

**City of Leawood
Planning Commission Minutes
August 26, 2008
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700**

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

APPROVAL OF THE AGENDA:

Motion to approve the agenda was made by Elkins; seconded by Williams. Motion passed unanimously with a vote of 7-0. For: Shaw, Jackson, Neff-Brain, Munson, Williams, Elkins and Heiman.

APPROVAL OF THE MINUTES: Approval of the minutes from the July 8, 2008 meeting and the July 22, 2008 meeting.

Motion to approve minutes from the July 8, 2008 meeting was made by Williams; seconded by Elkins. Motion passed unanimously with a vote of 7-0. For: Shaw, Jackson, Neff-Brain, Munson, Williams, Elkins and Heiman.

CONTINUED TO SEPTEMBER 9, 2008 MEETING:

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

CASE 59-08 - SIENNA II – CITY PROJECT – Request for approval of preliminary site plan, preliminary plat, final site plan, final plat, and rezoning; located on the southeast corner of 137th street and Mission Road. **PUBLIC HEARING**

CONTINUED TO SEPTEMBER 23, 2008 MEETING:

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

CONSENT AGENDA:

68-08 PARK PLACE – BRADLEY PAPER – Request for approval of a final site plan for a tenant finish; located at the northeast corner of 117th Street and Nall Ave.

69-08 PARK PLACE – KC SURROUNDINGS – Request for approval of a final site plan for a tenant finish; located at the northeast corner of 117th Street and Nall Ave.

70-08 PARK PLACE – MUSE SALON – Request for approval of a final site plan for a tenant finish; located at the northeast corner of 117th Street and Nall Ave.

Motion to approve Consent Agenda was made by Elkins; seconded by Jackson. Motion passed unanimously with a vote of 7-0. For: Shaw, Jackson, Neff-Brain, Munson, Williams, Elkins and Heiman.

NEW BUSINESS:

CASE 67-08 – ONE NINETEEN – DEAN AND DELUCA SIGN PLAN – Request for approval of a sign plan; located at the southwest corner of 119th Street and Roe Ave.

Staff Presentation:

Assistant Director Mark Klein provided the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is CASE 67-08 – ONE NINETEEN – DEAN AND DELUCA SIGN PLAN – Request for approval of a sign plan; located at the southwest corner of 119th Street and Roe Ave. Dean and DeLuca was previously approved to be at the corner of 119th St. and Tomahawk Creek Parkway. They are now coming back to ask for signage on that building. The applicant is proposing a number of signs including three wall signs: one on the south, east and west elevation. The maximum height allowed by the One Nineteen development for outparcels is 24”, and their signs meet the criteria as proposed at 20”. However, they are also proposing 19 awning signs, 21 window signs, one directional monument sign at the entrance of the drive-thru located on the south side of the building, a menu board with the name on it as well and six directional signs painted on the pavement for the drive-thru. Staff is not supportive of this application due to the large number of signs proposed. I’d be happy to answer any questions.

Chair Rohlf: Mark, can you give me the background on the current Dean and DeLuca and what the signage is for that particular building? If I remember, there were some concerns at the time that came through as well.

Mr. Klein: Correct, the current Dean and DeLuca has about 14 signs on it. I brought some pictures I can show you as far as where those are located. Part of the issue is the box signs added on that were up high that really didn’t go through the planning process, so there was a planning application that went through for that as well. I don’t believe those were ever approved. On the current building, it’s stucco that looks like stone. “Dean and DeLuca” is arched over some of the windows of the entries, on other windows and also is an awning sign. They also had a number of these box signs that were placed high on the building. I’ll go ahead and show you some of those. (*refers to overhead photograph*) Here, you can see the current signs that I was talking about in this stucco. They kind of arch over the tower elements located in the entry. These are the signs located on the hard canopy that extends out. Right here is where I was talking about the box signs up high. Also, “Dean and DeLuca” is on each of the doors, as well as each window, the two canopies, on this canopy and on each stucco piece. (*refers to another photograph*) This is on the back side of the building, facing west. Here you can see the sign added up high.

Chair Rohlf: I’d ask you to give us a little history of what we’ve gone through to get to this point. I’m somewhat surprised that we’re seeing this plan, given the number of signs that go well beyond the design guidelines, as well as the LDO. Before the Applicant speaks, can you give me your perspective on how the conversations have gone?

Mr. Klein: This followed the normal process for applications, including a pre-application meeting with the Applicant. At that time, we indicated concerns about the number and size of some of the signs. They made size revisions to those. At that point, they submitted the application. Staff wrote an initial comment letter back to them, stating our concerns about number and size of signs. They resubmitted revised plans, from which we wrote the Staff Report, which goes to the Planning Commission. This is not the first time they've been made aware of this.

Chair Rohlf: So at the initial stage, there were more signs than we're dealing with tonight?

Mr. Klein: Actually we had pretty much the same number of signs we're dealing with tonight. The big difference was, I believe, on the east elevation where one of the signs was larger than the allowance. They brought the size down, and the rest of the signs remained the same.

Chair Rohlf: I'll turn it over to others for questions for Staff.

Comm. Neff-Brain: So are they in violation now, or did they come back for some kind of variance in their incompliance on the building presently?

Mr. Klein: The building they have right now never had approval for the signs up high, I believe. As far as the rest of the signs, that was before I got here. As far as I know, they were approved with the building.

Comm. Neff-Brain: Do we ever do a check and citations on situations like this?

Mr. Klein: There was an effort to do that at the time because it was a major issue. However, obviously the signs have remained.

Chair Rohlf: Does anyone else have questions for Mark?

Comm. Williams: Starting with the window signs, we had this discussion on other projects, but this one seems different. The design of the façade has large, what appear to be plate glass windows that go to the pavement. Isn't there a code requirement of some designation on the glass so that people don't walk through it?

Mr. Klein: Staff actually brought up that comment at the pre-application meeting that they had and had recommended if that were what they were looking for, they could actually do a grey design on the window.

Comm. Williams: The Dean and DeLuca logo.

Mr. Klein: Right, and at that point I think they determined that what they really wanted was the name.

Comm. Williams: I guess in that regard, why would there really be a difference between putting a design across the glass versus putting the name?

Mr. Klein: From Staff's point of view, a sign is used for a definite purpose as far as getting your name out. Obviously they saw enough difference that they didn't want to do the design; they wanted to do the name to get it out there as much as possible. Another reason that Staff sees is you have the sign regulations for the city and also the criteria for the development. When something like that comes in, then everyone else starts pointing at that. Suddenly the regulations regarding signs that were approved before fly out the window.

Comm. Williams: So you're saying there's definitely a distinction between signage, even though that's a design element, and say a starburst going across the windows?

Mr. Klein: In Staff's opinion, yes.

Comm. Williams: Monumental directional sign – obviously there's a size issue. Are you saying that a directional sign could be allowed but that it has to be smaller?

Mr. Klein: Correct, the ordinance allows for two directional signs per project at a maximum of 6 sq. ft. in area.

Comm. Williams: But you agree that having a directional sign of some sort is acceptable.

Mr. Klein: Yes, we weren't arguing the fact a directional sign would be warranted.

Comm. Williams: In that same vein, as I'm seeing the plan, the menu board itself would have its back to the driveway so the only people who could really see it would be those people within the drive-thru lane. Is that correct?

Mr. Klein: Correct, the people who are ordering would see the front of the menu boards, which face south.

Comm. Williams: So what is the objection to the menu board?

Mr. Klein: Part of the objection to the menu board is, again, "Dean and DeLuca" appears on it. In Staff's opinion, it seemed like they were trying to get the name out at every possible opportunity they have. Generally if someone sees a menu board, they already know where they are. Staff had some concerns about the size as well. With the glass canopy that goes on there, it's 10', which is a considerable height. I realize the menu board needs some height to include selection; however, when the Planning Commission was considering the drive-thru before, there were a lot of questions as far as what would be sold. It was indicated there were not enough items to merit the board being that large.

Comm. Williams: I concur with that. It does seem like a very large menu board for the selections available. Regarding directional signage, we have developments - or at least one in Town Center - that have directional signage. This appears to go beyond directional and has some sense of "stop" and "deliveries only" and that sort of thing. Are directional signs addressed in the development's overall signage guidelines?

Mr. Klein: It's listed in a table as far as directional signs for signage, allowing two directional signs, maximum of 6 sq. ft. Staff really didn't have a problem with the ones

that were painted on the pavement; however, we did notice that the “no entry only” seems to occur before the last parking space. It seemed that would probably be appropriate to move it further to the north to where it makes more sense.

Comm. Williams: Also, where they have it is at the far curve line of the drive-thru lane so that if someone were to drive further toward the trash, then they would be conflicting with the one-way traffic coming out of the drive-thru. It would make some sense to have it where they're showing it. Again, these are all signs on the pavement and not sticking up out of the ground somewhere?

Mr. Klein: Correct, these are on the pavement.

Comm. Williams: And they only occur in the drive-thru area?

Mr. Klein: The drive that enters into the parking lot at the very south end also has one. It says, “Stop. Give way.” One of them says, “Order here.” I don't know if that's necessary since there's a menu board sitting right next to you.

Comm. Williams: I think in today's culture, just about everybody knows to do that. Thank you very much.

Chair Rohlf: Any more questions for Staff?

Comm. Elkins: Just a question to the other businesses that are there in One Nineteen. Have we approved any variances in the number of signs for any of those businesses?

Mr. Klein: As you may recall, signage was discussed quite a bit on West Elm, which occurred in the main center. The differences there as far as what the sign criteria addressed is that signage was allowed on the back of the building on a canopy and the door for customer pick-up. They were initially asking for a large number of signs as well, including one on the hard canopy over the store front, one on the façade of the storefront, window decals and the blade sign the development requires so somebody walking along that promenade in front of the store fronts could identify the stores. The window decals were not approved, and they had to choose between the sign on the hard canopy and the one on the façade.

Comm. Elkins: On this application for the window signs, refresh my memory as to what they would propose for signage for the Dean and DeLuca sign.

Mr. Klein: For the windows, I believe they are the lettering that's applied from the inside of the window.

Comm. Elkins: Is that an application or an etching?

Mr. Klein: The letters are proposed to be matte black vinyl letters applied to the inside of the window.

Chair Rohlf: Anything else from Staff? We'll hear from the Applicant.

Applicant Presentation:

Josh Hoodapp with Dean and DeLuca at 4700 West 119th St., Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Hoodapp: I'm excited to present this plan tonight. The big thing we talk about all the time is the manifestation of our brand. I wanted to address a couple of your questions about some of the signage on windows. Obviously the signage versus the etching on the windows is more of a safety element and an awareness issue that's used throughout that center in the larger buildings as well as throughout Leawood on others, including Crate and Barrel, Pottery Barn and Restoration Hardware. Even doing a small etching on the outside of the glass is not much of a deterrent for having people not walk through. I know that's not a huge push on the safety side, but it is following brand recognition throughout the whole plan.

Regarding the drive-thru directional signage, I'm sure the ground signage saying, "Order here" can be removed due to redundancy. Regarding the signage on the monument stating where the entrance is, I think the biggest piece on that sign is really the name of the drive-thru, not so much the monument. I'd like to revisit the size of the "Dean and DeLuca" sign at the drive-thru. We also need to make sure that's signed well because we are in a tight spot. We want to make sure people are safe coming and going from that area because it is shared with the receiving area; it is very close to Tomahawk Creek Parkway. The second piece of that - the menu totem - obviously with the height of that at 10', we need to have a canopy over where they're ordering so that they're protected from the elements. It's just a glass canopy, so it's very understated with a small stainless steel bracket holding it up. Nobody's going to see that board while they're driving by. I believe there's a lot of landscaping that's covering most of that. I would be open to any additional questions on that.

I think you have documentation on the manifestation of our brand. Across the country, we do a green awning with our name on it. We're within city guidelines for the backlit signs on the façade on the stucco on top. We didn't ask for additional there; we actually came down to a smaller size than what we had on the others. We can talk with the developers on the north side. I think overall when you look at the large numbers of what you consider signage, it's branding elements. This is the plan our architect, developer and executive group wanted submitted and what is being presented in all the other markets they're in. We're requested every day to come to other major markets as an in-demand brand. We'd really like to continue with that branding in Leawood here.

Chair Rohlf: I'll be candid with you, Mr. Hoodapp, I think you knew coming into this meeting that you were going to have some difficulty with the number of signs that you have proposed. I'm hoping you have given some thought on what you would reduce. You've talked about some possibilities here and there. We could spend a great deal of time going through each one of these tonight, having the Commissioners comment. Before we start the dialogue, I'd like to hear what you'd be willing to give up tonight so that we won't go back and forth. Let's get to some realistic numbers.

Mr. Hoodapp: I was sent in with this plan with the intention of passing this plan. I was on the phone with my CEO and our architect partner in London today. This is what they want to push through. If there are specific concerns, I can address those. I don't have another plan in my back pocket at this point.

Chair Rohlf: I think it's making it difficult for us because there are not only design guideline problems, but ordinance problems as well. I'm sure you conveyed some of those to the decision maker. If this is the plan, it will be denied. That's why I'm giving you an opportunity to come back with some changes now or take a continuance and think about it because just on the history of what we've done here in Leawood and with your building before, I don't think we're going to be able to pass this plan.

Mr. Hoodapp: I don't want to do that. To me, what's really important is that the large signs are going to stay there. I think the window signs are appropriate and follow through with what's out there in the community as far as branding in other major players in the market in Leawood. I think to follow through with the true look of the brand, the two signs over the entrance and the one over the awning that is just before you get to the drive-thru on that side are the important elements. To me, everything on the north side could be scratched, including all the awnings and windows. If we just maintain the windows and go to the straight green awning like over the patio area, I would be good with that.

On Town Center Plaza, Express has their big sign on the corner on both sides, on their awnings and on their windows. It's pretty big lettering and has been there for ten years, so nothing that's been passed recently. What's nice about ours is that it's 4 1/2" lettering. It's not something that is going to stand out from the street like the large sign above. To me, what's important is to maintain those three signs, the three awnings that are on the larger-sized awnings over the entrance and the window decals. If we get rid of the pavement markings, I would like to give some consideration to something that would block people from heading back into the receiving area or getting into the drive lanes for the traffic that is leaving. There is opportunity to rework what the monument sign looks like, but I want to make sure people know where it is.

Comm. Elkins: On a point of privilege, I would like to be excused.

Chair Rohlf: Mr. Elkins is leaving the meeting but will rejoin us later. Is there anything else? Mr. Hoodapp, if you're willing to make these changes, that means we have a Staff Report that practically would have to be rewritten in order for us to come up with the adequate stipulations. As you know, Staff has not approved it, so we do not have a set of recommendations. I'll ask thoughts of my other commissioners here on this plan.

Comm. Neff-Brain: You're willing to eliminate some of the window signs, so apparently it's not a safety reason or you'd need all or none.

Mr. Hoodapp: The safety reason on the front is where there's pedestrian traffic. On the north side, there are no sidewalks; on the south side, it's just the drive-thru.

Comm. Neff-Brain: So your entrances are all on one side. So where's the third door you're talking about?

Mr. Hoodapp: It's not a door; there's a large awning on the south elevation.

Comm. Neff-Brain: But no one will be coming out of the south elevation.

Mr. Hoodapp: Does everybody have the outside look? (*Refers to diagram*) The entry awning and then the one over here just around the corner are the ones because that gives it continuity with the size of the awnings.

Comm. Neff-Brain: Thank you.

Comm. Williams: This is looking toward the northeast?

Mr. Hoodapp: (*referring to diagram*) Yes, on the right-hand side is where your drive-thru is. This is your south entrance on the west elevation, and that's your north entrance on the west elevation.

Comm. Williams: There doesn't seem to be a problem with large building signs. In light of where the city has gone with other projects on awning signs, certainly 19 awning signs is in excess of what we've allowed everyone else in the last several years. I can understand the desire to have the entrances covered, particularly since (if I read the elevations correctly) your wall signs do not correspond with the entrances in both cases. To put an awning sign over the entrance would seem somewhat appropriate, though excessive in the whole package. From a design perspective, you would almost have to do both or neither to make it look right.

On window signage, we've had this debate. I guess Crate and Barrel is the best example we have of window signs and multiple wall signs. We did beat up on West Elm and tell them, "No, you can't do window signs" when probably not more than two years prior to that, we allowed Pottery Barn in Town Center to have window signs. They have well over a dozen there. I raise the question about the plate glass and code requirement because again, my experience has been that you have to have something on the glass. Where do you differentiate graphics versus signage, and what would we allow them to have for graphics, or do we even have any requirements that we would have to review and deal with? They could put up any number of designs cut out of vinyl, which is the standard trade technique today. I think along the major public walkway on the west side, something has to be there. I don't have an objection with it being Dean and DeLuca versus some other graphic form.

On the monument directional sign, I concur with Staff and think what they have there is a bit much. I understand the Applicant's concerns. Needing to have something that clearly designates where the drive-thru is, and given the issue of the special use permit and traffic congestion at this point, I would think that could be achieved with a smaller sign, such as 6 sq. ft. We'd have to see an example and see if a motorist could read it.

Regarding the menu board, I concur with Staff. From our understanding of what was supposed to be offered in the drive-thru, I think the board is too large. I understand the need to provide some weather protection; but in my limited experience with menu boards that have covers with them, I haven't seen any that work. I think to reduce it and cover it in landscaping is a good approach.

With the pavement signs, I think we have discussed reducing the number – particularly the obvious ones: "Collection Point," "Order" and so forth. I think the key ones that make sense are the ones in the entry lanes so that people do know which way they're supposed to go for the drive-thru.

Mr. Hoodapp: I've got a couple examples of what we have for drive-thru signs in Leawood currently. I think the requirement that you're asking for is 6 sq. ft. on the menu board.

Comm. Williams: No, the menu board is not 6 sq. ft; it's the directional sign to replace the monument sign that you have out on the entrance drive.

Mr. Hoodapp: So there's not a concern with the size of the menu board at this point?

Comm. Williams: No, the menu board with the cover is larger than it needs to be for this application and certainly larger than we thought we'd see when we last discussed and granted the special use permit. I think making it smaller to more clearly represent the amount of limited product makes sense.

Mr. Hoodapp: Even Starbucks at 135th and Roe (*refers to overhead photograph*), who has a more limited selection than what we talked about with a full drink menu and limited food has got one the same size we're asking for, in addition to three that are all together. Then you've got Wendy's and McDonald's here.

Comm. Williams: I hear you, and if Wendy's were to come through today with a menu board like that, it probably would run into worse problems than what you're facing here tonight. I think also a difference between the Wendy's and yours is where it's placed. Wendy's is at the back of the building and, to a large degree, out of public site versus your menu board right alongside the entrance drive to this development. I think that has to be taken into consideration as well. I'm not aware of the Starbucks signage. I think the first one doesn't appear to be too obtrusive, but certainly that three-panel sign for a Starbucks seems excessive.

Mr. Klein: Right, and that one did get approved; however, they did screen that menu board with a stone wall to match the building.

Comm. Williams: That makes a difference.

Mr. Klein: It isn't right off the right-of-way as well when you go into the drive-thru.

Comm. Neff-Brain: I'm still really confused as to what needs to be on these large windows. Does something need to be on each one for safety? What's the requirement?

Mr. Klein: The Applicant is stating that it's something necessary for safety reasons. There are a lot of storefront windows in retail buildings that don't appear to have them, and a lot of them that do have them are located at the very bottom of the window.

Comm. Neff-Brain: So there's no city code.

Mr. Klein: As far as the Leawood Development Ordinance, we don't have any requirements. I can't speak to state.

Comm. Williams: I think it would behoove the Staff to check with the Codes Department because I do believe there is a building code requirement on glass that goes to the ground level like this, the difference being going to the ground versus some of the plate glass storefront windows you see that are on bases or as much a 1-2' above the floor.

I've been required on numerous occasions by code officials to put something on the glass.

Mr. Coleman: The code on the glass wouldn't require a decal or signage, but rather for the glass to be a certain thickness and to be a safety glass so if it shatters, there are no sharp edges. Many office buildings have glass panels that come all the way to the ground. If safety were a prime concern here, I would suggest they put a mullion across the glass to the other mullions, which would make it clearly evident it's not a place to pass through.

Comm. Jackson: Have your drive-thru offerings changed?

Mr. Hoodapp: No, it's our full drink menu with a limited food selection – pre-prepared sandwiches, salads and pastry offerings, so standard coffee bar fare as well as a couple of food offerings. Everything's prepared with fast service.

Comm. Jackson: Madame Chair, we have these discussions every time – with Morton Steakhouse and West Elm. My point is because of rules, it seems like such a waste to come in here and discuss these every time with a new retail. We need to do it one way or the other. We've decided we don't want them. Let's not have them. Put the minimum number in and go forward.

Chair Rohlf: Does anyone else have a question for the Applicant or a comment at this point? Mr. Williams, I think you've made some good suggestions. At this point, I'm not sure we could commit to record this evening on these various changes that you've proposed you might be willing to revise.

Mr. Hoodapp: I need to go talk to my people. I'm not sure they would agree with all my opinions.

Chair Rohlf: Do you see any way you could carve out a set of stipulations?

Comm. Williams: No, and the point being also that he has to take them back to the powers that be. He works at this particular location but doesn't make the corporate calls.

Chair Rohlf: Do you have a good understanding of what is allowed?

Mr. Hoodapp: I think I have a very good understanding.

Chair Rohlf: Would you like a continuance, then?

Mr. Hoodapp: Yes, please.

Chair Rohlf: Move to continue to the next meeting, Mark?

Mr. Klein: The next meeting we have is September 9th. We have a lot of LDO ordinances on that menu. The one following that would be September 23rd.

Motion to continue CASE 67-08 – ONE NINETEEN – DEAN AND DELUCA SIGN PLAN – Request for approval of a sign plan; located at the southwest corner of 119th Street and Roe Ave. to September 23rd was made by Munson; seconded by

Williams. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Munson, Williams, and Heiman.

New Business:

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

Staff Presentation:

Assistant Director Mark Klein made the following presentation.

Mr. Klein: Madame Chair and members of the Planning Commission, this is CASE 39-08 – TOWN CENTER BUSINESS PARK – WALGREENS – Request for approval of a rezoning; special use permit, and preliminary site plan; located on the northeast corner of 117th Street and Roe Avenue. The project will be made up of a single one-story 14,750 sq. ft. building on 2.14 acres located at the northeast corner of 117th and Roe. The side of the building is centrally located. They do have a drive-thru that wraps around on the east, and then the drive-thru lane continues on the north. They are proposing a right-in, right-out also on Roe and on 117th St. Staff is recommending denial of this application for the reasons stated in the Staff Report. I'll go over some of those.

First of all, this has gone through the regular process that we discussed before with the Dean and DeLuca, including a pre-application meeting, initial comments, revised plans, and Staff Report based on revised plans; so this should not be a surprise to anybody. What they've asked for is 15 additional feet of right-of-way along 117th St. As you recall, this case was actually scheduled to come before the Planning Commission at the last meeting; however, that was continued at that time. Part of the reason for that is they weren't going to provide any right-of-way along 117th St. that Staff was asking for to allow for street improvements, sidewalks and utilities. They have revised the plans and provided 5' of that 15' of right-of-way along 117th St. Part of Staff's concern with the addition of that right-of-way along 117th St. is that it will also push everything back to the north, so the site plan will change as well. There is also a concern with not enough room between the back of the curb and the sidewalks to allow for trees. They're showing about 4-5 feet in there, and Staff would like a minimum of 6 feet. I think Public Works requires 8 feet between the back of the curb and the sidewalks.

Staff is also not supportive of the right-in, right-out on Roe due to the fact that it's within the area of influence of the traffic signal at 117th and Roe. Staff is also not supportive because we have an ordinance that we've talked about before, referred to as the 60/40 rule that states that to a distance of 90 feet to the property line back, no more than 40% of that area can be pavement. The rest of it either has to be building or landscaping. Currently, they are proposing 91% pavement area along 117th St. and about 53% along Roe Ave.

On the application, they're showing this drive-thru (*refers to diagram*) that runs along the east side of the building; and part of that drive actually goes on the adjacent property, which is also another application we see before us tonight. Staff did talk to them initially

as far as having these two applications together since the buildings were right next to each other and part of the same development; however, the application has been split in two. This is Walgreens, and the next one will be Discover O. If we're keeping these separate, we'd have a drive-thru that is located on a lot that isn't part of this application.

Other reasons Staff is not recommending this project is some painted end caps that are located on either side of some parking that's located in front of the building. Staff has always required these be landscaped areas that are curbed and that actually have trees as a primary landscaping element.

Comm. Williams: Painted end caps?

Mr. Klein: If you look at the site plan, I believe it is on the south elevation. There is some parking that is directly in front of the building, and then you have on either side of that a row of parking. Typically Staff would require curbed, landscaped areas.

Comm. Williams: So the one that's on the west side, they're trying to use that as part of their handicap parking?

Mr. Klein: That would be up to the Applicant.

Comm. Williams: That's the symbol it shows here. That's a very perilous place to put handicap parking.

Mr. Klein: Right, and they're proposing wooden trash enclosure gates to the trash enclosure. We've never allowed that. As you know, that's the typical stipulation that we always add – that they have to be decorative painted steel gates for maintenance issues, as the wooden ones seem to fall apart. They showed the street trees spaced out; however, they weren't to 35 linear feet. I believe they were closer to 40-45 linear feet, not meeting ordinance requirements. We already talked about the distance between the sidewalk and the curb. Regarding signage, they have four signs that are located on the building: "Walgreens", "24-hour", "Photo" and a neon mortar and pestle that is located over the main entrance that you see in a lot of Walgreens. The neon isn't allowed in the ordinance, nor is the number of signs. They are also showing a monument sign, and the ordinance reads that you can have two walls signs or one wall sign and a monument sign. Staff is recommending denial of this application for reasons stated in the Staff Report. I'll be happy to answer any questions.

Chair Rohlf: I'd like to clarify a couple things. Mr. Ley, I know you have a number of comments in your report as well. Can you tell me the difference between the 2030 traffic model and the 2020 and perhaps why the Applicant chose one over the other?

Mr. Ley: Tom Fulton with Olsson, actually reviewed their traffic study for us. In discussions with them, when I was reading through the traffic study, Transystems indicated the future 2030 model. Actually what they did was take our 2020 model, looked at the existing traffic volumes that are out there today and looked at the growth rates in the 2020 model and grew the existing volumes at that rate up to 2030. That's why the volumes don't match what we have in our 2020 model; however, we'd have to meet with Tom Fulton and Jeff McCarrow.

Chair Rohlf: I guess what I'm getting at is what we were trying to do with our numbers because it's clear to me we have a safety issue here. If you could explain for me your feeling on this 15' requirement. Is that a solid number?

Mr. Ley: In order to construct that westbound right turn lane, we would have to have 15 more feet from the existing right-of-way. You could construct it with less, but you wouldn't have enough room for the utilities to locate in that area. When we look at right-of-way, we want to be able to put sidewalks in, put in space between curbs and sidewalks, be able to put street trees in and allow utilities to locate.

Chair Rohlf: So with this 15' easement, that would require moving this whole project to the north, and that causes other things to happen.

Mr. Ley: Correct, and then with the 2030 traffic model, probably the only thing that would come up would be the westbound right turn lane because they're saying according to the information they have that the westbound right turn lane is not justified or warranted. With our traffic model, we had Booker Willis look at this intersection six years ago. They were recommending construction of a westbound right turn lane. That's the information we're using.

Chair Rohlf: So you would not be able to approve a 5' easement at all.

Mr. Ley: Staff feels it's too narrow to allow utilities a place to locate.

Chair Rohlf: Other questions for staff?

Comm. Williams: Going to your comments on the signage for a moment, didn't we have the same discussions on signage when they went in at 151st and Nall?

Mr. Klein: Yes, I believe so, and I believe they had a mortar and pestle that they put up and were required to take down.

Chair Rohlf: Anyone else have questions for Staff? Then we'll hear from the Applicant.

Applicant Presentation:

John Petersen of Polsinelli Law Firm at 6201 College Blvd, Overland Park, KS, appeared before the Planning Commission on behalf of MD Management made the following comments:

Mr. Petersen: Appearing with me this evening is Mr. Jim Harpool, President of Harpool, Morgan, Haney, who is representing the ownership this evening. Brian Forqueur with LUTJEN is our Civil Engineer and worked with us in terms of laying out the site of the two buildings that are under consideration as well as some of the street issues that I hope we have the opportunity to talk about today. An important part of our consulting team - Mr. Jeff McCarrow with Transystems - is also here. Before I get into talking about the project, it's just unavoidable that although we are technically in front of you at this moment talking about the rezoning/special use permit accompanying plan for the Walgreens, the next application for the revised preliminary plan for Discover O naturally enters into the discussion. I will not be redundant as we get into that application. I do want to respond initially to the comments of the professional staff because I want to be

clear. It is not our intent or desire to disregard comments that have been brought up by Staff during our discussions through the pre-app process and preliminary evaluations of our site plan, nor to come before you and waste your time after a perceived disregard of all the issues they brought up because we are so far apart on those issues. We can only make this determination when we actually look at the complete Staff Report. The first time we had the stipulations (which as you know are a critical part of an approval or denial or remand) was yesterday afternoon. We work great with Staff, but I probably wouldn't anticipate giving an approval this evening even if I thought I deserved one because we still have some details to work out. But there are some fundamental concepts that have been thrown out that I think are worthy of a bit of your time to listen to so we can collectively step back and see what we can do in terms of guidelines and policies with a difficult site with constraints.

This is the next step in the process of a development project that has been going on for 18 years now. The original plan (*refers to overhead of original plan*) includes utilization of some office buildings on the northern tracks that run from the east side of Roe from 117th north to 115th St. What we're talking about today is the retail component of the business park with a plan approved utilizing retail buildings here and here (*refers to overhead plan*) with a drive-thru component approved as part of it. All of that totals approximately 38,000-39,500 sq. ft. of retail. As we're starting to round out that office and other type of ancillary uses in this area, we're now bringing forth a concept that we think works well for the community in terms of uses that are in demand and allowed within the retail zoning categories, but that is on a site that does present some challenges, including a significant creek system traversing the site and steep grades as you move toward that creek. As the plan has been reapproved four times since it was originally approved, there are two fundamental issues: how to utilize the site, given the fact that you don't have a significant amount of land for internal circulation and how to make sure you have an aesthetically pleasing system that works comprehensively within the project. The site is not significantly deep backing up to the creek system, and the site interfaces two major streets – Roe and 117th St. Because of the proximity to this intersection and the fact that you would only have one full access point of ingress and egress into the site, it is essential to have the ability to have cross access and cross easements in this area here (*refers to overhead diagram*) so the different components of the project would have a free flow to that primary point. It's always been contemplated that you would have a right-in, right-out here (*refers to overhead diagram*). We're going to talk about the potential for a right-in, right-out here (*refers to diagram*). If that one does go away, that ability to have that cross access and that ability to move through there becomes even more of a critical concern and is used as it has been designed, zoned and contemplated for many years now.

The Walgreens building of 14,000 sq. ft. is situated at a hard corner here (*refers to diagram*) on approximately 2 acres of property with a need for access to 117th St. and good circulation and parking around the building. We have asked for a rezoning to the because of the drive-thru window. We have designed this project so we can bring the pick-up window in this area here (*refers to overhead diagram*) where it would essentially be unseen on the street or by neighbors. We would probably have one very small directional sign that would say, "Pick up area".

In terms of traffic, we have good news to report. What we have proposed covers both the Walgreens and Discover O. At the direction provided by the city, we had Mr. Jeff

McCarrow of Transystems do a traffic study. They took current counts at peak times of the affected intersections, primarily 117th and Roe, to see what the current traffic conditions are. They did a projection of their counts against the added traffic that would be generated by our specific developments and then projected against 2020 or 2030. The last time you did a base count was in 2002, and traffic has significantly decreased during the PNP. You now have a signalized intersection at Tomahawk and College, providing other avenues. The opinion of Transystems is that with the road improvements that we are proposing to make (including a left turn into the site, deceleration lanes at our right-in, right-out and with the existing configuration at 117th St.) that today and tomorrow, every intersection and driveway will operate at an acceptable level of service based on the standards of the City of Leawood.

I want to talk about the confusion between 2020 and 2030. I think I can say that the city's outside traffic consultant and my traffic consultant have resolved those differences. Jeff McCarrow's report properly took into account the appropriate parameters to consider for future traffic. Based on that and his professional judgment, with the improvements we originally proposed, our traffic and background traffic will operate at acceptable and safe levels. Staff has said, "But we want more lanes because we see some things happening in the future." What they said is, "Instead of one through lane here (*refers to overhead diagram*), we want two through lanes going from east to west and an additional dedicated right turn lane." That additional lane that is being requested has nothing to do with our traffic. I know we have a little disagreement with the outside consultant on that right-in, right-out on Roe, but there was no disagreement about the findings on 117th and what widening needed to take place. Having said that, after one of those pre-application conferences, we said, "Well, they want an additional through lane and an additional right lane," and the developer was trying to make sure we were working together on this. First it was 15 feet and this additional right-of-way. We came back and said, "We'll give you 5 more feet of right-of-way for public utilization and will build a full additional second lane across the entire interface of both Discover O and Walgreens." The one through lane will also serve as a right lane at 117th and Roe as you're facing west. If you look at the volumes there, we feel there's plenty of capacity for safe and acceptable levels of service.

We also would exceed the required amount of green space that is on the north side of the street along Camelot. We're at 5 feet, and we can get to 6. Staff wanted a 5' sidewalk in there, and we worked it out. We meet your UDO in terms of green space setback from property line or right-of-way to our first parking lot – 25 feet all along this area here (*refers to overhead diagram*). As part of our proposal within that 25 feet, we've built a berm system so we can screen the parking. We think we can hit the 3-4 feet along that entire area with screening. One of the reasons Staff is recommending denial is we won't give a full 15 feet. We've offered to solve all the problems that 15 feet was purportedly intended to solve. The second reason for denial is on top of the 15 feet of additional right-of-way, Staff has stated we won't give another 15 feet of utility easement. I got with my engineers and said, "What utilities? None of the utilities to serve our site need a 15' utility easement." In fact, gas and water actually utilizing our site today don't even have an easement. We'll deal with that. We'll get all those utilities back in an easement and make it work for them. That's an issue I'd like to work with Staff to get those utilities laid in.

Chair Rohlf: Let me clarify that, Mr. Petersen. Is that true, Mark, or is it the same easement?

Mr. Ley: That's a Public Works comment. It's a typical comment from Leawood and Overland Park. In discussions with KCPL, what they're requesting us to do around the boundaries of development now is to get a 15' wide easement to allow utilities the opportunity if there are conflicts. Within the right-of-way, we've got water, storm sewers, street lights and other public utilities. Utilities are looking for additional room. That is owned by the developer and does not impact setbacks of parking lots or anything like that. They can do landscaping within that utility easement.

Chair Rohlf: So it's one 15' easement?

Mr. Ley: Utility easement is dedicated to the City of Leawood that allows utilities to utilize it.

Chair Rohlf: In your comments concerning the plat, you grouped it together.

Mr. Ley: 3A on my stipulations is a 15' wide extension of the right-of-way and then on 2B, it's the 15' utility easement along the frontage of 117th St. where the right-of-way would be.

Chair Rohlf: So the utilities in A are different than the utilities in B?

Mr. Ley: A is actually right-of-way, so that would be owned by the City of Leawood. The easement is still owned by the property owner.

Comm. Neff-Brain: So how far back from the curb are we talking?

Mr. Ley: We'd have to lay it out because the curbs are moving to the north as part of the improvements that they are proposing to do. We would have approximately 15 feet from the new north curb line to the right-of-way. Within that 15 feet, there would be trees, sidewalks, street lights, storm sewers, water lines, possibly gas lines. Beyond that is another 15 feet which does allow utilities the opportunity to locate there.

Comm. Neff-Brain: So it's really 30 feet.

Mr. Ley: Again, we've had meetings with KCPL. We can talk to them. It doesn't impact their parking lot setbacks or reduce the fact that they can do landscaping within that area. It just does allow the utility to relocate if the corridor gets congested.

Mr. Petersen: That's right. It is presented for a stipulation if you decide to move us forward and a condition for denial because we refuse to do it: "Give us 15 feet of right-of-way" that is a transfer of ownership that we can't use for setbacks or development and then a blanket 15' utility easement, which I know some of you have experience with getting into trouble in terms of what you can do with that property. We don't need any kind of easements to bring public utilities to our site. Instead of a blanket 15' easement, I think we could work with Staff and the utilities and make all that work, as I think we could the lane configurations and the road configurations and still leave good solid green spaces and landscaped areas.

Almost every other item on which Staff has indicated we need a deviation, we really don't because we can get there; 80% of them, we can fix the plan. I'm going to push our

guys to look at that right turn lane at Roe and see if we can get it in there and still have our screening and buffering. The one we can't do is this design guideline in the ordinance, which I acknowledge, that says, "No more than 40% of the parking lot can interface the public street." It's either got to be 40% or less, and the other areas either have to be buildings or a 90' setback of green space along those streets. If you're dealing with a 40-50 acre project, that's possible. (*Refers to diagram*) If we took the currently approved buildings and put that 90' setback, you couldn't build anything. You wouldn't have parking or landscaping. I only offer that up because of the unique situation we have with a creek behind us, preventing us from moving north. We're looking for good circulation and good landscaping on the north side because we committed that to our neighbors. We need to maintain good cross access by our one point of availability in terms of points of ingress and egress. The compromise back against that (*refers to diagram*) is a good buffering and screening along this area with the berm and the landscaping, and it all works. Maybe you move back and take one of the design elements in your code of 25' landscaping and focus on that instead of the 90' setback. We want to continue to work with Staff and Planning Commission on this.

The last issue I want to hit is our neighbors directly to the northeast. We've met with them two or three times about the proposal and the details. They worked with us because we're going to do some things on their property to screen over there. We've got some specific commitments to them as we move through the process, including landscaping this (*refers to diagram*).

I'm not going to waste your time going through each one of the deviation points. I think I hit them. I see no stipulation in there that we cannot satisfy except those ones that deal with the fact that we would either have to push all the buildings up on the street, making the site not workable, that would require us to have 90' green space when that would decrease the building size and that we would automatically dedicate 15 feet of right-of-way. We would go ahead and dedicate the right-of-way of 15 feet because we have about 30 feet of green space, but we think we've put enough time and effort into this and respected the design goals of the city. We'd like to see if we can't bring detailed agreement back to you in terms of all of these issues.

I want to close with this last issue of the right-in, right-out on Roe. People turning left here (*refers to diagram*) would want to get over fairly quickly, and it might cause a conflict with these people turning right. Our learned traffic consultant from Olsson Engineering says, "There are going to be so few people doing that." Typically at that configuration when people are turning left, these people are not turning right; or you could put a "no turn on red" control there if that ever became a problem. Mr. Fulton said it should be longer, and we could probably push it up a little bit more, but we don't want to get it into our landscaping. It's a good function of circulation so not everybody is focused back on 117th St. We just think it makes sense. To compare, I would point out that within ¼ mile of about five different locations, you've got the exact same configuration in substantially less distance where there's a left turn with people moving over to the right. This includes Hawthorne turning left onto Roe going south, Roe turning left to go west on 119th into Dean and DeLuca, Roe turning left on 117th or Town Center Parkway, turning into the library. I don't think anybody can say there's a significant issue of safety or conflict. Let us have the opportunity to take a remand here and sit down with Staff and pound through some of these issues. I'd be happy to answer questions.

Chair Rohlf: I would open this up for questions to the Applicant, keeping in mind this is preliminary. If there are additional comments anyone has on Staff comments, obviously we are facing a number of deviations here, some of which Mr. Petersen has indicated he will go back and work with Staff on.

Mr. Munson: Among other things, my big concern is that right-in and right-out because I travel Roe Ave. often enough to see it as a real hazard. That's a stopper for me.

Comm. Neff-Brain: Is there any kind of stream way setback, or is this creek not significant enough?

Mr. Petersen: No, it's a significant creek with a fairly sizable retaining wall along the back side. The setback is as much vertical as horizontal. Between that wall and our property line is a sanitary sewer that we have to respect, so it's got some challenges in that regard.

Comm. Neff-Brain: What did I understand you saying at the end about being willing to donate the 15 feet of right-of-way?

Mr. Petersen: We're willing to donate the 5 feet, so we're really only talking about 10 more feet on 117th that we would landscape and make a part of our project, having that good 25' setback area of landscaping. Then in the future, if there was an additional 15 feet needed to do the right-turn lane or some other improvements, we would make the 10 feet available. That's a workable solution. This is looking east down 117th (*refers to drawing*). We could work to get that berm back a little bit so it would work. In terms of the right-in, right-out on Roe, it's pretty important to our operation; but again, I would hate to see somebody vote "no" on the entire project and at least not say, "If you get rid of the right-in, right-out, we could work on it" because we'll try anything to make this work.

Comm. Munson: I remember through our development process over the years that Staff has generally recommended and proposed that we have the buildings set up closer to the right-of-way, to the road, and the parking be behind it as a visual thing which is part of the design standards. What stops you from doing that?

Mr. Petersen: First, to move this Discover O building up (*refers to drawing*) would have a right-in, right-out on the property line and be a very difficult point of ingress and egress. You wouldn't have any access over here to our only full-service median break here. If you move this building up, it just doesn't give good flow. We think we can address the same issue by just having that single lane for circulation and at the same time, doing a pretty significant job in terms of the landscaping so you will not see those headlights or directly see those cars. That is a design option under your design guidelines.

Comm. Munson: Staff, would you comment further on that to give us a little background on placing the building closer?

Mr. Klein: Personally I think it would be possible to do something like that. It would be bringing the building to the front with the parking in the back. You'd have two drives accessing out to 117th St. at this point. That may be difficult as far as getting the drive-thru to work. I'm not a designer, but it seems like you could have a neighborhood retail

center, as this is zoned, which would have parking along the back. They'd move the buildings a little further away from the residential to the north.

Mr. Petersen: Again, can we move the buildings closer? We might be able to do that. Can we make it work and have them directly up on the street? No, and they're all not that way along all of 119th St. We could take a look at it, but it isn't going to work for us to move it all the way up.

Comm. Munson: I have a question for the Engineering Staff. When you add this extra lane on the north side of the street, it is where their property is, correct?

Mr. Ley: That's correct.

Comm. Munson: What happens on the west side of Roe Ave. with the continuation of Town Center Drive?

Mr. Ley: As you approach Roe if you're heading westbound, when you get 50 feet or so of the roadway at Roe, it's already three lanes wide for westbound. You have a westbound through, a shared westbound through and a right. Even if they added the right-turn lane, the through lanes in that location already exist and align with the west side of Roe.

Chair Rohlf: Does anyone else have questions or comments for the Applicant? All right, I guess I would address this to Mr. Klein and Mr. Ley. Based on what the Applicant has presented this evening, where do you think we are? Are some of the suggestions the Applicant has made helpful? I must say it's kind of overwhelming with various deviations that are outstanding.

Mr. Klein: They said a lot of things that might be possible, but I would think some sort of study would have to be done to see if they could accomplish those things. If you're talking about approving the case tonight, Mr. Petersen has even indicated it would take them looking at it. I don't think it's something you could stipulate for approval.

Chair Rohlf: No, I think we're definitely heading toward a continuance. There's a difference of opinion on these deviations. Typically we take the Staff recommendations on the deviations that are critical. You've given indication you think there are some ways to work these deviations out, particularly the 40/60 rule that I'm most concerned about. When you look at land use, performance standards, deviations – all the things that go into a preliminary, I guess I'm stuck on the site plan. You've admitted it's a difficult piece of property to make something work. Are we trying just a little too hard to make this work in terms of ordinance compliance?

Mr. Petersen: I wouldn't ask to try to make this work if I thought I was wasting your time. We think we can eliminate several of the deviations and eliminate confusion and miscommunication on our part. The 40/60 rule, as I indicated, will be our biggest challenge to make this work. It is why you have approved on the plan in 1994, 1998, 2002 and 2004 a very linear set of retail buildings, one with a drive-thru, by the way set back up again with no interest because that's what works. We think we can improve on that significantly.

I would also offer with trepidation that the 60/40 rule is a good standard because what it speaks to is limiting that classic old development of parking lot and building in the back. A good, "one size fits all" is you either put a building up there at 60% of the frontage or set everything back 90 feet and do it that way, but there are other ways to do it, too. It's a combination of orienting the buildings right, putting a minimal amount of parking in the front and using extensive landscaping to do it. Even on the 135th St. Corridor, your newest development, you have situations that don't fit the 60/40 rule. In this part of the city, the older part of the city, there is nobody out here hitting the 60/40 rule. I think we can hit that goal if you give us time to work on it, and if we can't, you turn us down.

Mr. Klein: I just wanted to make sure everybody is aware of the zoning and everything out there. (*refers to overhead map*). Currently the site we're talking about is here at the northeast corner of 117th and Roe. It's zoned neighborhood commercial retail. You were asking if we thought we could get here. There's still a lot to be done, as Mr. Petersen indicated. City Hall is located in this area. The library is located here. This all is zoned neighborhood retail, and you actually have an assisted living facility just to the north of it, so there's a residential flavor to it. Then over to the east, you have the Tomahawk Creek Condominiums that are a residential component. This part of Camelot Court is zoned neighborhood retail with some exceptions as far as the McDonald's on the corner that has gone to general retail; however, it is right across the street from where the One Nineteen development is with the Crate and Barrel, which is also zoned general retail. Then you have this area down here where the Waterway gas station is located. You also have the single-family subdivision up here – Leawood Country Manor. Then Edgewood is beyond City Hall and a little further to the west. As you're thinking through this process, I wanted to make sure you had the context of what's around.

Chair Rohlf: Mr. Petersen, I think you mentioned something about four prior approvals for zoning on this with a drive-thru. It's my understanding that the current zoning would not allow a drive-thru, and that's why you're requesting a change in the zoning, which is the only classification we have that would allow a drive-thru.

Mr. Petersen: You are technically correct. It used to be you needed a retail designation to get a drive-thru, even if it was a bank with an office utilization. It was originally zoned to allow a drive-thru. The zoning was CP1 for a number of years, and then it automatically got shifted CP1 into the neighborhood commercial. That was when the decision was made for a drive-thru to get approved in that zoning category that they put it in. It's an interesting legal question about whether you're approved for a drive-thru or not.

Chair Rohlf: What's interesting is we've been talking about so many deviations, we really haven't even talked about the drive-thru, which you know there's a history of the Commission being against drive-thrus.

Mr. Petersen: How about if I commit right here, no menu board? Madame Chair, I assume you're going to open a Public Hearing.

Chair Rohlf: I am. I'd like to ask if there's anyone here to speak this evening before we give our final comments, probably leading to a continuance. Is there anyone in the audience who wishes to speak about this plan? If so, please raise your hand. All right, we'll start with the woman in the front row.

Public Hearing:

Rochelle Mitz, President of Tomahawk Creek Condominiums appeared before the Planning Commission and made the following comments:

Ms. Mitz: I have one comment, and then I want to leave you with some information. When the homeowners at Tomahawk said they would be supportive, we were told by Mr. Petersen that their plan would meet Leawood specifications. Right now, we understand that is not happening. The Homeowners' Board wants to recognize that Mr. Petersen of the Polsinelli Law Firm has tried to work with the homeowners of our community during the past several months in order to find a way to help the developer of the project schedule for construction at 117th and Roe, meeting his goals while considering the concerns of the project's neighbors. The concern focus of the homeowners was the creek and pond situation and erosion issues, the water quality issue of the water running from the project's construction site, the increased traffic flow related to the 24-hour business, reduction in property values relating to having a 24-hour business as a direct neighbor, lighting and landscaping issues. After the board and participating homeowners heard the presentation, a motion was made, seconded, voted and approved. The Homeowners Association is in favor of effective screening and storm water management practices and that the city keeps in view the property values in the region. Our community is appreciative of the time and effort Mr. Petersen and his team have spent listening to our community concerns and are supportive of the plan that we shared on June 19th, per the conditions promised by Mr. Petersen (meaning the specifications of the City of Leawood must be followed). I'd like to leave this with you so that you can see what was discussed that particular evening.

Chair Rohlf: If you would give that to Julie, she'll make sure there are copies for us. Thank you. Yes?

Gayle Voyles, Board member of Homeowners Association for Tomahawk Creek Condominiums, of 11621-K Tomahawk Creek Parkway, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Voyles: I just want to add to what Rochelle said that we do have faith that Mr. Petersen and his team would be very collaborative in trying to work out the issues and that he is trying to meet the best interests for the city and the community at large. He's proven to be a very respectful listener and creative person to try to figure out how to compromise and help us move forward. We all know something is going to go at that site, and they have spent a great deal of time trying to figure out how to make it work. We do care about city ordinances, and we believe you have the right to make the decision. I feel it's worth your time to work with him, personally.

Chair Rohlf: I believe there was one more.

Caroline Markey of 11619-D Tomahawk Creek Parkway, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Markey: I'm pleased and grateful to speak to you and that you are already considering the safety factors. Beside these factors, I would like to say I love my condo and am pleased with the quiet atmosphere there. Now I'm afraid that Walgreens would disturb this privacy with their drive-up pharmacy window, which will be open 24/7. I'm

also concerned about the high level of lighting. I also think that those who are purchasing something at Walgreens would probably want to purchase something and walk into the store. I think it's an invasion of my privacy, and I'm concerned about property value. I appreciate your concern and you taking this under consideration. Thank you.

Chair Rohlf: Is there anyone else who would like to speak about this case?

As no one else was present to speak, motion to close Public Hearing made by Jackson; seconded by Heiman. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Munson, Williams, and Heiman.

Chair Rohlf: This takes us to any final comments about this plan or the continuance.

Mr. Klein: I would just like to make a clarification. This property used to be zoned CP1; that's absolutely correct. As you may know, the zoning classifications used to be completely different than what they are now. At that time it was CP1 and CP2. We had a lower intensity retail use or CP1, and we had a higher intensity retail use in CP2. When we did the change in classification in December of 2002, everything that was CP1 automatically became SDNCR. Everything that was CP2 became SCDR. I just want to make sure everybody's aware that even at that time, it was still considered the lower intensity use as far as retail. That really didn't change over time. What it really gets back to is the use. Changing it to a more intense use that requires a special use permit being suitable for this site really goes to that question.

Comm. Jackson: Seeing as they've asked for some indication from the panel, my thoughts at this point, subject to change, would be that I'd like to see that building moved down to the corner. I think if it is going to be a 24/7 drive-thru, that would block a little more of the lighting and commotion from the residential area and also allow a little bit more response. I don't think you'd have the 60/40, but you'd be much closer. Yes, we've allowed deviations, but generally not to this degree. Right now, that whole south border is going to be a deviation the way it's planned. That seems a little much. It is a small area. If you can't get a drive-thru in there, you can't get a drive-thru in there. I'm sure there's other retail that could go in there. At this point, that's my thought on it.

Chair Rohlf: Thank you. Does anyone else have any comments?

Comm. Williams: I concur with Miss Jackson on her comments about the building placement and the issue about the drive-thru. I don't know if there is any information in this regard or if the Applicant can provide any information, but if we're going to be open 24 hours a day, I think it may be beneficial for us as well as the neighbors to get some idea how much traffic there might be through the late nights. If you could come back with some of that information, that would be appreciated. We didn't talk much about the building design tonight, and that does come a little bit later. As they start to look at the shifting of the building or redevelopment of the site or whatnot, I would hope they would take into consideration that this is, I think all of us would concur, a fairly prominent site. The buildings to the south came and were built at a time when we were maybe a little less stringent on what we allow along the streets. In that vein, for the past several years, I've had the opportunity to pass the Walgreens at 151st and Black Bob. I have been very pleasantly surprised at how that building really looks like it contributes to the neighborhood versus what I'm going to say as a typical Walgreens store. If we could do

something that contributes more to this neighborhood, I think that would be a real plus for the site and for Walgreens.

Comm. Neff-Brain: I prefer a building set back a little than one that's right up on the corner. I don't like the sight distance issues if something is close to the corner. I'm thinking on State Line at about 133rd. There's a Beauty Brands and one level of parking and then the building, and I don't find that objectionable.

Chair Rohlf: Is there anything else to pass along to the Applicant at this point? Just for the record, Julie, please note that Mr. Munson has left for the evening. If it is the Applicant's wish for a continuance, I will ask for a motion to move this. Mr. Klein, can you give me any idea on when that might be?

Mr. Klein: I would say the earliest would be the September 23rd meeting, especially with how much needs to be done.

Chair Rohlf: Is that acceptable?

Mr. Petersen: That's great. We'll get to work.

Motion to continue CASE 39-08 – TOWN CENTER BUSINESS PARK – WALGREENS – Request for approval of a rezoning; special use permit, and preliminary site plan; located on the northeast corner of 117th Street and Roe Avenue to the September 23, 2008 meeting was made by Williams; seconded by Heiman. Motion passed unanimously with a vote of 5-0. For: Shaw, Jackson, Neff-Brain, Williams, and Heiman.

Mr. Petersen: Madame Chair, as the Applicant on the next item, may I respectfully request a continuance of that revised preliminary plan item to September 23rd?

Chair Rohlf: I think that would be agreeable. Is there anything on that particular plan that anyone would like to comment on at this point as a heads-up? I will open the Public Hearing just in case there's anyone here that wishes to speak about this case other than who's already spoken, and we can move those comments into this record. Is there anything anyone would like to add on this case, including Staff?

Mr. Klein: They're the same issues as the prior case. There is one that I tried to talk to Mr. Petersen about before the meeting that is not mentioned in your Staff Report at this point, and that's an issue of FAR. Currently the FAR that the Staff is calculating is that they would exceed. Again, he indicated they would take a look at that as well.

Chair Rohlf: I noticed there was something in one of the Applicant's memos about the FAR, and I noted that we didn't have anything in the Staff Report. If they're willing to look at that, we'll see it the next time it comes through. Anything else, Mr. Klein? All right, anything from you before we move to the Public Hearing? All right, is there anyone in the audience who wishes to speak about this particular case? Any additional comments made by the prior speakers, if they would like to reiterate their comments into the record, would be fine.

As no one was present to speak, motion was made to close the Public Hearing by Jackson; seconded by Williams. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Motion to continue 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 Avenue to September 23, 2008 meeting made by Williams; seconded by Neff-Brain. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman.

New Business:

CASE 62-08 – LEAWOOD SOUTH COUNTRY CLUB – SPRINT WIRELESS COMMUNICATION TOWER – Request for approval of a rezoning, special use permit, preliminary site plan, preliminary plat, final site plan and final plat; located at 3801 W. 123rd Street. **PUBLIC HEARING**

Staff Presentation:

Senior Planner Jeff Joseph appeared before the Planning Commission and gave the following presentation:

Mr. Joseph: Madame Chair and members of the Commission, this is CASE 62-08 – LEAWOOD SOUTH COUNTRY CLUB – SPRINT WIRELESS COMMUNICATION TOWER – Request for approval of a rezoning, special use permit, preliminary site plan, preliminary plat, final site plan and final plat; located at 3801 W. 123rd Street. The Applicant is Curtis Holland representing Sprint. This proposed tower is 75' tall. The tower is designed to look like an evergreen tree, which they're calling Monopine. The antennae will be camouflaged with the bark and needles of the Monopine. The tower will be similar to the existing tower within the golf course located to the south of this proposed location. The application does meet the requirements under the Leawood Development Ordinance as explained in the Staff Report under the Performance Standards section. Notices were sent to people within 1,000 feet as part of the courtesy notice requirement. Also, an Interact Meeting was held on August 6th, and a summary of the meeting is attached. The Applicant has provided a master plan that shows five additional locations for future cell tower within the city of Leawood. I'd like to show a couple of maps that show the exact location of the proposed tower (*refers to maps*). This is a map of the Leawood South Country Club. Here's Mission Road, and here's 123rd St. The proposed location is at this point with the black dot. The existing tower is located right inside the golf course. The parcel they are trying to rezone from R1 to REC [planned recreation] is this parcel outlined in black which will tie in with the golf course. This is a picture of the existing tower (*refers to photograph*). Staff is recommending approval of this case with the attached stipulations. I'd be happy to answer any questions.

Chair Rohlf: Mr. Joseph, have we received any positive or negative feedback from the residents after approval and installation of the existing tower?

Mr. Joseph: Actually I received a couple of calls from residents who support the existing tower and how it blends in with the existing landscape.

Chair Rohlf: That is currently at 95 feet?

Mr. Joseph: That is 75 feet, which is the same height as the proposed tower.

Comm. Neff-Brain: It will look like the tower up on the golf course. This one looks like mirrored housing.

Mr. Joseph: It's closer to residential. It's only 150 feet from an adjacent residential structure. Again, the ordinance allows that to be placed there.

Chair Rohlf: Does anyone else have questions? If not, we'll move forward to the Applicant.

Applicant Presentation

Curtis Holland, Attorney with Polsinelli Law Firm of 6201 College Blvd., Overland Park, KS, 66211, appeared before the Planning Commission, offered a PowerPoint presentation and made the following comments:

Mr. Holland: Before I get started tonight, I would like to introduce a couple members of our team who are here, one of whom will speak in our application. To start, I'd like to introduce Mike Reed, Senior Site Development Manager with Sprint/Nextel. I'd also like to introduce Christy Kuehl, Site Development Assistant. We also have Mike Alt, Engineer who was present in our last application and will speak more directly to the technical issues and the needs for Sprint in this area, as well as the justification and selection of the site. We are happy to share information from previous meetings covering this information if necessary. Finally, we have Paul Wrablica with Telecom Realty, who did all the site consulting work on behalf of Sprint/Nextel in terms of working with Leawood South Country Club, who would be our landlord if we receive approval of the application. We are going to present a PowerPoint presentation to better explain our application.

We had done this last year with the other Monopine facility that was ultimately approved by this body as well as the City Council and constructed earlier this year. You may recall there were a number of hearings regarding that application, and we discussed the coverage issues that Nextel has in the city of Leawood and how we were trying to address those issues. We mentioned that it's particularly difficult in Leawood to provide coverage in predominantly residential areas. We tried to provide these services in a compatible manner using stealth technology. You'll recall the Monopine at the fifth tee box, which has been mentioned, really was the first of its kind here in Kansas City; and it has been used in other locations. The technology has improved over the years, but there has been some anxiety in the community about what that facility would look like. While the current pending application was discussed as a second phase or companion application in addition to the one at the fifth tee box, it was agreed by the city that we needed to see how the other one looked first. Once the facility was ultimately approved and constructed, I think everybody breathed a sigh of relief. I haven't heard any negative comment about that other facility, rather positive comments both from the residents in the area and the club members themselves.

We now have Phase Two of the project that we discussed at length last time, improving coverage in Leawood, including both outside and inside the home use. With respect to

the site itself, I'm going to show you the PowerPoint presentation. What I talked about previously regarding the historical aspect of this application and the prior facility, I have placed an aerial photo on the screen which encompasses Leawood South (*refers to aerial photo*). We do have these red arrows that represent the sites that we are discussing, one of which we already received approval for. This arrow here is the fifth tee box site (*refers to photo*). Hopefully you've all had a chance to look at it. The second site in tonight's application is in the northwest corner of this picture. This site is also owned by Leawood South Country Club. Its use is as their maintenance facility. The arrow is pointing to the approximate location of the proposed Monopine. This property consists of about 1 ½ acre of ground. You see that there is significant foliage adjacent to the building, including mature 55' trees on average. We are trying to tuck our Monopine structure among those trees to help screen the top of the tree. You're probably not going to see the bottom of the tree from any vantage point.

This is a photo of the 75' tree that is in place (*refers to photo*). The new facility will be identical in terms of overall height. In actuality, the metal pole that's in the middle is only 70' tall. The artificial tree branches extend above that pole to a height of 75 feet. This pole is clad in simulated bark. There was an argument with this application about height, and we compromised from 95 feet to 75 feet, setting the maximum height the city felt was appropriate in terms of these types of facilities. This tree was designed and built by Preserved Treescapes as well as Saber. Those are the same companies who will work on this project if we get approval. I'm only going to show a couple of things with respect to the site plan itself, which is part of your packet and in compliance with city requirements. I do show this picture here (*refers to site survey*) to show you where the facility will be located in terms of this property itself, a little to the north and east of the existing maintenance facility building. You'll see the approximate location of the equipment compound, which will contain not just the Monopine structure itself, but also our telecommunications-based equipment. I also have the survey up here to show you the adjoining residences to the facility. As you can see on this map, the closest house is 154 feet from the Monopine structure. The other structure immediately to the south is 193 feet from the structure. The house to the west of the facility is 242 feet.

We had a neighborhood meeting on August 6th. At that meeting, we had a lot of discussion of concerns. There were dramatically fewer people voicing concerns at this meeting than at the meeting for the fifth tee box. Three residents stated opposition to the structure, and you may hear some tonight. What we heard with respect to the first Monopine facility is that they agreed that it looks good there, but the concern is that it won't look good here (*refers to photo*) and that it's too tall. We performed a crane test on August 21st, in which we notified the residents, drove a crane to the site, raised the boom to 75 feet and left it there from 10:00a.m.-6:00 p.m.

Also out of that meeting was a complaint by Mr. Todd that he does have a view of the maintenance area, and there was some frustration that some portions of the facility are unkempt and that in the wintertime, the screening is not thorough. We did discuss trying to provide some screening for this by planting six 6' white pine trees on 10' centers (*refers to plan*).

With respect to the actual site plan itself (*refers to site plan*), I'll quickly tell you we have a 50 x 50' lease area, but because we want to minimize the impact on the trees that are there. Our compound size is only going to be constructed at 20 x 32 feet to retain trees. In addition, there will be an 8' tall red brick screening wall around that equipment at the

base. In the Staff Report, there's a mention of a proposed gate for that compound being wood. They're suggesting it be changed to a metal gate, and we are fine with that change.

The next slide shows the neighborhood. These will be pictures showing the crane at 75 feet and what the tree will look like in its place. I do want to show you this map (*refers to Buffer MAP*). This is our notification map, including 1,000 feet from the proposed structure. This picture shows the number of notifications and also helps explain where the next photos will be taken from. We took pictures from 360 degrees around the crane test. You can't see a lot of this facility because of the topography (*refers to photos*). From Mohawk lane to the east of and closest to the facility, we think it would be the most direct view. We took pictures from 123rd St. and from Mr. McBride's house here, too. This photo (*refers to photo*) is from the crane and the intersection of Mission and 124rd looking east. You can see we have circled the boom. In the other photo, we have placed a Monopine. You can get a sense of the trees in the area. It turns out to be, in my view, very nice looking and well incorporated in the existing area. We provided a similar photo simulation to residents. This is another picture we are providing that shows the view from 123rd St. looking back to the west (*refers to photo*). This is a little bit east of the property, but we took the picture to show the first chance to see it from 123rd St. heading west. These next pictures are going to be from that neighborhood to the east along Mohawk Lane in Leawood South Subdivision from the Tobler residence (*refers to photo*). The house that you see looking straight on is the Todd residence, and the Yankel house is the other. Those are the two closest homes. The Toblers were very gracious and allowed us to come on their property even though they are not in favor of this, and we appreciate them allowing us to do that. The Todds have a two-story home, and this is a picture taken from their upper deck (*refers to photo*). This is the boom at 75 feet in the upper left-hand corner, and you can barely see it because of the tree. The lower right-hand corner is the Monopine facility, which you can't see well because of a tree. Finally, I just wanted to show you that the brick we're talking about for use at the compound would be a brick similar to what you see in this picture (*refers to photo*). This is along 123rd St. at the entrance of Bradford Place.

As mentioned by Staff in the Staff Report, there is a companion application as part of our overall application. This particular facility is only permitted by a special use permit, so we do have that application. Under the City of Leawood's rules, the facility can't be placed on R1 zoned property. I'm not clear on why it's zoned R1 while the rest of the golf course is zoned Rec., but in order for us to be able to put the facility on the property, we need to rezone it Rec. to allow for this. This is ancillary and pertinent to the golf course, and clearly should have been zoned Rec. when the golf course was. I do believe it's compatible, consistent and appropriate to have it be rezoned regardless of our application. The rezoning application raised concerns from the neighbors, including some fear that this rezoning would open up this land to other uses. I've looked into the issue, and it would not allow us to do something really crazy like an amusement park. In fact, you can only have a golf course, a park or a government building of some kind in Rec. zoning. Essentially we are not opening it up for anything other than the intent proposed. There is also a Plat Application on this property as well.

I do have a comment on some of the stipulations. What I would probably do is sit down and have Mr. Alt give a short presentation on the goal for this facility in trying to improve the coverage.

Chair Rohlf: Before we get started, we will need to extend the meeting. I don't want to shorten your presentation. I'd like to get an idea from the audience who is here to speak about the case. We have a number of people. I would like some guidance from Mrs. Shearer or Mr. Coleman on what you suggest we would do. About how much longer is your presentation this evening?

Mr. Holland: I'm guessing we can finish this up in ten minutes or so and then let the residents speak. I would like an opportunity to perhaps address some of their concerns if warranted. I did want to make mention of one of the stipulations I have a problem with either now or when Mr. Alt is done. It's really up to you.

Chair Rohlf: I want to be fair to the people who have come this evening, but I also know we tend to follow the by-laws and leave at 10:00. I always ask that the people speaking at the Public Hearing try to keep repetitive comments to a minimum. I don't know how many of your comments are similar or how many are in favor or opposed. I would like to try to get through the Public Hearing part if we can. I think we should start and see where we end up.

Motion to extend the meeting to 9:30 made by Williams; seconded by Elkins. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Chair Rohlf: Please note that Mr. Elkins has returned. We'll let the Applicant finish his presentation then move to the Public Hearing.

Applicant Presentation

Mike Alt, representing Sprint Engineering at 6240 Sprint Parkway, Overland Park, KS, appeared before the Planning Commission, provided a PowerPoint presentation and made the following comments:

Mr. Alt: I'm here to provide the technical aspects of the application as well as to answer any technical questions you may have. To start with, this is a similar map to what Mr. Holland demonstrated (*refers to aerial map*). This purple line represents the coverage target for the actual proposed site as well as the actual proposed location. This next map (*refers to prediction map*) is a representation of what propagation prediction shows. On the left-hand side, it shows the prediction today without this site activated. The right-hand side is with the site on-air according to the prediction. These maps are very similar to weather maps with the colors representing various densities of coverage. On these particular cases, green and yellow represent residential, in-building coverage. Red is more marginal, and blue is difficult, if not impossible, to make a call in the house. What you can see here is this site actually fills in a significant coverage gap, including areas where it is almost impossible to make a call without the site. This map here is a representation of a prediction, but in order to take it one step further to make sure the site will actually do what we expect it to do, we conduct drive tests. The crane test Mr. Holland mentioned served two purposes: to superimpose what the tower will look like, and also to use an antenna to collect data to test the coverage at that height. The left-hand shows here (*refers to map*) is a drive test of what the system is today with the one Monopine on the air. The colors are similar to what we saw on the coverage predictions where green indicates good coverage and red is more marginal. This is how it stands today, and this is the proposed application. This top right represents what we had

collected based on this carrier wave test. This is a realistic view of the coverage once the site is up. I know it's somewhat difficult to see specifically because you see these red areas and blue areas. We're incapable of collecting both the transmitter signal and the network signal at the same time. What you have to imagine is to aggregate the two together.

As part of the application, we wanted to address the questions about the overall plan for Leawood in many instances. This is a representation of the sites that are in planning phase (*refers to map*). This is the site we have the application for tonight. These sites here (*refers to map*) represent sites that we would like to have as part of an overall plan for Leawood. What I would stress is they're very much in their infancy and have a significant amount of due diligence necessary for us to make these realistic applications. The only one that we would say has the diligence is tonight's application. This is part of the questions that have come up regarding the plan for Leawood.

I'm happy to answer questions you have.

Chair Rohlf: We will open the Public Hearing. I think I'll do this a little bit differently than we did before, hopefully helping to keep repetition to a minimum. I'll start with people who are here to speak against the plan, and then we'll move to those in support. If I could have a show of hands on how many are here to speak against the plan, I would appreciate it. I think we'll start over here with you, sir.

Motion to open Public Hearing made by Jackson; seconded by Williams. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Chair Rohlf: We'll start with the gentleman in the blue shirt. If we can keep our comments short, I will not turn on the timer. If I get a sense of repetition, I will ask for the five-minute timer.

Alan Todd at 12314 Mohawk Lane, Leawood, KS appeared before the Planning Commission and made the following comments:

Mr. Todd: I live pretty much right behind the maintenance facility at 193 feet. It's awfully close for a cell phone tower to be near the home. When I moved to Leawood South five years ago, that was not an issue. I talked to the past President of the Board. He said to me, "It's a maintenance facility. You've got a golf course view somewhat. That's what it is, and it won't ever be changed." Now we've got a new regime and things are changing. I'd like to show some pictures of what I look at (*shows photographs*). I allowed Paul to take pictures, and they were on the good side. I've got some pictures of what I see in the wintertime. There are no trees to block this Monopine. The maintenance facility is what it is, and I've worked with the Superintendent of the golf course to try to get trees put up. I've split the cost with him, and we put a dozen pine trees up that all died. Now I've got pine trees I've purchased on my own to put on my property that are doing fine. We've tried to put up a shield, and it didn't work out.

Chair Rohlf: Mr. Todd, is that your home in the picture?

Mr. Todd: Yes, it is. We deal with a lot at the maintenance facility already. They've got chemicals, noise, trash – you name it, it's back there. In the summertime, there's a

green shield, but in the wintertime, we see things like this (*refers to photograph*). My big concern here is that they put a cell phone tower in, put up a few pine trees, and then it gets rezoned and they want to put another one on the course for Verizon or Sprint. We can only have two carriers on one Monopine, so where will this end? I suggested this at the meeting at the club – we've got Tomahawk Creek Park close that is city-owned property. Why not put a large tower there and not have all these small towers? It's just an idea. We've got a huge one at the city park right off 435. It's at least 150 feet tall. My question is when is enough, enough? It seems to me it's all about money for the country club. I don't know how you would feel having a cell phone tower 193 feet from your home, but that's not why I moved to Leawood.

Chair Rohlf: Does anyone else wish to speak against the plan?

Heather Kays of 12311 Mohawk Lane, Leawood, KS appeared before the Planning Commission and made the following comments:

Ms. Kays: Originally I was indifferent on the tower. I had seen the one on the fifth fairway, and I was impressed that it has a good feel now. Our concern is in the winter when the trees lose their leaves it will stick out. Also where the tower is proposed, it's in my front yard. I see it when my children play, when I let the dogs out and from the driveway of my house. It sticks up significantly higher than the other trees in the area that are not evergreens. I can't see it from my back yard unless I go clear out to the golf course and looked at it. I think the concern is for how it looks, but also mostly because of property value. I am a realtor with Reece and Nichols. I have bought, sold and lived in three properties in Leawood South myself and know how important it is to have everything going for you. If I have to disclose that there is going to be the potential of a cell phone tower, is that going to make someone decide not to look at the property? It does affect people's perception. I know of a property on Hollow Drive where the owners sold their house when the tower was proposed over the fire station of 127th and Mission Road. They back to 123rd, right across from the fire station didn't bother them; but the idea of a proposed cell tower would cause them to uproot their family and move on. I also know of another house on Pembroke Court on the fifth fairway that had to disclose a potential cell tower. I had clients interested in the property and opted out of making a bid after reading the disclosure.

We know obviously there's no known health concern, nor can we prove that. Still there may very well be in the future, and I don't want to take that risk if not necessary. That's a real concern for me. The tower on the fifth fairway is also not in somebody's front or back yard. It's not near as close to the properties as the proposed tower is to ours. I've purchased my home in the last year and have put close to \$100,000 in remodeling to increase its value. My concern is that the tower would change it. There is a line in the current appraisal that asks about backing to major roads, busy streets or commercial. That may change in the future, and I don't want that to happen.

Chair Rohlf: If I could see a show of hands, please. We'll start with the gentleman in the first row of that side.

Samuel Schissler of 3613 W. 122nd Terr., Leawood, KS, in Bradford Place appeared before the Planning Commission and made the following comments:

Mr. Schissler: I wanted to give my perspective because most of the people here live in Leawood South. My property backs up to 123rd St. I have a direct view of the proposed tower and the maintenance shed. I wanted to reiterate that what Mr. Todd said is absolutely correct about the lack of screening in the winter. To put in a commercial thing like a cell tower, even disguised as a pine tree, will be more visible in the winter. It does stick out substantially higher based on the crane test. The biggest trees are deciduous, and you'll have an artificial Christmas tree sticking up in the winter months.

Dennis McBride of 3805 W. 123rd St., Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. McBride: I'm the closest one to the property. I have a couple concerns including the zoning going from the R1 to the Recreational. When I bought the property from the club, it was four acres of R1 and was supposed to always be R1. You can see a sliver by the creek that would turn R1 directly around my home into Recreational (*refers to map*). Several developers were brought in, and they all wanted us to take that and give a new facility up by the driving range. They wanted to trade it. I told the President I'm not interested. I said I would build one house if they were interested. A year and a half later, his plan didn't work. He called me, and I purchased it. That's how I got here. Sixteen years ago there was a sewer treatment plant. Mr. Holland, when did you do your site plan where you show 242 feet to my house?

Chair Rohlf: One clarification point, please.

Mr. McBride: Was that done six months ago? A year ago?

Chair Rohlf: I would think it would be in the time of this application. Mr. Holland, do you wish to comment?

Mr. Holland: The site plan has been revised and updated to show the pine trees next to the Todds' property within the last 30 days. Prior to then, the site plan was done at the time of the application. The measurement was done afterwards, so within the last six weeks or so.

Mr. McBride: The reason I say that is it's incorrect (*refers to map*). Here's the front of my home, and right here is a 50' garage with a trellis walkway. So the drawing that you showed earlier is incorrect. In talking with the Sprint people, I asked how they were going to put it in. I asked if a big helicopter would drop this in. They said they would only drill a hole. There's going to be a lot more damage than, I believe, they are speaking to. I'm not a tree expert, but I've put in a lot of roads. To put in what they want in solid rock, they were going to core drill it. Just to get the rig up there, you'd have to make a huge base. Then they were going to build a wall around it with a footing. In the building of it, you're going to have a tree sticking up there. I'm not worried so much about that. I'm worried about in July when it looks like St. Nick should be there and there are no trees. I'm also concerned about the rezoning because of what could happen when they don't need it. In five years, if they don't get a special use permit, they won't have it. Let's go a step further.

Chair Rohlf: Mr. McBride, I don't mean to interrupt you, but we do need to move to continue the meeting for another 30 minutes.

Motion to extend the meeting to 10:00 made by Williams; seconded by Elkins. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Chair Rohlf: If you could wrap up your comments very briefly, we'll move on.

Mr. McBride: There are no stipulations that I know of to require them to take trees out and so forth. If they don't need it in five years and new techs come up with cell towers the size of toothpicks, now you've got this structure. They're out of their lease and they're gone. I don't believe it's been thought out that thoroughly if they can't even get the site plan correct and answer some other questions about what will happen.

Chair Rohlf: I know it's hard when you want to speak to continue to say the same things, but once we've heard them three times, we really quit listening. If any of your comments have already been said, please pass. If you do have something new to say, we'd like to hear it. I'm not sure we're going to get done if we continue down this path. How many do we have left on this side? We'll start with the women here.

Karen Tobler at 12316 Mohawk Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mrs. Tobler: There is a radio tower on top of the maintenance shed probably 15' high. I can see that in the winter now. The area behind the maintenance shed slopes up to the east. That is a virgin woods, never been plowed. I am a Johnson County Master Gardener with Extension, and I was looking at the trees. They put a road so they could get the crane back there, I'm sure. About 10 feet from that road was a burr oak I could not get my arms around. I've learned that the majority of a tree's roots are within the first 3-4 feet of the soil. When you go in these virgin woods and start digging and tearing up roots, you're going to make that tree deteriorate, and a burr oak that size is maybe 150 years old. Just because the pictures now show the Monopine pretty well covered up, in the winter it's not covered up. Those trees could easily die, and I doubt that Sprint is going to come in and put the large trees back in. My Verizon network works fine in my house.

Chair Rohlf: Anyone else?

Sheldon Bernstein of 12209 Mohawk, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Bernstein: I've got one of the best views of the Leawood Golf Course maintenance place, and I'm not against that. The problem I'm having is I've watched 123rd St. go from a two-lane street to where it is today, which is a highly congested street. We've got the police, fire and school buses that have to use that route. Now we're going to put a telephone tower right up to the street, which is going to cause us further congestion with the construction. I would ask that you consider that because it's a problem I don't think anyone can do anything about. No one would have ever dreamed that street would get to this point, and this would further compound an existing problem. I would think we could put that tower someplace else.

Chair Rohlf: Who else is left on this side?

Todd Huff at 12208 Mohawk, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Huff: We've lived there for about two years. My opposition comes with some experience. I've seen relatively upscale neighborhoods in the Chicago area kind of slide back by putting commercialism and other things ahead of the residential needs for the area. That's one of the main reasons we chose Leawood – for the livability and the very structured planning that goes on here. I'd echo the comments of the real estate agent, as I checked zoning when I first looked at properties. I am also deeply concerned about resale value and the impact this will have. When I step out my front door, I have a clear view of this tower. I think it will be an eyesore in the winter. My real concern is I just don't understand, after looking at the coverage map, that this is going to boost Sprint's coverage quality for maybe 50 homes. It seems to be a lot of effort. The existing signal can be boosted from their current infrastructure that would make this all unnecessary. I don't understand going through all this rezoning, which I strongly oppose. The health concerns are debatable, but they are considerable. I think some families would be deeply concerned if they were going to move into that area knowing that a high-frequency radio tower was going to be impacting their children when they play outside. I don't know if Sprint would like to address the issue about boosting their current signals. By the way, no one contacted me. I live in front of the tower. I got the letter in the mail, and that's why I'm here. I do have one question for the Commission. It seems like the existing eyesore – the maintenance facility- is that in opposition of current zoning?

Chair Rohlf: I don't know the answer to that, sir.

Mr. Huff: The gardener brought up some good issues. It seemed to me that Sprint was already compromising on the size of this tower. My concern would be the next step is to start cutting down trees because investments they made were not adequate. I strongly urge the Commission to consider all the residents that we want it to remain residential.

Chair Rohlf: All right.

Harry Sharp of 12200 Mohawk, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Sharp: I'm going to see that junk tower the rest of my life. I moved in town from Stilwell on 120 acres. We live within 1,000 feet. It's going to be another nuisance. When you get the tower there, you change the zoning. I've been around a lot of zoning boards, and you change the zoning a little bit and something comes in beside it. I'm definitely against it. I think it's a bad thing. I think they could get the power elsewhere or get along without it. I also know there's a lot of money in these towers. I don't like the one in my front yard, and neither do my friends. I think you were appointed. If you're going to be appointed to express the views of the 25 people here who are against it, then you cannot be afforded.

Chair Rohlf: All right, is there anyone else?

Carla Rauth of 12308 Mohawk, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mrs. Rauth: We've been residents 22 years in the same house in Leawood South and have seen a lot of changes in Leawood. One of the things in Leawood South that is exceptional is the quality of the trees and the landscape. I've watched all the attention paid to the landscaping that the developers are putting in all these areas that you're considering. They talk about throwing in a few more dollars here and there for landscaping to make it look better. My concern is part of what Leawood South is really known for is its beautiful trees. I totally agree that we don't know which trees will be moved, and we don't know how many there are. We don't know what the coverage change will be. The pictures here are in the summer, but they show full coverage with no trees removed. I would like this group to know that I appreciate your work for the city, and I appreciate the opportunity to speak as a resident. I play by the rules as a resident. I try to keep my property up and do the right thing. I ask you all to consider for the long run, yes, we need to be able to talk on our Sprint telephones, but do we need to compromise what our city is known for that we can't replace?

Chair Rohlf: All right, thank you.

Tom Tobler of 12316 Mohawk, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Tobler: We've lived in Leawood for 22 years, and one of the things we've always believed about Leawood and trusted is that you all are good stewards of our investment in our property and good protectors. I didn't know anything about cell towers. I saw the crane and didn't like the looks of it. On either side, you can find a lot of good information that these things will or will not harm you health-wise. On the standpoint of property value, there's an argument for and against it hurting you. You can build a case on either side of this argument. We can't look into the future and don't know what someone is going to dig up six months after this is built that could harm everyone in proximity. That's one thing we really need to look at. We don't know what this thing is going to look like in the fall. At the very least, from my standpoint, I would like to see what it's going to look like in four months. I appreciate the opportunity to be heard. We're against it. Thanks for your time.

Chair Rohlf: Have we finished up everyone who would like to speak against the plan? I note that it is not 9:50. We are not going to get done this evening. I would anticipate that we will need to continue this meeting to a later date. I'm sorry we didn't make it through the Public Hearing and continue for final comment and vote.

Mr. Klein: The next meeting is the September 9th meeting. Again, there are quite a few LDO amendments on that.

Chair Rohlf: Are those Public Hearing?

Mr. Klein: Yes, they're all Public Hearing. We could try continuing until the 9th and then see how it goes.

Chair Rohlf: I think to be fair, I would like to continue this to September 9th and make it the first agenda item so we can get through it and completed, even if we have to hold a special meeting on the LDO amendments later in the month. Yes, Mr. Holland?

Mr. Holland: We heard a lot of comments. I think there are some in the audience who are going to speak in favor of it. I'm not sure if they would have the opportunity to come back. From our perspective, if you could let the folks speak who could not come back? We're fine to table this to a less congested hearing date. If it's the 23rd, we could wait until then to hear this.

Mr. Klein: Actually the 23rd is stacking up as well.

Mr. Holland: We've been waiting a long time, but we could go back to October. We have the flexibility.

Chair Rohlf: I know we have a notice requirement here. Would we have to re-notify?

Mr. Klein: Actually if it's shown as a continuance, it wouldn't require re-notification. We would need a specific date.

Chair Rohlf: Our best guess would be the next one.

Mr. Klein: The October Meeting would be the 22nd.

Chair Rohlf: I don't know how much was originally on the 23rd.

Mr. Klein: On the 23rd, it really depends. You could have cases drop off. We could talk as far as the LDO amendments to see if they could get pushed.

Mrs. Shearer: There are no legal ramifications to moving the LDO amendments; it's a matter of scheduling.

Mr. Holland: I know your next two meetings are congested. We could go to the 23rd if that helps you.

Chair Rohlf: I actually think that's a more difficult agenda because of the two items we continued tonight.

Mr. Holland: I'm saying whatever October meeting you have.

Mr. Klein: That is October 28th, and we also should have a second meeting on October 14th. Both October meetings, I have no clue of what would be there.

Mr. Holland: Why don't we try the 14th if that's your inclination. I know it's getting late and you need to vote on that. I know there are others here who might want to speak to it, and this may be their only opportunity to be here.

Chair Rohlf: I think it would be unfair to continue with the Public Hearing at the point, as not everyone will get to speak.

Mr. Holland: So if they are here to support and cannot come back for the next meeting, then we are at a disadvantage.

Chair Rohlf: I know, and that's why I was reluctant to start this case in the first place because I thought it would be unfair to everyone, including us. Yes, sir, in the back?

Unknown speaker: Could you clarify the current status of the project from the city's perspective?

Chair Rohlf: We have not reached any decision. We have not even finished the Public Hearing.

Unknown speaker: The Staff recommendation is to approve?

Chair Rohlf: That is correct, but we are far from taking a vote on that. We have not had a chance to ask questions ourselves of the applicants. I was trying to give those of you who were here tonight an opportunity to speak. I know it's been a long evening. Yes, sir, in the back?

Unknown speaker: So if it's two months, are all these comments forgotten?

Chair Rohlf: No, there is a record of this meeting that we will, in fact, be given when we get our next packet.

Unknown speaker: It kind of loses impact.

Chair Rohlf: I know, and that's why I was reluctant to start in the first place.

Mrs. Shearer: Everything that was stated tonight is part of the legal record. We do distribute whatever was said at a Public Hearing that was continued to the Commission prior to any continuance of the Public Hearing in the case. Just the way that our by-laws state, we have to end at 10:00; this is the risk that we run in any case, even if we started at 6:00. The Planning Commission will have all this information available for them as we continue this case at the future meeting date.

Chair Rohlf: The people who have spoken this evening, will they be given another opportunity, or will their comments be part of the record and so stated?

Mrs. Shearer: Their comments are part of the record. If you wanted, as a Commission, to give opportunity for further comment by same and additional people, that's permissible.

Chair Rohlf: All right, then we will continue this meeting. Mr. Todd?

Mr. Todd: Can we get a copy of what you're going to see if it's going to be two months from now so we can see it ahead of time?

Miss Shearer: Yes, that's public record; so anything that is transcribed here this evening is available to the public.

Chair Rohlf: I do apologize ahead of time for those of you in the audience who wish to speak in support of this plan. I know there are a number of you. We do have materials up here in support of this plan, so there is plenty of support as well as opposition. I apologize, Mr. Holland, that those comments will not be heard this evening. All we can do at this point is hope that everyone can come back to the October 14th meeting.

Mr. Klein: Actually, if somebody can't make the meeting, they always have the option of writing a letter or e-mail that would also be included in the record in the package that goes to the Planning Commission as well.

Chair Rohlf: Then I would ask for a motion to continue this case until October 14th.

Motion to continue CASE 62-08 – LEAWOOD SOUTH COUNTRY CLUB – SPRINT WIRELESS COMMUNICATION TOWER – Request for approval of a rezoning, special use permit, preliminary site plan, preliminary plat, final site plan and final plat; located at 3801 W. 123rd Street to the October 14 meeting was made by Elkins; seconded by Williams. Motion passed unanimously with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman.

MEETING ADJOURNED.