

**City of Leawood
Planning Commission Work Session
135th Street Community Plan
Leawood Development Ordinance Wireless Communication Facilities
September 8, 2015**

In attendance:

Commissioners: Kip Strauss, Jim Pateidl, Bill Ramsey, Marc Elkins, Len Williams, David Coleman, Wayne Walden and Liz Hoyt.

Staff Members: Mark Klein, Richard Coleman, Ursula Brandt, Michelle Kriks, Patty Bennett, David Ley and Debbie Brenner

Absent: Mike Levitan

135th Street Community Plan

Mr. Klein: We thought since it's been some time since this plan has gone through that we would go over some of the major elements of it.

Ms. Kriks: We'd like to highlight some of the major points of the document and refresh everyone's memory on the plan. This plan was adopted by the Governing Body in June, 2014. It is the first step for a general concept for the 135th Street Community Plan. The next step is to develop and Implementation Plan. That plan is going to focus on topics such as multimodal transportation, preservation of the natural environment, Mixed Use Development pedestrian and bicycle connectivity, a walkable environment, environmental justice areas and changes to the Leawood Development Ordinance to implement this plan. The vast majority of the study area, which is bordered by Nall Avenue to the west, 133rd Street to the north, State Line Road to the east and 137th Street to the south, is vacant land. On the diagrams, Institutional areas such as churches are in blue; Retail is in orange; Mixed Use is in Purple; Office is in brown; Residential is the light tan. There are many opportunities for development.

Some of the key factors of the plan are developing Nodal Development, which would be areas of high activity. The proposed areas are at 135th and Mission Road, east of Market Square, and by the Old Leawood Airport. The areas of Nodal Development will correspond with the potential street character. There are three identified street characters: Destination Street, Active Pedestrian Street and Neighborhood Street. The Destination Streets will have an active storefront, wider driving lanes, on-street parking, neighborhood identity signage, seating, bike racks and wide sidewalks to encourage pedestrian activity.

Ms. Brandt: Next, we have Active Pedestrian Streets. They will be main thoroughfares for cars and pedestrians. It will have bike lanes, wide sidewalks but not as wide as the Destination Streets because we are not necessarily encouraging café seating on these streets. Finally, we have the Neighborhood Streets, which are usually surrounded by Residential. They have sidewalks that are not quite as wide as the previous ones, and cars won't necessarily be driving through here; they are primarily for people driving to their houses.

Comm. Elkins: Are there examples of Destination Streets in the city now?

Mr. Coleman: There isn't, really. The closest would be Park Place with Ash Street, 116th Street and the streets that lead to the apartment complex.

Comm. Elkins: What was the between one that you talked about?

Ms. Brandt: Active Pedestrian Streets.

Comm. Elkins: Are there examples of those in the city right now?

Mr. Coleman: Not that I can think of. It would be more like if you had a residential area and then had a transition area between the destination with the highest density and the medium density and the Residential with low density. It would be the transition zone between the highest density and the Residential.

Comm. Elkins: We're really doing something we haven't done before.

Mr. Coleman: Not exactly.

Comm. Ramsey: How does this work with the traditional street classification of Residential, Arterial, Collector and Thoroughfare? Is this something totally different?

Mr. Coleman: The Destination Streets would be more like a Collector size, really, if they're not going to be 135th Street. They would be like 134th Street or more of a Collector.

Ms. Bennett: The Arterials aren't changing

Comm. Strauss: So, 133rd and 137th will still be Collectors, and all of these other ranges are the local roads.

Mr. Coleman: The Destination Streets would probably be like a Collector, and the Residential Streets would mostly correspond with the current Residential Streets. With the Implementation Plan, we'll get into more detail about that. After the presentation, you may want to talk about the selection process.

Comm. Strauss: The other perspective is the Corridor is identified as Mixed Use, but the three different zones are segregating it a little bit more and creating a hierarchy.

Ms. Brandt: The next concept is the Transect Zones, and this is guiding where we would like to see the higher density development. We all want it close to 135th Street and then to gradually taper off, becoming less dense and less tall. Another key point of the 135th Street Community Plan was identifying natural spaces we would like to protect and also certain areas we would like to connect pedestrians and bicycles through to 135th Street and also to other bike trails and routes. That is the review of the plan.

Comm. Elkins: Regarding the street concepts we haven't really used in the past, I'm curious if this is the kind of situation that we would expect developers to do the infrastructure improvements to get here, or is that an idea that we, as a city, would take the initiative?

Mr. Coleman: I think that is going to be for the next step in implementation. Traditionally, the developers in Leawood build most of the streets. We are building 143rd Street right now.

Mr. Ley: These streets will be private with the exception of Chadwick and Kenneth Road.

Mr. Coleman: Yes, but the city might explore building a street at a developer's request.

Comm. Elkins: That would require quite a commitment of capital by the city, wouldn't it?

Mr. Coleman: It would, more so than it does currently. We would just need to explore it. It is similar to the Transportation Development District [TDD] policy, which is something the city has embraced to further the development. Park Place has one, so that district has a portion of the tax that helps to pay for the parking garages to help the developer because that parking is more expensive than surface parking. The city didn't have a hotel tax previously because there were no hotels; now, there is a hotel tax that helps fund the

infrastructure at Park Place. We will want to look more closely at how we can try to start to package some of these things to help incentivize development.

Comm. Strauss: This is very dense. For the plan, were traffic impacts considered?

Mr. Coleman: We will also look at that with the carrying capacity. I don't think we saw the density as uniform in the Community Plan. I don't know how many Nodal Developments it can support ultimately. For example, if there were a Nodal Development at the airport property, the property between that and the next could be Residential to help support the market.

Comm. Strauss: To address the thought of additional infrastructure, a grid network might help avoid improvements to 135th Street because traffic would be spread out more. It could be a consideration.

Comm. Ramsey: It would utilize the capacity of 133rd and 137th more.

Comm. Strauss: There are some tradeoffs. It might not just be a sum cost.

Comm. Hoyt: I live in Leawood South, so I can clearly visualize how this could come up against Leawood South and the whole airport property. With part of the intent being walkability, I'm wondering what kind of look you're going to take at the walkability of the surrounding neighborhoods to get to that place because Leawood South is notoriously shy of sidewalks. I could easily walk to this place, but I can't, especially with more traffic, unless sidewalks are added. There might need to be some supplemental infrastructure from the surrounding areas to get people to these places, I would think.

Mr. Coleman: Ultimately, that might be the case.

Chairman Williams: That would make the journey on foot easier instead of having to out to State line from Leawood South to get to this development.

Comm. Hoyt: Exactly. You wouldn't have to worry about as many cars, for instance, if people from those surrounding neighborhoods can walk.

Comm. Elkins: Wasn't there a thought around this plan to redesign 135th Street?

Chairman Williams: I don't think the plan was to redesign the street itself.

Comm. Elkins: I thought the idea was to provide higher speed to get from one side to the other but then create lanes on either side of what exists in order to provide access.

Chairman Williams: That was a concept that was presented.

Comm. Strauss: That could still be done. It is pulling off 135th Street. There are lots of issues to be considered in order for it to work.

Chairman Williams: One thing the plan implies is cross streets across 135th Street when, in reality, it will not have those cross streets. Is it somewhat misleading to have those streets looking like they are going to connect or allow the passage? What is the purpose of those street alignments as they are?

Mr. Klein: Currently, this is just a guide. I don't think it has gone into enough detail to know what it will end up being. We do know that 135th Street is a major area.

Comm. Ramsey: I think it is just to represent the street character of the different types of streets that would be through there. I agree that residential cross streets won't cross 135th.

Mr. Coleman: These are all schematic. They're not meant to be something that would be put down in reality. In the Implementation Plan, we'll look at the right-ins, right-outs, ½ mile, ¼ mile and those sorts of things along 135th Street for the transportation part of it. The next phase will get into more detail about that; whereas, this is extremely broad brush.

Comm. Strauss: One thing that I think came up in our discussions after the interviews was if there was an opportunity to create more green space than the Community Plan showed. Maybe when you're talking to the consultant, they could look into that.

Mr. Coleman: That depends a lot on the developer. If you remember the Regnier property, it had the farm ponds on there. There is the ability to recreate water features if desired. Maybe they want to create something like over at Mission Farms with the pond and build residences around it. They have said that the townhouses on the lake sold quickly. He said if he could build more of them, he would.

Comm. Strauss: Can we give bonuses for creating more green space?

Mr. Coleman: Yes, a lot of what we would do is if it had a 3-acre lake, those 3 acres would be included in the density ability; it would not be taken away. If a greenway were created, the land use density would transfer to whatever it was needed for. Maybe we'll look at additional bonuses so that 3 acres could potentially be applied at 6 acres. We will want to evaluate that more closely in the Implementation Plan.

Comm. Hoyt: What is the timeline on this?

Mr. Coleman: The timeline is that about next summer, we will take it to City Council for approval. It should come to the Planning Commission for review and recommendation sometime in the end of May or in June of 2016.

Comm. Elkins: Will there be another round of public input into it?

Mr. Coleman: Yes. We have a Selection Committee and also the Steering Committee that will be broader in scope and include developers and other interested parties.

Comm. Elkins: The reason I ask is that my sense was the level of community involvement, with no criticism to staff because people were invited, was not very good for this. This is a great document, and people worked hard, but our community just did not seem to be very interested.

Mr. Coleman: We had about 100 people at the first meeting, and then it dropped off. We'll be engaging the community through a bunch of different means, including social media and others to try to get people more involved.

Comm. Strauss: What I heard from some of the proposers is the need to talk to the landowners and developers to get their input at this phase. I think as we get more detailed with this plan, we want to start reducing the scope.

Mr. Coleman: Do you want to talk about the plans?

Comm. Strauss: Design Workshop was interviewed. Sam Cownie was out of Georgia, and then SWT was out of St. Louis. Design Workshop and SWT had some local firms on their team, also. We heard SWT first.

They did a good job. They didn't really touch on transportation other than to explain why they had two firms on their team doing transportation. They were a big team. They used Joplin as their example of how they've implemented community plans. Sam Cownie was interesting. One was very polished; the other two were very laid back and just stood and talked to us. They had some good ideas. One was a previous professor, so he had written a lot of books on how to do it. His big thing was that he's the expert and can answer any of our questions. The woman was with the DOT for North Carolina.

Mr. Coleman: She was based in Raleigh.

Comm. Strauss: She didn't talk a lot about transportation, either.

Mr. Coleman: She did the Community Plan.

Comm. Strauss: Then Design Workshop had an attorney with them: Mark White.

Comm. Ramsey: The St. Louis group, while they made a very professional presentation, had a few things that were bothersome. They kept talking about projects that had been redeveloped and not green space. The other piece they really didn't speak to was the understanding that we really need an Implementation Plan that is based upon a legal framework.

Comm. Strauss: That's why I liked Design Workshop, who brought an attorney to help with that.

Comm. Ramsey: We're going to have to adjust the LDO considerably in certain sections. Depending upon what we come up with and what we all want to recommend, it will need significant adjustments. They did not speak to that at all. They just wanted to go back and talk about how they redeveloped the auditorium in Joplin and some other things. The college professor was very nice and very capable. They've done a lot of work across the country, but it was – I never felt like they were ready to get into the details of what it is we need to move from the Community Plan to the execution. We came back, and it was unanimous at the end of the day with representatives from Planning Commission, City Council and staff.

Comm. Strauss: Obviously, Design Workshop has a leg up because they know the Corridor, the issues and the people. That helps them out a lot.

Comm. Ramsey: I think the concern that we had was that they went off on their own tangent on the Community Plan to begin with. I think after he had a meeting with them, they came back and started listening better. I think we will be on the lookout on this time through to make sure they're in listening mode and not wanting to be a fountain all the time, spewing forth expert thoughts.

Comm. Pateidl: In the presentations, was there any discussion by these experts regarding the economic environment of the corridor and how our plan identifies with or conflicts with that economic environment as it exists?

Comm. Ramsey: Once we get into it again, I think it's a mistake to think that we're going to say that at 137th and Mission, we are going to plop down this type of development because no developer may be willing to do that, may not get financing, may not be in accordance with the city. This section of the community is going to take a lot of negotiation between a potential developer and the city. What we're really trying to get to is to present what the city's position is on this stretch of ground. We're going to try to take away as much uncertainty for the developers as we can so that they know what to expect.

Comm. Pateidl: As far as the experts are concerned with the evaluation of the Implementation Plan so we have something we can actually work with, this is called the first step. If this is the first step, are we saying to

the experts, "This, in essence, is the desire of the city with the Mixed Use, Residential and the balance"? It's not necessarily "take it or leave it," but this is the objective. If it is not realistic and if we have some potential problems in managing through to this plan, when, what where and how do we address those problems? Those are the questions that I'd like to see addressed in the implementation part of this.

Comm. Strauss: I think that's a good point. I think in order for all of us to have buy-in and approve at the end, I'd like to have everyone submit what they want to get out of the Final Plan and any questions. That way, when staff is working on developing scope with the client, they can incorporate that in.

Comm. Pateidl: When we were at the MARC meeting and the county assessor made his presentation, he indicated that the applications and plans for multi-family housing apartments were 5-6 times the average annual deal right now, which implies that it's in a big growth mode. There could very well be a bubble, and what does that do to our residential requirements inside of this Corridor Plan? If we do have a bubble, we need to forecast to some extent. If that component of our Mixed Use is going to stand as an implement from developers coming in and having an interest in doing work inside of the city, we need to be prepared at some point in time to address that problem.

Mr. Coleman: One of the good things that you said about Design Workshop is that they had an attorney. If you address some of those issues you're talking about, there will probably need to be some kind of development agreement with the city and whoever the developer is because the economics change and the market changes. Park Place is not quite done, but most of the pieces are in place, but it's been a decade, and it's changed over time. The Park Place plan that initially got approved isn't the Park Place that will ultimately be built, but most of the similar components are there. It's a little different. If they'd gotten REI, it would look a little different than it looks now. They didn't get REI, so we have 116th Street with the small retail and offices. We accommodated that, but if they had gotten REI, the city would have accommodated that, and they would have had to modify their plans to fit it in there.

Comm. Ramsey: Jim, you had valid point, which is really the lynchpin of this whole deal along here. That's why this time through on the execution phase; we have to be very careful of how we go about doing this because so much of this is going to be put into the LDO. We're going to memorialize this in an ordinance. As opposed to having a concept plan of what we would like to have, the execution phase says, "We're going to stick our flag in the ground. This is what we're looking for now. Here are the rules and regulations."

Comm. Elkins: Is it our expectation that these consultants will help us by telling us what we need to do to the LDO to get from here to there?

Comm. Ramsey: Yes, that's really the whole idea. I think a lot of us have been involved working with consultants and plans in the past, and we all know that when you get to this point, it takes a lot more effort on our part to ensure that the consultants truly understand what it is we're looking for or what we would really like to see and to be able to question us enough to help us work through that thought process of what goes and doesn't go.

Comm. Elkins: I hear what you're saying. I don't know that I know the questions to ask them in order to tell them what we want. I'm not even sure we know what we want. I mean, this is kind of the beginning of it.

Comm. Ramsey: That's very fair, and I think that's why it is important for us to, at the front end, work with the consultants to get them to cycle us through that thought process.

Comm. Strauss: Richard, I think you were asking them to meet with us 2-3 times.

Mr. Coleman: In the schedule, there are essentially three public meetings, but we would have a lot of interim meetings between all that.

Comm. Strauss: Or, when they come in for a public meeting, can we schedule that around when we get together to maximize that so they can present information which will generate questions in your mind, Marc? I think there would be some more interaction than there was on the Community Plan. We met with them once on the Community Plan in the middle and once in the end.

Mr. Coleman: Yes, and then there were public meetings. There's also the opportunity for anybody to ask questions online.

Comm. Strauss: Did you get together and say, "We have these 15 questions; how are we addressing those?"

Comm. Elkins: Kip, I think you were at most of the meetings I attended. A lot of those meetings were like the fountain. This is not a criticism, but it wasn't really set up to get information from us or from the community; it was almost a presentation mode.

Comm. Strauss: Yes and no because I remember the first half was presentation, but then didn't we always go to a throw table?

Comm. Elkins: You're right.

Chairman Williams: You have to start the conversation with something, and I think that's what they were trying to do. From meeting with the committee and getting an idea where they were going with this and what the possibilities could be and then present that to the community and try to get response and feedback to avoid just starting from scratch.

Comm. Ramsey: We didn't have this last time. At least we have this as a starting point. I think as we go along that there's nothing that says we can't take a study session and have a group discussion among ourselves and fire off some emails to them. That's perfectly within their contract agreement.

Mr. Klein: I think that probably provides an excellent opportunity for the interaction. As Kip was saying as well, maybe when they're going to be here for a public meeting, we could have a work session around the same time so you could have some direct interaction with them as well. They also talked a lot about a Steering Committee and having some people in the development community as part of that. I think they were talking about being inclusive. I know with regard to the public participation, they did switch the firm they were working with last time, so there might be some different ideas and opportunities there, especially from the feedback they've gotten.

Comm. Pateidl: Has anybody ever thought about or established a vision as to the length of time it will take to develop that Corridor? Will it be 10, 20, 30, 50 years?

Mr. Klein: I don't think anybody has actually put a number on it. I think we all realize that this isn't something that will happen in the next year, 5 years or 10 years. Development goes through cycles, and it will take a while.

Mr. Coleman: It's probably somewhere between 20 and maybe 40 years. I'll be gone, for sure. You have to look at the economic growth generally in the area. We're not Dallas, Texas in the '70s. This area has had a slow, consistent growth curve of 3-4% per year.

Comm. Strauss: I haven't been on the Planning Commission a long time, but it seems like Leawood is not afraid to turn down the wrong development in order to wait for the right development.

Mr. Coleman: That's what I've said. Before I came here, they already decided they didn't want Walmart. They already decided they didn't want the Mercedes Benz dealership and all the other stuff sitting on the Missouri side of State Line Road. If they wanted it, it would all be on 135th Street right now, and it would look like that right there. The city didn't want it; they wanted something better.

Comm. Strauss: Something the Design Workshop brought up and that I remember Julie Cain really liked it was putting an identity in this Corridor. They talked about branding so you know you're in Leawood as you're driving through this Corridor. That could help market it better.

Comm. Pateidl: What's interesting is back in 1997 when we had the first Community Plan, the number one goal was to establish an identity for the City of Leawood. To this day, the City of Leawood hasn't done anything to help itself in that regard. Go to Prairie Village and see identification. I think really, part of the implementation of this is going to be from introverted looks to see what we have and haven't done. For 19 years, we have not moved very far. The plan from 1997 had infrastructure that is replicated in what we see before us today.

Comm. Coleman: I'm relatively new to Leawood. I've lived here for 3 years and have been in the area for 15 years. I come from a different perspective of not knowing anything around here. The first thing I always identify with Leawood is it's a classy place with classy development. If you want an indentifying characteristic, look at the development we've put in. It's all top-notch, classy stuff. Walmart(s) and the dealerships have gone elsewhere. Just looking at the Overland Park side, they can't get stuff up quick enough in my mind, to put the giant box stores or anything like that. I don't mind us moving at a snail's pace because like we alluded to, we want the right development in there. It should be high end because when you tell people you live in Leawood, there is a mentality out there that Leawood is a high end area.

Comm. Pateidl: But there is also a requirement for some synergy. It hurts me to drive through some of the commercial areas we have on 137th and Roe. We really have very little in the way of small business. We have professionals and financial firms, but we have a ton of vacancy in there and across the street. Market Square is finally getting occupants, but it, too, is not attracting businesses that would encourage me to walk there to patronize them. If I'm a developer and see all this vacant space in light retail areas, I'll wonder if I want to put my risk capital in and if I will get financing to do a project here. This is the economic environment that concerns me in the sense that if we're going to be facing that, will we be prepared to face it? If so, how do we do that?

Comm. Ramsey: I think those types of questions are basically out of our control. I think the only thing we can do is prepare a plan that will work for Leawood so that when developers are able to get financing and support the market, they know reasonably about what they must do in order to develop in this area. I could be wrong, but I think that's what we're trying to do here to get ready for that next step.

Comm. Strauss: Jim, are you asking for maybe a market study to see what's feasible in the Corridor for the next 30 years?

Comm. Pateidl: Something like that. If what we are saying we want isn't going to work out 10-20 years down the road, how long do we wait to make that decision? Is there an alternative, and is that something we ought to be contemplating and researching? Maybe the market study is the answer. My only concern is we can establish the bar and say that this is what we want, and the developers can leave and go down the road. I kind of wish Mike was here for his expertise from the development side. I had the joy of sitting with the banker on one side of me and the developer on the other side of me during our conference meetings.

Mike was telling me that it couldn't be financed, and Ken was telling me that they just foreclosed on one. That is what has caused me to have a sense of foresight that if we need to look at alternatives, when do we start preparing for that? If we have experts charged with telling us how to implement a plan for the Corridor, maybe now is the time to get that into their thinking process.

Comm. Elkins: The other thought that Will brought to my mind is that it seems that there need to be equal parts of not only giving the developer some certainty, but it seems to me that there are developers that specialize in different types of development, so it seems like we need to talk about what kind of development we want, determine who those developers are and then decide what we should do as a city to attract them. Certainly, we have a reputation of being difficult. I'm not sure I'm disappointed in that because I want to be difficult to certain types of developers. I guess that's the other part I would add to. It's not only the issue of certainty but also to incent them to make it such that the right developers will want to come here, whatever the right developers are. That's the part I'm not sure how to figure that out.

Mr. Coleman: That's a good question because there are all kinds of different developers, and they tend to specialize in one area or another. Mixed Use developers are a different breed.

Chairman Williams: You almost have to think about going outside this region to find developer that have the expertise for Mixed Use and the mindset that they can make it happen. As has been brought up several times, local people run up against that financing obstacle, and it's not something they've done and not something they want to fight to try to make happen. Park Place was a unique situation. Their financing was very different. They were able to do what they did, sell it and move on.

Mr. Coleman: They're selling it now, though.

Comm. Elkins: It's been 16-17 years. It's amazing it has lasted as long as it did.

Comm. Ramsey: Along this same line of how difficult to be and what the average person thinks about it, my wife is an eastern liberal democrat. She has a bleeding heart on both sleeves and is very conscious about everything: the environment, recycling, the whole bit. We joke about living in La-La-Leawood and about how the grass is always green and the houses are always neat. Of course, that's the subdivision we live in. But, we just took our daughter out to Durango, Colorado to college. We had to drive out, and on the way out, we drive through a lot of different towns. We get to Durango, and it has a lot of mobile home parks spotted around town mixed in at different points in the community. It's a college town. It's a vacation town with all the outdoorsy people. There's a lot of granola in Durango.

Comm. Strauss: It's kind of a different spin on Mixed Use.

Comm. Ramsey: It is. And on the way home, I never thought I would hear my wife say this, but she said, "I could never live in Durango because there are trailer parks right next to you, and you have a small, tiny house right next door to a nice house. The way the town is planned is just not right." So, she actually likes living in Leawood. At least we know when we pull in how things are going to be. On one hand, we joke about La-La-Leawood, but on the other hand, it's pretty nice, particularly when you go out and look at other communities that have developed over the years and have developed kind of willy-nilly and not with much thought. It's pretty evident that there has been a lot of thought going in to Leawood and the way we've developed. Even though we're a small community, it's been pretty well done. I think we're going to continue on that same path with this plan. I think it's embedded in our Leawood DNA. To do otherwise is not in keeping with knowing what to expect.

Mr. Coleman: The next steps are putting the contract together with Design Workshop. That will go to City Council for approval, and then there will probably be a kickoff meeting, and we'll get started on it.

Comm. Elkins: They were the consensus?

Mr. Coleman: They were the unanimous consensus at the end of the day. I think a lot of it did have to do with the fact that they had an attorney on their team.

Comm. Ramsey: The other two were fully capable of doing it, but Design Workshop really gave the impression that they had a complete understanding of what it is that needed to be done and therefore had the attorney there and were the only ones who talked about an Implementation Ordinance and putting time into it.

Mr. Coleman: Your fellow commissioners did a very good job of listening and ferreting out the questions. Okay, now let's move on to our next subject.

Leawood Development Ordinance Amendment for Wireless Communication Facilities

Mr. Klein: I'd like to hit some key requirements in the LDO. Right now, a monopole or cellular tower can't be located in residential areas. That includes Mixed Use. An alternative structure, such as a monopine, can be located within some of the other districts. There are also setback requirements associated with that as well. In other words, it has to be a minimum of 500 feet from a residential area. Then it has to meet the setback requirements of that individual zoning district as well. In addition, there is a maximum height of 150 feet for the monopoles.

The Draft Amendment we are talking about would only apply to existing legal, nonconforming structures. That means that the structure met the ordinances at the time it was installed, but then either ordinances changed or development occurred and the structure no longer meets the requirements of the LDO. It doesn't mean that they don't have the right to be there; it just means that they are a legal, nonconforming structure. We would like to address those that are legal, nonconforming and to allow some flexibility. Part of that is with regard to allowing them to be there but not allowing them to increase the current height. It would also allow them to have an exemption from the setbacks. We would also like to address some other components with regard to the design of the tower. Currently, a lot of the towers had requirements with regard to color, shape and wires when they were constructed.

Part of why we are coming to you is, as we have talked about it before, there was a change to federal law with regard to wireless communication facilities in Section 6409(A) of the Middle Class Tax Relief and Job Creation Act of 2012. That gave the operators of the wireless communication facilities a lot more flexibility and a little more freedom as far as having to meet some of the ordinances that cities have on the books. Currently, if there is an eligible structure, which is an existing structure that can have antennas, the applicants are allowed to change, make modifications to either the structure itself or the antennas being placed on the structures. As long as they don't make a change that is beyond what is considered a substantial change in the act, it must be approved at the city level within 60 days. That is why we took an LDO amendment through a couple months ago that removed the Special Use Permit requirement for some of the antennas that were co-locating on the towers. Our SUP process lasted longer than 60 days, and if the process takes longer than 60 days, it is deemed approved. Some of the substantial change requirements include the ability to increase the height of a current monopole by 10% or 20 feet, whichever is greater. Also, the antennas located on it can protrude 20 feet. We have an LDO amendment that is going to come in September. Basically, you will see a recommendation of a certain height. That takes into account the knowledge that they will come in with a 6409 request to ask for a taller height. We want to make you aware of it and answer any questions you may have. Another part of 6409 that we think is positive is that it does not allow the applicant to defeat the concealment efforts of the structure. The city is hoping to reach an agreement that the antennas can stick so far out from the monopole and that it in itself is a concealment effort.

We have existing monopoles currently that do not meet the residential setback or the setbacks of the zoning district they are in. They also don't meet the height requirements. The applications you will see include an LDO amendment asking for the flexibility not to meet the setbacks but will have the limitation to try to require that they keep the antennas all uniform on the tower at a certain distance. The color of the tower and antennas has to be consistent, and the cabling has to be interior in order to try to make the tower look better.

Comm. Elkins: The thing that strikes me immediately is the setbacks. When you went through the provisions of 6409, I didn't hear anything about the setbacks. What does it say about them?

Ms. Bennett: It doesn't, but it basically says if you have the tower, you can add to it.

Comm. Elkins: It basically extends your exemption for nonconforming use.

Ms. Bennett: Yes. This addresses width since it is making the antennas at a certain location at a uniform distance away from the pole. The height, you could speak to a little bit better. Let's say you had a 120-ft tall nonconforming tower. Maybe you like the tower, and you approve it. That's great, but then they can come in and add 20 feet on top of it. They only get one shot at the 20 feet. If you approve them at 120, knowing the whole time that they will bring a 6409 application through to go to 140, then they are done. That is the rub on the height. You can't really do that with width because it's 20 feet. This is a new enough law that there have been no decisions on it. What is a concealment element? Would flush mounting be? We think it is when you pull it in and make it a little more symmetrical.

Comm. Elkins: Does it take away the entire concept of regulations through the Special Use Permit?

Ms. Bennett: Close.

Comm. Elkins: So, when the Special Use Permit expires in 20 years, we don't have the option to say, "We don't want a pole there anymore."

Ms. Bennett: You probably do because right now, it's a temporary zoning. It would depend on how long you do the Special Use Permit for. Once it expires, they are unlawful, nonconforming.

Mr. Coleman: We're one of the few entities that have that.

Comm. Elkins: I was afraid that it took that away from us completely as well.

Mr. Coleman: The idea on the concealment is that narrower is less visible. We do have a couple issues on this that are coming up, and we also have additional radio antenna applications. We have a new small cell developer. We have major telecommunication providers that want to establish additional towers. They call them poles, but they are 120 feet tall. This is all on the horizon. Staff and our attorneys and everyone have been working diligently on this trying to figure out how to deal with it.

Comm. Pateidl: What does this do to the tower off Nall and 135th?

Mr. Coleman: What we're talking about is trying to address that tower. It is a major infrastructure tower for the area, so if it goes away, a lot of cell phone coverage goes away. We don't want the tower to get taller than it is, though. We would like it to be more uniform in its appearance, so we're trying to work and develop a scenario and a plan of action with the carriers so that we get that.

Comm. Pateidl: Does this basically take it out of our hands and put it in the federal regulations?

Mr. Coleman: Not entirely.

Comm. Elkins: But they can add 20 feet to it, and we can't say a thing about it, right?

Mr. Coleman: They can, but we might say that on the renewal of the Special Use Permit that it can only be this tall. Then they could come in with their 6409 and ask for 20 feet, and then it would be this tall. There would be other provisions that the antennas have to be at certain levels and can't project more than a certain distance and that the cabling has to go on the inside and so on. You're working with six different carriers. It's a struggle.

Chairman Williams: When it comes to the height increase, is it adding height to an existing tower? If it wasn't physically capable of being expanded and they had to put in a new tower, would it be a different set of regulations?

Mr. Coleman: They're a little vague on that, but I imagine if they could do structural modifications to the tower that didn't go outside of their expandability, they would be able to do that.

Chairman Williams: But if the tower comes down, it's a different ballgame.

Ms. Bennett: There are arguments on both sides of that, but one of the interesting terms is a "drop and swap" where they take out the old tower and swap it for a new tower. What they use while they're dropping and swapping are things called COWs or Cells on Wheels, where they get a platform and put the cellular antennas on it. That way, when they pull the antennas off the tower, my phone service can continue while they do whatever it is they're doing, whether it's the drop and swap with the tower or they're changing to these new beautiful 48-in. antennas that are going to be symmetrical. I do believe there could be arguments on both sides whether they have to use the existing one to add 20 feet to it or build a new one. My argument would be that you can't add 20 unless you add to an existing tower.

Comm. Elkins: They'll say the drop and swap still works. They played us. They had this activity working in Congress, so they just kept stalling us out until they could get Congress to fix it. It wasn't just Leawood, but for communities all over the country, they were playing a holding action until they could get Congress to do what we wouldn't do.

Mr. Klein: That's all we have tonight.

MEETING ADJOURNED

