

**City of Leawood
Planning Commission Minutes**

**July 22, 2008
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive**

CALL TO ORDER/ROLL CALL: Shaw, Roberson, Jackson, Neff-Brain, and Rohlf.
ABSENT: Munson, Williams, Elkins, and Heiman.

Mr. Lambers: Madam Chair, for the benefit of the applicants tonight given the absence of four Planning Commissioners, I would like for you to offer them the opportunity/right to continue, which would be the first meeting in August. This would not be a continuance that counts against them. The reason for this opportunity is to let you know that, obviously, we have a limited number of voting members and it is quite possible that if the entire Planning Commission were here, the outcome could be different. It would be my opinion that the applicants would be better off if they believe there may be disagreement amongst individual Planning Commissioners in not obtaining five votes tonight as this would then effect the voting of the other members. It would be more beneficial to them to make their presentation to a larger audience. Also, for the record, tonight on those items in which the Planning Commission is voting 4-0, I have requested that the Chair, if she is in concurrence, to vote with them for the record in order for the City Council to have the benefit of knowing that there are five votes in the affirmative, which would be non-reversible before the entire Planning Commission if it were back before them.

Chair Rohlf: I understand that we are going to pull Case 57-08, the Villaggio Drainage Facility, due to one of our commissioners meaning to recuse on that matter. Is that correct?

Mr. Klein: Right.

Mr. Lambers: This is due to the loss of a quorum.

Chair Rohlf: With that said, is there anyone here representing any of these cases that would like to follow Mr. Lambers' suggestion?

David Preston with Tide Dry Cleaners appeared before the Planning Commission and made the following comments:

Mr. Preston: I am here with Case 56-08. Would we be able to present our case two weeks from now?

Chair Rohlf: I believe it would be August 12th, is that correct?

Mr. Lambers: Whatever the second Tuesday in August is. Whatever is on this agenda, you would go to the beginning of that agenda, so you would be heard for sure.

Mr. Preston: August 12th?

Mr. Lambers: Yes.

Chair Rohlf: We don't get to start and then decide.

Mr. Preston: I understand. Let us confer first.

Mr. Preston: On behalf of Tide Dry Cleaners, we will continue to August 12th.

Chair Rohlf: Alright, thank you. Is there anyone else who would like to continue their case? We will go ahead and approve the agenda with the two revisions that we have just had this evening.

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

APPROVAL OF MINUTES: Approval of the minutes from the June 24, 2008 meeting.

Chair Rohlf: We were just given this set of minutes, so we will review and hear them at our next meeting.

CONTINUED TO AUGUST 26, 2008 MEETING:

CASE 122-07 – PARK PLACE – THE ELEMENT HOTEL – Request for approval of a final site plan; located at the northeast corner of 117th Street and Nall Avenue.

CASE 127-07 – PARK PLACE TOWNHOMES – Request for approval of a preliminary site plan and final site plan; located at the northeast corner of 117th Street and Nall Avenue. PUBLIC HEARING

CASE 05-08 – ONE NINETEEN – GREEN EARTH DRY CLEANERS (BLDG A) – Request for approval of a special use permit, preliminary site plan, and final site plan; located at the southeast corner of 119th Street and Roe Avenue. PUBLIC HEARING

CASE 39-08 – TOWN CENTER BUSINESS PARK – WALGREENS – Request for approval of a rezoning, special use permit, and preliminary site plan; located at the northeast corner of 117th Street and Roe Ave. PUBLIC HEARING

CASE 44-08 – TOWN CENTER BUSINESS PARK – DISCOVER O – Request for approval of a preliminary site plan; located north of 117th Street and east of Roe Ave. PUBLIC HEARING

CONTINUED TO AUGUST 12, 2008 MEETING:

45-08 CITY OF LEAWOOD COMPREHENSIVE PLAN – Request for approval of an annual review of the City of Leawood Comprehensive Plan. PUBLIC HEARING

CONTINUED TO SEPTEMBER 23, 2008 MEETING:

42-08 PARK PLACE – INGREDIENT SIGN PLAN – Request for approval of a final site plan; located at the northeast corner of 117th Street and Nall Avenue.

CONSENT AGENDA:

63-08 PINNACLE CORPORATE CENTRE – SIGN PLAN – Request for approval of a sign plan; located approximately at 115th Street and Tomahawk Creek Parkway.

A motion to approve item 63-08, Pinnacle Corporate Centre – Sign Plan with any Staff recommendations was made by Neff-Brain, seconded by Roberson. The Consent Agenda was approved unanimously.

NEW BUSINESS:

56-08 PARKWAY PLAZA – TIDE DRY CLEANERS (FORMER GREEN EARTH CLEANERS – RETAIL 10) – Request for approval of a final sign plan; located at the northwest corner of 135th Street and Roe Avenue. – ***CONTINUED TO THE AUGUST 12, 2008 PLANNING COMMISSION MEETING***

57-08 VILLAGGIO DRAINAGE FACILITY – Request for approval of a preliminary site plan and final site plan; located at the southwest corner of 135th Street and Fontana. ***PUBLIC HEARING – CONTINUED TO THE AUGUST 12, 2008 PLANNING COMMISSION MEETING***

58-08 BI-STATE CENTENNIAL PARK LOTS 10 & 11 – Request for approval of a preliminary site plan, final site plan and final plat; located north of 141st Terrace and east of Overbrook, within the Bi-State Business Park Lots 10 & 11. ***PUBLIC HEARING***

Staff Presentation:

Senior Planner Jeff Joseph provided the following presentation:

Mr. Joseph: Madam Chair and members of the Planning Commission, this is Case 58-08, Bi-State Centennial Park, Lots 10 and 11. The applicant is Jeff Skidmore with Schlagel & Associates. This is a request for approval of a preliminary site plan, final site plan, and final plat for the construction of two one-story buildings: Building A with 9,000 sq. ft. and Building B with 6,000 sq. ft. on 2.24 acres for an FAR of 0.15. The style of the proposed buildings is similar to what was constructed at the Ironhorse Centre, which is located at 151st Street and Nall Avenue. It is prairie style architecture with cultured stone and stucco with a concrete slate roof. As I note in the Staff Comments, we have some concerns about the landscape plan and the signage for the development as they do not meet the sign guidelines or the landscape ordinance. With that, Staff is supportive of this case with the stipulations stated in the Staff Report. If you have any questions, I would be happy to answer them.

Chair Rohlf: If I recall, we approved not too long ago the design guidelines for this overall Bi-State development.

Mr. Joseph: Correct.

Chair Rohlf: Do these buildings comply with what we approved in those design guidelines?

Mr. Joseph: Actually, they comply with the design guidelines except for the signage and the landscape plan. The materials proposed are well beyond the materials that were approved with the guidelines. They are proposing cultured stone, which is a better material than the stucco that was approved earlier. Staff is supportive of the actual materials they are using except for the base of the building. There is concern that if they use cultured stone along the base, it will get damaged by people walking through. Staff is recommending limestone or real stone along those areas.

Chair Rohlf: If I remember, we had some zones assigned to these various buildings. Which one does this fall under?

Mr. Joseph: This is along Kenneth Road. They are required to do 40% stucco.

Chair Rohlf: I remember that one was called the transition zone.

Mr. Joseph: I believe this was the Kenneth Road corridor.

Comm. Jackson: Sometimes, obviously, we recommend approvals for preliminary site plans and then the finals come back. In this case, why are we doing them all at the same time?

Mr. Joseph: Actually, the plan is shown as finished with all of the architecture and everything. Usually, if the architecture and landscaping is not done, they just come in with the preliminary and have to come back with the final later. In this case, they are prepared to do the architecture. Also, the elevations with the landscaping is designed and planned.

Applicant Presentation:

Todd Lipshutz with R.H. Sailors, 2045 W. 101st Terrace, Leawood, Kansas, appeared before the Planning Commission and provided the following presentation:

Mr. Lipshutz: I appreciate the time this evening. I am with the developer, R.H. Sailors & Company. We are the developers of Bi-State Centennial Park. We also have a minority interest in these two buildings with Dean Kirby, who is here tonight as well, and Jeff Skidmore of Schlagel & Associates, who is our engineer. Dean Kirby has been doing these types of buildings in commercial construction for the last ten years in the Kansas City market. Along with ourselves, we have been developing commercial properties for over forty years. Our only comment relative to the Staff Comments is the issue with the bottom of the building regarding the stone versus cultured stone. As I understand it, the concern is how the building is maintained with equipment, specifically mowing equipment. We are prepared to address that concern with a landscaped bed that protects the perimeter of the building, which may not be the case right now as there may be one area unprotected. We could do this through landscape protection. We have used cultured stone on our properties since it has been around. Dean Kirby has used it and hasn't had an issue. If they are experiencing issues in the market, it would probably be how they construct the building and/or mowing equipment. We are prepared to address that issue through landscape protection.

Chair Rohlf: There are a number of comments that Staff made with the various stipulations that go along with those. You have indicated that you don't have a problem with the rest of them?

Mr. Lipshutz: Correct.

Chair Rohlf: That would include the wall signs, etc.

Mr. Lipshutz: Correct. We will meet the standard required in the ordinance and work with Staff to comply with the signage.

Comm. Neff-Brain: Could you educate me on cultured stone. Is it a concrete that is dyed? Would the issue be addressed by them bedding all the way around the building?

Mr. Joseph: If nobody can go near the cultured stone, then Staff is comfortable with that. We have done this in another development, Cornerstone, as it had the same issue. In that case, they provided landscaping and a retaining wall around the building.

Comm. Roberson: You are comfortable with the stone as long as it is protected?

Mr. Joseph: Yes.

Dean L. Kirby, 2628 NW Ashurst Lane, Lee's Summit, Missouri, appeared before the Planning Commission and made the following comments:

Mr. Kirby: In nearly all of the projects that you have seen going up in Leawood, nearly every one is using the product cultured stone. I've seen it on nearly every building going up in Leawood lately. It is just a manmade product that is made to look like stone (*referring to material sample board*). It is a concrete-based product. It is not a natural cut stone, but it is a manufactured product. The product is so good now that most people can't tell the difference between real stone and cultured stone. I think there is evidence of issues where machinery has come in contact with the building and they have been knocked off. Just like if the equipment hit it brick, it could knock it off also. We can certainly handle that by using landscaping. Our project shows four-sided architecture. We are basically going to put a landscape buffer all the way around it, so we will never have equipment or lawnmowers come in contact with the product. We feel like it would certainly be suitable for what we have proposed to do there. Thank you.

Mr. Lambers: Madam Chair, for the record, we feel there are some situations in which the material has not lived up to its reputation. In Cornerstone at Plaza III, it is falling off 10-15 feet above the entry. Ironhorse Centre had tremendous problems with it as well where it simply has fallen off. For that reason, the City has gotten back to the position of encouraging natural stone and certainly trying to limit the contact with this product just because it can easily be taken off. The installation is critical, but the City does not monitor installation of those materials. Again, we have Melissa now as our new Planning Tech and one of her responsibilities is to go out and make sure that the materials are maintained at their initial construction condition. We have had issues. Perhaps things are getting better in the industry, but the issues still have occurred.

Chair Rohlf: Is that an installation problem if it falls off?

Mr. Lambers: Yes. We have not had this problem with the natural stone. We have to go out and get it fixed for the appearance. To be honest, the property owners are not diligent in correcting the problem and it becomes a policing issue for us to make sure that the appearance is maintained to the standard required by the City.

Comm. Roberson: Given that this is a business park, then you don't have a problem with cultured stone?

Mr. Lambers: Well, natural stone is better. I would say that with what they are proposing with the landscaping, it mitigates our primary concern with contact with it. Time will only tell as to whether or not the adhesiveness of this material is such that it works just as well as natural stone. We won't know this for years to come.

Chair Rohlf: I did note that on one of the drawings there is an indication for future parking. Is that future parking for this particular lot or is it for Lot 9?

Mr. Joseph: The plan right now is at the limit, four per 1,000 sq. ft. is the maximum they can have. Stipulation No. 19 was added, which limits the parking spaces.

Chair Rohlf: So, if that is indeed future parking, it would be for Lot No. 9.

Mr. Lipshultz: As this cul-de-sac develops, there is opportunity to use cross-access easements for the parking, so it wouldn't pertain specifically to these lots.

Mr. Joseph: Another building needs to come in to increase the parking.

Chair Rohlf: This case does require a Public Hearing. Is there anyone in the audience who wishes to speak about this case? If so, please raise your hand.

As there were no individual present to speak on the case, a motion to close the Public Hearing was made by Roberson; seconded by Neff-Brain. The motion was approved unanimously.

Chair Rohlf: With what the applicant has presented this evening, they are willing to comply with Staff's recommendations. I do not think there is any need to change any of the stipulations.

Comm. Jackson: Would we change Stipulation No. 8 regarding the cultured stone?

Comm. Neff-Brain: And, that it is landscaped all around.

A motion to recommend approval of Case 58-08, Bi-State Centennial Park, Lots 10 and 11, for the preliminary site plan, final site plan, and final plat with the Staff recommended Stipulation Nos. 1 through 28, changing Stipulation No. 8 to read "Landscaping around the base of the buildings shall be put in place to ensure that there is no contact between lawn equipment and the base of the building," was made by Jackson; seconded by Roberson.

The motion was approved following a vote of 5-0, which included a favorable vote by Chair Rohlf.

61-08 MISSION TRAIL ELEMENTARY SCHOOL – Request for approval of a preliminary site plan and a final site plan; located at 133rd Street and Mission Road. **PUBLIC HEARING**

Staff Presentation:

Assistant to the Director Mark Klein provided the following presentation:

Mr. Klein: Madam Chair and members of the Planning Commission, this is Case 61-08, Mission Trail Elementary School. The applicant is requesting approval of a preliminary and final site plan to build an 8,400 sq. ft. addition to the existing school building along with a 1,700 sq. ft. exterior open-air mechanical enclosure. This property is located at the northwest corner of 133rd Street and Mission Road. The school itself already exists and currently is 53,520 sq. ft. The addition would be about a 15% increase of that. The applicant is proposing to construct the addition primarily on the east side of the building, which is the front facing Mission Road. The mechanical enclosure will be located a little further to the southwest corner of the building, around where the gymnasium is. The applicant is proposing to use metal panel and two colors of brick, the light gray and the dark gray. There will be glass and aluminum as well. There are a number of deviations that the applicant is requesting. Typically they have to underground utilities at the time that they come forward with the project. Staff is recommending that this be postponed as determined by the Governing Body, which is allowed by the Leawood Development Ordinance [LDO]. In addition, there are street trees at one per 35 linear feet both along Mission Road and 133rd Street. Staff is recommending that these street trees be put in; however, the applicant is indicating that there are a lot of trees out there already and it might be difficult in terms of spacing. They indicated that they would be willing to provide a revised landscape plan to show how they would space the trees and incorporate the existing trees. Staff did drive out there earlier today to take a look at the trees. Some of the existing trees are actually set back a little bit further from the road, so we want to make sure that the existing trees that they are using serve the purpose of street trees as well. Staff is recommending approval of this application with the stipulations stated in the Staff Report. I would be happy to answer any questions.

Chair Rohlf: Can you explain for me where the utilities are right now?

Mr. Klein: They actually propose removing a lot of the rooftop utilities that are there right now and screen them. You have an aerial view of the school in your packet, and you can see some of the rooftop utilities there. Some of those will be moved down into the enclosure. The applicant can probably expand upon that. It is my understanding that the larger air conditioning units will be moved off of the roof as well as the box screens.

Chair Rohlf: Is it all rooftop utilities that we are talking about?

Mr. Klein: The rooftop utilities are moving down. The applicant can further address whether any other utilities will be located in that enclosure as well. There is also another deviation that is being requested. According to the Leawood Development Ordinance, ornamental trees are required at a rate of one tree per 12-ft. The applicant is requesting a deviation from that and Staff is supportive of that deviation. This basically is in an area where you have a residential subdivision that is further to the north. Also, across Mission Road and a little bit further to the north is another residential subdivision.

The landscaping hasn't been beefed up with a lot of other commercial developments in that area. The same goes for the requirement of five shrubs per linear foot. They are also asking for a deviation for this and Staff is supportive.

Chair Rohlf: In the Staff Report it was indicated that we were to receive a revised plan. Do we have that?

Mr. Klein: They indicated that they would try to have that for you tonight.

Comm. Neff-Brain: This is just to educate me because I am new to this. It was not required when the school was built that the utilities be undergrounded?

Mr. Klein: I don't believe so. The school has actually been there for a number of years. The current LDO went into effect in December 2002. I know that the school preexists that date. The utilities currently exist along the right-of-way.

Comm. Neff-Brain: That will just be allowed to remain that way until the Governing Body determines otherwise?

Mr. Klein: Actually, it is up to the Governing Body. The Leawood Development Ordinance states that the Governing Body has the ability to do that.

Mr. Lambers: It will likely occur with the development to the south developing and having the requirement to underground. We would have as part of that the undergrounding condition to be imposed by the City Council on this property.

Comm. Neff-Brain: They have a variance that you can call at any time?

Mr. Lambers: Yes. That would be the trigger to the south. When we get to the City Council, we typically put in a minimum notification requirement that is usually six months if not twelve months. With the school district, we will probably make it twelve months so they would be able to budget for it in the next budget year.

Comm. Neff-Brain: What is right to the north of the school? Residential?

Mr. Lambers: Subdivision.

Comm. Neff-Brain: Is it undergrounded there?

Mr. Lambers: Yes. Not all along Mission Road, but it is within the subdivision.

Comm. Neff-Brain: Not all along Mission because that preexisted the ordinance also?

Mr. Lambers: Yes.

Comm. Neff-Brain: So, that may never be undergrounded?

Mr. Lambers: The City Council has had some preliminary discussions as to whether the City is going to undertake undergrounding efforts for those developed areas that are in proximity to these. Right now, we did not do it on Roe Avenue, which in my opinion was a mistake. We are looking to do it for 143rd Street. We will do it for 151st Street. In those cases, the City-at-large will basically bear those costs. We just imposed the requirement for the Church of the Nativity. Again, there was a trigger for that in anticipation of some point in the future because 119th Street has a lot of it underground, it pops up, and then goes back down again. The idea is, wherever we can get the stipulation imposed on a development, then we are going to do it and have a trigger later on so that there is at least a sense of comprehensiveness for what we are trying to achieve.

Chair Rohlf: Mr. Ley, I noticed in your report under traffic impact, you talked about that there was a letter from the traffic engineer to the district saying there would not be an increase in traffic. However, part B talked about existing vehicular circulation. I guess I am a little concerned as anytime we have heard a development plan surrounding this school, one of the problems has always been the traffic and the concern for safety. What do we do about this particular modification? Are we just continuing to increase the density of this school?

Mr. Ley: They stated that they would not be adding any students to the school with this proposal. We are looking at installing "No Parking or Stopping" signs on 133rd Street to keep people from queuing up along 133rd Street. We are going to have our traffic engineer look at that sometime this week or next week.

Chair Rohlf: I guess I am a little concerned about taking a different position when a development comes in when I am wondering what actually the district's role of this is to provide a better circulation pattern in there if they can.

Mr. Lambers: It is real limited as to what can be done. We certainly don't want a repeat of 103rd Street where you are blocking a through lane of traffic for an extended period of time. Again, we are taking the school district at their word. They are adding classrooms to reduce classroom sizes. They will be on the record saying that there is no expansion of traffic. Obviously, if you add three classrooms, you figure 18 students for an equation of 18 cars times three is certainly a possibility. We will obviously take them at their word that this is not going to be the case. If this does happen, then we may be coming back to them saying that if there is an increase in traffic. We would have the ability to say that we need to improve what is out there to whatever extent we can. For now, we are just not allowing parking along 133rd Street because you have just one through lane that would basically back people up across Mission Road and further to the east by Price Chopper. Just so you now, Chuck Peters' office building is under construction right now. You will see an increase in traffic at that intersection.

Chair Rohlf: I wasn't thinking so much about his building, but you are right about that. There is a development across the street that has the potential to be much larger.

Mr. Lambers: I would say that it will be impacted by the southbound traffic if there is a queuing problem on Mission Road. There is no question about it.

Applicant Presentation:

Scott Pashia with NSP Architecture, 10200 Ensley Lane, Leawood, Kansas, representing the Blue Valley School District, appeared before the Planning Commission and made the following comments:

Mr. Pashia: Also here with me is Mark Plummer, engineer, and Brennon Randa from our office. Mr. Klein did a great job of presenting the project. Basically, it is a proposed addition to the Mission Trail Elementary School. The proposed addition is an 8,400 sq. ft. new portion of the project at the front of the building that is comprised of a new entry, vestibule, staff administration area, art room, nurse's station, and new classrooms. There is an additional 1,700 sq. ft. mechanical enclosure. This addition and renovation is a major mechanical renovation to the building, which obviously goes through and improve the mechanical and electrical systems within the building. Part of this is removing the air-handling units and mechanical screens that are currently on the roof. The 1,700 sq. ft. mechanical enclosure that will be on the ground level at the southwest corner will house the new cooling towers. This will be a brick wall enclosure that will match the existing brick on the gymnasium structure.

To address a couple of your comments related to an increase in classrooms, the intention of the district is not to increase classrooms. There are currently pod spaces built into the original prototype. Part of this renovation is to go through the building and make the classrooms larger so that they match the current prototype. Several of the schools have planned these open common pod spaces as classrooms during the course of several years. The intention of the three additional classrooms up front is to open the pod spaces back up for common activities. The proposal is to make the classrooms larger and recapture these pod spaces, not to add any addition students to this area. The district also encourages use of the bus program as well to help with some of the queuing problems.

We have reviewed the stipulations that the Staff has presented and agree with those. I would be willing to answer any questions that you might have. We did bring a revised landscape plan as well.

Comm. Roberson: Can you tell me when you plan on starting construction?

Mr. Pashia: Assuming approval this evening, we would submit for a permit within the next several months. Construction would start in December on the addition component. The actual renovation of the interior will be over the summer when school is not in session.

Comm. Roberson: You would have this done before school is out?

Mr. Pashia: That is correct. This is similar to other addition that the district has been doing. Prairie Star Elementary did this a couple of years ago. The design and materials are similar to what we used on Prairie Star.

Chair Rohlf: You said you had the revised landscape plan? I know that Staff had some concerns.

Mr. Pashia: I have a large copy as a display board. What we have done on here (*referring to display board*) is documented where there are existing trees and where we propose new trees with the dimensional relationship between those. It looks like along the south of the site, along 133rd Street, those are all new trees going in to match the 5-ft. requirement. Along the front, there are new trees going in. Along the southeast corner there is an existing maple tree that would be included as part of that. There are some existing apple trees that kind of separate the turnaround lane from the entrance off of Mission Road. There are some existing pear trees to the north of that exit and we would be proposing two new Sunset Maples to the north of that.

Chair Rohlf: Mark, what would be the best way to coordinate this tree issue? Is this satisfactory?

Mr. Klein: Staff would like to look at it a little bit closer just to make sure that the spacing is as close to what it is supposed to be and that they act as street trees. We need to make sure that they aren't set so far back that they don't serve that function. In speaking to David Ley, he indicated that there might be a situation where an additional turn lane might be added on to 133rd Street. If that is the case, we would want to make sure that the trees weren't located in such a place that they would end up being removed.

Chair Rohlf: Regarding Stipulation No. 6, would we need to alter that a little bit with some language about having the applicant work with Staff.

Mr. Klein: Yes. I would say that would be appropriate so that we would have time to look at the plan.

Mr. Lambers: We are finding with landscape plans that as long as they are generally compliant, there is always some tweaking that has to be done. What we do is tell the applicant to identify what they want to put in. If we agree and once it is in, we have them submit a revised as built landscape plan. This is close enough for this approval process to get us where we need to be. In the end, there may need to be some tweaking in terms of type of tree or where it is specifically located.

Chair Rohlf: Good. I had hoped that we could do that.

Comm. Roberson: I have one question on the landscaping. I assume that we have taken into consideration line of site issues with lots of kids running around, lots of cars picking up kids, and those types of things. I like landscaping, but...

Mr. Pashia: That is correct and the reason for the few deviations Mark had mentioned earlier in terms of screening around the parking lots and some of the lower shrub areas, strictly for security and site lines.

Chair Rohlf: This case also requires a Public Hearing. Is there anyone in the audience that would like to speak about this case? If so, please raise your hand.

As there were no individuals present to speak on the matter, a motion to close the Public Hearing was made by Roberson; seconded by Jackson. The motion passed unanimously.

Chair Rohlf: I think with a revision to Stipulation No. 6, this should be pretty straightforward.

A motion to recommend approval of Case 61-08, Mission Trail Elementary School, request for preliminary site plan and final site plan, with Stipulation Nos. 1 through 17 as recommended by Staff, revising Stipulation No. 6 to add the language, “the applicant will work with Staff on the specific layout of the required trees” was made by Jackson. The motion was seconded by Neff-Brain.

The motion was approved following a unanimous vote of 5-0, including a favorable vote by Chair Rohlf.

47-08 MOLLE OFF SITE PARKING – Request for approval of a special use permit; located south of 103rd Street and east of State Line Road. **PUBLIC HEARING**

Staff Presentation:

Senior Planner Jeff Joseph provided the following presentation:

Mr. Joseph: Madam Chair and members of the Planning Commission, this is Case 47-08, Molle Toyota, request for renewal of a Special Use Permit [SUP] for an existing parking lot for new vehicles. The applicant is Larry Winn, who is presenting the project. The applicant is seeking approval of a Special Use Permit that would allow for continued use of a parking lot for Molle Toyota’s new vehicles. This case was heard by the Planning Commission on August 14, 2007. The Planning Commission recommended approval. It went on to the City Council, who denied the case on September 4, 2007. The applicant has submitted a revised new application, which is exactly the same. There are no changes to the plan. Based on the City Council’s decision, Staff is recommending denial of this project. If you have any questions, I would be happy to answer them.

Chair Rohlf: When we heard this almost one year ago, was the first stipulation in tonight’s report there at that time as well?

Mr. Joseph: It was there. It is the same stipulation.

Chair Rohlf: This is the same proposal that we heard before?

Mr. Joseph: Yes.

Chair Rohlf: Why do we have it back if it has been denied by the City Council?

Mr. Lambers: I would be happy to answer and the applicant may elaborate. As you recall, this application came along at the immediate same time as two other applications involving cars and parking lots: one was the Mercedes dealership and one was the Target Shopping Center. The applicant believes that there may have been an unfortunate spill-over effect from reaction to those projects that impacted this negatively beyond what was perhaps appropriate. He requested from the City Council an opportunity to come back before the year was up and the City Council did agree to allow him to apply. They did not give an indication as to how they would vote on the matter, but his position is that essentially this was the victim of a spill-over effect. Whether that is the case or not is yet to be seen. Tonight, this is the same application that was presented to you before.

Comm. Neff-Brain: Did last year's Stipulation No. 1 say that this is the last extension to be granted?

Mr. Joseph: Yes. Again, it was denied by the City Council.

Mr. Lambers: I don't think there was an opportunity to discuss this with the applicant at that time because the sentiment of the City Council was for denial. There was not a discussion regarding accepting the stipulations, we didn't get that far. I would have to ask Mr. Winn to elaborate on that.

Chair Rohlf: In checking over the minutes of the City Council meeting, there was something about that particular stipulation. We will just hear from the applicant unless anyone else has questions for Staff.

Applicant Presentation:

Anna Molle Stasi, General Manager of Molle Toyota, 11220 Rosewood, Leawood, Kansas, appeared before the Planning Commission and made the following comments:

Ms. Stasi: I am going to read what I have prepared tonight. I am more comfortable doing that. Some of what I read may be a tad bit repetitious, especially from what I have heard here this evening. However, since there has been so much time go by, I kind of feel it is important that we highlight the history.

Ms. Stasi reads from prepared statement:

My company first purchased a small piece of property in Leawood in 1999. The property is zoned BP, which I think is Business Park designation. Some of you may recall that our neighbors include the Leawood Public Works Facility, a veterinarian, a chiropractor, a dentist facility, Midas Auto Service, and Gates Barbeque. Perhaps our most influential neighbor is Indian Creek. We had requested a one year Special Use Permit, which was granted in 2001 and again in 2002. The original permit expired in 2003. During part of this time, we did not utilize our property as the Public Works Department used it for construction access while doing some stormwater management along Indian Creek. We did not renew it at that point because we had ceased using the parcel for any new car storage. We reapplied in late 2006 because the need to utilize the facility had cropped up again in our business operations.

In May of last year, we sought to utilize the property for new car parking as we had in prior years. If you recall, your professional Staff, namely Mr. Joseph, indicated in his comments that the applicant was seeking renewal of a Special Use Permit that would allow for continued use of the facility for Molle Toyota's parking. Mr. Joseph indicated that Staff was recommending approval. During discussion by your commission, Commissioner Williams asked whether there had been any police, vandalism, or security issues since we had utilized the property in the past. Mr. Joseph indicated that he was not aware of any. I can tell you with certainty at any time that we have been on the property, we have never had any of our cars vandalized, have never contacted your Police Department, and have never had any public safety incident of any kind. It was asked whether the property had been maintained and Mr. Joseph stated that it had. May I also add that we continue to maintain this property on a weekly basis. Additionally, the ornamental wrought-iron fence was painted just last year even as we were unable to park cars there.

Mr. Lambers at that time stated that the parcel is unbuildable and that the property is in a flood zone. Commissioner Elkins during the Planning Commission comments indicated that he wanted to go on record as seeing this case as substantially different than an application to park cars west of Ward Parkway Shopping Center. Commissioner Williams seconded those comments. Your vote was taken and the application was approved with a 7-0 vote.

The matter eventually went to the City Council and for reasons I didn't fully understand, and still don't understand, it was denied. There were none of the usual type of concerns expressed, basically that we would have an adverse effect on surrounding property owners. In fact, I will state to you tonight that we had no one show up at the recent Interact meeting, where notices were given to property owners within 500-ft. of the site. I am speculating that it was a somewhat unusual night when the City Council considered out application. That same night, they were dealing with parking west of the Ward Parkway Shopping Center and with the application by Mercedes Benz to have some type of retail facility out on 135th Street. With the beauty of hindsight, we should have picked another night as it was not a good night for car dealers.

Nevertheless, the City Council recently authorized us to re-file this application and not to have to wait the one year that your ordinance indicates. We are most grateful for that consideration. I do want to make full disclosure that at some point because of confusion between my staff, our legal counsel, and the City, we were cited with a ticket for having automobiles parked there without a permit. We accept responsibility for that mistake, it was rectified immediately, and the matter was resolved.

Again, I hate to be repetitious, but all we seek to do is simply park new cars in this small area. For a number of years, we couldn't get any type of decent inventory of new vehicles because all of our Toyota models were being sent to the east and west coast. Recent economic conditions have changed that and we now are being able to obtain more new car inventory that our current facility can possibly accommodate. Not the least of these is the new demand created for fuel-efficient automobile and so-called hybrids. I want to stress that this is a passive new car parking lot. There are no used cars, no customers, and no sales or service activity at all.

Obviously, it would help us in our planning if the permit could be granted for more than one year. We understand that the City wants to keep its options open if there were ever a chance of redevelopment in this segment of Leawood. As most of you know and appreciate that even though our permit is for one year, we can be asked to leave at any time that we are not in full compliance with the conditions of this permit. I happily accept that. I would be happy to respond to any operational questions to our business and other questions that you may have but request that this application for one year be granted as it has been in the past. Nothing in the area has changed. There is no neighborhood opposition or concern. Our fellow business owners in the area have been very generous in their comments about how we have maintained the property. As I stated before, when you deem it is the right time for us to leave and vacate the property because of imminent changes in the neighborhood, we will be readily on our way and will just have to make something work at that point. Thank you for listening.

Referring to display board:

Ms. Stasi: What you see is a data analysis that Toyota did for us this past year. It represents the current year ending in 2007. The analysis talked about our market area, sales performance, registrations, etc. What you see is a circle that represents ten miles around Molle Toyota. Each dot represents a sale by Molle Toyota for the year 2007. As you can see, the zip codes of Leawood are highly represented.

Larry Winn, 6201 College Boulevard, representative of the applicant, appeared before the Planning Commission and made the following comments:

Mr. Winn: I actually did not plan to speak tonight as I thought Ms. Stasi did a very good job of presenting the case until I saw the Staff Comments. I saw something that in 30 some odd years of doing land use work that I had never seen before, which was a reason for Staff having reversed field from their previous recommendation because the City Council had voted against it at a meeting last year. With all due respect to the City Council, that is irrelevant at this point. This is a new application. We are allowed by the City Council to have it reconsidered on its merits. Whatever they did last time and for whatever reason, with all due respect to Staff and the Council, it is not before you tonight. I have read the Golden decision a few dozen times and believe it or not, no where in there as one of the criteria for your consideration is what the City Council did at another time. This is before you for your independent judgment.

I come up here tonight with some risk because all four Commissioners that are absent tonight voted for this last night. I am before you tonight short-handed and asking for your support. Mr. Lambers tried to put us on notice of that.

Mr. Lambers: I don't know what the vote was but Commissioner Heiman was not on the Planning Commission at that time.

Mr. Winn: Speaking of that meeting, I have the minutes and I wanted to mention some short points of interest. Chair Rohlf asked this question, "At the end of the year, what would happen to that piece of land. Would it stay as it is or need to be modified?" Mr. Lambers stated that it would be up to the applicant to decide what to do with it. Chair Rohlf stated it was pretty restrictive piece. Mr. Lambers responded that it was unbuildable. An unidentified Planning Commissioner commented that it was a flood plain and "you can't even see the cars when you drive by, at least I haven't been able to see them." The discussion goes on briefly.

Anna quoted some of this, but two long-time Planning Commission members who are not here tonight, Commissioners Elkins and Williams made comments. Commissioner Elkins states, "I would go on the record that I do see this as a different case than the Ward Parkway Shopping Center and express myself for the Governing Body. I understand their concerns about off-site parking but when you have a piece of property as small as this piece, and apparently no other use for, it concerns me that you would limit the owners use when there is no other use for it. I express my own concern about this particular incidence. It seems like the stipulation may be unduly restrictive." Commissioner Williams parroted that and concurred. Commissioner Roberson also concurred that night. That was the lay of the land and then the Chair called for a motion. It was unanimously passed.

You all know this part of Leawood as well as I do. It has been like it is for about 30 years. We moved to 9610 High Drive in 1951 and the conglomeration of "stuff" was built not very long after that, probably in the early 1960s. I have always had high hopes that in some point and time someone would come in with a creative plan and maybe be able to redevelop that entire area, maybe make an assemblage of property down there. Get the muffler shop and Public Works Facility out as you have a Public Works Facility out on Kenneth Road now. Maybe put together 5-7 ownerships and blow some of it away, possibly use creative incentive financing and do something down there that I think you all would be a lot prouder of. It will happen in the future. We know it will happen and we know that when that time comes, it will be a signal that we need to get out because car parking simply wouldn't be appropriate for a mixed-use project of the kind that I at least envision down there. It is a great location as you're very close to State Line Road and I-435. Again, I have always been intrigued that somebody hasn't figured out the key to the combination.

Again, notwithstanding what the City Council did last August, I don't think that should be in your considerations. It is not a zoning issue such as you normally would consider and go through analysis of on these things. We would ask that you refer this on to the City Council. As you know, it is just your recommendation and they will do whatever they will do. I won't know why they did it anymore than I know why they did it the last time. Somebody made a very good point, which I think it was Commissioner Elkins. This is apples and oranges to the two car deals that were up before you about one year ago. Ward Parkway across from Target is a great big, huge lot. I don't recall how many cars were proposed to be parked there but it was several hundred. There are homes to the north of that parking lot and I think there are homes to the west. So, on two sides of the Ward Parkway surplus lot, you have single-family homes.

I presented the Mercedes dealership at 133rd Street and thought it was really a good plan as all of the service activity was to be underground, but the City Council turned it down for a couple of very valid reasons. Number one, it was adjacent immediately to the school that you just approved the expansion thereof. It would have been a neighbor to that elementary school. There was some concern about test driving and that type of thing. That is not a consideration here. This is a complete benign use of this property. There is no test driving, no sales, and no service. I just ask you to use your common sense. We will pay our money and take our changes when we get to the City Council, if you will allow us to go there. Maybe we can convince them of some of the merit of this project, unlike the other two that were all up on the same night at the same time. With that, Madam Chair and members, either Ms. Stasi or myself would stand for any specific questions.

Chair Rohlf: This case does require a Public Hearing. Is there anyone present in the audience who wishes to speak about this case? If so, please raise your hand.

As there were no individual present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Roberson. The motion was approved unanimously.

Mr. Lambers: Madam Chair, just so you know, Mr. Winn submitted a response. I don't know if this is something that would be acceptable to him, the Planning Commission, or City Council, but I guess I would just like to offer it. We talked about the fact that we have this SUP and we don't want to create a situation that the City may later regret. They are refusing to agree that this would be the last extension that they would request. From their perspective in trying to be balanced, I can understand that. However, the City needs to have a comfort level that at some point and time it should be able to say no to an extension request. It would be best if the applicant would agree to that so that everyone understands that. If you go down to the end of the paragraph beginning with "We would agree to a stipulation that in effect would allow Leawood" and disregard all of the language that follows and say "to not approve any extensive request of the SUP at the discretion of the Governing Body." That would mean that they are not conceding anything, it is just stating that the City Council has the right to say no. They are saying that we have to do it for cause, which would not be acceptable for us because then it becomes a legal issue. Simple acknowledgement that the City has the right to say no to a request – they have the right to come in and make the request and we have the right to say no. They may not agree to it, but I think this is a middle ground that may make this go further in the next level.

Chair Rohlf: Would that be at the end of this one year?

Mr. Lambers: It would be a stipulation here and it would continue to be a stipulation for any renewal. If it were renewed in one year, the stipulation would remain and be carried forward.

Chair Rohlf: The extension would be granted for one year and then this language would be added?

Mr. Lambers: Correct.

Mr. Winn: I think we can concur with that. I think that implicitly you have that discretion regardless. If it will strengthen everyone's comfort level, we would be happy to agree to that stipulation. As I have indicated, I think there will be a time that we all know collectively, if you are all still on the Planning Commission and I am still alive, that the time has come where we need to see if we can find different uses down there. I don't see it today as I stand here but as Mr. Lambers says, one year from now, if you sell your Public Works Facility, as an example, and use the one out on Kenneth Road, then there would be more property. This piece isn't usable but if it were combined with another assemblage or two, you would have the possibility of another facility down there, which I would personally welcome and think it would be great for the City. The short answer is yes, Mr. Lambers, I think that is very appropriate.

Mr. Lambers: Mr. Ley brought up another matter. Typically for parking lots, we have now adopted standards of which this one doesn't meet. Would your client at least agree to seal coat it?

Mr. Winn: I drove by there today and noted that same thing. Yes, we would. It is time for that as it has been 7-8 years.

Mr. Lambers: It would be appropriate to have that as another stipulation – to seal coat it.

Comm. Neff-Brain: I don't normally love parking lots, but I also don't think the condition has changed out there any that I can determine that would make this any different from any other gear that it might have been renewed.

Comm. Roberson: Mr. Winn, with all due respect, I think that what the City Council does vote on and how they decide does matter. They are the public representatives. I would just like to make that comment on the record. To dismiss what the Staff was recommending based on that comment, I think was inappropriate on your part.

A motion to recommend approval of Case 47-08 with Staff recommendations and those added by Mr. Lambers was made by Neff-Brain; seconded by Roberson.

Chair Rohlf: We now have a total of eight stipulations.

Comm. Jackson: Do we need to spell out the stipulation regarding the right to come back for another extension? How would that be stated?

Chair Rohlf: I think the record would reflect the language that Mr. Lambers and the applicant have agreed to. The seal coating would actually be Stipulation No. 7 followed by No. 8.

The motion was approved unanimously following a vote of 5-0, including a favorable vote by Chair Rohlf.

MEETING ADJOURNED.