

City of Leawood
Planning Commission Work Session
Signs
Tuesday, October 11, 2011

Attendees: Richard Coleman, Ken Roberson, Jim Pateidl, Justin Peterson, Bill Ramsey, Kelly Jackson, Jane Neff-Brain, Len Williams, Marc Elkins, Kip Strauss, Mark Klein, Franki Shearer, Dave, Joe Rexwinkle, Debbie Brenner, Scott with Infinity Sign Systems.

Mr. Klein: We will be talking about proposed amendments to signage. Both AMC and US Bank have come before the Planning Commission with sign issues. Both were recommended for denial due to the fact that the Leawood Development Ordinance did not allow the signs as proposed. City Council continued the cases so we could look at the ordinance and perhaps address the issues. Sub-tenant signs will be the first type we will discuss. A sub-tenant is one who does not have a primary entrance into the building. Currently, the ordinance allows a maximum of two wall or canopy signs on the building. A wall sign is any sign attached to the exterior surface of the wall of the building but not projecting horizontally from the vertical wall surface more than 12 inches and is supported by the wall. The canopy sign is attached to or incorporated into a canopy. The limit on the number of signs is two, which is listed in a chart that is a bit vague. Staff has interpreted that for a multi-tenant façade, each tenant would be allowed up to two signs. Where you typically would see two signs is if the tenant wraps around the corner.

Comm. Neff-Brain: The HyVee down on State Line has several. What are those?

Mr. Coleman: That was prior to the current ordinance, and we have a number of businesses with grandfathered signage. This particularly pertains to the Price Chopper and US bank with the same situation. If they want the sub-tenant signage, they have to bring the current signage into compliance with the current ordinance.

Comm. Neff-Brain: Instead of a generic "banking," they want their name.

Mr. Coleman: Yes, if they want it to say US Bank, they cannot have the other five or six signs that are up currently.

Mr. Klein: In addition to the number of signs, the LDO regulates size of the signs, which is 5% of the building façade and a maximum of 200 square feet. Rarely do we ever run into the maximum of 200 square feet.

Comm. Ramsey: Where does the blade sign come in?

Mr. Klein: The blade sign is required by some of the developments. One Nineteen, for instance, absolutely requires a blade sign in their criteria. We don't address blade signs in the LDO at this time. Usually, sign criteria go through the Planning Commission and City Council and are approved that way. Different developments allow different blade signs.

Staff has interpreted a limit of two signs per building with one tenant. A multi-tenant building allows two signs per tenant. A deviation is allowed if the development had approved sign criteria that allow more signs. For instance, One Nineteen allows a third sign as long as it is not visible from the public right-of-way.

Comm. Ramsey: Where would that type of sign go?

Mr. Klein: Trader Joes has one on the south, east and west elevations. AMC has three signs, which are allowed by their sign criteria because they are an outparcel.

We consider a sign to be advertising one specific business. In the case of a sub-tenant such as IMAX with AMC, if the "IMAX" were placed under the "AMC," we would call it two signs for two entities. The city has many sub-tenants in the larger retail spaces, primarily grocery stores. Hen House has Starbucks; others have pharmacies. Market Square has Auburn Pharmacy as a sub-tenant. Capitol Federal Savings Bank had a sign, and I believe they took it down and put up the Auburn Pharmacy. Because of the limit of two signs, the primary tenant must be willing to give up one of their signs for the sub-tenant.

Currently, the LDO does not address sub-tenants at all. We wanted to try to find an amendment to the LDO that the Planning Commission will support that will provide a way for those sub-tenants to have some identity on the exterior of the building while controlling clutter. We had a work session with Governing Body on July 18th with regard to this issue, and what came out of that is that Governing Body would like to keep as much of the sign ordinance we currently have as possible and just allow a deviation for an additional sign for a sub-tenant.

We are talking about two zoning districts: SD-CR (Planned General Retail) and SD-NCR (Planned Neighborhood Retail). What we are proposing would not really apply to office, which is a different entity as far as signage. With the current regulations, neither the IMAX of US Bank could go in. Ranch Mart has no approved sign criteria, most likely because the development is older. The signs that advertise the departments of Price Chopper are not allowed under the current ordinance and were approved prior to the ordinance being in effect. When we took US Bank through, we let them know that the signs would have to come down to bring the building into conformance. They were not willing to do that. Staff still sees this as legal, non-conforming signage; therefore, they would still need to come into compliance with the current ordinance even if we modify the LDO.

Comm. Neff-Brain: Didn't they tear down part of the building and rebuild it? That was before the ordinance?

Mr. Klein: I was here in the end of 1999, and I think it was already there. The ordinance changed in December of 2002. AMC has three signs, which are all allowed in the Town Center Development sign criteria. They wanted to add "IMAX," and we determined that, since they are not the same legal entity, they are not the same company; therefore, we consider them a sub-tenant.

We looked at the LDO and had a work session with Governing Body. We looked at number of signs. Most of the developments do not allow more than three signs in their criteria. The majority of them still have two as a limit or have no criteria associated with them. The maximum size of signs as a percentage of the façade is currently 5%. We are trying to determine if we needed to distinguish a difference between primary and sub-tenants to look a bit at that and then also to distinguish between multi-tenant and single-tenant buildings. In Independence, AMC has "IMAX" on their sign, so we need to look at what we consider a single sign. Some would argue that it is all one sign; others would argue that there are several signs. We look at it as entities that are advertised, with IMAX being an entity that is advertised.

Comm. Elkins: I'm not sure this really addresses the overarching issue, but how did the IMAX situation come out? Is IMAX truly a sub-tenant? I think of IMAX as being a type of technology.

Mr. Klein: We struggled with this a lot and talked about the distinction between a sub-tenant and a product. It is not the same as US Bank, but there is a business relationship there. Many on the Council did not want to get into regulating exactly what would constitute a sub-tenant as far as floor space or relationship. We tried to stay away from that as much as possible. We propose an additional sign with a deviation.

Comm. Roberson: But what is IMAX?

Mr. Coleman: It is a corporation.

Comm. Roberson: It rents space at AMC if I am not mistaken.

Mr. Coleman: It does not rent space; it leases the technology for the film portion of it, but it does not rent the actual theater it is shown in.

Comm. Elkins: It is an IP (Intellectual Property) license.

Mr. Coleman: There is a legal agreement between them in the leasing of the equipment and the running of the films.

Comm. Elkins: We have a larger issue, but I have always struggled with that. To me, it is roughly equivalent to Technicolor coming in to movies.

Mr. Klein: We talked about that with IMAX, 3-D and Fork and Screen, which would be three signs in addition to the theater. With Hen House, you could have Starbucks, a pharmacy and all sorts of things. We are trying to control clutter while allowing a reasonable opportunity to provide at least one sub-tenant sign. What came out of the Council meeting is a desire to control the clutter with a deviation for one additional sign. Not everybody completely agreed with that, but it was the consensus.

Comm. Ramsey: Do you know how this relates to Overland Park and Lenexa?

Mr. Klein: No, I don't. Olathe has an AMC, and I can look at them.

Comm. Ramsey: I'm trying to determine if we are way out over here compared to the rest of the communities in their regulation of signs.

Mr. Klein: I believe Leawood has always been more restrictive as far as signage.

Comm. Ramsey: That is fine, but I would like to know where we related in terms of a benchmark. I understand that Leawood is Leawood and we get to do what we want to do inside our boundaries. I was just curious if they had done something different that addresses this.

Mr. Klein: I have seen multiple sub-tenant signs on businesses in Overland Park. We also looked at taglines that we sometimes struggle with here. Overland Park allows both. The signage tends to be a bit larger with a bit more variety. For instance, I have seen neon in Overland Park, and in Leawood, it takes approval by the Governing Body. Leawood has been more conservative, with the theory being that a level playing field allows for identification without clutter. Loosening up the sign criteria allows the signs to get larger.

We would like to determine what a primary tenant is. In the case of a single-tenant building, it would be any tenant occupying more than 50% of the floor area of the building. In a multi-tenant building, it would be any tenant occupying at least 25,000 square feet of floor area or 50% of the total building area, whichever is less. We chose 25,000 square feet because most of the sub-tenants we found were in spaces larger than this. The ones that typically meet that criterion are grocery stores, Macy's and Crate & Barrel. We are not talking about something that would multiply on every tenant space within the Parkway Plaza or One Nineteen. These would just be the major tenant spaces. With sub-tenants, we are trying to stay away from getting involved in their legal business. If they are a part of the space, they obviously have some sort of relationship with the primary tenant; they just do not have a separate entrance from that of the primary tenant. A single-tenant building contains only one tenant. A multi-tenant building would be a single building designed for two or more tenants, each with separate public exterior entrances. The grocery stores have large tenants within them, but they are part of a larger building that has many other tenants on either side.

Comm. Jackson: What is the signage on the Aloft and Ra Sushi restaurant?

Mr. Klein: The Aloft has one on the east elevation where the porte-cochere is. I believe they also have one on the south elevation. I don't know about the west elevation.

Comm. Jackson: Where is the name?

Mr. Rexwinkle: It is right above the entrance on the ground level.

Comm. Jackson: Would that be considered one building with one entrance?

Mr. Klein: We consider it a multi-tenant building with Ra Sushi, 801 Chophouse and Aloft. Since Ra Sushi is on a corner, it has more than one façade.

Comm. Jackson: Isn't it all the same entrance?

Mr. Coleman: No, they have separate entrances.

Comm. Strauss: We talked a while back on 3House Boutique. Didn't it have three signs? It had a canopy sign, one above and then a blade sign. There are many tenants with three signs.

Mr. Klein: Town Center Plaza has a lot of those. We have had discussions with them about that. They have talked about coming in to change their sign criteria for that development. 3House claimed the canopy sign was more pedestrian. It does seem like overkill, but Town Center has had that since I have been here.

The deviation we ended up proposing is for an additional sign. This came out of guidance we received before and also feedback from Governing Body in the work session. We came up with the following:

Upon recommendation of the Planning Commission, the Governing Body may grant a deviation to allow a total of one additional sign on a building or tenant space beyond the maximum permitted within this ordinance, provided that the following criteria are satisfied:

1. The additional sign shall identify a business entity that has a business relationship with the primary tenant but is a separate legal entity from the primary tenant. (This is meant to provide identity on the exterior to the sub-tenant inside as opposed to just adding a third sign for the primary tenant.)
2. The building, in the case of a single-tenant building and the tenant space, in the case of a multi-tenant building, shall be a minimum of 25,000 square feet. (It didn't seem good to have a sub-tenant allowed in areas smaller than that because often times, we butt up against the 5% rule. We rarely ever run into that with larger facades or single-tenant buildings.)
3. The maximum number of signs on any single façade shall be two. (We are trying to limit clutter.)

Comm. Roberson: Let's talk about the grocery store with a bank, pharmacy and laundry. You are saying those signs would not be permitted?

Mr. Klein: Correct; products are prohibited by the current ordinance. The way the LDO reads is that if signage is changed, it must come into conformance with the current ordinance, which allows two signs.

Comm. Pateid: That won't solve the bank situation.

Comm. Ramsey: Let's assume that they take down those signs and now have the grocery store sign. Let's assume they have a bank. Could they then put up a bank sign?

Comm. Elkins: Yes, as long as it is the name of the bank.

Comm. Ramsey: Bear with me for a second. Let's assume something like Walgreen's decides to go into the grocery business and buys out all these grocery store pharmacies and goes into the spots. How does that come into play with this?

Mr. Klein: They would be allowed to have Price Chopper as a grocery store and Walgreens as the sub-tenant.

Comm. Ramsey: In addition to the bank?

Mr. Klein: No, they would only be allowed one additional sign.

Comm. Ramsey: That is my point. Right now, all we are doing is proposing a fix for what has been brought before us. With the retail environment, we don't know how many consolidations will occur or how anything will go. How do we know that somebody else isn't going to come along and cause us the same consternation with the Governing Body?

Mr. Klein: We talked about that. If Hen House decided they wanted to allow all the sub-tenants to advertise on there, they could have six tenants in addition to Hen House.

Comm. Ramsey: Let's talk about Trendz up at 151st, which is nothing but a bunch of independently owned boutiques. What happens if they come in and say they want all the boutique owners to have signs on the outside?

Mr. Klein: The direction we got from Governing Body is only one would be allowed. Let's say there are five sub-tenants, and we are proposing only one can be on the outside. It is up to the primary tenant to bring forward an application or decide who gets the sign. We talked about multiple sub-tenants having their names up there. What came out of the Governing Body meeting was a desire to control the clutter and not allow multiple sub-tenants on there.

Comm. Jackson: If you are already controlling the percentage with the 5% rule, certainly a store the size of Price Chopper could handle signs for all the sub-tenants.

Mr. Coleman: If they get into many sub-tenants, you really start getting into a mall situation with kiosks inside the grocery store. My interpretation is the community does not want to have five or six signs.

Comm. Ramsey: My point is that may be what is starting to happen now, though. Does this open the door to cause us further consternation down the line?

Mr. Coleman: I don't think so because it is limited to buildings that are 25,000 square feet or larger. You have to have a relatively large building to even have the sub-tenant sign. Currently, it will be limited to grocery stores, Dick's Sporting Goods and AMC.

Comm. Ramsey: Let me remind you of all the open ground out there on 135th Street.

Mr. Coleman: The building would have to be 25,000 square feet or larger in an SD-NCR district, so it is limited.

Comm. Jackson: If you've got that size of a building, I would allow one more to allow for two sub-tenants.

Mr. Coleman: We talked about that. It might work for some of those buildings and not for others.

Comm. Neff-Brain: They have never been able to identify the business, and everybody has gotten along just fine.

Mr. Coleman: We are looking to modify the ordinance in the least disruptive way possible but to still allow large businesses to have a sub-tenant.

Comm. Ramsey: This is primarily going to be used at grocery stores.

Mr. Coleman: I think grocery stores certainly have that possibility. We also have Dick's, Macy's and AMC.

Comm. Ramsey: If we talk about the grocery stores, the primary reason somebody goes is to buy groceries and not to bank.

Mr. Coleman: That is why they are the sub-tenant.

Comm. Ramsey: My contention is the signage for the sub-tenant is nothing more than a marketing ploy by that entity to get their name up in front of the public as opposed to being a draw to let the public know that they are in there.

Mr. Coleman: I think you could argue it either way.

Comm. Ramsey: You can, but you'll never convince me.

Mr. Coleman: Certainly, signs are marketing ploys; it is what they are for.

Comm. Ramsey: In this case, they are always going to say that they need it because they want people to know they are there as a destination. I say that is not a reasonable point. I am not going to go in and ask for a commercial building loan in a grocery store.

Comm. Roberson: It is a retail banking establishment.

Comm. Ramsey: They're doing well to have a teller.

Comm. Roberson: Well, they usually have somebody who will take consumer applications and a teller. There is a Price Chopper at 135th that does not have a sign.

Comm. Elkins: They closed the Capitol Federal at Mission, which is why the sign came down.

Comm. Roberson: So there was a sign there.

Comm. Elkins: Yes, and by the way, I went to that Price Chopper to do my banking there as well.

Comm. Jackson: Does this cover the IMAX?

Comm. Elkins: That is what concerns me. In the definitions, you try to get away from the definition of a sub-tenant, but it still talks about a tenant. I'm not convinced that IMAX is a tenant.

Comm. Jackson: It also is a business with a separate legal entity. Is IMAX the name of the business?

Mr. Coleman: Yes, IMAX is a separate legal entity.

Ms. Shearer: The legal department does not want to get in the business of reviewing people's sub-tenant leases in these situations.

Comm. Elkins: That is my concern. You are putting yourselves in that business if you go back to that definition.

Ms. Shearer: We're not going to be in that business.

Mr. Klein: We are trying to identify it as an additional sign that is not be the same business as the primary sign. We didn't want to get into the relationship and floor area they take up, and maybe we need to tweak that.

Comm. Roberson: IMAX isn't even a secondary business; IMAX is a technology.

Comm. Elkins: It is closer to a product name.

Comm. Neff-Brain: You are either going to look online or in the paper to see who has the IMAX; you are not going to need the sign because you're not going to know what the movie is.

Comm. Roberson: It is a technology, so if it fits in the AMC sign, I don't see where it is an issue.

Mr. Coleman: That is the direction we are trying to go with more of a calculation.

Comm. Neff-Brain: But it is not called AMC IMAX.

Comm. Roberson: The film they are showing would be.

Comm. Neff-Brain: The theatre would have IMAX.

Mr. Coleman: Let's set it aside for a minute and talk about HyVee and Starbucks. Hen House has Starbucks and also Rice Garden. They may want to put a Starbucks sign out there. Starbucks is a set tenant in a sense, but it is another business that could have a sign on there with what we are talking about.

Comm. Pateidl: The issue is having Hen House be King Solomon and decide who gets the sign and who doesn't.

Mr. Coleman: It would probably be who pays them the most.

Comm. Pateidl: Particularly with all the different entities that are in there, I am wondering if the signage would be limited to a sub-tenant that was in a completely different type of business and not a subset. I would think that sandwiches and delis would be subset of the products Hen House sells, but the bank is not. It is just a different way of looking at it.

Comm. Roberson: HyVee has a laundry, a bank, a post office and a pharmacy.

Comm. Pateidl: You limit them to one sign and then identify characteristics of what that sub-tenant might be to get away from some of the threat of having fifteen signs.

Comm. Neff-Brain: Why do we need more than the primary tenant?

Comm. Pateidl: For the IMAX thing, what if you see an advertisement on the television about a movie that has IMAX? You can go to the paper to find out, but what if you're driving down the road and you see the IMAX sign on the side of the building. I can see where it would be a public service.

Comm. Neff-Brain: You're not going to know the times or movies.

Comm. Pateidl: You'll figure it out. For the longest time, I thought the closest IMAX theater was in the train station. Consequently, I never gave IMAX a second thought.

Comm. Ramsey: I am of the opinion that it is a slippery slope with adding anybody up there besides the primary tenant. Going back to the Hen House with Starbucks, you allow the sub-tenants those signs. Going back to Trendz, what is to keep them from coming in and saying their sub-tenants want signs?

Mr. Coleman: They are not big enough.

Comm. Ramsey: What if they get big enough?

Mr. Coleman: They could have one.

Comm. Neff-Brain: That number is arbitrary.

Mr. Coleman: It is based on the number of facades on the building.

Comm. Pateidl: Could it be challenged as an infringement on freedom of speech?

Ms. Shearer: In that case, we are not regulating who it is or what it says. I'm not worried about first amendment.

Comm. Ramsey: I believe that all of these signs are nothing more than the equivalent of a highway sign on somebody's wall.

Mr. Coleman: It is a little bit different because this is actually advertising at the location where the business is; it is not offsite.

Comm. Neff-Brain: That Starbucks at Hen House is a cart.

Mr. Coleman: It is a kiosk, and they make very good coffee.

Comm. Neff-Brain: But why do they need a sign on the outside of the building?

Comm. Jackson: If you don't want to get into the business of legislating what is technology and what is a business, just allow more signs if they are larger than 25,000 square feet.

Mr. Coleman: We said one.

Comm. Roberson: I heard "signs."

Comm. Jackson: Well, I would add two.

Comm. Ramsey: That is where we part company.

Mr. Coleman: That is what we are struggling with. If it is a freestanding facility with four facades, how many signs could it have? We went full-circle and came back to this.

Comm. Ramsey: And you are trying to meet what the Governing Body wants. All I am saying is there is a philosophy about Leawood. I asked about Overland Park and Lenexa because, after Leawood, they are known to have the most stringent zoning requirements. You can get away with murder in Olathe. If our philosophy is the minimization of sign pollution, we can't have it both ways. We are either going to be aesthetically sensitive with a community that only wants a certain level because of who we are, or we are going to start creeping down this road, and I guarantee that we will be back in two years talking about the same thing with another sign.

Mr. Coleman: We will be back in here talking about signs because we are working on other parts of the sign ordinance. It is a balancing act of keeping down the proliferation of signage while being able to allow for aesthetically pleasing signage that still conveys the business that is there.

Comm. Neff-Brain: AMC has a sign on all three sides. Could they take down one of them and put up IMAX?

Mr. Klein: This leads us to our next point. We talked about US Bank. The situation we have with AMC is that they have three signs, which are allowed by their sign criteria that were approved by Governing Body. With the way this currently reads, they would have to take down one of those signs, and they could put it back up. The alternative is they could keep the three signs that are allowed by the sign criteria and then add one for IMAX. We would like your feedback on that.

Comm. Elkins: Under the current ordinance, they could take one down and put another one up?

Mr. Klein: Under what we are proposing here, they could have one more than what is allowed by the LDO.

Comm. Roberson: But if they take one down, could they put up the IMAX?

Mr. Klein: Yes.

Comm. Williams: Would it be "AMC IMAX" or just "IMAX"?

Mr. Klein: It would be whatever they propose. Previously, they had "AMC IMAX."

Comm. Elkins: You interpret them to be two separate signs.

Mr. Rexwinkle: That is why we get to items of information, which was suggested at the end of Mark's presentation. Give us some feedback on what is one sign versus two.

Comm. Roberson: This is gaudy.

Comm. Neff-Brain: You could make an attractive sign with AMC and IMAX.

Comm. Jackson: Why can these centers come up with sign criteria that allow more signs?

Mr. Coleman: That is the way the ordinance was written.

Mr. Klein: There is a deviation allowed to change the number of signs. It needs to be fixed because it is written in such a way that it contradicts itself.

Mr. Coleman: We keep finding more and more work to be done.

Comm. Ramsey: There are signs, and then there are signs.

Comm. Neff-Brain: Did anyone ever check Camelot?

Mr. Coleman: Yes, we've sent them a notice to remove them. The contradictory elements with sign criteria and the rest need to be corrected.

Comm. Jackson: As far as calling "AMC IMAX" one sign, it seems to contradict what we've been saying all along that the legal name needs to be the sign.

Mr. Klein: That is where we are running into a problem.

Comm. Jackson: That is just an interpretation of the ordinance, so we could re-interpret it. Then you start being asked to do taglines.

Comm. Neff-Brain: They can take one AMC down and put up an IMAX if they wanted to.

Comm. Pateidl: Is it just "AMC," or is it "AMC Theatres"?

Mr. Klein: They say different things on different sides. On the east elevation, it says "AMC 20 Theatres." The one adjacent to Nall says, "AMC Theatres." On the south is "AMC 20."

Comm. Ramsey: What I am trying to get you all back to is technology and the business cycle are such that we can't sit here today and not say that, within five years, there will be another technology that comes up that will be requested on a sign. My point is we need to get back to the basic purpose of the signs and either come up with a formula in terms of square footage or number. We are going to continue to be approached on this all the time.

Mr. Klein: Kelly mentioned that you have a limitation of 5%. Within this proposal, we are also recommending that the maximum of all permanent signage on the façade is limited to 5%. It has been suggested to be 5% because they won't be willing to add so many that it makes them small. Governing Body discussed that as well; however, many people were not for that because they were afraid that four or five signs could be broken up as long as they were small enough. On the IMAX, one sign they were proposing was 2% of the façade. When you get the huge façade like that, it does allow quite a bit of signage in the 5%. A smaller tenant space is really where the 5% kicks in as a limitation.

Comm. Neff-Brain: Isn't the maternity place at One Nineteen three different maternity stores?

Mr. Klein: Yes.

Comm. Neff-Brain: How is that marked from the outside?

Mr. Klein: It should just be Motherhood Maternity. We talked about that extensively when they came through because they wanted all three on the sign. We limited it to the parent company. We argued that it was either a product, which would not be allowed, or sub-tenants. They argued that they were separate companies, but it was all in one main entrance.

Comm. Neff-Brain: But you would allow the grocery store to have two.

Mr. Klein: Yes, because Destination Maternity is nowhere close to 25,000 square feet.

Comm. Neff-Brain: I know, but it doesn't seem fair.

Mr. Coleman: Part of it is based on having a little store that is probably only about 2,000 square feet with a little façade and a bunch of entities on there, which would lead to clutter.

Comm. Ramsey: That is no different than Trendz.

Mr. Coleman: Right.

Comm. Elkins: This thought was looked upon favorably by the Governing Body?

Mr. Klein: This is what came out of the minutes of the work session. The mayor stated that the consensus was to keep the sign regulations for Leawood the same except to allow for a deviation for one additional sign. That is what we have tried to incorporate. We tried to stay away from getting into tenant relationships. You had a good point that we need to try to make it clear that we don't want to be in that business.

Comm. Roberson: We are not the ones that are going to pick and choose, but if I have two sub-tenants and I am the primary tenant, who gets the sign?

Comm. Neff-Brain: You make somebody pay more for that advertising.

Comm. Roberson: Do we really want to force the primary tenant into making those decisions?

Mr. Coleman: Sure.

Comm. Jackson: They've got to make lots of decisions like that.

Comm. Roberson: Make the decision for them and say no signs.

Mr. Coleman: They could say that, too.

Comm. Neff-Brain: This isn't going to help AMC; it will basically be a deal for the grocery stores. AMC already has three signs.

Mr. Klein: That is another question: do you want to allow this in addition to the three signs? This would have to be modified.

Comm. Neff-Brain: Then they would have four signs.

Mr. Klein: Yes.

Comm. Pateidl: That is one additional. I think the modification should indicate that sign criteria for the development would not be changed by the request for this sign.

Comm. Roberson: Basically it amounts to no more than three signs.

Comm. Pateidl: No, there would be four signs.

Comm. Roberson: Do we want AMC to have four signs?

Comm. Ramsey: No.

Comm. Pateidl: Who allowed three to begin with?

Comm. Roberson: You'd have to ask the Planning Commission, but Dick's could put a sign on each of the four walls.

Comm. Pateidl: Not unless it was a sub-tenant.

Comm. Neff-Brain: They may have a sub-tenant that we don't know about. A lot of those places sub-lease sections.

Comm. Jackson: Is anyone offended by Price Chopper now with the signs that are grandfathered in?

Comm. Neff-Brain: I'm not so offended when the words are all in the same letters; it is when you start getting logos and all that. Then you get really busy. It becomes more advertising than information.

Comm. Williams: One criterion we have used in the past for signs is the architectural compatibility of the sign: is there a place to put the sign? Does it fit within the architecture of the space? Let's say Price Chopper has a big façade with all the informational signs plastered all over the wall. To me, that does not constitute an architectural fit. The Capitol Federal sign on Price Chopper is what we would typically see as a sign band. It looks good and fits. It is just following the sign band around the development. Maybe that could be a consideration.

Comm. Neff-Brain: So it just said, "Capitol Federal" and didn't have the logo?

Comm. Roberson: No, it didn't, but Bank of the West had a logo on their sign. Where are they located?

Mr. Klein: HyVee on State Line.

Comm. Neff-Brain: It didn't say a bank name before; it just said, "Banking," didn't it?

Comm. Roberson: It was Bank Midwest before.

Comm. Williams: The Cap Fed sign on the band doesn't look bad.

Comm. Roberson: Do you have pictures of HyVee?

Mr. Klein: Yes, we have them here.

Comm. Neff-Brain: It looks busy and should just say, "HyVee."

Comm. Williams: But it is in keeping with the rest of the development.

Mr. Klein: This Hen House does have a Starbucks in the window. You can barely see it.

Comm. Roberson: That is where?

Comm. Jackson: Across the street on Roe.

Comm. Neff-Brain: At least it's not plastered on the exterior façade.

Comm. Neff-Brain: Would 'Grocery Pick-Up" be allowed?

Mr. Coleman: No; you could have a directional sign.

Mr. Klein: Yes, and this is Auburn Pharmacy.

Comm. Pateidl: And this one was grandfathered?

Mr. Klein: This was approved in 2000 because it had just gone through a settlement agreement in a lawsuit. When I got here, that lawsuit was over.

Comm. Pateidl: Auburn Pharmacy doesn't have an entrance.

Mr. Klein: Crate & Barrel has quite a few.

Comm. Neff-Brain: How did they get approved?

Mr. Klein: I think these are actually architectural elements.

Comm. Neff-Brain: There was room in that ordinance for that many?

Mr. Klein: At that time, a variance was granted.

Comm. Elkins: We would have done anything for Crate & Barrel.

Mr. Coleman: The sign criteria there say they can get pretty much whatever they want.

Comm. Jackson: In Crate & Barrel or all the stores?

Comm. Neff-Brain: We should quit doing that. We either have a sign ordinance or we don't.

Comm. Ramsey: What would happen if we cleaned up the definitions as you guys are proposing, left it just like it is and put in that there is an appeal process that people could apply for in extenuating circumstances.

Mr. Coleman: The appeal process would be weird. I would rather just say that we are going to allow one more sign for certain large buildings.

Comm. Ramsey: The problem is we are trying to get a one-size-fits-all ordinance. It is not so much whether we ought to add another sign or not; it is whether it will be appropriate for the situations that come up. If we're going to be halfway about this, we ought to just put in that it will be a certain way with an appeal for extenuating circumstances.

Ms. Shearer: You can get a variance through the BZA for anything in the LDO. We would not want the appeal to become too subjective.

Comm. Neff-Brain: It opens up all kinds of legal issues.

Comm. Ramsey: I am going back to the philosophy and mission of what we are trying to achieve with this ordinance. If we can't define that, we are just going to be running around in circles.

Mr. Klein: With the Governing Body, we were suggesting allowing additional signage. They were perfectly happy with the sign ordinance we currently have; they just wanted to find a way to satisfy these two situations.

Comm. Neff-Brain: They are not satisfying them.

Mr. Klein: Price Chopper would have to come back into conformance, and the situation with the IMAX comes down to whether or not we would allow them the additional sign. It seems that a lot of people have differing opinions. Some seem like they would lean toward keeping it the way it is because it could be a slippery slope to allow an additional sign; others seem to want to allow more. Honestly, the Governing Body had the same discussions. We talked about HyVee, and if they didn't own the bays, they would have tenants with signs on them. A governing Body member pointed that out as not being a problem.

Comm. Roberson: But it is a single building and not bays.

Mr. Klein: And that was the other argument. There was a lot of disagreement, and it was difficult to get a consensus until the end. The mayor indicated that what she heard was that most wanted to keep the sign ordinance as it was and to allow an additional sign with a deviation.

Comm. Neff-Brain: If you are going to allow one additional sign, I think that should be it. I don't think you should say that Crate & Barrel could have five if they get a tenant in there because we don't seem to enforce the base ordinance. What if another big tenant comes in and gets six?

Comm. Roberson: How big is Crate & Barrel?

Mr. Klein: 33,000 square feet.

Comm. Roberson: It could have one more.

Mr. Klein: No, the way this is currently written, they would have to get rid of all their signs except for two and then could have an additional sign.

Comm. Neff-Brain: This is as it is currently written, which is not to give them one more in addition to what they have now.

Comm. Roberson: In essence, we are agreeing that anything 25,000 square feet and above with a sub-tenant can have another sign as long as it doesn't exceed the number, size or percentage of the façade.

Mr. Klein: Another thing we have not talked about is that the additional sign would have to be smaller. We would allow a maximum of 2% of the façade, and it could only be 75% of the area and letter height of the primary signage.

Comm. Roberson: What is the reason for that?

Mr. Klein: Because, typically, a sub-tenant is a smaller entity in that business, we would allow a smaller sign for them.

Comm. Roberson: To make them look smaller.

Comm. Neff-Brain: So basically this applies to the grocery stores because AMC can't have another sign. They would have to take down a sign and replace it, and that isn't what they want to do. So basically, we're giving the grocery stores another sign.

Comm. Roberson: Or less.

Comm. Jackson: Less if they want to change them because they already have so many more.

Comm. Neff-Brain: So we're not helping anybody.

Comm. Jackson: Macy's is the only one who would benefit.

Comm. Roberson: The only Price Chopper hurt is the one at 95th and Mission. The one at 135th can't because they already have a sign. HyVee would be the other one hurt. Am I missing something?

Comm. Pateidl: When you go through it, it seems like much ado about nothing. I agree with Bill, and I think the ordinance as it is, is designed to avoid sign pollution. Once that toothpaste gets out of the tube, we'll never get it back in. Tweaking this for the limited amount of change that would come into the city isn't worth it.

Comm. Roberson: So if we don't do anything and someone comes in and asks for another sign, like AMC did with IMAX, we don't have the authority to change the LDO at that point, unless they take down one sign.

Comm. Neff-Brain: That is what they would have to do with this one.

Mr. Klein: I imagine they would want the one on the main entrance on the east elevation and the one on the west elevation.

Comm. Elkins: Ken's question goes to the current ordinance. They are only allowed to have two.

Mr. Klein: We got into that because they were adding something that was a different entity. It wasn't just number of signs; it was that it was for IMAX.

Comm. Roberson: We would not be able to say, "Take one down and put the one for IMAX up," then.

Comm. Elkins: That is the case under the current ordinance.

Comm. Roberson: We can't do anything at this point.

Comm. Ramsey: That was the basis under which we denied the IMAX sign last time.

Comm. Roberson: We did it because we couldn't go against or change the LDO.

Comm. Jackson: If they come back in and want to take down one of the AMC signs, do the other signs then need to be changed to say what their actual entity name is?

Mr. Klein: The way the ordinance is written is that they can have the name of their business, which is AMC. They then wanted IMAX, which is more or less a sub-tenant.

Comm. Jackson: So if they come in for an IMAX, they have to change the other two signs to read simply, "AMC."

Mr. Coleman: Or we could change it so we don't address the business entity name.

Mr. Klein: It could be the entity but not the legal name.

Mr. Rexwinkle: I think she is pointing out coming into conformance into all aspects of the ordinance.

Mr. Klein: Yes, that is what we are doing with US Bank.

Comm. Jackson: So "20" would have to go because it is a tagline.

Comm. Roberson: So we would just open up a can of worms, quite frankly. If we approve what you're talking about and they do this, they have to bring their signs into conformance and take the "20" down. I don't think this is what they want to do.

Comm. Strauss: Don't you think they'll get a variance like the first time?

Comm. Ramsey: They probably didn't get a variance.

Comm. Neff-Brain: They'd have to go through the BZA to get a variance.

Mr. Klein: We've also struggled with the legal name. The intent was that it should advertise the business without a tagline. However, we have had several instances in which the additional wording simply clarified what the business was, such as Southern Blue Boutique to let us know it is a boutique or AMC 20 to let us know it has 20 theatres and not 30 like Olathe has. That might be another change that could happen in the LDO. We tell people that, and we've had some change their legal name to whatever they want.

Mr. Coleman: They just do a DBA, so it serves no purpose, really, except for those who don't want to change the name.

Mr. Klein: If that modification was made and AMC came in with IMAX, they would have to take down one of the signs but could leave the other signs.

Comm. Neff-Brain: I would think "AMC" would be more important to them than "IMAX."

Mr. Coleman: If you take out the legal name of the entity, they could have all the signs say, "AMC IMAX Theatres."

Comm. Ramsey: But if we take out the legal name, it potentially allows taglines.

Mr. Coleman: Yes, it basically does.

Mr. Klein: The Governing Body was fine with a tagline that is a general description of what the business is, but they didn't want phrases and slogans.

Comm. Neff-Brain: That's too hard to differentiate legally.

Comm. Roberson: We could add, "Pizza," "Coffee," and "Food."

Mr. Coleman: We already have that with Over the Top Yogurt Cupcakes and Ice Cream.

Comm. Neff-Brain: It's getting more cluttered than this.

Comm. Jackson: Why don't we just restrict the space and give a larger façade a larger space.

Mr. Coleman: That is what we are trying to do with the 25,000 square-foot differentiator. Maybe if you have a freestanding 45,000 square foot building, you should be allowed one on each facade. Then we could limit each façade to two signs. I'll use Dick's for an example. If you have a big building like that, one sign on each façade is not going to be clutter.

Comm. Roberson: Have you seen the size of their sign? It's huge.

Comm. Ramsey: His point is that it is a big building.

Comm. Roberson: I know, but it is still a big sign.

Comm. Williams: Doesn't the center have sign criteria that limit the height of the sign?

Mr. Klein: Yes; and different developments have different criteria. Some allow 36 inches; some allow 24 inches.

Comm. Strauss: If they put up a canopy, they could get another sign.

Mr. Coleman: The original intent was that each of the developments is unique and should therefore have unique sign criteria. This has also led to some disparities.

Comm. Ramsey: Are we under any kind of time pressure on this?

Mr. Klein: It was continued by the Council, and I do get calls from both IMAX and US Bank. They know we are working on something. The gentleman here tonight is here because of the IMAX sign. IMAX wants to get the sign up. Right now, they are actually proposing two signs. They want to change the signs to "AMC 20 IMAX." The "IMAX" would be in blue lettering.

Comm. Jackson: So that would be five total signs.

Comm. Neff-Brain: We let them say "AMC 20 Theatres" now?

Mr. Klein: Yes, and it is one sign because it is the same entity.

Comm. Pateid: When they show an IMAX film, does AMC pay a commission to IMAX, or does IMAX pay a commission to AMC?

Mr. Klein: I am not sure.

Comm. Pateidl: It sounds to me like AMC is leasing the technology from IMAX as a product. Then we are allowing taglines inside these criteria.

Comm. Roberson: I think AMC said they were leasing the technology and that it was special equipment. I think it is actually owned by IMAX and just leased to AMC so they can show their films.

Comm. Jackson: It would be like Sprint putting whoever makes the phones on their signs.

Comm. Pateidl: It could be like Hen House leasing a freezer. Are you going to call a freezer a new business? Then we are allowing taglines of a sort as it relates to what is already being used by AMC and others like them. I think there is adequate room within the process to request a deviation that makes sense. If we are hung up on the legality of that issue, the criteria could be handled administratively by the planning department as to what constitutes a separate business entity. If IMAX is not the separate business entity within that building, it is not a tenant sign.

Mr. Klein: We currently do not allow products, so it would not be allowed if we consider it a product.

Comm. Pateidl: But you have "20" in the sign, so you do allow it.

Mr. Klein: That was approved before the current ordinance.

Comm. Elkins: It is the same thing as HyVee; it is grandfathered in. Today, it probably would be excluded.

Mr. Coleman: Do you want to exclude them from saying, "Cosentino's Grocery"?

Comm. Pateidl: I don't, but we're already doing that.

Comm. Jackson: That is why I say it should be 5% of the total façade and then give a total number of signs. Can they have two signs on the façade?

Mr. Klein: Legally, the easiest thing is to give a percentage and say they could put anything in there.

Comm. Neff-Brain: They'll be putting in all kinds of junk.

Comm. Roberson: From my standpoint, I would say that the US Bank sign is a second sign. Quite frankly, I don't have a problem with that. I do have a problem with the HyVee with ten signs along the front, which we would no longer approve. From that standpoint, if another grocery store were built at some point in time, they would only be allowed the grocery store sign plus one other. I have no problem with that. Where I am having difficulty is the AMC thing. I have no problem with IMAX being part of the sign as long as it is within the 5% limit.

Comm. Jackson: But you can't say that it is fine for AMC IMAX but not for "Best Yogurt in the World."

Comm. Roberson: Yes, I can, because that is their thought process. This is a product; it is a technology.

Comm. Ramsey: It is a product and not a tagline.

Comm. Jackson: So "Food," "Grocery" and "Pharmacy" are all fine, too.

Comm. Roberson: No, I didn't say that.

Comm. Jackson: They are all products.

Comm. Elkins: How do you draw the line? I agree with everything you say, Ken, but when I try to generalize it to an ordinance, I am at a loss.

Comm. Roberson: I am, too. How about Jimmy John's Sandwiches? We allow that.

Mr. Rexwinkle: That is their business name.

Mr. Klein: Yes; and any business can do a DBA and change their legal name to include any information, including a phone number. It has been difficult to regulate.

Comm. Roberson: Can the BZA grant a deviation?

Mr. Klein: The BZA can grant a variance to anything. I imagine they would see a lot of these requests, and the theory is that the BZA is a relief valve. If we see too many of the same request, it is an indicator that we need to change the ordinance to address the underlying issue.

Ms. Shearer: There are five statutory criteria the applicant has to meet to get a variance.

Mr. Coleman: One is that you cannot create the hardship yourself.

Comm. Roberson: I don't have the answer. I have no problem with IMAX or US Bank as a separate sign. I have no problem limiting signs. I don't think the addition of IMAX is a sign.

Comm. Ramsey: What is it?

Comm. Neff-Brain: It is a product.

Comm. Roberson: It is a technology used to show a film.

Comm. Jackson: Are you going to make an exception in the ordinance for technologies?

Comm. Roberson: I don't have the answer.

Comm. Jackson: There is no way to write that in there.

Comm. Neff-Brain: It is not part of their legal name, so it has to be a separate sign.

Comm. Roberson: I disagree.

Comm. Neff-Brain: But it is not part of their legal name.

Comm. Elkins: I may be in the minority, but I am in favor of the modifications that staff has talked about. Other than completely banning signs, we are just about drawing a line. And yes, we may be back again in two years, but part of what this body does is react to changing circumstances and values in the community. I am perfectly fine with saying that the community has evolved to the point where the increase in sign number is acceptable. My concern is that I don't have a problem with the IMAX sign, but I am not convinced that this ordinance addresses it. As you say, the IMAX is a product, and we haven't proposed a modification to that part of the ordinance that says the sign has to be the name of the entity that is in the building. I think

AMC pays a fee to IMAX for the use of that technology. I support what you propose, but I am concerned that it does not address the issue.

Mr. Coleman: If you define it as a product and not a business, it is true.

Mr. Klein: We were trying to get away from the product/sub-tenant argument by simply allowing this as an additional sign that is not the name of your primary tenant if you are 25,000 square feet or more.

Comm. Neff-Brain: They are not a secondary tenant.

Mr. Klein: We are trying to stay away from the fact that they are a tenant at all.

Mr. Coleman: We could go that direction, but Mark is saying that we could change the sub-tenant portion of it.

Comm. Elkins: We could talk about an entity.

Mr. Klein: In the actual recommendation, we left out anything about sub-tenants for that reason. If we take "entity" out of the ordinance, AMC could put "Popcorn" on the sign.

Comm. Elkins: This is truly taking it to the absurd, but a while ago, we had Sam's Club. Heaven forbid if we ever put a Sam's Club here and open us up to litigation on big box, but this ordinance would permit them to put "Super Store" as their extra sign, which is basically a tagline. That is a concern of mine. I feel it may open the door and a slippery slope for taglines.

Mr. Klein: The current wording calls for "separate legal entity."

Comm. Neff-Brain: When you talk about a primary tenant, it implies a secondary tenant and not a technology that they have leased.

Comm. Pateidl: If they have to identify a separate legal entity, whether it is a tenant or not a tenant, it gets away from a tagline.

Ms. Shearer: We can work on the language.

Comm. Ramsey: What happens if you stop that first sentence after, "legal entity"?

Comm. Elkins: It is kind of redundant to say "from the primary tenant;" although, it begs the question separate from what?

Comm. Jackson: In this instance, because IMAX is truly the name of a legal entity, it is fine; whereas, Technicolor was not the name of a legal business but rather the name of a technology and would not be allowed.

Mr. Klein: If it is not a business, it would not be allowed.

Comm. Jackson: What about Redenbacher's?

Mr. Klein: Yes, that would be allowed.

Comm. Neff-Brain: Would it allow them to put up any other sign advertising something that wasn't even in the building? What if they wanted to sell advertising space to Sam's Club?

Mr. Klein: I understand their point, which is why we talk about having a relationship with the primary tenant. It seems like there is another side.

Mr. Coleman: It would have to be limited to on the premises.

Comm. Neff-Brain: We have to get the ordinance written and look at all the legalities of it.

Comm. Roberson: Target has Taco Bell.

Comm. Strauss: McDonald's has Red Box.

Comm. Elkins: That part doesn't bother me quite as much. I have a tendency to analogize it to the big buildings downtown with 40 businesses and only one name on the building, such as Lathrop and Gage.

Comm. Pateidl: That is a multi-tenant building.

Comm. Ramsey: The way we're talking about this, would it solve the AMC problem or not?

Mr. Klein: The way it is currently written, it would require AMC to remove one of its signs and then could add IMAX to another sign or put it on another part of the building. This still doesn't address the situation about coming into conformance with the legal name.

Comm. Neff-Brain: I think we have to say that the maximum number of signs on any single façade shall be two. You don't have how many signs they can have.

Mr. Klein: At the top, it says that they can have one additional sign beyond the maximum permitted by the ordinance.

Comm. Roberson: It doesn't necessarily say that AMC would have to combine them into one sign on the façade, which I think defeats the whole purpose.

Comm. Jackson: You want them to combine it?

Comm. Pateidl: It's a lot less clutter if they are combined.

Mr. Klein: US Bank did not want to put theirs under Price Chopper.

Comm. Roberson: I wouldn't, either.

Comm. Jackson: Then you get into how you would define the sign.

Mr. Klein: This is a deviation that comes through Planning Commission and City Council, who will make comments if the sign doesn't look right. That might just be part of the application process.

Comm. Jackson: That is right because it should look different in these two circumstances.

Ms. Shearer: I think Mark is right that you can solve it through stipulation.

Comm. Ramsey: What would be the basis of the stipulation?

Ms. Shearer: We have stipulations about aesthetics quite often.

Comm. Ramsey: Could someone challenge it?

Ms. Shearer: We are allowed to make rulings and judgments based on aesthetics.

Comm. Ramsey: What are we worried about, then?

Comm. Roberson: Just think if someone comes on the Planning Commission and likes something different, which will happen.

Comm. Ramsey: Why couldn't we handle those issues on the placement of the sign based upon the situation or the architectural scheme by stipulation?

Mr. Klein: I think we could; I think it just allows them to request the deviation. As far as the design and placement, Planning Commission and Governing Body would still evaluate it.

Comm. Ramsey: What does that do to the recommendation?

Mr. Klein: It keeps the recommendation as it is here, but it still allows the Planning Commission to approve details such as location and appearance. You don't have to grant the deviation; it is not granting an automatic right to have the sign. You are perfectly within your rights to agree with the sign but request changes in location or other details.

Comm. Roberson: Over by McDonald's at 119th and Metcalf, they have Kentucky Fried Chicken, Taco Bell and Pizza Hut combined. How many signs would they be allowed?

Mr. Klein: That would be considered a multi-tenant building, and we interpret that currently as two signs per tenant. Generally, we limit it to one per façade. If they have a corner, they could have one on each façade.

Comm. Elkins: Do they have multiple entrances?

Mr. Klein: I think so.

Comm. Jackson: There are two; there is one on each side.

Comm. Elkins: Do you have enough direction from us?

Mr. Klein: Is everyone generally supportive of what is proposed? It sounds like we need to tweak it to ensure they are advertising something that is onsite.

Comm. Ramsey: Once again, how will this apply to AMC if we do it as we discussed here?

Mr. Klein: If AMC came back with an application with IMAX, they would be required to take down one of the three signs and then could put an IMAX sign in its place. It could be underneath the existing sign or separate, but it would be approved through the planning process, which includes a deviation from this body.

Comm. Ramsey: We are saying that because AMC only gets three signs total.

Mr. Klein: Correct; we also talked about modifying this to allow one additional sign to what is allowed by the sign criteria, which would allow them to keep the three signs and add an additional IMAX sign. I am leaving out the discussion about coming into conformance as far as the legal name.

Comm. Neff-Brain: I don't think it is fair that one development gets three and one gets four.

Comm. Jackson: They should all be the same.

Mr. Klein: We do have a lot of that right now. There are a number of developments that allow three.

Comm. Elkins: That is why we need to change the ordinance.

Comm. Roberson: I don't see how this accomplishes anything for AMC.

Mr. Coleman: It allows them to put "IMAX" on their building.

Comm. Roberson: I could be wrong; I don't mean to speak for AMC, but I don't think that was the spirit in which they came in to request the IMAX to be added.

Comm. Ramsey: Where were they going to put the IMAX sign originally?

Mr. Coleman: On both facades. I guess we have some direction. We can go back and tweak this and come back.

Comm. Ramsey: I don't think we're done with this.

Mr. Coleman: That is why we need to tweak it and come back. Signs are very difficult.

Comm. Strauss: If Crate & Barrel can come in and get five signs, it seems like it is all up for discussion.

Comm. Roberson: But we can't discuss it at the moment; we're limited by the LDO.

Comm. Neff-Brain: Somebody gave Crate & Barrel five.

Comm. Roberson: City Council did.

Mr. Klein: Honestly, I don't think we could do that again.

Mr. Coleman: There is a section in the LDO that says if it is approved as part of their criteria, they can get it.

Comm. Ramsey: What are we going to get hit with when they come in for their office building?

Comm. Neff-Brain: They are not going to want a lot for their office building.

Mr. Klein: Park Place has criteria established for office buildings.

Comm. Roberson: Didn't we say, as a body, that they had to have residential next to the development for office buildings?

MEETING ADJOURNED