

City of Leawood  
Planning Commission Minutes  
November 24, 2009  
Meeting - 6:00 p.m.  
Dinner Session – No Discussion of Items – 5:30 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive  
Leawood, KS 66211  
913.339.6700 x 160

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

**APPROVAL OF THE AGENDA:**

A motion to approve the agenda as amended – continuing Case 77-09 – ROOT DENTAL SIGN PLAN - was made by Williams, seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

**APPROVAL OF MINUTES:** Approval of the minutes from the October 27, 2009 meeting.

A motion to approve the October 27, 2009 Planning Commission meeting minutes was made by Jackson, seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

**CONTINUED TO JANUARY 26, 2010 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 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.**

CASE 64-09 – CLEARWIRE WIRELESS BROADBAND – Request For approval of a Special Use Permit for a wireless communication facility for Clearwire Wireless Broadband, located at 13401 Nall Avenue. **PUBLIC HEARING.**

CASE 73-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-5.3 – RP1 DISTRICT FRONT ENTRIES – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

**CONSENT AGENDA:**

CASE 62-09 – PARK PLACE – CAFÉ ROUX – Request for approval of a Final Site Plan, located at 11554 Ash Street.

CASE 76-09 – CITIZENS BANK SIGN PLAN – Request for approval of a Final Sign Plan, located at the southwest corner of College Boulevard and Roe Avenue.

CASE 79-09 – LEAWOOD MIDDLE SCHOOL – MECHANICAL SCREENING – Request for approval of a Revised Final Site Plan, located at 2410 West 123<sup>rd</sup> Street.

CASE 88-09 – BELLA BAMBINO BOUTIQUE – Request for approval of a Revised Final Sign Plan, located at 11553 Ash Street.

CASE 89-09 – PARK PLACE – BELLA B'S BOUTIQUE – Request for approval of a Revised Final Sign Plan, located at 11555 Ash Street.

CASE 90-09 – PARK PLACE – HATHAWAY SHOE – Request for approval of a Revised Final Sign Plan, located at 11531 Ash Street.

CASE 91-09 – TOWN CENTER PLAZA – LUCY – Request for approval of a Final Sign Plan, located at 500 W. 119<sup>th</sup> Street.

CASE 92-09 – NALL VALLEY SHOPPES – TAKE FIVE COFFEE + BAR – Request for approval of a Final Sign Plan, located at the northeast corner of Nall Avenue and 151<sup>st</sup> Street.

**A motion to approve the Consent Agenda was made by Williams; seconded by Jackson. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

**NEW BUSINESS:**

**ADOPTION OF PLANNING COMMISSION MISSION STATEMENT:**

Chair Rohlf: I'd ask everyone to take a quick look at the revised statement on the dais.

**Staff Presentation:**

Director of Community Development Richard Coleman made the following presentation:

Mr. Coleman: The Planning Commission was asked to develop a Mission Statement for the Board. We met a couple times at a workshop. Taking those suggestions, I put it together and put it out for everyone to evaluate. Mr. Elkins made some very good suggestions. You have a revised version with these changes. If anyone has any questions about the changes or about the Mission Statement, we're open for discussion.

Chair Rohlf: These appear to be more grammatical changes.

Mr. Coleman: That is correct. For example, "qualitative" was changed to "quality." We also changed, "being fair and impartial" to "conducting fair and impartial hearings." Those are two of the main changes.

Chair Rohlf: If no one has any questions or comments, I would ask that we adopt the statement.

**A motion to adopt the Planning Commission Mission Statement as presented was made by Williams; seconded by Elkins. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

CASE 75-09 – PARK PLACE – SFP SIGN PLAN – Request for approval of a Final Sign Plan, located at 11550 Ash Street.

**Staff Presentation:**

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 75-09 – Request for Final Sign Plan approval for SFP, an office tenant in Building A of Park Place. The applicant is requesting one wall sign to identify the tenant, located at the top of the north elevation of Building A. It will read, “SFP” and will include a logo. The sign will be composed of aluminum backlit reverse channel letters and will be halo-illuminated with white LED lighting. The sign dimensions comply with the standards of the approved sign criteria for Park Place office tenants and with the requirements of the LDO. The applicant is also requesting to revise the approved Park Place sign criteria for office tenants concurrent with this sign plan request. The revisions would permit, at the discretion of the landlord and the city, the use of logos, which are currently prohibited. Taglines will continue to be prohibited. Staff recommends approval of the revisions to the sign criteria as proposed and to the sign plan, subject to stipulations in the Staff Report.

Chair Rohlf: Does anyone have questions for staff?

Comm. Neff-Brain: If this is approved, the same sign criteria used throughout the city would be used at Park Place?

Mr. Rexwinkle: Other places do not permit logos. The other office tenants in Park Place would we allowed to include a logo with this change. It is the only change to the Park Place sign criteria.

Comm. Neff-Brain: I wondered how many other areas in the city do not allow logos.

Mr. Klein: Not many prohibit logos; most allow them with developer and city approval.

Comm. Elkins: Does the Leawood Development Ordinance address the use of logos on signs?

Mr. Coleman: No.

Comm. Elkins: So what is being proposed here would be in compliance and would not vary from the ordinance; we are just changing the rules for Park Place.

Mr. Coleman: Correct.

Comm. Neff-Brain: So the apple across the street is not considered a logo, but just as total sign size?

Mr. Klein: We did look at that as a logo. As each of the developments come in, we apply their sign criteria for that particular development. That was in One Nineteen, and so we applied their sign criteria. I believe that apple actually exceeded some of what was allowed, so there was some modification to that as well.

Comm. Neff-Brain: But those logos are only addressed in their own individual plans and not in the LDO.

Mr. Klein: Correct.

Comm. Rezac: Based on some discussions we’ve had in the past about signage and logos and whether the logo is included in the calculation for the size of allowable signage, does this address that?

Mr. Klein: It isn’t addressed specifically in here; however, city policy has always included the logo in the signage dimensions.

Comm. Pateidl: This whole matter came in discussion in 2008, and it was decided that logos would not be approved in the criteria for signage in Park Place, not only by this Commission, but also by City Council.

Can you enlighten me as to why that decision was made in 2008 and what benefit changing that decision provides to the City of Leawood at this point?

Mr. Klein: When the sign criteria originally went through the Planning Commission and City Council, it was proposed by the developers. At that time, they decided not to allow logos. They have rethought that position. All of the signage comes before the Planning Commission and City Council to allow a chance for review. I know there is some issue with logos, particularly if they are located on the same line as the rest of the sign. We have preferred to keep the logo roughly the same size as the text in the lines.

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

**Applicant Presentation:**

Vanessa Harbrucker with Acme Sign, 1313 Vernon, North Kansas City, MO, 64116, appeared before the Planning Commission and made the following comments:

Ms. Harbrucker: Hopefully you have a photo of the logo in your packet; this shows the logo included in their name. That's why we want to include it. We went to Park Place and asked for them to include it, and they were willing to make the change in their sign criteria. Hopefully you approve that as well so we can get this on the building so people will see it and know who they are

Chair Rohlf: Could you tell me who they are.

Unknown Speaker: It stands for Specialty Fertilizer Products. We make additives to fertilizer products.

Comm. Jackson: Mr. Alpert, there are already signs out there. Are you anticipating they'll come back and ask for new signs with a logo?

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

Mr. Alpert: IBM has one, yes.

Comm. Jackson: Are you anticipating they'll come back and ask for new signs with their logos now?

Mr. Alpert: Actually, the IBM sign is their logo. The question came up as to why we changed. When we first developed the sign criteria, we were not anticipating national companies as tenants, quite honestly. We really were thinking our tenants would be mostly local professional and entrepreneurial companies. What we found was we were actually leasing to international companies like IBM, Erickson Electronics and SFP. SFP is listed #28 in the fastest-growing companies in the country, so it is a pretty impressive group. Logos are an interesting thing. A lot of times, the font style that a company uses for its name, like IBM, for example, is its logo. These kinds of things really express identity, and we wanted to give our tenants the opportunity to express that identity. That's why we made the change. In the case of the signs already up, those will not change.

Comm. Neff-Brain: In our packet, there are photos of the buildings and View 1-7 where it says, "Signage." Can you explain that?

Mr. Rexwinkle: That was the sign criteria for office tenants that were approved in 2008. Those photos were included as examples, I believe. It does show you signage area on the north elevation that is consistent with the location of the SFP sign.

Mr. Alpert: I believe when we got signage approved for the building, we were allowed up to five signs on the building. That was a representation of the possible locations.

Comm. Neff-Brain: They really don't speak to this particular application.

Mr. Alpert: No.

Chair Rohlf: Does anyone else have questions for Mr. Alpert or the applicant? Thank you. That leads us up to discussion.

Comm. Jackson: Madame Chair, just because of the comments on the leaf symbol at the end of the "P" being part of the name and not the logo, I'd like to make it clear that we are considering it as a logo for purposes of the ordinance and the Planning Commission to avoid future issues.

**A motion to recommend approval of CASE 75-09 – PARK PLACE – SFP SIGN PLAN – Request for approval of amendment to Park Place general sign criteria for office tenants to include a logo – was made by Williams; seconded by Heiman. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

CASE 84-09 – PARK PLACE ZTE USA – Request for approval of a Final Sign Plan, located at 11551 Ash Street.

**Staff Presentation:**

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Madame Chair and members of the Planning Commission, this is Case 84-09 – Park Place ZTE USA. The applicant is Ron Gutierrez with Commercial Sign Design and is requesting approval for a Final Sign Plan for office signage within Park Place. One sign is proposed on Building B that reads "ZTE" with 22" letters. Staff recommends approval of this application with stipulations stated in the Staff Report and would be happy to answer any questions.

Comm. Neff-Brain: Are those two symbols considered part of the name, or is that a logo?

Mrs. DeBoer: It would be considered a logo.

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

**Applicant Presentation:**

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

Mr. Alpert: This is another international company. ZTE stands for Zhong Xing Telecommunication Equipment Company, Limited. They are a Chinese company who does business with Sprint. The logo is actually Zhong Xing in Chinese, and that's how they represent themselves everywhere.

Chair Rohlf: Mr. Alpert, where are these two companies relative to each other?

Mr. Alpert: ZTE is the Becker Building, which is the two-story building on the east side of the street. SFP is in the Aubrey Building on the west side of the street.

Chair Rohlf: Does anyone have questions for the applicant? Thank you. That leads us to discussion and a motion.

**A motion to recommend approval of CASE 84-09 – PARK PLACE – ZTE USA – Request for approval of a Final Sign Plan, located at 11551 Ash Street with the three staff stipulations – was made by Jackson; seconded by Rezac. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

CASE 66-09 – LEAWOOD SOUTH COUNTRY CLUB – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless communications facility for Clearwire Wireless Broadband, located at 12838 Pembroke Circle. **PUBLIC HEARING.**

**Staff Presentation:**

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 66-09 – Request for a Special Use Permit to allow the installation of wireless communication antennas on an existing tower located at 12838 Pembroke Circle in Leawood South Country Club. This is one of the two Monopine towers at the Country Club. The applicant proposes to replace three existing Sprint antennas, one on each sector of the tower, with three new Clearwire antennas. Each is proposed to be 1'x4'. An additional microwave antenna measuring 14"x14" is also proposed. The associated equipment cabinet will be located in an existing building and will be completely enclosed. The applicant has conducted an Interact Meeting that was held on November 17<sup>th</sup>, and the summary was included in the Staff Report. Staff has no objections to the proposed request and recommends approval, subject to the stipulations provided in the Staff Report.

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

**Applicant Presentation:**

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

Mr. Holland: Thank you for considering our application tonight. I'd like to remind you of our discussion last month regarding Clearwire and their build-out of a new WiMAX network in the City of Leawood. If you'll recall, the last application was the Macy's rooftop. Tonight, we have three applications before you, similar to the Macy's rooftop application in that we are building out our network in the City of Leawood and most of the Kansas City area by utilizing existing structures, thereby not adding new tower elements. We went over some of what they wanted to do with building the network here in Leawood. Mr. Elkins had a desire to see a build-out of the system in Leawood. Partly, it's the applications we are presenting tonight, as well as some others; but I thought it would be beneficial to hand out a packet to help you understand how we are covering that. (*Hands out packets to the Commissioners and places map on the overhead.*) In these documents is a list of sites to be built within the limits of Leawood proper. The larger map is a propagation map identifying the boundaries of Leawood in a heavy black line, showing all of the seven sites on the list and how we propose to provide the coverage to the areas north of I-435. North of I-435, there are not many sites we can utilize within Leawood's city limits. Instead of introducing a new tower, we have chosen to utilize rooftops and existing structures that straddle the boarder of Leawood and Kansas City, Missouri on the east side and Overland Park and Prairie Village on the west side. These structures include a Monopole at 103<sup>rd</sup> St. and Wornall, a cell tower at Rockhurst High School, a rooftop structure at 84<sup>th</sup> and State Line, a fire station at 91<sup>st</sup> and Roe, and a light pole in Ranchmart South. The areas south of 435 include the Macy's rooftop site, which you approved last month. Tonight, we have the Leawood South Monopine, Bank of Blue Valley's rooftop at 135<sup>th</sup> and Mission Road and the CBIZ rooftop. We also have the second Monopine at Leawood South Country Club. We're using the rooftop of an office building at Hallbrook. Finally, the Monopole at

135<sup>th</sup> and Nall is our last proposed site. This hopefully gives you an idea of the overall network coverage and how we're intending to provide the service to those areas. (*Clearwire chart is placed on the overhead.*)

This first application is the Monopine at the fifth tee box at Leawood South Country Club. Staff Reports indicate our plan. We're not adding height; we're simply putting antennas on the same platform that Sprint utilizes. These will be hidden. We held a neighborhood meeting and sent out nearly 700 notices on that. We had one person show up, and he indicated it was fine. We've reviewed the Staff Report and agree with the stipulations. We stand to take any questions if you have any.

Chair Rohlf: Mr. Holland, a couple months ago, you came back with a management proposal for these towers.

Mr. Holland: In this particular case, the Monopine at the fifth tee box was sold by Sprint to a company called TowerCo. Per your regulations, SUPs aren't transferrable; each company owning a structure would have its own SUP. Earlier, TowerCo was here before you to have an SUP to own and operate that structure. At the same time, Sprint was no longer going to own the Monopine, but co-located the antennas on the structure. Per your ordinance, that also required Sprint to obtain an SUP. Your ordinance requires any additional antennas added to a structure require an SUP. This would be Clearwire coming in now, seeking permission to have their antennas added to the structure.

Chair Rohlf: So nothing has changed with respect to TowerCo.

Mr. Holland: That's correct; they are still the property owner.

Chair Rohlf: Now there will be two providers: Sprint and Clearwire.

Mr. Holland: Yes.

Chair Rohlf: Is Sprint proposing any changes to what is currently there?

Mr. Holland: Sprint has sectors or faces. They utilize two antennas per sector to provide the service. In this case, they're taking off both of their antennas and putting a dual-pole back on to replace the two. The other antenna will be the Clearwire panel antenna. There are no new antennas, only a new configuration. In addition, there is a small microwave antenna attached to the top of one sector.

Chair Rohlf: I would guess we're going to have an application from Sprint modifying that antenna.

Mr. Coleman: The three antennas being replaced are allowed under the current LDO.

Chair Rohlf: At the height of this Monopine, there can only be these two providers, or is it two?

Mr. Holland: The pole itself is really 70'. As far as the number of users, structurally, it could accommodate at least one, if not two more, users, depending on where they would like to have their service. There is a separation requirement for companies, which is typically 10' between antennas. You'll recall we had a lengthy discussion with original approval of the Monopine. The original proposal was 90', and we ended up with 70', affecting the potential for co-location on it. Given advances in technology, we might end up with someone on there. There was a company interested in it that decided not to utilize it because it was lowered, but that doesn't mean someone else might not want it. Any new co-locators would have to come before you for another SUP.

Comm. Elkins: Let me begin by thanking you for the overview; it's very helpful and exactly what I was hoping to get. Essentially Clearwire and Sprint are going to be located on this same Monopine, correct?

Mr. Holland: Yes.

Comm. Elkins: Sprint provides both voice and data communications through their service, right?

Mr. Holland: Yes.

Comm. Elkins: Can you describe the kind of service Clearwire is providing through this network we're building out throughout Leawood and the greater metropolitan area?

Mr. Holland: I will tell you what I understand. Essentially it's a high-speed wireless Internet system. Right now it's data. My understanding is the plan is for voice-over-Internet protocol capabilities to enable phone service. Today, it is a data system. Think of your coffee shops that have Wi-Fi. Instead of having to do that where it's a small footprint that you can utilize, WiMAX is much larger in geographic area. It's a blanket, if you will, over the city.

Comm. Elkins: So it will be a service that is competitive with the data side of Sprint service, right?

Mr. Holland: Yes, they would compete with them and other broadband wireless providers. You would have the option of using the Clearwire service for those purposes.

Comm. Elkins: Is it sold directly to the end user on a subscription basis?

Doug Machamer, Network Engineer with Clearwire, 12635 W. 121<sup>st</sup> St., Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Machamer: I'm the local microwave designer for the market, as well as Nashville and Memphis. I worked previously for Sprint. The service we provide is not only sold by Clearwire. Our agreement with Sprint and other owners, such as Time Warner, Comcast, Google and Intel, gives them the ability to re-sell our services in exchange for up-front financing. Sprint is currently advertising 4G service, which would be the default if available and secondary if only the 3G service is available. Sprint's coverage is pretty comparable to Verizon's; in some places, it's better. You can think of a map like that to see where the 3G service covers. We're building WiMAX one market at a time. It will be comparable to AT&T's 3G service as far as up-front area. We'll be building that out over the next three or four years, and it will continue to grow after that. If you were here when Sprint started to build their service, it started out very much the same way. We're building the major metro areas up-front, and then we'll go from there.

Comm. Elkins: I may need a little help with the signal propagation maps we have here. Is red good or bad?

Mr. Machamer: Red is good. That represents different levels of coverage in buildings. Red would be coverage inside a building. It has a continuation of value associated with it and what the signal strength is in buildings or on the street.

Comm. Elkins: If I looked at these same charts we had from Sprint, is that comparing apples and oranges in terms of signal propagation maps in comparison to these?

Mr. Machamer: It's a little bit apples to oranges. The Sprint system has a significantly higher system gain, so it has much wider propagation. Their CDMA system requires a soft handoff, so you have interlocking coverage between cells. WiMAX system doesn't have that soft handoff capability. It has what would be

termed a hard handoff. If you're traveling between cells, you'll essentially hand it off. You wouldn't lose a session, but you might lose a small amount of connectivity, depending on how good the coverage is. Sprint's system is built such that you don't have that problem. You have a signal coming from up to three different cell towers simultaneously, and it selects the best one. The WiMAX system isn't designed with that capability. This is international standard system, so it's not like we're coming up with something different. We're just the biggest carrier in the United States to carry it.

Comm. Jackson: On the bank building, when you look at the coverage from the other towers surrounding it, that particular antenna doesn't seem to be adding anything to the red in the map.

Mr. Machamer: That's because it's pretty short. The bank building is only a two-story building, but it's the only structure we have to try to fill in anything in that area. The next closest tower gets significantly greater coverage because the antennas are significantly higher.

Comm. Jackson: So is the bank building just adding a little extra precautionary coverage on the handoff, or is it actually adding coverage?

Mr. Machamer: It does add coverage. It fills in a coverage gap between the Monopole and the next tower. To try to do as good a job to get some coverage out there, it's the best we can do without having a taller tower, which would lead to issues with building a new tower. As a corporate policy, we try to avoid the cost and planning associated with new tower builds. If we do build a tower, it's something the tower-building company already has on the books and is just waiting for a customer to request the build.

Chair Rohlf: Are you familiar with the plan enough to tell me the cross streets? Mainly, I'd like to know this area at the southern end.

Mr. Machamer: The bottom two sets of towers in Leawood is 135<sup>th</sup> Street. We go down to about 159<sup>th</sup>. There are no towers in Leawood in that area; it's a lot of farmland. There are a few transmission towers, but we try to avoid those if we can. They're difficult to mount on, and maintenance is difficult. The other thing we try to do is build out our systems in areas with residential properties that count toward our population count in a particular market. Our marketing people like to have those "fixed" customers. Even though this is a mobile broadband system, we try to keep in mind where the business customers are working and going.

Chair Rohlf: This is the Monopine here in the center (*refers to map*).

Mr. Machamer: Yes, it's 5739. 5766 is the Bank of Blue Valley. 5482 is the tower that we'll talk about next month.

Comm. Rezac: I have a question about the facilities you're mounting these to. Do you have some sort of contractual relationship with the facility itself?

Mr. Machamer: Yes, we have to have a lease with the tower owner. We also have a sub-lease with Sprint since we're co-locating on their level. Sprint is partial owner of Clearwire, and we have a relationship in which we will work out co-locating when we can. Sprint has a very complicated co-location process that we abide by, but it's difficult to get in there; so we try to rent our own level when we can. This particular Monopine requires us to be too low to have our own level. We don't like to be above 200', as it tends to interfere between the two systems at that level. All of our towers nationwide are from about 200' down to about 50'-60'. In some markets, the towers are extremely small. In Denver, San Diego and a couple other places, they are below tree height. This makes it difficult for us to deploy and get a microwave inter-connect system in to get traffic back to the switch.

Comm. Rezac: If the owner of the facility should move or have a breach in contract and the new owner doesn't allow for this type of system on their building, what happens to that equipment?

Mr. Holland: Our leases are good for a period of time, and they run to successors. Any change in ownership to a building would not allow them to ask us to remove the equipment until the end of the term of the lease. All of these facilities are being built per contract. We won't have any of those issues.

Comm. Rezac: If there is some case in the future of abandonment, does the equipment sit there?

Mr. Holland: In this particular case in other cities, they have rules that require you to place performance bonds to cover a situation such as abandonment. Since it's a lease, it's typically like any other lease in that when the lease term is up, you have to get out or renegotiate. If someone goes away and doesn't do that, a bond is placed with the City of Leawood that would cover that.

Chair Rohlf: Anything else for the applicant? Thank you. 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 Williams; seconded by Elkins. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

Chair Rohlf: That takes us up to discussion before we vote.

Comm. Elkins: I'd like to support this application and the others I see here. I think this is all positive for the City of Leawood in that it's achieving something we talk about regularly when we talk about the cell towers in our city, which is to encourage the providers to co-locate where they can. In this particular case, they're making use of existing monopoles, and in some of the other cases, they're using rooftops that already exist. I think that's very positive, and it's positive that we're on the cutting edge of technology and seeing new technology that sounds like it may be superior to currently available technology. This benefits the citizens we're giving voice to, so I'll be supporting this application.

Chair Rohlf: Does anyone else have comments? If not, I would ask for a motion.

**A motion to recommend approval of CASE 66-09 – LEAWOOD SOUTH COUNTRY CLUB – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless communications facility for Clearwire Wireless Broadband, located at 12838 Pembroke Circle – was made by Elkins; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

**CASE 80-09 – CBIZ – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special User Permit for a wireless communication facility for Clearwire Wireless Broadband, located at 11400 Tomahawk Creek Parkway. PUBLIC HEARING**

### **Staff Presentation:**

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Madame Chair and members of the Planning Commission, this is Case 80-09 – CBIZ Clearwire Wireless Broadband. It's a request for a Special Use Permit for a wireless communications facility, proposed on the top of the CBIZ building along Tomahawk Creek Parkway. They are proposing four antennas and an equipment cabinet. This cabinet is proposed to be 54" tall and located on the northwest

side of the roof. It will be concealed from view by an existing screen wall that is 10' high. The four antennas will be 42" tall and will be completely screened by a stealth screen wall that is approximately 5' high and will be painted to match the existing wall. Staff recommends approval of this SUP request for a period of five years with the stipulations in the Staff Report and would be happy to answer any questions.

Chair Rohlf: The screen wall is not there yet.

Mrs. DeBoer: There is a screen wall that is 10' tall, but the stealth screen wall will screen the antennas that are proposed.

Chair Rohlf: Any other questions for staff?

Comm. Pateidl: Under Stipulation No. 3, it says, "All antennas and associated equipment shall be completely screened from public view." I would like to know from what perspective this public view is.

Mr. Klein: This is an issue we've tried to deal with before. At one point we tried to establish public view as the view of a 6' tall person at the property line. However, the ordinance does not get that specific. We'd like to see something that is screened from cars driving by, etc. We realize if you're looking down from a hill, it may not be possible to screen it without completely enclosing it, which is not the intent. It is to try to get it from all reasonable points of view.

Comm. Pateidl: Being somewhat sensitive to the residents of The Woods, I did drive by to see what the public view would be. Quite candidly, on the northwest quadrant of the building, there is a very visible antenna there right now. Not only is it visible from the residents of The Woods, but also from the corner of the parking lot. I understand that has nothing to do with what Clearwire is proposing here, but I would like to get some clarification as to what public view is or at least assurance that the Planning Department will be very diligent in this restriction.

Mr. Klein: We've tried to address this issue with rooftop utility units as well. At the time the Sprint antennas were placed on CBIZ, we had stipulations that looked at it from the property line. We've had developers make the argument that even if the rooftop facility is 10' high, they can screen it with a 7' wall because that will block the view from the ground. However, in order to be certain that it actually does screen it, we're requiring those screens to be as tall as what they're proposing to screen. This doesn't address the antenna you're talking about. They made the argument that the edge of the building would screen them, but they don't screen from a distance.

Comm. Pateidl: I'd like to be clear. I do think that Clearwire is proposing some good screening methods. I am impressed with the integrity of the individuals making these presentations. I am concerned from the perspective of the residents of The Woods that they're not drinking their morning coffee, looking at a field of antennas. Accordingly, I'm asking that good planning be done in conjunction with the Planning Department to ensure there is adequate screening for those residents.

Mr. Klein: Sure, and I think Stipulation No. 3 speaks to that. Your comments on the record are very clear: that if those antennas are visible, we should have the ability to go back and correct the problem.

Comm. Neff-Brain: On this picture that you have included, if you were looking at the top of the building, how much higher would the antenna be than that? (*Refers to photograph*).

**Applicant Presentation:**

Curtis Holland, 6201 College Boulevard, Suite 500, Overland Park, Kansas, appeared before the Planning Commission and made the following presentation:

Mr. Holland: With respect to Ms. Neff-Brain's and Mr. Pateidl's questions, I've placed the structure on the overhead (*photograph is placed on the overhead*). That is a 10' high existing screening wall to cover the rooftop units on the building. The intent here is to place the antennas and the ground equipment behind the screening wall. These walls are made of a material that is bad for radio waves, so we're going to replace the panels you see here with an RF permeable material and have it match in color and texture to what is there today. You have perspectives from driving around, and you can't see this wall when you're driving around. Here's a picture of the building if you're looking from the ground (*places a photograph on the overhead*). You really don't see that screening wall. You can see it from the western portion of the building (*places another photograph on the overhead*). That's the parapet that sticks up above the roofline that screens the rooftop units. The point is you really don't see that unless you're on the roof. The antennas will be mounted behind these walls, well below the top of the wall so you never see them. We don't have a problem with the stipulation in this case or the next case because we have the advantage of these tall parapet walls which were there to screen the rooftop units. I do understand in other cases, it will be a problem. Your ordinance says that if we ever want to add antennas, we have to bring it back for another SUP. In this particular case, we are showing essentially four antennas, including three panel antennas and a small microwave. In the future, we have the desire to have the ability to add at least three more microwave antennas. They'd be screened and placed behind the screening wall in the same manner we're attaching these antennas. So we'd like to ability to add three more microwave antennas in the future. I wouldn't think that would be an issue for you. I realize the Site Plan didn't reference a future antenna, and I talked to staff about that. If you're agreeable to it, we can modify or amend the Site Plan to note future antennas to be screened in the same manner as these will be screened. With that, we'll stand for additional questions.

Chair Rohlf: Mr. Holland, as much as I would love to consider your proposed revision to the plan this evening, I would guess that Legal would not let us do that.

Ms. Shearer: I would not suggest you would allow that because we do not know who the owners of those antennas will be or the dimensions. There are a lot of details that would be forthcoming in an application to approve those additional antennas.

Mr. Holland: I want to clarify that these would be Clearwire antennas, and they would be the same dimensions as these antennas. It isn't our intent to have three and then have Verizon come in and use them. They would be for this company.

Chair Rohlf: Could you have just proposed that as part of this application?

Mr. Holland: It didn't come up until last week when they asked how many antennas were there. I know your code requires coming back for another SUP when adding antennas. I just felt like if we knew in advance we would have a couple more and they would be screened like this, I didn't see the harm in at least asking for the approval of up to seven.

Comm. Neff-Brain: Wouldn't you have to notice the Public Hearing differently?

Mr. Holland: Not really because we didn't identify exact numbers. We sent out almost 500 notices on this case because there is a condominium complex next to us, and we had one person show up. I'm not trying to cause a problem; I just thought it might be able to be done.

Comm. Jackson: You said there were microwave antennas versus other antennas. I know federal statutes prohibit us from considering certain types of waves that are emitted from these things as to whether they do cause any sort of personal damage or injuries. Does that include the microwave antennas?

Mr. Holland: Yes, any and all these antennas, and you are correct that the law prohibits you from considering health effects. As long as the RF emissions are in compliance with the SEC standards, we're fine. Part of your code requires that we submit a certification that they are and will be, and we did.

Chair Rohlf: Any other questions for either staff or the applicant? Thank you. I guess I would ask if these additional antennas you're contemplating would have additional screening, or would they be behind this screening?

Mr. Holland: They would be screened identically to what we are proposing tonight, which means behind the screening wall and not visible.

Ms. Shearer: Would they be behind this screening wall or a new screening wall?

Mr. Holland: We're not adding walls, so it's the walls here.

Ms. Shearer: I also would agree with Ms. Neff-Brain's comment about the notice. I have not seen a copy of the notice that you sent out for this Public Hearing, but I could see where that would make a difference.

Comm. Neff-Brain: Even though you don't have to notice up the number of antennas, someone who might be interested in coming to the meeting would have had the ability to come to City Hall and look at the plans and see what was there; and what is being asked for tonight is not what was there.

Mr. Holland: I understand. Frankly, I doubt if anybody showed up at City Hall and looked at the plans, but I understand what you're saying.

Chair Rohlf: We'll go forward with this particular application, and if you decide you want the additional antennas, you can notice that as well. 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 Williams; seconded by Elkins. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

Chair Rohlf: If there is no other discussion, I would ask for a motion.

**A motion to recommend approval of CASE 80-09 – CBIZ – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless communication facility for Clearwire Wireless Broadband, located at 11440 Tomahawk Creek Parkway with the four staff stipulations – was made by Elkins; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.**

CASE 81-09 – BANK OF BLUE VALLEY – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless communication facility for Clearwire Wireless Broadband, located at 13401 Mission Road. **PUBLIC HEARING.**

**Staff Presentation:**

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Madame Chair and members of the Planning Commission, this is Case 81-09 – Bank of Blue Valley – Clearwire Wireless Broadband. It is a request for a Special User Permit for a wireless communications facility, which is proposed to be on the rooftop of Bank of Blue Valley within Market Square Center Development. They propose four antennas and an equipment cabinet. This cabinet is proposed to be 50" tall and located in the center north side of the roof. It will be concealed from view by an existing screen wall that is 18' in height. The four antennas will be 42" tall and are located on the south side of the roof. These will be completely screened from view by the existing screen wall. Staff recommends approval of this Special Use Permit request for a period of five years with the stipulations stated in the Staff Report and would be happy to answer any questions.

Chair Rohlf: Does anyone have questions for staff?

Comm. Neff-Brain: What is that screen wall made of?

Mr. Klein: That has a little history. When Bank of Blue Valley originally put the screen wall up, it was a perforated metal screen. Planning had a problem with that, much to Commissioner Pateidl's point, in the fact that people could see through the screen. We worked with them, and they agreed to stucco the screen. The applicant is proposing to match the screen with a different material that will allow the signal to go through.

Comm. Neff-Brain: So it's going to look like stucco?

Mr. Klein: It's going to match exactly in style and color.

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

**Applicant Presentation:**

Curtis Holland, 6201 College Boulevard, Suite 500, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Holland: Much like the other application we just discussed, this is the screening wall today (*refers to photograph*). We are placing the antennas behind the wall. The equipment behind the wall will be completely screened. We will change out the panels to an RF permeable material that will match the color and texture of the stucco. You're not going to see the antennas or the equipment behind the wall. We don't have a problem with the stipulation as it is worded regarding visibility and are in agreement with the other stipulations as well and would stand for any questions if you have them at this time.

Chair Rohlf: Any questions for the applicant?

Comm. Pateidl: Mr. Holland, do you have any desire to add antennas to this location as well?

Mr. Holland: We do.

Comm. Pateidl: Would it be appropriate to grant an extension for us to vote on this so that you can modify this application and include what you want to have up there?

Mr. Holland: I think we'd prefer to move along and come back at this point. I appreciate your comments.

Comm. Pateidl: If you're in a time-sensitive position, I can understand that. The other side of the coin is that bringing those kinds of modifications before the Commission on the night of a hearing puts us in a very difficult position, and I would encourage you to try to avoid that in the future.

Mr. Holland: That's a lesson learned. I appreciate that.

Chair Rohlf: How many sites do you have left?

Mr. Holland: We'll have three more. Two are really easy, and one is not. Your code is a little difficult.

Comm. Elkins: This goes to the point that Commissioner Pateidl made. I'm trying to visualize Bank of Blue Valley in my own mind. That's located at 135<sup>th</sup> Street and Mission, correct?

Mr. Holland: Yes.

Comm. Elkins: This is all fine that you say the screening will be invisible from street level. I'm wondering about if we have plans for any multi-story buildings where people will be looking down upon the antennas. It's probably not practical from a technical standpoint to screen them from above, but I'm going back to the days when I worked downtown. I was looking at all kinds of condensers and all kinds of other stuff that wasn't so great to look at. Are you aware of any of the plans for development around there?

Mr. Holland: I'm not.

Comm. Elkins: It's a little bit of a random thought, and I apologize.

Mr. Holland: No, I understand what you're saying. I don't know how we'll ever, as an industry, be able to completely screen those kinds of things.

Comm. Elkins: Of course, that's perspective – if you're surrounded by those tall buildings, it has that adverse impact on your signal propagation anyway. You may have worse problems to deal with. Thank you.

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 Williams; seconded by Elkins. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

Chair Rohlf: That takes us to discussion on this case, hopefully leading to a motion.

A motion to recommend approval of CASE 81-09 – BANK OF BLUE VALLEY – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless communication facility for Clearwire Wireless Broadband, located at 13401 Mission Road with the four staff stipulations – was made by Elkins; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

CASE 85-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-10.3 – MATERIALS AND COLORS (Roof Materials in Single-Family Districts) – Request for 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 85-09 – Leawood Development Ordinance Amendment to Section 16-2-10.3 – Materials and Colors. Specifically, it deals with roofing materials for single-family residential. The purpose is twofold. During a previous amendment in 2003, a section was inadvertently removed. This will add that section back in. That section had to do with stone-coated steel being allowed over wood shake shingles as long as there was a fire barrier between the steel and the shingles. The second purpose of the amendment speaks to SBS-modified shingles, which goes to impact rating for hail. A Class 4 impact rating is the highest rating, and at the time this went through, only one material qualified for this class. As technology has changed, we are seeing a number of materials that meet the Class 4 rating. We would like the section to allow roofing material with a Class 4 impact rating and to remove the SBS requirement as long as it meets the standards that were previously approved. Staff is recommending approval of this application and will be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Rezac: It's almost like it's saying, "With the exception of stone-coated steel being placed over an existing wood roof . . ." so it sounds like that's fine – to place stone-coated steel over an existing wood shingle roof.

Mr. Klein: Correct.

Comm. Rezac: Then it goes on to say, "Stone-coated roofs must be placed on solid decking." I think of this as plywood or something similar.

Mr. Klein: The intent is that all roofing material is required to be placed over solid wood decking. We required that for everybody until this amendment was made because of a product called VersaShield that they would lay down between the wood shakes and that. The intent was to make an exception for the stone-coated steel.

Comm. Rezac: It sounds like we're allowing both, but the use of the word "must" sounds like the only thing allowed is the solid decking.

Mr. Klein: The first part was trying to get to the point at which everything would be required to go on solid wood decking unless you had this non-asphaltic fiberglass underlayment. Stone-coated steel would have to be placed on wood decking unless you had that underlayment in place.

Comm. Rezac: So the emphasis is really on the fiberglass underneath. It was just confusing the way it is written.

Mr. Klein: This is the way it was originally adopted back in 2003, which is why we have the language that way.

Chair Rohlf: Any questions for staff? This case requires a Public Hearing?

**Public Hearing:**

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

Chair Rohlf: That takes us up to any other discussion or a motion.

A motion to recommend approval of CASE 85-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-10.3 – MATERIALS AND COLORS (Roof Materials in Single-Family Districts) – Request for approval of an amendment to the Leawood Development Ordinance – was made by Jackson; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Jackson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

*MEETING ADJOURNED.*