

**City of Leawood
Planning Commission Minutes
April 28, 2009
Meeting - 6:00 p.m.
Dinner Session – No Discussion of Items – 5:30 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

CALL TO ORDER/ROLL CALL: Pateidl, Roberson, Jackson, Neff-Brain, Rohlf, Munson, Williams and Heiman. Absent (at APA conference): Elkins

APPROVAL OF THE AGENDA

Comm. Rohlf: We have one revision under New Business. CASE 15-09 – PARK PLACE – MICHAEL SHAE SALON & DAY SPA – request for approval of a final site plan, located at 11520 Ash Street has been continued.

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

APPROVAL OF MINUTES:

December 9, 2008 meeting minutes, January 13, 2009 meeting minutes, January 27, 2009 meeting minutes, and February 24, 2009 meeting minutes.

Motion to approve the December 9, 2008 Planning Commission Meeting Minutes was made by Williams; seconded by Roberson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Williams and Heiman.

Motion to approve the January 13, 2009 Planning Commission Meeting Minutes was made by Roberson; seconded by Williams. Motion was approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Williams and Heiman.

Comm. Jackson: *(inaudible comment on change to Page Five of January 27, 2009 Minutes)*

Motion to approve the January 27, 2009 Planning Commission Meeting Minutes as amended was made by Munson; seconded by Heiman. Motion was approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Williams and Heiman.

Motion to approve the February 24, 2009 Planning Commission Meeting Minutes was made by Roberson; seconded by Williams. Motion was approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson, Williams and Heiman.

CONTINUED TO MAY 26, 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 01-09 – GARDENS OF VILLAGGIO LOT 3 – Request for approval of a revised final site plan located at the northwest corner of 137th Street and Fontana.

CASE 06-09 – MADDEN MCFARLAND INTERIORS – Request for approval of revised final site plan located at the southwest corner of State Line Road and 135th Street.

CASE 20-09 – LDO AMENDMENT – SECTION 16-4-1 ACCESSORY USES (RESIDENTIAL EMERGENCY GENERATORS) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

NEW BUSINESS:

CASE 17-09 – VILLAGGIO AT LEAWOOD – REVISED DESIGN GUIDELINES – Request for approval of a revised final site plan, located at the southeast corner of 135th Street and Roe Avenue.

Comm. Munson: Madame Chair, I'll recuse myself.

Comm. Jackson: I'll recuse myself also.

Chair Rohlf: Will that also be true for the second Villaggio case this evening?

Comm. Jackson: Yes.

Comm. Munson: Yes, it will.

Chair Rohlf: We will call you back in for our third case this evening.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 17-09 – request for approval of a revised final site plan. The Applicant proposes to revise the approved design guidelines for Villaggio of Leawood, specifically to allow textured dark forest green light poles for the interior streets and parking lot lighting, as opposed to the textured black poles that are currently approved as part of a comprehensive review of the overall design guidelines for the development. Since approval of the original guidelines, the Applicant has purchased textured dark forest green poles, and wishes to use them. There are no other changes proposed of the guidelines at this time. Staff recommends retaining the original design guidelines as approved for the black poles.

Chair Rohlf: Questions for Staff?

Comm. Neff-Brain: These light poles will be maintained by the developer, correct?

Mr. Rexwinkle: Correct.

Comm. Neff-Brain: And did I hear that someone else in the development was going to the green poles also?

Comm. Roberson: The bank.

Mr. Klein: Currently, there are two buildings constructed in the Villaggio: The Gardens of Villaggio, along 137th St., and M&I Bank, located at the northeast corner of the development. M&I bank currently has the green poles. The Gardens of Villaggio actually had the green poles; however, Staff required that they paint them black as approved in the original plan. They have done so.

Comm. Neff-Brain: Will the bank be required to paint theirs also?

Mr. Klein: Right, if this is not changed to green, then all the poles within the Villaggio development will be required to be black as originally shown on the design guidelines that were approved by the Planning Commission and City Council.

Comm. Neff-Brain: Thank you.

Comm. Roberson: The Gardens of Villaggio were required to paint their poles black, and according to what I'm reading here, it was the intention of the designers all along to have them in this dark forest green. Did you not have a conversation indicating that was what they were looking for?

Mr. Klein: At the time we were going through Gardens of Villaggio, that wasn't expressed. They had the green poles. Staff went back to the originally approved plans, and we had several versions. They were bound by design guidelines that were provided by the developer. Staff did not produce the design guidelines.

Comm. Roberson: I understand, but didn't they know that the poles were required to be painted black?

Mr. Klein: They indicated that the developer had green poles and those were the poles they were using. We referred to the design guidelines which indicated black and told them that was the requirement. The Gardens of Villaggio was not constructed entirely per the approved plan, including the light poles, landscaping, elevations and sidewalks. The developer had the light poles painted black when it was called to attention. You're asking about communication between Staff and Applicant regarding Gardens of Villaggio. They indicated that they would really like to see them green. My understanding is part of the confusion is when Gardens of Villaggio originally came through, a partnership was set up consisting of a number of parties, including the owner of the Gardens of Villaggio, James Taylor and Estel Hipp. This might be better for the Applicant to answer, but my understanding is there was a breakdown in communication at some point. When Estel found out the City was requiring these to be painted black, he came forward and indicated that the designer intended to have all the light fixtures

within Villaggio green, but it was inadvertently put in as black. However, that's what was approved by the Planning Commission and City Council.

Comm. Roberson: I don't have a problem with that. When were these painted black?

Mr. Klein: It was recently – prior to Estel making an application requesting green.

Comm. Roberson: I'm just curious about the time frame here.

Mr. Klein: It happened before we received this application and before we knew there would be an application to make them green.

Comm. Williams: I understand Staff's position of the black being part of the comprehensive plan. I'd like to know what's wrong with the green. How does that not go with the comprehensive plan?

Mr. Klein: I think it's just what was originally shown with the development. As you know, there are decorative light fixtures that go along 137th St., Fontana and Pawnee in that 135th St. Corridor right along 135th St. The black was a contrast between the Verde green light fixtures. The green they're proposing is a slightly different shade.

Comm. Williams: So Staff's position is that with the dark green that exists along 137th St., it would be better to have black for the poles in the development?

Mr. Klein: Staff's position is since it was taken before the Planning Commission and City Council at the time the original plan was submitted, we would support that position. If Planning Commission or City Council decides they're fine with the green, Staff is fine with that, too.

Comm. Williams: Thank you.

Comm. Munson: It's the same lamp post otherwise – just the color change?

Mr. Klein: Correct, it's the exact same post.

Comm. Munson: Then the color of the fencing in the design guidelines is black, correct?

Mr. Klein: I believe so.

Comm. Munson: Thank you.

Comm. Neff-Brain: We've required the green on another property to be changed to black.

Mr. Klein: Correct, The Gardens of Villaggio, which was the first building constructed.

Comm. Neff-Brain: They're not owned by the same development?

Mr. Klein: No, S.O. Development is the one that owns Gardens of Villaggio. It was a series of three office buildings located in the office portion. My understanding is that's a separate ownership; however, the Applicant could probably give you a better idea.

Comm. Neff-Brain: Thank you.

Comm. Pateidl: Mark, you've provided us the design guidelines for Villaggio. Were these prepared before or after the final plan approval was given?

Mr. Klein: The ones you have right now were prepared just for this case. Those contain the modification to change the light fixtures to green. The original design guidelines were approved in 2006.

Comm. Pateidl: I understand from this design handbook that accent light fixtures are to be black.

Mr. Klein: Correct.

Comm. Pateidl: So we're going to have two shades of green and black?

Mr. Klein: I believe they are leaving the black light fixtures on the building. M&I Bank had building-mounted light fixtures that were black. Gardens of Villaggio didn't have any building-mounted light fixtures at all.

Comm. Pateidl: Are we getting somewhat of a rainbow effect out of all of this?

Mr. Klein: There would be different colors with the black building-mounted light fixtures and the green street-mounted light fixtures. Then you have the 135th St. Corridor with the Verde green.

Comm. Pateidl: The design criteria were prepared in 2006, did you say?

Mr. Klein: Correct.

Comm. Pateidl: Unfortunately, I'm new to the Commission, so I don't have the background. I'm presuming that they clearly stated that these fixtures would be black.

Mr. Klein: They had a model number which included "BK," which stands for black. The Applicant indicated that's just the generic default that the manufacturer provides and it was an oversight on their part to change that to green, which was their intent.

Comm. Pateidl: But their intent to change was never brought back to you after the final approval of the site plan?

Mr. Klein: This is the first time with the green. I think this is the first time they became aware the City was going to require the black. At that point, they may have been thinking they were green all along because they ordered a number of poles in the green. Then when this issue came forward with Gardens of Villaggio, requiring them to paint the poles, it threw up a red flag. They approached us and stated their intent was always the green poles. We let them know the only way that could change is by coming through the Planning Commission and City Council.

Comm. Pateidl: And we have two distinctly different parties as far as the existing building and the Applicant with respect to these issues. I understand the Village of Villaggio was willing to have their poles repainted forest green.

Mr. Klein: That, I don't know. I imagine after going through the expense of getting them painted, I imagine they probably want to see everyone else have to do what they did. I can't speak for them.

Comm. Pateidl: I thought I read that.

Mr. Klein: I know they were reluctant to do it, but that was the first thing they did out of the various changes that were required.

Comm. Pateidl: Thank you.

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

Applicant Presentation:

Estel Hipp, 12601 Cedar, Leawood, Kansas appeared on behalf of Pawnee Place, LLC, the developer of The Villaggio project, and made the following comments.

Mr. Hipp: We'd just like to clarify this whole green versus black light pole situation. I have with me here, if you'd care to look at them, copies of various design handbooks that have gone through various iterations, including the one that Mark referred to that was approved back in 2006. I'd like to correct one of the comments he made. In that particular comment, there was a cut sheet that shows the actual light pole design. You have a copy of it now, although it's not the exact same one because what you have shows a green color designation in the part number, whereas the one in the original book shows black. At the same time it also says, "Or as approved by the developer and the City of Leawood." The developer's perspective was that the issue of design or overall look of the light poles had been approved, but that the color was left to the discretion of the developer and would be approved as the projects came through on a case-by-case basis. Based on that, the developer purchased a sufficient number of light poles, fixtures and arms to light the internal streets that are currently built at Villaggio. These are not installed because we need to get this matter resolved.

S.O. has been asked to and has repainted the three light fixture poles black. Doug Patterson, who is the managing partner of that group, has told me he'd be more than happy to repaint those fixtures forest green in order to be consistent with the rest of the project. The M&I Bank, as Mark has already pointed out, was approved for forest green fixtures because it was their understanding that it was going to be the standard parking lot light fixture for the project. There were two design architects: James E. Taylor Design Group and Jeff DeGasperi and Associates. Both of those architects of record for this particular project had stipulated not necessarily black, but a color to be determined (forest green, as it turns out) for the parking lot lights and internal street lights. The lights to be attached to the building or for landscaping around the building were to be black.

Now, I'd like to introduce Tom Green, who is representing the James E. Taylor Design Group. He'd like to read a letter from James E. Taylor to you that will hopefully shed some light on the issue. After that, if you'd like, I actually have color samples of the black versus green for you to evaluate.

Tom Green with JET and Associates, 4605 Belleview Ave., Kansas City, MO, 64112, appeared before the Planning Commission and read a letter from Mr. Taylor to the Commission.

Chair Rohlf: Before you begin, Mark, is there a sample of the Verde green color of the lights on 137th St.? It would be great to be able to see the contrast.

Mr. Green: This is a letter from Mr. Taylor:

“Ladies and Gentleman of the Planning Commission:

Let me apologize for not appearing before you this evening, which was due to a previously scheduled meeting that required my appearance as Chairman of the Pastoral Council of the Church of the Nativity. I am a licensed architect and urban planner and principal of the firm of James E. Taylor Design Group, PC. For the last 15 years, I have served in some capacity on various commissions and the City Council for the City of Leawood, Kansas. As one of the originators and design decision-makers for the 135th St. Corridor plan adopted by the City Council, I employed and strengthened the design criteria that the plan in the master land use plan for the Villaggio Development at 135th St. between Mission and Roe Avenues. It was my goal to produce the highest quality building design envelope for all structures to be constructed on this property and to provide the City of Leawood with another example of land use that documented the land use in the 135th St. Corridor. To accomplish these goals, our firm’s design identified every architectural design element in this mixed-use development by producing the building exterior façade for the retail office and residential elements. We designed an exceptional corner feature at 135th and Roe, together with walking trails and rest areas, underground retention facilities, streetscapes which include benches, lighting standards, crosswalks, but most importantly, extensive landscaping and berming of parking areas for screening the adjacent residential properties.

“The matter before you this evening is the color of the light fixture design for the private streets and private parking areas. As a designer, I paid particular attention to the fixture design. It was my intention that all lighting fixtures in this development, whether public or private, would be green in color to match all the street lighting on 135th and 137th Streets at Leawood City design criteria. The selected color will not stand out as a black fixture against the tree-lined streets as intended. It will blend with the foliage in the landscaped area. The teardrop shape of the lenses we selected for the lighting element gives the development a distinctive design appearance, different from other public areas along this corridor. I wish to emphasize, as the architectural designer for the development and the designated architect of record, it was and remains my requirement that these lighting fixtures be green in color for the reasons previously stated. The Villaggio Development Handbook approved by the City Council has been misinterpreted by the Planning Staff to require black light fixtures. This is a misinterpretation of my intention, and thus the reason for this matter being before you this evening. It is important for you to know that my office reviewed this color issue when all private street lighting fixtures and standards were ordered in May of 2007. I clarified my intention that the fixtures be green in color, and they were ordered, delivered and are ready to be installed. It should also be noted that M&I Bank has installed green fixtures, which were previously approved by City Staff in M&I Bank’s final plan submission. I therefore

respectfully request, your honor, that my request that the approved color for the lighting fixtures on the Villaggio private streets and parking areas be green in color.”

I was the individual who performed the construction management for the developers as part of Jett and Associates. I recall the instance back in 2007 when we wrote the specs, received bids and then received submittals from the contracting bid. The issue was then raised internally, not thinking it was an issue with the City, frankly. That’s when the 30 poles were ordered, and they were delivered in August, 2007 and have been on the property since then. I would stand for any questions.

Comm. Williams: So the light poles in the green color go along the streets within the development.

Mr. Green: Correct.

Comm. Williams: And are they then also in the parking lots for each of the buildings that get built?

Mr. Green: As the buildings get developed, the individuals who purchase the property and build the buildings are required to construct the required parking. It will be part of the site plan development when they come in.

Comm. Williams: That’s fine, and going to the question that was raised earlier, tell me where the black light fixtures would potentially occur.

Mr. Green: Any black fixtures would be fixtures on the sides of the buildings (in other words, sconces like you have behind you that would be affixed to the building), landscaping lighting, which is flat on the ground in the landscaping and then bollards if anyone had lighted bollards. That’s the limit of the black light fixtures approved in the design standards.

Comm. Williams: So from a conceptual perspective, the large lights that provide the overall illumination for the streets and parking lots, as Mr. Taylor’s letter indicates here, that begin to blend with the trees be in that same environment are a green color. Then anything that’s on the buildings away from some of these trees and foliage gets to be black. They’re at much lower heights, so we’re really not talking about comparing a green light fixture up against a black light fixture.

Mr. Green: Right, the distinction here that the architect tried to develop was the teardrop shape of the lens fixture itself. We didn’t want the pole to stand out; we wanted the lens fixtures to stand out as distinctive fixtures. They look quite attractive. If you look at the amount of landscaping, for example, at M&I, you’ll see how these poles will blend in as the landscaping grows. In two or three years, there will be places where you can’t see those poles. You’ll have that pop of a light fixture, which will be very attractive at night.

Comm. Williams: I drove through there, and I thought they were fine. I didn’t look that closely at the building to compare it to any lights that were on the building, particularly at night.

Mr. Green: The black fixtures down at S.O. really do stand out. They’re just like a neon sign and stand out so much more than a green fixture would naturally anyway, whether

there was a considerable amount of landscaping or not. Green blends with the background better than black.

Comm. Williams: I'm going to ask a bit of a technical, rather than color, question. The sample that was passed around a while ago is a textured finish and appears to be a little bit more of a multi-colored finish and not just a pure solid color.

Mr. Green: It's powder coat.

Comm. Neff-Brain: That's a city one.

Chair Rohlf: They wanted you to see the difference.

Comm. Williams: So in that regard, you have some samples of your poles.

Mr. Green: Mr. Hipp has some.

Comm. Williams: It gets back to my question.

Chair Rohlf: Could I have that tile sample, Jim?

Comm. Williams: I guess while this is being passed out, let's talk about the technical aspects of this. This is a powder coat finish?

Mr. Green: Yes.

Comm. Williams: So as a powder coat finish, what kind of warranty do you get on the finish on these products? I ask that in comparison to the now painted black light fixtures that are field painted with a product that I would hope is a good quality black paint, but if you're in the industry long enough, you know that all paint eventually oxidizes and changes color, black being one of the worst for that.

Mr. Hipp: I can answer that question. The black light fixtures were taken down and taken to North Kansas City and powder coated.

Comm. Pateid: The comment in Mr. Taylor's letter is that there was a misinterpretation by the City of what the intent was inside the original design book. If I understand the process, when we get to the final plans, it's pretty clear what the agreement is as far as the understanding of the City going forward. If we said this was approved to be black, the time to bring this issue was then and not now. I'm very curious as to who made this misinterpretation. Was it the City? Was it Mr. Taylor in his recognition of the design criteria and the ordering of these poles, or was it a unilateral decision on the part of the developer that, "We're going to do what we want to do anyway"?

Mr. Green: I can assure you it was not the latter.

Comm. Pateid: It certainly looks that way.

Mr. Green: Elsewhere in the design handbook, there is a section on public street lighting that specifically calls out for a Verde green pole. I think that was the interpretation that the architect and developer gave to all poles that were going to be put on either private

or public streets – that they were to be green. As Mr. Hipp explained, the standard tear sheet that manufacturers provide for inclusion in things like design handbooks and specifications includes this description at the bottom, which is all we get from the manufacturers. In that description is the term “BK,” which in manufacturers’ color charts, “BK” stands for black. That’s what was originally approved. It was the intent of the architect all along that these poles should be green, simply from the aesthetic value standpoint. As I understand, the 135th St. Corridor plan provides for the lights off 135th St. to be green. Mr. Taylor is trying to carry that plan, in which he was instrumental, into this development. We didn’t have our first meeting where this was brought up to Staff until February.

Mr. Klein: I don’t recall. I don’t know that the developer was actually trying to pull a fast one or anything like that. I think it was a situation in which they were thinking one thing in their minds, and another was in the plan. Staff took what they were proposing and what was approved. This is one of the books that were approved back in ’06. It’s just like he said in showing the black. It’s not so much that Staff has a strong opinion against the green; we think it looks nice. We wanted to make sure that the decision to change to green is made by the Planning Commission and City Council and that it wasn’t just Staff all of a sudden saying, “The green is fine.”

Comm. Neff-Brain: Tell me again why the bank is green and why it has remained green.

Mr. Klein: The Applicant is saying the green light fixtures were approved. Stipulation No. 18 in the Governing Body Staff Report for M&I Bank stated, “All parking lot fixtures shall match those approved for the overall Villaggio Development.” In Staff’s opinion, that was black. We haven’t done a final site inspection of the M&I bank. We could have gone after them to change that to black as well; however, at that point, the Applicant came forward and said that it was always the intention for them to be green. In those discussions, we indicated the need to appear before the Planning Commission and City Council. That’s why we really haven’t gone after M&I Bank to have them change to black as well.

Mr. Green: James E. Taylor Design Group has been designated in the covenants and deeds of restriction as the architect for this project. Those restrictions require developers like M&I Bank and S.O. to come to Design Group with their plans and get them approved, especially color plots and landscaping. One of the reasons it’s in the restrictions and that the City approved the site plan is that we had this control through one group to make sure everything was consistent. In the process of approving a site plan and platting these things, the City has given authority to the architect to make some of these decisions. We always thought color was one of those areas. We have some overall plans in these architectural guidelines, but there are all sorts of details you probably don’t want to hear about in this Commission or at the City Council. That’s why you let architects make those decisions, and that’s the position we were operating from back in 2007 when the developers came to Design Group and said, “We want to put these poles up.” We got the submittals from the contractor, and the first submittal was black and was rejected. We made them get green. I happen to be the project manager on the M&I Bank project, and in that particular instance, 360 Architects were the designers, and they came to us with questions such as, “What color do the light poles need to be?” That’s how they got to be green because the stipulations indicate they have to match the rest of the development.

Chair Rohlf: Mr. Green, I think we have a pretty good understanding. I don't think there was any kind of attempt to get around the design guidelines. I think what we need to do is go from this point forward and decide what color we want in that development. From time to time, design guidelines change, even after they've been approved. It's not the first time that's happened. I don't think we're opposed to modifying design guidelines. I just think where the Commission needs to focus attention is on what color we want. I think Mr. Klein has indicated there are three black poles at the office building.

Mr. Klein: I can't tell you how many, but it's possible there are three.

Unknown Speaker: There are three.

Chair Rohlf: That's what I thought, and there's a statement here in our packet that Mr. Patterson is willing to change those back to green if that's what we decide the color should be. I really think the focus should be on the best color choice. We can stand by the document that says it should be black, and we can also recommend changing the design guidelines to put the forest green in.

Mr. Green: I appreciate that and thank you very much for your time. If we pass it, this will be the eighth amended version of the guidelines.

Chair Rohlf: I know we've seen them before. I just think we need to decide what looks best. Staff likes black; I like green. I don't know what my other Commissioners think, but with several more buildings to go, now is the time to make sure that we're on record with the color that is best for the development.

Mr. Green: And we'd like to get the poles up.

Chair Rohlf: Does anyone else have specific questions for the Applicant? Then we're ready for any further discussion on this. I do believe it comes down to whether we want to modify the guidelines and allow them to use the color they intended in the first place.

Comm. Williams: I would be supportive of the Applicant. I think the idea of bringing in the green poles that go with the 137th St. green poles concept that was discussed shows greater design intent of the project architect. I think it is a better choice than black, which is a fallback. I can sympathize with the mistake that got into the design guidelines with that particular cut sheet being in black. Manufacturers send those out in what they consider to be their standard colors, and you have to work to get them changed. I think the green is a nice fixture and would be a classier option than just a black fixture.

Chair Rohlf: Does anyone else have a comment?

Comm. Heiman: I would also support the Applicant for many reasons. I won't go through them all, but that's where I would lean.

Chair Rohlf: Does anyone have anything else?

A motion to recommend approval of Case 17-09 – VILLAGIO AT LEAWOOD – revised design guidelines – request for approval of revised final site plan with the two Staff stipulations, providing for the forest green with the manufacturer specifications of GN8TX was made by Williams; seconded by Heiman.

Comm. Pateidl: Madame Chair, I'd like to add one thought or stipulation inside there that the three poles that are currently black that are to be repainted forest green be done so in a powder coat or manufacturer equivalent process to avoid the fading that we discussed earlier.

Comm. Williams: I agree and accept that.

Chair Rohlf: So a total of three stipulations, and the numbering would be changed accordingly. If there's nothing else, we'll take the vote.

The motion passed unanimously with a vote of 5-0. For: Pateidl, Roberson, Neff-Brain, Williams and Heiman.

CASE 16-09 – VILLAGGIO EAST – DRAINAGE FACILITY – Request for approval of a revised final site plan to modify stipulations, located at the southeast corner of 135th Street and Fontana.

Staff Presentation:

City Planner Melissa Cownie made the following presentation:

Ms. Cownie: Madame Chair and members of the Planning Commission, this is Case 16-09 – Villaggio East Drainage Facility. The Applicant is Estel Hipp with Block and Company. The Applicant is requesting approval for a revised modified site plan to modify stipulations, wishing to remove two stipulations from the final approved plan. Stipulation No. 2 reads, "This temporary detention facility is limited to five years from the date of completion. If the owner wishes to extend this time frame, a new development application shall be filed with the City for approval." Staff does not support removing this stipulation. Per section 16-3-14 of the Leawood Development Ordinance, "Final development plan approval shall not be valid for a period longer than five years of the date of such approval unless, within such period, a building permit is obtained and substantial construction has commenced and all additional building permits necessary to complete the project as approved in the final development plan schedule are obtained in a timely fashion. This time limitation is put in place to ensure the Applicants have to return to the Planning Commission and City Council within five years. This allows the Planning Commission and City Council the opportunity to reevaluate the plan to take into account any changes that may have occurred over time and the stipulations to be modified if needed." The second stipulation they wish to remove is No. 3, "The owner or applicant must establish a funding mechanism to maintain, repair and replace all parts of the detention facility. The mechanism will include a deed restriction running with that lot that will mandate that the owner must contribute to the funding for such maintenance, repair and replacement and that the owner is jointly and severally liable for such maintenance repair and/or replacement and that the failure to maintain repair or replace such drainage facility will result in the City of Leawood repairing and replacing said facility. The cost incurred by the City of Leawood will be assessed against the lot owner and will be the responsibility of the owner of such lot." Staff does not support removing this stipulation. It has always been the City's position that the property owner is responsible for the property and any improvements to the property. If the property owner has a private agreement with a third party regarding the maintenance of facilities, it is the property owner's responsibility to enforce that private agreement. The City will not enforce a private contract. Staff is recommending denial of this application and for

the originally approved stipulations to remain in effect. Staff would be happy to answer any questions.

Comm. Williams: Going back to Stipulation No. 2, talking about substantial work being done. Does the fact that the retention pond is there to support the adjacent development not constitute that permitted work versus future work? It's already been constructed, right?

Mr. Klein: They got approved for a temporary drainage facility located there. They have every intention of doing that, and there already has been some work. You're right regarding that. The stipulation also dealt with the situation that the drainage facility would convert to a permanent drainage facility when the development on what used to be Villaggio East came into development.

Comm. Williams: Again, the reason for it even being there is for the work they have undertaken to do the street improvements or to put in M&I Bank?

Mr. Klein: The reason for the temporary was partially M&I Bank, for sure, because M&I does drain into that a little bit. As far as creating a permanent drainage facility there, that was intended to handle the drainage not only from M&I Bank, but also to handle drainage within –

Comm. Williams: I understand that. Does that five-year rule even apply here since it was put in related to an almost completed project?

Mr. Klein: For the temporary?

Comm. Williams: Yes.

Mr. Klein: Regarding the temporary, that part of it will be constructed. The Applicant would like to withdraw the five years. If the five years is already fulfilled with regard to substantial completion of that project, it doesn't come into effect and there's really no reason to remove it if you take that interpretation.

Comm. Williams: That's what I'm trying to get at.

Mr. Klein: Staff doesn't really wish to remove it because it's within the Leawood Development Ordinance and is a typical stipulation. Regarding the other stipulation, on everything the City does when somebody has a violation on a piece of property, we go after the property owner. This could be an example of a situation in which the property owner has a private contract which holds a third party responsible for any maintenance and repairs. That's great if they want to enforce that contract, but it's very difficult for the City to enforce a private contract to require a third party to maintain. Again, Staff isn't supportive of removing either stipulation.

Comm. Pateidl: Mark, what's the difference between this temporary and permanent detention facility?

Mr. Klein: I might have Public Works address that. The permanent facility will be quite a bit larger and will have some underground pipes.

Mr. Ley: The permanent detention pond as originally approved on the site will be an enclosed system. It will be 72" metal pipe that's buried under the parking lot.

Comm. Pateidl: I see there's a letter from July, 2008 regarding a temporary occupancy permit for M&I Bank and a requirement for the temporary facility to be constructed. What is the status of that process right now?

Mr. Ley: The temporary detention pond has been constructed, and they submitted their storm water study.

Comm. Pateidl: If, after five years, the permanent facility was not constructed, what would happen? What is the process, moving forward, to go toward a permanent detention facility?

Mr. Klein: I think this is what Commissioner Williams was discussing – whether the five-year limitation had already been satisfied by the construction of the temporary, or whether it is the permanent that is being required to be completed in the five years. Staff's opinion is it is actually the permanent that would be constructed in that period of time, and that's the Applicant's objection because the permanent facility, in their opinion, is probably not going to be constructed in five years, especially with the current economic climate. The reason for that five-year limitation is that conditions change, so it's not really intended as a punishment, but rather to allow the Planning Commission and City Council to look at the project again. If there is some new situation or new criteria that need to be addressed, it allows a chance to modify the stipulations.

Comm. Pateidl: If I understand the verbiage correctly, this five-year period would not begin until the completion of the temporary facility construction.

Mr. Klein: The five years typically starts at the time of Governing Body approval. I think this was approved September 8, 2008.

Comm. Pateidl: Stipulation No. 2 says, "This temporary detention facility is limited to five years from the date of completion. If the owner wished to extend this time frame, a new application will be filed."

Mr. Klein: I'm sorry, that is the way it reads.

Comm. Pateidl: So we're not talking about having this issue two years from now; it's five years.

Mr. Klein: Correct.

Comm. Williams: This is in some of the record. This is a dry detention basin? We're not talking about this being a water feature, so the only time water will be in this is if there is run-off from the property, and it's controlled drain as most retentions are.

Mr. Ley: That's correct.

Comm. Williams: I'm just asking the question for clarification for members who weren't here when this was originally discussed.

Mr. Klein: (*Places photograph on the overhead*) This is a picture of what's currently there. (*Places another photograph on the overhead*) Here's the drainage facility. As water comes through, it will filter down that pipe.

Mr. Ley: The water will actually come up from the pipe, fill this pond and then flow back out through that opening.

Comm. Williams: You really can't see it from the street driving by.

Mr. Ley: That's correct.

Comm. Williams: No further questions.

Chair Rohlf: Any other questions for Staff? Then we'll hear from the Applicant.

Applicant Presentation

Estel Hipp, 12601 Cedar, Leawood, Kansas, appeared before the Planning Commission on behalf of Pawnee Place, M&I Bank and Sharp Trust and made the following comments:

Mr. Hipp: First of all, let me clarify something. The temporary facility that is there now is designed to do two things. One is to collect water run-off from the intersection of 135th St. and Fontana, and secondly, some additional water run-off from the parking lot or from the portion of the parking lot of the M&I Bank facility. It is designed as a temporary facility that will ultimately be replaced, as Mark had said, by a permanent facility. The initial design for it was underground; who knows what will happen in the future, given certain changes that may happen in that design for the east side of Fontana in the future? The reason for asking for the second stipulation to be lifted is, as Mark pointed out, given the current economic environment and the fact that there are 600 acres of commercially zoned property from State Line to Metcalf, it will probably take 30 years to develop and maybe longer, given current circumstances. It was deemed by the Sharp Trust, the owner of the property, as well as Pawnee Place that requiring Sharp to come back every five years to go through the process of approvals through the Planning Commission and City Council for a situation that ultimately has to come before the Planning Commission if anyone wants to build anything on the east side of Fontana was something that could be dealt with by eliminating that stipulation. The stipulation with respect to the overall maintenance of the project had been handled, we thought, by virtue of a maintenance agreement that has been signed and recorded between Pawnee Place, LLC and the Sharp Trust. I believe you have a copy of this. That particular agreement was in place before these stipulations were put in place, and we feel they supersede the need for these additional stipulations because that provides for the eventuality of any difficulties in maintenance by either party to be held accountable, as are their successors. Should Pawnee be gone and somebody else owns the Villaggio, that's already been put into place in this agreement. Likewise, if the Sharp Trust sells their properties to other developers, the successors to their interest would also be held responsible for building the permanent facility and maintenance thereof after completion. I've asked Stu Sharp, who's actually here as a fiduciary representative for the Sharp Trust to speak on the subject tonight since the facility is actually on his property and he is the one who is ultimately charged with responsibility as far as the stipulation is concerned.

Stu Sharp, 13101 Mission Road, Leawood, Kansas, appeared before the Planning Commission and made the following comments:

Mr. Sharp: I hope it's not too much to beg indulgence for a little history of how we got to where we are tonight. The land is owned by the Perry M. Sharp Trust C. That is my grandfather, and that land has been in my family since the turn of the 20th century. My father and his two sisters were born on-site, and in 2002, one of my aunts actually passed away in the same room that she was born in. We're not developers; it is not our intent to be developers. After my aunt's death in 2005, we started marketing the property for sale. At that time, the trust decided to enter into a contract with the Pawnee Place, LLC, led by James Taylor. At that time, he was sitting on the City Council, and we thought of all people who would understand the ins and outs and proper protocols with the Planning Commission and City Council to make this a viable asset for the City of Leawood, it would be Mr. Taylor and that his professionalism would be an asset to us, as well as to his own group.

Pawnee Place ended up purchasing the west 40 acres, which you now know as Villaggio West. They were to purchase the east 40 acres, but they did not, due to economic conditions; so the Sharp Trust still owns the east 40 acres. In the process of having Villaggio West approved and a plan also approved for Villaggio East, the City required that 137th St. be built from Roe to Mission Road and that also Fontana be built from 135th to 137th. Again, only the west half that was owned by Pawnee Place was going to be developed at that time, so some temporary facilities were placed on the Sharp Trust property to handle the run-off from the streets. Now that pond has been made slightly bigger, due to the development of the M&I Bank site. It's really because of M&I Bank that we are here tonight. I am stunned by its beauty.

In the process of getting to this point, Mr. Taylor's group had a storm water study done and established basins on the entire 80-acre property that followed the natural contours of the ground. There is approximately about an acre in size that straddles both sides of Fontana that is called the North Central Basin. This land drains to the north under 135th St. On the plans presented to make the Villaggio project a reality, Continental Engineers showed a detention facility being built on the Sharp Trust side of the property that would effectively handle the storm water drainage and retention for one lot on Villaggio West site – the M&I Bank site. For whatever reason, the permanent drainage facility was not built by Mr. Taylor's group, Pawnee Place. That was fine with us because we are not excited about having a permanent drainage facility built on our property when we don't know where the buildings will go. We don't want to be in the position the Price Chopper development was in when they had to dig up their underground detention and move it for the Blue Valley Bank building that is at the corner of 135th and Mission. It was fine for us to have a temporary pond, but then along comes M&I Bank. At the time, Mr. Taylor asserted that he had assurances from the City that he would not have to build a permanent facility for M&I Bank's lot to be developed and built; that it could follow at a later time. We approached the City, I believe, on July 19, 2007 and met with Patty Bennett. We also met with Scott Lambers. I'm not sure if other representatives from this city were at the meeting. We did not want the Villaggio Development to construct the M&I Bank and then perhaps fail going forward and not be able to pay for their share of the detention that would ultimately have to be built. We didn't want the burden to fall on us or whoever might purchase the property of having to pay for the M&I permanent detention. We asked the City for assurances that they wouldn't tag us for that; none

were given. We basically told the Villaggio group we would oppose their M&I Bank development unless they solved the drainage. Finally we reached an agreement. The Sharp Trust received \$2,000 to enlarge this dry pond, the purpose of which was to handle, on a temporary basis, the run-off from the M&I Bank site until the Sharp Trust land was developed and a permanent detention facility would be constructed. The Villaggio group gave the Sharp Trust the money to build their part of the detention in the future, so that is now the Sharp Trust's responsibility.

At first we thought they would be able to put the M&I detention on the bank site for their lot and that we would each build our own detention in the future. Continental Engineers said that was not possible because of the grades at the M&I Bank site and that they would effectively have to have very small pipes under the entire project to store their water there. Wanting our neighbor to be successful, we agreed to let them store their water on our property and got the whopping \$2,000 compensation that hasn't even begun to pay for our legal bills. Our objections are that we made an agreement with Villaggio to help them out. They said they would bear the financial cost of that agreement. There was no mention of any stipulations being made, and we did not find out about any stipulations that the City Council passed that Staff recommended until after the fact. As soon as we found out about them in October of last year, we communicated with Patty Bennett and said that Stipulations No. 2 and 3 were unacceptable, that we were not willing to set up a funding mechanism with our own money – the Sharp Trust, that is – to maintain this basin. This is the end result of our objecting to that language.

We don't understand the five-year stipulation. We have a two-year plan that was approved. When the Villaggio West was approved, a preliminary plan was approved for Villaggio East. It has expired and is not longer applicable. I'd love clarification if I'm wrong, but when Staff refers to this being a final plan, it's the final M&I Bank plan; this is all done for M&I Bank. Then also in July, 2007, Mr. Ley, in a memo for the first application to enlarge this dry pond to hold the M&I Bank run-off, suggested that it should be a requirement that Villaggio West pay for the upkeep and maintenance of this. This was in contrast to the stipulation; although, we understand that the engineers' plans are part of the approval and part of the ordinance that's passed. We've got two conflicting, "Who's to pay for what?" So we're hoping not to have to pay for this; we'd like Villaggio to pay for it. We're not sure what the five-year limit really applies to, unless it's the M&I Bank's occupancy permit. We grow wheat, so we don't understand how that affects us.

I guess to add one other thing that just seems to rub salt in a wound, when we started this process a year ago to allow the M&I Bank site to be built, Mr. Taylor was wearing two hats. He was the managing member of Villaggio, and he was also the construction manager for the M&I Bank. He could not get the bank built without storing water on our property. He did not object to these stipulations at the time, and as soon as we found out about them, we did object. Thank you for your time, and I'll answer any questions.

Chair Rohlf: Mr. Hipp, would you like to comment further?

Mr. Hipp: No further comment.

Chair Rohlf: Questions for the Applicant or questions for Mr. Sharp? I'm sure he'd be happy to answer them.

Comm. Williams: I'd like clarification on No. 3. If we delete No. 3, then who's responsible for maintaining the detention basin?

Mr. Hipp: I'd be happy to answer that. In accordance with the agreement between Sharp Trust and Pawnee Place, Pawnee Place is responsible for that maintenance. Once Pawnee Place is gone, and there is already in place a Villaggio Owners Association, it becomes their responsibility. If, for some reason, somebody buys the entire Villaggio project, that responsibility transfers to those people as well. That document has been recorded, so it runs with the land. Anybody who buys the property and does a title search will see that this is a stipulation and an agreement that runs with the land. That has to do with the temporary facility. Once the permanent facility is constructed, then Pawnee is responsible for their allocated share of the water that goes into the permanent facility. We'll call it 30%, so if the permanent facility has to be cleaned out, then Pawnee's responsibility would be to pay for 30% of that cleaning cost and Sharp's would be 70%. That's once the permanent facility is undertaken. Was that too much information?

Comm. Williams: No, that's helpful.

Mr. Klein: I think really what it comes down to from the City's point of view is from the private side, they're indicating they have this private agreement set up and that Pawnee Place will take care of the maintenance. I'm sure that Pawnee Place has not thought that they are not going to pay for this. The main reason for the stipulation is the portion that refers to failure to maintain. What happens if, for some reason, that relationship breaks down? What happens if Pawnee Place decides that they aren't going to do it? Is the City going to bear the cost to enforce a private contract to which they were not a party? At that point, it really comes down to the responsibility of the property owner to enforce that.

Comm. Williams: The whole concept of the detention basin, regardless of where it gets placed, that was brought by the owner/applicant for that project, being Pawnee Place and/or M&I Bank, correct?

Mr. Klein: Correct, now since this was located on the portion of the property that the Sharp Trust owns, the property owner had to sign the application to take it forward for the temporary drainage facility, indicating they were in support of this application.

Comm. Williams: So if we delete this, they're still on the hook for doing this; it's just that what's being taken out of here is the City's ability to come back, fix the problem and back-charge them for the repairs. Is that right?

Mr. Klein: I think the risk that the City is taking is, say the relationship breaks down and isn't maintained. Suddenly, whom does the City go after? We don't have a stipulation here saying that we're going to go after the owner. If Pawnee Place breaks down, the private agreement is broken down, and now the City is in a position to try to pursue that. I'm not even sure if legally they'd have the ability to enforce such a contract.

Ms. Shearer: If I can chime in a moment to reiterate everything Mark has said. Patty and I have been in discussions regarding this issue and the agreements between all the

parties. Legal is not supportive of deleting this stipulation for all the reasons that Mark gave.

Comm. Williams: I'm not necessarily in favor of it, either. I'm just trying to get clarification because as I read this and listen to discussion, it strikes me more as a legal issue than a Planning Commission issue. I understand it's a stipulation in a site plan, but it's boiler plate. We see these on every project that comes through, and how they handle it through their contract is their business and not ours.

Comm. Neff-Brain: I would totally agree with Legal. As a former City Attorney, I put these in all of our agreements. The City has no business trying to enforce a private contract, nor do we have the legal ability to do so. Something like this, in my opinion, is absolutely necessary.

Comm. Roberson: I get to chime in as a banker and say the same thing. I have no idea what the financial wherewithal of Pawnee Partnership is, quite frankly, so I couldn't agree to that, either.

Comm. Pateidl: Assuming that this application went forth like most others and the final stipulation is that there is a signed agreement that everybody understood the stipulations, No. 3 establishes – whether explicit or implicit – some joint and several liability of the owners, as well as the Applicant. I think it would be irresponsible for this Commission to recommend the deletion of this stipulation at this point in time. With respect to the temporary dating on Stipulation No. 2, I believe the sunset is important to the City, particularly since there is going to be some confusion over the continued development of the property and that we should retain what that has, particularly since it establishes a timeline when a permanent facility is to be built or an extension is to be granted. I'm not in favor of removal of either stipulation.

Chair Rohlf: Are there any other questions of the Applicant? Thank you, Mr. Hipp. Does anyone else have anything they'd like to add?

A motion to recommend denial of Case 16-09 - VILLLAGGIO EAST DRAINAGE FACILITY – request for approval of a revised final site plan to modify stipulations with all eight of Staff's stipulations for denial was made by Williams; seconded by Pateidl. The motion passed unanimously with a vote of 5-0. For: Pateidl, Roberson, Neff-Brain, Williams and Rohlf.

CASE 18-09 – MISSION FARMS – ZEST RESTAURANT PATIO PLAN – Request for approval of a revised final site plan, located at the northeast corner of Mission Road and I-435.

Chair Rohlf: Julie, could you please get Miss Jackson and Mr. Munson? The minutes should also reflect that Mr. Heiman has left the meeting. Miss Jackson and Mr. Munson have rejoined us.

Comm. Williams: I'd like to recuse myself.

Staff Presentation:

City Planner Melissa Cownie made the following presentation:

Ms. Cownie: Madame Chair and members of the Planning Commission, this is Case 18-09 – Mission Farms Zest Patio Plan. The Applicant is Alexis Phillips with 360 Architecture. The Applicant is requesting approval for a revised final site plan for a patio. Staff is recommending approval of this application with the stipulations stated in the staff report and would be happy to answer any questions.

Chair Rohlf: Do we have questions for Staff? Then if we could hear from the Applicant, please?

Applicant Presentation

Alexis Phillips, with 360 Architecture at 300 W. 22nd St, Kansas City, MO, 64108, appeared before the Planning Commission and made the following comments:

Ms. Phillips: We submitted a prior site plan at the beginning of Zest Restaurant's preliminary design phase on the interior, which was approved; but we did want to revise it with the updates we currently have. Hopefully that should suffice. We've put together all the spec sheets of all the furniture and railings and have spoken to the Fire Marshall about the fire pit, which was a concern at one point. Hopefully there's a letter from the Fire Department clarifying that.

Chair Rohlf: It's in here.

Comm. Jackson: No, the Fire Marshall.

Chair Rohlf: Oh, we don't have that.

Ms. Phillips: There was a concern of liability. We agreed we would purchase a cover for the fire pit.

Chair Rohlf: Do you have a drawing of this patio? Well, I'm confused in the drawing which particular building it is. I've been to the restaurant, but I'm not sure I've seen that vehicular drawing before.

Ms. Phillips: There's an overall site plan, and the shaded-in area is our scope of work.

Chair Rohlf: All right.

Comm. Neff-Brain: It looks like there is the required sidewalk space on the other side of the planters and patio, correct?

Ms. Phillips: Yes, they're 7'.

Chair Rohlf: Was the patio always in your plan?

Ms. Phillips: Yes.

Comm. Neff-Brain: I love patio space outside in the summer.

Chair Rohlf: I don't think we have any concerns. Does anyone have any questions or concerns?

Comm. Pateidl: Given the fire pit and potential danger associated with that, is there adequate opportunity inside this plan for someone to vacate in the case of an emergency to get off that patio? I don't know what's between these planters. Is there any problem with that in the event of an emergency?

Mr. Klein: They do have an exit located in the gate. They're required by ABC [Alcohol Beverage Control], a state organization, to have a barrier around the patio since they'll be serving alcohol. There is a gate, and I believe the railing is 3' in height.

A motion to recommend approval of Case 18-09 – MISSION FARMS ZEST PATIO PLAN with the five stipulations in the Staff Report was made by Neff-Brain; seconded by Roberson. The motion was approved unanimously with a vote of 5-0. For: Pateidl, Roberson, Jackson, Neff-Brain and Munson.

Chair Rohlf: If we could locate Mr. Williams, please. The record should reflect that Mr. Williams has rejoined us.

CASE 19-09 – LDO AMENDMENT – SECTION 16-4-1 ACCESSORY USES (SUN ROOMS) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 19-09 – LDO Amendment to Section 16-4-1, which is accessory uses within the LDO. The reason for the amendment is to add sunrooms as an accessory use. Currently, they aren't an allowed use. Staff is recommending approval of the proposed amendment, allowing sunrooms with a maximum of 400 sq. ft. of glass roofs. The entire roof would not have to be glass if it were larger than that; however, it would limit the glass in the roof to 400 sq. ft. It would also require non-reflective, non-glare glass. Staff is recommending approval of this application and would be happy to answer any questions.

Comm. Williams: You're referring to item 25a as the addition or clarification to the LDO. Typically when you've done these in the past, you've underlined them or otherwise highlighted the changes.

Mr. Klein: Correct, 25a.

Comm. Williams: It's defined as a room and enclosed porch with both glass walls and glass roof. Is your intent that a sunroom is like a manufactured product that gets added on to a house with light framing against substantial glass?

Mr. Klein: It would allow for that.

Comm. Williams: You make comments in here, "oriented and designed to admit much sunlight." How do you define "much"? Who does that?

Mr. Klein: The intent was to make the point that the purpose of the room is to allow as much sunlight in as possible, more than a typical room.

Ms. Shearer: It was just meant to be a general definition of sunroom. We can take out any words that are unclear.

Comm. Williams: I'm just trying to get clarification, mostly because I've done this work and was before the Planning Commission a few years ago with what we called a sunroom with glass walls and a skyline, not a glass roof. You don't always get in situations where you're orienting this to admit much sunlight as much as you're trying to fit it on the house and property. Yes, the intent is to get and control the sunlight if you're doing a proper job. I'm just trying to get a feel for this because I wouldn't want to come in two years from now with a sunroom addition on a house and have a disagreement about how much was allowed.

Mr. Klein: That wasn't the intent. The intent was to show that a sunroom is a structure that would allow a lot of light into it.

Comm. Williams: Again, that determination of all this is done by the Planning Staff?

Mr. Klein: Correct, this would be administratively approved.

Comm. Neff-Brain: (*inaudible comments*). . . enclosed porch with both glass walls and roof?

Comm. Williams: Yes, the rest of it doesn't really achieve anything here.

Ms. Shearer: Staff is fine with removing that.

Comm. Williams: Regarding the definition of a sunroom, Mark, you were here when we had this project a few years back. We called it a sunroom; the owner called it a sunroom. The intent was to have that feel. By this definition, would that be considered a sunroom?

Mr. Klein: If I recall, that had a solid roof.

Comm. Williams: It was substantially solid with approximately 1/3 as a skylight.

Mr. Klein: I guess that would get into interpretation. If you had a room that was glass on all three sides and a solid roof that continued with the same roofing material as the house, it would just be an enclosed porch and would have been allowed without any problem. The issues started when we saw some of these come through with different roofing materials. Glass was not an approved material, so we needed to address it. We don't want to eliminate sunrooms, but we don't want to allow something such as a glass roof on the entire house. The intent was to allow a sunroom of reasonable size, but to still maintain control over roofing material approval.

Comm. Williams: And when you say, "400 sq. ft. of glass," you're actually measuring that as a square foot of glass; so when you get a pitch on this roof, you're taking that area in. It's not like a 20x20 room, which equals 400 sq. ft.

Mr. Klein: Right, it would be the area of the roof.

Comm. Williams: So if you're going to allow 400 sq. ft. of glass on the sunroom, any chance we can get a little bit of a metal roof? Nor further questions.

Chair Rohlf: Thank you. Does anyone have other questions for Staff? This case does require a Public Hearing. Is there anyone in the audience who wishes to speak about this case?

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Roberson. The motion was approved unanimously with a vote of 6-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson and Williams.

Chair Rohlf: That takes us up to final comments, leading to a motion.

Comm. Munson: So if I understand this, we would strike the last line of 25a and add a period after "roof"? I would defer to Mr. Williams, who is Mr. Sunroom himself.

A motion to recommend approval of Case 19-09 – LDO Amendment, Section 16-4-1 – Accessory Use/Sunrooms, editing paragraph 25a by deleting the last line so that it ends after, "both glass walls and roof." was made by Jackson; seconded by Munson. The motion was approved unanimously with a vote of 6-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson and Williams.

CASE 21-09 – LDO AMENDMENT – SECTION 16-2-10.3(C) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 21-09 – LDO Amendment for Section 16-2-10.3C, addressing commercial roofing that's allowed. The ordinance is currently written to allow laminated composite shingles, as well as SBS-modified shingles (also asphalt). SBS is a rubberized material that gets added into the asphalt to make it more impact-resistant. The intent was to remove it from the list of approved materials on commercial projects, as has always been the intent of the City. When the ordinance was updated in 2002, the roofing section was replicated from residential to commercial and included all the roofing materials in there. We've had a few people wanting to do asphalt shingles on commercial buildings, which has a more residential look to it, and the City has never been supportive of that. This is to clarify the ordinance by removing both the laminated composite and SBS shingles from the commercial portion.

Chair Rohlf: Any questions for Staff?

Comm. Roberson: Mark, does this have any affect on the Madden McFarland application?

Mr. Klein: Madden McFarland is currently proposing DaVinci, which is synthetic slate. Originally, they proposed an asphalt shingle. Again, the City is not supportive of that and has always been up-front about it. This is to avoid future confusion with applicants

wanting to do the asphalt, which is cheaper and therefore requested occasionally. The City wants a more commercial-looking building that you get with some of the other roofing materials.

Comm. Roberson: Is there any applicant or proposed application within the City that wants to use the asphalt at this time?

Mr. Klein: There is an application that has been made to the Board of Zoning Appeals that was denied. It was a series of four office buildings located at the northern end of the City. It's my understanding there's a chance that the Planning Commission and City Council might see this case. It's a little unique because there are four office buildings constructed in the mid-'80's. The roofs on them originally were wood shake shingle, which is no longer allowed on commercial buildings. They also have a portion that's a standing seam metal. At some point, two of those buildings were reroofed with asphalt shingles. There are two other buildings that still have the wood shingles, and now they're looking to replace them with asphalt shingles.

Ms. Shearer: I'll interject one fact, and that is the two permits that were given for the asphalt shingles to be applied to the two buildings that currently have them were issued in error by an employee who no longer works here who was working the permit desk at the time they were given. They were given as a residential permit in error. They weren't even really examined under the commercial standards as they should have been. That's the issue with that case, which might be coming before us. We do not have an application right now.

Mr. Klein: Part of the intent is so we don't mislead other people down the road. We want to make the record as clear as possible that asphalt shingles are not supported for commercial.

Chair Rohlf: Any other questions?

Comm. Williams: Ken addressed the first one. The buildings you were just talking about, are those at Lee and Somerset?

Ms. Shearer: 8900 State Line is what we're talking about.

Comm. Williams: I know what ones you're talking about. The other question I have is more of a comment. The ordinance is formatted overall with making the exception of roofing materials for single-family and then going right on through the ordinance and past what is presumed to be the commercial and then getting to Subchapter B or D and back to residential. Would it be cleaner to redo the LDO to just say, "This section is commercial construction; the next section is residential"?

Mr. Klein: If you notice on your agenda, there has been a case that keeps getting continued with each agenda that goes to architectural standards. We've actually taken that case before the Planning Commission and City Council before with the intent that we would separate out residential and commercial. There is a little debate going on, and residents in North Leawood would like to be part of that discussion. That relates partially to materials, but also height and massing, which is currently being discussed right now. That's the intent; however, it would be with a different application. We intentionally made this one a separate case number so we could correct the situation we have going

on right now with the asphalt shingles in commercial without alarming some people with regard to the rest of it.

Comm. Williams: So when you come back with residential standards, this LDO will be modified to delete the residential references, and we'll have a pure residential reference?

Mr. Klein: The hope is to clean it up and make it look a lot better. Again, there a lot of people who want to play a part in that discussion.

Comm. Williams: No further questions.

Chair Rohlf: Does anyone else have questions? This case does require a Public Hearing. Is there anyone in the audience who would like to speak about this case?

Public Hearing

As there was no one present to speak, a motion to close the Public Hearing was made by Williams; seconded by Roberson. The motion passed unanimously with a vote of 6-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson and Williams.

Chair Rohlf: That takes us up to any further discussion, leading to a motion.

A motion to recommend approval of Case 21-09 – LDO Amendment Section 16-2-10.3C with materials for all buildings except single-family residential was made by Williams; seconded by Roberson. The motion passed unanimously with a vote of 6-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Munson and Williams.

MEETING ADJOURNED