

**City of Leawood
Planning Commission Minutes
April 24, 2012
Meeting - 6:00 p.m.
Dinner Session – Discussion of Ironwoods Park – 5:30 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

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

APPROVAL OF THE AGENDA:

Chair Rohlf: We have one change to the agenda, and that is the addition of Case 42-12 to the continuances to the May 22nd meeting.

A motion to approve the amended agenda was made by Elkins; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins and Ramsey.

APPROVAL OF MINUTES:

Approval of the minutes from the March 27, 2012 Planning Commission meeting.

A motion to approve the minutes of the March 27, 2012 Planning Commission meeting was made by Williams; seconded by Jackson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins and Ramsey.

CONTINUED TO MAY 22, 2012 MEETING:

CASE 119-11 – LEAWOOD DEVELOPMENT ORDINANCE – 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. **PUBLIC HEARING**

CASE 33-12 – LEAWOOD SOUTH COUNTRY CLUB – MAINTENANCE BUILDING – SPRINT WIRELESS – Request for approval of a Special Use Permit for wireless communication antenna use and associated equipment, located south of 123rd Street and east of Mission Road. **PUBLIC HEARING**

CASE 35-12 – HALLBROOK COUNTRY CLUB – Request for approval of a Preliminary Plan, located north of 114th Street and west of Overbrook Road. **PUBLIC HEARING**

CASE 43-12 – IRONHORSE CENTRE – LITTLE SUNSHINE DAYCARE – Request for approval of a Special Use Permit for a daycare - commercial, Preliminary Plan and Final Plan, located south of 151st Street and east of Nall Avenue. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 41-12 – PARK PLACE – MARV'S ORIGINAL DELICATESSEN – Request for approval of a Final Sign Plan, located at the northeast corner of 117th Street and Nall Avenue.

CASE 39-12 – CLARE BRIDGE OF LEAWOOD – ROOF – Request for approval of a Revised Final Plan, located at 12724 State Line Road.

CASE 42-12 – PARKWAY PLAZA – OLIVER'S PIZZERIA – Request for approval of a Final Sign Plan, located north of 135th Street and west of Roe Avenue.

CASE 44-12 – PARK PLACE – ALYSA RENE BOUTIQUE – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Avenue.

CASE 46-12 – PARK PLACE – SPACE G-30 STOREFRONT – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Avenue.

CASE 47-12 – PARK PLACE – SPACE G-25 STOREFRONT – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Avenue.

CASE 48-12 – PARK PLACE – GENO'S CLOTHIERS – Request for approval of a Final Plan for a Tenant Finish, located at the northeast corner of 117th Street and Nall Avenue.

Comm. Elkins: I would ask to pull Case 51-12 from the Consent Agenda for additional discussion.

A motion to recommend approval of the amended Consent Agenda was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins and Ramsey.

CASE 51-12 – PARK PLACE – BARCLAY PARK ARTIFICIAL TURF – Request for approval of a Landscape Plan, located at the northeast corner of 117th Street and Nall Avenue.

Chair Rohlf: Mr. Elkins, do you have a specific question, or would you like a review from staff?

Comm. Elkins: I do, but I would like a review from staff.

Staff Presentation:

City Planner Justin Peterson made the following presentation:

Mr. Peterson: Madame Chair and members of the Planning Commission, this is Case 51-12. The applicant is requesting approval of a Landscape Plan for artificial turf to be located in Barclay Park and Park Place. The plans propose to place artificial turf as ground cover. The turf will cover 4,774 square feet and will be constructed in eight sections as identified in the attached plans. Staff recommends approval of this case. I'd be happy to answer any questions.

Comm. Elkins: The staff recommendation references that the recommendation for approval is subject to stipulations provided with the staff report. I didn't see any. I just want to make sure I'm not missing any.

Mr. Peterson: No, there are no stipulations.

Comm. Elkins: I'm not sure what the proper procedure is, but I would like to hear from the applicant about the proposal to switch from a natural green space to an artificial green space.

Applicant Presentation:

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

Mr. Alpert: The basis for this is that we've made a very honest attempt to grow grass in Barclay Square for four summer seasons now. Because of the requirement that we have a sand base underneath the ice rink, we've tried to come in each year and mix soil with the sand to give the sod a reasonable chance to take. It has always been a struggle; we've never been able to get a good stand of grass. Combined with the often heavy use that we get, particularly when we do special events, it has never worked out to the extent that we could be satisfied with the quality. We felt that this alternative would be wise. (*Shows sample*) This is a state-of-the-art material, and we think it will be a much preferred alternative in the long run.

Comm. Elkins: Given what you've been told by the manufacturer about the material that you're proposing for the artificial turf, how long is it before it fades or is necessary to replace it? Do you have a plan in mind for how often you intend to replace it?

Angela Grego, owner of Turf, Etc., Lee's Summit, MO, appeared before the Planning Commission and made the following comments:

Ms. Grego: The synthetic grass they are choosing is a 100% nylon product with a twelve-year warranty. It does not fade; it is guaranteed against it. They should get the full benefit of the twelve years out of it. We will take the turf up when they put in the rink in the fall and will put the turf back in when they take the rink out in February or March when it melts. We are going to do a Velcro system to put the turf in and will use a layer of ballast over the top.

Comm. Elkins: I'm curious about your experience with the material's retention of heat. One of the things my family has enjoyed in the past is that it provides a thermally cool spot to have breakfast. What is it going to be like when the plastic absorbs sun in the middle of August?

Ms. Grego: They have chosen a product with heat-block technology. In the grains of grass are reflectors. It stays 25% cooler than any other turf on the market today. It is going to stay much, much cooler than synthetic grass on an athletic field. It is manufactured differently, and this turf does not require rubber infill, which seems to really heat things up.

Comm. Neff-Brain: I saw samples in the holes. Is that for water runoff, or is there a slope?

Ms. Grego: That is for drainage. The turf is manufactured, and the base system underneath will allow 30 inches of water to drain per hour.

Comm. Pateidl: What, if any, influence will the installation of this product have on the ice rink?

Mr. Alpert: It has no effect.

Comm. Pateidl: So you will be continuing to install the ice rink?

Mr. Alpert: Yes, the material will come up and the ice will go down. If our intent was to not use the ice rink, we would excavate the whole thing, put in a full dirt base and continue with natural grass.

Chair Rohlf: Mr. Alpert, what is this space used for? Do you put anything on it? Are there chairs?

Mr. Alpert: We have Adirondack chairs we put out there. We have our concert series. We have a lot of people who sit on the grass or bring lawn chairs. We have non-profit events from time to time.

Chair Rohlf: So it does get a lot of use.

Mr. Alpert: Yes, it does.

Chair Rohlf: If there are no other questions, we are probably ready for a motion.

A motion to recommend approval of Case 51-2012 – PARK PLACE – BARCLAY PARK ARTIFICIAL TURF – Request for approval of a Landscape Plan, located at the northeast corner of 117th Street and Nall Avenue – was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 6-1. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams and Ramsey. Opposed: Elkins.

New Business:

CASE 45-12 – PARK PLACE – SITE SIGNAGE – Request for approval of a Final Plan, located at the northeast corner of 117th Street and Nall Avenue.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 45-12, Request for approval of a Final Plan for revisions to the site signage standards for Park Place. The sign standards apply to development signage only and do not apply to tenant signage, which are the sign criteria we often see here at Planning Commission. The application proposes modifications to existing identity monument, modification of an existing blade sign on parking garages and new village directory signage. The plans propose adding the name “Park Place” to the west facing and east facing bases of an existing identity monument at the northeast corner of 117th Street and Nall Avenue. The applicant also seeks to revise two existing garage blade signs located on the west elevation of Garage A facing Nall Avenue and on the south elevation of Garage B facing 117th Street. These signs currently consist of the letter “P” to identify parking. The letter is currently internally illuminated push-through letter on a green aluminum face. The proposed blade signs will consist of the words “Park Place” on an ivory colored acrylic face. The applicant is also proposing a new sign type called village directory signage. The plans propose these signs in multiple locations throughout the development. One of the locations is within a parking garage and will be wall mounted, while the others are proposed to be pole mounted. Each sign is proposed to consist of an aluminum panel with a map of the development on one side and a poster cabinet on the opposite side. The panels are proposed to be supported by two aluminum poles elevated above the ground about 2 feet. The request for the proposed Park Place sign on the identity monument is premature at this point, as there are currently no regulations that pertain to signage on identity monuments in the Leawood Development Ordinance. This sign does not meet the definition of a monument sign or a wall sign. Additionally, the proposed village directory signs as currently designed are defined as pole signs, which is a prohibited sign type by the Leawood Development Ordinance. Staff is recommending a continuance of this case to allow time for the applicant to revise the proposed village directory signs such that they comply with the current ordinance and to allow time for the city to address the identity monument signage.

Chair Rohlf: What would be some of the options for the directory signage that would be within the ordinance?

Mr. Rexwinkle: The signs could be wall mounted, or they could make them monument signs by adding a base so that you could not see underneath the panel.

Comm. Williams: This would not necessarily apply to the directory sign inside the parking garage.

Mr. Rexwinkle: Correct, because it meets the definition of a wall sign.

Comm. Williams: I'm looking at one that is on their page EGS5 that appears to be by the stairway. It is inside the parking garage by the stair tower.

Mr. Rexwinkle: That is on poles. One sign in Parking Garage B is wall mounted.

Comm. Williams: You are saying that is not allowed in the sign ordinance even though it is inside a parking structure?

Mr. Rexwinkle: Correct.

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

Applicant Presentation:

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

Mr. Alpert: My partner Melanie Mann is here this evening as well as Chris Molinsky with Vertical Designs. Chris was formerly with Workshop Design and has been our sign designer for all of the signage at Park Place since the inception of the project. As you might expect, we somewhat take issue with staff's position on some of these items. Rather than continue this, we would really like to get them out on the table and hopefully get some of these things approved. If not, we would like some input so we have a sense of direction for this.

Chris Molinsky, Vertical Design appeared before the Planning Commission and made the following comments:

Mr. Molinsky: (*Refers to display panels throughout presentation*) I think it would be best to talk about the three amendments to the Sign Criteria individually. The first one we would like to discuss is the amendment to the existing column sign. These column signs or towers were part of the original proposal for the project and approved in 2007. We are looking at adding the words "Park Place" to two sides of one of the columns. The sign itself is a 9-inch high character that is less than what is allowed for a monument sign, which is 18 inches. At 5 feet, the sign is consistent with a monument sign. In essence, we are looking for the ability to put a monument sign on a structure rather than building a wall in front of the column and putting our letters on the sign. It conforms to all of the criteria for a monument sign except for the fact that it's not on a wall with a certain square footage.

There is a precedent for this at One Nineteen. They have monument signs at the majority of the entrances. At the back of the property, they have the same signage on a retaining wall, which does not conform to the area required for a monument sign. We are asking to do the same thing that One Nineteen is doing in terms of number and requirements; we just don't want to build a wall. Staff commented that the structure we are attaching the sign to is not space that can be occupied, but the retaining wall is not, either.

I'll move on to the second item, which are directory signs. Park Place already has standards for all the regulatory signs. These all reside in the landscaped area between the street and the buildings. The design as proposed is to keep that same idea of design aesthetic and also to open up the sign as much as possible to allow the landscaping that it's put in to grow as well as site lines because these are placed at crosswalks between buildings across the street. We want to keep as much visibility as possible. We have shown an option in which the base is filled in, but if you look at that relative to the original design intent, you will see that it creates a much more opaque surface that won't allow the landscaping to grow or site line visibility for people walking back and forth.

You'll see examples of similar signs in the community. Leawood Parks uses the same post and panel system. The library has the same system, and Town Center has two components that use post and panel, although on a much larger scale.

The last item is replacement of the sign faces of the two entries for Park Place, which is an inward-focused development. This is in response to usage of the two garages. The simple "P" does not help people identify it as Park Place, so we have people driving through the property to determine that they are in the right location and then parking in the garage. This is contrary to what we really want them to do, which is to come off the major roads into the garage, park their car and then proceed on foot through the campus. Any questions?

Comm. Neff-Brain: Isn't "P" a universal symbol for parking?

Mr. Molinsky: It is, and it works well if you know that is where you are supposed to park. We have new visitors that are not sure they are at Park Place, so they are hesitant to park. They will drive into the project where there is some on-street parking, and it has really increased the traffic on the streets, which is not something we desire. We are only looking at modifying the two major thoroughfares. All of the other entrances that are inward focused, we are keeping as a "P".

Comm. Ramsey: How do you identify that it is public parking?

Mr. Molinsky: There still is secondary signage that indicates that.

Comm. Ramsey: But it doesn't say "Public Parking."

Mr. Molinsky: We certainly could add that.

Comm. Ramsey: In other words, you're looking to expedite people coming off and identifying that they're at the right location and that this is the place to park. You also have a lot of offices in that area, so it might be confusing to people unless it specifically says "Public Parking."

Mr. Molinsky: The original signs only say "P" and we certainly could add that "Public Parking" if you would like; we were just trying to keep the signs as simple as possible. Our issue we were trying to address was that people couldn't identify it as Park Place first and then parking.

Comm. Ramsey: If you go downtown to Power and Light District, some of those appear to be private at times and public at others. You're not quite sure which it is when, so that's what's triggering the confusion.

Mr. Molinsky: Historically, we haven't had the issue on this project. There is some issue within the garage of office holders parking on the wrong level, not giving room for retail, but there has not been overwhelming response that they couldn't find the parking to begin with or that it was perceived as not public parking. In this area of the city, there is not that much paid or private parking, and it really hasn't been an issue. If it was, we certainly would address it.

Comm. Williams: You said this is only going to be at two garage entrances?

Mr. Molinsky: Yes, there are seven garage entrances currently with Garage A and B, and we have seven signs up. We are only looking at modifying the two that face out to the public thoroughfares.

Comm. Williams: I can't see if it says "Public Parking" in your picture, but the photograph that is part of the sign package does say that.

Mr. Molinsky: It does.

Comm. Williams: It is showing the "P" blade sign, and then it clearly says "Public Parking" entering the garage. It says "Car Park" in big letters, and then in small letters below, it says "Public Garage."

Mr. Molinsky: That is the secondary signage I was referring to.

Comm. Williams: That seems to address Mr. Ramsey's concerns.

Mr. Molinsky: And secondary signage does occur at every entrance.

Comm. Ramsey: Go back to S3, though. Tell me if you see "Public Parking" under that one.

Mr. Molinsky: It is there. I'm sure it's difficult to see because of the shadows.

Comm. Ramsey: Is this sign the way it is all the way around?

Mr. Molinsky: That is at every entrance except for one. At one of the interiors, the parking entrance is behind CPK, and we don't have it there.

Comm. Elkins: This question is for staff. I see that the LDO, as amended, appears to limit the height of a monument sign to 6 feet.

Mr. Rexwinkle: That is correct.

Comm. Elkins: Is that what we recommended to Governing Body, or did they overrule us on that one?

Mr. Rexwinkle: That has not been recently amended.

Comm. Elkins: What I'm having trouble with is we have these tall identity columns that they are proposing to change, but as it stands right now, would those comply with the ordinance for a monument sign, or are they a non-conforming use as we sit here today?

Mr. Rexwinkle: They don't comply with the current ordinance.

Comm. Elkins: I thought we fixed that.

Chair Rohlf: It is not finalized yet. If you look at the last bullet point on Page 2, you will see that.

Comm. Elkins: Given the conversations we've had about amending the LDO, would their proposal still be out of compliance with what we've talked about?

Mr. Rexwinkle: One of the things we talked about specifically is identity columns similar to what exists out there. Assuming that amendment goes through, we would be writing it with that in mind.

Comm. Elkins: Would that permit "Park Place" to be written on there?

Mr. Coleman: That is something that would be determined once the ordinance is submitted to Planning Commission and City Council.

Comm. Elkins: So that would be addressed by regulation. Given the current status of our LDO, can you provide the commission with what your thoughts are on the justification for us to approve this signage?

Mr. Molinsky: We've been working on the change since November of 2011. Our tenants are asking for some sort of identification, and there is no foreseeable end to when the amendment will be made. We'd like to make modifications within the parameters that are allowed to the existing column before we duplicate that on other columns on the property.

Comm. Elkins: I guess I understand that desire. What I am trying to figure out is the rationale for getting around what staff tells us what the rule is. How do we get around the rule as it stands today?

Mr. Molinsky: There is a precedent that I've presented, and we could build a wall; we just prefer not to build a wall while we wait for the amendment.

Chair Rohlf: This is probably why staff has asked for you to consider a continuance, as two of the items, we are really not in a position to be able to approve or not. The identity monuments are being considered now, and the new village directory signs don't permit a pole sign. There is nothing we can do about that, short of amending the LDO.

Mr. Molinsky: There is no special category for a stop sign or regulatory sign, and we feel that our way-finding signs are regulatory signs that are informational and addressed to pedestrians. They are in the same location as the rest of the signs that are similar in design. I think the pole sign has a very narrow definition and is very loosely written in the requirements. From an industry standard, a pole sign is an illuminated box on a tall pole that is usually at a scale of a highway or a busy streetscape; it is not on the same scale as what we're proposing here. Our confusion is under the same regulation, stop signs and handicap parking signs that are already in place at Park Place would be considered pole signs because the pole is exposed.

Mr. Coleman: Regulatory signs are not under the LDO.

Mr. Molinsky: We have many informational signs that are not stop signs or disabled parking on-site already that direct people to the garages and tell of a private drive. All of those signs exist today.

Comm. Neff-Brain: They showed us examples with the retaining wall and the signs that show where stores are located that look like they are on two poles. Could you differentiate those?

Mr. Coleman: Town Center's signs were approved prior to the LDO of 2002.

Comm. Roberson: How about One Nineteen?

Mr. Coleman: The retaining wall is not taller than 6 feet. We would need to go back and see when that was approved and under what circumstances.

Comm. Neff-Brain: Did we have problems? Is that why we amended the ordinance to disallow things like the Town Center signs?

Mr. Coleman: Unless I go back and do some research, I couldn't comment on exactly why it is how it is. We do have other large entities that are submitting sign plans that are multiple sign packages and have a lot of directional signs involved, similar to Park Place. We are working with them currently on the pole sign issue. We are trying to address it through the LDO rather than doing it on a case-by-case basis.

Chair Rohlf: So just to clarify, the directory wall signs are fine, and the change to the blade signs is fine. We're dealing with the two other elements of the signage.

Mr. Rexwinkle: That is correct.

Chair Rohlf: At this point, our hands are tied unless there is something else you would like us to comment on as far as the directory signs.

Mr. Alpert: I've read the LDO, and it is basically one line that says, "No pole signs." That is a very broad sentence. It encompasses so many different kinds of signs, everything from what's already at Town Center to, as Mr. Molinsky said, a 30-foot 18-inch diameter pole with a giant WalMart sign on it. We are having a very hard time understanding what could possibly be offensive about the directories that we've designed for Park Place. What we came in tonight hoping was that you could interpret this as not being a pole sign. I got on the computer and googled pole signs, and I got 20 different pictures of these giant signs for WalMart, Target and everything else up and down the highway. This is so far from that. We were hoping for some logic to prevail and that this would not be considered a pole sign in the strict definition according to what we've been able to determine. That's where we are. It would seem to me that you could make an interpretive determination, or our only other choice is to fill them in to the bottom. It's not what we want to do; we want a lighter, more pleasing sign that lets people see the flowers behind them. We may have to wait until the process of amending the LDO to create more definition for what is now this one sentence, which we really would like to not have to wait for because it could be six months or a year. Obviously, it is a matter of interpretation and what you are willing to do to interpret it.

Comm. Neff-Brain: If it weren't a pole sign, what would it be?

Mr. Molinsky: The standard terminology in signage is a post and panel sign; they are not called pole signs, which is more of a highway sign.

Comm. Neff-Brain: But we don't address post and panel in the LDO, do we?

Mr. Coleman: No, and you might recall that we just addressed the drive-through signage issue where it was a pole sign. They agreed to make them non-pole signs.

Comm. Elkins: Mr. Alpert, to answer the question I asked about your advocacy with respect to getting where you want us to go with these signs, it is an interpretation that they are simply not pole signs, correct?

Mr. Alpert: Correct.

Comm. Elkins: With respect to the monument signs, do you have an equally creative way for me to get to where you want me to go?

Mr. Molinsky: Our interpretation was to do exactly what One Nineteen had done. We conform in every respect with a monument sign. There are no other monument signs at Park Place except for the area of a wall that it's placed upon and how thick that wall is.

Comm. Elkins: I don't intend to be rude, but that sounds suspiciously like "two wrongs make a right," which doesn't hold a lot of weight with me.

Mr. Molinsky: We could build another structure in front of the structure just to conform, but I think that's also wrong. The structure is unique; people do not reside in the columns in the same way that the retaining wall is a unique situation, given its topography. Instead of them building a wall in front of that retaining wall that conforms to the requirements, they were allowed to put it on the wall, and that's what we're asking here.

Comm. Ramsey: I want to be clear about this. With what we have recently reviewed and agreed on with regard to monument signs and the LDO, would this be approved if the amendment is approved?

Mr. Coleman: It is its own category, and that is what we are trying to codify. It is a tower marker that is nearly 30 feet tall. Monument signs are limited in height to 6 feet.

Comm. Ramsey: Based on what they are submitting, is it in accordance with what we've talked about?

Mr. Coleman: I think it is in accordance with what we've talked about; it just hasn't been codified, and it needs to be approved by the Governing Body.

Chair Rohlf: Those monuments are already in place; you're just asking for modifications to those monuments. I would see nothing wrong with letting the text amendment working its way through, and then when it is voted on by Council, come back with this proposal for the changes to these identity monuments. I think we're probably in a position to say to go ahead with the garage blade signs unless someone has additional comments on that. That gets us back to the directory signs. I don't think we are in a position this evening to decide on whether we think this is a pole sign or a post and panel. I can see your side of it, too. When I think of a pole sign, I think of something on a singular pole and not something that looks like this, but there is no leeway in our ordinance for that.

Mr. Alpert: If the ordinance to prohibit pole signs came after the directories at Town Center were installed, was there some intent on the part of that LDO to prohibit that specific kind of sign based on its previous existence in Town Center? In other words, did everyone think that was a terrible thing to do, and so they wrote an amendment to prohibit that kind of sign from being installed in Leawood in the future?

Chair Rohlf: I do remember discussions from other plans and not specifically Town Center or why it's in there like it is, but maintenance has become an issue for a lot of the signage in our developments. I don't know that it's tied to Town Center or what has happened there or why it's in the ordinance as it is. Sometimes, it's just history, and until we get to a situation where we're looking at something new with technology, materials or anything, sometimes the language in the LDO doesn't cover everything. That might be as simple as what's happened here; I don't know.

Mr. Alpert: We're just in a position that we are growing and finding that we need to provide that information to the people who come to Park Place looking for our shops and restaurants.

Chair Rohlf: You would have to admit, Mr. Alpert, a lot of things that have happened came as a result of the end of the development. If you wanted to have these signs and they were on your mind back when we first saw this plan several years ago and you had them in your sign guidelines, we could already have looked at this through the LDO. As your development has come along, you have realized what you need. We've seen a number of things you have come back to ask for because you see how it is all working. I wish that we had the latitude tonight to reinterpret that, but I don't think we do. Unless Mr. Coleman tells me we can, I don't think there's really anything we can do.

Mr. Coleman: To challenge the interpretation of staff would be to go to the BZA.

Comm. Jackson: One of the issues with signs is that they're very tricky. How do you write an ordinance such that you keep out a lower quality sign with one more like a plumbing pole with something on it and would still allow for the creativity and wonderful design that you put into your things? Unfortunately, you have to constrict it on both ends sometimes so you end up with something more average. We would love it if all our developers came in with what you have here, but it doesn't happen unfortunately.

Mr. Alpert: I guess it's a little frustrating when we see the sign type that we're asking for on the grounds of City Hall but we can't have it. That's where it gets a little difficult.

Comm. Jackson: That's understood, and I wish we could give you more leeway.

Comm. Neff-Brain: From my standpoint, I really like the directory signs you're proposing a lot better than the one that is filled all the way to the ground, and I hope that when we do amend the LDO, it can be a choice because it is really attractive. I hope you don't have to put anything up until then that is of lesser quality.

Comm. Williams: I concur with Commissioner Neff-Brain; I think it is an appropriate sign that looks nice, and I think it would be unfortunate if they had to turn it into a monument sign. In that same regard, I have an issue that we would be so concerned about a sign type with pole versus post and panel on the inside of a parking garage. I can understand it on the semi-public right-of-way and on the public right-of-way, but not inside the parking garage. What's next? Are we going to control the signage inside a store or office building? If you don't see this from the street on this one sign that they're proposing, I think we're going too far.

Comm. Elkins: I find myself in concurrence with both Commissioner Neff-Brain and Commissioner Williams. I like the signs. I think the signs are classic, and I think they look great. That's why I was asking for a way to get where you want us to go because even if we accept the premise that directory signs are not pole signs but post and panel signs, the way the ordinance is written is any sign that is not specifically permitted is prohibited. I don't see a way to get there from here. I agree with Commissioner Williams with respect to the interior signs; it just seems a step too far.

Chair Rohlf: Does anyone else have questions?

Comm. Elkins: Given what they've heard, does the applicant still wish for us to move forward. I don't want to presuppose what the commissioners who haven't spoken feel.

Chair Rohlf: The way the staff recommendations are set up, they set out what the motion would need to take into consideration.

Comm. Neff-Brain: Could we split it?

Chair Rohlf: I don't think it needs two. The staff stipulations set out the ones that we cannot approve based on the LDO.

Comm. Williams: By voting on the stipulations, we are saying no to the identity sign as they proposed and no to the post and panel sign.

Chair Rohlf: Right, and that's really all we can do. Based on the record, we have said that we are in favor of the design of these signs, but there is not a way for us to approve them.

Comm. Williams: Instead of denying the signage, it would be best for the applicant to take a continuance and see if we can get this thing changed in the LDO and try to do it in a timely fashion.

Mr. Alpert: Do we have any sense of what that time frame would be to make that change to the LDO?

Mr. Coleman: It would probably be about six months.

Comm. Elkins: I'm not certain about this and if it would help Mr. Alpert at all, but I do think there is a valid question out there as to whether a sign that is internal to a parking garage is a sign that is within the jurisdiction of the LDO. It might be a stretch, but I could see us modifying Stipulation No. 2 to create an

exception for the garage sign. That doesn't get Mr. Alpert to where he wants to go, but it seems that it may be an alternative out there that gets him further down the road.

Chair Rohlf: Where are the locations of the other ones?

Mr. Alpert: It is my understanding that a sign that is within a building doesn't require a permit. Isn't that true? So you are saying we could go build those two and install them because they are within the perimeter of the garage and therefore wouldn't require a permit.

Comm. Elkins: That is what I'm proposing, but I would have to defer to staff on whether it is correct.

Mr. Coleman: We would have to look at it. Right off the top of my head, I wouldn't want to say because it is a public space but also a structure. I could see both sides.

Comm. Ramsey: When would it apply?

Mr. Coleman: Right now, we consider it a pole sign.

Comm. Ramsey: Even when it is within the confines of a building?

Mr. Coleman: It is a public parking garage in a public space.

Comm. Ramsey: What if it is a private parking garage?

Comm. Neff-Brain: It is a private parking garage that is open to the public.

Comm. Ramsey: With all due respect, Richard, I'm with the other guys up here. I think you're on the ragged edge here.

Mr. Coleman: We'd have to look at it. I would rather take a good look at it.

Comm. Pateid: Do I understand correctly that changing the sign on the parking garage from "P" to "Park Place" is acceptable to you?

Mr. Rexwinkle: We are fine with that.

Comm. Pateid: I really do take heed to what was told about the direction of traffic coming in off a main thoroughfare and avoiding having traffic go through a space that is designed for pedestrians. I see that change in sign being a matter of public safety. In like fashion, these signs inside the structures themselves are equally as important for public interest for direction and safety. I'd hate to defer doing something that is in the public interest for one month or six months if we can move forward on those issues that we can all agree upon. As to the directional signs, I think first about the comments made about the inclusion of "Park Place" on the identity monuments. I find that to be a very compelling argument that just makes sense. I see your use of precedent as being a vehicle to get that point across. Unfortunately, the pole sign situation creates the same type of deal. To go along with the pole sign creates issues not so much in Park Place but in the remainder of the developments in Leawood in the future because somebody else will come up and say, "Well, you have the pole signs in Park Place. Why can't we have them here?" You see the dilemma we face there. I think the issue on the monument has been well discussed. I would ask staff if there is any further action required of the Planning Commission at this point on the matter of the identity monuments, or have we resolved that as far as we're concerned?

Mr. Rexwinkle: That is unresolved at this point. We will have a work session or a meeting on that.

Comm. Pateidl: I will go back to my statements about public interest, then. I would like to see this proposal modified with that respect. I don't know if we can approve part of a plan filing like this and continue the balance of it or not. If we can, that's what I would propose.

Chair Rohlf: The way the recommendations are set up now, the two components that are fine would be approved.

Comm. Elkins: It would not get to the interior signs that Commissioner Pateidl was suggesting would be appropriate.

Chair Rohlf: We could put that in there, but Mr. Coleman would prefer that we not do that until he's had an opportunity to evaluate it.

Mr. Coleman: That is correct. We would like the opportunity to codify the sign issues. We have other applicants we are working with that are multi-building, multi-tenant that have many site signs similar to this. We would like to try to work that out.

Chair Rohlf: Mr. Alpert, do you think a continuance would be of use to you?

Mr. Alpert: Our other choice would be to have you approve what you think you could approve and stipulate that the things you feel you can't approve be continued, which I guess is kind of how it's written now. We can take it to the Council. Who knows what they will do? The items that are continued, the Council couldn't rule on, so you would almost have to turn it down.

Chair Rohlf: Right now, we would be denying it.

Mr. Alpert: We would probably prefer that you approve what you can approve and deny the rest, and we will take it to Council and see what they will do. If we have to wait for an amendment to the LDO, it is not a timing issue. It's not like we're saving time by continuing versus having it denied.

A motion to recommend approval of Case 45-12 – PARK PLACE – SITE SIGNAGE DEVELOPMENT STANDARDS – Request for approval of a Final Plan, located at the northeast corner of 117th Street and Nall Avenue – with the Stipulations identified in the Staff Report – was made by Neff-Brain; seconded by Roberson.

Comm. Jackson: My only comment would be to encourage staff to please quickly resolve the issue as to the interior signs for Mr. Alpert and Ms. Mann.

Comm. Elkins: My position would be that if we chose to do so, we would have the ability to approve the interior signs. I recognize staff has asked for additional time, but for the record, that would be my position on it.

Chair Rohlf: I think we're all in agreement there.

Comm. Williams: Would that need to be added as a stipulation?

Chair Rohlf: No. Anything else before we vote?

Motion approved with a unanimous vote of 7-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins and Ramsey.

CASE 52-12 – RANCHMART NORTH – Request for approval of a zoning to SD-CR (Planned General Retail) and R-1 (Planned Low Density Single Family Residential), Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located north of 95th Street and east of Mission Road. **PUBLIC HEARING.**

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 52-12, request for approval of a Zoning, Preliminary Plan, Final Plan, Preliminary Plat and Final Plat for the existing development known as Ranchmart North. The site consists of nine un-platted parcels of the northeast corner of 95th and Mission, consisting of a main center, three pad sites and Linwood Cemetery on the east half of the site. The property is currently un-platted, and the applicant has submitted a Preliminary and Final Plat showing the site to be divided into four lots with the main center located on Lot 1 and each of the pad sites on the other three lots. No site changes or changes in use are proposed with this application; however, as required by ordinance, the applicant has submitted a Preliminary and Final Plan that shows existing site conditions. The request proposes to zone the cemetery R-1 (Planned Single-Family Low Density Residential) and the remainder of the site SD-CR, which is Planned General Retail. Since at least 1982, city maps have designated the entire Ranchmart North site as commercial zoning. Over time, as new zoning ordinances and maps were published, the zoning district became what we identify today as SD-CR (Planned General Retail). It is our understanding that the Ranchmart North shopping center was constructed prior to its annexation into the city in 1960. Shortly thereafter, the City Council addressed the zoning of a portion of the site; however, staff has been unable to find a published ordinance demonstrating that the site was fully zoned. The annexation and initial zoning discussions occurred more than 50 years ago, and records from that era are different than records from today. With this application, the city seeks to confirm the zoning of the Ranchmart site such that it matches the zoning on the city maps since at least 1982. While this request is unusual, it may not be unique. Staff is commencing a study of some other properties within the city which may have comparable circumstances, so you may see other cases similar to this going forward. Staff recommends approval of this request, subject to the stipulations, and we'll be happy to answer any questions.

Chair Rohlf: I hope you have all had the opportunity to look at the folder with a revised memo from David Ley.

Mr. Klein: Madame Chair, I also wanted to draw your attention to emails from the public with regard to this matter on the dais as well.

Chair Rohlf: Questions for staff?

Comm. Williams: This doesn't change any of the uses currently on the property; it doesn't change any of the process to put new uses on the property?

Mr. Rexwinkle: No.

Comm. Williams: It just basically is a clean-up of the documentation of the zoning for the property.

Mr. Rexwinkle: Correct.

Comm. Williams: In that regard, was this caught when the barbecue restaurant originally came through, or did it happen afterward? What was the process?

Mr. Klein: This was actually determined during that process when we received some records and started doing analysis going back and getting into the old files.

Comm. Williams: Along those lines, if the existing structures don't conform to the current LDO, they're listed as non-conforming in terms of setbacks and parking requirements, etc.

Mr. Klein: Just like any other building that no longer meets the current LDO.

Comm. Jackson: The Golden Criteria mentions that there will be harm to the property owners if these aren't adequately zoned. I don't understand what that is referring to there. Can they not do certain things if it's not zoned in the current zoning law?

Mr. Klein: That is with regard to the property owners there that had expectations. This property has always been zoned SD-CR as long as I've been here and as far as the maps from 1982. When zoning requests and record requests came in, it was what was quoted out. A lot of decisions have probably been made based on that information.

Comm. Jackson: What type of decisions are you referring to?

Mr. Klein: As far as somebody coming in for placing a building there, opening a business or purchasing a house, they would come to the city and check the surrounding zoning. The information received at that point would be that it was zoned SD-CR.

Comm. Neff-Brain: On Page 5 of the Interact notes, there is a question for Mr. Coleman, "There is documentation that they intended to rezone to commercial, and it was advertised to rezone to commercial. Then it gets fuzzy." It says, "Are you talking about the whole center or just the post office?" You said, "The indication is just the post office." What was the context of that?

Mr. Coleman: I was referring to what was called the Zoning Committee, which was an appointed group similar to you. They received the request to rezone part of Ranchmart from residential to business. It was advertised in the Johnson County Herald for five weeks to rezone it from residential to business. That's what I was referring to. It changes when it gets to the Council. It is indicated that it was light industrial, and we couldn't find the ordinance. That's where it stands.

Comm. Neff-Brain: Just the area where the post office is and not the whole Ranchmart?

Mr. Coleman: That particular case just deals with that area, yes.

Comm. Neff-Brain: At the time, it was residential?

Mr. Coleman: At the time, Ranchmart Shopping Center was part of the Urban Mission Township. It had been constructed and added on to several times. Subsequently, it was considered commercial in the Urban Mission Township. When it was annexed into the city, the city kept the same commercial designation at that time. There were several annexations. The portion we referred to as the cemetery was residential, and the city was looking to establish the post office in the City of Leawood. A portion of that property was the subject I was talking about.

Comm. Elkins: Is the cemetery within the bounds of what this proposal rezones?

Mr. Coleman: No, at that time, it was described as a tract of land around the post office.

Comm. Elkins: I note that, in the title of the proposal, this is identified as a request for approval of zoning to SD-CR and R-1. Then when I look at the summary with reference to the plat, I see a reference to four lots that all seem to be commercial and, I presume, are subject to SD-CR. Is there any portion of the tract that we're talking about here that will be zoned R-1?

Mr. Coleman: The cemetery.

Comm. Elkins: So it is within the tract of what we're rezoning, and that's the piece that's getting zoned to R-1.

Mr. Coleman: Correct.

Comm. Pateid: I'd like to follow up on Commissioner Jackson's question because it confuses me on the Golden Rule portion of the comments provided by staff. I'll quote a couple of sentences here. "Since this is an existing development, denial of this request does not result in relative gain to public health, safety or welfare. For the same reasons, however, denial of this request will result in hardship opposed upon the property owner." I would like to have some clarification of what hardship the denial of this rezoning will create on the property owner if it has existed under its current circumstances for 50 years. Why now? What is the hardship?

Mr. Klein: It all comes down to what expectations were. This property has always been shown as I stated before. That was the information given to everybody. With regard to the property owners themselves, if this piece of property was no longer considered what it was always thought to be zoned, those uses would no longer be allowed under the new zoning. We're talking about the entire parcel here. We aren't talking about just the post office. We aren't talking about just the cemetery. If that was not zoned SD-CR, a lot of those uses would certainly be non-conforming, which would be a detriment to the property owners currently at that location. You would then have illegal uses.

Comm. Pateid: I think it was considered to be SD-CR in the past. We're talking about it being SD-CR in the future. I'm not following what this change does that creates a hardship for the property owner.

Mr. Klein: This change does not create a hardship for the property owner; denial of this change would basically not give this property the SD-CR designation, and the retail uses within that property would no longer be allowed.

Comm. Roberson: If they made changes to this property, they would not be allowed.

Mr. Klein: The zoning and the uses would no longer match. Right now, all those retail uses are allowed in the SD-CR district. It is probably why many have been approved throughout the course of this property. However, if the SD-CR is not the zoning designation on this piece of property, then you have a lot of retail uses in a district that basically is not zoned for retail.

Comm. Pateid: There is no grandfathering on this?

Mr. Klein: That is what this is trying to do; it is trying to correct that and take it back to what everybody thought it was with the information given out all these years.

Comm. Pateid: Isn't what everybody thought it was what it was?

Mr. Klein: Everybody thought it was SD-CR. That's what we thought. Everybody saw a shopping center on this piece of property and thought it was a retail zoning district. When we went back to see if there was an actual zoning ordinance that zoned that piece of property SD-CR retail, we didn't find one. That is the reason for this application. We are formally recording the zoning of that property as retail.

Comm. Pateidl: "Since early 1982, the area has been designated commercial zoning on city maps. New zoning maps were published over the time. Corresponding zoning district became what is identified as SD-CR (Planned Commercial Retail) today." The zoning map's current designation, which I presume has not been changed and has been what it has been, is SD-CR (Planned General Retail). Now, I don't know what the difference between Planned Commercial Retail and Planned General Retail is, but we're saying we want to change it from SD-CR, which it is now on the map, to SD-CR. I'm having a hard time figuring this out.

Mr. Coleman: Maybe I can clarify this. The retail zoning we have assumed for the last 30-50 years, we don't have the Council ordinance that formally made this center retail. We are trying to put that in place, so we had to get the zoning in place and take care of this possible error or omission that occurred many decades ago.

Comm. Jackson: Is there a default, then? If something is within city boundaries at this point in time without zoning, what does it default to?

Mr. Coleman: Probably AG.

Comm. Jackson: So as of right now, we would have to consider that AG property because we don't know what it is.

Mr. Coleman: That probably would be correct.

Comm. Ramsey: But you also have the issue of zoning maps that have identified this as something other than AG.

Mr. Coleman: The Comprehensive Plan has designated it for more than 30 years as retail.

Comm. Pateidl: I understand that we have been unable to find a copy of the ordinance. Is there any kind of proof or evidence that there is no ordinance? Have we talked to the post office? Have we gone through Regnier's records? Have we gone through that kind of an evaluation, seeking tax records from the county as an example?

Mr. Coleman: We have gone through our records extensively looking for a document from the city that would show it zoned, and we have not been able to come up with it.

Comm. Pateidl: City records.

Mr. Coleman: Yes, and that is where city ordinances would reside.

Comm. Elkins: Following up on that, as crazy as it sounds, the logical extension of that is the current use to which that property is being put doesn't even qualify for a legal, non-conforming use. It's an illegal use at this point in time.

Mr. Coleman: We don't actually know that.

Comm. Elkins: But if we assume that there is no zoning ordinance in place and the default is AG and there has never been anything other than that.

Mr. Coleman: There may be a zoning ordinance in place; we have just not been able to locate the ordinance. There are many indications that the property has been zoned, but we haven't been able to come up with it.

Comm. Elkins: The whole reason for this exercise is that very thing. As far as you can tell from the legal record, there is no proof that it has ever been zoned.

Mr. Coleman: We don't have proof at this time, so we are trying to get that legal portion in place.

Comm. Neff-Brain: As a former Overland Park city attorney, I can tell you a lot of things got passed that were never found again. Record-keeping was nothing; everything was by paper. I've had that experience many times, so I wouldn't necessarily say it didn't exist; it's just finding it.

Mr. Coleman: Keep in mind that this was annexed into the city around 1960. When they dissolved Urban Mission Township, the county basically said, "Overland Park, you get this piece. Leawood, you get this piece. Prairie Village, you get this piece" and so on. The piece that came to Leawood was Ranchmart, and it had a commercial development on it from the county. That was the start of the commercial zoning.

Comm. Jackson: In my mind, it would be better for the actual property owners to be in here arguing these things if it is truly a detriment to them not to have it properly zoned. Let them come in and make their arguments and put the burden on them to find these things. Then hopefully, that would also encourage them to improve these properties.

Mr. Coleman: We're doing it based on the fact that they were our records and our ordinances.

Comm. Jackson: Assuming they came in and asked for a change at one time.

Mr. Coleman: We do have letters from the property owners requesting the rezoning from residential to business.

Comm. Neff-Brain: If it came again to the city as Mission Urban Township commercial, why would the city have to take any further action?

Mr. Coleman: We don't have an ordinance or haven't been able to find an ordinance that shows the actual retail or commercial designation. Portions of Ranchmart that were annexed into the city were residential, including the cemetery.

Comm. Ramsey: Couldn't it also happen since it came in as an existing use, it may have been zoned at that point on that existing use and then upgraded as part of the Comprehensive Plan changes, ergo the change in the zoning maps along with the Comprehensive Plan?

Mr. Coleman: I think that's probably the course for the large portion of this area. The records are so sketchy; it's difficult to follow it in any detail.

Chair Rohlf: Are there any other questions? Are we finished with the presentation, since staff is also the applicant? That takes us up to the Public Hearing. I see a number of you in the audience. I'm sure a number of you were here before when we heard the case. For those of you not familiar with the Public Hearing process, I'm going to give you the guidelines. First, there will be a timer this evening set at three minutes,

and I will adhere to it. I don't want to be rude, but we need to move the meeting along. I'm sure a lot of you will want to discuss the prior case, which is what started us down this road. We are not here to discuss the Slab & Pickle application. That will be taken up by City Council at a later date. Tonight, the Public Hearing will involve comments about this particular zoning application. Previously, the homes associations that were here were represented by one or two people that spoke. Is that going to be the plan tonight so a good portion of the time I would allow each person to speak would be handled by one or two people? If that is true, raise your hand.

Inaudible comments

Chair Rohlf: I didn't assume, and I wasn't finished. I will finish now. For those of you who are going to let Mr. Barry speak, I will give him more than three minutes. There will be time for other people. I need to get an idea of how many people will speak after him that I will need to put the timer on. Please raise your hand for that. All right; and then do we have any other individuals here representing a group that will get more time?

Inaudible comments

Chair Rohlf: Do you have any idea about how long your presentation is going to be?

Inaudible comments

Chair Rohlf: I would ask, Mr. Patrick, if you are going to follow Mr. Barry, if any of your comments are duplicative, I will ask you to stop. That would be said for anyone coming after them. Once people start to make comments, we don't need to hear it multiple times. That just takes time from people who may have a new comment to make.

PUBLIC HEARING

Kerry Patrick appeared before the Planning Commission and made the following comments:

Mr. Patrick: I'm not going to read all of this; I am just going to summarize and highlight. I believe that almost all the statements made by Mr. Coleman are absolutely and completely factually incorrect. When you review documents which have not all been responded to me, which have been made under the Kansas Open Records Act by Miss Patty Bennett and Mr. Coleman. I'm not going to give you copies of all the emails but what I believe to be a representative example. I've lived close to 40 years as a resident of Leawood. I've served twelve years as a state representative. I've been involved in numerous other civic activities and organizations within the city. I testified many, many times before City Council and various boards at their request to help get legislation passed and offer amendments to bills and committee that the city thought was in its best interest. If this request is granted in contravention of the current LDO, this will be the only place in Leawood where a single bar restaurant with two big TVs and speakers and 50 tables will be permitted to be placed within 125 feet of single-family residences. I ask you why we are here when this is done no place else and is in contravention to the city's LDO. Why is the city initiating this rezoning and not the developer because we have an LDO plan? When you look at the record, you will see that what Mr. Coleman has stated is incorrect. I just picked this up at 6:30 at Kinko's, and one document was omitted, but I refer to it in my overview and have a copy of it that I will quote from if you so desire. If you wish to turn to Tab A, you will see that it refers to Mr. Coleman stating that this is not a zoning request as he referred to in the December 21st meeting and is clearly SD-CR (General Retail). Tab B is part of the city LDO plan. In Article 4, page 51, it talks about structures, lawful, non-conforming use structures. The post office to be used for anything other than a post office is a lawful non-conforming structure. If you look at some of the frustration I've had with the city in terms of some of my open record requests, you'll see the first comment, "Patty, I know that you and I must believe all the staff look too young to have been born when the EPS was built in Leawood. At the time, I was a youngster living in Columbus, Ohio." If you look at the highlighted portions I have, you can see the

email that was sent to me in 10-point font type. I've had five surgeries to my eyes as a result of Multiple Sclerosis, which I've suffered from, so I've blown up part of it into a bigger print so that you and I can read it. I have made a document request, not a request for the city's mental impressions, mental impressions that you personally or none of the staff mention in your email contact or could have known since none of you worked for the city back then. Then again, the city listed, in handwriting, the ordinances that amended these documents referring back to a February 12th email. This was in a February 13th email. She says, "Hey, I need to provide a copy of the ordinances and everything that was done to them." Well, it was in the document that she gave to me, so all these ordinances and all these documents are cited, so this seems to be a totally nonresponsive answer. Then you flip to the next page. I asked a yes/no question. I'm not trying to get the owners of the restaurants or any of the retail establishments or some of the architects that have been employed by them in trouble, but it has been the position of city planning staff that no chairs or tables could be set up that went outside of the existing roof structure. This has been the consistent position of the city. Yet, for some reason, we are now going to go outside of that consistent position that has been taken for decades, going back to the old Baskin Robbins restaurant in the early '70's that I used to ride up to on my bicycle to get ice cream. The tables were always within the roofline. We usually had to sit outside because it was so busy and the only place to get ice cream that we could ride our bikes to in North Overland Park and that portion of Southeast Prairie Village that was south of 435.

If you look at Section D, you'll see a report that was presented July 27th of 1960 to the mayor. If you turn to my outline that I have referred to on Tab D, I'll read some. It was on August 1, 1960. It says they are going to permit the building of the post office to light industrial for use of a post office site only in accordance with the recommendations of the Special Zoning Committee with the following provisions. It talks about something related to 95th Street. Then it says in the resolving clause, "Be it further resolved that a special building permit be granted by permission of City Council, approval of the plans." One year later, the building permit, after all the aesthetics, etc., have conformed to the existing Ranchmart shopping center, the city issued the formal building permit to zone. The UPS property was zoned residential and the Council was considering it to be rezoned as light industrial. Mr. Regnier asked for it to be rezoned for business use purposes. That was turned down by the city, and it created this new classification called light industrial. (*Hands out copies*) Looking at the city records that were sent to me by Patty, it refers to Ordinance 49 and all the amendments to it. It talked about a light industrial district. Nowhere will you find in the city records - and I'm sure this was an omission - where the term "light industrial district" was repealed. Mr. Coleman talked about everybody assuming it since 1962. Well, this was still not repealed, and it applied, as far as I can tell without having all my open record requests filled by the city, this applied and it applied only, for some unknown reason, to the United States Post Office building. There was no harm to the owner of the Ranchmart shopping center if it is not permitted to be used as a restaurant. When it was initially established in 1960 by a special resolution of the Council, it was to be built under the terms of a special building permit. I've asked to get a copy of that special building permit; it has never been provided to me. I've also asked to see a copy of what the setback provisions were from single-family residences for Ranchmart shopping center for this light industrial district. You'll see an old map of the city and that it applies only to the space occupied by the post office. I think it's also important to note that, in 1960, the City of Leawood did have a functioning zoning board like this one in place. If you turn further on page 5, I'll try to summarize briefly. Again, it was referred to as a light industrial district in 1960. Nowhere was this overturned, changed or anything done with it, period. No harm can be had to the owner of Ranchmart and the current sites, be it Price Chopper, O'Neill's, whatever because this light zoning district, if you look at the meets and bounds from this August 1, 1960 resolution applied only to the United States Post Office building, for which Mr. Regnier received rents from every year until it no longer served some time in 2010 as a post office building. In no way has he been harmed since Ranchmart was established, according to the records in 1957. To me, and some might argue this point too strongly, not one of these basic questions on pages 5 and 6 have been answered by city staff. I could go on, but I won't. On the pending rezoning, they claim that they are tending the Slab restaurant to fall, once again, under the pending Section 451 of the current Leawood city LDO. The city and the developer - and it's been the same developer that zoned it continuously since 1957, so I don't think any argument can be made by the Regnier family that they would have lost a document; just look at

the situation with Martha Bagby School. The special building permit granted was to build a post office. It was, from the beginning, a light industrial use zoning, whatever that meant. I've asked to see what it meant in more detail. We don't know. The most and the fundamental legal question as per Golden is what were the setback rules for Ranchmart and single-family residences at the time of establishment in 1957 and again to the construction of the post office under the then existing light use zoning classification. Mr. Regnier, according to city records, was turned down in his request for it to be called a business. The SD-CR, as in Leawood City LDO that allows a non-conforming use in this kind of situation to be used as a restaurant, is a false and legally incorrect statement in my opinion. I graduated with Jane from law school. Even though I believe neither of us practiced law, I have remembered a few things.

So what is and what was the purpose? I think the BZA needs to consider the Leawood LDO. If this rezoning is granted, this will be the only place in Leawood where we have a restaurant, an outside bar, TV screens, loudspeakers blasting out. This is what I fail to understand: why is the city initiating the rezoning in contravention of the current LDO? If anyone should be initiating the zoning process, it should be the developer. The City Council, city planning staff, the city attorney's office are bound to follow the LDO under its own rules and regulations and Golden. It's a mystery to me why the city staff, both from the attorney's office and planning staff, have on their own without having full information to be able to make an intelligent and knowing protest of this pending rezoning, which is also required by Golden and its progeny, are doing this. Again, Mr. Coleman repeats the 100% incorrect statement as to any harm that might be coming to the owner of Ranchmart. He knew in 1960 it was under light industrial. He knew it was turned down for a business request. It was done only for light industrial, and basically, as far as we can tell, it was done for one thing and one thing only. I would be happy to stand for any questions. I apologize I didn't have time. I have been in the process of finishing oil wells in Southeast and South Central Kansas, and with my MS, I basically collapsed on Sunday and had to work on it all day until 2:00 when I started preparing this and got it to Kinko's at 4:30 or maybe later and didn't have the time to proofread it when we picked it up at 6:20 to race over here to the BZA meeting at 6:30. I'd be happy to stand for any questions. Then again, let me close. We have a city LDO for a reason. Secondly, no financial harm can be shown or proved to my satisfaction to the owner of Ranchmart, for it was never permitted, even though he asked for it to be used for business; it was only for light industrial, and that light industrial was interpreted to be a post office. Look at the meets and bounds that describe the property of the post office and the loading dock and only that part of Ranchmart. I thank you for your time and for serving because I know you have a thankless job. I appreciate your willingness to serve because I know what a thankless job it is serving on boards, commissions, etc. I appreciate your job.

Comm. Neff-Brain: Kerry, you may not have practiced law, but I did for 28 years.

Chair Rohlf: Thank you, Mr. Patrick. We'll move along. If we have questions, we will come back.

Mr. Patrick: Again, I would like to know what harm this would be to Ranchmart. Thank you.

Dr. Seth Berry, 9419 Wenonga Road, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Berry: *(Refers to PowerPoint presentation throughout)* Thank you for taking the time today to hear from the public. I'll try to be concise after Kerry's comments. What we're asking the Planning Commission this evening is if you decide to vote on this by chance that you look and consider each lot individually. Right now, it is being presented as "one size fits all" and as you heard Kerry mention, each lot does have different ordinance history that we think should be taken into account and not all lumped together. Please keep this in mind as you consider this.

I want to make a quick general comment that covers Lots 1, 3 and 4. Like Kerry, I'm going to focus most of the presentation this evening on Lot #3. It has to do with easements. The public has concerns with regard to the easements. Whenever we see a recommendation from Public Works that the Preliminary Plat

have a full sidewalk along 95th Street, we don't see that reflected in the plat. What's specifically missing there is the sidewalk in front of McDonald's. As many of the neighbors can probably attest, whenever you walk down 95th heading west, you come to a point where it basically empties into McDonald's parking lot, and you're forced to struggle with the parking lot traffic. Likewise, if you're coming from Overland Park or Prairie Village at 95th and Mission going northeast, there is basically just a little pad of a corner for a sidewalk with a bunch of rock that is then spread between there and the McDonald's parking lot. There is no sidewalk, and it becomes an issue for pedestrians. We think it is important that you consider that. Likewise, going down Mission Road, we also think there needs to be a sidewalk. Again, we're fighting traffic in the parking lots. From a public safety standpoint, that is a concern.

With regard to Lot 3, many of the homes we all reside in were built in 1958 or 1959. The post office was built in 1961. If you look at some of the documentation, you will see that many of the homeowners were opposed to the post office going in. The main reason for that is they were concerned about their property values. Likewise, with the school across the road, there was also concern there. One important point there is that there were 800 individuals that petitioned the city for a post office. We wanted to be able to write "Leawood, Kansas" on our mail. Because of that, the neighbors the property adjoins understood that it seemed reasonable to want a post office. I think that was the main reason they went along with it. It serves a specific benefit to the community, so the post office has served us very well. Part of the reason we're here tonight is the change in zoning with regard to changing this to full commercial. In doing so, it would allow bars and restaurants at that site. We've gone over this before with the application, so I won't go into the issues we have with the barbecue restaurant, but it is still on the table as far as we know that this formality is just another step in the process for the developer to get that application in front of City Council. As I stated before, there are no other bars or restaurants with this short of a setback. Likewise, since we were here last, we've had a few more people sign our petition; it is up to 215 signatures that are against having a bar or restaurant in this location.

We can back up and actually look at some of the records. The tract the post office sits on was previously zoned for residential use. It states that in the minutes. I have provided you all with a letter from Vic Regnier that he wrote to the City of Leawood on June 7, 1960. "We request the property be rezoned from residential to business." The interesting part of that note is if you look down in the lower right hand corner, it says the plat was submitted. My question to you all is where is the plat? We should have that with any good record keeping process. Again, there are 800 petition signatures for the post office that are covered in this document. As Kerry has mentioned, there was no light commercial zoning at the time, only light industrial. If you have some question, it is ordinance 67 that covers that.

In August of 1961, a special zoning committee instructed the city attorney to have it rezoned, this time for use of a post office site only. You see highlighted in the text here where it says specifically, "for use of post office site only." You go to the last paragraph, and it says, "A special building permit," which in my frame of mind implies a special use. If we are interpreting it today, that's probably how we would view it. As Kerry mentioned, we have asked the city planners for the special building permit. All we've received is basically a card that says the date and the building permit number 2244 that was granted on August 10, 1961. We think that building permit is important because if it was a special use, it sets the stage for a lot of the decisions that were probably made from then on.

Another important piece to note is in Ordinance 94, Section 5408 on the prohibitions. In this, it basically says, "In no building structure is a tavern, saloon, liquor, wine or beer allowed." At that point in time, they couldn't have been thinking, "Oh, in this place, it would be really good for a restaurant." I don't think that was their intent. This afternoon, I was able to look at the 1963 zoning map. I also looked at the 1958 zoning map, which shows a big blank area where the Ranchmart shopping center sits, the main building where Cure of Ars sits as well as where the post office and cemetery sit. Basically, it didn't look like it had been zoned at that point. I asked the city staff for the 1961 map, but they were unable to provide that. When I looked at the 1963 map, this is what you see. Here we have the shopping center. Then you notice with the cemetery and a little sliver that says "Post Office Tract," those do not have the business classification. Basically, this is the first map we've seen after this property was supposedly zoned, and it

doesn't show that it's business. Likewise, it doesn't show that it's even industrial or even heavy industrial. What it looks like is all of the other residential areas surrounding it.

Let's talk about what we would do if we were going to look at this today. If we were going to zone Lot 3 and we wanted to build a new commercial building on it, it would be almost completely prohibitive by today's LDO. What you would come up with is a building that is about 32 feet wide and barely functional for the developer or whoever owned that land. In that regard, I sympathize with the developer. The current LDO, I don't think, was intended to deal with some of the small parcels of land that we have in North Leawood. The question is if it doesn't really fit, is full general retail commercial really the correct zoning moving forward? They're always going to have to use the old post office. They're never going to get them to build a new building there and start to bring some of the structures up to our current standards. In our opinion, it is time for the building or the use to conform to the current LDO standards.

As we were talking about Golden, we think there are some important points to that. In your remit in Section 3 where it says, "Whether the development is designed, located or proposed to be operated so that the public health, safety and welfare will be protected," you've heard me go on and on at the Slab & Pickle application about the issues we have with the noise, the smoke, the smell. Continuing to grant commercial use of that property would further that. Likewise, the remit to identify whether a community need exists for the proposed use; I love barbecue. We have tons of barbecue restaurants in Kansas City, and I haven't seen a petition from the developer or the city asking for another barbecue restaurant. In 1960, we had it for the post office but not today for the barbecue restaurant. In Section #5 where it asked if the development will impede the orderly development and improvement of the surrounding property or impair the use, enjoyment or value of the neighboring properties, we have to think that whenever you have a site that sits 50 feet from the neighbors' back yards that is open until midnight, it is going to impair the use of the nearby residences. You're not going to be sitting out in your back yard if they have the smoker going. Likewise, we do think this will cause a detriment to our home values. I know people say you can't really judge home values, and I understand that. The reality is that it does happen.

For Section #9 and the appropriateness of the minimum dimensions and areas of lots and yards set forth in the applicable zoning district regulations, as I showed you in the previous slide, the size of this lot with the current LDO does not provide enough space or setback from residential. Again, just for your reference, it is a 45-foot setback for the proposed Slab & Pickle restaurant, where in other locations like Gates or Broback's, we have at least 400 to 1,000-foot setbacks.

Finally, I think it is also important to look at the abandonment issue. In Ordinance 175 that was active when the post office was built and in today's current LDO, it basically says when a non-conforming use has been discontinued for a period of six months, it shall not be reestablished, and future use shall be in conformity with the provisions of these articles. The post office left in 2009, which is much greater than 180 days or six months. Again, it's time for the building or the use of the old post office to start to conform to the current LDO.

In closing, we want to see Ranch Mart succeed. We understand that the developer cannot build a new commercial building on that site for all practical purposes, due to your new setback guidelines. As residents, we are here, willing to compromise to an office zoning that would provide proper use of the building and be in line with the current setbacks from residential, and the developer can continue to use that building. Whenever we have approached staff as far as asking the city to consider other zoning uses, we've met a wall. We would sincerely like the city's feedback and your opinion as far as why we couldn't consider that. At a minimum, the zoning change needs to be postponed until such time as a thorough due diligence review can be conducted by all parties. It hasn't been very long that the city staff has looked at it. You can hear that when they say, "We still haven't found that ordinance yet." So why are we rushing into this? We obviously got it wrong years ago. Records got misplaced. So why rush today? If votes are cast tonight, we would ask that they be cast separately for each lot and that Lot #3 be denied SD-CR (General Retail and Commercial) zoning for the aforementioned reasons. Most importantly, we all want to see the old post office building and the rest of Ranchmart North to prosper. We live there. We shop there. We bank there. It's our home, but we don't want to see this go through at the cost of the neighborhood. Thank you.

Chair Rohlf: Thank you. I know we have a few other people that would like to speak.

Patricia Racik, 3210 W. 95th Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Racik: I believe I have strong standing to appear here before you. My property is about six buildings away from the post office. I'm also an attorney. I practice law now. I'm licensed in three states: Missouri, Kansas and California, and I've taken real estate property law. I'm not a real estate attorney, but I have access to a lot of real estate attorneys. What I don't understand is really why the city is essentially creating a situation where a nuisance is going to descend upon our property. If this were considered as a nuisance situation, there would be a balancing of the hardships to the parties. We've already addressed that we're not asking Mr. Regnier to knock down his building; we're simply asking him to use it for a more suitable use. His only hardship is the difference in rents he would receive from a restaurant versus a business building. By the way, you can pass along to Mr. Regnier that, as an attorney, I'd be happy to rent his space.

Chair Rohlf: Ma'am, I would ask you to calm down a little bit.

Ms. Racik: I'm sorry. All of us in this room have a lot of money invested in our homes. I saw you nigger over signs. I'm sorry. I sat here quietly, and I listened patiently, and I'm just asking for you to listen to me. There are already two foreclosures on 95th Street. One is next to my house; the other one is a few houses down. If I were this lady who lives just a few yards away from where you want to allow a restaurant with people being able to go out and watch big screen TVs, drink beer, clink glasses and clatter silverware, I'm outraged. I'm outraged. Where is the city looking out for our interests? Our property values have already declined. I can tell you, I'm trying to rent my building, and I've had potential tenants ask me about what's going on. What do these, "Save our Neighborhood" signs mean? I've been in the position, and as an attorney, I feel I have an obligation to tell the truth about that. It embarrasses me to have to tell them that there is an application to have a barbecue restaurant that encroaches upon the residential area. What I don't understand is why our valuable city resources are being used to even entertain this concept. If Mr. Regnier wants to rent his building, let him know and I'll be happy to rent it from him. He just needs to contact me, and we'll negotiate a rent for an office building. I'll be happy to do that just to forestall the Slab & Pickle because I have a property that used to be worth about \$200,000; now, I think it's worth about \$180,000 if I could sell it. With the entire pall that's been cast over our neighborhood, because of all that has been going on, I doubt that I could even sell it for a fair price. Maybe I could have a fire sale. Anyone who wants to sell their property has the obligation, under Kansas real estate law as I understand it, to disclose what's going on. I hope this poor lady isn't planning on selling her house because if you disclose that, trust me, no one is going to want to buy it. Would you want to buy it? Would you like me to figure out where all of you live and then we'll figure out if we can get together and open a barbecue restaurant in your neighborhood? It's ridiculous. At the very least, we're not asking Mr. Regnier to knock his building down. I guess technically, we have the right to do that because it's non-conforming at this point. We're not asking him to shut down all of his rentals, which are illegal at this point if there is no zoning. Why aren't they being shut down? That would be hardship to him. All we're asking is a balancing of the hardships. I find it hard to understand why it's taking so much time and effort to impress upon the city that this property should be allowed in a use similar to what it has been, one that will not disrupt the neighborhood and one that will not expose us to noise pollution and odor pollution and potentially put my house in danger. I have a shake roof on my house. I've had enough of a problem trying to get insurance on it lately. I've had a lot of insurance companies who don't want to insure an older shake roof. Gee, I wonder if the underwriters know there is a barbecue restaurant emitting embers that may slip through. Perhaps it will be uninsurable. Again, I'm sorry; I am upset about this situation. I am sorry; I've tried to tone it down as much as I can. I'm trained to be an advocate in court. I find it very difficult to sit on my hands and watch something I think is an injustice, move forward. That's all I have to say.

Chair Rohlf: Thank you. Is there anyone else who would like to speak?

John Petersen, Polsinelli Shughart Law Firm, 6201 College Boulevard appeared before the Planning Commission and made the following comments:

Mr. Petersen: I am appearing on behalf of the ownership of the Ranchmart shopping center. I will be brief because my comments tonight will stay within the context of the application that is before us this evening. Madame Chair, I appreciate your effort in guiding the public comment tonight to the application before you. I was before you on the Final Plan application that involved the barbecue restaurant that has received so much of the attention this evening. As a preface to my brief comments, I will point to the stipulations put forward by the applicant of the City of Leawood, particularly Stipulation No. 1, which emphatically states that nothing in regard to what we do here this evening has a power of law, an implication of advantage in regard to the Final Plan application that is pending in front of the Governing Body. This is not a disadvantage or an advantage. This is an attempt to confirm the zoning of the property. God bless you all, and I'm sorry you had to hear from a lot of lawyers tonight about their legal opinions, and I'm going to resist adding one more because it's the last thing we need to do. I would simply say the line of questioning Commissioner Ramsey went down has purpose. I'm not saying he's on my side or not on my side, but it's the idea that your professional staff, your city attorneys, the action of numerous Planning Commission and City Councils took 30 years of action, whether it be adopting the Master Plan and reconfirming it, adopting the Zoning Map or reconfirming it, making a variety of decisions based on the premise that this property, in its entirety that is before you this evening is retail commercial. The acronyms have changed over the years from R-1 or C-1 to SD. They've changed, and the Master Plan has reflected that. We could spend hours on this, and you don't care about my legal opinion; you care about her legal opinion. I feel confident that we stand here not as a shopping center that is agriculturally zoned by law. I appreciate Commissioner Neff-Brain's comments because I've been in front of many cities over 30 years, and this is not unique when you go back 50-60 years and try to have a picture-perfect file that shows the thought process of over six decades of development and use in a community. Your professional staff comes before you and says they want to confirm what have been the perception and the reliance not only of the owner of the shopping center but the city itself on what this zoning is. Confirm it. Then, we're going to have plenty of opportunity to talk about component applications, final plans, how close, how far, legal non-conforming and all those issues. I understand I'm standing before a body that recommended denial, but with the utmost respect and in line with what the chairman started with, it has nothing to do with the application before you. We have reviewed Stipulations 1-3 as proposed by staff. Again, I would think the primary one would be the fact that this has nothing to do with that Final Plan and gives no advantage or tip of the hat in that regard. We will have to make our case before the Governing Body just as we were prepared to do after we left here after your recommendation. Stipulation No. 2 goes to the public works issues that were briefly brought up. We have had an opportunity to review the memo and have discussed it with the public works staff, and we will make all of those changes as recommended, even in this interim time before we do any changes to the site. With that, I would be happy to answer any questions, but we would respectfully ask you to support the position of your professional staff and move this to the Governing Body for this very simple case of confirming the zoning for this particular piece of property. I really don't want to get into a big debate. I think the Golden Criteria, as analyzed by the city attorney and professional staff is right on point. If there is some confusion about the hardship, I'd be happy to respond to that. I think it was vetted through thoroughly enough, but I'd be happy to answer questions from the perspective of the property owner. Thank you for your time.

Chair Rohlf: We'll see if there is anyone else out there who wishes to speak.

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

Chair Rohlf: I would like to give the applicant an opportunity to respond to any comments or clarifications. Does the applicant wish to add anything? Then we will move on to our discussion.

Comm. Pateidl: I have a question for staff. Occasionally reading The Kansas City Star, I once saw that litigation is being filed by the homeowners association with respect to the application for the barbecue restaurant. Is that litigation still in effect, and what is the current status of that?

Ms. Shearer: That is true; there are three homeowners that filed a lawsuit against the city. The last conversation we had with the attorney representing them resulted in it being on hold until the Council decision about the restaurant, and then we will decide how to move forward at that time.

Comm. Pateidl: Thank you. With litigation pending, I find the timing of this application to be awkward for me. The residents who are opposed to the barbecue restaurant have a right to litigate their issues if there are issues to be litigated and on the playing field that existed at the time they filed their litigation. While I support what the city is attempting to do in terms of confirming the records of our zoning, I would not be in favor of seeing a rezoning at this particular juncture as it may or may not influence the court's decision. Apparently, there is a fair degree of disagreement as to the realities of the zoning, the intentions of the city fathers, etc., and that's not for us to judge. That's not our job. If I'm representing the citizens at this point in time, I think it's only fair that they have their opportunity to be heard. For that reason, I would be opposed to passing this application.

Comm. Neff-Brain: We have this picture that was provided of the 1963 City Zoning Map. Franki, do you have a copy of that?

Ms. Shearer: I do not. Mark can get that.

Comm. Neff-Brain: I assume that's the way things were marked back then. It shows hatch marks for all of Ranchmart except the cemetery and the post office tract. They are hatched and indicated as business. Then the area of the cemetery and post office tract is blank. I wondered if there were previous zoning maps. Was this an official City Zoning Map at the time?

Mr. Coleman: Mark is retrieving that map. Some of them were land use maps.

Chair Rohlf: Do you have anything else? We can come back to it, then.

Comm. Williams: I understand and am sympathetic of the city's attempt to clean up the paper trail on this property. In that same vein, in my reading of the LDO, doing the SD-CR would not preclude a portion of this property being used for offices; is that correct? We've got a retail bank that has offices in it.

Mr. Coleman: It is shown as SD-CR.

Comm. Williams: So we don't have an issue of eliminating a use like that on this property?

Mr. Coleman: The bank is SD-CR but is shown as General Retail.

Comm. Williams: I'm saying we could have a use like that on the post office property with the new classification.

Mr. Coleman: Yes.

Comm. Williams: In looking at some of the material that was provided in the Public Hearing with this property zoned light industrial, I'm wondering if we're missing a piece here why it goes from light commercial to light industrial. With what is allowed for light industrial district, short of the municipal buildings, I don't see uses that would necessarily be what we would consider appropriate uses to be sitting next to a residential neighborhood. Today, I certainly would not want to see light industrial, by today's definition, sitting next to a residential neighborhood. In that respect, I think the proposed clarification of the zoning on the property is more appropriate, as the applicant has requested.

Comm. Roberson: I agree.

Comm. Elkins: My question follows that comment. Do you care to comment on the records that have been put before us that certainly seem to look like the City Council zoned at least the parcel the post office is on as light industrial? That could be out of context, but obviously you've seen this as well. Can you comment on it?

Mr. Coleman: *Inaudible comments* - I think the zoning was done by letter and agreement and so forth because you see, if you follow the trail, it was noticed as a change from residential to business. Now, if we did that, we couldn't just change it at Planning Commission and City Council. I don't know if they could do that back then or not. The legal notice in the paper said residential is this. As far as the light industrial, as far as I can see from the documents, there wasn't necessarily a designation. The next ordinance that we have anything on was in 1968, and it showed a post office under Planned Business. It's listed at that date under the uses allowed under Planned Business. It also has the possibility that light industrial then included all of those, too. It's a little bit hard to follow the track exactly of what occurred, not having the actual ordinance in hand that confirmed the zoning. At some later date, it appears that the zoning was changed because it started showing up on the maps and city documents as commercial and had been shown that way for at least 30 years. I would comment that the map Commissioner Neff-Brain asked about is a land use map and not necessarily a zoning map.

Comm. Elkins: Thank you. Madame Chair, I probably speak the obvious, but just to narrow down the issue, it seems clear to me that, with respect to Lots 1, 2 and 4, there is no question that the zoning proposed by the city is basically a confirmation of what appears to have always been the case. The nut of the issue is Lot 3, where the former post office sits. It is troubling because the record that has been put before us tonight certainly indicates that the little plot where the post office was located was, at one point in time in 1960, zoned as light industrial. We have been referred to what that was in those days. I find myself in agreement with Commissioner Williams again, that with the kinds of things that would be appropriate in light industrial, it would surprise me if the residents would be much happier about those types of things than the barbecue restaurant because we're talking about a garage for storing automobiles or trucks, a woodworking shop, a warehouse and other industrial uses. Given our obligation to at least try to make the uses consistent, certainly the uses that are currently adjacent to that post office space are nowhere near the types of industrial uses that were identified back in 1960. It's a real dilemma here because the record we see shows that the last thing we've seen that is at all official is an ordinance that says that it was to be light industrial, which certainly is not consistent today with the use that is around it. Those are my thoughts.

Comm. Ramsey: What is the current Zoning Map showing for that location?

Mr. Coleman: It shows SD-CR.

Comm. Ramsey: When was that map adopted?

Mr. Coleman: It has been shown that way since about 1982.

Comm. Ramsey: Whether it was originally zoned industrial or not is moot because frankly, we have not been shown any of the additional records since then that would have potentially changed that. I can guarantee you that back in the 1960's, because I was engaged in public service at the time, there were two business classifications: a central business district and then the rest was business. You had industrial and light industrial. The zoning ordinances back then threw everything, including the kitchen sink, into those. You could almost do anything you wanted to anywhere. It was not much. Certainly, it did not have the distinguishing characteristics that we have today that slice and dice uses. So I'm fully in support of what the staff is trying to do here because it's clear by the current Zoning Map that it has always been determined and intended to be the zoning classification that they are saying we need to ratify at this point. I would be fully in support of this because, again, it has nothing to do with any applications that are before us for any other uses on any of that property at that location.

Ms. Shearer: I just need to clarify something for the record. Mr. Pateidl, you asked about the lawsuit. That lawsuit has to do with the BZA decisions that led up to the Slab & Pickle project; it does not have to do with the zoning case or the Planning Commission and City Council review of the Slab & Pickle project.

Comm. Pateidl: To clarify my statement, I don't disagree with Commissioner Ramsey that I am supporting the professional staff in what they want to do. My sole heartburn in this thing is the awkwardness of the timing. I simply don't think it's appropriate for the city to take a rezoning position on something that is in dispute. Settle it out. If we've had this mistake on the books for 50 years, I don't see where it's going to be a big difference if it's there for 51 years. Timing is everything in terms of my decision.

Comm. Jackson: The only way I can really get my mind around this is if it's already zoned as it shows up on the map, we don't need to rezone it, so my vote doesn't matter on that. If we're going by the Golden Criteria; if it's zoned something else and we want to change it to this new zoning, I have to go by the Golden Criteria. Under that, with the character of the neighborhood, you're trying to put commercial right up close to residential. That doesn't seem to work for me. Zoning uses of properties nearby, you have at least the cemetery that is residential and residential on the east side. Suitability of subject properties for uses to which it's been restricted; it has been restricted in one area to a very low-use building, and now it is going to be open up to a wider use, supposedly. There is too much information going back and forth as to whether it was under its own special use. If it is under its own special use and you change it all, does it work? I can't come up with these legal conclusions in my mind, so strictly going by the Golden Criteria, if this was coming to me today as new land developing where it is, we would say that they need a buffer like they did with the Price Chopper at 135th and Mission. We would make more demands on it. That is the only way I can get my head around it tonight, and I can't be in support of the application.

Chair Rohlf: Thank you. Does anyone else have anything before our motion?

A motion to recommend approval of CASE 52-12 – RANCHMART NORHT – Request for approval of a Zoning to SD-CR (Planned General Retail) and R-1 (Planned Low Density Single Family Residential), Preliminary Plan, Preliminary Plat, Final Plan and Final Plat – with all three staff stipulations – was made by Roberson; seconded by Elkins. Motion approved with a vote of 5-2. For: Roberson, Neff-Brain, Williams, Elkins and Ramsey. Opposed: Pateidl and Jackson.

MEETING ADJOURNED.