

**City of Leawood
Planning Commission Meeting
June 28, 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: Walden, Levitan, Pateidl, Elkins, Strauss, Coleman, and Block. Absent: Hoyt and Ramsey.

Chairman Elkins: Commissioner Block has completed his Oath of Office and is now officially a member of the Leawood Planning Commission. Welcome.

Comm. Block: Thank you.

APPROVAL OF THE AGENDA

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

APPROVAL OF MINUTES: Approval of the minutes from the May 24, 2016 Planning Commission meeting, June 14, 2016 Planning Commission meeting and the June 14, 2016 Planning Commission Work Session.

A motion to approve the minutes from the May 24, 2016 Planning Commission meeting was made by Strauss; seconded by Coleman. Motion carried with a unanimous vote of 6-0. For: Walden, Levitan, Pateidl, Strauss, Coleman and Block.

A motion to approve the minutes from the June 14, 2016 Planning Commission meeting was made by Coleman; seconded by Pateidl. Motion carried with a unanimous vote of 6-0. For: Walden, Levitan, Pateidl, Strauss, Coleman and Block.

A motion to approve the minutes from the June 14, 2016 Planning Commission work session was made by Strauss; seconded by Pateidl. Motion carried with a unanimous vote of 6-0. For: Walden, Levitan, Pateidl, Strauss, Coleman and Block.

CONTINUED TO THE JULY 26, 2016 PLANNING COMMISSION MEETING:
CASE 67-16 – BRIGHT SPACE SENIOR LIVING – Request for approval of a Preliminary Plan, Preliminary Plat for Senior Assisted Living and Independent Living Facilities, and Special Use Permit for a Senior Assisted Living Facility, located south of 137th Street and west of Mission Road. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 63-16 – FIRST FEDERAL BANK OF KANSAS CITY – Request for approval of a Final Sign Plan, located at 8000 State Line Road

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

NEW BUSINESS:

CASE 64-16 – PATIO HOMES OF HALLBROOK – 11408 HIGH DRIVE – Request for approval of a Rezoning from REC [Planned Recreation] and RP-4 [Planned Cluster Residential – Former Zoning Classification] to RP-2 [Planned Cluster Detached Residential District], Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located at 11408 High Drive. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 64-16 – Patio Homes of Hallbrook, request for approval of a Rezoning from REC and RP-4 to RP-2, Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located at 11408 High Drive. The request is to combine two properties into a single lot with a single zoning classification. (*Illustrates on overhead*) Back in 1994, the Hallbrook Country Club deeded land to 11 property owners adjacent to the golf course and filed a plat. At the time, the pieces of property adjacent to each lot were with the lot number and designation “A”. They did not re-plat the properties into single lots, so each lot was its own piece of property. They also didn’t rezone the property, so the piece that was deeded over was zoned Recreation, which reflected the golf course. The applicant is requesting to do that in addition to rezoning to re-plat the properties into a single lot. Currently the property for Patio Homes of Hallbrook is zoned RP-4, which is a designation that no longer exists. We have RP-4 now, but it is for apartment houses. With the approval of the new ordinance at the end of 2002, the Governing Body decided to eliminate the RP-4 designation, which allowed both attached and detached units within the same zoning district. They were divided into two zoning classifications: RP-2 [Planned Cluster Detached Residential] which would only allow single family homes and RP-3 [Planned Cluster Attached Residential] which would allow duplexes and other attached homes. At that same time, with the realization that the RP-4 zoning designation was no longer an option, they indicated the equivalent in the new ordinance is RP-2. All the regulations match that, and that is what the city is proposing for this rezoning. If it is not rezoned, two properties would combine in one lot with different zoning regulations. That is why the application combines a rezoning and re-plat. Staff recommends approval of this application, and I’d be happy to answer any questions you might have.

Chairman Elkins: Are there any questions?

Comm. Strauss: Would it be more efficient if all the properties were adjusted all at once, or would you rather take each parcel on its own?

Mr. Klein: The applicant went to the Board of Zoning Appeals to get a variance to the setback. Combining the two properties will allow them to construct their roof structure over the patio. At that time, staff met with the applicant and suggested it might be better if all 11 properties came in at one time. They indicated that their time frame prohibited that from happening. I have spoken with a number of property owners who are in the same situation. They have indicated they would be possibly interested in doing that and may get a meeting to include everyone involved.

Chairman Elkins: Additional questions? I would invite the applicant to step forward.

Applicant Presentation:

Mary Holland, 11408 High Drive, Leawood, appeared before the Board of Zoning Appeals and made the following comments:

Ms. Holland: Mr. Klein covered everything perfectly.

Chairman Elkins: Staff identified two stipulations to go along with the plan. Are you in agreement with those stipulations?

Ms. Holland: I don't know what they are.

Mr. Klein: They just state the limitations of the approval (*Reads stipulations*).

Ms. Holland: Yes, I agree.

Chairman Elkins: Because this is an application for rezoning, we will hold a Public Hearing.

Public Hearing

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

Chairman Elkins: That brings us to discussion.

Comm. Walden: On Page 3, it states that the Governing Body vacated 10 feet of sanitary sewer easement along the eastern edge of Lot 9A. Is the sanitary sewer still in that area?

Mr. Ley: The sanitary sewer was not vacated; the utility easement east of the sanitary sewer easement was vacated.

Comm. Walden: How much space does that leave for the sanitary sewer?

Mr. Ley: The sanitary sewer had an existing easement that was 20 feet wide.

Chairman Elkins: Does the comment about the vacation of the sanitary sewer easement need to be corrected?

Mr. Ley: Yes, it should say “utility easement.”

Chairman Elkins: Thank you. Any other questions or comments?

A motion to recommend approval of CASE 64-16 – PATIO HOMES OF HALLBROOK – 11408 HIGH DRIVE – Request for approval of a Rezoning from REC [Planned Recreation] and RP-4 [Planned Cluster Residential – Former Zoning Classification] to RP-2 [Planned Cluster Detached Residential District], Preliminary Plan, Preliminary Plat, Final Plan and Final Plat, located at 11408 High Drive – with 2 Staff Stipulations, subject to a correction on Page 3, changing “sanitary sewer easement” to “utility easement” – was made by Pateidl; seconded by Strauss. Motion carried with a unanimous vote of 6-0. For: Walden, Levitan, Pateidl, Strauss, Coleman and Block.

CASE 60-16 – THE GLYN OF LEAWOOD – Request for approval of a Final Plan and Final Plat, located north of 151st Street and east of Mission Road.

Staff Presentation:

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 60-16 – The Glyn of Leawood – Request for approval of a Final Plan and Final Plat, located north of 151st Street and east of Mission Road. A request for zoning to Planned Single Family Low Density Residential, Preliminary Plat and Preliminary Plan was originally approved by the Governing Body for 52 single family residential units on 52.88 acres on January 19, 2016. This was proposed to be constructed in two phases. With this request, the applicant is proposing the first phase of development, which will include 30 single family residential lots on the east side of the development on 28.65 acres. Access to this phase of development will be by 151st Street. The Preliminary Plan did include an additional connection to Mission Road, which will not be constructed until the second phase of development. The streets within this development will be between 50 and 90 feet in width with several landscape medians, and the pedestrian crossings will be constructed with red brick pavers in a herringbone pattern and soldier course edge. Four common tracts of land are proposed, which include a Tree Preservation Easement, a detention basin with fountain, detention basin and natural area. West of the entrance to 151st Street, a shaded sitting area with a black metal bench is proposed with access to the area by a 5-ft. concrete path by sidewalk along the main entrance into the development. A 15-ft. Tree Preservation Easement has been provided along the northern property line adjacent to Ironwoods Park and the east property line adjacent to the single family residential subdivision in Overland Park to the east. The developer and homes association will be responsible for the care and

maintenance of the Tree Preservation Easement. The applicant has proposed that any existing trees 3-in. caliper or greater are not to be removed unless they are dead, diseased or pose a threat to public and property. Any other removal of trees 3-in. caliper or greater will require approval from the City of Leawood. The residents will not be allowed to remove trees within the easement or dump yard waste and refuse within the Tree Preservation Easement. The trees are not proposed to be replaced if they are removed. Two monument signs have been proposed on either side of the entrance to the development from 151st Street. Each sign is proposed to be 26.82 feet in length and 12.36 feet in height with a square footage of 331.49 square feet. The monument signs incorporate a planter extending from the base that is about 2.32 feet in height. The monument signs will be a natural colored limestone with cast stone caps in a neutral buff color. The signs are proposed to be illuminated by ground-mounted light fixtures, and the applicant has also proposed decorative light fixtures to be attached to the signs. The applicant has proposed a variety of shade trees, which will be 35 feet on center along the streets between the back of curb and sidewalk. Native vegetation is proposed between Tracts B, which is east of the main entrance, and Tract C, which is centrally located. The applicant has also proposed 14-ft. black decorative light fixtures at the entrance of the development from 151st Street.

Staff has identified a few concerns with this application. First, staff has recommended the applicant or developer install a 5-ft. fence between the back of the lots and the tree preservation area located along the northern and eastern property lines to delineate a clear boundary between the homeowner lots and the Tree Preservation Easement. Staff has also recommended this fence to be installed prior to the issuance of building permit on any lot within the development. Without a fence, homeowners might inadvertently or purposely encroach into the easement and remove trees. Additionally, staff has recommended the fence to be 5 feet in height, which will comply with recent changes in the regulations of Johnson County and requirements of home with pools to install a 5-ft. fence. Secondly, the applicant has proposed two monument signs on either side of the entrance. The Leawood Development Ordinance allows a maximum of one monument sign at each entrance from an arterial or collector street within and R-1 zoning district. Staff is recommending the applicant revise the plan, showing one monument sign off the entrance at 151st Street. Third, staff has concerns regarding the size of the monument sign proposed by the applicant. The signs proposed are 331.49 square feet in size, which is almost 6.5 times greater than what is allowed for a commercial development. Initially, the applicant proposed monument signs that were approximately 110 square feet in size. Staff was supportive of the initial scale, which is still more than twice the size permitted for commercial development. The Leawood Development Ordinance does allow monument signs within the Residential zoning district some leniency, and the size of the signs are approved by the Governing Body after recommendation by the Planning Commission. Finally, staff has concerns regarding the maintenance and tree replacement within the Tree Preservation Easement. These concerns include that the Tree Preservation Easement will become overpopulated with volunteer tree species and the thinning over time due to removal of the large trees that are not replaced. Staff has recommended that the homes association be responsible for the maintenance of the Tree Preservation Easement, which includes the removal of volunteer saplings and the replacement of any trees 6-in. caliper or greater with a species approved

by the city. Staff recommends approval of Case 66-16 with the stipulations outlined in the Staff Report, and I'm happy to answer any questions you may have.

Chairman Elkins: Any questions for staff?

Comm. Pateidl: In your closing comment, you referenced a 6-in. caliper tree that has to be removed and replaced if it dies. What size of tree is required to be put in? There is no clarification of that.

Mr. Klein: Typically, they are replaced with a 2-in. or 4-in. caliper tree. It could be 1 ½-2 inches so that no existing trees are killed in the process.

Comm. Pateidl: Do you feel we should clarify that?

Mr. Klein: That is probably not a bad idea. We want to allow a tree small enough to fit in the space.

Comm. Pateidl: Caliper appropriate for the location?

Mr. Klein: That would be good.

Comm. Block: My understanding from the Site Plan is that homes border these trees on the north and east. How would someone gain access to do the work?

Mr. Klein: The city is supportive of gates in the fence, and perhaps that should be clarified as well. There are tracts adjacent to the tree preservation area that would allow access.

Mr. Block: Would the city allow access for the park?

Mr. Klein: The city is supportive. The second phase includes a connection to the park with a tract to the north.

Mr. Block: I would think we would want to address gates.

Mr. Klein: Yes, we should stipulate that no gates from the private lots are included.

Comm. Strauss: I want to make sure there is access to Ironwoods Park to the north. I realize that this should have come up at the preliminary phase, so that is my mistake. I want to make sure we are promoting bicycling and walking and that we're not forcing these residents to drive to the park. I heard you say there is going to be an access point to the park, a little west of what we're looking at now.

Mr. Klein: That is correct. There is a large tract of land that runs underneath the power lines that will provide a nice access to the park. There is an asphalt hike/bike trail that will allow access to the park.

Comm. Strauss: I'm still trying to understand the fence. The city is proposing that the fence is put up because we don't believe the residents will maintain the easement.

Mr. Klein: It is not so much that they won't maintain it; it is somewhat the opposite. The tree easement is there to ensure that the trees are not cut down. The concern is that there is not a clear delineation for the beginning of the tree easement. People could think it is their lot and perhaps clear it, and then the easement is lost. The applicant has indicated that it is protected in the deed restrictions, but there have been instances when the deed restrictions did not prevent similar actions.

Comm. Strauss: I'm thinking about a residential property that abuts the golf course as an example. There is an agreement with the golf course and property owner without a fence. I'm having a tough time with putting a fence up. Could we use the same thought process as a golf course?

Mr. Klein: Brian Anderson, Parks Superintendent, can address that as well. There have been instances of understanding in the past regarding similar situations. Ironwoods Golf Course actually has a fence of a specific style. There is also a 25-ft. golf course easement.

Mr. Anderson: I agree that everything he spoke about has been a problem in the past, even at the golf course, where someone cuts trees to improve the view of the golf course from the back of their home. We think the fence would help protect the trees.

Comm. Strauss: Is there a certain kind of fence that is suggested?

Mr. Klein: There is a metal fence in their deed restrictions. I believe it is shown as 4 ft., and staff has asked for a 5 ft. fence so that if someone has a pool, the fence already meets the height requirement for Johnson County.

Comm. Block: The plan we have says it should be 4 feet, but you are saying 5 feet. Should it say 5 feet?

Mr. Klein: The applicant is proposing 4 feet, but there is a stipulation requiring 5 feet.

Comm. Pateidl: Is Ironwoods subdivision in Leawood or Overland Park?

Mr. Klein: The one to the east is Overland Park. It is called Villas of Ironwoods.

Comm. Pateidl: Based on your comments, I get the impression that the LDO does not have any size restriction on monument signs for residential subdivisions and that it is somewhat at the discretion of the Planning Commission and Governing Body.

Mr. Klein: Correct.

Chairman Elkins: Are there any other questions? I would invite the applicant to come forward.

Applicant Presentation:

Korb Maxwell, Polsinelli Law Firm, 6201 College Boulevard, Suite 500, appeared before the Planning Commission on behalf of Beckner Development and made the following comments:

Mr. Maxwell: I have with me Sean Beckner, Don Donahue and Dan Foster with Schlaegel Architects. The Glyn of Leawood is going to be a very high-end residential development that will match any of the fine developments that have been established over the last several years in Leawood. This body was able to see the Preliminary Plan come forward approximately six months ago. You may remember we are talking about 52 lots on 53 acres, which is fairly rare in Leawood. We know we need to create a high-quality development, especially because we are playing off a city asset. Ironwoods Park to the north is a huge benefit to this development and one of the reasons Mr. Beckner has pursued this piece of property to bring this forward.

We want to briefly walk through the Final Plan and Final Plat, including all the lots but most specifically the 30 acres on the east side that are the subject of this discussion. We have reviewed all the stipulations, and we rise in support of those stipulations except for two. They are related to the questions already discussed. The first is the question of the fence. The second is the issue of the monument sign. I would like to point out that we came before this body in November, 2015, and there was no stipulation during the Preliminary Plan for any form of fencing. Naturally, in these applications, the Preliminary Plan would be an appropriate place to introduce such a large element. Just because it didn't happen at Preliminary Plan is not argument enough of why we are asking to remove the stipulation. We think it is onerous on the owners, the developer and the future of The Glyn. I'll use the example of Lot 23, which has a standard 10-ft. utility easement, the property line and then another 10 feet of ground within the HOA tract with common ownership before the Tree Preservation Easement, which runs 50 feet to the property line directly adjacent to the park. We also want to note one critical component: if a fence is erected on the property line, it is fencing off the owners from that 10 feet that is not a Tree Preservation Easement as well as the trees in the easement. It is also flipping it and allowing free access into the ground from the park. More importantly, it is allowing free access to any of the owners on the eastern side that have no Tree Preservation Easement or any requirements on their plat. It is opening up the HOA ground in Leawood and inviting the applicants on the east into the property. We don't think it makes sense. We would propose no fence. Staff says that we need to do this to ensure it is maintained correct. What will be maintained better: HOA and an individual property owner maintenance or only the HOA? We propose that it will be better maintained with more people looking at it. We understand that staff is concerned about the overzealous owner who cuts down trees. They are actually going beyond their lot 10 feet where there is no Tree Preservation Easement and then another 10 feet into the Tree Preservation Easement. That is overzealous, but those things do happen. It is controlled with deed restrictions and HOA requirements. We are not objecting to stipulations about tree

replacement. The HOA would be enforcing that on the owner if any tree were removed inappropriately. We believe no fencing is the proper course.

We also want to talk about the monument sign. As pointed out by the commission, there is no requirement in the LDO. We proposed a 331-sq. ft. sign that is high quality. Importantly, we think it's a pure matter of fairness. Highlands Creek right next to this development has a monument sign that is over 30 feet and 14 feet high. It is beautiful. We want to do the exact thing. If we are limited, we will be about ¼ of the Highlands Creek sign. Tuscany, Sienna and others all have high quality signs. We would ask this commission to approve the Final Plat and Plan but with amendments to the stipulations. First, deleting No. 2 and amending No. 6 to take out the size of the monument sign and approve it as is. I'd be happy to answer any questions.

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

Comm. Pateidl: Will this 10-ft. HOA strip between the homeowners' property and the tree preservation area be maintained on a weekly basis to where it is clearly indicated that it is a common area?

Mr. Maxwell: That is the plan. Part of the reason to have the 10-ft. easement is to allow access to maintain the Tree Preservation Easement.

Comm. Pateidl: That should create a clear delineation.

Mr. Ley: That tract is actually for BMP, so it should just remain native and not be mowed.

Comm. Pateidl: So, the 10 feet cannot be maintained.

Mr. Ley: That is correct. It can only be maintained to the property lines. It is another reason for the fence.

Chairman Elkins: What is BMP?

Mr. Ley: Best Management Practices for treating storm water. Dan Foster can speak to this, but they do have a lot of signs that they are going to place around those tracts to identify that.

Comm. Pateidl: Your having cited the lack of any requirement for a fence in the preliminary application strikes to mind that in the preliminary presentation you presented a monument sign substantially smaller than what is requested now by three or four times.

Mr. Maxwell: That is a very good point. It would be interesting if it was a bargain, but I will tell you that the fence issue and the monument issue are both incredibly important to the developer. We have studied the monument sign much further, and we know what is needed in the market to be competitive.

Comm. Pateidl: If you are fully aware that the size and monument type was up to the discretion of this body and City Council, why did you not come forward with something more dramatic in terms of a presentation that gives us some idea of what you're thinking about? Frankly, what is in this proposal for us to make a decision to triple or quadruple the size you originally asked for is minimal.

Mr. Maxwell: I wasn't here on the Preliminary Plan, so I will let Dan speak to this.

Dan Foster, Schlagel and Associates, appeared before the Planning Commission and made the following comments:

Mr. Foster: The monument sign was not part of the Preliminary Plan. The sign that is contained within the Staff Report was my thought. The owners then came back and asked for something more along the lines of the other subdivisions in the area. That is when we revised the sign. They feel this is more fitting with what Leawood has and also what represents what Leawood stands for in terms of stature and high-quality homes. To elaborate on Mr. Ley's comment, he is right that it is BMP and will be natural, but it would not necessarily have to be trees; it could be native grasses. The whole point of that gap is for the HOA to drive some sort of maintenance vehicle in to do maintenance on some of these trees. There is some mowing and weeding to be done on BMPs.

Comm. Block: You talked about one monument, and you had two initially. What are you asking for?

Mr. Maxwell: We do not need two monument signs. We would like to have one sign that has an actual sign and then have a decorative wall with framing into the development. We do not object to Stipulation No. 5.

Chairman Elkins: Are there other questions for Mr. Maxwell? That moves us on to discussion.

Mark Simpson, neighboring land owner, appeared before the Planning Commission and made the following comments:

Mr. Simpson: I have a question about park access.

Chairman Elkins: You can direct that to staff outside the meeting. There is not a Public Hearing provision for this particular type of plan.

Mr. Simpson: This is my only venue to do this. I've had discussions with the Parks Department, and they indicated I should speak with the Planning Commission about access because the access they originally spoke about now has been granted to this development, and the connectivity between developments in the LDO speaks to development access for us to the park to come from this development. We have tried in vain to get this.

Chairman Elkins: I still think the proper place to raise that question is with the planning staff. In addition, this case still has another step to go. Assuming it is approved tonight, it will still come before City Council. At that point in time, the public will have an opportunity to comment as well. This is not the last venue to raise the issue. Thank you. That takes us to discussion. There are two issues to be addressed. Let's talk about the fence issue. Are there comments with respect to the fence?

Comm. Coleman: I would like to get staff's opinion in regard to the fence. Can you address the comment that we did not stipulate a fence in the original plan?

Mr. Klein: We've talked about this with the applicant. When an applicant comes through with the original plan, we are looking at landscaping, street layout and lot sizes. Fencing typically would come up in the Final Plan stage. We made the comment early on when they submitted the application that we wanted to see a fence. We talked with the Parks Department about their experiences. Staff still believes that the best way to protect that tree preservation area is to have a clear boundary. I realize they have a 10-ft. area along the north side in addition to the tree preservation area. The applicant had a concern that it could grow into the fence. We indicated they could have a mow strip along the fence to prevent that from happening. The homes association restrictions indicate that the HOA is responsible. It gets confusing when the homeowner and the homes association are responsible for different things. Staff feels strongly that there should be a fence to provide the boundary. The Parks Department has noted that similar situations have occurred several times. The tree preservation area was meant to be a screen between the park and the single family. Part of the concern is property owners who could want to see the park and take matters into their own hands.

Comm. Coleman: Are there any other recent subdivisions where a fence like this was required?

Mr. Klein: There is a development around 137th Terrace that isn't too far from Tuscany Reserve and Leawood Falls. The Planning Department occasionally runs into issues with different types of fencing, so if there is no clear indication as far as type of fence, they could all be different. The other issue is height differences because of pools. It doesn't look consistent.

Comm. Levitan: Could something be done with more of a natural barrier than an actual fence, such as a prairie grass? We've done that on commercial developments, and I think it can be done successfully. I don't see the need for the fence at this point but perhaps something more natural.

Mr. Klein: We haven't looked at that, but we would still have some concerns because of the potential for people to remove it easily. The fence is more difficult to remove.

Comm. Levitan: The HOA would be responsible for the area.

Mr. Klein: The HOA is responsible. We are concerned that once the trees are gone, they're gone. I realize that they have indicated they would replace the trees, but it will take a long time for a small tree to replace a large tree. There have been so many instances when residential property backs up to a park and trees have been removed. At Gezer Park, there was no fence built originally, and the residents didn't understand where their property line ended. Play sets and woodpiles ended up on city property. Sometimes in those common areas, mowers get caught on a pile of wood and debris. Staff is concerned that the vegetation might not be enough of a barrier.

Comm. Levitan: My hope would be that the HOA would have enough teeth to enforce it and make sure it doesn't happen. I just don't see the need for the fence. With respect to the monument, my belief is that if we don't have anything in the LDO regarding size, we need to approve this because of that, and maybe the next work session can talk about monument size.

Mr. Anderson: I would like to follow up on maintenance issues we have run across. Buried pet fences will get put in the easements and yard waste as well. Regarding the tree preservation zone, it is a buffer. The way we utilize the park in this area immediately north of this development is a nature center with activities. The park patrons are there to enjoy nature and have a way of feeling away from the city. That is one reason why our department's opinion is that we like as much screening as possible.

Comm. Strauss: I think I fall on the side of the fence. I like to look for solutions that are less intrusive. I would like to see barrier that could protect the tree preservation area without putting up a fence, I think the applicant is saying the trees are a marketing tool, and backing up to the park is a marketing tool. I don't think we mandate that fences are put up along golf courses. A sign could be less intrusive than a fence. I also like the idea of the giant boulders that are more natural could delineate the two properties. Maybe on the deed restriction, they need to initial the portion that refers to the deed restriction. I think there are less intrusive ways to protect the areas.

Comm. Levitan: I don't really know how a fence would stop a homeowner from taking care of a tree. I would just hope the resident would recognize it is the right thing to do.

Chairman Elkins: Other comments? Let's move to the sign for a moment.

Comm. Strauss: If I understood Commissioner Levitan's point, he said that if it is not in the LDO defined and there are other examples around Leawood that have larger monuments, it doesn't seem like we can preclude them from having a larger monument until it is defined better.

Comm. Levitan: Correct.

Chairman Elkins: Not to misquote staff, but I believe that is within our discretion to do so; the question is whether it is good policy to do so and not whether we have the authority. Other comments?

Comm. Walden: I just want to verify with staff about the size of the monument signs for other subdivisions. Do you agree that those are larger than 110 square feet?

Mr. Klein: That is correct. There are many monument signs, many of which were constructed before the current ordinance. As Chairman Elkins indicated, scale is at the discretion of Planning Commission and Governing Body. It was worded that way to add flexibility. I want to point out on the fence issue that Ironwoods Golf Course has a requirement for a fence. That is something the city has been consistent with. I realize that maybe on private golf courses, there may not be fences.

Chairman Elkins: Is that requirement enforced at Ironwoods?

Mr. Klein: I believe so. I know it has been an issue a number of times since I've been here. I know the Parks Department has been involved on numerous occasions. I know gates are not allowed. It has to be a specific style so the fence is consistent along the boundary. The 25-ft. golf course easement also tries to protect people from an errant golf ball.

Chairman Elkins: Could our Parks Department Director confirm that?

Mr. Anderson: I'm not on the golf course on a daily basis. Having been a part of numerous discussions with fencing issues, I am comfortably confident that the vast majority at least has a fence.

Comm. Block: I'm in one of the neighborhoods that borders the golf course, and a fence is required. I'm also on the homeowners association. I think it is unfair to put the onus on the HOA to enforce this. I think the fence is necessary. Just dealing with homeowners in this neighborhood and my last neighborhood, I think it is unfair for those people to police their neighbors.

Chairman Elkins: Additional comments? The way I would like to approach this is a little different. I would like to take the fence issue first. I haven't quite figured out how it's going to come out. The current case has a stipulation to include the fence. The chair would entertain a motion to remove that stipulation from the case, and then we'll decide whether the fence stays in or out.

A motion to remove Stipulation No. 2 from Case 60-16 was made by Elkins; seconded by Levitan.

Comm. Strauss: To address the city's concerns, I was thinking that the recommendation wouldn't be stuck; it would be altered to say that the applicant and city would agree on a less obtrusive barrier.

Comm. Coleman: Is it at all possible to table this issue? It is vague to let staff and the developer work on it.

Chairman Elkins: Certainly, either staff or the developer could ask for a continuance if they thought it would be productive.

Comm. Strauss: It hasn't been uncommon to put it back to staff to work with the applicant.

Chairman Elkins: Additional comments? I look to the applicant and staff. Do you think there is basis for additional discussion based on comments heard tonight, or is your timetable such that you need to move forward?

Mr. Maxwell: We would be very happy to work on a natural barrier, and we think that has a lot of merit. We would ask that staff gets some direction if that is the case. I think staff has been fairly firm in their opinion on this.

Mr. Klein: In talking with the director, this is an issue that staff feels fairly strongly about. I am not saying we would not work with the applicant, but until I have the ability to speak further, I can't promise that there would be a solution other than the fence, but we could talk.

Chairman Elkins: We have a motion and a second to remove the requirement completely. We've had discussion. Are there other comments? We'll move to a vote on the motion to remove Stipulation No. 2.

Comm. Strauss: We can vote on that, but if other commissioners are interested in a less obtrusive barrier to be worked out, how does it happen?

Chairman Elkins: You have to decide on the motion at hand.

Mr. Maxwell: The motion makers could accept a friendly amendment.

Comm. Levitan: I was thinking of modifying it to say, "natural barrier."

Friendly amendment to modify motion to modify Stipulation No. 2 to strike reference to the fence and add, "The applicant and the city shall develop a barrier less intrusive of a fence between the homeowner and the Tree Preservation Easement prior to the issuance of a building permit" – was made by Strauss.

Comm. Levitan: Or, "To install a natural barrier"

Comm. Pateidl: That is fine. What we are really trying to do with this fence, be it a barrier or rock, is to delineate the Tree Preservation Easement. We are not trying to protect or enhance it. I would incorporate with that stipulation that it should be a natural or less intrusive barrier to delineate the tree preservation area.

A motion to incorporate language to require a natural or less intrusive barrier to delineate the tree preservation area was made by Pateidl; seconded by Levitan. Motion passed with a vote of 6-1. For: Elkins, Levitan, Pateidl, Walden, Strauss and Coleman. Opposed: Block.

Chairman Elkins: We'll move on to No. 6, and I think we're looking at a motion to remove this stipulation.

A motion to remove Stipulation No. 6 from Case 60-16 was made by Walden; seconded by Levitan.

Comm. Pateidl: Having driven by the site and seeing the size of the monument for Ironwoods subdivision, candidly, a sign of 110 square feet versus 330 square feet would provide a disservice to this subdivision. That land wasn't cheap. Secondly, it was horrible to clear. Third, they're going to put nice homes in there. Fourth, we are competing with Overland Park. That sign is two levels and is roughly 12 feet tall. Something comparable would be appropriate. I'm disappointed that we don't have more to show the plans for the sign. I would encourage the applicant to take something better to this to the Governing Body.

Comm. Coleman: On Page L3, isn't the sign they are proposing already in here?

Chairman Elkins: I believe that is correct.

Mr. Klein: That is the sign; however, the applicant called staff today to say it would be located on one side and they might have a wall on the other side that would not contain a sign.

Chairman Elkins: Is the wall idea acceptable to staff?

Mr. Klein: The wall has been used before in other developments.

Comm. Coleman: Is the sign comparable to other signs in the area?

Mr. Klein: There are large signs in the area. The Enclave has something in the scale of this. In that area, there are a number of large monument signs.

Mr. Maxwell: We would affirm that the sign is what is on Page L3, and we would have one sign and one wall. We do agree with all the comments about the size and scope of our competition, which is why we proposed the sign.

Comm. Coleman: If we strike the stipulation, the sign in the proposal would be the sign?

Chairman Elkins: That is correct. Additional comments? We'll move to a vote, then.

Motion to remove Stipulation No. 6 from Case 60-16 carried with a unanimous vote of 6-0. For: Walden, Levitan, Pateidl, Strauss, Coleman and Block.

Chairman Elkins: Before we go to a motion regarding recommendation to the Governing Body, I want to confirm that the applicant has no objections to the remainder of the stipulations and the stipulations that have been modified tonight.

Mr. Maxwell: That is correct.

Chairman Elkins: Chair would entertain a motion.

A motion to recommend approval of CASE 60-16 – THE GLYN OF LEAWOOD – Request for approval of a Final Plan and Final Plat, located north of 151st Street and east of Mission Road – with the removal of Stipulation No. 2 and replacing it with a statement that the applicant will bring a proposal to the Governing Body with a natural, less obtrusive barrier, delineating the Tree Preservation Easement and the removal of Stipulation No. 6, allowing 27 remaining stipulations to remain intact – was made by Pateidl; seconded by Levitan.

Mr. Klein: Mr. Pateidl indicated he wanted to modify No. 7 with regard to the caliper size of replacement trees.

An amendment to the motion included modification to Stipulation No. 7, to require that the species of trees used to replace those that are 6 caliper or greater will be appropriate for the location of the removed tree – was made by Elkins; seconded by Levitan.

Comm. Block: I heard from staff that the fence was to delineate and protect. I don't think it was just to show where the area starts and one stops. They talked at length about protecting the trees.

Chairman Elkins: Fair point and noted.

Comm. Strauss: In my mind, the reason we are making those two changes is that we are pro-business, and this is what they need to market the development.

Motion to recommend approval of Case 60-16 with amendments carried with a vote of 6-1. For: Elkins, Walden, Levitan, Pateidl, Strauss and Coleman. Opposed: Block.

CASE 78-16 – 2016 ANNUAL UPDATE TO THE CITY OF LEAWOOD COMPREHENSIVE PLAN – Request for approval of the 2016 Comprehensive Plan.
PUBLIC HEARING

Staff Presentation:

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: May I present Case 78-16 – Annual Update to the City of Leawood Comprehensive Plan for 2016. This update will incorporate the following:

- Update Tables and Figures within the plan, reflecting the most recent demographic information from the American Community Survey for the City of Leawood.
- Amendment to the Comprehensive Plan Map, which would include the area around 89th Street and State Line Road, which would change from Medium Density Residential and Office to Mixed Use. The vacant land at approximately 106th and State Line Road would be changed from Medium Density Residential to High Density Residential. Along 107th Street between Nall Avenue and Briar Street, which would align a future bike-hike trail along the right-of-way.

Staff recommends approval of this case, and I'd be happy to answer any questions you might have, and I'm happy to answer any questions you might have.

Chairman Elkins: Thank you. Are there additional questions for staff?

Comm. Block: I saw a couple things that might have been overlooked. It looks like the charts and graphs were updated, but some of the text doesn't correspond. For example, on Page 13, it talks about the population from 1990 to 2010, but the graph goes to 2014. I understand that it gets confusing with the 2010 Census, but I would assume you had more data because the graphs and charts reflect that. I made notes. I don't know if we need to go through every single one. Along the same lines, when it is broken down by North and South Leawood, there are no updates there.

Ms. Kriks: The update with the tables and the graphs are from the American Community Survey, which is more of a broad overview from year to year that the US Census does. The actual census gets more detailed. With the 2010 Census, we were able to break it down by census tracts of North and South Leawood.

Chairman Elkins: Would you agree that the reference to 2010 should be changed to 2014?

Ms. Kriks: We can make sure that gets updated.

Chairman Elkins: Commissioner Block, let's get your other comments.

Comm. Block: It is mostly on Pages 13, 14 and 16 with the reference to 2010 and not 2014. It seems like the text should correspond with the graphs.

Comm. Pateidl: Perhaps staff can clarify for me the process for rezoning inasmuch as we're looking at a request for approval of an update of our Comprehensive Plan, but we've also incorporated some pretty specific rezoning issues. Is this the normal process for us to do this? This seems unusual to me.

Mr. Klein: We have had properties evaluated as we have updated the Comprehensive Plan. We try to bring them out in a work session, particularly the one that is going to High Density Residential. It seemed to make sense since there are apartments directly adjacent. In the last year, we've had some opportunities to talk with applicants to see what markets are available. Based on that, staff thought a transition in that area made sense. The area to the north made sense for that, also. You're right that it is supposed to be a more comprehensive vision of the future; we are just trying to respond to what makes sense.

Comm. Pateidl: With respect to the requested changes, I take umbrage with moving the 89th and State Line position from Office and Medium Density to Mixed Use. I've got a number of problems as far as the proposal is concerned. For example, in the plan, we define Mixed Use on Page 65 as a tract of land or building structured for two or more different uses. That implies to me that I can use a Mixed Use zoning to put an office and a retail center together. Yet, the LDO says that it requires a minimum of 20% Residential. The plan is not representing our ordinance, and I have a problem with that. First, there should be clarity and comparability as far as those two documents are concerned. Secondly, when I look at the front page and it says that 89th Street is changing from Medium Density Residential to Office to Mixed Use. In the information contained in the report on Page 34, it refers to SD-O [Office]. Do we have zoning for mixed residential? Do we have an RP-2 or RP-4 that is associated with that property? Are there two pieces of property? Should there be two pieces of property? Is the platting correct? I'm thinking of Ranchmart North and everything we went through because certain items weren't filed correctly. I don't know how two pieces of zoning are on one piece of property.

Mr. Klein: You have a point with regard to the Comprehensive Plan and the Zoning Ordinance and the need to match. Mixed Use is required to have a residential component, and it should be reflected in both documents. With regard to the individual pieces of property, the Comprehensive Plan is a guide to what the city would like to see there in the future. It's not trying to get down specifically to designating a project for a specific piece of property. As a project comes in, it could need multiple pieces of property. If it is a Mixed Use development, it can be horizontally or vertically integrated. The development might use one or more of those parcels located there.

Comm. Pateidl: I can appreciate the fact that the Comprehensive Plan is more of an overview and certainly not as precise as the LDO, but by the same token, we're being asked to change the zoning on a piece of property, and I believe that takes more serious consideration than the approval of an overview to get to the changing of zoning, particularly to Mixed Use. In accordance with what you just said, there is a residential component, and we have a history of a residential component directly west of this piece of property that has been a miserable disappointment at least, if not a failure. We know that residential development in that area is difficult. Compound that with members of this commission who are professionals in banking, real estate and management who have told us endless times that it is difficult at best, if not impossible, to finance Mixed Use developments. On this small piece of property in that location in Leawood, saddling that property with a Mixed Use zoning is very contrary to being business friendly. Tell me

how this change in zoning will benefit the citizens of Leawood. What does it really do for us?

Mr. Klein: The city has been approached by a developer with regard to wanting Mixed Use in that area. There are topography changes that would allow some opportunities for structured parking. There is a parking deck already in the area. The intent of the Mixed Use development is to try to incorporate Residential and Office and have more of an area that will serve different segments of the community. I know we have talked about this before, especially with the 135th Street Community Plan, that the city is embracing Mixed Use to allow that walkability, to try to encourage the mix of uses. Retail seems to be the most challenging at this point. Residential is extremely hot. We have gotten a number of applications with regard to 135th Street and apartments.

Comm. Pateidl: If an applicant came to you tomorrow with a reasonable Mixed Use request for 89th and State Line, is there any question in your mind that if that was presented before this commission, the zoning change wouldn't be granted?

Mr. Klein: It depends on the project. I'm not going to say there is no chance it wouldn't get passed.

Comm. Pateidl: My point is if we change this now from Office to Mixed Use and somebody brings a good proposal for Office, we'll have to go through the process and definitely change it, and citizens will become more involved because of the change in zoning and public hearings and all that goes on. I wonder why we don't have a public hearing on this as it is. I'm saying that making this change just for the sake of a paper change is unfounded.

Mr. Klein: This has a public hearing. Secondly, it is staff's opinion that there is opportunity for Mixed Use. We have heard some interest for it. Office is located up there at this point. We have had no applications with regard to office. I know that occasionally, we get interest in the parking lot on the north side of the 8900 building, and there is sometimes a residential component with it. Staff thought this was reasonable, as the city is embracing Mixed Use.

Chairman Elkins: Additional comments?

Comm. Levitan: I love how thoughtful staff is with this topic. I tend to agree with Commissioner Pateidl. I would rather have the merits of a good project be approved, regardless of what the Comprehensive Plan is. There are two office buildings there with the same owner who probably might sell one day. Then there is a separate owner with the parking lot. I think everybody is sick and tired of hearing me say how difficult it is to finance Mixed Use, and then structured parking gets added in, and the economics become more difficult. It works in really dense cities on the East and West Coasts, but I would rather have a developer come in with a well thought out plan, asking for Mixed Use. Then they can aggregate all three parcels and consider it, but I would rather not have it driven by the Comprehensive Plan.

Mr. Klein: I understand. The Comprehensive Plan is meant to take a look into the future before there is development pressure to see what the city would like to see there. That is why discussion is occurring regarding 135th Street. I understand your point that it is nice to have a solid development and have flexibility. There is still opportunity to take a look at a project and make changes.

Comm. Levitan: What credence is the Comprehensive Plan given at the time of submittal, asking for rezoning?

Mr. Klein: It is one of the first things we look at. We start with the broad picture and move to the landscaping. We look at the Comprehensive Plan, the zoning, setbacks and lighting and landscaping. The Comprehensive Plan is supposed to guide development placement. I know we had a work session with regard to the Comprehensive Plan. If there are questions, we can schedule another work session to discuss it more.

Comm. Pateidl: You're right; we did discuss this, and we didn't reach a consensus. I went on the website to look at minutes of our various meetings, and no work session minutes have been posted on our website. Is there a reason for that?

Mr. Klein: They should be. I'll take a look at it. I know that we don't post them until they are approved

Chairman Elkins: Questions for staff?

Comm. Walden: Some of these don't make sense now. On Page 11, there are words that don't belong there. It is little things. Then beginning with, "Not white alone are composed of several racial and ethnic population groups," I think the word "a" should be stricken. I'm assuming once the final draft comes out, these things won't be there. That's what I've seen so far.

Chairman Elkins: You might check the spelling of the Chairman's name as a minor thing. That aside, Commissioner Pateidl raises a good point. If we were to approve this plan and Governing Body approves it, does it effectively change the zoning, or is it a recommendation?

Mr. Klein: The zoning would still have to be changed. If the Comprehensive Plan shows Mixed Use but it is currently zoned Office, a Rezoning would have to be filed by the applicant.

Chairman Elkins: On the particular rezoning on 89th Street and State Line Road, if we were to approve this plan, it does not effectively change the zoning, correct?

Mr. Klein: That is correct, and it would include public notification and hearings as well.

Chairman Elkins: We are not rezoning by approving this plan. A plan, in my mind, is not aspirational in nature, and we shouldn't let what the current state of the zoning or the LDO drive what we approve as a plan. What we're saying here is that it is what we aspire to have in that place. The plan drive modifications to the LDO and to the zoning as we think necessary and appropriate. To me, we've got a "horse and cart" issue here in that our LDO shouldn't drive what's in the plan, and we shouldn't look to the plan to be consistent with the LDO. The plan is what we think the future ought to be, and then we change the LDO and zoning to achieve what we've said we're trying to achieve with the plan. That is my approach. Having said that, the question I think we all have to ask is with recognizing the practical difficulties of these thing, what is it we would like to see in that spot? That's what we should proposed to the Governing Body. The Comprehensive Plan is almost completely aspirational in nature based on demographics, types of soil, watersheds and history.

Mr. Klein: That is correct. Zoning is a completely different document. The Comprehensive Plan is for us to start a conversation with a developer who comes in with a project. It does not change the underlying zoning.

Comm. Pateidl: Let's recall that you were asked what weight the Comprehensive Plan carries. You said it's the first thing that is considered. If someone comes in with an office project, and in ten years, they are turned away from this area because someone tells them that it doesn't work for the city. It's already presenting an obstacle to somebody with a desire to make a development. As far as what we would like to see in that property, my answer would be anything but a parking lot. It's going to be hard enough to do anything on that piece of property without giving it more hurdles to jump.

Chairman Elkins: That is true, but the exact opposite is true as well. If we leave it as Office and I want to bring Mixed Use to it, now there is the very same barrier that you identify with the flip side for Mixed Use. It's really a judgment on what's more likely to happen there.

Comm. Pateidl: If somebody were then to look at the Comprehensive Plan and say that they would love to see Mixed Use, I think this commission or any of our successors down the road would gladly approve zoning change to Mixed Use. But would they even get the chance to go in reverse with the Planning Department?

Chairman Elkins: But to your point, I think they would encourage whatever came in. It cuts both ways. Again, I share Commissioner Levitan's and Commissioner Pateidl's doubt about Mixed Use. Governing Body may have a group with some pretty strong thoughts that aren't the same as ours on that issue. Given the strong discussion, do we think it merits another work session?

Comm. Levitan: Do we have the ability to strike the 89th Street piece?

Mr. Klein: You can do that.

Chairman Elkins: We can modify just as we do a project plan.

Comm. Strauss: If that is the consideration, I would prefer a work session. It is my fault, but I didn't make the meeting that covered this. I would like to revisit it.

Chairman Elkins: Let me open the Public Hearing.

Public Hearing

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

Chairman Elkins: That takes us to discussion and how we would like to proceed. The options are to continue this to a work session at a future date, vote on the proposed revisions as they stand or make our own revisions.

Comm. Pateidl: What is the timeline as far as approval of the Comprehensive Plan update?

Mr. Klein: We are fine if you want to discuss it more at a work session.

Chairman Elkins: I must say that I am pleased with the discussion we've had tonight. The fact that the commission has put time and effort into really considering these things makes me feel good about the planning exercise. This has all been healthy, positive conversation. Mr. Pateidl, could I get a motion?

Comm. Pateidl: Given my conversation, I will defer to another commissioner to make the motion.

A motion to continue CASE 78-16 – 2016 ANNUAL UPDATE TO THE CITY OF LEAWOOD COMPREHENSIVE PLAN – Request for approval of the 2016 Comprehensive Plan – was made by Strauss; seconded by Coleman. Motion carried with a unanimous vote of 7-0. For: Elkins, Walden, Levitan, Pateidl, Strauss, Coleman and Block.

MEETING ADJOURNED