

**City of Leawood  
Planning Commission Meeting  
February 23, 2016  
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, Williams, Elkins, Ramsey, and Coleman. Absent: Pateidl and Strauss.

**APPROVAL OF THE AGENDA**

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

**APPROVAL OF MINUTES:** Approval of the minutes from the January 26, 2016 Planning Commission meeting.

**A motion to approve the minutes from the January 26, 2016 Planning Commission meeting was made by Ramsey; seconded by Coleman. Motion carried with a unanimous vote of 6-0. For: Hoyt, Walden, Levitan, Elkins, Ramsey and Coleman.**

**CONTINUED:**

CASE 19-16 – PARKWAY PLAZA – LOT 10 – Request for approval of a Revised Preliminary Plan and Final Plan, located north of 135<sup>th</sup> Street and east of Briar Street. **PUBLIC HEARING**

**CONSENT AGENDA:**

CASE 18-16 – PINNACLE V – SIGN CRITERIA – Request for approval of a Final Sign Plan, located south of 114<sup>th</sup> Street and west of Tomahawk Creek Parkway.

CASE 20-16 – PLAZA POINTE – 5<sup>TH</sup> PLAT – Request for approval of a Final Plat, located south of 136<sup>th</sup> Street and west of Linden Street.

CASE 23-16 – LEAWOOD EXECUTIVE CENTRE – NEUTERRA CAPITAL – Request for approval of a Final Sign Plan, located north of 113<sup>th</sup> Terrace and east of Roe Avenue.

Chairman Williams: Does anyone wish to pull an item from the Consent Agenda?

Comm. Walden: I would like to remove Case 22-16 for procedure discussion.

**A motion to approve the remainder of the Consent Agenda was made by Elkins; seconded by Ramsey. Motion carried with a unanimous vote of 6-0. For: Hoyt, Walden, Levitan, Elkins, Ramsey and Coleman.**

CASE 22-16 – MISSION FARMS – NOURISH RESTAURANT OUTDOOR SEATING – Request for approval of a Final Plan for a Change to the façade of a Tenant Space, located east of Mission Road and south of 106<sup>th</sup> Street.

Chairman Williams: Mr. Walden, do you have a specific question you would like to address?

Comm. Walden: Part of this Revised Final Plan is the inclusion of an outdoor speaker to play music. In my previous tenure of sitting on a Planning Commission, something like this would fall under the heading of a Special Use Permit. Maybe Leawood is different in this case, and I'm assuming it is. There is that element that probably should be a Special Use Permit type of application. Also, there is a lack of a Public Hearing. The adjacent businesses might have objection to outdoor music, so I feel they should have a say if there is any kind of objection.

Chairman Williams: Could staff address the two questions?

Mr. Klein: With regard to a Special Use Permit, we have had other situations with outdoor music or televisions. They have always been approved with Final Plan approval, which is when we would know more as far as the type of speaker, size of television and orientation. It is not required in the ordinance as a Special Use Permit, and we have not done it before.

Chairman Williams: The question was raised about the requirements for the speakers. I know we have a noise ordinance.

Mr. Klein: It can be no more than 60 db at the property line. Additionally, Stipulation No. 3 states that music from the outdoor speakers shall not be played after 10:00 PM or before 7:00 AM.

Chairman Williams: Other businesses that are immediately adjacent could still be in operation and dealing with that. In a situation like this with tenant improvements and multiple tenants up and down the sidewalk, how does a business like this, then, control the 60 db at the property line? Is the property line defined as their tenant property line?

Mr. Klein: The property line would probably be defined as the parking lot in this case. This is a restaurant located at the bottom floor of Mission Farms.

Comm. Ramsey: What about the sides, though?

Mr. Klein: I'm not sure how far away the sides are. Basically, it would be complaint-driven as well regarding the volume. The reason for the time limitation is to try to curtail that potential issue. For instance, there is residential in the apartments above this.

Chairman Williams: If we're not sure as to the side limitations here regarding property line, how do we monitor and control that? When we talk about the property line going to the driveway, and yet the seating area is fairly well removed from the parking, the music would have the potential to be loud.

Mr. Coleman: The sound would be handled by the property owner, which is the management for Mission Farms. If they had complaints, the management would tell them to turn it down. As far as the property line goes, the only property line relatively close to the restaurant would be any residents above. They couldn't be more than 60 db horizontally at the property line. It would limit the volume considerably. If we go up to the apartment, we can measure from there. Also, we are working on presenting a new sound ordinance that is considerably more involved than the existing one. It will deal with commercial and residential, different uses and such so that it is more tailored to the specific zoning rather than just being a blanket requirement.

Chairman Williams: If I understand, the city really has no control over the sound in this area except out to the property line and potentially to the parking and residents above; anything beyond that is for the tenants in the shopping center to deal with the management and have it toned down if they can.

Mr. Coleman: *Inaudible comments.* The neighboring business to this restaurant has already been noticed for a similar situation with sound levels.

Chairman Williams: Mr. Walden's other point was regarding a Public Hearing for something of this nature. Is that not in our process at this point?

Mr. Klein: No, it is not.

Chairman Williams: Mr. Walden, does that address your two concerns?

Comm. Walden: Yes.

Comm. Coleman: There could be something in the development rules and regulations that may address the situation.

Mr. Coleman: We'd have to look at the deeds and restrictions. This is not unique to this particular development. There is some sound in other shopping centers in Leawood.

Chairman Williams: The biggest issue on the table is the LDO and how it is applied here and what controls we have or don't have for procedural purposes in reviewing this. Seeing no further discussion, could I get a motion, please?

**A motion was made to recommend approval of CASE 22-16 – MISSION FARMS – NOURISH RESTAURANT OUTDOOR SEATING – Request for approval of a Final Plan for a Change to the façade of a Tenant Space, located east of Mission Road and south of 106<sup>th</sup> Street – was made by Ramsey; seconded by Elkins. Motion carried with a vote of 5-1. For: Hoyt, Levitan, Elkins, Ramsey and Coleman. Opposed: Walden.**

**NEW BUSINESS:**

CASE 14-16 – LEAWOOD SUBDIVISION – REPLAT AND EMERGENCY GENERATOR – Request for approval of a Revised Final Plat and Final Landscape Plan, located north of 93<sup>rd</sup> Street and west of Lee Boulevard.

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 14-16 – Request for approval of a Revised Final Plat and Final Landscape Plan for Lot 540, located within the Leawood Subdivision at the northwest corner of 93<sup>rd</sup> Street and Lee Boulevard. The applicant is proposing a replat of Lot 540 within the Leawood Subdivision due to the presence of a formal lot line. The homeowner's current lot is all of 540 and the eastern portion of Lot 566 to the west. Initially platted in the late 1940s, Lot 566 was divided and sold between Lot 567 to the west and Lot 540. However, the lots were not replatted, and as a result, a legal, nonconforming condition was created, as the home does not meet the current setback requirements for the R1 zoning district as required by the Leawood Development Ordinance. The replat of Lot 540 and the portion of Lot 566 will remove this nonconforming condition and will permit the homeowner accessory structures and uses allowed for Single Family Residential, such as a pool or gazebo, to be constructed in the future should they choose to do so with

appropriate permitting. Per the Leawood Development Ordinance, accessory structures and uses are required to be located on the same lot as the primary use, which within the R1 District is a single family home. In addition, the replat will allow the generator requested by the applicant and homeowner, which will be discussed next, to be placed in the proposed location. Otherwise, the generator would not meet accessory use and setback requirements. Secondly, the applicant is proposing a 38kw generator for residential use. The Leawood Development Ordinance states that a permanently installed generator for residential use must meet the following criteria: permitted only within the rear yard, to be powered by natural gas or propane, to be screened by either a fence which does not exceed 4 feet in height or by evergreen plantings which substantially shield the generator from view of neighboring properties, cannot be placed more than 5 feet from the primary structure, cannot encroach in setbacks and cannot exceed a noise level of 60 db at the property line. The generator the homeowner is proposing is 7.48 feet in length, 2.74 feet in width and 3.77 feet in height for a total of 66.26 cubic feet. The LDO states that permanently installed generators for residential dwellings larger than 20kw or 48 cubic feet shall be required to be reviewed as part of a Final Landscape Plan relating to location, screening and design, subject to approval by the Governing Body and recommended by the Planning Commission. The generator is to be located within the rear yard of the home and will be placed 18inches from that dwelling. The generator meets the noise level and setback requirements, and the screening directly adjacent to the generator will be Emerald Green Arborvitae and Dense Yews, which are evergreen, and they are proposed to be a minimum of 60 inches in height. Staff recommends the Planning Commission approve Case 14-16 with the stipulations outlined in the Staff Report, and I'm happy to answer any questions you may have.

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

**Applicant Presentation:**

Jim Kiely, Chief of Operations, Larson Building Company, 344 E. 2100 Road, Wellsville, KS, and Ken Coda, 18230 Canterbury Drive, Stilwell, KS, appeared before the Planning Commission and made the following comments:

Mr. Coda: It all sounded very accurate. I don't have anything to add.

Chairman Williams: Have you seen the Staff Report, and are you in agreement with the stipulations?

Mr. Coda: Yes.

Mr. Kiely: Yes.

Comm. Ramsey: I read that this will be around 58-59dbs output from this unit. Based on the previous discussion, we're fine with the sound levels?

Ms. Kriks: According to the information the applicant provided, at approximately 7 meters from the home, it is 58db. This is about halfway to the rear property line. The closer it gets to the property line, the decibel level should continue to decrease.

Comm. Ramsey: Thank you.

Chairman Williams: I'm not a sound expert, but this is sitting 18 inches off the house and is generating the sound levels that you mentioned. What role does the reverberation off the house contribute to the sound levels and the spread of the sound levels? It's one thing to begin to control sound levels with the shrubbery, but then if the sound reflects off the side of the house, it could circumvent some of the protection, but if it does stay within the 60db, we don't have a problem with it. The city will send inspectors out to do the testing once it gets installed?

Mr. Klein: If there is a noise-driven complaint, somebody from Neighborhood Services will check the sound level to ensure that it meets the requirements.

Chairman Williams: Does this not get inspected during construction?

Mr. Klein: I believe a building inspector is there.

Mr. Keily: I was told at the final inspection of the property, they would test the sound levels. We have to go through the test process of the generator, and that is when the noise level would be tested before we can receive final occupancy.

Chairman Williams: Thank you. Any further questions? Thank you. Any discussion?

**A motion to recommend approval of CASE 14-16 – LEAWOOD SUBDIVISION – REPLAT AND EMERGENCY GENERATOR – Request for approval of a Revised Final Plat and Final Landscape Plan, located north of 93<sup>rd</sup> Street and west of Lee Boulevard – was made by Ramsey; seconded by Levitan. Motion carried with a vote of 6-0. For: Hoyt, Levitan, Elkins, Ramsey, Coleman and Walden.**

CASE 25-16 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-5.9, SPECIAL PROVISIONS FOR OFF-STREET PARKING AND STORAGE OF VEHICLES IN RESIDENTIAL DISTRICTS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the parking of vehicles. **PUBLIC HEARING**

**Staff Presentation:**

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 25-16 – Leawood Development Ordinance Amendment to Section 16-4-5.9, Special Provisions for Off-Street Parking and Storage Vehicles in Residential Districts. This amendment has been discussed by the Governing Body to address an issue that has been evident in some of the residential neighborhoods in which cars are parked in the driveway and then left for long periods of time. The proposed amendment will actually limit the amount of time that somebody can park in a residential driveway without moving the vehicle to a period of 90 days. The intent is to make sure we have something on the books that makes it very evident that cars aren't meant to be parked in the driveway and left for storage. Staff is recommending approval of this amendment, and I'll be happy to answer any questions.

Chairman Williams: The period of 90 days has to be continuous. Who monitors and makes this determination? The homeowner could put it in the street for two hours and put it back. How do we know?

Mr. Klein: The Governing Body discussed that. There will be some parts that will be difficult to monitor. We have Neighborhood Service Officers driving the neighborhoods on a regular basis, so they will have some idea if a car is sitting for a long period of time. They want something on the books that makes it clear that there is a limitation to how long the car can be parked in the driveway without actually moving it. It is not so much storage of vehicles but rather parking in times the vehicle is not being used. There is some realization that it might be difficult to enforce the ordinance, but we should have a general idea based on the patrolling.

Chairman Williams: But they're not doing that every day.

Mr. Klein: They are out there every day. If they became aware of a situation, I would imagine they would drive past it more often, checking on a daily basis. In addition, neighbors would also call the city with complaints. Then, Code Enforcement would be notified of the situation.

Chairman Williams: Again, a neighbor and certainly the city are not going to be able to watch these things 24 hours a day, 7 days a week for 3 months. If the neighbors say it's still there and Neighborhood Enforcement people are suspicious, the people would get a ticket, I'm assuming. They could say that they moved the car for two hours and nobody saw it happen. I understand if it's on blocks, it's hard to move it, but if it is potentially moveable and can be started, then it is up to the property owner to prove innocence in this case? How will that work?

Mr. Coleman: They all carry cameras, so we'll take picture.

Chairman Williams: But are you taking pictures all that time period?

Mr. Coleman: If there is a complaint, they would take a picture of the car from a certain location and then come back in 90 days and take another picture. If the car is in the exact same location and the wheels are in the exact same position, it would be an offense.

Comm. Ramsey: What is in the books now, Richard?

Mr. Coleman: There isn't anything for this particular situation.

Comm. Ramsey: This is the initial attempt to at least have something on the books, particularly for egregious activities of parking and literally abandoning it on the driveway.

Mr. Coleman: Correct.

Chairman Williams: I'm not arguing against doing this as much as questioning the enforcement.

Comm. Ramsey: It's not about what anybody said about the car being moved. Communities throughout the metro area have cars that obviously haven't been moved in years in driveways. I think this is an attempt to have something to be able to deal with it as opposed to saying, "The clock is now running, and you have 3 days left of your 90-day period." I'm not sure we're going to get into the middle of that. As a former city official, I wouldn't want any part of that, but I would want something to give me the appropriate authority to go after somebody who has a car up on blocks or a car that has no engine in it.

Chairman Williams: I agree with you 100%, and I'm not opposed to the idea of the 90-day time limit. I'm just looking at this as something that can be enforced fairly. If it is an issue of a vehicle that appears to be serviceable, if they move it for part of this time and nobody sees them move it and they put it back in the same spot, are you penalizing them?

Comm. Ramsey: I don't know how it is in other subdivisions, but if we leave our cars out on the driveway for more than 3 days, we get a letter from the homeowners association.

Chairman Williams: Our homeowners association has that in our clause, but nobody enforces it, partially because 1 in 3 people leave a car in the driveway. These are 2-car garages and families that have, in some cases, 4 cars. Something has to be done with them.

Mr. Coleman: We do have an ordinance on the books that addresses inoperable vehicles. We already enforce that. This is for operable vehicles that are looked to be stored on the property.

Chairman Williams: I think that just complicates the issue of fair enforcement.

Comm. Ramsey: It does, but we have to start somewhere.

Comm. Coleman: Was there a reason to put this forth? Were there complaints?

Mr. Klein: I think there is a situation or two in which cars have been left in the driveway. They aren't left on blocks, but they also don't appear to be moving for a very long period of time.

Comm. Coleman: Do other cities have something similar?

Mr. Klein: I can't answer that for sure.

Comm. Levitan: I think the intent is fantastic. We've had some issues in North Leawood. The enforcement is the piece I'm struggling with, too, because if a neighbor calls in on Day 9, does the city start the clock for 90 days on that 89<sup>th</sup> day? It just keeps going. I could see somebody coming to the city and successfully fighting that ticket because we can't prove it. There would have to be 90 days of documentation. I like the intent; I think it needs a little more specificity. It's a good start, but we need to take it further.

Mr. Coleman: In most cases a photograph taken of the vehicle will show any movement.

Comm. Ramsey: Or, they could chalk mark it.

Mr. Coleman: That's more difficult. We can't actually go on their property. The enforcement is probably the most difficult part.

Chairman Williams: I would be interested in getting our resident lawyer's perspective on this.

Comm. Elkins: I'd prefer to defer to the City Attorney on that, but there is an issue about enforcement, but there is an issue with enforcement of any ordinance. I'm frankly not familiar with the procedure, but in most cases with an ordinance and a violation, the burden of proof is still on the city. I might be willing to take the defense to the case that Mr. Coleman raised with a picture because all kinds of things can happen during that period of time. But what's the point here? The point is to get the car moved. If you write up a summons or a ticket, you're probably going to get the car moved, and that's the purpose.

Chairman Williams: Presumably, if you get the summons, you've probably already passed that time frame. You could probably still get it moved after that.

Comm. Ramsey: But without anything on the books, there is no way to start the discussion. The ultimate solution of it goes about to a ticket or summons being issued as probably a last resort. In the meantime, just by being able to address that it's a concern, most people would take care of it, or they would have a cogent reason not to and can file an appeal.

Comm. Coleman: Instead of going straight to 90 days to have a summons issued, could we institute some kind of warning system after so many days?

Mr. Coleman: That is already in place. We send a courtesy notice to them that says they are in violation of a section of the ordinance, and they have 10 days to respond. After that time, if the vehicle hasn't been moved, we issue a citation.

Comm. Coleman: After 90 days, they would get the notice that says they have 10 days to move the vehicle.

Mr. Coleman: Correct.

Comm. Elkins: We talked about the driveway area and adjacent pad. While they are few and far between in Leawood, we do have some lots that are larger than traditional lots. Some are, frankly, probably legal, nonconforming uses. I'm curious about the use of the term "pad." If I've got a tractor sitting in the middle of the lot of the 90 days during the winter, what would be the intent there?

Mr. Coleman: It's a violation. You can't park it on the grass. Sometimes, people have an area that is a parking area that is adjacent to the driveway. Some people store boats and things like that, too.

Comm. Coleman: So, if someone put a car in the middle of the lot, it falls under an abandoned car ordinance?

Mr. Coleman: Cars have to be parked on pavement.

Chairman Williams: Pavement is concrete, asphalt or permeable pavers that we sometimes see in commercial parking lots. The Botanical Gardens in St. Louis has the cast blocks with openings. Grass grows out of them, but cars can still be parked on them. They do that to allow water to penetrate to the roots of the trees. The way I read this, that type of system is allowable. There is some question as to whether that is allowable.

Mr. Coleman: If it is a paved surface, it would be allowed. It depends on how it is structured.

Chairman Williams: That is a discussion for another evening.

Mr. Coleman: Some have holes that allow grass to grow up, and that would be fine. There are other ones that have basically just all grass.

Chairman Williams: Any other discussion? This case requires a Public Hearing.

## **PUBLIC HEARING**

Louis Rasmussen, 10111 Hal Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Rasmussen: Tonight, you are considering a revision to LDO 16-4-5.9, concerning the storage of vehicles on residential driveways. Each of those words has deep significance. There are specific instances in the first and second wards of our city which illustrate the need for this revision. It has become apparent that although parking and storage are clearly defined, as I'm sure you have read in the current LDO, abuse has occurred in residential areas. It has become so common that it is cheaper to "store" (and I'm using that term in the technical, legal sense as we have defined it) a vehicle on the driveway than to otherwise garage it. Gentlemen and ladies, we have in our city houses that are not occupied, and in some of those buildings, the driveways are now being used for the storage of residential vehicles. The city closely regulates open commercial storage of vehicles in the city. For example, State Line Road and roughly 105<sup>th</sup> Street next to the creek is a site that does this. The problem is that it is not clear in our ordinances as to whether residential vehicles are "prohibited by law." As a consequence, we are faced with vehicles stored on driveways for years. I'm here to testify, and I'm here to swear that it is the case. I've been in this city for some 50 years now, and I can assure you that it's happening. I'd like to close by stating what one resident emailed me. It's really a cry for help in our north end. I don't want to see our city deteriorate, as has occurred, as you mentioned earlier tonight in your discussion, in other cities. "I am resigned to the fact that those cars will be there permanently." Notice the word. It is not singular; it is plural. "I hope someday to be surprised." I am available for questions, and I thank you for your time and your service.

Chairman Williams: Thank you. Are there any questions of the speaker? Mr. Coleman, you made a comment earlier that the city gives notice to potential offenders. Is that based on the timetable listed under the definition of storage? It calls for 7 consecutive days to find storage.

Mr. Coleman: Unless it is a multiple offender situation, we give a courtesy notice first. It gives 10 days to rectify the situation before being subject to a citation and a court appearance. If we had a complaint, we would go by, note the vehicle location, check on it periodically, take pictures and then issue a notice after 90 days. If it didn't move in the next 10 days and we didn't hear from them, we would issue a citation and a court summons.

Chairman Williams: Is that what we can do now?

Mr. Coleman: No, that is what this ordinance would allow us to do. Right now, we can't do anything.

Chairman Williams: I thought I understood you to say that we already give notice.

Mr. Coleman: We already have an ordinance for inoperable vehicles.

Chairman Williams: The examples just mentioned by our speaker would not fall into this category, then?

Mr. Coleman: Our ordinance right now says that it has to be licensed and operable. This would add the storage element.

Chairman Williams: Certainly for vehicles that have been sitting for months with potentially no hope that they would move, this time frame certainly helps. Let me take it one step further. Is it possible to forcibly remove these vehicles?

Mr. Coleman: Currently, no, they are on private property and are meeting all regulations.

Chairman Williams: Going to the proposed change in the ordinance, there is nothing presented to us tonight that would allow that.

Mr. Coleman: The court would make that determination. They would probably order the property and vehicle owner to move the vehicle.

Chairman Williams: Seeing no one else to speak, can I get a motion to close the Public Hearing?

**As no one else was present to speak, a motion to close the Public Hearing was made by Hoyt; seconded by Coleman. Motion carried with a vote of 5-1. For: Hoyt, Levitan, Elkins, Ramsey and Coleman. Opposed: Walden.**

**A motion to recommend approval of CASE 25-16 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-5.9, SPECIAL PROVISIONS FOR OFF-STREET PARKING AND STORAGE OF VEHICLES IN RESIDENTIAL DISTRICTS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the parking of vehicles – was made by Coleman; seconded by Hoyt. Motion carried with a unanimous vote of 6-0. For: Hoyt, Levitan, Elkins, Walden, Ramsey and Coleman.**

Chairman Williams: It has been brought to my attention that Ursula is leaving us. We are sorry to see her go. We certainly appreciate your time and your service to us. You have done a great job, and we wish you all the best.

*MEETING ADJOURNED*