

**City of Leawood  
Planning Commission Minutes  
January 13, 2009  
Meeting - 6:00 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive**

**CALL TO ORDER/ROLL CALL:** Pateidl, Roberson, Jackson, Neff-Brain, Rohlf, Munson, Elkins, and Heiman. Arriving late: Williams.

James Pateidl is taking the place of Dick Shaw.

**APPROVAL OF THE AGENDA:**

**A motion to approve the agenda as amended was made by Munson; seconded by Roberson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Elkins and Heiman .**

**APPROVAL OF MINUTES:** Approval of the minutes from the December, 2008 meeting.

**A motion to approve the December, 2008 Planning Commission meeting minutes was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Elkins and Heiman.**

**CONTINUED TO JANUARY 27, 2009 MEETING:**

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

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

CASE 96-08 - ONE NINETEEN MOCHI YO - Request for approval of a final plan, located at the southeast corner of 119<sup>th</sup> Street and Roe Avenue.

**A motion to approve the continuance of Case 96-08, ONE NINETEEN MOCHI YO to the January 27, 2009 meeting was made by Neff-Brain; seconded by Roberson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Elkins and Heiman.**

**OLD BUSINESS:**

CASE 85-08 – MISSION FARMS TRASH ENCLOSURE - Request for approval of a revised final site plan; located at approximately 105<sup>th</sup> Street and Mission Road.

**Staff Presentation:**

Assistant Director Mark Klein provided the following presentation:

Mr. Klein: Mister Chairman and members of the Planning Commission, this is Case 845-08 - LEAWOOD MISSION FARMS TRASH ENCLOSURE. This case was heard by the Planning Commission on November 25, 2008. At that meeting, it was stated that Staff was opposed to this application due to the proposed location of the trash enclosure, which is over on the north side adjacent to the townhomes. Staff is still recommending denial of this application for the same reasons that we stated previously as far as the close proximity to the residential area with regard to noise, odor and that sort of thing. However, at that meeting, it was stated that the applicant was to go back and look at putting a roof structure on the trash enclosure. The applicant has come back and provided a trellis feature to be located on the trash enclosure. Staff is again recommending denial of this application. However, if the Planning Commission so chose to approve this application, Staff does have a number of stipulations to provide as well. Staff will be happy to answer any questions.

Chair Rohlf: The record should reflect that Comm. Williams has joined the meetings this evening. Questions for Staff?

Comm. Neff-Brain: Yes, do we have any pictures of this trellis? I think I was the one who requested that we see a roof structure, which I don't consider a trellis to be.

Mr. Klein: Actually they have provided schematic drawings of what the trellis would look like. They have them located in the north-south orientation going across. Staff had some concerns that being from the north, you could still look between the trellis feature. So in the stipulations that we had, we also indicated that they would need to put east-west members that went across, spaced about sixteen inches on center.

Chair Rohlf: If I remember, Mark, I think as a group we were working toward taking the trash enclosure where the applicant wanted it. Is that your recollection, Jane?

Comm. Neff-Brain: We talked about having a nice roof structure on it so it looked more like a little building than a trash receptacle.

Chair Rohlf: Maybe they can shed some light on that. Does anyone else have questions from Staff? Then we'll hear from the Applicant.

**Applicant Presentation:**

Rick Jones, architect from Nearing, Staats, Prelogar and Jones of 3515 West 75<sup>th</sup>, Prairie Village, KS, appeared before the Planning Commission and made the following comments:

Mr. Jones: Our recollection is the same. At the last meeting, we had the impression that the Planning Commission was fairly supportive of the location for the trash enclosure. What we heard mentioned was a roof structure or possibly a trellis in this location. We would prefer the trellis. One of the main reasons is, again, I think everyone is concerned about the smell from this facility. The dumpsters will be closed at all time, and the material will be taken in a closed car. One of the Staff's stipulations is that it gets emptied every day between 8:00 and 5:00, and that is what is planned by the developer. (*refers to sight plan*) We feel like having this facility in this location is much better than carrying the trash all the way across the main drive over to the highway location. The difference is about 300 feet. Where the trash comes out of the ends of the buildings, it's about 180 feet to the north. It would be 470 feet from the south. I will mention that Mr.

Weltner is out of town and wasn't able to attend. He made that case fairly clearly how it needs to be distributed - it needs to be in as open a facility as possible.

I think the main concern was the townhomes to the north being able to see in this. As it's currently proposed without the trellis, you could see into the structure; but you could not see the dumpsters if you'll view the sight lines. What we've passed out to you this evening also shows the sight lines from the condominium buildings to the south. We'd be happy to comply with Staff's stipulations to run additional members in the other direction, which would provide greater coverage. Generally when we do a structure of this kind, it's got two heavy wooden beams running in the east-west direction. We span the shorter direction with what we call the rafter beams. They're actually fairly heavy, too, at 3"X8" in dimension. It is true that you could potentially see through them, but you could not see the dumpsters themselves within the enclosure.

The rest of the Staff stipulations including the additional landscaping, we're happy to comply with. Doug Weltner's group maintains architectural control over the whole project. Both of the developers of the condominiums: Paul Robin and Mike Fox, who's doing The Manors (currently under construction), have agreed and accepted this location. I'd be happy to answer any questions.

Chair Rohlf: Thank you. Questions for the Applicant? Yes, Miss Neff-Brain?

Comm. Neff-Brain: Is there a structural reason why we didn't see a roof instead of a trellis?

Mr. Jones: There's not a structural reason. We want to keep it as open as we possibly can to not concentrate the odor. Odors become a problem when they're contained, and the roof would tend to do that, where the trellis will not.

Chair Rolf: Miss Jackson?

Miss Jackson: How much distance do you have between the top of the trash bin and the top of that?

Mr. Jones: Let me get the bigger plan (*refers to sight plan overhead*). It's about 18" to the top of the wall, and the beam adds another foot to that. You can see that beam running across.

Miss Jackson: The trellis beam?

Mr. Jones: Yes, the major beam is right above those doors there if you're looking at the elevation.

Miss Jackson: And then you're saying if you did crossbeams, you'd keep the beams as you're showing them now; but you would put additional ones on top?

Mr. Jones: There would be a much smaller additional member going parallel to the main beams on top of that. That is correct.

Miss Jackson: And just so I am looking at this correctly, with the sight plan, you're saying by standing in the second floor of these buildings looking down, the height of the wall is what's going to keep you from seeing the top of the trash bin.

Mr. Jones: That is correct.

Miss Jackson: That's all I have.

Chair Rohlf: Is the use of the timbers compatible with any other material on this project?

Mr. Jones: We do have wood trim that's a dark color on the buildings, and it will be the same color. It will be dark.

Chair Rohlf: Does anyone else have questions for the Applicant?

Comm. Pateidl: Excuse me for not having been here before, but I'd like to know if there has been discussion relative to the attraction of varmints as a result of this trash being that close to the residences. The open edible garbage is going to be an invitation to rats and skunks and possums and raccoons, just to name a few.

Mr. Jones: It's in a closed bin that's emptied once a day.

Comm. Pateidl: You don't think there's going to be any spillage or any problems of that nature.

Mr. Jones: The property is excellently maintained. I can't say that will never happen. That's one reason we wanted it in a closer proximity to where the trash is coming from, rather than carrying it all the way to the other side of the site.

Comm. Pateidl: The location of this is also very close to the swimming pool for the community. It's much closer to the pool than the trash container on the south side is to the commercial property. I guess my concern is that this is an invitation to create some health hazards with varmints in a very residential area. For that reason, I have strong support for the Staff and their recommendation.

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

Comm. Munson: Do you want questions or comments?

Chair Rohlf: Is it directed to the Applicant?

Comm. Munson: Just comments that would be directed to him.

Chair Rohlf: Go ahead.

Comm. Munson: Echoing the new commissioner on his concern, I also have these following concerns; and I will go through them if you will bear with me. First of all, I think that at this location, even if you build it like you say you're going to build it, there's still going to be a distraction to the residential areas, both in your condo units and in the units on the north side - spillage, etc. As far as it being policed, I'm thinking of another location where we recently approved the restaurant over here called Sullivan's. It has a

trash enclosure that has a wall built around it, but they leave the doors open all the time so you can see them at 119<sup>th</sup> Street. I mention that because this can happen with any location. Third, I took a drive-by of the area on Sunday and noticed there was trash in the front driveway – bottles, cans and boxes; so the policing of the area is suspect. Also, having a restaurant worker walking from the restaurants over to the lot that the Planning Staff prefers is an inconvenience for that person because it's a long walk; but restaurant workers come and go and residents stay. I think that to be concerned about that is missing the issue. Also, we're told that it's going to be policed and so forth, but what happens if the developer sells the project to someone else and that particular group or individual is no longer the one that we started out with? We no longer have the same promises or the same way to keep track of things. Those are my concerns. At the last meeting, I thought it made sense. After looking it over and thinking about it, I don't think it does. I think it needs to be on the south side away from the residential units and as far away as it possibly can be so any spillage or anything that could attract varmints won't be a hazard to the residents and a discomfort to them. Thank you.

Chair Rohlf: Thank you, Mr. Munson. Anyone else?

Comm. Williams: Mr. Johns, I think you may have gone over this at the last presentation; but given the time frame, I have forgotten some of it. The trash enclosure is to serve trash for the restaurants on this side of the complex only?

Mr. Jones: That is correct.

Comm. Williams: So retail businesses that are on Track E and the residents two floors above, where does their trash go?

Mr. Jones: If you're talking about buildings A and B, their trash goes into a compactor in the building itself.

Comm. Williams: Where in the buildings are those compactors located?

Mr. Jones: They're located near the alley.

Comm. Williams: The dividing alley?

Mr. Jones: Yes, between the buildings.

Comm. Williams: So again, this is only for the restaurant use?

Mr. Jones: That's correct, and one thing I wanted to point out is that it's just for the restaurants. As you know, this location has been a very popular spot for restaurants, and they have done well. We now have, I think, one or two in Building F as well on the other side, closer to the highway. The restaurants on that side will use the dumpster along the highway. That was one of the points that Mr. Weltner made at the earlier meeting - that it's good to keep it somewhat open and spread out and not have to bring it all the way across the site. So that location will be used for the restaurants that are under what we're currently working on and calling Building E, which is more or less a mirror image (in fact, it was approved by the Planning Commission, I believe, in November) and Building F that's already there. Any restaurants on that side of the main drive will go to the south.

Comm. Williams: Going back to the restaurants, then, in Building A and B, if they're not using the compactors in those buildings but going to need to take the trash out to a dumpster – let's say for a moment it is on the north side – where are they keeping the trash before they take it to the outside remote dumpster?

Mr. Jones: It's in their facilities. It doesn't make a stop on the way.

Comm. Williams: If they were to transport that refuse to the south location, do you have any sense of how they would transport that?

Mr. Jones: In a plastic two-wheeled cart.

Comm. Williams: So there shouldn't be an opportunity for those bags to split and strew trash from their location all across your parking lots.

Mr. Jones: It should not happen.

Comm. Williams: Thank you. I have no further questions.

Chair Rohlf: Thank you. Does anyone else have questions?

Comm. Heiman: I have a couple of thoughts here. I think it's fairly clear that Buildings A and B are supposed to use the trash enclosure that is in question, and Building F and E are to use the trash enclosure on the south side.

Mr. Jones: That's correct.

Comm. Heiman: Last time there was some discussion about distance from Building A to that south side. I don't know what that distance was, but in my mind, for the residents and patrons to have somebody wheeling a cart from Building A all the way down to that south doesn't make sense to me either. I think this is always a difficult challenge to dispose of trash, but personally I think the idea is sound. I know it's probably not optimum, but dragging trash from Building A all the way to the south side is not optimum either. So the question is what is that distance? I remember you had mentioned last time that we were here that there was a pretty good distance that they would have to travel to do that.

Mr. Jones: (*refers to sight plan*) You come out of the buildings at the central alley. It's 180' to the north and 470' to the south from A and B. I think the main concern is more The Manors, the villa units that are off to the north. When you're standing in their front yards, it's the developer's and my feeling that it's not attractive looking at the sea of cars. It's broken up with plantings according to ordinance; but frankly, I think the brick wall with the landscaping in front of it is a nice break, and we're extending that fairly significantly. To me, that's a plus in the location where it is, to break that up. Again, it's a solid brick wall. It'll be well ventilated. Again, Mr. Weltner, has had extensive experience with this problem primarily in the Westport area. When you get it spread out and property taken care of, it's not a problem. It's in a contained area, which it was when we were trying to use the compactors in the building. Frankly, it was an incompatible use, and other people have had the same issues with condominiums and apartments above restaurant facilities.

Comm. Roberson: I've noticed that you have no letters from residents or tenants supporting this transaction or this concept. Why is that?

Mr. Jones: There aren't any residents in The Manors, and I'm not sure how many there are in the buildings A and B at this time. The single largest owner is the developer, and obviously it's very important to him that this is an appropriate solution. He's Paul Robins, from whom we do have a letter.

Comm. Roberson: I understand, but the people who actually are going to live and work there.

Mr. Jones: I think the few tenants that have been there do not want to open the trash chute and have the smell of the restaurant refuse. That's the major issue that they're having.

Comm. Roberson: Just curious why there weren't any written letters from them. Thank you.

Chair Rohlf: Anything else for the Applicant? All right, thank you.

**Motion to deny Case 85-08 - MISSION FARMS TRASH ENCLOSURE - request for approval by sight plan, was made by Munson; seconded by Roberson.**

**Motion to deny did not carry following a vote of 3-4. For: Pateidl, Roberson, Munson. Opposed: Jackson, Neff-Brain, Williams, Elkins, Heiman.**

Chair Rohlf: It appears that we, perhaps, have the other side of the argument with the remaining commissioners if we can try to make a motion on that.

**Motion to approve Case 85-08 - MISSION FARMS TRASH ENCLOSURE - Request for approval of revised final sight plan with stipulations 1-5 was made by Williams; seconded by Elkins.**

**Motion carried with a vote of 5-3. For: Heiman, Elkins, Williams, Neff-Brain, Jackson. Opposed: Pateidl, Roberson, Munson.**

### **NEW BUSINESS:**

CASE 98-08 - ONE NINETEEN DEAN AND DELUCA - Request for approval of a revised final plan; located at the southwest corner of 119<sup>th</sup> Street and Tomahawk Creek Parkway.

### **Staff Presentation:**

Assistant Director Mark Klein provided the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 98-08 - ONE NINETEEN DEAN AND DELUCA. The Applicant is requesting revised final sight plan for the Dean and DeLuca building that is going to be located within the One

Nineteen development along Tomahawk Creek Parkway at the east end. They're proposing two changes to the building. One is on the south elevation adjacent to the drive-thru. They are proposing to remove one of the windows that's located there, along with the green awnings. The Applicant has stated that the reason for removing those windows is that they'll have some cooking equipment and that kind of thing that really isn't something that is to be viewed by the public and therefore would be better screened. The other change that they are requesting is to add an 8' extension onto the east elevation of the building, which is a screen wall that screens the trash enclosure on the east side of the building. The reason they are requesting this is to provide more space back there not only to allow the trash enclosure in the loading dock area, but also to accommodate some utility boxes that are back there as well. That wall will extend to 8'. It will jog in 1' because the way that lot is shaped, it kind of follows Tomahawk Creek Parkway as it goes along. In order to maintain the building setback, it had to set in 1'; so they did that. Staff is recommending approval of this application with the stipulations stated in the Staff Report, and I'll be happy to answer any questions.

Chair Rohlf: Questions for Staff?

Comm. Heiman: I'd just like to know where the old window was. I know it's on the south elevation.

Mr. Klein: It's on the south elevation. Actually in the plans, they drew a cloud around that section. I can show you on the overhead.

Comm. Heiman: I've got it; it's fine.

Chair Rohlf: Anything else for Staff?

**Applicant Presentation:**

Christopher Sogus, DLR Group, 7290 West 133<sup>rd</sup> St., Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Sogus: Thank you for taking the time to see us today. The driving factor with these revisions is the design was done prior to the interiors package being developed, so we needed to address a couple of significant issues: one being the interior next to the third window and the other being the additional equipment in the service yard. Briefly that's it, and I can answer any questions you may have.

Chair Rohlf: Questions for the Applicant?

Comm. Munson: What's the status in terms of opening of the facility?

Mr. Sogus: Well, I don't really know. We're the shell architect. There's another architect handling all the interiors.

Comm. Munson: So when they get the shell done, they're half done?

Mr. Sogus: Then another architect comes in, and I think they've actually got drawings in for permits. I don't know where they are in terms of review and all that.

Chair Rohlf: Anything else?

**Motion to approve Case 99-08 - ONE NINETEEN DEAN AND DELUCA, with Staff stipulations 1-3 made by Roberson; seconded by Jackson.**

**The motion passed unanimously with a vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Williams, Elkins and Heiman.**

CASE 02-09 - MARKET SQUARE CENTER – Request for approval of a revised final plan; located at the northwest corner of 135<sup>th</sup> Street and Pawnee Street.

**Staff Presentation:**

Assistant Director Mark Klein provided the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 02-09. The Applicant is requesting approval of a revised final sight plan for the screening of six utility boxes and for modifications to the sign criteria for the Market Square development. Let me give you some reference as to where this is located. The Price Chopper is located at 135<sup>th</sup> St. and Mission Rd. As you may recall, there was an addition of about three buildings that had been constructed at this point located at that southeast corner adjacent to the intersection of Pawnee and 135<sup>th</sup> St. With regard to those buildings, there have been some utility boxes installed, some transformers and also some sectionalizers that are located there. Within the staff report, I created a matrix for you to indicate where each of the boxes was located, and I broke them down as far as Location One, Location Two and Location Three and Four. The Applicant is requesting to screen these boxes pretty much in the same way on all of the boxes with burke eyed junipers that will be 5' in height. The tallest box is 4'5". There's a transformer located there. Then between the sidewalk and utility box, they're proposing to screen the box with two-gallon Carl Forester switch grass. The grass would then grow up to a height sufficient enough to screen the boxes. One of the things that this does, according to the Applicant, is allow the KCP&L to access the boxes by cutting down the grass, but the grass will then grow up after that. Staff is recommending approval of the application with stipulations stated in the Staff Report. This is the utility box portion of it.

They do have a second portion of it that is related to modifying the sign criteria within the Market Square development. With that, currently the Market Square development only allows white letters to be used and really no marketing of the individual building as far as different colors, icons, logos, etc. They're asking for different colors to be used outside businesses that wish to be branded instead of just the white faces. The other thing they're asking for is over the entrance of the buildings, which generally face interior to the site, that the maximum height of 2' for the letters is allowed to go to 3' in height. Staff is supportive as far as allowing the branding as long as it comes before the Planning Commission and City Council and is approved that way. However, we are not supportive of allowing the lettering to go from 2' to 3' in height. We just feel that's too large. Again, it faces interior to the site. People who are parking are not going to be that far away from the building to have a need for a 3' letter. Staff is recommending approval of this application with the stipulations stated in the Staff Report, and I'll be happy to answer any questions.

Chair Rohlf: Thank you. Any questions for Staff?

Comm. Elkins: Mr. Klein, what alternative techniques for screening the various KCP&L boxes are available to the developer here?

Mr. Klein: Basically you have a situation where you can either do landscaping, which is typically used; or you can use a masonry screen to match the materials used in the building. At one point when this application first came forward, one of the transformers on Building F was shown to be located in the corner of the building and therefore could have easily been screened with a masonry wall that extended much like a trash enclosure or something like that. However, when the box was actually placed, it was placed out on the south side of the building adjacent to 135<sup>th</sup> St. That is the one box that actually does not use any of the grass to screen the box. They basically created a big circle of junipers that goes around there and created a 10' buffer area on the south side of it to allow KCP&L to access that side of it. That site does slope down to the south of that location. Hopefully, as the junipers grow, it will completely screen it; but it should screen the majority of it right at the beginning. The Applicant is also proposing to plant a lot of these junipers to have a 3' clearance between each of them. They're basically stating the reason for that is when the plants grow together within a growing season or two, it will all go together and all screen. It's Staff's opinion that these boxes need to be screened from day one, and therefore we're recommending that the spacing be maximum 42" across and no more than 1' clearance between the plants.

Comm. Elkins: Thank you, Mr. Klein. I have one additional question. Did I understand you to just say that Staff is supportive of the proposal of changing the limitation of the signage to white facing and black returns?

Mr. Klein: Yes, we're all right with being able to brand as long as it has a stipulation, and they included that in their sign criteria – that it would have to come before the Planning Commission and be approved by both the developer and the city. It would therefore come before the Planning Commission and City Council that way, allowing them to see what they are proposing at that time. Staff was supportive of that change; however, we were not supportive of going from 2' letters to 3' letters.

Comm. Elkins: So as proposed, we'll have the opportunity to address even more sign issues.

Mr. Klein: Yes.

Comm. Elkins: Thank you, Madame Chair.

Chair Rohlf: Comm. Roberson?

Comm. Roberson: Can you educate me, Mark? I guess the city doesn't have control over where they're placed, or is it lack of planning? These just seem to be plopped down, and then we have to worry about landscaping them and hiding them. If you drive along 135<sup>th</sup> Street, a lot of the boxes that are not landscaped are very close to the street or exposed. I guess if you look down the street at MNI bank, their building has a berm to hide theirs, if I'm not mistaken. How does this evolve?

Mr. Klein: Basically there will be a lot of boxes out there. This ordinance really didn't come into effect until after the new Leawood Development Ordinance, which was 2002.

It isn't going to cover anything that was prior to that. I believe this section of the ordinance was added even a little bit later than that. With regard to the boxes themselves and the reason you see them in the location they are, KCP&L has certain requirements with regard to where they place those boxes. They always like to have access to the openings of those boxes. In fact, they've indicated on some of the transformers that they have a minimum of 10' of clearance so they can have one of their workmen go out there, open the doors, have a 10' long pole to flip certain switches so they avoid the arc of the electrical current and that kind of thing. It seems like what they like to do is put these up right next to a sidewalk where it's almost impossible to screen or put them in such an area where it is very difficult to screen. Staff has talked to KCP&L a number and developers a number of times, who say they are caught in a catch-22 where basically KCP&L dictates where they put the boxes and puts them in at a later date. The solution the city is looking at is to make sure the developers are aware that we have the requirement for screening at the very beginning and that they try to find out where the locations of those boxes will be when they bring through their final sight plan for the development. Then you'll have a general idea where they're going to be and how they're going to be screened. The city actually would also like to dictate a little bit as far as where those boxes go so that maybe they go up next to a building or something like that to where you can actually get a masonry screen wall that will wrap around it. That way if they need to access it, they can open a gate, access what they need to access and close the gate. Then you don't have that problem that you do with some of the landscaping and that kind of thing.

Comm. Roberson: Thank you.

#### **Applicant Presentation:**

Paul Wade with Copaken, White and Blitt representing the ownership of Market Square, 1100 Walnut, Kansas City, MO, 64104, appeared before the Planning Commission and provided the following comments:

Mr. Wade: I am joined tonight by David Contag and Chris Sogus with DLR Group, who I think may want to have some input as to spacing and plants and those types of things, which I'm really not too informed on. What Mr. Klein referred to is exactly correct in regard to KCP&L, and I'm not here to debate that; but basically we have KCP&L come in and say, "Here are our requirements. You'll put the pad here, the transformer here, the sectionalizer here; and it's got to be 10' so we can reach it with our boom truck with our apparatus. It will open this way, and if you plant anything in front of it, we're just going to rip it out. If you don't agree to that, you're not going to get power to your shopping center." We make that move, and then of course we run afoul of the ordinances and requirements that the City of Leawood has in place as well. It's something I know that the city is working on, but it's something that I'm afraid is going to be an ongoing issue until there is some type of resolution between KCP&L requirements and what the city is requiring. I appreciate Staff working with us. I think we've got a plan here to screen the transformers and sectionalizers on the property.

One thing I would like to look at is Staff recommendation #5. As much as we've talked about it, met over it, planned drawn drawings and now come before you tonight, #5 leaves this whole scenario open; and frankly, we've been denied even a temporary certificate of occupancy on two of our buildings because of the screening on the

sectionalizers and transformers. I need to get some closure to this situation if it's possible.

I'll just be completely honest with you on the signage: we screwed up. We took our old sign criteria which addressed street-side signage and interior signage. I know this has not been recommended for passage, but our request was that we wanted larger stylized signs, branded logos - those types of things on the street side. Somehow it got translated, even in our document, to be the interior signage. We're not particularly concerned because, as Mr. Klein said, you're going to drive right up to the entrance of the building. We're more concerned about the visibility from the street side. I thought I might put out as a compromise that we stay to the 24" that they have required, but perhaps we would be allowed to do that on both the interior and exterior side of the building.

I'll let David Contag address some of the plant issues.

Mr. Klein: Do you want me to address that?

Chair Rohlf: Yes.

Mr. Klein: Actually I don't believe Staff would be supportive of that just for the fact that when this development actually went through, as far as the size of the signage that would be located specifically along the street side at 135<sup>th</sup> St., they had specifically talked about the size being limited to, I believe, 1'6"; but I'm trying to find that in here. I know that when I went back to the previous approval of this overall development when they were talking about it, they wanted to limit the size. They also limited the size with regard to Parkway Plaza, which is just a little bit further to the west for the same reason. Basically what you have is a situation where Price Chopper is located a little further back from the street, so they wanted to go to 3' letters because it was starting to look too small from, particularly, Mission Road or maybe even 135<sup>th</sup> St. because it was set back so far. These buildings are actually set back right up along 135<sup>th</sup> St. You don't have that same perception and are not really that far to the street where these buildings actually are going to occur. In Staff's opinion, the limitation that we placed on them initially with this development is appropriate.

Comm. Neff-Brain: Was there a stylized caveat?

Mr. Klein: There was, and again, I think Staff was supportive as far as allowing them to allow branding of the stores that wanted branding. Again, it had to be approved by both the developer and the city. In Staff's opinion, that means coming back before the Planning Commission and City Council so you'd have a chance to see what exactly they were proposing as far as color and logo design and size.

Comm. Neff-Brain: So it's size that you're concerned about.

Mr. Klein: It's size at this point.

Chair Rohlf: Thank you. Anything else on that issue?

Mr. Wade: If I might respond to that briefly. We're not asking for anything out of the ordinary. If the rest of the developments around that "Four Corners" as it's been called

are going to be required to have that same stipulation as far as size, then we're agreeable to that. We just want to make sure we're on an even playing field with the rest of the developers as they come in and try to attract national tenants who are going to have requirements.

The other thing is we're close to the road, but frankly, we planted a forest out there. There are already substantially grown trees and a lot of them. It was our hope that we would be able to have a little bit larger signage there because we have a lot of vegetation out front as well.

Chair Rohlf: Would you like to add something, Mr. Contag?

### **Applicant Presentation**

David Contag, DLR Group, 7290 W. 133<sup>rd</sup> St. appeared before the Planning Commission and provided the following comments:

Mr. Contag: I just wanted to reiterate that we're pleased with all the work that Mark has done in terms of reviewing the application and going out on site a number of times and taking detailed measurements. As Mr. Wade indicated, he's more than willing to comply with the city requirements and put the screening in, as are we in terms of pulling the plans together. On recommendation #2, I would like to just make a comment. I did talk with Mr. Klein about this. The plant we're proposing is an upright juniper. A lot of the upright junipers have similar growth habits; they'll get up to 15' high and about 6-8' (closer to 8') in width if you don't trim them. Most of the time when you see developments planting these plants, their maintenance crews will top them down at probably 6-8' where they're more in scale with the pedestrian character because a lot of these are really close to sidewalks; but 6-8' would do a nice job screening. The plant that we have specified, we are proposing 5' apart. I'm going to be conservative and say it would take roughly two seasons before it grows solid together. I can appreciate what Staff is saying about wanting an immediate screening or a 1' gap in there. We can plant them at 42", but my concern is if you take these large shrubs and put them only 3 1/2' apart, in 5-10 years when these plants grow together, they'll be dead on the sides because they can't compete for water, root area and light. In order to get a full shrub where we get these pruned and screened like a solid evergreen screen, I predict they will be starting to decline in 5-10 years. I would lobby for the 5' centers. The developer will put it in either way.

Then also we are concerned with #5 leaves everything open. If we have too much of a gap here or there or, "This isn't working" or whatever, they don't get closure and get their buildings occupied.

On the Carl Forester grass, we changed out; it's not a switch grass. Carl Forester is actually a feather reed grass, and the benefit of that is that it's dense – as dense as the switch grass – but more upright, and they'll grow taller quicker than the switch grass. It also stays more upright and erect in the winter, where the switch grass will tend to lay down. I think you'll be happier with that.

Mr. Klein: It was shown in the table as Carl Forester switch grass.

Mr. Contag: Then we probably got it wrong, but it's a feather reed grass. I think either way, we'll be better off with it. Those are all the comments I had.

Chair Rohlf: Thank you. Anything else from the Applicant? All right, then. Questions for the Applicant?

Mr. Klein: I'm sorry, if I may just give you a little bit of the reason we have that Stipulation #5 in there since it's become a topic of discussion. Basically what we've done in the past, and it's been a pretty standard stipulation in there, is that all utility boxes have to be screened. As long as I've worked here, it's pretty much been that way. What that allowed is for Staff to have the ability to go back to them and ask if they could add a little bit more landscaping if, for some reason, Staff didn't feel like it was screened well by the developer.

I'll draw a diagram showing what I'm talking about. (*refers to diagram*) Basically if you have junipers, sometimes the juniper may be a little bit wider at one spot and a little bit narrower at the top especially. We don't want to get in a situation where they say, "Well, it meets the 1' requirement here," when the top of the box is still visible. To a certain extent, it does become a little bit subjective in the fact that you look at the box and feel it's screened from the public either right away or not. So Staff just has that stipulation in there to allow more dialogue if that needs to be.

Miss Jackson: I have a question on the spacing of those bushes because I have neighbors who have wanted a whole tree line of the evergreen, and they have spaced them really close. After about ten years, about every third one starts dying because they were spaced too close and haven't had the air and the water they needed. So do you have the experience of an arborist in saying this should be this spacing?

Mr. Klein: I don't really have the experience of an arborist. Basically what Staff is concerned about is they're supposed to screen these utility boxes; and if it takes two years to screen these utility boxes, that's a substantial amount of time the utility boxes are actually going to be out there. You also have a chance that one of plants could die, which means you're going to plant a new plant material and it's going to take even longer. Staff is just looking at it from the point of view that the city wanted to have these utility boxes screened and pretty well screened from the very beginning.

Chair Rohlf: Is that all?

Comm. Roberson: I guess the comment I have is every time I've had a landscaper come in and do my yard, they always say the same thing: "Don't put your plants too close together because they grow." I guess I think that's what's being told here - that we don't want to plant them too close because they'll grow. Instant gratification is one thing, but long-term gratification, I think, is really what we're looking for here.

Chair Rohlf: Mark, I do have a question on these boxes. Have we had any experience with KCP&L coming back and taking ones out or coming in with new equipment? I mean, this just seems a little bit overkill for this particular corner. Do you ever find that they've taken them offline but still left them standing there?

Mr. Klein: I really don't have any firsthand knowledge of that. It's my understanding that they put them there for a reason. I know they string them along down the right-of-way. Once they go beyond a certain length, they have to put another box there to keep the power moving. In addition, what we're also finding is it's not just KCP&L; it's AT&T or somebody else out there as well.

Chair Rohlf: All right, thanks. Yes, Mr. Contag?

Mr. Contag: If I might add, they can't move the transformers once they're in because there is the primary and the secondary, which makes it very expensive to move. What you see is the addition of more sectionalizers. In fact, at least two of the sectionalizers on this property don't even serve our property; they're for the property across Pawnee on the east side. But your ordinance does state that the property owner must stipulate all of that equipment, whether it's theirs or not. They do pretty much locate it where they feel like, and they just show up.

Chair Rohlf: Is there a chance there could be more at this location, depending on more development around?

Mr. Contag: That, I don't know.

Chair Rohlf: All right, I'm not sure where we left off since we've been going back and forth between the Applicant and Staff. Has everyone had an opportunity to ask questions of either one? Yes, Comm. Williams?

Comm. Williams: I have a couple of questions. Going back to Stipulation #2, Mark, and this plant spacing, we've seen a lot of the AT&T boxes that have come through. Is that evergreen material that they typically use similar to what's being proposed here? Do you recall?

Mr. Klein: No, I remember those AT&T boxes that were used. We required they use upright junipers. In talking to the Applicant with regard to this, he indicated that these burke eyed junipers are a little bit different variety that tends to be a little bit fuller and greener (*refers to overhead picture of junipers*). Again, I'm relying on a landscape architect to tell me that.

Comm. Williams: In that regard, they may be different plants, but do you recall on those, were you asking for 42" spacing on those as well? It's never come up that I can recall.

Mr. Klein: Actually I think when we looked at those, we felt like they were being planted close enough to actually screen. Basically, you have a utility box that might be 5' across and then you have 5' spacing of the plant material going across. If the shrub itself is very narrow at all, in Staff's opinion, it doesn't seem like it is going to screen very much at all, especially at the beginning. The Applicant was stating that it would grow together and be fine, but Staff was uncomfortable with that. We talked a little bit about an alternative to that being that they still allow the spacing to allow the ability for them to grow together, but do it in such a way to where they stagger the bushes. That way you keep more spacing between the bushes, but you have more bushes there that will block the view more immediately as well as they all grow together.

Comm. Williams: That staggering is not what's being proposed?

Mr. Klein: That staggering is not what's being proposed.

Comm. Williams: Going to #4 in light of the switch grass change, do we need to change that in the stipulation just so we've got it right?

Mr. Klein: Yes, actually that should be the correct species that they're proposing.

Comm. Williams: Thank you, no further questions.

Chair Rohlf: All right.

Mr. Contag: We have approximately 16-18 plants in different locations. We have 14 of the juniper on the corner at Pawnee in the east-west drive. In addition, we've got 13 of the Carl Forester grass, and I think we're going to add a couple more to the plan to adequately screen the one sectionalizer; so we're talking about more than two or three plants. There are several more than that anyway. Thank you.

Comm. Elkins: Mr. Klein, on Stipulation #2, it's really a question of enforcement for me. In the event that one of the junipers dies in the first six weeks or four months after it's planted, does the city have enforcement power to require the developer to come in and replace the junipers that have died?

Mr. Klein: Yes.

Comm. Elkins: Is that also true with, for instance, the AT&T boxes that we've been approving here for the last year or so that the city has the enforcement authority to come in and request the dying plants to be replaced?

Mr. Klein: Yes.

Comm. Elkins: Thank you, Madame Chair.

Chair Rohlf: Any more questions? All right, I think we're ready for discussion on some of these Staff recommendations, hopefully leading to a motion. We'll be comfortable with the signage issue probably. Would anybody like to add?

Comm. Jackson: Madame Chair, I guess we really haven't discussed their desire to add the outside signage. It sounded like 1 ½' was appropriate for the outside of the center. Do we need to add something for that?

Chair Rohlf: I think that's what's in the current design guidelines.

Mr. Klein: Correct.

Comm. Jackson: So it'll be larger on the inside than on the outside?

Mr. Klein: Currently by 6'.

Comm. Roberson: Madame Chair, I guess one of the things I'm unclear on right now is the feeling on the plant spacing of the other commissioners. I think before we make a motion, we ought to figure out whether we'd be in agreement or not.

Comm. Jackson: I'd be in agreement to moving it to 60"

Comm. Williams: I would concur with that and go with the recommendation of the landscape architect.

Comm. Neff-Brain: I think I'd agree. I've seen too many bushes die because they were put too close together. I think that's a shame.

Comm. Williams: I think in that same regard, I would be in favor of keeping Stipulation #5.

Comm. Roberson: I agree.

Comm. Williams: Then once these get planted, if there are some glaring openings that can or should be addressed that certainly would go and do that. Just looking at the landscape plan and staying with the proposed planning, I'm not sure we're really going to see much of those – certainly very little that I don't think it would be that much of an inconvenience for the developer.

Comm. Roberson: I'm sorry, what's the name of this grass again?

Comm. Williams: Feather reed grass, I believe. I wrote it down.

**Motion to approve Case 02-09 - MARKET SQUARE CENTER - Request for approval of revised final sight plan, located at the northeast corner of 135<sup>th</sup> and Mission Road with ten Staff stipulations with proposed changes to the following: #2, change 42" to 60"; #3 and #4, change "switch" to "feather reed", made by Williams; seconded by Elkins.**

Comm. Pateidl: To be clear, do we need to include some comment that the approval of this particular proposal does not include any changes to the outside or south side signage? That's my understanding is we're not dealing with the south side signage.

Chair Rohlf: That's correct. That's what the design guidelines state. Anything else?

**Motion passed unanimously with a vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Williams, Elkins and Heiman.**

*MEETING ADJOURNED.*