

**City of Leawood  
Planning Commission Meeting  
August 25, 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:** Hoyt, Walden, Levitan, Pateidl, Williams, Elkins, Strauss, and Coleman.  
Absent: Ramsey

**APPROVAL OF THE AGENDA:**

**A motion to approve the agenda was made by Elkins; seconded by Strauss. Motion carried with a unanimous vote of 7-0. For: Hoyt, Walden, Levitan, Pateidl, Elkins, Strauss and Coleman.**

**APPROVAL OF MINUTES:** Approval of the minutes from the July 28, 2015 Planning Commission meeting.

Mr. Klein: A correction was made to the minutes in a vote count for Mitchell Gold.

**A motion to approve the amended minutes from the July 28, 2015 Planning Commission meeting was made by Elkins; seconded by Hoyt. Motion carried with a unanimous vote of 7-0, For: Hoyt, Walden, Levitan, Pateidl, Elkins, Strauss and Coleman.**

**CONTINUED TO SEPTEMBER 22, 2015:**

CASE 61-15 – THE GLYN OF LEAWOOD - Request for approval of a Rezoning, Preliminary Plan, and Preliminary Plat, located north of 151st Street and east of Mission Road. **PUBLIC HEARING**

CASE 75-15 – LEABROOKE TOWN MANORS – Request for approval of a Preliminary Plan and Preliminary Plat, located north of 148th Street and west of Kenneth Road. **PUBLIC HEARING**

**NEW BUSINESS:**

CASE 84-15 – LEAWOOD COMMONS – COMMERCE BANK – Request for approval of a Revised Final Landscape Plan, located at the northeast corner of Nall Avenue and Town Center Drive.

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 84-15 – Request for approval of a Revised Final Landscape Plan for Commerce Bank, located at the northeast corner of Nall Avenue and Town Center Drive within the Leawood Commons development. Nall Avenue and Town Center Drive border the site on two sides. Ash Street, which borders the property to the east, is a private drive. Along Town Center Drive and Nall Avenue, existing mature Pine, Oak and Birch trees are present. The applicant is proposing to remove these trees and replace them with 4-in. caliper shade trees at 35 feet on center. Along Ash Street, there are existing Oak trees which shall remain. Around the perimeter of the site, the applicant is proposing a combination of single and multi-stem ornamental trees, a combination of deciduous and evergreen shrubs and ornamental grasses. Directly adjacent to the building is an existing cobblestone strip, which is proposed to remain. Beyond that strip, the applicant is proposing a combination of roses and juniper shrubs. Within the parking lot island to the east

side of the building, there are 2 existing Birch trees. The applicant is proposing to add 3 additional Birch trees which shall bring the total parking lot tree count to 5. North of the trash enclosure on the north side of the lot, the applicant is proposing a total of 5 7-ft. upright evergreen trees to enhance the screening of that enclosure. Staff is recommending denial of Case 84-15 based on the following reasons: The applicant is proposing to remove mature shade trees adjacent to Nall Avenue and Town Center Drive, most of which are healthy and established. It will take years for new trees to reach the level of size and canopy cover of the existing trees. It is staff's opinion the applicant is able to infill with the required shade trees while preserving the mature trees. The plan also does not comply with Section 16-4-7.3(d)2 of the Leawood Development Ordinance, which states that landscape buffer of 10 feet shall be required adjacent to buildings. Lastly, the applicant is proposing smaller shrubs than what is required by the ordinance, which is a minimum of 5 gallons and 36 inches in height at the time of planting. However, should the Planning Commission approve this application, please consider the recommended stipulations outlined in the Staff Report. I'm happy to answer any questions you may have.

Chairman Williams: I would start with the shrubs. All shrubs have to be a minimum of 36 inches in height, regardless of what species they are?

Ms. Kriks: That is correct.

Chairman Williams: How does the existing landscaping begin to comply with the 35-ft. spacing requirement?

Ms. Kriks: The purpose of the requirement is to create a boulevard effect. Staff's concern is that these are mature, healthy trees that would be replaced by smaller trees when other ornamental trees could be used to infill.

Chairman Williams: Have you had discussions with them regarding what kind of layout might work?

Ms. Kriks: We have met with the applicant a couple times.

Chairman Williams: Would you elaborate a bit on the 10-ft. buffer? There was something that referred to security issues the bank had with it.

Ms. Kriks: The applicant has concerns with creating a landscape buffer directly adjacent to the building due to security concerns. The applicant could address that. We have banks in the City of Leawood that have a 10-ft. landscape buffer with 3-ft. shrubs.

Comm. Hoyt: Does the city have a policy on removal of mature trees?

Mr. Coleman: We're in the process of working on a tree ordinance that will address removal.

Comm. Pateidl: Does that mean there is no ordinance regarding tree removal?

Mr. Klein: We are in the process of amending the current ordinance to address tree preservation of mature trees. Occasionally, businesses would like to keep the trees small for visibility purposes. The city is interested in maintaining the mature trees.

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

### **Applicant Presentation:**

Kurt Kraisinger, Lorax Design Group, 8021 Santa Fe Drive, Suite 200, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Kraisinger: We are here on behalf of Commerce Bank. We are challenged with all kinds of obstacles as landscape architects. The two main objectives we have to consider on every project are to satisfy the city's ordinances and the client who has hired us. Commerce Bank has been around since the late 1800s. They are a staple here in Kansas City and probably one of the oldest in Leawood. When they approached us about this area, they asked about replacing a few trees. At some point, the city said that the whole plan would need to come back through the process. The client wants to do this right. Leawood Commons had an overriding Landscape Plan when it was developed. Commerce Bank has been taking care of the trees in question. The English Oak is a beautiful tree, but it also has taken 20+ years to get to the height today, and others have been lost along the way. Along the entire corridor of Leawood Commons, there is only a single English Oak, and it stands out. Others were not maintained and have been lost. Along Ash, there is a consistent block of English Oaks to the south and north of the development. We believe those should stay in place and that they create good continuity and rhythm throughout the development. We have no issue with replacing the one tree on Ash Drive. Since we are putting in a whole new Landscape Plan, we are preserving some trees, but we feel the continuity and texture along the street frontages on Town Center Drive and Nall should be in keeping with what has been done immediately to the south. There were street trees there, and the arborist the staff used to look at the trees determined that they are in the right of way and that they should be maintained. We don't feel it builds continuity with the street trees along the corridors. Across the street, healthy trees were removed. If there is not an ordinance in place regarding tree preservation, we feel that what we have proposed is in keeping with compliance. We have met and exceeded the required levels of landscaping with trees and shrubs.

Regarding the landscape buffer around the building, although the ordinance is very well spelled out, there are certain items that are subject to question. One of these is the landscape buffer around the building. It does not actually call it out specifically and what kind of plants can go in the area. We work with many different clients, all of whom have criteria regarding security and safety. I would relate this to site triangles at an intersection. Clients don't want shrubs that will exceed a certain height adjacent to the bank. We have a 10-ft. buffer, and within the buffer, we have 18 Junipers, 15 Roses, 2 Maples and ground cover. We feel that we meet the criteria. If the code is being revisited, I would like to point out that there is no physical way to meet the criteria of the 5-gallon shrub because it is not even available in the marketplace. A #5 container is available, and it equates to a 4-gallon shrubs. Many industries are going to special potted plants, and these are even smaller. The next size is a 7-gallon shrub, and it will drive the cost of the project up.

The third correction I would like to make is we are not using multi-stem trees, and we are using clump form trees. It is a common misconception in the industry. A multi-stem tree is a large shrub on a short trunk. Most don't like it because it becomes a screen. We haven't used them for years. We would like to use a minimum of 3 cane clump form trees, which is three small trees grown together. They are each treated like individual trees, which creates height and the 2-in. minimum to meet the code. We feel like we have a great project here, and I'd be happy to answer any questions.

Chairman Williams: Right now, particularly along Town Center, how many different varieties of trees are you proposing to remove and replace?

Mr. Kraisinger: We're talking about removing the 2 English Oaks, and we're going back in with a consistent growth of Ginkgos along both Town Center and Nall Avenue to create a more consistent corner presence.

Kyle Knecht, Lorax Design Group, 8021 Santa Fe, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Knecht: We're also proposing to remove 2-3 Birch trees and perhaps a Pine as well.

Mr. Kraisinger: Austrian Pines are on a decline. I know that some of these on the property are white Pines, which do better here in Kansas City. Further up Nall are more Austrian Pines and River Birch, which is a terrible street tree because it is very messy and fragile in storms. We are amending the ones in the parking lot.

Chairman Williams: By taking these trees out and meeting the ordinance with 35-foot spacing and Ginkgos, you will have a consistent appearance that matches what is going on?

Mr. Kraisinger: Yes.

Comm. Strauss: Is the purpose of the project site visibility of the bank? Is it beautification of the landscaping or clean-up?

Mr. Kraisinger: (*Illustrates on Site Plan*) Plants in decline or missing branches are marked to be replaced. The client wanted to come in with a consistent plan rather than just replacing the declining trees. Much more plant material is going in that what is there now.

Comm. Strauss: What percent of the trees are being taken out and replaced?

Mr. Kraisinger: I would have to do the math, but perhaps ½. The trees that are being removed need to go. The only ones that look decent are the English Oaks, but they don't fit the overall concept. It is hard for me to take out any tree, but we deal with this all the time. AMC could have left all the street trees along Town Center Drive and Ash, but they were all removed and replaced with trees that matched the development. We just want to develop a product that looks consistent. Staff is asking us to put in another English Oak, and it will look so odd because it will never physically catch up with the others. If all plantings along Nall were kept up, it would make sense to keep the trees, but that hasn't happened.

Chairman Williams: If there are no other questions, it brings us to discussion or a motion.

Comm. Strauss: Mark, can you talk about what might have happened at Park Place? Were older trees taken out?

Mr. Klein: Originally, there was a very large tree that we tried to keep. At that time, the developer said there was no way to keep the tree because of a small drainage channel adjacent to it. With regard to the application at hand, staff doesn't have an issue with them coming into compliance with the current ordinance. The issue is the cutting down of mature, healthy trees. With regard to the number of shrubs and the 5-gallon requirement and 3-ft. height requirement, no other landscaper has addressed that with us before. With regard to the 10-ft. buffer, the ordinance clearly requires that. Staff applauds the applicant with wanting to upgrade the landscaping.

Mr. Coleman: One of the concerns with consistency on the entry to Leawood is we would be planting Ginkgos across from Maples, which would be completely mismatched. The Maples will grow much faster. If you're inclined to approve the application, I would suggest that they need to be substituted for Maples or a similar tree on the south side by Park Place to create a matching entry to Leawood.

Mr. Kraisinger: Any landscape architect will tell you that there is an idea of a boulevard effect. The idea is to change up species. If everything was ash, the ash borer would wipe out everything. These are two different developments, so saying they need to match is ludicrous because it is a whole different development, different character. The heights are different with different architectural styles. We have met the spirit and intent of the 35-ft. spacing, picking a stellar tree. It may grow slower, but it will go in as a 4-in. caliper tree. It

is a beautiful tree, and we feel it is a good match for the project. Any arborist will encourage diversity. Our obstacle was keeping a consistent street appearance, and I feel we have met that.

Comm. Coleman: If I'm counting correctly, there are 17 trees to be removed. Is that correct?

Mr. Klein: I believe so.

Comm. Coleman: How many of those trees physically need to be removed?

Mr. Coleman: There were 3 trees that Brian Anderson identified as being in decline.

Chairman Williams: Which trees are you suggesting remain?

Mr. Klein: We are looking to maintain the mature trees that weren't suffering because it takes a while to get the trees to that level.

Chairman Williams: I am sympathetic to that, but on the same token, I see developments in the city with uniformity of street trees. This isn't doing any of that, particularly with the losses over the years. You can't tell us which trees you are specifically requesting to keep?

Mr. Coleman: We suggested all of the healthy trees.

Chairman Williams: Which of the diseased trees are you looking to have removed?

Mr. Coleman: The Pine, the English Oak and a Birch. We felt street trees could be added. The Landscape Plans are approved as part of a Final Plan, so they are a plan of record. All these trees were approved as part of the development plan. We go to great extent, at Governing Body's direction, to make sure that all the Landscape Plans in the city are maintained.

Comm. Pateidl: If English Oaks were part of the original Landscape Plan and they were up and down the street and now are not there, where did they go? All the symmetry is lost because the trees are gone.

Mr. Coleman: I would have to look at the original plan, but they should have replaced them. This is just now coming to our attention.

Comm. Pateidl: How old are these English Oaks?

Mr. Coleman: 20 years old.

Comm. Pateidl: It just came to your attention?

Mr. Coleman: I don't know how many are missing.

Comm. Pateidl: I'm assuming from what has been said that English Oaks went up and down Nall and Town Center as part of the street plan.

Mr. Coleman: I don't know that it was the case.

Comm. Pateidl: I thought I asked you if that was the case and you said it was.

Mr. Coleman: No.

Comm. Pateidl: That is my assumption. I don't know if it's correct or not, but what symmetry may have been designed initially has been lost. What remains is somebody who took care of some trees that really don't look appropriate.

Chairman Williams: Mr. Kraisinger, do you know about the previous Landscape Plan?

Mr. Kraisinger: The only copy that we received is the one that was actually for our portion of the development. You can walk up and down Nall and see other English Oaks. I don't know how many. I know 2 that are immediately north of us have been replaced with alternate trees. The point is that there is lost symmetry. This property had trees that died and were not replaced.

Chairman Williams: If you were to keep the Oaks and the other healthy trees, how could you work with those trees to create the boulevard effect?

Mr. Kraisinger: It is a challenging site because now we have to meet all the other regulations that have come into effect since these were planted originally. More trees are required today, so now we have to work around trees and keep uniform spacing. We felt that the trees were in the way. The client said that if he can't remove the Oaks, he probably would not move forward with the project.

Chairman Williams: I don't have the full benefit of the English Oaks on Town Center Drive. If you go in with the Ginkgos to the east and finish up your plan with Ginkgos on the west, you could potentially have 4 if the spacing works out or if staff allows you some flexibility in the spacing so you would not plant on the mature trees.

Mr. Kraisinger: I would have to ask the applicant what he is willing to do. I know the biggest sticking point was to create a street presence that is consistent.

Chairman Williams: I'm sympathetic to staff's concerns about the mature trees. As a designer, I try to keep the trees whenever possible. On the same token, we've also worked hard to create a street presence in the city.

Mr. Kraisinger: Many of the trees in Leawood Commons don't meet the street tree ordinance. We feel that removing those trees benefit the project. The applicant will keep the River Birch in the parking lot.

Chairman Williams: I like what the bank has done with some of their flower beds and smaller landscaping. I see the vast addition of more landscaping in this plan to make it look even sharper than it does today. I don't like the inconsistency of the taller trees. I like what you're creating. I hope we can come to a resolution. Any other questions of staff or the applicant? Seeing none, I open it up for discussion.

Comm. Pateidl: As it relates to the proposal put forth by the applicant, it appears to me that they have certainly met the letter of the LDO, particularly if we don't have any restrictions or specific instructions regarding removal of existing trees. That may change, and if it does change, I would support the LDO. At this point in time, I think that the applicant has a right under our statutes to look at what he wants to do with respect to the improvements to this property. More importantly than just the simple right, I believe what is proposed will give us a symmetrical, good appearance on this piece of property directly across from the AMC center, which is new. Hats off to Commerce Bank for taking this position. I look at it as being a strong corporate citizen, and I would support what they want to do. I am concerned with a stipulation that allegedly cannot be met with the 5-gallon issue. I would hope it could be resolved as far as any approval. I think they're doing the right thing and they have a right to do it.

Chairman Williams: Any other comments or discussion?

Comm. Coleman: This is a lot of trees, and I agree with staff that the area of development has a natural beauty with the trees as they are. I am concerned to take out that many trees at one time. I am hoping that we come to some kind of compromise. I agree with staff.

Comm. Strauss: I was trying to think about it in a different way as far as the Planning Commission approving a new Site Plan and new Landscape Plan where the building is built with landscaping and then a couple years later, ownership changes and maybe the new ownership doesn't like the landscaping. They would then come back to the Planning Commission and want to make changes. I was thinking about how long these plans last. Certainly, there was a qualified landscape architect 20 years ago that laid this out and had a vision. I also have a problem with taking out healthy trees. It looks like a lot of trees to remove. I'm having difficulty with the number of trees. I understand the right to manage the property, but the city also has ordinances on landscaping, and apparently, they don't meet those ordinances if they were to make these changes.

Chairman Williams: If they make these changes, are the two parts of the ordinance that they're not meeting the size of the pots and the 10-ft. buffer?

Mr. Klein: Correct. It would upgrade the ordinance to the current standards otherwise.

Chairman Williams: So, to your comment, they will be more in compliance with the ordinance if they make these changes than they are now.

Comm. Strauss: We've been talking about uniformity of the corridor, though. Would this make it less uniform? I do see height variances today, but a newer tree next to a mature tree creates a lack of uniformity. I don't think we can achieve uniformity at this point.

Comm. Pateidl: As a point of clarification, I'm talking about symmetry of this development and not the corridor. The appearance on the corridor will obviously be impacted, but I also agree with the thought that as long as the properties look good, they really don't need the same kind of tree on one side of the street as the other. Variety is not a bad thing, but keeping the property symmetrical is important in my mind.

Comm. Elkins: I'm struggling here and have no idea what I'm going to vote. I very much subscribe to the idea of preserving fully grown, mature trees. Having said that, there is one picture in our packet where the mature tree sticks out like a sore thumb. If I had my druthers, I would cut down one tree and leave all the rest. That's why I'm not a landscape architect. That is my struggle. I hope there will be a bit more discussion to help me form a decision.

Chairman Williams: Mark, do you or Mr. Coleman know what this tall slender tree is?

Mr. Coleman: It is an English Oak. The others apparently died and were not replaced.

Chairman Williams: It doesn't seem to me that the style of tree contributes to the look of a canopy along the street. Any other questions or discussion? If not, I'd like to get a motion.

**A motion to deny CASE 84-15 – LEAWOOD COMMONS – COMMERCE BANK – Request for approval of a Revised Final Landscape Plan, located at the northeast corner of Nall Avenue and Town Center Drive – was made by Strauss; seconded by Coleman. Motion did not carry with a vote of 3-4. For: Strauss, Coleman and Walden. Opposed: Levitan, Pateidl, Hoyt and Elkins.**

**A motion to recommend approval of CASE 84-15 – LEAWOOD COMMONS – COMMERCE BANK – Request for approval of a Revised Final Landscape Plan, located at the northeast corner of Nall Avenue and Town Center Drive – subject to an amendment to the stipulation calling for a 5-gallon pot to read a #5 container with all other elements of size and height to remain and the remainder of stipulations as provided by staff other than the restriction on removal of trees- was made by Pateidl; seconded by Levitan.**

Mr. Klein: My only concern is that the 5-gallon bucket is taken directly out of the ordinance. There really is no deviation to that. Maybe we need to look at it, but we don't have the ability to change it until it goes through an amendment. This is actually the first time I've had anybody bring up the issue.

Comm. Hoyt: Could we say "the equivalent of a 5-gallon shrub" would that work?

Mr. Klein: As long as it meets what the ordinance calls for.

Comm. Walden: What else is being changed?

Chairman Williams: There wouldn't be any changes.

Comm. Walden: Everything in Staff Comments 1-8 will be approved, then?

Chairman Willilams: We are not approving the comment about keeping the existing trees.

Comm. Hoyt: That is in No. 2.

Chairman Williams: Correct, so part of No. 2 will be removed because the 10-ft. buffer needs to remain.

**Motion amended to keep the requirement for the 5-gallon pot and to address Staff Recommendation No. 2 to remove the requirement to keep the existing trees so Recommendation No. 2 would read: "New plant material will meet all the requirements of the Leawood Development Ordinance, including a 10-ft. buffer along the building"; seconded by Levitan.**

Comm. Coleman: As a point of clarification, on No. 2, the proposal is to take out the section about the healthy trees?

Chairman Williams: Yes.

Comm. Coleman: So they are keeping them or taking them out?

Comm. Hoyt: They can do what they want with the trees with this.

**Motion carried with a vote of 4-3. For: Levitan, Pateidl, Hoyt and Elkins. Opposed: Coleman, Strauss and Walden**

CASE 85-15 – SWARTS RESIDENCE – LANDSCAPE PLAN – Request for approval of a Landscape Plan, located south of 151st Street and west of Mission Road.

**Staff Presentation:**

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 85-15 – Swarts Residence Landscape Plan, located south of 151<sup>st</sup> Street and west of Mission Road. The applicant is requesting approval of a Landscape Plan for a single family residence at 4203 W. 151<sup>st</sup> Street on 2.9 acres. Per the LDO, single family homes must sod the entire lot. The applicant is proposing to sod the ½ acre closest to the residence and then seed the remainder of the property. Staff is concerned about the effects that this may have on the adjacent property. Staff is recommending sod on the perimeter of the property and seeding adjacent to the residence to present more of a completed look from the public and adjacent neighbors' points of view. Staff is currently recommending denial for Case 85-15 based on the plans submitted; however, staff would be supportive if sod was going to be placed adjacent to the public right of way and adjacent properties. If the Planning Commission recommends approval, staff recommends the stipulations stated in the Staff Report. I'm happy to answer any questions you may have.

Chairman Williams: Between the house and the landscaping and driveway, it is maybe an acre. For clarification, I understand you would support sod in the front of the house to the public right of way and also next to the neighboring property?

Ms. Brandt: We're just suggesting them flipping what is sod versus seed.

Chairman Williams: I'm assuming the grades on the Site Plan are close to accurate.

Ms. Brandt: Last I visited the site, they hadn't done the grading yet, but there is a steep drop-off in the front.

Chairman Williams: It is hard to keep seed with a steep grade, particularly with heavy rain. Any other questions for staff? We'll hear from the applicant.

**Applicant Presentation:**

Doug Swarts, 4203 W. 151<sup>st</sup>, appeared before the Planning Commission and made the following comments:

Mr. Swarts: Let me apologize because I am woefully unprepared; I'm just a homeowner. It is a big lot. I was trying to figure out how to not sod everything since it is a large amount of sod. I've been trying to figure out the right plan. My wife and I threw this together to get the ball rolling. The perimeter is lower, so the neighbors would actually see what is near the house. The grades aren't necessarily accurate because of changes. We have worked with the building inspector who is requiring that all of the yard is in before the issuance of a Temporary Occupancy Permit. I am just trying to figure out what to do so I can get my family in the house. The construction is all done, and we've been living in temporary housing because we can't get the yard issue figured out. There is another issue with the driveway, but I'm working with the builder on that. I am looking for Leawood to give me insight on what to do. There have been requirements from the building inspector to bury the electric utility line, and there is no ordinance for that, so I feel like I'm being singled out for whatever reason. I'm all right with adjusting the plan; I'm just trying to figure out what makes sense. I'm trying to keep all the sod at one time so I don't have the water pressure to water 3 acres of sod at the same time. I'm looking for insight on how to work through this and get it resolved.

Chairman Williams: The pictures show existing turf of some sort.

Mr. Swarts: There is rough grass on the outside, but it is not particularly great. A lot of it is probably more weed. There were other compliance issues that I've removed, such as firewood. The yard needs to be done; I'm just trying to get into the house so I can actually maintain it and make sure it's taken care of.

Chairman Williams: The reason I'm asking is that you have turf around the perimeter of the house that could be worked with and do seeding, even though you may be knocking down the weeds. Then you could keep the seed in heavy rain, and it could be something we could work with. If it's substantially all disturbed,

it makes it more difficult. Certainly, seeding the area up close to the house where there is a lot of gravel and construction that is typical of new homes is difficult and almost needs sod. As you pointed out, it's a big lot to put 100% sod on all at once and keep it if you don't have the water pressure.

Mr. Swarts: It is our anticipation to landscape with flowers and trees. It's not all just grass, which is another thing that makes it complicated because I'm trying to get in and manage the stuff. It's hard to take care of the yard when you don't live there.

Chairman Williams: Mark, in that regard, is it possible from staff's perspective to work with existing turf and seed on the perimeter that hasn't been disturbed by construction and fill in with sod where it needs to meet compliance to allow the owner to manage this?

Mr. Coleman: As the owner indicated, most of that stuff is pasture grass. It is not a lawn.

Chairman Williams: I'm only looking from the perspective that grass is there.

Mr. Coleman: There is some that wouldn't necessarily need to be removed; he could probably sod around the areas if he so chose to. It's really kind of a weak.

Chairman Williams: I'm only looking from the perspective that there is something there to help the new seed stay in place.

Mr. Coleman: That is the idea for the sod on the perimeter because this is all a hillside and drains to his neighbor's property. The ordinance requires you to establish the grass, which requires water. The seed on the hills is much harder to establish. Since he didn't want to comply with the ordinance to sod the site but rather to seed part of it, we suggested doing sod on the perimeter to prevent erosion to the neighbor's property. That was the thought behind that. They don't want to do that, so that's why we're here.

Chairman Williams: How much of the perimeter would be required to get sod if they were to accept doing that?

Mr. Coleman: We just used his map and reversed it. It is probably 50-100 feet around the exterior for sod and then probably 100 or so feet around the house.

Chairman Williams: It would around all sides up to the public right of way on 151<sup>st</sup> Street as well, roughly 100 feet from the property lines. In that regard, on the right side of the drawing, it looks like 58 feet from the house to the property line.

Mr. Coleman: On the west side, yes. It is the flattest area, too.

Mr. Swarts: On the west side around the back has grass that is more prairie grass. Also, on the far east corner is all established grass. I am just looking for guidance on what to do and how to get in the house while it's going on instead of waiting until it's all established.

Chairman Williams: I can see where it would be important to be in the house to help maintain this, regardless of what we are asking you to do. In light of what staff has commented and recommended, are you rethinking your willingness to do the 100 feet around the sides or maybe 50 feet, given the distance on that west side?

Mr. Swarts: I would be completely amenable to 50 feet around the perimeter.

Chairman Williams: I threw out that number because it's what you have on the west side, and you'll have a little more than that on the east side.

Mr. Coleman: On the west side, it's only 25 feet of sod. On the east side, it is about 100 feet.

Chairman Williams: Any other questions of the applicant?

Mr. Walden: Do you plan an irrigation system?

Mr. Swarts: We do plan on one, but there is a requirement to irrigate everything, and there is no ordinance for that.

Mr. Coleman: I think that was a misunderstanding. The irrigation is to establish the grass; it is not that we require an irrigation system to be established.

Mr. Swarts: There was an email sent to me by the building inspector that said I was required to irrigate the whole lot.

Mr. Coleman: Why don't you forward that to me, and I'll take a look at it.

Chairman Williams: Per Mr. Coleman, putting an irrigation system on the whole lot is not required; it just needs to be irrigated to establish the sod or seed. That seems like a step in a positive direction.

Mr. Swarts: I also ask that whatever we come to terms with tonight, I'm able to proceed with the occupancy, barring anything else.

Mr. Coleman: This body doesn't have the authority to do that.

Chairman Williams: I figured that. What is that process?

Mr. Coleman: Once it gets approved and he sods and starts the seeding portion, we would give him the TCO to move in and maintain it.

Chairman Williams: He actually has to get the sod and seed down, and that is per ordinance.

Mr. Coleman: Normally, he would have to have sod on the whole lot.

Chairman Williams: All other properties in Leawood of comparable size have sod?

Mr. Coleman: We have properties that are larger than this that are entirely covered with sod. It's not unusual.

Chairman Williams: This is the first time this issue has come to the Planning Commission.

Mr. Coleman: We have never had anybody not want to comply with this part of our ordinance.

Mr. Swarts: Are there other properties that have not gotten a Temporary Occupancy Permit before the yard is done?

Chairman Williams: That is not something for us to deal with; that is Mr. Coleman's department directly. Any further questions of the applicant? Thank you. That opens the floor for discussion and a motion.

Comm. Pateidl: Given that our drawings are sufficient but lacking a lot of specifics with respect to distance and areas, what I hear the staff telling us is that they're not opposed to recommending that a portion of the lot is seeded, but they do have a concern that sod is established to the extent that it protects the property of the adjoining neighbors, which I wholeheartedly endorse to a certain extent. With that, we have an odd-shaped lot, and it is hard to determine what should and shouldn't get sod and what meets the goal of protecting the neighbors and what might be overkill. If we were to establish a position where minimum of 50 feet from the property line get sod, would that meet the goal of protecting the adjacent property owners and give us something that is identifiable as far as our inspectors are concerned?

Mr. Coleman: That's fine with me.

Comm. Elkins: On the west, there would be an obligation of sod to within 8 feet of the house if I understand correctly.

Chairman Williams: Yes. Are there any other comments? Then to follow Mr. Pateidl's suggestion of 50 feet from the property line, I took the liberty of doing a rough sketch of what it might look like (*Shows illustration*).

Mr. Swarts: To the east side is a drainage ditch with trees. I wouldn't necessarily be able to put sod in there, and also, where there is turf grass established, I wouldn't need to sod.

Chairman Williams: I would open that to Mr. Coleman.

Mr. Coleman: It depends on if you're planning on keeping the barnyard grass.

Mr. Swarts: It is turf grass.

Chairman Williams: We weren't aware of anything in the back corner. I'm not an expert to know where you can put sod.

Mr. Coleman: They usually just leave an area around the trunk of the tree without sod.

Chairman Williams: Rather than a lengthy stipulation on how he treats all of that, can we just set the 50-ft. border of sod? How do we give guidance?

Mr. Coleman: If he leaves a layer around the tree, it's not an issue.

Mr. Swarts: That would also exclude any planting inside the sod area, too.

Mr. Coleman: There is no landscaping there now.

Chairman Williams: If you put in landscaping at the time you put in sod, the landscaping would be accepted.

Mr. Coleman: You need to make sure you're not compromising the neighbors. We are just asking for sod.

Chairman Williams: This gets you started and moved in.

Mr. Swarts: I still have to establish the seed.

Chairman Williams: Does he have to establish the seed or just put it down?

Mr. Coleman: It needs to be put down and watered. Now is the time to do it. If it's done in the next month, September is when it takes.

Chairman Williams: Does that work for you?

Mr. Coleman: Is the pool done?

Mr. Swarts: No.

Chairman Williams: That's not an issue tonight, though.

**A motion to recommend approval of CASE 85-15 – SWARTS RESIDENCE – LANDSCAPE PLAN – Request for approval of a Landscape Plan, located south of 151st Street and west of Mission Road – with incorporation of recommendation of sod and seed with an understanding that an area of a minimum of 50 feet from the exterior property lines of the lot get sod with the balance of the property to be either seed or sod at the discretion of the applicant – was made by Pateidl; seconded by Hoyt. Motion carried with a unanimous vote of 7-0, For: Hoyt, Walden, Levitan, Pateidl, Elkins, Strauss and Coleman.**

CASE 86-15 – MISSION FARMS – 7 TH PLAT – Request for approval of a Revised Final Plat, located north of I-435 and east of Mission Road.

**Staff Presentation:**

City Planner Ursula Brandt made the following presentation:

Ms. Brandt: This is Case 86-15 – Mission Farms 7<sup>th</sup> Plat, located north of I-435 and east of Mission Road. The applicant is requesting approval of a Revised Final Plat. The applicant is requesting to remove a property line surrounding Building F, which is the southwest building, and to combine the building and the surrounding parking lot into one lot. They are also providing a common tract for the main entrance feature and are defining a separate lot for the future Building E, which is to the east. The original purpose of the lot line surrounding the building was to place all common areas, including parking and drives, into a commonly owned tract. This was to facilitate maintenance around the development as well as to ensure cross-access parking. Because of these concerns, staff is not supportive of dividing the parking between property owners without the assurance that maintenance and cross-access parking are to stay in place. To do this, staff is recommending that a cross-access parking easement be shown on the plat covering all areas that are common, including the parking and drives. In addition to showing the easement on the plat, staff has proposed an additional stipulation which was placed on the dais. It would require the applicant to submit, prior to Governing Body consideration, a graphic showing the location of cross-access parking throughout the whole development and not just the lots in question tonight. That would be recorded with the deeds and restrictions. The stipulation would also require that the applicant get approval by the city before the graphic is modified in any way. Staff is currently recommending denial based on the submitted plans for Case 86-15, but if the Planning Commission does recommend approval, staff recommends the stipulations stated in the Staff Report. I can answer any questions you may have.

Chairman Williams: Any questions for staff? Thank you.

Mr. Klein: One of the reasons staff is addressing this on the plat is that we have had a number of developments lately where it has become confusing as to what is the common area and what will be maintained by the development association as opposed to the property owners. We also want to make sure the cross-access parking is maintained because sometimes, the individual tenants will want to reserve the parking and then suddenly everyone is reserving the parking. We have had a situation already with a cross-

access agreement in place but one property owner was afraid to use the other one because the other property owner insisted it was his parking. We are just looking to record whether the cross-access parking changes. Currently, the plat they show draws a line around the building, so it is evident as far as what is the building and what is the rest of the lot. It is listed as 2 different lots in their deed restrictions. We are looking for something to be recorded on the plat because it is something that would have to come back before the Planning Commission and City Council if it were to be changed. If it is something in the deed restrictions, those are private agreements that can be changed without us knowing. If they did change them, they would be out of compliance with the approved plan, but the city might not find out until it is already an issue.

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

**Applicant Presentation:**

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

Mr. Weltner: I also have Judd Claussen with Phelps Engineering with me tonight. We're not in disagreement with the strategy of the cross-access agreements, the shared parking agreements and the maintenance responsibilities. We have a Master Declaration that is a recorded restriction on every property in our Mixed Use development. We spent a lot of time and a lot of money putting that into place. It does exactly everything that is requested by staff. It includes the shared parking arrangements, maps of the shared parking arrangements and cross-access agreements to all the properties on site. Everything we have is in place, and this is a Final Plat application, not a Revised Plan where we put stipulations on our development. That all happened back in 2004, 2005, 2006. I was required in those applications to have a Master Declaration that accounted for all the things that we all jointly want. I'm only re-platting 2 parcels. I have to go to condominium owners and townhome owners on a cross access easement and maintenance responsibility. This is not something I'll be able to get probably. We already have this in place. We would be in default if we don't have it in place. I thought it was odd that I was asked to go to the entire development and start asking for things. They're just not going to do that. The lenders aren't going to let me. Yes, I'm a member of some of those, but I'm not the controlling member. My purpose tonight is to explain that we already have this in place. There is no common-owned property by the association on this tract of ground; it is all owned by member entities that own buildings and parking lots. We tie it all together with the Master Declaration. That's the way we've done this in a common shopping center, even though there are different property owners throughout. We don't have any of that to exist today. The only reason I am here tonight is the county thought it would be a good idea to get this tract of parking and common area that surrounds Building F, which is owned by an entity, to determine it as a development tract. That building already had a valuation that assumed 150 parking spaces around it. The county wanted to get rid of the ancillary tracts that were part of the building, and that is the only reason we're here. We came to try to make something simpler. I'm not sure if this is making it simpler. When we did the Mission 106 apartment building, they wanted the apartment building to own the parking. We agreed, and I thought the message was to get the rest of it that way as well. Anybody can look up our Master Declaration. They're recorded at the county. There is one small tract at the front, and it is the only tract that will be owned by the common area association. The lenders need access to the public right of way at the main entrance. Additional language will be added that reciprocal, non-exclusive easements over, upon and across the driveway, parking and sidewalks as are stated in the Master Declaration that were filed in 2005. All the shared parking areas, circulation, access and egress are on file in public record in the Master Declaration. The maintenance is the responsibility of the property manager. Regarding easement, each owner grants to the board permission to have reasonable access. Staff is asking for nothing other than what the Master Declaration already accomplishes. Nobody likes joint and several language regarding liability, which complicates things. If you would like to approve the Final Plat tonight, we would like to add the note we provided. We would also like Stipulation Nos. 2, 3 and 4 deleted because of the Master Declaration.

Chairman Williams: If you're re-platting this, will it be 3 lots?

Mr. Weltner: The tract that is owned by the association is the entrance tract, and it is described as illegal and without a plat. Another tract is a future development lot. It is currently the staging lot for the apartments. The other tract, we're collapsing 2 lots together into 1 because right now, we have 1 lot that follows the improvement line of the building, and then everything else is the parking, sidewalks and common areas of the building. Right now, they are both owned by the same entity.

Comm. Pateidl: How time sensitive is this filing?

Mr. Weltner: I do have some financing on the one building that would be nice to have cleaned up, but I don't have to.

Comm. Pateidl: Have you reviewed and are you satisfied with the Master Declaration? Were it to be wholly incorporated, would you concur with that?

Mr. Klein: It does a good job with joint access and parking. Probably the one area that does need to be changed is the plan showing the cross access.

Comm. Pateidl: Does it accomplish what you wanted? You wanted infrastructure to show to parties down the road as terms and conditions.

Mr. Klein: It definitely helps.

Comm. Pateidl: Mr. Weltner, is there any reluctance or any reason that you know of that you couldn't incorporate language that says, "The terms and conditions of the Master Declaration are hereby incorporated into this plot in whole and in part"?

Mr. Weltner: I think it already says that. Do we need to beef that up?

Comm. Pateidl: No, and the reason I say that is you've introduced a lot of legal issues that I'm not qualified to say are right or wrong. If you've got the time and it's not sensitive and you know the Planning Department will concur with the inclusion of the Master Declaration as a part of the plat and that resolves their problems, I would encourage you to think about a continuance while you sit down with your attorneys and make sure this is right so it doesn't get screwed up in the filing with the county.

Mr. Weltner: I agree. We're more than happy to let each plat know that this is subject to the Master Declaration. Is that what you're indicating?

Comm. Pateidl: It's a little dicey because once you get it filed, you're going to have to live with it.

Mr. Weltner: The Master Declarations are already encumbered on every property, so it's not really new.

Mr. Klein: Staff's only concern with listing the Master Declarations and referring only to that is that they could still change the deed restrictions behind it. The plat would still refer to the deed restrictions; it is just that the deed restrictions would be different, and the city wouldn't know the difference. The city was looking for a way to be kept aware of any changes. Staff and the applicant want the same thing; it is just that staff has concerns based on experiences with other developments making changes that the city does not know about.

Chairman Williams: I understand where you're coming from, and I appreciate that, but why are we addressing this at this stage of development versus addressing it at the very beginning? This is the first time I recall this discussion, and if it's a problem, we need to address it for the next development and not the one that is nearly complete.

Mr. Klein: Part of the reason it came up on this one is that there is a plat around the building, so it was very clear what was the building and what was the common area. By combining them, it is lost and becomes one lot. We aren't asking anything new from what they have already done. For instance, Stipulation Nos. 3 and 4 are standard language and have been approved with this development from the beginning. Taking those out would be in contrast to what has already been approved. No. 2 is the big change as well as the one we added at the dais. They already have this; it just needs to be modified.

Chairman Williams: In light of what has been discussed, are you in agreement with what staff is now saying?

Mr. Weltner: Are you saying No. 2 is new language? Whatever is in our plan approval, we have already accomplished in our Master Declarations.

Chairman Williams: So, we just delete No. 2 and supplement the new language that staff has added?

Mr. Weltner: I just don't know if a plat is a place to have that because this is referencing the entire development, and this plat is not the entire development. We can't agree to stipulations and commit others that aren't represented on this application. I just don't know if they're appropriate to have in this application because it is bigger than this application.

Chairman Williams: So, in No. 3, instead of the entire development, you would reference just the plat that you are presenting to us tonight technically.

Mr. Weltner: Right.

Mr. Klein: I believe these have already been done, though.

Mr. Weltner: The Master Declarations are not a separate easement, so I don't think No. 3 would be accurate. We kind of have this document that does all the things we want it to do. If we start creating other documents and partial plats with different stipulations, it gets very confusing.

Chairman Williams: Mark, if at the time the original development was presented and approved and if this has already been done, is there really a need to put the stipulation in and muddy the waters?

Mr. Klein: Honestly, it's just carried forward. I think the applicant and staff want the same thing. Maybe Commissioner Pateid's idea of a continuance to allow us time to bring something together that we can agree on is a good one.

Mr. Weltner: I think maybe we can do that because we all want the same thing.

Comm. Walden: Mr. Weltner, will you leave all the items you showed us tonight with staff?

Mr. Weltner: Sure.

Chairman Williams: Any other questions for the applicant?

Mr. Weltner: I'd like to get some feedback from the Planning Commission because Master Declarations do this. That's what they're for. I don't want to necessarily not utilize that vehicle.

Chairman Williams: I don't think we are asking for it not to be used. Perhaps we're asking in a late stage for something that should have been done years ago and maybe will be done in the future for new developments. To put you in a situation where you have to go to other property owners and lenders to recreate something could complicate the issue.

**A motion to continue CASE 86-15 – MISSION FARMS – 7 TH PLAT – Request for approval of a Revised Final Plat, located north of I-435 and east of Mission Road – to the September 22, 2015 Planning Commission meeting – was made by Elkins; seconded by Strauss. Motion carried with a unanimous vote of 7-0, For: Hoyt, Walden, Levitan, Pateidl, Elkins, Strauss and Coleman.**

CASE 87-15 – IRONHORSE CENTRE – THE FAIRWAYS OF IRONHORSE – Request for approval of a Final Plan and Revised Final Plat, located south of 151st Street and east of Nall Avenue.

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 87-15 – Request for approval for a Final Plan and Final Plat for the Fairways of Ironhorse within the Ironhorse Centre development, located south of 151<sup>st</sup> Street and east of Nall Avenue. The applicant is requesting approval of a Final Plan and Final Plat for a 109,119 sq. ft., 74-dwelling unit independent senior living facility to be located on Lot 9 of Ironhorse Centre on 3.99 acres for a residential density of 5.99 dwelling units per acre. An application for Rezoning to Mixed Use, a Special Use Permit for an independent senior living facility, Revised Preliminary Plat and Preliminary Plan was approved by the Governing Body on April 20, 2015. Currently, there are a total of 8 lots within Ironhorse Centre with 6 of those lots developed. Lots 5 and 6 are undeveloped lots at the southeast corner of the development and are proposed to be re-platted into Lot 9 where the independent senior living facility is proposed to be located. The newly created lot shall be 173,935 square feet in size or 3.99 acres. No other changes to the lot lines are proposed for the development with this plat. Along the east and south perimeter of the Ironhorse Centre development, a 25-ft. golf course easement is present. This easement prohibits any structures or activities to be conducted within the easement and is in place to protect individuals from wayward golf balls from the course. Along the 25-ft. golf course easement on the applicant's property, they are proposing a retaining wall with a fence on top of it. That retaining wall and fence shall match others currently within the development. Additionally, a perimeter fence is proposed along the full length of the south and east common property lines between Ironhorse Centre and the golf course and shall match other existing golf course fences. The building shall be oriented at the southeast corner of Lot 9 in a V shape extending to the north and west parallel to the property line. Access to the facility shall be from a private drive off the Ash Street roundabout with surface parking north and west of the building. The applicant is also proposing a 2,000 sq. ft. plaza within the parking lot which shall have seating amenities, a gazebo and landscaping. Other site amenities will include underground parking, bicycle racks and a putting green. The putting green shall be located at the southeast side of the building adjacent to the golf course. The maximum height of the facility is proposed to be 4 stories at 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 front entrance shall be covered by a pitched roof porte cochere. The building materials proposed are limestone and stucco in dark beige, light beige and a dark red. Within the access drive off the Ash Drive roundabout, a median with a monument sign and water feature is proposed. The monument sign shall be 5 feet in height and 9 feet in length for a total of 45 square feet. The monument sign shall have limestone veneer, which shall be identical to that proposed on the main building. On the face of the monument shall be a horse logo, a text reading, "The Fairways of Ironhorse." The maximum height of the text shall be 9 inches, and the logo shall be 2 feet, 11 inches in height. The water feature shall be a maximum of 3 feet, 4 inches in height and 21 feet, 8 inches in length.

The applicant has made 2 minor changes from the approved Preliminary Plan. First, the applicant relocated a proposed trash enclosure so it is less visible from the internal private drive. Secondly, the applicant reduced the amount of parking by 10 spaces. Although the number of spaces has been reduced, the plan will comply with Mixed Use Residential parking requirements and with parking ratios within the Mixed Use district. Staff recommends the Planning Commission approve Case 87-15 with the stipulations outlined in the Staff Report. I'd be happy to answer any questions.

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

**Applicant Presentation:**

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

Mr. Holland: I'm here on behalf of Overland Property Group. In attendance with me is Matt Gilham, representing OPG and our engineer Brad Sonner with Olsson and Associates. I am happy to be before you on a recommendation for approval. I want to thank everybody here. It has been a collaborative effort to get this project to where it is today. With regard to the previous application, we have the same sorts of stipulations on our plat here as well. It has been with our center for a long time, so we're not stepping into anything new. We do have Declarations that spell out the cross access, parking and maintenance obligations. Those were filed early on by the original developer of the center. Almost every experienced developer, including the one before us, would have done that to make sure that all the land is subject to the Declarations. We are going to note the Declarations on our plat and incorporate those by reference. It was done with all the other plats as a part of this development. The city has had those provided with every application. We provided them again with this application, so we're okay there. I don't think we need to spend a lot of time talking about the plan. Staff has done a great job summarizing it. I did want to show you a brief video to show our finished product. (*Shows video*) I will stand for any questions. We agree with all the stipulations.

Chairman Williams: Any questions for the applicant? Thank you. I'll open the floor up for discussion.

**A motion to recommend approval of CASE 87-15 – IRONHORSE CENTRE – THE FAIRWAYS OF IRONHORSE – Request for approval of a Final Plan and Revised Final Plat, located south of 151st Street and east of Nall Avenue – with 34 staff stipulations - was made by Strauss; seconded by Coleman. Motion carried with a unanimous vote of 7-0, For: Hoyt, Walden, Levitan, Pateidl, Elkins, Strauss and Coleman.**

*MEETING ADJOURNED*