

**City of Leawood
Planning Commission Meeting
April 29, 2014
Dinner Session – 5:30 p.m. - No Discussion of Items
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: Levitan, Roberson, Jackson, Rohlf, Williams, Elkins, and Ramsey. Absent: Pateidl and Strauss

APPROVAL OF THE AGENDA:

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

APPROVAL OF MINUTES:

Approval of the minutes from the March 25, 2014 Planning Commission meeting and the April 8, 2014 Planning Commission work session.

A motion to approve the minutes from the March 25, 2014 Planning Commission meeting and the April 8, 2014 Planning Commission work session was made by Williams; seconded by Roberson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CONTINUED TO MAY 27, 2014:

CASE 135-13 – IRONHORSE GOLF COURSE CLUBHOUSE EXPANSION – Request for approval of a Revised Preliminary Plan and Revised Final Plan, located approximately at 146th Street and Mission Road.

PUBLIC HEARING

CASE 77-13 – RANCH MART – MCDONALD'S DOUBLE DRIVE-THRU – Request for approval of a Revised Preliminary Plan and Special Use Permit, located north of 95th Street and east of Mission Road.

PUBLIC HEARING

CONTINUED TO JULY 22, 2014

CASE 21-14 – CROWN CASTLE CELLULAR TOWER – Request for approval of a one year extension for a Special Use Permit for the continued use of a wireless communication tower and associated equipment, located north of 135th Street and west of Briar. **PUBLIC HEARING**

CASE 22-14 – AT&T MOBILITY CELLULAR ANTENNAE – Request for approval of a one year extension for a Special Use Permit for the continued use of wireless antennae and associated equipment, located north of 135th Street and west of Briar. **PUBLIC HEARING**

CASE 23-14 – CRICKET CELLULAR ANTENNAE – Request for approval of a one year extension for a Special Use Permit for the continued use of wireless antennae and associated equipment, located north of 135th Street and west of Briar. **PUBLIC HEARING**

CASE 24-14 – CLEARWIRE CELLULAR ANTENNAE – Request for approval of a one year extension for a Special Use Permit for the continued use of wireless antennae and associated equipment, located north of 135th Street and west of Briar. **PUBLIC HEARING**

CASE 25-14 – T-MOBILE CELLULAR ANTENNAE – Request for approval of a one year extension for a Special Use Permit for the continued use of wireless antennae and associated equipment, located north of 135th Street and west of Briar. **PUBLIC HEARING**

CASE 26-14 – VERIZON WIRELESS CELLULAR ANTENNAE – Request for approval of a one year extension for a Special Use Permit for the continued use of wireless antennae and associated equipment , located north of 135th Street and west of Briar. **PUBLIC HEARING**

CASE 27-14 – SPRINT-NEXTEL CELLULAR ANTENNAE – Request for approval of a one year extension for a Special Use Permit for the continued use of wireless antennae and associated equipment, located north of 135th Street and west of Briar. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 61-14 – COUNTRY CLUB OF LEAWOOD – Request for approval of a Revised Final Plan, located south of Overbrook Road and east of High Drive.

CASE 68-14 – WATERFORD POOLHOUSE ROOF REPLACEMENT – Request for approval of a Revised Final Plan, located north of 132nd Street and east of Mission Road.

A motion to approve the Consent Agenda was made by Jackson; seconded by Roberson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

NEW BUSINESS:

CASE 56-14 – TOMAHAWK CREEK CONDOMINIUMS – Request for approval of a Revised Final Plan, located north of Town Center Drive and west of Tomahawk Creek Parkway.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 56-14 – Request for approval of a Revised Final Plan for Tomahawk Creek Condominiums. The plan includes faux chimney removal, new roofing, new siding and new color. This apartment complex was originally approved in 1995 and was constructed in 1996. In 2002, they requested to become condominiums and were re-platted. Currently, the applicant has indicated issues with regard to the roofing with leaking. They would additionally like to remove faux chimneys on the rooftops. Real chimneys are on either end of the building and will remain. They are also experiencing wood rot and would like to replace the Masonite with Hardiboard and would like to repaint. Currently, the apartments are painted light yellow. Staff is supportive of the application; however we are recommending Stipulation Nos. 1-5. The first is that the cupola on the clubhouse and the cover of the trash enclosure shall be constructed as originally approved with the development. Originally, a cupola was located on the clubhouse as well as a pergola on the trash compacter; both have been removed. Secondly, all chimneys, including the faux chimneys, would be retained on the roofs. Staff feels this is a significant architectural feature of the buildings that adds interest and breaks up the roofline. Additionally, all phases shall be completed in three years. The applicant stated a timeline of four-five years. Finally, all carports shall be reroofed in the same material as the condominium and townhome buildings. The applicant talked about painting the chimneys the same cobblestone color and would replace it with Hardiboard as siding gets replaced. This stipulation requires them to be the same color. We have also asked that they do each building at one time. Staff is

recommending approval of this application with the stipulations outlined in the Staff Report, and I'd be happy to answer any questions.

Comm. Williams: Mark, would you elaborate on what you find as architectural significance in these faux chimneys and what we would lose if they were removed?

Mr. Klein: (*Refers to photos*) Staff feels that the faux chimneys add an architectural interest to the building and that they break up the appearance of the roofline.

Comm. Williams: If the building came in today as a new project, would you request or require faux chimneys?

Mr. Klein: I don't know if we would specifically require faux chimneys. Generally, we ask applicants to break up the façade with different materials and undulations of the building. It would be hard to say.

Comm. Williams: I see them as a feature on that ridgeline, but they also seem somewhat arbitrarily placed and don't serve as an architectural feature of the façade; they just relate to the ridge of the building. My opinion would be that there would be not great loss to the complex if they go away. If it causes significant problems for future maintenance, particularly the roof water infiltration, I could see the need to remove them, particularly in light of the more pressing concerns of color and sequence of renovations.

Chair Rohlf: Which type of building is this one? Is this the condominium building or the townhome?

Mr. Klein: I believe this is one of the condominium buildings but the applicant would be able to confirm.

Chair Rohlf: And that's the majority of the units?

Mr. Klein: That is my understanding.

Applicant Presentation;

John Petersen, Polsinelli Law Firm, 6201 College Blvd, Suite 201, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Petersen: As you know, I'm typically up here advocating for commercial development and "fighting" residential communities that may have a different opinion about a proposed development. There are a variety of issues to be addressed that are very important to the community, and they represent millions of dollars of capital investment that have to be made by this neighborhood, so they asked me to help in response to both substance and timing of implementation of the efforts that need to take place. The Tiehen Group has done a great job in approaching the balance of maintaining the standards of the city and being mindful of the realities of cost. This neighborhood is especially good to deal with while paying attention to detail. Jim Tiehen is here with me, as is Tim Rellihan, Property Manager for the Tiehen Group. Jennifer Brees is VP of the Tomahawk Creek Board. Gail Voiles is President of the Board. Many residents have joined us this evening as well. The concerns tonight relate to the cost of the project needed to be implemented and, most importantly, the timing of some of the features.

This is an apartment complex that was build 18 years ago perhaps, in some cases, not to the standards of Leawood today in terms of quality of materials and workmanship. It was turned to condominiums in 2002. We see this often when rental projects are turned into ownership communities and work needs to be done to bring the property up to standards of individual owners. When the roof was placed on the property it was purported to be a 50-year roof; it wasn't done correctly, and the roof is shot after 18 years. It needs to be repaired because of leakage, which is causing additional damage with the siding. These roofs will take six months to get replaced. The first initiative was to ask staff to consider a quality

roofing material less expensive than tile. This created a \$1 million differential. We agreed to the \$2 million investment in the roof, as staff would not agree to an alternate material. Norton and Schmidt was hired by the community to do the design to ensure structural integrity. Bordner Roofing will do the work.

The next issue is the siding. We have substantial wood rot. The community talked to staff about replacing the Masonite siding that has not worked as well as anticipated with Hardiboard. We have an agreement in terms of the materials, but as part of this, the neighborhood would like to consider a color change to grey. (*Shows examples of existing and proposed*). The siding is a \$1.2 million investment.

Regarding the chimneys, Commissioner Williams brought up a good point. Any builder hopes that faux elements have a beneficial visual impact because working around the elements could cause problems. These faux chimneys don't serve a purpose. Putting a new roof around these chimneys could cause operational problems. Commission Williams asked if these chimneys would be required on a new project. I know from experience that it probably would not be approved with them. The neighborhood would prefer to remove the faux chimneys.

Regarding reroofing the nine internalized carports, the roofs are fine. To do that would be another \$110,000. Staff's analysis points out potential differences between the living structure roofs and the carport roof. (*Shows samples of materials from both roofs*). There is a slight difference but not enough to warrant a new roof that would be mostly obscured from outside view.

I don't have a picture of the clubhouse cupola. We think that, perhaps as part of the original plan, there was a structure over the entrance to the clubhouse. The cost is tens of thousands of dollars, and the existing clubhouse is terrific and well liked by the community.

The next issue involves the compactor enclosure that had a roof at some point. It is not required to put roofs over trash enclosures or the compactor. The original roof was in constant need of repair, and finally, from a practical standpoint, the decision was made to remove it, as is the case in 98% of multi-family projects with commercial-sized waste disposal vehicles come. This one is maintained well and is screened appropriately.

I'd like to discuss phasing. We're moving in the vicinity of \$3.5 million, and \$2 million will be spent in a 6-month period. Financing arrangements have been made with significant monthly increases. Many of our residents can absorb those well; many cannot. We have a number of fixed-income residents in this community, and many of them moved to the community to have some certainty in terms of budget and monthly capital reserve requirements. Over \$750,000 a year is reserved for maintenance of this property, so they are maintaining a high level of quality. We would like to explore ways to stretch out the project, which goes to the issue of phasing in the \$1.2 million siding. We have proposed phasing this from 2014-2018; staff wants it to be done more quickly and also in a way that everything in every building gets done at one time. I know this is because of a concern with color difference issues. I acknowledge this, but I would ask you to consider the differential, which almost looks like an accent color situation. With other projects I have been involved with, we have been asked for color changes to avoid monotony. You will also see that the buildings are internalized, and the members of the community are comfortable with the color changes. The next phase along Tomahawk Creek Parkway will all be done in a block. The ones along Town Center Drive will be done in another block. We have tried to be sensitive to the idea of people seeing the color changes and will make improvements in phases so that it works for us financially as well.

We feel we are meeting goals of staff in making a quality project while doing so in a way that works for the city and for the neighborhood. We'd like to move forward with a \$2.2 million capital investment into the neighborhood along the lines we propose as opposed to \$3.4 million. We would ask for your approval to do it in the manner I've outlined here. I am happy to answer any questions.

Jim Tiehen, President of Tiehen Group and Property Manager for Tomahawk Creek, appeared before the Planning Commission and made the following comments:

Mr. Tiehen: Thank you for listening to us; I appreciate your time. John covered all the points we wanted to make. We have to put on the roofs. It is causing damage to the interior of the units. To put on the roofs, we have to deal with the chimneys. We cannot go back up at a later date and put contractors up on the roof, as

it will affect our warranty. When we replace the roofs, we want to reside those chimneys and replace the color at the time. We had, over a year of planning, come up with a plan and a budget. We have increased dues to these residents, which was difficult to do, to the tune of 25% more than what they are paying today in order to get this project off the ground. If the city requires us to move up our siding schedule, we will have problems. We have a myriad of other issues within our budget: sidewalks, pavements, ponds that need to be dredged. We would be limited in doing the other things necessary to continue with the upkeep of the property. I felt we put together a very good plan. It doesn't make any economic sense at all to roof a building and then side a building. We have to have the roofer come in and get it done; that is what is causing our problems. Once the roofs are on, the siding will not deteriorate any more. We will replace it, but I need to do it over time. We can't increase the dues any more.

Mr. Petersen: When he talked about siding the chimneys, there are two permanent, functional chimneys that go to a firebox. We would change the siding and color of those buildings while we were on the roofs so the grey color would be on the chimneys. Our position is not to reside the faux chimneys. With that, we're happy to answer questions.

Comm. Ramsey: The real issue for me, which may be misplaced, is I would be concerned taking this out over five years not from the color sequencing standpoint but from the concern that you might get into the middle and come across a change in the board who then decides to stop the project because it is not economically feasible. What is the guarantee that this will be completed, whether it is in three years or five years?

Mr. Petersen: The "lawyer" answer would be that we would have an approved Final Plan with the condition that the siding be replaced and the color change would occur within a period of time established in the schedule. As you have the right to enforce any condition, there would be the opportunity to enforce a code violation in terms of not adhering. I think the real answer sits in this room right here and in the quality of the community. These people have done nothing but reflect that they maintain the highest standards for their community in Leawood. They are not going to stop the project, as it needs to be done to maintain the integrity of their homes.

Comm. Elkins: You presented that what the community wants to do is to pursue the \$2.2 million budget.

Mr. Petersen: It's \$3.3 million; I'm sorry.

Comm. Elkins: It's not that the community is pursuing the \$2.2 million budget; you are conceding to move the Line One from \$1 million to \$2 million and then the aggregate of the next three lines, which increases the budget by \$1.2 million.

Mr. Petersen: I misread that our original proposal was for the \$1 million roof fix, and we are conceding the \$2 million, which then adds up to \$3.2 million of total capital investment by the neighborhood.

Comm. Elkins: Clearly, there is a disconnect here because the community thought they had a 50-year roof and got an 18-year roof. Is the community pursuing a claim against the manufacturer or the installation company?

Mr. Petersen: I asked the same question. It has been considered, and it is not an option.

Chair Rohlf: Are there any other questions for the applicant? This takes us up to our discussion. We need to discuss how we feel about the recommendations, particularly in light of No. 2.

Comm. Williams: I have already stated my feelings about the chimneys. I don't think they would be missed. I think the buildings would be well served to have the chimneys go away and have a well-installed waterproof roof for the residents. The chimneys would be different if they related to more of the architectural form and were pulled forward maybe on the gabled sections that form the façade of the building. That would be a stronger architectural influence in my professional opinion. To have them arbitrarily spaced doesn't relate to the architectural forms on the façade. It is not good design to me.

Comm. Elkins: In our packet, we have a map that references the removal of 81 of 168 faux chimneys. I understood that the proposal is to remove all of them.

Mr. Petersen: The 168 includes the functioning, real chimneys.

Comm. Roberson: I think we need to talk about the phasing in No. 3 and No. 1.

Comm. Ramsey: Mark, what is the reasoning for removing and replacing the carport shingles?

Mr. Klein: The reasoning is consistency with the project overall. If this had been a new project coming in, we would have required the carport material color to match the roof.

Comm. Jackson: A new project would also have to have the trash enclosure, wouldn't it?

Mr. Klein: The stipulation currently would require the trash enclosure. The original was a trellis feature (*Refers to photo*).

Comm. Ramsey: Was it torn out by Deffenbaugh?

Mr. Klein: I don't know how it was removed.

Mr. Petersen: Big portions of it wound up in the Deffenbaugh truck. It's just not functional.

Comm. Ramsey: That's a compactor roll-off, so it is on a tilt frame. If the driver doesn't watch it, he'll take the box right up through the top of the trellis. No matter how many times we tell them to put them back on, it will keep getting torn off, I'm afraid.

Comm. Roberson: Will the new tile fade like the old tile?

Mr. Klein: I would imagine it would.

Comm. Roberson: Eventually, the two will match.

Mr. Klein: I don't know if they will fade the same way, but they will probably fade.

Comm. Ramsey: The carports are significantly far away from the regular buildings, aren't they? It's not like they're going to be side-by-side for a comparison. I grant you that one is darker, but it's not like it's puce and chartreuse; it's in the same palette of colors. I'm not sure it's worth tearing off a perfectly good roof.

Comm. Williams: I would tend to agree with Mr. Ramsey on that. It is close in color. They are not side-by-side, and these are not seen from the street. The residents that own the property are satisfied with what they have right now. I don't see that we need to force them to replace the roof when the bigger issue is the overall appearance of the complex, getting a good roof on the buildings and keeping these in good condition for the long term. At some point, those may need to be replaced, and we evaluate it then.

Comm. Levitan: I was searching for something to disagree with in the presentation, and I don't see it.

Comm. Williams: I don't, either.

Comm. Levitan: They are reinvesting. They have to get it remedied.

Comm. Roberson: If I go to the phasing portion of this, I don't think I'm opposed to the longer-term phasing, either, knowing how much it's going to cost each one of these residents.

Chair Rohlf: No.

Comm. Williams: I agree, and I think the point there that Mr. Petersen made is that these are owners. We're not talking about an apartment complex that is owned by somebody out in New Jersey. These are the people who live there and have a vested stake in the property. Mr. Ramsey's concern about board leadership changes is a valid point, but again, if we've got the legal leverage with the stipulations that state a time frame, that's what we do.

Comm. Levitan: I agree.

Comm. Ramsey: I understand the concerns that staff bring, and I normally would default to staff; however; this time, I have to agree with Mr. Petersen. I think their request is reasonable in light of the fact that they are not asking for an exemption from the roof.

Comm. Levitan: I think they should be commended for their phasing plan; it is smart. They dealt with it up-front and considered how it would appear from Tomahawk.

Comm. Williams: You're right on that; it's a well thought out plan to address a lot of concerns.

Chair Rohlf: Does anyone else have points to discuss? It appears we are close to eliminating five stipulations.

Comm. Ramsey: I don't agree with putting that pergola back on the trash enclosure. I've never seen one before in 25 years of being in charge of trash service for the reason that I mentioned.

Comm. Williams: I agree; it isn't practical in this case.

Comm. Jackson: The only thing we may consider since we're taking away some of the expenses is perhaps to put the phasing in over four years. You'll start having some fading of what goes in the first year. By the time the fifth year comes in, different colors will be in there.

Comm. Ramsey: I was looking at that as well, and that's the equivalent of about one year's cost. I would be supportive of that.

A motion to recommend approval of CASE 56-14 – TOMAHAWK CREEK CONDOMINIUMS – Request for approval of a Revised Final Plan, located north of Town Center Drive and west of Tomahawk Creek Parkway – with the following changes to staff recommendations: elimination of Stipulation Nos. 1, 2, 4 and 5 and revise No. 3 to be five years, retaining all other stipulations for a total of 10 – was made by Williams; seconded by Ramsey. Motion denied with a vote of 2-4. For: Williams and Levitan. Opposed: Roberson, Jackson, Elkins and Ramsey.

A motion to recommend approval of CASE 56-14 – TOMAHAWK CREEK CONDOMINIUMS – Request for approval of a Revised Final Plan, located north of Town Center Drive and west of Tomahawk Creek Parkway – with the following changes to staff recommendations: elimination of Stipulation Nos. 1, 2, 4 and 5 and revise No. 3 to be four years, retaining all other stipulations for a total of 10 – was made by Elkins; seconded by Roberson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 59-14 – HAYWARD ESTATES – Request for approval of a Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located south of 143rd Street and west of Mission Road. **PUBLIC HEARING**

Staff Presentation:

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 59-14 – Hayward Estates – Request for approval of a Preliminary Plan, Preliminary Plat, Final Plan and Final Plat. They will be dividing the 19.8 acre lot into two lots with the division being made east to west. The proposed southern lot has an existing house, while no structures exist on the northern lot. The Site Plan also includes a tract that surrounds an existing pond. The tract will be jointly owned by both property owners, and they will both be responsible for maintaining the pond. Lot One, which is the southern lot, will be 297,242.49 square feet, and Lot Two will be 23,546.37 square feet. They meet the requirements of the RP-A5 zone in which it is located. The city has street improvements scheduled in 2015 along 143rd and Mission Road just south of 143rd. for which the property owner is dedicating 48,876.86 square feet on Mission Road. As a correction for the Staff Report, they will be dedicating 41,835.74 square feet along 143rd Street. Per the Leawood Development Ordinance, street trees are required along all public rights-of-way, so the applicant is proposing alternating Pacific Sunset Maple and Red Oak along 143rd and Mission. Due to the street improvements, we are only asking them to plant the trees in Lot One, which is the southern portion of Mission Road at the time of recording of Final Plat, and the rest of the trees will be planted before final occupancy of Lot Two. Staff is recommending approval of this case, and I'd be happy to answer any questions you may have.

Chair Rohlf: If that vacant lot is built on, where would the driveway be? Would it be on the 143rd Street side, or will it come up on the north side of the lake?

Mr. Klein: It would have to be on 143rd Street. I believe Public Works would require a separation, so it would be farther west.

Applicant Presentation:

Mark Simpson, 15145 Windsor Circle, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Simpson: I'm a friend of Hayward Spears. He asked me to help him split this lot so he could hopefully get his daughter to move and build on the second lot. We're fine with all the stipulations. The only issue we probably have is the four trees that are to be planted on the southern lot that has Hayward's house on it. We may not be able to plant those four trees prior to filing the plat. Our tree transplant company, Paradise Landscape, says if we don't do it by June 1st that they won't give us a 3-year warranty. The plat is not due to be heard by City Council until late May. Time being what it is, we just might not be able to get the four trees in. We already have 15-20-inch caliper Pin Oaks lining Mission Road and 143rd Street. I can't find an arborist in the world that agrees with 35-foot centers on street trees to start with. Putting these puny, 4-inch trees between these 15-20-inch trees is of no impact whatsoever to the visual eye. We will accept the city's wisdom that they need to be 35-foot centers; we would just ask a little forbearance on timing of planting these four trees and do it by the end of the year so we can get the warranty. They cost about \$300-\$400 apiece. I'm happy to answer any questions you may have.

Chair Rohlf: Questions for the applicant?

Comm. Williams: I would ask staff for some guidance in light of the comment about the trees.

Mr. Klein: The requirement as far as 35 feet on center is that all residential property is exempt from landscaping requirements with the exception of street trees. There are no available deviations from that LDO requirement. I talked with Mr. Simpson with regard to the timing. We took into account that Public Works would be doing construction projects along 143rd Street and also south along 143rd Street and Mission Road that will extend approximately halfway down the property. It would not affect the property where these four trees would be planted. With regard to the timing, the stipulation simply says that they need to be planted prior to the plat. That is our leverage as far as when we would have something to enforce. There is nothing saying they couldn't plant the trees any time from now on. I doubt very much there are many issues with this plat.

Comm. Williams: You're suggesting they plant the trees now before the platting is even approved?

Mr. Klein: Right now is an excellent time to start planting. We're actually doing landscape inspections right now. It's an ideal time. The only time it is not a good idea is in the dry heat of the summer. I understand what he is saying as far as June 1st and the warranty, but usually even the beginning of June is a fine time to plant trees.

Comm. Williams: If the company doing the work isn't going to warrant the trees, it is a moot point for him. Do you have some latitude on letting him plant in the fall?

Mr. Klein: If you want to specify a specific date, we could do that as well.

Public Hearing

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

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

Comm. Williams: I would raise the question to my colleagues that I just raised to Mark. I supposed he doesn't have to run off immediately and plat the land, but if he wants to develop that land in the near future, I guess maybe the sooner the better for them. To potentially nullify his warranty is, to a degree, a little bit unfair to the owner if he's willing to plant the trees. Maybe changing that stipulation to allow them to plant the trees by the end of this year would be fair to the property owner.

A motion to recommend approval of CASE 59-14 – HAYWARD ESTATES – Request for approval of a Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located south of 143rd Street and west of Mission Road with the seven Staff Stipulations, modifying Stipulation No. 5 to have the trees installed no later than December 31, 2014 – was made by Williams; seconded by Roberson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 60-14 – CITY OF LEAWOOD – LEAWOOD DOG PARK – Request for approval of a Rezoning from SD-O (Planned Office) to REC (Planned Recreation), Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located west of State Line Road and north of College Boulevard. **PUBLIC HEARING**

Staff Presentation:

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: Before I get started, please be advised that staff received a citizen comment yesterday regarding the Leawood Dog Park. A copy of the comment is on your dais.

This is Case 60-14 – City of Leawood Dog Park – Request for approval of a Rezoning, Preliminary Plat, Preliminary Plan, Final Plan and Final Plan at College Boulevard and State Line Road. Within the past year, Hallbrook Office Center dedicated 8.59 acres of undeveloped land east of Indian Creek to the City of Leawood for the expansion of the Parks and Recreation services. Currently, this property is zoned for Planned Office. Leawood Parks and Recreation is planning to devote the property for an off-leash dog park. To allow this use, the applicant is requesting that the property be rezoned to Planned Recreational. In the park, 5 acres shall be enclosed by a 48-inch treated lumber fence for the dog park. On the west side of the park, 1 acre will be dedicated for small dogs. The remaining 4 acres will have a 6-ft. wide crushed limestone path which shall circumvent the lot. Amenities such as seating with canopies, trash receptacles, dog waste stations and drinking fountains shall be placed at various locations throughout the park. Parking shall be off 119th Street west of Indian Creek, and patrons will be required to access the park using the Indian Creek trail and the footbridge over the creek. Way-finding signage is proposed by the parking lot and along Indian Creek Trail. At the entrance of the park, a gateway sign and a welcome sign are also planned. Indian Creek Trail will also receive minor updates on the west side of Indian Creek, making the park ADA accessible. Staff recommends the Planning Commission approve Case 60-14 with the stipulations outlined in the Staff Report, and I'd be happy to answer any questions you may have.

Comm. Williams: Will the rest of the land not used for the park be zoned for offices for development by Hallbrook?

Ms. Kriks: That is correct. The rest of the property east of the proposed dog park is retained by Hallbrook Office Center and will retain the zoning of SD-O (Planned Office).

Comm. Ramsey: Will the crushed aggregate pathway be like an AB3, or will it just be crushed rock? Will someone in a wheelchair be able to get down that walk?

Mr. Coleman: Yes, it will be ADA accessible.

Applicant Presentation:

Chris Claxton, Director of Parks and Recreation, appeared before the Planning Commission and made the following comments:

Ms. Claxton: This park is adjacent to City Park. With me tonight are Brian Anderson, Superintendent of Parks Maintenance and also Brett Haugland with Continental Consulting Engineers, who has been working with staff on this project. We are pleased that we already have parking available on the east end of the park, so it will be easier for people to access from that area. *(Refers to display board)* We're making some improvements off the parking lot to make it ADA accessible, so the grade will change a bit. Also, asphalt will come up to the bridge abutment with concrete. Crossing over the bridge and then getting to the entrance will also be concrete, as will the 16 X 16 bullpen area as we call it. In the report, you'll see three gates. One gets into the bullpen area, which gives the owners a place to unleash the dog. Then they can either exit left to go to the small dog area or to the right to go to the larger dog area. We have placed the drinking fountain in a higher spot so it is in the dog park area but is actually outside the fence. It will help keep it farther out of the floodplain, and it will be able to be accessed by patrons using it, whether they are going to the small dog or large dog area. One of the things that we needed to address was the fact that this is in the floodplain. We have tried to select things that will look nice in the area but are also functional. Wood can be replaced.

There is already some similar wood fencing along the trail a bit farther east. We have tried to make the spacing so that a smaller dog cannot get under it. The color scheme for the amenities is very complementary. We wanted to provide an area that would provide protection in storms, which is the sheltered area. The dog stations and benches will give a nice area for people to watch their dogs and still meander about the park. Right now, in regard to the crushed aggregated limestone path, it is proposed to be a future addition, depending on funding. Most of this work is going to be done by our staff internally with the exception of the big concrete areas and the adjustments to the ADA improvements on the trail. We'd be happy to answer any specific questions.

Comm. Ramsey: In order to access the park, the parking is in the City Park parking lot?

Ms. Claxton: That is correct.

Comm. Ramsey: There is not access off State Line Road?

Ms. Claxton: The only access that comes off the eastern section would be on the trail by foot.

Comm. Williams: What is the area south of the dog park?

Ms. Claxton: That is an easement, and that was part of what we worked out with Hallbrook. Right now, it's actually a haul road they used for years. Sometime in the future, we would be interested in working with them to make that a trail spur off the sidewalk, giving even better access to that area and connecting to the trail in front of the dog park entrance.

Comm. Williams: I realize the actual park area comes short of the pond shown on the north end; that is probably a good move. What determined a 4-ft. fence versus something even higher?

Ms. Claxton: I think just looking at some of the other dog parks in the area. Shawnee Mission Park virtually has no fence, but they are in a different situation. Stoll Park has a 3-ft. rolled fence. We talked with other dog park operators, and it appears once the dogs are let off their leash, they don't make attempts to jump over the fence.

Comm. Williams: That is very breed specific, unfortunately. In the signage, there is a comment that says that outside trainers using the area to conduct business is prohibited. Why is that, especially if they are Leawood residents?

Ms. Claxton: Currently, part of our policies is we don't allow our park facilities to be used for profit. The same thing applies if you were to try to go to a park and conduct a class of any sort.

Comm. Elkins: If you get approval, when would you contemplate that the park would be open?

Ms. Claxton: Pending your approval and also Governing Body's approval hopefully later in May, it would be probably July 1st.

Chair Rohlf: Will these rules and regulations be posted there?

Ms. Claxton: They will be posted at the entrance. We also have met with our risk management insurance company and with the City Attorney.

Chair Rohlf: Do you think you will have the personnel to oversee this as it opens and see what people are doing down there?

Ms. Claxton: I believe so. I think we'll be able to work with our Animal Control Division as well. The other thing I found about dog parks is that they tend to be somewhat self-policing. People tend to be pretty good about noticing things that seem inappropriate or people that are not meeting rules. Our staff will be in there every day, dealing with the dog waste and certainly with maintenance, looking for any problems.

Chair Rohlf: I think it is a great use of space. It's really good planning. It seems like when we had those public meetings about what we could utilize the space for near Leabrooke, it seems like a dog park was at the top of the list. It may not be there, but this is a great place.

Public Hearing

Lori Saar, 2812 97th Terrace, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Saar: As a new resident in Leawood and a dog owner, I am very excited to see this presented, and I hope that you will give it your full support. We walk those trails quite often. Where we live, we don't have sidewalks, so if we walk our dogs, we have to walk them in the middle of the street, which is usually a safe situation but not always. We tend to go to the City Park to walk our dogs, and it is a beautiful place. This particular field is perfect for a dog park. I'm very excited to see Leawood consider this. Thank you.

Peggy Wilson, 8207 Wenonga, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Wilson: I've been a resident for 47 years and grew up around Lee Boulevard. I have used that park. It's a great park for a dog park, but I'm concerned with the cost of the fence and if we couldn't use natural barriers because all of a sudden, this beautiful park and field is now citified. It's got wood all around it. Before, Mr. Ramsey mentioned that the pond is fenced out, but the big dogs run and play in the pond, and it's a freshwater pond. If you go on the trail, you can come into the field from the north side or the south side. Fencing it in might be good for insurance; it's not aesthetically pretty. It now looks like someone's big back yard. If it's fenced in with the wood, I understand you have to maintain civility and the dogs in the small park area, but I just would like to complain about the wooden fence. There are deer in that field early in the morning. Now, they're blocked off. I guess they could get to the water now but cannot get to the field. We've moved the wildlife out. They've cut it all down. There was really a natural barrier there. I've seen people use that park for a very long time with their off-leash dogs because it was a natural barrier and people didn't go back there. We've all gotten along fine with our dogs playing. There is a common law that they all have gotten along and all play. But when you put that fence up there, I don't know what the cost is, but the waste will be huge. You can pick up your waste on the trails and such, but all of a sudden, it's somebody's back yard that's just fenced in. I really believe it takes the beauty and aesthetics and fun of running free away. I think you have the letter from Mr. Guier. He asked me to read the letter, but if you have it, then you know what he has to say. There are probably 7-8 of us there early in the morning or late at night when the park is open who let our dogs run free. We really dislike the wooden fence barrier. If there is another fence where they can see and they are protected and the people are protected, maybe fence the path to keep them off, but they've all done fine without the big wooden fence around it. Thank you. I did not admit letting my dog off the leash, by the way.

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

Chair Rohlf: That takes us up to our discussion.

Comm. Williams: Ms. Claxton, could you address the comment about the possibility of natural barriers?

Ms. Claxton: I certainly appreciate the citizens' comments. From staff's perspective, we do have a leash law here. It makes it very hard to enforce that if there aren't some confines, in my opinion. I think it also makes it difficult for staff to effectively clean up the waste. I would also have some concerns because while there are many well-behaved dogs, there are also dogs that may not be in those categories and there is a lot of use on the trail. Again, although we don't have residential property, we do have the potential future development for the commercial development. I'm not speaking for them, but I would have some concerns about that as well.

Comm. Williams: Are there no natural barriers that could have been used in conjunction with fences?

Ms. Claxton: Natural barriers are a reference to the trees, I believe. We removed primarily trees that were dead or diseased. We tried to keep as many trees as we could. It is in a valley, but again, we don't own all the property that surrounds that area. The trees will not stop an animal.

Comm. Williams: We don't have any rock cliffs or that sort of thing?

Ms. Claxton: No.

Comm. Williams: This leaves open the pathway to the stream bed, so that can't be used as a barrier. You talked about taking out the dead trees. Is the space, then, pretty well open?

Ms. Claxton: It's pretty well open. The aerial photo is not 100% representative.

Comm. Williams: More than anything, the area in the illustration that is brown and open is barren ground?

Ms. Claxton: That is correct, and it will remain as such.

Comm. Williams: Is there a way of adding turf to the area so it's not all dirt and mud?

Ms. Claxton: It actually has turf. We already did seeding in the areas we disturbed. In that area, we hope to go in and seed in the fall.

Brian Anderson, Parks and Recreation Maintenance Superintendent, appeared before the Planning Commission and made the following comments:

Mr. Anderson: A fescue field is out there, and we have over-seeded it with the tall fescue. A lot of the trees were being flooded, and there were grapevines growing up. They were in bad shape, and some were hazardous. We have worked a lot of hours this winter clearing those out. There is an open alley through some of the small dog area that we have seeded.

Chair Rohlf: That takes us up to discussion, hopefully leading to a motion.

A motion to recommend approval of CASE 60-14 – CITY OF LEAWOOD – LEAWOOD DOG PARK – Request for approval of a Rezoning from SD-O (Planned Office) to REC (Planned Recreation), Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located west of State Line Road and north of College Boulevard – with five stipulations – was made by Williams; seconded by Jackson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 48-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Technical/Vocational Schools. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 48-14 – Leawood Development Ordinance Amendment to Article 9, Definitions – Request for approval of an amendment pertaining to the definition of Technical/Vocational Schools. This case is related to the next two as well. One is for definitions of Colleges and Universities; another is for Table of Uses with respect to College and Universities. Currently within the Leawood Development Ordinance, Technical/Vocational is allowed strictly within the BP District. It is defined as an establishment that offers vocational and technical education or training in a variety of technical subjects and trades such as business, commercial trades, language arts or other similar activities or occupational pursuits and not otherwise defined herein. Other schools are allowed in the Commercial District, such as elementary and middle schools. We thought the intent of the Technical/Vocational was limited to educational programs that dealt with large machinery or servicing of products or vehicles. Therefore, it would be limited to BP (Planned Industrial Park) to where the uses would be more appropriate. However, schools such as an education program for teaching or business where it's taught more in a traditional classroom without impacts such as large machinery, it could be very compatible just like other schools. Staff is recommending amending this definition of Technical/Vocational Schools to make it targeted a bit more to uses within an industrial facility. We'd like to change it to:

“An establishment that offers vocational and technical education or training in a variety of technical subjects or trades that are not limited to a traditional classroom and involve any of the following uses: hazardous materials, chemicals, storage of equipment, manufacturing, assembly, physical chemical components, servicing physical components of machines or equipment or other activities or occupational pursuits not otherwise defined herein. Technical/Vocational Schools shall include but are not limited to auto repair, machine manufacturing and repair, refrigeration repair and computer repair. Schools for information technology not involving any of the above activities such as computer programming shall not be considered a Technical/Vocational School.”

Staff is recommending approval of this LDO amendment, and I'll be happy to answer any questions.

Chair Rohlf: The following ones would change what?

Mr. Klein: The next one is Case 55-14 – Leawood Development Ordinance to Article 9, Definitions and pertains to colleges and universities, which are listed in the Table of Uses. They are allowed in the Commercial Districts; however, they are not allowed in the Agricultural District. They require a Special Use Permit; however, there is no definition of College or University in Article 9. The intent of that amendment is to provide a definition for Colleges/Universities that would distinguish it from Technical/Vocational.

The third one has to do with the Table of Uses. Colleges/Universities are allowed with a Special Use Permit within the Commercial Districts. This would allow it within the Agricultural District with a Special Use Permit, as elementary and middle schools are also allowed.

Comm. Jackson: Is there someone who is looking to move in with a college or vocational school?

Mr. Klein: This started with a discussion with St. Paul's Theology School going into the Church of the Resurrection. There was question about whether they were allowed in there or not. We didn't have any definition of College/University, and some may have included that type of education. It was an ancillary use, so we decided to try to address it with this amendment. Also, we see a number of universities around town.

Comm. Jackson: Was that one going to have living quarters?

Mr. Klein: I don't believe so.

Comm. Jackson: Would that be allowed under the definition?

Mr. Klein: It was not our intent to allow dormitories. That's an excellent question.

Comm. Williams: That would raise the question of intent versus legality.

Mr. Coleman: If it's not in there, then it doesn't exist and is not an approved use.

Comm. Jackson: Then if it is not included as having dormitories or living arrangements, it is not included in a university?

Mr. Klein: The definition would have to be amended.

Comm. Jackson: Do we need to explicitly deny it?

Mr. Coleman: We would have to explicitly allow it. If it's not in there, it's not allowed.

Comm. Williams: Going back to the last line of the Technical/Vocational, you specifically said that computer programming shall not be considered; yet, you find computer programming in many Technical/Vocational schools. Why are you pulling that out? Is that to allow it to go other places as well?

Mr. Klein: It is to allow computer programming to go other places. For instance, if it is software/computer programming, it doesn't have the impacts with a stockroom or storeroom or large machines.

Comm. Williams: Computer programming could be in one of these schools.

Mr. Klein: It certainly could, and if it also had the activities listed above, it would fall under Technical/Vocational.

Comm. Elkins: In looking at the Table of Uses, I noticed a reference to a category called School Business/Secretarial. Is there a definition for that?

Mr. Klein: There is no definition for it.

Comm. Elkins: So we haven't fixed that particular piece.

Mr. Klein: That is correct.

Comm. Elkins: This is a technical point, but in Case 55-14, we're creating a definition for something called "School/College or University." In the Table of Uses, even as we proposed to amend it, we don't really have a category for it. To be precise and consistent, I see that we do have a category called College or University. It would make sense for me to move College or University over to the last page with School, School/University. Technically speaking, if we do it as proposed now, we still have the same problem: we don't have a definition for a College or University.

Mr. Klein: That makes sense.

Public Hearing

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

Chair Rohlf: This takes us to discussion and a motion.

A motion to recommend approval of CASE 48-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Technical/Vocational Schools – was made by Elkins; seconded by Williams. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 55-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Colleges and Universities. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 55-14 – Leawood Development Ordinance Amendment to Article 9, Definitions. Mr. Elkins had an excellent point with regard to Schools, Colleges and Universities. We are defining it as “An institution, public or private, other than a trade or vocational school that provides full-time or part-time education beyond high school in a traditional classroom setting.”

Comm. Elkins: I was suggesting the Table of Uses.

Mr. Klein: I’m sorry; that is correct.

Public Hearing

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

A motion to recommend approval of CASE 55-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Colleges and Universities – was made by Elkins; seconded by Roberson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 51-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES, pertaining to Colleges and Universities. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 51-14 – Leawood Development Ordinance Amendment to Section 16-2-7, Table of Uses, pertaining to Colleges and Universities. The intent would be add Colleges and Universities; however, it would be better to change the name to Schools, Colleges and Universities so it is located in a better

position within the table and to allow that in the Ag District as well as the Commercial District with a Special Use Permit. Staff is recommending approval of this amendment. I'll be happy to answer any questions.

Public Hearing

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

A motion to recommend approval of CASE 51-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES, pertaining to Colleges and Universities – with the following modification: The line item on the first page entitled College or University be stricken and that there be added a category of use called School/College or University that has the indicated approved uses in the right columns as were previously under Colleges or Universities – was made by Elkins; seconded by Williams. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 47-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Retail Sales with Limited Manufacturing. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 47-14 - Leawood Development Ordinance to Article 9, Definitions, pertaining to the definition of Retail Sales with Limited Manufacturing. This case is related to the next one as well. This one specifically addresses a definition that does not exist for a category called Retail Sales with Limited Manufacturing. Case 52-14 addresses placing that use into the Table of Uses. This particular application is before you to allow retail sales which might have some sort of manufacturing of the product as a component of that business but secondary to that business. The product could then be sold at the store's location. An example of that would be candle making, soap making, picture frame assembly. It does have limitations of 49% of the square footage allowed for the manufacturing; 51% would have to be devoted to the retail sales to ensure that the sales are the focus. In addition, it would require a Special Use Permit recommended by the Planning Commission and approved by the Governing Body. Such Special Use Permit would be conditional upon an annual review by the fire official in compliance with fire and building codes. In addition, the manufacturing has to be secondary to the retail sales. All products manufactured onsite shall be for onsite sales only. The intent is the manufacturing is to support the sales in that particular store. It would also limit hazardous materials to 10% of that allowed by the International Building Code and International Fire Code for any specified occupancy type. In addition to that, it would also not allow any high-hazard chemicals. Building Official Travis Torrez and Fire Marshal Gene Hunter are also here to answer any questions you might have. Staff is recommending approval of this application, and I'd be happy to answer any questions.

Comm. Williams: I have a comment about products manufactured and not shipped to another location. Are you specifically saying not to ship to Overland Park for sale in another retail store, or does it include mail order?

Mr. Klein: We tried to take that into consideration. If an order is called in, the sale is still at the store. If it were taking it to a different location that didn't have the manufacturing, it couldn't be shipped for the point of sale to occur somewhere else.

Comm. Williams: You call out the candle making and soap. Does this apply to things like candy and ice cream and other food objects?

Mr. Klein: We had that discussion as well with kitchens and combining materials. We have never considered that manufacturing. Candy might be different. If it is created, wrapping and presented for sale, it is a grey area. Cooking is something like a restaurant. We have Cupcake a La Mode and that kind of thing where they're making the cupcakes in the back of the store and selling them.

Comm. Williams: I'm trying to get an understanding of where all these different types will fall in.

Mr. Coleman: It is not intended to apply to food service.

Comm. Williams: When I first read this, I had confusion with lumping picture framing in with candle making. It gets to be a question of picture framing. Any framing store is manufacturing those frames onsite unless they're selling pre-manufactured items. I think there would be a difference if there is a wood shop in the back versus most of them that take manufactured product, cut it to length and assemble. You are classifying a framing shop the same as a manufacturing facility for candles and soap. I don't see where they are.

Mr. Klein: I was trying to cover both of those. I realize picture framing shops cut them to size and fit them together. Some use a miter box, cut them to the correct angles, rout the edges and assemble. This would allow that.

Comm. Williams: It allows it, but it puts a space stipulation on them. I'm mixed on that one. How do you see this ordinance relating to something like an artist's studio, such as an artist that wants to fabricate something in the back room and sell it out front? Would the size stipulation have to be met, even if it was not applicable to the particular business?

Mr. Klein: Do you mean something like premade canvases where they paint?

Comm. Williams: It could be all kinds of art forms. It could be a welder, for that matter. I see that as higher end and probably not likely. It could be a potter.

Mr. Klein: I would classify the potter, the welder and, by extension, maybe the painting as the same.

Mr. Coleman: It would apply.

Comm. Elkins: I just want to clarify the last paragraph. It may actually go to the next case, but since it's in the paragraph, I'll ask. What you're proposing is that this would be a permitted use in the SD-CR District, and because the linking in 16-2-6.4 for Mixed-Use Developments, this use would effectively be appropriate in the Mixed-Use Development, correct?

Mr. Klein: Correct.

Comm. Elkins: Those are really the only two zoning areas that this use would be approved for.

Mr. Klein: Yes, and part of the reason we are here with this is when you reviewed the Park Place Preliminary Plan, they showed some live/work units. It is very possible that they may have tenants who want to do exactly this: live above a studio with manufacturing and have this type of shop. We wanted to be proactive and address what might come up.

Public Hearing

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

Chair Rohlf: That takes us up to discussion.

Comm. Elkins: The concern I have is Mr. Coleman made the point is that it was not intended that this definition of Retail Sales with Limited Manufacturing would extend to food service. I know it's a slippery slope when you start listing all the things it is not intended to include, but I'm wondering if we should find a place in this definition to articulate our intent that Retail Sales with Limited Manufacturing will not include food service. I'd be interested in the thoughts of my colleagues because I could go either way. I just worry about an expression of intent and the application that will surely come up to challenge that unspoken intent. Again, I recognize it is a slippery slope to list all the items not included.

Comm. Levitan: I would agree with food and putting the intent that it doesn't apply to food because that is more likely the case for retailers in Leawood. The language is vague in general, and I'm not an attorney to be able to clean this up, but I do think we need to address the food item.

Comm. Williams: I concur. If we are going to change the ordinance and add new definitions, it needs to be as clear as possible.

Comm. Jackson: What is cupcake making considered?

Mr. Klein: It would be food. Would it be possible to say "An establishment, other than food-related businesses, whose primary use is retail sales"?

Chair Rohlf: Could you put "Excluding food service after sales"?

Comm. Williams: Does that work for the lawyer on the panel?

Comm. Jackson: Mr. Coleman is right; it says, "Retail Sales and Services" and then "Food Store Specialty." It already has its own category. Do you need to exclude it?

Chair Rohlf: We shouldn't exclude it, then; it's already there.

Comm. Jackson: Retail Sales appear on the second page of the tables, and then farther down is Food Service/Specialty. That would seem to cover that. It would be hard for someone to come in and say they are manufacturing.

Comm. Elkins: Just to be sure, do we actually have those uses defined in the ordinance?

Mr. Klein: Bakery is defined; Food Store/Specialty, I do not see.

Comm. Elkins: Maybe that is for another time, but it looks like we may have it covered.

Comm. Williams: Would you lump candy stores into Specialty Stores?

Mr. Klein: I think so.

A motion to recommend approval of CASE 47-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the definition of Retail Sales with Limited Manufacturing – was made by Jackson; seconded by Elkins. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

CASE 52-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES, pertaining to retail sales with limited manufacturing. PUBLIC HEARING

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 52-14 – Leawood Development Ordinance Amendment to Section 16-2-7, Table of Uses, pertaining to retail sales with limited manufacturing. This would make this use allowable within the SD-CR District as well as the MX-D District by extension.

Public Hearing

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

A motion to recommend approval of CASE 52-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-7, TABLE OF USES, pertaining to retail sales with limited manufacturing – was made by Jackson; seconded by Roberson. Motion passed with a unanimous vote of 6-0. For: Levitan, Roberson, Jackson, Williams, Elkins and Ramsey.

MEETING ADJOURNED