

**City of Leawood  
Planning Commission Meeting  
October 25, 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:** Belzer, Hoyt, Pateidl, Elkins, Strauss, Ramsey, Coleman, and Block. Absent: Levitan.

Chairman Elkins: We'll note that Commissioner Stacy Belzer is on the dais this evening. She was appointed by the Mayor, approved by the City Council, and took the Oath of Office this evening, so she is seated as a qualified commissioner. Welcome to the commission.

Comm. Belzer: Thank you.

**APPROVAL OF THE AGENDA**

Chairman Elkins: Are there any revisions?

Ms. Kriks: None.

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

**APPROVAL OF MINUTES:** Approval of the minutes from the September 27, 2016 Planning Commission meeting.

**A motion to approve the minutes from the September 27, 2016 Planning Commission meeting was made by Coleman; seconded by Block. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

**CONTINUED TO THE NOVEMBER 22, 2016 PLANNING COMMISSION MEETING:**

CASE 65-16 – CORNERSTONE DEVELOPMENT – THE ELEMENT HOTEL – Request for approval of a Revised Preliminary Plan for the Cornerstone development and Special Use Permit for a hotel, located south of 135<sup>th</sup> Street and east of Nall Avenue.

**PUBLIC HEARING**

**CONSENT AGENDA:**

CASE 73-16 – BRITTANY WOODS FOURTH PLAT – Request for approval of a Final Plat, located at the intersection of 153<sup>rd</sup> Street and Rosewood.

CASE 99-16 – TOWN CENTER PLAZA – CYCLEBAR – Request for approval of a Final Plan for changes to the façade of a storefront, located north of 119<sup>th</sup> Street and east of Nall Avenue.

CASE 106-16 – PAVILIONS OF LEAWOOD, 7<sup>TH</sup> PLAT – Request for approval of a Revised Final Plat, located north of 148<sup>th</sup> Street and east of Delmar Street.

**A motion to approve the Consent Agenda was made by Ramsey; seconded by Strauss. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

**NEW BUSINESS:**

CASE 100-16 – BRIGHT SPACE SENIOR LIVING (ASSISTED LIVING) – Request for approval of a Final Plan and Final Plat, located south of 137<sup>th</sup> Street and west of Mission Road.

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 100-16 – a request of a Final Plan and Final Plat for a 90,413 sq. ft., 90-bed Assisted Living Facility for Bright Space Senior Living, located at the southwest corner of 137<sup>th</sup> Street and west of Mission Road. The project presented this evening is the first phase for Bright Space, which had a Preliminary Plan, Preliminary Plat and a Special Use Permit for an Assisted Living Facility approved by the Governing Body in August, 2016. An Independent Senior Living Facility is proposed in a future phase. The lot is currently a single lot and is adjacent to Single Family Residential to the south, Multi-Family Residential across Mission Road to the east and a vacant land to the north. The applicant is proposing to divide the property into two individual lots with a lot line which will connect north to south from 137<sup>th</sup> Street to the south property line. Access to both the Assisted Living Facility and the future phase will be by a shared drive from 137<sup>th</sup> Street. At the southeast corner of the lot adjacent to Mission Road, a dry-bottom detention pond is proposed. An illuminated, 5-ft. concrete pedestrian path, which will be south of both the Assisted Living Facility and Independent Living Facility is proposed to connect from 137<sup>th</sup> Street to the west to the Assisted Living Facility and Mission Road to the east. A dense tree line is present along the common property line with the neighborhood to the south, which both the applicant and the neighborhood desire to protect. A 25-ft. tree preservation easement has been provided to protect that tree line.

The facility is proposed to be rectangular in shape and oriented north to south, adjacent to Mission Road with a central open courtyard. That courtyard will only be accessible through the building and is proposed with amenities for the residences, such as pet therapy, aviary and shuffleboard. Trash enclosure is proposed at the southwest corner of the building, which will be attached to and architecturally integrated into the design of

the building. A backup generator, initially proposed, has been removed with this Final Plan. The loading and delivery area is proposed on the south side of the building, adjacent to the trash enclosure. The applicant has provided a 75-ft. building and parking lot setback from the residential subdivision to the south. Within the setback area, a 3-ft. berm has been provided to screen that parking lot. The Assisted Living Facility has been proposed to be a 2-story building with an approximate height of 37 feet, 4 inches. The facility is proposed to be constructed of a combination of light beige stucco, natural stone and hardie board and is proposed to have air conditioning covers to match the surrounding façade to conceal individual units. The main entrance to the Assisted Living Facility is under a porte cochere on the west side of the building by a circular drive, and the porte cochere is proposed to be 23 feet in height with a clearance of 12 feet, 6 inches. A monument sign has been located west of the entrance from 137<sup>th</sup> Street and will be constructed of stucco and natural stone and is proposed to be 6 feet, 11 inches in height and 10 feet in width, for a total area of 69.2 square feet. Section 16-4-613 of the Leawood Development Ordinance states the size of monument signs within the RP-4 zoning district are as recommended by the Planning Commission and approved by Governing Body. The text of the sign is proposed to be double-lined with multi-colored logo at the top center of the sign. The height of the text and the logo will not exceed 18 inches, which complies with the Leawood Development Ordinance. The monument sign will be illuminated with lights located within the canopy, which will illuminate the face. Around the site, the applicant has provided a totally of 2,779 square feet of plaza space, a water fountain, bike rack, demarcated pedestrian crossings across vehicular drives and enhanced landscaping. Currently along 137<sup>th</sup> Street, a combination of ash and maple trees exist, but there are gaps in that spacing. The applicant is proposing to fill in those gaps with black tupelo trees. The applicant is also proposing a combination of oaks along Mission Road at 35 feet on center. As I stated earlier, an existing dense tree line is located along that south property line, which will be protected by the 25-ft. tree preservation easement. Staff recommends approval of Case 100-16 with the stipulations outlined in the Staff Report, and I'm happy to answer any questions you may have.

Chairman Elkins: Thank you. Any questions for staff?

Comm. Pateidl: We discussed the preliminary application for this project. I indicated then that I had some concerns about the drainage and storm drainage from that property because of the shifting from a row crop agricultural field to a substantial amount of rooftops and pavement. I understand the use of a detention pond to slow the drainage of water from the site but not to retain the water. Is that correct?

Ms. Kriks: That is correct.

Comm. Pateidl: One of the things I note in the description of the applicant is the engineer on this project is Mark Johnson, who is affiliated with or part of BHC Rhoades, who is the applicant. With all due respect, it does show that there is at least some potential for some conflict of interest there. Do we have an independent study on the expected water flow, not only from this application but also from Phase 2 as well, to evaluate the potential or the capacity of the detention pond?

Mr. Ley: With the original development plan that was approved by Villaggio East, they did a stormwater study and determined the flows off this property with what they originally had. We do have that study as reference. BHC Rhoades did do the stormwater study for this project, also. The first study was done by Continental Engineers 5-10 years ago. That was with the original plan that was approved. Now, we have this different plan where they've hired BHC Rhoades to do their stormwater study and they just followed the APWA guidelines for the maximum, peak flow off their site. They analyzed the storm sewer downstream to verify that the peak flow – that the storm sewer downstream does have capacity for that peak flow.

Comm. Pateidl: So we don't have an independent engineer?

Mr. Ley: We have.

Comm. Pateidl: The original deal was for whatever it was applied for at that time. What is the comparability of that project to this one in terms of square footage, space, type, parking? Is it all the same? It's nice that they have a study, but if they're going to put a Wendy's there versus a nursing home, it's a whole different ballgame.

Mr. Ley: The original plan was Mixed-Use Retail and Residential with quite a bit of parking lot. They didn't look at what the flow was off the site and match the prior flow; they calculated their new flow off the site and then retained the difference from the existing flow to the proposed flow. We did review their stormwater study to verify that it was in compliance with the APWA requirement.

Comm. Pateidl: I recognize that, but you're using in-house engineering.

Mr. Coleman: Just to clarify, BCH Rhoades is the local engineer, and the developer is outside the area. They used BCH Rhoades just simply as their agent on the application to make the application. Professionally, they are required to verify these and make sure that they meet all the prescribed engineering standards that are required. Otherwise, their engineering licenses could be challenged.

Comm. Pateidl: To take it one step further, I just have to believe that there's going to be a substantial change in the water flow. During construction, you've got Mission Road, which is a very important artery for the city, and you've got an open drainage ditch taking water away from that. Is there a proposal, recommendation or stipulation that we can require the detention pond to be built in the early stages in the construction to avoid any potential problems with runoff in the course of construction?

Mr. Ley: Absolutely; that could be required as part of the first phase of the grading plan. They would have their detention pond constructed as a silt pond, so it holds water and lets the silt drop out prior to releasing the water from their site.

Comm. Pateidl: Very good. The last thing I have is probably a question not directly associated with the applicant. Part of the stipulations from the Public Works Department is to have the sidewalk built along Mission Road. Directly south of Mission Road is the housing subdivision, and there is no walkway there. There is another walkway at 138<sup>th</sup> Street. Will the city give some consideration to some emergency funding in our Capital Improvements Program to put a sidewalk in there for the benefit of the children walking down to the school, since that's the only sidewalk that gives them access?

Mr. Coleman: I can't actually say whether they will or not, but your statement is on the record for that. They will see that when it goes to Governing Body.

Comm. Pateidl: I would recommend it. Thank you.

Chairman Elkins: Are there any other comments?

Comm. Strauss: I have the same question about sidewalks, to follow up with Commissioner Pateidl's comment. Does this plan include building the sidewalk along Mission Road or 137<sup>th</sup> Street?

Mr. Ley: Yes, it is from 137<sup>th</sup> Street south to their south property line.

Comm. Strauss: Does it include a sidewalk along 137<sup>th</sup> Street?

Mr. Ley: There is a tail on their side of the street.

Comm. Strauss: I don't remember seeing a street fee before. Maybe I just didn't recognize it.

Mr. Ley: We've had the street fee for 20-30 years. It's a cost per foot based on arterial frontage.

Comm. Strauss: I always remember the South Leawood Transportation Impact fee.

Mr. Ley: This is one that applies to all developments within the city.

Chairman Elkins: Other questions for staff? I'm sure this has come up before, but for some reason, this just occurs to me. Mr. Coleman made the comment that the developer is not actually BHC Rhoades. I'm relatively confident that the Sharp Trust is not going to be operating this facility. Why is it that BHC Rhoades is here as the applicant as opposed to the entity that's actually going to build and operate this facility?

Mr. Coleman: They're local, so it's not uncommon for them to act as an agent and sign the application.

Chairman Elkins: Is the actual ownership or developer on the public record within any of the city records?

Mr. Coleman: I believe they are. Our communication has been with their architects and engineers. They could probably explain.

Chairman Elkins: Thank you. I would invite the applicant to step forward.

**Applicant Presentation:**

Jay O'Dell, BHC Rhoades, 7101 College, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. O'Dell: We prepared a short presentation that will address some of the drainage issues you brought up. We can speak on the ownership. The local developer is here as well.

Bright Space is based out of Chattanooga, Tennessee. They currently own and operate four Assisted Living Facilities like this one and four Independent Living Facilities throughout the country. Mike Belew is here with the developer, and Whitney Hale is here with RKA Architects. He can answer any architectural questions. I am here representing BHC Rhoades as the design engineer on the project. Phase 1 is the Assisted Living that staff presented on. To answer your question, the berm on the south will be done with the initial grading along with the detention pond that will be used as a basin. That way, we maintain EPA compliance because we can't have water just run off with our construction operations. It also helps with the drainage from the residents, which was a big concern for them. That will be done in the first phase, and the berm will be completed all the way along the south border of our property, just to ensure that for the residents. Along with that, another request they had was for us to put in butterfly gardens, which we are also using as raingardens to the south. On top of that, for water quality requirements, we also have other retention ponds and things for storm events. Those have been approved by engineering. On top of that, as was mentioned, we were responsible for analyzing the downstream effects of our project. There was discussion about the detention pond in the preliminary phase. It is in Sienna to the south. As engineering mentioned, we are proposing to grade in a channel down Mission Road along the west sides south of our property to ensure that our runoff will be conveyed to the 36-inch pipe down there at the south. We also had to analyze the capacity to make sure we weren't overloading it. That is compliant with our release rate off the property. We also included an extensive Landscape Plan, so if there are questions on that, we're happy to answer them. One of the requests from the neighbor to the south was increased vegetation along their border. We added that. If there are any questions, we would be happy to answer them.

Chairman Elkins: Questions for Mr. O'Dell? I have just a couple questions that relate to the ownership issue. Can you enlighten us a bit on who will actually be joining our community when this is built?

Mr. O'Dell: I'm going to defer to Mr. Mike Belew.

Mike Belew, CBC Real Estate Group, 4706 Broadway, Kansas City, MO, appeared before the Planning Commission and made the following comments:

Mr. Belew: We are local in nature and are partnering with Brightspace. Brightspace and CBC will be owners of the real estate, and Brightspace will be the operator of the facility. Just to add a little color, Brightspace is a third generation family operation by the Preston family out of Chattanooga. The Preston family, over the years, has developed 238 properties. Originally, they were more of a Skilled Nursing Facility. This will focus on assisted living. Brightspace is part of the large organization that the Preston family has. It's a private organization with long-term owners. They very rarely sell any assets. I believe they've sold three out of their entire portfolio over the 60 years they've been in business. We look forward to working with them. We'll be long-term owners of the real estate. We're investing quite a bit of capital and a lot of resources to accommodate the neighbors and the community. We're local, and we look forward to a long-term relationship with the City of Leawood.

Chairman Elkins: Thank you. Mr. O'Dell, I wasn't quite sure I followed all of the discussion. You did a nice job of describing the drainage issue, but does the owner have any questions or objections to any of the 29 stipulations?

Mr. O'Dell: No.

Chairman Elkins: If we were to add a stipulation specifically requiring a detention pond or a silt pond in Phase One of your construction, would it create any concern for you or the owners?

Mr. O'Dell: No because that's the plan already.

Chairman Elkins: Thank you. Any other questions for Mr. O'Dell? Thank you. That moves us to discussion of the proposed plan. Are there comments or questions? Mr. Pateidl?

Comm. Pateidl: I have no questions or concerns. I certainly welcome the applicant, and I'm heartened to see that we have local representation as well as a noted long-term entity in this business joining us here in the City of Leawood. This is a particular type of project that I think this community needs. This is a wonderful application.

Chairman Elkins: Are there any other comments? I would entertain a motion.

**CASE 100-16 – BRIGHT SPACE SENIOR LIVING (ASSISTED LIVING) – Request for approval of a Final Plan and Final Plat, located south of 137<sup>th</sup> Street and west of Mission Road – with 29 Staff Stipulations – was made by Ramsey; seconded by Hoyt.**

Comm. Coleman: I think we should include the retention pond.

Chairman Elkins: We can move to discussion. Commissioner Coleman has asked the question about whether we think it is necessary to add a stipulation to the 29, specifically calling out the silt and detention pond. Any comments on that?

Comm. Pateidl: Given the sequence and requirements of the EPA for discharged water off construction sites and the fact that it's already planned to be in the initial phase of construction, I think a stipulation is not necessary.

Comm. Coleman: That's fine. I just didn't want it to be lost.

**Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

CASE 102-16 – PARK PLACE – 801 CHOPHOUSE OFF-SITE SIGN – Request for approval of a Special Use Permit for an Off-site Sign, located south of Town Center Drive and east of Nall Avenue. **PUBLIC HEARING**

**Staff Presentation:**

City Planner Staci Henry made the following presentation:

Ms. Henry: This is Case 102-16 – 801 Chophouse – Special Use Permit for an Off-site Sign. Please find on the dais an updated Staff Report for this case. Staff amended Stipulation No. 2 to reflect the correct verbiage from, “A Special Use Permit shall be issued for an Assembly Hall and apply only to the current ownership, 801 Chophouse, LLC and is not transferrable,” to the correct verbiage of, “The Special Use Permit shall be issued for an Off-Site Sign and shall apply only to the current ownership, 801 Chophouse, LLC, and is not transferrable.”

801 Chophouse is requesting a Special Use Permit for Off-Site Sign. The property is located at Park Place, south of Town Center Drive and east of Nall Avenue. The property is zoned MX-D [Mixed Use Development]. The applicant is located on Ash Street within Building I, the same building as aLoft Hotel and directly north of the entrance of the hotel. A 2-story portion of the building, which is directly west of 801 Chophouse, projects to the west along Nall Avenue. The Off-Site Sign is proposed to reside on a 2-story building between NBB Advertising and aLoft Hotel. The staff recommends approval of Case 102-16, and I would be happy to answer any questions.

Chairman Elkins: Are there questions for staff?

Comm. Block: The rendering with the red around it is just because the letters are white and the paper is white? There is no box around it. Is that correct?

Ms. Henry: Correct; the arrow is pointing to where the sign would be located.

Comm. Block: The red box will not be around the sign, correct? It is just to show what it will look like against the building?

Ms. Henry: Yes, this is what it will look like against the building. (*shows material board*).

Chairman Elkins: Are there any other questions? I guess I have one question for staff, and it's just to put this into context. We've spent a lot of commission time recently on signs in Park Place. Can you put this sign application into the context of those discussions? I take it that it is compliant with the current sign ordinance as well as the development plan.

Mr. Coleman: It's signage that is on Nall, and that was kind of part of the goal to create more visibility for the businesses. This is an adjacent business to the wall. 801 Chophouse has a storage area on the ground floor, but they don't have any space on the second floor. That is why it is an Off-Site Sign, and it's more visible. I would note that with that sign added to this wall, it approaches the 5% rule. For example, should MBB Advertising subdivide and another business were to come in, they would probably be left without a sign on that wall.

Chairman Elkins: In this space, is the building actually owned by Park Place and leased by 801 Chophouse?

Mr. Coleman: That is correct. The property is owned by KBS. They own the commercial space and the building. It is leased to 801 Chophouse.

Chairman Elkins: With that, I would invite the applicant to step forward.

**Applicant Presentation:**

Chris Harris, 5251 W. 116<sup>th</sup> Place, Suite 200, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Harris: Everything sounds good to me. We do own Pig & Finch and 801 Fish. I think there has been great work made toward Park Place Development's upgrading of the signage. It needed to be done. We're not going to come back and ask for Pig & Finch and 801 Fish; this is strictly for 801 Chophouse. I think it's mutually beneficial for 801 Chophouse as well as all the other retailers around the area to have a restaurant sign up connected with the hotel. It's a lot more impactful than having an ad agency sign. I think it will help drive traffic to the development as well.

Chairman Elkins: Questions for the applicant.

Comm. Strauss: I had a question about the trees out front and if you were concerned about them blocking the sign as they grow. I know when we were talking about a signage plan for the whole development, some of the business owners brought up concerns about the landscaping blocking the signs internal to the development.

Mr. Harris: This is something we wanted, and we tried to get it done for several years, dating back to when we opened it. I think we'll just have to deal with the trees when they

come. I think it's that important to us to have the exposure that we can now. If the trees cause problems later, they cause problems. On the interior, 801 Chophouse will eventually need to do something on the front sign because it is not backlit and there are trees blocking it. While we love the trees, they either need to be trimmed somehow to show the signs, but it is just tree-growing pains for the next several years to get that accomplished. It's a give and take. We understand the city likes trees. We're not going to ask to take them out.

Chairman Elkins: That is a good plan. Any other questions?

Comm. Coleman: Obviously there is some additional space on there. Are there any other tenants that will want their sign up there, or do you have any plans to put any more signage up?

Mr. Harris: The landlord has a representative here tonight. She could probably speak more to that point as far as landlord support. I know we're supported by the landlord in this because we do have some space along that back wall. I would defer to them. We did have a neighborhood meeting, and there were really no objections to any other of our neighbors, if you will. We crossed that hurdle, and we didn't have to come to that rationale. I would say no, but I don't want to speak on the landlord's behalf?

Chairman Elkins: There has been discussion about a sign above the entrances into the parking garage that would list out a number of the retail businesses. Would you anticipate that you would have space on that sign, going into the parking garage, in addition to the sign on the building?

Mr. Harris: I think a lot of the signs above the entrances are not necessarily on the garage itself. I know they were talking about having signage above the garage to help guide people where to park. If it comes into play there, I would say it would be at the landlord's discretion. We're not going to come back and ask for another sign 30 feet down the way that is smaller along the garage. If we had our sign there, I think that would be sufficient. The only thing is if the trees grow too high, maybe we could talk about removing the sign and getting our little sign on the garage, but all we want is some visibility.

Chairman Elkins: Thank you. This case requires 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 Ramsey. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

Chairman Elkins: That leads us to discussion. Are there comments?

Comm. Pateidl: I think it's terrific. This is the type of recognition and identification that I believe Park Place needs to drive a little more excitement inside that development. I applaud the fact that we're able to accommodate them with the Off-Site Sign.

Chairman Elkins: Additional comments?

Comm. Strauss: I agree with Commissioner Pateidl, but I hope that we don't start getting individual sign requests. Since there is a comprehensive problem, I hope the owner comes back with a comprehensive solution. I understand there was an immediate need here. I'm supportive of the sign. I also wonder if they will come back in five years and want to move the sign somewhere else because of the maturity of the trees, but there is an existing need today. I hope we can move forward in approving this.

Chairman Elkins: I have a similar comment. I agree with Commissioner Pateidl. It seems appropriate. I continue to have this slight concern that we are heading down a slippery slope. I don't want that façade along Nall to become a giant billboard. Certainly the tenants are there. I've always thought the façade was starting down the billboard path, and now we're adding 801 Chophouse. Now, my guess is that based on the discussions we've had and that the Governing Body has had, there will be signs just down the way a little way above the parking garage entrance indicating other tenants. I know the commission has indicated its sympathy for the retailers, but I do have this concern of what we will see on that façade ten years from now. I certainly think this application is well taken. If there are no additional comments, I would ask for a motion.

**A motion to recommend approval of CASE 102-16 – PARK PLACE – 801 CHOPHOUSE OFF-SITE SIGN – Request for approval of a Special Use Permit for an Off-site Sign, located south of Town Center Drive and east of Nall Avenue – with 7 Staff Stipulations – was made by Block; seconded by Coleman. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

CASE 92-15 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1, ACCESSORY USES – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the screening of pool equipment.  
**PUBLIC HEARING**

**Staff Presentation:**

City Planner Michelle Kriks made the following presentation:

Ms. Kriks: This is Case 92-15 – Leawood Development Ordinance amendment to Section 16-4-1, Accessory Uses, pertaining to the screening of mechanical equipment associated with pools. Currently, the LDO states that pools must maintain a minimum 10-ft. setback from the side and rear property lines. However, currently, the LDO does not address the equipment associated with those pools. Staff is proposing to set some standards where equipment can be placed on the property and screening of the pool equipment is required. Included in the proposal is that pool equipment will also maintain

a minimum 10-ft. setback in the side and rear yards. The pool equipment must be screened from the public right-of-way and from adjacent properties. Some of the screening proposed can be a fence that is constructed of materials that match or are complimentary to materials used in the primary structure with some evergreen landscaping. The screening must be installed within 5 feet of the equipment. The maximum height of the wall or fence to screen the pool equipment is up to 6 feet, which is the maximum height allowed for fences associated with pools. If the property owner chooses to use evergreens to landscape the pool equipment, the evergreens must be a minimum of 6 inches taller than the equipment it is screening. Another performance standard staff is proposing with this amendment is to reiterate that the equipment must meet a minimum of 60 decibels at all property lines, which will be determined if it passes at the time of final inspection. Staff is recommending approval of Case 92-16, and I'll be happy to answer any questions.

Comm. Pateidl: You said that the sound of the equipment would achieve a minimum of 60 decibels. I assume you meant maximum.

Ms. Kriks: That is correct. I apologize.

Comm. Hoyt: Do you contemplate that there are properties that would not meet these guidelines currently?

Ms. Kriks: It is my understanding that these guidelines were written to make sure we encompassed the current situation so we don't have any legal, nonconforming conditions out there now. As it stands, we don't have any standards, so this is to put something in place to make sure when our building department is talking with a property owner about a pool permit, there is something in place to establish standards for the equipment.

Comm. Hoyt: If somebody has a pool right now and isn't in compliance with this, what will happen?

Ms. Kriks: It would be a legal, nonconforming condition.

Mr. Coleman: On Item 2, which states that permitted screening materials shall include a fence or wall as outlined in Subsection 3 or evergreen plantings that will screen the equipment at the time of planting, it has a typo currently.

Comm. Pateidl: If somebody has a pool right now, are they not grandfathered from compliance with this ordinance?

Ms. Kriks: Yes.

Comm. Pateidl: If they sell their house, it becomes nonconforming and the buyer has to bring it into conformance?

Mr. Coleman: It would run with the land. The only time they would have to bring it into compliance would be if they pull the building permit and move the equipment. Otherwise, they're good to go. We have run into this a few times in the past year.

Comm. Pateidl: I think it's great, as long as it's fair.

Comm. Strauss: If a subdivision has a regulation of a maximum fence height of 4 feet, does the city's ordinance preclude that?

Mr. Coleman: We're probably going to be bringing you an LDO change addressing that because at least for semi-public pools, like the HOA pool, the County Health Department reviews those, and they require a 5-ft. fence. Single Family Residential right now only allows 4 feet. We're looking at that.

Comm. Strauss: From a legal perspective, does the city ordinance supersede HOA?

Ms. Bennett: Generally, the stricter requirement would prevail.

Comm. Coleman: Have there been instances in the past that created a need for this to be put together?

Ms. Kriks: To my knowledge, I don't believe we've had any complaints. The need for bringing this amendment forward is to set standards for us to refer to when a plan comes in for a pool and associated equipment.

Mr. Coleman: We have had complaints in the past from one neighbor to another neighbor. The neighbor with the pool puts their equipment as far away from the pool and patio as possible, so it becomes visible to the neighbor. The neighbor doesn't want to look at it, either. They have to invest money in their own property to screen it. That is the reason for it.

Chairman Elkins: Ever since I got this, I've been trying to reconcile Subsection 2 and Subsection 3. Maybe they don't need reconciling. I don't know anything about pools. What is the relative probability that the equipment necessary to support a pool would exceed 6 feet in height?

Mr. Coleman: It is possible in some areas of the city with lots that are sloped steeply. In that case, they would still be required to be screened. It is possible, but it is generally not the case. You might have a 6-ft. non-privacy fence, like a wrought iron fence to surround the pool. This would require screening of the equipment in this situation.

Chairman Elkins: The landscaping has to be 6 inches taller than the equipment, but if it is a wall, it has a maximum of 6 feet. Is that telling me that the landscaping can be 6 feet, 6 inches?

Mr. Coleman: That is correct. Our ordinance limits the height of fences and walls to 6 feet, but there is not limit on the height of plants.

Chairman Elkins: There is no limitation on the height of the equipment itself if it was to be installed?

Mr. Coleman: There is no limitation on that. If it was taller than the tree, it would be in violation.

Chairman Elkins: But if it was a wall without a tree, it would be fine for the equipment to be taller than the wall. It seems like there is a little bit of a loophole here that we don't really achieve what we're trying to achieve, but it seems like a low risk.

Mr. Coleman: They would still have to screen it, even if they had a solid wall that was 6 feet tall. If their pool equipment was taller than 6 feet, they would still have to screen it. I suppose maybe they would have it on a deck. It would be very unusual. I don't know why they would do that. Usually, they want the pool equipment to be fairly accessible for maintenance purposes, for filters and keeping it up to date. Also, if they have a pool company that maintains their pool, they want them to be able to access it readily.

Chairman Elkins: I guess that's achieved with the first sentence there in Section C, where it says that it shall be screened from the public right-of-way and adjacent properties. If it is more than 6 feet tall, it can't be screened by the wall, and they're out of luck with using that particular pool equipment then.

Mr. Coleman: There is probably a place they could put the pool equipment that would provide that screen. I think it would be unusual if there wasn't.

Chairman Elkins: Thank you. Other questions for staff? This case requires 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 Hoyt. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

Chairman Elkins: Is there any other discussion?

Comm. Coleman: Mr. Coleman, could you reference the typographical error again?

Chairman Elkins: It is in Subsection C2, I believe, in the third line down.

Comm. Pateidl: In Subsection 2, there's a duplicate in the first line.

Chairman Elkins: With those two corrections, do I hear a motion?

**CASE 92-15 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1, ACCESSORY USES – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to the screening of pool equipment – with the corrections to the two typographical errors as discussed – was made by Strauss; seconded by Coleman. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Pateidl, Strauss, Ramsey, Coleman and Block.**

*MEETING ADJOURNED*