

**City of Leawood
Planning Commission Minutes
September 23, 2008
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

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

APPROVAL OF THE AGENDA

Chair Rohlf: I believe there is one change in our last case under Current Business – 73-08 – CVS Pharmacy has been continued to October 28th. That's the only change.

Motion to approve the agenda with one change: continuing Case 73-08 – CVS Pharmacy to the October 28, 2008 meeting made by Roberson; seconded by Williams. Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

APPROVAL OF THE MINUTES: Approval of the minutes from the August 26th meeting.

Motion to approve the draft minutes of the August 26th meeting made by Elkins; seconded by Heiman. Motion passed with a vote of 6-0. For: Shaw, Jackson, Neff-Brain, Williams, Elkins and Heiman. Abstaining: Roberson.

CONTINUED TO OCTOBER 07, 2008 MEETING:

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

CONTINUED TO OCTOBER 14, 2008 MEETING:

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

CASE 54-06 - LDO AMENDMENT – SECTION 16-2-10 – ARCHITECTURAL STANDARDS – Request for approval of an ordinance to the Leawood Development Ordinance. **PUBLIC HEARING**

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

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

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

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

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**

CASE 77-08 LDO AMENDMENT – SECTION 16-2-5.1 AG – HEIGHT; Request for approval of an ordinance to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 66-08 – BI-STATE CENTENNIAL PARK LOT 12 – Request for approval of a preliminary site plan and final site plan; located north of 141st Terrace and east of Overbrook, within the Bi-State Business Park Lots 12. **PUBLIC HEARING**

CASE 71-08 – VILLAGGIO – NEIGHBORHOODS AT SHARON LANE – Request for approval of a special use permit, preliminary site plan and final site plan; located south of 137th Street and east of Roe Avenue. **PUBLIC HEARING**

CASE 81-08 - LDO AMENDMENT – SECTION 16-4-9.3 FENCES AND WALLS - Request for approval of an ordinance to the Leawood Development Ordinance. **PUBLIC HEARING**

CONTINUED TO OCTOBER 28, 2008 MEETING:

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

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.

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 73-08 – CVS PHARMACY – Request for approval of rezoning, special use permit, preliminary site plan, and preliminary plat; located on the southeast corner of 151st Street and Mission Road. **PUBLIC HEARING**

CURRENT BUSINESS:

CASE 72-08 – GEZER PARK – Request for approval of revised final site plan; located on the southeast corner of 133rd Street and Mission Road.

Staff Presentation:

Senior Planner Jeff Joseph made the following presentation:

Mr. Joseph: Madame Chair and members of the Commission, this is Case 72-08 – Gezer Park. The Applicant is the City of Leawood and is requesting approval for a revised final plan for Gezer Park, located at the northeast corner of 133rd Street and Mission Road. If you'll recall, last year a final site plan was approved for this park. With this revised final plan, we have some additional changes that have been made to the plan. One additional shelter has been added between the restroom and the shelter on the west side. Also, a fire pit is shown on the plans adjacent to Mission Road. Bridges have been added where the walkways cross the creek locations. Also, some additional information about the monument sign has been provided. The Parks Director is here to answer any questions you may have. Staff is recommending approval of this case with stipulations.

Chair Rohlf: Questions for Staff?

Comm. Neff-Brain: If you're going to use the fire pit, do you bring your own logs? If you leave before it goes out, what's the deal with that?

Chris Claxton, Director of Parks and Recreation appeared before the Planning Commission and made the following comments:

Ms. Claxton: That is designed to be used during a ceremony. I would recommend to the City Administrator is that would be with a permit only as issued by the Fire Marshall.

Comm. Neff-Brain: And would it be covered so someone couldn't use it without the permit?

Ms. Claxton: Most likely, yes. We did use it about a year ago when we had a ceremony there with park staff. We also had the Fire Department come afterward to make sure it had been extinguished. That's why it's important to have the permit issued because that would trigger the Fire Department to come by afterward and making sure it's properly extinguished and covered.

Comm. Neff-Brain: That would be my concern if it weren't covered – people getting into the park with the flames still lit. Also, what's a wadie?

Ms. Claxton: A wadie is an area that carries water from one end of the park to the other, and it will re-circulate and end in that area that's going to house the sculpture.

Comm. Neff-Brain: I've asked Legal Counsel to check into this. Anything that's in the park, I assume, is all neutral as far as any religious connotation.

Ms. Claxton: That's correct. There are two items that you might be referencing. One is the piece of public art called Steps and Stones, which the Planning Commission approved several years ago. It is completed and will be placed in very shortly after this Phase 1. The other is the Harvest Calendar. Roger, could you bring that up to me? We have a small replica of it. It's supposed to be about 8' tall and 4' wide. It is exactly what it sounds like. It has some language back here (*refers to calendar replica*) that talks about two months harvest and two months planting. That's what will be on it, and I don't believe there will be anything else.

Mr. Lambers: Actually it will be in Hebrew. We'll offer a translation around the side so people know what it says. This was a calendar that was found and is believed to be a student's project to document the different seasons for harvest about 1,000 BC.

Comm. Roberson: Are we going to allow charcoal grills at the shelters?

Ms. Claxton: Yes.

Chair Rohlf: Ms. Claxton, would you mind going over the phasing again and where we stand? I know the project has been on hold for a while.

Ms. Claxton: We have separated the project into two phases, if you will, primarily to make sure we can utilize this fall to do the site work, the rough grade and utilities. Also with us tonight is Roger Cassidy of Phelps Engineers and our landscape architect with Indigo Design and Christian with Clockwork Design, who did the buildings and everything. They can answer some of those detail questions as well. The buildings themselves – the three shelters, the restrooms and the actual re-circulation of the water would come in Phase 2. We actually expect to bid Phase 2 toward the end of October. We're traveling one package right after the other in order to try to meet our late April deadline of having the park completed.

Chair Rohlf: This is the first time we've seen the materials, right?

Ms. Claxton: That's correct. I know Mr. Joseph mentioned to you that we're back for the revised final, but it's also because we did not have those for you previously when we met with you on June 12, 2007; so we wanted to bring those materials back to you and let you review those tonight. Christian is here from Clockwork if you have any specific questions about the buildings.

Comm. Williams: Chris, I wanted to go back to Ken's question on the grills. Are these freestanding, permanent park-installed grills, or is it that individuals can bring their own grills?

Ms. Claxton: No, it would be our standard of grills that would be next to the shelter. Potentially there might also be a grill inside the fire pit for those activities, correct, Scott?

Mr. Lambers: It's possible in the future, but for now it's just viewed as a fire pit available for open fires. When ceremonies are held out there, they may actually need to cook something in the fire pit.

Comm. Williams: The shelters having grills, then – is there going to be a depository for putting these charcoals when people are done? Are you expecting them to blow out? I happened to be in the Shawnee Mission Park for an event, and I noticed all the charcoal is built up from use. Given the neighborhood location of this, I assume that's something we don't want to have occur?

Ms. Claxton: That's correct. We typically go over all that information when we rent or use the shelters. We also have our part-time staff maintenance that goes through the shelters and does a good job of keeping those clean in our other parks.

Chair Rohlf: Thank you. This takes us up to any further discussion and a motion.

Motion to approve Case 72-08 – GEZER PARK – Request for revised final site plan for park by Roberson; seconded by Williams. Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

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.

Chair Rohlf: Commissioners, you should note that there is a letter from Mr. Petersen covering both the Discover O and Walgreens cases. I'm sure Mr. Petersen will talk about it a little more.

Comm. Jackson: Madame Chair, I'll just put on the record that those memos are awfully long, and there really wasn't time to review them in their entirety.

Chair Rohlf: I understand. We'll see if Mr. Petersen can shine some further light on them. If not, perhaps we'll take a brief recess so everyone has the opportunity to read them thoroughly.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 44-08 – Town Center Business Park – Discover O. This application was on the last agenda; however, it was continued to this meeting. The Applicant is proposing construction of a 2-story, 30,000 sq. ft. medical office building on 2.5 acres for an F.A.R. of .28. This building is located just to the east of the proposed building that you saw at the last Planning Commission for the Walgreens which sat right on the corner of 117th and Roe. The building's entrance is located in the southeast corner of the building and has a porte cochere that extends out into a parking lot that's located on the east side of the building. There is a substantial grade difference between this building and the residential development to the east, which is the Tomahawk Creek Condominiums. The parking lot sits about 18' higher than what the parking lot is showing for the Discover O building, and the building itself is approximately 26' higher. The Application is showing this with two different versions of what's adjacent to it. One to the west is the Walgreens that they proposed at the last meeting, and the other is what's currently approved as the master plan for the Town Center Business Park. That's the reason you have two different cases shown.

I did want to draw your attention to a letter submitted by the Applicant regarding this case. There are actually two – one for Walgreens and one for Discover O. I'll run through the major responses they have highlighted. The first one indicates that the street trees are at 35 linear feet. That is true for most of it; however, there is one tree I saw on the west side of the drive which is the reason for the statement. There is also a low point that was shown within a drainage swale, causing me to question whether a tree could be planted. Landscaping, however, is something that's usually approved at final plan and will be more fully addressed at that time. They're also indicating that the city is requesting an additional 15' of right-of-way, which is one of the key issues with this development. The Applicant is only proposing to have 5' of right-of-way. It's the city's position that the city does need this extra right-of-way for future development, for

street widening, for sidewalks and for utility easements. We believe they would have enough room if they adjusted their site a little bit. Actually with the Discover O, they're pretty much at that point. The utility easements would be within a 15' utility easement. They're proposing a compromise in which they'll provide 5' of right-of-way currently with an additional 10' of right-of-way to be provided in the future. They wouldn't move the buildings or the parking and therefore have a parking setback that would go from 25' in width down to 15' in width. This is actually more than what the LDO allows for deviation, and therefore I don't believe the City Council would have the ability to grant that deviation. Staff feels like the development in Leawood is of high quality, and we try to stick with the Leawood Development Ordinance as much as possible. It's a little dangerous when you start deviating from the Leawood Development Ordinance because then suddenly you start setting precedents against that.

Once you have the utility easement in that area, then you also have to have landscaping. They're also showing some post-construction standards as far as swales for drainage within that area as well, which I think makes it a little bit more difficult. We have developed a graphic that indicates where we feel the buildings can go. Jeff will pass that out right now.

One of the other main issues with this development is what we call the 60/40 rule, which is 90' from the property line you either have to have building or landscaping condition for at least 60% of the property, leaving only 40% allowed for pavement. The applicant isn't meeting this; in fact, the majority of the site has a drive that runs right in front of it. The Applicant is stating that they believe this is going to be required whoever goes in that development. I don't know that we could know that for sure just for the fact that there are a lot of different ways you could arrange buildings, depending on the use of the building. It also ties into another fact that the Applicant has indicated that although they are showing a shared drive, it's with the development to the west, which is the Walgreens or the Master plan that's shown for Town Center Business Park and that it's split between the two property lines. The Applicant has said this is typical of developments, and although it is typical with a single application and a development actually tying these lots together, you have a situation here where the Applicant has requested they be separated. You have potentially different owners of the site, and then there's nothing saying that just because Discover O gets approved that Walgreens will get approved or that even if they both did get approved that one of them could get a different owner and suddenly you don't have that connection anymore. Staff feels it's important to have the drive fully on one lot or the other. Staff is recommending denial of this application and will be happy to answer any questions.

Chair Williams: Mark, clarify for me the heights. I caught an 18' and I believe a 26'.

Mr. Klein: The 18' is the easternmost portion of the parking lot as measured from where the condominiums sit to the east. There's a substantial grade change there. They'll be adding some retaining walls along there that vary in height from 8' to 20' in height. Then as it slopes up to the west, the building will actually be approximately 26' higher.

Comm. Williams: So the floor line of the building will be 26'.

Mr. Klein: Correct.

Comm. Williams: Regarding the retaining walls, where do we begin to get a 20' retaining wall?

Mr. Klein: The retaining wall would be 20' to the northwest corner of it. Part of that would be located farther down on the hill, so it's not like it would be sticking a wall on top of the elevation change.

Chair Rohlf: Have we talked about the F.A.R. on this project at all?

Mr. Klein: I'm sorry, that is another major issue with this. Currently what they're proposing is to leave this site zoned SDNCR, which is Planned Neighborhood Commercial Retail and has a maximum F.A.R. of .2. The Applicant is proposing a 30,000 sq. ft. 2-story building for an F.A.R. of .28, which is considerably more. The Leawood Development Ordinance does allow F.A.R. bonusing; however, it also requires that certain things be given back for those bonuses. In this case, nothing has been provided.

Chair Rohlf: So we have a number of deviations being requested, at least one of which can't be granted by the Council.

Mr. Klein: Yes, basically the Leawood Development Ordinance allows a 75% deviation to paved or building setbacks from a public street, and this exceeds that.

Chair Rohlf: Does anyone else have questions for Staff? All right, we'll hear from the Applicant.

Applicant Presentation:

John Petersen with Polsinelli Law Firm, 6201 College Blvd., Overland Park, KS, appeared before the Planning Commission on behalf of the Applicant and property owner, MD Management and made the following comments:

Mr. Petersen: Also appearing this evening is Mr. Jim Harpool, who represents the ownership group of the property; Brian Forqueur with LUTJEN and Associates, who served as our Civil Engineer and Site Planner and Jeff McCarrow with TranSystems, who has been consulting with us in terms of the proposed road improvements, right-of-way issues and other issues that have come up that involve the potential traffic impacts of this project. If I could ask for a little bit of assistance, I'd like to use the overhead.

Madame Chair and members of the Commission, what I placed in front of you is a copy of the currently approved plan (*refers to site plan overhead*) for these three tracts of property that, as Staff has indicated, sit at the northeast corner of 117th and Roe. I think it's important to start with this site plan because it does set a context within which we have made two separate applications for what we feel is an improvement in terms of the plan that's currently approved for this corner, both in terms of design elements and functionality. Also, this is a real plan that actually has users behind it ready to bring new business opportunities to the City of Leawood and provide a new home for a current corporate citizen, namely the proposed business user of this specific application, Discover O.

I want to digress just a minute, though, to talk about what Staff has seemed to suggest is a negative in terms of the procedural approach requested by the Applicant in the fact

that we filed two separate applications. There's a very simple reason. I don't want to get into it because it's not worth your time. I think it was Staff who requested we file separate applications, but I ultimately agreed with them and so I'll take responsibility for it. We are dealing with a preliminary plan that covers these three retail pad sites that have been approved for some time and subsequently revised and re-approved as recently as 2004, comprehensively including this property and the property across the creek that is now occupied by some office buildings and the retirement home. As we look at the impact of this plan, it's important to keep in mind the original approval that contemplated retail along 117th and Roe in this facility. The reason we have two separate applications is it is our desire to receive approval for a pick-up window, which is typical for a pharmacy. We have to rezone this particular tract of ground to take it into the zoning category for which you even have the right to apply for a special use permit for the pick-up window. This plan here on these two tracts (*refers to site plan*), which contemplates combining the two tracts for single utilization for Discover O is a revised plan for not only this, but of all of this development.

As part of this revised preliminary plan for approximately four acres here, we're substituting two approved retail buildings. I ask you to note where those retail buildings sit, vis-à-vis their interface with 117th Street (*refers to site plan*). It's a plan that continues to make sense since it was approved because that plan capitalizes on the same circumstances anybody would be faced with to develop this corner. Namely, because of your proximity to 117th and Roe, you only have one point of ingress and egress that will be a full movement function, meaning you can turn left in, you can turn left out for any of this property here. That's located right here (*refers to site plan*). This original plan contemplated so this could be utilized by not only these two buildings here, but also a building on the corner. There would be cross access so that patrons of this retail facility could come back and utilize the full movement intersection here. Then both parties could utilize it with cross-access agreements. Notice the driveway splits the current property line here as it comes in off the public street so both sides could access that right-in, right-out access to the public street system. This plan has a 17,000 sq. ft. retail zoned building with a drive-thru facility.

(*Refers to Preliminary Development Plan*) What we brought before you last time is a concept taking those two retail buildings and combining the lots. There's some confusion in the Staff Report about property lines. Of course, we would agree to the stipulation that before Discover O would be allowed to be final planned or built, we would re-plat the lots and combine them into one lot so you wouldn't have parking spaces crossing over what now is a property line. We would lay in the Discover O building, which is an allowed use under the current zoning classification. We'd situate the building, respecting the very issues that were recognized and addressed in the original approved plan - that we will have not only patrons of Discover O utilizing this intersection here (*refers to Preliminary Development Plan*) but also patrons of whatever utilization is ultimately approved for the tract on the corner. We hope it's a Walgreens, but whatever it is, it will have the ability for a drive split by the property line, which Staff has approved off the public street.

We've been able to eliminate many of the issues presented in the original Staff Report. We had time to address one of the fundamental issues, which is the location of the building vis-à-vis the street and try to make an improvement. We really boiled it down to four deviations that we will be speaking to this evening.

(Refers to overhead Staff Report) The first issue to take on is density, F.A.R. [Floor Area Ratio]. Staff has indicated that we need a deviation because of our F.A.R., since the requirement in this zoning category is a .20 and we're a .28. The differential is about 7,000 feet. If you just take the Discover O tract and apply the F.A.R., we're at a .28 with a deviation. If I were just bringing in that case I could make a case for a deviation allowing a bit more square footage for this utilization makes sense and could meet the elements you look at when you consider deviations. The question one must ask is, "What is the negative impact here?" It has to manifest itself somehow, and typically it's not being able to meet the green space requirements, generating too much traffic or not being able to meet parking ratios. We have none of these. If we're going to say this is a deviation, I'm going to ask you to take into consideration the design elements and the things the city looks for to make sure it's a good, balanced site to consider the deviation. The thrust of my argument is we need a deviation because you don't look at a plan that involved senior living, offices and other retail pads and pull out one component of a preliminary plan and apply the F.A.R. You apply it across the entire preliminary plan area, which is what you did when you looked at the retirement facility. You moved around density and square footage to get a balance to the overall preliminary plan. If you do that here, we fit within the square footage approved for the overall area and the F.A.R.

The second deviation Staff indicates we need to address is Number Two. This goes to this issue of the ordinance that's a "one size fits all" or a basic rule: you will have either 90' of building or landscaping along 60% of your frontage line. Everybody adheres to it unless you ask for a deviation. To look at a deviation, you look at the circumstances of the site to see if a deviation makes sense. That was a critical part of the discussion from the last meeting. What could we do to make this project better, considering the deviation? The deviation, of course, goes right back to that fundamental set of circumstances and points of consideration that were made when this corner property was first zoned back in the '90's. We've got a tight sight with a creek behind it, limiting movement to the north. In terms of moving buildings up, we've got this one point of ingress and egress that needs to be designed for circulation for all parcels in that site. We ask you to take these circumstances into consideration. I don't need to get a scale out to show you that if you put that requirement on this piece of property - I don't care who the user or the use is - that pretty much just emasculates this site because of the creek.

We looked at what we could do. We moved the Walgreens building and moved it closer to the street trying to get a bit closer to that 60/40 goal. This building (*refers to the Preliminary Development Plan*) basically lined up directly from east to west with the front or the side of Discover O. We've moved that building up and eliminated one whole row of parking in front of the Walgreens so now it's just a single drive with single parking facing into the building. Why do you have this ordinance of either a building or 90' of landscape? I would submit the goal of that ordinance is to eliminate the sea of parking. It's a legitimate softening goal, and we've worked on that with the parking and screening elements along the perimeter (*refers to Site Plan*). As you can see in this area here that interfaces to the south for Discover O, we have a 3' berm with landscaping on top. Then we pick up here a 3' screen wall that was worked in with our landscaping plan so that someone driving along 117th Street will see a building that appears to be very close to the street, a berm and landscaping and wall system that hides the parking.

The third deviation Staff has indicated is the minimum interior parking setback of 10' with 0' interior parking setback, allowing property lines to run through parking lots, drive aisles and driveways. Let me clarify we are not asking for a deviation for any parking setbacks or any drive aisles within the parking configuration. What I think Staff is referring to is that as vehicles will enter this right-in and right-out here, (*refers to Preliminary Development Plan*) it is a shared driveway which provides access to the right-in, right out for patrons of the corner lot and Discover O, which Staff says is good. We're splitting the property line so both sides have access to it. That drive continues down between the buildings, and legally that can be taken care of. That's done in every shopping center you approve with different owners owning the pads. You do it through your cross-access agreements, which we agreed to. It just starts right here (*refers to Preliminary Development Plan*) where Staff thought it was a good idea to have access to the public street and it runs down as a public drive. The drive-up window for Walgreens is not at issue here - it's not on someone else's property. I think another part of the confusion with this deviation is that these two are in two separate lots, so technically right now there's a lot line that goes right here (*refers to Preliminary Development Plan*). There is an issue with that current lot line, but if we're approved - and before the final plan - pursuant to Staff stipulations, we'll re-plat that into one lot. That issue of the deviation really goes down to this situation right here (*refers to graph*). Off 117th, it's a drive that would be utilized by patrons of both uses. As you can see, we go to the Walgreens property for the drive-up lane and pick-up window. I don't think it's busting the bank, as they say, in terms of what we're asking for there.

The last deviation is Number Four, which goes to the issue of landscaping on the perimeter. What the ordinance says, as I indicated, is you either have a 3' berm and landscaping or a 3' wall system. We have that along our Roe frontage on the west side. We have that on our 117th frontage for both applications. In Staff's opinion, the request for deviation is because in this area right here (*refers to Preliminary Development Plan*) we do not have a 3' berm or a wall. The reason we don't have that there is it sits on top of a 20' retaining wall. We have committed to our neighbors to take their suggestions for the final plan. Staff raises a big negative of the height differential between our neighbors in Tomahawk Creek and our site. Quite honestly, I would take issue with that. It's a benefit because as it sits higher and you put the landscaping up, they'll never see the parking lot because vertical separation sometimes is better than horizontal separation. We're also working with our neighbors with off-site landscaping here (*refers to Preliminary Development Plan*) that will be part of our initial development here. A 3' berm or wall at that location really doesn't provide much purpose at that height. That is the only area we need a deviation for these buffering elements.

The last issue that Staff raises in the context of a deviation is this issue of 15' of right-of-way. This is a legal position, but the fact that Staff has requested 15' of additional right-of-way by their own description to "serve future development" and our refusal to do so, but with a plan that addresses what needs to be done on the site in a different fashion, is not a deviation. There is no ordinance in the city of Leawood, or in the state of Kansas which says an applicant must deed right-of-way that's requested by the Planning Staff. What the law says is you shall do public improvements and dedicate right-of-way to support those public improvements that are necessary to support the traffic impact you will generate by your site. As we know, cities and states have other tools available to them if they have public-at-large traffic issues and need right-of-way and other things. Let me tell you what we did to work with the city and make the project work. Right now

I'm just talking about Discover O. What Staff has said is, "We want 15 more feet of right-of-way in addition to what's out there, and we want an additional through lane east to west." (*Refers to Preliminary Development Plan*) I'm not really sure why two through lanes are needed for our traffic, but we're trying to work together. "We want a deceleration lane at your driveways and also a dedicated left turn lane for traffic traveling east that's going to turn left into the site." All this is to be done at our expense, and we agreed because that's related to our traffic. Also, Staff wants the sidewalks a certain size with a certain amount of green space between the sidewalk and all those elements, and we agreed. We did all that by dedicating an additional 5' of right-of-way at no cost by the city. I don't know what the other 10' is for in this area. I know what it's for at Walgreens, and I think we've got a solution there, too. In front of Discover O, are you going to put a third lane in? I don't know, because there's no record of what you're going to do with that additional 10' of right-of-way. We've got an exhibit that shows what it does if you just give 15' of right-of-way (*holds up exhibit*). I worked with my team to see what we could do to work with this. We don't need this. We can't even identify what it would be needed for, since everything that is necessary is already there unless the city has some utility requirement to get future utilities across Tomahawk Creek. We can work with the city to get a utility easement over our 25' landscaped setback. Just a blanket 15' easement and a blanket 15' for right-of-way for some future unidentified need is not in the spirit of working together and has no legal basis for denial of this application.

This gets down to why Staff has recommended denial. There are a lot of stipulations. Staff has said in Stipulation One that it's a .28 F.A.R. and should be a .20. I don't think there's a negative impact to the community if you allow us the additional square footage. The second reason Staff has raised is that we didn't give the 15' of right-of-way. We've got all the public improvements in there in terms of what interfaces Discover O, including addressing the 2020 traffic study which is not due to our traffic, but other traffic from other areas that haven't been developed yet. The third reason is that we did not meet the building or landscaping 90' off the road. A deviation seems appropriate to me since you took that into consideration in 1994, 1998 and 2004 when you continued to approve this global plan. The fourth reason is the portion of the drive on the west side of the building located on the lot to the west. That's the issue I showed you. I don't know what they want us to do. I guess we need to curve one way or the other. It doesn't seem like a good reason to deny the application. Five, they indicate that we did not meet the 3' berm or wall requirement. It's only in the northeast portion of the site. The sixth reason is concerns over the significant grade change between the proposed project and the adjacent condominiums. We think that's an advantage for buffering.

In closing, the only stipulations we would ask consideration for modification to are Stipulations One, Four, Five, Six and 22. Other than that, the balance of the 33 stipulations is acceptable. With that, we stand ready to answer questions.

Chair Rohlf: Before I ask questions, Mr. Ley, could you clarify your position on this 15' right-of-way again?

Mr. Ley: When any development comes into Leawood, we always require them to dedicate the right-of-way that's necessary for future improvements. Our traffic model and studies that were shown to us by the developer's engineers indicates that there will be a need for dual eastbound lefts, which is on the west side. If you build the dual eastbound lefts, you do need to have an additional lane on the north side in order to line up the two through movements going westbound. The lane width of the roadway is

going to be 11', so we're requesting 15' of right-of-way, which is only an additional 4' more than the lane width. One of the problems we have with the existing right-of-way is that the sidewalk is actually sitting up against the curb, and we don't want that on a through lane. That's why we were requesting that additional 4', to push that sidewalk away from the roadway. Then on the utility easements, the reason we're requesting that is for utilities that will have to be fed to this site. There will be transformers from KCPL. In addition, ten years ago we never would have guessed we'd have VRAD cabinets. If you don't have that 15' UE, then they're stuck putting those boxes between the sidewalk and the curb and have to landscape around that. The 15' utility easement is for future use for the utilities to locate.

Mr. Klein: There may be some clarifications I could make before you start asking general clarifications. There was some talk as far as when this initial plan came through and that it was approved in 2004. There was a site plan that was shown focusing on Sunrise, which was really the focus when that plan was done. They showed Sunrise on that plan and carried over another plan that was shown for the Town Center Business Park that was actually approved in 1999. That was before the current LDO that we adopted in 2002. The city went through a major undertaking to change that ordinance for a number of reasons, one of which was to ensure that whenever deviations were considered, that the city actually only granted those deviations when the city got something back for them. The initial plan is shown here (*refers to Preliminary Site Plan*). This is the same layout that they're proposing for the Master plan. It was shown on the plan that was approved in 2004; however, really the focus of that case was Sunrise Assisted Living. Also on the record at that time was an agreement that they wouldn't use any of the square footage and subsequently shifted to another portion of the site. As far as taking Sunrise Assisted Living and moving it to one of these buildings, on record they agreed that it would not occur.

Another clarification is on the F.A.R. Really what we're looking at is these two lots located right here (*refers to Preliminary Development Plan*). They're currently zoned SDNCR. This one on the corner is also zoned SDNCR, and they're proposing to rezone it to SDCR (general retail)]. There is no confusion on Staff's part as far as this property line. It simply is a requirement that we'd want the parking on the same side as the building and that you wouldn't have the porte cochere extending over a lot line. That's usually done at final site plan, but it's Staff's responsibility to call out what LDO is and to provide that information. The F.A.R. is .28 on this, which is substantially over the F.A.R. limit for the SDNCR district, which is .2. It came out a little over 8,000 square feet as a difference, and with 30,000 square feet for the building, that's a significant amount of extra space. They also made the comment that you should take the entire development as a whole for F.A.R. That isn't what we've done on other applications coming through the city. We have Villaggio, which had split zoning between SDCR (planned retail) and SDO (planned office). We've always looked within the zoning districts. But even if this remained SCNCR and you had these three properties as well, that would still give you an F.A.R. of .22, which is still over the .20 allowed. It's closer, but in 2002 the city did go through a major effort to try to address that. If you're going to grant F.A.R. deviations, then they should provide something in return. They aren't proposing structured parking; however, due to the topography, it may be a possibility. There is also superior site planning, but I don't believe this would qualify. They do have increased open space, but as far as F.A.R. bonusing, if you get that bonus for open space, it must provide value to the community. They really aren't providing anything significant. I don't think there's anything above and beyond as far as what they're proposing. Regarding pedestrian

amenities, they provide sidewalks and crossings, but we require that of everybody that comes through. Integrated storm water is not something they've provided. In addition, the bonuses are limited to 10% on most, which wouldn't equal the 8,000 + square feet they're looking for.

The Applicant also indicated Staff is confused about the berms with regard to screening the parking and that we were talking about this area (*refers to Preliminary Development Plan*). That's not true at all. We do realize they provided some walls in this section and this section here; however, there wasn't a wall provided in this section here. It generally slopes down. I think it went from 986 to 984. There was no berm associated with that adjacent to the public right-of-way.

Regarding the drive that goes between the buildings, if this were Parkway Plaza or Park Place and they had come in with separate applications for each one of those, I can't imagine the Planning Commission would have approved it because they were looking at one piece as a whole to see how it would tie together. The danger they have now as far as if one building gets approved and the other doesn't is suddenly the connections aren't showing. This one is still out there, and a new owner might want to do something entirely different.

I'm the one who asked for a single application for this piece of property for that very reason – that they show the connections and we know we're looking at one piece as a whole. The Applicant chose to separate them. I imagine part of the reason is if one got denied, the other was still alive, which is exactly the point we're making that we don't want. If you're only going to approve one of these and you're truly looking at this as one piece, then really the drive should be located on that one lot. I'd be happy to answer more questions if you want.

Chair Rohlf: Thank you for clarifying those points. I'm sure we'll have some follow-up questions, but I think we should go ahead now and ask questions of the Applicant and any member of his team.

Comm. Jackson: Mr. Petersen, what would you propose doing if we recommend approval of the Discover O but deny the Walgreens as far as that road going up the middle?

Mr. Petersen: If that were the case, I'd suggest that you propose the stipulation to the Discover O that at that time of final plan, they come back with an easement document indicating they have the right from the adjacent property owner to build a drive on that property that would, in the future, be used also by whatever develops on the other side. It's the same easement that would be necessary to construct the drive off the street, which is placed where Staff indicated it should be. It is partially on somebody else's property, but you want to have it there so they have access to it in the future when they develop. We would be agreeable to that stipulation. Commissioner, I would ask you to think about what difference it would make if we brought that all in on one plan and showed that drive. We'd be okay then, but then four months later, the owner sold the pad to X user that was acceptable to the City of Leawood. You'd have two different ownerships all utilizing an approved plan, and they'd do it by agreement. Before that person could build anything, you'd make sure you've got rights to share the common drive. I'd really now like to go back, using the example of Park Place or Town Center, and see how the property lines line up with California Kitchen. The plan was approved

not knowing who was going to own that site. In real-life development, that happens. You protect that you've got a functioning plan by requiring before a building permit that you've got the right and maybe the requirement to build that shared access in for the first guy who comes in to build. That's what I would propose we do, whether Walgreens gets approved or not.

Comm. Jackson: What is your response to the need for two left lanes out as to why they needed the extra 15'?

Mr. Petersen: I went back to my traffic engineer, Mr. McCarrow with TranSystems. He said it was the first time he'd heard that as well, that some day we would have that.

Jeff McCarrow with TranSystems Corporation at 2400 Pershing, Kansas City, MO, appeared before the Planning Commission and made the following comments:

Mr. McCarrow: I was aware about the issue of the dual turn lanes on this side of Roe that Mr. Ley was speaking about. How far do you need those lanes to line up going all the way across the intersection? As you are traveling westbound on 117th Street, how far do you need those two lanes to really extend back from that Roe intersection? In the last conversations that I recall, it was my understanding we need to carry those through the Walgreens side but not necessarily all the way along the Discover side. The traffic volume projections we have out there didn't have queuing that long that necessitated - even out in the future - that those be extended this far back. If I misunderstood anything, I'll be aware of that issue on the next application.

Mr. Petersen: Based on that, what you'll see in our Walgreens application is we've provided a mechanism that I thought was accepted by Staff in terms of the right turn lane onto Roe. We would agree in the future that if 10' of additional right-of-way is needed at the intersection, we will give it to the city. Now if we think maybe in 2020 that there might be a need for an additional 10' - even along Discover O - we can make the same agreement. Then if the city determines that there really is a need for future improvements due to traffic being generated outside of Town Center or somewhere else, we'll have the right-of-way there. That would cut into our landscaping, and I assume the city would weigh that balance of having only 15' of landscaped area there as opposed to 10'. To say, "We think we might need right-of-way in the future, so give us 15' now and you still have to adhere to the 25' setback," cuts the property 1/3 (*refers to map*). Our responsibility is to try to work with the city and make sure future city-at-large needs can be accommodated, and we're willing to do that.

Chair Rohlf: Questions for the Applicant?

Mr. Klein: If I could give you one more clarification. Mr. Petersen talked about whether you approved this at Park Place and the alignment of California Pizza Kitchen. There is a difference. When you have an overall master plan and each one of those feature projects come in, you have a plan that it goes back to. If they want to change that alignment or building, it's a plan that comes back before the Planning Commission and City Council for approval; and it gets compared against the master plan that is there. In a situation like this, you really don't have a master plan for the overall because you had one that was approved back in 1999 that was prior to the current ordinances. They're going to take a piece and chop it in half, so you really don't have an overall master plan anymore for that extra piece that's left over. I believe there is a difference, and that's

part of the reason Staff is so concerned about it. I'd like to show you on the map the 15' of right-of-way, and I'll read the section of the LDO regarding it (*refers to map*). If they do the future right-of-way, giving an additional 10' of right-of-way here, they aren't proposing to move this parking setback at all. So basically we have a requirement of 25' of parking setback that is required by ordinance. I'm sure every Applicant can probably come in and make the same cases on every development application that comes through – that they shouldn't have to provide the full right-of-way. Furthermore, if it was allowed and they gave that extra 10' of right-of-way without moving the parking setback, it now goes from 25' to 15'. According to Leawood Development Ordinance 16-3-9,, "Setbacks and buildings in paved areas from a public street may be reduced to 75% of the standard requirement." That's all it allows, and this exceeds that. That's under a section of the LDO that says, "Setbacks subject to the general requirements of the deviations: The following deviations to required setbacks may be granted only when compensating common open space, not less than one-to-one ratio is provided elsewhere in the project and where there is ample evidence that the deviation will not adversely affect the neighboring property." It sets out very clearly what's allowed to be deviated; and what they're proposing exceeds that. I don't know that even the governing body has the ability to go over and above that.

Comm. Neff-Brain: Is there a way for them to keep the size building that they're requesting, donate the right-of-way the city's asking for and still keep the parking and landscaping that they need?

Mr. Klein: As far as this application, I don't really know. One of the other things they're saying really can't be met is the 60/40 rule. Maybe you couldn't get all the way there, but you could get a heck of a lot closer than what they've gotten. Really the issue comes down to the next application with the drive-thru. You have to have pavement around the entire thing for circulation. Say this was a restaurant (*refers to map*) and you had a patio here and all the parking was behind. Say this building was moved up closer to 117th Street here. Again, circulation is behind here and you have an access out where they're showing here. There you've come a lot closer to meeting the 60/40 rule. Again, it's a different plan, but they're asking for a lot of deviations for this site and for a use that you have to do a rezoning on. They don't want to do the right-of-way. They have a drive that's located on a separate application. You can make the argument as much as you want, but typically you don't see that.

Mr. Petersen: Can I respond because we've got a lot of new testimony based on the written report and Staff's report?

Chair Rohlf: Before you get started on that, let me ask you one question here. You're asking for a significant number of deviations on both of these plans. What do you think the city is really gaining by giving you five of them? There is a trade-off when we grant a deviation. These are the same deviations we talked about last time. You admitted this is a difficult piece of ground to make work. I think it's difficult for us because you have your side and we have Staff's position, and we're not engineers. We have to take Mr. Ley and the traffic reports at face value. I don't think you've presented me with enough significant reasons to grant these deviations. You just want this building there. We've got to look at it in terms of fitting the site, good planning, safety concerns being met. I really thought when we left here last time that we had an understanding that there would need to be some significant changes in these two buildings. Frankly, I don't see it. I can wait to hear some of the comments when we get to that part, but I'm not sure we're that

much further along than we were last time. There are a couple of deviations here that we just don't grant very often, and I don't think you've given us the ammunition to do it. That would be the 60/40 rule and this right-of-way issue. I don't know how we, as Commissioners, can resolve that when we have our own Staff, on whom we rely a great deal, telling us we need that. I do know we've had instances these last two years of having to go back and grant utility easements because of these VRAD cabinets and expansion of technology. I think there's an occasion where it does come up years later. With that said, go ahead.

Mr. Petersen: I'm going to do my best as briefly as I can. I heard "a bunch" of deviations and "several". There are four. For the record, Staff spoke about the ordinance in terms of setbacks. He did not find an ordinance that said, "You're required to give right-of-way, whatever amount Staff requests, based on what they think will be the future needs of the city." It's not there, nor is it in state law. That is not a deviation. When you ask for a deviation, Madame Chair, you should make a significant effort to earn the deviation or present a significant case that shows you have a set of circumstances that reasonably require the deviation (*refers to site plan*). That is the approved plan. That is significant. The property is zoned, and a plan is approved for utilization of two buildings in that area. Staff says, "They can change the building." I don't want to get into a game of speculation because the plan that's in front of us right now has nothing to do with Walgreens. The plan is for Discover O, who would like to move across the street with 30,000 square feet. Now, we can look at that plan right here (*refers to plan*) and say, "They could fix it right there." What am I going to do? If I move both the buildings down to the street, I just blocked off the only full median access to the entire site. Am I going to move one down and one back? How is that cross circulation going to work? Those are the specific set of circumstances, Madame Chair, that I think warrant a reconsideration of the very reason the buildings were placed in the orientation they were then. I can see at the time they were originally placed there in 1998, you didn't have this requirement. That requirement was there when you re-approved this plan. Remember we do it comprehensively all part of one plan. You left it there twice and never commented on it in terms of this Revised Preliminary Plan, including these lots. I would submit that if we didn't have a Walgreens on the site, but maybe a sit-down restaurant on the corner, that consideration would be given. But that's not the plan in front of you.

We've met our setback requirements and our landscaping requirements, save for the technicality of a 3' wall or berm in the northeast corner, which is a deviation. Regarding the F.A.R., Staff indicated that overall we're probably at a .22 when you take into consideration all the other square footage that hadn't been utilized within this plan. I think that's a reasonable basis to see if we're trying to squeeze too much in here, which I don't think we are. If you took this building down 8,000 square feet and only allowed Discover O to have 22,000 square feet, that's not going to get you your 90 feet of landscape or building frontage because they've still got to be able to utilize the full-access median point. It's probably not going to allow us to give away 10' of additional right-of-way and 15' of a utility easement for other people's use. It would still enable us to try to work with you to put utility cabinets in our green space area. Those cabinets you're talking about aren't necessary to develop our property.

We're really looking for, in my opinion, three deviations. I think at times you can bell and whistle a request for a deviation by saying, "I'll build a nicer building" or whatever, or you can look at a set of circumstances. As you recall under state law, the conditions to look

at a circumstance is as circumstances outside control of the Applicant. I respectfully suggest we have that here. Madame Chair, it happens. You always hear about precedent. You look at every set of circumstances, what the site's like, how it impacts surrounding areas, how it addresses the design elements in the code in other ways, and you make a decision. You all have done it and have done it well.

I was going to use this in the Walgreens applications, but I'll use it here. I'm not going to say, "You did it somewhere else, so you've got to do it here." I wouldn't say that because it's a set of circumstances. Right there is the Walgreens at 151st and Mission. (*refers to photograph*). It doesn't have 90' of building and landscaping at the corner of 151st and Mission. It doesn't even have half the green space, probably because there were circumstances in that shopping center that made sense to grant a deviation. That's our record, Madame Chair. We think it's a good project in terms of Discover O and would ask for your recommendation for approval.

Comm. Roberson: I'm sorry; can I ask a quick question? That 151st and Mission, maybe I missed something. Is that there?

Mr. Petersen: 151st and Nall – the shopping center on the northeast corner.

Chair Rohlf: All right, questions for the Applicant?

Mr. Petersen: Just a clarification for the record, and I promise I'll be quiet. I don't think we have in the record of any indication that an additional 10' of right-of-way dedicated for this site is needed to do the improvements necessary to support our traffic and maintain acceptable levels of service. If I'm wrong in that statement, I think it would behoove the entire record for Staff to refute that, but I don't think they can. Thank you very much.

Chair Rohlf: Questions for the Applicant?

Comm. Williams: I did have one question. Review again the deviations as you see those for this project.

Mr. Petersen: There are four. It's the F.A.R., the 60/40 rule, the issue of the drive between the two buildings (which I could probably argue is not a deviation) and then the perimeter landscaping pertaining to that one corner. Correct me if I'm wrong, but that's the way I read it. Now, we did say we don't have a berm along 117th Street. That is not true. My engineer says the plan reflects a 3' berm. It will reflect a 3' berm or wall along the interface of 117th. I don't think that needs a deviation. It's three, and you've heard my record about the additional 10' of right-of-way being a request of staff but not a deviation.

Comm. Williams: Let me ask a question of you or your design staff. With this site and the F.A.R., we're talking about some of the categories where we do grant increases and trade-offs. Given the topography of this site and the fact that you've got a 20' wall on the north side, was any consideration given to trying to utilize that site? I think Mark made some reference to a parking deck down below instead of filling it in, and that would give you the potential for more of a setback on the street side and maybe more landscaping.

Mr. Petersen: A parking deck on the north side?

Comm. Williams: A parking deck under the building, treating that 20' wall so we don't have a 20' retaining wall back there.

Mr. Petersen: Well, the retaining wall has to be there because of the creek system.

Comm. Williams: So the wall is required.

Mr. Petersen: That wall is there and will be there. We're locked there. It would be economically infeasible to build a parking structure for a 30,000 sq. ft. building.

Comm. Williams: It would be costly, I don't doubt that. Mark, could you confirm, is there a wall back there now?

Mr. Klein: There is a wall that goes along the north side (*refers to map*). The wall actually is down along here as far as the creek. It kind of flattens out as you go this direction. This part right here as far as what goes up, it literally goes up without a wall or anything like that around it. The wall itself is actually located by the creek that everything drains into.

Comm. Williams: How tall does the wall get to be?

Mr. Klein: At one point up here (*refers to map*), I think it's probably double my height so probably at least 12-15' as an estimate.

Comm. Williams: That's fine.

Chair Rohlf: Anything else for the Applicant? This case does require a Public Hearing. Is there anyone in the audience who wishes to speak about this case?

PUBLIC HEARING

Ken Patrick, owner of 11603-E Tomahawk Creek Parkway appeared before the Planning Commission and made the following comments:

Mr. Patrick: I'm here to speak against this. This is a more intensive use than the original design. It's 1/3 more in building size, and I think it would be detrimental to the area and the community as a whole. Thank you. One quick aside is they mentioned this is a difficult site to work with. I think that's probably not correct; it's just difficult to sell at the price they'd like if they work within the limits.

Chair Rohlf: Thank you. Is there anyone else who wishes to speak about this case?

Gail Voyles of 11621-K Tomahawk Creek Parkway, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Voyles: I am on the board for our community. I want to point out that we did, in our letter that we presented at the last hearing, acknowledge that we wanted to partner and work with Mr. Petersen based on a board meeting that we'd had and invited all owners to participate in. We did take a vote after he had presented lots of information. I left you the minutes and the letter. One thing that we did say is we would support their plan as long as they were meeting Leawood guidelines. I am in economic education at UMKC,

and I do have to say that I liked the presentation as far as why we have certain ordinances and really evaluating the cost-benefit analysis. I'm not an expert, so I leave it to the Commission. I've been impressed with your work, but I do believe (and I wish that it had all been resolved by now) that there is possibly a chance that the issues could be resolved. Thank you.

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

As no one else was present to speak, a motion to close the Public Hearing was made by Roberson; seconded by Jackson. Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Chair Rohlf: That takes us up to our discussion.

Comm. Elkins: Madame Chair, I don't know if this is out of order or not, but I did have one additional question for Mr. Klein. Counsel for the Applicant made the point – or at least attempted to argue the point – and I'll paraphrase it that as far as the density rules that we shouldn't just blindly follow the rule, that there are policy reasons for having the F.A.R. for this particular type of zoning. He suggested in his presentation that many (at least of the ones he identified) of those policy issues were addressed and at least not adversely exacerbated or impacted by granting a deviation off the F.A.R. I was curious if you could address that, Mark, and perhaps enlighten us once again. We've had this discussion in the past as to the purposes of the F.A.R. requirements are. Maybe you could apply your perspective directly to this plan that's before us here tonight.

Mr. Klein: Really, the purpose of the F.A.R. is a measurement you can apply to a number of different sites. It's a ratio of the amount of square footage of a building to the amount of land that you have. It's intended to have a measure as far as the intensity of the use that you'll have because square footage of the building also drives our parking requirements that we have as well. One of the reasons the SDNCR (neighborhood commercial retail) has a lower F.A.R. is because it does take into consideration neighborhoods that might be in the area. As you recall, you not only have the Tomahawk Creek Condominiums that are located to the east, but you also have, across the street of Roe, Edgewood that kind of creeps around City Hall and also abuts Roe as well. It's the foundation for all of those different impacts because a lot of different things can be driven from them. Now, the setbacks are pretty much the same for the commercial districts as far as the 25' parking setbacks and the 40' building setback. The reason is for light and air and to create a presentation. Again, when the city went through the planning process and had the new LDO, we wanted to really take a look at that because we had a number of applications that were coming forward at that time with requests for deviations. The city didn't really have any way to ask for anything in return. It was more like the Applicant is trying to do tonight in making a case that this is a unique site and has difficult circumstances and should therefore be entitled to a deviation. At that time, the city decided there needs to be a reason for varying from the standards if the deviations were to be granted. Really, these are almost an equal protection issue as well, as you're having different Applicants that are coming in and applying for development applications. When deviations are granted for one and not others, it becomes a little subjective. Part of the intent of having the F.A.R. deviations is that you actually have some standards that you're measuring across to compare different applications.

With regard to a point Mr. Petersen brought out with the Walgreens at 151st and Nall, which is in the Nall Valley shops, it's true that it has a drive-thru that goes all the way around; but I believe where that was a situation where you had Nall Valley Shops, which was an overall development. I'd have to double check, but I believe the reason that was allowed to happen is because it did meet the 60/40 rule for the overall development as it extended along 151st Street. This is a case where you just have a single piece that you're considering. In fact, Mr. Petersen said a couple of times, "We aren't looking at Walgreens with this application." That's Staff's point - this has been broken up. They aren't asking for approval of a master plan that's already been approved. They're asking for a piece that's substantially different, and they want to look at that other piece separately at a different time. That's admittedly in a few minutes, but there's no guarantee whether that will get approved. Since they're separate ownership and they're really not part of the same Master plan, will another Applicant come in and make a case for something different? Staff feels like this is a case where it is a difficult site with a lot of barriers, but it has a lot of advantages, too. It's located on a very key intersection in an area that's kind of become the downtown of Leawood with restaurants and shopping. Hopefully as the Planning Commission looks at this, they see that it's not only the constraints of the site, but also the possibilities of the site as well.

Comm. Elkins: Thank you, Mark. Thank you, Madame Chair.

Chair Rohlf: Anyone else?

Mr. Petersen: Madame Chair, you keep having Staff testimony. The rule is that you get to respond to the written and oral testimony of Staff. I'd like two minutes to respond to the current testimony. We're asking for another revision to the preliminary plan and the rezoning with the Walgreens. What Staff just testified to is that we're to go beyond zoning and land use issues, and you're supposed to start considering uses – restaurants and shops. That is inappropriate testimony. This is an allowed use within this zoning category. Thank you.

Chair Rohlf: All right, this takes us up to discussion if there is any.

Comm. Roberson: As a layman, I'm not as eloquent as Mr. Petersen or even Mr. Klein here. However, I would like to say that this is the Planning Commission, and it is our job to consider the here and now. It's also incumbent on us to consider the future. In this case, we're talking about the future impact of what appears to be an inappropriate building on this site and a consideration of another inappropriate building in a few minutes – at least that's my opinion. The right-of-way issue and the other deviations, you can downplay all you want; but you've actually given the city nothing for granting the deviations, quite frankly. As a result, I'm wondering why I should grant you a deviation when this property provides nothing back to the city and you would get everything.

Comm. Neff-Brain: Certain deviations, I really don't have a problem with. I do have a problem with the F.A.R., and for that reason, I couldn't support the application.

Comm. Jackson: Just to expand on that, this is a separate application. You have to look at the F.A.R. as being .28. The Applicant has asked for it to be separate. He has reasons for wanting it that way, and with a .28 F.A.R., there's really nothing within the

ordinance that allows me to vote for recommending approval of this. The 60/40 rule is just way too far off. It's not there at all for a single application.

Comm. Williams: I agree with my colleagues first and foremost. One comment I would make is maybe we're beating up on the use here as an office building. Maybe it's not so much the use at this particular site as it is the size and configuration. The F.A.R. plays a factor in that, but to have an office building at this location properly fit within the constraints would probably be doable. It is a difficult site. Mr. Petersen tries to make a good argument, but I'm very concerned about the F.A.R.; I think that's key. I was concerned until he and Staff explained about the wall in the back. I think it's an unfortunate situation, but I think it's outside their control in this particular case. I emphasize the comment that was made that we have to look at the future without reacting to what happens in the future, but try to make reasonable plans based on what we know is happening today. I think we've made the comment before that we do rely on Staff's input and analysis going through this. In that regard, I have difficulty with this application as well.

Comm. Elkins: I would just like to add a few of my own observations to my colleagues' and voice my agreement and support for their sentiments as well. It's interesting to me that on one hand, the Applicant's counsel has suggested to us that we consider this proposed plan in a vacuum, asking us to ignore the site on the corner. I would agree with my colleague at the other end of the table that from a planning standpoint, we have to consider the plan that's before us and the context - not only of the temporal issues of issues of future and past time, but also within the geography and the overall development on that particular corner. Staff has so appropriately put out that this corner is effectively part of what has become, as a practical manner and a manner of planning for this Commission long before I was on the Commission, the downtown of Leawood. At the same time, when it fits his purpose, counsel wants us to consider it in the overall context when we're talking about the density. He can't have it both ways, quite simply. We have to look at it in the overall aspect. In looking at it in the overall aspect, I agree that it's simply too big a building to be put in this particular spot. Again, I agree with Commissioner Williams and want to additionally emphasize that it's not the use. I take exception of counsel's suggestion that we're making any of our decisions here based on the use of that particular piece of property. It's the intensity of the use and the density of the use which seems inappropriate. It is certainly within our prerogative under our LDO to abide by the LDO, either by granting exceptions or asking that our developers comply. For all those reasons - in particular, trying to make plans for the future with respect to the traffic on that particular intersection and the density of the proposed use, I cannot find a way to support the application as it stands now. Thank you.

Chair Rohlf: Is there anyone else who would like to make a comment? Perhaps we're ready to make a motion.

Motion to recommend denial of Case 44-08 – TOWN CENTER BUSINESS PARK – DISCOVER O – Request for approval of preliminary site plan located north of 117th St. and east of Roe Avenue made by Roberson; seconded by Jackson.

Comm. Williams: Madame Chair, do we need to state reasons for denial?

Chair Rohlf: I believe with the discussion points made by individual Commissioners, we have established our record on concerns about this application. Would you agree, Mr. Coleman or Mrs. Shearer?

Mrs. Shearer: I think if you want to reiterate that the reasons are the reasons that have been previously stated during the discussion, that's sufficient.

Chair Rohlf: I believe the record should reflect that we have adequately expressed our reasons for denial in our comments section of tonight's meeting.

Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

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.

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. The Applicant is requesting approval of a rezoning; special use permit and preliminary site plan for a drug store with a drive-thru. The project would be made up of a single 1-story 14,750 sq. ft. building on 2.14 acres for an F.A.R. of .16. This application has been discussed with regard to the other, and many of the same issues apply. The primary difference between this and the other is the fact that this one does meet the F.A.R.; however, there are still a number deviations requested. These include the 15' right-of-way, which is more critical on this piece than the Discover O because it is so close to the major intersection of 117th and Roe. They also have a right-in, right-out that's currently shown off Roe that doesn't meet the distance from the intersection. They have indicated changes in the current site plan do that.

The Applicant addressed this application as well. I'll go through some of the statements. Street trees are required 35' on center to create a boulevard effect. The Applicant has provided them along 117th Street and a portion of Roe – the portion that's south of the right-in, right-out on Roe. The ones north of that are closer than 35 linear feet. The Applicant also stated that they meet the minimum 8' width sidewalk at the store front along the south side of the building. Staff's interpretation is that both the south and west sides of the building are the store front. The main entrance is at the southwest corner of the building, between both the south and the west. Parking is in the same configuration on the south and the west, with more parking and a longer façade on the west. You have a sidewalk providing access to that main entrance on both the south and the west, thus creating a need for an 8' sidewalk in Staff's opinion. The Applicant is only providing 5' of the 15' of right-of-way, which is needed for future developments. In addition, the Applicant is requesting a deviation for landscape buffer that's required within the landscaping portion of the Development Ordinance around the building. They are providing the buffer on the south and west sides of the building; however, the drive-thru is on the east side and some service areas are on the north side with no buffer on either of these sides. Staff feels they could provide more buffer, especially on the north side around the trash enclosure and service entrances. The Applicant also brought up the

minimum interior parking setback of 10'. That's the issue where Walgreens is located at the corner of the site, and they have a drive-thru around the building. Part of that extends over to the adjacent site. This is a separate application than the Discover O, and typically we don't allow a separate plan with drives on the adjacent property that aren't part of the application or overall development. Again, the Applicant doesn't meet the 60/40 rule with this application, either. They have very minimal open space along 117th Street with a little more along Roe Avenue, but quite honestly, there's been a change in this plan since the last one you saw. I'll go ahead and address that (*refers to map*). In the plan you saw before, you had a row of parking located here. The Applicant shifted the building down, got rid of the parking directly in front of the building here and moved it approximately 18' farther this way. In order to make up the parking, they created additional parking in this area to the north. In doing that, they maintained green space along 117th but reduced the amount of green space along Roe, making the last plan closer than this one.

The Applicant is also making the same offer as far as the right-of-way as 10' in the future if necessary. By doing that, they would take this parking setback located here from 25' to 15', which exceeds the allowable deviation in the LDO for that. This is an area that is a bit more critical because of the proximity to the intersection. This drive is the one that actually might have to move farther to the north, changing the site. The major difference between this application and the Discover O application is the rezoning request. It's currently zoned SDNCR, which doesn't allow a drug store with a drive-thru. We have the same concern here because now a portion of this drive-thru is shown on this other site, and we don't know what could come in here. Just to make myself clear, I was never trying to attack the use as far as here. This is an allowed use in what they're asking if they get a rezoning, but not with the current zoning. Part of the reason for the SDNCR zoning is residential located up here with Sunrise Assisted Living and down here with Tomahawk Creek Condominiums and Edgewood over here across the street on Roe Avenue (*refers to map*). Again, this is a very unique piece of property. This corner is strategic and very much a part of downtown Leawood. You also have the Yahoos, Town Center Plaza and a number of uses that are working together with the residential uses. Staff is recommending denial for the application for the reasons stated in the Staff report, and I'll be happy to answer any questions.

Chair Rohlf: Questions for Staff?

Comm. Roberson: I have a procedural question. This is not a permitted use because of the zoning?

Mr. Klein: Correct, the reason for their application is to change this zoning from SCNCR [Planned Neighborhood Commercial Retail] to SDCR [Planned General Retail].

Comm. Roberson: Do we have the authority to change the zoning?

Mr. Klein: It's very typical for an Applicant to come in and ask to change zoning. That's something the Planning Commission sees all the time with different developments, but Staff does not agree that this is the right plan for that zoning change or that the zoning even should change, considering you have the residential in the area. In addition to the SDCR zoning that they're requesting, in order to have the drive-thru within the new zoning, they still have to have a special-use permit.

Comm. Williams: First, when was the Camelot Court developed?

Mr. Klein: I don't know. I believe it was probably in the '80's.

Comm. Williams: My reason for asking the question is it was well before the current LDO from 2002 and probably well before the version before that one.

Mr. Klein: I would imagine so.

Comm. Williams: At that intersection, the buildings in that development around the corner are closer to the street. Parking is inward with some minimal service drives outward. On the other corners, we've got the Library and Yahooz, both of which have a fair amount of green space around them, do they not?

Mr. Klein: Yes, they do, and you raise an excellent point. Yahooz is pushed up to the corner with a patio and a building with more of a presence. You have the Library that's over across the street with green space and no parking directly in front. The building to the south does have a service drive that wraps around; however, it's not quite as wide. You don't have parallel parking located there as well.

Comm. Jackson: Mr. Klein, there are a couple things they're asking, including a zoning change and a special-use permit for a drive-thru. If we change the zoning and grant a special use, does that special use stay with the land; or does that just apply to Walgreens? Say Walgreens went out of business there and a McDonald's came in that would be a much more utilized drive-thru.

Mrs. Shearer: According to 16-4-3.2, "A special-use permit shall allow the specified use by the Applicant only and shall not run with the land and is not transferrable unless otherwise approved by the governing body by stipulation in the special-use permit approval."

Comm. Williams: Regarding the right-in and right-out on Roe, if someone needs to return to the south, how are they going to get there?

Mr. Klein: This one right here as they come in (*refers to map*) is another concern Staff has. Currently the way they have it has an island you're dodging immediately after entering. I believe they'd come in this way and cycle down this way, and then you'd have the drive-thru lanes coming up the other way. The Applicant could probably clarify that.

Comm. Williams: So if they want to go south, they pretty much have to go out the 117th Street side.

Mr. Klein: Yes, this would be a right-in, right-out headed north.

Comm. Williams: I think we briefly saw in the previous presentation the plan where the drive-thru would be on the east side of the building.

Mr. Klein: Yes, it's located right along here (*refers to map*). Staff is talking about the 10' of green space here and here, but as you can see they have nothing here. Green space is more than just screening. There's a big difference between a rectangular block

building that goes down to the concrete with green space around it as landscaping that adds to the façade of the building and creates life and nothing back there with just concrete going up to the back of the building. In this case, you have trash enclosures and service areas and maybe a trash compactor back there as well. It does impact how the building will look on that side.

Comm. Williams: Sure, now going back to the access. Walk me through the scenario of a person coming from the south who wants to go through the drive-thru to pick up a prescription and then leave the site. How would they do that, coming from the south?

Mr. Klein: Coming from the south, you would have to come in here, which isn't even part of their plan (*refers to map*).

Mr. Ley: Actually, one of my stipulations is that they have to construct that full access right there.

Mr. Klein: So they'd have to come up here and have access coming along here, go in here and then circle the building because this would take you out to the north (*refers to map*).

Comm. Williams: Or they could choose to come through the Roe access and go back down. The drive, if I remember Mr. Petersen's presentation, is a two-way directional drive between the two buildings.

Mr. Klein: I believe so. They have the drive-thru here and another one going down halfway (*refers to map*).

Comm. Williams: So they'd have to cross the oncoming lane in order to get to the drive-thru.

Mr. Klein: Right, and then you have a strange situation where you're constructing improvements that technically are not on your property.

Chair Rohlf: Does anyone else have anything for Staff? Thank you, Mark. We'll hear from the Applicant.

John Petersen of Polsinelli Law Firm, 6201 College Blvd. appeared on behalf of the property owners and made the following comments:

Mr. Petersen: It's a pleasure to be before you this evening to talk about the application for rezoning for the corner portion of the project and revised preliminary plan. Jim Harpool with Harpool management, representing the ownership of the property, is here as well as Brian Forqueur with LUTJEN and Associates, who has served as our Civil Engineer and Jeff McCarrow with TranSystems with regard to our traffic issues. I'm going to move quickly, as we've been over a number of related issues. I'm going to take those issues and apply them to this specific application and stand ready for questions.

The context of this application is against the current approved plan for the site in the case of the rezoning application and the revision to the overall plan for the district, which has been approved over the last ten years. We're utilizing here (*refers to site plan*) an existing 17,000 sq. ft. retail building with a drive-up facility approved on the site as the

context. The “X” marks the drive-up window, and the arrow indicates how the site would circulate in terms of accessing that window. Our attempt to modernize the approved plan instead of just coming in for a final plan against that plan was to take a 14,000 sq. ft. building with an F.A.R. of 3,000 less square footage than the currently approved plan (*refers to Preliminary Development Plan*). Since the last time we were here, we have moved the building up in an attempt to bring more of a buildingscape and landscape frontage along 117th as we understood was a design goal of the city. In terms of the current zoning on the site, a pharmacy is an allowed use. The only reason we need to go to the next zoning code is to be considered for a special-use permit for the drive-thru window, allowing residents to pick up their pharmaceutical needs from their car. I would concur with the City Attorney that the special-use permit does run for that specific utilization for the drive-up window for that specific purpose and location in the building.

Staff has indicated there are a number of deviations as we seek approval. There are actually four (*refers to deviation presentation*). Again, I think the fundamental one we’re all aware of is the 60/40 rule. I will make the record very quickly that we attempted to bring the building forward, eliminating one row of parking because of the site circulation in terms of not only the drive-thru facility, but for the overall site. Someone would get to a full median break point on the site plan would be across that shared access drive, which was an important part of the originally approved plan. We also attempted to work with Staff in terms of coming up with a landscaping plan in terms of a 3’ wall over a 3’ berm (in this case, part of it being a reverse berm) shielding all the parking area of the proposed Walgreens along both 117th and Roe frontage. That’s depicted on the larger picture on the easel there referencing how we address that.

The next deviation is this issue of minimum parking setback (*refers to deviation presentation*). This goes to that very issue that has been discussed, referred to by Staff as the shared drive between two buildings not even on this plan, whatever that means. I would merely say you have that situation in a number of shopping centers in this city. It may not have been that way when you approved it, but through ultimate sales and subdivisions of pad sites in the project, you have different ownership that shares ownership of internal drives. It happens all the time. Having said that, we would be pleased to take a stipulation that if we were allowed to move forward with this in final plan, we would come back showing the entirety of that drive running from 117th Street up to the northern part of the site as part of one ownership in the Walgreens application by re-platting the property. We can put that totally to bed.

Deviation Number Two is buffering adjacent to the building. Staff has indicated that, although we have sufficient landscape buffering along the west and south portions of our building, we do not have sufficient landscaping between the two buildings as proposed along the east and north sides of the building. There is some landscaping indicated there. Obviously you don’t have quite the opportunity to landscape the east side if you have a drive-thru lane. The north side does have more of a utilitarian function in that it is where the trash compactor is located. We know what it says, but Leawood, like most cities, works with Applicants. We looked at the most recently approved pharmacy with a drive-up facility we could find in the city at 151st and Nall. There is the current situation in terms of the drive-up facility (*refers to overhead photograph*). That’s looking south, and the pick-up window would be on the left side. That is a shot of the utilitarian function on the north side in this case, and that is the drive-up area there. As you can see, the building is very well landscaped on the south and east sides. You can see there’s some landscaping in this area here as that drive will turn the corner and come into the pick-up

area. Our plan reflects to have that same type of landscaping in that area there. In fact, we would adhere almost exactly to that design.

Comm. Williams: Is this a one-way or two-way drive? I'm seeing a "Do not enter" sign in the picture.

Mr. Petersen: I don't know what the exact situation is (*refers to photograph.*) I think this is a two-way drive that goes both ways here internal to the site. Obviously this would be a one-way drive going up to the drive-thru.

Comm. Williams: Thank you.

Mr. Petersen: (*refers to photograph*) Again, this is another view of the treatment that was approved by the City of Leawood for the drive-up area in the recently approved pharmacy at 151st and Nall. Those are the exact standards we're proposing to adhere to.

Per Section 16-2-9-1, Staff says we need a deviation because all sidewalks in the project are not at least 8'. As Staff indicated in the area of ingress and egress into the building, our site plan does reflect at least 8' sidewalks in that area. We've moved down to narrower sidewalks on the both the western and southern sides of the building, partially because that this is exactly what was approved at 151st and Nall. I've got a couple of shots to put that in perspective (*refers to photograph*). You've got a little bigger area by the front door here. This sidewalk is just less than 7' in this area, which would be on the east side of their building. This area, which would be the south side of the building, would be just less than 7' – the exact standard we are proposing as part of our plan. For the same reasons it was deemed appropriate there, we would ask for your consideration. My point is that at a very visible corner in 151st Street in the entrance into the shopping center, you can see it was deemed appropriate to have less than a 90' setback of landscaping. In this case, there wasn't any berm or wall utilization. We would submit to you that in terms of what will be seen from the public street in terms of the front door of Walgreens at our site, you will have a great deal of difficulty seeing any cars parked in the area because they will set down a reverse berm and landscaping of 4-5' as it moves through the site. We can utilize that same tool in a much more effective and efficient manner as part of this application.

We have the last issue that Staff has raised, which is the issue of the right-in, right-out on Roe. As you remember, the early Staff report from the last time we were here indicated they could not support this because of its proximity to the intersection at 117th Street. Public Works staff was kind enough to sit down with our traffic engineer and rework that. As you can see in the Staff commentary, they now say they could support a right-in there if it is set a sufficient distance away from 117th Street. We did our site plan accordingly for the first meeting (*refers to site plan*). If we could get 365' from center line of 117th Street to center line of the right-in, right-out drive, they would deem that acceptable. That's the plan before you this evening. Today, we heard that the preferred measurement by Staff is from the pedestrian walkway closest to the drive on the north side of that intersection to the center line of that right-in, right-out. The plan that Staff referred to that we have drawn accomplishing that 365' is a little bit different than where that drive hits to the north. We could meet that by final plan to reflect that distance and would agree to a stipulation requiring that.

We're quickly moving on to Staff recommendations for denial. Number One, the fact that we haven't hit the 60/40 rule – we acknowledge that and ask for a deviation to treat our landscaping and screening the parking of the area the same that has been utilized in newer developments in the City of Leawood. Staff is recommending denial because we will not dedicate a total of 15' of right-of-way along 117th Street at the Walgreens frontage. Pursuant to the plan today, we have agreed to dedicate 5'. For the record, we would accept a stipulation and have indicated that we will dedicate (at no cost to the city) an additional 10' when requested by the city at some point in the future, assuming 2020 traffic models or traffic of such intensity that additional road work would deem it necessary. There's no evidence in the record it would be necessary due to our traffic, so I think we can eliminate that as a reason. I also indicated we would provide a utility easement once we identify with the city what utilities they are trying to get an easement for within our 25' setback area. Staff has stated that they are not supportive of the right-in, right-out on Roe in the written statement. I think that has changed based on discussions taken place subject to the conditions I have expressed. Four is our 60/40 rule that we made the record on. Five is a portion of the outside drive-thru lane on the east. That will be all on the Walgreens property in final plan. Reason six is the issue of 10' of landscaping on all four sides of the building. Again, I would just direct your attention to the fact that we have had the application of design criteria and modification from the city in regard to a Walgreens; and our plan adheres to that recent approval. I would respectfully suggest that is not a reason, therefore, to deny this application. Number Seven, I think I've made the record on the 8' sidewalks. Again, we're adhering to the application of that rule to an actual Walgreens at another location and would respectfully suggest it's not a reason to deny this application. Eight goes to this issue of the sidewalk system internally does not access the public sidewalk sufficiently enough to satisfy Staff. We'll take a stipulation to modify that by final plan however Staff wants it. That's just a site design issue. The last one is that we have an angular pedestrian way from Discover O to this building. We will just state for the record, given the fact that we don't have a building over there, that any pedestrian way we put in there for the ultimate pedestrian access will be lined up in accordance with the recommendations of Staff.

With that, Madame Chair, I'd be happy to answer any questions, as would members of the team.

Chair Rohlf: Thank you. Does anyone have questions for the Applicant?

Comm. Shaw: Could you please show us again the original site plan that you showed us earlier? I just want to view it.

Mr. Petersen: Yes, sir (*shows site plan*).

Comm. Shaw: No, I'm referring to when it was originally submitted back in the '80's or early '90's. Excuse me, we have one right here. I have it.

Comm. Roberson: While he's looking at that, I have one question. Am I to understand that if I come in off 117th Street to go to the drive-up, I drive on the wrong side of the road to get into the drive-up? If that's a two-way street, I have to cross over.

Mr. Petersen: You would cross over that oncoming lane to move to the drive-thru, yes, sir – very similar to the situation you have at 151st and Nall.

Comm. Roberson: It didn't appear in the picture.

Mr. Petersen: I don't have a good enough picture to show you. I would submit to you that it's not uncommon in internal circulation, but that is the way it's designed.

Comm. Roberson: That's not the way it's shown.

Comm. Williams: Would you describe to us locations for delivery and trash pick-up on the site? If you would also address, since this facility is open 24/7, timing for deliveries and so forth and where they would come into the property and so forth.

Mr. Petersen: We did have some information we presented to the neighbors given to us by Walgreens. In terms of the general comment about point of service and deliveries, it is in the northern area. There's an enclosed wall that includes the trash receptacle in this area here (*refers to Preliminary Development Plan*). I think that is the gate system there. The delivery door is right there on the north side. In terms of delivery timing and trash pick-up, deliveries are typically in the morning hours before the store gets busy. We would more than welcome a stipulation restricting times of trash pick-up and deliveries for the store. I think we're far enough away from most residential that it wouldn't be an issue, but I know it is one that's of some sensitivity.

Comm. Williams: It has been of sensitivity with this body on other projects that have had drive-up facilities. Those facilities, from what I recall, have not been 24/7 facilities, so it's possible to do deliveries and trash pick-ups in the mornings before customers start trying to maneuver in the same pavement areas with trailer trucks and trash trucks and so forth. My colleague was asking for clarification on access to the drive-thru. Again, if service vehicles are going to be using those same drives at potentially the same time of day, it's difficult. You've got this in centers all over, but you often have the opportunity to do it in the morning before the stores open and customers start coming in.

Mr. Petersen: Typically with that level of detail, whether we did a preliminary plan or final plan to take stipulation about delivery times and trash pick-up times, many times those are of interest to neighbors if they're close enough to hear that activity. We'd be very open to that. Those are the kinds of issues I've talked to the neighbors about working out at a final plan stage to make sure they're comfortable. I would make one distinction, however, in terms of if there was noise of the drive-up facility itself. Of course, with a pharmacy, there's no outdoor speaker or order board. It's not a situation like a McDonald's or Dean and DeLuca, recently approved.

Comm. Williams: We had a lot of problems with it, as you may recall because of all the traffic points, coming off a fairly busy street – Tomahawk Creek Parkway.

Mr. Petersen: Definitely worthy of final plan consideration.

Motion to extend the meeting until 9:30 was made by Elkins; seconded by Williams. Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Comm. Williams: In your photos of the Walgreens at 151st and Nall, there was a canopy over the drive-thru. I don't see one being proposed on this one. Is that correct?

Mr. Petersen: We had that discussion today because I had the very same question. Do you want one?

Comm. Williams: The way this is configured, no, I don't.

Mr. Petersen: It doesn't have the poles. I asked the architect that today. There would be a canopy for weather protection, but it would be anchored to the wall as almost an awning, as opposed to the pole on the one at 151st and Nall. We assumed that would come in as the stipulation indicates with the final plan. The signs will come in also. There are a lot of comments from Staff about signs. We're not asking for any sign approval as part of this application. That's a final plan issue and a separate plan issue. We acknowledge that. We'd have to adhere to the UDO in regard to signage.

Comm. Williams: So the overall design of this particular facility and its materials would all be addressed at the next stage.

Mr. Klein: Correct, final issues of landscaping, signage, lighting, architecture and materials are all final issues.

Comm. Williams: I don't like the design of this sitting at this corner, but this is not the time or place to address that.

Mr. Klein: Right.

Mr. Petersen: I know there was some confusion, and we had a stipulation about the stuck-on brick not being allowed. We agreed with that stipulation. At final plan stage, we would show you this as a representative sample of the type of materials we would intend – maybe not the exact use of awnings and all that, but quality of materials.

Mr. Lambers: This document (*handed out to Commissioners*) is part of a document submitted by the Applicant's traffic engineer and was just brought to my attention. You asked about deliveries in terms of time. They're proposing they would occur during normal business hours. This shows that the truck has to make the right-hand turn from the left lane of Roe and therefore will stop traffic behind it, have to wait for traffic to clear in the right turn lane and travel through the right travel lane to get into the site. While this is a legal pursuant to action of standards, the question is, is it really in the best interests to have that occurring at this point in this section of Roe?

Comm. Roberson: Do I remember correctly that trucks are not allowed on 117th Street? It's got a "No Truck" sign.

Mr. Lambers: It's a "No Truck Turning" sign.

Comm. Roberson: To go down to Tomahawk.

Mr. Lambers: Yes, that's what I recall.

Comm. Williams: I guess this shows how the truck gets in. How does it get out?

Mr. Lambers: Once it's in, I think it's okay; it's just getting into the site. I don't think it can come in off 117th Street.

Comm. Williams: So if it's going to be pulling out onto 117th Street, it's going to take a couple of lanes as well to make that turn.

Mr. Petersen: We could have our traffic engineer respond to the issue.

Mr. McCarrow: The truck we're seeing here is actually what we call the WB67, more commonly called an interstate tractor-trailer. These are the largest vehicles you typically see out on the roadway. A lot of delivery vehicles are actually much smaller than this. The maneuver you're showing is actually common, and I would argue that it happens at just about every commercial driveway and every intersection in which you have this large of a facility turning. Trucks can't make a right turn out of that right turn lane. It's a common application that reminds me of a story when I was at Lee's Summit. One truck driver mentioned to me, "We're big; we're slow. People don't run into us very often." Trucks move, and this is the legal maneuver they make. The trucks can circulate coming in off Roe. There's also the opportunity as they leave to exit off 117th Street. I'd be happy to answer any questions on this subject you might have.

Chair Rohlf: Mr. Klein, did you have a comment? I know we're still asking questions of the Applicant. Are there any other questions at this point?

Comm. Elkins: Mr. Petersen, I have a question on the original plan you put up. Do I understand correctly that has been approved for a drive-thru? When was that plan approved?

Mr. Petersen: 1998.

Comm. Elkins: This pre-dates the LDO we have now.

Mr. Petersen: It was re-approved in 2004?

Mr. Klein: 2004 is when it was shown; however that was actually focusing more on the Sunrise. It was approved as Case No. 67-99, so it was back in '99.

Mr. Petersen: But I would remind Staff of its prior testimony that you take all plans in a comprehensive fashion, so when you re-approved this plan in 2004, you evaluated the plan comprehensively, then you should have been recommending changes. You did not, and it was re-approved as part of the preliminary plan of 2004. Part of that plan has been executed, which holds it in place. Someone could come in today in a final plan ask to build that building with that configuration with a drive-up window, and it would be a legal application.

Comm. Elkins: Mr. Petersen, let me break that into pieces. Bottom line is that the preliminary plan as previously approved in 1999 and 2004 does provide for a drive-thru. That drive-thru is in violation of current zoning for that location, correct?

Mr. Petersen: I would argue that it's not in violation with current zoning. As is any case when you change your zoning code and create a new zoning category, it doesn't take away the use.

Comm. Elkins: I understand, but in order to permit the special-use permit that's requested here tonight for a drive-thru, our ordinance requires a different zoning classification - true or false?

Mr. Petersen: If you applied for it today, it would take a different zoning classification.

Comm. Elkins: Thank you, but your position is under some legal theory, it would be grandfathered in because of the prior approved plan.

Mr. Petersen: If I brought in a use consistent with that zoning and configuration at the time of a bank (I believe), the rule was that you could have a drive-up facility. It's my opinion that is a plan I would have a right to bring in at final plan and have approved.

Comm. Neff-Brain: Was a pharmacy part of that zoning?

Mr. Petersen: I don't know. I think there was a strange quirk on drive-up windows back in those days, but I'd have to look at it.

Comm. Elkins: Mr. Petersen, changing topics for a moment. As I understand it, what the Applicant is willing to do on the right-of-way issue is to grant a 5' right-of-way currently, correct?

Mr. Petersen: Yes, sir because we're making improvements on that today.

Comm. Elkins: I understand, and that upon a request by the city, the Applicant would agree to a stipulation to grant an additional 10' of right-of-way. I look at your plan, and there is parking on the south side of the building, correct?

Mr. Petersen: Yes, sir, single-loaded.

Comm. Elkins: So in the event that the additional 10' right-of-way was granted, would the Applicant have to take out that parking to be compliant with the parking setbacks?

Mr. Petersen: We would be at a 15' parking setback, then.

Comm. Elkins: And as I recall, the way the ordinance was quoted to me earlier this evening, it's a 25' required setback with authorized deviations of up to 75%.

Mr. Petersen: I wouldn't be requesting a deviation.

Comm. Elkins: And why is that?

Mr. Petersen: Because the city would be taking the property for a public purpose to create a turn lane, I wouldn't need a deviation. I would submit to you that the city very often takes additional right-of-way, and it reduces the setbacks below what the zoning ordinance would normally allow. If we need two left turn lanes, which is the reason I heard for the 15', you're going to be taking additional right-of-way from other streets in other shopping centers in the area that would reduce their green space setback to less than what the ordinance allows. That happens all the time.

Comm. Elkins: Let me try it this way: in that event that the city requested and the Applicant granted the additional 10' of right-of-way, the parking setback would be less than that which is authorized by the LDO, correct?

Mr. Petersen: Yes.

Comm. Elkins: I understand you're not asking for a deviation. That's not my question. I'm just asking if the setback would be less than permitted by the LDO?

Mr. Petersen: 4' less.

Comm. Elkins: But it would be less, thank you.

Chair Rohlf: Questions for the Applicant? All right, this case does require a Public Hearing. Is there anyone in the audience who would like to speak about this case?

PUBLIC HEARING

Ken Patrick of 11603-E Tomahawk Creek Parkway, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Patrick: Again, I would object to this. The 60/40 rule is being violated substantially. The green space effect will not be what it should be. I think Mr. Petersen's 151st and Nall photos were a pretty clear example of why we wouldn't want that here, and 117th and Roe is not 151st and Nall as far as street sizes. I think it's inappropriate for the area. Thank you.

Chair Rohlf: Thank you. Is there anyone else who wishes to speak this evening?

As no one else was present to speak, motion to close the Public Hearing was made by Roberson; seconded by Heiman. Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

Chair Rohlf: This takes us to our discussion.

Comm. Williams: Is it possible to ask Staff a question?

Chair Rohlf: I think at this point, yes.

Comm. Williams: Mark, can you help us identify locations or situations in more modern development time (post-current LDOs) where we would have a drive-thru facility on a corner piece of property like this and one that has access drives as close to this fairly busy intersection? Then also in that situation, could you point out where we have buildings that don't begin to meet or come close to that 60/40 on this type of condition? I say "this type of condition" because this one is very different, in my opinion, to the Walgreens that was referenced at 151st Street east of Nall. It's on, I believe, more of a residential access to the shopping center; so it's not a prominent intersection.

Mr. Klein: I have a plan here that you can see of Nall Valley Shops - one that has been referred to tonight (*refers to site plan*). This is Nall Valley Shops, and actually Nall is

located right over here. This is 151st Street right here. This is an entrance into the shopping center here. The Walgreens is not sitting on the corner, but rather right here. As you can see, the 60/40 was met with the building and landscaping condition for the rest of that frontage that went along there; so it really is different. I think the crux of what's being decided here as far as the rezoning and the use is you have a zoning right now of SDNCR. You have a 60/40 rule that is required by ordinance unless a deviation is granted, and you have a prominent corner in downtown Leawood. Basically the decision you're going to make tonight is going to have a substantial impact not only on this building, but also on the other development. Mr. Petersen indicated a pharmacy is an allowed use within the SDNCR district, and that is very true – it is an allowed use without a drive-thru. But that drive-thru actually changes a lot of things. It requires that building to be pushed back and not meet that 60/40. It doesn't allow that to come up to the corner. I imagine it's probably going to make it difficult to have a future building here (*refers to site plan*) do the same as far as coming down to 117th Street. So, you're looking at an application asking for a rezoning for a particular use. They're asking for deviations to that, including not providing the right-of-way the city typically gets when it asks for future improvements in a very prominent area of the city where you have governmental, retail and residential uses all coming down at this one point. The rezoning and deviations will then affect how the city is going to look. I think that's what it's coming down to. Even if it came in and was a perfect plan asking for no deviations, I don't believe you would have to approve it just because of that if you didn't feel like the use or site layout were appropriate although I'd have to defer to legal.

Chair Rohlf: All right. This would take us up to our final discussion, then.

Comm. Jackson: As far as the rezoning issue, I don't find this is an appropriate new zoning to put on this corner. By rezoning it, you allow it to go from a .20 to a .25 F.A.R. I think it's a little too intense use for that corner with the way that plot is laid out and difficulties with traffic that have often come up in this meeting. I understand they're well under that .20 F.A.R. at .16 for that Walgreens; but by rezoning it, you would allow a more intense use to be able to come in if this didn't proceed as it is on the site plan, which obviously get rewritten all the time. Also, the drive-thru is just too much for that corner. It causes you to not meet the 60/40 rule, and the landscaping is not what it should be in there. I just think the special use of the drive-thru causes too many problems for that lot the way it's laid out and the way they want it to abut up to the rest of the property.

Comm. Roberson: I'd just like to concur and indicate once again I think it's an inappropriate building for this site.

Comm. Williams: I concur with what has been said and have a couple of different comments. I think in this particular site, the 60/40 rule is very important. Actually Mark didn't get to one of my other questions, and that is locations in the city at busy intersections where we have broken the 60/40 rule and so forth. Since I've been on this body, I can't remember any of those. There have been some deviations as you've gotten down along the street in some cases, but certainly not on the corners. The corners are very prominent elements. I think with what's around here built more per the current LDO, it needs to comply with the 60/40. I do agree that the drive-thru as it's presented tonight really does complicate the lot. It does complicate its usage. Even though the '98 site plan had a drive-thru, it was approved per different standards. Also if you look at the access to the drive-thru and how it relates to other traffic circulation, it

stands alone. You go clearly into the drive-thru and maneuver out instead of turning circles through the development here to get in and out of the drive-thru. We've had this discussion on other projects that try to do similar things, and it creates dangerous situations for both vehicles and pedestrians. If Staff begins to say that at some point a right-in and right-out is appropriate for this site, I might be convinced of that. Again, looking in context with the area and other developments, you don't have anything that close to the intersections. In fact, do you even have any right-in, right-out or left-in, left-out situations? I see that as problematic as well.

Comm. Heiman: Madame Chair, I think it's obvious where this is headed, but I will say I agree with my fellow Commissioners. I'm not in favor of rezoning, as this is planned neighborhood retail. I'm not in favor of it being more intensely used. I have lots of other issues, including the 60/40, the truck delivery and the right-of-way issues. There's also a CVS right across the street. Quite frankly, I don't know that we need another drug store across the street. I'm also not in favor of this application.

Chair Rohlf: Thank you. Would anyone else like to make a comment?

Motion to recommend denial of Case 39-08 – TOWN CENTER BUSINESS PARK – WALGREENS – Request for approval of a rezoning, special-use permit and preliminary site plan with reasons stated in the Staff report and comments by the body here tonight was made by Williams; seconded by Elkins. Motion passed unanimously with a vote of 7-0. For: Shaw, Roberson, Jackson, Neff-Brain, Williams, Elkins and Heiman.

MEETING ADJOURNED.