

City of Leawood  
Planning Commission Meeting  
May 26, 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, Elkins, Strauss and Ramsey. Absent: Roberson, Jackson, Williams and Walden.

**APPROVAL OF THE AGENDA:**

A motion to approve the agenda was made by Ramsey; seconded by Strauss. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

**APPROVAL OF MINUTES:** Approval of the minutes from the May 12, 2015 Planning Commission meeting, and May 12, 2015 Planning Commission Work Session

*Minutes for the May 12, 2015 meeting had a date correction in the header.*

A motion to approve the amended minutes from the May 12, 2015 Planning Commission meeting was made by Pateidl; seconded by Ramsey. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

Comm. Pateidl: On Page 4 of the work session minutes, the first paragraph attributed to the chairman were made by me.

A motion to approve the amended minutes from the May 12, 2015 Planning Commission work session was made by Pateidl; seconded by Ramsey. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

**CONSENT AGENDA:**

CASE 49-15 – VILLAS OF HIGHLANDS RANCH – PERIMETER FENCE – Request for approval of a Revised Final Plan, located north of 138th Street and east of Chadwick.

A motion to approve the Consent Agenda was made by Ramsey; seconded by Pateidl. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

**NEW BUSINESS:**

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

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 33-15 – Request for approval of a Special Use permit for a sport court with lighting for the Myers residence, located at 14600 Mission Road. The applicant is proposing a multi-use tennis and

basketball court with lighting and a non-illuminated soccer field for private residential use on approximately 19.6 acres. The sport court is proposed to be located west of a single family residential structure currently under construction. Per section 16-4-1.3(b)6 of the Leawood Development Ordinance, a sport court is defined as a paved area and other surfaces designed for sport court or similar recreational uses. Sport courts with lighting are authorized with an issuance of a Special Use Permit. The color the sport court shall be a combination of light and dark green, and there are 6 15-ft. dark bronze light fixtures proposed around the tennis and basketball court. On the southern half of the court, the 2 basketball courts are planned to be installed. West of the sport court, a 120-ft. by 180-ft. artificial green turf soccer field with no lighting is also proposed. Around the sport court, the applicant is proposing a combination of evergreen trees and shrubs along the west property line, and existing double row of evergreen trees that are approximately 27 feet in height are present. Along the northwest property line is an existing double row of deciduous trees, which are approximately 40 feet in height. Directly north of the house and sport court along the property line, the applicant has planned a double row of Norway Spruce trees, which will range in height from 9 feet to 12 feet. Staff recommends the Planning Commission approve Case 33-15 with the stipulations outlined in the Staff Report, and I'm happy to answer any questions.

Chairman Elkins: Questions from the commission? Seeing none, I would invite the applicant to present.

**Applicant Presentation:**

Jay Childs, Evan Talan Homes, 1920 W. 143<sup>rd</sup> Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Childs: The property is a beautiful place that enhances the entire area. The owners have gone above and beyond to make this a wonderful property while increasing their privacy and that of others in the area. They have created berms to contain water and create interest. They have also planted many shrubs and trees. The sports court was in the city-approved plans from the beginning. Later in the process, they consulted with a lighting specialist. Based on the recommendations, they purchased poles and fixtures. They learned they were too tall for city ordinances and people complained about the height, so they had them cut down to 15 feet to be within regulations. Regarding screening issues on the north property line, there are 74 trees along that property line. They continue to add more trees. (*Showed photos of the property.*) We are thankful that staff has recommended approval, and we agree with the stipulations as noted.

Chairman Elkins: Seeing no questions, we'll open the Public Hearing.

**Public Hearing**

Tom DeBacco, 14550 Mission Road, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. DeBacco: I'm the neighbor directly to the north. Thank you for the time this evening. This has been an ongoing discussion for quite some time between myself, my wife and the Myers family. They are very nice people and have built a beautiful home. However, during the process, I sent a letter regarding the situation.

Chairman Elkins: Yes; it is part of our packet.

Mr. DeBacco: A lot of trees have been planted over the years, but to the east, there is a large void. That is the void that meets our property. We knew the new evergreens would not provide enough shielding for the lighting that is currently in their home. The ordinance that prohibits lights from 10:00 PM – 7:00 AM is helpful, but when the lights are on, they cast a great deal of light on our back yard. I don't know if testing was done on the foot candle level. The tennis court lights are very large, industrial lights. I appreciate that

Jeff cut them back to 15 feet to meet the ordinance, but we still have full exposure to the lights. The trees cover the light poles, but the screening doesn't block the light. I have no issues against the sport court; my only issue is the lighting. We are the only ones that are affected. The actual home was built on the 10 acres that abut our property, which causes even more lighting issues. I'm only asking that the ordinance is upheld. Obviously, some of that has been met, but from a screening point of view, I believe it has not been met. I also mentioned potential water runoff in my letter. The berms have been wonderful; I just don't know if they have fixed everything. We have a large grove of natural trees that buffers our properties in front of our homes. I am concerned that a lot of those trees will die as a result of water runoff. Unfortunately, most of those trees are on my property. Additionally, I just sent a note to the city last evening after the excessive rain that expressed concern about the culvert on Mr. Myers' property and that it might not be big enough to handle the water. Any additional runoff being caused by more concrete or artificial turf ultimately does have an impact on that river that comes through there. I would encourage anyone to come out when the lights are on. This could also impact my property value. We were looking for a quiet place, which is why we built on 10 acres. I am not concerned about the noise level because of the expectations expressed in the stipulations. I'm happy to answer any questions.

Chairman Elkins: Thank you. Questions for Mr. DeBacco? Thank you.

Jason Phillips, Royal Wiring, 517 NE Emerald Drive, Lee's Summit, MO, appeared before the Planning Commission and made the following comments:

Mr. Phillips: I'm the electrical contractor that did the work on the Myers property. We did do studies on it. It does zero out outside the sports perimeter. Inside the perimeter the level was 13-30 foot candles. Outside of that was nothing but moonlight, and these studies were done at 10:00 in the evening in February after the first complaint about the lights came in. When the poles were higher, they did cast a considerable amount of lighting. They had no diffusers, and it probably was too bright. We took them down to 15 feet at that time and put shields on them. It will be visible from 400 feet away, but the actual light output on the adjacent property was zero.

Comm. Ramsey: To be clear, you do have shielding on the lights?

Mr. Phillips: The shields are on them now, and they direct light to the center of the sport court.

Comm. Ramsey: When were these installed?

Mr. Phillips: They were installed right after the first complaint in December and when we cut down the poles.

Comm. Ramsey: When did you take the light test?

Mr. Phillips: The day after we installed all the shields and lowered the poles.

Greg Williams, 14567 Granada Circle, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Williams: Our house is directly behind the DeBaccos' home. We don't have the same issue they have. One of our issues was our master bedroom overlooks the Myers' property, but the lights were not abnormally bright. We don't have a concern with the noise, either.

Mr. DeBacco: The only other thing I didn't mention at first was that this is not only an issue sitting in the back yard but also in our driveway. At least 3, if not all 6, of the light poles are visible. Again, I just want to let you know that not all the pictures you've seen tonight represent the proper visual presentation.

Chairman Elkins: Mr. DeBacco, the pictures included in your letter to the commission appear to have been dated and taken in January. I don't think I saw pictures from your residence following the installation of these shields. Can you tell me if the situation has changed with the positioning of the shields?

Mr. DeBacco: Yes, it did make a difference, no doubt about it. But still, it is quite a bit. I don't know the wattage of each light fixture, but they're still very bright. From my point of view, we should not have to shield our eyes in order to see people on the other side of our patio. That is the situation we have today without the proper shielding. We shouldn't have to live with that. I will say that the lights that you saw in the January date were the 25-ft. lights. Since they have been cut down to 15-ft. poles, I included pictures of those as well. The poles are still quite visible.

Chairman Elkins: Thank you. Are there other comments from the Public Hearing?

Mr. Phillips: Jeff asked me to mention that 3 new trees were planted after these photos were taken, and Mr. DeBacco chose the location of the trees.

**As no one else was present to speak, a motion to close the Public Hearing was made by Ramsey; seconded by Pateidl.**

Chairman Elkins: As a point of order, I'd like to allow the applicant to respond. Mr. Childs, would you care to address the runoff issue and the screening?

Mr. Childs: The owners worked with David Ley regarding runoff early in the process, which led to the building of the berms. The property has been graded to the original plans that included the sport court and soccer fields. It's hard to see from the pictures, but the berms are substantial. Some of the water issues may be a result of splitting the waters. Everything to the west is uphill, so the Pavilions to the west are a contributor. The water that comes off the Myers' residence and associated landscaping is definitely contained within his property. The berms have outlets that allow the water coming from the west to flow toward the Myers' property. A substantial amount of work has been done to contain the water and allow water from the opposite side of the berm.

With regard to screening, there are a multitude of trees on that property line. I'm not sure you could plant trees close enough together to ever screen the area 100%. As time goes by and the trees grow and expand, the screen will fill in more and more. If the trees are planted close enough together to screen completely now, they will die.

Chairman Elkins: I realize I didn't take a vote to close the Public Hearing. I'll cover that. Questions for the applicant? With that, I believe there is a motion on the floor to close the Public Hearing.

**Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.**

Chairman Elkins: That leads us into a discussion of the application.

Comm. Pateidl: Given the height reduction of the light poles, are there any other violations of the LDO that you're aware of?

Mr. Klein: Not at this particular point. One ordinance is that the source of illumination cannot be visible. The diffusers are screening the lights, but we want to make sure they are pointed down. Also, some new

information came to our attention with regard to the application. We talked with the applicant about a fence. Staff is not aware of a fence located on the property. We would like to add a stipulation that the fence would have to meet the requirements of the LDO with regard to Section 16-4-1.3(a)7, which speaks to sports courts, to ensure the construction material is PVC coated and is no more than 12 feet in height.

Comm. Pateidl: Let me ask about an additional stipulation. No. 7 says, "In addition to the stipulations listed in this report, the property owner agrees to abide by all ordinances of the City of Leawood Development Ordinance unless a deviation has been granted and to execute a statement acknowledging in writing that they agree to the stipulations above." There are a number of issues that have been brought up by the neighbors that there is no way for us to evaluate. This stipulation says that if someone inspected the property and addressed the neighbors' concerns, a recommendation could be given to the Governing Body as to those findings and that it would all be in accordance with this, and would that not also pick up the stipulation that you just cited?

Mr. Klein: It would. The only reason I suggested adding it is we haven't had the opportunity to look at the fence and evaluate setbacks and fence height. I talked with the applicant about the material, and he didn't have those details at this time. I just want it on the record that they are constructing a fence because right now, the plans don't show it.

Comm. Strauss: Mr. Ley, I wanted to get your opinion on the lighting study that was done.

Mr. Ley: Planning staff reviews the lighting studies.

Comm. Strauss: So, you guys have had a chance to review the findings?

Mr. Klein: The study shows zero foot candles at the property line, which is the requirement of the LDO.

Chairman Elkins: I understand the LDO requirement of zero foot candles at the property line, and that relates to ambient light, correct?

Mr. Klein: Yes, it would be any light that is generated from their site. The actual requirement is .5 foot candles at the property line, and they show zero.

Chairman Elkins: It seems to me that there is a difference between the aggregate light at the property line versus seeing a starburst 350 feet away. Can you relate the ordinance's requirement in terms of foot candles at the property line versus the impact of the source of those lights that may be inboard from where the setbacks are?

Mr. Klein: There is a section of the ordinance that we talked about earlier with regard to the source of illumination and the requirement that it is invisible. The hope is that the diffusers and angle of the light will take care of that. With regard to the .5 foot candles at the property line, it was changed in the ordinance a few years ago. It includes the reading at the property line.

Chairman Elkins: There was a comment about what the LDO requires in the way of screening. What does the LDO say about the amount of screening?

Mr. Klein: The section on sport courts states a requirement of screen plantings of a height necessary to muffle noise and block lights. There is also a requirement that candles should not exceed .5 foot candles measured at the property line.

Chairman Elkins: The screening is necessary such that the court itself is screened from the neighbors.

Mr. Klein: Yes; it should muffle sound and block lights. When we have evaluated sport court applications, one requirement is that they provide a landscape plan. We look to see if it buffers the adjacent properties.

Chairman Elkins: In staff's opinion, does the current landscaping provide that necessary buffering?

Mr. Klein: It was staff's opinion that they did provide enough landscaping. I wanted to make sure the Planning Commission understood that the trees on the landscape plan are planted. I don't know if the extra 3 trees are shown on the plan.

Chairman Elkins: If we were to approve the SUP and there may be inadequate screening, does the city still have authority to require additional screening, or is this the opportunity to require it?

Mr. Klein: This is your opportunity to require the screening unless there was a stipulation that additional screening would be added based on some standard that you state.

Chairman Elkins: I find myself in a bit of a quandary because I understand what Mr. DeBacco is saying about his use and enjoyment of his back yard. On the other hand, I don't know that it is necessarily fair to have the Myers family be subject to the absolute discretion of the DeBaccos as to how much screening is there. Does someone have suggestions?

Comm. Ramsey: Is there any reason we couldn't reduce the term to 2 years on the SUP?

Mr. Klein: No.

Comm. Ramsey: We might reduce the term to 2 years to give us the opportunity for us to ensure everything is in place, at which time we could go for the longer term if it is in place.

Chairman Elkins: I think that idea has merit; thank you. Staff, do you have a comment?

Mr. Klein: That would allow the Planning Commission and City Council to look at the application again after the trees have had time to mature.

Chairman Elkins: It is 2 years that the DeBaccos have to deal with it, but it does give the city an opportunity to come back. Given your comments that the city doesn't have enforcement authority beyond what is in this plan if it is approved, this may be the best we have available.

Comm. Pateidl: I like it.

Chairman Elkins: Other comments or questions?

A motion to recommend approval of CASE 33-15 – MYERS RESIDENCE – SPORT COURT WITH LIGHTING – Request for approval of a Special Use Permit, located at 14600 Mission Road – with the following changes:

- Reduce the length of the SUP term to 2 years.
- Add a stipulation to read "Prior to Governing Body approval, the applicant shall provide revised plans showing the location and construction details of the fence. Such fence shall meet the requirements of Section 16-4-1.3(a)7 of the LDO."

for a total of 8 stipulations - was made by Pateidl; seconded by Strauss. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

CASE 48-15 – 103RD AND STATE LINE – LARSON BUILDING COMPANY CORPORATE HEADQUARTERS – Request for approval of a Final Plan, located at the northwest corner of 104th Street and State Line Way.

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 48-15 – Request for approval of a Final Plan for Larson Building Company, located at the northwest corner of 104<sup>th</sup> Street and State Line. The applicant is proposing site and exterior building modifications of an existing 1-story office building within the Planned Business Park zoning district. The building was constructed around 1975. Per Section 16-4-8.2(b) of the LDO, the building is considered a legal, nonconforming building and is permitted to remain as is as long as the expansion does not increase the extent of the nonconformity. The building is nonconforming with regard to building setbacks, parking setbacks and required open space. The existing building is approximately 6,070 square feet, and the applicant is not proposing to increase the square footage of the building. The lot is approximately 0.66 acres and is rectangular shaped and oriented east to west. The entire lot is located within the 100-year floodplain, and this designation classifies the lot as having a 1% annual chance for flooding from the nearby creek. East of the building, there are currently 4 parking spaces, which are accessed directly off State Line Way. The applicant is proposing to remove one of these parking spaces. There are no changes proposed to the parking west of the building. The existing building is 12 feet in height, and the applicant is proposing to increase the height of the parapet by approximately 70 inches to screen rooftop utilities. Updates to the exterior include light and dark brown cementitious stucco façade and a 3-ft. stone base around the building. On the north side of the building, an existing 144 sq. ft. vestibule shall be removed and replaced with glass doors with a dark bronze metal canopy. A new 70 sq. ft. vestibule is proposed on the west entrance of the building and shall be constructed of a cementitious stucco and stone. The applicant is proposing 2 non-illuminated wall signs on the south and east elevations. The signs shall be flat-cut metal letters pin-mounted directly to the façade. Per Section 16-4-6.13(a) of the LDO in the BP zoning district, signs are required to meet the following criteria: 1 sign per façade and a maximum of 2 signs total; signs shall be non-illuminated or indirectly illuminated; maximum size of 2% of the façade or 200 square feet, whichever is less. The sign for the east elevation is approximately 20 square feet, and the sign on the south elevation is approximately 32 square feet. On both signs, a red and white logo is proposed to the left of the company name. These signs, as proposed, meet the requirements of the LDO. As previously stated, east of the building are 4 parking spaces which are accessed directly from the public right-of-way. The applicant has proposed removing one space with the remaining 3 reserved for Larson employees. Staff does not support these 3 parking spaces to remain for the following reasons: the parking spaces back out onto a public right-of-way. The parking spaces are in conflict with the sight distance with a sharp turn in the roadway directly to the south. The proposed landscaping will further impair the sight distance from these parking stalls. Removing these parking spaces will give an opportunity to increase open space for the site and reduce stormwater runoff. There is sufficient parking on the site already with the parking lot on the west side of the building. With the 25 remaining spaces, the parking ratio will still be 4.11. Staff has stipulated that prior to Governing Body consideration, the applicant revise the plans removing those parking spaces east of the building and provide open space and landscaping for the site. Staff recommends the Planning Commission approve Case 48-15, and I'm happy to answer any questions.

Chairman Elkins: Thank you. Questions for staff?

Comm. Pateidl: You're referencing the property as legal, nonconforming. Does that include the parking spaces as long as they are not modified?

Mr. Klein: It is a legal, nonconforming condition of the existing site. Staff has concerns with the sight triangle at the corner.

Chairman Elkins: Other questions or comments? We'll invite the applicant to step forward.

**Applicant Presentation:**

Jim Keiley, Larson Building Company, 8416 Ensley Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Keiley: We would like to keep those 3 spaces. We're excited about having our building at that location for our building company. The spaces we would like to keep currently exist; we are not changing anything. We would ask that we could keep them if they are conforming.

Comm. Ramsey: I think what staff is saying is that those 3 spaces are not conforming. Is that fair?

Mr. Klein: They do not meet the current ordinance, but it is an existing condition.

Comm. Levitan: It will be worsened by the landscaping that will be installed.

Mr. Klein: The landscaping is one of our concerns. We are mainly concerned that this is not located on a corner. It is just more of a safety issue.

Mr. Ley: We just came up with the option of rotating the parking stalls 90 degrees so they could exit onto their drive aisle that runs along the north side of the building. It may reduce the parking stalls from 3 down to 2. It is something they could consider.

Mr. Keiley: We are open to that.

Comm. Ramsey: I use the State Line Vet for my animals, and I've come around there a number of times. The way it is now with backing out onto the driving lane, I've almost hit somebody.

Mr. Keiley: That's a good suggestion. I am fine with that idea. The other thing I would like to bring up is a city ordinance with signage on the property. It calls for 2% of the façade, which is very small. We would like to request 5%, which is what is allowed throughout most of the other city properties, if not more than that in the area, such as Jimmy Johns. We think 2% is not going to represent our building well and get the image of what we are trying to put out there on the property.

Chairman Elkins: Are there any other stipulations that trouble you?

Mr. Keiley: No.

Chairman Elkins: Does staff have a response with regard to the signage issue?

Mr. Klein: We've talked with the applicant. There is no deviation to this LDO requirement. We indicated to the applicant that it could only be changed in the future, but this body does not have the authority to override it at this point.

Comm. Pateidl: I thought the requirement was 5%.

Mr. Coleman: This is the Business Park district, and the maximum is 2% of the area. It is the only district in the LDO with 2%. Retail and office space can have 5%. We told the applicant we could not change it now but that we would bring it to the Planning Commission and discuss at a work session.

Chairman Elkins: Mr. Keiley, our hands are a little tied here. Your options could be to either suspend your project until we get the signage issue resolved or move forward in hopes that the commission and Governing Body may change the ordinance down the road.

Mr. Keiley: We would like to move forward with the project in hopes that it would happen.

Chairman Elkins: Are there any more questions for Mr. Keiley or staff? That moves us to a discussion of the application. Are there additional comments?

Comm. Ramsey: Staff, how do you incorporate this revision on the parking spaces?

Mr. Coleman: We'll incorporate it as part of the plan.

Mr. Klein: Would it be possible to add a stipulation that, "Prior to Governing Body consideration, the applicant shall provide revised plans to modify the parking on the east side of the building as discussed at the Planning Commission meeting."

Chairman Elkins: Would that be proposed in lieu of No. 5?

Mr. Klein: Yes.

Chairman Elkins: Are there other comments on the application? The chair would entertain a motion.

**A motion to recommend approval of CASE 48-15 – 103RD AND STATE LINE – LARSON BUILDING COMPANY CORPORATE HEADQUARTERS – Request for approval of a Final Plan, located at the northwest corner of 104th Street and State Line Way – subject to stipulations outlined in the Staff Report, with the revision of No. 5 to read, "Prior to Governing Body consideration, the applicant shall provide revised plans to modify the parking on the east side of the building as discussed at the Planning Commission meeting." – was made by Ramsey; seconded by Pateidl. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.**

CASE 54-15 – MAINSTREET FACILITY – ASSISTED LIVING/SKILLED NURSING FACILITY – Request for approval of a Final Plat and Final Plan, located east of Nall Avenue and south of 143rd Street.

**Staff Presentation:**

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 54-15 – Mainstreet Assisted Living/Skilled Nursing Facility – Request for approval of a Final Plat and Final Plan, located east of Nall Avenue and south of 143<sup>rd</sup> Street. Case 147-15 was for the Preliminary Plat, Preliminary Plan, Rezoning and Special Use Permit for this property were recommended for approval by the Planning Commission on March 24, 2015 and approved by Governing Body on April 20, 2015. The project will be made up of 70,933 square feet on 6.65 acres for an F.A.R. of .24. The building is proposed to be located centrally on the lot facing 143<sup>rd</sup> Street. A total of 108 parking spaces are proposed. One parking lot will be the north of the building next to 143<sup>rd</sup> Street with right-in only entrance off 143<sup>rd</sup>. A circular drop-off is proposed at the main entrance. Another parking lot is also proposed to the south of the building with access off Nall Avenue and Birch. Pervious pavement is proposed within the parking lots, including the northern and southernmost parking spaces within those lots. A 3-ft. berm is proposed along the southern parking lot adjacent to the residential buildings with landscaping to screen the parking lot from those residents. A drive will connect between the parking lots and will run along the eastern side of the building. Pedestrian connections are also proposed between all the entrances on the north and south sides of the building with connections from Nall and 143<sup>rd</sup> to the facility. The building is proposed to be

35 feet in height with vertical windows and dormers to break up the roofline. A tower element is proposed at the northeast corner of the main entrance with 3 levels of windows that will culminate in an angled roof that slopes toward the building. A porte cochere is proposed to extend from the main entrance to the parking lot island within the circle drive. It will also have an angled roof that slopes toward the east. The proposed building materials consist of red brick, stone and stucco with the colors beige, brown, white and red. The trim of the building will also be white. The bottom 2/3 of the building is proposed to alternate between the natural red brick and a grey and brown stone mixture. The roof is proposed to be a grey-brown concrete tile. A roof drip line is also proposed with trenches instead of gutters and downspouts. The trenches will be 3 feet in width to ensure they collect all the runoff from the building. Multiple courtyards are proposed around the building and are made up of outdoor seating, outdoor dining and a rehabilitation and physical therapy area and pedestrian plaza. A monument sign is also proposed just west of the northern drive entrance. The sign is proposed to be 10 feet in length and 6 feet in height. The sign is proposed to be made of a brick base with a stucco sign face that will match the stucco colors used on the building and will have a cast stone cap. Staff has concerns about the red painted stucco and is recommending the color be changed to something closer to a natural clay color. With that, staff is recommending approval of Case 54-15 with the stipulations outlined in the Staff Report. I'd be happy to answer any questions.

Chairman Elkins: Questions or comments for staff? Seeing none, we would invite the applicant to step forward.

**Applicant Presentation:**

Curt Petersen, Polsinelli Law, 6201 College Boulevard, Suite 500, appeared before the Planning Commission and made the following comments:

Mr. Peterson: With me are Mike Klingel from Mainstreet, Todd Mosher with RA Smith National and Neil Fister with the Lawrence Group. Stipulations 7 and 13 require a bit of discussion, and otherwise, we are here to answer questions. Regarding No. 7, which has to do with color, this building is made of brick, stone and cementitious stucco. The stucco will have 3 neutral colors and red as an accent color. Staff showed a preference for something more muted than the red. Certainly, this suggestion is subjective and not mandated by the LDO. It may seem like a developer picks a random color, but for this particular user, the accent color is a big deal. Without any exaggeration, the color scheme rises to the level of the CEO for each of these properties. This is a transitional care facility. Just as they take their time in choosing every element of the interior so that it represents a place of healing and vibrancy, also the outside is chosen with the same level of care. If the entire building were to be red, I would not be able to present that with a straight face in Leawood. This is truly an accent color that is used sparingly and quite nicely to handle the idea of vibrancy for the building. We would ask that No. 7 be stricken from the list. The only other stipulation we would like to address is No. 13. It states that the shrubs shall be a minimum of 3 feet at the time of planting. We would like a clarification so that it says none of the shrubs will be less than 3 feet in height except for the interior landscaping, for which that requirement does not apply. With that, I'll stand for questions.

Chairman Elkins: Are there any other stipulations that are of concern to you or your client?

Mr. Petersen: All the other stipulations are acceptable.

Comm. Levitan: The renderings look modified. The sample I see is more muted than the printed version. Have you seen the sample?

Mr. Klein: We have, and staff has concerns with regard to the color.

Comm. Strauss: Where will the accent color be on the building?

Mr. Petersen: *(Shows where the color will appear)* You can see it is used truly as an accent color.

Chairman Elkins: Does staff have a comment on the size of the shrubs and the modification that the applicant described as a clarification?

Mr. Klein: The LDO states a recommended 3 feet in height. Staff wants the 3 feet for the buffers between the properties and to screen the parking, but as far as the interior, staff is supportive of the applicant's position.

Comm. Pateidl: Tell me the importance of this red color for the accent.

Mr. Petersen: Mainstreet is a company that has become known nationwide for the ultimate in transitional care to the level of a hotel-like experience. I have great respect for a young CEO of this very high caliber company that is involved in the finest of details. This is very important, whether it is the inside or outside, that it look classy.

Comm. Pateidl: Why is it important?

Mr. Petersen: It is a place of healing and transitional care. People come in for anywhere between 14-30 days to heal. It is not a place that is a beige place. When you look at the building on the website, the last thing you think of as far as an emotional color association is all beige. The Mainstreet facilities all have an accent color that makes you realize that it isn't something to be forgotten. Just like you might do in your living room or another place that you use an accent color, this is not meant to entirely blend in. It is meant to be consistent with the surroundings but is meant to be a memorable experience and building from the time people drive up.

Comm. Pateidl: With all due respect, I have a hard time identifying with that as a justification for that red color. My first impression when I looked at the renderings is it looked like an athletic dorm at the University of Nebraska. The concern I have is how well it will fit into the community at that particular location, across from a major church and major housing developments. It is a very brash and bold substantial color presentation. I would question how Mainstreet feels about getting along with the neighbors versus the importance of the red coloring.

Mr. Petersen: This is where subjective meets subjective. We have not heard any complaints from anybody we have shown these pictures to. It is visible from the public road system. We're not bashful about it. We think it looks great. Folks from the church showed up at our neighborhood meeting. I think this is a subjective point. I may never convince you that this is an appropriate use of an accent color, but it is something that is well thought out and important to my client.

Comm. Pateidl: Staff, did we have the renderings when we went through the preliminary stage?

Mr. Klein: We had the renderings.

Comm. Pateidl: Were the renderings presented at the interact meetings?

Mr. Petersen: They were presented a long time ago.

Comm. Pateidl: Thank you.

Chairman Elkins: Are there any more questions for the applicant? Thank you. That leads us to discussion of the application.

Comm. Strauss: When I look at the renderings, the red seems muted to me. I was expecting a brighter red. I see almost clay-like color, and I think it's nice to see some accent colors besides what we like to call Johnson County beige. I enjoy interesting architecture, and I like the red. It is a subjective discussion, I realize. I don't have that architectural background, but the red doesn't bother me.

Comm. Ramsey: The red bothers me. I'll leave it at that.

Comm. Levitan: I think I'm okay with it. It's not an "in your face" red. It conveys a rich tone, and I think in the land of beige, it may stand out. It is beige out there. If it was fire engine red, I would probably have a problem with it, but it doesn't appear that it is that. I'm fine with it.

Chairman Elkins: Other comments? That moves us to a motion.

**A motion to recommend approval of CASE 54-15 – MAINSTREET FACILITY – ASSISTED LIVING/SKILLED NURSING FACILITY – Request for approval of a Final Plat and Final Plan, located east of Nall Avenue and south of 143rd Street – with the removal of Stipulation No. 7, and No. 13 includes “. . . except for interior landscaping” - was made by Strauss; seconded by Levitan.**

Comm. Ramsey: Since we're short of people, I'm not going to hold this up over the color. I would like to go on record as saying that I support staff's contention that it could be muted a bit more. For the sake of moving the project forward, I will support it.

Comm. Pateidl: Simply stated, I won't support this on the basis of the conflict with the neighborhood. If this goes through with the removal of No. 7, there will be no further consideration as far as the muting of the color. There will be no requirement.

Comm. Ramsey: City Council could still deal with it at their level.

**Motion carried with a vote of 3-1. For: Levitan, Strauss and Ramsey. Opposed: Pateidl.**

**CASE 55-15 – TOWN CENTER PLAZA – RESTORATION HARDWARE – Request for approval of a Preliminary Plan and Final Plan, located north of W. 119th Street and east of Nall Avenue. PUBLIC HEARING**

**Staff Presentation:**

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 55-15 – Request for approval of a Preliminary Plan and Final Plan for Restoration Hardware, located north of W. 119<sup>th</sup> Street and east of Nall Avenue. The Planning Commission originally heard Case 131-14 for Restoration Hardware on December 1, 2014. Since that time, the applicant has decided to redesign the building, making it slightly smaller and to include rooftop outdoor space. The applicant is now requesting approval of the new design.

The building will be 41,290 square feet and 3 stories on the southeast portion of Town Center Plaza in the former 810 Sports Zone location. The applicant is proposing parking to the west and east of the building with the main entrance to the building on the north side. The applicant is proposing a total of 64 spaces on the site with a cross access agreement with the rest of the parking in Town Center Plaza development. The building is proposed to be 50 feet in height with elevator overruns projecting to a maximum height of 52 feet, 4 inches. The first floor will have outdoor courtyards on the east, west and south. The second floor will have 2 balconies on the north elevation. There will be an exit on the third floor that leads to the outdoor space above the second floor. The outdoor space on the third floor will consist of

landscaping, metal trellises with awnings and an enclosed area that houses the elevators and the grand staircase. The building material is proposed to be cement plaster with a series of windows and black steel awnings to break up the façade. The applicant is proposing 2 steel plaques on either side of the main entrance inside plaster frames. The plaques will read, "RH Leawood, the Gallery at Town Center Plaza." The letters "RH" will be approximately 3 inches in height with the remaining letters being 1 inch. These plaques will be painted to match the color of the building. The applicant is requesting 2 deviations for interior parking setbacks. The Leawood Development Ordinance requires 10-ft. interior parking setbacks; the applicant is requesting 4 ft., 9 in. and 4 ft., 9.5 in. setbacks. They are being requested to align the drive aisles between Restoration Hardware and the adjacent parking to the north. Staff is supportive of both the requested deviations. I have a clarification for the case. The property owner for the case is Glimcher, and Restoration Hardware is leasing the site, so stipulations that reference the owner refer to Glimcher and not Restoration Hardware.

Chairman Elkins: The reference to the property being owned by Leawood Lot 2, LLC is what should be changed, correct?

Mr. Klein: It is more of a clarification.

Ms. Brandt: The Lot is a subsidiary of Glimcher.

Mr. Klein: We would also like to propose a modification in order to allow cars to turn around at the dead end. We would like for them to block out 1 parking spot at the end of each parking aisle.

Chairman Elkins: Would it affect their compliance with the LDO in terms of parking spaces?

Mr. Klein: They are short on the site as it stands, but they have a cross-access parking agreement with Town Center Plaza. As we just indicated, Glimcher owns both pieces of property.

Ms. Brandt: Staff is recommending approval of Case 55-15, and I would be happy to answer any more questions.

Comm. Pateidl: Is signage included with this application?

Ms. Brandt: Signage is not included with this application. We are considering the plaques architectural elements.

Comm. Pateidl: Is it anticipated that any additional signage will be requested?

Ms. Brandt: The applicant is going to propose 2 additional sigs that will read "RH" on the north and south sides of the building.

Chairman Elkins: Is there a way to tell the total difference in elevation from 119<sup>th</sup> Street in front of the address to the top of the building?

Comm. Levitan: To piggyback on that, what is the difference in height from the last approved plan and this one?

Ms. Brandt: The previously approved plan was also 50 feet in height, but the elevator overruns went up to 56 feet. This is actually a reduction in the total height of the building.

Mr. Coleman: There is about an 18-20 ft. difference depending on the location. The top of the building is just under 50 feet, so it is approximately 70 feet from road grade to the top of the building.

Comm. Pateidl: It appears that more than just reducing the size of the building, there has been a major change in the architectural appearance of the building. As such, do we have sufficient information on the materials? Has it been vetted with respect to compliance with the ordinance?

Mr. Klein: The design of the building has changed fairly substantially as far as the rooftop terraces; however, the materials and color of the building have remained the same.

Comm. Pateidl: Just as long as the planning department has evaluated it, I am fine.

Chairman Elkins: Additional questions? Seeing none, I would invite the applicant to step forward.

**Applicant Presentation:**

Brian Suiter, WP Glimcher, appeared before the Planning Commission and made the following comments:

Mr. Suiter: WP Glimcher, which is the former Glimcher and has merged with another company, owns Town Center Plaza and also the property under discussion this evening. RH will be under a ground lease and will present architectural details.

We are here to bring a new design with the same tenant. The building is vastly different in terms of architectural details. The materials are very similar. The reason we are here is retail is somewhat of a changing beast. RH had the opportunity to build this same store in another location and knew that this was a better fit for this market. It gives more outside display area and a better opportunity to engage with the environment to really tie in with Town Center Plaza. Despite the fact that it slowed down our progress by 6-7 months, we prefer to have them have the perfect store for the location.

We are fully on board with everything staff has done. We appreciate all their work on this. There was a comment that was part of Stipulation 21, which is a mechanism for funding the maintenance of the common area. I understand that it's a template stipulation for a variety of projects. With our new ownership of Glimcher, there is more detail toward some of these issues with how they affect our financing and funding for joint venture partners and such. The way this is worded is somewhat concerning in our view, partly because of the words "jointly" and "severally" which means that we, along with RH, to have this funding mechanism, would suggest they are just as liable for our property as we are for theirs. The REA that we currently have with this property already has means to be able to satisfy any kind of maintenance for common areas. If they aren't doing maintenance, we can come in and do it for them. We haven't had a lot of time to work with staff and our tenant since this came out. We would like to propose to have the ability to work with staff to come up with language that is comfortable for everyone. Other than that, I will leave it to the folks at RH to present their overall site. Feel free to ask me questions that are specific to the landlord.

Rob Eddington, Restoration Hardware, 15 Cook Road, Corte Madera, CA, appeared before the Planning Commission and made the following comments:

Mr. Eddington: With me tonight are Robin Randall with Restoration Hardware, architect of record George Melara and outside counsel John Snyder. We were here last fall and received your approval. In the interim, we opened a store that had less massing and a lower profile. We felt that was the appropriate store for this parcel as well. It is centered on the parcel, and it has a much more open rooftop with balconies on each building. We appreciated the staff review of our application and look forward to your support tonight. Robin Randall will go through changes in the design.

Robin Randall, 15 Coke Road, Suite K, Corte Madera, CA, appeared before the Planning Commission and made the following comments:

Ms. Randall: I would like to take a few minutes to refresh your memory on what RH is as a company. Restoration Hardware is a luxury brand in the home furnishings market. We offer furniture, lighting, bath, textiles, décor and other lines such as outdoor, baby and child. We serve as a curator for some of the world's finest historical design, but we are also constantly bringing in new product by working with artisans around the world to showcase their latest design visions. The image on the screen is a photo of one of our recently opened galleries in West Hollywood. The gallery we have planned for Leawood is modeled off this design. The design in Leawood features the front loges and the entry courtyard. The interior of a Restoration Hardware gallery is set up like a showroom. The way the product is laid out is very similar to residential design. The rooftop will have a combination of trees, shade structures and outdoor RH product. We are all very excited about the Leawood location. If you have no questions for me, I would like to invite George Melara up to talk more specifically about the design.

George Melara, Nelson Partners, 15210 N. Scottsdale Road, Scottsdale, AZ, appeared before the Planning Commission and made the following comments:

Mr. Melara: One of the concerns we heard last time was about the bulk of the building. We had asked for a deviation on the front yard setback of 40 feet. Now with the new design, we have moved the building farther away from 119<sup>th</sup>. It also stair-steps back and accomplishes a lot of the things that were raised as potential concerns last time. I think this is a much better design. I will be glad to answer any questions more specific to the architecture.

Chairman Elkins: Thank you.

John Snyder, Dentons Law Firm, 11912 Mohawk Road, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Snyder: We're fine with all the stipulations that staff recommended, other than No. 21. We would like it to not be a part of this because we have an REA that addresses common area maintenance for the shopping center and pad site. The other option would be to state that there is a Reciprocal Easement Agreement in place that affects the property and governs common area maintenance. I could provide language to staff if it's helpful. Otherwise, we are in agreement with staff's recommendations. Thank you.

Chairman Elkins: Questions for the applicant? Mr. Snyder, I am curious about the concern about No. 21 because it strikes me that the qualifiers at the end of the stipulation reference that the cost would be jointly and severally assessed against each lot rather than to the landlord or tenant, and it specifically calls out that it shall be the responsibility of the owners of the lot. As I understand it, your clients are not the owners of any of the lots in this space.

Mr. Snyder: That is correct. It starts out and refers to the owner/applicant. The owner has established a mechanism, but then it gets into deed restrictions and funding. I don't think that's how it is actually done. From the tenant standpoint, we have a lease with the Glimcher entity that provides for the tenant paying a certain amount of operating expenses under the lease. From an ownership standpoint, it is different. I don't represent Glimcher, but they do have an REA. From Restoration Hardware's perspective, we have the lease in place with the owner. The language doesn't reflect how it is operated.

Chairman Elkins: You make a fair point with respect to reference to the owner and applicant, but it does seem like the body of the requirement all references the owner of the land as opposed to the tenant. Are you concerned that your clients may have some responsibility under this stipulation?

Mr. Snyder: We're concerned because it mentions the applicant. We certainly have to pay our lease payments, which include both base rent and operating expenses. We just want to build a nice store. They were a little concerned with the language. If they sold the pad site to a third party, how would that work? They have an REA in place which governs this kind of thing.

Comm. Levitan: Arhaus had the same situation, I believe. How did we handle that?

Mr. Coleman: The same stipulation was part of that application. We would be fine with removing the word "applicant" from the stipulation.

Mr. Snyder: That addresses our concern.

Mr. Suiter: Arhaus was approved with this stipulation. Our company has since been bought by another company, so now it is WP Glimcher. In that case, WP Glimcher looks more toward the opportunities for joint venture partnerships and for different ways to finance properties. Since that change has happened, this situation has sparked a slightly more microscopic view of the language versus when we came in with Arhaus. Our concern here is the way this is worded is not the way that it's handled in reality. The underlying intent is spot on, but the way it is worded suggests that there will be an independent fund that we set up with our tenants that we can pull from if there are offset maintenance issues. In reality, because of the way we have the structure set up with RH, although we own the land and there are common area maintenance fees that RH pays us, those fees are distributed toward the ring road and entrances. The internal landscaping to their parcel is completely handled by them. Within the REA, we have the rights to go after them to provide the landscaping, but we don't have a fund to pay a landscaper.

Chairman Elkins: Is your concern the respective obligations of you versus your tenant, RH, or is your concern the respective obligations of one lot owner relative to another lot owner in your park?

Mr. Suiter: Ours is more general and across the board. If it is RH or another tenant, we will still have the same concern.

Chairman Elkins: It strikes me that we addressed that by simply striking the reference to the applicant. Our concern is we want to have one place to go to satisfy the city's concerns. Secondly, if the lot is sold off, this stipulation will address that because the last thing we want to do is for you to sell off the RH lot and leave the city no recourse against you. That is why we have the cross obligation of joint and several. You say that this doesn't match the real world experience. The requirement is for a funding mechanism, not the fund itself. You've demonstrated very well that you have established a funding mechanism. I'm struggling to understand exactly what your concern is, other than to create a divorce between multiple lot owners at some point down the road. Quite frankly, the city has some experience with that with other developments.

Mr. Suiter: I agree 100%. In a perfect world, when DDR took over the site, they would have established a master development agreement. Everybody that bought parcels from them would have been obligated. Unfortunately, there is not that document in this case. We are, arguably, the biggest guy on the block, but we have no control over Dean & DeLuca at this point. In a perfect world, we could force our hand to Dean & DeLuca, or alternatively, if we sell off RH, we could come and force our means on RH. It's not the case in the real world. We have REAs, which we feel represent a good way for us to be able to have some kind of leverage over tenants. Arguably, the concern is that we're not interested in selling this off. To maintain that opportunity in the future, the concern is that we can't have that type of language in a parcel sale. With joint and severally, if we stop working on our property, they would be obligated to fix our property because it's a joint fund. That will make it so these properties are utterly worthless.

Chairman Elkins: You're telling me that the Glimcher entity does not own the pad site that Dean & DeLuca is on?

Mr. Suiter: We only own Bristol, Pottery Barn, Arhaus and RH. There are roughly 15 different entities that own property within that square block.

Chairman Elkins: Thank you.

Comm. Pateid: In the real world, you received these stipulations on Friday and you have new ownership or legal counsel looking at this. Realistically, you haven't had the time to sit down with staff and talk about what needs to be done or what variances you have with the objections inside of this. I'm not sure we can modify this stipulation, but we can offer the requirement that mutually agreeable language is reached between the parties prior to the presentation to Governing Body.

Chairman Elkins: Thank you. I struggle a little bit because I hate the idea of kicking the can down the road so Governing Body has to deal with it and we don't have an opportunity or the obligation to do so. That is my concern with your proposal, though it has a lot of merit. It's hard for me to accept the fact that this comes as a complete surprise because the same owner was involved in Arhaus. Does staff have a comment on this issue?

Mr. Suiter: In the first round, this was not a stipulation. To be honest, it was a bit of a surprise when we got this because it was added in. We probably could have foreseen it because it was in Arhaus.

Mr. Coleman: We have included this stipulation for years on all the new development. The reason for it is to protect the city's interest when these developments get chopped up and sold. Mr. Suiter and I talked a bit about it this afternoon. Any property they don't own is not subject to this at all. This is where we felt we needed to start for Town Center.

Chairman Elkins: And staff doesn't have any objection to removing the reference to the applicant.

Mr. Coleman: We have no objection to that.

Chairman Elkins: In many ways, it strikes me that not having a master plan exacerbates the issue, and it is even more important that we have a stipulation like this because we can't fall back to the plan to protect the city in the event that there is a downturn in the economy and Glimcher finds it necessary to sell off lots. We have run into that in at least one instance in the city, and it has been a challenge for us to regulate it. Additional comments?

Comm. Ramsey: If we're in agreement, we have our safety clause.

Chairman Elkins: Given that, Commissioner Ramsey, would you think it would be appropriate to add clarifying language to encourage the owner and staff to enter into discussions?

Comm. Ramsey: I think it's incumbent upon the owner to move forward with staff if they have that kind of concern. As it has been pointed out, this is standard language. Frankly, I'm trying to figure out exactly what it is they're trying to say to us. I think they need time to sit down with staff if they're that concerned. If they're not, we move forward.

Chairman Elkins: Other comments? Seeing none, I'll open the Public Hearing.

## **Public Hearing**

As no one was present to speak, a motion to close the Public Hearing was made by Pateidl; seconded by Strauss. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

A motion to recommend approval of CASE 55-15 – TOWN CENTER PLAZA – RESTORATION HARDWARE – Request for approval of a Preliminary Plan and Final Plan, located north of W. 119th Street and east of Nall Avenue – subject to 25 staff stipulations with the removal of the word “applicant” in Stipulation No. 21 – was made by Ramsey; seconded by Pateidl. Motion carried with a unanimous vote of 4-0. For: Levitan, Pateidl, Strauss and Ramsey.

*MEETING ADJOURNED*