

City of Leawood  
Planning Commission Minutes  
February 28, 2012  
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, Neff-Brain, Rohlf, Williams, Elkins, and Ramsey.  
Absent: Pateidl and Strauss.

**APPROVAL OF THE AGENDA:**

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

**APPROVAL OF MINUTES:**

Approval of the minutes from the January 24, 2012 Planning Commission Meeting and February 15, 2012 Work Session Minutes.

A motion to approve the minutes of the January 24, 2011 Planning Commission meeting and February 15, 2012 Work Session Minutes was made by Elkins; seconded by Williams. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

**CONTINUED TO MARCH 27, 2012:**

CASE 92-11 – PARKWAY PLAZA – PARKWAY PLAZA RETIREMENT HOMES – Request for approval of a Rezoning, Special Use Permit, Preliminary Site Plan and Preliminary Plat for an independent living, assisted living and skilled nursing facility, located north of 135<sup>th</sup> Street and west of Roe Ave. **PUBLIC HEARING**

**CONSENT AGENDA:**

CASE 12-12 – TOWN CENTER PLAZA – EXPRESS – Request for approval of a Final Plan for a Tenant Finish, located at 5016 W. 119<sup>th</sup> Street.

CASE 15-12 – PARK PLACE – REGUS – Request for approval of a Final Sign Plan, located north of 117<sup>th</sup> Street and east of Nall Avenue.

CASE 16-12 – VILLAGE OF SEVILLE – SAMMY'S PIZZA & PUB – Request for approval of a Final Sign Plan, located at the northwest corner of 133<sup>rd</sup> Street and State Line Road.

CASE 27-12 – CENTENNIAL PARK – BUILDING 23, 2<sup>ND</sup> PLAT – Request for approval of a Final Plat, located at the northeast corner of W. 143<sup>rd</sup> Street and Overbrook.

CASE 29-12 – PARK PLACE – SPACE G-35 – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue.

CASE 31-12 – TOMAHAWK CREEK OFFICE PARK – AMERICAN ACADEMY OF FAMILY PHYSICIANS – Request for approval for a Final Sign Plan, located at 11400 Tomahawk Creek Parkway.

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

**NEW BUSINESS:**

CASE 05-12 – CITY OF LEAWOOD – 2013 – 2017 CAPITAL IMPROVEMENT PROGRAM – Request for approval of the 2013-2017 Capital Improvement Program. **PUBLIC HEARING**

**Staff Presentation:**

Assistant Director Mark Klein made the following comments:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 05-12 – City of Leawood – Capital Improvement Program. Tonight, we have Joe Johnson, Public Works Director, and also Don Long, Finance Director, to answer any questions you may have with regard to the CIP.

Joe Johnson, Public Works Director, made the following comments:

Mr. Johnson: The introduction to the CIP does a good job of highlighting the key points, both on projects where the city stands with the debt financing and list of projects that are presented to the CIP. The most noticeable item on the CIP is that most of the debt projects are curb replacement projects with one storm sewer project. The total cost of debt financing is approximately \$50 million. Of that, about 86% is funded through city at-large funds, 8% is through other funds, including Johnson County CARS program and 6% is funded either through federal or state funds.

- Tab One is an overview of what the city's capital program is comprised of and how projects get placed on the CIP.
- Tab Two is the discussion of the debt policy that the city follows, looking at how projects will be funded and whether it is SBD or TDD and the terms of the bonds. It is a guideline that is used in establishing the debt program.
- Tab Three lists the projects included in the 2013-2017 CIP that will be debt financed. All the projects with the exception of one are printed in black. The exception is 143<sup>rd</sup> Street from Windsor to Kenneth, which is highlighted in red. Currently, this is programmed for 2017; however, currently, it is a non-committed project for funding. As we move forward in the next couple years, looking at city financing and other parameters, we will look to see if we can make it a committed project. We have moved 143<sup>rd</sup> Street widening to a four-lane cube and gutter street between Nall and Kenneth back into the CIP. Phase One will be done in 2015, which will improve 143<sup>rd</sup> from Nall to Windsor. In 2017 would be Phase Two, which would go from Windsor on to Kenneth Road.
- Tab Four lists the projects that will be debt financed from 2013-2017. Probably the biggest addition to projects in the CIP is a \$20 million, four-year curb replacement program which will be done between 2013 and 2016 at \$5 million a year. There is roughly 370,000 feet of curb along arterial and collector streets and about twice that much in residential areas. Over the next four-year cycle, we will replace the curbs that are deteriorating. In 2015, you'll notice that 143<sup>rd</sup> Street is in there for Phase One.
- Tab Five is debt service information. That looks at the projects that will be debt financed and looks at the year that temporary notice will be taken, the year the project will be constructed, when the bonds will be issued and the terms of the bond for each of those specific projects.
- Tab Six is the city's Pay As You Go program. Most of these projects are cash financed through various tax revenues, including the 1/8 cent sales tax and the art impact fee. Included in this program are the city's arterial and residential street program, art projects, storm water program and the Justice Center. The money was collected with the city's ¼ cent sales tax and the county's ¼ cent sales tax to each generate \$10 million for that project.

- Tab Seven is Capital Lease. Generally, those are use for financing the purchases of our fire trucks.
- Tabs Eight and Nine are appendices and additional information in the CIP.

If there are any questions, I'll be happy to answer those questions.

Chair Rohlf: Does anyone have questions for Mr. Johnson?

## **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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

Chair Rohlf: Are there other questions, keeping in mind that our role in the review of this program is to make sure that it conforms with the Comprehensive Plan? It's a little different than we've seen in the past with a lot of information dedicated to our streets and curbs.

Comm. Jackson: I would just note in the record that, in the Work Session held on the 15<sup>th</sup>, we were able to ask all questions and address concerns to Mr. Johnson.

**A motion to recommend approval of CASE 05-12 – LEAWOOD CAPITAL IMPROVEMENT PROGRAM 2013-2017 – Request for approval of the 2013-2017 Capital Improvement Program - was made by Roberson; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 10-12 – PARK PLACE – NATIVE 34 – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue.

### **Staff Presentation:**

City Planner Justin Peterson made the following comments:

Mr. Peterson: Madame Chair and members of the Planning Commission, this is Case 10-12 – Request for approval of a Tenant Finish for Native 34 at the Park Place development in the location formerly known as Trezo Vino. The applicant is proposing modifications to the store front of the tenant space. The Southeast Elevation will remain the entrance to the restaurant. The entrance façade is proposed to be constructed of wood slats placed horizontally along the storefront and spaced evenly apart. LED light fixtures will be placed both at the top and the bottom of the storefront behind the wood slats, which will produce a cool glow of light from the gaps between the wood. The East Elevation will maintain the existing materials; however, these materials will be painted Benjamin Moore Iron Mountain (charcoal). The existing wood window features will be reconfigured and stained to match the storefront wood. Outdoor seating of six tables will be placed along the sidewalk between the street trees. The South Elevation will maintain existing materials and will be painted charcoal in color as well. A new folding door system will also be added. These two doorways will provide access to the outdoor seating area, which will consist of seating for 64 customers. A trellis is proposed to cover the outdoor area, providing shade to outdoor diners. It will extend 26 feet, 2 ¾ inches from the building and will be 26 feet, 8 inches in width. It will be constructed of hard wood and will stand 9 feet, 6 inches in height. Within the outdoor seating area is proposed a fire pit. The feature will be constructed with a concrete base surrounded by two sets of ¾ inch tempered glass. The proposed signage is one wall sign and one blade sign, both of which comply with the requirements of the LDO and the approved Sign Criteria for Park Place. The proposed wall sign will be placed on the southeast façade and will not be illuminated. It will be constructed of matte black metal letters 18 inches in height. The overall sign will be 13.5 square feet or 4.5% of the façade. The proposed blade sign will be circular in shape with a height of 2 feet and length of 3 feet, 6 inches and will be located on the east elevation of the building. Staff

recommends approval of Case 10-12, following the stipulations stated in the Staff Report. I'd be happy to answer any questions.

Comm. Neff-Brain: I see on the page that has the exterior rendering something called festoon lights. Are those hanging lights?

Mr. Peterson: The applicant may be better to answer those questions.

Chair Rohlf: Do the changes to the elevations comply with the overall design guidelines?

Mr. Peterson: Yes, they comply.

Comm. Williams: Please explain the replacement of the doors. Where are the folding doors?

Mr. Peterson: They will be on the south elevation and will provide access to the outdoor trellis feature.

Comm. Williams: To your knowledge, are those framed and glass doors, or are they frameless? What I see looks like a framed door, and then on the cross section, I see a note for a frameless door.

Mr. Peterson: The applicant might be able to answer those questions.

**Applicant Presentation:**

Mark Walker, managing partner at Trezo Vino, 10771 South Cedar Creek Circle, Olathe, KS, appeared before the Planning Commission and made the following comments:

Mr. Walker: I own Walker Development Services, which is a restaurant hospitality development company. Many years ago, I did the Bristol and Houlihan's here in Leawood back when I was with Gilbert Robinson. Trezo Vino has been open about four years now in March, but we haven't been able to achieve the success we would like. During the last six months, I've been working with the chef and owner of Blue Stem, Colby Garrelts, who is with me here tonight. Colby was born and raised here in Leawood, Kansas and currently lives in Leawood. We are developing a concept that will really define what the Heartland Table is all about. We've been working on Native for about six months now and have submitted the exterior work for approval and are about two weeks away from submitting the materials for the building permit. I'm happy to answer any questions.

When we opened Trezo Vino, we didn't know what was going to be on the south side because it was still not designed. We feel it is one of the best patios in the city. The sun goes behind the hotel at about 2:30 in the afternoon, so we wanted better access to the area. Those will be in the similar style in the aluminum frame that everything is in now. It will be fully weatherproof with a draw-down screen on the back side.

Comm. Neff-Brain: My question was about the festoon lights.

Mr. Walker: The festoon lights are still in the plans. We have reduced the size of the trellis structure from three times what it was. We left them in because we didn't have comments back from staff to modify that. They were strung between the trellises.

Mr. Klein: This is something we've seen over at the Los Cabos in Mission Farms. It involved a long discussion about prohibited signs, and it was determined it was not really a sign and that they would be allowed by both this body and the Governing Body.

Comm. Jackson: Do you have a larger picture of the way the patio fits in with the buildings behind it? I'm trying to figure out how far the patio comes out. Is it right by 801 Chophouse?

Mr. Walker: We don't come quite to the tree. Last summer, when we didn't have a structure, we had couch groups and a lot of loose furniture. We kind of took up the space, and occasionally, they band played on the platform that is at 801 Chophouse. They won't be able to do that this year. It's a lot more intimate space that gives people more privacy. The seating count is identical as it was.

Chair Rohlf: Do we have any other questions for the applicant? Thank you. That takes us up to discussion, hopefully leading to a motion.

**A motion to recommend approval of CASE 10-12 – PARK PLACE – NATIVE 34 – Request for approval of a Final Plan for a Tenant Finish, located at 117<sup>th</sup> and Nall Avenue, with all four staff stipulations – was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 30-12 – PARK PLACE – BUILDING F – EXPANSION ROOF SCREEN – Request for approval of a Revised Final Plan , located north of 117<sup>th</sup> Street and Nall Avenue.

**Staff Presentation:**

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 30-12 – Park Place, Building F – expansion roof screen. The applicant is requesting approval of revised elevations of Building F such that the roof screen is located on the west side of the building, rather than being more centralized on the east elevation of the building as was originally approved. This application was actually approved on July 18<sup>th</sup> of 2011. The building has been constructed. (*Shows elevations on the overhead.*) Building F2 was approved in July of 2011. The building consists of a single façade but is broken up to look like different buildings. As you can see here, the central portion of the building is flanked on either side by a different type of architecture. They were showing a roof screen that consisted of horizontal metal louvers that went across. It wasn't perfectly centered on the building but more or less centrally located to create a balance. The roof screen itself is about 11 feet high. At submittal, the building plans showed the roof screen to be taken a bit farther toward the west elevation, away from the centralized location. Staff has concerns about that based on the fact that it lost the ability to balance the building and be more equal. The applicant stated that it works better with utilities on top. Elevations in your packet indicate the views that will be obscured. I drove by on Town Center Drive, and I could see some of it at that point. More importantly, many of the buildings in Park Place are multi-story, which would create a higher vantage point for many. From an architectural standpoint, staff is supportive of the originally approved design. I'd be happy to answer any questions.

Chair Rohlf: Mark, how has the size of the screen changed?

Mr. Klein: The screen has shrunk. Again, they indicated where the rooftop utilities were as the area that really needed screening. Staff talked to them about extending the screen across to create some balance; however, that ran into some other issues, such as cost. The applicant could better answer that.

Chair Rohlf: Has this been installed?

Mr. Klein: I believe so.

Comm. Williams: Mark, could you clarify the LDO requirement for the utility screens in terms of limiting visibility. How far out do they need to go to meet the criteria of the LDO?

Mr. Klein: We used to have a stipulation that they had to be screened from public view, which raised the question of what public view actually is. What we've been doing the past number of years to ensure that the rooftop utilities are screened is to require that they are at least the height of whatever the utilities they are screening.

Comm. Williams: So there is really not a requirement that they are hidden from street level at any vantage point or that the screening would not be seen from neighboring buildings. Your concern is that, with its location, it would look better from neighboring buildings if it was more per the original plan.

Mr. Klein: Yes, it is more from an architectural standpoint.

Comm. Williams: In that regard, other utility screens on the other buildings in the vicinity are like what? Are they more centered, off to one side or a combination?

Mr. Klein: I don't recall. I know that, as some of these buildings come through, the rooftop utility screen appears to be more a central part of the actual design of the building; whereas, on other ones, it doesn't seem to be. On this particular one, we thought it was centrally located and balancing. On some of the other ones, it really didn't come into play because it wasn't considered quite as big an element.

Comm. Williams: I agree that it would have looked nicer overall from a lot of vantage points to have been more per the original plan. I think we probably preferred that when we approved it in the first place.

Comm. Roberson: Did I understand that the screen has already been installed?

Mr. Klein: Yes.

Comm. Neff-Brain: Have you inquired about why they installed it not per the plans?

Mr. Klein: At this point, I have not. We did have discussions at the time of building permit. At that point, it was noted that the screen was in a different location. We did note that on the Building Plan review that staff was not supportive and we wanted to see it back in its original location. We weren't really aware that it had been constructed until the same day the Staff Reports were going out.

Comm. Williams: This may have been referenced in the packet, since the mechanical equipment itself is set, and to get this screen more to where it was originally proposed, I doubt the mechanical equipment itself is going to be moved because of what's involved in that, so it would pretty much just require a larger screening element on the roof, which maybe becomes more of a visual issue for surrounding buildings than the screen as it is for surrounding neighbors.

Mr. Klein: From staff's point of view as far as the balancing, having it centrally located, even if it was a little longer than what was originally approved, balanced it a bit better. We did suggest that they extend the screen, even though it wouldn't be screening any utilities behind it.

Comm. Williams: That screen would be roughly twice as big as it is now?

Mr. Klein: It wasn't completely centered before, but it would probably extend from here to here (*illustrates on the display boards*). It would be longer.

Comm. Ramsey: But that would be just to balance it out?

Mr. Klein: Yes, it would provide some proportion to the building from those elevations.

**Applicant Presentation:**

Gary Schuberth, Opus Architects and Engineers, 4900 Main Street, Kansas City, MO, appeared before the Planning Commission and made the following comments:

Mr. Schuberth: *(Refers to computer presentation throughout)* The roof screen has been constructed in the smaller configuration than what was originally shown at the last approval; however, that doesn't mean that we wouldn't change it. We are perfectly willing to change it if you so desire. The building is an asymmetrical design and is meant to look like three different buildings. The rooftop screen was shown in an asymmetrical manner to begin with, and it wasn't perfectly centered to reinforce that idea of three separate buildings that are not equal in shape. When we did the Generale building, it was centered on 116<sup>th</sup> Place. The rooftop screen is perfectly symmetrical and centered on the building. This one, we didn't want to do that. Also, while you can see the building from upper floors of some of the buildings that will be built around it, you really don't see it from the ground level as you're driving around the building. We did note on the plan that the exact configuration would be determined on submittal of the construction documents. We had that in there just because the exact rooftop specs were not determined at that point.

The planning drawing illustrates that, around the center portion of the building, it projects about a foot and a half to this side and about 22 feet to the other side. Again, it was not symmetrical in the initial submittal. The current configuration is still off to the side but it much shorter. The original is approximately twice the size of what we're showing now. We thought that being smaller would be better with the roof screen. The roof screen projects about a foot and a half from this side of the center over to 22 feet on this side. Here, it's much smaller. As you can see, it comes to about this point right here from the original one. Again, it's asymmetrical but still keeping in the spirit of the design of the building.

Along 116<sup>th</sup> place from the street view, you can't see any of the roof screen at all, whether you are at the Generale building looking west or at the traffic circle, looking east. The Site Plan shows the view corridors. Once AMC's garage and building is in place, the view from Town Center Drive and Nall will be obstructed. Coming up the street, both the R1 and R2 residential tower buildings will block that view, as well as the Axis Lofts. Off Town Center Drive, you will have a gap through that part of the building.

The aerial view shows what we're proposing and what we'd like you to approve. View B is the view between R1 and R2 residential buildings. View A is off Town Center Drive from farther away. From the east elevation, it is blocked, but you might start to catch a glimpse at the end. The roof screen is a little hard to see, but we have parapets on the building that are raised up fairly high to help hide that. The corner of the roof screen is about where that arrow is. If we extend that, it will come over and be hidden at that point.

Again, our case here is that it was intended to be asymmetrical, and by making it wider, it will not cover any rooftop equipment. It is doubling the size and the cost, which we don't think is necessary. It forces symmetry on a building that is not meant to be symmetrical. It is contradictory to the design intent. We'd be glad to answer any questions you have.

Comm. Neff-Brain: Why wasn't it built according to approved plans?

Mr. Schuberth: If you say we have to put it back the way it was per that plan, we certainly will, but we built it the way we felt was best and still met the design intent of the building, fully intending to come before you to see if we could have this change approved. Again, on the original drawing, we had a note that said the exact configuration would be determined when we submitted the permit drawings. We were developing the rooftop equipment specs, and that time, we were looking at one unit versus two units. We ended up with one unit, and we didn't feel we needed to make the screen twice as big as it needed to be.

Comm. Roberson: So you installed it without approval?

Mr. Schuberth: Yes, but we haven't finished the building.

Comm. Roberson: But you knew you needed approval.

Mr. Schuberth: Yes, and that's why we are here tonight. We knew we needed to do that, but we didn't think it was a problem to make it smaller than it was. We didn't feel that it was a strong aesthetic aspect of the building.

Comm. Ramsey: I agree that it's not, and I think it's a fairly reasonable thing to do. What's not reasonable is for you to come in here and, instead of requesting permission, begging forgiveness. That's what, effectively, is happening here because there is a process. If we're not going to adhere to that process where we have the opportunity for public interest to be considered, then why do we even have a Planning Commission?

Mr. Schuberth: I don't think I'm asking for forgiveness.

Comm. Ramsey: To me, after the fact is asking for forgiveness.

Mr. Schuberth: We haven't finished the building, so we still will be glad to do it if you say so.

Chair Rohlf: How would you do it now? Would you just add on?

Mr. Schuberth: We would simply add on. The building is still under construction and is not finished; it hasn't been capped off or trimmed out. We simply have to add more columns and extend it over.

Comm. Ramsey: Is it finished or not?

Mr. Schuberth: The screen isn't finished. It hasn't been capped off. It's not like we finished the building, got a Certificate of Occupancy and are now coming back and saying we did something we shouldn't have done.

Comm. Ramsey: I apologize then.

Mr. Schuberth: I am asking permission for a modification of the plan.

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

Mr. Alpert: Let me just add a bit more perspective. Hopefully, you all understand that we are not in the habit of trying to slip things by because it's not what we do. This is a situation in which, post-approval of the Final Development Plan, there was a significant change in the design of the mechanical systems. As Gary said, the original system called for two separate units spread apart, therefore requiring a much larger screen. The ultimate solution was a single unit located toward the west end of the building. Because of the way the tenant finish configurations worked out, it was the most efficient place to put the shaft that distributed the air down to the individual floors. If we had stopped the project in order to come through the process, which, not including the design times, is about an eight-week process, it would have pushed back delivery to our two tenants from July 30 to September 30 and probably would have killed the deal. These tenants had very tight time frames. We got the building started and immediately came back with an application for this reconsideration of the roof screens. That really is the whole story.

Comm. Roberson: Mark, did you ask them to come back with this, or were they voluntarily coming before you found out?

Mr. Klein: We noticed it on the building plans and talked to the applicant about it, asking that it go back to being centrally located. They indicated that would not work for what they wanted to do, and they didn't feel that, due to the obscured views, it needed to be. We indicated the only way to have it changed was to come back through Planning Commission and City Council. We were not aware it had been constructed at that point. As I said, literally the day of the Staff Report is when I found out.

Comm. Williams: When was this permit review done?

Mr. Klein: I don't remember exactly. When the building plans come in, one goes to the planning department. That was part of our notes.

Comm. Williams: My point in asking is I'm assuming if we have a building with windows, mechanical windows and screening that it has taken a few months here.

Mr. Klein: It should have been back before a building permit was issued that those comment were made to the building department.

Comm. Williams: So there should have been plenty of time to bring that back for a review or work out the details with staff before getting the screen up. Now, it comes before this body and the Governing Body.

Comm. Roberson: How long does it take to put up a screen? The reason I'm asking very simply is that it doesn't delay the building construction at all.

Mr. Alpert: It's an 11-foot tall screen. It was installed in conjunction with the steel erection in order to be structurally sound.

Gary Schuberth: We knew that it needed to be at that end, so we thought we would get that part up. Then if we have to extend it over, let's do that, but we wanted to at least get that portion done while we're up there doing the other work. It is as if it's half complete, and if we have to extend the other half, we'll do that.

Mr. Alpert: The structure of the roof screen was part of the steel package, so the shop drawings had to be done, designed and included in the beginning of the process.

Mr. Schuberth: When we had it in for building approval, it was flagged with a change of the layout of the rooftop. We had the discussion, but we didn't come to an agreement on it. They said we need to come here to get it approved because it could not be approved administratively. Now, we are coming to see if we can get it approved with the smaller version. If we can't, we'll simply extend the walls over.

Comm. Williams: When was this flagged? How many months ago did you have time to bring it back before being built?

Mr. Schuberth: It was in for permit last December.

Comm. Williams: You couldn't have brought it in earlier than now without it being built?

Mr. Alpert: At that point, it would have delayed the construction of the building. We would have had to delay the steel package.

Comm. Williams: The screen is with the steel fabrication context?

Mr. Alpert: Yes, the structure is.

Comm. Williams: It never has been on any of my projects.

Comm. Neff-Brain: But it can be added on to without adding to the steel package?

Jared Protasky, Opus Design Build, 4900 East Main, appeared before the Planning Commission and made the following comments:

Mr. Protasky: I am the project manager for this project. With an 11-foot tall roof screen, those posts must go up and have some support. That actually attaches to the structural steel and went up at that time. What these two gentlemen were alluding to with the building permit, the first opportunity that we would have had to apply to get on your agenda would have been the December 26<sup>th</sup> application date. We hit the January 26<sup>th</sup> date to get in front of this committee. I agree that we were a little behind, but we got a lot of other things caught up and did get in front of you. It was an eight-week process.

Mr. Alpert: Also, don't forget that there is no new business taken by the Planning Commission in December. We conceivably could have gotten in earlier, but there was really no point because we could not have been heard until the January meeting at the earliest.

Chair Rohlf: I'm sure we could probably dispute this back and forth as far as the timing, but I'm not sure that will accomplish what we need to evaluate. I'd like to get back to the actual drawings and see what we think now of this particular screen, perhaps putting aside what it might have looked like. Based on my review and what I've seen, I'm not sure it's that significant of a change, but I would be open for others to talk about the change and not the process.

Comm. Ramsey: As I've indicated before, I agree that it's a minor change. I don't have a particular problem with what they want to do. Unfortunately, these guys are receiving my wrath because this has happened once too often as far as I'm concerned.

Comm. Neff-Brain: And just recently. People are starting to think that if they want to make a change, they can and then come in after the fact. I agree that dilutes the purpose of the Planning Commission.

Chair Rohlf: We should consider the track record of this particular project and the sheer enormity of it.

Mr. Schuberth: I would agree that begging for forgiveness is not the right way. In our industry, 900 times out of 1,000, we would find that less is more when it comes to roof screens, which is part of the reason we didn't feel it would be a problem. It is usually the undesirable part of the architecture that people don't want to see. I think it speaks wonderfully that people at the staff level were unaware we put it up because it's small and hidden. I'm not saying it makes it correct, but at the same time, it was our line of thinking.

Comm. Ramsey: I appreciate that.

Chair Rohlf: Any other questions for this applicant? Thank you.

Comm. Williams: I concur with comments you and Mr. Ramsey made on this. Quite frankly, if this had come in for approval before it was constructed, it would be a non-issue. I do side with staff in part that the original design was, in many ways, maybe better fitting on the building, but I do agree that less is more with roof screens, particularly if they don't serve a function of screening the equipment. It is a metal screen and doesn't relate to anything that typically is seen on these things. To a large extent, it won't be noticed except by people on the floors above it. In that respect, process aside, I would be supportive of the change.

Chair Rohlf: Anyone else on this, or are we ready to make a motion?

**A motion to recommend approval of CASE 30-12 – PARK PLACE – BUILDING F EXPANSION ROOF SCREEN – Request for approval of a Revised Final Plan, located north of 115<sup>th</sup> Street and east of Nall Avenue – was made by Williams; seconded by Elkins.**

Comm. Jackson: Do we need to add stipulations?

Mr. Klein: We are basically approving their current plan, so the only stipulation would be that they would need a building permit; they are already operating under one.

Mr. Coleman: The only thing I would add is that all rooftop mechanical units shall be screened by this.

**Motion amended to include two stipulations:**

1. **Applicant must obtain and operate under a building permit**
2. **All rooftop mechanical units shall be screened by this.**

**Amended motion made by Williams; seconded by Elkins.**

Comm. Roberson: I still can't see how we can ignore process. I think that is wrong. I agree with Commissioner Ramsey that we have seen this once too often. Quite frankly, I think we need to send a message that we will not support transactions like this, when you come in after having done something, knowing you have to get approval. In this case, they knew they had to get approval, and they did it anyway.

**Motion approved with a vote of 4-2. For: Jackson, Williams, Elkins and Ramsey. Opposed: Roberson and Neff-Brain.**

**CASE 18-12 – STC FIVE, LLC CELULAR TOWER – Request for approval of a Revised Final Plan, located north of 117<sup>th</sup> Street and east of Nall Avenue.**

**Staff Presentation:**

City Planner Justin Peterson made the following presentation:

Mr. Peterson: Madame Chair and members of the Planning Commission, this is Case 18-12 – Request for approval of a two-year extension of a Special Use Permit for the continued use of a wireless communication tower and associated equipment, located north of 135<sup>th</sup> Street and west of Briar in the Parkway Plaza Development. This is associated with the following six cases as well, which are the cellular antennas located on this tower. Since these cases are associated, staff is providing one presentation; however, the Planning Commission must hold separate Public Hearings and vote separately on each case. Antenna carriers on this tower include Verizon at 127 feet, AT&T at 145 feet, Cricket at 145 feet, Clearwire Wireless at 94 feet, T-Mobile at 127 feet and Sprint / Nextel at 170 and 105 feet. The tower and several of the antennas located on the tower are non-conforming structures. They do not meet the following requirements of the City of Leawood's ordinance for wireless communication towers and antennas. The tower is not an alternative structure, such as a monopine, and is not permitted within any comprehensive master plan or existing residential areas including MX-D districts. In addition, as the tower is not an alternative structure, it does not meet the required setback of 500 feet in all directions from the base of the tower to the property line of any existing or comprehensive master plan residential area. The tower exceeds the height limit of 150 feet required by the LDO, and several of the antennas are mounted on platforms that are not flush-mounted to the pole as required by the LDO. The applicant approached the city in 2011 in regard to changing the city's development ordinance in such a way as to allow this tower and the antennas mounted on it to remain, as the tower and associated antennas will expire in March of this year. The city passed an amendment to allow up to a two-year extension of Special Use Permits for wireless communication facilities, including towers

and antennas, on November 21, 2011. This was done to allow time for the applicant to either make this tower conform or to remove it. The applicant would prefer the LDO be revised to allow this tower to stay. If granted this extension, the applicant has agreed to provide additional information to the city in order to facilitate review of the LDO and how it applies to this tower. Members of the Planning Commission are invited to let the applicant know if there is any specific information they believe would be helpful in considering the LDO provisions. Staff recommends the Planning Commission review Case 18-12, along with the following six cases: 19-12, 20-12, 21-12, 22-12, 23-12 and 24-12, following the stipulations outlined in the Staff Report. I'd be happy to answer any questions.

Comm. Roberson: What residents are within the 500-foot radius of this?

Mr. Peterson: The apartments in Overland Park.

Mr. Klein: The MX-D District has residential, so it is included as one of the master planned areas that is considered residential. Because it is in an MX-D District, it doesn't meet that. Additionally, it is 500 feet from the apartments to the west, even though it is in Overland Park.

Comm. Roberson: The only residents I know of in that area are the condominiums (*inaudible comment*)

Mr. Klein: I don't believe they are; I would have to check that. It may be a bit farther than 500 feet, but the way the ordinance is worded is if it's in a district that's zoned for residential, it is actually from the zoning that contains residential.

Comm. Williams: The tower has been there a while and was there before Parkway Plaza was approved. Relative to that, what was the zoning of the property when the tower went up? Was it still MX-D?

Mr. Klein: No, actually, the MX-D zoning came in with Parkway Plaza. Prior to that, I believe it was Ag because Grass Pad was in that area.

Comm. Williams: So the tower was there, and the development came in around it. If you're going to put a 500-foot buffer, the development should have had it versus now making the tower have it.

Mr. Klein: It falls into the legal, non-conforming structures. At the time the structures were constructed, they were perfectly legal, but then the regulations changed. Then you have a situation in which they don't meet the current regulations. That is where we are now.

Comm. Williams: For clarification, the approval of the Council on November 21, 2011 is coupled with staff's approval of this application. Are we giving the applicant two more years to work out a plan?

Mr. Klein: Actually, the applicant is supposed to provide additional information to the city with regard to the LDO and their needs to see if something can be worked out so the tower can meet the ordinance or perhaps the tower is taken down. That is the reason for the statement that it would be appropriate for the Planning Commission to give input on that. If this does get approved, the applicant has these additional two years, and it would be helpful to have some direction from the Planning Commission.

Comm. Williams: I would think a big component of that, based on past presentations and discussions of coverage and maps that we've seen, if they're going to try to make a tower at this location comply with the LDO, it probably means the introduction of other towers somewhere in the area to pick up the coverage because the towers, as we have them in the LDO, do not provide the coverage for the full area. There will be balance, give and take or whatever is required to get the coverage to meet public demand.

Mr. Klein: You're absolutely right. With the current ordinance, if they were coming in with something new, the only thing they could present would be an alternative tower structure such as a monopine. In the past, we have limited those to 75 feet in height because once you get a 150-foot tree, it stops looking like a tree.

Comm. Williams: On the same token, wouldn't a 75-foot monopine in the middle of a parking lot, surrounded by concrete buildings look a little out of place?

Mr. Klein: Sure.

Comm. Elkins: My memory may be faulty on this, but my recollection is when we looked at the amendment to the LDO back in November, it may have been Commissioner Neff-Brain who expressed concern about the status of the maintenance around this tower. I think we indicated to the applicant's counsel that he would take a strong message back to the owner. I'm curious if staff or the inspectors have been out there and can comment. I have noticed we don't have pictures of the area immediately around the tower.

Mr. Klein: The applicant took those comments from the Planning Commission very seriously. When I took the pictures, the stucco on the CMUs that composed the compound seemed very thin. It wasn't painted very well; they had rusting gates; some of the landscaping did not look maintained. The applicant has redone the stucco on the wall and painted it. The rusted doors have been replaced. They did maintain some landscaping. In addition to that, the stipulation is on the tower structure on this one, and they must provide additional landscaping, including landscaping around the utilities. The applicant has been very cooperative.

Comm. Elkins: So in your mind, it appears to be adequately maintained?

Mr. Klein: Yes, at this point.

**Applicant Presentation:**

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

Mr. Holland: *(Refers to overhead presentation throughout.)* Before I get started, I would like to introduce a couple folks from Crown Castle, who manages the ownership of this tower: Robert Bruce, district manager, Jeff Barnett, property specialist. From T-Mobile, we have Garth Adcock, real estate manager. As staff indicated, there are seven applications here tonight, all related to each other. Just as staff made a single presentation, it is my intent to do the same. Before you, I have listed the various essential parties that have some interest in the tower facility. Crown Castle would manage the tower, the equipment compound and the landscaping around it. Next, we have Sprint / Nextel in two locations on the tower. We have AT&T Mobility, Verizon Wireless, T-Mobile, Cricket and Clearwire. The carrier applications are merely for the antenna facilities attached to the structure itself and the ground equipment within the compound. Staff gave you a brief history of it, and I have a bit more. Just to orient you to where the facility is located, this is in the northeast quadrant of 135<sup>th</sup> and Nall. Parkway Plaza surrounds us and the apartment complex immediately to the west in Overland Park. As indicated, this structure was first approved in 1996 and built in 1997. At that time, the land was zoned Ag. A tower existed on the tower already. The original use of the property was a nursery before anything else was there. The existing cell tower was built by a company called Cellular One (now Verizon Wireless); the other was Southwestern Bell Mobile Systems (now AT&T Mobility). The tower was approved for 185 feet. The tower structure was 175 feet, and then there was a lightning arrester at the top. In the field, it is 170 feet with a lightning arrester, with a total estimated height of 178-180 feet overall. The existing tower had a deal with the city. In those days, they did not build towers for co-location, so the tower was for Cellular One. When Sprint was building a network in 1996, the tower wasn't structurally capable of holding their antennas. The arrangement was that Sprint would build this tower and the other tower would eventually go away. The lease for that tower was four years, and at the end of the four years, it

would go away and Cellular One would move over to this one. There would be a single tower still on the property.

Following the construction of this tower and Sprint placing antennas on it, the other carriers liked the location. It is a great location that fit in their network and design. All the other carriers put antennas on it between 1997 and roughly 2000. In 1997, an ordinance change allowed for the platforms to be there. The city approved all the SUPs for the carriers. In 2002, the city amended the ordinances again, requiring that all antennas be flush-mounted to the pole or be internal. Some of those SUPs were for a five-year period of time. The first renewal of those was granted in 2004 to Nextel. Again, in 2004, we had an ordinance in place that required the antennas to be flush-mounted, but in 2004 when there was time for it to be done and the ordinance required for everyone to bring the facility into conformance when the SUP was up for renewal, city planners, planning staff and City Council recognized that it wasn't practical. In 2007, after everybody was on, the tower and all the carriers were up for renewal. Five or six applications came in, and the planning staff recognized this was a legal, non-conforming use that was grandfathered, and the Planning Commission and City Council recognized it would be impractical to bring the facility into conformance because it violates four or five different rules. They left it as is and approved it for five years. Everybody has looked at this for a long time and understands that it is impractical to change what is there already. No resident has complained about it to anybody. It's been there so long people just accept it. The ordinance does say that, at the time of renewal, you need to have the facility brought into compliance. In 2009, an application came through by Clearwire for WiMax antennas. The city took a change in position and no longer allowed the platforms. They also said, "In 2012, you will have to bring this tower into conformance." This was the first time the industry and carriers were notified we had to do something to bring the facility into conformance. You heard the list of regulations we don't meet, and it is impossible to meet all of them. Even if we shorten the tower, we still will be within 500 feet of residential. In 2009, in response to that, I submitted a letter request to the city asking to consider amending the ordinances. We formally made a request in 2011, which has brought us to the city approving an amendment to the ordinance for an additional two years. From the time we knew about it and learned that the city might try to really enforce the ordinance, even though they hadn't up to that point in time, it has always been our intent to try to keep the facility where it is because it serves six carriers, is in prime location and provides a lot of coverage for a lot of people in this area. The City Council and your body considered an amendment last year to allow for a two-year extension of this permit to keep us in conformity, but within these two years, to do a serious evaluation about whether or not we could do this any other way than to have a tower there. We have agreed to do that, and that's what we're doing now. It will not be easy to do. Everybody has built their network around this facility. Now, it's very difficult to simply remove it and do something else and replicate the coverage there. It interfaces with the other sites already built around it. It has to be very near its current vicinity. Today, it is in the middle of the MX-D District. From Nall all the way to State Line is an MX-D District on both sides. Residential is beyond those boundaries. Parcels of land are not large, and most of them are slated for some type of development. Factoring in all those issues, you see that it is a daunting task that takes time. You have to find out the impact to the carriers. Some will lose 40% of their coverage, including homes, people and businesses. It will take us a period of time to figure out if there is a way to do anything differently.

We still would prefer to keep the facility as it is. To flush-mount all 40 antennas on the pole will not look good, either. We may come back and say that there is really no other way to do it practically, or we will figure out another way with several monopines in different locations. Maybe we can do that, but it's the process we are undertaking now. If we are not allowed to continue, I guess we take the tower down and about 5,000 of your residents are going to call City Hall and complain because their phones don't work. It is not just a convenience; it is a necessity for public safety, including 911 communications because well over these calls are made through a cell phone. This facility covers a large area of Leawood and Overland Park, and it is every carrier in this market. We are here to hopefully obtain recommendation of approval. We agree with the stipulations staff has mentioned in the report, and we are happy to answer any questions.

Comm. Jackson: Do the flush-mounted antennas cover any less area than these platform antennas?

Mr. Holland: It will have an impact on the coverage area, partly because you have to stack these. Most of the carriers have two or three separate networks going at the same time: voice, data, 3G and 4G. Yes, flush-mounting will lose coverage because center lines will be lowered.

Comm. Jackson: When the 4G comes on board, do the 3G antennas come down?

Mr. Holland: They'll keep them running because some will have a 3G phone still. That is why these antennas are still there.

Comm. Jackson: Any new technology coming down the line?

Mr. Holland: We're always trying to provide coverage in a manner that is cost efficient and effective in areas where we know it's difficult, particularly from a zoning perspective. We are implementing stealth facilities, and they've been very creative over the years, such as church steeples, building roofs and billboards. We need height. Technology-wise, 4G is the next generation, and I think you'll just see more and more of this kind of thing because everybody uses a phone, and it is for all applications. Antennas are not getting smaller. The structures are still going to be needed at some height to provide coverage.

Comm. Jackson: I'm just trying to think outside the box. The most obnoxious part of this antenna is in looking directly at it. I don't know if you can put up some sort of building façade for a couple stories and if it would make it more palatable. It is just unsightly. The area is obviously different; it used to be open area, and it's not anymore. We have to find something to do with it.

Mr. Holland: I understand; the difficulty is that it has to be in this narrow area because the networks are already built around it. We haven't heard one complaint in fourteen years about this tower. One of the carriers needs four poles to replace this. I'm pretty sure if I bring in four applications, we will have a room full of people who don't want the monopine in their back yard.

Comm. Neff-Brain: I think she is talking about the base area. In Mission Hills, right in the residential area, one house looks flat. I don't know if it's water or sewer, but it's a distribution point that is right in the middle of a residential neighborhood that is built to look like a house. Obviously, you still have the pole going up, but if you're asking for suggestions, maybe something could be done at the base so at least driving and walking views would be more than a concrete structure.

Mr. Holland: We will solicit architectural suggestions. Sometimes, if you try to hide something, you make it more noticeable.

Comm. Elkins: When do your clients anticipate having a report ready for this group relating to their efforts to evaluate alternatives?

Mr. Holland: I will say within the next year or so.

Comm. Elkins: Do you anticipate it will be a joint report from the collection of carriers?

Mr. Holland: Yes, we are trying to determine what they would do to replicate the coverage. The problem is everybody will have a different plan, so it's not just going to be four towers; it could be eight towers because of the way their other facilities are and how they interface with them. Every carrier isn't identical. You could end up with a lot more structures.

Comm. Elkins: I understand that, but right now, what they all have in common is one very tall tower in the middle of our city. Because you're not very far down the path yet, I know it is difficult to estimate this, but what would be the construction and approval process time to even come up with an alternative?

Mr. Holland: It will take all of two years and then some.

Comm. Elkins: That is my point. If your group is not back here until a year from today, you will box us into the same position we were in last November, except this time, you will need a two-year extension for construction, even if you can come up with an alternative. I can't emphasize enough that I'm glad your clients are here tonight because I want them to hear the admonition that they need to move forward. These are companies that have been extraordinarily successful in the last twenty years, and they've been successful because of their creativity. They need to bring that creativity to bear. The cost of the creativity certainly can be outrageous, but just because it might cost more than the current situation isn't necessarily an answer. The threat of pulling the coverage and the hoards coming to City Hall is not an answer, either. We are preciously short of time here, and it's important for your clients to recognize that. From our perspective, you had two years before this and were in the middle of a four-year cycle. At two years, it didn't seem like much progress was made on evaluating alternatives. We could be in the same box we are in today in two years, and it is important that the timing be recognized here.

Mr. Holland: I appreciate that because we don't have a large window here to figure anything out. I'm trying to be honest with you; I don't think we will find a better solution for this. My stance since 2009 is to amend the ordinance to allow this to stay here. That doesn't mean we will not diligently try to see if there is an alternative and to figure out those costs, but based on what little I know already, I know it will be exceedingly difficult to do. I don't know if covering it is a solution.

Chair Rohlf: When this was originally built, was it 186 feet with one carrier?

Mr. Holland: The Cellular One tower may have been every bit as tall as this.

Chair Rohlf: Where did the 170 feet come from initially? Who determined that was the magic height?

Mr. Holland: That was at the carrier's request. Sprint was building a brand new network, and their design determined that height. It is all done by a team of engineers.

Chair Rohlf: As these additional carriers have come on at additional heights, why do they get good coverage?

Mr. Holland: Each of the carriers operates on a different engineering technology. The heights of their facilities are not necessarily going to be identical to the next carrier. The height for a particular carrier depends on the design of their network where they have facilities that surround it. Height isn't always the best. We wouldn't want to be 300 feet up, for example. There are different design requirements, and in some cases, they were forced to accept a lower height and lesser coverage because of what's there and the fact that there was no way Leawood was going to approve another tower. The coverage isn't perfect today for some of them.

Chair Rohlf: You're saying to take 20 feet off the tower would significantly affect the coverage of the carriers, or is it by virtue of the number of carriers on that pole?

Mr. Holland: It affects each carrier, some more dramatically than others.

Chair Rohlf: What if there were fewer companies on the tower? Would they come back with additional towers elsewhere?

Mr. Holland: Let's say we lower this tower to 150 feet. A couple would lose so much coverage by dropping that distance that the structure won't be effective for them, and they'll have to figure out something to do, which is adding other towers for them.

Chair Rohlf: Are you convinced in two years we'll see this number of carriers?

Mr. Holland: Yes, or more; there are people doing things out there. As long as there is spectrum and people have money, you will have entrepreneurs. You could potentially have more carriers.

Chair Rohlf: No additional carriers could go on that tower, right?

Mr. Holland: It's very maxed out.

Chair Rohlf: Could someone from staff remind me where the 150 feet came from?

Mr. Klein: That was something that came in about 2002 with the current LDO. I know when it was approved, the city talked about 150 feet and an additional 5 feet for lights.

Chair Rohlf: Do you know what prompted the number? Is it relative to other building heights in the city?

Mr. Klein: I don't remember the history of that.

Mr. Holland: It was 1997 when they approved it. It was a height that was fairly typical for monopolies that we were seeing at that point in time. After this tower was approved, they adopted it. Before this tower was approved, the city didn't have a wireless-specific regulation; it was adopted in 1997. That's when the 500-foot rule came and the 150-foot height was adopted.

Chair Rohlf: Does anyone else have questions for the applicant? And your presentation covers all the applications?

Mr. Holland: Yes, and I know you have to vote on them separately. If you have questions as we go along, we are here.

## **PUBLIC HEARING**

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

Chair Rohlf: That takes us up to discussion on this case. If we need to discuss the cases one-by-one, we can do that as well.

Comm. Elkins: I would just add to the comments I made earlier two additional points. I happen to know something about their design process. I also happen to know something about their capital outlay planning process. I know, in 2014, it will be difficult to come up with the capital to come up with an alternative. Again, recognizing the time frame and that this body and City Council have all agreed to give this group of carriers an additional two years to come up with an alternative, I would encourage them as greatly as I could, not only with respect to the time to begin the process, but the planning that goes in to capital investment

because an alternative will require some capital investment. That is not something any of the carriers generate on a six-month plan. It is something that carriers generate on a two-year plan. I would encourage the carriers, in their capital planning process as well as their network design process to be aware of the time. I also know it is difficult for the left hand to know what the right hand is doing. When we come to 2014, those will not be satisfactory explanations for this commissioner.

Comm. Jackson: Unfortunately, what I'm hearing is a desire not to do anything, and that worries me. There are a lot of people involved here and a lot of amazing minds in these corporations. You can do better than this, and we expect to see something better than this.

Chair Rohlf: Thank you. Are there other comments? Then we will vote on this case.

**A motion to recommend approval of CASE 18-12 – STC FIVE LLC CELLULAR TOWER – Request for approval of a two year extension for a Special Use Permit for the continued use of a wireless communication tower and associated equipment, located north of 135<sup>th</sup> Street and west of Briar with all seven staff stipulations – was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 19-12 – VERIZON WIRELESS CELLULAR ANTENNA –Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar. **PUBLIC HEARING**

Chair Rohlf: All of the comments are carried forward to this case.

#### **PUBLIC HEARING**

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

Chair Rohlf: We will carry over comments from the previous case. If no one has additional comments, I would ask for a motion.

**A motion to recommend approval of CASE 19-12 – VERIZON WIRELESS CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar with all six staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 20-12 – AT&T MOBILITY CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar. **PUBLIC HEARING**

#### **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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

Chair Rohlf: We will carry over comments from the previous case. If no one has additional comments, I would ask for a motion.

A motion to recommend approval of CASE 20-12 – AT&T MOBILITY CELLULAR ANTENNA – Request for approval of a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar - with all six staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

CASE 21-12 – CRICKET CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar. **PUBLIC HEARING**

#### **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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

Chair Rohlf: We will carry over comments from the previous case. If no one has additional comments, I would ask for a motion.

A motion to recommend approval of CASE 21-12 – CRICKET CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar – with all six staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

CASE 22-12 – SPRINT / NEXTEL CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar. **PUBLIC HEARING**

#### **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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

Chair Rohlf: We will carry over comments from the previous case. If no one has additional comments, I would ask for a motion.

A motion to recommend approval of CASE 22-12 – SPRINT / NEXTEL CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar – with all six staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

CASE 23-12 – T-MOBILE CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar. **PUBLIC HEARING**

#### **PUBLIC HEARING**

Garth Adcock, manager in the engineering department at T-Mobile, 12980 Foster Street, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Adcock: Thank you for the opportunity to make a few comments. I'm not going to repeat everything Mr. Holland said, but I would like to elaborate and clarify. I've been in the wireless business 18 years as a manager and senior manager. Most of my career has been on the east coast. I would like to offer to you the opportunity to have some workshops and some more dialog. I think there is a fairly stark void of practical understanding. The workshops we used to do in North Carolina, South Carolina and Georgia were an opportunity to have some dialog outside of a hearing. They really educated and provided a baseline of knowledge. Certainly, you all know what mobile phones are, and you have some knowledge. There is a lot of extra information that could be shared that I think would be helpful for you and for us.

To the point of Mr. Holland's comments, the networks are similar, but they are dissimilar as well. T-Mobile operates at a 1900 MH frequency for our PCS network. We call that GSM (Global Systems Mobile). We've had that network for 14 years. That is our 2G network. We have millions of customers on the Legacy networks. As Mr. Holland suggested, we are operating multiple networks, as are our competitors. Our competitors operate at different frequency bands. AT&T is in the 850 MH band, as is Verizon. AT&T has a 700 MH band. Not to get into a mathematical discussion, but the frequency bands, based on math, propagate differently. Everybody needs cell sites, but they don't propagate exactly the same. They can't because we're licensed by the FCC. In a workshop, we could really dive into this deep, and I don't think we should tonight, but the point is there are similarities and differences.

The other thing I would ask you to really consider is what you're talking about here tonight is mature networks. When I got into this business 18 years ago, they were very immature. T-Mobile has 34 million customers. AT&T has 90 million. Verizon has 90 million customers. Sprint has over 50 million. This is a mature network. You suggest these radical changes. We will do the due diligence, as Mr. Holland said. T-Mobile will always do the right thing, and we're committed to that. But this property was zoned Agriculture 14 years ago and is highly developed now. It's a different world. There have been no complaints. We will provide the documentation, but this is a highly risky matter for Leawood, for Overland Park and for Johnson County. I would suggest to you that this could cause economic havoc in your areas. There is no guarantee that, in this highly developed area, you are going to find three or four more cell sites nearby that are zoned correctly to meet your requirements. Of course we can do creative things; we've done them before, but we can't make something out of nothing. If the properties aren't zoned right, what are we to do? It takes three things to make a cell site: zoned property, willing landlord, requirement to fit the design. Everybody's designs are similar and different because of the frequency propagation models. There are a lot of moving parts here. I would suggest a word of caution. In the 18 years I've been in this business, I can't think of another situation like this where there has been not one complaint from the community, and yet, we're being asked to make such a monstrous change. But we'll look into it, get back to you and provide all the straight-up documentation. There will be a lot of it. I'm not sure everybody understands what's on the table here. But we're open to doing a workshop, and I'd love to do that to get to you know and have you get to know us. Thank you for the opportunity to make a few comments.

**As no one else 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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

Comm. Elkins: I very much welcome Mr. Adcock's offer of a workshop because that is one thing that we've looked for since I've been involved in these issues. Quite frankly, it is the first offer we've received. There may have been other alternatives. We would welcome that from any and all the carriers. In addition, I just would comment that certainly I don't want to pre-judge the outcome, and I want to encourage these companies to use the creativity that has made them so welcome, but at the end of the day, one of the issues is that we need to satisfy the public trust that we've been given by the City Council that all of us have made our very best effort to find an alternative, maybe more than a good faith effort. If we've exhausted that, then

we've exhausted it and we have to deal with the realities and circumstance. The encouragement I extend is that we and the carriers make every effort to see what the alternatives are.

**A motion to recommend approval of CASE 23-12 – T-MOBILE CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar – with all six staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 24-12 – CLEARWIRE CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar. **PUBLIC HEARING**

#### **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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

Chair Rohlf: We will carry over comments from the previous case. If no one has additional comments, I would ask for a motion.

**A motion to recommend approval of CASE 24-12 – CLEARWIRE CELLULAR ANTENNA – Request for approval of a two year extension for a Special Use Permit for the continued use of wireless antennas and associated equipment, located north of 135<sup>th</sup> Street and west of Briar – with all six staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 119-11 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-9, FENCES AND WALL – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to fences constructed on top of a deck. **PUBLIC HEARING.**

#### **Staff Presentation:**

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 119-11 – Leawood Development Ordinance amendment to Section 16-4-9 – Fences and Walls, pertaining to fences constructed on top of a deck. As the Planning Commission may recall, this case was heard on October 25, 2011, at which time, the Planning Commission recommended approval. The Governing Body heard the case on November 21, 2011. At that time, they had some questions with regard to screening of the underside of the deck and remanded this back. The ordinance regarded fences constructed on a deck. The current ordinance stated that the fence height would be measured from grade to the top of the fence, and the fence could not be taller than 4 feet in height with a maximum of 6 feet in the case of a pool or an exception from the Board of Zoning Appeals. The ordinance's intent was to have the height of fence on a deck to be measured from the floor of a deck to the top of the fence instead of from the ground. Obviously, a fence on a deck that was 10 feet high would violate every ordinance. The other part of the ordinance had to do with the screening on the underside. Using that same example of a deck 10 feet in the air and a fence 4 feet high, the previously proposed ordinance stated that the deck could be screened if it was located within the building setbacks to a height of 4 feet. After that, it would remain open. If the deck happened to encroach in the rear yard setback, which decks are allowed to do by 5 feet, the underside of the deck would have to remain unscreened or screened only with landscaping. We have had cases with elevated decks that

were screened with lattice that went beyond the 4 feet. Governing Body discussed whether it should be allowed and whether we would consider it a solid enclosure, which would have to meet the building setback. You could have a deck that already encroached 5 feet to the required rear yard setback. Then if they enclosed the whole underside of the deck, it would not meet the setback. They decided to remand the case down to evaluate what would be appropriate as far as "open." Staff looked at it and determined that 25% of the lattice is open. Currently, the ordinance remains the same with regard to measuring the height of the fence from the floor of the deck to the top of the fence, but now, if the deck is located within the required building setback and does not encroach, the entire underside could be screened as long as 25% of that screen is open and uniformly distributed throughout. If it happened to encroach into the setback, that portion that encroaches into the setback would have to remain completely unscreened, or it could be screened with landscaping. Staff is recommending approval of this application, and I'll be happy to answer any questions.

Comm. Neff-Brain: So in that 25% that has to remain open, the space between the lattice is the 25%?

Mr. Klein: Correct.

Comm. Jackson: I guess I don't understand the point of that. If it's a solid, you just don't think it looks very good?

Mr. Klein: Part of the reason we stayed away from solid is if it is enclosed with solid walls, it can become a room. Whenever we have had solid vertical walls that were part of a structure, it had to meet the building setbacks. Often times, people will build the house out to the rear building setback and allow the deck to encroach the 5 feet that the LDO allows. Suddenly then, we could have a situation in which they would be in violation of the setbacks if the walls were solid. This allows some screening.

Comm. Jackson: But you're only allowing it if they have not gone into the encroachment.

Mr. Klein: That is true.

Comm. Jackson: I've seen them with a solid enclosure, and as long as it is far enough back, it looks just fine. I don't see a need for the 25% rule.

Comm. Williams: Are we saying that they have to be screened?

Mr. Klein: No, but if they were to screen it, they would have to use something with 25% open area.

Comm. Williams: In that same regard, it doesn't matter what height off the ground the deck may be.

Mr. Klein: Correct; you could screen the entire underside of the deck under this.

Comm. Williams: Is the way the LDO defines a fence on the deck currently a solid fence?

Mr. Klein: It would be any of the fences up to 4 feet in height.

Comm. Roberson: If it does encroach on the setback, why does it have to be open?

Mr. Klein: The intent is that as you encroach into the setback, you get closer to other houses. In some cases, it wouldn't make much difference. We do have some lots, especially in the RP-2 or R-1 Districts where the lots can be fairly shallow, and two houses can actually back up to each other. If you enclose the deck, it looks like more of a solid structure.

Comm. Roberson: If I'm looking at a deck that is 10 feet high, usually that means the basement is below. It may or may not be a walk out and may or may not have windows. Why would I want to look under the deck at the back side of a house?

Comm. Neff-Brain: I think it's the mass.

Mr. Coleman: You have an extension of the structure from the main house into the back yard, and you're starting to block your neighbor's view. You're already starting to create a solid mass by having this lattice. If you extend it into the setback, you're just further blocking the openness of the back yards. One thing that Leawood has prided itself on is keeping an open landscape. You're starting to move the actual structure into the setback. In reference to Ms. Jackson's comment about it being a solid wall, it would be doing that even more. You would basically be creating a building structure that goes into the setback, which is a violation of our code. If it's solid, we have no idea what is behind there. They could be building a room.

Comm. Jackson: Is there an issue if it's a solid wall and it's not within the setback area?

Mr. Coleman: Yes, I think the whole idea is to provide some openness and that this is not a solid structure, a building wall with a foundation.

Comm. Jackson: If it's not within the setback, visually, it is no different than if they built the house as far as they could have.

Mr. Coleman: It goes back to keeping it open; otherwise, you are more into the building aspect, and we'd have to look at it as a structure.

Comm. Neff-Brain: Couldn't you have put your building there if it's not in the setback?

Mr. Coleman: You could put the building there, yes.

Comm. Williams: You have a deck that is 6 feet off the ground and you choose to screen the underside. You couldn't do that with a solid screen within the normal building limits?

Mr. Coleman: The idea was to keep it open.

Comm. Williams: Just in my own neighborhood, I can visualize half a dozen different decks that fall in the category I just described, and none of those look obtrusive. I could understand if it was a second-story deck with a whole first-floor wall.

Comm. Neff-Brain: Where do you draw the line, then?

Comm. Williams: I think you try to draw the line with a definition of a height factor. The examples in my neighborhood look nice. As a matter of fact, I think they would look tackier with lattice. A well-constructed solid wall is easier to maintain and has longer longevity than the lattice work. I'd like to be able to see the option of the solid, and I think there could be applications for it.

Mr. Coleman: Then it would probably come in under a different permit because we issue these deck permits much differently than we issue building permits, per se.

Comm. Jackson: It is basically the same material, only solid. You're not putting a foundation under it.

Comm. Ramsey: Does it really matter that much?

Comm. Jackson: I just think it makes it easier for someone to put something up. They don't have to determine if it's 25% or 30%. It seems unnecessarily restrictive.

Comm. Williams: Do we have examples of problem areas or complaints that drive some of these ordinance changes?

Mr. Klein: In this case, it was a matter of trying to reduce the massing under the deck.

Mr. Coleman: It is also derived from the issue of the fences on the decks.

Comm. Williams: I have no issue with the fences on the deck.

Mr. Coleman: It becomes hard to define the differences sometimes, but if you put an 8-foot fence on your deck on the underside, now it's a solid wall.

Chair Rohlf: Does anyone else have anything? This case does require a Public Hearing.

## **PUBLIC HEARING**

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

Comm. Jackson: It is easy enough to strike out that language if we want to do that.

Chair Rohlf: If we did take that out, does it take us back to the way it was initially proposed to Governing Body?

Mr. Coleman: If you're going to strike that language, we would like to look at this further because that is not what City Council initially sent it back for. They sent it back because they recognized that a lot of people had put 8 feet of lattice work underneath their decks, and they didn't want to prevent people from doing that.

Comm. Neff-Brain: And I can see the solid surface if it's a short deck. I certainly wouldn't want a two-story enclosed deck. I'm not sure where that line would be drawn. I think lattice work up high is fine because there is a sense of flow through it, but how high off the ground would we allow solid before going to lattice and open?

Comm. Jackson: We have one behind us that is probably 14 feet tall, and it's solid. It really isn't an issue.

Comm. Neff-Brain: I think we need to see some pictures.

Chair Rohlf: I do, too.

Comm. Williams: If it's set back from the rear or side property line, I agree that I don't think it would be that big of an issue. But if you put it right at the setback line, depending on how close the neighbor is behind, it can begin to be a bit of an issue.

Comm. Jackson: There can't be that many yards with that big of a slope where you're going to have that high of a deck, either.

Comm. Ramsey: But I did this on our lake house, and underneath the lower level, we have about 12 feet of open space. We did it with lattice. If we had enclosed that, it would have been a fairly large, monolithic piece there. Kelly, I understand that your neighbor's doesn't look bad.

Comm. Neff-Brain: There could easily be people with 10-foot ceilings with a deck off the top-story bedrooms, it could be up there.

Chair Rohlf: It would be like a building.

Comm. Neff-Brain: And it would be at or near the setback line. That could be a problem.

Comm. Williams: Maybe Richard has a point here to let them go back, take a look at this and look at introducing a height consideration for a solid element.

Mr. Coleman: This has to do with fences and walls on decks. This came up because we don't allow fences on decks higher than a certain height. Now, all of a sudden, you have a deck, and you're basically making a fence 8-10 feet tall. The point was not to have a fence that enclosed 10 feet around a deck. If we change it to solid, you end up with that.

Chair Rohlf: Does this language take care of what you perceive as the problem and/or question that Council had?

Mr. Coleman: It leaves it so the screen is open rather than solid.

Comm. Ramsey: I don't have a problem with the language as long as it solves the problem.

Comm. Neff-Brain: It solves the problem of the fence; it doesn't solve the issue below the deck.

Chair Rohlf: Is this the section where that would come into play?

Comm. Williams: Maybe it needs a section to address the fence on the deck, and then you add No. 3 that addresses the skirt below the deck to be clear what item you're talking about.

Comm. Ramsey: Are you in a hurry on this?

Mr. Coleman: I don't think there is urgency.

Comm. Ramsey: Would it be okay if you took it back and brought it back next time after having reviewed it with some of the thoughts we've given you tonight?

Mr. Coleman: We can look at it and continue it.

Comm. Roberson: Let's do that.

Chair Rohlf: I would love a picture, whether it is in compliance or not, just to get an idea of proportions we are talking about. We will continue this matter.

**A motion to continue CASE 119-11 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-9, FENCES AND WALLS – Request for approval of an amendment to the Leawood Development Ordinance pertaining to fences constructed on top of a deck – to the March 27, 2012**

**Planning Commission meeting – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

CASE 26-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-7 – TABLE OF USES – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to uses within the BP (Planned Business Park) district. **PUBLIC HEARING**

**Staff Presentation:**

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 26-12 – Leawood Development Ordinance amendment to Section 16-2-7 – Table of Uses, pertaining to the uses within the BP (Planned Business Park) district. This application is before you to allow some additional uses within the BP district. The three uses we are requesting to add as special uses would be Restaurant, General; Restaurant, Fast Food Dine In / Carry Out; Dry Cleaner / Laundry. Leawood has two districts zoned BP. One is at 103<sup>rd</sup> and State Line; the other is approximately 143<sup>rd</sup> and Kenneth Road. The two actually have very different characteristics. The one at 103<sup>rd</sup> and State Line has a wide variety of uses, including Gate's and a dry cleaner. The reason we are proposing these as Special Use Permits is to allow the Planning Commission and Governing Body to evaluate whether the specific use makes sense in the area. With regard to 103<sup>rd</sup> and State Line, it would take a legal, non-conforming use of Gate's and make it legal. It would also make the use of a dry cleaner legal as well. Additionally, it would also allow some of those buildings to be used for other purposes. For instance, if someone wanted to use the vacant Pride Cleaner building, they could put in a dry cleaner or a restaurant, allowing more flexibility. We have had some issues with regard to 103<sup>rd</sup> and State Line with the use of the buildings because so many of them are located in the flood plain, and then they also have legal nonconformities widely associated with a number of different things, and they are only allowed to improve 50% of the value of the building. This would allow more flexibility to businesses going in. Staff is recommending approval of this amendment, and I'll be happy to answer any questions.

Comm. Williams: Why approach these on a Special Use Permit basis? I can understand the drive-thru issue because any drive-thru has to have a Special Use Permit. To say that a dry cleaner or restaurant has to have a Special Use Permit when it's not that in other districts, especially given this particular site where we already have existing businesses who were there long before the district was established, doesn't seem right. Now, we're telling them they have to have a Special Use Permit, which typically has a time frame attached to it, unless we're saying that they come in once and get that Special Use Permit so they're now a legally allowed use, so Gate's could do business there for the next 20 years.

Mr. Klein: Right now, Gate's is a legal, non-conforming use, so it's allowed without coming back for a Special Use Permit. However, if a new restaurant wanted to move into the area, they would be required to get it. The reason for an SUP as opposed to allowing them to be planned uses as they are in some of the other districts is these aren't really retail districts, as a lot of the other districts are that allow those. Granted, 103<sup>rd</sup> and State Line does have a lot of uses that have been there for a very long time, and this zoning was applied to that area. However, 143<sup>rd</sup> and Kenneth Road has quite a different characteristic, so it might be a situation where the Planning Commission or City Council wants to take and look and decide if it's appropriate to have a restaurant located within that area. This would allow more flexibility for you to look at the site.

Comm. Williams: You say that the SUP would allow greater scrutiny. Is that from the onset or throughout the operation of the business?

Mr. Klein: It would be at the onset. You mentioned a time associated with it, and the way the LDO reads is that all SUPs, unless stated otherwise, have a time period of 20 years. SUPs on drive-thrus would have a

20-year limitation just by default. On the cellular towers, we will state a given time that is shorter to require them to come in earlier.

Comm. Williams: Let's say a restaurant came into the dry cleaner location. Wouldn't they have a whole set of guidelines set by the LDO that they would have to meet before going in there anyway if it was a permitted use?

Mr. Klein: That is correct. Again, 103<sup>rd</sup> has a whole variety of things that it doesn't meet, such as parking, setbacks, open space and floor area ratio. Many of those businesses are locked into this legal non-conforming status. As long as they don't improve by a certain amount, they can exist as they are without having to come into conformance, which, in many cases, would be impossible. This is a way to allow a bit more flexibility within the area without opening it up completely for both districts.

Comm. Williams: You're picking a restaurant, drive-thru and dry cleaners. Why those particular items versus any others? For example, I'm assuming KC Colors is in Leawood. Where does that fall in terms of the business? Would it be auto service?

Mr. Klein: It would.

Comm. Williams: And yet, it is not a permitted use in the Table of Uses in that district.

Mr. Klein: That's a fair point. At this point, we have actually been studying this area for a while and a number of other areas that don't meet many of the current ordinances. We have situations with regard to this particular one at 103<sup>rd</sup> and State Line with a building that has been vacant for a while. We are just trying to find a way to allow a little more flexibility without opening everything up until we have a chance to take a look at it. The Gate's seemed very obvious; it didn't seem like a restaurant was a bad use. The dry cleaner was there before, so if someone wanted to do that again, it did not seem like a stretch.

Comm. Williams: This only applies to new businesses and not existing businesses?

Mr. Klein: Yes, the current businesses would be legal, non-conforming uses at this point.

Comm. Roberson: That is the clarification I'm still missing. Would Gate's have to get a Special Use Permit?

Mr. Klein: No, Gate's exists. If a new restaurant wanted to come in, it would have to get one.

Comm. Roberson: Would the businesses there be legal after this?

Mr. Klein: If we do this, it would not change; they would still be legal, non-conforming.

Comm. Elkins: I'm curious about the difference between Restaurant Fast Food, Dine-In / Carry Out and Restaurant, General. I'm curious about the definition of fast food, especially given some of the litigation that has been going on.

Comm. Neff-Brain: Also, do we want to even allow the possibility of a drive-thru at that location?

Mr. Coleman: The idea was that drive-thrus generate more traffic in the district.

Comm. Elkins: The proposal does not propose that, not even with the Special Use Permit. I was going to take the opposite position on it; that is where my question was headed, frankly.

Ms. Shearer: We have a few definitions:

- Restaurant Carry Out: an establishment or portion thereof designed and constructed to have the food consumed away from the restaurant.
- Restaurant Drive-In: an establishment or portion thereof designed and constructed where some or all of the food is consumed on the restaurant premises but outside the restaurant structure, usually within a motor vehicle parked on the restaurant premises. This was meant to address something like Sonic.
- Restaurant Drive Thru: an establishment or portion thereof designed or constructed where the food is picked up by the customer from the customer's automobile to be consumed off the restaurant premises. Such activities, though commonly associated with fast food restaurants, may also occur at restaurants and food establishments that do not serve fast food.
- Restaurant Sit Down: any business establishment or portion thereof designed and constructed solely for the consumption of food within the building.

Comm. Elkins: In this list, we don't have all of those. We may even have one you didn't read off, but I get the point. I take a different view of Commissioner Neff-Brain's question. I'm thinking in connection with Centennial Park. As long as we're doing this, what would be the objection to creating the possibility of a drive-thru in a business park like this? It seems a little arbitrary to draw the line between drive-thru and carry out.

Mr. Coleman: It is just casual dining, but the difference is the amount of traffic generated. Business parks are generally low traffic volume. If you introduce a drive-thru into the area, you're increasing the traffic considerably. It's a matter of degree.

Comm. Elkins: My thought is that since it is low volume traffic anyway, adding a drive-thru is less intrusive than just having a drive-thru just off Roe. It seems less of a problem to add volumes of traffic in an area where there is already a low volume of traffic.

Mr. Coleman: I think it is the expectation of the existing businesses in there and that their business is not going to be impacted by higher traffic. Introducing the drive-thrus in there impacts the existing businesses adversely in that sense; whereas, if you're already in a retail area that has a drive-thru, there is less impact because the expectations are different.

Comm. Elkins: Is Centennial Park a BP zoning?

Mr. Coleman: It is; it was a planned business park district, whereas, 103, I would consider unplanned.

Comm. Elkins: Fair enough.

## **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 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.**

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

Comm. Elkins: Just as a matter of comment, I will support the proposal as it stands, but I would be inclined not to draw the distinction between Dine-In, Carry Out and Drive-Thru. I don't feel so strongly about it that I'm not going to support what is in front of us.

A motion to recommend approval of CASE 26-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES, Pertaining to uses within the BP (Planned Business Park) District – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, and Ramsey.

*MEETING ADJOURNED.*

DRAFT