

**City of Leawood
Planning Commission Minutes
June 23, 2009
Meeting - 6:00 p.m.
Dinner at Bristol – No Discussion of Items –following meeting
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

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

APPROVAL OF THE AGENDA:

Mr. Klein: Staff is recommending Case 38-09 be continued.

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

ELECTION OF VICE CHAIR:

A motion to appoint Len Williams as Vice Chair of the Planning Commission was made by Neff-Brain; seconded by Elkins. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

APPROVAL OF MINUTES: Approval of the minutes from the June 9, 2009 meeting.

A motion to approve the June 9, 2009 Planning Commission meeting minutes was made by Roberson, seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CONTINUED TO July 14, 2009 MEETING:

CASE 30-09 – PARK PLACE – 4TH PLAT – BUILDING G – PARKING GARAGE B – Request for approval of a revised final plat and revised final site plan, located north of 117th Street and east of Nall Ave.

CONTINUED TO JULY 28, 2009 MEETING:

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

CASE 81-08 – LEAWOOD DEVELOPMENT ORDINANCE 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 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1 ACCESSORY USES (RESIDENTIAL EMERGENCY GENERATORS) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING.**

CONSENT AGENDA:

CASE 33-09 – O’NEILL’S RESTAURANT & BAR – Request for approval of a final site plan, located at the northeast corner of 95th Street and Mission Road.

A motion to approve the Consent Agenda – CASE 33-09 – O’NEILL’S RESTAURANT & BAR – Request for approval of a final site plan, located at the northeast corner of 95th Street and Mission Road - was made by Williams; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

OLD BUSINESS:

CASE 26-09 – LEAWOOD SOUTH COUNTRY CLUB – TOWERCO – Request for approval of a Special Use Permit, Preliminary Site Plan and Final Site Plan, 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 – TowerCo. The applicant is Curtis Holland with Polsinelli Law Firm representing TowerCo and is requesting a Special Use Permit, Preliminary Site Plan and Final Site Plan which will allow for ownership of the existing Monopine wireless tower. Nothing is changing with this application; only ownership of the tower. Per Section 16-4-3.2 of the Leawood Development Ordinance, “A Special Use Permit shall allow the specified use be the applicant only and shall not run with the land and is not transferrable unless otherwise approved by the Governing Body by stipulation in the Special Use Permit approval.” Sprint currently owns the tower, and the 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: Does anyone have questions for staff? Then 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 on behalf of TowerCo and made the following comments:

Mr. Holland: We were here about a month ago and had a presentation for you that night which explained what we were asking for in that case. Since we did cover that ground, I can be brief tonight regarding our request. We are simply asking permission for the would-be new owner of the communication facility to be issued a Special Use Permit to own and operate that facility. TowerCo is a national company with 10,000 communication towers they own and manage across the country. They lease space on the towers to the actual carriers, who aren’t as interested in being owners of the vertical steel as much as they are in providing a service to their wireless customers. It’s an

ordinary transaction in the industry. It just so happens that under your regulations, SUPs do not run with the land, and each owner of the facility is required to have an SUP in the City of Leawood. As staff indicated, nothing else is changing. Sprint will abide by the stipulations which are intended to run with this application. I do have one minor request in connection with this application. Staff indicated your ordinance states the SUPs do not normally run with the land. Apparently Section 16-4-3.2 allows for the transfer of these facilities if it's allowed for with stipulations in the SUP permit itself. In this case, we're asking you recommend to the Governing Body that a stipulation be added to the application allowing for future transfers of the SUP without needing to come back to the City for approval, as is being required in this case. We have many reasons for asking for this. One is that it's very unusual for communities to limit the transferability of SUPs. No other city that we work in, either in Kansas or Missouri, requires new SUPs every time ownership changes, which is frequent in this industry. There have been no issues or difficulties in the other communities in the way they manage these permits. I don't know anything unique to Leawood that would require us to go back through the SUP process every time ownership transfers. The second reason is cost. Transferring and obtaining a new SUP is very costly. In our particular case, I don't feel that whatever benefit that is outweighs the burden to the applicants in terms of cost. As an example, in this particular case, your ordinance relating to communication tower facilities requires that notification be given to all property owners within 1,000 ft. of the property. These types of applications are treated differently than other SUPs, which have the standard 200-ft. notification requirement. We had to give notice to nearly 800 people and also notice an interact meeting, which only had one attendee. We're asking to allow for the SUP to be transferred in the future if it should need to be. I would stand for questions if you have any. Thank you.

Chair Rohlf: Does anyone have questions for the applicant?

Comm. Elkins: Mr. Holland, at the time that Sprint brought their application before the Commission and the Governing Body for this particular cell tower, Sprint had a series of predictions as to the anticipated effectiveness of the tower in covering what historically have been gaps in Sprint's coverage. Has the fact borne out the predictions?

Mr. Holland: Yes, as a matter of fact, it is very close to what the prediction maps indicated for service coverage in this area. I believe the folks in the area who didn't have good service prior to it being installed are very happy now.

Chair Rohlf: Just some thoughts on the SUP request, I don't have the ordinance in front of me, and I know it's something obviously the Council can take up when they hear this. It might make sense that the ordinance is taking into consideration other types of uses of an SUP. What comes to mind is, perhaps, a drive-thru restaurant or something like that, where you might get a situation in which something might go in without review that really doesn't fit there. I'm not sure how the ordinance specifies different types of SUPs, but that might be something the Council would want to take into consideration to revise. I'm not sure it's in our purview this evening, but on the surface, it makes sense to me.

Comm. Roberson: I take the opposite view. I think if it's going to be transferred, there ought to be an opportunity to review who's going to receive that SUP.

Chair Rohlf: That's what I'm saying.

Comm. Roberson: Then I agree with you; I'm sorry.

Mr. Holland: Just to follow up on that point you made, which is a good point, the ordinance we're referring to is one of general applicability to all SUPs. In this particular case, it just so happens that we're asking for an SUP for a wireless communication facility. I'll read one sentence to you: "A Special Use Permit shall allow the specified use by the applicant only and shall not run with the land and is not transferrable unless otherwise approved by the Governing Body by stipulation in Special Use Permit approval." It really is a Governing Body issue, and it can be approved as part of the Special Use Permit. That's my request.

Chair Rohlf: I think that's fine; thank you.

Comm. Williams: If this is approved and approved by Council, does that give them a new Special User Permit that runs five years, or is it just a continuation of the current one that expires in three years?

Mr. Klein: No, this would be a new Special Use Permit that would run for five years.

Chair Rohlf: Does anyone have anything else?

Comm. Elkins: Procedurally, does staff have an opinion as to whether the provision on "free transferability" of the SUP in this case is appropriate or not?

Mr. Klein: Staff is looking to the Governing Body to make that decision. One thing that would be affected at this level is if the Planning Commission decides to add that stipulation to the approval, then City Council would be able to approve the case with a simple majority. However, if the Planning Commission did not move to include the stipulation, City Council would need a super majority in order to add it in. Conversely, if you add it in and City Council decides they don't want it, they need a super majority to override the Planning Commission and remove it. Staff is comfortable with letting City Council decide whether they would allow the transferability.

Comm. Elkins: Madame Chair, I think it's both appropriate and incumbent upon us as a body to make a recommendation to the City Council on this. Having said that, we can either add the stipulation for freely transferring the SUP here, which would be tantamount, in my view, to a recommendation favoring approval; or we could leave it out. I don't think we need to add a stipulation which declines it. I'm opposed to the free transferability. I appreciate the comments about the cost and the unusual situation, but I don't think these are reasons for us to differ from our ordinances. I think it's particularly appropriate in this case because this is the first time we've had a Monopine in our community. It was subject to a great deal of discussion. I will say I'm a big supporter of the Monopine, but it's only 24 months out. Who knows what it might look like two, six, eight years from now? I think it's appropriate to retain the ability to review how it looks, how it affects the community each time the opportunity presents itself, whether it is the natural term of the SUP or when it is being transferred. For that reason, I am opposed to the free transferability of the SUP. Thank you.

Chair Rohlf: Is there anyone here in the audience who wishes to speak in this case?

Public Hearing:

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

Chair Rohlf: That takes us up to final discussion and a motion.

A motion was made to recommend approval of Case 26-09 – LEAWOOD SOUTH COUNTRY CLUB – TOWERCO – Request for approval of a Special Use Permit, Preliminary Site Plan and Final Site Plan, located at 12700 Overbrook Road, including the two Staff Stipulations – was made by Elkins; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 27-09 – LEAWOOD SOUTH COUNTRY CLUB – SPRINT NEXTEL ANTENNA – Request for approval of a Special Use Permit, Preliminary Site Plan and Final Site Plan, located at 12700 Overbrook Road. **PUBLIC HEARING**

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 27-09. It's a request for a Special Use Permit, Preliminary and Final Site Plan for Sprint/Nextel Wireless Communications Antenna. This is the antenna on top of the tower in the previous case. The Leawood Development Ordinance requires separate SUPs: one for the tower and one for the antenna. When approved in 2007, the plans reviewed then included both the antenna and tower, but the ordinance approving the SUP did not specifically permit the wireless communications antenna. That is the reason the applicant is requesting the SUP for the antenna tonight. The plans were reviewed with the previous case, and no changes are proposed. Staff does recommend approval, subject to the stipulations in the Staff Report.

Chair Rohlf: Does anyone have questions for staff? 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 on behalf of Sprint and made the following comments:

Mr. Holland: Sprint would be the continuous user of this facility. In this particular case, the SUP would allow them to have their antenna co-located on the facility and to operate the wireless communications facility. No other changes are planned with respect to the facility. I would take one issue with respect to what staff indicated earlier in terms of whether the original SUP allowed the antenna or not. I don't intend to get into a huge legal debate, but for the record, we disagree with that opinion and think that it clearly allowed for the antenna to be placed on the facility. We stand by the stipulations and would take any questions. Thank you.

Chair Rohlf: Mr. Holland, currently Sprint is the only one on this tower, correct?

Mr. Holland: That's correct.

Chair Rohlf: If additional providers would like to come on to the tower, would they still come back through Sprint, or will they go through TowerCo?

Mr. Holland: They would enter into a direct agreement with TowerCo and probably an agreement with Sprint as well. It's kind of complicated, but you have the Monopine facility over here and the equipment building over here. In addition, they would enter into an agreement with the Country Club. They would also need to come through this process for a Special Use Permit.

Comm. Neff-Brain: Is Sprint going to continue to own the ground equipment building?

Mr. Holland: Yes, they will. They will also own the coax and the antennae. The only thing TowerCo would own is the Monopine facility and the ground lease with the Country Club.

Comm. Elkins: I realize you and staff don't agree on this, so I'm not asking for a legal opinion. The current situation is the tower has been approved for a Special Use Permit. Is the antenna that Sprint currently has on the tower within the scope of the SUP that the Governing Body approved?

Mr. Holland: I believe it is.

Comm. Elkins: But staff doesn't necessarily agree with that; is that a fair statement?

Mr. Holland: I think that is correct.

Comm. Elkins: I realize I should put my question to them, but to summarize for me, there are two things being accomplished with this application: one is to make sure the Sprint antenna is within the SUP, and the other is to permit Sprint to co-locate other carriers' antennae on the Monopine?

Mr. Holland: I think that's a fair description with maybe one other angle. Assuming Sprint's facilities were within the scope of the original SUP for the sake of this discussion, I believe the City is indicating Sprint would also be required to have its own separate SUP for co-locating antennae on the facility because of the division in the ownership, even though Sprint was issued an SUP which allowed for the ownership and operation of the facility including the antenna. Setting that aside and going forward, I think staff would have required an SUP separate for Sprint's co-location of their antennae, notwithstanding the fact that they had been approved previously for an SUP there. Staff could clarify if I'm wrong.

Chair Rohlf: Anything else for the applicant? Thank you.

Public Hearing:

Chair Rohlf: Is there anyone in the audience who wishes to speak about this case?

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

Chair Rohlf: This takes us up to final discussion and a motion.

Comm. Elkins: It does strike me as an extraordinary outcome that even with our approval and Governing Body's approval of the SUP previously and the way our ordinance is set up, that we could approve a Monopine tower and not an antenna. I know we have an amendment to the LDO coming up soon, hopefully addressing the issue. It does make sense to me to have a regime in place in which we look at any efforts by a wireless carrier to co-locate on the tower. Again, we have an impact on the community around it. Other than that, I certainly favor this application.

Chair Rohlf: Anything else?

A motion to recommend approval of Case 27-09 – LEAWOOD SOUTH COUNTRY CLUB – SPRINT NEXTEL ANTENNA – Request for approval of a Special Use Permit, Preliminary Site Plan and Final Site Plan, located at 12700 Overbrook Road – was made by Williams; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 28-09 – NEIGHBORHOOD RETAIL CONTAINING A BANK WITH DRIVE-THRU AT 151ST STREET AND MISSION ROAD – Request for approval of a revised preliminary plan and revised preliminary site plan, located at the southeast corner of 151st 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 Drive-Thru at 151st St. and Mission Rd. The applicant is requesting approval for a revised preliminary site plan and preliminary plat for construction of a two-story, 43,483 sq. ft. neighborhood retail center containing a bank with a drive-thru of 5.5 acres for an F.A.R. of 0.18. This case was actually heard by the Planning Commission on May 26th. The case was continued to allow time for staff to work with the applicant on three points as are noted in the Staff Report. The first was regarding the Leawood Development Ordinance calling for no more than 40% of paved surface area within 90' of any public right-of-way. The applicant provided a graphic illustration calculating the frontage at 37% along Irohnorse Ct., and staff agrees with it. The second point refers to the retaining wall along the south and east sides of the parking lot. Staff was concerned with the mass and recommended it be tiered, which the applicant has done. The maximum height is 13'. The third concern regarded the number of drive-thrus. The applicant has reduced the number from five to four. Staff agrees with that, provided that the fourth lane is for bypass (or escape) 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: Thank you. Does anyone have questions for staff?

Comm. Rezac: Because of where this sits on a hill, drainage will be a big issue obviously for the residents below. Looking through the report from Olson, it looks like some of that was taken care of with the detention area. Can you briefly describe how the detention and drainage will be taken care of?

Mr. Ley: The developer is proposing to install an underground detention pond which will control the outflow from this development. It then goes into the natural preserve to the south. The water will be treated through that area and will flow into the area inlet to the south, going underneath Ironhorse Circle.

Comm. Rezac: And all the grading will bring it down to that one area.

Mr. Ley: That's correct.

Comm. Jackson: I'm trying to determine why you included the Golden Criteria.

Mr. Klein: According to the Leawood Development Ordinance, preliminary plans within the City of Leawood are an act of rezoning; so that's the reason the Golden Criteria are included.

Comm. Jackson: So the preliminary acts as a rezoning.

Mr. Klein: Correct.

Chair Rohlf: Anything else for staff? Then we'll hear from the applicant.

Applicant Presentation:

John Petersen with Polsinelli Shughart Law Firm, 6201 College Blvd., Ste. 500, Overland Park, KS, appeared before the Planning Commission on behalf of the applicant, provided an video demonstration and made the following comments:

Mr. Petersen: Jeff Martin, Alan Mackey and Kyle Fitzgerald are also appearing on behalf of Land Plan Engineering. We have spent considerable time on this property over the last year. I'm not going to go through all the details, but highlight the key issues that were identified during the last Planning Commission meeting and support the testimony of staff and their conclusion that project is now worthy of their support. The property has been zoned retail since 1996, at which time it had an approved site plan for approximately 45,000 sq. ft. of retail. The application this evening is consistent with that designation as well as the land use intensity that was acknowledged during that original zoning. Just to emphasize a point, seven or eight months ago, this same group advocated utilization on this site for a CVS pharmacy with a drive-thru, which had a total of 14,000' of utilization, but which required rezoning. We have regrouped and are now bringing this application before you based on its current zoning and use. Staff indicated several issues addressed during the last Planning Commission meeting. I'm going to touch on them as we go through a pictorial for the project. (*Begins presentation on the overhead*). You can see the grade starts to drop and builds a natural green buffer along 151st St. Along Ironhorse Ct. will be the only point of ingress or egress to the site. At the southern end of the parking lot is the retaining wall that was originally too tall according to staff. With the existing vegetation on the site, it will be difficult to see this wall unless you're in the parking lot; but we have tiered the wall regardless. The intersection of Mission Road and Ironhorse Ct. gives you an at-grade perspective. Bending on

Ironhorse Ct. to the north, we pick up that retaining wall briefly with two tiers and landscaping between. As we proceed north on Ironhorse Ct., we're starting to use some natural grade and tier systems together with vegetation to create a very nice aesthetic impact that screens any kind of parking lot intrusion on the neighbors along Ironhorse Court. The hard corner of 151st and Mission is the point of entry to the second-story of the corner building. The point of access is at 151st St. at the eastern end of the property. We removed a drive-thru lane and replaced it with additional green space. That's our project. I would state that we have reviewed Stipulations No. 1 through 31, including Stipulations 21, 9, 19, 27 and 8, which specifically go to the items from the last meeting to which we have now agreed. We accept all 31 stipulations as proposed. The only comment would be on Stipulation No. 5, which goes to our road impact fee of \$311 per linear foot for 151st and Mission. We understand what the ordinance says regarding these streets becoming thoroughfares. We'd be happy to answer any questions.

Chair Rohlf: I'd like to thank the applicant for the willingness to work with staff. They took the suggestions of the Commission and staff to heart and have done a good job. My only question was going to be about the modular block walls, and it looks like you've done away with that, too.

Mr. Petersen: We understand we have a stipulation in final plan that staff has suggested at least stone face on the walls. We'll definitely bring those details and architectural issues at the time of final plan.

Chair Rohlf: The only other thing noted in here for final plan was the traffic study.

Mr. Petersen: We'll have updates as we move to final plan. We've reviewed the Public Works memo, both in terms of traffic impacts and improvements to be contemplated and the storm work we'll need to do in order to avoid adverse downstream impacts from our storm water run-off.

Comm. Roberson: Do you have any tenants for this project yet?

Mr. Petersen: No, typically with this type of project, it's very unlikely you would have tenants prior to knowing you have an approval.

Comm. Roberson: I was just curious why you would build a bank building with a drive-thru without a bank to move in.

Mr. Petersen: It will be very unlikely we will build any building before we have a tenant for the building.

Comm. Williams: Is your anticipation the second floor will be office space?

Mr. Petersen: Probably office/service-type utilization that is typical in a center like this.

Comm. Williams: Will the ground floor in that particular building be part of that office or all retail?

Mr. Petersen: It could be either.

Chair Rohlf: This case requires a Public Hearing. Is there anyone in the audience who wishes to speak about this case?

Public Hearing:

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

Chair Rohlf: That takes us up to any additional discussion.

Comm. Elkins: I'm voicing my support for the application. I think last time I made some very strong comments about poxes going down on the houses of both the applicant and staff. Having seen the work, I feel like I owe them both a commendation on the work you've done together. I think this is a very difficult piece of ground, and with the joint efforts of the staff and the applicant, we have a plan here that really does justice and addresses that piece of property. My only minor question has to do with the fact that it's a two-story building on the corner. I think I'm fine with that, but I wanted to put it on the table and see if my colleagues had comments on that. It may sit low enough below the grade of where 151st St. is that it's fine, but that's my only minor question.

Comm. Williams: That leads into a question I had for Mark about the aspects of this being a two-story building sitting at the corner. I'm trying to get a grasp of where the floor plate is, relative to the intersection. Do you have a rough idea?

Mr. Klein: It might be better for the applicant to address this. I know it does sit lower, and they have a small retaining wall that sits down at that corner.

Mr. Petersen: When we get the final plan, we'll have the grades tightened down. The floor plate will sit about 8' below grade at that part of the corner. You've got about a 39' building which will expose about 29'-29' of building façade to the street, which is similar to a residential house.

Comm. Williams: That answers my question. I'll direct my question to staff. Unfortunately, I wasn't at the last meeting to be part of this discussion, so some of this may be repetitive. From a contextual perspective, a building of this size sitting at the corner seems to be way out of place to me. Can staff give me a little input here as to how you are supporting this in light of the fact that we've got single-family residence on the other three corners? Is there a plan I'm missing here for the north side of that street that's going to be larger in context?

Mr. Klein: On the north side of the street is the perimeter of the Mission Heights Subdivision, which was platted back in the late '60's and really hasn't developed out. The plat maps show internal streets, but what has happened instead is some houses have developed along the perimeter of Mission Road and 151st St. It is planned to be residential. Regarding the scale of the building, staff is supporting it because the development has a number of Leawood Development Ordinances the applicant was trying to meet, and they did just that. It does move the building as far away from the surrounding residential to the south and east. The site also sits down a little bit, so it won't have the same effect as if it were sitting higher than or even with the road. The building is two-story; however, the portion along Mission Rd. is actually single-story. The

portion to the east that will connect the bank with the other retail building is also single-story. It does meet the F.A.R. requirements, which is .2 as opposed to a general retail of .25. They've also complied with the requirement that they push the building more up to the street, which is really what the LDO was designed to do. This gives the building more of a presence. Those are some of the reasons staff supports it.

Comm. Williams: I agree with all of what you said in a more commercial development area. Even though this is zoned for this application, it just is very out of context to me with the surrounding zoning. I give credit to the applicant because I think they did a nice job with this as a standalone piece and as it relates to the people to the southeast. It looks to be a great improvement. Looking at the larger community piece of this at that intersection, it just strikes me as wrong.

Comm. Rezac: I'm fine with the height of the buildings for that area. As far as the scale, what strikes me is the length on both sides. This corner has a very long elevation on both sides. Was there any discussion about breaking some of these buildings up?

Mr. Klein: This site is actually fairly challenging because a number of trade-offs occur. The site has a great deal of grade changes and a large number of trees. We need to keep in mind the 60/40 rule in the LDO. They really don't have the ability to deviate from this, so they had to push the building along there. Also rearranging the parking runs the risk of pushing more into the existing trees. They are already taking out a significant number of trees and adding a significant amount of fill, as any development going in there will have to do. If you push more into the parking and continue down to the south or to the east, then you create a situation in which you're taking out mature trees and also pushing retaining walls higher and closer to the residents to the south and east. With regard to the massing of the buildings, you also have to look at the fact that there is a large amount of landscaping proposed between the setback and the building, as required by the LDO. The street trees will be one per 35 linear feet. They will start out as 4" caliper trees and will eventually grow to over one story. Ornamental trees will be one tree per 12 linear feet. Bushes also will be one per 5 linear feet. Because of this and the grade, it will not be as large a mass as it could be.

Comm. Neff-Brain: I want to speak in support of the application. I think it's a very awkward piece of land, and I think the planning is good. I love that so many trees will remain.

Comm. Williams: I made the comment a moment ago that I think the building, as it relates to the intersection, is out of context and scale. There is always concern about a development's impact on property values. We've seen comments from various residents who have attended the interact meetings, and it was a big concern when we heard this before. At the end of the day, I don't think this building will hurt anybody's property value. I think people to the southeast will be positively impacted by the development. I'm not necessarily in opposition because of the scale of the building; I would have just like to have seen something softer and more in keeping with the intersection.

Mr. Klein: If I may, one of the things that staff tried to do was to make it very clear that these are not the approved elevations and that the developer is not to come away from the meeting thinking that they will look like this. Staff will look for them to incorporate residential character within the development to help blend and soften.

Comm. Williams: I fully appreciate that; it's just more the mass and scale as it relates to the greater context of the intersection. No further comments.

Chair Rohlf: Anything else? Then I think we're ready for a motion.

A motion to recommend approval of Case 28-09 – NEIGHBORHOOD RETAIL CONTAINING A BANK WITH DRIVE-THRU AT 151ST ST. AND MISSION RD – Request for approval of a revised preliminary plat and revised preliminary site plan, locates at the southeast corner of 151st St. and Mission Rd. with the 31 staff stipulations – was made by Jackson; seconded by Elkins. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 15-09 – PARK PLACE – MICHAEL SHAE SALON & DAY SPA – Request for approval of a final site plan, located at 11520 Ash Street.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 15-09 – Request for approval of a final site plan for Michael Shae Salon and Day Spa. It's a tenant finish in Building A in Park Place. The north elevation faces the vacant lot at the northwest corner of the Park Place development. The east elevation faces Ash St. The storefront façade is proposed to be constructed of four primary materials: stucco, glass fiber reinforced concrete, glass storefront windows and cast stone. Less than ¼ of the façade is proposed to be composed of masonry materials, while approximately ½ of the façade is proposed to be constructed of stucco. This leads to our stipulation requesting additional masonry materials. A total of four signs are proposed, three of which are on the east façade. Staff recommends this be reduced to three signs with two on the east façade and one on the north façade. With that, staff recommends approval of Case 15-09, subject to the stipulations in the report and would be available for any questions.

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

Comm. Williams: Where does glass come in to your calculations?

Mr. Rexwinkle: It's 26% of the storefront.

Comm. Williams: The reason I ask that is you're saying you want 50% of this façade to masonry or stone, and you don't have that on any of the other retail stores there. Some are just all storefront.

Mr. Rexwinkle: Staff is not suggesting it needs to be exactly 50%; we just think the proportion of masonry materials should be reversed with more masonry than stucco. That goes back to some of the original plan approvals for Park Place in which the applicant and developer stated higher quality materials would be at the pedestrian level of the development. As far as the percentage of other tenant finishes, I can't speculate.

Comm. Williams: The majority of the storefronts there appear to be largely glass, versus 50% masonry. I'm just trying to get an idea where you're coming from. Likewise, when you look at this building above, you've got a whole block that is made up of different

architectural styles – some masonry and some stucco. Since this is a stucco building, it just seems that stucco for this tenant finish seems quite appropriate.

Mr. Coleman: The applicant came in with an original plan with a hierarchy of materials. The ground level where the pedestrian could touch the building would be tile, masonry and more expensive materials. Closer to the top of the façade would include more fiber-reinforced concrete, stucco and less expensive materials. That's where the comments originate. It has nothing to do with the percentage of glass versus stucco because each tenant will have a different ratio for that. Mr. Alpert agrees that this tenant is not much different than the other tenants along the street as far as glass is concerned. We're just trying to get the hierarchy in place at the ground level so we don't have stucco at the ground level, but rather tile, stone and other masonry materials.

Comm. Williams: I hear you, and I appreciate that. If this applicant were to change the design completely and have full storefront with all glass, would that be acceptable?

Mr. Coleman: We would probably be looking for some type of masonry on it because we don't feel – and I think Mr. Alpert would agree – that an all-glass façade would be appropriate for this development.

Comm. Williams: And I only bring that up because I didn't see the same kind of ratios on the other storefronts or even something remotely similar for what's being proposed for this one. I'm just trying to understand why that is. The buildings had very little masonry.

Mr. Coleman: We might disagree about the amount of masonry on the particular façade, but I don't know that they would agree that most of their facades are stucco at the ground level. I know a number of shops have used masonry materials very well. We would just like to see less stucco and more masonry.

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

Applicant Presentation:

Jeffery Alpert with Park Place Village, LLC, 11551 Ash St., Leawood, KS, appeared before the Planning Commission, provided a PowerPoint presentation and made the following comments:

Mr. Alpert: With me this evening are Melanie Mann and Justin Bridges with Davidson Brown Architects, the designer of the storefront. I appreciate Mr. Williams' comments because I actually have some examples of some of these other storefronts to illustrate the comments. I thought I'd start with an overview of the storefront and let Mr. Bridges walk through the design concept. Then I'd like to address that specific stipulation about building materials. *(Begins PowerPoint presentation with Master Development Plan)* The storefront in question is at the north corner of the Aubrey Building. It's about 2,500 sq. ft. and will be a salon and day spa. We actually have less glazing than on some of our storefronts specifically because of the activities that are taking place within.

Justin Bridges appeared before the Planning Commission, referred to the display boards and made the following comments:

Mr. Bridges: (*Refers to display boards*) Just so you can have a reference point here, this façade elevation includes the space we're talking about here as well as the entire façade of the building. I'll walk through the materials and where they're located. The pilasters that you see here and on this corner as well are existing GFRC pilasters. That's consistent on a good majority of the divider spaces between tenants throughout the building. It's on all the corners, on the breezeway and around the back side as this turns toward the delivery drive. We've retained that pilaster material so we could maintain a consistency along the facades, both in the front and the back. Any of the pilasters that you see here are the same materials that are already on the building. We've created a granite base on each of them, making them similar to the corner pilasters. Space on the bottom is cast stone. The darker areas are cast stone and rise up between the pilasters here. We wanted to limit the amount of glazing here because of the activities inside. Cast stone is on each side of the windows as well. To reference the pilasters and GFRC as stucco is not an accurate statement, in my opinion. It's a very dense, cementuous material, as is the cast stone. All of the materials at base level from the top of the windows down are very dense and hard and will age well. The stucco is really just the space between each of the window areas to prevent us from having to install additional steel to support anything in those areas. I'd be happy to answer any other questions.

Comm. Williams: What is the material on the arches above the windows?

Mr. Bridges: The arches are made of stucco so we don't have to support them with additional steel. That governed our break point.

Comm. Williams: For the benefit of our entire panel, would you give a full description of GFRC?

Mr. Bridges: It's Glass Fiber Reinforced Concrete. It is cementuous.

Comm. Williams: Is it hardy board?

Mr. Bridges: No, it's quite a bit denser. I know the sample board we provided had a sample of that. You can see that it's not a hardy board, but actually concrete.

Mr. Alpert: I wanted to refer you to the staff comments, which ask us to approach this from the standpoint of a percentage of materials. Quite honestly, we're concerned about that for a precedent or direction in terms of design. What we're about is the overall design and not just the materials, but how the materials are distributed. We get very concerned when we start focusing on percentages as opposed to focusing on the design that really is what the materials represent. We also have to be concerned about cost. Clearly, some of these materials are more expensive than others, and there are always trade-offs. For example, the arched windows that you see on the board are very expensive – probably twice as much as a square window. We look at that as an important detail and try to balance materials and design to come up with something unique and reflective of the tenants' identity and brand and also to give some variety up and down the street. As Mr. Williams said, most of our storefronts do not have 50% masonry. (*Shows examples of storefronts*). Annabelle's is primarily ceramic tile with a little cast stone at the base. Envy Boutique has a little stone, but it is primarily wood, ceramic and glass tile with some metal trim at the top. The Park Place Gallery has travertine tiles and glass aluminum storefront. LaRev Salon uses a combination of storefront and architectural sheet metal in a couple of different colors. Gobug is a

combination of stucco, wood and stone on the right. Learning Tree is primarily a glass storefront with some plaster detailing in a whimsical design with broken ceramic tile to depict the trunk of the tree. Paciuggos is literally an all-aluminum storefront with a hardboard fill-in above. You can see that we really have a minor focus on masonry through the storefronts. We think the Michael Shae storefront we've provided is attractive and appropriate to the brand, and we would request your approval.

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

Comm. Williams: Could you go back to the photo of Paciuggos? The beige material between the two sections of storefront is what?

Mr. Alpert: That is GFRC.

Comm. Williams: It would appear you have that in quite a few places.

Mr. Alpert: Right.

Comm. Pateidl: I wasn't here when the original proposal for Park Place was approved, but I understand certain deviations were granted, particularly related to density, with the understanding that superior construction materials would be used, particularly at the pedestrian level. I'd like to have your interpretation of what that really meant.

Mr. Alpert: What it means is as much unique detailed design as materials. In terms of high-quality materials, it could be a variety of things. It could be masonry, brick, stone, architectural sheet metal, ceramic tile or natural stone tile. We have used stucco on some occasions, primarily above eye level – probably higher than 8'. We actually have a storefront approved that is all painted wood. We want to use a whole host of materials and not get pigeon-holed into one or two.

Comm. Pateidl: And I don't think Mr. Coleman is suggesting that. He's suggesting use of tile and other upper-grade materials on the pedestrian level of the storefronts. You've alluded to concern with respect to establishing a precedent that a certain percentage of the materials are this, and you'd prefer that to be architectural style. I don't disagree with you at all; however, I'm also very concerned with precedent. We had a proposal presented in May for a replacement for the Morton's facility that was very heavy on stucco, very short on architectural design and very argumentative within this Commission. We've had a proposal for Building B and Parking Garage G with great discussion about the use of materials. Now we're faced with the same situation. That's three proposals in a row, and I'm concerned about a trend that this is a development that was approved with initial understanding that it would be the downtown of Leawood and would be a see, touch and feel of quality. Yet, the proposals that we are seeing are turning to something less than what was proposed. Do you see it that way?

Mr. Alpert: Mr. Pateidl, I honestly don't. When we brought in our original plans for our buildings, there was a significant amount of stucco on those buildings. We never made any attempt to hide that fact. That was one of the design characteristics of the buildings we presented. I think if you look at the first two buildings we built – the Aubrey and Becker – you will find that the buildings we've brought in subsequently have all reflected the same design character and types of materials. We've used brick and stucco. I don't think we've had any deviation from the pattern from the beginning. In reference to the

Morton's building, I don't believe any stucco is below the 14' line. It is all brick with larger areas left out for future storefront to be included.

Chair Rohlf: I would ask Mr. Coleman or anyone on staff, obviously in the presentation, Mr. Alpert showed us a number of storefronts that we've never seen and obviously have gone in with approval. I guess I'm concerned why this particular one has caught the attention and if we're missing something here.

Mr. Coleman: We're just looking at the individual storefront, and since this storefront presents masonry-type storefront with the pilasters and cast stone base, we would just like to see the percentages of materials reversed so that the majority is masonry. Essentially we had suggested one of the other materials, which is a simulated travertine stone (ArcusStone) be used in lieu of the stucco above the windows, which would not require steel lentsils. Stucco gives the impression of being lightweight and doesn't fit the rest of the masonry look of this particular storefront, which is a very solid masonry storefront that's trying to give a very masculine look to the store. We don't have any opposition to the GFRC on the pilasters; it was just simply the overall materials used at the ground level versus above.

Comm. Williams: Does staff have a problem with the cast stone as a horizontal band below the windows?

Mr. Coleman: No.

Comm. Williams: Where would you want to see the masonry to which you were referring?

Mr. Coleman: It's the stucco panels above the windows.

Chair Rohlf: Any other questions? Thank you, Mr. Alpert. Does anyone have any additional comments about this? We are either in agreement or disagreement and may need to modify staff's stipulations.

Comm. Neff-Brain: So in the area above the windows, you're fine with stucco?

Mr. Klein: No.

Comm. Neff-Brain: So it's more than the bands; it's the whole area.

Mr. Bridges: (*Refers to display board*) The only stucco we have is above the windows consistently around. Anything you see lighter below here is cast stone. This darker color between the pilasters is cast stone. The stucco is 26% of our façade. If staff doesn't have a problem with the GFRC on these pilasters, we only have 26% stucco. The GFRC sample you see there is not the color that is being applied here. The color scheme that you see in the color samples there are what color that will be.

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

Comm. Williams: I'd like to make a couple comments. I understand staff's concerns for having quality, durable products down where people can see and touch them. What I understand from the presentation and material board, within arm's reach of pedestrians,

we have solid materials. The stucco above the windows is not a problem to me, particularly given the style of the building to which this attaches. I find this storefront to be very much in keeping with the style of the building above it. I like the way they've integrated the pilasters down, framing and giving a footing to the building above. I think it's a nice-looking façade, in keeping with the general quality of design that is in the development so far, regardless of whether we're talking 50% masonry here or not. The key here is having nice, interesting, visually pleasant design work on the storefronts. I think this meets those criteria.

Mr. Rexwinkle: I'd just like to add that part of the reason staff is taking this perspective with reducing the amount of non-masonry materials and increasing the masonry materials is that staff has had a historic understanding, as we believe City Council also has, that masonry and natural materials would be used predominantly at the first level of these buildings. At the time the original plan was approved, there was a lot of discussion about what materials would be located where. There was discussion about the contrast of having stucco on the second and third level of the buildings with masonry materials at the ground level at both Planning Commission and City Council meetings. Staff is just trying to implement that original vision that we believe was understood by the Council, the applicant and staff at that time. That's why we've made our recommendation.

A motion to recommend approval of Case 15-09 – PARK PLACE – MICHAEL SHAE SALON & DAY SPA – Request for approval of a Final Site Plan, located at 11520 Ash Street, deleting Staff Stipulation Nos. 1 and 2 and renumbering the remaining four with a total of four Staff Stipulations – was made by Williams; seconded by Rezac.

Chair Rohlf: Before we take a vote, I just wanted to clarify that Mr. Alpert agrees with the staff recommendations on signage.

Mr. Alpert: Yes, we're fine with that.

Chair Rohlf: Is there any other discussion?

Comm. Neff-Brain: I will not be supporting the motion. I was not on the Planning Commission when this plan went forward, but if it was indeed the Commission and the Council's recommendation that the first floor be predominantly the natural stone and other materials like that, I think it is incumbent upon the Commission to follow through with their recommendations.

Chair Rohlf: Thank you; that will be noted in the record.

Comm. Jackson: I find when looking at these, you can put brick on a building and it's boring as anything else. The Nall side of Park Place to the south parking garage has a very large brick wall that certainly has no interest to it. I think you can do just as boring things with expensive materials as you can with inexpensive materials. My concern on this is that you haven't mixed the materials like you have on some other storefronts that create interest. I think you could use these same materials and make it a little more exciting. The material mix doesn't make it an interesting storefront. When we saw Park Place at the very beginning, the intent was that this was going to be a very interesting and unique area. I don't think this storefront quite meets that standard.

Chair Rohlf: Anything else? We're ready for a vote.

The motion passed with a vote of 4-3. For: Roberson, Rezac, Williams and Elkins. Opposed: Pateidl, Jackson and Neff-Brain.

NEW BUSINESS:

CASE 35-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-8.2 FL (FLOOD HAZARD OVERLAY DISTRICT) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 35-09 – Leawood Development Ordinance amendment to Section 16-2-8.2. The reason for the update is to adopt the FEMA floodplain maps, effective August 3, 2009. The state of Kansas approved these changes back in May, 2009. Staff is recommending approval of this amendment and is happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Neff-Brain: They're changing from lowest opening to lowest floor?

Mr. Ley: That is correct. The state reviewed this back in 2002, and it was supposed to be the lowest floor. When they reviewed our ordinance, they caught that and realized they should have done that back in 2002.

Comm. Pateidl: As an observation if it hasn't already been caught, in the first page of 16-2-8.2, my copy says "May 14, 3009" for a date. You might want to correct that. More importantly, I have a couple other questions. I understand what we're doing is just updating the evaluation of where the floodplain exists today because of the different environmental changes that have taken place over the years. Does anything before us change the LDO regarding activities, restrictions or requirements related to construction in areas of the defined floodplain? Does that all stay the same?

Mr. Ley: That does stay the same. We had these calculations for the last five years. On Leabrooke, Mission Reserve and Estates of Old Leawood, we've been using these new maps even though they hadn't been adopted. The developer would put tracks where the future 100-year floodplain would be.

Comm. Pateidl: Do we have any developments in Leawood – residential or commercial – that are impacted by this revised recognition of the floodplain; that they are now in the floodplain when they were not before?

Mr. Ley: Yes, most of those would be north of 435 in the more established neighborhoods. South of 435, there are a few homes, but we used the new floodplain maps on most of the newer developments.

Comm. Pateidl: As we approve this revision, are there any intentions or provisions in place to notify those people who are impacted?

Mr. Ley: We did have public meetings. There are some people being removed.

Chair Rohlf: Anything else? This case does require a Public Hearing.

Public Hearing:

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

Chair Rohlf: That takes us up to any additional comments, hopefully leading to a motion.

A motion to recommend approval of Case 35-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-8.2 FL (FLOOD HAZARD OVERLAY DISTRICT) – Request for approval of an amendment to the Leawood Development Ordinance – was made by Williams; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 34-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-5, OFF-STREET PARKING, STORAGE, LOADING REGULATIONS AND PARKING LOT DESIGN STANDARDS (PARKING STRUCTURES) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 34-09 – Leawood Development Ordinance Amendment to Section 16-4-5 – off-street parking, storage, loading regulations and parking lot design standards. This will require that the first level of parking structures with elevations facing a public right-of way would have to have 70% retail space within it. As you recall, the Park Place Development came through with a preliminary plan for Building G and Parking Garage B and was approved by both the Planning Commission and City Council without that requirement. Since it's not something from which we cannot deviate, we need to repeal the section out of the ordinance requiring that in order for the applicant to go forward with the final site plan for Parking Garage B and Building G. It will probably come through with a stipulation stating that fact. This amendment will actually remove the requirement; however, we didn't want to remove the entire section. We wanted to keep in the parts that spoke to the design of the lower level parking garage, including being integrated with building architecture, materials and overall concept and also be articulated in design to create a harmonious appearance with the buildings they serve. Staff thought that gave great direction to the applicant for design requirements. Staff is recommending approval of this application with the stipulations stated in the Staff Report and would be happy to answer questions.

Chair Rohlf: Questions for Mark?

Comm. Elkins: Mr. Klein, to your last point that staff thought it was appropriate to retain the provisions of the LDO relating to design and looking at what's left of D2 in particular,

can you provide a little more color for us as to what staff interprets “harmonious appearance with the buildings they serve”? In particular, I would like to know what buildings they serve.

Mr. Klein: For instance, Parking Garage A is surrounded by buildings: Building A to the east, a hotel to the south and Building B farther east. It is to ensure the architecture of the parking garage fits in with the type of design that other parts of the development have. If the development has a traditional shopping center with traditional elements on the main building, staff would look to the parking garage to incorporate some of those elements. It is important to know the parking is there, but we still want to incorporate it into the design.

Comm. Elkins: Thank you. Would there be another way to approach this in which we could have re-drafted the ordinance to give both us and the Governing Body the flexibility to grant a variance, rather than strike the 70% completely? If so, did staff consider that?

Mr. Klein: Staff considered that, and we thought that would be a great way to go about allowing a deviation. However, since this project has already been approved without that requirement in it, if we had then amended the LDO to put that requirement in, it would have required the developer to come back and get that deviation after the ordinance went into effect. In this case, we felt it was better to remove the section of the LDO and also give staff a little time to consider new language to be used in a requirement that would include a deviation. Staff realizes there are other commercial projects in the City of Leawood, particularly along the 135th St. Corridor, for which we might want an ordinance.

Comm. Elkins: Thank you.

Comm. Neff-Brain: I agree that a deviation or a variance is a lot better idea than deleting it completely. It concerns me that we’ll delete it and have to come back later.

Mr. Klein: Staff realizes it might be a situation in which we will come back. It’s just that it wouldn’t work in this situation with the Park Place Development. They’re on a tight time frame, and it was already approved with the fact that they would not have to have the 70% retail on the first floor. Therefore, to keep that project on track and also to allow staff to regroup and look at the whole issue again, we just felt it would be better to repeal this section at this point and come back hopefully in the near future before another development proposed a parking structure.

Chair Rohlf: Currently, we don’t have anything to which this would apply.

Mr. Klein: Right, the only thing we have is the Park Place Development.

Chair Rohlf: I’m not even sure what the intent was when they put this in.

Mr. Klein: Originally when Park Place came through, there was a lot of discussion over parking structures because Park Place was the first one to use parking structures to a significant degree. It was also shortly after the Sprint parking structures were constructed, and a lot of people didn’t like the fact that the parking structures and the outside next to the public right-of-way had all the nice architecture and landscaping, but

on the interior, they basically walled off their project. The intent was if you had parking structures along the perimeter, you would address them in such a way that they would have the appearance of the building and be incorporated as part of the development itself. By putting the retail along the first floor, you actually create some life along that streetscape, drawing the eye down to the first floor, leaving the rest of the parking structure not so prominent. Parking Garage A was adjacent to Nall Avenue. Staff, City Council and Planning Commission looked at the 70%; however, it was considered such a busy street with little chance of pedestrian traffic. When the one along 117th St. came forward, we saw that more as an opportunity to be addressed. It's something staff doesn't really want to give up on; however, we want to be able to draft an ordinance that takes into account Planning Commission and City Council's concerns and allows deviations to consider each one on a case-by-case basis.

Comm. Neff-Brain: When the first parking garage went in, this was not in the LDO?

Mr. Klein: When the first parking garage went in, it actually was in the LDO.

Comm. Neff-Brain: How did it get by that?

Mr. Klein: I think it just got bypassed or deviated from.

Comm. Neff-Brain: We couldn't amend that section to add this as a deviation, rather than take this out?

Mr. Klein: We thought about adding this in as a deviation, but the situation we're in is that the Park Place Development has already been approved without that requirement, and typically the deviations are granted at the time of preliminary plan. By the time we change the ordinance, it would require the applicant to re-file the preliminary and request the deviation, which would probably be granted, but it would delay their project.

Comm. Roberson: Let's back up a little bit. The first parking garage is in violation of the LDO. What is the normal consequence of being in violation of the LDO?

Mr. Klein: I believe when Park Place went through, it was allowed deviate. That idea has been revisited, and now we're following very strictly what we have before us.

Comm. Roberson: Again, what would be the consequences for failing to follow the LDO normally?

Mr. Klein: In a typical circumstance, you would be required to come back and get an approval.

Comm. Roberson: The LDO doesn't allow for anything other than 70%, right?

Mr. Klein: Correct.

Comm. Roberson: Assuming this didn't change, what would be the normal consequence of violating any LDO?

Mr. Klein: Typically they would have to come back before the Planning Commission and City Council. This would be a way to change it. I understand where you're going.

Comm. Roberson: What I'm trying to get to is that they would have to fix it. They'd have to either put the retail stores in or tear the garage down, is that correct?

Mr. Klein: Technically.

Comm. Elkins: I'll defer to City Attorney, but I suppose in a long, drawn-out process, a citizen could start the process to force the City to enforce it, but any city has discretion in enforcing provisions.

Comm. Roberson: I understand. That's really not where I was going with this. We do have a technical violation for the garage.

Comm. Neff-Brain: But the City allowed it to happen. Was there a change of legal thought, or was the legal department not involved the first time?

Ms. Shearer: As Mark said, this decision about the first parking garage pre-dates my employment here, but I believe the consensus, as Mark has stated, is that at the time it was thought this was something from which we could deviate. As you correctly stated, this was part of a plan that was approved by the Planning Commission and Council for the garage to be designed as it is now. In revisiting this, we evaluated the list of deviations and realized this was not included. Staff totally agrees with the proposition that we should add this to the list of deviations, and I would like to reiterate that it is something we plan on revisiting and bringing back to you in the not-too-distant future.

Comm. Elkins: I'm always concerned when changes are proposed to the LDO to meet the needs of a particular development. Having said that, I think I'm in favor of it here, although with a lot of reservations. It seems to me that for all the reasons Mr. Klein described so well are the justifications for the existing LDO. My preference would be not to see the backside of a parking garage at street level in Leawood. I was on the Commission when we approved Parking Garage A, and I'm willing to accept the fact that I'm stuck with that. It's tempered with the fact that it is along Nall. My real concern is with Parking Garage B. As I mentioned when we talked about Parking Garage B, I'm very concerned that it will have the same effect of having just a blank wall along 117th St. I'm very concerned Park Place and Mr. Alpert get Parking Garage B and Building G built in a timely fashion for what I think is going to be a great tenant for Leawood. I just want to reiterate my concern that I'm looking for staff and Mr. Alpert and his staff to come up with something that is interesting and attractive at the ground level and that they not use this amendment as an opportunity to avoid that opportunity to make Parking Garage B an interesting street-level item. Thank you.

Chair Rohlf: Before I take further comments, we do have a Public Hearing on this matter.

Public Hearing

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

Chair Rohlf: Does anyone have additional comments?

Comm. Neff-Brain: I'm going to support this amendment because I would support a deviation if that were the way we could handle the situation; although, I am really opposed to the way we are doing it. I just think you don't take sections out for one developer and then put them back.

Chair Rohlf: Is there anything else?

A motion to recommend approval of Case 34-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-5 – OFF-STREET PARKING, STORAGE, LOADING REGULATIONS AND PARKING LOT DESIGN STANDARDS (PARKING STRUCTURES) – Request for approval of an amendment to the Leawood Development Ordinance – was made by Williams; seconded by Roberson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 36-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-9 PERFORMANCE CRITERIA (LIGHTING) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 39-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 15-4-5.7 IMPROVEMENT OF PARKING AREAS (LIGHTING) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, we have two LDO amendments that go to lighting performance standards. Staff would like to address Case 36-09 – Leawood Development Ordinance Amendment to Section 16-2-9 Performance Criteria, specifically addressing lighting, and then also Case 39-09 – Leawood Development Ordinance Amendment to Section 16-4-5.7 Improvement of Parking Areas, again, specifically regarding lighting. These two amendments go to the design of the light fixtures themselves. Currently, within the LDO, we have requirements that the light fixture be designed in such a way that the light source is invisible from off-site. Typically that's something we want to see; however, there might be circumstances in which a decorative light fixture such as a lantern could be proposed. Also, we have a requirement for a flat lens, which is something with a shoebox light fixture. We currently have light fixtures approved within the City of Leawood in Park Place, the Villaggio and the Estates of Old Leawood, so staff felt the ordinance was maybe too restrictive. Planning Commission and City Council would still have an opportunity to look at the design of the light fixtures. None of the photometric studies requiring a limitation on foot candles would be changed. Staff is recommending approval of both of these applications and will be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Neff-Brain: 15-4-5.7, we're deleting, "shall be in the design that the source of illumination shall not be visible from off the premises."

Mr. Klein: Yes, staff just wanted to allow more flexibility. A development like Park Place has internal drives which could use a decorative fixture. For instance, the gas light fixtures would not be allowed with this ordinance because the light source within is visible. Since the Planning Commission and City Council would still have the ability to review and approve plans, staff felt comfortable with this application.

Comm. Rezac: I just want to be clear. It sounds to me like you are removing the restriction of the light fixture design.

Mr. Klein: Correct.

Comm. Rezac: And with removing the ones you mentioned, are there physical characteristics of the lighting fixtures left, or are you just going to do it on a case-by-case basis?

Mr. Klein: It would more or less be on a case-by-case basis. This would allow the development to propose different types of more decorative light fixtures. It would also clean up the ordinance so that light fixtures that have already been approved within, for instance, Park Place, The Villaggio and The Estates of Old Leawood would be acceptable. This section of the ordinance was added recently, so it's not the same situation you had before in which you had things after the ordinance was approved. We cleaned up the ordinance and put in uniformity of lighting as far as even distribution of light across, for instance, a parking lot. We also were trying to limit the lighting viewed from off-site; however, in doing that, staff realized we were being too restrictive.

Comm. Rezac: Personally, I'm glad to hear it's going to be on a case-by-case basis because there are so many variations with lighting. I agree that's the direction to go.

Chair Rohlf: Anything else for staff? Is there anyone in the audience that wishes to speak about Case 36-09 – LDO Amendment – Section 16-2-9 Performance Criteria (Lighting)?

Public Hearing

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

Chair Rohlf: Is there anyone in the audience that wishes to speak about Case 39-09 – LDO Amendment - Section 16-4-5.7 – Improvement of Parking Areas (Lighting)?

Public Hearing

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

Chair Rohlf: We can discuss and make motions individually as well. With respect to Case 36-09, does anyone have any additional comments?

A motion to recommend approval of Case 36-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-9 PERFORMANCE CRITERIA (LIGHTING) – Request for approval of an amendment to the Leawood Development Ordinance – was made by Jackson; seconded by Roberson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

A motion to recommend approval of Case 39-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-5.7 IMPROVEMENT OF PARKING AREAS (LIGHTING) – Request for approval of an amendment to the Leawood Development Ordinance – was made by Jackson; seconded by Roberson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 06-09 – MADDEN MCFARLAND INTERIORS – Request for approval of a revised final site plan, located at 8010 and 8014 State Line Road.

Staff Presentation:

City Planner Melissa Cownie made the following presentation:

Ms. Cownie: Madame Chair and members of the Planning Commission, this is Case 06-09 – Madden McFarland Interiors. The applicant is Bernie Madden and is requesting approval for a revised final site plan to install a new roof. This case was heard before you on January 27, 2009 and was recommended for approval with a 7-0 vote. It was then heard by the City Council on February 16, 2009, at which time the City Council remanded this case back to the Planning Commission so all the stipulations with the originally approved case 08-07 would be added. The City Council considers this current application for a new roof to be a revision of the approved final plan; therefore, the stipulations of that final plan should be carried forward with this application. The current application is for the roof only; however, staff has included the stipulations from Case 08-07. In addition, staff has also attached a copy of the originally approved final site plan from which these stipulations are derived. 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: I do have a question for staff. Did we approve the synthetic slate in the grey? It's my recollection we did not approve that.

Mr. Klein: When the Planning Commission saw this case before, the applicant was requesting a color in brown, which the Planning Commission approved. It went on to City Council, and the Council raised the issue that they consider this a revised final site plan from the current plan in which they asked for an addition to the building, expansion of the parking lot, some changes to the elevation and a new roof. At that point, they remanded it back down to consider the case in light of that. Staff is now recommending that the case, as it is, stand with the initial color of roof as grey. The applicant is still requesting the brown, and I would defer to the applicant for questions.

Comm. Pateidl: I thought the initial request back in January was to use the DaVinci roof in a wood shingle format in a brown color, which we recommended and the City Council remanded back to us.

Mr. Klein: When they originally came forward, the Staff Report recommended DaVinci brown slate. In the meeting, the applicant brought the shake shingle look as well. At that point, the Planning Commission was looking at both the brown slate mentioned in the Staff Report and also the shake that they brought to the meeting and indicated they really wanted to use. At that meeting, I believe the brown and slate were actually approved. Then it went to City Council, who then had the concern of viewing this in light of the previous approval that included several stipulations with the expansion, including impact fees and improvements. They wanted to make sure all that was incorporated with it. Staff looked at the case in light of that and is now recommending the original approval stand with the color of the original grey that was approved several years ago.

Comm. Pateidl: That's not as I remember it, but fine. During the presentation to us in January, I understand there was a change in the roofing material and a discussion of the expansion and architectural renderings showing the expansions and how all of this would play in. When the City Council had difficulties with our recommendations, this new roof was proposed to be temporary. Are we talking about a temporary or permanent roof? Is there even any room for us to be talking about the color of this as it relates to that overall expansion unless we open Pandora's Box and go through a whole process of what that expansion is all about?

Mr. Klein: Right, regarding your first question about permanent versus temporary, staff is looking at this as a permanent roof. City Council really wanted to see the grey roof with the original approval. The concern was if they were allowed to replace the roof, then that would be the only improvement they would make, leaving the expansion and the rest of the plan unfinished. As part of that, we discussed allowing the brown roof that would have to be torn off within five years when they plan on doing the expansion of the parking lot. They indicated that was something they did not feel they could spend that kind of money to do. Now we're implementing the first phase of the currently approved plan with a permanent grey roof.

Comm. Pateidl: First of all, for the record, the temporary roof idea came from the applicant, not from staff, Council or this Commission.

Mr. Klein: From what I remember, it was actually mentioned at City Council and staff then mentioned it to them. The architect might have indicated they planned on doing the expansion in the future and it was possible that the roof would change at that point.

Comm. Pateidl: My second point is that in the stipulations contained here, there are a number of summary items relating to fees and various and sundry improvements unrelated to the roof. They are reasonably related to an expansion, but not necessarily to the roof, yet we're going to incorporate that as part of this approval for a roof. What kind of enforcement position will the City have with respect to those stipulations and those requirements if we go forward, whether the roof is brown, grey or purple?

Mr. Klein: That's a good question. A lot of the impact fees that are related and many of these stipulations included in the Staff Report aren't triggered by the roof itself being put on. They are typically triggered when they do the addition of the building because the impact fees are related, in large part, to additional square footage. Staff's position is they would put on the grey roof per the original approval as the first phase. Then when they came in for the other improvements, such as the expansion, that's when the other stipulations would be triggered.

Comm. Roberson: So if we approve this and they put the roof on, they really don't have to do anything else.

Mr. Klein: What this does from Staff's point of view is it approves what we've already approved with the original plan. If they just put on the grey roof, they've done the first phase. Staff opposes the brown roof because they could put on the brown roof, and if they decide not to come forward with any of the future phases, they've got a roof that was not originally approved.

Comm. Roberson: If they put on the grey roof and don't do anything else?

Mr. Klein: Then they've implemented the first phase of that original plan, and the City can't really force them to come back through and do the rest.

Comm. Neff-Brain: In the 2007 report, you have in here, "The applicant is proposing the DaVinci roofscape synthetic slate roof, castle grey color." So that was initially the applicant's request?

Mr. Klein: Initially, yes, that's what the applicant was proposing.

Comm. Jackson: Mark, Stipulation No. 10 does apply to screening of rooftop equipment. Is that to be done with the new roof?

Mr. Klein: Yes, that's a standard stipulation, and it would be done.

Comm. Jackson: Does it make sense to add to that stipulation that it has to be done with this roof? The ones that have fees, you specifically say will not be done until issuance of the building permit.

Mr. Klein: That's a good point, and staff would support clarifying that.

Comm. Jackson: There are a lot of other ones, such as power lines and downspouts, which could be addressed. Do the downspouts need to be constructed of copper?

Mr. Klein: If the downspouts were put on, yes, this would be implementing that first phase. Staff is looking at this as them going forward with the plan they originally got approved in 2006. Whatever portions of that plan they're doing at this time, they would have to meet those criteria.

Comm. Neff-Brain: If they decided they just wanted to build on and not put on a new roof, what would their procedure be?

Mr. Klein: If you're removing it from the fact that there was a previous approval? Typically they would come before the Planning Commission and City Council with a revised final site plan, especially if the roof is different. They are allowed to do maintenance if they can replace the same roofing material.

Comm. Neff-Brain: So any commercial building would have to come before the Planning Commission?

Mr. Klein: To ask for anything different than they currently have, yes.

Comm. Neff-Brain: They have shake shingle now?

Mr. Klein: Right now, they have an asbestos tile, which I doubt they could replace because of federal regulations.

Comm. Williams: This is strictly a re-roof of an existing building, correct?

Mr. Klein: Currently, they are requesting to re-roof the building, and the applicant would like it to be considered as such. The City Council indicated they consider this a revised final site plan of a previous approval.

Comm. Williams: So with a re-roof of an existing building, they are subject to all of the development fees that would apply to an expansion and rebuild?

Mr. Klein: If you strip the case completely of its history and say they're just coming in for a re-roof of a building, they would go to Planning Commission and City Council for approval, but there would be no stipulations because they are actually tied to an expansion. In this case, it has the history of a revised final site plan including the addition.

Comm. Williams: Again, for re-roofing an existing building, they have to redo the power lines, do the landscaping and pay the fees. Do you have any idea how much that's going to cost them?

Comm. Roberson: That's not my understanding.

Mr. Klein: That would not be triggered until they come in for the addition.

Comm. Williams: When I read the stipulations, such as No. 11, requiring all power lines to be placed underground, I don't see a stipulation there that says they do it on the next phase.

Comm. Jackson: Stipulation No. 11, "This must be done prior to building occupancy of any building within the project." Perhaps that needs to be clarified, too.

Comm. Williams: That's what's confusing me because we're talking an existing building, but it doesn't stipulate any new expansion.

Mr. Klein: We can clarify that.

Mr. Coleman: They already have an occupancy permit.

Chair Rohlf: Let's hear from the applicant.

Applicant Presentation:

Matt Austin with Polsinelli Law Firm, 6201 College Blvd, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Austin: Also appearing tonight is Bernie Madden, who is the owner of this building. I'd like to start with the history since there are many questions about that. Mr. Madden came before you requesting this exact color and material back in January. During that Public Hearing, he started discussing that, although we were going with slate because that's what the plan approved, what he'd really like to do was shingles. You agreed with him and recommended 7-0 to have brown shingles. At that point, he went to the City Council, at which time they discussed slate versus shingles and whether this restarted the five-year time frame for a final plan. We looked at issues of whether it was permanent or temporary. The idea behind this is that it would be a permanent change of the roof. Where the temporary idea comes in is if and when we move forward with the expansion which we asked for back in February of 2007 when things were different, he's going to be forced to tear off the roof on the building in order to do the expansion. That's where the temporary nature comes up. We had a problem with the idea of being told, "Two and a half years from now, you will have to tear off this roof." We want it to be permanent, but with the understanding that, if and when we go forward with the renovations, then it will come down. The Council ultimately voted 5-3 to approve the shingles in the brown color and ended up coming back off that because there was confusion about the temporary nature and the stipulations. They ultimately remanded it back to this body. At that point, we met with staff and said we would agree with everything that came up at Council. We're all right with the five-year clock and with the slate. All we would like to do is build a brown roof. It's purely aesthetic. Right now, we have a perfectly functioning roof that is structurally sound and not leaking. He'd just like to make it brown. He doesn't know when this expansion and renovation will happen and would like to improve the roof. Unfortunately, and a bit surprisingly, staff has switched their opinion on this. They were supporting us and are now recommending approval, but stipulating the roof has to be grey. That doesn't do anything for my client. He will not move forward with grey, but will stick with what he has today. We're simply asking for a brown roof, and this will have no impact on the final plan as it exists. We're agreeing to all the stipulations. You have touched on one of the issues, which is that although these stipulations are in place, they're not triggered by this. We understand we'll have those fees. We just want to aesthetically upgrade the building. Bernie and I are both available for questions.

Chair Rohlf: We have seen this plan come in a number of times and spent quite a bit of time on this in '05 or '06. I think what has happened is that there is a philosophical difference at the Commission level and the Council level as to the nature of the building: commercial or residential. I think the problem that we have here is by putting on a brown roof; that signifies to me that it's considered residential, and none of the expansion will go forward. I think because we've needed to come back several times on this plan for a number of reasons, I need to hear from you, Mr. Madden, about what your plans are for this building. Is this temporary? How market-driven is it?

Mr. Madden: Thank you. I'll only give you honest answers, and I can understand why you're confused because what you heard is not exactly what happened. I've been there since 1975. The home was designed and built in 1959. The Leawood architect, John Grandstead, designed the home. I purchased the home for my business because it was a beautiful residential structure that I thought would lend itself to my business. In 2007, we went through the process of getting an approval for a renovation. We would have the renovation finished by now and be very proud, as would the City of Leawood, I'm sure; however, we had two contractors that said, "Your renovations are so intense that you need to move off-campus for four months." I'm in the retail business, so to close for four

months would put me out of business; so we didn't go forward. Our business, somewhat like the rest of the retailers in America, isn't as good as it was three years ago. Now, all I want to do is put on a new roof. It has nothing whatsoever to do with the renovation. The City Council cannot understand that simple request that I just want to put on a roof that's as permanent as long as I'm going to look the way I look. If and when I do the renovation, the roof comes off and a new roof goes on. Will it be grey slate? Probably, if we use brick façade. If we use a stone façade, which Leawood, at that time in 2007, said, "We don't care," then it may be brown or charcoal. There has never been anything difficult or complex about my request. You handled it very promptly and professionally the first time I came here. You said unanimously, "What's wrong with a shingled brown roof? It looks like it goes on that building." There isn't anybody in this city that thinks I look commercial, although Mayor Peggy Dunn did mention she thought I looked commercial because of my sign. We're a residential building operating a business. It's never going to look commercial, even with the renovation. My architect, Mr. Stallbaumer, tried to make it look as commercial as we could for the benefit of the City. It doesn't look very commercial; it looks like a beautiful residential home in North Leawood. Mr. Klein mentioned consistency. Putting a grey slate roof on that residential house would be sinful, and that's not just my opinion. You can take a poll of architects and designers in Kansas City, and they'll say, "Why would you put a grey slate roof on a residential house?" We just want a roof. Is it permanent? You bet, it's permanent. When will it become not permanent? When we do the renovation. When will that be? I don't have a clue. Have I answered your question?

Chair Rohlf: You have, thank you. We will move on to questions for the applicant.

Mr. Austin: I'd like to add one thing to what he just said. Once again, we've done what we could to look at what the City Council said last time and met as much of it as we could. We've added the stipulations, gone away from shingle and to slate, tried to meet the spirit of what they've asked us to do. All we're asking on the whole issue here is color. Staff says grey; we say brown. Once again, City Council did approve 5-3 the brown color the first time before we got into the complexities.

Chair Rohlf: We had this same plan with another Staff Report months ago that talked about that remand. I remember some concerns expressed about temporary versus permanent, and then the matter was continued and we didn't see that particular report again. Do I remember correctly?

Mr. Klein: What I remember of the last one is what Mr. Austin and Mr. Madden indicated. When they came back to the Planning Commission, they were requesting a brown DaVinci tile roof and indicated they really preferred a shake shingle roof. The Staff Report showed brown DaVinci in slate. They came to the meeting and indicated they would prefer the shake. That's where I didn't remember right – I thought they were approved with slate, but I guess it was brown shake. It went to City Council, at which time the City Council had concerns with the plan coming forward in February of 2007 with the rest of the expansion. The City Council supported the expansion and did not want to see the old plan go away, but rather incorporated into this first phase. That's why it was remanded back.

Comm. Neff-Brain: I think we all understand the record well, and Mr. Madden is on the record saying that if he goes forward with the expansion at all, he'll pull the roof off and put the grey slate roof on. I like the brown shake shingle we approved the first time.

Chair Rohlf: We had quite a bit of discussion, and I think it was a unanimous decision on that because we considered it a residential-looking building and thought the shake shingle was appropriate.

Mr. Austin: Once again, we also like the shingle. We're here asking for the slate.

Chair Rohlf: I know you're making the compromise that needs to be made.

Mr. Austin: That's right, because we're interested in brown. If it needs to be slate, it will be slate.

Comm. Neff-Brain: It's on the record saying that if he comes back with any kind of addition, he'll pull the roof off and put the grey slate on.

Mr. Austin: What he's on the record as saying is when we do the renovation, we will have to pull off the new roof, and at that time we'll evaluate what color makes the most sense. It won't necessarily be grey; it depends on the materials used in the expansion.

Comm. Elkins: Mr. Klein, I guess I am curious as to the staff's recommendations for the grey at this point in time. History aside, what warrants grey over brown?

Mr. Klein: When they initially came through, it was proposed with the development. The basic disagreement here is Mr. Madden has what used to be a residential house and fits his needs for running his business. He sees it as being a residential structure; the City Council sees this in a commercial corridor, especially at one of the ends of the gateways along 135th St., and sees it as a commercial building. Grey goes to a slate look that you would see on a commercial building.

Comm. Elkins: Thank you.

Comm. Jackson: Mark, it seems like this would be much cleaner if it had come through as just a roof change. If he had done that, would that void out the approval he has?

Mr. Klein: As you recall, that's the way the application came through the first time. We're here from direction of the City Council.

Comm. Jackson: If you change out the shingles on the roof, you're not meeting the new plan anyway because it's a completely different roof. You can't call it a first phase of this site plan because it doesn't put any phase into it.

Chair Rohlf: We don't agree with the remand. We won't approve this plan. It's appropriate to go back to our original recommendation, which is brown shingles.

Comm. Roberson: That's what I would suggest we do.

Comm. Jackson: That's what I'd like to do.

Chair Rohlf: We can go around in circles. I think this is a philosophical disagreement on how this building is viewed. If we want to go with brown slate, I'm not sure from an aesthetic standpoint what the difference would be. We can discuss the appropriateness

of this particular plan, but unless we're on-board with slate in castle grey, I don't think that's where we're going.

Comm. Neff-Brain: I'm not. I've spent more than my fair share of time at Madden McFarland, and I think it looks like a house and will continue to look like a house and needs to have the brown shake shingle.

Comm. Williams: I go back to an earlier question I had about just doing a re-roof on this building. On the 26 stipulations plus the stipulations approved with the initial plan for expansion, what are they going to have to do, if anything, of these 26 items to replace the roof? Are they going to have to do a park fee, art fee, erosion control, additional landscaping, etc.?

Mr. Klein: No.

Comm. Williams: Then why have them on this?

Comm. Roberson: Can we just approve this without the stipulations?

Mr. Klein: This is a remand from the City Council. We did that the first time.

Comm. Roberson: Can we approve this without the stipulations?

Mr. Klein: I think the Planning Commission has the ability to approve whatever they want to make a recommendation to the City Council.

Chair Rohlf: To be consistent, we would go back to our previous recommendation to Council that we see the original shake shingle or slate in brown. I don't know how they would handle it procedurally to change this particular final site plan. This is a different method of incorporating what I think the Council wants.

Comm. Pateid: Just for the record, whatever we approve, I believe firmly and think it's been said by Mr. Madden as well that what you see is what you're going to get. Any thought or belief that this roof is going to be torn off or repaired or replaced with another roof is pretty unlikely. The vehicle by which we're having these discussions and revisions of this final plan with all the different stipulations, I think, is totally inappropriate for this discussion and for this issue. If Mr. Madden wants to abandon this plan and come back and ask for a re-roof of his building, I think that's totally appropriate. To try to beat this SUP to fit and paint it to match is a mistake. We've been told Mr. Madden wants a new brown roof, and if we don't approve it, fine; he doesn't need a new roof. At this point in time, given all the complexities inside this deal and the conflicts inside this proposal, I'm inclined to not move this forward to the City Council.

Comm. Roberson: I'm not sure I agree with that. I think we ought to recommend he go with the brown shake or slate roof and eliminate the stipulations.

Comm. Elkins: It seems to me like there are two different issues here. One relates to the kind of roof Mr. Madden has, and that's really the issue he's interested in. The other issue is more procedural. In the event that the Commission would recommend to the Governing Body that we have a brown shingle or slate roof without any stipulations or with minimal stipulations, would that constitute a change to the plan that was previously

approved by this body and the Governing Body such that, in the event that sometime between now and 2012, as a technical matter, Mr. Madden would have the authority to go forward with his expansion without any of the stipulations? If we don't include the stipulations here, do they disappear from the planned expansion that's been approved?

Mr. Coleman: In my opinion, that would be correct. This is a revised final site plan approval. It's the same application with a revision, which is essentially the color of the roof because the shingles that were originally approved were the grey slate shingles. What he's asking for is the brown.

Comm. Neff-Brain: How did we do it a month ago?

Comm. Elkins: The Council told us we did it wrong.

Mr. Coleman: It got remanded back because you removed those stipulations from the plan, and that was one of the things with which they had an issue.

Comm. Elkins: Let me understand because I think this is an important point. In your view, if we approve what we have in front of us tonight without the stipulations, the effect of that is to have a plan for an expansion of Mr. Madden's facility without any of these. It will essentially wipe the stipulations out of the plan that was approved three years ago.

Mr. Coleman: That's correct. That's the reason it is presented the way it is before you tonight. If you would like to make a motion one way or the other, that is what would happen.

A motion to extend the meeting 30 minutes was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

Chair Rohlf: I'm not sure procedurally we can do anything other than deny it. If we approve it, then the castle grey slate comes in.

Mr. Coleman: You have the option to approve or deny.

Comm. Roberson: Can we approve it with a deviation in color?

Mr. Coleman: You can approve it with brown and keep all the stipulations. You could approve it with grey and keep all the stipulations.

Comm. Neff-Brain: Can we approve it with brown shake and the stipulation that when they expand, they go back to the grey.

Mr. Coleman: You can do that, too. This is no different than revising a plan on file.

Chair Rohlf: So in No. 1, we could go back to what they proposed, which is the DaVinci slate brown stone classic in brown, or we could do whatever we want to do there.

Comm. Neff-Brain: Until such time as expansion occurs.

Comm. Roberson: But he doesn't necessarily want to go with grey.

Comm. Neff-Brain: But then he has to come back with a roof.

Comm. Roberson: Do you want slate or shake?

Mr. Madden: Shake would be more proper, but with the attitude of the Council, I probably don't have a chance. That's my feeling. I think they'll be very unhappy. I've been trying to please them for 35 years. I will not put on a grey roof because I could not tell people I was in the design business. We have solid mahogany shutters and have just painted. We look the best we can with the means we have.

Comm. Rezac: Can we approve this and strike "synthetic slate in castle grey" and replace it with what color we want?

Comm. Roberson: We have other issues with the stipulations that need to be addressed.

Comm. Williams: Either we add a stipulation that says that all these stipulations kick in when an expansion redevelopment takes place and leave them or strike them out. Quite frankly, I think any good lawyer could look at this and determine them to be on the hook for them.

Mr. Coleman: It says, ". . .for the expansion" for any of the ones that have to do with money.

Comm. Williams: I'm not seeing that statement in this. That's why I'm concerned.

Mr. Coleman: Starting with No. 4, "Prior to the issuance of a building permit for the expansion of the building." No. 5: "Permit for the expansion of the building. No. 6 refers to it.

Comm. Jackson: No. 8 does also.

Comm. Williams: How about No. 23, "The applicant shall be responsible for installation of a corner feature, not to exceed \$25,000"?

Mr. Klein: That's the same language that was included at the time it was approved by City Council. They left it open: "at a later date."

Comm. Williams: So the Council is looking for a \$25,000 corner feature for his roof?

Mr. Klein: No, I'm saying they intentionally had, "feature at a later date." They didn't put a specific date on it to indicate it was open.

Comm. Neff-Brain: Same with the gutter.

Comm. Jackson: Nos. 10 and 17 are the only ones that would make sense with the roof. Do we want those or not? Do we want them to be delayed with the expansion of the building permit or the permit for the roof?

Mr. Klein: Rooftop equipment is always a requirement.

Mr. Coleman: Madame Chair, I would recommend that whatever you decide to do this evening, you leave the stipulations in.

Comm. Roberson: That's what we're trying to do. We're trying to figure out language.

Comm. Williams: I don't think any of us has any problem with these stipulations being in here for the expansion and redevelopment of the project which was originally brought to us, but all the man is doing right now is re-roofing his building so it looks better for the time being until he can get to the project.

Mr. Coleman: Right, but keep in mind that this is a revised final plan approval no different than what he went through originally. He's simply asking for a change in roof. If he wanted to tomorrow, he could go ahead and file a building permit plan based on the final plan approval to expand the building.

Comm. Neff-Brain: We understand that. It's just that all he wants to do is put on a new roof – nothing to do with any of this. I know where you're coming from.

Comm. Williams: As long as these don't kick in for the roof, we don't have an issue.

Comm. Elkins: Madame Chair, could we add a stipulation that specifically provides that Nos. 10 and 17 shall apply upon the issuance for building permit for the roof? If we want to go the next step, the balance of the stipulations is not effective until a building permit is issued for the expansion of the facility under this plan.

Comm. Williams: Nos. 1, 2, 10 and 17.

Chair Rohlf: I think I'll need some guidance from you on No. 17, Mr. Madden. Is it your intent to put copper downspouts and guttering on this as a residential building?

Mr. Madden: I was told by the staff that none of that would take place until I do the renovation. Then I'll agree to the stipulations. What Mr. Elkins mentioned would make a lot of sense to me. It shouldn't be complicated.

Mr. Austin: I would just add that No. 10 would be something that would logically be done with the roof. We will make sure rooftop equipment is screened from public view. I agree with staff that we do not want to lose the stipulations based on the conversations that happened at Council. It seems strange because we're only dealing with the roof, but this makes sense because it is a revised preliminary plan. We have the same plan, so all the stipulations stay in place. It was important to have it stated for the record they won't kick in, and taking it one step further by adding a stipulation is what we'd like.

Comm. Roberson: Mr. Coleman, you look distraught. Are we stepping into something we don't know?

Mr. Coleman: No, I don't think so. I agree with Mr. Austin.

Mr. Austin: To further complicate things, is there a way to incorporate language that the Council would have the ability to do the shingles? We're trying to compromise,

anticipating their thoughts. Can we leave it open-ended by specifying brown but leave the material open?

Comm. Neff-Brain: Can it say something like, "The applicant shall install a DaVinci roofscape synthetic shake shingle in whatever brown until such time as the expansion . . ." I agree; I think shake is best.

Comm. Roberson: Why don't we give him the option of slate or shake and brown?

Mr. Austin: Yes, I think it would just be an "or" statement.

Comm. Pateidl: While Mr. Madden refers to himself as walking, sounding and looking like a duck, the fact of the matter is he is a commercial operation in the City of Leawood. One of the desires of the City of Leawood is to differentiate commercial buildings from residential via a roof style, which is really where the issue of slate versus wood shingle comes in. I think for us to make all the compromises we're talking about doing with the stipulations and go on to this wood shingle style is dangerous on our part with respect to precedent. I would disagree with the recommendation for shake shingle.

Comm. Neff-Brain: My opinion is you do what is most aesthetically pleasing for the particular facility. For a facility that looks like a house, a shake shingle is the most aesthetically pleasing.

Chair Rohlf: Mr. Elkins, since you were the one who came up with the appropriate stipulation, would you like to attempt revising?

Comm. Elkins: My colleague has been scribbling next to me, so I may defer to him.

Chair Rohlf: That's fine. I think we're ready to wrap this up.

Comm. Williams: Let me throw this out there for consideration. We add a stipulation stating that Nos. 1, 2 and 10 shall apply to the proposed re-roofing of the existing building. The final stipulation No. 27, which is currently No. 26, would read, "The property owner agrees to execute a statement acknowledging in writing that he agrees to the balance of the stipulations upon execution of the expansion and redevelopment of the property."

Comm. Roberson: What does No. 1 say?

Comm. Williams: No. 1 would be the color, which would be brown.

Comm. Roberson: Are we going to do slate, shake or give an option?

Comm. Williams: I'm fine with the brown and shake for reasons that have been discussed, and I fully agree. For the record, what would be the name of the brown color?

Mr. Austin: Tahoe Classic.

Mr. Madden: I appreciate all your patience and all your help. I think politically speaking, we should consider the slate in brown, which is a compromise on my part. Knowing the

attitude of the Council and the City Administrator, that would be the safest thing for me to do. I think we would have a real issue with the City Council, and I think it's almost become a personal thing. I hate to say that.

Comm. Roberson: I think we'll give you the option and let them fight it out.

Mr. Austin: My concern is they'll change the stipulation and send it back to you.

Chair Rohlf: I agree with Mr. Manning and thing we need to go with the slate. I think the odds we're going to get a shake shingle out of the Council are slim to none.

A motion to recommend approval of Case 06-09 – MADDEN MCFARLAND INTERIORS – Request for approval of a revised final site plan, located at the southwest corner of State Line Road and 135th St. with the following revisions to staff stipulations: Stipulation No 1 deletes “castle grey” and substitutes “Brownstone Classic.” Stipulation No. 26 reads: “Stipulations Nos. 1, 2 and 10 shall apply to the proposed re-roofing of the existing building.” The final stipulation changes the previous No. 26 to No. 27, and it shall read, “The developer/property owner agrees to execute a statement acknowledging in writing that they agree to the balance of the above stipulations prior to building permit” was made by Williams; seconded by Elkins. Motion approved with a vote of 6-1. For: Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins. Opposed: Pateidl.

A motion to extend the meeting until 9:45 was made by Williams; seconded by Jackson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

CASE 31-09 – STATE LINE EXECUTIVE OFFICE PARK – Request for approval of a revised final site plan, located at 8010 and 8014 State Line Road.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 31-09, request for approval of a revised final site plan for State Line Executive Office Park. The office park is composed of four buildings labeled A-D on the plans provided to you. The applicant is requesting approval to install new roofing material on Buildings A and C. It would match existing material on Buildings B and D. This material is an asphalt shingle, which is prohibited for commercial buildings according to the LDO. At the time Buildings A and D were re-roofed, the shingle was not prohibited. Since then, the LDO has been amended to prohibit these shingles. Staff does recommend denial of this request until such time the applicant proposes commercial-grade roofing material compliant with the LDO.

Chair Rohlf: Is there something currently available on the market that would be in compliance with the LDO that would be compatible in design or aesthetics?

Mr. Coleman: We didn't want to pick out a material, but we think there are. There are different types of synthetic slate that have a multi-color modeled look to them. There are concrete tile materials. We feel there are options available that would work.

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

Applicant Presentation:

Jim Lichty with Archetype Design Group, 8010 State Line Road, Leawood, KS, appeared before the Planning Commission, showed a PowerPoint presentation and made the following comments:

Mr. Lichty: For clarification, I noticed the agenda reads that our application is for 8010 and 8014 State Line. Staff mentioned it was for all four buildings, but I'd like to note for the record that it is only two. (*Begins PowerPoint presentation*) This is the property in this slide.

Chair Rohlf: While you're there, could you show us which buildings are A, B, C and D?

Mr. Lichty: The final development plan from back in the '80's has, to some extent, been misplaced. The document that's submitted is the latest, which is a preliminary site plan. I can't be sure of the names of the buildings, but I think staff mentioned them.

Mr. Coleman: They are the top two.

Mr. Lichty: One your site plan, it's the northeastern-most building and the southern-most building. The reason we're asking for a revised final development plan stems from the approval in March, 2005 of the application under re-roofing permit for 8016 using this same 50-year Timberline Prestique shingle we're proposing. (*Shows aerial photo*). That is a photo with that March, 2005 roof in place. The reason our application addresses all four buildings is we're asking to get these buildings retroactively approved. In May, 2007, the 8012 State Line building was improved with the Timberline Roof. In March this year, the applications for simultaneous permits for 8010 and 8014 were denied. The weathered wood shingle (Timberline Prestique) is one of the approved commercial and residential shingles that had been approved and authorized by the LDO at the time of our permit application and also at the time of our revised final development plan. The re-roofing application date was March 5, 2009. Our revised final site plan application was submitted May 13, 2009, and Timberline was an approved material. Then your ordinance 2393 that outlaws asphalt shingles on commercial buildings was approved May 18th. (*Shows permits with dates specified*). It is pertinent to note there are two owners represented here who have coordinated. There are a lot of cross-easements, restrictions and common-area maintenance. The Snyders have done a great job of keeping the buildings leased and maintained. Having these buildings appear consistent and harmonious is essential and, as we read your LDO, one of the fundamentals of your ordinance, notwithstanding the differences we've recently talked about relative to the character of the northern part of the city and some of the southern parts. (*Refers to photographs*) I've blown this up because staff asked for a more clear indication of the roof we're talking about. Each building has three types of roofs. Two have these Timberline shingles, so the grey area is the shingled roof. There's a tar and gravel roof on the core of the building so mechanical equipment is completely screened. Then a third roof focuses primarily on the inner part of the facility, or the grounds. That's a standing-seam metal roof, and it varies in color, as do the doors of the building and a couple other features. (*continues presentation*) This is a re-roofing permit issue on March, 2005 on 8015 and 8012, the two buildings that do have the Timberline shingles

on them. This is the copy of your cut sheet, if you will, for your approved materials list. I think until recently, that list had been the same for both commercial and residential projects. You can see it was last updated on March 24th and included the Timberline Prestique Lifetime High-Definition shingles. This is a GAF Elk product, and it's their highest quality product with a 50-year guarantee. The two are going to be there for some period of time. On the premise of the history of this development, for the issuance of permits for 8016 and 8012 and for the listing of approved materials of the initial permit application that was denied March 3, 2009, we're asking for your approval on these roofs. (*Refers to photographs of the buildings*). These are supplemental. We were asked to provide photographs of all faces of the buildings. These are the standing-seam roofs that face toward the core of the project. We've provided the sample board as well. With those key dates, the history of the project, the good citizens that the owners have been over the last 20 years or so of ownership, we'd like your recommendation to the Council that this Timberline shingle application be approved for buildings 8010 and 8014 and that the revised final development plan apply in its entirety to all four buildings. I'll be glad to answer any questions.

Chair Rohlf: Does anyone have questions for the applicant?

Comm. Williams: I'd like to clarify that the architectural style and details of each of the buildings basically are the same with minor modifications?

Mr. Lichty: Nearly identical.

Comm. Williams: Thank you.

Comm. Elkins: Mr. Lichty, have you looked into shingles that are on the current approved list to see if there are shingles that come close to matching the Timberline shingles you want to use?

Mr. Lichty: There are none that match the other two buildings. We've been asked to look at the synthetic slate shingle, and we did get a price for that. It was just under 125% more or more than double the cost of the Timberline. That's a lot of money.

Comm. Elkins: So the issue is primarily cost and not aesthetics?

Mr. Lichty: I wouldn't say that. Our client and the owner of two of the buildings have been very cooperative in making repairs and upgrading to meet fire codes. They have not shied away from cost, but 225% cost on shingles is certainly a consideration.

Comm. Elkins: Back to my question, how dramatic is the difference between a shingle that is on the list and the shingle you want to use?

Mr. Lichty: The only shingles we looked at were the synthetic slate. They have a 12" wide face to it. These are relatively low-pitched roofs - about 9' and 12'. The slate shingles are about 9" tall, so they would look very large on these relatively small roofs that don't go very far up. The slate shingles tend to be more appropriate on taller and steeper roofs. As you may have noticed in the photographs, you don't see that much of the roof, so there would be few shingles as you reach the peak. Aesthetically and architecturally, we disagree with the synthetic slate. There are wood shake synthetics that probably come closer aesthetically, but again at the same synthetic material cost.

Comm. Elkins: Thank you.

Chair Rohlf: Do we have other questions? I need some clarification from staff here. Have we had this situation occur before in which we had multiple buildings and something has changed in the LDO on a particular material? Were we able to grandfather in the material? I can understand the concern now of allowing the asphalt shingles on a commercial development because we'll get hit with that if we allow it here.

Mr. Klein: This isn't permitted as far as the LDO is concerned. You might have a situation in which you have an approval of a roofing material or structure of the building or even setbacks and are legal at the time they went in. Then the LDO changes, and those uses, structures and materials are considered legal, non-conforming. In other words, it's recognized they were allowed when put in; however, the idea is that when the LDO changes, everything going forward from that point will need to comply with the new ordinance. There is a provision that, if the property is destroyed to more than 50% of the value, the property owner would have to come into conformance at that time. Really, nothing allows you to go back and grandfather in something after the LDO has changed because it's occurring after the ordinance has taken effect.

Comm. Neff-Brain: Did they put their application in before the change?

Mr. Rexwinkle: We have their application on May 14th.

Comm. Neff-Brain: Before the ordinance changed.

Mr. Rexwinkle: The ordinance is May 26th.

Comm. Neff-Brain: So they made application prior to the change. Did you notify them there would be a change?

Mr. Coleman: Ms. Neff-Brain, let me give you a little history. The applicant came to us for a building permit to re-roof those two office buildings with the asphalt shingles. At that time, we told them that they needed to go to the Planning Commission and City Council for approval of a roof material change. Every commercial office building has to do that in the City of Leawood. During my discussions with Mr. Lichty, I also informed him we were in the process of removing asphalt shingles from the LDO. Mr. Lichty decided to go to the BZA to challenge my interpretation of the LDO with regard to that provision and asked the BZA to require me to issue the building permit for the asphalt shingles. The BZA upheld my decision on the LDO, and Mr. Lichty now has come back to follow the proper process through Planning Commission and City Council. In the meantime, we had already submitted the change to the Planning Commission to remove it from the LDO. The practice of the City since I have been here is not to approve asphalt shingles on commercial buildings, and that was the reason to bring the LDO up-to-date with current practices of the Planning Commission and City Council. Currently we're recommending they re-roof the remaining roofs with an approved material, and then when they need to re-roof the other two, they match those with whatever they choose for these two roofs.

Comm. Williams: "At a later date" being 20-30 years from now.

Mr. Coleman: What they say on asphalt shingles and the lifetime is about half.

Comm. Williams: It's not going to be five or six years.

Mr. Coleman: No, probably 10-12 years, barring any hail storms.

Comm. Roberson: When did they go before the BZA?

Mr. Rexwinkle: It was April 22nd.

Comm. Roberson: They did get permission to put the asphalt shingles on in 2007?

Mr. Coleman: The two re-roofs were a mistake by a permit technician who no longer works for the city.

A motion to extend the meeting until 10:00 was made by Jackson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

Chair Rohlf: I think we're at a point where we should discuss this.

Comm. Pateidl: I think the issue here is the question of whether or not a filing for an application preceding a change in an LDO gives right to the applicant to use materials that are no longer approved. I truly don't feel this Commission has the authority to make that judgment, particularly given that this has been through the BZA. Consequently, given that there is precedent that is important to the future of this Commission, I feel we should deny any action on this matter based on the fact that this is probably a legal matter and not one for the Planning Commission.

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

Comm. Jackson: I don't see any method for us to grant an exception on this. I really don't see that it would be proper, either, so I would not support the application.

Comm. Williams: I agree that I don't know that we have a mechanism to allow this change that has been called more of a legal question. On the same token, we have four identical buildings that are going through the process of renovation with a development plan that had repairs and upgrades in it. I fully agree with the architect for the continuity of the properties. If you've got four identical buildings and you change the roofs on half of them, I don't think that serves the development or the city. Fifteen years from now when the roofs have to be redone, then you require it to be in compliance with the ordinance; but they started this process a few short years ago and put their application in before this was fully executed and changed.

Comm. Neff-Brain: There is no deviation from the LDO, and I'm certainly not one to want to change the LDO for one circumstance.

Ms. Shearer: We do not have a deviation for roofing materials. This might address Mr. Pateidl's concern about the timing of this. I think this really goes to vesting rights, which under Kansas statute, Chapter 12: 7-64. Different states do this different ways. I'll read from Kansas Code. "For all purposes other than single-family developments, the right to

use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun and substantial amounts of work have been completed under a validly issued permit.” The way we typically view these things is that your rights vest under the LDO when you pull the permit and begin substantial work on your project. I think because the application was made before the ordinance was changed is really not what matters. What would matter is if the application was made after such time the ordinance was changed. Now that we’re hearing the case and the ordinance has been changed to reflect that this building material has been removed from the list, we need to work with the current list we have in the LDO, which unfortunately does not work with this material. Ms. Neff-Brain, you can let me know if you disagree.

Chair Rohlf: Mr. Coleman, although you indicated a mistake was made on the previous two roofs, it really wouldn’t be true because those were approved materials.

Mr. Coleman: No, the mistake was that the building permit should never have been issued for the roofs. They should have been directed to come before the Planning Commission and Governing Body to get approval for the roof change since they were commercial. That’s the process they are now going through.

Chair Rohlf: It was a procedural mistake.

Comm. Williams: At the time those roofs were redone, that was an approved material.

Mr. Coleman: At that time, it was an approved material.

Comm. Neff-Brain: You were talking about a plan. Was that part of a plan approved back then?

Mr. Coleman: When the project was built in the 1980’s, the roofs had wood shake shingles and not asphalt.

Comm. Williams: Probably as required by Leawood code at the time.

Mr. Coleman: I don’t know; you could probably get fire-rated wood roofs that might comply, but the point is that it should have come before the Planning Commission and City Council for approval. That was the error.

Chair Rohlf: Does anyone else have a comment? We heard from a couple of the commissioners who are not in support of this plan for aesthetic, procedural or legal reasons.

Comm. Rezac: I just have one comment. It seems to me that if the LDO is in place, that’s the guideline we should follow. There are a number of projects that could always come into this situation in which we could make an exception. The LDO is typically changed to make things better, and so at some point, you have to decide if you’re going to move in that direction. I see this situation as unfortunate timing.

Chair Rohlf: Does anyone else have anything to say? I think we might be ready for a motion.

A motion to deny Case 31-09 – STATE LINE EXECUTIVE OFFICE PARK – Request for approval of a revised final development plan for 8010 and 8014 – was made by Roberson; seconded by Neff-Brain. Motion to deny approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Rezac, Williams and Elkins.

MEETING ADJOURNED.