

**City of Leawood  
Planning Commission Minutes  
May 26, 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, Rohlf, Munson, Elkins, and Heiman. Absent: Roberson, Jackson, Neff-Brain, Williams

**APPROVAL OF THE AGENDA:**

Chair Rohlf: I have had a request from one of the applicants to change the order of the agenda this evening. Although I would like to do that, I have been told by the City Staff that I cannot do that. Mr. Alpert, I'm sorry.

Mr. Coleman: I said you could discuss it; I just recommended against it.

Chair Rohlf: Still my choice, then we will switch the order of the agenda. We'll be switching Case 29-09 with Case 15-09.

**A motion to approve the agenda as amended was made by Elkins; seconded by Heiman. Motion approved with a vote of 4-1. For: Pateidl, Elkins and Heiman, including a favorable vote by Rohlf. Against: Munson.**

**APPROVAL OF MINUTES:** Approval of the March 10, 2009 meeting minutes, March 24, 2009 meeting minutes, April 14, 2009 meeting minutes and April 28, 2009 meeting minutes.

**A motion to approve the March 10, 2009 Planning Commission meeting minutes was made by Elkins; seconded by Heiman. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

**A motion to approve the March 24, 2009 Planning Commission meeting minutes was made by Elkins; seconded by Munson. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

**A motion to approve the April 14, 2009 Planning Commission meeting minutes was made by Elkins; seconded by Munson. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

**A motion to approve the April 28, 2009 Planning Commission meeting minutes with the following revisions: Page 12, first paragraph starting with "powder coat or manufactured" and should be "manufacturer's equivalent." Page 19, fourth**

paragraph, "Some joint and severe . . ." and should read "Some joint and several . . ." was made by Munson; seconded by Heiman. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.

**CONSENT AGENDA:**

CASE 25-09 – PARK PLACE – ALOFT HOTEL – Request for approval of a revised final site plan for an addition of a sign, located at the northeast corner of Nall Avenue and 117<sup>th</sup> Street.

**A motion to approve Consent Agenda was made by Elkins; seconded by Heiman. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

**CONTINUED TO JUNE 23, 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 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 01-09 – GARDENS OF VILLAGGIO LOT 3 – Request for approval of a revised final site plan, located north of 137<sup>th</sup> Street and east of Roe Avenue.

Comm. Munson: I'll recuse myself.

Chair Rohlf: Does that take away the quorum?

Ms. Shearer: Yes, you need five.

Chair Rohlf: Is the applicant here? Mr. Patterson, I apologize. Can we postpone this to the next meeting?

Mr. Patterson: That's all right; I understand.

Mr. Klein: The next scheduled meeting is the June 23<sup>rd</sup> meeting. We do have one case scheduled for the June 9<sup>th</sup> meeting. We were trying to keep that agenda light, but with the conflict in schedules, Staff would support the 9<sup>th</sup>.

**A motion to continue Case 01-09 – GARDENS OF VILLAGGIO LOT 3 – Request for approval of a revised final site plan, located north of 137<sup>th</sup> Street and east of Roe Avenue – to the June 9, 2009 Planning Commission meeting was made by Elkins;**

**seconded by Heiman. Motion approved unanimously with a vote of 4-0. For: Pateidl, Elkins and Heiman, including a favorable vote by Rohlf.**

Chair Rohlf: It has been brought to my attention that CASE 06-09 – MADDEN MCFARLAND INTERIORS has requested a continuance.

CASE 29-09 – PARK PLACE, BUILDING D – FORMER MORTON’S SHELL - Request for approval of a final site plan – Located at 11652 Ash Street.

*Comm. Munson rejoined the meeting.*

**Staff Presentation:**

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 29-09 – Request for final site plan approval. The plan proposes a multi-tenant structure known as Building D in Park Place, located adjacent to the Aloft Hotel. The building was previously approved as a single-tenant structure with Case 107-07 for a Morton’s Steak House. The building shell has been constructed based on those approved plans as of today’s date, and the Staff Report includes photos of the completed building shell. The applicant is proposing revisions now because the tenant is no longer interested in the building, and the applicant wishes to finish the exterior. No specific tenants are proposed at this time. The plan proposes a structure that is different from that which has been constructed to this point, and therefore, partial demolition may be necessary to construct per the proposed plan before you this evening. The plan proposes storefronts along the entire east façade and portions of the south and north facades. Approximately 35% of the façade is proposed to be brick, with the remaining to be primarily storefront glass and stucco. The applicant has not provided a photometric study or lighting details at this time, and staff has concerns with the inconsistency between the constructed building shell and the proposed plans before you this evening. The wall heights differ, as do the storefronts; and there is a change in the plane on the north elevation, which is visible in the photos in the Staff Report, compared to the plan. Staff also has concerns with the multi-tenant building in this location. The building is located on a site that is considered a gateway to the Park Place Development and is highly visible. Therefore, staff believes the site is best suited to a single-tenant structure. For those reasons and others stated in the Staff Report, staff recommends denial of this request. If the Planning Commission wishes to recommend approval, staff does recommend Stipulations 1-7 as stated in the Staff Report.

Chair Rohlf: Does anyone have questions for staff? Joe, do you happen to have any of the elevations from the previously approved plan with you?

Mr. Rexwinkle: I don’t have full-size elevations, but at the end of your Staff Reports, there are copies.

Comm. Munson: “All buildings within this development shall conform to the architectural style and scale of the buildings approved by the Governing Body at the final site plan.” It is staff’s opinion that this does not do that, correct?

Mr. Klein: Actually, that’s a standard stipulation indicating that whatever the Governing Body approves with this final site plan will be what is approved.

Comm. Munson: This started out as the Morton's Steak House, correct?

Mr. Klein: Correct.

Comm. Munson: I think we had quite a bit of discussion back and forth on the way that was supposed to look, due to the fact that it's the main entrance from the Nall side, correct?

Mr. Klein: Correct, and Morton's faces the east as the main entry. Along Nall, it's more or less hidden by that retaining wall and landscaping. Once you come into the development, it's a prominent feature.

Comm. Munson: Morton is no longer in the picture?

Mr. Klein: You'd have to ask the developer.

Chair Rohlf: Mark, I guess I'm concerned about the number of changes that we're seeing in this proposed final. Should this have come back as a preliminary since it's such a major change to the building?

Mr. Klein: Specifications in the Leawood Development Ordinance constitute compliance with the preliminary development plan and what would have to go back. Most of those usually have to do with expansion of square footage by not more than 5%, increase in height by not more than 5%, decreases in landscaping by not more than 5% or increases in density. None of these are present in this plan.

Chair Rohlf: But it's changing pretty significantly in that we're going from a one-tenant structure to a multi-tenant structure.

Mr. Klein: Correct, however, the square footage is staying the same.

Chair Rohlf: Does anyone else have questions for Staff?

**Applicant Presentation:**

Jeff Alpert with Park Place Village, LLC, 11551 Ash Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Alpert: My partner, Melanie Mann is with me this evening, as well as Dave Anderson with Anderson McAdam Architects, who did the detail design. The conceptual design for this building was done by Street Works, our master planner out of White Plains, NY. We also have Mark Van De Riet, with Presidian of San Antonio, TX, who is the developer of the Aloft Hotel, of which this building is an integral part.

Let me start by giving you an overview of why we're here and what we're doing. First of all, to clear the air, Morton's, with whom we have a lease for this space, has requested a 12-18 month delay in the opening of the restaurant. We have an obligation to the hotel developer to have this building substantially complete at the time the hotel opens. Our discussions with Morton's were such that, whether or not we ultimately determined they were going to open a restaurant in this location, we had to have a building finish that could not just accommodate Morton's, but any tenant that could go in there in the event

that Morton's ultimately decided not to go into that space. The originally approved façade was Morton's prototype design that they own and is strictly for Morton's restaurants. We are not in a position to build that façade if Morton's is not the tenant, now would we necessarily want to. They own the plans for the finish, and they have control over them. In our discussions with them, we agreed that they could adapt their design to the building that we are now designing and proposing tonight and brand it with their brand. They go into a lot of existing spaces around the country and often deal with these kinds of conditions. Because we started out with them from the ground up and it was a brand new building, we were able to offer them their prototype design. The building, which you see on the board in blue, is integrally attached to the hotel. The hotel actually runs over the top of the rear half of the space. The footprint we are proposing is exactly the same footprint as what was approved for the Morton's building. *(Places site plan on the overhead.)* There is reference to the north façade changing, and it is exactly like the original plan. Because the shell is in place and the building structure is up, it would not be economically feasible for us to start making major structural changes to the building. We went in and designed a new façade that was representative of Park Place architecture. It was what we believe to be compatible with the hotel and would allow us to put a variety of tenants into the space in the event that Morton's determined they were not going to go in. There has also been discussion about it being a multi-tenant building. Right now, the building is a little over 8,200 square feet, and there are not a lot of 8,200 sq. ft. restaurant operators in the market right now. We have looked at how we might divide the building in the event that we were to get a 5,000-6,000 sq. ft. tenant, and we believe we could divide it with a north/south line that would give us two entrances if necessary. They would both be oriented into the project. *(Refers to site plan display.)* You can see that the way the building is designed, we would divide it with a line in this location here. We could have an entrance in this vicinity where the current Morton's entrance is located and a second entrance on the corner. There really is no significant difference in how the building would be used, except that there would be two entrances for two tenants. Our goal is to find a single tenant for the building, and we obviously are strongly motivated to do that. We also want to be realistic. We have a building that's up; tenants are not easy to come by in this economic climate, so we want to create every opportunity to get the space filled with quality operators.

At this point, I'm going to ask Dave Anderson, the architect, to walk you through the materials and design of the building.

Comm. Munson: Do you have any proposed tenants at this time?

Mr. Alpert: We're talking to tenants, but we don't have any deal done yet.

Comm. Munson: What type?

Mr. Alpert: We're still focusing on restaurants.

Dave Anderson of Anderson McAdam Architects appeared before the Planning Commission and made the following comments:

Mr. Anderson: *(Puts rendering on the overhead.)* As Jeff had mentioned, the architecture has changed to match more of what is going on in Park Place in terms of the existing structures. There's a combination of storefront glazing and aluminum

framing. There's a canopy made of metal in a couple locations, potentially, depending on tenant. There are a number of similar materials that have been used in the past: brick, stucco and pre-manufactured pieces, such as medallions and copings that are going to be used at the top of the façade. The other materials indicated here include a frieze that is a pre-manufactured piece that you can see just before you get to the hotel piece. Then some cabling structure is added for detail. The accent pieces essentially will be stucco and subdued red brick from ACME, not a fire-engine red. The stucco colors are similar to the hotel colors. (*Refers to north elevation display.*) You can get a better idea here of what's going on. I think staff may have thought there was a change to the north elevation based on this drawing. We did add the line on the north elevation for you in the re-submittal that we made in May, but the footprint of the building has not changed. It was an elevation issue in terms of where the shadow was placed on that building. (*Refers to east and south elevation display.*) The east elevation will be essentially all storefront, as opposed to the way it was presented earlier with Morton's, with fewer pieces of glass and more building façade. It will open up and address the entry concern to the developer. I think it will be a nice addition to the development entering on that east face of the building.

Mr. Alpert: At this point, let me ask Mark Van De Riet with Presidian to speak briefly to the importance of having this building finished for the hotel.

Mark Van De Riet, with Presidian, 9000 Tesoro Dr., Suite 300, San Antonio, TX, 78259, appeared before the Planning Commission and made the following comments:

Mr. Van De Riet: Our concern with having this building unfinished is that it will have a negative impact on our guests. The concern is that the guests, not knowing the building is not a part of the hotel, will perceive the hotel to be unfinished. We also have an agreement with Starwood Hotels and Resorts that the whole complex would have exterior finishes, giving the appearance that everything was occupied. As Jeff also mentioned, Park Place is contractually obligated to have a finish on the building prior to us opening the hotel. Thank you.

Chair Rohlf: Mr. Alpert, have you had a chance to read the Staff Report and stipulations?

Mr. Alpert: Let me take a few minutes and walk through the comments. Obviously the staff recommended denial of this application, and I think it's important for us to address their reasons. First of all, the first five bullet points in their report speak specifically to denial on the basis of the fact that the building is inconsistent with the previously approved building. I'm not exactly sure how to respond to that except that the footprint is exactly the same as it was. The only thing that has changed is the design of the elevations and the materials. We have varied some parapet heights from the original Morton's design. (*Refers to elevation display board.*) We raised the southeast corner of the building at the entrance to create a little more prominence in the building and create more of a distinct corner as you come in. Again, if you look at that, compared to the Morton's building (*refers to prototype elevation*), they've diminished the impact of the corner. When they got their building approved, we actually requested that they do something a little more like what we have, but they declined on the basis that it was their prototype design and they didn't want to vary from it.

Chair Rohlf: Before you move on, is this the particular elevation that might require some demolition?

Mr. Alpert: (*Refers to plan*) When we're talking about demolition, we're really talking about adding and subtracting the parapet heights a little bit. The majority of the building really stays the way it is. We create more window openings than what currently exist. In the south elevation here that fronts 117<sup>th</sup> St., they actually had three small windows here. The rest of what you see that appear to be windows are actually fake closed windows. Although we have no intention of allowing an entrance into this space off 117<sup>th</sup> St., we felt that having more glass and storefront would show more activity and be a more inviting façade than the closed-off entrance that the Morton façade had. That is our response to those first bullet points.

The next bullet point stated that, "It's not clear if the proposed parapet will effectively screen rooftop mechanical units." The parapet, all the way around, is a minimum of 5' high above the roof surface. In that corner that I talked about, it goes to about 8-10' high, so while we don't have the mechanical units specified yet, we believe the parapet that exists in the new design will effectively screen the mechanical units that would most likely be installed there. We would be happy to agree to a stipulation that, in the event that those rooftop units are higher than the parapet, that we would add additional screening in order to make sure that they were not visible.

We actually did provide information on lighting. The only lighting we are adding to the building is what you have there, and those lights were detailed on the original elevation submission as well as the second revised elevation submission. They're just very small lights designed to highlight the building. They don't add any light to the street, and in fact, there is significant street lighting around the building. We provided photometric studies of that lighting when the original building was approved. We would respectfully request, given the cost of these studies and the fact that there is no significant addition of lighting, that we not be required to do an additional photometric study.

The next bullet point indicates that a material board with building materials attached had not been provided. We actually did provide it; they just couldn't find it. I believe they located it today. We did not provide a three-dimensional model of the proposed structure. We have the original model that we used when we got the hotel designed. We have not brought it over, but would be happy to do so. In addition to that, we had the prospective drawings that we provided to you tonight commissioned so that we could give you a sense of how the building fit in and its relationship to the hotel. Hopefully those were helpful drawings.

The next item: "The plans do not identify the materials used in the construction of the cornice." That material was listed on our May 4<sup>th</sup> submittal – the second submittal we made in response to staff comments – and it's called an Arcus Stone coating. It's designed to be a coating that gives the look of a cast stone, but with less structural requirement.

"The site plan and buildings do not identify the building height." The heights are on the plans; they were on the elevations, both on the original and revised submittals. "Though the retail storefronts are proposed along the north, east and south facades of the building, none of these are proposed to have parking immediately adjacent to the storefront." Even if this were to carry two tenants, which we think is a possibility but not

our preference, the entrances would be oriented in the same general location that the current entrance is. We don't believe we're altering the traffic impact at all, relative to what was previously approved. Regarding staff's concern with a multiple-tenant building in this location, I believe that I've addressed that, hopefully to your satisfaction. If you have questions about that, I'd be happy to answer them. Like I said, we're in a very unique economic climate, and we want to give ourselves every opportunity to put quality tenants in this space, regardless of the square footage.

The last bullet: "The building shell appears to be constructed per the approved plans," which is true; it is constructed per the approved plans. "Staff recommends the building façade be finished per the approved plans." Hopefully we've given you the reasons why we believe we cannot do that. That is a proprietary Morton's façade, and it would look very strange putting another tenant in the building. Since we don't own the plans for the façade, our agreement with Morton's was that we were to take the building to the point that it is now and they would finish the façade according to their own plans. We don't even own the plans and could not finish it ourselves.

Stipulation Number 1 it says, "The project is limited to 8,000 sq. ft.," but in fact, the building is 8,211 sq. ft.; so I would request that change be made. Again, that's on the submission as well on Plan A2, I believe. Going to Stipulation 18, that information has been provided and you should have that. Stipulation 19, we would request that a traffic study not be required because we're not adding square footage or significantly changing the location of the entrance. That completes my presentation.

Comm. Munson: Is the F.A.R. of 0.85 affected by the amount of square feet that they are proposing? Is the 8,000 sq. ft. in there because it keeps it within the F.A.R. that's been allowed?

Mr. Rexwinkle: Actually, staff got that number from the first plan in your packet. It shows that the building is 8,000 sq. ft.

Mr. Alpert: That was actually put on there by the engineers, and it's an incorrect number. The correct number is the one on Sheet A2.

Comm. Munson: This doesn't affect any of the enhancements that have been allowed?

Mr. Coleman: The bonuses?

Comm. Munson: The bonuses, this doesn't affect the bonuses that were given to the developer in the initial approval?

Mr. Klein: The bonus they received was for an overall F.A.R., and it's actually staying the same for the entire development; so it shouldn't affect the bonuses.

Chair Rohlf: Does anyone else have questions?

Comm. Heiman: In terms of Morton's, if they decide to utilize this building in 12-18 months, they would go into the building as it is being constructed?

Mr. Alpert: That is correct.

Comm. Heiman: So there wouldn't be any changes to the building?

Mr. Alpert: No.

Comm. Heiman: That's all I have for now.

Comm. Pateidl: This is for Mark, perhaps, first. As I understand it, there is going to be a change in the façade; albeit, the Morton façade is proprietary and one you can't use in that design. However, it's also going to be a change in materials from what appears to be a brick façade in the Morton's building to something other than that. It's unfortunate we don't have the materials board to see what's coming forth. Given the materials that are being proposed, do you find that what is proposed for this façade is in the spirit of and in compliance with what was originally expected for this development?

Mr. Klein: If you take a look at the elevations when the Morton's was approved, it had quite a bit of brick. It's an issue that staff has brought up a number of times with regard to the Park Place development. Staff is still supportive of seeing much more masonry on the building. Again, staff was very pleased with the Morton's façade, and we just have some concerns about the proposed changes.

Comm. Pateidl: Could you elaborate a bit more on what your concerns are?

Comm. Heiman: Could we see the old Morton's design?

Mr. Klein: (*Refers to display boards.*) In this area, you see the masonry. We like the component, especially as it butts up against the hotel. It adds contrast and doesn't look like an extension of the same building; it actually has some character of its own. The current design they're proposing still has the parapet that comes up here; however, on some of the plans we have, it was a little confusing. On the north elevation, it didn't look like the parapet came up. It's primarily stucco going along this part with a cast stone element that comes across the top. You have this area right here that's stucco. I believe these are steel cables, and this is a cast stone element in the design along here. Staff just feels more comfortable with the classic look - the way this is trimmed to where it looks like a cast stone, prominent element on the corner. It has the look of a single entity.

Comm. Pateidl: As far as the proposed design for the façade for multi-tenant structure, are the architectural treatment and materials in synch with what had been originally understood by staff as being the basis and foundation of this development?

Mr. Coleman: I think that's a good point. We don't feel that it is, and it's basically based on Mr. Alpert's hierarchy of materials that he cited before. They would use lesser materials like stucco, GFR and some of these other manufactured materials at the second or third-story level of the buildings, rather than using them down at the street where people are in touch with the façade. This is an aluminum storefront building with a small brick band at the base and a stucco cap at the top. We feel that it's a devaluation of this particular site and building that was approved after an extreme amount of discussion in the final development plan of the project. It sits on the most prominent corner of the development with the most traffic going by it on 117<sup>th</sup> St. If you compare the two buildings, this one is a much weaker presence on that corner than the

Morton's façade. This design is much weaker and really doesn't do justice to the entrance to Park Place.

Chair Rohlf: Does anyone else have questions?

Comm. Elkins: Madame Chair, I would just like to hear Mr. Alpert's response to that observation about the architecture.

Mr. Alpert: I would respectfully disagree, as you might imagine. First of all, we think that our design is totally in keeping with the architecture that we had established for Park Place with a variety of materials. Part of the problem is the full impact of the building will not be realized until we do have a tenant who inserts its storefront into it. We've shown a possible storefront, but that certainly could change once the tenant is identified and the space is built out. Although the rendering shows the full storefront in place, what we're requesting is just the area around the storefront. We've identified the storefront locations as being inserted in the future. We've had a lot of discussion about percentages of materials. I hate to go down that road because I feel like we're making arbitrary decisions about our design based on statistics rather than the overall feel of what we have on the board. That is very distressing to us, but given that our brick percentage is almost 35% of the building, glass (assuming the majority is glass) would be 30%, stucco is right at 26%, which is within a percentage point of the target of 25%. Then another 8-9% is various materials – the stone trim, medallions and things like that. It's a very subjective thing. Everybody has a different opinion of what looks good. When I look at those two buildings, I see the more prominent corner and the opportunity for a unique finish up above with the medallions. I see unique lighting that Morton's was not going to do. The fact that they have really blanked out the elevation that faces 117<sup>th</sup> St is not very inviting. I would much rather see something with windows and activity inside to get a sense of what's going on. With the Morton's façade, you don't get that.

Comm. Elkins: Mr. Alpert, just a point of clarification – not to go too deep into your contract with the hotel developer, but is the obligation for you to have the façade complete, or do you actually have to have a tenant in the space and the space open?

Mr. Alpert: No, we have to have the façade substantially complete, which allows us to build what we're proposing to build and put temporary construction in the storefront areas until we do have a tenant.

Comm. Elkins: Mr. Alpert, on the rendering that's on the easel right now, that is facing south onto 117<sup>th</sup> St. You made the comment pretty emphatically that you didn't contemplate ever having an opening or an entrance into the building on that side. I was curious about why that is.

Mr. Alpert: Because we really are internally focused as the design of the development. You might recall we had some discussions a few weeks ago about retail on the ground floor of the garage. It's really the same principle. We want people to go into the center of the development and experience it that way. (*Refers to site plan display.*) With the overall site plan, Barkley Square is here and the entrance to the hotel is here. This is where the activity takes place. That's why we want our entrances focused in this location and connected more to what's going on in the center of the development.

Comm. Elkins: Mr. Alpert, also with respect to the parapets, is there any difference in the height of the parapets between the Morton's design and this one?

Mr. Alpert: I believe they're higher in this proposal, particularly at the southeast corner.

Comm. Elkins: Thank you.

Chair Rohlf: While you're there, could you put up your proposed plan, south elevation view? (*Puts up south elevation.*) Could you show me what would be there, regardless of the tenants that go in there? It is basically just the glass?

Mr. Alpert: Yes, this brick here and here would go in up front, no matter what. This area right here would be left out. This area right here would be left out. We have a column here and here that would be finished to define the corner. The majority of the storefront on this elevation, which is the east elevation, would also be left out.

Chair Rohlf: So all the brick on top.

Mr. Alpert: This is all brick here, and brick wraps all the way around the back.

Chair Rohlf: Just to make sure I understand, Morton's is definitely not going into this building? I would think, if their building is considered proprietary and you want to move away from that, you would have to give a point when they couldn't turn around and say they changed their minds again and wanted back in.

Mr. Alpert: That's why we informed them we were heading in this direction, and they understood our situation. They acknowledged that if they did come in, they would adapt their design to the structure we already had in place.

Chair Rohlf: And we really don't know if it's going to be a single or multiple-tenant.

Mr. Alpert: We're very hopeful that it will continue to be a single, but if we have a great restaurant come in that only wants 6,000 sq. ft., we want to find some terrific merchant to lease that last 2,000.

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

Comm. Pateidl: What is the time frame for your completion of this building by virtue of your contract with the hotel?

Mr. Alpert: We're expecting the hotel to be open somewhere between July 15<sup>th</sup> and August 1<sup>st</sup>. It's still a little in flux, but that's the general time frame. We're not being given much time, but if we were to be approved this evening and we get approval from the Council in three weeks, we would immediately be in for a building permit and hopefully get it done very quickly.

Mr. Munson: Do I understand that if this isn't done, the hotel may not or won't open?

Mr. Alpert: They have the ability to delay their opening based on this if they decide it becomes a distinct marketing disadvantage for them.

Comm. Elkins: Mr. Alpert, looking at the south-facing elevation up there now, you have a significant amount of brick and masonry in there. When I look at the other rendering that Ms. Mann handed out to us tonight, it almost has a completely different look and feel to it. Either you or your architect made a comment on that. Unless I'm completely misunderstanding what I'm seeing there, I'm seeing virtually no brick on that particular side of the building. In some ways, it looks like it's being set up as two separate buildings for two tenants.

Mr. Alpert: The upper portion of the parapet here is consistent around to that one raised section at the southeast corner. Then when you get to this point, it goes back to the brick. We continue the brick from this point on to the west end of this façade, across the back and then returning back on the south elevation.

Comm. Elkins: But the brick part that's facing us now is really under the building, right?

Mr. Alpert: Yes, it is under the building and is clearly visible from a lot of angles. Again, we were going for a lot more glass in this area to open the store up more to the outside and the street. It may turn out, when we get our tenant and this storefront is designed, that we add some brick panels in here to continue that on. At this time, we didn't want to take the design that far and reduce flexibility.

Comm. Elkins: So just duplicating the Chair's question on the south side, what part of that is storefront that may or may not be there when you finally get a tenant?

Mr. Alpert: From this line all the way over and then around the east side.

Comm. Elkins: And is it only the bottom half?

Mr. Alpert: From this line here down to the ground.

Comm. Elkins: Thank you.

Mr. Rexwinkle: (*Places plan on the overhead.*) If you look on the plan here, the red line that I've drawn over here to highlight is the hotel, I believe, coming across the top of the building. You can see there's a projection there that is shown on this plan that doesn't seem to correspond to what they're showing this evening. This is also the plan that points out that it's an 8,000 sq. ft. building. Then the very next page in your packet shows the building as a solid north face, causing concern with differences in what's presented. (*Places elevations on the overhead.*) We also have these elevations provided by the applicant. The east elevation of the building shows it as flat or level, whereas other things shown on the southeast corner projected upward. Then on this plan as well, you can see that they're showing this is the east elevation on this plan. It's hard to tell what is proposed based on what we had presented to us.

Mr. Klein: Madame Chair, you also have the hotel coming down on the south elevation and the color handout, I believe.

Mr. Rexwinkle: (*Places plan on the overhead.*) I believe what Mark was referring to is this area right here, where a portion of the south façade of the hotel comes down through the building because this building that we're talking about this evening will extend west of the hotel. Staff has some concern about that change in building material.

The Morton's plan appeared as one consistent façade across the hotel. I think we have the approved elevation for that (*places elevation on the overhead*). This is the south façade here that we were just looking at, with the hotel right there.

Chair Rohlf: The photo that you showed us before had what portion of the hotel?

Mr. Rexwinkle: It looks as though it's just a portion of the south façade. It looks like the south façade is wider than what is shown. You can see the transition here. You've got what looks like similar building materials from the hotel down here at the ground level. This is different from what we originally saw with Morton's and also from what was submitted with this application.

Chair Rohlf: Could that just be drawn incorrectly, Mr. Alpert?

Mr. Alpert: It's my recollection that when the Morton's plan was originally approved, members of the Planning Commission, I believe, requested to see the hotel building grounded in at least a portion of it. The final approved plan called for the brick to come all the way to the ground in that section. That's why that's left out. I think it might have been Mr. Williams who made that request. There was some concern the way it was originally proposed that the hotel just looked like it floated over the building. Being such a substantial structure and to not hit the ground seemed to be uncomfortable design-wise. That section is hotel façade that goes all the way to ground level in that location.

Chair Rohlf: Any other questions, or are we ready to move on to our discussion?

Mr. Klein: Regarding Mr. Alpert's comments as far as what was approved with it coming down to the ground, I'd have to research it because I don't recall. I know in the approved plan that we pulled from the Staff Report, it shows the brick going across. We'd have to check to see if there's a stipulation to change it.

Chair Rohlf: Any other questions? We'll move on to our discussion and a motion.

Comm. Pateidl: I can certainly appreciate the confusion and difficulties that arise when a tenant suddenly backs out of a lease, particularly when it's a build-to-suit project. I understand there's a need to move forward and with some dispatch as it relates to your other contracts. That's a bad deal. However, at the same time, the proposal that was made and debated long before my time had a building of a much different flavor and feel approved in the final plans. Asking for change of that, particularly on the architectural materials to the extent that you are, is bothersome to me for a couple of reasons. Number one, in the short time that I've been on this Commission, I've learned that precedent seems to come up quite often and brought to bear on future activities in any development. We had a brief discussion when we last met on the 14<sup>th</sup> about a parking garage and application of materials in that project. My concern is that there's a very slippery slope precedent that we need to be very careful of, recognizing the statement made by Mr. Coleman that the Morton's building did give this development a much different feel because of its brick exterior. While that façade may be proprietary, the materials are not. I suggest that it's mainly a materials issue.

Comm. Munson: I'm ambivalent, and probably unless the Holy Spirit moves me, I will not vote on this one. I'm aware of the vicissitudes that the developers are going through. I'm also aware that the Park Place that we got to know and love years ago is not

necessarily the Park Place that we're seeing now. I've got some real concerns about the way they would handle this particular change. I can see the reason for the change, and one thing I certainly want to avoid is another fiasco like the Dean and DeLuca building, which is now empty. I don't think we want that at this prominent corner, but I would really like to see the developer come a little closer to the staff's position in terms of the way it's going to look if we're going to do this.

Comm. Elkins: My thoughts are very similar to Mr. Munson's and Mr. Pateid's. I am very sympathetic to the situation the developer is in. The last thing I want to see is a delay in the opening of the hotel. I'm pleased with the way the hotel has come along from a construction standpoint, and it helps to fill out that space. As I said, this may be nit-picky a little bit, but when we look at the south-facing façade, that gets it there from my perspective. When I look at this other façade that I think is facing east, I have a much more difficult time with it. I'm struggling a great deal with this. The other comment I'll make comes primarily out of the conversation we had a couple weeks ago about the parking structure. That is that while I understand this is a standalone development, at least my vision of what we're trying to do with this space overall is to create a sense of a Leawood community and not a Park Place community versus a Town Center community versus a governmental center community. I would certainly encourage the developer to rethink or at least be flexible on the idea of focusing all of the interest in this area inward. I'd like to see more facing outward. I was persuaded reluctantly when we talked about the parking garage several weeks ago that there was about 2 ½ football fields worth of parking lot to where the Town Center buildings are. Here, it seems like we're a little more close at hand with the AMC Theater category. Again, I'd like to see people walking out of buildings and across to the AMC Theaters. I realize that's a busy street and we'll have to figure out ways to make that pedestrian-friendly. That's the kind of community I'd like to see rather than three independent communities. I guess I'm heading toward supporting staff's position with respect to the proposals before us tonight.

Comm. Heiman: I, too, think this is a challenging case. There appears to be a lot of discrepancy between the applicant and staff, mostly on materials and where things are. Like my fellow Commissioners, I'm sensitive to the current situation. I like the new design better than the Morton's design. Obviously since it's a proprietary design, you've got to change it, so I understand that. Where I fall on this is you need to get closer together on the materials that are being used and how they're being placed on the buildings. I think once that's done, I would actually be in favor of it. There are too many discrepancies for me to vote in favor of the applicant. I would just encourage that those two parties come together a little bit and we reconvene on this another time.

Chair Rohlf: I would give Mr. Alpert the opportunity to ask for a continuance. I think you can probably sense the direction the Commission is going. That would give you an opportunity to, perhaps, take some of the suggestions we've made. Like I said, in the beginning, this felt like it should be a preliminary plan. I just think we're a little bit apart. Perhaps if we'd never seen the Morton's building, we wouldn't have that to compare to. I know it's up in the air and you really don't know what you're going to have in this building, but that makes it a little difficult for us to see in the future.

Mr. Alpert: We're in a pretty distressing situation here. I would request that we ask for a continuance to the June 9<sup>th</sup> meeting so we can get this done as quickly as possible.

Chair Rohlf: I think we've probably booked that agenda. The 23<sup>rd</sup> was our next formal meeting in June.

Mr. Alpert: We'll have to take what you'll give us.

Chair Rohlf: So you'll accept a motion to continue it to our June 23<sup>rd</sup> meeting? I don't know the agenda for that meeting.

Mr. Alpert: If there would be a way to get it on the 9<sup>th</sup>, we'd appreciate the consideration.

Chair Rohlf: This time of the year, it's difficult to know how the schedules will work out for our various presentations.

Mr. Klein: I believe the 23<sup>rd</sup> is the date we would have available.

**A motion to continue Case 02-09 – PARK PLACE, BUILDING D – Request for approval of final site plan – located at 11652 Ash Street to the June 23, 2009 meeting was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

CASE 23-09 – NALL VALLEY SHOPS – CAPITOL FEDERAL UTILITY SCREENING PLAN – Request for approval of a revised final site plan, located at the northeast corner of 151<sup>st</sup> Street and Nall Avenue.

**Staff Presentation:**

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 23-09 – Nall Valley Shops – Capitol Federal Utility Screening Plan. As you recall, this is very similar to the Capitol Federal that was located at Village of Seville at 133<sup>rd</sup> St. and State Line that had some utility boxes on-site that weren't shown on the original or final site plan. As part of the ordinance, if the boxes are a certain size, they have to be shown on the site plan; otherwise, they have to come back before the Planning Commission with a revised final site plan. That is the case here. This site has seven utility boxes, which the applicant is proposing to screen with 60" high junipers, according to one of the staff stipulations. Some of the utility boxes are fairly large, but the applicant does have quite a bit of landscaping next to 151<sup>st</sup> St. and also to Nall. The additional landscaping they're proposing should blend into the existing landscaping. Staff expects that it will be sufficient to screen the boxes; however, there is a stipulation that requires the applicant to work with staff if it isn't screening properly. 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: In Stipulation No. 1, is the number supposed to be six utility boxes? They have one that they've partially screened, right?

Mr. Klein: They have one. That would be the seventh utility box. It should be six.

Comm. Elkins: Mark, I need for you to educate me a little bit here. These utility boxes are not designed specifically for Capitol Federal, correct?

Mr. Klein: I believe some of them probably do serve Capitol Federal; others probably serve more. Quite honestly, we don't normally see this many boxes out on a single site.

Comm. Elkins: As a general matter, when we start out with just a pasture and we have a developer who wants to put in the infrastructure, is the question of where these utility boxes go a matter for the Planning Department and the Planning Commission?

Mr. Klein: Staff, Planning Commission and City Council spend a lot of time on the architecture of the buildings, monument signs, etc. These large utility boxes would go down without staff having any knowledge - often times, next to a sidewalk along the perimeter of the site, allowing no opportunity to screen them whatsoever. The way the ordinance is written and the way staff is moving is that we're trying to make sure that the applicants consider placement of these utility boxes as early on in the process as possible. We'd like to see them go up next to the building where they can have a masonry screen, in an existing trash enclosure or among landscaping already around the building.

Comm. Elkins: It seems like we have a bunch of these big green boxes out on the street. I'm trying to figure out how they got there and what we can do. Unfortunately, we're pretty much developed out in Leawood now, so I'm not sure there's anything we can do at this point; but for those few spaces where we're not developed out, I'm curious about your comment. When the telephone company wants to add boxes, we argue with them about where those boxes are going to go. I'm just curious how we can prevent having these big green boxes sitting on our streetscapes.

Mr. Klein: I think that's the direction we're moving. We've tried to let the applicants know up-front when they come in with preliminary plans that they'll be expected to know where those utility boxes go when they come in for their finals. Again, when we write initial letters on our final plans, we have that statement in there indicating they need to show the utility boxes on their plans so they can actually put some forethought into it. The developers have indicated to us that they're at the mercy of the utility companies as well. They'll construct the buildings, and all of a sudden the utility dictates where the box will go and not tell the size of it until it's actually installed. That has been frustrating. We've talked with a number of developers and also KCP&L to try to understand because they have a number of clearance requirements. KCP&L requires a 10' clearance so they can use a pole to switch a breaker for safety reasons. If that's the case, we'd like to get them on a portion of the site where they're not necessarily right out next to the street with no opportunity to landscape in front of them.

Comm. Elkins: Thanks, Mark.

Chair Rohlf: Does anyone else have questions for staff? Then we'll hear from the applicant.

**Applicant Presentation:**

Duane Nellis with WDM Architects, 1310 SE Norwood, Lee's Summit, MO, 64081, appeared before the Planning Commission and made the following comments:

Mr. Nellis: We've been working with staff, and we feel we've come to a workable plan. We are agreeable to the seven stipulations on their report, and we would like to move forward and installing the landscaping materials.

Chair Rohlf: Is it just a coincidence that you have the same number of utility boxes on your State Line location?

Mr. Nellis: We do not - just for the record, out of all the boxes, only one transformer and one switch gear; and those are located within 5' of the building.

Comm. Heiman: You stated there were seven. Do you agree with all eight stipulations?

Mr. Klein: Yes, there are seven, and the eighth agrees to all of them.

Comm. Elkins: Mr. Nellis, I'm just curious about your experience. I'm not suggesting at all that I have issue with what you're doing. I appreciate that you're trying to screen what is, perhaps, an unattractive aspect of the spot you happen to build your building on. Can you enlighten us a little bit on your experience on when you and your client became aware that there would be six boxes there, or were there six boxes there when you started building?

Mr. Nellis: Those boxes were on the corner when we started the project. We had talked to the developer, and it lands in our lap.

Comm. Elkins: Thank you.

Chair Rohlf: Does anyone else have questions? If no one has any further discussion, I think we might be ready for a motion.

**A motion to recommend approval of Case 23-09 – NALL VALLEY SHOPS – CAPITOL FEDERAL UTILITY SCREENING PLAN – Request for approval of a revised final site plan; located at the northeast corner of 151<sup>st</sup> St. and Nall Ave. with a revision to Stipulation No. 1 to read, “six utility boxes” – made by Elkins; seconded by Munson. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

CASE 26-09 – LEAWOOD SOUTH COUNTRY CLUB – WIRELESS COMMUNICATION FACILITY TOWERCO. – Request for a Special Use Permit; located at 12700 Overbrook Road. **PUBLIC HEARING**

**Staff Presentation:**

City Planner Melissa Cownie made the following presentation:

Ms. Cownie: Madame Chair and members of the Planning Commission, this is Case 26-09 – Leawood South Country Club – Wireless Communications Facility TowerCo. The applicant is Curtis Holland with Polsinelli Law Firm, representing TowerCo and is requesting approval for a Special Use Permit. Nothing is changing with this application, only the ownership of the tower. Per section 16-4-3.2 of the Leawood Development Ordinance, “A Special Use Permit shall allow the specified use by the applicant only and shall not run with the land and is not transferrable unless otherwise approved by the Governing Body by stipulation of Special Use Permit approval.” Sprint currently owns

the tower. This application is for TowerCo to take over ownership of the tower only. 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: Questions for staff? We don't have any, so we'll hear from the applicant.

**Applicant Presentation:**

Curtis Holland with Polsinelli Law Firm, 6201 College Blvd., Ste. 500, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Holland: Thank you for hearing our application tonight. For most of you here, I think it's a very familiar application. I think there are a couple new Planning Commission members since we were here last in 2007 when we first sought the approval for this wireless communication facility, which is currently located in the Leawood South Country Club near the fifth tee box. It was a rather unique application as far as wireless communication facilities go, not just in Leawood, but in the Kansas City metropolitan area, as it was the very first Monopine structure. As indicated by staff, it is an existing structure that is presently up and operating, owned by Sprint/Nextel at this point. As staff indicated, the LDO is somewhat unique in terms of the way other cities in Kansas and generally across the country handle these matters. By that, I mean whenever there is a land use entitlement, such as in this case as a Special Use Permit, typically those types of applications run with the land and are freely transferrable. The LDO doesn't allow that unless, when you come in with your application, the Governing Body allows, as a stipulation, that the facility or application could be transferrable. That wasn't done in this particular case. We are now before you probably sooner than most people thought, the prior application having been approved for a five-year period. As staff indicated, there are no changes other than the change in ownership.

For the record, we'll just clarify that the entity that would own and operate the Monopine structure is TowerCo. TowerCo is a tower development company that owns, manages and rents to wireless carriers nearly 10,000 of these kinds of structures throughout the United States. It is the trend in the wireless industry for the structures themselves to be owned by a different entity than the carrier. Many of the carriers initiate the applications and often construct the communication structures, later packaging them up and selling them to a company that would simply own and manage the facilities. That is taking place in this case. TowerCo would become the owner of several thousand of their communication structures, and Sprint would lease back on the structure and keep their antennae in place. There are no planned additional antennae on the structure.

Regarding the stipulations, I would point out that the transfer of the permit is allowed if the Governing Body allows for that to take place in the context of approving a Special Use Permit. I know that is something the Governing Body is charged with doing, but we are making that request as part of this application so that in the future, if TowerCo ever sells the structure to another party, we would ask that it be allowed by right and to have the SUP run with the land. As you'll recall, this structure is within the Leawood South Country Club, which is surrounded by a residential community. Under the city's rules, whenever you prepare for these kinds of applications, you have to give notification to all persons within 1,000 feet of the structure. In this particular case, given the dense residential nature of the area, we gave notice to over 800 folks when we came through here in 2007. We got to repeat all that again just recently. If you were here, you'll remember it wasn't always pleasant at those meetings. I received a number of phone

calls from the residents who did receive letters questioning what we were doing. Some were rather irritated that they had to receive a new notice. It seems to me, in this case, where the stipulations pertain to the structure and the owner of the facility is required to abide by those terms and conditions of the approval, that it doesn't make a lot of sense to have these kinds of cases reheard for simple transfer of ownership. I would ask that that be considered going forward. There is another section of the ordinance that allows for co-locations - future additional antennae to be added to the structure to be approved by revised final plan. In the particular case here, the prior ordinance that approved this Special Use Permit, Stipulation No. 8 stated that, "Placement of any additional antennae on the pole shall constitute a revised plan and shall require issuance of a new Special Use Permit." With regard to this particular structure, although the ordinance does allow for these facilities or additional antennae to be added to the structure by a revised final plan instead of a Special Use Permit, by stipulation, we could not do that in this case. Again, that's something we would ask you to consider – that future co-locations, additional antennae added to this structure be approved by revised final plan and not Special Use Permit. Other than these two changes, we are in agreement and would stand to answer any questions.

Mr. Klein: This is something that we just noticed on the LDO. In order to make everything comply with the LDO, it does require that a preliminary and final development plan be approved either simultaneously or prior to a Special Use Permit being issued. As far as the final plan, it probably wouldn't be hard; however, a preliminary plan does require notification in the paper to the surrounding properties. Staff would recommend that these two cases be continued to the June 23<sup>rd</sup> meeting in order to re-notice in the paper of a preliminary, as well as Special Use Permit to be in order with the LDO.

Mr. Holland: I've been working with staff for two months on this issue. Not before I get to make my comments, but in the middle of the comments, I hear this. On point, I would respectfully suggest that this does not require a preliminary development plan be approved. We are asking for the SUP to be transferred. We aren't asking for any changes. There is not reason for a preliminary development plan to be approved. With all due respect, I don't think it should be required in this particular case. I would note that even in the first case when it was approved, we had a full set of site plans that were presented to everybody. We had numbers of hearings with residents, Planning Commission and City Council. Everyone knows what the plans are. All we're asking for is to allow for the SUP to be transferred, not for any new plans to be approved. It is a unique request, but that is reflective of the uniqueness of your ordinance that requires this. I would respectfully disagree with the staff that the application is necessary.

Chair Rohlf: I will take the direction of Ms. Shearer.

Ms. Shearer: This caught our attention reading through the code as we came into tonight's meeting, looking through various provisions that Mr. Holland called to our attention this afternoon regarding his wanting to add the stipulation that the SUP run with the land and not the applicant. In the course of our reading and research, 16-4-3.3 of the LDO says, "A Special Use Permit in a district requiring plan approval may only be issued where a preliminary development plan for the use has been approved. No authority under a Special Use Permit in a district requiring plan approval shall become effective until after final development plan pertaining to said use shall have been approved. The approval of a Special Use Permit may be included in an ordinance approving a development plan or by separate ordinance approved simultaneous with

approval of a development plan.” I understand what Mr. Holland is saying regarding this being transference of a Special Use Permit; however, in reading this, staff has come to the conclusion that perhaps this should have been done with the initial Special Use Permit that was issued for the tower.

Chair Rohlf: But then would this applicant make the preliminary plan application, or would it be the new owner? Whose plan is it?

Mr. Coleman: It would be the new owner.

Chair Rohlf: Mr. Holland?

Mr. Holland: I need a little clarification of what staff is reading. Are they saying that I need a preliminary development plan application because I’ve made a request that the SUP run with the land?

Mr. Coleman: No.

Mr. Holland: To me, it doesn’t make any sense. We’ve had plans in front of this body approved. I don’t know if they were preliminary or final plans. My belief is that there were not just preliminary, but final plans, also. Even if I’m incorrect about that, there’s clearly, in the context of our Special Use Permit, a set of site plans that were considered and approved. In most cases, those are part and parcel to each other. I’m sure the stipulations for the approval required completion of the project in accordance with the plans, so this doesn’t make any sense to me. Again, I respectfully disagree with staff that this is required. I don’t know what else to say to you.

Ms. Shearer: I understand this is being looked at as transference of an SUP. Because Special Use Permits, under our code, do not run with the land, this is technically a new Special Use Permit for a new owner. Mark or Richard, if anyone disagrees with what I’m saying, please let me know. With that said, in the LDO, it says, “A Special Use Permit in a district requiring plan approval may only be issued where a preliminary development plan for the use has been approved.”

Comm. Elkins: There is a provision – I think 16-4-3.2 – where the transfer is really addressed. It speaks of a transfer of a Special Use Permit, as opposed to a new Special Use Permit. It’s the last sentence: “A Special Use Permit shall allow the specified use by the applicant only and shall not run with the land and is not transferrable unless otherwise approved by the Governing Body,” which I would take to mean the transfer be approved by the Governing Body by stipulation of Special Use Permit approval. I’m just curious if you could address that for us.

Ms. Shearer: That really is the subject of this case. The initial Special Use Permit for this tower did not contain a stipulation providing that it would run with the land and be transferrable from owner to owner. I think Mr. Holland’s goal is with this Special Use Permit being approved at this time with the new owner, that the provision be added. That’s the request he’s making so that going forward, it will run with the land and we will not be in the situation of doing a new Special Use Permit for each new owner.

Chair Rohlf: That doesn’t take care of what we’re faced with this evening.

Mr. Coleman: No, we need to continue this to the 23<sup>rd</sup> so he can do notification and he can put those requests in his application.

Chair Rohlf: But then he wouldn't be the applicant, correct? It would be TowerCo to submit the application?

Mr. Coleman: Yes, it's the application for the new owner.

Mr. Holland: My request was to have the SUP transferred.

Comm. Elkins: There's no provision or ordinance for a transfer.

Mr. Holland: It says it requires Governing Body approval, and that's what I'm asking for. The process I am told to do that is through an SUP. Are you suggesting, after I've given notice of this hearing, that I go out and give notice to 800 folks again and tell them staff is indicating we need a preliminary plan because we never had one? The whole facility that we sought approval for and spent hours in this room getting approved isn't in compliance with the code? Staff's position on this makes no sense, and it's a complete waste of time and resources and money to do something that's already been debated considerably and approved.

Comm. Elkins: I would suggest that it will be an even greater waste of time and resources if you get a legal challenge and the whole thing is thrown out for not having complied with the ordinance. I'll defer to legal counsel, but the way I read what you've shown me here, the only way that a transfer is within our jurisdiction is if it was in a stipulation in the original SUP. Any other way, the new owner has to come in and ask for a new SUP.

Mr. Holland: I'm not debating that, sir.

Comm. Elkins: There's no ordinance or provision in the ordinance that gives us jurisdiction to grant you the relief you ask for.

Mr. Holland: I'm not challenging what you just said. What I am challenging is the requirement that we seek a preliminary development plan application and approval as part of my request to have this SUP be transferred. That, I don't believe, is required. I'm very comfortable with the legal position my client is in without this requirement. I do think it's unnecessary.

Comm. Elkins: I don't purport to understand the notice requirement. I'm just looking at the question of whether this body has the jurisdiction to grant you the transfer. Based on what counsel has told me and what I'm reading as a Commissioner, I don't see that I have the jurisdiction to say, "Yes."

Chair Rohlf: Mr. Coleman, do you have anything to add?

Mr. Coleman: I don't have anything to add. I would like to apologize for this last-minute glitch.

Chair Rohlf: And would the same be true of our second matter for them this evening on the antennae?

Mr. Coleman: I believe it is.

Chair Rohlf: The antenna is staying with Sprint, right? I would think this one could be approved, or is it falling under the same permit?

Mr. Coleman: In my interpretation, it is a Special Use Permit. The ordinance requires a preliminary development plan for the Special Use Permit.

Chair Rohlf: To be prepared and filed by the new applicant.

Mr. Coleman: Correct.

Ms. Shearer: Madame Chair, I'd like to add one more thing. This afternoon, I was informed around 4:00 by staff that Mr. Holland had contacted planning staff regarding the addition of the stipulations that he was going to include in his discussion this evening, namely that the SUP would run with the land instead of the applicant and also in the SUP pertaining to the antenna, that any future co-location – I think up to one additional antenna – also be done just through a revised final site plan, rather than going through another Special Use Permit process. The LDO contemplates both of those situations and is permissive in its language, meaning it allows the Governing Body to approve that stipulation – it can allow the SUP to run with the land. It can also allow the addition of another antenna on a tower designed for co-location by revised final site plan, rather than an SUP. I think staff is apologetic; however, in this research and looking to see what was provided as allowance under the LDO to be in stipulations for these modifications to our normal SUP rules, this was uncovered.

Chair Rohlf: So they have the opportunity, then, to put that in their new preliminary plan, and this should not happen again.

Mr. Coleman: Correct.

Comm. Munson: Would it be possible to waive the requirements for a public hearing and all that, or will that still have to be done all over again?

Ms. Shearer: For a preliminary site plan, no, we have to have a public hearing.

Chair Rohlf: Is there anyone in the audience who had planned to speak about either one of these plans this evening? Thank you. Then I think that Mr. Holland, we would move to continue this matter until June 23<sup>rd</sup>.

**A motion to continue Case No. 26-09 – LEAWOOD SOUTH COUNTRY CLUB – WIRELESS TOWERCO – Request for approval of a Special Use Permit, located at 12700 Overbrook Road - to the June 23, 2009 Planning Commission meeting was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

**A motion to continue Case No. 27-09 – LEAWOOD SOUTH COUNTRY CLUB – SPRINT NEXTEL ANTENNA – Request for approval of a Special Use Permit, located at 12700 Overbrook Road – to the June 23, 2009 Planning Commission**

meeting was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.

CASE 28-09 – NEIGHBORHOOD RETAIL CONTAINING A BANK WITH DRIVE-THRU AT 151<sup>ST</sup> STREET AND MISSION ROAD – Request for approval of a revised preliminary plan and preliminary site plan, located at the southeast corner of 151<sup>st</sup> Street and Mission Road. **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 28-09 – Neighborhood Retail containing a bank with a drive-thru at 151<sup>st</sup> St. and Mission Rd. The applicant is proposing a neighborhood commercial development located at the southeast corner of 151<sup>st</sup> St. and Mission Rd., consisting of a neighborhood retail center that includes a two-story bank with four drive-thru lanes and a bypass lane for a total of five lanes. Staff does have some concerns. This application is located on vacant property, bordered on the south and east by the Ironhorse Subdivision. There is also residential to the north, west and northwest of this location. Staff is concerned about a large retaining wall that goes around the south and east sides. This wall varies in height, with portions of it 10'-20'. Staff is concerned about the solid wall and would recommend the wall be tiered back. They do have a couple other natural stone retaining walls also located in front of those that will be tiered. Staff is also concerned about the number of drive-thrus for the bank and would recommend reducing them. Regarding the frontage around Ironhorse Courts, staff has calculated that it does exceed the 40% of paved area within 90' as required by the LDO. Staff offered to work with the applicant to address the concerns, requiring a continuance. The applicant wanted to come forward to discuss the case tonight with the Planning Commission. Staff is recommending denial of this application, and I'll be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Elkins: Mr. Klein, is a drive-thru for a bank required to have a Special Use Permit?

Mr. Klein: This is neighborhood retail zoning, and a bank with a drive-thru does not require an SUP.

Comm. Elkins: So it's a function of the matter of particular zoning that's in place there.

Mr. Klein: Correct.

Comm. Pateidl: As it relates to the size of this retaining wall and what I perceive to be a pretty massive fill on that site to bring it up to a stage ready for construction, have there been any kind of engineering calculations made or presented regarding either the solid wall as proposed or the tiered-back structure you were recommending?

Mr. Klein: They'd be required to do the engineering for the wall at the time of final. They are showing the wall at that height at this point, and due to aesthetic reasons, staff would prefer to have that wall tiered with some landscaping placed within those tiers to break

up the mass of the wall. I did talk with the city engineer with regard to the engineering of the wall to see how tall these things can go. He said they can be engineered to go fairly tall. This is primarily related to staff's concerns about aesthetics, especially related to the surrounding residential neighborhood.

Chair Rohlf: We will hear from the applicant.

**Applicant Presentation:**

John Petersen with Polsinelli Shughart Law Firm appeared before the Planning Commission on behalf of Leawood Land Company and made the following comments:

Mr. Petersen: Mark Simpson, who is an owner and member of Leawood Land Company, was planning on being here. I know he had another hearing this evening. He may not be here yet. Also here as part of the development team are Jeff Martin, Alan Mackey and Kyle Fitzgerald with Land Plan, our civil engineering consultants and landscape architects. Finally, Steve Turley, who has served as project architect, is here as well. I want an aside. I know we've got about four issues we're going to talk about this evening. We really didn't have an opportunity to discuss these issues because I received my Staff Report at 3:30 this afternoon, which was the first opportunity I had to see the position of the professional staff in terms of recommendation for our revised preliminary plan. This makes it a little difficult to prepare for a hearing, but I also say that to apologize at the outset that we're not going to have as fluid a presentation as I would have had if I'd had 48 hours to understand staff's concerns.

*(Refers to site plan.)* As you know, this is approximately a 5 ½ acre tract. We are proposing a 43,489 sq. ft. neighborhood shopping center. The property is currently zoned SD-NCR, which is neighborhood commercial retail. To put this in context, some of you may recall that we had a previous application on this site several months ago with the backdrop of the zoning that has been in place since 1996 for 45,000 sq. ft. specifically set forth in the zoning resolution. The application was for a 13,500 sq. ft. CVS pharmacy as the sole user with an additional 6,000 sq. ft. small shop to be built in the future. It required a rezoning because under your code, SD-NCR does not allow a drive-thru for a pharmacy; although, it does allow drive-thru for a banking facility. We reduced the density but were denied the request. I only go through this to make clear that we are not requesting a zoning change. *(Places document on the overhead.)* Resolution No. 1291, passed on March 4<sup>th</sup>, 1996 addressed this property and zones it to CP-1 category, which was the precursor to SD-NCR and specifically sets forth that the property is zoned for that retail category and utilization up to 45,000 sq. ft. Another relevant ordinance that was passed in just about the same time frame, which will be useful in the next few minutes, was passed as part of the overall residential community in the area – the Ironhorse Golf Course. All of this was zoned together at the same time.

Every single ordinance requirement of the City of Leawood has been met. The site is parked at 3.5 per 1,000. We meet every required building setback, parking setback, landscaping requirement, F.A.R. and density on the nose. We meet all requirements except for the 60/40 rule that staff just brought up. Land Plan has come up with a way for us to get a good view of this property and this proposal we have before you. *(Sets up a video presentation of the site and runs through it.)* I'd ask you to note the existing vegetation remaining on the site will be untouched in taking into consideration the visual impact of that retaining wall as you are on Mission Road and start traveling on Ironhorse Court, coming around the east side. As you can see, this is all left in its natural state.

We start picking up the three-tiered retaining wall on the east side that will interface directly with the residential properties. That is a replication of the exact landscaping, treatment of the walls, the three-tiered system. This is too high to be seen from the residential areas, but you can see how we pick up the landscaping concept, meeting all the requirements for landscaping within the parking field. The corner building is a two-story building in that portion of the project. Approximately 14,000 sq. ft. will be utilized on the second floor of the 43,000+ square feet. Interesting to know at 151<sup>st</sup>, vis-à-vis the finished floor area of this project will provide about 7-8' of really buffering the finished floor of the building below 151<sup>st</sup> St., so we're screening some of the exposure of the building to the street.

Comm. Pateidl: While you have that presentation up, would you show us the ingress and the egress for the drive-thru? We saw a lot of landscaping and a lot of walls, but I didn't see the drive-thru banking facility.

Mr. Petersen: *(Refers to the site plan overhead.)* The area that's being highlighted is the building. The larger square portion on the corner of 151<sup>st</sup> and Mission Rd is to the left of the bank building. The east wall of that building would be where the tellers would be situated. Then you have five lanes moving east, including three typical banking lanes, an ATM lane and an escape lane. If you talk to our architect, who does a lot of work for Commerce Bank, that is the preferred configuration for banks in terms of convenience to their customer and efficient circulation in the parking lots. That configuration of lanes sits 8' below grade on 151<sup>st</sup> St., so you won't even see it from the street.

Chair Rohlf: Would you explain the routing? It looks like you would come in off Mission?

Mr. Petersen: To access the bank.

Chair Rohlf: And is that a signal in and out – left-in, right-out?

Mr. Petersen: Right now, off Mission Rd., that would be a full-service intersection. The median is not planned at this time. It's anticipated that the access on 151<sup>st</sup> St. would be strictly right-in, right-out in the future.

Chair Rohlf: So in order to utilize the bank lanes, they'd have to come in off Mission and drive up through the parking lot, then drive out and turn right on 151<sup>st</sup>.

Mr. Petersen: Or they could turn in, come down and around and access the drive lanes from the southern point on the driveway.

Comm. Munson: The piece of ground to the south of the development says, "Underground Detention Facility." What would happen to the balance of the land that shows no building on that piece?

Mr. Petersen: Left in its existing state.

Comm. Munson: No retaining wall down there – just a slope?

Mr. Petersen: Yes, sir. The retaining wall is basically at the line. You can see that it's at the southern perimeter of the parking stalls. We'd leave the existing vegetation in place, and there's an open area south of there that would be utilized for underground detention.

Correction – the underground detention is under the parking lot. We're going to use some of the grasses down there to help with the wet spots that have been down there.

The first issue is that staff is concerned about the 20' retaining wall. (*Refers to the video presentation.*) The only way you're going to see that retaining wall is to stop and try to look through the trees. The only reason we see it now is we're elevated to get a panoramic view of the site. As you get down to the normal level, you can see existing trees and vegetation, supplemented by landscaping requirements, in essence, hiding the wall. From a structural integrity standpoint, we will provide engineering documentation at final plan stage. Friday afternoon, staff said, "Why don't you tier it?" My response was, "Okay, if we tier it, it will take up approximately 10'-14' of the existing trees – your call." We think the 20' retaining wall with the existing vegetation makes more sense.

Number Two: "The retaining wall that is proposed to extend from the southwest corner to the northwest corner of the site is proposed to be constructed of modular block. Staff is not supportive of the use of modular block at this location and recommends that the retaining walls be constructed or faced with real stone to match the stone used within The Reserve at Ironhorse subdivision." I'm not sure what staff means. There are some large limestone boulders, and they're used on our site. If they're talking about block or stone used on homes or this retaining wall in this area here (*refers to overhead photograph*), what we've proposed is, in essence, the same thing. I know that it sounds like we're going to put up cement block, but this is what we're proposing. At final plan, we can work with color. My design folks tell me the example is one grade below the quality proposed here. We're proposing a tumbled stone to look more natural. I'd be happy to continue to work with staff on what sounds like a final plan issue.

The third issue deals with the 60/40 rule. When we redid this plan, I said I wanted the buildings right up on 151<sup>st</sup> and Mission because that's what we were told with the CVS. As you can see, even utilizing the area we're going to leave as green to the south, we're fine at 151<sup>st</sup> and Mission. Staff is talking about Ironhorse Court starting from Mission Road, all the way to the northeast corner. I've deducted the frontage we'll be dedicating to the city for public right-of-way on Mission Road. That universe is 911' where you see our parking coming. That leaves less than 40' of 337.63', which is 37% that is not 90' of green along Ironhorse Court. (*Refers to exhibit*) I think it's a miscalculation by staff, and I would stand on the determination by my engineers that we are slightly in excess of code requirement.

Staff is not supportive of the five drive-thru lanes, and we've talked about that. It's what banks look for to have good internal circulation and convenience. Staff wants three. I don't know where three came from, but I drove by your four newest approved banks in the city. Country Club Bank at 135<sup>th</sup> and Briar, Bank of Blue Valley at 135<sup>th</sup> and Pawnee and Capitol Federal at 133<sup>rd</sup> and State Line all have four lanes. Town and Country Bank has three. We'd like to have five, because I can't understand what the negative impact on the neighbors is of five lanes, but we'll go with four if it causes consternation.

"Staff has concerns regarding the large amount of fill and the number of trees that would be removed with this project. The site is currently heavily treed. The applicant is proposing to remove all of the trees within the center portion of the site, which is where the majority of the trees are located." That is untrue. That was clearly contemplated when this was zoned for 45,000 sq. ft. in 1996. We are maintaining a significant portion of trees to the south, but we are removing a significant portion of the trees. We own the

trees, and we have a right to develop our property. It's a necessity of being able to utilize the property. We've gone to great lengths to design the site so that we leave the trees that interface mostly closely with the development and neighbors to the south. Again, we've supplemented with new landscaping that meets or exceeds all code requirements.

The next issue is with architecture. We will work with staff between now and final plan. Our architect will be pleased to do it. The final issue deals with the deviation required for a site that is less than ten acres. I will defer to the Assistant City Attorney. That is a requirement of a zoning district. This is already zoned and is not a requirement for a preliminary or final plan. Please recall that these ten acres were zoned in the context of a multi-hundred acre mixed-use zoning element. This provision does not apply to the facts before the Commission this evening. We would be happy to answer questions.

Chair Rohlf: Thank you, Mr. Petersen. Questions for the applicant?

Comm. Munson: Can you bring us up-to-date on the history of the zoning of this piece of ground? Counselor said it was zoned something in 1996. What was it prior to 1996?

Mr. Klein: I believe it was AG. Reserve at Ironhorse and this piece of property were zoned at the same time. This was always to be neighborhood commercial retail use at that corner. With regard to the ten acres, this property is still un-platted at this point.

Chair Rohlf: Mr. Petersen, can you tell me a bit more about the phasing of this project? I know you indicated this is part of the first phase.

Mr. Petersen: An educated estimate would say that once we start building the bank, it makes sense to build all of that, moving around to the south. The second building on 151<sup>st</sup> St. would probably be the second phase. That bigger building could probably be split into phases, too, depending on market and financing. The bank would have the most interest at this location in the near term.

Comm. Munson: Anybody have any knowledge on how many banks there are within about two miles of this site?

Mr. Petersen: About as many as there were pharmacies.

Comm. Munson: Not that it matters to us at all, but it just seems like banks have taken up filling stations.

Mr. Petersen: They are in convenience mode, that's for sure.

Chair Rohlf: In your second building to the east, do you have in mind what would be a compatible use with the bank?

Mr. Petersen: I really don't - whatever is allowed in the SD-NCR.

Chair Rohlf: How large is that?

Mr. Petersen: 5,500 sq. ft.

Chair Rohlf: Thank you. Other questions?

Comm. Pateidl: This deals with our ability as a Commission to address the situation this evening. Mark, regarding the 60/40 rule and the 43% that you have and the 37%, could you address those calculations?

Mr. Klein: Sure, when we first received the application, it was fairly easy to measure along Mission and 151<sup>st</sup>. We did have a question on Ironhorse Court because it curves more. We asked for frontage along there. The response letter we got back is that the frontage was 700 – some odd feet. In scaling it out, we were coming up with over 900. We had a question as to whether that was accurate, but we were still coming out with 42%. Mr. Petersen e-mailed me indicating the numbers he used now, and he stated the green space was 500-some feet. We scaled it down tighter to do our own calculations and tried to make sure we were consistent. Typically when we take frontage off at 90', we do it perpendicular to the frontage of the road. When we did that, we came out with 42.7 and rounded it off to 43%. I had two different people do the calculations, and that's how they came out. We'd be happy to sit down with the applicant and have them show us on CAD, if that's what they're doing. As far as some of the other items on the list, we indicated we had some of these concerns last week and asked them to continue the case. The reason we didn't stipulate the case is we were afraid if they tiered the wall back, it would change the parking layout and would be more difficult for the Planning Commission and City Council to see exactly what the plan layout would be. Mr. Petersen has indicated it would eat into the trees 8-15'. We would like to see what that kind of form would be.

Comm. Pateidl: Disregarding the esoteric issues, to me, the real issue is the 60/40 issue - either we are in compliance or are not. I'd like to know whether this body has a right to move forward on this request. I defer to legal counsel on that question. I'd also ask counsel to address the comment from Mr. Petersen regarding the 10-acre position being a matter of zoning. If that's outside the purview of our jurisdiction, please tell us.

Ms. Shearer: Mark may want to chime in on this as well as far as the deviation for the ten-acre rule because Mark wrote this report. This was added to the LDO sometime last year dealing with any commercial development in the City of Leawood that is less than ten acres. According to the sections Mark has cited in his report – 16-2-6.2(D), there is a chart referring to minimum acreage for a development. It references the deviation section if it's less than ten acres. This was made by the Planning Commission and Governing Body to the LDO last year that now applies to any commercial developments that went forward after that was adopted.

Comm. Pateidl: So what you're saying is this is a matter that's appropriate for the Planning Commission and not necessarily relegated to the zoning.

Ms. Shearer: In my opinion, yes.

Comm. Pateidl: I should also note that staff has agreed to the deviation.

Mr. Petersen: Yes, they've recommended a deviation if one was needed.

Comm. Pateidl: You brought up the point that this is a matter of zoning, and I wanted to find out whether we have the authority to address your positions on this matter. I don't know unless I have counsel. You can address that if you'd like.

Mr. Petersen: Thank you, sir. I did not suggest that this issue needed to go to the BZA. Counsel refers very appropriately to the code. I would ask her to also confirm that it is Article 2, zoning districts. This all pertains to approving zoning districts, like SD-NCR – a zoning district with a preliminary plan. That's what the ten-acre pertains to. My only point is that this property is already zoned.

Comm. Pateidl: I would accept that is your point. How I perceived your comment to be is, "Forget this ten-acre point because you don't have any jurisdiction over it." That was the way your comments were received by this Commissioner, and that's why I asked counsel. It appears based on changes within the last year, we have some purview of authority in this matter. Do we exercise it? Staff has already agreed not to, but I just wanted to see where we are and where you're coming from. Work with us, or pound us. Which are you trying to do?

Mr. Petersen: I always try to work with you.

Comm. Pateidl: It doesn't sound like it to me.

Mr. Petersen: I would suggest to you that there is an element of procedure here, Commissioner. If I just let it go as a deviation, then I get to the Governing Body who says, "I'm not going to give you a deviation, and you didn't raise it at the public hearing." That applicable ordinance doesn't even apply here. My duty is to make a record, not to fight you or staff. If I had known this issue was going to be raised again prior to today, I might have been able to talk to counsel about it. I don't need to fight about it.

Chair Rohlf: I think the record is clear on that now. I noticed we are moving toward our 9:00 ending time. I would ask for a motion to continue this matter since we have people in the audience who would like to speak on this matter. This leads me to tell the last applicant on the agenda that we will not reach you.

**A motion to extend the meeting until 9:30 p.m. was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

Chair Rohlf: I think we are finished with the applicant unless someone has questions.

Comm. Munson: I have questions for staff. What kind of trees are on the site now? The reason I'm asking that question is that counselor indicated his retaining wall would be hidden by trees. If these trees are deciduous, that wall would be hidden so many months of the year. When they lose their leaves, it wouldn't be.

Mr. Klein: I've been to the site, but to be honest, I didn't look to see if they were evergreen or deciduous. My impression was they seemed more deciduous. I imagine it's probably a mixture in there. It's always been our experience whenever you have treed areas, especially with the thick brush there, is that once you go in and clean out the underbrush, creating a more formal and landscaped look, you can actually see through the trees. We've seen it with Church of the Resurrection and Tomahawk Point

at College and Mission Road. The applicant is proposing some additional vegetation. Staff's concern is the straight mass being much more visible. Also, as far as the limestone, we just want a natural stone that matches the limestone. I'm not saying it has to be big blocks. I know the CMUs are tumbled to look like natural stone and have been used at Ironhorse Center; however, you have a lot of natural stone located in that development. Staff would like to see something that matches the existing stone, if not scale, then at least type and color.

Comm. Munson: Counselor said they would work with staff on the architecture at final. If my memory is correct, it's surrounded by residential. That would lead me to believe that the architecture must be of a residential character in terms of its appearance. Is that their understanding?

Mr. Klein: The applicant is suggesting they will work with staff, so I would take that at face value.

Comm. Munson: Thank you. I think the counselor for the client indicated they were willing to make the changes you've asked for, such as going to four lanes instead of five and perhaps tier the retaining wall. All those things would be at final, including the wall?

Mr. Klein: I know what the applicant is saying – that they'll tier the wall. We'd like to see a minimum of 6' between the tiers for an opportunity to get plant growth and break up that wall.

Comm. Munson: And that would take up 18' of latitude.

Mr. Klein: Right, which I imagine the parking lot would push into other areas.

Comm. Munson: What's the parking ratio of this project?

Mr. Klein: It's 3.5 – right at the minimum they're allowed. They would either have to reduce the amount of square footage and have less parking or push into other areas.

Comm. Munson: 3.5 should be reasonable for this plan.

Mr. Klein: Yes.

Mr. Petersen: I just want to clarify, we said we would work with staff, tier the wall, put the landscaping in between the walls, do the design just like on the east side. We will not agree to do it by reducing square footage; we will just go out farther and bring the wall down to the south.

Jeff Martin with Land Plan appeared before the Planning Commission and made the following comments:

Mr. Martin: (*Refers to landscaping plan*) This gets into a matter of taste and what we were trying to do. When we did the tree survey, we found good trees up here; but the variety and the really large trees are in what we call the break in the forest. Our intent in this thing is to try to protect what we've been referring to as the Southern Forest and maybe even leave some of the underbrush because you've got these really large trees down there, and that is how we set this wall. If we need to – and we don't really have a

problem with it because we won't lose that many – we can tier out and lose about six trees. I believe we have our numbers right on the 40/60.

Mr. Petersen: We will show a tiered wall just as we will the architectural elements that staff has requested.

Chair Rohlf: We are ready to move forward with the Public Hearing this evening. Could I just get a show of hands on how many people are planning to speak this evening, keeping in mind that as people have said what you planned on saying that you would pass. We're trying not to have repetitive comments, or we will not get done by 9:30.

**A motion to open the Public Hearing was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

### **PUBLIC HEARING**

Joe Variano, 3609 Ironhorse Court, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Variano: I live directly across the mid-portion of the development. As a homeowner, I'm a little concerned about the height and massiveness of the wall. It's right across the street from my front door. There are really no trees there; it's mainly an open field for about 20-30 yards, then the trees naturally slope up to Mission Road. We're a little concerned about the amount of fill that's going to be involved there, and it's really not going to preserve the character of the neighborhood. I understand that the developer owns the property and that it's a hard area to build on, but I don't think tons of fill and a block wall are in the character of the neighborhood that's there now.

Alan South, 3709 Ironhorse Court, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. South: I live directly across and south. I'm the first house on Ironhorse Court as you enter off Mission Road. First of all, I'd like to address the issue of 45,000 sq. ft. as being the zoning for this particular project. I believe that is the maximum amount of retail space that could be placed on this site. It is not mandated that 45,000 sq. ft. be built on this particular site. I don't believe that 45,000 sq. ft. of retail or office space and 150 parking places is consistent with the neighborhood use for The Reserves of Ironhorse and, selfishly, my house. I don't believe it's a reason for a deviation for the ten-acre rule to the 5.5 acres. If you had ten acres, probably 45,000 sq. ft. would be a reasonable use, but you don't have that; you have half of that. Secondly, I live on the south end of this particular development. I think I can say the majority of the trees are deciduous in the South Forest. Any tree that's evergreen in there is probably what we used to call just a red cedar and not an ornamental tree. The trees that are there are typically some oak, elm and shagbark hickory, which are not the most attractive trees. Saving the South Forest is really saving a lot of underbrush. Third, because of the location of my house at 3709 Ironhorse Court, I happen to be in the floodplain of Negro Creek. My back yard floods when we have rains here and Negro Creek overflows its bank. I am concerned about water retention and flooding that will occur because there's a 24" whistle tube that goes underneath Ironhorse Court that drains a southern portion of this property. To accumulate water from that much development, even in a water retention facility, I think would increase the chances of my lot flooding even more. Thank you very much.

Bill McKean, 15141 Mohawk Circle, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. McKean: I live within 500 feet of the subject property. We started looking at the Reserves of Ironhorse when the sales office opened in a trailer back in '95-'96. We asked about the corner property at 151<sup>st</sup> and Mission. We were advised it was zoned commercial. We started construction on our home in '99 and completed it in 2000. It was just six months ago that the development where we have chosen to live looked at the proposed 13,225 sq. ft. CVS pharmacy plan and the future 2,400 sq. ft. coffee shop. Unlike this plan, that plan required a zoning change because of the drive-thru pharmacy lane, which would have been used by few and created a tiny amount of traffic. Because of zoning, it was not granted. At that time, I was involved with the homes association. It was the view of the board that we would be much better off with a smaller single owner/operator as a neighbor. We thought having one dumpster area, one store manager, one landscape service provider, etc. to communicate with would make being good neighbors easier on all concerned. I worked with the CVS representative to get some changes made to benefit our development. I worked primarily with Mr. Petersen and his staff, along with the landscape engineers. They cooperated 100% with all the requests made. Another concern was the amount of additional water going to Negro Creek, and that was addressed. I received several telephone calls regarding the proposal. These calls and other conversations yielded the following suggestions for the subject commercial property: coffee shop, bank, insurance office, offices, Hooters, a convenience store, nail salon, hair salon, Blue Moose-type bar and grill, florist, art supply store or a city-owned green area. It would appear that, with the exception of Hooters, the convenience store and the green area, all of the desired or preferred occupants can be achieved by the new proposal. I attended the meeting on May 12<sup>th</sup>. The developer's group indicated the landscape changes were still in place. The developer also advised us at the same meeting that water flow would be controlled by water-type chambers under the parking lot to have less water flow into Negro Creek than the property has currently. My opinion is shared by multiple property owners in the development. I welcome the development of the proposed shopping center and ask the Planning Commission to approve the revised preliminary plan and preliminary site plan persona to the zoning commitments made to the property owners by this city in 1996. Thank you for your time.

Milt Moravec, 15148 Mohawk Circle, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Moravec: A lot of interesting points have been made this evening. I don't know if you're aware of this, but there are only 31 homes in our subdivision. I can count roughly 20+ people that are here this evening, and that's a pretty outstanding turnout. Contrary to what has been said by Mr. McKean, it is not the popular opinion of this neighborhood that this site plan be accepted. I've lived at this location for ten years. I've walked this land. I've looked at the elevations. Everything that I've seen does not seem to be on a level that's going to make this an attractive development. The bottom line is I just don't think there's a way to attractively develop that property at all. It's unfortunate. I understand Mark Simpson's position. I understand Leawood's land development's position on this. I wish there were a way to make something happen, but unfortunately, as homeowners, we look at the value of our property. We see a negative impact associated with any type of development on this property. I think I can speak for

everyone that's here with me, with few exceptions this evening, but we're definitely opposed to this development.

Chair Rohlf: Thank you. Is there anyone else that would like to speak this evening? I would ask for a motion to close the Public Hearing.

**A motion to close the public hearing was made by Elkins; seconded by Heiman. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

Chair Rohlf: Mr. Petersen, you do have an opportunity to address any of those concerns, if you'd like.

Mr. Petersen: Just very quickly, Madame Chair. The one issue that was not brought up in the Staff Report and addressed was the flooding issue. I think the reason it wasn't in the Staff Report is we had done our preliminary storm water management, and Public Works was comfortable that we could design on-site detention. As we all know, it is the law of the City of Leawood, the state of Kansas and the United States of America that you cannot have water leave your site at a greater volume or rate of discharge after development than it does the day it exists. It is our legal duty to design a detention facility to accomplish that. It will not adversely impact downstream conditions. Thank you.

Chair Rohlf: Mr. Klein, I noticed I do not have any Public Works comments in my packet. Were there any included?

Mr. Klein: No, since there were no stipulations with the Staff Report, there were none from Public Works.

Comm. Pateidl: What we're talking about in terms of the development is roughly 5.5 acres. What is the total acreage owned by the developer by this point, and what are the future plans for the balance of the acreage after this development is built?

Mr. Klein: I believe this is all that's owned by the developer at this location. He did subdivide and create The Reserve at Ironhorse, but I believe all of those lots have been sold. This is the only piece he has, and he owns all of it.

Comm. Pateidl: So the balance of the land around there will not be developed, or this will encompass all the remaining land that's there.

Mr. Klein: This encompasses all the land that's there that's zoned SD-NCR. There is a subdivision just to the north across 151<sup>st</sup> St., one to the northwest and one to the west that are not owned by this developer.

Comm. Pateidl: I'm just worried about this one little corner. If there are three or four acres left, what's going to happen with it?

Mr. Petersen: I would be happy to state for the record. This plan that we're submitting shows that as open space. I'm not saying there's any intention to change that, but the only way we could is to bring back another plan and go through the entire process. That's how we calculated our F.A.R. and met our zoning requirements.

Comm. Pateidl: And the responsibility of maintenance of that open space will rest with whom?

Mr. Klein: The developer.

Chair Rohlf: This takes us up to our discussion. I'm sure you've all noted we do not have any stipulations attached to this report this evening. We would either need to come forward with our own or ask staff to supplement. Mr. Coleman, what would you suggest we do here with no stipulations?

Mr. Coleman: Your options are either to deny, approve or continue with direction to staff and the applicant on working out some of the disagreements like the 60/40 rule.

Chair Rohlf: I think that is the only contentious matter we have left. We have two numbers, and both parties seem pretty sure their number is correct. If it is more than 40%, we are not in a position to approve this because it would not be in compliance with the LDO. Mr. Petersen has indicated his number is.

Mr. Petersen: I stipulate I will be 40%, and by final plan, we'll have to prove that to the staff. We understand we can't exceed 40%.

Mr. Klein: Coming from staff's position, it's a situation where we felt that if the plan changed – for instance, the wall tier, the Planning Commission and Governing Body should see the plan as it changed. If they have to push into the trees, then the Planning Commission and City Council should see how much it has to push into the trees. That's the reason we didn't put the stipulations there.

Chair Rohlf: Thoughts on this?

Comm. Munson: Is the 60/40 the only place they're not in conformance with the zoning regulations?

Mr. Klein: The 60/40 is the only place as far as the zoning ordinance.

Comm. Munson: Is that the only thing, or are there other items?

Mr. Klein: No, again, our concerns were the 60/40, the size of the retaining wall which would change the site if tiered and the reduction of the number of drive-thru lanes.

Mr. Petersen: Those are not code requirements, by the way.

Mr. Klein: They're part of the plan.

Mr. Coleman: The 60/40 rule is the issue here as far as the regulations and the LDO go. We just felt that the plan, while we thought they had done a fairly good job of putting the building up on the frontage of the two streets, needed a little more work. We calculated the 60/40, and getting them in compliance with that might change their layout slightly. We felt that the Planning Commission should be able to review that to see what it really was like once they met that 60/40 rule. I know Mr. Petersen feels like they've met the 60/40 rule, but based on the plans we received, we calculated less than that. That was

the reason for our recommendation. If the Planning Commission would like to stipulate the 60/40 rule, we'd be willing to work with the applicant and make sure that was met if you didn't mind not seeing those changes that might occur when they met that rule.

Chair Rohlf: Does everyone understand what Mr. Coleman said?

Comm. Elkins: I'm not quite sure where to start here. I guess I would begin by saying that this is an exceedingly difficult site to figure out what to do with. Second, with all due respect to the neighbor who spoke last, I truly don't see not developing this corner as an option. There is a person or entity who owns the corner and who has a right to develop that corner within the bounds of our Leawood Development Ordinance. As a practical matter, I don't see that it's possible to say, "No development at all." Having said all of that, I would commend the developer for addressing virtually all the issues that I recall being raised when we looked at this as a CVS site, and in particular, trying to create a greater buffer between the development and the neighborhood, moving everything up against 151<sup>st</sup> St. That was a concern of this Commission, and the developer has addressed that. Yes, it may be a larger building than the CVS was, but as I say, I think the developer has done an admirable job of dealing with a difficult spot, moving the development as far away from the neighbors as possible. As to the 60/40 rule, I'll be really frank with all the parties. There's a part of me that wants to say, "A pox on both your houses." This Commission has enough to deal with in terms of the policy and things that can't be addressed with a scale and a calculator. I'm an engineer by education. You can calculate these things out, and sometimes there's room for disagreement; but it is frustrating to have the parties, including the City Staff in this instance, come before us in disagreement as to what the numbers are. I take Mr. Coleman's comments very seriously, and that is that as a Planning Commission, it seems like it is incumbent upon us to see what this site and development is going to look like once it's concluded that the 60/40 rule has been met. I believe, based on what I've read and whatnot, 60/40 rule applies in this context. Similarly with the tiered wall, it puts us in a difficult situation to say, "Well, if staff wants it tiered, we'll tier it," but we haven't seen as a Commission what it looks like tiered. I'm torn by that. I understand the concern about the height and mass of a single wall. I also like trees, even if they're brushy trees; so to bring that out and to lose six major trees puts me in a little bit of a dilemma. I don't have in front of me something that tells me what it will look like if you bring two tiers or three tiers and we lose six of those major trees. I support the development generally as it stands, but having said that, I'm not sure I'm in a position to vote for it because I haven't seen what it's going to look like. At 9:30 at night, I'm not in a position to be dictating stipulations that should be dictated in a quiet room. Thank you.

Chair Rohlf: Thank you. Does anyone else have comments they'd like to make?

**A motion to extend the meeting to 10:00 was made by Elkins; seconded by Heiman. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

Comm. Munson: There are no staff comments about the stipulations. Where are they?

Mr. Klein: There are no stipulations with this application.

Comm. Munson: Then I'm going to move that this case be continued until we have stipulations to go by.

**A motion to continue Case 28-09 until staff provides stipulations to guide the Planning Commission was made by Munson; seconded by Elkins.**

Mr. Petersen: Madame Chair, may I speak to this? You're going to leave an open continuance until they prepare stipulations? They should have prepared stipulations to this one. This costs our client money to have these people sit here. This is expensive. Commissioner, we'll go to work on those two issues, and we'll show you what it will look like. Let's take a continuance and get to work and do it. Let's continue it to the next meeting, and can we have a commitment that we'll have the stipulations a week in advance so we can study them, have the opportunity to sit down and talk to staff? I didn't get this calculation until 5:30 Friday night, refuting our 60/40 rule calculation. I'll go to work and show you the plan, but we need to have a procedure here that makes sense. I'm sorry for raising that. One week would at least give us an opportunity to have due process.

Chair Rohlf: I'm not sure what our next available date will be.

Mr. Klein: The 23<sup>rd</sup>.

Chair Rohlf: I know we have a motion pending to continue this until the 23<sup>rd</sup>, but I see no reason why this can't be worked out in this next amount of time. I don't think there are any outstanding issues, Mr. Petersen, that you're not willing to address. I think you have to understand that I know you were not given the report in the time that you would like, but it also makes it difficult for us to see what you're willing to do. We do need to see what it's going to look like at the end of the day.

Mr. Petersen: My frustration is not expressed at the Planning Commission. I totally understand that you need to see it.

Chair Rohlf: We'll see what the tiered wall will look like, and hopefully we'll be on the same page. I would ask for a vote to continue this matter until June 23<sup>rd</sup>.

**Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

*MEETING ADJOURNED*

Mr. Alpert: Could I just make a statement for the record about the first case?

Chair Rohlf: Please note for the record that I have reconvened the Planning Commission Meeting at 9:30 to give Mr. Alpert the opportunity to make a statement on the record.

*MEETING RECONVENED*

Mr. Alpert: This is regarding Case 29-09 that you heard earlier this evening. After discussion with my partner in reviewing the course of events, we would respectfully request that you agree to allow us to withdraw our continuance and vote on the issue.

Chair Rohlf: Even though you know that more than likely it would be denied?

Mr. Alpert: Yes.

Ms. Shearer: Actually this is a procedural issue. You all would have to vote to reconsider your previous decision first.

**A motion to reconsider the decision to continue Case 29-09 was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

Chair Rohlf: I believe we were heading in the direction of a denial based on staff comments and those we raised ourselves. If that's not your recollection, please refresh mine.

Comm. Munson: Do you have on the record who made the motion?

Mr. Klein: I have Commissioner Munson first and Commissioner Elkins with the second.

Chair Rohlf: We need a motion to deny. Is that where we were headed, fellow commissioners?

**A motion to deny Case 29-09 – PARK PLACE – BUILDING D – FORMER MORTON'S SHELL - Request for approval of final site plan, located at 11652 Ash St. – was made by Munson; seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Pateidl, Munson, Elkins and Heiman, including a favorable vote by Rohlf.**

*MEETING ADJOURNED.*