

**Revised  
City of Leawood  
Planning Commission Minutes  
August 28, 2007  
Meeting – 6:00 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive**

**CALL TO ORDER/ROLL CALL:** Present: Shaw, Roberson, Jackson, Rohlf, Conrad, Munson, Elkins. Absent: Williams and Reynolds.

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

**CONTINUED TO THE SEPTEMBER 11, 2007 MEETING:**

CASE 55-07-LEAWOOD FIRE STATION #2 CELLULAR ANTENNAE – Request for approval of a Special Use Permit, located at 12701 Mission Road. **Public Hearing**

**CONTINUED TO THE OCTOBER 23, 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 53-06 LDO AMENDMENT – SECTION 16-2-z5.7 (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**

CASE 66-07 LDO AMENDMENT – SECTION 16-4-5.7 PARKING LOT CONST. STANDARD. Request for approval of an ordinance to the Leawood Development Ordinance. **Public hearing**

**CONSENT AGENDA:**

CASE 84-07 THE RESIDENCES AT PARK PLACE TENANT FINISH – Request for approval of final site plan, located at the northeast corner of 117th Street and Nall Ave.

CASE 87-07 THE PARK PLACE GALLERY - Request for approval of final site plan, located at the northeast corner of 117th Street and Nall Ave.

CASE 89-07 PARK PLACE – B-03 TENANT FINISH - Request for approval of final site plan, located at the northeast corner of 117th Street and Nall Ave.

**A motion to approve the Consent Agenda was made by Munson, seconded by Elkins. Motion approved unanimously.**

**OLD BUSINESS:**

CASE 65-07 M&I BANK AT VILLAGGIO – Request for approval of a preliminary site plan, located at the southwest corner of 135<sup>th</sup> Street and Fontana. **Public Hearing.**

*Commissioner Munson recused himself from discussion of this case.*

**Staff Presentation:**

Mr. Klein: This is Case 65-07. The applicant is requesting approval of the preliminary site plan for a one-story 6,005 square foot bank with a drive-thru on 1.33 acres. The building is to be divided between a 4,978 first floor and a 1,027 basement. Originally a 9,000 square foot one-story building was proposed at this location. It was also showing to be a bank. The Planning Commission heard the last overall final site plan for the Villaggio Development on November 21, 2005. With that, this piece was part of that located at the corner of Fontana and 135<sup>th</sup> Street. Again, it did have the drive-thru similar to what is shown here. It also had a trellis feature that goes around the northeast corner to screen the drive-thru. Part of the reason that was done was to help meet the 60/40 rule along 135<sup>th</sup> Street and Fontana.

There are several deviations that are being requested with this application. These deviations are in agreement with the overall final site plan that was approved with the Villaggio Development. I included a portion of that site plan in your packets so you could have some comparison between the two. One of the deviations is for a 30-foot structure setback. That's for the canopy along Fontana. The LDO does allow a reduction to 30-foot building setback as long as there is compensating open spaces provided. The applicant has provided some open space over on the north side of their property in which they've tried to make an amenity of this area to make up for some of the deviations that they're requesting.

Another deviation is an 18-foot exterior structure setback. This is for the trellis feature that goes around the corner. The Leawood ordinance states that garden structures are allowed to go anywhere in the front. Staff is taking a conservative approach and decided to call out that deviation just to make sure that you are aware of it. This was something similar that was shown on the overall final for the Villaggio Development. There is a one-foot interior building setback also for the trellis. There's a tract of land that's located at the northeast corner of the development that will eventually have a corner feature. This trellis feature will act as a backdrop to that.

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

Chairman Rohlf: Mr. Klein, I just noticed one thing, and maybe you can clear it up for me. The zoning for Villaggio, is the zoning that's referred to in this staff report only for this site?

Mr. Klein: Only for this site, and for this particular site it's SDCR, which is planned general retail. This overall site actually has a section of it along the north and then west property line that was retail. Then it has an office portion which is zoned SDO, which you earlier saw an application for Gardens of Villaggio, which is three office buildings that were clustered around an open space.

Chairman Rohlf: Does it have a condominium component?

Mr. Klein: Actually Villaggio East had a condominium component. However, it's my understanding the contract on that has expired. This one did have an independent and assisted living facility located on the south side of 137<sup>th</sup> Street.

Chairman Rohlf: I thought there was some other zoning. Any other questions for staff? Then we'll hear from the applicant please.

**Applicant's presentation:**

*Joe Shortreed, M & I Bank, 770 N. Water Street, Milwaukee, WI, appeared before the Planning Commission and made the following comments:*

Mr. Shortreed: I would like to take this opportunity to thank you for hearing our request for preliminary approval. Bob Meyer with 360 Architects has filed the application on our behalf, as mentioned, for the 6,005 square foot new branch bank on this site at Villaggio. I'll turn it over to Bob to make the presentation for the site.

*Bob Meyer, 360 Architecture, 300 W. 22<sup>nd</sup>, Kansas City, Missouri, appeared before the Planning Commission and made the following comments:*

Mr. Meyer: I'm here tonight to present the M & I Bank at Villaggio. We do have a basement component with this building which is used for mechanical and storage only. There won't be any occupants down there. On the site, as Mr. Klein had mentioned, there's a trellis feature that would act as the screening element to the drive-thru. That is part of the original design feature that was approved in the original master plan approval. In this area we did take into consideration adding a pedestrian lane. As Mr. Klein had mentioned in this area, we are requesting a deviation of approximately four feet into the parking right-of-way, and that really pertains to this additional pass-thru lane that we would like to have in the project.

As far as the elevations go, we're basically using the design handbook approved materials, and those include a tile roof, exterior insulation finished system along the cornice area, and a face brick. So there is no deviation from that. We are following with the Tuscan theme that has been approved. Landscaping, we are proposing to use perimeter shade trees and a mix of ornamental trees within those shade trees and berming effects to create this edge along 135<sup>th</sup> Street and Fontana. We currently are proposing to have 33 percent open space. I think that would complete the presentation.

Chairman Rohlf: I was a little unclear on the deviations, but I think I have it now. Has your team read all of the stipulations, the 31 stipulations, and you're in agreement in with all of those? We don't have any problems?

Mr. Meyer: No, we do not.

Chairman Rohlf: Questions then for the applicant.

Comm. Conrad: Maybe I should ask this of staff. Is EIFS acceptable?

Mr. Klein: Actually no. At the time of final site plan, when we do the review for the building elevations, we'll have them change that or recommend that be changed to stucco. Typically no, we don't allow the EIFS.

Comm. Conrad: So should that be a stipulation now?

Mr. Klein: It can be if you'd like to add it. The reason the stipulation wasn't in there currently is because typically we do that at the time of final site plan. Usually when they submit for an application for final site plan, we tell them that they need to be stucco.

Comm. Conrad: The slats are called out as vertical. They're really horizontal. What are they made of?

Mr. Meyer: We haven't really determined that at this stage, but what we're looking at is some kind of a durable material, something that's long-lasting.

Comm. Conrad: Those wouldn't be wood, would they?

Mr. Meyer: No, not just painted wood, but something other than that which would stand the test of time.

Comm. Conrad: My final question. Has the detention been constructed on this site yet?

*David Ley, Public Works Department, appeared before the Planning Commission and made the following comments:*

Mr. Ley: No it has not. The study has been approved, and there's a temporary pond on the east side of Fontana, but they do need to install the pipes for this site.

Comm. Conrad: So in order for a building permit to be issued, that will have to be a part of the building permit?

Mr. Ley: That's correct. They would have to have the plans approved prior to getting a building permit.

Comm. Conrad: And construction will be completed before an occupancy permit?

Mr. Ley: Right, before a TCO would be given.

Chairman Rohlf: Other questions for the applicant?

Comm. Jackson: This might be for Mr. Klein, too. What deviations are approved on the preliminary?

Mr. Klein: Actually, the deviation that was approved on the preliminary was for a zero foot internal parking setback, which you see very common. The plans showed this building located at this general area at this general layout with more or less the deviations that it would need. However, I don't believe they were approved at that time, because there was really no guarantee as far as what would go at that corner ultimately. There was no specific tenant or anything like that. I think it's meant for this Planning Commission meeting to determine whether they feel that the deviations are justified. Part of what they've done with the deviations, again, is you have that one-to-one ratio that they have to provide an open space amenity, which they've tried to do on the north side of the development. So that's part of what you'd be taking into consideration. At the time of the overall final site plan, nothing like that existed. It just simply showed the building located at that area and the drive-thru going around it with the screen like a pergola feature going around the corner and then also with the drive-thru extending out toward Fontana.

Comm. Jackson: There's certainly nothing on this site that would warrant the deviations. It hasn't been put into this site plan. Is that the overall site plan?

Comm. Klein: The overall site plan showed this building at this location and this basic layout. However, the deviations for this particular site were not technically granted. This is consistent with the plan that was approved; however, the deviations listed there are the deviations specifically listed out in that staff report and did not include the ones for this particular project.

Comm. Jackson: Are there any amenities added for the entire site plan that you feel justify these deviations?

Mr. Klein: There are amenities that are added with the overall site plan regarding corner features, primarily at the corners of 135<sup>th</sup> Street and Fontana, which is actually adjacent to this piece. Then they also have another corner feature that is located over on the opposite corner. This particular development had actually two parts to it. They had an office portion that was located in the interior and a retail portion that wrapped around it. The office portion of it exceeded the FAR that was allowed within the office portion, and so a great deal was spent as far as providing them FAR bonuses. The retail portion of this, which is zoned SDR, which this is actually a part of, was a little bit below as far as the maximum FAR allowed. So no deviations were required at that time, and no bonusing was suggested with that part of the development.

Comm. Jackson: Then there's a question of how tall the trellis should be, and staff is different?

Mr. Klein: The reason for that is there's a section in the ordinance that limits accessory buildings and structures to 15 feet in height, so that was the reason for the stipulation of the 15 feet.

Comm. Jackson: Does that adequately screen that area?

Mr. Klein: I believe so. Fifteen feet is still fairly substantial. It should be well above the cars to screen that and still blend with the building.

Comm. Jackson: How about the berm along Fontana? Does that help in making up for the deviation in the drive-thru lane encroachment?

Mr. Klein: The berm is intended to screen parking and service areas, so it's a requirement of the Leawood Development Ordinance. Regarding the deviation for the 21 foot parking setback, which is actually for the drive-thru, staff is recommending that to provide a pass-through lane that goes on the other side that isn't a requirement. The developer would be able to go back to eliminate that and thus eliminate that deviation.

Comm. Jackson: But staff feels that's needed right there?

Mr. Klein: Staff feels comfortable that a deviation to allow a car to get around would be something that would be beneficial.

Comm. Jackson: What would happen if you pushed the entire piece to the west there?

Mr. Klein: I think we talked a little bit about that with them early on in this process, and I think they were having a problem as far as getting the parking to align. Also, you have 24 foot drive aisles that are going, and then they have to match in with the piece that's further to the west.

Comm. Jackson: Mr. Meyer, back to you. Is all this parking necessary around the bank? Kind of a comment that goes to several of the buildings that were seen today, we're being asked for a lot of deviations, where Leawood is requesting more open areas, more distances between streets and buildings. It just doesn't go to the aesthetics. It also goes to the increased congestion, the increased traffic use, increased sewage use, the increased pollution. Those are some of the reasons for these added areas. I think all our buildings, people come in and they try to make the building a little larger, the parking a little more. I think it's incumbent today, in this age, that we look at those things a little more critically as do we really need that parking area? Do we really need all that surface paved, because it does cause other problems down the road. Can you speak to the need for all this parking around the bank?

Mr. Meyer: I believe we are only one stall more than is required by City ordinance.

Comm. Jackson: Is that what it comes out to when you get to the 4.5? You're .5 over.

Mr. Meyer: I have that listed on the site plan sheet that calls out the required parking versus what we are providing, so I think we're providing just one more than we're required by City ordinance. I would point out also that we're also requesting a smaller building footprint than was originally approved on the plan, so we're actually probably increasing open space on the site by doing that.

Comm. Jackson: Thank you.

Chairman Rohlf: Any other questions for the applicant? Thank you. There is a public hearing this evening for this case. Is there anyone in the audience that wishes to speak to this case?

**Seeing no one, a motion to close the public hearing was made by Elkins and seconded by Jackson. Motion approved unanimously.**

Chairman Rohlf: That takes us up to any additional discussion hopefully leading to a motion.

Comm. Elkins: I guess I had a question for staff. I didn't quite follow the exchange between Mr. Conrad and staff on the EIFS issue. Is it something that would be appropriate for us to add a stipulation on the EIFS? Or is it already a requirement such that they would need to make that change before they got their construction permit?

Mr. Klein: I think you could do either. Quite honestly, providing them with a stipulation indicates to them early on that they need to exchange the EIFS for stucco. I don't see any problem with that. We've done that in the past. The only reason why staff didn't do that is because typically the elevations are reviewed at final. I think it would be appropriate if you so choose.

Chairman Rohlf: Would we need to include any of the other materials? I think sometimes in these we have consistent with the building materials...

Mr. Klein: They're required to use the materials that were approved with the overall Villaggio Development. As you recall on the Gardens of Villaggio, there was a great deal of discussion regarding the architecture of that building, the materials of that building, and so I would assume that this would be very similar to that at the time of final site plan. In fact, if there's any concerns over the elevations that they've given you tonight, it would probably be a good idea to at least give them a general heads-up as far as the things that they might consider addressing. I do know on the Gardens of Villaggio there was a lot of discussion regarding that. Again, they do have to use the materials approved for the development. If they don't, then they would have to make an amendment to those materials for the development.

Chairman Rohlf: Do we have a set of design guidelines? I think we do, don't we?

Mr. Klein: Yes, and I have them here if anybody would like to see them.

Chairman Rohlf: I thought we had approved that.

Comm. Elkins: It seems to me that if they're already bound to the materials for the overall development, and EIFS isn't on the approved list of materials, I don't know that it makes sense to add another stipulation here.

Chairman Rohlf: Hopefully we won't see that at final.

**A motion to approve CASE 65-07 was made by Elkins and seconded by Shaw, subject to the 31 stipulations recommended by staff.**

Chairman Rohlf: Any further discussion or comment?

Comm. Jackson: Just for comment out here, if we added something because we are allowing all these deviations, we expect to see it final for the overall plan added amenities to justify them.

Mr. Klein: If you want, yes, there is a similar stipulation that was made on another case, I believe, at the last meeting. Deviation shall be granted contingent upon applicant satisfying the deviation requirements as determined by the Planning Commission and governing body.

Comm. Jackson: Mr. Elkins, would you add that as an amendment?

Comm. Elkins: I would accept that as a friendly amendment exactly as staff has articulated, because I can't repeat it.

**Motion was unanimously approved.**

**NEW BUSINESS:**

**CASE 72-07 GLEN ABBEY OF LEAWOOD SALES TRAILER** - Request for approval of a Special Use Permit for a sales trailer, located at 143<sup>rd</sup> Street and Cedar.

**Staff Presentation:**

Mr. Joseph: This is Case 72-07, Glenn Abbey of Leawood. They are requesting approval of a Special Use Permit for a temporary sales trailer. The applicant is Jason Meyer. This property is located at the northwest corner of 143<sup>rd</sup> Street and Cedar. The proposed trailer is approximately 12 feet x 44 feet, and the applicant is requesting one year for the Special Use Permit duration. Staff is supportive of this application and is recommending approval. If you have any questions, I would be happy to answer those.

Chairman Rohlf: Anyone have questions for staff? Seeing no questions, we'll move to the applicant.

**Applicant's presentation:**

*Jason Meyer, Adam Development, 10327 Lee Boulevard, Leawood, KS, appeared before the Planning Commission and made the following comments:*

Mr. Meyer: Thank you very much for letting us present this to you. I want to keep this very short. We're providing extensive landscaping around the sales trailer, handicapped accessible parking. It's on an interior lot, so there really won't be any houses around us that will even see this sales trailer. The interior finish is going to be very nice considering we're going to be selling homes that are over \$1 million in the subdivision. With that, we completely agree with all the staff recommendations and stipulations and respectfully ask for your approval.

Chairman Rohlf: I do have a question for you. How will people know that there is a sales trailer there?

Mr. Meyer: There's really only one way into the subdivision, and as they drive through the roundabout they're going to be able to see the sales trailer. There might actually be a small sign with an arrow pointing up somewhere along that route.

Chairman Rohlf: Would you point out for me? I know I've seen it on my rendering, but it wasn't real clear. Just show me, because it seems like it's pretty interior.

Mr. Meyer: Yes, actually the lot is right here. We understand that being centralized, and we know we can't build a house on this lot until the sales trailer is gone, but it's just located right in the middle of the development.

Chairman Rohlf: You would anticipate this would be for people that would just like to see a tour of the neighborhood?

Mr. Meyer: Yes, in fact all of our subdivisions, the sales trailer or sales office works best because they can go through and they can see all the lush landscaping and the stone monuments and all of that. It's better if it's here versus in an office somewhere else, so that's why we just want something temporary until we've already got quite a few of the homes ready to start going up once we're able to pull permits. Hopefully within a year we're going to have upwards of 10 or 12 homes going, so we'll be able to eventually move into one of those garages, and that would be the sales office.

Chairman Rohlf: All right. Does anyone else have questions for the applicant? Mr. Munson, I'm sorry, we are hearing from the applicant on the Glen Abbey sales trailer. He has finished his brief presentation. Do you have any questions for the applicant?

Comm. Munson: No, I don't.

Chairman Rohlf: All right, thank you. Then I think that takes us up to any further discussion on this. It does require a public hearing. Is there anyone in the audience that wishes to speak about this case? If so, would you please raise your hand.

**Seeing no one, a motion to close the public hearing was made by Jackson and seconded by Elkins. Motion approved unanimously.**

Chairman Rohlf: That takes us up to any additional discussion, hopefully leading to a motion. I think this is pretty consistent with what we've seen before in our Special Use Permits.

**A motion to approve CASE 72-07 was made by Jackson and seconded by Elkins. Motion was unanimously approved by the Commission..**

**CASE 80-07 AT&T LIGHTSPEED – 11404 Canterbury Circle – Request for approval of a special use permit, located at 11404 Canterbury Circle.**

**Staff Presentation:**

Jeff: This is Case 80-07, AT&T SAI box cabinet. This is a request for approval of a Special Use Permit. This box is located at 11404 Canterbury Circle, and recently you approved an AT&T VRAD cabinet right next door to it. So this is the proposed SAI box that will be located to the east of the VRAD cabinet. Staff is recommending approval of this case with the attached stipulations. If there are any questions, I'd be happy to answer them.

Chairman Rohlf: All right, questions for staff?

Comm. Conrad: Jeff, was this the site that we thought there was one abandoned pad which may not be the applicant's? Did we ever find out?

*David Ley, Public Works, appeared before the Planning Commission and made the following comments:*

Mr. Ley: That's not an abandoned pad. That is a street light. There's a street light controller on that pad, so it turns the streetlights on and off.

Comm. Conrad: So all of the equipment in this area is currently operational?

Mr. Ley: That's correct. We went out and looked at it, and there's nothing abandoned. Everything is in operation.

Comm. Conrad: Thank you.

Chairman Rohlf: Any other questions for staff?

Comm. Munson: The letter from David Ley to Scott Lambert, Item 1, indicates they prefer to have the cabinets installed outside the right-of-way. Is this one outside the right-of-way?

Mr. Ley: Yes, this is in the backyard in a utility easement.

Comm. Conrad: Okay.

Chairman Rohlf: Any other questions for staff? All right, then we'll hear from the applicant.

**Applicant's presentation:**

*Chris Carroll, AT&T, 8900 Indian Creek Parkway, Overland Park, appeared before the Planning Commission and made the following comments:*

Mr. Carroll: You might recall and as staff reported, we were here before the Planning Commission on July 10<sup>th</sup> for a VRAD cabinet that was approved and then subsequently approved by the Council. It was our intent when we made that first application to file for both cabinets at the time, despite the fact that on our site plans, on our landscape drawings, both cabinets were identified. We were notified the morning of the hearing of the Planning Commission on July 10 that it would require us to file a second application, and that's why we're here before you this evening, Madam Chair. This is the third phase of a three-phase project that AT&T is undergoing in the community of Hallbrook, a \$2.5 million upgrade of our telecommunications network infrastructure there. We've placed a fiber backbone through the community. We are now currently and will be until the end of the year placing fiber to the homes on the southern edge of the community.

This Service Area Interface – SAI - cabinet is required in order to provide dial tone to those in the northern half that are copper fed. I have a drawing here I'll just share with you. The blue colored area would be copper fed, and originally we had [*Inaudible – partially off-microphone*] a Service Area Interface cabinet that is right here. This is a new cabinet at this location. You might recall the previous VRAD applications we've had, there's been retrofits of the Service Area Interface cabinets, the SAI boxes. This one is a new cabinet, thus the need for this other application. This Service Area Interface cabinet will be providing dial tone to the copper fed communicants listed in blue in the northern half of the Hallbrook community and is a requirement in order to provide, again as I said, dial tones. So as long as the homes are there, we're going to need this cabinet, and the one of the stipulations, I believe it's Item 4, I would ask the Commission's consideration for, as with all other previous SAI boxes, is an indefinite period of time. Again, it's understood that the VRAD cabinets that we're putting in have the limitation of 25 years, so I would ask the Commission's consideration for an indefinite period of time for this particular cabinet because of the nature of the technology that it serves and the services that it provides and just basic dial tone, not video services like the VRAD cabinets that you earlier approved for this site and other sites throughout the community of Leawood. There is at this particular location, and this is a utility easement, there is a cable box. There's a KCP&L cabinet. As reported, there's a light fixture that controls the lights in Hallbrook and our facility. A number of cabinets that are existing is fairly well shielded with existing trees and shrubbery. I will report to the Commission that just recently we met with the property owner to the north and to the west of this particular site, and outside this easement we've agreed with those property owners to add additional landscaping for additional screening on their property. So we've spoken with and have visited with and agreed with those nearby property owners. You'll notice on the landscape drawing and also on the staff report that there's sufficient screening to the east, but not necessarily as much as was desired by the property owners that we've worked with to the north and to the west. So we've agreed to place some additional shrubbery and trees there all in a height of about six to seven foot as earlier requested by staff. I'm happy to answer any questions.

Chairman Rohlf: Mr. Carroll, I know we've had a number of these this summer. Has the governing body, approved the majority of these? Are we at the point where we're going to start installation?

Mr. Carroll: Oh, installation is going on. The last ones we just got approved from the Council, they may not have started on two or three of those, but I know that we have, I believe, another seven that we will be applying for. We've talked to staff about that. We hope to be before you before the end of the year with those seven. But yes, we're moving forward, and in fact, we've locked service. We're already offering our U-Verse TV services to citizens in the community of Leawood.

Chairman Rohlf: Jeff, are you notified once they're installed so that you can go out and make sure that the landscaping meets? Because I'm sure you haven't been installing the landscaping, at least I hope you haven't.

Mr. Carroll: Well, not in the last four to five weeks. We won't start again until the middle of September.

Chairman Rohlf: Is that something that you monitor?

Mr. Joseph: Once they are done with the landscaping, they'll notify us, and we'll go out and inspect the cabinets.

Chairman Rohlf: Okay, because I know we've approved an awful lot of screening for these.

Mr. Carroll: You're right, Madam Chair. The weather lately is not conducive to planting, so we have held off, and staff has agreed with us that this is not the time. So we will begin again the 15<sup>th</sup> of September.

Chairman Rohlf: All right. Jeff, what about stipulation number 4? Do we have some inconsistencies? I do remember the discussion on the 25-year permit for the VRAD.

Mr. Joseph: Staff is still recommending the 25 years due to the fact that if the technology changes, then we'll be able to have the opportunity to look at it later before the 25 years.

Chairman Rohlf: Is that what we've been doing with all of these then?

Mr. Joseph: Yes.

Mr. Carroll: That is correct with all the VRAD applications, the video cabinets that we've been placing, and we concur with that. This is just like the cabinets that we've had for 30 years or more in the community. This particular Service Area Interface cabinet provides basic dial tone to the residents, and I'll pull out my map again. This is one of our smaller cabinets, but we were unable to provide from this earlier Service Area Interface cabinet at this location, we couldn't reach all the way to this edge. From this location with that over-technology, we weren't able to serve all the way to this area, the northern areas of Hallbrook. So this cabinet is there to serve the entire area that you see identified in blue. It's the same cabinets that we've had in place throughout not only this community but throughout the greater Kansas City area that's been there for years and years that provides basic dial tone. For that reason, Madam Chair, I would request that consideration be given for this particular cabinet for an indefinite period. We'll be back before you with those other seven VRAD cabinets that I understood would be a 25-year limitation.

Chairman Rohlf: We haven't had any of the SAI.

Mr. Carroll: This is the first time since I've been on this job that I've ever gone before any governing body, a Planning Commission, requesting a Service Area Interface cabinet. Those have all been years and years ago, but because we've got a six month upgrade of our infrastructure. We started in late April, the first of May until the end of the year, we'll be working in that community building our network infrastructure. You see when that subdivision was put in back in the mid-80's, at that time the technology that we placed at that time was the latest fiber technology. That is manufactured discontinued today. It's not even compatible with our network today. Unfortunately we have not been able to even offer basic broadband services. DSL is not available to the community of Hallbrook at this time. With this new infrastructure that we're placing, and again we're spending \$2.5 million on this upgrade, we'll be able to provide not only the latest in advanced services that we offer but video services and greater bandwidths and broadband services. We're actually visiting each home, cutting each home over from the old network to the new network, so it's a major, major undertaking that, like I said, it's taking about six, seven months to complete.

Chairman Rohlf: Does anyone else have questions for the applicant?

Comm. Jackson: So the old technology was from the 80's and now it's being upgraded?

Mr. Carroll: Yes.

Comm. Jackson: So that lasted about 27 years, perhaps 25. Technology's only changing faster. Wouldn't 25 years be about appropriate?

Mr. Carroll: We don't want to have to come in every 25 years and spend \$2.5 million just to change technology. At that time, this was a fiber-to-the-home community. This community and Cedar Creek were the only two communities that I'm aware of in the State of Missouri, well maybe not Missouri but certainly in the greater Kansas City area and in the entire State of Kansas, where we put that technology and fiber to the home. We're only doing that today in new developments, in green field developments. We're taking what we call FTTH fiber to the home. This is a fiber-to-the-node program that we've been before you before with our VRAD cabinets. The VRAD is the node, fiber to the node. Hallbrook, again, in the mid-80's when it was developed, it was a fiber-to-the-home

community, and it was state of the art at that time. It was recognized across the country as one of the leading developments, Hallbrook and Cedar Creek at that time. Only in green field areas now are doing that type of development, fiber-to-the-home technology.

Comm. Jackson: What do you mean by green field?

Mr. Carroll: New developments where there's no existing development, no houses now, brand new subdivisions that are going up. You see some of that in the growth area of southern Johnson County and southern Leawood, western Shawnee, western Lenexa, some of Olathe. We're taking fiber straight to the home. But where I've been before for the VRAD cabinets, that has all been a fiber-to-the-node technology that we're putting in utilizing the existing copper technology that we have. With digital compression, we're able to deliver the video signals and the bandwidth through the traditional copper phone line that we have in our homes today.

Comm. Jackson: I guess I'm still confused. So what's going in this cabinet isn't going in anywhere else in Leawood, or it is?

Mr. Carroll: It's just like what we have throughout. In the blue area, the northern area, that's going to be a fiber-to-the-node technology. It's converted from fiber-to-the-home to fiber-to-the-node in the northern half. In the southern half, we're continuing our fiber-to-the-home technology but converting it to newer fiber. That still doesn't answer your question, does it?

Comm. Jackson: Are you going to be converting any other cabinets?

Mr. Carroll: No, no. This is it for Hallbrook.

Comm. Jackson: But how about in the rest of Leawood?

Mr. Carroll: Oh yeah. I said we've got seven more. Seven, I believe it is, that we'll be before you, other locations where we have existing SAI boxes that we need a VRAD next to it in order to provide the video technology.

Comm. Jackson: Why do you believe that this technology is not going to change significantly in 25 years?

Mr. Carroll: Well I can't say for certain whether it is or isn't, but as a shareholder of our company and employer of our company, I know our planning and design engineers don't engineer a project that has to be replaced every 25 years. It wouldn't be prudent to our shareholders to do that.

Comm. Munson: In 25 years, does that mean they would have to replace it or just come in and get another Special Use Permit?

Mr. Joseph: They would have to come back and get another Special Use Permit.

Comm. Munson: Doesn't involve any construction?

Mr. Joseph: No.

Comm. Munson: Okay, so what's the worry?

Mr. Carroll: I'm not going to be here in 25 years. So it's somebody else making this presentation. Oh I might be around hopefully, but I'm certainly not going to be standing here at the podium requesting an extension of a permit. This would be then consistent with all of our other SAI boxes throughout not only Leawood but throughout the country where they have indefinite terms.

Comm. Munson: I don't see the rationale. I think the staff's position is correct. Since it's just a matter of coming back in and extending it, not necessarily you're going to build it. The fact that it's consistent across the United States, hey we're Leawood.

Mr. Carroll: I've come to learn that.

Chairman Rohlf: Any other questions for the applicant? Thank you, Mr. Carroll. I think we've already started our discussion on this, but before we do that we do have to have a public hearing. Is there anyone in the audience that wishes to speak to this case?

*Ellen Chilton, 2905 W. 113<sup>th</sup> Street, Leawood, KS, appeared before the Planning Commission and made the following comments:*

Ms. Chilton: My backyard backs up to the utility easement. The three or four neighbors that are there have been meeting, and we all have concern about the number of units that are going in there. There used to be two KCP&L ones, telephone and then telecable was added. Now we have a total of eight back there. It looks like a high rise city, and this is the backyard of homes. So we are concerned about the screening. I would not agree that we're finished with that, because the landscaped plans that were submitted to me are incorrect in terms of drawing and tree location and what trees are where. That really needs to be refined, not

that we're unhappy, but it's not finished. The major concern is okay, this is AT&T. We have heard rumors and obviously they're just rumors at this point that Everest has interest in coming in as well. So does that mean that we're going to get three more gigantic eight-foot units in our backyards? So they're screened and they maintain them for a year or they water them four times, but then it's our job. So we just want you to be aware that we're not happy with the number of units that have been placed back there, and maybe you should consider somebody else's backyard next time when Everest or whatever company comes in next. It really looks like a high rise building.

Chairman Rohlf: Is there anyone else?

*Chuck Peters, 11501 Canterbury Circle, Leawood, KS, appeared before the Planning Commission and made the following comments:*

Mr. Peters: A number of my neighbors expressed one concern, and that is beyond all the multiplicity of these units that are in these easements, the issue of egress and ingress, because as the AT&T representative mentioned earlier that they have a large cabinet there on Brookwood. There are times when there are four or five trucks adjacent to that unit. In this case, the easement is in the middle of a conclave of residences, in the backyards with no means of egress other than through their yards. I'd just like to have that addressed. Thank you.

Chairman Rohlf: Is there anyone else in the audience that wishes to speak?

**Seeing no one, a motion to close the public hearing was made by Elkins and seconded by Jackson. Motion approved unanimously.**

Chairman Rohlf: Jeff, have you been out to the site?

Mr. Joseph: Yes, actually I visited the site, and there is some existing landscaping. Staff is asking for more landscaping to screen the units. If the Planning Commission so chooses, it can add additional landscaping to screen the areas, too.

Chairman Rohlf: We don't have that spelled out? I guess I would ask, Mr. Carroll, would you be willing to continue to work with City staff on making sure we have adequate landscaping? I know we've seen your plans and without being at the site right now...

Mr. Carroll: Most definitely. In fact, I was at the site last night and met with the property owner to the west, Mr. Ohmuth, and we have agreed to place at his request six additional trees, five to six Arborvitae and one Austrian Pine. That is an agreement that he and I reached last evening. In fact I sent this letter to him this morning. I can read it to you if you like. It's an agreement that we have, and certainly we had a contractor meeting with Ms. Chilton earlier and have agreed to place additional Arborvitae shielding her property. I haven't had the privilege of meeting Ms. Chilton, but I understand that Larry Green on our staff has done so, and certainly I will introduce myself and give her my card this evening. We're happy to work with property owners. Madam Chair, as I've stated to you before and to the Council, we want to be good corporate citizens, and we're working with the homes' association and the neighbors to ensure the adequate screening of these cabinets. I think we've demonstrated that just as early as last evening.

Chairman Rohlf: All right, thank you, Mr. Carroll.

Mr. Joseph: We could add a stipulation in there that talks about applicant shall work with staff regarding the landscaping.

Chairman Rohlf: I think that's a good idea, because it may require some additional review of the site.

Mr. Joseph: Correct.

Comm. Conrad: I'm trying to bring some of those comments together, and in my mind it kind of makes me wonder if 25 years is too long on Special Use Permits as technology changes. As the one lady pointed out, there are utility easements that have been set. They can probably be populated by any utilities, but from a planning standpoint we probably do want to keep a watch on what's put in and how it's put in. So I guess with those comments I would say it reinforces my support of a review of a Special Use Permit, whether it be a cell tower or a cabinet or whatever. It actually makes me think if 25 years is too long.

Chairman Rohlf: To be consistent, right.

Comm. Conrad: I think to address the question of none of the other SAI cabinets are under that, I think we're at a new point in time now. I think as we go forward, I don't think it's inappropriate to begin to look at time limits on reviewing those Special Use Permits on all those types of installations.

Comm. Elkins: A question for staff. This is a little bit new territory for me, but I tend to sympathize, and this is not directed at AT&T at all, but I sympathize with the concerns about what I would describe as a multiplex of utility cabinets in one particular area. Can

staff address is that the way the utility easements are designed so that there's one place where all the boxes should go? Or is there a concentration limitation that staff would look to see that eight cabinets is enough, but the ninth one is going to have to find somebody else's utility easement to rest itself on? I'm sure there are some technical issues about where you put them and whether your telecommunications or electricity or whatever. Can staff address the idea of what I would describe as a multiplex of utility cabinets?

Mr. Joseph: It depends on the easement. It's up to the applicant to decide who gets in there and how many boxes are located there. In this case, the VRAD cabinet was already approved, and they decided to actually build a new SAI box. That's the reason why this required a Special Use Permit. Any time they come in with a bigger box, they have to come through the process and get approval from us.

Comm. Elkins: Just from a purely hypothetical standpoint, because I understand we've already approved the VRAD box there, and it makes no sense to suggest the SAI box should go some place else. But hypothetically if some unnamed utility would come in two months from now with another application to add another box for some microwave, whatever the next generation of technology is, would we have the authority to deny the siting of that utility box at that spot and suggest that it should go some place else technically feasible? What are the scopes and meets and bounds of what we can do here?

Mr. Ley: We can discuss it with the utility on moving it, but our utility easements allow for any number of structures to be there. It doesn't limit the number of structures that can be in one location.

Comm. Elkins: So we have very little discretion as to what we can do if that's the case?

Mr. Ley: As long as they can fit in that utility easement, that is correct.

Chairman Rohlf: David, how often do we look at these utility easements? Are they in stone, or do we reevaluate?

Mr. Ley: Utility easements are typically given on the plats. Sometimes a utility, KCP&L or AT&T will work with the property owner to obtain a larger easement, but for the most part everything's on the plats.

Comm. Elkins: I guess another question for staff, but the gentleman expressed a concern about the ingress and egress, and again my recollection of utility easement law isn't as good as it should be. Is there a right to get to that easement over the property owner's property?

Mr. Ley: Yeah, there's an easement that goes out to the street which does allow for access, and AT&T can discuss, because we talked to AT&T about that before with having boxes in the rear lots, how would they access them.

Comm. Elkins: So there's actually a drawn easement on the plat as to what the egress?

Mr. Ley: It goes right out to the right-of-way.

Comm. Elkins: Okay, thanks Dave. I guess one other comment that I would have just to put myself on the record with Commissioner Conrad. I think maybe I was one of the people that started the ruckus about the perpetual Special Use Permits. It just seems to me like a matter of prudent public policy, and I am in agreement. I kind of kick myself a little bit for giving in on the 25 years and now wish it was something less than that. When you think that all of the investment that goes into a cell tower, and we review that every five years, as I recall it. This seems like a much less concentrated investment. It's certainly less intrusive, too, admittedly, but I think the proof of the policy is in Mr. Carroll's presentation that 20 years ago, whatever it was, state of the art technology said that Hallbrook was the best there was in the country. In 25 to 27 years that's changed, and there's a need for a new box and a different type of fiber optic cable to be laid. So I would go on the record again as yet reiterating my own position, my own perspective that at the very least in 25 years from now, our successor ought to take another look at this and see where we stand.

Comm. Munson: I think what we ought to do is make the length of the Special Use Permit consistent with the cell tower, so everything is the same. In other words, if it's five years, it should be five years so we have a chance to review it and so forth and so on. I would suggest that we amend that. Whoever makes a motion can decide that. I feel that we ought to be consistent with what the cell towers are.

Comm. Elkins: As a matter of policy, I am in complete sympathy with Mr. Munson. As I said, I am kicking myself for giving in three months ago when we went for the 25 years as opposed to the perpetual, but having said that, a law professor I once had said consistency's a hob goblin of a small mind. I think there's a reason for a difference in the way we're treating the SAI box today than we did in the past, because we have articulated a new policy on this Commission, and I think it's been affirmed. Our perspective has been affirmed by the governing body. Having said that, especially for the Project Light Speed things, I think it would put AT&T at a real disadvantage to try to keep track of the boxes that were approved, the VRAD cabinets that were approved two months ago. They know they have to come back in 25 years and even though I'm in complete agreement and sympathy with Commissioner

Munson tonight, to say the ones, the last seven in their Project Lightspeed, they have to come in five years to have those approved. It seems like an administrative nightmare to them. While policy, I would love it. I just hesitate to visit that upon them.

Chairman Rohlf: Any other discussion on this? Then I think we're ready for a motion please.

**A motion to approve CASE 80-07 was made by Elkins and seconded by Roberson, subject to the staff recommendations.**

Comm. Jackson: Were you going to add the landscaping?

Comm. Elkins: I'm sorry, yes. If someone could help me with the language, I would be happy to add that.

Comm. Jackson: Applicant shall work with staff regarding the landscaping of the SAI cabinetry.

Comm. Elkins: Thank you, Commissioner.

Chairman Rohlf: All right, we'll add that then as stipulation number 6, making a total of 7.

**Motion approved 8-1.**

**CASE 81-07 BI-STATE CENTENNIAL PARK – KIDDIE ACADEMY – Request for approval of a special use permit and a preliminary plan, located south of 141<sup>st</sup> Terrace and east of Overbrook, within the Bi-State Business Park Lot 20.**

**Staff Presentation:**

Jeff: This is Case 81-07, Kiddie Academy within the Bi-State Development. The applicant is Bob Rogers. The applicant is requesting approval of a Special Use Permit and the preliminary site plan for the construction of a one-story, 9,315 square foot building on 2.05 acres for an FAR of 0.1. This project is located within Lot 20 of the Bi-State Business Park. The proposed building will be constructed of brick and stucco. This building will be used as a daycare facility. Per the Leawood Development Ordinance, a daycare facility is allowed within a BP district with an approval of a Special Use Permit. The proposed building is constructed of more than 60 percent stucco, and staff is recommending that a minimum of 50 percent of the building be constructed of masonry materials like brick or stone. The applicant is also requesting a deviation to circumvent the 40/60 rule. Staff is recommending approval of this case with the stipulations stated in the staff report. If you have any questions, I'll be happy to answer them.

Chairman Rohlf: Jeff, could you refresh my recollection on what other buildings we've seen on and on what lots?

Mr. Joseph: Sure. This is Kenneth Road here, 141<sup>st</sup> Street. The building that they're proposing right now is Lot 20. This is the corner there. Then Lot 19 is a warehouse building that was approved five months ago, and also Lot 23 is a warehouse building that was approved. These top row buildings are already approved. These are brick buildings that are existing. Those are all the buildings that are approved.

Chairman Rohlf: Lot 19 and Lot 23 we've seen in preliminary and final, is that correct?

Mr. Joseph: Final, yes. They're in for a building permit right now.

Comm. Munson: The existing building right in the middle?

Mr. Joseph: Yeah, the Coors distribution.

Comm. Munson: What is that?

Mr. Joseph: It's a beer distributor.

Comm. Munson: Beer distributor? Thank you.

Chairman Rohlf: Anyone else have questions for staff at this time?

Comm. Elkins: Jeff, I'm just curious. I can't remember what we've talked about in the past in terms of the architecture being consistent from one building to the next. I know that the developers had some discussion about the need for a difference in looks, that they want to attract all different types of uses. Is staff satisfied with the consistency of the architecture?

Mr. Joseph: Actually we've been recommending the applicant to build to design guidelines for this development, and I think they are working on it right now. Staff wanted to get that before you before this building came in, but they're not finished with it yet. So that's where it is right now.

Comm. Elkins: I know it's a little bit like reading a crystal ball, but based on what we see here, do you feel like there's enough consistency so that when they do come in with guidelines, that the buildings will be roughly within those guidelines?

Mr. Joseph: I think right now it's all over the place. These two buildings, they are constructed of brick. Everything is brick. Then Lot 19, it's all stucco. It's totally different architecture. Lot 23, again that's like pre-cast concrete, and it's totally different architecture altogether. This building is different here, so it's different.

Comm. Elkins: Okay, thanks Jeff.

Comm. Jackson: Jeff, there's some concern from the fire department as to getting in toward the building. Has that been resolved? It looks like they changed the layout on the parking.

Mr. Joseph: Yes, actually they are providing two access points. That solved it.

Comm. Conrad: Jeff, I think we've seen a few daycare facilities when I've been on the Commission. Have they given any description as to the play area and the fencing and some of those issues? We're awful close to the lake. I know it's probably not ours to question too much about those issues, but in an overall look of what the development is going to be, I know that the fence round the play area has always been an issue. Has anything been presented? Maybe we need to ask the applicant.

Mr. Joseph: They are proposing a four-foot fence. It's a metal picket fences around the play area and also around the [inaudible]. It's all around the building. It's right next to the sidewalk, so it's all enclosed.

Comm. Conrad: I'll ask the applicant.

Chairman Rohlf: Anything else for Jeff at this point? Thank you, Jeff. We'll hear from the applicant.

**Applicant's presentation:**

*David Suttle, Suttle Midland Architects, St. Louis, MO, appeared before the Planning Commission and made the following comments:*

Mr. Suttle: Thank you for this opportunity. I think just following up on the site issues of this children's facility, it is overlooking the pond, and for security purposes alone, there is no way to really get in and out. So that's been paramount. Whether or not it was on flat side or wherever, that really is key to the whole concept. So that in the site plan is part of it. You notice that the play yards really are concentrated on the south end of the building. That's for good supervision by the teachers and everybody else so that there really is, in addition to the requirement, the zoning on the use of the site rather than spreading it all the way around the building, we've located all in one particular area to the south. That way I think there's an amount of comfort factor as well. I think the building is well described. It is an adaptation of their national prototype, and we have modified it quite a bit to conform to what we think is more pleasing and a more comfortable transitional design that would be appropriate in a mixed building business park, where as you know there are several buildings in the area that are already built. We're trying to move towards bringing them together with landscaping and material pallets and so forth to begin to make an impact on the rest of the business park. This particular stucco and brick combination building with the concrete shingle roof is probably going to be one of a couple of approaches to an architecture that meets different needs, because there's so many different kinds of new uses from highly industrial, warehouse kind of buildings here, to smaller buildings like this and office and warehouse combined. So we're going to have a little bit broader approach. We are working on those standards now. We will get those done very quickly, but we will not have a single uniform prototype, because it would just be impossible. With what's already there, it wouldn't blend with that either. So it's an issue that we're working on very hard, and we're just about finished with those issues, but the building that we have before you now we think is a very attractive building.

I would like to make one comment, and our client and everyone is very compatible with the suggestions, but we would like to just discuss the one issue of the amount of brick on the building. The use of brick on this kind of building was actually initiated as a practical matter, because the children and sidewalks all around the building, it's a protection to the lower part of the building. So we do have a zone of brick that's sort of a base course of the building from a practical standpoint. We felt that just alone might look like sort of a water table. So on the ends of the buildings and a couple, three places, we've put more brick and kind of made it so that it was a part of a design and not just sort of an engineering data point. It looks comfortable and it gives more brick accent on the end, but really the brick was there initially as a way to have long-term maintenance of the building maintained. In doing that, we do see brick and stucco very low contrast. So it's all very natural and very quiet as an aesthetic that we'll be presenting in the final application. I do feel that honestly if you look at the building and not at a statistic, but look at the building, it's pleasant, and the amount of brick is certainly adequate. I don't think there's a mandatory percentage of brick needed on buildings in Leawood. So it seemed like to me we were solving their practical problem and enhancing it to a point where it looks good. So I would just appreciate a little discussion or consideration of leaving the amount of brick that's on it now, because it's pleasant looking and attractive, and it's practical, rather than applying a kind of a rule to it. I would just like your consideration of that as you look at

the building. Everything else obviously is fine. We know there is a lot of landscaping, and you know they'll probably need some more, so we're ready to do that as well. Thank you very much. We would like your approval.

Elevations, I should show you elevations. Here you can see the main elevation. It has a rather special sort of tower form in the middle which would be seen and very attractive, we think, in the roof pattern. The red sort of entrance is their national trademark, so we thought it blended in and gave some accent. It's all kind of tucked into the auto court in front. We thought of landscaping. It won't be highly seen, but it will be there as part of their image. The rest of it, as you can see, the brick and the stucco and the roofs. We did add on both ends of it projections and roofs for entrances and enclosed the trash and tied into together, so that it would be an integral part of it, even though they need a breezeway through there functionally for exiting and kitchen access and so forth. So we've added more features. We've made the roof bigger. We've refined the design of it to the point where we think it's an attractive building but a very quiet building that only has kind of one feature that would be more noticeable and that would be attractive for the project then. So if there's any questions on any of these things, I'd be very glad to answer.

Chairman Rohlf: Mr. Suttle, I think our last building was number 23, maybe lot 23? We've had some discussions about the materials for both of those other buildings, 19 and 23, and I think your partner was here or one of your affiliates. Did you talk with him about some of the concerns that we expressed that evening about the buildings and our concern about the lack of an overall design plan for this development?

Mr. Suttle: Concerning guidelines particularly? Yes.

Chairman Rohlf: Right. I noticed that Dr. Vince isn't here this evening for me to ask him, but I'm not even sure we're clear how involved you are in the overall park. There are several lots on the Kansas side, and I'm not sure if you're involved in all of these buildings, or if we're going to take them one at a time?

Mr. Suttle: I'd be glad to just give you our observation on that is that we are designing and architects for some of the buildings. We are only consulting with the developer on other buildings. So there's going to be somewhat of a range, and certainly we plan on it being very acceptable, but there will be some variation appropriate to the various buildings. That's what you're seeing at this point. Some buildings have a little bit more of a masonry quality. Others have all stucco. This is a combination. We think that that's probably the direction that we want to embrace but given a little more control. So as we move forward, my honest feeling is that there will be more consistency with one or two of these buildings and less variation, but really without doing those and without doing the standards and showing it to you, that's just sort of a look ahead. So I hesitate to even say that, because it's not fair for you to judge on something you haven't seen yet. But that's my intention is to bring more solidity to fewer options of building design, and I'm working on that right now with the developer.

Chairman Rohlf: I think you can appreciate the position that we're in also. Typically a development this large with this many lots we would have an overall plan, preliminary plan and final plan. We would have design guidelines, material boards. This is our third building, and I know from our last conversation, and I think if I remember I was pretty specific with Dr. Vince about the fact that before we could approve another building, we really wanted to see the overall plan, because there was quite a bit of discussion. I can't remember which one it was on the roof issue. We had quite a discussion on the lines of the roof and the materials. I know this is just a preliminary for this plan, for this particular building, and I don't know whether our comments tonight would generate some changes to it. I'll wait and see what my fellow Commissioners have to say and ask questions, but I guess I'm just getting concerned. I know you've been as clear as you can be in terms of what your role is, and we've worked with you on a number of developments here in Leawood. I think I'd be feel a little bit better if you were involved in all of them.

Comm. Munson: Are you or representatives of this particular project working with staff to develop the building guidelines, the architectural guidelines? Where are you with it, or are you anywhere with it?

Mr. Suttle: We're working on it now, and it is has not been presented officially to the staff or anyone else yet. It's still in-house, but we're getting to the point where we can have that discussion, yes sir. We look forward to that.

Comm. Munson: Any idea how soon that would come?

Mr. Suttle: That should be in the month of September for sure.

Comm. Munson: So if we were to delay this particular project for 30 days or so, then we would have a chance to have a look at the building criteria. Is that correct?

Mr. Suttle: Yes, I presume.

Comm. Munson: You think they'd have them in about 30 days? Does that seem reasonable?

Mr. Suttle: Yes. I don't know what the submission for one month, that lead-time in there.

Comm. Munson: I'm not trying to push you too much.

Mr. Suttle: Yeah, I understand.

Comm. Munson: I am trying to put you on the spot, not too much.

Mr. Suttle: Okay, all right.

Comm. Munson: I think Chairman Rohlf expressed it quite well in saying that it was pretty clear from the Commissioner here that we expected something from the developer in terms of building guidelines, etc. I personally feel then that the project should just be delayed until we get those guidelines.

Mr. Suttle: Could I make one comment that would just be helpful? If you recall back on the Plaza Pointe project, the project that was least like the rest of the project was the daycare center. It's sort of having the children, having them the way you want to, having the businesses, it's sort of something that we live with. I do believe that this building probably is going to be less like the rest of the buildings and more like perhaps the buildings across the street and in the general area now. That's just a candid comment, but we know that when you deal with these buildings, they must have roofs. They must have brick on certain areas. There is kind of a standard that we all have to live by, and it's not always our first choice, but it's kind of reality. So we're trying to make it look pleasant and meet their standards and bring it into an area that would not be normally thought of always as a place for a daycare center. But it's another reality of culture where they occur in these places. They have good businesses. We want them to look good. It's that whole side of life. I appreciate your comments. We're trying to do the best we can to fit them in with lots of landscaping overlooking the lake and making a very pretty place here. I do believe this is probably going to be more unlike the rest of the buildings than subsequent buildings that we'll be bringing in for your attention. That's just for conversation.

Chairman Rohlf: I think we should probably go ahead and ask the questions of the applicant on this particular building. I think we can wrap up in our comments section, some overall comments about the plan and what we'd like to see next time. Let's just continue this. This also will have a public hearing, and if there's anyone here that would like to speak, I would like to give them a chance this evening. So let's go ahead and ask questions of the applicant at this time.

Comm. Conrad: Back to my question about the fence. I don't recall the fence that we had on the project that you mentioned previously, but four-foot seems a little short for trying to keep kids in.

Mr. Suttle: That is the standard. You can be sure their attorneys are looking at that very carefully also. I could take it back to them and see certainly if there's any consideration that would raise that.

Comm. Conrad: My question is when we looked at that case before, to not micro-analyze it, though, I know there was some concern about the height of the fence, because it does become a rather large sight object, if you will. There's a lot of it, so that would be one element I would like to have a little better definition. Again, I'm sure that the owner of the facility would look into it. The road curves in a U shape a little bit. We're talking a play area right into that U shape. From a vehicular standpoint, I'm not sure that would be the most desirable from a planning standpoint basically to have the play area in line of traffic until they make the curve. I guess the lake is a little bit concerning. My bottom line is, is there another lot on here where this facility works a little better for what it is?

Mr. Suttle: It's completely out of my jurisdiction.

Comm. Conrad: I'm trying to ask planning questions.

Mr. Suttle: I just don't have an answer for that.

Comm. Conrad: Okay, thank you.

Chairman Rohlf: So your concern's about safety?

Comm. Conrad: Some.

Comm. Jackson: Well keeping in line of safety questions, when you look at the actual view of it from above, you can see quite a few semi-trailers parked in the Coors warehouse right next door. As far as the traveling of those trucks, are they mandated to go in and out a certain route? Or would they be mandated so that they wouldn't go by?

Mr. Suttle: That's a good question. I don't have the answer to that. I can get it.

Comm. Jackson: I would hope that would be looked at, especially in regards to them.

Mr. Suttle: It's a private drive. This is where all the trucks come and out, though, right? It's their private drive to the distributorship.

Comm. Jackson: I'm sorry, which road? Can you put that up so we can see which one? So these semis are allowed all along the length of that road?

Mr. Suttle: Today I believe they are. I didn't know the answer, so I'm getting the right answer from the engineer. This is where the semis come in and out here.

Comm. Jackson: So they wouldn't be going by the Kiddie?

Mr. Suttle: No. I didn't think that was the case, but I really didn't know the answer. I didn't want to say, because I didn't know for sure.

Comm. Jackson: Well that is reassuring.

Mr. Suttle: That is very reassuring.

Comm. Elkins: Mr. Suttle, you asked for some additional consideration with respect to the 50 percent brick requirement suggested by staff. Can you give me a ballpark idea of the way you have the elevations drawn right now about what percentage that is?

Mr. Suttle: Thirty percent.

Comm. Elkins: That's about 30 percent?

Mr. Suttle: Yeah, we thought we better have that answer, because if it was 10 percent or 45 percent. It changes the dynamics, I realize that, but it's about 30 percent of the wall area.

Comm. Elkins: I'm just curious. Again I realize it's a little premature here, although I tend to agree with Commissioner Munson on the issue. Harkening back to the other two buildings that we've approved for this office park or business park and comparing them with this particular structure, can you give us a sense of what design elements or what material elements you would – I'm not going to hold you to this – but you would expect to carry through when you do have design standards established for buildings in the park?

Mr. Suttle: Again, sort of unofficially, but what I'm thinking of that's important is the color palette of color and materials, and I think the color palette on Lot 19 is the color palette that we're concentrating on. It's four shades of tones of color of nice earth tones with some lights, some darks, some in-betweens. So it's a nice range. I plan on developing the standard to its final that will see those colors maintained as the palette. Some will have roof forms. Some will not have roof forms. That's really a key thing for smaller buildings and larger buildings that just can't do that. So we're going to have some of that variety, but further than that it's not settled yet, and we're still discussing all other options. With the landscaping and the need to have the streetscape and the lighting and the landscaping and the color palette in a very pleasant flowing development like this, I would hope that would give some sense of stability and quality. It can never be from start to finish like what other from-ground-up developments ones in the city, but it can be greatly improved, and over time with more and more buildings, have a sense of quality even though there's a little more variety than perhaps Plaza Pointe or Parkway Plaza, other projects here.

Comm. Elkins: Mr. Suttle, if I read this correctly and I'm not the best at reading these plans, but speaking of color palettes, your proposal here is for a gray slate roof. Is that correct?

Mr. Suttle: Yes sir. A soft, warm gray.

Comm. Elkins: Refresh my recollection. I recall that there was a lot of discussion as to the last one we approved about what the roof material is. Do you happen to know what the roof material and colors are for the two buildings that have already been approved?

Mr. Suttle: The one building is a flat roof.

Mr. Joseph: Both buildings are flat roofs. One is slightly slanted but still *[inaudible]*.

Comm. Elkins: Okay, thank you, Mr. Suttle.

Chairman Rohlf: All right, any other questions for the applicant? This case does require a public hearing. Is there anyone in the audience that wishes to speak about this case?

*Dr. Ron Brown, 13217 Monte Street, Leawood, KS, appeared before the Planning Commission and made the following comments:*

Dr. Brown: This is not in my backyard, but I am very concerned about putting a child daycare center amidst a bunch of warehouses. We have a lot of semis going through here. The philosophy of this may not be at the purview of this committee, but I'd sure like to find out where the purview is. I'm quite concerned about the security and the safety of those children. I think daycare centers belong in spots where parents need to get to them, but this deeply, deeply concerns me. Thank you.

Chairman Rohlf: Is there anyone else in the audience that wishes to speak?

*Patricia Wilson, Carlson Kort LC, 800 W. 47<sup>th</sup> Street, Ste. 320, Kansas City, MO, appeared before the Planning Commission and made the following comments:*

Ms. Wilson: May I just take a quick look at the revised plan, because I've not seen it. We represent Highlife Sales Company, known as Central States Beverage, who owns the large building, which you'll see in the middle of this business park. Their property is located at 14201 Overbrook Road in Leawood and also in 14220 Wyandotte in Kansas City, Missouri. Their property is on both sides of the State line with the State line cutting through the middle of the building, which is central to the operation that's conducted there. This property's been used for a distribution center of beer and alcoholic beverages since it was constructed in the 1980's, the building's built for that purpose. My client's love a daycare center. I think everybody does. Certainly I do as a mom, or my kids are way past that age, but they're very concerned about having this property next to the property they own. If you look at the plan, if I could put the plan up. This plan shows an entrance here along this private drive. This private drive is the property of Highlife Sales Company. There's been no agreement for that entrance, so I just want to make that clear. This was new to us tonight. It wasn't on the plan we saw. Anyway, that's a private drive owned solely by Highlife Sales Company, who owns this property here.

In addition to that issue, as I read the Leawood Development ordinances, there's a recognition that Special Use Permit uses are required at certain locations because those uses aren't appropriate at all locations. One of the things stated in that ordinance is that a Special Use Permit may be approved at a particular location, though the receipt of a Special Use Permit where the impact of use does not inappropriately affect or impair the use and enjoyment of neighboring property. This ownership of Highlife Sales Company in this property, it's current use has been there for over 20 years. Under Kansas Administrative Regulation 14-14-2, premises cannot be licensed for the distribution of alcoholic beverages where they are within 200 feet of a school or church. We're not sure about the definition of school, whether it's broad enough to encompass a daycare center. We've not found any Kansas authority that will give us a reading on what that might be interpreted to mean.

It's clear that this regulation and this Special Use Permit you're looking at could have a serious negative impact on my client's business. They currently employ over 160 full-time people who work here and whose livelihood this is. This building is a large distribution center. The purpose of the regulation appears to have been to protect minors. Highlife Sales Company's property abouts this property in terms of the private street abuts. The building on the Highlife Sales Company property is within the 200 foot radius even if you measure from the side of the building to the property line that's under discussion. Therefore, we could see that Highlife would be restricted in any expansion of its existing license. It might be restricted in any expansion of its building, and clearly if it decided to change ownership in any fashion, any new person would probably not be permitted to get a license at this location, thereby making this facility very difficult to market if that was something they were looking at doing. It isn't, but it's still a concern to them because the future, you never know what's going to go on.

If you grant a Special Use Permit, it clearly adversely affects this property owner who's adjacent and has been in the neighborhood for a long time. Further the Leawood Development Code provides that you look at the safety that's involved. There's several safety issues. You've raised some of them, I think. This detention area, as it shows on here, is a lake. There's water in it. It's on our property. It's on the property that's under consideration, and it's on the other adjoining property owner. We're concerned about the safety of kids in the lake. We have part of the lake on our property. We don't want somebody hurt. We have 160 full-time employees, a number of whom go in and out this entrance, this private drive and who use it, who are going to be driving by this location where there are a lot of kids. I guess it doesn't seem appropriate to have that kind of use in this kind of location, and for safety reasons, we are also concerned about it.

I think for those reasons, and there are a lot of semi-trailer trucks that go in and out on a daily basis. We have over 35 semis going in and out of this facility. They probably don't use this entrance, but they are there. There are also deliveries that are made, and there are smaller delivery trucks and salesmen's trucks that are going in and out. For these reasons and in terms of the effect it would have on the property that my clients owns and in terms of the safety issues that we think are involved from the traffic and from the lake, we'd respectfully request that the Planning Commission recommend denial of this Special Use Permit.

Chairman Rohlf: Is there anyone else in the audience that wishes to speak about this case?

**Seeing no one, a motion to close the public hearing was made by Elkins and seconded by Jackson. Motion approved unanimously.**

Chairman Rohlf: Before I think we can move into a discussion, I would just ask for clarification from our City attorneys with what's been brought to light here. From a legal standpoint, I would ask that you share with us your opinion at this point. Would we need to take this into consideration?

*Patty Bennett, City Attorney, appeared before the Planning Commission and made the following comments:*

Ms. Bennett: I had a chance to talk with the attorney today. We didn't talk about the access point. As far as the regulation, there is one and it does prohibit future licenses from being issued. Arguably an extension of the current license or if they sold this facility to another distributor, it would impact that. That is not something that is mandated for you all to consider specifically except for in regards to your regular considerations on a Special Use Permit.

Chairman Rohlf: So when you were looking at this, did the definition of the school include this type of use?

Ms. Bennett: As she stated, the definition, there is none. It just says school.

Comm. Elkins: This may be out of order. If so, you can tell me I'm out of order, but I'm curious from staff's perspective, in formulating your recommendation to the Commission, did you look at the compatibility of the use that's proposed with this facility with the existing uses and the uses that have already been approved on the two additional buildings? Can you give us some insight into your assessment, Jeff, an analysis of that issue?

Mr. Joseph: Basically per the Leawood Development Ordinance, commercial daycares are allowed within the business park district, again with the Special Use Permit. It's up to the Planning Commission and the City Council to decide if this is the correct use for this property. When this plan initially came before staff, this site only had one access. That's from 141<sup>st</sup> Terrace, and staff indicated to them that this site will only work if you have two access points. Otherwise it will become a dead-end street or parking. That's when the applicant came back and had the second entrance off of the prior drive, and the applicant indicated to us that they had an easement or a private agreement between the two parties that they can access that property via the drive. So that's what happened at that time.

Comm. Elkins: I guess my question, though, is a little broader than that in that I as read the LDO, one of the specific findings we have to make on a Special Use Permit is that the proposed use will be operated in a manner that will be compatible with the surrounding uses. Clearly the distributorship is one surrounding use. We've approved two other buildings that arguably are surrounding use. I'm just curious. I understand with the approval of a Special Use Permit it's appropriate to put a daycare in here, but with the more generalized issue of is this a compatible use. You guys have obviously given this a lot more thought than I have tonight, so I'm curious as to your perspective on that.

Mr. Joseph: I am sorry. Staff hasn't made that determination.

Comm. Elkins: Okay, that's fine.

Mr. Joseph: At this point staff would like to ask for a continuance of this case so we can go back and look at that.

Comm. Elkins: Do we need the consent of the applicant in order to approve or to have the matter continued? I've lost track of my procedure.

Chairman Rohlf: I think there are probably a number of reasons why we could ask for a continuance this evening. I'm concerned that if the applicant has made representations to you that they received approval on this private drive access.

Mr. Joseph: That's one thing that they need to give us.

Chairman Rohlf: According to the attorney that spoke on their behalf, that's not the case. I think we need that clarified, number one, because I think that would end up making this whether it's an acceptable use or not.

Mr. Joseph: Correct.

Chairman Rohlf: So I think there are a number of points that we need to clear up on the regulatory side. Also then, Mr. Suttle, I hate to burden you with this, but I really would like for you to take back the message to the developer, whoever it may be, that before we see this building, if we see it at all given what we may need to work out with staff, we really do need to see an overall plan for as many buildings as we can see. I think the odds are we are not going to continue to approve these piecemeal without some kind of overall plan. I sympathize with where you are. Unfortunately you need to be the messenger, but I think I made it pretty clear to Dr. Vince last time that we would not be looking at another building without a set of guidelines or some indication of what's going in here. I think this is a pretty unusual use given what we have already approved there, but it may be very compatible with what's coming in or what other things might be proposed there. I would like to go ahead and ask that we continue this. I think then we would like to move for a continuance, please.

**A motion to continue CASE 81-07 to the September 25, 2007 meeting was made by Munson and seconded by Roberson. Motion approved unanimously.**

**CASE 82-07 BUILDING 133 OFFICE DEVELOPMENT** – Request for approval of preliminary plat and preliminary site plan, located north of 133<sup>rd</sup> Street and west of Mission Road. **Public Hearing**

**Staff presentation:**

Mr. Joseph: This is case 82-07, Building 133 Office Development. The applicant is Chuck Peters with Peters & Associates. This project is located at the northwest corner of 133rd Street and Mission Road. The applicant is requesting approval for preliminary plat and preliminary plan for the construction of a one-story 28,000 square foot office building.

I would like to show you some of the preliminary plans that were approved earlier to give you a clearer picture of the whole development. This is the preliminary plan that was approved back in 1993. Here is Mission Road; this is where the Mission Trail Elementary School is located. The office development that they are proposing is right here. At that time, there were two office buildings proposed. One was a two-story and one was a one-story building, for a total of 28,400 square feet. This is the preliminary plan that was approved back in 2005. They showed two buildings there; office buildings along here and retail buildings in this area. This is the main center. At that time, this was considered separate because the use was different than what they were providing here. They had to have a 75-foot setback from the residential. At that time, there was a lot of discussion about landscaping and setbacks adjacent to the residential development. The residents actually wanted one-story buildings versus two-story, so they came back and changed it to two one-story buildings. Right now, they are proposing a single-story building of 28,000 square feet right in this area. Now, they actually put a lot line right there. They bought this property – just this lot – and everything else belongs to this developer.

They are asking for three deviations. One is the setback. A minimum of 40 feet is required between this building and the lot line. They are requesting 20 feet. The 40/60 rule – a minimum of 60 percent of this space needs to be either green space or building space. If you look at this lot, they don't meet that. They are providing 50 percent parking space. The developer has actually submitted a letter to us, stating that they do not intend to build anything over here and will leave this as green space or a detention area. That's the reason why staff is supported of the deviations they are asking for. With that, staff recommends approval of the space with the stipulations stated in the staff report.

Again, I would like to take out two stipulations – Stipulations 9 and 10. Stipulation 9 is actually a duplication to Stipulation 11; they are the same. Stipulation 10 is actually meant for the whole development and not this lot. Staff would like to take those two stipulations out. That would change the number of stipulations to 19. If there are any questions, I'd be happy to answer them.

Chairman Rohlf: Just so I'm clear, we are looking at this building as a separate plan.

Mr. Joseph: Yes.

Chairman Rohlf: It's my recollection then from reading the staff report that the overall plan, this is no longer being taken together – is that correct?

Mr. Joseph: This preliminary plan expired on June 6, 2007. They are requesting an extension for nine more months. They had to go back to the governing body and request that.

Chairman Rohlf: So then there's no longer a compatibility between these two plans.

Mr. Joseph: No. This would be totally separate.

Chairman Rohlf: And how are we getting around the less than ten acre requirement?

Mr. Joseph: Again, that's a deviation that they are requesting. Staff looked at it as this whole area because they are leaving this as green space.

Chairman Rohlf: But that's the other developer, correct?

Mr. Joseph: Yes.

Chairman Rohlf: What assurances do we have that that is, in fact, going to happen? I can ask the applicant that, and maybe there is a letter in writing that so states that. It seems to me that we're allowing deviations based on the overall plan to a parcel that we're now looking at separately. I'm not sure that we've done that before. I mean, I guess I didn't really realize until you clarified it for me that this is a separate plan owned by someone else.

Mr. Joseph: Yes, this will be a totally separate plan.

Chairman Rohlf: Are you concerned at all about that? What assurances do we have?

Mr. Joseph: The reason for that is because the previous plan is similar to what we have right now.

Chairman Rohlf: But it was part of the overall plan, wasn't it?

Mr. Joseph: Yes, it was part of the overall plan.

Chairman Rohlf: And at this point, I know we wouldn't be looking at this building if it were part of the overall, because it would still be a preliminary that's expired. So, the reason why we're being allowed to look at this is because it isn't a part of the overall plan any more.

Mr. Joseph: Actually, this was considered as a separate plan by itself because 133rd Street divided the two projects.

Chairman Rohlf: Why is it shown together?

Mr. Joseph: This is owned by one single entity.

Chairman Rohlf: It was.

Mr. Joseph: Yes, it was.

Chairman Rohlf: So it was an overall plan.

Mr. Joseph: No. I'm sorry, it was an overall plan with the other development, which is the 135th and Mission project.

Chairman Rohlf: That's expired.

Mr. Joseph: That's expired, yes.

Chairman Rohlf: And so since its expiration, there is a new developer of this building.

Mr. Joseph: Just this portion here.

Chairman Rohlf: And one piece of property less than ten acres, knowing there is an ordinance that prohibits development of less than ten acres.

Mr. Joseph: They're asking for a deviation.

Chairman Rohlf: How big is this piece?

Mr. Joseph: This is 3.3 acres.

Chairman Rohlf: And how big is the entire piece?

Mr. Joseph: This entire piece is about seven acres.

Chairman Rohlf: So even with the green space, it's less than ten?

Mr. Joseph: Yes. Again, with all the setbacks and everything, this is undevelopable. You cannot put a building in there with all the setbacks.

Chairman Rohlf: Right, but even if we had assurances from the overall developer that they're going to leave this as open space, we're still looking at quite a significant deviation. Well, okay. Let's see if the applicant can shed some light on that. Any other questions for staff?

Comm. Elkins: Jeff, let me make sure I understand this before we get the applicant up here; I'll ask him the same question. There are two pieces of property that are north of 133rd; those are collectively about eight acres, right?

Mr. Joseph: Just this portion, yes.

Comm. Elkins: Now, when you say, "just this portion," what portion are you talking about?

Mr. Joseph: This triangular area.

Comm. Elkins: That triangle that's north of 133rd is just shy of eight acres. So, even if you took it in its entirety, it still wouldn't satisfy the ten-acre requirement in the ordinance, correct?

Mr. Joseph: It doesn't.

Comm. Elkins: Therefore, if we were to approve the deviation here, then we'd have the issue remaining of the 4 ½ acres or so that's to the west – Is that right? The remaining piece that hasn't been cleaved off?

Mr. Joseph: You mean to the west of this?

Comm. Elkins: No, to the west of where we're talking about tonight. You've said that it's not buildable in any event, correct?

Mr. Joseph: Yes, with all the setbacks, etc., it's not buildable.

Comm. Elkins: Different subject now. In your presentation, I think you mentioned that according to that plan, was there a 75-foot setback from the rear property line, from the north property line?

Mr. Joseph: Yes, just...

Comm. Elkins: Okay, and what's being proposed tonight?

Mr. Joseph: Seventy-five feet.

Comm. Elkins: So the seventy-five feet, to my way of thinking, the back setback is still in place, and actually it's more than that, right?

Mr. Joseph: It's more than that. I think it's 90 feet.

Chairman Rohlf: Other questions for Jeff?

Comm. Jackson: I believe it mentions somewhere in your packet that there is an existing bike trail.

Mr. Joseph: Yes, it actually exists along here, north of 133rd Street.

Comm. Jackson: This plan isn't encroaching on that in any way, correct? Thank you.

Chairman Rohlf: Other questions for staff? Thank you. We'll hear from the applicant now.

*Chuck Peters, Peters & Associates, 999 College Boulevard, appeared before the Planning Commission and made the following comments:*

Mr. Peters: As Jeff brought up here, you may or may not recall that I own property to the west off of Roe. The property that's on the west side of Fontana. At the time that was done, we felt we had purchased the property all the way up to this property from the owner. I was responsible for the one that provided the land for the pastoral setting there, where it is currently existing. We got the required dedication and so on for that property. As it came to light, as some of these large and ambiguous legal descriptions, when you get a property this large, with two different pieces of property both on the south and north side, that property that has nothing in it extends all the way to Roe, 60 foot. It tapers from this point all the way up to 60 foot that we own, that is contiguous to this property.

Over the years, we have tried to buy this adjacent property. I've been in conversations with the City and with Scott in those approaches but we have not been successful. We have tried to purchase the property where the Mercedes was proposed. That is the property to the south. You'll notice, the plan that was up there, our office prepared those plans for Terra Venture back in 2005. We prepared those plan so you would understand why there is a separation between the property north of 133rd versus south of 133rd. This is a mandate setting. Back then, with Diane Binkley, when she was a planner, that property would not be considered in terms of the open space, the green area space – and of those things to the property to the south of 133rd. Therefore, from the beginning, this property was always separate, but it was submitted as a preliminary plan adjacent with this property only as a matter of convenience, not in terms of which benefited either/or party. So, I came back and visited with Scott and the City staff about three months ago and confirmed that this was still a separate piece of property, and I had gone under contract to purchase this property for a said use. I have a client that's now located here in the city of Leawood that would like to relocate their facilities at this location. I hope that goes to some of the premise based on your understanding as far as how the history of this property has come to pass.

I have a letter from the current owners, stating that they will not build in consideration of these deviations. They will not build other than to use this property for detention and landscaping. It should be in your packet. Therefore, this consideration could

be given in view of the things that have been provided on the north side of 133rd. Do you have any questions regarding the history of this property?

Chairman Rohlf: Mr. Peters, tell me, who owns the property south of your one-story office building?

Mr. Peters: The property that is shown up here, the easterly part of future Fontana, is owned by Terra Bentley. When I did this plan, it was under contract by Terra Venture. Terra Venture formed a partnership with Terra Bentley, and subsequently, that has had a demise. Now, the current owners – which is who you have the letter from – is Terra Bentley, but is represented by the controlling owners. I asked them to send a letter to staff, stating that they had withdrawn any applications. As you may or may not know, the neighbors had asked me about this. I said my understanding was that they had withdrawn the application for the Mercedes plan. I believe Mr. Winters done that. He states that in his letter, which is in your packet.

Chairman Rohlf: Terra Bentley is the one who has asked for the nine-month extension.

Mr. Joseph: Yes. They are asking for a nine-month extension. Again, I just wanted to let you know that the Cornerstone development is kind of similar, with Briar Street dividing two properties, with [inaudible] on the other end and the rest of the development on the other side. When this came in with the West Side at Mission project, that's when they asked for the bonuses and they asked for all types of things, combining the two projects. But now, it's already divided with 133rd Street, so it's similar to the Cornerstone development.

Chairman Rohlf: I remember the plan when it was the overall plan. I guess a lot has transpired in that two years with the developers. Were you finished with your overall presentation?

Mr. Peters: No. I just wanted to help clear up the history of this property.

Comm. Roberson: I'm confused. On the original plan, there were two buildings being planned. If our ordinance says we can't build on anything less than ten acres, what am I missing here? Mr. Peters, why would you buy a piece of property that goes against an ordinance like that. I'm puzzled.

Mr. Peters: With the history I've had here in Leawood, and I've built a lot of buildings in Leawood, this has always been puzzling me, why there's a stipulation to place a building – not multiple buildings - but place a building on a single lot. Why you would be restricted in any way to place a building on it if it's master planned to be office?

Comm. Roberson: That I can't answer.

Mr. Peters: And I can't answer it either.

Comm. Roberson: I'm asking the question – and you don't have to answer it 羊

Mr. Klein: If I may, just trying to clarify. There have been instances in the past where the City has allowed development to go on pieces of property that are less than ten acres. One of those is Chadwick Place, the Mission Bank; it has two rows of five lots for a total of ten lots. The reason why that one was less than ten acres is because a number of right-of-way had been taken out of that piece of property until it was no longer feasible to do. The reason for the ten acres is, very simply, it's kind of a good planning strategy to ensure that you get developments that aren't just piecemealed in, where you have one developer with maybe one or two acres here, somebody else buying another one or two acres here, totally different architecture, access doesn't line up. Suddenly you're jerry-rigging everything to try and make it fit as best you can. Therefore, I think the City has been very proactive in trying to make sure that everything fits together.

However, included in your packet you see a lot of LDO amendments that have been continued from month to month. Two of those actually address this issue Case 09-06 is one of them; the other one is 16-2-9.2. That's been carried down and it's something we brought to the Planning Commission before, where we're trying to address issues and where you have a piece of property that's actually a little separate, so you don't have a 20-acre piece or a 40-acre piece; you have a little piece that kind of got carved out and left alone and everybody else developed around it. It's similar in this case. You've got 133rd Street that's always dividing it, and that issue with this project that was shown there initially when Chuck Peters brought it forward. There was an issue when the Mercedes Benz dealership came forward, because they wanted to use open space and bonuses based off that piece that was separated to the north, and that was an issue. The City is always trying to look for a way in which you have these little pieces that are left over, where maybe it doesn't make sense to require the full ten acres, and I think that's the reason why we're supportive of this deviation right now. It really is separated by 133rd Street, which is a reverse collector street to provide access to those along 135th.

Comm. Roberson: Okay, but if I understand what I'm hearing, we only have three acres of buildable space, so we don't have ten acres, we don't have seven acres, or eight acres; we only have three acres.

Mr. Klein: Correct.

Comm. Roberson: And again, I'm puzzled. Again, being somewhat new, I'm puzzled as to why we would allow two buildings, let alone one.

Mr. Joseph: If I may, it's similar to Parkway Plaza, where they will come in with the preliminary plat and they divide the lots, divide the land into different lots and then sell them, so each of those lots will be three or two acres, or something like that.

Comm. Roberson: Yeah, but you have an overall development that's ten acres or larger – Is that not correct?

Mr. Joseph: Correct.

Comm. Roberson: In this case, you only had three acres that you could build on. Is that not correct?

Mr. Klein: I think in this situation, again, it comes down to the argument, is this piece of property really, when somebody looks at that piece of property, would they naturally associate it with the property to the south. Part of the discussion tonight is that it is separated by 133rd Street, so as far as access, it has a drive access going across, but a lot of separate developments do as well. They try to match it as closely as possible, but yet it is separated by 133rd Street. If somebody was coming through this development and they saw the development to the south, I'm not sure that they would really expect that the one on the north side would be attached to it. I think we're trying to address this one piece to allow it to develop into something that is compatible with the uses around it, but not necessarily tie it to the project to the south. The added benefit is that when the development to the south comes in, they aren't going to try and steal all the open space up to the north and claim it for their own, even though it's not technically located on their site because it's, again, across 133rd Street.

Comm. Conrad: That was going to be my question. My concern is the now open piece to the west of Mr. Peters' development. Will the development to the south be able to <sup>use</sup>

Mr. Klein: It's my understanding that they've been told that it cannot be used for a bonus criteria for the development to the south.

Comm. Conrad: I think that needs to be <sup>use</sup>

Mr. Klein: A stipulation?

Mr. Peters: I might state, in 2005, it was not able to be used. In the old plan that's being put to the wayside, it was not allowed to be used at that time.

Mr. Joseph: For the West Side at Mission project, they used that area as the detention.

Comm. Munson: I've got a question, though. You've got a piece of ground and somebody wants to put something on it and you tell them that they can't, what relief do they have? This letter that's in here that says they're not going to do anything, etc., what does that mean? I don't think it means anything.

Chairman Rohlf: You mean about the development on the west side?

Comm. Munson: Well, keeping it open, for example. I don't think there's anything to stop them.

Mr. Klein: I think as far as practicality, that piece of property that's further to the west, once you take out the 40 foot setback from 133<sup>rd</sup> Street and the 75 foot setback from the north property line, you're pretty much left with hardly any room to put a building, let alone any parking.

Comm. Munson: So you go to the zoning board of adjustment and get deviations on it so they can put something on there.

Mr. Peters: With all due respect, Mr. Munson, when the pastoral setting and that property was dedicated to the City, that alleviated any concerns of being built on.

Comm. Munson: Legally?

Mr. Peters: It's not practical.

Comm. Munson: Is it tied down?

Mr. Peters: First of all, you have the property deeded to you. Second, under any type of stipulation, for any further development you can restrict that.

Comm. Munson: I don't see this as a problem for you, your development. I see it as a problem for the City in the future, and I think you ought to do something about it.

Comm. Conrad: So will the development to the south need that as a detention area?

Mr. Joseph: That's possible.

Comm. Roberson: I would agree. This is not Mr. Peters' issue. There needs to be some assurance legally that the land will stay undeveloped. I'm not sure a detention pond is appropriate. Let me put it that way as an undeveloped piece of land. I don't know what your feelings are.

Mr. Peters: I might point out it is being used as somewhat of a detention to this date.

Comm. Roberson: Well, in the back it is.

Mr. Peters: That whole area. It all filters through that whole area.

Comm. Roberson: To give benefit to the development to the south, I think is interesting.

Chairman Rohlf: Just before I let you continue, I do want to ask David one question. In your report, David, then are you referring to just a traffic study? Are you talking about just this building?

Mr. Ley: Right. We're just looking at existing counts, which the City already has, on 133<sup>rd</sup>. So at 133<sup>rd</sup> and Roe, 133<sup>rd</sup> and Mission what the existing counts are and then what impact does this building have on those intersections.

Chairman Rohlf: So your report is written specifically for this one building?

Mr. Ley: Specifically for this one building. This is what we do typically when we get projects come in. You have an overall traffic study, and then if all the improvements haven't been made, then each development provides an incremental traffic study to account for their increase in traffic.

Chairman Rohlf: So when you talk about their final storm water study, are you still talking about this building?

Mr. Ley: The final storm water study is just for this site. The storm sewers underneath 133<sup>rd</sup> Street I don't think would allow for development on the south side. To pipe their storm water undetained, underneath 133<sup>rd</sup> Street, I don't think the capacity is there. So I don't think they'd be able to use anything to the north as detention.

Chairman Rohlf: That's what I was going to ask you, based on what Mr. Roberson has just brought up, that whether that's a likely use for that west side of this.

Mr. Peters: Originally, I believe on the very first plan that was submitted, they did show the side as detention, and we worked with the developer, because there were quite a few trees, and had them pull that detention back so it would save those trees.

Chairman Rohlf: Before we continue on here, let's go ahead and let the applicant finish his presentation, and we'll get back to some of these.

Mr. Peters: I might point out early here, since we just talked about detention, we have provided detention on site for this building. As Jeff pointed out earlier, the two buildings that were originally planned here at 14,000 square foot each. That's the older plan. The new plan that we have here for you, still staying with a single story building. The building is set on the westerly side of the property. We have a plat before you tonight that combines those two lots to one lot. We have taken the elevation of the building, the adjacent property that is the soccer fields that are part of Mission Trail, that's at elevation 1,000. That cuts through the middle of this site, so we've used that as an establishment with Belch Engineering as far as the benchmark for the building elevation. So we have depressed the parking area somewhat to allow the collection of the water. The watershed that comes off of the soccer fields coming from the east goes into the parking lot, and then we raised back up. It depresses approximately 2.5 foot, and then it goes back up to the elevation of the building so that we're at somewhat equilibrium on both from the east of the property and the upside of the watershed versus the where the plan of the building is.

The fenestration of the building, as staff has mentioned, is all cast stone masonry. On some pieces on the columns that are shown, there we have cast stone inserts from medallions. On the roof we have concrete tile that's a Hallbrook blend that we've used on buildings here on 115<sup>th</sup> Street, on Mr. Pepp's building. We have standing [inaudible] in terms of the peak. There are five

peaks, the major peak at the entry as well as the four peaks in the corners of the building. There are three radius elements on the building, one that's on each end of the building and then on the apex on the backside where the two sides meet, there's another curve element there.

We had submitted a material palette to the staff on this project. We've also created a model. I know it's ahead of what it's supposed to be, but it helped us look in terms of the way the building worked on the site, and that's before you here. All the mechanical equipment are screened behind the elevated parapets or the screening devices that surround the building. The mechanical units are shown on the roof so they're well screened from the adjacent neighbors. The neighbors that I met with at interact meeting, some of the concerns that they had, included in your packet, one of the concerns was safety of the adjacent property, that is an elementary school. I pointed out to one on the aerial photograph, which you also have in your packet, the school itself is a good distance away. The soccer fields are adjacent to the parking lot. If it was a concern, we would be happy to look at cameras in the parking lot. I'm not sure that could deter any crime, but it could follow up on any crime. I've not heard that question asked before on any of the other office developments we've had, but it could be a concern, and I thought it was very good point.

Later in the week I had a call from another neighbor that was concerned about the elevation of the building pad itself, and over the phone I explained to him in terms of how layout was, which I just went over with you in terms of the adjacent property is at 1,000. So what we try to do on a downside of a watershed we elevate the building to a point where it at least matches, and then we depress it in between, and that allows us to deter the water. If we were to go down further, then it would cause us other concerns in terms of these every three-month, 100-year floods that we have here that seem to happen all the time, frequent 100-year floods. Also it allows us to, based on where we've got on setbacks from their property, on one of the sections we have, I'll show you here. We did sections for that meeting prior to the staff requesting them here so we could show it to them, and there were concerns about the elevations of the berms, the existing berms. The existing berms are at 99 foot. We actually went out and looked at two homes and did section cuts through. This section here, the first one that's up here that shows there's a 93 foot difference between the home face and the building face. That home is at 92.5, their elevation. Their roof line is approximately 1024. Our parapet is 1019. With the screen, we get just approximately 1023, so we're very compatible in terms of heights of buildings. This is probably the least extreme in terms of them being blocked by this berm.

The berm, as mentioned earlier tonight about berms that are really to block out parking and/or other sights that you don't want to see. From the get-go with Scott, when we met with Scott, Mark and Jeff, he told me one of the concerns we have on this site, and any development that goes on this site, is to make sure we get a good landscape and maintain the berms, but create a good landscaping buffer between the homes on the north and this office. So we've employed Rick Owens now with Nearing & Statts, and he is here tonight to answer any questions on that. We are here to ensure you that we will not only provide a good buffer and landscape, but we'll also irrigate it, which is also a big concern of the neighbors that the property that was done back when it was placed hasn't been maintained. Some of the owners are maintaining it, as I understand, but we will maintain that property, irrigate it, plus place a lot of landscaping buffer in that area.

There's another section, if you'd like to see, that's further down. As these homes go to the west, they descend in elevation. When you look at that from their patio, their main floor area, as you look up to a berm, to me it's much more beneficial than if you're on the higher side looking down on a berm, because the vantage point of view, you hit the berm and you hit the trees. Given the elevations are soaring, you lose that vantage you had on the site. We're trying to be very sensitive to the issues of the neighbors as far as what they will see being 90 some feet plus away from the buildings, but also in terms of what their elevation is. I'm here to tell you tonight, as I've done in other developments in the City and surrounding areas, we will do our best to ensure that they do have that buffer. We agree with all the stipulations. We did have a comment, as Madam Chairman you had with David Ley on his comments about the traffic, but I called David, and I understand what he's asking for. The information he's asking for, what he has and what we get. We put that back to him in terms of what it is, how this affects it, because it's very marginal in terms of traffic. It will show how it affects the intersection of 133<sup>rd</sup> and Roe as well as 133<sup>rd</sup> and Mission, show that it does not warrant a traffic light.

We agree with all the stipulations that we reviewed with the staff, with the exceptions of 9 and 10. Given a letter prior to them resending it, we had agreed to accept all those stipulations. We've given that to Jeff tonight in writing. If you have any other comments, I'll be happy to answer them.

Chairman Rohlf: Let's start with questions for the applicant, his building.

Comm. Conrad: I guess I have a question still about the storm water and what might happen to the west piece of property. Your detention basin veers into just an outflow structure on that west side property. Is that right?

Mr. Peters: I have the engineer here tonight, Roger Cassity, but they are restricted based the requirements of the City and their calculations. It does restrict it to a required flow out of that orifice.

Comm. Conrad: So there's no energy dissipation structures or anything we need to build there?

Mr. Peters: No. We do have onsite that detention area and the structure required there in order to backflow.

Comm. Conrad: What's the discharge that I would want? Because it has to go across that whole piece of site.

Mr. Peters: I would have to ask the engineer to give you that. I'm not that technical. If you like, I could bring him up here to answer that question.

Comm. Conrad: Just if he wants to address how that's going to be handled.

*Roger Cassity, Phelps Engineering, 1270 N. Winchester, Olathe, KS, appeared before the Planning Commission and made the following comments:*

Mr. Cassity: The release point from the detention basin is proposed to be an end section, and we would probably be putting some rip-rap in there. The actual release rate run-off has not been totally calculated, but we've looked at the volume and we do have the storm water detention volume. Also the location of that end section is near an existing swale ditch type thing that's in there.

Comm. Conrad: I guess my concern is that piece is just going to be a lost piece of property with a concern of unmaintained. It's a shame that can't be part of this property from a legal description.

Mr. Cassity: We will continue to try to pursue that in terms of the rest of the property.

Comm. Conrad: We have a piece of City art basically on that piece. It may become a detention basin, but there's just a lot of questions about that piece of property that I would certainly like to have a lot more assurance that it's going to end up the way we want it.

Mr. Cassity: I can't give you that, as you know.

Chairman Rohlf: Mr. Peters, I have all the confidence that your building will be a great building. We've seen other things. Do you have some concerns about what's going to happen to this outside?

Mr. Peters: Yes we do, but I've met with them. Actually I met with Greg Turner, who you've probably seen or maybe met here. We have, I don't want to say parted ways, because he still leases in a building of mine, but we have a great concern back and forth with each other in terms of what has transpired and what has been approved. I was fortunate, I think, to be able to buy this property, and it wasn't necessarily through his benefit or the current person that's now controlling this. You will not have Terra Venture before you again, at least on this property, nor probably on the south side of 135<sup>th</sup> and Mission, because these people are the ones that are in control of the property. They've actually had a divorce in terms of their relationship.

Chairman Rohlf: I think we were under the impression that the south plan, which is an approved plan, was coming forward, we would have something to look at. The fact that there is a new developer and they've asked for an extension of nine months or whatever it turns out to be. I guess I'm concerned because I saw this room when we had the Mercedes Benz proposal, and it was full of people concerned about this development. At that time, we were treating it as an overall development. I'm just concerned for all of us, you, too, and what kind of public hearing we're going to have when the next piece comes in.

Mr. Peters: Well I don't think it's going to be as radical, and if this will help you, they had asked me to be involved in that plan, and I declined and turned them down. We were opposed to it, and it was a matter of record that we were opposed to it. That came up in the comments of the neighbors at the interact meeting, and I told them that I had been opposed to that plan. My hope is that we will be involved in the remaining development, so we can make these two pieces, that is from Roe to Mission, one piece. That is our intent. That's what we've been trying to do for a period of time. It may improve now that we have an entity that's being managed differently than the other entity.

Chairman Rohlf: I hate to hold out my reservations about the whole plan against your one piece, but I must say it's awfully hard for me to look at it separately.

Mr. Peters: Well this is a concern I had when I came to the City three months ago with Scott and the staff. My history with this property, understanding that this piece of property was always handled separately was not given any benefit to the south property and given with any bonuses or land or anything. When I came and asked them, Scott categorically said Chuck, we will ensure and make it clear to those that are asked about this property that you have no ties to the property on the south side. This is a separate piece of property, and I think in all fairness and a question that Mr. Roberson brought up, you're going to find properties in old Leawood that's going to be needed. There's going to be other things done that are going to be not even an acre property that they're going to have the same issue. Surrounding developments of less than 10 acres. This has always been something that I've never been understanding, but I've been able to work through it on other properties we've done that have been less 10 acres. I ask you tonight to consider this property and as one step forward in good faith in terms of what we've been able to do in order to start something that's going to be on a positive standpoint rather than a negative standpoint.

Chairman Rohlf: Does anyone have a question for the applicant, Mr. Peters, about this building in particular?

Comm. Jackson: In keeping in the same subject area, you have no assurances that buildings that come into the south and whatever does get proposed down there in the future will mimic your building.

Mr. Peters: We would hope so. We will obviously have an insight on this property and have on the property on the west of this property, that we will make our recommendations known as we did on the Mercedes dealership.

Comm. Jackson: But there's no way that we can know for sure that that's going to happen.

Mr. Peters: I know, but in the reality of life, there's no way that you could put bearing to people that you don't have a contract over.

Comm. Elkins: Another question for Mr. Peters, just a clarification of something he said earlier. Mr. Peters, is there actually a long, narrow strip that runs on the north side of 133<sup>rd</sup> all the way to Roe?

Mr. Peters: Yes, sir.

Comm. Elkins: And that's what you say that you own?

Mr. Peters: Yes.

Comm. Elkins: So it's a strip that's like 60 feet?

Mr. Peters: It's 60 foot. No man's land all the way. Once we develop that property, we will maintain it. Actually our understanding is we own this all the way down to this property and that got into a little bit of an after-the-fact. Unfortunately after the City had the property dedicated that it was determined that we didn't have that. Whether we did or didn't, we conceded that we didn't see the need to have property that, other than having a pastoral setting, it didn't benefit us at all.

Comm. Elkins: So you own all the way to Roe, and right now from a title standpoint, there's a hole in what you own.

Mr. Peters: Between those two, yes. Between this and then the other, yes, 60 foot.

Comm. Elkins: Okay, thank you Mr. Peters.

Chairman Rohlf: Is there anything else? Thank you. This case does require a public hearing. Is there anyone in the audience that wishes to speak to this plan?

*Alex Weinberg, 13252 Delmar Court, Leawood, KS, appeared before the Planning Commission and made the following comments:*

Mr. Weinberg: I live adjacent to this property or contiguous to it. I'm also here on behalf of Kris and Steve Farnen who live at 13248 Delmar Court, and Michelle Pace who lives at 13257 Delmar Court, who are unable to attend this meeting. We all have a basic issue with what Mr. Peters is bringing up here. When we built our houses, we all knew that this was going to get developed. This is no surprise to us. We all knew that we had a landscape berm that was going to give us visual protection from this development to the south. We also knew that we would get extensive landscaping at some point in time to help shield us. Over time we have put in our own landscaping. The City has provided some landscaping when 133<sup>rd</sup> Street was built. Now Mr. Peters brings a plan in that the slab elevation of his building is at the same height as the top of our berm. So you understand, the top the of our berm is basically 10 feet, so his building will start at that spot, and then it's another 19 feet tall above that. So if I'm standing in my yard at my 990 elevation and look at my berm, I will see my berm and then 19 more feet of building. Understand he is not building his building below the berm, at the toll of the berm, which is what we would expect him to do to give us some visual relief from seeing the building. His building is being built at the top of the berm. Please understand that. That is a huge visual thing for us. We will not only see his building from our first floor but from the second floor of all of our houses. We'll look out and see the back of his building through the landscaping. I don't know how you feel. I'm not real excited about that. Neither are my neighbors. We would hope that you would require him to get his building down below the berm and give us some site relief.

Across Leawood, the Planning Commission has been very good about doing that for our friends at Waterford, friends at the Plaza Pointe. All of those folks have gotten significant berming, and we're kind of the lost children on 133<sup>rd</sup> Street. We would ask that the plans stipulate that it have down-lighting, that if this building does get built that we do not have what's going on at Price Chopper now, which is 24 hours of sunlight over there. We would ask that any utility work that this project requires leave all of the trees that are adjacent to the Pastoral Dreamer that are there now -that's a significant stand of timber- not be disturbed when he puts in his storm sewers. There's got to be a way to engineer that storm sewer system without having to go through those trees. We would ask that you stipulate that any landscaping plan require our input, that a plan just doesn't get done by the staff or his architect, that we have a say and we get to see what's going on there. This is in our backyard. It is only 75 feet from our house to his building. That's not very close. We would hope that the stipulation would require that any air conditioning units that go on the top of that building be not only visually screened, but sound screened so we don't have to hear those condensers come on in the middle of the night. Thank you.

Chairman Rohlf: Thank you. Is there anyone else?

*Tracey Thomas, 13212 Delmar, Leawood, KS, appeared before the Planning Commission and made the following comments:*

Mr. Thomas: I live just one block west of Mission Trail Elementary. I don't know for certain, but I suspect that the brown house that you see right there might very well be mine. I was in attendance at the August 9 interact meeting. I have communicated with my neighbors. Suffice to say that the design that has been presented to you this evening we do find to be very attractive. As the City goes from a residential to a commerce transition, this is one that we feel would potentially fit into the fabric as the area does develop all the way south to 135<sup>th</sup> Street. At the same time as has been mentioned at the interact meeting, Mr. Peters did mention that he would welcome and he would be willing to meet with the neighbors as it had to do with landscaping. We would very much encourage and appreciate the opportunity to participate in such sessions.

I might also mention from State Line all the way to Metcalf, as development has taken place along 133<sup>rd</sup> Street, to my knowledge the destruction that has been detailed this evening would be the closest to the residential community. If from monitor to monitor is roughly 30 feet, my property line will be 3 times away, roughly 90 feet away directly due south. It has already been mentioned from the top of that berm, it would be 19 feet and above, so as the Council has so eloquently demonstrated in the past a willingness to work with developers and the residential community to construct those physical barriers. We don't want to have to look out at this all day and all night long, so I would certainly request that the Council does take into consideration what they have demonstrated in the past, not only in Leawood but certainly in Overland Park from Metcalf all the way to State Line Boulevard. Again, thank you. I appreciate the opportunity to be before you.

Chairman Rohlf: Thank you. Is there anyone else that wishes to speak on this case?

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

Chairman Rohlf: Mr. Peters, do you have a response to the comments this evening?

Mr. Peters: The gentleman that last spoke, and I am very sensitive to their elevations. We showed you the extreme elevation. His home is actually at about 1,000 feet, which is similar to our site. It's shown on the engineering sheets. If you go to sheet C5, you can't see it, but his home is actually just right there off of the home that's to the northeast of this site. Actually if you go to C4, you can see it better. You'll look at that structure that is actually right above where it says existing Blue Valley Elementary school to the north. Just to the top of that page you'll see an elevation of 994.7. The extreme elevation of the other is at 92.5. We will definitely work with the neighbors as far as the landscaping, because this has been something that when I first walked in and talked about the property, the City staff and Scott said whatever you do, do something on that berm based on the lack of it being done prior. So we're very sensitive about that.

Chairman Rohlf: Well we would anticipate that you would get that work done before we would see it back in final.

Mr. Peters: I can't do that, because I won't go into contract prior to final. I mean I won't close on the property until final.

Chairman Rohlf: You'll owe us a final landscape plan.

Mr. Peters: We've done a lot of things for the City in the past, and I'm happy to continue to do them. The other issue is this elevation that was proposed by the gentleman earlier. Unfortunately I hire engineers to do our work, to place buildings on sites. As much as he would like to see us go downstream and lower, it's just not practical. These buildings that were approved earlier were at this elevation. It's just not practical. Unfortunately the Wilshire property does descend as it goes westerly, but the elevation of the elementary school soccer fields, which is a large expansive area, that elevation is 1,000. I had Mr. Caskey come in my office after I had a call from Alex, the neighbor that was in this area, about three days ago. He came in my office on Monday afternoon at my request and said, let's look at this. If there's any way we can lower this elevation or do something, let's look at it, but there's no practical way to do that. The only place that really gets filled on this site is a portion of the building, not the parking lot. The parking lot gets dug out, to give you an idea in terms of how those grades are. No developer likes to fill on a site. I will tell you that standing here. In order to be practical and be sensitive based on the areas that I've worked in before down in Tomahawk and other areas, you've got to be sensitive to the water issues, both on your adjacent properties, on your property and what goes across your watershed. This is that best to minimum in terms of elevation that is matching the adjacent property.

The other issue, and the gentleman that was just here, his home is actually 134 feet, and he actually doesn't go up to the building. He abuts the berm that screens, and that berm does screen the parking lot. That is on this plan, on the easterly side. Approximately a little less than one-half of the site is parking, and that parking, it does have a significant berm in front of the parking of six feet. That parking from his area will be screened. I can't tell you the building is going to be screened 100 percent other than when the maturity of the vegetation that gets placed there will be. I'm trying to think if there's any other concerns they have, but we are sensitive to their concerns, and I'll continue to be.

Chairman Rohlf: So the property owner that had the visualization in his backyard on the 19 feet.

Mr. Peters: It's 134 feet, the last gentleman.

Chairman Rohlf: No, no, the first gentleman that talked about what he would see from the property.

Mr. Peters: That's what I mentioned in my presentation. He's on the lower end. He's westerly. Actually this gentleman's not adjacent to our property. He's about three or four homes down, but his neighbors, I understand. That's what he had told me at the interact meeting. His neighbors, there's two of them that are facing our property and not the woods. Their elevation, when they'll be looking up at this property, and site lines, if you look at something that's nine feet in front of you, actually the berm back down on the other side. That berm goes back down. The building pad is at 1,000, so you're right at approximately the same elevation as the top of the berm. When you look up at something, just like you look at anything here, think of screening when you think of screening on a building. You never see the mechanical equipment, even if it's in the middle of the building with no screening at the base of the building. If you go down further, it gets even less. The vantage point loses, but if you're equal or get further back or at that elevation or higher, you do see it. This building, as you mentioned about screening and elevation and mechanical, as I mentioned earlier and as we showed in our model, we have more than the screening we need for any of the air conditioning units. Those rooftop units, self-contained rooftop units, they will be at approximately 160 feet from any residential structure. I think along with the vegetation to the west of this and what we improve on, because there's a lot of vegetation, I don't think that they'll hear anything. We had the same issue down around Tomahawk. I don't think you'll hear anything on the mechanical units. The units don't run, good or bad. We mentioned this at the interact meeting. The units shut off. This business that's going to be in there is an insurance company business. I put in our staff comments response 7 to 7, Saturday 12 to noon, just normal business hours, but these units do shut down. They come back on. They do come back on around 5:30 in the morning, but it isn't like they run all night. They go on, set back, and come back on.

Chairman Rohlf: Mr. Conrad, do you have a question for the applicant while he's up there?

Comm. Conrad: Yes, and maybe the engineer. So the existing grade that runs through the middle of where the building is going to be is about 94?

Mr. Peters: One thousand. Right at the front door, the existing grade's at 98. Existing is at 98. The front door is at 98. Those are the proposed grades you see on C4. They're not the existing.

Comm. Conrad: I'm looking at C5.

Mr. Peters: I see the 1,000 up here. One thousand comes down right there across the building. That line is at 98. The 1,000 is right there in front of the building, which is intersection. It comes diving across right in front of the building.

Comm. Conrad: I'm looking at the existing grade that runs pretty much straight up and then to the northeast. Existing grade's 94. At the front door it's 96. But in the middle of the building it's 94.

Mr. Peters: Ninety-four. That's correct.

Comm. Conrad: So we're putting six foot of fill there. There's six foot of fill to get to the elevation.

Mr. Peters: That's correct.

Comm. Conrad: So if we had access to the property to the west, you think there would be more opportunity to change some of those elevations?

Mr. Peters: Mr. Conrad, what you don't want to do is if you've got a shed coming this way, lowering the building significantly this way, because the water's going to go one place, and that's right across your pad. What we've done there is create a barricade for water. What we have done is taken the distance we have from 1,000 in the building and create a depressed area significant enough, from my assurances from the engineer, that we won't have an issue like that. Also, the grade coming into the drive is at 98, I believe. So you're only two feet higher from that grade coming into the building elevation.

Comm. Conrad: I keep coming back this piece of property at the west. It seems to affect everything on the plan. It's a good plan.

Mr. Peters: I would love to own the property adjacent to this.

Comm. Conrad: I think we'd have a better plan in a whole lot of ways.

Mr. Peters: Sometimes people say the best plan is to have property that's not being developed to the adjacent and not own it.

Comm. Conrad: I think my position will be that there are some deviations that we need to give that are tied to this other piece of property. I think that given what we know about that other piece of property and its influx ownership right now.

Mr. Peters: In a positive manner, yes it is.

Comm. Conrad: Pardon me?

Mr. Peters: In a more positive manner it is.

Comm. Conrad: I'm going to feel like I'm not going to want to grant the deviations, which probably doesn't let the plan occur.

Mr. Peters: More importantly if you look at the three deviations, two of which are not practical. One of them relates to a ten acre. The other relates to the 63.

Comm. Conrad: That one I would...

**Mr. Peters: The 60/40 is not practical on property that's on - and I've talked about this with them. If you look at this plan, that was approved without that.**

Comm. Conrad: But if the west property line of this project...

Mr. Peters: It doesn't have anything to do with that property next to it. The 40/60, the deviation rule on the plan that was approved north of 133<sup>rd</sup>, that was knowingly separate from this other property, not giving any benefits to the property south of 133<sup>rd</sup>. There is no 60/40 in that plan. We relayed that 60/40 to Mission Road and the other. We have parking that's all the way across that plan, but somehow this came up.

Mr. Joseph: If you look at 133<sup>rd</sup> Street, along there, they have more than 60 percent open space, green space.

Comm. Conrad: If you include the whole piece.

Mr. Joseph: If you include the whole piece.

Comm. Conrad: Let's make it all be one piece.

Mr. Peters: Okay, I see what you're saying there.

Comm. Conrad: The 20 foot setback, the same issue. There's no deviation required if this entire piece of property supports this one building.

Mr. Peters: I don't know that it supports it. When the pastoral setting was dedicated to the City, it enabled that property to not really be developed. Good or bad, that's what it enabled it to be.

Chairman Rohlf: Thank you, Mr. Peters. We're close to 9:00. We probably need to extend this meeting so we can get through a discussion.

**A motion to extend the meeting 30 minutes was made by Elkins and seconded by Munson. Motion approved unanimously.**

Chairman Rohlf: I was thinking about those two cases that we have left this evening. I know in the past Mr. Lambers has indicated that we can keep going and hear a new case, but at this point I'm inclined to not hear these two cases this evening and continue them until our next meeting. Is that correct, Mark? September 11?

Mr. Klein: September 11.

**A motion to continue CASES 83-07 and 85-07 to the September 11, 2007 meeting was made by Jackson and seconded by Elkins. Motion approved unanimously.**

Chairman Rohlf: That takes us back to our discussion on Case 82-07.

Comm. Jackson: I think I would be willing to go with these deviations if I could see the plan for the parcel to the south of it to know that these are going to relate and thereby fulfill the purpose of the ten acre requirement, that you don't have an odd shaped building that doesn't relate to anything else around it sitting out there. At this point, I don't think I'm ready to approve such a plan.

Chairman Rohlf: You know I have those same reservations, but I think there had been representations made to Mr. Peters by the City that this in fact has been and continues to be treated as a separate development. It seems to be, although it would make sense from a planning standpoint, to have the south portion of this, it really isn't part of this application. It's my understanding it never has been. I think what makes this parcel unique is we don't really know what's going to happen to the west of it. I'm not satisfied that this letter takes care of that. I think there's an awful lot going toward the owner/developer of the south project at this point, but I'm not sure that we can hold what's happening on the south end against this presentation this evening.

Comm. Munson: I share Commissioner Jackson's concern, but on the other hand I would volunteer that this project will probably be better than anything else that shows up on the south side of the street. So I'm not too concerned at this point in time about the plan on the south side of the street being a reason to not go ahead with this one.

Comm. Elkins: I agree with both of my colleagues but going from a little different perspective on it. Obviously we all have concerns about what's going on the south side of the street. Tonight we don't have any control over that. We don't have anything in front of us. As the Chair pointed out, there's not really anything we can do tonight about what was going on the south side, but let me suggest this. If as a Commission we think that Mr. Peters' building is the right looking, the right use of building for that spot, then when the folks that own the south side come before us, they now have the burden of demonstrating to us that even though it's a little bit the tail wagging the dog, their big piece of property is going to have to comply and be compatible with Mr. Peters' development. And I'll go on the record as saying that when the folks with the big lot on the south come in. So to me it seems like this gives us an opportunity tonight to obtain some leverage that quite frankly, to put it in lawyer's terms, we don't have in terms of leverage over the developers that have the part on the south side. That's one of the reasons I'm kind of pleased that this plan has come before us tonight. If we as a group think that it's the right plan and the right look of a building, this gives us every opportunity in the world to stake out our territory and use Mr. Peters' development as the standard by which the folks that eventually come in with the south parcel have to meet in order to get our positive recommendation. I am concerned about Mr. Weinberg's concerns, although I understand you literally can't move the earth. I mean the earth has got the topography that the earth has there, and I appreciate what Mr. Peters has done in trying to find a solution. I am caught on a bit of the horns of a dilemma, because I also sympathize with Mr. Weinberg that the front step of the building is going to be his backdoor neighbor. It comes right across the top of his berm, and it kind of, at least to a certain extent, eliminates the purpose and what was intended to be served by the berm. I'm just not quite sure what the solution is for that, and I'm mildly frustrated by that.

Chairman Rohlf: Any other comments?

**A motion to approve CASE 82-07 was made by Munson and seconded by Elkins, subject to stipulations 1-8, omitting 9 and 10 and then renumbering 11-21 as appropriate. A vote was taken and approved 5 to 2.**

Comm. Conrad: I am fully supportive of the project and the building. I think we are limiting the site development given this small piece that we have. I think there are siting and detention pond opportunities if we had a bigger piece of ground to put this building on. I'm supportive of divorcing north of 133<sup>rd</sup> with the south of 133<sup>rd</sup>. I think if there was any advantage to denying this to resolve that issue, then that's where my support is. The existing grade is 94, where we're building the building, to 1000. If we had some opportunity to move that slightly to the west, maybe we could decrease the finished elevation with all respect to the site. The detention basin is quite large on the north side of the building. If you look at the plan, there's a definite north/south line that we've drawn to berm this site up, and again I'm supportive to separate it from north and south of 133<sup>rd</sup>. I think that we would have maybe a much better site layout. I'm concerned about the development to the south ultimately coming back and needing that as a detention area, which I think would be totally out of place if it now needs to be constructed to the west of this building. So although supportive of a lot of the elements of it, I am going to vote against the approval for those reasons.

**Motion passes 5-2.**

*Meeting adjourned.*