

**City of Leawood
Planning Commission Minutes**

October 26, 2010

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

SWEARING IN OF NEW COMMISSIONER:

Ms. Shearer: Mr. Ramsey, raise your right hand and repeat after me: "I, William Ramsey do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the state of Kansas and faithfully discharge the duties of a member of the Planning Commission for the city of Leawood, Kansas, so help me, God."

Mr. Ramsey: "I, William Ramsey do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the state of Kansas and faithfully discharge the duties of a member of the Planning Commission for the city of Leawood, Kansas, so help me, God."

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

APPROVAL OF THE AGENDA:

A motion to approve the agenda was made by Neff-Brain; seconded by Jackson. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

APPROVAL OF MINUTES:

Approval of the minutes from the September 28, 2010 Planning Commission meeting.

A motion to approve the minutes of the September 28, 2010 Planning Commission meeting was made by Elkins; seconded by Heiman. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

CONTINUED TO NOVEMBER 23, 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 56-06 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – Section 16-2-5.3 (R-1 District) – HEIGHT – Request for approval of an amendment to the Leawood Development Ordinance pertaining to the maximum permitted height of residential structures in the R-1 District. **PUBLIC HEARING**

CASE 57-06 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-5.3 (RP-1 District) – HEIGHT – Request for approval of an amendment to the Leawood Development Ordinance pertaining to the maximum permitted height of residential structures in the RP-1 District. **PUBLIC HEARING**

CASE 104-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-7 (Table of Uses) – KENNELS – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 105-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-6.13 (Permanent Sign Regulations – BP District) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 99-10 – BI-STATE CENTENNIAL PARK – SALES INJECTOR DEALER SERVICES – FINAL SIGN PLAN – Request for approval of a Final Sign Plan, located at 1920 W. 143rd St.

CONSENT AGENDA:

CASE 95-10 – TOWN CENTER PLAZA – SUNGLASS HUT – FINAL SIGN PLAN – Request for approval of a Final Sign Plan, located at 500 W. 119th Street.

CASE 96-10 – MARKET SQUARE CENTER – JANE’S CANINES – FINAL SIGN PLAN – Request for approval of a Final Sign Plan, located at 3633 W. 133rd Street.

CASE 97-10 – VILLAGE OF SEVILLE – LE SOLEIL TANNING – FINAL SIGN PLAN – Request for approval of a Final Sign Plan, located at the northwest corner of 133rd Street and State Line Road.

CASE 100-10 – MISSION FARMS – AVENUES – FINAL SIGN PLAN – Request for approval of a Final Sign Plan, located at the northeast corner of Mission Road and I-435.

CASE 101-10 – PARK PLACE – PICASSO EXOTIC AQUATICS – FINAL SITE PLAN – Request for approval of a Final Site Plan for a tenant finish, located at 11560 Ash Street.

CASE 102-10 – CORNERSTONE – SEVENTY SEVEN SOUTH – FINAL SIGN PLAN – Request for approval of a Final Sign Plan, located at 5041 W. 135th Street.

A motion to recommend approval of the Consent Agenda was made by Jackson; seconded by Elkins. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

NEW BUSINESS:

CASE 47-10 – PARK PLACE – MECHANICAL EQUIPMENT SCREEN – FINAL SITE PLAN – Request for approval of a Final Site Plan, located at the northeast corner of 117th Street and Nall Avenue.

Staff Presentation:

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Mr. Chair and members of the Planning Commission, this is Case 82-09 – Park Place Mechanical Equipment Screen. The applicant is Jeff Alpert with Park Place Village, LLC and is requesting approval of a Final Site Plan to provide screening for the existing rooftop mechanical equipment on Buildings B and I and for the ground-mounted utilities along Nall Avenue. The applicant is proposing to screen the existing utility boxes along Nall Avenue with additional landscaping, including several tall grasses, trees and shrubs that will complement the existing landscaping along Nall Avenue. The rooftop mechanical equipment on Buildings B and I are proposed to be screened from public view with a pre-finished louvered mechanical screen that is white in color. Staff recommends approval of this application with the stipulations stated in the Staff Report and would be happy to answer any questions.

Chairman Williams: Stipulation No. 4 relates to the grasses used to screen the utilities. Staff had talked about keeping those year-round as opposed to cutting them down. Do we know if that is proper maintenance for that type of product?

Mr. Coleman: The grasses normally are left through the winter, are cut in February or March and then grow back in the growing season.

Chairman Williams: We are advocating they be cut sometime and then allowed to grow back?

Mr. Coleman: Yes, we are encouraging healthy maintenance of them.

Applicant Presentation:

Jeffery Alpert, Park Place Developers, 11551 Ash Street, Leawood, Kansas, appeared before the Planning Commission and made the following comments:

Mr. Alpert: This particular case involves screening in two areas, including the roof of the north section of retail within the hotel building. It is a two-story building area, and we have two large rooftop units. Dave Anderson with AMAI Architects designed those and can describe what we used on them. Then we have Chris Dring with Young & Dring Architects, who designed the landscape screening along Nall Avenue, here to explain his design concept.

Dave Anderson, AMAI Architecture, 1510 Walnut, Kansas City, MO, 64108, appeared before the Planning Commission and made the following comments:

Mr. Anderson: The material we are using to screen the large RTU (rooftop units) is a pre-finished louvered panel that will enclose the entire RTU on Building B with an opening to allow for maintenance. On Building I, we are screening it on two sides from the adjacent property lines from the ground. It's also a pre-finished louvered panel that will be supported with members going to the roof. There will be a small gap between the roof structure and the bottom of the panel. The drawings are clear in terms of what we're doing.

Chairman Williams: The rooftop units you're screening on two sides have one side facing the hotel, which is out of view from the street. The other side is north?

Mr. Anderson: The north side is on the parking garage side. It is the west side along Nall that we're screening and then also the south side.

Mr. Alpert: Any other questions about that before we go to the landscaping?

Chris Dring, principal at Young and Dring Landscape Architecture, 8440 Marty, Overland Park, Kansas, 66212, appeared before the Planning Commission and made the following comments:

Mr. Dring: We've worked with staff to come up with a solution for the issue of this plethora of utility boxes and gauges along the wall here. (*Refers to display board*) What you see currently in black and white is existing landscape. Portions of this were planned to be installed once the utilities had gone in. We have now gone in and augmented those with the second row of red maple, which will eventually surround the entire project. The primary screening plant we're using, which is represented by the dots, is an ornamental grass called Maiden Grass. It gets to be about 5'-6' tall and about 5' wide. We've tried to put them in literally everywhere we can where it doesn't pinch the sidewalk. We feel, between the screening of the grasses and the dappled shade from the maples, that it will start to dissipate the visual impact of those utilities along that edge.

Chairman Williams: So the two boxes at the north end have no screening because there is no space between them and the sidewalk?

Mr. Dring: It is very narrow here. Also, there are sight distance concerns.

Comm. Neff-Brain: What happens to these grasses in the winter? Do they die down or turn?

Mr. Dring: They are the same grasses planted behind City Hall. They turn brown, and our plan would leave them up. They would be cut down in the spring and then regenerate in 4-6 weeks. The grass is also very forgiving and hardy. If the power company should cut a piece down, it will grow right back up, unlike a woody shrub.

Comm. Elkins: I'm really happy to see that we're taking this step. I have had comments from three different members of the community expressing concern about the visual impact of those boxes behind the hotel along that side. From a process standpoint, is there someplace where we, staff or the developer failed in that we're getting this now? We're finding out that the boxes are too close to the sidewalk, which is requiring this particular type of screening. I'm not intending to be critical; I am only looking to improve the process.

Mr. Dring: We talked to the utility companies, and the locations they give us are very general. Unlike many things that are on-site that the civil or mechanical engineers would specify, wherever they put their boxes is where they put their boxes. Until they were really installed, we were not able to really understand the impact.

Mr. Alpert: Yes, there are many unique circumstances relating to this specific area, one of which was that originally we had two of the largest transformers designed to go in the garage and be totally hidden. KCP&L came to us in the 11th hour and said, "We couldn't set them there because we don't feel we would have sufficient access." They moved them up to Nall. We weren't prepared for that. Other utilities already in the ground limited the space where we could locate the transformers. Then the problem became further exacerbated by the fact that we originally wanted to put some type of a fence as a screening, but because of the proximity of the boxes to the sidewalk and the fact that some of those boxes had to have the access points face west, toward the sidewalk and street, it limited our ability to put anything in front of them. Then you get into the issue of where you can dig holes for posts and footings for walls. After many discussions with the Planning Staff, we all agreed that the best approach would be to augment the existing landscape. Even then, it was a challenge for some of the reasons Chris stated and the fact that we couldn't just put things in certain places because KCP&L requires access to their boxes. If we could have planned it exactly, you never would have seen any of them in the first place. It is just a fact of construction that they have to go somewhere.

Comm. Elkins: You have no idea how well that explanation resonates with me. This is another example of the electrical boxes preventing us from doing the planning we want to do.

Mr. Alpert: It is frustrating, but we need power.

Chairman Williams: Any other questions for the applicant? If there are no other questions, I would ask for a motion.

A motion to recommend approval of CASE 82-09 – PARK PLACE – MECHANICAL EQUIPMENT SCREEN – Request for approval of a Final Site Plan, located at the northeast corner of 117th Street and Nall Avenue, including five staff stipulations – was made by Elkins; seconded by Heiman.

Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

CASE 92-10 – PARK PLACE – PHASE 2 – Request for approval of a Revised Final Site Plan for site furnishings and signage, located at the northeast corner of 117th Street and Nall Ave.

Staff Presentation:

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Mr. Chair and members of the Planning Commission, this is Case 92-10 – Park Place – Phase 2 – Site Furnishings and Signage. The applicant is Jeff Alpert with Park Place Village, LLC and is requesting approval of a Revised Final Site Plan for site furnishings and sign guidelines for Phase 2, which includes Building G and Parking Garage B. The applicant has provided site furnishings to be used throughout Phase 2, including planters, benches, a clock, a fountain, lighted bollards and trash receptacles. The applicant has also provided signage to be used throughout Phase 2, which includes signage for Parking Garage B and building identification signage for Building G. A total of four wall signs and two blade signs are proposed. Staff recommends approval of this application with the stipulations stated in the Staff Report and would be happy to answer any questions.

Applicant Presentation:

Jeffery Alpert, Park Place Developers, 11551 Ash Street, Leawood, Kansas, appeared before the Planning Commission and made the following comments:

Mr. Alpert: When we originally brought our second phase in for approval, we indicated we would come back for site furnishings and signage at a later date. There are so many details to address when doing buildings like these, and we couldn't pull those details together initially. We are actually going through Certificate of Occupancy review on Building G right now. The tenant who will be occupying the entire top floor is doing tenant improvements with the intent to move in somewhere around the first or second week of December. The parking garage, we're hoping, will be placed in service within the next two weeks. We're getting very close to having these buildings ready to go, and we now want to address these issues. In terms of site furnishings, I think you can see that we have provided a variety. Some things are a continuation of the types of things we did in Phase 1, including benches, planters and a fountain. We have a clock we will locate in the Via in this building. These are all from a variety of sources. I am happy to answer any questions about those items, and then we can move on to signage.

Comm. Neff-Brain: Where is the fountain located? It looks like a birdbath. Does the water shoot down into the stone?

Mr. Alpert: It just bubbles and re-circulates. *(Refers to display boards and points out various item locations)* This is a Site Plan that shows where all these different elements are located.

Comm. Ramsey: Does all of this furniture match Phase 1 furniture?

Mr. Alpert: No, we purposely found new items. We always wanted to make the look eclectic and not have everything match. We have found different things that we haven't sourced before. In some cases, similar manufacturers but different styles give it an eclectic look. That is really the design theme we've used from the beginning.

Comm. Ramsey: Does that mean the signage will be different?

Mr. Alpert: No, I'm talking about furnishings.

Comm. Ramsey: It's not going to be that different, is it?

Mr. Alpert: No, it all has a similar theme, but each item doesn't match exactly.

Chairman Williams: Any other questions? Mr. Alpert, would you like to address the signage?

Mr. Alpert: On the signage, we just have a few exterior signs on the buildings. We've named this building the Gibson Building, and it will have a sign on the North Elevation over the Via to match similar building identification signs we have for our Aubrey and Becker buildings. In terms of garage signage, these signs actually do match. We use the same theme in terms of identifying the entrances to our garages. We have the international sign for parking on three entrances to the parking garage and a couple of additional ID signs. We also have a sign indicating pedestrian access from the street.

Comm. Elkins: I have a general question about Parking Garage B. Are you pleased with the way that is ending up?

Mr. Alpert: Yes.

Comm. Elkins: Thank you.

Chairman Williams: Comments or discussion?

Comm. Elkins: I have a brief comment about the development. I think Park Place is an absolutely wonderful addition to our community and to what has effectively become downtown Leawood. I would express a difference with Mr. Alpert with respect to Garage B. I know we had a great deal of discussion when we reviewed Phase 2 in the first instance. I hoped it would come out better, but I remain disappointed. I think we all have missed the mark with the garage in terms of the grand plan for Park Place. It does effectively feel as if Park Place has turned its back on the rest of the area: in particular, Town Center. I remain disappointed about that. It leaves me feeling something like, but not nearly as bad, as the Sprint Campus where the parking garage blocks the main development from the rest of the community. Having said that, I think the furnishings proposed are spot-on, and congratulations on a very good addition to our community.

Chairman Williams: Any other comments or discussion?

A motion to recommend approval of CASE 92-10 – PARK PLACE – PHASE 2 – Request for approval of a Revised Final Site Plan for Site Furnishings and Signage, located at the northeast corner of 117th Street and Nall Ave, with all of staff stipulations – was made by Jackson; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

CASE 98-10 – MANORS AT MISSION FARMS – Request for approval of a Final Plan and Final Plat, located at the southeast corner of 105th Street and Mission Road

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Mr. Chairman and members of the Planning Commission, this is Case 98-10 – Manors at Mission Farms – Request for approval of a Final Plan and Final Plat, located at the southeast corner of 105th Street and Mission Road. This development was originally approved in November of 2006 with the townhomes for

the area. At that time, it consisted of twenty units, more or less located on the north side of what became the mixed-use development for Mission Farms. To the north of that is a single-family portion of Mission Farms. A private street was approved that connected 105th Street at the northeast corner and meandered through the development, connecting with the parking lot on the north side of the commercial portion. The applicant is requesting to reduce the number of units from twenty to fourteen. Some of the other changes would be to realign the aforementioned street, which would no longer connect to the parking lot on the north side, but would turn to the north and connect with 105th Street approximately 120' east of Mission Road. The applicant is also proposing an additional pedestrian connection on the southwest corner of the development, from the sidewalk on the north side of the private street down to the area in the location of what was originally to be the street. There are two columns shown as entry features for the road, and they would stay and become entry features for the pedestrian path. The applicant went to the Board of Zoning Appeals in September of 2010 to obtain variances with regard to a residential setback required at 75' from MXD to Residential. Another difference between this plan and the currently approved plan is the approved plan had setbacks of approximately 10' from where the units were down to the private street, which didn't leave a lot of room for cars to back out and clear the garage. On the north side, they are now proposing a clearance of 15' setback from the private drive to the location of the units themselves. At the southeast corner of the development, they actually provide 25'. The development has two units currently: a spec house on the north side of the private street, adjacent to the pool and clubhouse that serve the single-family residential to the north and one privately owned unit located at the southeast corner of the project that is currently occupied. Staff would like to recommend one additional stipulation. The applicant is proposing Montier Lifetile, which was approved in 2006; however, staff has concerns that it is not color through, which we do recommend. Staff is recommending approval of this application with the stipulations stated and will be happy to answer any questions.

Chairman Williams: Where would you like to see that additional stipulation?

Mr. Klein: I would like it right after the stipulations for modifications to the design guidelines.

Comm. Neff-Brain: I wasn't here for the original approval, but in Stipulation 21, it talks about private funding for the streets, walls and storm water system improvements. Does that mean the storm water system is a private system and not a public system?

Mr. Ley: The storm system through the development is public because it is conveying water from the north.

Comm. Neff-Brain: Yes, so why is the developer and subsequent owners responsible for the storm water system improvement, repair and maintenance?

Mr. Klein: This is a standard stipulation that we have on most of the projects, especially when there are common areas to ensure a development association is set up to take care of the common amenities. We can modify it to strike the storm water issue.

Comm. Neff-Brain: I ask because if it is a public system, the city will maintain it.

Mr. Ley: The storm sewer pipes are public, but the pond is private and is maintained by the entire Mission Farms development.

Comm. Neff-Brain: I would like to modify the language to speak to the pond. If the regular system is maintained publically, I don't think it should be in the stipulations.

Comm. Ramsey: Isn't the pond considered part of the storm water system?

Mr. Ley: Yes.

Comm. Neff-Brain: Yes, you would just have to say, "pond" in lieu of the whole storm water system.

Comm. Ramsey: I think we need to be specific here that the pond is taking the surge.

Mr. Ley: The pond is actually part of the original plat of Mission Farms and not part of this plat.

Comm. Jackson: Mark, do you have the original plat or plan of this area? And on that plan, where were the variances granted?

Mr. Klein: (*Refers to overhead plan*) The single-family residences are located to the north. The zoning changes at the center line of the street are required, in the MXD district, to be 75' from where the zoning changes. The section with the pool and clubhouse was also zoned R-1, thus requiring a 75' setback. Another variance was to the rear yard setback where the units back up so closely to the separate lot that is part of the residential subdivision to the north. They also received interior setbacks between the units themselves. On this particular plan, the homes were all single family with one triplex, which was never constructed. The homes that were constructed were a spec house and one other existing unit.

Comm. Jackson: How did the square footage of the individual units change? What was the original square footage?

Mr. Klein: The development is limited as far as square footage. It is zoned MXD and is considered the residential portion. This limits them to a .31 F.A.R., which they meet. The reason it is .31 and not .25 is when this development came through originally, they owned some property on the south side of I-435. The developer dedicated that land to Leawood, and it became part of the park. He was able to transfer the development rights from that property to this development. Within the MXD district, the LDO gives a 25% discount for residential square footage.

Comm. Jackson: What was the individual average square footage of the original planned homes?

Mr. Klein: I don't know that.

Comm. Jackson: Did these new ones get bigger?

Mr. Klein: They did get a little larger as far as the footprints, but the number of units is reduced. They are proposing single story as opposed to two stories.

Mr. Coleman: They average around 3,500 square feet on the ground floor, and then they would have basements.

Comm. Jackson: The original homes were two stories with a smaller footprint?

Mr. Coleman: The square footage was in the same vicinity, and there were more of them. The original plan had variances, also; they just had to re-plat this to change the number of units. They basically received the same variances they had before. They changed the roadway system. We are supportive of this plan, and we feel it is much improved over the original plan. They're doing this because they think it meets the market much better than the previous design and plan. They could build the same square footage as the original, but they have indicated the footprint of the square footage, which is about 3,500 sq. ft. on average, plus a basement.

Comm. Pateidl: I have a question about Stipulation No. 21 and specifically the function and purpose of the pond on these subdivisions. As I understand it, in other circumstances, these ponds are considered to be an amenity in the Final Plan. They've been approved, and there is a contract between the homes association and the city to maintain those amenities. Is that correct?

Mr. Klein: Yes.

Comm. Pateidl: If we make changes with respect to the responsibilities as was briefly discussed for No. 21, is that somewhat a slippery slope as it relates to existing subdivisions in which the homes associations are responsible for the maintenance?

Mr. Klein: This is a standard stipulation. The idea is that it will catch everything. It is to make sure that some association will collect money to maintain the common areas, facilities and amenities. That stipulation originally included the entire Mission Farms development. Originally, Mission Farms was zoned SC-CR, and then a residential portion to the north is what we are talking about here. The city encouraged the applicant to come back and actually rezone to MXD to create a mixed-use development. A lot of the numbers, including F.A.R. and square footage, allowed actually do tie back to the development overall.

Comm. Pateidl: I'm not sure all of that addressed my primary question. Maybe I can simplify the question. Clearly, there is a part of the storm water drainage system that is public, and that apparently is the buried pipe. Clearly, there is a part that is private, which is the pond on the property. Currently, who is responsible for the maintenance of that pond?

Mr. Klein: Currently, it is on the commercial portion of the plat, so the commercial portion would be responsible.

Comm. Pateidl: And the city has a contract with an association representing the commercial occupants to perform that work?

Mr. Klein: No, as far as I know, we require that the property owner maintain it. I don't believe we have a formal contract.

Comm. Pateidl: As far as I know, when we have amenities on common grounds, a requirement in our ordinance calls out that an association or a party responsible for the maintenance of the amenities enter into a contract with the city to perform that maintenance. Is that not correct?

Mr. Klein: There is a requirement through the stipulations that they form a homes association or development. I am not aware of a requirement stating they have a contract with the city.

Mr. Ley: I am not aware of that.

Comm. Neff-Brain: There is no contract with the city.

Comm. Pateidl: I've seen it.

Comm. Neff-Brain: I've never seen one.

Comm. Pateidl: That's fine; this is a personal issue I'll address later. My only concern is that clearly, if there is a responsibility of the homes associations to maintain these ponds, we avoid inconsistency that will create precedents that will come back to this commission time and time again. I'm somewhat concerned about the clarity of Stipulation No. 21 as it relates to this project.

Chairman Williams: In Stipulation No. 21, are you requiring that a separate association be established for these fourteen homeowners?

Mr. Klein: I believe there would be a separate homes association. This piece got sold to somebody else. As with a lot of developments with commercial, various portions will be sold off under separate ownership.

Comm. Neff-Brain: Frankie, wouldn't the homes association have been formed for the entire area and these kinds of stipulations placed into the declarations and then run with the land? That's normally how it's done.

Ms. Shearer: I have not seen the declarations that went with either portion of this development, but Mark is correct: this portion of the development is now owned by the bank, and I understood that the intention was to form a separate homes association.

Mr. Klein: Stipulation No. 6 states, "The common areas within the Manors portion of Mission Farms shall be maintained under a separate set of declarations, and the mixed-use portion of the development shall take over maintenance of these common areas if they are not satisfactorily maintained, as determined by the city of Leawood." That was discussed when this was originally approved because they were concerned that if there was not enough money to maintain the common areas, the commercial portion would step in.

Comm. Neff-Brain: If it's under new ownership now, how can you look back at the mixed use? Unless it was in the homes association declarations of the mixed-use area, you can't now impose that restriction on them after the fact. Maybe it was in the declarations of the mixed-use portion.

Mr. Klein: I would have to go back and pull the mixed-use portion to look at that.

Comm. Neff-Brain: That would be an important fact. We can't require a different homes association to take over maintenance if this one doesn't.

Mr. Coleman: The Manors was part of the original development. If it is sold, the original developer would have to release them of their obligation to the overall development. Doug Wellner signed the plat on this project, so the obligation would transfer with the land unless they were released by the original developer. They would still be responsible for the maintenance.

Comm. Neff-Brain: I thought there were going to be two different homes associations, and there weren't declarations for this second portion yet.

Mr. Klein: That was a stipulation that was approved with the original. A homes association was being formed at the time.

Stuart Stein, 3749 West 105th Terrace, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Stein: My wife and I are in the only owner-occupied unit in this area. I'm also a real estate attorney. There are three separate associations, including a homes association for the estate section, of which there are 18 of 22 homes built. That association owns and operates the clubhouse and the swimming pool. There is an association that owns the commercial developments with the condos, the restaurants and the retail shops. That organization owns and controls the pond. Ours was the last of the three subdivisions, and we were originally platted to be twenty villa homes; we will become fourteen. There were obviously some problems with the development, caused in part by the economy and in part by some development errors. It is our feeling that this subsequent developer is taking care of those problems and has improved

our subdivision dramatically with the proposed changes. Our home has 5,600 square feet, 4,200 of which are furnished. We are on the largest lot on the original plat. As you amend this and go from twenty to fourteen, everybody's lot becomes bigger, and it will give the other homes the opportunity to be a size similar to our home. There seems to be a perception that larger homes are more attractive in this area. The biggest problem that we've had, I believe, with our area is that one of our two entrances goes through the retail segment. A lot of people have found that offensive. One of the changes being made here is both of our entries will come off 105th Street, which is the estate section. We will be aligned with the homes, as opposed to with the condos and the retail. Relocating the road will allow them to properly landscape the berm between the two so the parking lot will be less visible. Regarding the lake, we have no responsibilities under the current written documents for the maintenance of the lake. There are safeguards and remedies if the other people don't do it. We simply take care of landscaping and those types of issues. We have had no issues with that, even with our small size.

Comm. Neff-Brain: I assume that if the pond is not maintained, the city has the right to do it and assess back against the commercial.

Mr. Stein: Yes, it was a huge issue with me and my wife as to whether or not we would have a responsibility to maintain the pond. The drainage goes from the estate section with their ponds, through the commercial section and into Indian Creek. There are issues and expenses. Fortunately, they've done a very good job of maintaining that pond. We have no financial responsibilities.

Applicant Presentation:

Andy Gabbert, Schlegel and Associates, 14920 W. 107th Street, Lenexa, KS, 66215, appeared before the Planning Commission and made the following comments:

Mr. Schlegel: I am the landscape architect. I don't have much more to add. Sounds like you have asked a lot of good questions. We do agree to the stipulations as set forth in the Staff Report. If you have any other questions, we would be happy to answer them.

Craig Eymann, 12120 Catalina, Leawood, KS, 66209, appeared before the Planning Commission and made the following comments:

Mr. Eymann: We have met with the single-family residents there and have also worked with Stuart, who is the lone resident in The Manors as well. I think everybody is very much in favor of the changes we are making to the project.

Chairman Williams: Any questions for the applicant? Mark, I'd like to ask about Stipulation No. 21. On the storm water system improvements listed here, could you clarify what would be on this property that they would have to potentially maintain?

Mr. Klein: Let me clarify something quickly with legal.

Mr. Ley: There is one small section of storm sewer that is private. It's collecting water with about 200' of pipe and two inlets that collect private water.

Chairman Williams: That storm sewer pipe is considered private and would be subject to their maintenance.

Mr. Ley: Yes, and then there are two trunk lines running through the development that are public.

Chairman Williams: So they are only responsible for what you are defining to be the private portion.

Mr. Ley: That's right.

Mr. Klein: That is what I was discussing. We would like to modify it to say, "The owner-applicant must establish a funding mechanism to maintain and repair or replace all privately owned common areas and common-area improvements." We would leave the rest the same.

Chairman Williams: I think that helps. Any other questions? Any comments?

A motion to recommend approval of CASE 98-10 – MANORS AT MISSION FARMS – Request for approval of a Final Plan and Final Plat, located at the southeast corner of 105th Street and Mission Road with the 30 staff stipulations and a revision to Paragraph 6 in Stipulation No. 12, indicating the roof tile approved with this development shall be color through and a revision to Paragraph 21 to be modified to read, "The owner-applicant must establish a funding mechanism to maintain and repair or replace all privately owned common areas and common-area improvements" was made by Jackson; seconded by Elkins. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

CASE 103-10 – MOLLE OFF-SITE PARKING FOR NEW VEHICLES – Request for a Special Use Permit for an existing parking lot for new vehicles, located at 104th Street and State Line Road.

Staff Presentation:

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Mr. Chair and members of the Planning Commission, this is Case 103-10 – Molle off-site parking for new vehicles. This project is located at State Line and 104th Street. The request is for a renewal of a Special Use Permit to allow continued use of the existing parking lot for off-site parking of vehicles, limited to one year. Staff recommends approval of this application with the stipulations stated and would be happy to answer any questions.

Comm. Neff-Brain: We approved the same thing a year ago, correct?

Mrs. DeBoer: That is correct.

Applicant Presentation:

Larry Wynn, 6201 College Boulevard, appeared before the Planning Commission on behalf of the applicant and made the following comments:

Mr. Wynn: I don't have a lot to add. This is probably the oldest new business that you'll consider tonight. This is the fourth time we've been through this scenario. We have suggested that it would be less cumbersome to not have to do this every year, but some folks at City Council have a vision that, at some point in time, this area of the city might be fully redeveloped; therefore, they do not want the permit going for a longer period of time. Anna Molle can answer any operational questions if you have those.

Chairman Williams: Any comments or discussion?

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Elkins. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

A motion to recommend approval CASE 103-10 – MOLLE OFF-SITE PARKING FOR NEW VEHICLES – Request for a Special Use Permit for an existing parking lot for new vehicles, located at 104th Street and State Line Road, including all seven stipulations – was made by Elkins; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

CASE 72-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – Section 16-2-5.3 – RP-1 – DISTRICT FRONT ENTRIES – 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: Mr. Chairman and members of the Planning Commission, this is Case 72-09, which is actually similar to 73-09. One is in the R-1 District (Planned Single-Family, low-density residential that requires a minimum of 15,000 square feet per lot), and the other is in the RP-1 District (Planned single-family district at 12,000 square feet per lot). The reason these applications are before you tonight is there are many houses out there with no covered entry; however, they have not been allowed to construct a front entry that would provide shelter from the elements. This would allow them to encroach into that setback by no more than 6' with a maximum of 75 sq. ft. for the entry itself. This would apply both to your standard setback of 35' in the front yard in both districts and the average setback in which you cannot build any closer than the average of the homes on either side of you. If the zoning called for a 35' setback but all the homes were 50', you could not build closer than the 50'. This would allow extending into that. I would like to make a change in the ordinance. Currently, in Item B within "Front Setback," instead of "35 foot setback," it should state "any setback by no more than 6 feet." Staff is recommending approval of this application.

Comm. Jackson: If I'm building a house, I can build it to the 35' line and then say, "Oh, I'd really like an entryway and extend into it." I can't build the house with the entryway and extend it into that area.

Mr. Klein: That's right. This merely allows an exception through the Board of Zoning appeals to build the entryway. The criteria for an exception are easier to meet than a variance.

Comm. Jackson: You don't think we're setting it up for people who want to encroach on that in the first place?

Mr. Klein: No, because in a), it states, "The existing structure was legally constructed, and the structure meets the 35' front setback." I understand what you're saying about doing it in parts, but that was not the intent.

Comm. Jackson: Where are these homes that were built without an entryway?

Mr. Klein: Most of them are located up north. The city has been seeing a number of requests for them, and we'd like to address the concerns. It did seem reasonable; however, the limitations were to ensure that it didn't go too far.

Chairman Williams: This change would allow the structures to be fully enclosed?

Mr. Klein: Yes, and they would have to match the materials of the buildings themselves.

Comm. Elkins: If it is going to be fine for us to modify an existing structure to encroach into that setback, why shouldn't it be fine to encroach into that setback with the appropriate appellate process from the very beginning?

Mr. Klein: If we did that, we would essentially be changing the front setback. The intent of the ordinance was to allow a remedy to those homes that didn't include some sort of architectural feature, as opposed to allowing the structures to encroach 6' from the start.

Comm. Elkins: I understand that is the intent, but why the difference?

Mr. Klein: This is meant to deal with pre-existing, non-conforming structures as opposed to new construction. I understand what you're saying about allowing new construction the 6' encroachment.

Comm. Elkins: My point is not a matter of rights, but rather to create the same opportunity for exception in new construction as we have with existing buildings. I agree with discretionary exception; I just don't see a need to differentiate between new and existing construction.

Chairman Williams: Would it be appropriate to add something to only include existing structures built prior to the establishment of this ordinance? Anything that comes after this would comply with the setbacks.

Comm. Neff-Brain: Are we concerned that we have a setback for a reason, and why are we allowing any building in it?

Comm. Jackson: Especially in a new building. I can understand a lot of those homes in northern Leawood that are already back 50'. Our intent today is to keep them at least 35'. If they go 6' in front of that, it is still a very large yard.

Comm. Neff-Brain: What if they're just 30' now?

Comm. Jackson: If they're on the line and you allow them to encroach, I think we're getting on a slippery slope.

Comm. Elkins: It just seems like a pretty arbitrary line to draw. It either ought to apply across the board or be restrictive across the board.

Mr. Coleman: There seems to be a lot of discussion on this item. Maybe it would be better to continue it, and we could bring it up in the work session on November 9th.

Chairman Williams: I think that would be a good idea, and you could show a graphic representation of what you're talking about. I personally have been affected by this on a couple of projects, in which the client only wants a stoop, but they can't do that.

Mr. Coleman: That was the intent of this ordinance, but I can see there is a lot of discussion. We should get it more accurate.

A motion to continue CASES 72-09 and 73-09 to the November 23, 2010 Planning Commission meeting – was made by Jackson; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Elkins, Heiman and Ramsey.

MEETING ADJOURNED.