

**City of Leawood
Planning Commission Agenda - Amended
October 9, 2012
Dinner Session – 5:30 p.m.
Meeting - 6:00 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, Jackson, Levitan, Roberson, Rohlf, Elkins, Strauss and Ramsey.
Absent: Williams.

APPROVAL OF THE AGENDA:

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

APPROVAL OF MINUTES:

Approval of the minutes from the August 28, 2012 Planning Commission meeting, and the September 11, 2012 Planning Commission work session.

A motion to approve the minutes from the August 28, 2012 Planning Commission meeting was made by; seconded by. Motion approved with a unanimous vote of Ramsey; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

A motion to approve the minutes from the September 11, 2012 Planning Commission work session was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

CONTINUED TO October 23, 2012:

CASE 52-12 – RANCHMART NORTH – LOT 3 – Request for approval of a Zoning to SD-CR (Planned General Retail), Preliminary Plan and Final Plan, located north of 95th Street and east of Mission Road. **(PUBLIC HEARING)**

CASE 77-12 – PARKWAY PLAZA – SPRINT ANTENNAE AND ASSOCIATED EQUIPMENT – Request for approval of Special Use Permit, located north of 135th Street and west of Roe Avenue. **(PUBLIC HEARING)**

CASE 122-12 - LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-6, SIGN REGULATIONS - Request for approval of an amendment to the Leawood Development Ordinance. **(PUBLIC HEARING)**

CASE 138-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to signs. **(PUBLIC HEARING)**

CONSENT AGENDA:

CASE 118-12 – PARK PLACE – SFP (SPECIALTY FERTILIZER PRODUCTS) – BACKUP GENERATOR – Request for a Revised Final Plan, located at the northeast corner of 117th Street and Nall Avenue.

A motion to approve the Consent Agenda was made by Ramsey; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

NEW BUSINESS:

CASE 121-12 – MISSION FARMS – PHASES 3 AND 4 – Request for approval of a Revised Preliminary Plan, located south of 105th Street and east of Mission Road. **(PUBLIC HEARING)**

Comm. Roberson recused himself from Case 121-12

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the commission, this is Case 121-12 – request for approval of a Preliminary Plan for Mission Farms, Phases 3 and 4. The site is located on the east end of Mission Farms immediately north of Interstate 435. Phase 3 is proposed to consist of one 3-story 45,000 sq. ft office building called Building E on the plans. Phase 4 is proposed to consist of two buildings: one 15,765 sq. ft 2-story seven-unit townhome, identified on the plans as Building D and a 225,300 sq. ft. 4-story residential and office building containing 167 residential units, identified as Building C on the plans. A five-level parking garage is also proposed to be attached to Building C. Phases 3 and 4 are the final two phases of the Mission Farms Development, which is laid out along both the north and south sides of an east-west drive with Buildings A and B to the north of the drive and Building F to the south. Building E is proposed to be located adjacent to Building F on the south side of the street. The east-west drive is proposed to be extended eastward with Building J, which is the townhomes located on the north side, immediately adjacent to the existing pond and Building C in the parking garage proposed to be mostly on the south side of the drive; however, Building C will extend above and over the drive with a portion of it on the north side. Mission Farms is a Mixed-Use Development designed along this east-west drive. Several different preliminary and final plans in the past have been approved over the past ten years. In each, the intent of the development was to create a Main Street environment with Buildings A, B, C, D and F, located immediately adjacent to this east-west drive with wide sidewalks between the buildings and drive and on-street parking. Parking fields were always proposed to be located behind these buildings. This is how Buildings A, B and F have been constructed. A temporary lot was constructed immediately south of the drive, east of Building F. The applicant is now requesting that Building E is set back a considerable distance from this east-west drive so that the location of the existing temporary lot can be reconstructed as a permanent parking lot. Previous plans showed Buildings C and D immediately surrounding the east end of the drive. The streetscape along Buildings A, B, E and F was proposed to continue around the east end of the drive along Building C and D. Surface parking was behind or east of Buildings C and D. An extraordinary building setback of 490-500 feet was provided between the east side of Building C and D and the residential property line to the east in all of the previous plans. The proposed plan shows the drive extending eastward to provide access to the townhomes and the east side of Building C. In the proposed plan, both Buildings C and D are larger and extend farther eastward than previous plans in a manner such that they cover the area that would have been the surface parking on the previous plans. Buildings C and D are now proposed to provide a building setback of 250 feet from the east property line, as compared to 490-500 feet on the previous plans. Buildings C and D were previously contemplated to be office and retail uses. A large residential complex was never proposed in this location. Staff is concerned with how this change in use, the location of the buildings and the general layout of the site may affect vehicular and pedestrian circulation. The proposed uses of Buildings C and D will likely generate greater numbers of trips coming into the site in the early evening at the same time the other uses generate trips. During this time of day in particular, staff is concerned that the existing layout of the site may result in an inefficient and inadequate flow of traffic, particularly near the main entrance of the development. A right-in, right-out access point on the south side of the development to Mission Road has been discussed with staff, and it may alleviate the concern a little bit,

but more study of this option is necessary. Staff is concerned with the circulation near the circle drive immediately west of Building C, with parking spaces on the circle drive as shown on the plans. We're concerned that cars backing out of these spaces may not see vehicles coming from the east due to both the angle of the space relative to the drive and the fact that Building C is above the drive in this location with walls that come down to the ground level on either side of the drive. The plans show a distance of 12 feet between the front of each townhome's garage and the drive, and staff is concerned that this is not adequate distance between the building and the street to allow drivers backing out of the garage to see traffic coming from the east. Additionally, staff is concerned with the pedestrian circulation between Buildings C and F. Due to the location proposed for Building E, the applicant is proposing a pedestrian connection that is less direct and convenient than it would otherwise be if Building E were located adjacent to the drive as previous plans have shown. Staff believes that many pedestrians will simply walk through the landscape islands or parking lots to make a more direct route. The total amount of floor area requested exceeds the maximum floor area ratio for this site, and consequently, the applicant is seeking density bonuses in exchange for providing two existing underground parking garages under Buildings A and B and the proposed garage attached to Building C. With the bonus, a total of 453,488 square feet is permitted. With this request, the applicant is proposing 286,065 square feet of floor area in addition to the existing 281,012 square feet for a total floor area of 567,077 square feet. The Leawood Development Ordinance automatically provides a 25% floor area discount for residential uses and up to a 55% discount if approved by the Governing Body. With the 25% discount applied to the residential, the adjusted floor area decreases to 461,394 square feet or about 7,000 square feet more than what is permitted if the bonuses are granted. In this case, the applicant is requesting that a 25% discount be applied to the multi-family residential proposed for Building C and that a discount of 45% be applied to the townhomes to adjust the total floor area down to 445,251 square feet. The Leawood Development Ordinance requires a minimum residential floor area of 20% and a minimum commercial floor area of 30% in a Mixed-Use Development. The proposed plan results in 74.5% of the total floor area being residential and only 25.5% being commercial. This use distribution does not meet the requirements of the ordinance. Assuming the applicant adjusts the use distribution such that it complies with the ordinance, the proposed floor area may only be permitted if the Planning Commission and Governing Body approve the requested bonuses and residential discounts. Staff has expressed these concerns with the applicant; however, the applicant prefers to advance this case to the Planning Commission. This case was originally scheduled for September 25th Planning Commission, and since that time, staff has received several written communications from members of the public regarding this case. All written communications received prior to last Thursday are provided in the packet to you. Communications received since last Thursday have been provided to you this evening on the dais. In response to the staff comments provided in the Staff Report released for the September 25th meeting, the applicant has provided revised plans, along with a memo summarizing them, as well as a traffic analysis and Mission Farms Sign Criteria. These materials were provided on the afternoon of October 2nd. Since staff did not have adequate time to review the materials, the Staff Report, including staff comments and recommendation for continuance have not been modified to reflect these plans. Staff is only providing information submitted on October 2nd because it was addressed to the Planning Commission. Given the number of unresolved issues noted by staff in our review of the original plans and the fact that staff has not had adequate time to review the plans submitted on October 2nd, staff is recommending continuance of this case to a later date and requests that the commission provide feedback to the applicant and staff. If the commission chooses to approve this case, we are recommending all the stipulations provided in the Staff Report.

Chair Rohlf: I'd just like to clarify some things. Regarding the memo that is in our packet from Mr. Weltner to city staff provided on October 2nd, have you had a chance to compare the items discussed in that memo with the revised plans that were attached to it?

Mr. Rexwinkle: Staff met late last week to go over the memo and the revised plans, and it does appear that a few of the stipulations and issues that staff brought up may be resolved or addressed with the submitted

plans. There are probably some that are not addressed, but we have not had time to speak with the applicant about it or to go into great detail or analysis on any of it.

Chair Rohlf: I'm not quite sure how we should approach this because the majority of the information we have prepared by staff refers to the original plan submitted back in September. I know that there are some pretty key stipulations, and I'm not sure if those have been resolved to your satisfaction since you haven't had the necessary time to really study the plans, and I sure didn't have time this afternoon to try to figure out if they resolved issues. I will go ahead and let the commissioners ask questions of staff, but I wonder what we hope to gain. I know the public is here, but we're really dealing with an incomplete report. Is that right?

Mr. Rexwinkle: We would prefer to be able to respond to the revision. This is an unusual situation because the report was released, and the applicant was able to review it and respond to it. They requested that we provide this to the commission and that it not be continued as we suggested.

Chair Rohlf: Have you had a chance to do any further review since you received this memo and the plans?

Mr. Rexwinkle: Other than a very initial review and discussion with staff, we have not had a chance to look at it in detail.

Chair Rohlf: I'll go ahead and open up for questions from the commissioners, but we may need to discuss this further with the applicant. Do we have questions for staff?

Comm. Ramsey: There are adjustments from what was originally submitted back when A, B, D and E were constructed. What's the difference in general with what they've submitted now versus what was originally approved?

Mr. Rexwinkle: The main thing was that Buildings C and D, which were always shown at the end of the circle drive that exists in Mission Farms, are now much larger than they were previously shown to be, which was a mixture of office and retail; now, it is a difference of about 145,000 square feet larger. They're mostly residential, which makes it a different use, and are also larger in that portion of the development, creating a reduced setback from the residential to the east.

Comm. Ramsey: In essence, the developer is flipping from a commercial use to a residential use.

Mr. Rexwinkle: Yes, they are reducing the commercial floor area and adding residential.

Comm. Ramsey: In effect, they are redoing the whole plan.

Mr. Rexwinkle: They are changing the whole ratio of uses.

Comm. Jackson: Mixed-Use is fairly new to Leawood. Remind me why we have the percentages we do. I know you've talked about the philosophy behind it.

Mr. Rexwinkle: We want to have enough commercial floor area to complement the residential floor area in a Mixed-Use District, so there's the ratio of a minimum of 20% of the floor area being residential, and then we don't want that to get carried away and be entirely residential, so there is also a minimum of 30% commercial. They have to maintain those ratios. They can't have more than 70% residential.

Comm. Jackson: Because you have different traffic patterns and different usages, you can have greater density and make it work in that area, correct?

Mr. Rexwinkle: Correct.

Applicant Presentation

Doug Weltner, Developer at Mission Farms, 4520 Main, Kansas City, MO, appeared before the Planning Commission and made the following comments:

Mr. Weltner: (*Refers to computer presentation throughout*) I have Judd Claussen with Phelps Engineering tonight, who may speak tonight as well. Bill Preloger and Nicole Anderson with NSPJ may also speak. I thought I would start off with why we're here. The plan before you is the 2008 existing plan. We have built Buildings A and B. They are 60 residences above retail and restaurants at that location with 30 units in each building. Those units were about 1,500 square feet on average. They were built as a for-sale product initially. Today, we rent about 44 or 45 of those units with relatively strong occupancy. We have built Building F, so approximately 1/3 of the original plan is complete. Building E is approximately 45,000 square feet. We're really not changing the configuration of that building. I will address how we would like to adjust the site. Building C was really planned as two restaurants when we initially did the plan. That really hasn't changed since 2002. Building C was a one-story building and was planned as two pretty high activity locations on the site. Building D is approximately 80,000 square feet, and we're looking at D as a three-story building with some retail facing to the inside and restaurant use. Then, of course, we had the surface parking all the way out to a stopping point at the east at the spillway for the lake.

The plan up now is what we have presented to the city. First off, we are looking at what we call Building E or Phase 3, and it really has not changed the size; it is still three stories. It is still utilizing office and will probably have some retail/restaurant component on the first floor. Most of that would be facing north. Why do we want the reconfiguration? We built a temporary lot exactly where the lot immediately north of Building E is located. The Rye Restaurant is literally getting national acclaim, and we expect a really busy location in Building B, which is one of our signature patios on the lake. When a couple of the restaurants that occupied this space were super busy, we found we struggled with parking. We're not doing this to miss out on the Main Street look. I'm not sure we ever intended a pure Main Street look; that's not us. I think we do have an urban look, which is important to us. We wanted a pedestrian look. In our memo, we've addressed some peninsulas. They talked in the plan that they didn't like the disconnect; there wasn't a way for pedestrians to go back and forth because of the new configuration of Building E. We've solved all that with sidewalks in those landscape areas. We put connections with the peninsulas from the building to those sidewalks that are out in those islands. I really think we've solved a lot of that problem. We like the way it works in that you can see the parking garage to the east of it; it kind of screens the parking garage, which is kind of nice.

Before I talk about Building C, let's talk about traffic. I'll be honest: we're confused about this whole traffic thing and the comments from the city. I think we'll get on the same page; I don't think it's a problem. The only way to the rear parking lot on this site was to go all the way to the highway at basically the southwest corner of Building D. We haven't changed that. That is really the only routing to get back to our major field of parking. The circulation on this site is almost exactly the same. The entrance to the parking garage for residential only is on the next slide. We've given you a report on our traffic. If we take what is in Phase 4 existing and put the 167 units on this map and the seven townhomes, we reduce PM traffic counts in and out of the site by 50% with that alone. If you read the report, you'll read David Ley's agreement that overall on the site, we've reduced traffic by 22% at peak hours. I wanted to point that out. I don't have a lot of choices about circulation because I've kind of got what I've got, and I'm kind of living with what we approved ten years ago. I can't get access to the highway. We're obviously not going to cut through Leawood Estates. I don't really have any way of getting north. I'm pretty land-locked.

That brings us to why we switched to residential. We found, in a very short period of time, its highest and best use. That's the most important thing when you're doing land planning and when you're developing. Ten years ago, office was a different world. Maybe at that time, it was highest and best use. I really think what's driving this site is the residential use. We thought this was a great opportunity to take this piece of land at the back of our site and really make it something special. We've had 200 units built across

the street. You have to remember, I'm running a 500,000-600,000 sq. ft. project and not a 300,000 sq. ft. project in Leawood. We get all caught up in these ratios. I don't understand it all. I'm going to let Judd talk about that. I'm dealing with trying to create a balance and diversity. I've got to do it for the whole project and not just Leawood. I hope you understand that. Across the street has probably been the most successful apartment project in Johnson County that I can remember in 30 years. We opened up with 83 units in June out of the 200 that were ready to occupy in the first phase, and we had 100 leases signed. Today, there are 140 leases signed in that project. We don't have 140 units available today. This is important; we have an average household income of this customer across the street of \$120,000 a year. That is the same as the 3-mile radius of this location of all the single-family homes. It is 40-70 years old. I like to say this is the same person we were going to sell condos to, and these people have become renters by choice. You've heard the spiel because you just went through Park Place, and they told you about this customer that's out there. They're out there. We think there are more. This is it. Nobody can come in and build against us really because most of the land is pretty gobbled up at these locations. I don't know of any sites where this could happen. We think it's a unique opportunity. We like the residential users because they are loyal; they're community. They are 24/7, as opposed to the office, where we found they sometimes eat lunch with us; they rarely shop with us and rarely stay and have dinner. For the vibrancy of the project, the residences are really critical, and we've had good feedback from the residents who live in Mission Farms currently. You'll have Park Place and this. These units are an average of 1,100 square feet. Across the street has 900 square feet. We didn't build enough two-bedrooms; they want big units. There is not a two-bedroom unit available, including future phases. We have them leased out for when they become available in January.

The other reason I like the plan and what we're doing is the lake. I felt like the project before turned its back on the lake, and if you haven't driven back to this piece of ground, you should because it's gorgeous. I think we have a really unique opportunity here to really take advantage. I'd love to hear input. How do we make this lake a better amenity for everybody? We're trying to put people on the lake. I'd say we've got about 40% of our units that will look at the lake. We have the townhomes on the lake. I spent time with the city manager talking about the townhomes. We all think it's a great idea. We just think that there are a lot of positives for all this.

I have a rendering of where we are today. We love the way the architecture of this gets closed at the back end. We had that open, and Rick Jones, who is Bill Prelogar's partner and has done a lot of work with the City of Leawood, was one of the ones that said, "We need to close this. I actually like Building E set back not just because of the way it hides the garage but I like the way it opens up and is not so tight feeling." This is a tough retail environment back there because you already don't have street frontage and all that. The more we can make it car and pedestrian friendly, the better because I don't have a through street. It's not a Main Street concept.

At the back, the new buildings there have two stories of residences above, and it opens up again on the other side where the townhomes are. The shaded area shows where the building cantilevers and bridges over the drive that goes back to the back. Some of that is for fire, obviously, but it is access to our townhomes as well. The depiction on the far right is the existing restaurant and patio we have where Rye is going, previously Lakeside Tavern. We're trying to pay homage to the existing condo buildings and not the property across the street. That's not the architecture we're looking for. We're looking for something that is not exactly the same, but we want to tie everything to the architecture that exists on the condominium buildings. We think that's important. We have seven townhomes. We have to do it to make it work as a rental, but I think we'll put them up for sale immediately. I think they'll sell. They will be about 2,200 square feet, which will be a nice niche to hit. They will be separately platted. We will do a lot of brick and a lot of rubble stone, not faux stone. We are doing cast stone around the windows. We'll have some stucco, obviously, but I think the architecture of our projects has never been anything that anybody has criticized, and we plan to continue that. I was disappointed, but I understand and am respectful of those in Leawood Estates. I didn't know that I had opposition. When you do these things, there will always be some angst. I try to get out in front of that. We had our Interact Meetings and really didn't have anything going up until our meeting. Yesterday, we got a few of the memos. We had a positive memo in there. The resident Stuart Stein wrote you. He is probably the most affected by this project with his view, and you ought to read it. He

made some nice comments. We want to respect that. I don't want to harp on this, but you're going to have a Public Hearing, and I do this more for information for those people because I think there was some information that maybe they didn't have.

If you'll look at Site Section 3, you'll see existing A and B are the condominium buildings. Those come in at 65 feet at their highest point. Proposed Building C comes in at 54 feet, 6 inches. We're 9 feet shorter than those buildings. I think I saw a comment that we were four stories. First off, A and B are four stories; they're not three stories. Four-story residential is equal to our office buildings, which have 17-foot floors. The residential building will not be as tall as the office buildings. We're not asking for a zoning change. This is a great use under MX-D. I was the first MX-D in Leawood, and I think I was the first MX-D in Overland Park. Everybody started talking about these ratios, and with all the hype on that and angst by cities and staff, there is concern that we weren't going to do any residential. Really, that is how the bar got set. I'm not really sure why the 30% got thrown in, but I thought back then that they were scared the developers wouldn't do residential; that they would do a token residential just to get their retail and office. Now, we're embracing it. This isn't really a money thing for us; this is a wash on value of land, but we just think it is so much better for the project because of all the things I've already talked to you about tonight, mainly traffic and that we really want these customers and think they are important for the vibrancy of what we're doing. I talked to a couple of the neighbors who came to the Interact Meeting. Probably the least successful thing I have going at Mission Farms are the townhomes. I'll tell you why they don't work according to the realtors. It is the parking lot. Somehow, somebody has to screen that parking lot. That is the one thing people and residents don't want to look at. If I deliver the landscape and deliver the building, I think residents in Leawood Estates are going to say that it is much better than cars that just may drive in at night. We're not going to have it closed off. That's what happens in office building parking lots, but mainly, it's the parking lot lights. The light is not appealing. I'd much rather look at a well-done residential project. There is some talk about the footage between these projects. That was when we were going to do restaurants and office. Now that we're talking about residential, we feel like this is a really appropriate transition for those people to the east of us.

This picture is from May or June of 2012. In the lower right-hand corner is the spillway. That is where we are talking about bringing the project. We are not going any farther than the parking lot edge. That is one of the best green spaces delivered to residents that I can think of. We put a 5-acre lake in. We've got 250 feet of green space that is mature. I really think we have a unique situation here with a great buffer zone. I thought the picture would give you a good depiction. If I was a resident more than about five houses up in Leawood Estates, especially at the north end, I would see this as the best noise wall we've ever had. This will really help with the noise we still have on that end of the project. Along the back of the homes is a really mature row of trees. We could do more in there. I've actually offered to make that into woods, but everybody likes to see the lake. We've continued to maintain it. Standing by the spillway in the evening or early morning, you can hardly see a house. It's really a nice space already that we could easily enhance for the residents.

I went from the center of everybody's yard on the first five homes in Leawood Estates, and the first on is 275 feet to the first structure. It goes from 275 to 421 feet. At Park Place, you can see it averages 147 to 150 feet from Edgewood, which has very expensive homes. I wasn't a part of that, but I don't know if any of them are seeing their property values decrease, and they are 150 feet from a four-story structure. The Woods is one of the more successful townhome developments. It backs up to a senior living facility. I really do think that I addressed that issue and that we can deliver what they would want. I think it would be more pleasing than the parking lot of an office building, and it's a big parking lot; we're doing 90,000 square feet there.

I don't know what you're going to do with me tonight because it sounds like staff really doesn't want to move on it. I don't really think we have that much issue with staff on this thing. We feel very strongly about the positioning of Building E; we think it makes sense. I don't know who that harms, I guess. I'm not really sure that it's that important to our look. We like the way it opens up and brings all that into play, and we like the way it operates. I've got to believe, with landscape and pedestrian connections, we can get through that with staff and get them to support us. We will put a right-in only, which we can get at the

southwest corner. That might address staff's concern about the peak hour traffic that would be coming in at the same time my restaurant traffic is coming in at 5:00 or 5:30 because I think a lot of my traffic is going to come from College Boulevard. That's where their jobs are. If I can get 70% of them to come in and know they can do a right-in to the site with a straight shot back to their parking garage, we could make it very positive.

Staff did give you recommendations if you choose to favor this. I will have Judd speak to you when I'm done. We don't agree to No. 3. We want to deal with the floor area ratios; it's not something to argue about. It can get worked out, hopefully. No. 9 is another issue we would not accept, and we would like to have some compromise there. We are okay with No. 5, except we just want it to be the same as what we have currently and we fund it when the traffic signal is warranted at the beginning of installation. No. 6 deals with traffic; I think we've addressed that. No. 10 is Building E; I think we've addressed that with you. Nos. 12 and 14 deal with signs, and we already have approved Sign Criteria and have a monument structure on the site clock tower. Our criteria allow two tenant signs on it, so it's something we'd like to keep. We don't really want to change that. No. 15 is a trail. We're willing to build a bridge, which isn't cheap, across the spillway for the lake and have that trail go back and connect up to the existing pedestrian walkway that we have that goes into Leawood Estates. Basically, it's pretty easy to figure out. It would go into the green space to the east of the project and run along the lake. I think it's a great idea. I know Stuart Stein in the townhomes thinks it's a great idea. I also understand Leawood Estates is not in favor of it; maybe some are. If they don't want it, that's fine; we'll keep it off the map. It's not that critical to us if it's just something that they feel adamant about. We dealt with this before in 2002, and we took it off the map, so maybe that's what we need to do. No. 28 of the stipulations: we don't love sunset provisions, especially two years. I think that ought to be five years at a minimum. I think that's fairer. We don't know what's out there in front of us. Basically, we agree to all the other stipulations. We're only addressing six or seven of them. Judd will address the ratios and the parking situation.

Chair Rohlf: Before he does that, could you explain to me the major differences in the two plans? Are there any significant differences?

Mr. Weltner: In the plans we submitted on October 2nd?

Chair Rohlf: It's difficult for us to go back and forth. Our staff report that we have has stipulations based on the plans that were submitted for our meeting two weeks ago. Although you have covered responses to the stipulations in a memo that is attached in our Staff Report, I just need to know before we continue on with your other individuals what the major differences are.

Mr. Weltner: I'll try to cover them, but Bill might have to jump in. On No. 4, you needed additional elevations, and those were submitted on October 2nd.

Chair Rohlf: Is the Site Plan essentially the same?

Mr. Weltner: It is essentially the same, but in front of Building E, there weren't the little peninsula islands in the middle; we added those. We also added a sidewalk in that landscape area under the trees to give a connection from Building C to Building F. That was discussed in the report, and we did make that change. In the revised Site Plan on Phase 2 at the lower southwest corner, we show a right-in. Really, that's it. There might have been a few adjustments to some of the cul-de-sac parking, but most of that is geometrics, and we'll get it all figured out at the time.

Chair Rohlf: So some of the changes that happened in the two weeks are a reflection of what you and staff had been discussing?

Mr. Weltner: We responded to their report. There were only three changes: the right-in, sidewalks in front of Building E and the fire lane adjustment. We were hoping we could get it going because other than the setback of Building E and a couple of other things I brought up, there is not that much that we felt we couldn't get on the same page.

Chair Rohlf: Then we'll hear from the rest of your team, but I may ask staff for some help to determine what key issues are still unresolved or what we need to discuss as commissioners.

Judd Claussen, Phelps Engineering, 1270 North Winchester, Olathe, KS, appeared before the Planning Commission and made the following comments:

Mr. Claussen: Doug asked me to give a little perspective on No. 3, which is about the floor areas and the 30% minimum commercial. Without getting too much into the weeds with you, I want to give you a little perspective. (*Refers to display board*) I believe this plan was done in 2010 and was maybe one of the last revisions before our case tonight where the villas at the north end were revised. This road used to come in and turn south and tie in directly to the parking lot here. They turned that north. Then what you see here on this plan is these grayed-out areas that are the building envelope. Basically, the gray represents the area from the building lines where the maximum possible envelope that structure could occupy on that lot. It turns out that when we got into doing all the calculations here, the square footage of that gray area was what was used for the calculation for the residential. It ended up being 80,000 square feet and change. You go back over to the plan and take a look at what they had anticipated those house sizes to be, and a few are 3,400 square feet, 3,300 square feet and 3,200 square feet. If you add those up for those fourteen lots, you get 45,000 and change. That is a difference there on how you do this calculation. That part alone bumps us up from the 25% that Joe was talking about to 28.5%. Then you think about how the LDO talks about a discount for the residential in your floor area ratio calculation, basically to promote residential use within an MX-D district so we don't have all commercial in there and just some token residential to try to get some incentive for it. Think about that when we're trying to incentivize doing the residential in doing some calculations. Using the discount in your calculation of how much retail and office you have versus how much residential, my calculations came to 35% on the commercial side. That's with the discount in it, so it's an adjusted number. The last thing I want you to think about is to go back to the color graphic on the laptop that shows the Site Plan. The technical legal boundary of this project is this entire area all the way up to 105th Street. It is in the numbers as far as what the MX-D is. This is single-family villas that are really isolated now, especially with that road tying up to the north. The color graphic shows what we feel is the heart of the MX-D District: Buildings A, B, C, D and F. If you look at that and do the math on what the commercial is on that, which removes the villas to the north, it is at 31.1% commercial. I wanted to give you that perspective on the statistics of how these floor areas are adding up and what our intent is and where we are with providing the amount of commercial that the LDO is looking for.

The last thing I wanted to speak about is the issue with the driveways. Stipulation No. 9 talks about the length of these driveways, and normally, for a driveway, you would want about 20 feet if you were going to park a car in it like a normal, residential-type house. This is a situation where these are seven specific individual property owners. No parking is allowed in that driveway, and that is something very common that we're seeing in MX-D and multi-family type developments in Johnson County and the surrounding Kansas City metro area where you have some units that may not have parking in the driveway because you're trying to create a certain look. You don't want those cars parked in there. They are single tenant owners that you can regulate that with. The other thing that we want to express is that if you're in a normal parking lot and you have a car next to you on either side, you're backing out first to see past that first car before, and you're partway in that drive aisle before you can really see if anyone is coming. Here, you're backing out of your garage, and you've got 12 feet to back up before you even enter the drive aisle, which with the length of most cars, your drive eye is going to see down that street to see if there's anyone coming. Our traffic engineer has looked at this as well, and he has said that it is a safe situation because it's a low-volume

street with very few driveways on it. I wanted to offer those findings to you for your consideration on that stipulation.

Mr. Weltner: We're finished with our presentation if you would like to ask any questions.

Chair Rohlf: Questions for the applicant?

Comm. Pateidl: I have one question on the driveway issue before we leave it. Where would guests to those townhomes park?

Mr. Weltner: As you notice, we have parking right across the drive aisle there up against Building C, and those are visitor parking spaces. There are some underneath the canopy as well.

Chair Rohlf: Any other questions for the applicant at this point?

Comm. Jackson: With all that parking in that area, is some of that also going to be used for the apartments to the south?

Mr. Weltner: Yes, but we also have about 20 in the garage for visitors.

Inaudible comments

Comm. Jackson: We're looking at how much car activity is going to be in that parking area. Are some visitors to those apartment complexes going to be parking in those places?

Mr. Weltner: Are you talking about the drive aisle that goes out to the townhomes?

Comm. Jackson: Right.

Mr. Weltner: Yes.

Comm. Jackson: Is there an entrance to the apartments right by that spot?

Mr. Weltner: The apartment entrance would come through the clubhouse, and the clubhouse is actually at that first cul-de-sac before you go underneath that little shaded area.

Comm. Jackson: Just point to it on the big map, would you please?

Mr. Weltner: (*Refers to display board*) The clubhouse is right here.

Comm. Jackson: And how many spots are there to the east of that clubhouse?

Mr. Weltner: Well, there are five spaces here on the cul-de-sac. There are another five spaces at this location. Underneath here, there are approximately fourteen spaces, and then I believe that's almost ten or eleven spaces.

Chair Rohlf: I would ask staff if you would prefer that we go ahead with the Public Hearing at this point, or do you have any comments you would like to make before we do that?

Mr. Klein: As Doug mentioned staff has worked with the applicant a lot on this, and there are a couple of key items that we just disagree on at this point. We are looking for guidance from the Planning Commission

on those. If you want to open the Public Hearing, you will have all the issues on the table at one time, and then we can talk about it further.

Chair Rohlf: I would like to see a show of hands of who would like to speak. Keep in mind, we have anything that you have sent as part of the record. With that, we have maybe three or four. I would ask that, if the person in front of you says what you were planning on saying, you let that stand. We do want to get through this plan this evening, and that would help. I would ask that you keep your comments to the point and at a reasonable amount of time. I will try not to stop you unless I feel we are going beyond what we need to do.

Public Hearing

Joe Nickell, 10500 Mohawk Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Nickell: (*Refers to computer presentation throughout*) I believe you have a letter from Dale Johnson in your packet; is that correct?

Chair Rohlf: I believe so.

Mr. Nickell: He asked us to read that in. At your guidance, we will not do that.

Chair Rohlf: Since we have a hard copy of it, it is part of the record. I don't think we need to use the time to re-read that.

Mr. Nickell: Very good. Members, constituents, residents, thank you for allowing me to come tonight. I'm Joe Nickell. I've lived here since 2000, and at the time I moved here, I did take the time to investigate the 2000 plan, which was current at the time, of the Mission Farms Development. It's a beautiful development. The residences are beautiful. The current appearance of the buildings is very attractive, and I really like what's going on. I don't want you to think this is an anti-business tirade. As a resident, you look at the plan and think, "This is what I'm living next to," and when you find that the plan has changed significantly, you're concerned. What we're talking about tonight is the undeveloped area. The blue line is where the current setback is. For reference, I live here at the corner of that walkway. The proposed setback is significant, and that brings up some concerns to us, obviously. The original plan was basically in this same area. The restaurant is in the upper corner here. As he mentioned, the original two buildings were smaller commercial with a parking lot to the east, now adding a four-story building. The thing that gets your attention immediately is this is a significant increase in square footage. Particularly when we moved in and investigated, we were told there would be no rental property; now, there is rental property. Admittedly, I would rather have a rental property than a hotel. The increase in square footage is not just a reshuffling, in my opinion. I am concerned that the original setbacks were agreed upon 10-12 years ago, and the residential expansion is significant at 500%. We aren't seeing anything to address light and noise control abatement, though the development is moving much closer to the Leawood Estates residences. This changes the look and appeal of Leawood Estates. We don't know if our property values are at risk. In particular, I personally don't think the style of row housing is consistent with Leawood and what's in Mission Farms right now, which I think is very beautiful, but I don't think it's cohesive with it or Leawood or Leawood Estates. We also have concerns about maintenance of the property that we've had with our current history. Prior to moving in, we understood there would be no rental property and that there would be this large green space. That just is diminishing farther and farther. I'm the guy that, if you put in a walking trail, it is 60 feet from my breakfast nook where I sit every morning. (*Refers to display board*) Mr. Stein said he would like to have a walking trail here because it provides access for these people to the Leawood Park. I don't see the virtue of providing a walking path literally 60 feet from my kitchen to have access to Leawood Park when Leawood Park is over here. If there's a walking access issue, it should be directed toward the park where

people want to go walk and not past the residences. The final development here is we would really like to feel like Leawood Estates is being considered and it's not just a development for Mission Farms because we're stuck with it. We don't have the option of saying, "I wanted to go to this very different Mixed-Use facility." A banker I talked to this week who owns these properties in Phase 2 now said, "This is great; this is just like the Plaza." I said, "I didn't move to the Plaza; I moved here." If I'm an impediment to this, I apologize, but you could buy my house. As a point of reference, these are just two samples of the current development of Village at Mission Farms taken at 265 feet, which represents the proposed new setback versus what a view of those apartments would be from 500 feet, which was the setback that was approved and is currently on the plan from 2002. Moving forward, what I'd really like to see is this to be a win-win for Leawood Estates and for Mission Farms. In particular, there needs to be an attractive transition from Leawood Estates to Mission Farms. The view from either way, from Leawood Estates to Mission farms or Mission Farms to Leawood Estates, needs to be considered fully, and I'm just not seeing that in the plan. Right now, I feel like we are under a plan where there is a right and a wrong side of the fence to be on. If you're Leawood Estates, you're on the wrong side of the fence. If you're on the Leawood Estates side, you have this funky old fence that is not maintained, grass is not always mowed or is not mowed very well. If you look here at the split rail fence on that side of it, you will see that it's an older, less expensive fence that is falling down and requires replacement. On the residential side, it's a higher grade fence. I just want to say that I think you could find more support and agreement from the community if this was really a cohesive plan. I think I've said everything. Thank you very much.

John Rosenbaum, 10520 Mohawk Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Rosenbaum: We would be directly facing the east side of the new development. You have a brief letter in your packet there, but I will make a few comments to complement that. We also moved to Leawood Estates about three years ago. Like Joe, we researched. We saw Mission Farms there and saw it was a new development. We were curious to see what was going to be put there because we were buying a house there, and obviously, we didn't want to lose property value, and we had concerns with the children. We did look into it and made our decision based on the current plans that had been approved. When we got the letter several weeks ago that said there would be a new proposal to have 167 apartments, it definitely made us take a step back and wonder about a lot more residents closer to us than what we had originally understood there would be, and frankly, never would have even imagined that we would have that many apartment units that close. Just for the record, at the Interact Meeting several weeks ago, I did say that I was not in favor of having apartment buildings that close to my house. It was not in the comments anywhere, but I did make that statement. Regarding the setback, it is a big change. I know there were pictures shown that said it looks like not much of a change, but if you stand in our back yard and look across there, it's pretty much wide open; there is no screen there. You all know that mature Leawood trees do a good job of providing shade and we love them, but there's not a lot of screening because it is all 10-20 feet up in the air. These apartments would be very close to our back yard. We have concerns of privacy because we enjoy going in our back yard and having wide open space behind us as a benefit that we looked forward to when we bought the house. Now, the idea of having people looking out their windows right at us is not something that we're excited about. It really changes the flavor of the neighborhood, having apartments so close. It's just a lot more residents that could be walking through the neighborhood. Leawood Estates residents are constantly walking. We love having people on the streets walking, but again, it would be a lot more people and a lot more traffic, which we're not crazy about. When we consider the resale value, just like we looked at it, we considered what would be here in the future. Now, people will know there are apartments there, and that will definitely have an impact, I think, on the resale value compared to what it is right now. Based on what I've heard tonight and what I've read in the packet, it seems like there are a lot of concerns that staff has that are different from my concerns because their obligation is to look at all the technical details and traffic studies and things like that. My concerns are more from a family, personal and neighborhood level and how it impacts our neighborhood. Maybe my final comment to think about is if any

one of you were to have this in your back yard, would it be something you would be in favor of? It is moving in fairly close, and it is different than the average residence that backs up to another residence. Single family with another single family on the other side is a standard thing. We've had the privilege of having an open space, which has been very nice. The idea of now having 167 units, which is however many people, that close is not something we're very excited about. Thank you for your time.

Craig Rooney, father of Brian Rooney, resident of 10516 Mohawk Lane, appeared before the Planning Commission and made the following comments:

Mr. Rooney: (*Refers to overheads throughout*) I was a former urban planner and architectural engineer at Black and Veatch, and Brian asked if I would evaluate his property before he made the purchase. Of course, we were exposed to the 2002, amended in 2008 plan. He bought his house in 2003, and we went through a lot of machinations over that, and buying was a big deal. He agreed to purchase based upon what we were seeing in the 2002 plan. Before I go on, a little chronology as I understand this: it took some 6-8 years of submittal and re-submittal to develop a plan that was approved, called the 2002 plan. It had lots and lots of reviews and comments. Finally, everybody got together and said, "That's it." Then it was amended in 2008. Joe Nickell said in 2002, he reviewed with the city that there would be no rentals; that's what he was told. In 2003 after our review, my son buys his house. In 2007, Joe Rosenbaum reviewed this with the city, also, and received assurance he was looking at the plan that was going to be used. In 2008 the amended plan was approved. I'm not sure what that entailed, really. In 2012, my son decided that he was going to make a major interior renovation and wanted to second-mortgage his house. When the finance company was shown what was potentially going to take place across the way, they said if that happens, there will be a substantial change in the real estate value. By the way, my son's house is right across from this. Here's what has been proposed. That proposal will take up all the available land and cut back on the setbacks on 250 feet. Had that been surface parking with that proposal, the lake would be paved; that's how much the density has changed. This would require paving all the way out to the property line. Here are the three stages of this. This was the 2002 plan. You'll see it not only involves a setback, but it involves service parking after the setback, so that the first building structure is something like 650-700 feet away. A question comes to mind. Back in the year 2002, do you think a plan as we're seeing here would be approved, a plan that took six years to get approved in 2002? There is some considerable resistance to this currently. I think that is evidenced by my email box. At the top was the original plan, and then down here, you see revisions. This whole area is being replaced with building construction. A four-story apartment building, townhomes and considerable reduction in setback building construction but also the green area and air space of what was originally approved. We took a camera and when to Mohawk drive and photographed what you see presently across to the element as it exists, which is wonderful work, by the way. This shows views of current buildings on Mission Farms if you stood 250 feet away. Of course, in your mind's eye, you're really going to have to increase the height of those buildings to four stories with the light from those buildings. Here, he goes out on the property and looks back at the residential property, so this is standing out 250 feet on the Mission Farms property looking back at the residences along Mohawk. The idea you're getting right now is if you have a window in one of the new buildings, this is what you're going to see. By the way, if you're walking on a path, cut that distance by four times, and you're pretty much right at the back fence line, looking within 50 feet to any of the houses along there. I think the safest and best bet is to go back to what it took six years to get approved. That at least represented the consensus of the neighborhood. It at least represented how these homes were purchased and on what basis further loans have been taken. That's our recommendation: go backwards to what's already been approved.

Brian Baggott 10519 Mohawk Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Baggott: I actually live right across the street from the Rooneys, so I have a good view of Mission Farms, and I have three real concerns here. They primarily deal with the setback issue and the fact that it's

really being reduced from essentially two football fields to one football field and the impact that has on three things: the value of the homes in Leawood Estates, especially on Mohawk Lane, which is closest to Mission Farms, the lighting and how that will impact the residents of Leawood Estates and really, the integrity of Leawood Estates. I'll address the lighting first. I've lived in my home now since 2007, so going on five years. There have been occasions when Mission Farms is having some sort of gathering or function outside, usually in the summertime, and there is some sort of carnival-type atmosphere. It's rare, but it happens. You can very clearly see the lights, even from my house which is across the street and obstructed by the Rooneys' house. You can very clearly see these lights. That is when they are probably 600-700 feet away. Now, the proposal is to move everything about half that, if more than half that, closer to the houses on Mohawk Lane. I feel it's a significant reduction, it will truly impact the residents of Mohawk Lane, and that it is simply not needed. On the value of the homes in Leawood Estates, my wife and I have been bouncing around the idea of moving possibly. We've been in our house for five years. It's a '60s-era home. We have three kids. We'd like to upgrade. At the same time, we love Leawood Estates, and we've strongly considered staying there. It's a great neighborhood. It's right near Brookwood School. It's just a fun place to live. But when we heard about this proposal to reduce the setback and have a four-story apartment building sitting halfway closer to us than was originally planned, my wife and I decided, if this goes through, we will indeed move and will move quickly, and we considered putting the house on the market immediately before the construction starts, before it becomes apparent how the building will impact the view. I'm not mentioning this as a threat; I'm just mentioning it as something my family was considering and will certainly do if this goes forward. Finally, as to the integrity of Leawood Estates, I want to tell you what my six-year-old son said to me when he asked me why Mr. Rooney was giving me the pamphlet of the current state of the plan. He asked me, "What's going on over there, daddy?" I said, "They want to build an apartment building that will be about halfway closer that it's currently planned." From time to time at Mission Farms, you may have seen hot air balloons lifted off from there. His comment to me was, "That means they won't lift the hot air balloons off from there anymore." I said, "Well, probably not." I don't mention this as a request to keep the green space to lift hot air balloons off from there, but I think it is representative of how this plan, if the buildings are brought a football field closer to the residents of Mission Farms, will impact the integrity of Leawood Estates. I think it's a perfect example of what the residents of Leawood Estates have become used to and bought their houses on the assumption on that the neighborhood would remain that way. I feel that if this plan is allowed to go forward, that simply will not be the case. Thank you.

Sharon Rathburn, 10318 Ensley Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Rathburn: I am not as close as most of the people behind me, but I live in Leawood Estates. I moved to Leawood about six years ago. I moved to Kansas City from the South. We could have chosen anywhere in this city to live. I picked the house because I love the house. I have family in Kansas City, but they're not near us. We picked this house because we loved the house. Once we moved in, the greatest thing about where I live is my neighbors have all been there for 30 years. My neighbors and I are like this. We have some brand new neighbors on one side of me that moved into our neighborhood because they wanted a neighborhood that had a neighborhood feel to it. They left a neighborhood that was a different socioeconomic neighborhood because they wanted one where people took care of their yards, took care of their houses and neighbors, and that's what we do. I don't think a bunch of apartments behind my neighborhood is going to allow my neighborhood to maintain that kind of community spirit. That's something that I don't think any other community in Kansas City has unless you go way north or way east. I don't know why, on the Kansas side, Johnson County would want to lose that kind of community and that kind of reputation. I also would like to tell you, because I do live closer to 103rd Street than the folks behind me, there are plenty of times when I can't get in or out of 103rd Street because of the traffic. The other thing that bothers me about the density of these apartment buildings is unless you guys are going to get my police force to run up and down 103rd Street and Mission more often to control that traffic and to control those speeders, then we're going to have a lot of problems. I know that in January of 2011, State Line and 103rd

Street was the worst intersection in the entire city for accidents. I think that's something you need to think about. The post office that was at 95th near Ranchmart closed. Now, the only post office I have to go to is the one that's past that other pile of apartments. You're ruining my community. I run from my house down through Mission Farms and by that post office. Am I still going to be able to do that? Will there be so much traffic that I can't do that? I just really worry that it's a community at this point, and it's the best community that I've lived in, but I think we'll lose that if you increase the density. That's all I have to say.

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

Chair Rohlf: That takes us up to questions of staff or the applicant or comments in general.

Comm. Levitan: Doug, has there been any discussion with the neighborhood about any kind of additional screening or berming?

Mr. Weltner: Our Interact Meetings didn't give me this. I think if I had an opportunity, I would have been able to deal. I remember Joe from 2000, so I think we can make it a win-win. I looked at it today, and I think there is some opportunity. I think you can see it on the map. We're not taking away any green space from the plan of the parking lot. In fact, I think there is an adding of green space over the parking lot to this space. I think we can take that area between the spillway and really improve that. I think those guys are the guys that we probably need to focus on: those three or four houses right there. Some of these houses that go up to the north, we can add some more, but they love looking at the lake. I've talked to them about it and have had two or three tell me, "No more trees; I can't see the lake." I think that map will show you they're 700 feet away from that four-story building. I think we ought to address those three or four homes that are in that immediate adjacent area. We've got a lot of land there that we can do a lot with and make it a special spot and make it an asset to them. I never knew if they liked the fence or not. Some don't; some do. Some like the security of that fence. There is a chain-link fence remaining from the Saddle and Sirloin club.

Comm Levitan: Has there been any kind of photometric study about the light emitted from the parking lot versus the proposed lighting?

Mr. Weltner: Not a comparison study, but that would be easy to do.

Chair Rohlf: Now that you've had a minute to think about where we are, where do you need guidance? Do you feel strongly that we need a continuance of this case for you to have plenty of opportunity to review the plans?

Mr. Klein: As staff stated in the Staff Report, we are recommending continuance of this case to allow us a little more time to work with the developer. There are a couple of things from staff's point of view that we would like to have a chance to work through. It also might give the developer a little more chance to address some of the issues that were brought up by the neighborhood. Some of the issues that staff currently has, the applicant is well aware of because we have talked to them before. The first one is probably the split between commercial and residential. We hear what the applicant is saying with regard to using the discount to actually decrease the amount of residential floor area and use it in the ratio of commercial to residential; however, the intent of that was to allow them to have more floor area ratio based off residential because it wouldn't have as much of an impact. It wasn't intended to change the ratio from a minimum of 30% commercial to 20% residential. The intent of that split was to ensure there is a substantial component within a Mixed-Use Development that would be one or the other mixed uses. The reason that it was more or less split between 20% and 30% is because it allows them a great deal of flexibility in there as far as how they wanted to make that split. Staff feels strongly, as we have with all the Mixed-Use developments, that we

take the actual square footage; we don't discount the residential. Again, it is to try to ensure there is a commercial component and a residential component. We can probably work through that.

The next issue is with regard to Building E. As you saw in the previous plan, this had been shown relative to the temporary parking lot. All the buildings fronted this like a horseshoe of buildings coming off Mission Road. Staff always felt that provided a nice streetscape with a nice pedestrian walk going in. You had weather protection as you were coming through next to the buildings. One of the comments we gave the applicant was that originally, this was kind of a landscape island, so for somebody walking along Building F, they would have to then come over, turn down, go along here or have to walk through the parking lot to do it. The applicant did provide a sidewalk along there to make that connection; however, you still lose the streetscape and the weather protection of the building. The applicant did mention they liked the way it opens up. Staff understands that; however, it's more of a parking lot than anything else. It is not like it opens up to plazas and amenities in addition to the parking lot.

One of the other issues we have is with regard to the traffic circulation. The applicant has provided a traffic study, and basically, their argument is that substituting the residential creates less of a traffic impact as far as the total amount of traffic being generated by the site. To an extent, it is true. Staff's concern is more related to how the traffic is distributed through here. Originally, they didn't have this right-in located down here, so we were basically looking at it as these were the two main entrances that people were going to try to get to because this is the full access. A right-in, right-out is located a bit farther north. It would not be such a big deal which way they take as far as maneuvering through the parking lot to get out to Mission Road because most of these businesses aren't going to be open; restaurants aren't going to be really operating at that point. However, when 5:00 p.m. comes, the restaurants are going to be getting business coming in. A lot of the people in the apartments will want to get back to their residence. We thought that created a lot of conflicts that could potentially take effect if they had to drive through these other areas of the parking lot. We thought maybe a dedicated route that brings them back to the parking garage might be one way to solve that. They have provided this right-in, which helps; however, I believe Public Works and staff still need to look at that because originally, we were proposing a right-in, right-out; however, a study does need to be done to make sure it meets the sight distance.

Additionally, some driveways are adjacent to Building D, and they are fairly short at 12 feet. Staff is concerned that somebody backing out isn't going to have a whole lot of time to see if somebody is driving past. We also have a concern that somebody coming to visit or stop really fast will park in one of those driveways, and with the length, there is a good chance they will park over the sidewalk. The applicant has addressed some of our concerns. We had concerns about the drive aisle width, and they shrank the island to provide the width. Staff's opinion is that we would like to be able to work with the applicant to address some of these issues. It is not that it can't be done, but we would like a little more time.

Chair Rohlf: That gives us some guidelines. Perhaps we can get feedback from some of the commissioners from this particular plan and what we might see as issues that need to be dealt with.

Comm. Elkins: I think you may have addressed this in the earlier presentation, but it's kind of come full circle now. Could you comment on staff's thoughts on the reduction of the setback to the east?

Mr. Klein: This plan has actually had many versions that have been approved. There was a lot of controversy with regard to Leewood Estates. I know that original setback of approximately 490 feet was negotiated with the neighborhood, and it is actually what got approved. As far as the ordinance is concerned, they have a zoning of MX-D [Mixed-Use Development]. This does require a residential setback of 75 feet. Currently, 250 feet is a little over three times that amount. I do know, though, that this has been a controversial issue from day one with this site, which has actually been planned since before I got here thirteen years ago. One was a three-par golf course. That is the history.

Comm. Strauss: I'm in favor of a continuance because I feel like there are so many stipulations that are unresolved. I feel like the developer addressed a few, but I don't feel like all of them have been addressed. I

think there are still a lot of unresolved questions that staff has that need to be worked out. I certainly would like to see the developer working more closely with the neighborhood to develop it appropriately. I am afraid the setback isn't able to change, but perhaps the residences can approve screening and such. I drove through the development before the meeting, and I saw Building E as adding to the surface parking lot, which is not what the Mixed-Use is all about. I would prefer to see that up along the main drive. I was intrigued by the photo that showed it opened up, but then I thought if the developer could have it be green space, it would be a really special kind of place. If a green space in that area is not possible, I think the development is all about the parking on the back side and the pedestrian being able to walk in that horseshoe area and not feel like they're walking through parking lots. The driveway length doesn't bother me because I feel the number of vehicles back there is going to be so small that I think it's an infrequent occurrence. I would like to see those parking spaces just north of Building C be dedicated to the townhomes. This would ensure dedicated visitor parking because, if those become full, I think they would park in the driveways and such. I like the right-in idea, and I understand that they will look at the sight distance to see if a right-out idea is good, but I think it's a good way of relieving some of the traffic. I also think a traffic signal at that location is eminent. I think it is the city's desire to wait until the development is open and to collect counts.

Mr. Ley: That is correct; it would be warranted on the counts that are actually out there and not projected to be out there. I believe Overland Park is going to do a study this fall and then again next summer.

Comm. Strauss: I'd like to get down to a more manageable level of stipulations that the staff is comfortable with and then the Planning Commission can be comfortable with. I'd like to see more collaboration with the neighborhood.

Comm. Pateidl: I certainly share many of the comments made by Commissioner Strauss. Looking through the report given to us by staff, I'll quote one quick piece: "The ordinance permits that the sole discretion of the Governing Body up to a 55% floor area discount for residential uses upon a recommendation by staff and the Planning Commission," notwithstanding or imputing the abilities and capacities of the representative of the applicant to make these calculations, I'm certain I don't have the expertise to look at what's been presented and conclude that everything that was presented is in accordance with what the provision in this ordinance provides. I'm relatively certain staff is not prepared to tell us tonight that those calculations are accurate. Based on that, as a commission, we're based with making a recommendation to the Governing Body that they consider an exception or a special provision inside the ordinance, which I'm not prepared to do. I do believe the applicant has come forward with some well-meaning thoughts, alternatives and suggestions as it relates to some of the objections of staff. I do believe there is ground for them to meet agreement and minimize the stipulations that we have. For one, I would be prepared only to recommend a continuance for this evening.

Chair Rohlf: Are there any other comments any of you would make that would give guidance to the applicant and/or staff? We have heard a number of comments. What I don't want is for them to come back and then have something that comes up again. These would be substantial comments and not like the driveway lengths. It would really go to the heart of this revised plan. If not, it looks like we're leaning toward a continuance. I just don't think there is any way we can proceed this evening on a vote.

Mr. Weltner: I have gotten one comment on Building E. I would be interested in how everybody felt on that issue alone.

Comm. Ramsey: In response to his question, I support moving it back to its original location. I agree with Commissioner Strauss.

Comm. Jackson: It is a much better pedestrian experience with it moved up. It does hide the garage with it back.

Mr. Weltner: *(Refers to overhead)* There is the rendering of how it hides the garage.

Chair Rohlf: If it goes back to its original location, it aligns exactly with Building F.

Comm. Jackson: All things being equal, if you move it back up to the north, we'd like to see a little better design on the parking garage so it doesn't look like so much of a parking garage.

Mr. Weltner: I agree; I understand.

Comm. Ramsey: It all goes back to the ratio of commercial and residential, then, in terms of the parking garage because all of a sudden, you may not be able to support as much residential at that location in terms of the floor area. Right now, I know a lot of you have been in there for dinner and lunch, and, particularly in the evening, you really have to pay attention when you're driving through there. That traffic on the site itself is heavy.

Mr. Weltner: That is one of the reasons we wanted to do the setback. We can do everything we want with signs, but they all want to park in the front side, and that's where they're going to drive. We kind of like the extra drive aisle to get out of there, too. If they have to go to the other side of the building, there is not as much temptation to use that.

Comm. Ramsey: That very well may be, but I think that you're heading in the direction of where I'm going that it has to be a balance on the density because you've got a relatively small area there.

Mr. Weltner: There are enough spaces; it is just a matter of getting to them.

Comm. Pateidl: Frankly, I'm in favor of the setback on Building E, specifically for the reason that Commissioner Ramsey just pointed out. There is a critical need for parking on the front side, and if the problem is the pedestrian experience, I would encourage the applicant to work with staff to dress up the area to improve the pedestrian experience. I do believe that some commercial attention has to be given to the parking needs of that facility. When I saw that particular change in the plans, I thought it was encouraging.

Comm. Elkins: I have a comment on the aesthetic. I subscribe to a lot of the comments that have been made about the setbacks and the traffic flow. I'm concerned, and I noticed in one of the letters in our packet as well about the inconsistency of the architecture. Part of what has made that development attractive in the past, at least in my mind, is what I would describe as an English Tudor gabled roofline. Clearly, you are departing from that in a pretty major way with these new buildings. I'm concerned about the consistency of the aesthetic, especially in the rooflines. I may be the only one because I'm the only one who has mentioned it so far, but as long as we were talking about it, I would like to say that it is a concern.

Comm. Ramsey: I'm just curious about why you changed the architectural style. I'm in agreement.

Chair Rohlf: Do remember that these are preliminary elevations.

Mr. Weltner: What we're trying to do with what you're seeing in the depiction currently there is the parapet look. We think it's a little more of an urban look, and we liked how it integrated. The one thing we didn't want to do is repeat the architecture exactly, other than maybe with materials and things of that sort. One of the things that Stuart Stein has commented on is we did try to bring the element on that north façade, very

similar to what we did on the condo buildings above the townhomes. We brought in the sloped roofs and the eaves. I think we probably need to add that eave and bring it around on that four-story building and tie it back to Building B. I think it would help a lot. The architects like the change. Everybody has an opinion about that. I don't want to get too hung up on the roofs because, at the end of the day, you're standing at 6 feet tall, and you're not really looking at roofs all the time. What you see is what is used in the first 12 feet.

Chair Rohlf: I think that's giving you a lot of feedback. Mr. Klein, the one thing that still concerns me most of all and is a trigger for the rest of this is that percentage of residential and commercial. I don't know what that difference is going to be. If it's significant enough, no matter what we think, we wouldn't really be able to approve it if it's not within our percentage that we can go over to recommend to Governing Body. Are we close?

Mr. Klein: I think we're close. Will it potentially change a little? It probably will change something, but I think we're close.

Chair Rohlf: Obviously, the numbers he is bringing forward are going to make it viable for the development. I just didn't want the developer to put in significant time if we know it's not going to happen. Mr. Weltner, you can understand, then, why we are supportive of a continuance. Is that something that you would agree with?

Mr. Weltner: Yes, based on what we've all heard tonight, it's fine.

Mr. Klein: Since the October meeting is so close, it would not give us any time to work with anybody. We would like to continue it to the November 27th meeting, the Tuesday after Thanksgiving.

Chair Rohlf: Then we will continue this until November 27th.

Mr. Weltner: We got continued two weeks ago. Nobody called us. I did talk to Richard, but I don't know why November 27th is necessary.

Chair Rohlf: I don't know what the agendas look like for the other meetings.

Mr. Coleman: It is a very full agenda in October, including Ranchmart.

A motion to continue CASE 121-12 – MISSION FAMRS – PHASES 3 AND 4 – Request for approval of a Preliminary Plan, located at approximately 105th Street and Mission Road (Public Hearing) to the November 27th Planning Commission Meeting – was made by Elkins; seconded by Jackson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey.

CASE 62-12 – PARK PLACE – MESTIZO PERMANENT TENT – Request for approval of a Revised 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: This is Case 62-12. It's a request for approval of a Final Plan for a permanent rooftop tent at Mestizo at Park Place. This case was continued from the August meeting. At that time, the Planning Commission expressed concerns regarding the durability and appearance of the tent as well as flues projecting out of the top of the tent and the proposed vestibule at the ground level. In response to these concerns, the applicant has revised the plans to propose a 3-ply reinforced PVC fabric and powder-coated metal frame. The applicant has dropped the request for the proposed vestibule and will not use the rooftop

fire pit, so the flues have been removed from consideration. Staff believes that the material proposed today is more durable than previously proposed and finds that the appearance of the structure looks more permanent than the previously proposed structure. We are recommending approval, subject to the stipulations provided in the Staff Report.

Commissioner Roberson re-joined the meeting.

Chair Rohlf: I was absent when they presented in August, but I did read the minutes. It appears the problems the commission had at that time have been resolved.

Mr. Rexwinkle: Yes, and a lot of the concerns expressed mirrored some of staff's comments as well, and our concerns have been resolved.

Comm. Pateidl: We're talking about using a building material for a permanent structure. Are we opening the door for this type of material to be used or considered as acceptable for permanent structures in other applications and thereby inadvertently allowing some precedent for tent material, for lack of a better description. Does it fit our requirements today, and does it fit our requirements for the future?

Mr. Rexwinkle: I think that's a fair question. I wouldn't say it is creating a precedent because we do have another location with a similar type of material. I think it is something we can take case by case. Whether or not it complies with building codes is something that would have to be addressed by the building department. As far as I know, it does comply.

Comm. Pateidl: Will this be subject to a building permit and applicable building codes?

Mr. Rexwinkle: Yes.

Comm. Elkins: Could staff elaborate a little bit more on the concerns of the fire marshal with respect to the flu and the fire pits? If the roof is retracted, I don't understand the fire marshal's concern. It seems like a nice feature, and I'm not quite sure I track why they would be disconnected completely.

Mr. Rexwinkle: That is an issue that has changed over time. This is one of multiple revisions. Previously, the rooftop area was fixed, they were going to use the fire pits, and there were flues on the elevations. Now that they have agreed to disconnect the fire pits, they don't need the flues anymore and are able to retract the rooftop.

Comm. Elkins: If the rooftop is retracted, why is there a need for a flue?

Mr. Rexwinkle: It is because they would close the rooftop to use it during the winter and if it were raining. If it is opening and closing, flues would not work.

Comm. Elkins: Why is it not permissible for the developer to have the freedom? I understand the rules, but why is there such an on/off switch to this circumstance?

Mr. Coleman: We can't monitor how the restaurant operates. We have to assume the worst-case scenario; we can't assume that they're going to follow this kind of sensible operation. It doesn't work that way.

Comm. Elkins: I guess I struggle with that a little bit. We assume that the operator will not operate in compliance with the rules, when there are a lot of other situations in which we assume that a law-abiding citizen will comply.

Mr. Coleman: If the fire marshal would allow it, we would agree. I don't believe that's the case.

Chair Rohlf: If there is nothing else, we will hear from the applicant.

Applicant Presentation:

Tim Sinclair, 2210 North Rosemont, Wichita, KS, appeared before the Planning Commission and made the following comments:

Mr. Sinclair: I am one of the partners of Mestizo. I want to highlight a couple things Joe touched upon. (*Refers to plan*) The biggest thing from our last meeting is we had a fixed canopy system with retractable side walls. As you will see, all of these are retractable all the way back. All the side walls are also fully retractable all the way down; whereas, last time, the side walls were retractable and the roof was fixed. Although it is called a permanent structure, when the days are nice, it will be fully retracted, both the side walls and the roof. When it's cold out, they will be closed. It is called permanent for this process, but we look to having them open and closed at different times. We also have talked about the fire pits, and we have been after this for so long, we wanted to get approval however we had to. We agreed to take the gas away. Since we got everything submitted to Joe, we can do a link that turns a valve to let the gas come through when they are open, and when they are closed, it turns the valve back. I was going to address that with the fire marshal after we got to that process. I don't need to submit it here; I was just trying to tell you how we have addressed that process. We will go with whatever the fire marshal tells us to do. We are going with a better material, similar to what was used on the Denver Airport. I would like to have our vendor show you that material. We are using a copper look versus the cream look that we discussed last time. We brought a mock-up to show you how it works (*Sets up example*).

Jerry Grimaud, Lawrence Fabric and Metal Structures, 3509 Tree Court Industrial, St. Louis, MO, 63122, appeared before the Planning Commission and made the following comments:

Mr. Grimaud: (*Demonstrates roof*) This retractable roof will be on a motor. Right now, the sample is manually operated. The first three feet will be covered with the sheeting so water and debris don't get on the inside. When it's retracted, this will take about a minute with the motor to fully extend out. When it's tight like this, then it is probably about this pitch and will shed all the water to the front. The gutter system takes it down through the post to the floor of the second floor. This sidewall is a screen, but the sidewalls we propose would be made of the same material with a clear vinyl window that is rolled up. Each individual bay will have its own mechanism and roll-up motor. On the top will be four bays that will act independently of the two bays on the site. Are there any questions?

Comm. Strauss: What is the experience during heavy weather conditions?

Mr. Grimaud: This is an engineered system, so we'll have it stamped. If you expect a 6-inch snowfall, I would instruct the owner to retract it back. Other than that, if it is being used as snow falls on it, heat builds up on the inside, which will then rise and melt the snow.

Comm. Ramsey: What about hail and other storms?

Mr. Grimaud: This will be engineered for wind, also, just like it is a permanent canopy. People can be underneath it when such a storm comes through. Of course, they would have to use common sense when lightning occurs.

Mr. Sinclair: The structure will open as one unit, one unit and one unit. The spacing of these is for the structural integrity of snow or rain loads. The gutter system will drain back down onto the second floor roof deck. There were comments in August about coming down. We have contained that. Overall, I believe the

two things that were most concerning last time were the material and the flues. Not only did we get rid of those, but I believe you pressed us to get a better solution overall for everything. Any questions?

Comm. Elkins: I'm curious about your experience with respect to this material to hold its color over time, especially given the sun that we have in Kansas.

Mr. Grimaud: The material is warranted for eight years, which means it generally lasts 10-12 years. There may be some fading after six years. I think you will see some fading, but it will be slight.

Mr. Sinclair: Melanie, the developer at Park Place, quizzed us on that very diligently, and it's the same record that we discussed in August that all the awnings in Park Place fall under the same stipulations of needing to be replaced if they're fading so much.

Chair Rohlf: Anything else? Then that takes us up to further discussion on this matter and a motion.

Mr. Rexwinkle: If the commission does want to provide the opportunity for the applicant to be able to use the fire pits, we would recommend a modification to Stipulation No. 4. As it is currently written, the fire pits are to be disconnected, regardless. We would offer that it could be modified to say, "The existing fireplaces shall not be used and disconnected from gas service unless provided otherwise by the fire marshal."

A motion to recommend approval of CASE 62-12 – PARK PLACE – MESTIZO PERMANENT ROOFTOP TENT – Request for approval of a Final Plan, located at the northeast corner of 117th Street and Nall Avenue, with the six stipulations, including the staff recommendation provided that No. 4 be modified as follows: "The existing fireplaces shall not be used and disconnected from gas service unless provided otherwise by the fire marshal" was made by Elkins; seconded by Strauss. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

CASE 119-12 – TOWN CENTER BUSINESS PARK – SUNRISE SENIOR LIVING - Request for approval of a Revised Preliminary Plan and Revised Final Plan, located south of 115th Street and east of Roe Avenue. **(PUBLIC HEARING)**

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair, this is a request for approval of a Revised Preliminary Plan and Revised Final Plan for a parking lot at Sunrise Senior living in Town Center business Park. The applicant is proposing the construction of a 22-space parking lot on the southeast side of the property. The extra parking is proposed because the use generates a greater demand for parking than what is currently provided in the existing surface and underground parking garage. The construction of the parking lot would result in several minor modifications to the site, including relocation of an existing sidewalk on the west side of the parking lot and a new crosswalk connection across the drive, north of the proposed parking lot. The sidewalk west of the parking lot connects to the city trail on the south side of the site; however, on the currently proposed plan, there is no connection from the public sidewalk along Granada Street to this sidewalk. Staff is recommending a short sidewalk connection here. You have also received a memo from the fire marshal expressing his support for this proposal, as he has had several issues in the past with parking at that property. Aside from the proposed parking lot, no other changes are proposed at this site or the building. Staff is recommending approval, subject to the stipulations in the report.

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

Applicant Presentation:

Jeff Skidmore, Shlagel and Associates, 14920 W. 107th Street, Lenexa, KS, appeared before the Planning Commission and made the following comments:

Mr. Skimore: I am here on behalf of Sunrise this evening. We also have a representative from the facility as well if you have any questions operations-wise. I have nothing to add beyond staff's current report. We appreciate their assistance with the process and would be happy to answer any questions. We do agree to the stipulations.

Chair Rohlf: So you are fine with the sidewalk.

Mr. Skidmore: We are.

Chair Rohlf: Any questions for the applicant? This appears to be pretty easy.

Public Hearing

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

A motion to approve CASE 119-12 – TOWN CENTER BUSINESS PARK – SUNRISE SENIOR LIVING – Request for approval of a Revised Preliminary Plan and Revised Final Plan for a parking lot, located south of 115th Street and east of Roe Avenue – with Stipulations 1-11 – was made by Roberson; seconded by Pateidl. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

CASE 122-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Master Development Plan/Master Plan. (**PUBLIC HEARING**)

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 122-12 – Leawood Development Ordinance Amendment to Article 9, Definitions, pertaining to the definition of a Master Development Plan / Master Plan. Currently, the LDO has a definition for a Comprehensive Development Plan and Comprehensive Plan. However, Master Plan and Master Development Plan are often used interchangeably for Comprehensive Development Plan or Comprehensive Plan. This proposed change just makes it clear that a Master Development Plan or Master Plan is the Comprehensive Development Plan or Comprehensive Plan as defined in the articles. This is adding a definition within Article 9 to cross-reference the terms. Staff is recommending approval of this application.

Chair Rohlf: Questions for staff?

Public Hearing

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

A motion to recommend approval of CASE 122-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO Article 9, Definitions, pertaining to the definition of a Master Development Plan / Master Plan with staff recommendations – was made by Roberson; seconded by Strauss. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

CASE 128-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Research Services – Limited. **(PUBLIC HEARING)**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 128-12 – Leawood Development Ordinance Amendment to Article 9, Definitions, pertaining to the addition of the use Research Services – Limited. This case is related to the following case as well, which is 127-12, which proposes to add the term Research Services – Limited into the Office District as a Special Use Permit. Currently in the LDO is a definition for Research Services, which is strictly limited to the BP or the Planned Business Park District. That definition states that an establishment engaged in conducting basic and applied research, including production of prototype products when limited to the minimum scale necessary for full investigation of merit to the product, excluding production of products used primarily or customarily for sale or for use in non-prototype production operations. What we are proposing is another category to Research Services that would allow this type of use within the Office with a Special Use Permit and also within the MX-D District as well because it allows all the uses within the Office District as well as the other commercial districts. We are proposing to require that no more than 25% of the total gross floor area of the business, as determined through a Final Site Plan that is approved with the Special Use Permit application be made and then also that, per the fire code and International Building Code, there is no Type F occupancy [Factory], H [High Hazard], S1 [Moderate Hazard Storage] or S2 [Low Hazard Storage], just to ensure that there is some regulation with regard to unneeded risk to the adjacent uses. The full definition we are proposing is: “An establishment engaged in the conduction of basic and applied research, including the production of prototype products, provided that, per the currently adopted International Building Code and International Fire Code, no Type F [Factory], H [High Hazard], S1 [Moderate Hazard Storage] or S2 [Low Hazard Storage] occupancy shall exist and that the area dedicated to this use should be no more than 25% of the total gross floor area of the business as determined through a Final Site Plan submitted with the Special Use Permit application. Furthermore, research shall be limited to the minimum scale necessary for full investigation of the merits of the product, excluding production of products used primarily or customarily for sale or for the use in non-prototype production operations.” Staff is recommending approval of this application as listed and will be happy to answer any questions.

Chair Rohlf: I am curious as to why we are looking at this.

Mr. Klein: You probably will be seeing another application following this in the next month with regard to SFP, which is the Specialized Fertilizer Products that is located over in Park Place. They currently are in the business of actually researching different fertilizer additives to see which plants grow better. They have some small areas in there in which they do have some chemicals, and then they have plants that they use to show which ones grow better in which circumstances. Rather than not allowing that use, as long as it didn't cause any harm to anybody else, we wanted to allow it, but under strict specifications.

Chair Rohlf: So they are already in the practice of doing this?

Mr. Klein: Yes.

Chair Rohlf: Where is that building?

Mr. Klein: It is one of the office buildings. I believe it is in Building A on the second floor.

Chair Rohlf: It's been there for a while.

Mr. Coleman: It came to light as they were doing a Tenant Finish.

Comm. Elkins: Just for reference purposes, is 128-12 the modification that relates to the office and 127-12 is Mixed-Use or vice versa?

Mr. Klein: It is vice versa. I wanted the definition to go first so everybody would realize what was being added to the Table of Uses.

Comm. Elkins: So 128-12 will modify Mixed-Use, and 127-12 will do Office?

Mr. Klein: The way Mixed-Use currently reads is that it includes all the uses in the Table of Uses for Office, SD-CR, SD-NCR, and some Residential. By including it in the Office section, it would not only allow it in Office, but also in Mixed-Use.

Comm. Pateidl: Why was this activity limited to BP prior to this change in definitions?

Mr. Klein: If it were going to be a full-blown research lab with a number of chemicals, the BP District would probably be more appropriate. A lot of the setbacks are larger in BP. Typically, we've seen individual buildings constructed there.

Comm. Pateidl: In a nutshell, then, public safety.

Mr. Klein: Yes, I believe so.

Comm. Pateidl: The restrictions that you put on here with respect to storage of hazardous materials and the various classifications, etc. are going to be subject to the governance and follow-up of what department of the city?

Mr. Klein: It would go through the Special Use Permit process and also the building department and the fire department.

Comm. Pateidl: Who makes sure that the people are in compliance?

Mr. Coleman: The fire marshal does an inspection.

Comm. Pateidl: Is there a provision for inspection that is associated with this definition? My concern is particularly in the Mixed-Use, where you are going to put research and development in with all the good intentions of restricting any hazardous materials, but I really question the ability of the city to monitor, control and make sure public safety is held first.

Mr. Coleman: There will be an inspection by the fire marshal. Part of it is that the research varies from something that is innocuous to something that might be of a high hazard level. We wanted to be able to divide that into different sections. This is a small lab with little plants and very small amounts of materials.

Comm. Pateidl: I understand that we are looking at a specific case that is innocuous and pretty simple. What I'm concerned with is opening this door and the definition for the broad spectrum in the future.

Mr. Coleman: That is one of the reasons it is under a Special Use Permit. That way, the business operation and use can be more fully looked at to make sure that it isn't a safety hazard to the public. Otherwise, it would just be under that zoning district and they could do it by right. With the SUP, it gives us the ability to look closely at what they're doing and make sure that it isn't a hazard.

Comm. Pateidl: I'll say it again. I understand that the Special Use Permit will allow us to make evaluations at the time the permit is applied for, but my real concern here is enforcement, and enforcement in a Mixed-Use area where not only do we have commercial operations exposed, but onward to residential as well. To me, it is a slippery slope that we need to look at down the road. That is my concern.

Comm. Elkins: I agree with Commissioner Pateidl. We just had a discussion in which we assumed that the applicant would not violate the law, and in this case, we're taking exactly the opposite position and assuming they will comply. It seems like a double standard.

Mr. Coleman: I don't think it is the same situation. They are following the Uniform Building Code, and it allows for these uses in Office under the Building Code.

Comm. Roberson: Do we have any medical research labs in Leawood? Do we have any chemical research labs in Leawood that we're aware of?

Mr. Klein: We do have medical office buildings and dental office buildings. In talking with the building official, I found that a lot of times, those office buildings will actually have more of the chemicals than what this particular business has. I know we don't want to specifically just address this one because I do understand your point as far as trying to make sure it is safe. I think what we are trying to do is to have them go through the approval process, let us see everything they are doing, get them a stamp of approval only after being reviewed by the fire marshal and going through the process. Could they do something illegal? Certainly, they could, but then again, they could do something illegal even without going through this process.

Comm. Roberson: My concern at this point would be if we have any research facilities like this that we are unaware of that we've approved.

Mr. Klein: Not that I'm aware of. Honestly, when we approved this, we thought it was an office building.

Comm. Roberson: Chemicals are chemicals, and whether it is formaldehyde or all sorts of other chemicals, they're all explosive.

Mr. Coleman: For example the Orthopedic Institute is a hospital-type facility that has lots of gases and oxygen and other things that are highly flammable, and it comes under a Special Use Permit. We don't know exactly all the different chemicals or gases that they use as they put people under and do different things. That is one of the reasons it is under a Special Use Permit.

Comm. Jackson: I think we also have some of these pain hospitals that do research on different procedures and things. Do we want that coming under here, also?

Mr. Coleman: I don't know that we have those research facilities in Leawood. I know they do in Overland Park.

Comm. Jackson: But a lot of times, those little surgery centers do research that they get paid for.

Mr. Coleman: Dentist offices have hazardous gases and things, too.

Comm. Levitan: Do we know how often SFP would be inspected?

Mr. Coleman: I don't know exactly, but I think the fire department tries to do annual inspections.

Public Hearing

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

Mr. Barry: I'm a pharmacist. I practice in clinical pharmacology, and I have some concerns with this. The first is what is a prototype product? If it's an electronic prototype product, I have no concerns. In the world I live in where we are talking about chemicals and biologics, it does raise a little bit of concern, as Mr. Pateidl indicated, in a Mixed-Use setting. My personal opinion is that if you have research being conducted, especially biologics, they can easily spread. Mixing that with other commercial uses like restaurant use with people consuming food, other potential residences with people living, you're trying to mix too many things in the same pot. I really think it would be in our best interests to keep these separated, keep the research services dedicated to the Business Park where you do have that separation from normal, everyday activities. There's a reason Quintiles has a building that is completely separate across from the Sprint Campus. We do research, nothing that necessarily falls outside of international standards or that we're not monitored continually by the FDA and other agencies, but it is something that is much bigger than what the city typically takes on. That is my concern with regard to this. One thing that is hard to really grasp is when we talk about prototyping, and what exactly is the size that we're talking about here? Are these batches? Small plants are one thing, but how many of them will there be and in what volume? I don't think we've really hammered that out, yet, at least from what I've seen in this piece. With that, I think that it is a good topic to bring up, but we need to look at it in a little more detail. Thank you.

Mr. Coleman: Let me address two of those issues. One is the biological; if they are hazardous pathogens, they would be listed as a high hazard and are not allowed in this district. The other is that the prototypes would be something that would be discussed and shown during the Special Use Permit process.

Chair Rohlf: Those letters are codes that are staff terms?

Mr. Coleman: No, those are building code terms. We didn't make them up.

A motion to close the Public Hearing was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

Chair Rohlf: That takes us up to any additional comments.

Comm. Elkins: I have three comments. First, I share Commissioner Pateidl's concern about enforcement. It sounds like the fire marshal would be on an annual inspection program, and that gives me a little bit of comfort, but I am concerned about that. I'm also concerned about the part of the definition that includes the production of prototype products. I realize that we would have some regulatory control through the SUP process, but I'm just concerned about the idea of essentially permitting what I think of as quasi-manufacturing - I'm not so concerned about the chemicals; I'm concerned about another type of research that is mechanical research - being permitted in the office context. For whatever reason, I would see a distinction between Mixed-Use and Office; although, I could be easily talked out of drawing a distinction. I'm

particularly concerned about a use in an office context that includes the production of prototype products. I see the distinction between producing prototype products and research. I don't know if the two necessarily need to go together. I think research is fine in an office context. I'm concerned about the production of prototype products being included in the appropriate uses in this context. Third is just, frankly, a matter of semantics. In the definition when we talk about an establishment engaged in the conduction of basic and applied research, quite frankly, I'm not sure it's a completely appropriate use of the word "conduction." If we go forward with this, I would propose that it would be modified to be "an establishment engaged in basic and applied research" without the words "the conduction of."

Comm. Jackson: I just feel completely unqualified to rule on this, not knowing if these different types are the only categories within the building codes that we would want to disqualify. I have no idea what else is in there. Are we missing something? I just don't feel like I have enough knowledge to begin to rule on this.

Comm. Roberson: I also express a concern about having something like this in a Mixed-Use setting, especially with our public speaker's comments about restaurants, residential and office space. I have a problem with allowing this.

Chair Rohlf: Any other thoughts? I'm not sure exactly how to proceed here. Is there any other definition that would help us?

Mr. Klein: I know there are a lot of questions. Maybe the best thing would be to continue these two cases, and we will try to have the fire marshal and/or the building official here to answer some of those because it really gets into their codes, and they're very familiar with the types of things and would be able to give you examples and probably better answer your questions.

Comm. Pateidl: It is either continue or vote.

Chair Rohlf: We have continued these types in the past when we have asked them to change the language. It is not very often, but I think this case warrants a continuance. Do you want to give a date, or would you like to bring it back?

Mr. Klein: We could continue to October 23rd; it really just depends on us being able to get them here.

Comm. Strauss: Can we continue it to a work session?

Mr. Coleman: We can continue it to November 13th.

Comm. Roberson: That makes more sense to me.

A motion to continue CASE 128-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS, pertaining to the addition of the use Research Services – Limited - to the November 13th Planning Commission meeting – was made by Elkins; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey.

Comm. Elkins: As a procedural matter, do we need to go through the exercise of a Public Hearing on the next case, or can we go straight to a continuance?

Ms. Shearer: I would open the Public Hearing just to make sure.

CASE 127-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to Research Services – Limited.
(PUBLIC HEARING)

Public Hearing

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

A motion to continue CASE 127-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to Research Services – Limited – to the November 13, 2012 Planning Commission meeting – was made by Elkins; seconded by Roberson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey.

Ms. Shearer: As a point of procedure, we are nearing the time that we need to extend the meeting if you choose to do so.

Chair Rohlf: Do we perceive that there could be a need to have 20 more minutes for this case?

Comm. Jackson: It will be more than 5 minutes.

A motion to extend the meeting to 9:15 was made by Jackson; seconded by Elkins. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

CASE 140-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1, ACCESSORY USES – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to rain barrels. **(PUBLIC HEARING)**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the commission, this is Case 140-12 – Leawood Development Ordinance Amendment to Section 16-4-1, Accessory Uses, pertaining to rain barrels. The Planning Commission has had a number of work sessions with regard to rain barrels, and we've provided a number of examples as far as what's out there. Currently, the LDO does not list rain barrels as an accessory use and thereby doesn't technically permit them to be used within the city. The proposed ordinance would allow them within the districts of RPA-5 [Planned Rural Density Single Family Residential], R-1 [Planned Single Family Low Density Residential], RP-1 [Planned Single Family Residential], RP-2 [Planned Cluster Detached Residential]; however, would not allow them for attached structures such as RP-3 [Planned Cluster Attached Residential] or RP-4 [Planned Apartment Residential District], nor would it allow it in any non-residential zoning district. The intent is to allow rain barrels in Leawood while placing restrictions on them to make sure that they meet certain standards. Those restrictions would be:

- Located in the side or rear yard.
- Barrel size cannot be greater than 70 gallons or 5 feet in height.
- Shall not be elevated more than 6 inches above grade and must be on a hard level surface, not to include gravel or wood.
- Must be connected to a downspout and within 6 inches of the house.
- Must be restrained in such a way to prevent tipping.

- Must be permanently fitted or constructed with an insect guard.
- Must have a decorative design and be neutral in color, not to include black or white.

Staff is recommending approval of this application, and I'd be happy to answer any questions.

Chair Rohlf: Questions for staff?

Public Hearing

Seth Barry, 9419 Wenonga, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Barry: Typically, I think you have heard me talking about not wanting stuff in my back yard. I am actually in favor of having a rain barrel, so I think it's a good sign that the city is pursuing rain barrels and allowing that accessory use. I have a couple of concerns with the stipulations on their use would be the 6 inches above grade on the elevation. I definitely understand if you are hooking a hose up to something, it works. Most of these rain barrels, though, are gravity-fed, and trying to fill up a water bucket becomes difficult at the 6-inch elevation. I would actually ask you to increase that to 1 foot to assist with filling a water bucket. The second point gets down to the design of the rain barrels and how they work. Part of my concern here does get back to safety. I noticed that you talk nothing about that this is non-potable water, not safe for drinking, but yet, we're going to stick a faucet that kids or other individuals might confuse as being a reliable water source. It seems that one item we are missing in these stipulations is that it has some sign or indication that the water is not for consumption. Also, there are two types of water barrels: open and closed system. Generally, the closed form system means that the water drains pretty much directly into the water barrel, that there is some type of diverter on the downspout to route that into the water barrel. The nice thing about some diverters is that it really does decrease the insects that have access to a rain barrel. This could be an area where mosquitoes can breed, but I think we could put some stipulation as far as allowing a closed system. To be honest, having an insect guard over an open top is good if they're installed and in place, but if they get bumped or moved, it becomes an issue. Then finally, I think the other issue I see with this is that rain barrels do collect water fairly fast. A 1,000 sq. ft. roof with a typical rainfall will fill a 55-gallon barrel in about 15 minutes. As we all know, it rains a lot more than just 15 minutes around here. I think we also need to specify what happens to the overflow of these rain barrels. I would hate for it to just go out onto the ground, and I feel you should really address how the overflow is used. I'm excited that you have brought this up. I think it's a good move, especially after the drought that we've just gone through this past summer. I do think there are some tweaks you could make to the stipulations. That is all.

A motion to close the Public Hearing was made by Roberson; seconded by Jackson. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey.

Chair Rohlf: Are we comfortable with the way the amendment now stands?

Mr. Klein: I think some of the comments that were made would allow it to go above 6 inches in height. Originally, part of the reason staff was recommending the 6 inches was we didn't want to get them so high that they created more of a tipping hazard; yet, we wanted to allow a hose to be attached. With regard to the mosquito screen, I think he's absolutely right. It wasn't our intent that this would be a screen that you just casually flip over. The way we have it listed is it would have to be permanently fitted or constructed with an inset guard. It was our intent that this was more than just a makeshift solution. With regard to the potable water, to tell you the truth, it didn't really occur to me at that point, but I can definitely see how a child would see a hose and pick it up. I don't know what you want to do with that.

Comm. Pateidl: They wouldn't be able to read the signs.

Chair Rohlf: How would they have access to the barrel?

Mr. Klein: I would imagine it would be the hose and the spigot. It would have pressure in the hose because of gravity, so it is pushing down. They would be able to open the hose and get to the water.

Chair Rohlf: Have you seen any literature on this?

Mr. Klein: I have not heard of that.

Chair Rohlf: It would strike me that it wouldn't be a problem.

Mr. Klein: There was one other issue with regard to overflow, which is a good point. They fill up, and obviously, the water has to go someplace. Most single-family houses do have the gutters, and they typically do run out on the ground as far as directing water away from the foundation of the house. I'm not sure if we would want to add something that would cause it to go into more of a guttering system that would do that. At this point, nothing is specified that the overflow would have to go into another gutter and then direct it out. I would imagine people would want it to go away from their house.

Mr. Coleman: We don't specify that on houses, either.

Chair Rohlf: I don't want to make this so complex that no one would want to even do it, like the recycling bins. I don't know how anyone else feels.

Comm. Roberson: I do have one comment. The idea of having an open barrel concerns me, even if it does have a wire screen on it. I think that was a very valid point. Our intention was that a gutter would come in, and the opening would be basically the size of a gutter with a permanently attached screen, if I remember correctly.

Mr. Klein: You're absolutely right.

Comm. Roberson: I think we ought to make that clarification and the stipulations because naturally, somebody is going to be curious if it is open. They could go up and jump up and down. I don't know; kids could do most anything.

Mr. Klein: Would that be a closed system?

Mr. Barry: I'm not making an endorsement or anything here, but RainReserve.com is where I got my information. They do have two different types of systems. Those have a solid top on a barrel that is very much like what you were referring to, where the diverter directly puts the water into the barrel. Even some open systems, you can use a trap just like you would have in a sink to keep the water in the barrel and prevent any exposure from mosquitoes or other insects into the barrel. With the potable water issue, you probably are going to get algae and other forms of microorganisms growing in this water, stuff that a kid might not necessarily see but is there. I would hate for us to approve this and then have a bunch of cases of Giardia because kids are drinking out of them.

Comm. Jackson: I think we are really over-thinking rain barrels. My thought on this would be that if people put up rain barrels in their back yard, the city is not going to know about it. They're going to put up very different things. You're not going to hear about it unless somebody is really disgusted with it. For something in your back yard, we all put different things in our back yard that some of our neighbors don't particularly like. I would keep A, B and F, and I would pretty much get rid of the rest of them. With C, like we were

talking about, some people are going to want it 6 inches; others will want it higher. People can figure these out. As long as the size of it is not very large, you can't stop every accident from happening, and we can't try to plan for it with a rain barrel. With D, there are different ways to hook these things up. Is it going to be directly fed from a downspout? Do we need to establish exactly how the water is going to be fed into it? That doesn't make any sense to me. With E, if they're not full of water and they tip over, it doesn't matter. If they're full of water, they're heavy and are not tipping over. The homeowner has to deal with all sorts of safety issues in the home; they can deal with how to make a rain barrel safe. With F, keep an insect guard on it. Then with G, trying to determine the color and look of a rain barrel is going too far, I think. We don't tell people what color their planters can be. I just think we're over-thinking this. We want people to use rain barrels, especially with the drought. If that continues, it's a great idea.

Chair Rohlf: If we're going to have further discussion, we will need to extend it to 9:30.

Mr. Coleman: We had numerous meetings on this, and this is the list of the things that came out of those meetings. I would recommend staff's list that was based on discussions with the Planning Commission over numerous meetings.

Comm. Jackson: That's what I mean; we are over-thinking it.

Mr. Coleman: But these are the listed items that came out of the discussions with you and the commission, and to rethink it, again, is over-thinking it. I would recommend that you approve it as it is. If you wanted to put something else to raise it to 1 foot, I would be fine with that; any higher than that would be very dangerous.

Comm. Roberson: I think having an open top would be dangerous, too.

Mr. Coleman: You could just say that they're closed. I've looked on the sites, and they all come with lids.

Comm. Pateidl: Any commercial rain barrel that is sold will have a hard top, and it will have an insect guard built in as part of the permanent assembly. The concern I would have would be if somebody decides to make their own rain barrel. The open top is an issue. We can sit here and say that we are over-thinking it, or we can sit here a year from now and say, "Gosh, I'm sure sorry that kid drowned in that thing." That is a safety consideration that bears some merit, recognizing that people will try to build one of these themselves. Having a rain barrel and having experience with it, I can tell you that 1/10 inch of rain will fill up a 45-gallon rain barrel in a heartbeat. It's not that you're just going to have a little bit of water in the bottom.

Mr. Coleman: I wouldn't be opposed to requiring a lid.

A motion to extend the meeting to 9:30 was made by Elkins; seconded by Pateidl. Motion approved with a unanimous vote of 7-0. For: Pateidl, Jackson, Levitan, Roberson, Elkins, Strauss and Ramsey

Chair Rohlf: Why did we feel it was necessary to put this in?

Mr. Coleman: We had numerous residents who requested rain barrels, and we don't have it in our Accessory Use section.

Chair Rohlf: How did they request it?

Mr. Coleman: They called and asked if we had anything that prevents them from having a rain barrel.

Chair Rohlf: So they've been waiting until this ordinance has gone into effect?

Mr. Coleman: Probably some people have gone ahead and installed them.

Chair Rohlf: I just wondered if we had any experience with what was out there and what people were actually doing, such as buying premade ones or making them and how they were working.

Mr. Coleman: The ones that I talked with wanted to buy a premade one from Lowe's or Home Depot and then install it.

Chair Rohlf: What do you think? We have some who think we have over-thought it; we have some who think we need to add more. Where are we?

Comm. Roberson: All I want to add is a closed top; that's all.

Chair Rohlf: Does anyone at that end feel strongly?

Comm. Ramsey: If you buy a commercial rain barrel, it is going to come with a closed top. If someone makes one, I don't know how you're going to control it.

Mr. Coleman: You could just add "G: Must have a lid."

Chair Rohlf: Or would we be better off telling them they have to have a commercial one?

Mr. Coleman: I don't know that it would be better off. Someone could buy a commercial one and take the lid off.

Chair Rohlf: We will add H and say that the rain barrel must have a lid. Where is the insect guard on the rain barrel?

Mr. Klein: Typically, it is on the lid as it drains through.

A motion to recommend approval of CASE 140-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1, Accessory Uses, pertaining to rain barrels – with staff recommendations, adding a recommendation that the top at least be fitted with a lid – was made by Roberson; seconded by Elkins. Motion approved with a vote of 6-1. For: Pateidl, Levitan, Roberson, Elkins, Strauss and Ramsey. Opposed: Jackson.

MEETING ADJOURNED