

**City of Leawood
Planning Commission Meeting
March 24, 2015
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, Pateidl, Jackson, Williams, Strauss, Ramsey, and Walden.
Absent: Roberson. Joined after the meeting began: Elkins

APPROVAL OF THE AGENDA:

A motion to approve the agenda was made by Ramsey; seconded by Jackson. Motion carried with a unanimous vote of 6-0. For: Levitan, Pateidl, Jackson, Strauss, Ramsey and Walden.

CONTINUED TO APRIL 28, 2015:

CASE 61-13 – RANCH MART - Request for approval of a Revised Preliminary Plan, located north of 95th Street and east of Mission Road. PUBLIC HEARING (Remand from the Governing Body)

CASE 137-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-6.4 MXD (MIXED-USE DEVELOPMENT DISTRICT) – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to required use ratios. **PUBLIC HEARING**

CASE 138-14 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-6.13, PERMANENT SIGN REGULATIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to window signs. **PUBLIC HEARING**

CASE 01-15 – MARKET SQUARE – BANK OF BLUE VALLEY – SPRINT WIRELESS ANTENNAE – Request for approval of Special Use Permit for a wireless antennae and associated equipment, located north of 135th Street and east of Mission Road. **PUBLIC HEARING**

CASE 33-15 – MYERS RESIDENCE – SPORT COURT WITH LIGHTING – Request for approval of a Special Use Permit, located at 14600 Mission Road. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 29-15 – TOWN CENTER PLAZA – KCP&L ELECTRIC VEHICLE CHARGING STATION – Request for approval of a Final Plan, located south of Town Center Drive and west of Roe Avenue.

A motion to approve the Consent Agenda was made by Ramsey; seconded by Strauss. Motion carried with a unanimous vote of 6-0. For: Levitan, Pateidl, Jackson, Strauss, Ramsey and Walden.

NEW BUSINESS:

CASE 24-15 – CITY OF LEAWOOD 2016 - 2020 CAPITAL IMPROVEMENT PROGRAM – Request for approval of the 2016 – 2020 Capital Improvement Program. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 24-15 – CIP [Leawood Capital Improvement Program] for 2016-2020. Joe Johnson, Director of Public Works, is here to answer any questions that weren't covered in the work session that was held to discuss the topic.

Mr. Johnson: We discussed potential changes in funding of some projects in the CIP. The biggest change is the storm sewer replacement program that was changed from 7 years and a total of \$35 million to \$3 million every odd year with a \$3 million residential reconstruction program every even year. The storm sewer replacement program will be carried out in 10-12 years. This allows the city to move some major road improvement projects up sooner. Improvements will occur this year between 143rd and Nall and Windsor. In 2019, 143rd St. from Windsor to Kenneth Road will be improved. The change allows Mission Road from 135th St. to 143rd Street to be moved to 2021 and Mission Road from 143rd St. to 151st St. to 2023. Spreading out the cost of the storm sewer replacement program allows for this acceleration of some of the road projects.

The other change that is being reviewed annually is a 3-year program that involves major maintenance on the park lands, including the new construction for a clubhouse for the golf course. Other than that, there are no additional changes from the work session discussion.

Chairman Williams: I was not able to attend the work session, and I know that Mission Road is a topic that comes up every year. Have there been traffic studies on that stretch, both from a vehicle and pedestrian perspective? There is a school at 143rd Street with some kids walking.

Mr. Johnson: Going south from 138th Street, there is sidewalk access to 143rd Street. With the improvements to 143rd Street, sidewalks will run all the way from Nall to Windsor, and a bike trail will be on the north side as well as a 5-ft wide sidewalk on the south side. Sidewalk extension on Mission Road north of 138th street is limited because of right-of-way issues. The city is seeking temporary easements for temporary sidewalks.

Comm. Pateidl: With the Oddo project nearing completion, there will be 272 multi-family units in place. At this point in time, we have no idea what the demographics will be, but we can assume there will be a fair number of families with school-age children. Currently, the only passageway with a controlled intersection for the children to get to a sidewalk on the opposite side of Mission Road from the school is to walk down to 135th Street with no sidewalk to cross with a signal. Then, they will walk 2 ½ blocks to walk back to a marginal sidewalk on the wrong side of the road. I understand that we may have right-of-way problems, but those have been going on for at least the five years I have been involved on this commission. With the occupancy of those apartments, we face a serious responsibility to the safety of children and their access to school. That access should be on the east side of the street. I wasn't here for the work session, or I would have gone into detail with it at that point in time. I want to go on the record and say that it is extremely important and irresponsible for us not to be addressing that problem.

Mr. Johnson: City Council is aware of that and shares that same concern. They are trying to extend projects out to address the concerns.

Comm. Pateidl: I just hope we don't have serious injury or death in the next five years before we have money to address the problem.

Chairman Williams: Are there any other questions? Thank you. This requires a Public Hearing.

Public Hearing

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

A motion to recommend approval of CASE 24-15 – CITY OF LEAWOOD 2016 - 2020 CAPITAL IMPROVEMENT PROGRAM – Request for approval of the 2016 – 2020 Capital Improvement Program – was made by Strauss; seconded by Ramsey. Motion carried with a unanimous vote of 6-0. For: Levitan, Pateidl, Jackson, Strauss, Ramsey and Walden.

CASE 147-14 – MAINSTREET ASSISTED LIVING/SKILLED NURSING FACILITY – Request for approval of a Rezoning from AG (Agricultural) to RP-3 (Planned Cluster Attached Residential), Special Use Permit for an Assisted Living/Skilled Nursing Facility, Preliminary Plan and Preliminary Plat, located south of 143rd Street and east of Nall Avenue. **PUBLIC HEARING**

Staff Presentation:

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 147-14 – Mainstreet Assisted Living / Skilled Nursing Facility, located on the southeast corner of 143rd and Nall Avenue. The applicant is requesting approval for a Rezoning from AG to RP-3, a Special Use Permit for an Assisted Living Facility, a Preliminary Plan and Preliminary Plat. The applicant is proposing a 2-story, 69,465 sq. ft. building with 2 parking lots containing 108 total parking spaces on a 290,053 sq. ft. lot. Currently, the lot is un-platted. The applicant is proposing platting the 6.65 acres into one lot. The property is currently zoned Agriculture. The applicant is proposing a Rezone to RP-3, which is Planned Cluster Attached Residential. Assisted Living and Skilled Nursing Facility is allowed in RP-3 with a Special Use Permit. The plan proposes one centrally located building with 3 1-story wings connected by a 2-story strip going east and west. Multiple courtyards are proposed throughout, which include outdoor seating, outdoor dining, a rehab and physical therapy area and a pedestrian plaza. A right-in only entrance is proposed off 143rd Street, a right-in, right-out off Nall and access to a private drive to the east. Street trees are proposed along Nall and 143rd planted at 35 feet on center as well as the required number of ornamental trees and shrubs. Landscaping will be finalized with the Final Plan. Preliminary elevations will be proposed with this application, but elevations and materials will be reviewed and approved with the Final Plan. The applicant is proposing the building at 35 feet in height with vertical windows and dormers to break up the roofline. Materials proposed include natural stone, cementitious stucco and a concrete tile roof. There is also a tower element being proposed at the main entrance with 3 levels of windows. The applicant is also proposing a roof drip line with ground trenches instead of gutters and downspouts. The applicant is proposing 108 parking spaces in 2 lots. The lot to the north of the building has 62 spaces; the lot to the south has 46 spaces. They will be connected with a drive along the east. Staff is recommending approval of Case 147-14, and I would be happy to answer any questions.

Chairman Williams: Could you go back to the drip line? Since we typically have gutters and downspouts, what is your position?

Mr. Klein: Staff reviewed this with the applicant, and we are supportive. Typically, we don't like to see the downspouts. This was a solution they proposed. We widened the area where the water drips.

Chairman Williams: Are there any other questions for staff?

Applicant Presentation:

Curtis Peterson, Polsinelli, 6201 College Blvd, Suite 200, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Peterson: I'm here with an entire team to answer any questions you may have. The Staff Report was very straightforward, and we are in agreement with all the stipulations. Mike Klingl, Developer for Mainstreet Property Group, is here as well. Todd Mozier is the Senior Development Director with R.A. Smith, our civil engineer. Tom Ingram from Cook, Flatt and Strobel is here as our traffic engineer.

This particular client is someone our firm works with in many states, including many locations throughout Kansas. The use is tremendous, and they are worthy of Leawood with their skilled nursing and assisted living components for this facility. We went through several layouts and different access potentials for the site. We were pleased, and we feel that staff is as well, given their support.

Comm. Elkins joined the meeting.

Mr. Peterson: I have one technical note for the record. In the Staff Report, one location mentions an applicant entity that is an affiliate, but it isn't technically the applicant. To clean up the record, the applicant and SUP recipient would be MS Leawood, LLC. With that, I'm happy to answer any questions.

Chairman Williams: I have a few questions for your design team. Are there any questions of the attorney? Thank you. My first comment is your renderings are quite nice, and they show nice landscaping. Could you explain some of the site development as it relates to the neighbors?

Mr. Peterson: *(Shows slides)* I would start to the south. We have a very nice villa project to the south, and the grade drops off. We had a wonderful meeting with some of the residents of Highlands Villas. We discussed how the grade changes. We put in a berm and landscaping to address the transition. On the east is another grade change. We were careful to avoid headlight issues, and we were careful not to interact with any other head-in parking. To the north, the church was represented at our neighborhood meeting. There are no transition issues there. I would say the same is true to the west.

Chairman Williams: On the west side along Nall, what is the grade relationship?

Mr. Peterson: That breaks to the west.

Chairman Williams: In terms of the design of the facility, could you walk us through its design, size and mass to create the architectural elements that may or may not relate to surrounding areas?

Mr. Peterson: I should have talked about massing in our transition discussion. On the south side, there are three pieces of the building that jut out. From the central area to the south is 1 story. The east-west part of the building and the smaller pieces that jut to the north, including the main entry feature, are all 2-story. There is also a tower feature that is the most prominent feature. It goes to the maximum height of 35 feet.

Chairman Williams: Thank you. Are there any further questions? Thank you. This case requires a Public Hearing.

Public Hearing

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

Comm. Strauss: Mr. Ley, regarding the circulation of the site, I didn't see any concerns in your report. There is a right-in on 143rd Street, so I presume that there will be an access break at Birch in the future when it becomes a 4-lane roadway.

Mr. Ley: Currently, the median breaks at Birch, so it is a full access point. The island will not extend to the east of the 143rd Street project.

Comm. Strauss: I know from proximity it is too close to a traffic signal, but Birch is only serving that development and the development to the south. Do you anticipate a need for a traffic signal, or is it just low volume?

Mr. Ley: It is very low volume, and there is also full access on Nall through the development to the south. There is really good access from the development to the south.

Comm. Strauss: Is that how people will come from the east side?

Mr. Ley: They could turn left on Birch, or they could go to Nall, do a U-turn and access the right-in from Nall.

Comm. Strauss: The U-turns are part of my concerns.

Mr. Ley: The traffic report showed very minimal traffic counts for this development, especially during the PM peak.

Chairman Williams: Any further questions?

A motion to recommend approval of CASE 147-14 – MAINSTREET ASSISTED LIVING/SKILLED NURSING FACILITY – Request for approval of a Rezoning from AG (Agricultural) to RP-3 (Planned Cluster Attached Residential), Special Use Permit for an Assisted Living/Skilled Nursing Facility, Preliminary Plan and Preliminary Plat, located south of 143rd Street and east of Nall Avenue – with 18 stipulations, modifying No. 2 to read “NS Leawood, LLC” instead of “Mainstreet Property Group” - was made by Jackson; seconded by Elkins. Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Strauss, Ramsey and Walden.

CASE 161-14 – IRONHORSE CENTRE – THE FAIRWAYS OF IRONHORSE – Request for approval of a Rezoning from SD-NCR (Planned Neighborhood Retail) and SD-CR (Planned General Retail) to MXD (Mixed Use Development District), Special Use Permit for an Independent Living Facility, Revised Preliminary Plan, and Revised Preliminary Plat, located south of 151st Street and east of Nall Avenue.
PUBLIC HEARING

Staff Presentation:

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: Before I begin my presentation, I wanted to bring attention to a memorandum adjusting stipulation No. 29 to read, “...The property owner cannot remove the fence without prior city approval.” I have also placed the Interact meeting that was accidentally left out of the packet.

This is Case 161-14 – request for approval for Rezoning, a Special Use Permit for an Independent Senior Living Facility, Revised Preliminary Plat and Revised Preliminary Plan for Ironhorse Centre and The Fairways of Ironhorse, located south of 151st Street and east of Nall Avenue. Currently, Ironhorse Centre is under two zoning classifications. A majority of the development is zoned Planned Neighborhood Retail; however, a single lot at the northeast corner of the development is zoned Planned General Retail. The applicant is proposing to rezone the entire site to Mixed Use. This zoning designation proposed is in accordance with the Leawood Comprehensive Plan. The applicant is also requesting a Special Use Permit for the proposed Independent Senior Living Facility as required by the LDO. The facility is planned to be considered as a residential component required for the Mixed Use rezoning request of this application and will meet all requirements for Residential in Mixed Use. Currently, there are a total of 8 lots within Ironhorse

Centre with 6 of those lots developed. There are 2 undeveloped lots at the southeast corner of the development that are currently known as Lots 5 and 6 are proposed to be re-platted into Lot 9, where the facility will be located. The newly created lot shall be 173,835 square feet in size or 3.99 acres. No other changes to the lot lines are proposed for the development. Along the east and south perimeter of Ironhorse Centre, a 25-ft. golf course easement is present. This easement prohibits any structures or activities to be conducted within this easement and is in place to protect individuals from wayward golf balls from the course. The applicant met with the Golf Course Committee to discuss a project which resulted in some concerns regarding an off-leash dog area proposed within the golf course easement, a retaining wall located within the easement, and restricted air flow on the 15th green and 16th fairway due to the height of the facility. The applicant has since removed the off-leash dog area and has moved the retaining walls outside the easement. The only remaining issue is a possibility of restricted air flow on the golf course. The applicant has indicated to the Golf Course Committee if air flow does become a concern, they are willing to purchase and install fans. The independent living facility is proposed to be located at the southeast corner of the development within Lot 9. The building is proposed to be v-shaped where the apex is located at the southeast corner and extend to the north and west along the property lines. Access to the facility will be by an existing private drive and a roundabout. The applicant is proposing a total of 154 parking spaces, 84 of which will be service parking; 74 are proposed to be below ground. The below ground shall qualify as a required covered parking for the independent living facility. Access to the below ground parking shall be via a one-way drive on the west side of the building, and residents shall access to the north. Within the parking lot, a plaza is planned with a variety of landscaping, seating amenities and a gazebo. On the southeast side of the facility adjacent to the golf course, a putting green is proposed for residents. A perimeter fence is proposed along the common property line with the golf course, and a retaining wall with a fence is proposed just outside the 25-ft. golf course easement on the applicant's property. The maximum height of the facility is proposed to be 4 stories and approximately 55 feet with the tallest point at the southeast corner of the building, transitioning to 3 stories to the north and 2 stories to the west. The applicant has proposed EIFS and cultured stone as a primary building material; however, since this is a Preliminary Plan, building materials are not approved at this stage. Building materials are reviewed and approved with the Final Plan. With this application, the applicant is requesting the following 3 deviations for the development:

- Deviation to the exterior parking setback to allow for 19 feet for an existing parking lot adjacent to 151st St. The LDO allows a deviation to reduce the exterior parking setback for up to 75% of the standard requirement
- A side yard setback of 0 feet for a building which is currently adjacent to an interior lot line as is its existing condition. The LDO allows for side yard setbacks to be reduced to 0.
- An interior parking setback of 0 is requested to allow for this condition. The LDO also allows for interior parking setbacks to be reduced to 0.

Staff does recommend the Planning Commission approve Case 161-14 with the stipulations outlined in the Staff Report, and I'd be happy to answer any questions.

Chairman Williams: Did we not have a building approved for this lot some years back?

Mr. Klein: Yes, an architectural office was approved. It was a v-shaped, 2-story building.

Chairman Williams: It wasn't this large, but the height was the same, and I don't recall any issues with the height at that time.

Mr. Klein: Correct, and it was different in that the current request is to rezone to MX-D, which has a height limit of 90 feet as opposed to 50 feet, which is allowed by SD-NCR.

Chairman Williams: Any further questions of staff?

Applicant Presentation:

Curtis Holland, Polsinelli Law Firm, 6201 College Blvd., Suite 500, appeared before the Planning Commission and made the following comments:

Mr. Holland: I want to introduce members of our team. Brandon Breising with Merrill Companies was the original developer of Ironhorse Centre. Brett Johnson and Matt Gilham are principles with Overland Property Group, which is the proposed developer of the building for the independent facility on what is not Lots 5 and 6. Brad Sonner with Olsson and Associates is our civil engineer. Stephanie Bradshaw is legal counsel to St. Luke's South Hospital, which is a co-applicant and owner of Lot 4. I will talk briefly about why we're here, and then Brett Johnson will go over the plans for the Independent Facility.

The primary reason we are here tonight is to discuss the rezoning for Ironhorse Centre. The impetus is the proposed senior independent living facility in the southeast corner of the property. The reason we're coming here tonight has to do with the height of the building, which is taller than what would be permitted in the current zoning district. Staff indicated the Comprehensive Plan shows the property designated as Mixed Use, which would be an appropriate category for the property. We had the property owners agree to the rezoning, and St. Luke's joined us in the request. We met with the Golf Course Committee very early on in the process. They raised concerns with the early design. In response to those meetings and discussions with the committee and Chris Claxton, we made changes to address the concerns. The committee is now in support of the application. One of the attractive features of the area is the golf course itself. The Centre adjoins the course on the north and east. Across the fairways are some single family residential homes. We met with the neighborhood, and some concerns were raised at those meetings. The first issue was traffic increase. Olsson and Associates submitted a report, and the traffic generated from this particular use would decrease the expected traffic from an office development by approximately 500 trips. The AM peaks would be an estimated 92 fewer trips; the PM peaks would be an estimated 113 fewer trips. Another concern is the building height. While the building is a 4-story building in the center of it, the height transitions from the outer edge. The SD-NCR allowed for a 3-story building, and this proposed building needs to be put in context. The houses are a substantial distance from the building. Additionally, trees line the back side of their properties, just as trees line the golf course. With that, I will turn it over to Mr. Johnson.

Brett Johnson, Overland Property Group, 5345 W. 151st Terrace, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Johnson: We've been around for 12 years, and this will hopefully be our first hometown development. We started in 2002 and have covered 5 states with rental product, ranging from multi-family all the way up to independent living facilities. This will be our 7th facility, not to be mistaken with Mainstreet Development, which has the assisted component and skilled nursing. We are predominantly focused on independent living and have 3 here in the metro. This particular product will be what we refer to as boutique senior living, which is a relatively new concept and will be one of the first in the Midwest that focuses on the level of service. As such, it is an opportunity for Leawood to help lead the way as far as the new direction for independent senior living. This is not typical congregate living. It is fewer than 100 units to prevent detachment of the residents. This will have a resort feel with valet parking, catered meals and high-end materials in each unit. The building itself is 120,000 square feet and meets the LDO requirement of 80% of the units being more than 1,000 square feet. The challenge is if the units are more comfortable, the residents are less likely to use the common areas. We have a nice blend. The amenities include a movie theater, sports bar, exercise room and synthetic putting green. The dog park has been eliminated, as it was not a good fit. Every unit has a patio or balcony. Neighbors include Paddy O'Quigley's, St. Luke's, Simmons First Bank and Reece Nichols. We will have constant oversight on our development because of our office location.

The iterations of the building have gone through many changes through working with staff for the last 8 months to meet their requests and also the LDO requirements. The building began as a 4-story building; it is now a stepped building that transitions from a 2-story to a 4-story building in places. The final product includes more stone, which will all be natural stone. The columns in Ironhorse Centre are replicated

to create continuity so the building fits in seamlessly. The prairie style roof matches the existing roofs. The unit plans are standard; what is not here is 40,000 square feet of common space. The residents will have every opportunity to be self sufficient within their units, but if they desire, they will have a meal plan and a la carte services available to them, from travel arrangements to dry cleaning. We fit 74 underground climate controlled parking spaces along with a storm shelter. A van service will take residents to anywhere within a 10-mile radius. We did a third party market study for cost, and they showed that there is very strong demand in southern Johnson County, particularly in the neighborhood. I can answer any questions you may have.

Chairman Williams: What is the ballpark cost?

Mr. Johnson: Our market study included comps in the area, and we asked the analyst to share attainable rents. They came back with \$3,250 a month for a 1-bedroom and \$4,250 for a 2-bedroom. It is high, but there is a market for it. That includes everything from a meal plan to utilities. This is in the upper 1/3 of the comp market. The study also said that the adult caregivers of these seniors are also affluent and desire to have their parents live near them or the grandchildren. The trend in the business is that the adult caregivers are dictating where mom and dad will live.

Chairman Williams: You have already addressed the distance issue, which is important because of public comments. The distance of a football field and a half seems to be a good distance.

Mr. Johnson: It is, and that is why we emphasized it. Not only does the distance help, but many trees also line the boundaries.

Comm. Strauss: Can you explain the retaining wall that goes around the building?

Mr. Johnson: I'll have Brad Sonner explain the walls.

Comm. Strauss: One of the walls looks really tall. You talked us through the building materials, but then the retaining wall reminds me of a highway retaining wall.

Mr. Johnson: We will work with staff on developing a retaining wall, which will taper from the western edge of the building.

Brad Sonner, Olsson Associates, 7301 W. 133rd St. Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Sonner: The retaining wall and fence is 4-5 feet and goes to 13 feet at the corner.

Mr. Johnson: We have a fence next to the golf course, and we will work with Merrill to extend the outer fence to 6 feet. The fence on top of the retaining wall will be a 4-ft. wrought iron fence.

Comm. Strauss: I'm not as concerned with the wrought iron fence as the retaining wall. What is the wall made of?

Mr. Sonner: We're still working out the final details, but it will probably be a modular type of block.

Ms. Kriks: There are existing retaining walls at Ironhorse Centre just outside the 24-ft. golf course easement, and staff will require the retaining wall in this project to match those walls. I believe it is Versalock.

Comm. Strauss: The building height was stated at 40 feet.

Mr. Johnson: I believe the peak is 54 feet.

Comm. Strauss: From the ground level of the golf course, another 13 feet could be added.

Mr. Johnson: We have the topography, but it doesn't take the trees into consideration. Google Earth shows the topography and the need for the retaining wall. The highest point will be on the southeast corner.

Ms. Kriks: There are also site sections in your packet which include the golf course and buildings.

Mr. Johnson: The finish grade of our building is the same level of the homes on both sides.

Comm. Ramsey: From the back of the property line for the residents to the east to the top of your proposed building is a difference of about 60 feet in elevation. I also see a difference of about 600 feet in distance from the property line to your property line.

Mr. Johnson: That is correct, and we did measurements on the peak lines of those homes as well. They ranged anywhere from 37-45 feet, depending on the style. The distance from the property line to the home shown would be 554 feet.

Comm. Jackson: What was the airflow issue?

Mr. Johnson: When we met with the golf course superintendent, the only concern was if the structure would block wind coming from the southwest. The main concern was the green, which sits in a hole and is blocked by trees; however, we feel that our building does not block wind up the green and to the fairway. We have explained that we would be willing to put a fan on the green if a study showed that the building caused detrimental blockage.

Chairman Williams: Is the wind for the comfort of the golfers?

Mr. Johnson: No; actually, moisture can build up without the wind and can cause mold issues.

Chairman Williams: Are there further questions for the applicant? Is there anything else your team would like to say?

Mr. Johnson: No; we appreciate the opportunity to work locally.

Mr. Holland: I forgot to mention there is a significant number of stipulations, and we agree to all of them. As indicated by staff and Mr. Johnson, it includes the materials that will be evaluated in the Final Plan. We will work with staff to meet their requests. We have done everything that staff has asked us to do. We hope for a recommendation for approval.

Comm. Pateidl: Since we're looking at a zoning change to Mixed Use, it seems that if this project is completed, it is basically built out. There are roughly 74 units with 40,000 square feet of common space. Have you done the calculations to determine if it meets the 20% requirement?

Ms. Kriks: It meets all the use requirements for a Mixed Use Development.

Comm. Elkins: Mr. Holland noted that the Comprehensive Plan shows this space as Mixed Use; obviously it is not zoned as such. When did the Comprehensive Plan first indicate this space for Mixed Use?

Mr. Klein: It was probably around 2005-2006.

Comm. Elkins: As early of 2005, the idea of Mixed Use has been included in the Comprehensive Plan and noticed to the public.

Mr. Klein: Correct.

Chairman Williams: Any other questions for staff? This case requires a Public Hearing.

Public Hearing

Tom Slezak, 4717 W. 152nd Street, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Slezak: I live at The Village at Ironhorse. I've lived there for 13 years. I live in the development directly east of the 16th fairway. I'm the president of our 51-member homes association. Our property values in there range from the high \$400s to close to \$700,000. I'm a residential realtor with Reece and Nichols and have been for 13 years. I'm in the Leawood office at 135th and Briar. I have listed and sold 11 properties in this community, so I know it well, and I know the values well. In 2001 when the development began selling lots to homeowners and builders, the golf course lots were quickly snapped up, as they were a premium. Homeowners paid an additional \$75,000-\$80,000 per lot over existing non-golf course lots. Buyers appreciated the view of the golf course and the trees that line the course on the 17th fairway. These homeowners understood that the property to the west was zoned for future development with roof heights no larger than 35 feet. When the current structure on the east side of the golf course in the Ironhorse Centre was built, our community was pleased with the look they had and the heights of the buildings. I attended the Interact Meeting in October, and I believe it to be an outstanding project; I just don't think it is a good fit for those two lots and for our community. Last April, I listed and sold a home at 15204 Linden for what then was a post-2008 real estate crash high price of \$662,000. This is one of the homes on the golf course that will look directly at this development. The buyer told me he would not have bought the property had he known there would be a 4-story development. As a realtor, I can tell you that the property would not have sold for \$662,000 had that building been proposed or built. This building will impact the value of all the residents. I don't live on the golf course, but it will impact the value of my house. The golf course lots are the premium lots. The homes sell quickly for a premium, and then they trickle down and affect the price of the other homes in the community. This building will impact the value of the entire 51-home community.

There was concern about traffic. The entrance will be at 151st and Ash, and that currently is 2 lanes eastbound and two lanes westbound at 45 MPH with no stoplight. When it crosses Ash, it goes to 2 lanes at 35 MPH. It is quite a change with people merging from 2 lanes to 1 with a reduced speed. I don't know if there is a proposed stoplight for the intersection, but I think traffic is a concern. I know 151st Street has had a proposed widening for years, and it has not happened. Traffic is a concern to our community. Our concern was what the building would look like above the current tree line. Brett and his group prepared photos. He estimated the height of the Reece and Nichols building at 24-28 feet, and their building will be an additional 35 feet beyond that. It is not a good fit with the existing buildings. I appreciate his efforts, but it gave us a good view, and everyone at our homeowners association meeting agreed that it is not a good fit. I personally think it is a great project, but it is sitting in the wrong place. It will stick out and will impact our home values.

In closing, I recall in 2006, the City Council and Planning Commission saw a similar proposal for a 5-story residential condominium proposed to be built on top of the One Nineteen center. I found the minutes of that meeting when the Planning Commission heard from the residents of Berkshire about their concerns about the height and the view they would see from their development. As you are aware, that project did not get built. We hope the city and the Planning Commission will listen to us and value our opinions as citizens as you did back then to the folks at Berkshire. I also have a petition from 57 homeowners basically asking that the proposal be denied. I thank you for your time, and I'd be glad to answer any questions.

Chairman Williams: Could you put the rendering with the penciled-in massing of the building so audience members can have a chance to see them? (*Placed on display*) This shows the building as it would look above the tree line.

Mr. Slezak: The Reece Nichols building is estimated at 24-28 feet. Their proposal tops out at 55 feet.

Chairman Williams: Could we have staff put up the pictures for the benefit of the audience? (*Placed on display*) Could you describe where those are?

Mr. Slezak: There is a ledge on the top with homes on both sides of the street. It is at 4948 W. 151st Terrace. There are homes on both sides of the street. I took these pictures standing in someone's back yard. I'm just trying to put the Reece Nichols building in perspective. The other building will be 35 feet higher. The rest of the development has the same elevation of 25-35 feet, maximum.

Chairman Williams: Thank you. Is there anyone else who would like to speak to this case? Thank you.

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

Chairman Williams: Mr. Holland, you had your hand up.

Mr. Holland: I understand and appreciate the comments that Mr. Slezak made. I would point out that the pictures are very difficult to use for proper perspective on the building. One of the pictures without the proposed buildings shows rooftops that are already visible. The building will be taller than what they thought they were going to see and will probably be taller than some of the trees, but again, what they will see is a beautiful building. I want you to remember that even under the current zoning, that building could be 40 feet tall. The incremental difference in height is 15 feet at 150 yards away.

Mr. Johnson: Mr. Slezak and all the neighbors were very cordial and gracious. The meeting was productive, in my opinion. I deal with this a lot in my business. We don't just do independent living; we do affordable housing. Change is often something people do not want in their neighborhood. Often times, though, it is inevitable. On this site, we are talking about 5-6 homes that have these views. If this were an office, it would have parking lot lights and headlights on the homes. The alternative of a residential facility would be much more acceptable.

Chairman Williams: Mr. Ley, could you address the question about the traffic issue and the lane change?

Mr. Ley: It is 4 lanes until Ash, and then the right lane turns into a right turn lane. According to the latest CIP, 151st Street is scheduled for 2025, at which time it would be increased to 4 lanes through to the east city limits. When Ironhorse Centre came in, we worked with them and Nall Valley Shops to the north to line up their driveways for a potential future traffic signal, which will not go in until it is warranted.

Comm. Jackson: As a point of clarification, under the current zoning, is the maximum 35 feet or 40 feet?

Mr. Coleman: For SD-CR, the maximum is 50 feet.

Ms. Kriks: This particular lot is zoned SD-NCR, which has a maximum of 40 feet.

Chairman Williams: Any further questions for staff? Any comments or discussion? Could I get a motion, please?

Comm. Elkins: I'll comment and finish with a motion. I have long been on record as advocating for senior living in Leawood. Tonight, we've addressed this, and I think while this may not be completely senior living, it is still an opportunity for quality development. I am somewhat troubled by the height issue. Mr. Holland describes it as a little bit taller; I see it as a 20% increase, so it seems to be in the eye of the beholder. Having said all that, it appears to be a high quality facility with a developer located here in the city. I think this is a unique and positive opportunity here in Leawood.

Chairman Williams: This is a need that we have discussed, and it appears to be a quality project. They also appear to be willing to cooperate with the city. The city has designated this as Mixed Use, and this project fits within the guidelines of the zoning category. I share the homeowners' concerns about the property values. I don't think anyone wants us to see a development go in that decreases their investments. At the same time, we are not the experts in home values. I think our job is to consider the LDO requirements and whether or not the project fits the overall desire for a quality project. Perhaps the property value issue is one for City Council to consider.

A motion to recommend approval of CASE 161-14 – IRONHORSE CENTRE – THE FAIRWAYS OF IRONHORSE – Request for approval of a Rezoning from SD-NCR (Planned Neighborhood Retail) and SD-CR (Planned General Retail) to MXD (Mixed Use Development District), Special Use Permit for an Independent Living Facility, Revised Preliminary Plan, and Revised Preliminary Plat, located south of 151st Street and east of Nall Avenue – with 30 stipulations as amended and presented on the dais – was made by Elkins; seconded by Levitan. Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Elkins, Strauss, Ramsey and Walden.

CASE 05-15 – CBIZ – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use for a wireless communication antennae and associated equipment, located at 11440 Tomahawk Creek Parkway. **PUBLIC HEARING**

Staff Presentation:

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 05-15 – Special Use Permit for Clearwire Broadband, located at 11440 Tomahawk Creek Parkway. The applicant is requesting a Special Use Permit for continued use of 4 antennas and a rooftop equipment cabinet. No changes are being proposed with this application, and the antennas are not visible. Staff is recommending approval, and I can answer any questions you may have.

Chairman Williams: Is this just a renewal?

Ms.Brandt: Yes.

Chairman Williams: Are there any questions for staff? Then we'll hear from the applicant.

Applicant Presentation:

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

Mr. Holland: I am here in support of the application. We are in agreement with the stipulations. This is an existing project; we are just here for renewal. We had a neighborhood meeting, and a few people showed

up. They thought we were building a new tower, which is not the case. If we were making changes, we would be back with an amended Special Use Permit. I would stand for any questions.

Chairman Williams: I'm assuming you have been good neighbors on the towers and have lived up to the requirements from the last application.

Mr. Klein: We have had no complaints. These are not visible.

Chairman Williams: Any questions for the applicant? Thank you. This case requires a Public Hearing.

Public Hearing

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

A motion to recommend approval of CASE 05-15 – CBIZ – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use for a wireless communication antennae and associated equipment, located at 11440 Tomahawk Creek Parkway – with 5 stipulations – was made by Jackson; seconded by Strauss. Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Elkins, Strauss, Ramsey and Walden.

CASE 25-15 – MOLLE OFF-SITE PARKING FOR NEW VEHICLES - Request for approval of a Special Use Permit for an existing parking lot for new vehicles, located south of 104th Street and west of State Line Road. **PUBLIC HEARING**

Staff Presentation:

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 25-15 – Special Use Permit for Molle offsite parking for new vehicles, located south of 104th Street and west of State Line Road. The applicant is requesting approval of a Special Use Permit that will allow for the continued use of an existing parking lot for offsite parking for new vehicles for Molle Automotive. No changes are being proposed to the site. One stipulation has been added from the last time they came forward: “No vehicles shall be loaded or unloaded from an auto carrier on the site.” The applicant stated they agree with this. Staff recommends approval of this case, and I can answer any questions.

Chairman Williams: Any questions for staff? Thank you. We'll hear from the applicant.

Applicant Presentation:

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

Mr. Holland: I am here in support of the application. This matter has been before this body 8 times. The last time you were here, you were gracious enough to offer a longer term of 2 years. We are asking for your continued support of the use of the property. It is tucked off the road, and we have had no issues with it. We are asking for approval for two years or more.

Chairman Williams: I don't think it is within our power to grant you more than 2 years.

Comm. Jackson: Is there any hope of redevelopment of this area coming soon?

Mr. Holland: I think that is probably the reason the term of the permit has been so short. There has been some hope that redevelopment would occur. I don't know of any that is planned. There could be someday. There are existing thriving businesses. It will take a concerted effort by all the parties in that area, and the city is obviously going to have a big role.

Comm. Jackson: Is that all owned by different people?

Mr. Holland: Yes.

Chairman Williams: Are there any other questions? This case requires a Public Hearing.

Public Hearing

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

A motion to recommend approval of CASE 25-15 – MOLLE OFF-SITE PARKING FOR NEW VEHICLES - Request for approval of a Special Use Permit for an existing parking lot for new vehicles, located south of 104th Street and west of State Line Road – with 9 stipulations – was made by Strauss; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Elkins, Strauss, Ramsey and Walden.

CASE 28-15 – CHRIST COMMUNITY CHURCH – SIGN CRITERIA – Request for approval of a Final Sign Plan, located north of 143rd Street and west of Kenneth Road.

Staff Presentation:

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 28-15 – Christ Community Church Sign Criteria, located north of 143rd and west of Kenneth Road. The applicant is requesting approval of new Sign Criteria for Christ Community Church. The applicant is proposing criteria for monument, directory, directional, building and entry door signs. All signs are to be externally lit or non-illuminated. On building signs, the maximum letter height will be 24 inches with the maximum sign area being 200 square feet or 5% of the façade. Monument signs shall be a maximum of 50 square feet. Directory signs shall be a maximum of 18 square feet. Directional signs shall be a maximum of 6 square feet. Entry door signs shall be a maximum of 2 square feet. The Sign Criteria meet all the requirements of the LDO. Staff is recommending approval of Case 28-15. I can answer any questions.

Chairman Williams: No signage is actually designed at this time; this is only criteria to take it to the next step?

Ms. Brandt: That is correct. We have applications for signs, but they need the Sign Criteria approved before we can approve them. If this case is approved, the signs can be approved administratively.

Chairman Williams: Any questions for staff? We'll hear from the applicant.

Applicant Presentation:

David Greusel, architect with Convergence Design, 4828 W. 121st Street, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Greusel: I think this case is fairly straightforward. I just want to say that the Sign Criteria are based on the LDO, and we respectfully ask for approval.

Chairman Williams: Any questions for the applicant? Thank you. Any further discussion?

A motion to approve CASE 28-15 – CHRIST COMMUNITY CHURCH – SIGN CRITERIA – Request for approval of a Final Sign Plan, located north of 143rd Street and west of Kenneth Road – with 2 stipulations – was made by Strauss; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Elkins, Strauss, Ramsey and Walden.

CASE 41-15- CLASSIFICATION OF USE NOT LISTED – LIMOUSINE SERVICE – Request for determination if the use of limousine service is sufficiently similar to an expressly authorized use within the BP (Planned Business Park) District.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 41-15 – Classes of use not listed in the LDO for limousine service. This is the first case the Planning Commission has had with regard to the request for classification of use that is not listed. We have an applicant who would like to locate in the Planned Business Park located at 104th and State Line Road. In the Table of Uses, the limousine use is not listed. Per the LDO, if the use is not listed, it is prohibited; however, there is a section listed in your Staff Report that allows them to come to the Planning Commission and City Council to ask for a clarification to determine if the use they are requesting is similar enough in use to a use that is permitted within that district, then by extension, the use would also be allowed. Staff does not support the application, and I would be happy to answer questions.

Chairman Williams: Can you give us some reasons you are not supportive? What are the issues from this use that prevent it from being appropriate for this Business Park?

Mr. Klein: Staff originally was trying to determine where the use would fit. We thought we could find something in Business Services, but we determined it really didn't fit within the Business Services.

Chairman Williams: Help me understand the use that makes it not compatible.

Mr. Klein: Perhaps the applicant can describe her use, and then I could answer questions.

Chairman Williams: Are they going into an existing space?

Mr. Klein: They would like to use the old AB May building.

Chairman Williams: Could you give us an idea of some of the other uses in this Business Park?

Mr. Coleman: Are the permitted ones are highlighted in the Table of Uses. Some of the uses in the park are legal, nonconforming issues and really don't have any bearing on the issue.

Comm. Elkins: I understand that it may not be relevant, but I'm still curious as to the other issues around the space, whether they are legal, nonconforming or not.

Mr. Klein: The AB May site may have been equipment rental or repair service. There is a Montessori school that is a legal, nonconforming use. Gates Barbecue is in the development. The Parks Department is a

governmental use. US Toy is a retail building and State Line Vet are in the development. The plumbing showroom is there as well. I'm not sure if they're allowed or not.

Chairman Williams: Are you referring to the plumbing store that is going in that is not allowed?

Mr. Klein: No. With regard to US Toy, I would have to look at the Table of Uses. Gates Barbecue and Jimmy Johns are located in the development. Pride Cleaners is no longer a permitted use in the district. O'Reilly Auto Parts is a permitted use.

Chairman Williams: You said a dry cleaner is not allowed, even though it requires a Special Use Permit?

Mr. Klein: I stand corrected; it is prohibited if it has a drive-through.

Chairman Williams: What are the issues that apply to this type of business that would be a problem for being included in a Business Park?

Mr. Klein: The issue comes in trying to classify it as one of the permitted uses listed in the Table of Uses or in Definitions.

Chairman Williams: Was AB May a legal, nonconforming use?

Mr. Klein: I believe so.

Chairman Williams: Even though in some of the descriptions that you have, it talks about all company vehicles to be out of view from the public street, I don't read any description of allowed uses that would allow fleet vehicles, with the possible exception of business definitions with custodial or linen services.

Mr. Klein: Nonconforming uses existed prior to the current ordinance, so they were legal when they went in. Now, they are no longer allowed based on change in the ordinance. Almost all cities have a legal, nonconforming use regulation. The idea is since the use is no longer permitted, it will eventually be changed to a use that is permitted. Most cities, including Leawood, have certain restrictions if the use went out of business or ceased to operate for 180 days. Pride Cleaner is an example. They had a drive-through and ceased to operate for 180 days. Another dry cleaner wanted to buy that project. Since 180 days had expired, the legal, nonconforming use had also expired and was therefore not allowed. AB May would have the same situation with their legal, nonconforming use.

Chairman Williams: So, a drive-through restaurant would be allowed but not a drive-through cleaner?

Mr. Klein: Correct.

Chairman Williams: And yet, the volume of traffic for a restaurant would far exceed a cleaner.

Mr. Coleman: That is allowed with a Special Use Permit.

Chairman Williams: But they could come in and apply for a Special Use Permit. You're saying that a drive-through cleaner can't even do that.

Mr. Klein: That is correct. When the ordinance was modified in 2002, when there was no pressure from any particular development, appropriate uses were decided at that time.

Chairman Williams: This district can have a warehouse, trucks of any shape, size and descriptions coming in day and night if need be. Fleet vehicles may not be allowed, but some of the services listed would imply that it would be allowed. Is there a problem with adding the limousine service definition to the list?

Mr. Klein: Right now, it is not so much an LDO amendment that is being requested. This is a clarification of use request. It is the quickest way they could get before your body. We are left with not amending the table but rather clarifying the use. It would have to fit within one of the existing uses.

Comm. Pateidl: You alluded to the fact that we have a public use facility permitted in this district right now. That happens to be the Parks Department, which has trucks and cars. They may be required to perform some emergency services to where they are a 24/7 operation. Is that not what this limousine service is? Doesn't that match up pretty well with what we say is a permitted use for Planned Business?

Mr. Klein: I don't disagree with you as far as the activities that they have.

Comm. Pateidl: Does that comply with the other part of the LDO that gives us the discretion to review existing uses or currently permitted uses to see if, in our opinion, it applies to the application? Is there any reason we can't use Public Use in our determination of comparability?

Mr. Klein: The only concern I would have is that Public Use in our ordinance allows for the various public facilities in all zoning districts.

Ms. Bennett: Since a governmental use is allowed in any district, if you determine a limousine service is equal to a governmental use, you essentially allow a limousine service in any district. That would not be the best parallel to draw in this ordinance.

Comm. Pateidl: We have something that is a very comparable use.

Ms. Bennett: It could be something that you want to study to determine whether limousine services should be in this district or in some other district because right now, they're not listed anywhere in the LDO. The specific question in front of you tonight is whether limousine service is close enough to something listed in the Business Park that it is tantamount to being identical to it and should be allowed. A separate question would be if it should be included in the LDO. The issue you would have is if you're determining limousine service is close enough to a governmental use, not necessarily the specific one that's down there but any governmental use. That would then essentially apply across the board because if this board and Governing Body determines it, it then says that limousine services should be allowed anywhere governmental use is allowed, which is in any district.

Chairman Williams: I think that would be a hard case to make. We're talking about a for-profit company as compared to a public service entity. I think we still have an avenue here. It might not be the public building component of the LDO. If you don't have any further questions of staff, maybe it would be good to hear from the applicant and get a definition of what their business is.

Comm. Levitan: So, we're trying to find one of these uses that this could be slotted under.

Mr. Klein: Correct.

Comm. Ramsey: Did I understand you to say you reviewed the definitions and you didn't believe that limousine service would fit within any of the existing categories?

Mr. Klein: Originally, we worked with the applicant to see if there was a use that would work. Upon further review, we decided it didn't quite fit.

Comm. Ramsey: Why wouldn't it fit in 16-9-50 – Business Services?

Mr. Klein: We are looking at equipment rental or that part of it. Since this business is renting limousine services, we decided that didn't fit.

Comm. Ramsey: The full spectrum of this is pretty wide.

Ms. Bennett: I would note that it doesn't say “. . . including but not limited to.” That section lists specific businesses that are allowed. That makes it a little bit different, and staff found that this business is not similar enough to any of those specifics. There again, if it should be listed in there is another question.

Comm. Ramsey: I would agree with that. What we're looking for is the elastic clause that we don't have.

Ms. Bennett: Certainly not in that definition.

Chairman Williams: What is the definition of Rental and Leasing?

Mr. Coleman: Business machine rental, like copy machine rentals.

Chairman Williams: It is pretty widespread.

Mr. Coleman: We didn't have it fitting in that category.

Comm. Elkins: Mr. Klein, I just want to make sure I'm clear. In Case 25-15 that approved this evening for a parking lot, it is generally in the same vicinity. Even if it's not, it is in the same zoning classification, correct?

Mr. Klein: That is correct, and that case had a Special Use Permit for the offsite parking.

Comm. Elkins: In the Table of Uses, there is a use for a parking lot. It doesn't describe what kind of parking lot. We approved the case because it was appropriate in BP under the auspices of a Special Use Permit.

Mr. Klein: Correct.

Comm. Elkins: We've already hit upon one way to get to the place the applicant wants to get in changing the LDO to specifically add limousine services and identify where they would be appropriate. I understand there may be some time constraints, but does staff have any other mechanisms by which we can get from Point A to Point B at any time other than an amendment to the LDO?

Mr. Klein: The only two options are the path we're on tonight or an LDO amendment.

Chairman Williams: Any other questions? We'll hear from the applicant.

Applicant Presentation:

Greg Musil, Douthit Frets, 5250 W. 116th Place, Suite 400, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Musil: This is the first time I've had the opportunity since I changed firms to announce Leawood as my home for my office. You have hit on the issue. The LDO gives you the elasticity that you need. It gives you

the discretion with your expertise as a Planning Commission and then on with the City Council's approval to look at all the uses within the BP district and determine whether the use being proposed, which nobody thought of in 2002 when the current LDO was adopted, is appropriate because it is substantially similar. I heard Ms. Bennett say "tantamount to identical," and we lawyers get picky about the standard of proof. It is substantially similar. You have already identified a number of uses in the LDO in the BP district that include the exact type of characteristics and elements that a limousine service does. I don't think AB May would agree that it was a legal, nonconforming use because it was providing a business service. It was a 24/7 operation. We are proposing a limousine service. Ms. Diane Forgy, the owner of the business, is here with me tonight. Overland Chauffeured Services has been in business 35 years and has won Ingram's Magazine's Best Transportation Service for 8 years in a row. It has 20 full-time and part-time employees who do things such as sales, customer service, dispatch and things that offices in the BP district do. It has 50 full-time and part-time chauffeurs who actually take the rental equipment out to pick people up and take them someplace. This service serves CBIZ, KCOI, SKOR, AMC and other businesses in Leawood and around the metro area, 80% of which is corporate business. They want to move here from Missouri. The irony of this is AB May moved from Leawood to Missouri. Mr. Forgy looked for a site that looked similar and was centrally located. Her use is less intense than AB May. She has a binding contract that she will either have to close on or lose. She has time constraints because there is a due diligence period in which she needs to be able to know she can put her business in Leawood. I don't have any problem with a process that includes this in the BP district because I can't imagine that such a service was intentionally left out. When looking at similarities, it is necessary to look at the intensity, burden and activity it places on the site and the neighbors. The ordinance does recognize that you can list everything that might come up. Interestingly, though, it lists quilting services for individuals and dance studios.

Let me tell you some of the places I think you can go because I don't think you have to take a single use and say that it fits under that one. I think you can look at all the elements of the proposed use against all the elements that are allowed in BP. This can fit in multiple categories, including 16-9-193, which is Office General. This allows uses that have an establishment providing executive, management, administrative or professional services. Typical uses include real estate, travel and similar offices. This building will have offices and will provide travel. In 16-9-202, the parking structure is allowed. This facility will park and store vehicles. I believe 16-9-201 is for a parking lot, and it talks about a parking spot for one car. If it is for more than one car, we also fit under that section. Somebody has already mentioned 16-9-49 on Business Equipment Rental as establishments that rent or lease non-consumer machinery and equipment. We are renting equipment the consumers are not going to buy because you don't see many people parking their limousine outside their house. Section 16-9-50 is Business Services, and you have already alluded to the long list of services. Carpet and upholstery cleaning is included here. What do they have? They have fleets of vehicles with cargo vans that have pumps and equipment. They probably do service on their vehicles. The same is true for equipment rental and leasing, which is included without the limitation of a non-consumer. Parking lot maintenance service will have dump trucks, asphalt machines and concrete machines. These vehicles are more intense than ours. Snow removal services are going to have trucks with plows on them. A swimming pool cleaning and maintenance facility is going to bring vehicles to the site, and they're going to pick up supplies, dispatch and sell. Their customer service is going to be in the office. Pest elimination services are on the roads all the time in vans and trucks. They will come to and from a facility. Section 16-9-204 is Personal Services, and it includes messenger services, which presumably implies that a vehicle will take the message from one place to another. In your code, you define a vehicle as an implement of conveyance designed or used for the transportation of people and materials. Certainly, we fit within that definition.

It is important for Ms. Forgy that she gets clarification that this is a use that is substantially similar to a variety of other uses already in the BP district. I think you understand the distinction and difference. She would like to make a couple comments. This is her effort to bring 70 employees to Leawood and to use the site in a very high quality, professional manner.

Diane Forgy, 10515 Ensley Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Forgy: I am very familiar with the area. I grew up in Leawood. The business has been in my family for 35 years. Our use is a service business, and our mode of providing the service is chauffeurs and vehicles. There are a number of service uses that do fundamentally the same thing. We are currently located on a 4-star hotel property and have been for 15 years. We have a good track record being in an affluent area where we have to be good neighbors. Our business has grown. I would like to continue to function how we currently do and continue to prosper. I love the building and the area. Some of the other uses in the park include Jiffy Lube, O'Reilly Auto Parts, KC Colors and Midas. I do hope that, if anything, we would be an enhancement to the area. I do have the building under contract. We are trying to buy the building. Everybody has been great to work with, and I am just looking for a clarification. I would appreciate that. I just want to reinforce the process we have been through, and hopefully you will all agree with the way we are looking at this.

Chairman Williams: Are there questions of the applicants?

Comm. Elkins: Mr. Musil, you opened your presentation by declaring that the ordinance does give us the flexibility and elasticity to apply our good sense to what are substantially similar uses. I also heard the City Attorney speak to the fact that what lawyers would traditionally look to in the way of elasticity clauses doesn't appear to be present in some of these definitions that you refer to. Can you point to a place in the ordinance that I can use to get the commission to a place you want to go?

Mr. Musil: If each of these sections said, ". . . including but not limited to . . ." then the ordinance would be wide open to anything that sounded like that. The part of the ordinance that states that what is not listed is prohibited would be meaningless. The elasticity is in Section 16-2-3.5, which was in the staff comments, which says that if it is not expressly listed, the Planning Commission, with approval of City Council, has the ability to find if it is sufficiently similar to another use that is approved. There is an out clause, and it is up to you to decide how broad that is for you to make your discretion. If you recommend approval tonight and City Council agrees with you, it would be determined to be allowed because it was sufficiently similar to the uses I've described. This is the first time such a case has ever been brought to this commission. The BP district just doesn't seem to address this, but there are a number of uses that contemplate fleet and office uses that are very similar. We have to go on to City Council either way. We certainly believe that you have seen that there is nothing detrimental with this use.

Comm. Elkins: You also pointed us to Section 16-9-202 with a parking structure as a possible path. My concern is that if I read it correctly, I see that the use requires a Special Use Permit. Does that meet your client's needs in terms of the time constraints? If we determine that is the substantially similar use, we still have to put out a notice for a Public Hearing. Does that get you where your client needs to be?

Mr. Musil: If the only basis was a use that wasn't permitted but required a Special Use Permit and that was the only similarity you found, we would have to go through that process. I listed that as an example. The elastic clause isn't as specific on that point, either. I think a reasonable interpretation would be that we would need to go through the Special Use Permit process. The other ones we talked about don't require that. I think it's just another example of a use in a BP district that has parking and is anticipated and allowed. We're going into the same building. If that were the only one, I would agree that it would not meet our time frame.

Comm. Elkins: The parking structure feels like it fits the best based on what you've said tonight, but I was concerned about the need for a Special Use Permit. You mentioned as another possibility the element that relates to equipment rental. I'm curious if your client is comfortable going forward with the idea that the

patrons are actually renting the vehicle as opposed to taking advantage of a service. It may have implications elsewhere beyond what we're trying to do tonight.

Mr. Musil: They are renting a service. They are purchasing a service. I don't know how specific it was intended for that code section to be. It is certainly another angle. If you believe a car rental service is allowed because it is equipment rental, that is sufficiently similar to ours to allow a limousine service. There are so many dots you can connect here. I hope you have enough to exercise your discretion to allow this use. A rental car is no different than a limousine service in the sense that somebody will pick up a car, drive it back, park it and store it there.

Comm. Elkins: Can you give us some guidance on your view of 16-2-3.5 as to whether we are required to make a finding that is a specific finding of substantial similarity to a specific use in the LDO? You seem to be suggesting that we create a cloud of a bunch of different uses and say that we can pick a little from each. In order to proceed on this provision, do we have to make a specific finding as to a specific use that is substantially similar?

Mr. Musil: It is my opinion that you can cite different sections of the BP that contemplate an element of the use that we have and constitute this use in combination. I think you can find that under Business Services because we are sufficiently similar to pest control or snow removal. I also think there are other pieces of the BP district that show we are similar enough that we should be permitted. I don't think we have to find one section we fit into perfectly. I would contemplate a motion that would incorporate the ones I mentioned.

Ms. Bennett: I'm going to have to respectfully disagree with Mr. Musil. The ordinance itself says that the Planning Commission must determine that the proposed use is sufficiently similar to a use expressly authorized in the applicable district. I would disagree and say that your determination ultimately must find a single use that is similar. I don't think that parking structure fits, as it is tantamount to one or more levels parking cars. This will have a building with cars inside and outside. It maybe falls within the Business Services that Mr. Musil discussed. Ultimately, I feel your determination needs to list what use is expressly authorized that this is substantially similar to.

Comm. Ramsey: You don't agree that we could connect the dots around? You feel it must be a specific area?

Ms. Bennett: It must be a use expressly authorized in the applicable district.

Comm. Ramsey: What about the Business Services and equipment leasing within that category?

Ms. Bennett: If you believe that this is substantially similar, you would want to list that out in your determination when the motion is made.

Comm. Ramsey: Would you have any problem defending that?

Ms. Bennett: The question would be if the limousines are considered equipment. This is really more of a factual determination to you. Equipment is normally thought of as Bobcats and such. Again, when you look at the definitions and the things that Mr. Musil discussed, it is complicated. We have discussed this on many occasions because it is new.

Comm. Elkins: Ms. Bennett, if we were to determine that this use is substantially similar to a parking structure, would it be staff's position that a Special Use Permit would be required?

Ms. Bennett: Yes because it is a use expressly authorized as a Special Use.

Comm. Pateidl: This really gets to be a murky subject, and while we've been discussing back and forth, I was looking at Section 16-9-49 being Business Equipment Rental, and then I went through the Table of Uses, and in no place is Business Equipment Rental cited.

Ms. Bennett: I believe that is included in Business Services.

Comm. Pateidl: Business Services is included under 16-9-50.

Comm. Elkins: In the list of services included, equipment rental is listed.

Comm. Pateidl: I understand that, but the bulk regulation of 16-9-49 stated specifically that business equipment rental is not anywhere included in the business uses, only showing that there are pluses and minuses inside these definitions. Nowhere have I found in the ordinance a definition of rental or lease as such. I do believe under 16-9-50 under Commissioner Ramsey's observation of equipment rental and leasing that we do have a specific comparable element within the ordinance that compares to what this business does. I might add as well as copy machines and business furniture. People rent forklifts, trucks, trailers and all kinds of items that are comparable to what this limousine is. Is a limousine fee a rental? If we don't have a definition, I can interpret it as such because it's close enough to count in my opinion. At some point, I would be more than happy to entertain a motion as far as this case is concerned.

Comm. Jackson: The way I get there is the 16-2-3.5 where it says that a use expressly authorized is business services, and it is defined broadly. To me, if it is not equipment rental and leasing, the other thing it could be is an office structure that works with other businesses and has equipment onsite that it uses for the purposes of these other businesses. You could say the same thing about snow removal. Certainly, you take your snow removal trucks onsite, and you take them to the other business to clear their snow. I think that is broad enough. I would support it.

Comm. Strauss: I would like to step back and say that common sense says that this fits in this BP district. I know we're spending a lot of time, and thank goodness we have lawyers to help us find the right wording, but I would hope that our motion would be approval. I'm good with the equipment rental and leasing, but then we add on to it that in the future, we can modify the LDO to include limousine services. I feel perfectly comfortable with this use in this district.

Chairman Williams: Any other comments or questions? Thank you. If there is no further discussion, could I get a motion?

A motion to make a determination that this use in CASE 41-15- CLASSIFICATION OF USE NOT LISTED – LIMOUSINE SERVICE – Request for determination if the use of limousine service is sufficiently similar to an expressly authorized use within the BP (Planned Business Park) District – is sufficiently similar to Business Services, based on the inclusion of definitions in Section 16-9-50 – Business Services, specifically related to equipment rental and leasing and other descriptions within this category – was made by Pateidl; seconded by Jackson.

Comm. Strauss: At what point do we recommend that this get included in the LDO?

Mr. Klein: This is its own separate case, and the Planning Commission has the ability to ask staff to look at adding the use. I don't know that it has to be a formal motion.

Ms. Bennett: It will be reflected in the minutes. Most of the Governing Body read them pretty closely. We can also discuss them with the City Administrator after the Governing Body's determination on this recommendation.

Mr. Coleman: You can make a motion; we just recommend that you separate the two.

Comm. Elkins: For the sake of clarity, I would express my view that the motion Mr. Pateidl just made is a finding of fact by the commission as to the substantial similarity of the use proposed by Mr. Musil's client to the standards that are set forth in our LDO. I want to emphasize that for the record.

Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Elkins, Strauss, Ramsey and Walden.

A motion to recommend a modification to the LDO be considered to include limousine services within Section 16-9-50 – Business Services – was made by Strauss; seconded by Ramsey.

Comm. Elkins: I would suggest that we give the staff a little more leeway than requiring them to bring something before us that includes limousine services specifically in Business Services. It may well be that we want to list limousine services separately.

Mr. Coleman: I recommend we just take this to a work session in the future and we can discuss it there.

Motion amended to discuss the matter of limousine services' inclusion in the Business Park district at a work session; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Levitan, Pateidl, Jackson, Elkins, Strauss, Ramsey and Walden.

MEETING ADJOURNED