

City of Leawood
Planning Commission Minutes

October 9, 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, Munson, Williams, Elkins, Reynolds

APPROVAL OF THE AGENDA: A motion to approve the agenda, with the modification that the public hearing is being removed from Case 98-07, was made by Elkins and seconded by Roberson. Motion approved unanimously.

CONTINUED TO THE OCTOBER 23, 2007 MEETING:

CASE 96-07 RESIDENCES AT PARK PLACE, Request for approval of a revised preliminary site plan and final site plan, located at the northeast corner of 117th Street and Nall Ave. **Public Hearing**

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 NOVEMBER 13, 2007 MEETING

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

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

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

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

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

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

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

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**

CONTINUED TO THE NOVEMBER 27, 2007 MEETING:

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

CASE 86-07 MISSION CORNER – Request for approval of a revised final site plan and a revised final plat - located at the southeast corner of 135th Street and Mission Road.

CASE 114-07 ONE NINETEEN – WEST ELM STOREFRONT – Request for final site plan, located at the southwest corner of 119th and Roe Avenue.

NEW BUSINESS:

97-07 ESTATES OF OLD LEAWOOD – Request for approval of Preliminary Plan, Preliminary Plat, Final Plan and Final Plat – located at 8901 Sagamore. **Public Hearing**

Staff Presentation:

Mr. Klein: The applicant is requesting approval of a revised Preliminary Site Plan, revised Final Site Plan and Revised Final Plat for 23 single family residential lots on 16.2 acres for a density of 1.42 units per acre. This is a reduction of four lots from the currently approved plan, which is 27 lots for a density of 1.67 dwelling units per acre. In addition to the reduction in the number of lots, the applicant is also requesting some small adjustments to the layout of the three cul-de-sacs around which the lots will be arranged. These are the only changes to the plan. There are no changes proposed to either the recreational areas or the amenities, zoning or zoning boundaries. The currently approved Final Site Plan for Estates of Old Leawood was approved by the Planning Commission on February 14, 2006 and approved by the City Council on March 20, 2006.

Again, this plan before you, basically the main change from the currently proposed plan is that they have removed four lots from the development. They removed one from the northern lobe. It's basically organized around three cul-de-sacs. They removed one from the cul-de-sac that's on the north, one from the cul-de-sac that's on the south, and two from the cul-de-sac that's in the middle. As a result, the lot sizes have gotten a little larger. They have kept the zoning boundary the same as what it was before. The wall that's there is still the same as what it was before. The fencing that they had around the development is the same as what was before. The pool and cabana that's located within the tract that's adjacent to the residential subdivision to the west, no changes have been made to that either. Staff is recommending approval of this application, and we'll be happy to answer any questions.

Chairman Rohlf: Before we get started, Mark, it's my understanding that all of the stipulations that have been previously approved have been carried over into this staff report.

Mr. Klein: Correct.

Chairman Rohlf: I think maybe I'll wait and see if the applicant goes through a little bit of the adjustments to the cul-de-sacs, but it appears from the site plan comparison that they truly are.

Mr. Klein: Correct. There is a plan in your packets that shows the difference, and they are just minor adjustments.

Chairman Rohlf: All right, so does anyone else have questions for staff?

Comm. Roberson: Just a quick question. When was this originally done? I apologize.

Mr. Klein: Oh no, that's perfectly fine. It actually has a very long history. It originally started in 2002, and at that time the Planning Commission recommended denial. It went onto the City Council. There was a protest petition filed. It got remanded back to the Planning Commission. It came back again for a rezoning, preliminary plat, preliminary plan in 2004, and the Planning Commission again recommended denial of that. Another protest petition was filed, and the governing body did approve that project. Then in 2005, it came back before you as a final site plan. At that time it was approved by the Planning Commission on March 29 of 2005 and approved by the governing body on May 2 of 2005. Then it came back in 2006 to change the material for the wall. There's a retaining wall that goes around the east side of the development. They're putting in a lot of fill to bring a lot of it up out of the flood plain, and so they were proposing to replace that from the limestone blocks that they'd shown before to VERSA-LOK material that you've seen on a number of other developments, including Iron Horse Center and also 119 over here is using along their Tomahawk Creek Parkway. Therefore, the Planning Commission recommended approval on that on February 14 of 2006, and the governing body approved on March 20 of 2006. Now they're currently before you with this plan.

Comm. Roberson: I guess the question is, has anything been done there besides the building of this wall, or has that even occurred? Has anything happened there?

Mr. Klein: Yes, actually there has been demolition of the club before. I can show you some pictures as far as what the site looked like before, and now the club has been removed. It's my understanding that there's some piles of dirt and things like that around. I know that's been a source of contention with a lot of the neighbors trying to get this underway and actually get it cleaned up and constructed. The developers have indicated they're ready to do that now. They indicated that they were ready to go ahead with the 27 lots that they have currently approved. However, in rethinking a little bit, they indicated it would be a little bit more marketable to actually have a little bit larger lots, to be able to do a little bit more on the lots themselves. Therefore, that's the reason the request for the 23 as opposed to the 27. The developer can probably go into that. If you want to see, I do have a picture from 2003.

Comm. Roberson: That's all right. Thank you.

Comm. Elkins: A question for Mark as well. Mark, just refresh me on the way the rules work here. By approving this revision, does that have an impact on the life of the plan, the length of time that the developer has to go forward?

Mr. Klein: Correct. Actually every preliminary plan has a two year sunset clause. However, this is a preliminary and final, so all the finals also have a five year, so the five year would start from the current approval that this has.

Comm. Elkins: Currently they're working under a five year plan. A final plan has been approved as of?

Mr. Klein: 2006.

Comm. Elkins: So this would effectively add a year or a little more than a year to the plan?

Mr. Klein: Correct.

Comm. Elkins: Thank you, Madam Chairman.

Comm. Jackson: Mark, can you explain to me a little bit, on Tract B it talks about that being in the flood plain and that there's a veranda that serves as a decorative feature and also island of refuge. What is the thought that this might be needed?

Mr. Klein: That was something that was actually discussed early on with staff, and part of the concern that the neighbors brought out on one of the earlier plans is that you have a flood plain down here, and suddenly you're bringing a lot of it up out of the flood plain. You're constructing these retaining walls, and there was some concern because a lot of the neighbors indicated that there had been some flash flooding in the past, and what if you had somebody down in that tract of land down by the creek. You've got a flash flood, and they didn't have enough time to get out of that area. So, what the islands of refuge were meant to do in these verandas that go in between the two lobes - the northern and the middle, and the middle and the southern - is that it would hopefully allow somebody to get up quickly onto a higher point of access without exiting the entire site. There's also two trails that lead from those verandas in between the lots that would access onto Sagamore as well.

Comm. Jackson: How high up is the first level of that veranda? Is that easy to climb?

Mr. Klein: The developer might have a more accurate number for you than I would.

Comm. Jackson: How often would that flood that much? In the past ten years, has it flooded several times?

Mr. Klein: There was a story I know that was going around when this initially came through that somebody was actually killed down there, that it flooded that quickly. How often it happens, I couldn't tell you for sure.

Comm. Jackson: And you're satisfied that with the amount of fill that's going in here and with the materials that are being built to hold this up that it won't be an issue if there's flooding, it certainly can contain the area and there won't be any washouts?

Mr. Klein: I, again, rely on engineering reports and that kind of thing, but yes, it would have to be engineered to do that. I know that the VERSA-LOK system that they have on the retaining wall, actually the blocks are fairly small

themselves, but there's this fabric layback that goes into the hill. They lay a couple of layers, and then you have this fabric that ties back into the hill with the dirt piled on top of it. You add some more of the wall, and then you lay it back. Also, the wall is tiered partially to make it look better so you didn't just have this massive 20 foot tall wall in certain spots. Not the entire thing is that tall. It kind of reduces in height, especially as you move down to the south where it eventually just disappears. There's landscaping in between the wall as well to try and make it more aesthetically pleasing.

Comm. Jackson: It looks like there's more fill being added now with this new plan. Is that correct or not?

Mr. Klein: Actually the fill should be pretty much the same. The plan, as far as that outside boundary going around those three lobes, the cul-de-sacs, is the same as what it was before. They haven't really changed that from the currently approved plan.

Chairman Rohlf: David, are you satisfied? Is this the same report that you prepared last time? Did anything change with this?

David Ley, City Engineer, appeared before the Planning Commission and made the following comments:

Mr. Ley: On the previous approved plan, they had their stormwater study that was approved at that time, and Larkin and Associates had studied this entire watershed for Johnson County and the City of Leawood. Larkin and Associates reviewed the engineer's stormwater study and they agreed with it. That was one of the areas of concern, was that Tract B actually holds water back, because when the water comes down it can't get underneath State Line Road. Because of the restriction there, the box culverts are too small, so the water is actually backing up into this area. It's not flowing down at a high rate. It's more or less just backing up into this area.

Chairman Rohlf: So we're actually in better shape than we were before.

Mr. Ley: We're in the same shape.

Chairman Rohlf: Number A under 2, Stormwater Study, that's a new addition to our report about the engineers? I don't remember that being in there before.

Mr. Ley: That was on the previous approved final.

Chairman Rohlf: Oh, final, okay. Anything else for staff? All right, then we'll hear from the developer.

Applicant's presentation:

Bill Whittaker, 6832 El Monte, Prairie Village, KS, appeared before the Planning Commission and made the following comments:

Mr. Whittaker: I am representing the ownership of Leawood Country Club Partners, and we are here to request the Preliminary Plan, Preliminary Plat, Final Plan and Final Plat approval for 23 single-family lots. Our existing plan has 27. Basically as Mark pointed out, we did receive staff approval. We'd like to take four lots out of the existing plan. Over here we have the existing plan that's approved on the lower side. Then we have the 23 lot plan for your review up here. The recreational zoned tracts on the west and east side of the development remain the same legal description, same recreational components. The interior lots, we have something here that we could show you the existing plan that's been approved and the 23, but basically we're changing the lots' lines. We're moving the cul-de-sacs slightly, but as you can see it looks the same except it's less dense. We have had a number of interact meetings, and I felt that the neighbors liked the less dense plan more than the 27 plan. We did make a few adjustments with some of the neighbors that are contiguous to the property, worked with them on some buffer issues that they were worried about.

As Mark said, there has been a lot of things from this site over the last five or six years. We feel that every time we've come in here, and we want to get started next week. We're not going to delay this anymore, but every time we've come in here for a change, we felt we've made this development better with the retaining wall. I do have some pictures. It shows you the thought that we've put into the retaining walls. The VERSA-LOK system is a better technology than a poured-in-place concrete system, which we came in with the last time we came to get approved. It's

better looking, and we did do an extensive geotechnical study on that. I'm sure that's recorded somewhere, that they came and testified that's a much better wall to build these houses on top of basically. We're open for questions if anybody has any questions.

Comm. Williams: Just one question for confirmation. The area that the new 23 lots are going to cover is the same amount of area as the original 27?

Mr. Whittaker: The footprint size of the homes, or you mean just the legal description of the RP-2 property?

Comm. Williams: Not the footprint size of the homes themselves but of the land within the circle shapes here. Is that the same amount of square footage as previously approved?

Mr. Whittaker: Yes.

Comm. Williams: It looks like it.

Mr. Whittaker: It is. The legal description is the same for that tract.

Comm. Williams: Okay, thank you.

Chairman Rohlf: Would you discuss a little bit more for me the reasons that you decided to change this? What happened since February 2006 that kind of took us to this point?

Mr. Whittaker: Well from the last time when we came in, basically we did some market research, and obviously the trends are changing. We had a footprint of about 1,800 square feet of livable space average for the 27 homes. It seems a lot of the empty nesters, which is what we feel are going to be our target market here - these homes will be in excess of \$1 million - want to have their bedrooms and masters on the first floor. They want to live on a first floor footprint, and at 1,800 square feet we didn't have that flexibility. Now we have 1,800 and up to 2,800 and a lot of things in between. It didn't help the economics at all by taking four lots out, but we were looking at the overall look and the overall success of the development, and that's what we decided on.

Chairman Rohlf: So you really never marketed this per se with the 27 lots. I mean, people weren't coming in to look at property.

Mr. Whittaker: We did not market it. We did have a heck of a lot of interest, but we did not take it formally to the market. We did some studies, but we did not take it formally to the market, because we didn't have our grasp around pricing and infrastructure and things like that. We do now, and we're ready to take it to the market as soon as we can get, if we can get this. We're going to take it to the market whether it's 27 or 23, but we feel that this is a better overall development just for the market itself and the neighbors and everybody, I think, would welcome this versus what we had before.

Chairman Rohlf: And I've kind of forgotten, but I think I remember that any number of architects could come in and design a house. There's not an overall theme to this development.

Mr. Whittaker: Well, we have architectural restrictions. We're not going to be a Spanish motif, a colonial motif. We're sticking to a stone and stucco/brick kind. I do have some examples of the homes.

Chairman Rohlf: Will you be actually reviewing these designs and approving them? Will you be reviewing various designs then as they're submitted?

Mr. Whittaker: Nearing, Staats, Prelogar and Jones are our exclusive architect for the project and they will design the exterior. It's kind of a designed community, but everything's going to be very high class as far as materials used. I think we have the stipulation as far as having to use slate roofs or concrete roofs. We can't use shake roofs. There's a number of things that are on our homes' association documents that are ready to be signed. We've kind of agreed about those over the last year or two. We're not here to change any of that or any stipulations that have already been agreed to over, like we say, five years of compromise back and forth.

Chairman Rohlf: Mark, you've had an opportunity to take a look at some of these building materials, and do you know what they're proposing?

Mr. Klein: Yes, and as far as the houses and everything, typically we don't review single-family houses as far as what the buildings look like. Typically there aren't design guidelines for single-family.

Comm. Munson: Just wondering if the amount of fill that's going to be taking place there, is there a certain time that needs to go by before they can actually build on that fill? How does that work?

Mr. Whittaker: It's going to be a controlled fill, and some of the homes will be built on 25 feet of fill, which is not uncommon, but we will peer some of those homes, Councilman Munson. Greg, do you want to answer that?

Greg Garbeff, 18911 W. 118th Street, Olathe, KS, appeared before the Planning Commission and made the following comments:

Mr. Garbeff: We will be bringing that up in lifts. We're bringing in controlled fill. The fill that is currently there, we're going to take off to the side, segregate out the stuff that is bad, bring in good stuff, mix it all in and we'll bring it up in lifts. So actually, the wall will come up in lifts as well or in layers. It won't all go in at one time; it will be engineered.

Comm. Munson: My question is generated by an experience I had when I was living in another location in Missouri. It happened to look out my kitchen window one day and saw the swimming pool next door tilted, and I thought, well I wonder what happened there. Apparently it was a matter of they'd built that fill, so I was wondering what do you do to make sure those kind of things don't happen here.

Mr. Garbeff: We rely on good engineers. We rely on years of experience building homes in the upper bracket like this, and sometimes you overbuild a little bit.

Comm. Munson: My other question is what arrangements are made for the care and upkeep of Tract B and of Tract A?

Mr. Whittaker: Commissioner, we have a homes' association document in place, but just a broad brush on this. The 23 homeowners will maintain the common area and they will own that common area, which is the recreational ground. The 1.3 acres up top here on the west and approximately 9 acres down below, they will maintain that. This is going to be a managed maintenance provided community, so they will get a bill from Price Brothers or Curry or whoever we decide to manage this, and it will be primarily a landscaping management, like a lock-and-leave freestanding home community. As far as the pool and the tennis court, I don't know if you remember this, we're opening this up for 66 homeowners in the surrounding area. The maintenance of the land will be provided by the 23 homeowners. The maintenance of the pool and tennis court will be the 23 homeowners plus how many people join divided by their pro-rata share. All of this is in a mechanism in the homes' association documents.

Comm. Munson: Staff, the City only gets involved if anything becomes a nuisance, is that the way that works? I don't see anything in this about homes' association requirements.

Mr. Klein: Yeah, just like any homes' association, if they aren't able to take care of it, then the City would get involved and then they'd bill the applicant. The owner's ultimately responsible.

Mr. Whittaker: And if only 30 people join, then those 30 people or 20 people or none, it's still going to be maintained by the 23 people.

Comm. Munson: Any projection at this time of what the value of the homes that you're currently building there?

Mr. Whittaker: We feel a million and above.

Comm. Munson: A million and above?

Mr. Whittaker: Yes sir, primarily probably anywhere between a 3,600 and 4,600 square foot home, a reverse one and a half. Most of these, as you remember when we came in the one time to do the wall, we also created at the time 26 of the 27 walkouts. Most of these will be walkouts.

Comm. Williams: Just one question. Earlier we had the conversation about this fan-shaped veranda down in Tract B, discussion that it could be used as a means of egress should water start to rise. I see in this illustration a fence that seems to separate that area from the veranda. I don't see a fence on the drawings.

Mr. Whittaker: There is a fence, and we cannot lock it. There is a fence with a gate. The veranda and the trails in between the veranda are private to the 23 homeowners. If there's a problem, we cannot lock that gate. That gate's got to be open. It's going to be a three, four foot gate, but there will be a gate that can be opened, and we said one of the stipulations that we weren't going to lock that gate.

Mr. Klein: And it's been that way with the last plan as well, that they have those gates there, but they're not allowed to be locked.

Comm. Williams: Good clarification. Thank you.

Mr. Whittaker: We are handicapped accessible, and we did do a lot to improve that flood problem, so I don't think anybody's going to be...God forbid, somebody's going to get stuck right there. They see it coming.

Comm. Williams: All right, thank you.

Comm. Jackson: Where is the handicapped accessibility? I'm not seeing it in the pictures.

Mr. Whittaker: It's right here. You come down the trail around here and down through this. This is 89th Street here. Walk down around and then down. This is accessible to an ambulance or to a city truck that needs to get down there for whatever they need to get down there for.

Comm. Jackson: I guess what I'm referring to is in your picture, here is a terraced veranda. Here is your fence. There are only steps?

Mr. Whittaker: That is not handicapped accessible there.

Comm. Jackson: Well, my fear is if we really believe that this will flood in here, which it sounds like it has, if you have people down there with a wheelchair or mothers with strollers and small kids, they're not going to be able to get out of there very fast.

Mr. Whittaker: Well, if somebody's down here with a stroller, they can come up here this way or up this way. If anything's been down there when it comes to flooding, it's not like a tidal wave's going to come down here or it fills up that quick. There are two ways to get in and out of this. It's eight acres down here, probably 1500 linear feet with two egresses and ingresses, and quite honestly, it doesn't flood. But as far as getting up that high, I don't think that by putting a handicapped, I don't think it would help the development. I don't think it's necessary to have that handicapped accessible.

Comm. Jackson: Can I ask our engineering staff what they think of that, whether you need some handicapped accessibility through those verandas to get out of that area?

Mr. Ley: They do have the two accesses on either side, and our belief is if that water is going to be rising up, it's going to be raining for 15, 20 minutes. If it's raining, they shouldn't be down in that area to begin with. I don't know if we'd maybe post signs or something that states to leave after a rainstorm, but you'd have to be down there for quite awhile during a rainstorm, and I'm not certain how many people would actually stay down in that area during a rainstorm event.

Comm. Jackson: Do you think what they have is sufficient?

Mr. Ley: Yeah. It's sufficient. They have two accesses in and out on both sides.

Comm. Jackson: All right, thank you.

Chairman Rohlf: Any other questions for the applicant? All right, thank you. This case does require a public hearing. Is there anyone in the audience that would like to speak this evening? If you would, please raise your hand.

Gordon Hinke, 8901 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Hinke: When he said that there's been no effort to sell, I remember the ad being in the Designer Showhouse two years ago, so there was an effort there to sell. I saw people coming up and seeing what was there and turn around to leave. I really wonder just how much, with that being done two years ago, how many people that they had signed up at that time.

Chairman Rohlf: Thank you. Yes, sir.

Mark McGrory, 9006 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. McGrory: I want to address something that Commissioner Elkins raised that I think is important here for the Commission to consider, and that is the re-triggering of the timeframe. As I think everyone on the Commission can appreciate, it's been a long time for those of us who live adjacent to the property, that we've been undergoing many, many truckloads of fill. The fill's all there. If you were to go look at the property today, I would guess there's 30 feet of fill in that property and some pretty significant chunks of concrete. I understand all that will be worked and the property will be re-graded, and we'll all be very appreciative when that process gets underway, but we are re-triggering the period within which his work is required to be done. This isn't the first re-triggering of that event, so it's been a number of years that we've watched the project.

One of the obligations of the developer and then the resulting homes' association is to create and maintain this common area, that this was part of the benefit of the bargain. What we would like to see be required of the developer and the association is to develop that property and put the walking trail in. At this point I'm not speaking of the pool and the tennis court. I can appreciate that those are amenities that come in at the time the houses start to go up, but in terms of the walking trail, it seems to me that in all fairness, the developer should be obligated to develop that part of this development. Put the trail in and do the landscaping at the same time that they're putting in the infrastructure. The surrounding homeowners shouldn't be subject to the profitability of the project. We all know the real estate market has its whims, and we would prefer not to have another five years of undeveloped property down there. We'd like to get the benefit of the landscaping and the walking trail, whether there's ever a house constructed on that property or not. Obviously the streets have to go in and the sewers and the electricity will have to go in, but we'd like to see that commitment made with respect to the development of this property.

At the same time, I think it's also important, and I'm sure that the staff will keep track of this, but let's keep the silt fences up. They were up initially back when the club came down several years ago. They are not there today. They've all been washed away or through the years of weather, they're no longer there. The silt fences aren't there, and the property really has not been maintained other than on the west side of the property, which is up above and easily accessible. The weeds on my side of the property are probably about eight feet tall. They're down now because the weather's cool, but let's get the project started. Let's put the amenities in that benefit the surrounding landowners on the front end of the project rather than the back end of the project. Thank you.

Bill Moran, 8927 Sagamore, Leawood KS, appeared before the Planning Commission and made the following comments:

Mr. Moran: Twenty-four houses is a lot better than 27 houses, and that's the only change, so it's going in the right direction as far as I'm concerned. It's still a dense development compared to the other surrounding areas, but it's going in the right direction, so that's good. I've only been involved two or three years, but for the five years, its part was north Leawood, everybody's supposed to be able to use the common ground, and I never quite understood at the interact, although I know Bill Whittaker and the developer were trying to explain it. My concern is that the homes' association, when they get involved, they say we may not want all these people on our 16 acres, so I don't understand

how they can change that by just changing the homes' association bylaws or whatever. Bill Whittaker emphasized at the interact meeting that would not be possible, but I never quite understood how that would not be possible. I guess that was settled three or four years ago. I'm concerned about that, that there will be contrary interests between the surrounding north Leawood, which is supposed to be kind of a quasi-common area for everybody, and then the interests of the people maintaining that property. They may want to exclude others for privacy reasons. That would be my concern. Thank you.

Amy Griffith, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Griffith: I live within 200 feet of the property, and I've followed this for about the last five years. Some of you have been on the Planning Commission during that time; some of you haven't. I wanted to still go on record saying that I think this is ill-conceived and not a good fit for our neighborhood. I was disappointed each time that it passed, and I know you voted it down each time, but I still don't think it's a good fit. It's out of character. There's 24 homes on nine acres when most of us have one home on one acre. I don't have a lot of faith in these developers either. I just wanted that on the record again over the last five years.

Steve Stechschulte, 9026 High Drive, Leawood, Kansas, appeared before the Planning Commission and made the following comments:

Mr. Stechschulte: I've lived probably within 500 feet of the property for 20 years. One of the reasons I relocated to Leawood was because of that property. I agree with Mark McGrory's point, that it would be nice to get the amenities in ahead, and I agree with Bill Moran's point that I guess things are going in the right direction. But to me, I think this still represents a horrible fit for north Leawood. This was a bad plan initially. It's perhaps slightly less a bad plan, but there's nothing in north Leawood that is at all like this. I think in some ways fortunately the project has stalled at the point it has stalled. It's gone nowhere in three years. There are plenty of examples of projects throughout this area that have stalled in the state of half development. I think from the Planning Commission's standpoint, it would seem to me, there is very little that's changed on this plan from over three and a half years ago. While the City Council voted to approve this project over the Planning Commission's recommendation and over the protest petition that was submitted, I would hope that the Planning Commission would take the same view you took three and a half years ago, that this development really has no place in north Leawood. Thanks for your time.

Connie Cardell, 8915 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Cardell: My house backs up to the parking lot. I've lived there for 24 years, bought the house fully expecting to be facing a country club all the years I lived there. I agree. I was in the fight from the very beginning on this, fought the rezoning on it, but we lost. That's just the truth. Now we are faced with, do we continue to fight? I guess not. Or do we try to work with these guys? They have been receptive to what we've asked. They have made some significant changes from the very beginning plan, which was 36 condos, 20 homes and an 850 member club on that space. I also would like to see all the amenities done immediately. We've lived with this for a long time. I sit in my kitchen, and I sit up very high on the property, so I'm up 20 feet looking down on this property. I don't want to continue to look at a mound of dirt and concrete, bulk streets. A neighbor of mine fought his county taxes this last year, if I may have permission to say that. He actually got his taxes reduced, and in the words of the county in the letter to him, it said because you live next to a dump. I would love to see this timeframe boosted, moved forward. I'd love to see some things in there. I don't feel free to put my house on the market, even though I've got a much larger house than I need - I have children that have moved out - because I can't get the value for it living next to this. I'd like to see things moving quickly.

Also, I've spoken to Bill about significant landscaping from my house in particular, because I look down on a parking lot that backs right up to my land. We've asked for the power lines to be buried so that I have an opportunity to build a landscape barrier without KCP&L coming in and cutting it down. What I'm asking you is that when a developer tells me as a homeowner that they're going to put in significant landscaping, what recourse do I have if they don't? And what happens if Mr. Whittaker wins the lottery and moves to the Bahamas, and I don't have the recourse anymore? So, I'm asking you for advice or asking if this is something that gets in writing at this point in time. I know some other homeowners have asked for some landscaping for some of their homes that are adjacent. Thank you.

Tom Meyer, 8935 Sagamore, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Meyer: Since 1979 I have seen all kinds of things happen in the neighborhood, including a lot of water. We've had a conversation about water tonight, and my first comment is regarding what the other people have talked about, and that's the density issue. If you look at this property, you'll see High Drive on one side. You'll Sagamore Road coming down the other side. There are in fact 11 houses in that area on nine acres. They're not 23 houses on nine acres. There are 11. And I say that as a comment, because we've lost that battle. It is water under the bridge. The question I would have is what others have talked about, and that is what is the schedule? What are we now to look forward to? We've been in this for five years. We lost. The majority of the neighbors lost, so where are we now with the schedule and the amenities and the commitments about putting in amenities? Gordon is our historian, and he reminds us that 50 years ago this was a landfill. Correct? It's currently a landfill. If you drive down there, it's a dump. What are we looking forward to now, is my question. And the comment about density, it is water under the bridge. We lost. Thank you.

Chairman Rohlf: Thank you. All right, is there anyone else that wishes to speak? If so, please raise your hand.

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

Chairman Rohlf: Would the applicant like an opportunity to respond to any of these comments? You don't have to, but if there's anything you'd like to add.

Mr. Whittaker: Well, I think we are ready to get started if we get approved here tonight and get approved at the Council meeting. We're ready to submit our plans to the City, to the Johnson County Waste, KCP&L, get our permits and move forward. I think all along we've said that we're going to build the infrastructure first, and our thought is we have to build the retaining wall. I think we put in one of the stipulations on the fifth house we had to have the pool and everything, don't we? One of the concerns is right now, I could say we're going to do the walking trails and it will be accessible for the neighbors, but I'm not sure, depending on the construction of the homes, if it's going to be safe right off the bat. I'm not sure how that's going to work out. Our goal is to build the infrastructure here, and then that's going to help us sell homes. Right now, we do have a pile of dirt. That's how most construction sites start out. Our goal is to spend about \$2.5 to \$3 million to bring in these amenities, to bring in this retaining wall and to bring in sewers and the drainage and improve the conditions, quite frankly, of the flooding, of the sewers and of the drainage in this area. We're not doing this change to dodge for another five years, believe me. That's basically our frame of mind.

Chairman Rohlf: Thank you. Mark, I do have one clarification then on one of the stipulations and for some of the points that were raised this evening by the public. There are a number of stipulations in our staff report that go to landscaping and these public amenities. I think we are really holding the applicant pretty accountable for this development once this is approved, but I would like you to explain Number 30 for me, Mark, to make sure that covers the public amenity question.

Mr. Klein: That was an effort to get at that very point, as far as the houses all getting built and then you wouldn't have the trails, the pool, the tennis court down there. Basically Stipulation 30 says "building permits for no more than five houses shall be issued prior to completion of the amenities within Tracts A and B and shall be completed within 36 months of the completion of the litigation, whichever comes first." It's my understanding that the litigation is no longer, so basically that states that building permits for no more than five houses shall be issued prior to the completion of the amenities. It's an effort to make sure that the amenities come in on the front end as opposed to later on.

Comm. Munson: Is that, "completion of litigation, whichever comes first," is that extraneous now? Is that unnecessary?

Mr. Klein: That is probably extraneous. I thought about taking that out initially when I was writing this, but I didn't want to change the meaning in any way, so I erred on the side of caution.

Comm. Munson: That kind of clouds it for me.

Mr. Klein: Okay. It certainly would be fine as long as you have the five houses in there.

Comm. Reynolds: Mark, the five year time period, is that a standard city time period?

Mr. Klein: That's a standard city time period. Currently right now they were approved in March 2006, I think. Say this plan was not approved or if the applicant withdrew this plan, they still have a currently approved plan. If this one gets approved, then that one goes away and this one takes its place. It would be certainly up to the Planning Commission and the City Council if they wanted to maybe limit that and track it more as far as the timeline that it's currently on.

Comm. Reynolds: Maybe you just answered what I was going to ask then. Will you have the discretion perhaps to make Stipulation 27 read two years? Or three years, or whatever we think is a reasonable time?

Mr. Klein: I believe so. That's a typical stipulation. It is part of the ordinance that it's allowed as far as those time frames, and I guess I would have to defer to Legal to say that for sure.

Comm. Reynolds: While she's looking up, a couple more questions. Similarly, I am glad to see Stipulation 15 that says "additional landscaping shall be planted on the west sides of the pool and parking lot that serves that pool as approved by staff." Then certainly Stipulation 35, "a landscape buffer to be approved by Planning shall be added along the south sides of Lots 21, 22 and 23 to provide additional screening to those existing lots to the south." I guess again I wonder if there's a mechanism or precedent that would say that we could require that as landscape buffers to occur within a shorter time period, within a year, for instance. That would at least screen those neighbors' views of the construction activity.

Mr. Klein: The only concern is, because the buffers will be on their property, they won't be on the adjoining property, and then if you put a house on that, I'm just concerned that you put up the buffer, the construction of the house goes in and then tears out the buffer that was just put in.

Comm. Reynolds: It may be a little tricky but possibly do-able I would think.

Mr. Klein: Right.

Comm. Elkins: Mark, when we're talking about the amenities, oftentimes we think of a pool and tennis courts as the amenities. From staff's perspective and from the City's perspective, what all is included in the amenities?

Mr. Klein: The amenities in this case are the pool, the cabana, the tennis court. Then you also have the trail system. It's a little unusual in the fact that you have so much green space and everything being dedicated with the subdivision to be opened up, but it's on private property that gets opened up to the surrounding community. In this case, that would be considered an amenity. They have those trails and that kind of thing that are opened up. According to their covenants and restrictions, homes' associations of Leawood and Leawood Estates will be allowed to use those.

Comm. Elkins: And isn't it true that in a typical construction project, the trails are the last thing to go in? The major construction projects are the things that go in first, and it's once you lay the sod that you really have the trails put in place.

Mr. Klein: Yeah, it really kind of depends on the developer and how he wants to do that. If the trails are far enough away from construction, they may go ahead and decide to do that. That way when they get a couple of houses in, they can enjoy those amenities, but it also may be up to the developer if he decides that it may be easier to fund those amenities after a number of the houses are primarily constructed.

Comm. Elkins: Mr. Whittaker expressed some concern just in terms of the normal, what makes common sense from a construction standpoint, as to whether it would make any sense to put, in particular, the trails first. Based on your experience and what you see on that plan, would it be do-able to put in, at the same time the infrastructure goes in, the trails on a more expedited or more accelerated basis?

Mr. Klein: I would think they definitely would have to get the walls in and also definitely have to get the fill in for the houses to make sure that you don't need to have any heavy machinery or anything down in that area. After that - again I'm not an engineer or anything - it seems like if most of the construction is limited to the lots in which the houses

were going to be constructed on. Once you got the walls up and once you've got the infrastructure, personally I don't see a reason why you couldn't put the trails in, especially down in that Tract B.

Comm. Elkins: Madam Chairman, just a comment, although maybe it's early for comments. One of the things I'm mildly concerned about is that I appreciate stipulation number 30 as an incentive to get the amenities done, but it seems to me it's kind of a two-edged sword in that, "building permits for no more than five houses shall be issued," that becomes kind of a limiter that discourages or could discourage the developer from even getting started until they had much more of a commitment and then try to put them in all at the same time. I'm not sure I'm articulating very well there, but while I think the purpose of it makes a lot of sense, I'm a little concerned that it may be a disincentive rather than an incentive. But we'll have more conversation about that when we get closer to a motion. Thank you, Madam Chairman.

Comm. Williams: Question for Mark here. This goes to 27. Marc referenced that. On the timeframe, has construction of any nature already started on that property based on the 2006 plan and approval?

Mr. Klein: Well, grading has definitely taken place. They've definitely done the demolition of the club that was there before. As you heard tonight, there's piles of dirt there that need to be cleaned up a little bit and then will be used as fill eventually, so as far as the actual construction of the trails, the amenities, the houses, the wall, that has not taken place.

Comm. Williams: That I understand, but still going in and doing grading and bringing in dirt and the demolition you referred to of a structure, that under most normal conditions constitutes the start of construction, does it not?

Mr. Klein: However, in demolition we require a demolition permit, so that wouldn't be considered a building permit. I'm not sure if that's what you were linking it to.

Comm. Williams: I guess I'm trying to get a clarification of what constitutes the start of construction as it relates to the time period for the development project.

Mr. Klein: Typically it is the start of the grading, the putting of the infrastructure. Those kind of things are typically what we see as the start of construction.

Comm. Williams: Before you put in infrastructure, you have to start grading.

Mr. Klein: Grading it out. Exactly.

Comm. Williams: It requires that you have to bring in fill.

Mr. Klein: Right.

Comm. Williams: So again, I raise the question: Has construction tactically started on this project as it would relate to the time frame in the ordinance?

Mr. Klein: I suppose yes, it probably has.

Comm. Williams: Okay, so in that regard, the stipulations previously approved, and correct me if there's an ordinance that I'm not aware of, there's not, unfortunately, a timeframe to complete the project. If they've started construction, regardless of how long it takes them, five years from today doesn't matter if they've technically already started construction?

Mr. Klein: Sure.

Comm. Williams: Okay, along that line, the plan we see before us today, and even though technically it's a redo of the preliminary and they're here for the final, this development is the same development as previously proposed in terms of land area and street placements and everything would equate to really minor changes? They don't really change the plan. All it does is change the number of lots and those lot lines.

Mr. Klein: Correct.

Comm. Williams: It's a real minor change. Okay, thank you.

Comm. Shaw: Mark, under the staff recommendations, there's 42 now. Back in 2006, was there a number of staff recommendations at that time?

Mr. Klein: Actually there was. There has been one stipulation added that we've been adding to all the projects now, and it's to cover ourselves as far as the stipulation 41, which was added back in 2006. There were 41 original stipulations. Stipulation 41 states, "the conditions and stipulations of the preliminary plan approval remain in full force and effect except to the extent expressly modified herein." It's just to make sure that if something was left back in the preliminary, everybody is on the same page and that it will be carried over. Again, this is a standard stipulation that we've been including on all of them.

Comm. Roberson: Mark, quick question. Have you seen a construction schedule?

Mr. Klein: I have not seen a construction schedule. I know I have received a number of calls over the last several years from a number of the residents asking when construction would get started on this project. Unfortunately I did not have an answer for them. Oftentimes that's not really under our control. As Commissioner Williams indicated, once construction starts, it can take awhile to build out a subdivision. Typically the subdivisions we see are considerably larger than this, and therefore it can take quite a bit longer. This one, with 23 lots, may not take quite as long hopefully, but that's all dependent on the market and the financing and that kind of thing. But no, I have not seen a construction schedule. The developer has indicated, as he said tonight, that he was ready to get started with the 27 lots, that he was almost right on the precipice of beginning the actual construction when they decided to make this change and then come back before us.

Comm. Roberson: I guess that would be a question I'd have for the developer then. Is there a schedule that you can tell the residents if this is approved tonight, if City Council approves it? Quite frankly, although technically you may have started construction, when are you really going to start?

Mr. Whittaker: Our thought is if we get approved tonight and get approved by the City Council, our construction plans are ready to go. We have to submit them. We can't submit them. I'd submit them today if I could, but I can't submit them until my plan gets approved. We have all the drainage. We have a full set of plans. I'm sure you have them. We sent them to you. I'm going to have a bid probably in 20 days, a few bids on the infrastructure. I had the other infrastructure bid, and we had selected a contractor to do the infrastructure. It's not that big of a curve here, just there's less grading with 23 than 27. Our thought is to, once we get permits, start immediately. Now I know there is a thought about a five-year plan. I could shorten that fuse up if that's what the concern is. My concern is in order to sell these lots and build these homes, it's efficient to me to do the infrastructure all at once rather than piecemeal the infrastructure. From an economical standpoint, from a construction standpoint, that's not how you do it. Our thought is to build the infrastructure, build the retaining walls, which is a landscaped, nice wall, but it more works as a retaining wall. Build that, compact the site, and put in the trails, because we have to engineer that nine acres down there. We have to engineer that for Larkin's survey. We have to dig that out and do certain things grading-wise in order to make that work.

Comm. Roberson: And I understand that. I guess from a homeowner standpoint, I think they're anxious to know when you're going to start.

Mr. Whittaker: As soon as we can. As soon as the governmental body gives us the permits to start going, we'll start going. I'd like to get a grading, if I get a grading permit, soils permit tomorrow, I'll start moving some dirt and start going. We're ready to go. We're committed to the site, and we're committed to this new plan. We're ready to move forward. That's what we want to do. We have our financing in place, but I don't want to sign up to a specific schedule. If I don't start by November 1st, then I lose my rights. I'd like to be fair here, but our goal is to move forward. We have a lot of money and a lot of time in this as does everybody here and everybody behind me. We're ready to move forward. That's all I can say.

Comm. Roberson: Do you feel that six months from now you will be started?

Mr. Whittaker: You mean as far as to start building homes? It's going to take us probably six to seven months to do the infrastructure if everything goes right from the time we start, so we can convey a lot fee simple to somebody so they can start building their house. That's what our construction people tell us. Now, we could have a bad winter or could have a great winter. I don't know why we couldn't. Our goal is once we get permits from Johnson County Waste, KCP&L and all those people, our goal is to start the infrastructure and start marketing the property.

Mr. Whittaker: The bridge was going to be put in, Mr. Hinke, when we start the infrastructure. The only thing I'm worried about safety-wise is to guarantee that the bridge will be up and you can walk through that day one, I'm just worried about construction and stuff. It's not like we're going to build the infrastructure and then put the bridge in, in three years. I can guarantee it. Safety purposes, I want a new bridge in there and so does the City. We're going to put a 10-foot long bridge, and it's in the stipulations that we agreed to. We're not shying away from anything we agreed to last time we were here. The only thing we're doing is going from 27 to 23 homes. I understand the timeline.

Chairman Rohlf: I think you've put it in the best perspective that you can. We have a reasonable timetable that you're shooting for. We can respect that. Things do enter into it, and I feel we have your commitment that you're ready to get started.

Mr. Whittaker: Yes ma'am.

Chairman Rohlf: It's on the record multiple times, so hopefully it will happen that way.

Comm. Williams: A question for staff. We just heard from the applicant that once he gets the various permits he mentioned, I think he said six or seven months to get to building. From a city, county perspective, can you give us and the residents some ideas from today what that time process, timeline might be? Are we talking 60 days, 90 days, 120 days?

Mr. Klein: I know it takes at least months, and actually the City Engineer might have a better idea, because typically what happens with residential subdivisions is before the plat actually gets recorded, the infrastructure has to be put in, in case there's any minor adjustments of easements or anything like that that will be put on the plat.

Mr. Ley: I don't know how far along they are with the plans to Johnson County Wastewater, but I would say it's probably going to take at least three months when they submit the plans for us to review them. We'll probably have comments and for them to address those comments. We have looked at them at one time and already gave them some comments on it. Typically we have three to four review periods before we actually have approved plans.

Comm. Williams: Okay, so once the plans come in, it's about three months?

Mr. Ley: Yeah, typically it's about three months, and that would be from when they submit the plans, which they can't submit until it gets approved by Council.

Comm. Williams: I understand. Okay, so that would be roughly a month away?

Mr. Klein: Yeah, the Council probably, and obviously this isn't set in stone yet, but it would probably be the first Monday in November.

Mr. Williams: Okay. So, for everyone's information, because of the process that's involved beyond the applicant here, with the review process and their construction and weather being perfect, we're looking at 10, 11, maybe 12 months before they can start building houses.

Mr. Klein: As far as the house themselves.

Comm. Williams: The public area, the infrastructure would be finished and clean, and then what? What the neighbors would have to put up with at that point would be the building of the houses?

Mr. Klein: Yeah, I would imagine after the approvals get done, then they actually have to construct the infrastructure.

Comm. Williams: I guess I understood that the infrastructure would be completed in that six, seven-month window.

Mr. Klein: Right.

Mr. Whittaker: Obviously the slowest link in the chain sometimes is the Wastewater people. where there's reviewing and things like that going back and forth. Scott Lambers asked us to do a report on the existing soils that are there now from PSI, our geotechnical engineer, which we did submit. But we would be willing, if we could get a soils disturbance permit to start grading, moving some of the dirt around and compacting the dirt, we'd start grading as soon as we can, as soon as David or Scott or Mark would let us do it.

Comm. Williams: Well, I think any way the process of construction could be short-circuited and speeded up would obviously be beneficial for you financially as well as for the neighbors and what they have to put up with construction from this point on.

Mr. Whittaker: If you can assist us in expediting it, we're ready to go. The City's been great. The staff has been very good throughout this period, and I know they want to get us going, too.

Comm. Williams: I think from our side of the table, the expediting is moving on with further discussion and potentially approval of the application.

Chairman Rohlf: Sounds like a good idea, Mr. Williams.

Comm. Williams: All set up, thank you.

Comm. Elkins: Not being one to be intimidated by my colleague to my right here, I do want to follow up. I didn't mean it that way. He knows that. To follow up with Mark on just the conversation he had with Commissioner Williams, I just want to make sure I understand this correctly and perhaps some input from the legal staff as well. As a practical matter at the end of the day when you and Commissioner Williams got done, is the bottom line that Stipulation number 27 has already been satisfied? Is that the bottom line?

Mr. Klein: Well, technically Stipulation 27 has been satisfied for the previous plan, because it's part of that development, and I certainly understand what Commissioner Williams is saying, because it is basically the same plan. They've already gone forward with it. However, this would be a new stipulation with this one, so I think it's appropriate to probably keep it on this one just because it starts that five years.

Comm. Elkins: I'm sorry, where I'm going with the question, though, is it sounds to me like it does us no good, even if legally we can do so, to reduce that five years to two or to one or whatever, because it sounds to me like it's already - satisfied.

Mr. Klein: Once they start substantial construction, then they've started down that road.

Comm. Williams: That was the whole point behind my question, to get clarification, because otherwise I think several of us would be looking at changing that five years to something shorter.

Mr. Klein: Sure. It doesn't say that it has to be completed within five years. The idea behind this is, at one point the City didn't have any sunset clauses at all on any of their plans, so what would happen is you'd have a plan that was out there, they would get approved, and 20 years later when everything had changed and that area of the plan no longer fit, the City wanted to make sure that somebody didn't just pick it up and say hey, I got an approved plan here, I'm going to go build, even though it didn't meet any of the current standards, any of the surrounding. That really was the primary reason for that stipulation being added, and it is the standard stipulation that we put on just to ensure that these plans do fade away if they aren't started.

Comm. Williams: Well the problem is we don't want this plan.

Mr. Klein: To drag on forever.

Comm. Williams: Potentially don't want this plan to fade away at this point as much as we'd like to get it done and get cleaned up so the neighbors don't have to look at a dump.

Comm. Jackson: Well, if I can interject here. It does say it has to be diligently pursued, and at this point it's not being diligently pursued. From what it sounds like, they're not doing any more grading. There hasn't been any bulldozers working out there, so once that gets started again under this new plan and it is being diligently pursued, then I think they've hit what they're required to in order that the plan won't lapse. But at this point, if they don't do anything more, I think the plan would lapse in five years. If we wanted to shorten that, assuming Legal agrees, we could potentially shorten it.

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

Ms. Bennett: You are not prohibited from shortening it. The ordinance itself reads that there has to be "substantial construction and all additional building permits necessary to complete the project in the plan are obtained in a timely fashion." So, there's another part of that. Also, it defines substantial construction to mean completion of at least 10 percent of the building construction, excluding grading and site preparation. That's the ordinance itself. That's not the stipulation, but that is what the ordinance provides.

Comm. Williams: By the ordinance you just read, I would interpret that as construction really hasn't started.

Ms. Bennett: Meets the stipulation, but yes, it does not meet the other section.

Comm. Williams: Okay. Thank you. I guess, if I may, did we start discussion?

Chairman Rohlf: Yes, I think so.

Comm. Williams: I guess I raise the question to my colleagues, and we could take the five years out and make it four, make it three and a half, wherever you want the clock to start. At the end of the day, the real critical issue is when is this going to be done? When is it going to be cleaned up? Right now it's a mess. It's a dump, as is the comment by the tax appraiser that was passed on to us. So, to a degree, maybe five years is a moot argument to get into, and look at trying to do something that more addresses the completion of the schedule from this point forward. If we can impose a completion schedule on the applicant, but I don't think we've ever gotten into, at least on my time on the Commission, been able to get into a completion schedule.

Chairman Rohlf: And we can't do that.

Comm. Williams: Okay, we can't do that, so end of that discussion.

Chairman Rohlf: Well, I think let's apply some common sense. If they really want to start selling these lots, they're going to have to have a presentable infrastructure and common area. I think that it will take care of itself. I don't think we need to impose any more of a timeline than is already stipulated to.

Comm. Williams: But I guess we might have said that a year and a half ago when they got their approval for the 27 lots, and nothing substantial has happened. That's part of the rub with the neighborhood.

Chairman Rohlf: I'm not sure changing that stipulation in this case is going to help this.

Comm. Williams: That's what I'm saying. There's nothing in changing that stipulation does anything to move up the project.

Chairman Rohlf: Why don't we move away from that discussion and see if there's anything that we need to focus on this evening. If not, then I'm ready to entertain a motion, please.

Comm. Elkins: I'm still intrigued by this idea that was suggested by one of the members of the public about a stipulation relating to the walking trails in particular. Again, I don't know if there's any precedent for us imposing such a stipulation or what the appetite of the rest of the Commission is, but I am intrigued by that idea. It gives the neighbors

some use of the property well in advance of the completion of 23 homes or even the completion of five or six homes. As I said, I am intrigued and interested in the addition of a stipulation of that sort. Again, I don't know whether there's any support around the dais for something like that or not.

Comm. Williams: Do you not read number 30 to possibly begin to achieve some of what you're asking for?

Comm. Elkins: I think that it goes part way there. As I said, I'm a little concerned, especially given the definition of construction, that what happens is we get the infrastructure started to put in place. The walking trail's not there. The developer, the economic conditions are such that he's not sure that he can get all the way through, so then it just stops. My colleague down the way makes a good point. They have to diligently pursue construction, but I'm afraid that we're going to get into situation where the infrastructure's done, we're in construction, and there's no trails, there's no way for neighbors to get from the east to the west. I guess from the north to the south more likely is the way it looks. That's a fair point.

Chairman Rohlf: Well, too, Mr. Elkins, I guess I would be a little concerned about inviting people into that area when perhaps not all of the safety issues are in place. I would think that there could be an impact depending on how these homes come in, where the locations are, and also wondering whether you want to invite people onto this site when there's no homes built, security issues, people roaming around in an open space. I don't know. I'd have some misgivings about that.

Comm. Elkins: Madam Chairman, I think that's a fair concern, but this piece of property looks a little bit unique to me in that, I guess, what I look at - and maybe I'm looking at the wrong part and maybe I'm fooled by perspective - but I look at what I guess, if I read the map correctly, would be the south, the top of the map. I guess that's actually east. On the east side of the property, a lot of that walking trail and whatnot seems to me to be much more removed from where the housing construction will be, especially given that housing construction's on a pedestal. It's up above the rest of what I would call a park is going to be. It's a little different than in some of our neighborhoods in south Leawood where the walking trails are just virtually on the patio of the backyards. All that yellow space we see is actually up on a platform, and the park is down in the valley, so to speak. I think, again, it may be my perspective's off, but it's considerably removed physically from the rest of where the construction's going to be taking place. What I'm envisioning is development of the infrastructure, building of those retaining walls, which I think are great. I think they look good. Then essentially the completion of the walking path and the park area. I guess what I'm really talking about is completing the park first and then building houses after the park's built. Again, not sure it's practical, and we have to yield to practical here, but that's what I'm throwing out on the table.

Comm. Williams: I think I heard the applicant say a few minutes ago that the park area and the trails would be completed in order to market the homes. Is that not right?

Mr. Whittaker: Yes.

Comm. Williams: Okay. Going to the question of inviting people into a potentially dangerous area, if the area is finished and cleaned up except for the sites for the homes, even if the homeowners around this development can't use that property yet, it's still a benefit to them because it helps to clean up the site substantially. It also, I think, can give the developer the flexibility that if there's a home site, for example, that maybe needs to have access from the wall, they can cordon that off to protect people or just keep people out for a short period of time while some of that potentially dangerous work is being done. That still leaves the area clean and more presentable to the surrounding community. It gives them the flexibility, and I like that aspect.

Chairman Rohlf: All right, I think we've heard the representation that that's what his plans are. All right, is there anything else anyone has a comment on?

Comm. Reynolds: Yeah, I must say I'm not as concerned about the open space timing of that development, but I do remain concerned about the economic hardship potentially that we may be placing on those adjacent landowners. That's why I've poked around Condition number 15 and 35, which provide for landscape buffers, which I think are appropriate and would be beneficial even during construction, perhaps even more so during construction than after construction. I wonder if Stipulation number 3, which talks about utilities being placed underground prior to final occupancy of any home within the project, if a similar stipulation could be added to numbers 15 and 35 that said that

those landscape buffers would be in place before final occupancy of any home. It would at least ensure that there's a buffer that gets in places in a timely way. Quite frankly, I've done developments where we've done buffers before the rest of the development goes in, and these are relatively easy areas to rough grade and put those buffers in place before other activities occur. That would be a direction I would head in terms of an amendment to the stipulations.

Comm. Jackson: Madam Chair, I propose an additional stipulation, too. I still have some concern about the flood plain, and if we could at least get some signage up there. I understand adults probably wouldn't be down there in torrential downpours, but I have teenagers, and yes, they would. I would like some signage so at least parents are aware that it is a flood plain at the entrance. I guess the entrances are going to be on Sagamore then and allow you to get down there. At both entrances signage could be placed.

Mr. Whittaker: We are going to have signs posted about the flood plain as well as rules and regulations as far as no alcohol, no certain things down there that aren't going to be permitted down in this particular area. One of the things is there is a flood plain will be posted. We've already agreed to that. I think that is in one of the stipulations.

Mr. Klein: Actually, in their homes' association they indicate that they'll have the ability to make rules uniform across with regard to the use, with regard to the time that it's open, with regard to safety. But there's nothing specific, so I think it's appropriate that you add a stipulation in there that would definitely cover that. I think that they anticipate doing something like that, not only with the flooding, but in regard to alcohol and the other things as well. I think a stipulation is fine.

Comm. Jackson: Madam Chair, if we're ready, I'm willing to propose a motion.

A motion to approve CASE 97-07 was made by Jackson and seconded by Williams, subject to the staff recommendations and with an amendment to stipulations 15 and 35, adding a sentence to each which states:

- 15. "Such landscape buffers shall be done prior to final occupancy of any home within the project."
- 35. "Such landscape buffers shall be done prior to final occupancy of any home within the project."
- 30. A period after tracts A and B, such that it would read "Building permits for no more than five houses shall be issued prior to the completion of the amenities within Tracts A and B."
- 40. Change to read that "warning signs of the flood plain would be placed at all entrances to the pedestrian walkways."
- 42. Change to 43.

Motion approved 8-0.

CASE 98-07 CAPITOL FEDERAL AT NALL VALLEY SHOPS – Request for approval of Final Plan Site Plan, located at 151st and Nall.

Staff Presentation:

Mr. Joseph: The applicant is Jeff Skidmore with Schlagle & Associates. This project is located at the northeast corner of 151st Street and Nall within the Nall Valley Shops. The applicant is requesting approval of a final site plan to construct a one-story, 3,043 square feet bank building with a drive-thru. This proposed building is located at the southwest corner of the development. The drive-thru area is located on the north side facing the rest of the buildings within the development.

This project does not meet the 40/60 rule along 151st Street. At the time of the preliminary plan approval process, a stipulation was added that stated: "if the applicant and/or developer proposes a significant public amenity area and a timetable of construction acceptable to the Planning Commission at the time of the final site plan, a deviation to the 40/60 rule may be considered." They provided the public amenity area on Lot 4. It's a circular feature with an art piece at the center of the brick paved area.

Also one more issue that was raised during the preliminary plan was the logo. Staff is not supportive of the design of the logo that is proposed tonight. At the time of the preliminary plan, the logo was shown as a three-dimensional architectural feature on both sides of the building. The applicant has suggested that it's actually made of a vinyl material, essentially will be pasted on the glass surface instead of an architectural feature. The sign of the logo shown on the renderings is not drawn correctly. The reason staff is not supportive of the vinyl logo is that, if you recall three years ago, Walgreen's store came in with

a similar type of logo, and this was denied by the Planning Commission and the City Council. It's the same concern that we have.

Staff is recommending approval of this case with the stipulations stated in the staff report. If you have any questions, I'd be happy to answer them.

Chairman Rohlf: Jeff, I'm assuming that this enlarged sculpture plaza that we have on one of the drawings here, is that considered the public amenity that they're proposing?

Mr. Joseph: That's correct.

Chairman Rohlf: In looking at that, do you consider that significant?

Mr. Joseph: I think it is significant, plus they are proposing landscaping along the parking area, so it adds to that.

Chairman Rohlf: Okay, so we need to look at the public amenity and we need to consider the logo this evening. Those are our two main points. All right, does anyone else have questions for Jeff?

Comm. Williams: This might be a question better stated for the applicant or the applicant's architect, but in looking at the drawings and on one site plan where I see this amenity, it appears as though it's more removed from the parking lot than what it looks like on one of the architectural site plans. The more partially landscaped plan has the enlarged sculpture plaza. It looks like that sculpture amenity is - it's hard to tell here - a few feet away from the parking lot versus maybe at least twice the distance away from the parking lot on one of their engineered site plans.

Chairman Rohlf: I think they have their current rendering up there.

Comm. Williams: And that one would be showing it closer than what it seems to show on the Schlagle & Associates site plans. Do we know for sure where it's actually going to be placed?

Mr. Joseph: The applicant will be able to answer that question.

Comm. Williams: All right, thank you. No further questions.

Chairman Rohlf: All right, then we will hear from the applicant.

Applicant's presentation:

Scott Bixler, WDM Architects, 105 N. Washington, Wichita, Kansas appeared before the Planning Commission and made the following comments:

Mr. Bixler: As you can see, we have some of the site plan and the elevations for you to look at, as I'm sure you have in your packet. To the question of Mr. Williams, the site amenity, the Schlagle package basically came prior to when we actually put the final design together, and it pulled away a little bit. What we wanted to do was to integrate it within that walking path that you see coming from the north, and it also circles around and connects. Mr. Williams did want to get it fairly close and integrate it into this area so it would feel like a part of the bank property as well, even though it's somewhat off on the other property. The developer and our firm have been working together on developing this amenity package. They are working on a particular piece of artwork that they don't have right now. It's a significant piece of artwork. It's very nice, but what we have developed here is this element that we feel works well with some of the circular patterns that we've got in the site plan. Landscaping around the parking lot we feel is significant and provides a good break. We wanted to make sure people not only could sit there, but it wouldn't be just out in the middle of a space. It had something that it could kind of form around, and that was originally pulled a little bit closer than what you see in the Schlagle plan.

Comm. Williams: That's great. Thank you.

Mr. Bixler: Any other questions?

Chairman Rohlf: Is there anything you would like to tell us this evening?

Mr. Bixler: Sure. As I've talked with you several times before as far as the building materials, which I think you can see down here on my lower left, we're trying to utilize the same materials that we've got in the rest of the center. There's a couple of variations. The variation is just the texture of the stone. I think you see one stone that has a chiseled face on it, which was used at the center. What we wanted to do was to take the same stone but actually give it a smooth face, same color. The reason we wanted to do it, we felt it was a little bit more sophisticated for the bank, and we wanted to utilize that. The other material is the shingles. The existing shingles that meet the approved criteria are no longer available, so we got a shingle from the same manufacturer that's very, very close to the same color.

I would like to talk about the logo as well. When I was here and also at the City Council meeting, the logo that's right above the front door here and the opposite side, which would be right here, and right here is where we have the two logos. We felt it was extremely important to have that integration between the signage that would say Capitol Federal and the logo up above it. I believe it was Commissioner Reynolds that basically indicated he felt good about it but wanted us to bring it back and show that it wasn't just a big heavy, clunky sign. Therefore, what we wanted to do was try to create a little bit of a piece of art. What we did is on this glass, which right here it's approximately six feet across, we were looking at creating something in the line of an etched glass, if you will. What we worked out, this is basically kind of a simulation of what you would see. It has a little bit of the blue color to it. It is a vinyl, but it would be on the inside face of the window, and basically it would not have any edge lighting on it. We went away from actually having a canned sign, if you will. But this would be during the daytime, we get a little bit of a hint of blue like we have around the edges of the blade canopies. We were really looking at not doing anything really bright, something that would really stand out tremendously. We wanted to be very subtle, and that was the reason we used the vinyl. We could go up there and etch the back of the glass and get the same effect, but the vinyl is cost-effective, and we really feel works quite well. That's the reason we went with that logo.

Chairman Rohlf: I guess I'm a little confused, Jeff, about what was proposed at preliminary, and maybe Dennis remembers.

Mr. Joseph: The rendering showed the actual logo. It's an architectural piece. When I talked to you earlier, it was just a vinyl pasted on the glass of the window.

Chairman Rohlf: And before it was part of the window?

Mr. Joseph: Yeah, it would be like just a vinyl piece that's pasted to the glass instead of an individual character.

Mr. Bixler: And we certainly can do that as well. One of the reasons we wanted to make it a part of the window was that from a reflectivity standpoint, we wanted to get the exterior glass being a non-reflective glass, and we wanted to put it right on the window. We can make this thing have some thickness to it. We were just trying to get away from being a boxed sign, if you will, and we thought doing it on the backside of the window would be extremely subtle. It would look good, have a tint of color to it, and we really felt worked quite well with the signage below it, too. That was the reason we wanted to use this particular application.

Comm. Munson: Is that what it's going to be, like that? What size?

Mr. Bixler: It's five feet, nine inches in diameter, is exactly how big it is, so it's a fairly good size.

Comm. Munson: And you're saying you don't want that, correct?

Mr. Joseph: Well, in the rendering drawings, it's showing as a different type of character.

Mr. Bixler: Yes, the rendering, initially we had shown a box sign. When Commissioner Reynolds indicated that he would like to see something that's a little bit more artistic, we went away from the box sign into an application on the back of the glass. That's the only difference.

Mr. Joseph: Again, the final application is the same thing that the Walgreen's came in with, and it was denied by the Planning Commission and the City Council at that time.

Comm. Munson: What do you prefer to have?

Mr. Joseph: If it's shown as the same as the renderings, staff is supportive of one logo at the entrance of the building. It's not facing the street. It's facing towards the development.

Comm. Munson: Because on your recommendations it says " the logo shall be removed." Where are we here?

Mr. Joseph: Well, if it's individual characters, staff is supportive of one logo. But if it's not, if it's just a flat vinyl backing, then staff is not supportive of the logos.

Mr. Bixler: The one comment that I would make is we are not opposed to an individual sign, if you will, on the inside of the glass. We're just really looking for that identity and that branding with Capitol Federal below it, and we would really like to do it at both locations. We would be more than happy to develop a sign that had an individual character to it. We were just trying to address Commissioner Reynolds' request.

Comm. Munson: Well, he's leaving the Planning Commission. [Laughter]

Mr. Bixler: And he doesn't count? Okay. We just feel it's extremely important to have it above on the two ends of the façade.

Comm. Munson: Here's how I feel. You said you were going to go to a slick surface as opposed to the rough surface stone to achieve what you said, I think you said more sophisticated?

Mr. Bixler: We felt that the slicks, actually the ground face versus the chisel face.

Comm. Munson: Is that different than the other buildings in the development?

Mr. Bixler: The other buildings have the chisel face stone, which is the larger sample down there, the smaller one on top.

Comm. Munson: What I would prefer you do is to stay with what's in the development. As far as your logo, I think it has to be very tasteful in keeping with what we've done before, because otherwise I think you're putting up a pretty nice building and a lot of nice features, but that sign, if it's cheesy, is going to wreck the whole thing.

Mr. Bixler: Absolutely, and I would assure you that at the efforts that have been put together to put this building and this site together, we do not want to put anything that's cheesy up there. I can assure you it will not be cheesy. We'll go to whatever lengths it takes to get that signage up there, as long as it meets your criteria.

Comm. Munson: I'd say work with the staff real closely on that one.

Mr. Bixler: We would just like to have it on both elevations. That's all we're looking for.

Comm. Munson: Why both elevations?

Mr. Bixler: We feel it's extremely important, number one, from a continuity of the sign, the logo, being every time the Capitol Federal logo is developed, it's along with a horizontal sign. And we feel it's important from a branding standpoint to have it at the entryway and down here at this intersection at Nall and 151st. We still feel it's extremely important. We've developed a little bit of a block out on the windows up above that they actually protrude out, so we're really trying to set up for that logo to be set in there.

Comm. Williams: Along that issue, we have numerous discussions with applicants about signage and trying to tie signage into the architecture. In reality, maybe one out of ten actually ties in to the architecture of the building, and yet the applicant, I feel, has done a very fine job of tying the signage into the architecture. I think it's quite appropriate, especially given the design of the building to have it at both ends.

I'd like to go back to the vinyl for just a second. I remember having discussions on the Walgreen's, and I think a lot of what we were looking at and a lot of what we were opposing was some very bad examples of Walgreen signage being backlit with the fake lights or fake windows that they were notorious for at that point in time. They have since done some very nice things in surrounding communities. I guess I'm having a little trouble relating that signage to this one. It might have been vinyl letters on the glass, but I think the way it was overall set up, particularly in looking at how the sign relates and fits into the architecture, we're somewhat comparing apples and oranges here. I can see with this approach, and I somewhat say this and I'll be candid, I've used maybe the same product or certainly similar approach. What it achieves is a nice subtle, soft appearance of

the sign, and when I look at the sample before us and think about that being even close to six foot in diameter, it's a subtle look on that area of the glass. I would personally prefer to see something subtle like this than to see something much stronger and harsher, which would be going to the box sign approach.

Mr. Joseph: At the time talking to the applicant, we had the impression that it was just a vinyl sticker type of thing stuck on it. That was our impression that we got when we were talking to the applicant.

Comm. Williams: Well, and certainly the description even still, it would seem like it's just that. When you see the sample and you can know that it's applied from the inside, not the outside. It just gives it a completely different look. I think this could look really dynamite out there.

Mr. Joseph: Okay.

Chairman Rohlf: Anyone else have questions for the applicant? I guess we need to make sure we discuss a couple of items.

Comm. Williams: I'm sorry. For the applicant for just a second. You mentioned that Capitol Federal hasn't picked out a piece of artwork just yet for this art feature location. Do you have any sense of what the potential size of this might be?

Mr. Bixler: I certainly have a potential comment here from the developer.

Otto Westerfeld, 20190 Deerborne, Stillwell, Kansas appeared before the Planning Commission and made the following comments:

Mr. Westerfeld: As I had to address, I believe, at the last or a couple of meetings ago, the Regnier family is choosing a piece of artwork for the shopping center, as we're required to do. I had really pushed them hard to just cut a check for \$10,000 and give it to the Art Council. I told them this would be much more difficult and much more costly. But Vic Regnier, Jr. really wants to choose a nice piece of art for the shopping center. The problem with getting that done is he lives in LA, and he flies all over the globe for some retirement company he works for. He's in Kansas City about once every month and a half. They have looked and like a piece of art. It's kind of a tall triangular tower type thing with glass in it, about \$30,000, \$40,000 for this thing. They also are looking at a couple of other artists' product. I believe they're going to do that the next time he's here, which would be in about a month. If you're concerned about this amenity being built, is that it? And not having a piece of art in it?

Comm. Williams: My concern is more the size of it given its location and the fact that we're asking for a substantial amenity here. I wouldn't want to see something that's three foot tall. I'd like to see something maybe six foot tall or bigger, at least have some size to it.

Mr. Westerfeld: Right. It will be substantial, and of course I'm not clear on the requirements, but I believe we have to get approval for whatever art, which is actually a separate process from this, giving Cap Fed their approval. We have our own process to go through with the Art Council to get something approved for the property, but I can tell you that the piece that they looked at, that they kind of like, that thing's probably eight feet tall. It's substantial. I mean, it better be for \$30,000. It better be bigger than three feet, that's for sure.

Comm. Williams: One would hope so. Thank you.

Chairman Rohlf: Is it Building E that will share that amenity? Is that the only building left?

Mr. Westerfeld: That's the only pad that's left. That building's not been constructed and will not be constructed until the center's probably at 90 percent.

Chairman Rohlf: Great. Thank you.

Mr. Bixler: Could I respond? I think you bring up a good point. Not knowing specifically the size or the mass of the sculpture, we may, we may have to scoop that away from the paving just a little bit more. We just didn't have any idea of the scale of it yet, so we'll take that into consideration. I think that was a good point.

Comm. Williams: Okay, thank you.

Chairman Rohlf: Any other questions, comments? I think it is time. We just need to make sure that we have discussed a little bit about the amenity, if we do believe that is significant enough amenity to waive paving 55 percent rule because we would need to modify a couple of the stipulations. One, we would need to remove number 5, and then we would need to quantify a little bit of number 7. I think we need to change that. Otherwise, I believe everything else is consistent with what we've discussed. With that in mind, did you have a comment, Mr. Reynolds?

Comm. Reynolds: I just wanted to make it clear since I was the one who talked about it last time that Lenny actually hit every comment I would've made and totally agree, so enough said.

Chairman Rohlf: All right. Anything anyone else wants to add before we try our hands at a motion?

Comm. Reynolds: I'm not sure how to modify number 5.

Chairman Rohlf: We could just delete it actually.

Comm. Reynolds: Delete it?

Chairman Rohlf: We would delete it. I believe that's right, isn't it Jeff?

Mr. Joseph: Yes, delete it.

Chairman Rohlf: Right. If we agree that amenity is...

Comm. Reynolds: I offer to make a motion then.

A motion to approve CASE 98-07 was made by Reynolds and seconded by Williams, subject to the staff recommendations and with the elimination of Stipulations #5 and #7.

Motion approved 7-1, with Commissioner Munson voting in opposition to the motion.

Comm. Elkins: Before we adjourn, I'd raise just a point of personal privilege. Earlier in the evening in the context of our discussion about Case 97-07, I made a very flippant comment about being intimidated by my good friend, Mr. Williams.

Chairman Rohlf: And I think he took it seriously. *[Laughter]* On the record, yes.

Comm. Elkins: But I get concerned, because at some point in time we will have a written record of this meeting, and if my comment was left there without some additional qualification, I would feel terrible about it. So, I would ask that the record reflect that comment was made completely in jest and was in fact flippant, and that I do consider Mr. Williams to be a good friend, and in fact was agreeing with him on the particular issue we were discussing there. Thank you, Madam Chairman.

Chairman Rohlf: Thank you, Mr. Elkins.

Meeting adjourned.