

City of Leawood
Planning Commission Minutes
May 24, 2011
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: Roberson, Jackson, Rohlf, Williams, Elkins, and Ramsey. Absent: Pateidl, Neff-Brain and Heiman

APPROVAL OF THE AGENDA:

A motion to approve the agenda was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

APPROVAL OF MINUTES:

Approval of the April 12, 2011 Planning Commission work session minutes and the April 26, 2011 Planning Commission meeting minutes.

A motion to approve the April 12, 2011 Planning Commission work session minutes was made by Williams; seconded by Jackson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

A motion to approve the April 26, 2011 Planning Commission meeting minutes was made by Williams; seconded by Jackson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CONTINUED TO JUNE 28, 2011:

CASE 73-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1.3 RECYCLE BINS – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 114-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-6 – PERMANENT SIGN REGULATIONS – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 43-11 – NALL VALLEY SHOPS – SOUTHERN BLU' STYLE BOUTIQUE – Request for approval of a Final Sign Plan, located at the northeast corner of Nall Avenue and 151st Street.

CASE 45-11 – IRONHORSE CENTER – SIMMONS FIRST NATIONAL BANK – Request for approval of a Final Sign Plan, located south of 151st Street and east of Nall Avenue.

CASE 46-11 – PARK PLACE – TALLULAHBELLE'S – Request for approval of a Final Plan for a Tenant Finish, located at 5255 W. 116th Place.

CASE 47-11 – PARK PLACE – CARMEN'S CAFE EXPANSION – Request for approval of a Final Plan, located at 11526 Ash Street.

CASE 54-11 – ONE NINETEEN – FLIRT BOUTIQUE – Request for approval of a Final Sign Plan, located at the southeast corner of 119th Street and Roe Avenue.

CASE 55-11 – TOWN CENTER PLAZA – AMORE CHOCOLATE PIZZA COMPANY – Request for approval of a Final Sign Plan, located at 4821 W. 117th Street.

A motion to recommend approval of the Consent Agenda was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

NEW BUSINESS:

CASE 48-11 – PARK PLACE – 801 CHOPHOUSE – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Ave.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 48-11 – Request for approval of a Final Plan for a Tenant Finish for 801 Chophouse, which is located on the ground level of Building I of Park Place. The entrance will be just north of the entrance of the Aloft hotel. The plans propose a new storefront for the tenant, which will consist primarily of clear glass windows, recessed cherry wood paneling and granite tile. The plans also show cast-stone cornice along the length of the top of the storefront, which was to have been installed when the hotel was constructed, but was not. The plans propose one wall sign and one blade sign, each of which complies with the design standards and the LDO. Outdoor dining is not being proposed with this application. Staff is recommending approval, subject to the stipulations provided in the Staff Report.

Applicant Presentation:

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

Mr. Alpert: I'm here to present a storefront for 801 Chophouse. With me this evening is the architect for this project, Jeff Hall, with H2B architecture. After giving some background, I'll let Jeff walk you through the details of the design. 801 Chophouse has a location in the Power and Light District and also in Des Moines and Omaha. They are a fine-dining, ala carte, steakhouse concept and are unique in that they serve nothing but prime beef. The food is very good. The space that is the subject of this application is part of a two-story retail space that was originally designed for another tenant who did not end up going into the space. It has 16,000 square feet on the ground level and 12,000 feet on the second level. The steakhouse will be part of that ground level directly north of the Aloft hotel lobby.

Jeff Hall, H2B Architects, 1800 Baltimore, Kansas City, MO, 64108, appeared before the Planning Commission, made use of the display boards, and made the following comments:

Mr. Hall: (*Referring to display boards*). The restaurant is approximately 7,600 square feet and will seat 230 customers. The entry door is adjacent to the Aloft hotel entry. We have a covered element and a granite base. They wanted to continue the granite throughout the whole façade, including the interior. The panels are six-inch metal studs from floor to the bottom of the existing hotel, and they meet all energy codes. We will also have see-through double glass glazing. The panel system is a recessed, highly decorative cherry

panel. We will have a decorative brass handle. The illumination of the storefront system and signage element will be a gooseneck fixture. We do have interior illumination, highlighting each seating area within the space, as well as illumination in the entry vestibule.

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

Comm. Roberson: When is the opening date scheduled?

Mr. Hall: Our goal is to open early November to beat the holiday crowd.

Chair Rohlf: What is the timing of Gordon Biersch?

Mr. Alpert: The last week of September.

Chair Rohlf: What type of restaurant is that?

Mr. Alpert: It is an upscale, casual microbrewery.

Chair Rohlf: If no one has any other questions for the applicant, I would ask for discussion and a motion.

A motion to recommend approval of CASE 48-11 – 801 CHOPHOUSE – Request for Final Plan for a Tenant Finish, located at the northeast corner of 117th St. and Roe Avenue, with all staff stipulations – was made by Jackson; seconded by Williams. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 49-11 – PARK PLACE – BUILDING I – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Ave.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 49-11 – Park Place – Building I – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Ave. Just north of 801 Chophouse will be a vacant space and then this space. Specific tenants are not identified with this application at this time, and signage will not be approved with this application. The applicant would like to finish the exterior storefront space with a permanent storefront and prepare portions of the building for future tenants. The plans propose three basic modifications, a ground-level entry at the northeast corner of Building I with a storefront and ground-level leased storage space on the west side of Building A, as well as second-level future office tenant space. The ground-level entry will consist of a covered-entry porch and lobby with stairs and an elevator that provide access to the second level. The exterior of the ground-level storefront is proposed to be constructed of architectural precast and will include new concrete steps outside the entrance, as well as new windows and doors on the north-facing elevation. The ground-level leased storage space will be accessed from the west side of the building in a separate entrance, facing Nall Avenue. The exterior of this space will remain unchanged. The plans propose for the addition of clear storefront windows along the south, west and north sides of the second level with frosted windows on the east elevation, which faces toward the hotel. All other exterior materials will remain as is. The plans show a cast-stone cornice along the length of the top of the storefront that matches that shown for 801 Chophouse and what was approved with the Aloft hotel. Staff is recommending approval, subject to the stipulations in the Staff Report, and we're happy to answer any questions.

Chair Rohlf: Do we have anything that shows what it looks like now?

Mr. Rexwinkle:: Right now, it is a temporary storefront just as the front of the Gordon Biersch building was before they finished.

Applicant Presentation:

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

Mr. Alpert: This is an additional part of the former two-story retail space I spoke about in the previous application. The original retailer requested a two-story space, so we created this second level that, unfortunately, became infinitely more difficult to find a use for, particularly in the economic environment. We have secured a tenant for the majority of the second floor: an ad agency who really likes the idea of the space. Our responsibility was to give them windows to bring natural light in, which was not originally required, and to create a first-floor lobby to give them a way to get into the second-floor space. That is really the basis for this application. Gary Schuberth, with Opus AE Group, is the architect for this project.

Gary Schuberth, Opus AE Group, 460 Nichols Road, Suite 300, Kansas City, MO, appeared before the Planning Commission and made the following comments:

Mr. Schuberth: (*Refers to overhead plans*) The space to the right of 801 Chophouse is still vacant. The new entrance we're talking about is on this 45-degree corner of the building. The plan shows the overall floor plan for the first floor. The left lease space shows 801 Chophouse, with a long narrow vacant space to the right, and then farther to the right of that are a covered porch and a recessed entry that leads to a hallway which leads to an elevator/stair going to the second floor. The inset to the upper left shows enlarged detail of the covered entry with steps that extend to the sloping sidewalk, which we are extending to provide ADA access into the covered porch to the double doors that lead to the hallway up to the second floor. To the rear of the space is a leased storage space. There is an exit corridor coming out of the retail tenant and the 801 Chophouse that leads out to the dock. This will be leased storage for many of the tenants in the building that would like to have additional storage. Once you come up the stairs, you come into a more traditional core to an office building with restrooms, janitor closet and a hallway that leads into doors that would access the main area. The overall elevation on the east shows the detail of the entrance, which is fairly simple. It is precast concrete to simulate a limestone-type look that would infill where the open retail space is now and would go all the way up to where the brick of the hotel exists currently. On the north side of the building, our entry would be in the lower left. We have new doors, accessing utility rooms, and an exit stair. The east elevation faces the hotel and is not visible from any street. We have frosted glass windows to let natural light into the space. The west elevation facing Nall also has windows added. There are no other changes to the exterior, which is a dark bronze mullion with clear glass. To the south, we have two windows on the upper area. The lower area is the existing dock. Any questions or comments?

Chair Rohlf: I don't think so, thank you. If no one has comments or questions, I would ask for a motion.

A motion to recommend approval of CASE 49-11 – PARK PLACE – BUILDING I – Request for approval of a Final Plan for a Tenant Finish – undesignated tenant – with two staff stipulations – was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 50-11 – PARK PLACE – BUILDING J REVISIONS – Request for approval of a Revised Final Plan, located north of 117th Street and east of Nall Ave.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 50-11 – Request for approval of a Revised Final Plan for Building J at Park Place, which is currently under construction. The purpose of the request is to obtain approval for a change in exterior building materials. The plans propose replacing a horizontal band of windows across the north, south and east elevations with opaque spandrel panels in order to conceal interior building components. The west elevation of the building, which is visible from the interior of Park Place and from 116th Place, will not be affected by this plan. Staff is supportive of the request and recommends approval, subject to the stipulations in the Staff Report.

Comm. Williams: Do we have any samples of this new material?

Mr. Rexwinkle: Yes, we'll pass it around.

Comm. Jackson: Was there a time when staff was not supportive of spandrel?

Mr. Klein: The issue came up a number of times, and my understanding was that the Planning Commission did not like spandrel glass being used in place of a real window that would let in light.

Comm. Jackson: This is more decorative, right?

Mr. Klein: Yes, it is to screen structural components.

Comm. Williams: We're talking metal panels.

Mr. Klein: Correct.

Applicant Presentation:

Jeffery Alpert, Park Place Village, LLC, 11552 Ash Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Alpert: This application request came about primarily due to some misunderstanding of materials. This is Building J, which is currently under construction for Generalli Insurance, who is occupying the second and third floors of the building. There were design elements of the façade that actually brought glass all the way down to floor level in certain places. When the tenant originally approved it, it was under the impression that it would be spandrel glass; but it was actually designed as full-view glass. They objected because they wanted a certain level of privacy up to what would be a 30-inch level. We looked at alternatives, and we came up with the metal panel after spandrel was rejected by staff.

Gary Schuberth, Opus AE Group, 460 Nichols Road, Suite 300, Kansas City, MO, appeared before the Planning Commission and made the following comments:

Mr. Schuberth: (*Refers to overhead plans*) This detail shows locations of the spandrel windows, which is basically desk height to the floor. This shows the detailed mullion pattern over the metal panel, so the background of the color is a silver-grey prefinished painted finish on the metal, and the mullions are a little darker silver-grey. The standard mullion color is black, so it is all part of the same monochromatic family of colors on the rest of the window system. It will give shadow-pattern detail to that spandrel pattern. This shows the areas where it will be installed and replaced. Where it was spandrel glass will now be an opaque metal panel with a contrasting, but complementary, color scheme.

Chair Rohlf: The panels down below are retail, if I remember.

Mr. Schuberth: Yes, those dark grey panels at the first floor are just because we don't have a retail tenant in there. It will be filled with whatever tenant goes in.

Chair Rohlf: Thank you. Unless anyone has further questions, I think we're ready for a motion.

A motion to recommend approval of CASE 50-11 – PARK PLACE – BUILDING J REVISIONS – Request for approval of a Revised Final Plan, located north of 117th Street and east of Nall – with three staff stipulations – was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 51-11 – CAMELOT COURT – OKLAHOMA JOE'S BBQ RESTAURANT – Request for approval of a Final Site Plan, located east of Roe Avenue and south of 117th Street.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 51-11 – Oklahoma Joe's BBQ Restaurant. This is a Revised Plan for a Tenant Finish for a building currently located at Camelot Court. It used to be TGI Fridays. It has Roe on the west side and then is bordered by two internal drives providing access into Camelot Court on the north and south. This application is proposing to modify the elevations, provide a patio at the southwest corner of the building, enlarge the enclosure on the north side, and make modifications to landscaping. Two signs are proposed with this application: one on the main entrance and one on the west elevation, facing Roe Avenue. The modifications to the elevation will face the tower element with a natural stone (*passes around material board*). They also propose to paint the stucco two colors: kilm beige and steady brown, which are also shown on the material board. They are proposing to provide wooden shutters over the windows, which will be down-lit by the light fixtures. Custom light fixtures will be approximately one foot wide by three feet high and will be metal with routed decorative flames. The patio at the southwest corner of the building will be approximately twenty feet by twenty feet and will be enclosed by a black custom steel fence with decorative panels, which mirror the design on the light fixtures. A wooden pergola will be over the patio, with string lights in an "X" pattern, similar to Los Cabos in Mission Farms. The applicant is also proposing to enlarge the enclosure currently located on the north side of the building to allow room for the three smokers, which will have smoke running back in through the building and up through the top of the building. Two signs are proposed: one over the main entrance on the south elevation and one over the west elevation, adjacent to Roe. Both signs meet the requirements of the LDO and the sign criteria for the development. Staff is recommending approval and will be happy to answer questions.

Applicant Presentation:

Henry Clover, Clover Architects, 10995 Lowell, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Clover: (*Refers to overhead plans*) Mark has done a thorough job, and I will only add that the green trees and markup trees you see are all the new trees. We have added five street trees that had been removed at one time or another. The island trees are the darker aqua color. The shade trees are the lavender trees. Additional landscaping will screen the transformer. We will also add River Birch to provide leafy shade to the patio. The pergola is the same that we used on the Ranchmart Garden Center, which we thought turned out nicely. I would like to correct one item. It says that the enclosure extends 37 feet; it actually only extends 22 feet. This is to cover the smokers, which are two feet shorter than the walls that are going to be there now. I confirmed the smoke will return inside the building. I don't know if I need to bring this up or not, but the criteria I have show a requirement for bronze letters, which we thought was not appropriate with all we want to do. I'm supposed to ask for approval for black. Other than that, we're good.

Chair Rohlf: You're good with all the stipulations?

Mr. Clover: Yes.

Chair Rohlf: Mark, do we have anything about the colors of the sign?

Mr. Klein: I didn't see that in there.

Chair Rohlf: Do we have a timeframe for the restaurant to open?

Mr. Clover: As soon as possible.

Chair Rohlf: Is this their third?

Mr. Clover: Yes, and believe it or not, this restaurant works out marvelously. The issue with the other locations is queuing, and this is designed to never cross the paths of anybody coming from the counter. It works beautifully.

Chair Rohlf: Do you believe parking will be sufficient?

Mr. Clover: If we have that issue, we're all happy. It's a big shopping center with plenty of parking.

Chair Rohlf: Questions for the applicant? I think we're good.

Comm. Williams: Do we need to add a stipulation concerning color of the signage?

Mr. Klein: We could add it just to make sure it's on the record.

A motion to recommend approval of CASE 51-11 – OKLAHOMA JOE'S BBQ RESTAURANT – Request for approval of a Final Site Plan, located east of Roe Avenue and south of 117th Street – with all staff stipulations, with No. 15 to be changed to allow for black signage and the original No. 15 to be the new No. 16 – was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 52-11 – BI-STATE/CENTENNIAL PARK – CENTRAL STATES BEVERAGE – Request for approval of a Revised Preliminary Site Plan and Revised Final Site Plan, located at 1900 W. 143rd Street. PUBLIC HEARING

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 52-11 – Request for approval of a Revised Preliminary Site Plan and Revised Final Site Plan for Central States Beverage at Bi-State Centennial Park. This is a warehouse and distribution facility that straddles the Kansas / Missouri state line. The applicant is requesting approval of a 29,660 square foot addition to the warehouse, of which 13,965 square feet will be located in the City of Leawood. The applicant is also seeking approval of modifications and expansion to the existing parking lot, which is located southwest of the warehouse, all within the City of Leawood. The plans show the expansion of the south side of the existing warehouse and the installation of four new loading docks on the west side of the expansion. The expansion area will be constructed of metal wall panels in a color that will match the existing building. Rooftop mechanical units

are also proposed and will be screened by a parapet. The parking area will be modified to add 27 new temporary truck parking spaces and an additional paved surface for maneuvering and loading of trucks. The applicant is proposing a Landscape Plan that complies with the LDO. This plan shows perimeter landscaping around the site and interior landscaping, all of which complies with the LDO. The plans do not specify the height of the parking lot light poles, and staff is recommending that this be clarified prior to Governing Body consideration of the plan. Additionally, the plans do not show a parapet along the south side of the proposed expansion area, and they should be revised to show this prior to Governing Body in a manner that provides full screening of the rooftop equipment. This request does require a Public Hearing. The applicant held an Interact Meeting on May 11th, and a summary of this meeting is attached to the Staff Report. Staff is recommending approval, subject to the stipulations provided, and we're happy to answer questions.

Chair Rohlf: Have you discussed the stipulation regarding the parapet with the applicant previous to this meeting?

Mr. Rexwinkle: We have not discussed it verbally, but they have received the Staff Report.

Applicant Presentation:

Stan Hernly, 920 Massachusetts Street, Lawrence, KS, appeared before the Planning Commission and made the following comments:

Mr. Hernly: I am the project architect. We have reviewed the stipulations, including the parapet on the south side, and we are fine with providing that for the property. I would like to note a few items: Item Six has a stipulation about utilities. Existing utilities are all in Missouri, and we are proposing nothing new, so that doesn't really apply. We'd like to talk about Item Eight: "Landscape areas shall be irrigated." The majority of the new landscaping is part of a bio-retention along the south edge of the parking lot. That is an area we really don't need to water. The plant materials going in there are intended for that type of location. There are about 8-10 new trees we are planting and would prefer to let the full-time maintenance staff water the new plant materials until they are established rather than putting in an entire irrigation system. There is not an irrigation system currently, and we would prefer to keep it that way. That is really all we have. The applicant and engineer are here as well.

Chair Rohlf: Have you had to make a presentation to the Missouri side yet?

Mr. Hernly: The process in Missouri is basically the building permit process. We've met with the planning staff and have gone through it, but there is not a Public Hearing on that site.

Chair Rohlf: So you're done with that part of the application process?

Mr. Hernly: No, but we'll be going through the building permit process there at the same time as we go through the building permit process here.

Chair Rohlf: Have you had an opportunity to look at the memo provided by David Ley? I would just like to make sure you are aware that the storm water study shall be updated and submitted.

Mark Huggins, Payne and Brockway, 426 South Kansas, Olathe, KS, appeared before the Planning Commission and made the following comments:

Mr. Huggins: I was hesitant because I was going to look at that memo before I came up. I know we received a memo and didn't have any exceptions to it, and everything we've done so far has been in compliance with that.

Chair Rohlf: David, they're current at this point?

Mr. Ley: Yes.

Chair Rohlf: Does anyone else have questions on any of the engineering stipulations?

Comm. Ramsey: Have they been in to discuss the bioretention area with you?

Mr. Ley: They submitted their drainage study, but they have not been in to discuss it with us.

Comm. Ramsey: Any thoughts on the irrigation request with that?

Mr. Ley: Typically, those are not irrigated. There are a few times of the year when it would come in handy.

Comm. Ramsey: But we typically would not require them to put irrigation into a bioretention area?

Mr. Ley: That is correct.

Mr. Coleman: All the other landscape areas would need to be irrigated.

Chair Rohlf: Is there additional landscaping that is not within that section?

Mr. Rexwinkle: The bioretention area is on the south side of the parking area, and there is additional landscaping along the entire west edge of the parking and the north side as well.

Chair Rohlf: That is the landscaping you would like your full-time maintenance people to handle?

Mr. Hernly: Yes, and the bio-retention basin is all basically native grasses. Part of their benefit is they don't need irrigation. It is a developed site, and we are adding landscaping to it. Our feeling is the facility has been there since '84 and has maintenance people who take care of the site. Those people would be able to keep the plants and trees watered until they are well established, rather than go through the expense of an underground irrigation system.

Mr. Coleman: It is required in Section 16-4-7.3 (7) in the LDO that all landscaped areas be irrigated. We don't have the discretion to say that an area doesn't need to be landscaped. We would need to have an adjustment to the LDO to speak to bioretention areas.

Chair Rohlf: There is no existing landscaping on the Leawood side of that building at all?

Mr. Coleman: I assume there is some landscaping. Like any new building that comes in for approval, they are bringing their landscaping up to current codes. The irrigation is part of the code, too. In 1984, we probably did not have those requirements, but we do have them now.

Chair Rohlf: So this building expansion constitutes new construction, and there is nothing in any kind of agreement that sets out anything different than that?

Mr. Coleman: No, we would need to have an LDO amendment that addressed bioretention areas and what parts need to be irrigated.

Comm. Ramsey: We need to do something along that line. I know we can't do it tonight for this applicant, but with the movement of sustainability, it makes no sense whatsoever to irrigate a bioretention pond.

Mr. Coleman: I agree.

Chair Rohlf: Yes, but we would need to be very careful with any modification to the LDO on irrigation. As far as the landscaping, it does meet code, correct?

Mr. Coleman: Yes.

Comm. Ramsey: They just have to provide irrigation as it currently stands.

Comm. Roberson: Does it require underground irrigation systems?

Mr. Coleman: It doesn't specify, so it could be a drip hose.

Mr. Klein: Joe had a good idea. We don't have the ability to change the LDO at this point. What could happen is, in the process of construction, staff could work on an LDO amendment. If it gets approved, they can come back for a Revised Final Plan to have that stipulation removed. There might be enough time in the process of construction.

Comm. Ramsey: We could do that, or approve everything but landscaping and have them come back for the landscaping piece after we've had time if that's what the Commission wants to do.

Mr. Klein: At this point, we have to approve everything included in the project.

Chair Rohlf: We would let it stand, and if the LDO is revised, we do what needs to be done there. You're saying there are possible ways around specificity.

Mr. Coleman: It says that all landscaped areas shall be irrigated; it doesn't get into the details. The point about these water treatment areas makes sense. I think we should look into it.

Chair Rohlf: Do we have any other questions for the applicant?

Mr. Hernly: I'm not familiar with the LDO process. Is that another Planning Commission or City Council option that you would put together and notify us?

Mr. Klein: Yes.

Comm. Roberson: I assume the utility issue is a moot point.

Mr. Coleman: Yes, as they stated, the utilities are on the Missouri side.

Comm. Williams: Do we just need to strike that out of the stipulations?

Mr. Coleman: I would leave it in case KCP&L decided to move a transformer to the Kansas Side.

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

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

A motion to recommend approval of CASE 52-11 – BI-STATE CENTENNIAL CENTRAL STATES BEVERAGE – Request for approval of a Revised Preliminary Site Plan and Revised Final Site Plan, located at 1900 W. 143rd Street with 20 staff stipulations – was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 57-11 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – ARTICLE 9, DEFINITIONS (PERTAINING TO KENNELS) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, the next two cases deal with Kennels. Case 57-11 deals with the definition. We currently have one definition of kennels in the LDO. The use is allowed within the SD-NCR (Planned Neighborhood Retail), the SD-CR (Planned General Retail) and the BP (Business Park). We have seen a number of kennels coming through. One was in the Bi-State Business Park, located away from anything. It was a large kennel that seemed appropriate as far as the use because it backed up to the Public Works facility, and there wasn't really a lot of residential or commercial around it. Later, we had an application for Dog Days, which was a kennel that wanted to locate in the Market Square development. In the past, we've seen smaller kennels in those retail areas; this one was actually proposing a scale of somewhere around 100 animals with an outdoor play area. There were concerns about noise and waste disposal. We were looking at trying to create several classifications of kennels based on their impact, and we came up with three. The first classification is trying to recognize occasional overnight boarding that is associated with veterinary services. It would be allowed in SD-NCR, SD-CR and the BP and would be called Veterinary Service, which would allow overnight boarding only associated with the care of the animals. The next classification is Kennel General, which limits the number of animals allowed to 25 and would be allowed in the SD-CR and the BP. This would not include runs or play areas outdoors; all activity would be in a soundproof building that would handle noxious odors associated with care of the animals. The third classification would be Kennel Commercial, which would be the largest type and would have no limit to the number of animals allowed. It would only be allowed in the BP district, which we feel is most appropriate for the size. This would allow outdoor runs and play areas. All three would allow veterinary care. Staff is recommending approval of both of these cases, and I'll be happy to answer any questions.

Chair Rohlf: I know I missed the work session on this. What is the veterinarian over by 103rd?

Mr. Klein: Dr. Ott has about 25 animals at his peak in that location. This would still allow him within an SD-CR district. He's zoned BP currently, so he would not be affected.

Chair Rohlf: So he would fall in the first category?

Mr. Klein: From what I understand, he does a little bit of kenneling on the side as well. He probably is closer to Kennel General. In the zoning district he's in, he could qualify for the Kennel Commercial.

Comm. Roberson: What about the doggie hotel that was going in next to Price Chopper?

Mr. Klein: That would not be allowed. It had 100 animals and an outdoor play area, so it would be limited to the BP area.

Chair Rohlf: Did they withdraw?

Mr. Klein: We haven't seen anything happen with it. I'm not sure what happened.

Comm. Williams: You talked about a soundproof building. What standards have we established, and how are we going to measure that? Soundproof means all the noise and sounds stay in. For example, they probably could not have a glass storefront, for example.

Mr. Klein: We were trying to get to the point where, if you were outside the building, you would not hear the barking. The reason for that is some of these are in strip malls, and businesses may be directly adjacent. The goal would be soundproof to the point of neighbors not being able to hear the sound of the dogs barking.

Comm. Williams: The neighbors would be one thing, but if you're walking on the outside of this store, such as in a strip center, would that be a situation in which they would have to rip out glass storefronts and put in higher sound rated construction?

Mr. Klein: I think they would have to find some way to ameliorate the sound. I think a lot of them might have the kennels behind other barriers which are away from a storefront, and this takes care of a lot of the sound. To a certain extent, I believe it would be based on the sound heard from others, and if it was deemed to be too much, they would have to do something.

Comm. Williams: I can fully understand and support the idea that the kennel area could be contained in a more soundproof construction. It's described here as a soundproof building, which is exterior wall to exterior wall. If you're saying a curtain wall meets the criteria, how does it get put into the LDO?

Comm. Ramsey: What if you state it to just say that the sound shall be retained inside the building or something to that effect? That's what you're trying to achieve.

Mr. Klein: We want to make sure they're good neighbors in these retail buildings.

Comm. Williams: You can do a demising partition that is a soundproof wall. If you're asking for the whole building to be sound rated, it is challenging.

Mr. Klein: Franki has a suggestion for modifying the wording.

Comm. Jackson: Mark, how would this be enforced? Who can object to the noise or odor, and what happens if they do?

Ms. Shearer: Anybody could object, and our codes officials would handle it. It happens all the time. This was my idea for rewording the soundproof portion: "The facility shall be totally enclosed in such a way so that no objectionable noise or odors are produced from the exterior of the kennel or are emitted . . ."

Comm. Williams: So if there is a subtle woof of a dog that could be heard, it would not necessarily be considered to be objectionable, by the definition.

Ms. Shearer: If a citizen or shopper were really upset and wanted to complain, he could. Our process in handling the complaints is through our Codes Enforcement Division, which Richard also oversees.

Comm. Williams: With any facility like this, there is potential for sound when moving the animals from the kennel to the parking lot.

Mr. Coleman: I think it could be addressed with Ms. Shearer's modifications. We could say, "The facility shall be enclosed in such a way as to produce no objectionable noise or odor from the exterior of the kennel."

Comm. Ramsey: I hope we could keep someone from going out with a noise meter.

Mr. Coleman: We do have one, and I understand. I don't know that we want a decibel reading in the ordinance. I think most of it would be handled by the landlord.

Comm. Elkins: I'm still struggling a bit with this. I'm concerned about not wanting to put a decibel reading into the ordinance. On the other hand, it does seem pretty vague. I presume it would be taken care of by the landlord, but part of what we're in the business of doing is addressing the worst-case scenario. What is objectionable is in the eyes of the beholder. Apparently this is not an extraordinary situation, but take the light as an example: I know that when we see plans, we get photometric studies that give us pretty objective standards.

Mr. Coleman: We do have nuisance ordinances, which I would call less objective and a bit more subjective. Certain behaviors or issues between people are deemed objectionable by one person and not by another. We deal with that every day. We do have a noise ordinance, but it pertains to separate property owners and a property line and not at a tenant lease line. This is 60 decibels.

Comm. Elkins: So the noise ordinance has an objective standard.

Mr. Coleman: Yes, and we have a sound meter we use to measure those. Occasionally, we get complaints about noise. It has to be sustained noise. For example, if a dog barked loud two or three times, it would not be sustained; if the dog barked continuously for an hour, it would be sustained.

Comm. Elkins: I have no idea what 60 decibels is. I wonder if it would make sense to tie this to that ordinance.

Chair Rohlf: Could we take out "objectionable" and put "sustained" in there?

Mr. Klein: If you're in the space next door and you hear anything, it will probably be objectionable. If you're walking by, you have ambient noise around; therefore, if you hear some barking, it probably would not be overly objectionable. Those would require two different decibel readings. The adjacent building would have to be almost zero, and outside the front door would be separate.

Ms. Shearer: Under "Performance Standards in a BP District," No. 7 reads, "In no case shall the noise level exceed 60 decibels at repeated intervals for a sustained length of time measured at any point along the property line." I can do a search through the rest of the districts. I'm pretty sure this is a performance standard in all of our districts for any use. We don't reiterate it for every use; it is simply a performance standard for the district.

Comm. Elkins: That performance standard would create an objective standard for "objectionable"?

Ms. Shearer: Yes.

Comm. Elkins: My other concern is zero sound, and I question if it is practically possible.

Mr. Coleman: You could change it to attenuated sound.

Comm. Elkins: If the 60 decibels apply to tenants and property owners, it would address both of my concerns.

Mr. Coleman: I just see it more as a landlord/tenant issue, rather than a city issue. If the sound is at the property line, we have something to address it. At the BP district, if the dogs have outdoor runs and the barking is over 60 decibels at the property line, we can do something about it.

Ms. Shearer: Mr. Elkins, I found the answer to your question. Under "Performance Criteria" in 16-2-9, in all districts and all uses, No 1 is, "No use shall create noise in excess of the normal daily traffic measured at the lot lines of the premises. In no case shall the noise level exceed 60 decibels at repeated intervals or for a sustained length of time, measured at any point along the property line." This applies to all uses in all districts.

Comm. Elkins: I have one other question. Mark, you made reference to the fact that you had talked with at least some veterinarians. Did you also talk to kennel owners to get reaction from those communities about this?

Mr. Klein: We tried to contact every veterinarian and kennel in Leawood. We aimed this at the number of dogs they had and whether or not they provided kenneling and/or veterinary services. A lot of this came from ordinances from other cities. We evaluated them and felt the language to call for soundproofing was appropriate. In talking with the building inspectors, we have found that 60 decibels is about like an air conditioning unit. Barking at that level for a prolonged period would most likely be objectionable. An occasional bark might not be.

Comm. Elkins: And I am looking at it from the kennel owner's standpoint. Let's say a regular 40-decibel noise were objectionable. Would it be grounds for enforcement action?

Mr. Klein: The difficulty with the current ordinance is that it is taken at the property line. Often times, these multi-tenant retail buildings are owned by a single property owner with lease lines. I'm not sure we could apply it. I understand you're trying to come up with a balance that protects adjacent businesses and also the kennel from an ambiguous level for a complaint. I just don't know what that decibel rating would be. I feel it would have to be a bit different from the inside.

Comm. Elkins: Let's assume we approve this amendment with the additional language Ms. Shearer proposed, and let's assume an adjoining tenant complains about objectionable noise. Let's assume further that the sound meter shows the noise at less than 60 decibels. Would it be grounds for action because it was deemed objectionable?

Mr. Coleman: No, if it is not over 60 decibels.

Comm. Elkins: I want to make sure we're all on the same page with this.

Mr. Klein: We actually have had a number of these in developments, and I don't think we've really had a problem with them. I think if you heard 60 decibels from an adjacent office, you would find it objectionable.

Comm. Elkins: I want to know whether it would be unlawful.

Mr. Coleman: If it is less than 60 decibels, no.

Comm. Ramsey: Yes, but 60 decibels only applies to the property line. It doesn't apply to the lease line.

Mr. Coleman: That's why it would basically be an issue between the landlord and the tenant. We do have some commercial centers that have condominiums in the zoning, in which case, it would be 60 decibels. In the tenant issue with a bit strip center owned by one entity, it would be an issue between the tenants and the landlord and not between the city and the tenants.

Comm. Jackson: It would give us, as a Planning Commission, a reason to object if they could not maintain the sound barrier or properly dispose of waste.

Mr. Coleman: Unless you had the soundproof statement in there or some other technical standard, I still think it's an issue between the owner and his tenants. It's just like in an apartment complex; we don't regulate sound between apartment units.

Comm. Ramsey: So this is moot because if it is a standalone building within an existing district, the noise ordinance applies. If it is not a standalone building but is within a strip mall, your situation will apply with the tenant and the landlord battle it out.

Mr. Coleman: Right.

Chair Rohlf: Do we think the freestanding kennel would have been viable next to the Bank of Blue Valley? Would this have given us some leverage at all? I can't imagine the Bank of Blue Valley would not have had complaints.

Mr. Klein: We required that they actually talk to the Bank of Blue Valley. We got a letter from the bank stating they were fine with it. Currently, the ordinance does not address soundproofing. What Richard is suggesting is you remove all of the section with regard to the sound and let it be handled as we've discussed here.

Comm. Williams: Are you saying to eliminate the language that Franki proposed?

Mr. Klein: If you take out any reference to sound, then pretty much you have the LDO ruling as far as property line. You'd have the property owner ruling for multi-tenant buildings. Occasionally, you will get property lines that run down the middle of the building because they'll sell of little pieces. It will vary with the projects.

Comm. Ramsey: Do you think we need sound in or not?

Mr. Klein: Originally, I thought it was a good idea to have something to put everybody on notice that sound would have to be taken into account. I do understand Commissioner Elkins' point that if it is too arbitrary, a neighborhood services officer has to make the call as to whether or not it is objectionable without relying on a decibel reading. Richard was basically saying to fall back to the LDO's current ordinance on noise.

Comm. Roberson: How loud does a dog bark?

Mr. Klein: With 25 dogs, it can get pretty loud.

Comm. Roberson: Are we at 60 decibels? 10 decibels? I don't know.

Mr. Klein: I had building inspectors check generators and things like that, and an air conditioner unit is basically close to 60 decibels.

Comm. Roberson: Dogs barking and howling in a kennel non-stop?

Mr. Coleman: Inside the kennel with dogs barking, it would be well over 60 decibels. Outside the kennel, it would be much lower.

Comm. Roberson: But it's constant.

Mr. Coleman: But it probably is going to be lower than 60 decibels outside the building.

Comm. Roberson: Do you know how irritating it is to listen to dogs barking while trying to eat or getting hair done or doing whatever?

Mr. Coleman: My point is that is a tenant/landlord issue.

Comm. Roberson: But if you've got a condo situation, then you have a problem.

Mr. Coleman: That is why we have the 60-decibel limit.

Comm. Roberson: If I'm at the dentist listening to dogs barking, it's a problem.

Chair Rohlf: What about the one on Roe that is next to a dentist? What kind of practice is that kennel?

Mr. Coleman: We haven't had complaints.

Comm. Ramsey: It's like Mark said; they're all in the back room, which is sealed off.

Comm. Williams: What if we were to address the sound issue here to be 60 decibels at the perimeter of the operation or the kenneling area? We're being reasonable that the dogs may bark on their way in and out, but it covers the back.

Mr. Coleman: You could do that. I have not had complaints come across my desk for any of the facilities that are currently within the city.

Comm. Williams: Do we take the sound issue out and just deal with numbers?

Mr. Coleman: That would be fine with me. I was fine with taking out the soundproof building if you felt it was too stringent. It would end up coming under the nuisance provisions of the code.

Comm. Williams: Maybe that's a better way to address it.

Mr. Coleman: That's how we do it now.

Comm. Jackson: We didn't address the odor.

Mr. Coleman: We're leaving that in.

Ms. Shearer: The sentence Richard is referring to is, "The facility shall be totally enclosed in such a way as to produce no objectionable noise or odors from the exterior of the kennel."

Comm. Williams: I think that's good.

Comm. Elkins: Is "objectionable noise" defined by 60 decibels? I'm not saying I need to have it in this; I'm just looking for an objective standard.

Mr. Coleman: If it's more than 60 decibels, it is very clear. That is at the property line. If it is an ongoing noise, it would fall under our nuisance ordinance.

Comm. Elkins: My concerns are the vagueness issue and also staying out of the battle between tenants and landlords. Thank you.

Chair Rohlf: Do we have other comments?

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Williams. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

Chair Rohlf: We're comfortable with changing the language to remove, ". . . in a soundproof building"?

Ms. Shearer: I will also note that the language is also in "Kennel Veterinary" in the last sentence. That sentence would need to change to say, "The facility shall be totally enclosed in such a way as to produce no objectionable noise or odors [detectable] from the exterior of the facility."

Chair Rohlf: So both of those would need to change. If everyone is comfortable with those changes, I would ask for a motion.

A motion to recommend approval of CASE 57-11 – LEAWOOD DEVELOPMENT ORDINANCE – AMENDMENT TO ARTICLE 9 – Definitions pertaining to kennels – with the three definitions as presented with the change in language to delete, "soundproof building" and insert language as herein discussed – was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 119-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-7, TABLE OF USES – (PERTAINING TO KENNELS) – Request for approval of an amendment to the Leawood Development Ordinance

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Williams. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

A motion to recommend approval of CAS 119-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-7 – Table of Uses (pertaining to kennels) – Request for approval of an amendment to the Leawood Development Ordinance – as amended and presented tonight – was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

ELECTION OF OFFICERS:

Chair Rohlf: We have the opportunity to elect the Chair and Vice Chair of the Planning Commission. Currently, I serve as Chair, and Len serves as Vice Chair. I have been chairing for the past few years because of the transition with people leaving, and consistency was necessary to bring us along. I would like to say I would be more than happy to continue to serve, but I would

also like to give the opportunity to someone else if they would like to be nominated and approved. A motion would need to be made from a member of the Commission.

Mr. Klein: Yes, that is the way it has happened.

Chair Rohlf: We do have Mr. Pateidl, Ms. Neff-Brain and Mr. Heiman absent. Mr. Heiman will be stepping down, and this would have been his last meeting. We will meet his replacement in the next work session in June.

A motion to nominate Commissioner Rohlf to serve another term as Chairman of the Commission and Commissioner Williams to serve another term as Vice Chairman was made by Elkins; seconded by Roberson. Motion approved with a unanimous vote of 5-0. For: Roberson, Jackson, Williams, Elkins and Ramsey.

MEETING ADJOURNED.