

**City of Leawood
Planning Commission Meeting
January 10, 2017
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, Elkins, Strauss and Coleman. Absent: Levitan, Pateidl, Ramsey and Block.

APPROVAL OF THE AGENDA

Chairman Elkins: Are there any changes to the agenda?

Mr. Klein: There are. Case 65-16 – Cornerstone of Leawood has been continued to the meeting on January 24th.

Chairman Elkins: And the applicant has agreed to this?

Mr. Klein: Yes. There are no other amendments.

A motion to approve the agenda was made by Hoyt; seconded by Strauss. Motion carried with a unanimous vote of 4-0. For: Hoyt, Belzer, Strauss and Coleman.

APPROVAL OF MINUTES: Approval of the minutes from the November 22, 2016 Planning Commission meeting.

A motion to approve the minutes from the November 22, 2016 Planning Commission meeting was made by Strauss; seconded by Hoyt. Motion carried with a unanimous vote of 4-0. For: Hoyt, Belzer, Strauss and Coleman.

CONTINUED TO THE JANUARY 24, 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 135th Street and east of Nall Avenue.

PUBLIC HEARING

NEW BUSINESS:

CASE 113-16 – VILLAGE OF LEAWOOD – Request for approval of a Rezoning from REC (Planned Recreation) to RP-2 (Planned cluster Detached Residential District),

Preliminary Plan, Final Plan and Final Plat, located north of 91st Street and east of High Drive. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 113-16 – Village of Leawood. The applicant is requesting approval of a Rezoning from REC to RP-2. We learned this afternoon that the applicant will rezone the entire property to RP-2 as was originally published. The proposal is for 24 single family lots on 16.25 acres for 1.48 dwelling units per acre. I can give background on the case if you would like.

Chairman Elkins: Thank you. I think the history of this predates everyone on the commission, so we would appreciate the history.

Mr. Hall: As a reminder, this property does involve a piece of property that was litigated over some time ago. You might hear reference to that. I would like to remind the commission that your consideration tonight is for the plan before you.

Mr. Klein: (*Refers periodically to overhead presentation*) The area under discussion is located east of Lee Boulevard and west of State Line Road. Office buildings are on the other side, and adjacent to the area are low density single family residential homes, including Subdivisions of Leawood, Leawood Estates and Stonebridge. Currently, the lots are platted with Estates of Old Leawood. The proposal was 23 lots based around three cul-de-sacs on the east side of Sagamore, which loops and connects with 89th Street. Two pieces of property were zoned REC. One is east of the proposed lots; one is on Tract B, located adjacent to the single family residential in Leawood Subdivision.

The lots zoned around the three cul-de-sacs are zoned RP-2 (Planned Cluster Detached Residential). There is Recreational land on the east side of those lots as well as another area adjacent to Leawood Subdivision. Currently what is approved on that lot is a pool, cabana and parking lot. The parking lot, light fixture and retaining wall have been constructed. The applicant is proposing to remove the parking lot and convert the area into 4 single family lots. It would be rezoned to RP-2 as well. In Estates of Old Leawood, there are 23 single family lots zoned RP-2. Trails and tennis courts were proposed in the REC area.

The streets have already been constructed. The applicant is proposing 20 single family lots around the three cul-de-sacs. They would remove 1 lot from the northern cul-de-sac and 2 lots from the central cul-de-sac. As a result, the lot sizes will be larger. Additionally, the some retaining walls will be removed. Some of the lot lines will be increased and extended into a tract that in Estates of Old Leawood was originally called Tract B; currently, it is called Tract A here. It was 8.71 acres. In the current proposal, the tract will be 7.72 acres. The remaining .45 acres will be added into the single family lots. Additionally, 4 lots are proposed within Tract B where the pool and cabana were going to be located. Staff has concerns with regard to Lot 21, the southern lot. The Leawood Development Ordinance requires the lot depth to be 120 feet; currently, it is

approximately 95 feet. Staff has concerns about a house fitting on the lot, despite the proposal presented.

Originally, this case came forward as Case 92-02 in 2003. The application was for 20 single family lots on the east side of Sagamore. There were cul-de-sacs extending to the east. That application proposed a Rezoning to R-1. It was eventually denied. The applicant would like to bring back another application with smaller lots and more green space. The applicant filed Case 93-04, proposing 27 lots on the east side of Sagamore. That had approval for a Final Plan as well with Case 12-05. Case 06-06 was recently filed in order to adjust lot lines to better fit some of the houses. It was approved. After evaluating the difficulty fitting houses on the lots, the applicant decided to decrease the number of lots to 23 with Case 97-07. A Final Plan was then approved for the project. The streets were constructed. Another application was filed to adjust street lights and monument signs. In 2010, an application for a sales trailer was approved. After some time, the sales trailer was removed.

Staff is recommending approval of this application with the stipulations stated in your Staff Report; however, staff has concerns regarding Lot 21. I'll be happy to answer any questions.

Chairman Elkins: Thank you.

Comm. Hoyt: To clarify, there is no swimming pool or cabana?

Mr. Coleman: That plan has expired and is no longer relevant. The references to the pool were with regard to the proposed plan that has now expired.

Comm. Coleman: Is it the same ownership since the bankruptcy?

Mr. Klein: My understanding is it is the same ownership.

Chairman Elkins: You mentioned that Lot 21 is at variance from the lot depth required by the LDO as calculated by staff. Is it within our jurisdiction to grant the variance, given that it is a requirement of the LDO?

Mr. Klein: This is a little different from what you have seen before. The Planning Commission can approve the deviation, provided it meets the criteria, including 1:1 open space. This deviation would require finding of hardship by the Planning Commission and Governing Body.

Chairman Elkins: Can you give me a definition of hardship?

Mr. Klein: With hardship, strict interpretation of the ordinance would be unreasonable in order to develop the lot. Section 16-8-3.7(C) states that the depth of residential lots shall not be less than 120 feet. Per Section 16-9-6.1.4 of the LDO, lot depth is defined as the average distance from the property line to the rear property line measured from the general direction of the side property lines of the lot. The average lot depth of Lot 21 was calculated at 95 feet. Section 16-8-6.1, Rule of Exception, states that whenever a tract to

be subdivided is of such unusual size or shape or surrounded by such development or such unusual conditions that the strict application of the requirements contained in the subdivision regulations would result in hardship or inequity, the city may vary from said requirements of design but not of procedure or improvements, so that the subdivider might develop the property in a reasonable manner. At the same time, however, there must be a finding of unusual hardship as opposed to the mere granting of privileges so that the public welfare and interest of the city is protected and general intent and spirit of the ordinance is preserved. Such a rule of exception shall state the reason for each variation and may be passed by a $\frac{3}{4}$ majority vote of the regular membership of the Planning Commission and subject to review and action, including approval, denial, conditional approval by the majority of the membership of the Governing Body. In other words, if the strict interpretation of the ordinance leaves the lot too difficult to develop, the Planning Commission can find a hardship on the developer.

Chairman Elkins: Thank you. Are there other questions for staff? Then I would invite the applicant to step forward.

Applicant Presentation:

John Petersen, Polsinelli Law Firm, 6201 College Boulevard, Suite 200, Overland Park, KS, appeared before the Planning Commission and made the following presentation:

Mr. Petersen: Also appearing on behalf of the application: Mark Simpson and Saul Ellis, who are the developers; Tim Tucker with Phelps Engineering; Brick Owes, landscape architect. I will acknowledge that no current member of the Planning Commission was here when the application we will be compared against tonight was brought before the Planning Commission over 12 years ago. The City Attorney referenced litigation surrounding previous application. I had nothing to do with any litigation on this property. Having said that, I don't feel it would be fair to ignore history. As we looked at how to bring this property to a productive state, we considered history, including consternation and controversy, caused by the potential loss of what everyone perceived as a community asset: Leawood Country Club. During its operation, it had open space, but then the club closed. In the wake of the closure, the community worked to find a replacement. Although some hope it could continue as a country club or park, there was acknowledgement of a need for balance between the prior use and an economic model that made sense for the person who owned the property.

The initial plan stated that the sound use for the property was single family, privately owned homes acknowledging that this was a transitional piece between single family to heavy commercial activity to the east. A fundamental part of the original application is that the homes would be built on smaller lots. Another element was to maintain significant open space. Additionally, some access to the community at large would be included. Another unique element at the time was a pool area that was owned by the residents but would be open to paid membership of the community at large. Dues would support the financial responsibilities of the area. Nothing tonight is meant to be dismissive of that plan. It was a good faith effort, and the fundamentals were sound. The problem is several of the key elements were flawed. Significant capital was invested to

advance that effort in terms of sewers, utilities, roads and grading over 12 years. Not one lot sold, not through lack of motivation on the owner of the property.

We are here to suggest tonight that components of the fundamentally sound idea resulted in what we have today. It is against that background tonight's application is before you. We are seeking to rezone from RP-2 and REC to RP-2. It includes 24 single family lots at 1.48 dwellings per unit, which is significantly at the lower end of the continuum for density allowed within an RP-2 zoning category. This configuration expands the lot size. The original plan called for lots that were approximately 9,500 square feet; this current proposal is for over 12,000 square feet per lot. This still maintains 7.72 acres of open space.

The homes are approximately 3,200-3,500 square feet, valued at an estimated \$850,000-\$1.3 million, depending on amenities. The lot sizes have been expanded so that the houses will be more appealing with first-floor masters and three-car garages. The market wants homes that require a larger lot.

One of the key elements of the original plan that we are maintaining includes the public sidewalk along 89th Street. There will be 5-ft. sidewalks throughout the subdivision. As part of the project, easements will be granted to continue a trail off that public sidewalk down to interface with the bridge. To the east of the new home sites are 7 acres of open space. Originally, we did not contemplate public access. Based on neighborhood meetings and conversations with property owners, we will incorporate a trail system through the open area. We are not proposing to build a pool, cabana or tennis courts.

I'd like to talk about Saul and Mark a bit. They have done many single family subdivisions in Leawood and other communities. Recently, as market demand and taste of the buying public has moved to smaller lot, common maintenance of the open spaces, Mark and Saul have been leaders in Leawood. This development will be high quality. There are 30 stipulations, and I am pleased to have staff support. I only want to speak to Stipulation No. 1. I have a proposed Stipulation No. 31, which would reference public access to the open space. We know this does not satisfy all angst about our proposal, but it does address some. We propose that, prior to building permit, we would work with the city and possibly neighbors to set aside the opportunity to create a legally binding transfer of control and interest for that to be a point of ingress and egress for the public. I initially proposed that this would be an easement dedicated to the city, given that it is a public trail. There was discussion that perhaps it could be granted to the homes association in the area. We are open to this. We don't want unfettered ability to do all sorts of things on this property. It is a control issue in terms of what goes on back there. It is also a liability issue when inviting the public onto property that is privately owned. If we can define the point, people can have control over this. We can't turn it over completely, but we can give people access to enjoy the open space. This works with the community as well as the future established community.

Stipulation goes to the issue of Lot 21, which would eliminate our ability to put a home on Lot 21. We think the home fits well. It is our best lot. It will have our most popular home because it gives more flexibility to lay a home out more linearly. The home will meet the same 20-ft. rear yard setback that staff has found acceptable on all the other lots in the subdivision. It can be landscaped appropriately, and it meets all the other lot configurations. Staff does not like the lot because it is irregular, and we must show

hardship. Our hardship is the significant costs to bring deteriorating infrastructure to a workable state. It is a hardship to lose the lot. We don't think it is irregular. The LDO states that an irregular lot is any lot that does not have a generally rectangular shape, either due to an abnormal lot line or due to the absence of a rear lot line. The lot is generally rectangular, and it has a rear lot line 20 feet off, which is well within standards for the community. Irregular lots happen. It does not mean lower quality. In every subdivision with similar lots, 1-2 will be a bit irregular. This is no different. This is a great lot on which we can build a fine home. It should not be moved to a level of extraordinary review.

I would like to draw attention to the fine work of Brick Owens in terms of landscaping. The 7 acres of open space on the eastern perimeter is in a natural state today. We want to leave it in a natural state but enhance it considerably. According to Brick, Tract A will be developed into a tree-covered meadow. The edge along the creek will remain in its native condition. The existing open areas will have shrubs, honeysuckle, and trees. The area will be graded for drainage where necessary, and tall thin-blade fescue mix will be seeded in areas. Native shrubs will be added along the creek. Hardwood trees will be added across the tract. The idea is to plant new, long-sustaining, balanced but diverse open area that will be an amenity to our new subdivision but also to the area in general. Once we work out the details, we will invite the community at large to walk through the area and enjoy the good work of Brick Owens.

We would ask you to consider our application for high quality single family homes, significant open space and, most importantly, a plan that can move from deteriorating streets and places that people congregate that shouldn't be there to a new subdivision in the City of Leawood that the city can be proud of. I would be happy to answer any questions.

Chairman Elkins: Thank you.

Comm. Coleman: As we go through the timeline, is this the same ownership group that purchased the property originally?

Mr. Petersen: Yes.

Comm. Coleman: With that time over the last 12 years, was the project just not viable to move forward? I know you said you could not sell any lots. Could you elaborate a little on that?

Mr. Petersen: I wasn't there through each year, but what we do know is no lots were sold. There was marketing activity. Builders didn't bite. Developers develop these lots to standards of quality, and builders come with people that they represent that want to own the home. These aren't spec buildings. People looked at it, and what we heard was that people liked it, liked the area, liked the size of the lots, but also wanted a first-floor master and three-car garage, which can't fit on these lots. Secondly, the potential that pool and tennis courts would be the sole responsibility of the homeowners was not appealing. Everybody assumed homes would be built, but something was wrong.

Comm. Coleman: When the development was approved, it was still RP-2?

Mr. Petersen: Yes, that stays the same.

Comm. Strauss: I appreciate that you addressed the history and stressed the importance of finding a balance with the original plan. Did your team get together with the neighbors to talk about the revised plan, not counting the Interact Meeting?

Mr. Petersen: We had one-on-one interaction about architectural elements of the design. The introduction of Stipulation 31 with the trail came out of one-on-one interactions with the neighbors.

Comm. Strauss: So, you talked to some individual homeowners, but there was never an organized group meeting.

Mr. Petersen: Not other than the Interact Meeting.

Chairman Elkins: Thank you. I'd like to look at the Golden Factors. Could you comment a bit on the applicant's views with respect to the Golden Factor relating to the character of what is proposed here versus the character of the other homes in the neighborhood?

Mr. Petersen: Thank you for bringing up the Golden Factor. There really are good guideposts in terms of the standard out of the Golden Decision. It is a standard of reasonableness. Character goes to the compatibility of uses. The character of this area of Leawood is, in large part, single family residential. It includes well maintained yards, premium open space, including privately owned or an amenity that could be accessed by the public. That is the character of Leawood. In this case, we have another influencing element. There is a part of Leawood that interfaces directly with State Line Road and Kansas City, Missouri, and there is very high commercial utilization. The general character of the area is residential, but it has an influence of a different character. We usually call that transitional property. Again, this is where the balance comes in. In this case, it works with the character of North Leawood, which is changing even today. It used to be all single-story homes, and we are seeing different types of home design. The only slight different difference is a smaller lot size but with a counterbalancing, significant open space. One fundamental constant here between the plan that was approved by the city 12 years ago and today is that it includes owner-occupied single family homes on smaller lots with adjacent open space. We are not inconsistent with the plan that was approved in 2012. The character element was established, and we tried to stay true to that.

Chairman Elkins: The materials the commission received indicated that the zoning on three sides of this parcel is R-1. What we are looking at here is RP-2. With the exception of a small space, we're not talking about a change of the zoning, but for the commission's benefit, could you tell us a bit about your views on the distinction between R-1 and RP-2?

Mr. Petersen: The fundamental difference, other than the design elements in the codes, is density and lot size. RP-2 could be five times as dense as what the plan reflected. That starts speaking to a category that puts attached residential together and starts packing in the density. The desire here is to have the same size homes, if not slightly larger homes, that are in the immediate area, but do it on a smaller lot, which is what the RP-2 flexibility offers with a counterbalance of the overall open space of 7 acres. That is the key difference between RP-1 and RP-2, which is interesting because it speaks to one of the fundamental goals, which was set in place and was a guidepost for everybody 12 years ago. There could be fences all the way around a portion of it. There could be no access. People have an individual right to not have a comprehensive landscape plan. RP-2 often uses a transitional piece between single family and a higher intensity use by using a smaller lot with the same calculations of open space. It will be configuration with a more meaningful overall impact from an aesthetics and preservation of natural resources standpoint, not just somebody's yard behind a fence that is maintained, but using natural features and enhancing what is already there.

Chairman Elkins: RP-2 provides for a greater density than R-1. Given the plan that your clients are proposing tonight, how does that density compare to the density of the surrounding neighborhood?

Mr. Petersen: It is typically about the same.

Chairman Elkins: You are not proposing a density that is substantially different than the density of the surrounding neighborhood.

Mr. Petersen: That is correct.

Chairman Elkins: With respect to these lots, by reducing the number of lots over time and taking what had been set for the amenities. You mentioned larger lot sizes. How much larger are these than the lots that were proposed in previous plans?

Mr. Petersen: They were 9,535 with the previously approved plan. The lots on the east side of Sagamore are at an average of 11,927 square feet. On the west side, the back yards interface each other. We tried to configure it a couple ways. We tried to make some a little bigger because the back yards interface with each other. They are 14,081 square feet on average.

Chairman Elkins: We're talking about an approximate 20% increase on the east side and even more on the west side.

Mr. Petersen: Correct.

Chairman Elkins: Do you have any idea of what the average lot size is in the surrounding area?

Mr. Petersen: I really don't.

Chairman Elkins: You mentioned the additional trail. The plan in front of us called for a trail, and you are now proposing a trail that meanders through the common space. You mentioned granting an easement to the city, and it hasn't gone anywhere to date. Who are you granting the easement to?

Mr. Petersen: This was driven by initial commentary that the lawyer in my probably shut down, to be honest. It's a concern to lawyers to open it up and let whoever wants to go in there go in. These homeowners own the property, so they are liable if someone falls nearby. We kept hearing commentary that it was important. There is a footpath that people use. I said if the owners designate an area that is the responsibility of whoever is granted the easement. The city does it all the time with bike/hike trails. They typically own most of it through right-of-way or fee title. Many cities put their trails over easements. The underlying property owner still owns the property, but there is an easement that is the city's responsibility. They are inviting the general public to use the trail. The city attorney today asked if there is another way to do it. There probably is another way to do it. We could identify surrounding HOAs, and we could give them the right to traverse through the property that is privately owned. If the HOAs want to put gravel down, we could work with them through an easement document. We are facing the realities of the world and not wanting to hang a negative around the neck of trying to entice people into the subdivision while still addressing that people would still like to access this private green space.

Chairman Elkins: I understand why the trail makes good sense. I think it does sound like a good idea. What you contemplate right now is an easement granted to nearby HOAs. Again, my knowledge of real estate law is thin. Who would be responsible for maintaining this trail, then?

Mr. Petersen: Whoever the easement was granted to would be responsible for maintaining it.

Chairman Elkins: The bottom line is the ability to walk through also leads to the responsibility to maintain.

Mr. Petersen: Once you say it is yours to use, it is yours to decide. The responsibilities go with the decision. We can work out the details. The point is that prior to the first building permit, we are ready to provide access to entities. The easiest would be to have it be a city trail, but if that is not the preference of the city, we will work with surrounding HOAs.

Chairman Elkins: How would you propose this commission could approve the plan with what seems to be ambiguity around this issue tonight?

Mr. Petersen: My suggestion would be to add a stipulation that states, "Prior to the issuance of a building permit within the project, the owner/applicant shall grant a 20-ft. pedestrian easement within Tract A that generally follows the existing natural trail."

Chairman Elkins: The recipient of the easement would be left unknown?

Mr. Petersen: Yes, and I'm willing to take the risk that we can work that out. If I offer it to the city and the city doesn't want it, and I offer it to the surrounding HOAs, I trust the city's judgment, and we'll alleviate that responsibility.

Chairman Elkins: My last set of questions is about Stipulation No. 21. As I understand, you focused on the definition of an irregular lot. I thought staff's concern was around limitations and the LDO with regard to the depth of the lot. Those are two different things. First, do you have a quarrel with the calculations for the depth of the lot?

Mr. Petersen: I think it is approximately correct. I will say the configuration of lot depth and other ramifications are no different generally than we find in the other lots in the previously approved plan and the plan before you today. They're not out of character with the other accommodations made for lots. I wanted to focus on the fact that I don't think it's irregular, and in terms of impact, it is still the same 20 feet, which is to code with no deviation.

Chairman Elkins: At the appropriate time, I'll come back to staff with this, but what I thought I heard staff say was the basis in the LDO for the issue was not the irregularity of the lot but rather the depth of the lot. Did I hear you tell me that the depth of Lot 21 is not substantially different than the depth of any of the other lots?

Mr. Petersen: As they are approved, yes.

Chairman Elkins: That plan is expired, so that is a bit of a moot point now, but is the depth the same as your plans propose for the other 23 lots?

Mr. Petersen: I can look at that while we hear the commentary from the public.

Chairman Elkins: I think I heard staff speak to the issue of the hardship standard and our obligation is to make a determination about the public welfare and interest of the city. Your focus on the hardship was to your clients, as I would expect you to focus. What is your view as to whether the standard is the welfare of the public and the interest of the city, or should we be considering the impact of not going forward with it on your clients?

Mr. Petersen: Alluding back to the Golden Criteria, that is included. Hardship is a balance. Who gets hurt the most? In this one, I would say the hardship is that a developable, market-ready lot is ready for development, and the loss of the economic component of their ownership of that ground is a hardship. The city has to look at it as the community and the hardship against the community. In that case, it's a lot that is not a perfect rectangle. What is the impact to the neighbor behind? There is none. There is a 20-ft. rear yard setback per code in RP-2. It is large enough for a good landscape plan. Would it cause a lower quality home to have to be built? It would not. Conversely, it will be the highest quality. I would submit that the hardship to the property owner is distinct

and quantifiable. The hardship to anybody is a little more subjective. If you look at the objective criteria to gauge that, we are meeting all of the design requirements that are typically required in this kind of development. I am comfortable arguing the balance of hardship, and I think it tilts significantly in favor of allowing us to develop the lot.

Mr. Coleman: Mr. Petersen can make that argument; however, I wanted to point out that we only have five members of the Planning Commission present, so we don't have enough members to vote on that one, as it takes $\frac{3}{4}$ of the regular commission, not $\frac{3}{4}$ of the quorum.

Mr. Petersen: I would suggest that the point that is being raised by the applicant is that this is not an irregular lot. That is a matter of judgment of the Planning Commission. We shouldn't be made subject to a rule exception.

Chairman Elkins: That's an issue I'll take up with staff at the appropriate time. You clearly are arguing on the basis that the reason for the need for the hardship decision is the irregularity of the lot. I heard that staff is looking not at the configuration but the depth. I'll ask Mr. Klein about that shortly.

Comm. Strauss: I have a follow-up question on the trail. I don't understand the limits here. The bridge is one termini. What is the other termini?

Mr. Petersen: We will have to work with city staff to figure this out. We definitely will tie in with 89th Street and the public sidewalk. We will grant an easement and extend the trail down to connect with the bridge. Off that trail, there will be an easement. Then it basically follows the footpath. We'll have to figure out how we tie back in to the public sidewalk. We will have to have those details worked out before we come in for a building permit.

Comm. Strauss: It is nothing you construct; you are just leaving it as a dirt path.

Mr. Petersen: Correct. If people want to make other improvements, the easement document would typically address that.

Comm. Coleman: With regard to Lot 21, Page 8 of the Staff Report states that the average depth of Lot 21 is 95 feet, and the depths of the residential lots under that section of the ordinance is supposed to be 120 feet.

Chairman Elkins: Thank you. Are there other questions for Mr. Petersen before we move on to the Public Hearing? Thank you. At this point, we'll open the Public Hearing. Before I invite citizens to speak at the hearing, I'd like to give a few ground rules. Under the rules of the commission, we permit 4 minutes for individuals to speak. You will see a light at the podium that will blink with 30 seconds remaining. Our history in Leawood is we have a collegial and friendly community, so I do ask that you observe the blinking light so that I don't need to speak up. This is not a vote, so if there are points to be made that have already been made, please consider whether you want to repeat those points. If

you think they could be made better, I certainly understand that. I would just ask that we avoid repetitive discussion of the same points.

Public Hearing

Mark McGrory, 9006 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. McGrory: Mr. Petersen made a good point at the outset, and that is that it's not fair to ignore history here. This property was originally purchased 100% REC and in a floodplain. They bought it as such. The walls are about 15 feet high around 9, 10 and 11 lots, and probably 1,000 truckloads of fill have been brought in to raise that land up sufficient to build on it. The plan that was originally approved was rejected by the commission over the staff's recommendation. It went to City Council, and Mayor Dunn cast the deciding vote. That plan expired about 9 years ago. We have continuity of ownership, so the idea that the original plan is the reason the land has been empty for 12 years doesn't hold water. I think it is really important to look at 3 documents: minutes from the prior Planning Commission meeting in September, 2004, the minutes from the City Council meeting in November, 2004 and then ultimately the ordinance that was approved and passed. The ordinance itself said that the Rezoning from REC to RP-2 for the 3 cul-de-sacs was contingent on the performance of the 26 stipulations that were attached to the ordinance at that point in time. Those stipulations essentially obligated this owner to maintain the REC land below and the REC land above, which has been referred to throughout the proceedings a buffer. During the proceedings, the following statements were made by the owner's lawyers, developers and architects: "This is a vest pocket development." In other words, you can't see it once it's developed. "The project is buffered by open space all around." "The project is a donut project," which means that none of the R-1 houses on the west side would have one of these developments abut it. They also said the trails would be maintained by this homes association and open to the public. One of the lawyers said they would self-impose a no-build zone on the buffer. That is Lots 24, 23, 22 and 21. They would never seek to rezone that. This is in the minutes of those meetings. I strongly encourage the commission to read those minutes and look at those statements. It's a different set of lawyers, different set of architects, different set of developers but the same owner. There is continuity of ownership throughout this period. If you read Councilman Gill's and Mayor Dunn's comments at the meeting where the ordinance passed, it is very clear from the record that the reason they voted to approve this RP-2 zoning only in the 3 cul-de-sacs and not on the west side of the buffer was because of the promises made in the stipulation to keep it a donut, to keep it buffered from the surrounding neighborhoods, to maintain the trails and to maintain the REC land in this plan. It's quite clear if you read the ordinance itself that the reason this land was ever zoned RP-2 in the 3 cul-de-sacs is because of the promises to keep the land REC, develop the trails, keep it open to the bridge that is part of the biking and hiking trail the city has. Thank you.

Chairman Elkins: Thank you.

Nick Even, 8915 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Even: If this plan continues as it is, my house is right in the middle, and I will face Lot 22. I'll also border Lot 21. Not with us tonight because he is Tim Casanada at 8909 High Drive will directly connect to Lots 22, 23 and 24. He asked me to share some of his comments. We're pretty well aligned, so I will not differentiate with them. We both moved in within the last 2 years. I moved in 2014; Tim and his family moved in 2016. Both of us looked at the potential property and opportunity and were apprehensive about it, as anybody would be. Change can be scary. Potential change and what that would do to our property value was concerning. What was a tipping factor for me and my family was the fact that the western tract which was called Tract B tonight is zoned Recreation. There would not be any homes built there. That provided, according to what we just heard, a buffer between the RP-2, which is a different zoning criteria that allows for more density, than the RP-1 of the surrounding areas. Our concern in particular with those 4 homes being proposed to be built directly behind our house is that it is out of character with the 5 homes that are currently there. In fact, I would be concerned about my resale value if you took my home and property and moved it a block away and I didn't have those 4 homes on those size lots directly behind me in that crowded arrangement. Would a potential buyer come into my house in the future, see that crowded view and view it negatively? I think they would. I certainly would myself. A block away where it is RP-1 to RP-1, it is consistent with the Leawood character. It is consistent with one of the reasons we wanted to live in this area and raise our family here. My lot is barely .5 acre. It is not the 1.5 that is in the neighborhood. In this revised plan, the lot sizes are all under 15,000 square feet. That is the minimum lot size of RP-1. Compared to the surrounding RP-1 neighborhood, I believe all the lot sizes are smaller than that. The other issue that is concerning to us is the deviations they are seeking to the setbacks. I understand that is in the 3 cul-de-sac areas primarily, but by my calculations, the RP-2 setbacks are approximately 30-34% less than the RP-1 setbacks for side and back. They're seeking another 25% reduction to that. We will have large consistent houses on even smaller lots. I don't think it's a reasonable calculation to include the entire open area so that all 16 of these acres are divided by the number of houses to come up with the calculation of 1.4. Really, they're putting the 20 houses on approximately 7 acres. That is closer to a calculation of 3.0. Thank you.

Celine Moran, 8927 Sagamore Road, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Moran: We are the last house on Sagamore, and we have 1 acre of land. If you look at this chart, we are next to Lots 20, 19 and 18. Those homes are going to be extremely close to our house. I'm sure when they are built, they will be elevated. We are in a ranch house. That will also give us less privacy than what we have. We are looking at a 3:1 ratio, we feel. We have one house on our left, and we will have 3 homes on our right side. These houses are on the 89th Place cul-de-sac, which is a total of 6 houses. The density of these houses is completely out of character of our neighborhood. Bill and I feel like we're getting hit the hardest because of this close proximity. There will be street lights, noise,

and additional traffic, which will ruin our quiet neighborhood. It is a regrettable and an unwelcome change. If this development goes forward, my husband and I are requesting a landscape barrier the length of our property for privacy and to minimize looking at decks in the back yards of these houses. Thank you.

Wolfgang Trost, 8732 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Trost: I live immediately to the north, about 500 feet from this development. I've been asked to speak about the architecture and streetscape of this development and the potential concerns that the neighbors have. We appreciate the fact that we have a good developer team that is interested in doing good work here, but we're wanting to encourage and wanted to make certain there is some kind of planning and language that is more clear about the potential architecture that is in the plan. As you know, they are requesting 3-car garages. There is concern that these pie-shaped lots are somewhat difficult and may need more care in design. We're concerned about them being able to get the Old Leawood Design Guidelines in place, or are they going to use other guidelines to allow 3-car garages to face the street? Can they do 2-car garages facing the street with the third garage not facing the street? There is confusion about that, but it's a potential concern to the aesthetics. It may be doable, but it's going to require additional understanding and energy from the design team to share that with us. Also, it is our understanding the Old Leawood Design Guidelines are not in place in this particular neighborhood, so we would like to have a better understanding of what kind of leeway they do have because we're interested, and we would like to encourage that the housing that gets put in here does blend in with the streetscaping of this neighborhood. I understand they are going to guide the design with a certain style and look. The context of the neighborhood they're coming into is a little more architecturally varied. We would like to encourage them to allow for more variation in their housing design so it doesn't look like a high density villa complex necessarily. We would like to see a little more energy and a little bit better understanding in terms of the architectural layout. We're not clear about the lighting the streetscape is going to have and how that will either be different or compatible to what's there. We're not 100% clear on some of these elements. The neighbors asked me to at least see if the Planning Commission has any say or language that can ensure a more respectful architectural styling and detailing that is more compatible to North Leawood. We're not asking for major changes, just to be sensitive to what is there. In that sense, the focus is if they are going to be an enclave and truly different, we are expressing at least a concern that we would like the Planning Commission to possibly help clarify how that is going to be driven. I'm going to allow others to talk about the green space and the buffer zones. In the Old Leawood zones, we do have little vest pocket green spaces and amenities in some of the streets that I think we hope that they can explain and share some of those opportunities in this enclave as well. I will leave it at that. This is a concern that the architecture shall flow and be compatible and not be a radical difference. I am sharing the concern about the 3-car garage and homes that the only thing visible from the front is garage doors. It will require more energy to make this more compatible to the existing neighborhood.

Mark Curfman, 2812 W. 90th Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Curfman: Like many others out here in the room, I was here in 2004, and we're back again. In 2004, the issue was all about Recreation. The neighborhood lost that battle. We understand the city gave the developer what they wanted at the expense of the neighborhood. The fundamental issue here has always been about compatibility and density with the surrounding neighborhood. Inherently, the higher the density, the less compatible it is with the surrounding neighborhoods. North Leawood is all R-1 with a few commercial spots around the perimeter for our grocery stores and things like this. There is a piece of RP-2. It is significant that it is surrounded by the REC zone. Whether or not it is actually recreational or public, it is important that it is open space. In this plan, we see that in large part being lost. That is part of what made the plan somewhat palatable in 2004. It was the fact that they were working to minimize the higher density and separate it somewhat from the neighborhood. In particular now, we are looking at the west property and the buffer being eliminated. The issue there has never been whether it is a pool; the issue is that it is a buffer. It is open space helping to separate the higher density from the lower density of the surrounding neighborhood. A lot of what I have noted down here has been brought up already. I don't want to keep bringing things up. The developer talks about the market demanding the 3-car garages. The most compatible way to do it would be to make it all R-1. There are differences, particularly with setbacks. That would even be more compatible. If the wedge is not a buffer, the way it was intended, it wouldn't be a question about meeting code. The question should be whether it meets code with R-1 because that's what's next to it, and it doesn't. Lastly, I'll echo Wolfgang's concern about the design with the 3-car garages. They are all the rage. I sit on the Leawood Homes Association Architectural Review Committee. How to get a cul-de-sac not to look like a sea of garage doors is a huge issue. We would like to see that explored further. Thank you.

Phillip and Janel LaMonica, 8745 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. LaMonica: We live at the northern point of the property we're talking about on .85 acres against Lots 1 and 2. We love our home. Our neighbors are great, as you can see. Our neighborhood school is great. The only thing we're missing in the neighborhood is recreational space. Almost immediately after we moved in, the recreational space in our back yard was rezoned, and the country club was torn down. That wasn't ideal, but at least we were promised certain concessions that would help the neighborhood thrive.

Mrs. LaMonica: For example, approximately half of the rezoned space would remain recreational. Everyone would be free to enjoy public access to the landscaping and walking trails. A playground was even discussed. The neighbors closest to the land were also promised buried utility lines to our homes, the tennis court and pool. It wasn't ideal, but we were so grateful that your predecessors voted in favor of those amenities. In fact, their approval was contingent upon them. Here we are 12 years later, talking about it again. At this time, there is nothing in the new plans that brings goodness, character or

improvements to this neighborhood. Every single positive, including the recreational space, buried lines, public access, walking trails which could be put back into the plan but not as originally promised, landscaping, tennis court and pool have all been removed.

Mr. LaMonica: There are not many sidewalks in Old Leawood. There is a sidewalk going down Lee Boulevard and a sidewalk going down 89th Street. Where they all led in the past was to the recreational space, which was Leawood Country Club. It would be great to keep that a recreational space. The only recreational space we have right now is a little space in North Leawood. They are considering putting something at the Fire Station, but that would only add 2 acres at the most. In Central and Southern Leawood, there is about 418 acres. Right now, we have .51, compared to 418.52, I believe. We have no trails. Our kids have no access to this. If this development goes in, it will increase traffic to about 300 cars a day in front of our property.

Mrs. LaMonica: Mr. Petersen mentioned at least 4 times that he is a lawyer. I'm not. I'm a mom, and I live in that last house right before the country club. I'm watching our community really enter a time of rebirth. We've seen the homes being improved. There are young families and children everywhere. We have 11 kids within a few hundred feet of our own home. Those kids are playing in the street right now because they have nowhere to go, and they deserve a green space. They deserve that tennis court and pool that they were promised. Lastly, I wanted to say that I don't think we heard compelling evidence that the reason the homes didn't sell before was because of the green space, the pool and the tennis court. It could be the lots. They're very small, as you've heard already. They were increased a tiny percentage. I know I, for one, am very concerned that the one lot that the staff has pushed back on for not being correct is the one lot that Mr. Petersen told us all the builders are chomping at the bit to get to. What about all the others? I think there could be other reasons these lots didn't sell, and I don't think this tradeoff is what is going to make them sell. But what does it take from us and from our children? It takes a lot. We just ask that you please consider that and please keep our green space. Thank you.

Mr. LaMonica: I don't believe for a second that people considered the pool and tennis court a problem when buying a house there if they even go that far on purchasing a house or a lot there. I have a hard time believing it. But please help us save our green space. Thank you.

Martha Weber Conradt, 8625 Overhill Road, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mrs. Conradt: I live with my husband Joe and teenage sons Max and Ben. I appreciate the opportunity to speak. I am one of many people who are part of the group that would like to keep it recreational, that supported retaining recreational zoning of the former Leawood Club site. Proximity to REC space was part of our criteria back in 2000 when we searched for a home to buy. I was happy to learn that a park named Brook Beatty was near the property we were considering purchasing. I'm not from this area, so I was very surprised to discover that Brook Beatty was only .5 acre, the same size as the lot at 8625

Overhill. A friend told us about Leawood Country Club and how it served as a recreational and social hub for the neighborhood, and we purchased the home. Sadly, the club closed shortly afterwards. Richard Jones made a speculative real estate purchase of recreationally zoned property. He never put forward a plan to develop the property for recreational use. Instead, he requested rezoning. Neighbors organized, and in 2004, the Planning Commission rejected Jones' plan. Neighbor opposition triggered the need for a super majority of the City Council to approve the plan, and in a tiebreaking, what some would call heartbreaking, vote Mayor Dunn approved conditional rezoning. She called it a good compromise due to numerous stipulations attached that included retaining rights of access to the REC space and its trails and other amenities. Since the purchase of the property in 2004, Jones has failed to get the development off the ground. He hasn't even kept up with mowing. In 2011, he had the property reclassified as Agricultural. Lots that were appraised for about \$62,000 in 2010 dropped in value to only \$10-\$20. I grew up in a farming family in Iowa, and I can tell you that property is not a farm. The rights of access to the REC space for neighbors are very important. In your packet, you have a copy of a letter signed by 65 North Leawood residents. We have continued to gather signatures, and in less than a week, 123 people have signed. I have a copy of those additional names and addresses. You might wonder why the space is so important. It is because other than the .5-acre Brook Beatty Park, it is the only REC space serving more than 8,000 Leawood residents north of 435. The other 23,000 Leawood residents have more than 400 acres of park and open public space. Leawood City Park is our community park, but it is 3 miles from my house. If Central and South Leawood had REC space equivalent to what we have in North Leawood, they would be sharing 1.5 acres and not 400. You may think this 9 acres is not that important, but I think the numbers tell a different story. The recreational zoning and access have become increasingly important since the conditional rezoning in 2004. The number of residents in North Leawood has grown, and many young families have moved in. We have lost access to other REC space that served our neighborhood. Mission Valley and Somerset Elementary closed, and the Corinth playground is now locked after hours. You have an opportunity to protect the last and only green space remaining in North Leawood. Please protect this space and our access to it. Please deny our plan. Thank you.

Chairman Elkins: Thank you. If you would give the additional signatures to Mr. Klein, we'll make sure it is added into the record of tonight's proceedings. Are there other members of the public that wish to be heard on this case?

Grace DiFranco, 9018 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mrs. DiFranco: We live on the other side of the creek, and we are next to Lot 18. WE moved to Old Leawood in January, 2004, just as all the Old Leawood Country Club proposals were kicking up steam. Being someone who always sees the silver lining in things, I saw this as a great opportunity to get to know my community and my neighbors. I dove right in and participated in trying to help preserve this last slice of green space that you've heard so much about. Neither Steve or I are from Kansas City. We had lived in a great historic neighborhood before down in Roanoke. We specifically targeted a central

area with as much green space as we could get and great schools. I'll never forget when the real estate agent first drove us up 92nd Street from State Line, and I saw that tree-lined street. I said, "Where has this section of High Drive been hiding throughout our entire home search?" We saw our home on an acre. It was a fixer-upper, and we were sold the minute we saw it. We have invested in renovating our home while keeping it in keeping with the neighborhood. I now look out my kitchen window over the creek and the trail, and every day, I watch people playing and walking their dogs. We have owls. We have deer. We have racoons and foxes that come right up to our back door. There is incredible nature back there. I encourage any of you who are not familiar with the neighborhoods and all this to drive around and look and think about this proposal and the existing homes. I didn't realize nobody would have pictures of the homes to put into perspective. We are in a unique situation in that our property is actually on both sides of the creek. We couldn't believe it when we saw the survey, but a piece of our property is on the other side of the creek. In the past 10 years since the club has been taken down, Mr. Jones has not only rezoned it to farmland but also has not maintained it at all. In addition to maintaining our property, my husband, Mr. McGrory and others spend entire weekends back there taking care of it. It is not technically our responsibility, but we know that so many people utilize the space that we want to keep the paths walkable so we can. Our kids have friends that live over at 92nd and Lee. We like to go to Ward Parkway. We are people that use these trails to cut through. If you go down 92nd Street toward State Line, not only does that take you out of the way, but there is no sidewalk. It is dangerous to walk up State Line, so it just makes the most sense for everybody on the south side to cut through and walk over, not to mention that it is a more enjoyable experience. I'll cut out my part where I talk about the acreage because I think Martha covered that really well. We have less than an acre of walkable green space in our section of Old Leawood in comparison to the 8,600 residents of South Leawood that have 230 acres. It's great that they might be doing something in the Fire Station, but again, that's not walkable for kids who can't cross 95th Street on their own. There is no green space left. If Leawood is to maintain, as I quote in part from Page 54 of the City of Leawood's Comprehensive Plan that was updated in 2015, "Priding itself on being a safe, attractive community that will continue to offer a variety of high quality residential neighborhoods, sustained environmental sensitivity, retain natural landscapes and provide public open space," then you, the members of the Planning Commission and the City Council, need to think twice before signing off on this plan. None of us are debating or challenging that the developer is not a quality builder, but we are challenging that the dense, likely repetitive style is not in keeping with the neighborhood and that the RP-2 developments with additional reductions in setbacks are not in keeping with the neighborhood and that having 3-4 of these homes directly butting up against our 1 home is not in keeping with the neighborhood and that having a developer whose attorney confirmed at the Interact Meeting that they are concerned with their liability and do not want people trespassing along the creek when this has been happening for 50 years since the inception of Old Leawood is not in keeping with the neighborhood. I know there has been discussion of liability tonight, but that is a major issue that needs to get worked out. I would hope that the City Attorney would consider what it sounds like he is not so much in support of today because this is the last spot to protect. We really need this buffer, and we really need this access. Like Flip and Janel said, I don't think it was the pool that didn't sell this

property. Nobody stopped to think that this club was in a floodplain and when you build up 15-20 feet to rise above it, what do you look at? At that time, it was Dillard's. Dillard's is gone, but are people going to pay \$1 million to look at businesses? It is a problem, and it should have been a park or recreational space all along, but we can't cry over spilled milk; we just have to try to right a wrong. I thank you for your time and for hearing me.

Bill and Alicia Jennings, 9015 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Jennings: I am a member of the Leawood Sustainability Advisory Board, and I'm also past Chairman, soon to be Vice Chairman of the Bicycle Committee. We've had a \$60,000 plan for Leawood for bicycling and pedestrian walkways, and one of them goes through this very property from the bridge up to 89th to make it a major crosstown thoroughfare. I don't know if it's in the plan for 5, 7 or 10 years. There is a bike trail to go from Lee Boulevard to the bridge over to state line. I have copies if you would like to see from our 230-page plan. (*Distributes copies*).

Mr. Jennings: We are to the south of the development across the creek. I'll try not to be repetitive. I have signed in support of the document that has been presented to the Planning Commission, outlining the residents' concerns about the project. I purchased in North Leawood back in 1988 because of the quality of the neighborhood, lot sizes and the country club at the time. Though the country club is gone, we continue to consider a portion of the property valuable open space for our neighborhood. In some ways, things have changed; in other ways, they haven't. We thought in 2004 after a 2 ½ year battle over this property that we had a compromise, that there was some recreationally zoned land, floodplain on the east and a buffer on the west. Subsequently, I long ago gave up the idea of a pool, cabana and tennis court. Our desire to preserve open space, as many other people have said, remains. In fact, our grandchildren and friends go with us over there at least on a weekly basis to walk and hike. Mr. Jones returns to start this project, insists on relitigating the zoning with the new legal representation, with the same muttering of suing the city if they don't get the west tract rezoned to build 3-4 houses there. Come on. I wish we could just be talking about setbacks, aesthetics and concerns about traffic density in and out of neighborhoods along Sagamore and 89th Street. We've received an olive branch with regard to the easement along the creek, but in my opinion, which may be a stretch, and obvious solution to the current problem would be the conveyance of the two recreationally zoned parcels to the City of Leawood for green space preservation and maintenance. There is a precedent for this in Leawood, namely Gezer Park at 133rd and Mission Road. Similarly in that case, the homeowners to the north of that site protested a planned commercial development adjacent to the residences. Subsequently, the developer conveyed that property to the City of Leawood. The result is a remarkable community asset as well as a buffer that enhances the quality and traction of that residential area. Thank you for your time.

Steve Stechschulte, 9128 High Drive, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Stechschlte: I have lived and worked in Leawood since 1973. In fact, I've lived in 4 homes in North Leawood, all walking distance to this property. I've been around for this entire process, and I know very clearly the proceedings before, and I'm very familiar with this project. We felt, in 2004, as we do now that the city really violated its mandate by gifting away recreational land. While it was privately owned and while it is still privately owned, it was still zoned Recreational. The only reason it was zoned RP-2 was because there were these concessions to retain some of it as Recreational. As many predicted then, we thought the plan was a bad idea, but it got worse when it got converted to Agriculture land. We have continued to pay taxes and maintain it, so we feel like we've not only financially supported this plan, but we've actually put in work to maintain by mowing pathways and clearing scrubs. As you've heard, we have zero recreational land in North Leawood. We have 0.52 acres, to be exact, and that is embarrassingly small. Neighboring cities like Prairie Village have actually bought back land to convert to Recreational, if this project goes forward, Leawood continues to give it away. It really is a gift. This is corporate welfare. Richard Jones bought this property as Recreational. For the city to rezone it is a gift to him that enhances his profit but does nothing for the city and surrounding neighbors. The previous agreement preserved at least a bit of land for public use. It was stipulated that the land could be rezoned only if it remained in perpetuity for recreational use. I think we should go back to the future to really address this project. When you look at the plan from 2004, you see that the buffer space was meant to be a recreational space, whether or not it had a pool. The space to the east was meant to be a recreational buffer space. The proposed pathway connects to the bridge, and there were meant to be pathways throughout. Whether or not there is a tennis court or pool, there should be publicly accessible recreational space. I think first and foremost, forget the present plan. I think we need to start back where we were in 2004 because this entire rezoning was contingent upon the recreational space. I'm sure Richard Jones would love to build 30 or 40 homes. I'm sure they're going to tell you they can't do it unless they have 23 homes; in an irregular lot, 21. I would say this entire plan is irregular. I think we should think about a separate idea. That is if this was rezoned, contingent upon this recreational space, and if those go away, I think we should re-address the entire rezoning process and go all the way back to 16 acres of recreational zoning and start all over again. The only reason we were there in 2004 is because of these contingencies. If you take them away, the agreement is void, and I think the city has to honor what it promised the residents. The city has to honor its mandate, which is retain and maintain recreational spaces. Thank you very much.

Chairman Elkins: Thank you. Are there others who wish to speak on this topic? Then Mr. Petersen, I would invite you back to the podium to respond.

A motion to close the Public Hearing was made by Strauss; seconded by Coleman. Motion carried with a unanimous vote of 4-0. For: Hoyt, Belzer, Strauss and Coleman.

Chairman Elkins: Yes, Mr. Petersen.

Mr. Petersen: Many comments were made in the Public Hearing, all heartfelt and in good faith. Many of them about the open space in North Leawood are really not my position to speak to. I would like to speak to a couple specific facts that were brought up to put things in the right context, hopefully. Mr. Chairman, you spoke about hardship earlier. Looking back at the Staff Report, which is staff's opinion of Golden Criteria and serves as part of their support of this application, they actually go right to the issue of density. In R-1, we could go up to a density of 2.9 units per acre. Even though we're in the RP-2 category, which enables us to work with lot size so we can maintain almost 8 acres of open, undisturbed, natural space, we are actually well below the allowed density of R-1. And just a point of comparison to the commentary from the gentleman along the west property line. He talked about the lot sizes. Again, the minimum size we could build on a lot in R-1 zoning is 15,000 square feet. We are right at 14,000 square feet. There is not a night and day transition between our homes on the west side in the area that was formerly Recreation. Fundamentally, the details about easements and the concept that is put forth by most in the audience is to deny this application because it is not maintaining recreation zoning on privately owned property that people can use at their will. I know that was the conversation that took place 12 years ago. I will tell you that it is exactly the reason this property has not sold a lot. We can talk about somebody paying property taxes or lowering property taxes or valuation. The idea, as good faith as it may have been to start with, was not going to start from the beginning. Time has proven that. The Golden Criteria here address the character of the neighborhood, how long the property has remained in its current state. It has been 12 years. The plan wasn't viable. We know how prolific development is and how attractive the City of Leawood is in terms of people committing capital to build a home here. In 12 years, not one lot could be sold. That is why that is 1 of the 8 criteria the Kansas Supreme Court set forth. How long does a private property owner have to not use its property? Even though agreements were made in good faith with all involved, including the city and the mayor, how long until it is unreasonable? That is the reason those criteria are in there. Regarding the balance of hardship, we are not taking away open space. We are not taking the ability across our property to access city trails. We are not taking away any natural terrain from the approved plan. I would respectfully suggest that this has been a very good faith effort to keep the integrity of the focus that was attempted to be made 12 years ago and bring a plan that can actually be built. Finally, you will have to look at your own personal experiences. You have a home, and behind it was going to be a swimming pool, cabana and parking lot that could be used by anybody who walks up and buys a membership as opposed to an opportunity to bring in well-designed homes. A pool will not be built. That property owner cannot then use the property for anything except recreation of some kind because the person feels like it would be a bigger burden than having a swimming pool and a parking lot. I think Saul and Mark have come together in the utmost of good faith to bring a good plan forward. We have a couple issues with lot 21. We'll get a trail worked out to try to accommodate them. Your staff agrees, and even the legal analysis supports this. Thank you for the time you've given us.

Chairman Elkins: Thank you. Would you stand for more questions?

Comm. Hoyt: Can you give me a rough ballpark on what you think Lots 22, 23 and 24 would go for, market price?

Mr. Petersen: \$250,000-\$275,000 apiece, which is 25% of the home value. That's a million dollar swing here, going to hardship.

Chairman Elkins: I think it was Ms. Jennings who mentioned the Bike Leawood. Can you comment a little about the interaction of your plan with those planned routes? Has that been considered as part of the development of this property?

Mr. Petersen: What I do know is the request and part of the plan from the beginning is on the north side, we widen the sidewalk and will replicate the existing city sidewalk along the north side of 89th Street. At a point, I assume it is in consultation with the biking community, we are willing to build a trail down to the bridge, which I assume is bicycle accessible. That is what we saw as a requirement from the city.

Chairman Elkins: There were questions from the public about design guidelines for the development. Are there design guidelines as part of this plan, or is that something you would anticipate later?

Mr. Petersen: In terms of the architecture, Leawood has a number of design guidelines in terms of articulation, roof materials, building materials and those kinds of things. Leawood has very stringent standards, which any submittal for a building permit would have to adhere to.

Chairman Elkins: I think typically, we have design guidelines in the context of commercial properties as opposed to residential properties. Mr. Coleman?

Mr. Coleman: The design guidelines would be based on their submittal of the Final Plan. There's not a formal set of design guidelines for Residential. They would have to meet all the building code requirements. They have provided information that they are showing stucco stone and tile roofs. They could deviate from that to some extent. The city doesn't have a design review board.

Chairman Elkins: The material boards would be incorporated into the design guidelines, correct?

Mr. Petersen: Yes.

Comm. Hoyt: Lighting was also mentioned. On Page 8 of our packet, it does say that the applicant is proposing to use the standard street light fixture used by the city.

Chairman Elkins: Mr. Petersen, is there a stipulation in here that relates to the question of buried utilities?

Mr. Petersen: Stipulation No. 3 talks about that, and we have no objection.

Chairman Elkins: That completes the questions I have.

Comm. Hoyt: You are proposing to leave 7.72 acres of open space; is that correct?

Mr. Petersen: It is 7.72, yes.

Comm. Hoyt: That is the area in and around the proposed trail?

Mr. Petersen: Yes, ma'am.

Chairman Elkins: Are there any other questions for Mr. Petersen? Thank you. And I have been remiss in not thanking the public. You all did an excellent job in presenting your concerns, and we are very grateful for the organized and courteous fashion in which they were delivered. They definitely have an impact on this commission's review and assessment of the plan. It has been suggested to me that we take a short break.

Recess

Chairman Elkins: The commission will come back to order, please. Thank you. Before we move to the discussion part of the review, I have a few additional questions for staff. We've had a lot of discussion about the relative densities of everything. I understand there is a difference between what is permitted in R-1 versus RP-2. I'm curious about a comparison of the actual plan density, even though it is in RP-2, and what we can estimate about the actual existing density in the R-1 that surrounds this particular parcel. Can you speak to that, Mr. Klein?

Mr. Klein: It has been addressed a little bit tonight. Basically, R-1 allows a minimum of 15,000 dwelling units per acre. That is not to say that there aren't several lots in Leawood that are substantially larger than that. There are also smaller lots, even though they are zoned R-1. With regard to the lots in this area, the average lot size varies from about 14,534 square feet to the one that is irregularly shaped and is 172,369 square feet. An average of lot size within 300 feet of the area, it came out to around 31,000 square feet. It is skewed by the large one at 172,000. That probably isn't a true reflection of average lot size. There are other areas in Leawood that have as little as 10,000 square feet that are zoned R-1. North Leawood was around prior to the existing zoning ordinance. The R-1 District has many houses that don't meet the setback. That is why we have the side yard exception that regularly goes to the Board of Zoning Appeals.

Chairman Elkins: What I'm getting to is this question of character of the proposed plan versus the character of the existing area with objective data. You spoke to setbacks. I know you don't have precise measurements, but generally, there is a wide variance of setbacks in North Leawood; is that correct?

Mr. Klein: There is. The current ordinance requires a minimum 15-ft. side yard setback for R-1, 35-ft. front yard setbacks and 30-ft. rear yard setbacks.

Chairman Elkins: How does that compare to RP-2?

Mr. Klein: RP-2 requires a 30-ft. front yard setback, 20-ft. rear yard setback and 10-ft. side yard setback without deviations, which are allowed. This application is proposing to have everything on the east side of Sagamore to have a 7.5-ft. side yard setback. Throughout the entire development, on both the east and west sides of Sagamore, the applicant is proposing a 22.5-ft. front yard setback. That does allow the buildings to be pulled closer to the street. With regard to the rear yard setbacks, the ones adjacent to Tract A that face the east have a 0-ft. rear yard setback because there is a 0-ft. interior property line setback that is allowed. That allows the house to be set back farther. They have constraints with regard to the retaining walls, especially along that central cul-de-sac. Regarding Lots 11 and 12, one has a 26-ft. front yard setback, and the other has a 23.5-ft setback. There is a little variation, but the majority have 22.5-ft. front yard setbacks.

Chairman Elkins: An issue that got lost in the Public Hearing but that I am curious about is with respect to Lot 21. There seems to be a disagreement between you and Mr. Petersen as to what the basis for Stipulation No. 1 is and whether we need to make a hardship finding or not. He talks in terms of it being an irregular lot. My understanding is that staff's grounding in the LDO is regarding the depth of the lot. Can you restate staff's position?

Mr. Klein: Within Article 8 that refers to subdivision regulations are a number of factors, including irregular shape and the fact that the lot depth is less than 120 feet. There are lots on the east side of Sagamore that are less than 120 feet in depth, but they are adjacent to the floodplain and have retaining walls. This is a newly created lot. Staff has concerns with regard to lot depth because it gets a lot skinnier, so the house is pushed up. It meets the 20-ft. rear yard setback, and the applicant is not requesting a deviation to that, but on the other lots, the lots are deeper and the houses are pulled away a bit more. The depth has an impact when it runs along the 20-ft. setback on a greater level.

Chairman Elkins: We've had a lot of discussion tonight around the Recreational zoning. My perception is that there has been an equating of Recreational zoning with public use. Could you comment on those two concepts from the perspective of our zoning ordinance and LDO? Because something is zoned Recreational, does it make it open to the public?

Mr. Klein: We have private and public Recreational space. The public parks are open to the public, and anybody can go there. Private golf courses are zones Private Recreational. They require a membership. This space was similar to that originally with the Leawood Country Club. It is my understanding that long ago, the club allowed people to go onto the property without being a member. The city doesn't own this piece of property, so to make it a public space, the city would have to pay some type of compensation or arrange something by the 5th Amendment.

Comm. Hoyt: This goes back to the question about Lot 21. On Stipulation No. 1 where you limited the west space to 3 single family lots, how do you contemplate those lots would be broken up? There would still be an irregular space. Are you thinking the current area would be evenly chopped into 3?

Mr. Klein: We wanted the developer to come back with something. We think the lots could be increased in size, allowing the southernmost lot to have the house constructed in the widest section. It would also increase lot size within those areas. If it is divided evenly, the lots are over 18,000 square feet, but they would have to configure the lots to fit houses.

Chairman Elkins: With that, we'll move to the discussion phase.

Comm. Strauss: I did a lot of reading over the weekend and have given this a lot of thought. I'm viewing this as 3 entities that are part of the decision: the developer, the public and the commission. The developer and public have been in this process for a long time; it's the commission that's new. We have to rely on what the public and developer say. I appreciate that it's not fair to ignore history and that we have to find a balance. I think those were the conclusions that the mayor made when she made her deciding vote. She found a balance in the plan, and the balance was the Recreational space, along with the RP-2 new zoning. I can appreciate that the market changes and a pool is not the right application, but I don't think that means that the pool gets replaced with houses. Then the balance isn't there, and you're taking away that compromise. I don't think that there's a \$1 million by not developing the houses here. I think of it as savings that they're not having to pay for a pool. It is something of a "glass half full or half empty" kind of situation. Through many of the 12 years sitting vacant, we went through one of the greatest economic downturns since the Depression. I can appreciate that the developer wants to make adjustments to the plan, such as getting rid of the pool and going to a 3-car garage, which I don't love, but if that's allowed within the district, it can be done. I don't think that gives them the right to change the essence of the agreement, which is some open space. I was a little disappointed to hear that there wasn't a better good faith effort made with the surrounding property owners when the developer wanted to come back with a new plan and meet with the surrounding property owners and have discussions. I do like the idea of conveyance of property to the city. I don't know if that's something the Council could consider, but I wanted to bring it up. Even though this was zoned as Private REC space, it was open to the community as has been discussed. I think that has to be honored. I think a deal was set in 2004 where the developer could rezone to RP-2 if there was land set aside. I don't think the area just on the back of those 3 cul-de-sacs is all of that agreement. I think it includes the west side of Sagamore, too.

Comm. Belzer: I agree with Commissioner Strauss's comments. I just want to clarify what that means, though, in terms of if we were to decide that the parcel with the four homes would remain as REC space. What does that mean? Is that for use for everybody? Is it private use?

Chairman Elkins: That is, in fact, the reason I asked staff. I think we need to make sure that we don't equate REC space with public use. I'll speak more to my concerns in a minute. We also need to parse away the plan that is expired from the zoning. Certainly, the plan that was done 12 years ago has expired, but the zoning wasn't part of that plan. The zoning was a quasi-permanent thing until this commission and the City Council might rezone it for another purpose, such as what is being proposed here. What I've heard staff tell us is that if the space is left with the Recreational zoning, it doesn't necessarily mean that it would be available for the public use. If the owners want to use it for private recreation, they would be free to do so. Keeping the Recreational zoning may well retain its buffer and character as green space, but in terms of the public's use of it, I don't know that it is necessarily part of the deal.

Mr. Klein: We are approaching 9:00

Chairman Elkins: The commission's rules call for adjournment at 9:00, but we have the option to extend. I certainly think we should do so.

A motion to extend the meeting 30 minutes was made by Strass; seconded by Coleman. Motion carried with a unanimous vote of 4-0. For: Coleman, Belzer, Hoyt and Strauss.

Comm. Coleman: Thank everyone for showing up tonight. You are passionate in your causes, and I understand that. It is a great attribute to have for neighbors. Before I came on the Planning Commission, I served 3 years on the Leawood Parks and Recreation. One of our constant challenges was getting park space north of 435. We have all this great space south of 435. We were always looking for options. We did Brook Beatty, and it was a great thing. I feel exactly what you're going through in the neighborhood to want to preserve what you have. With that said, the zoning issue before us is to rezone the REC part of the development. However, going back to the notes and minutes from the last decade, it is clear that there was a partnership and a promise from the developer for a comprehensive combination of Recreational and Residential that would work for both parties, and by getting to this rezoning today, we are not adhering to that promise that was made. We can't start fresh. The developer could do that, but I think where we are, we have a clear mandate of what was done previously and a guideline for what to do tonight.

Comm. Hoyt: It is very difficult because I am terribly sympathetic to both interests that are represented. I am certainly sympathetic to the rights of what we have as two separate sets of property owners: the owner of the undeveloped land who has a right to develop the land and the current homeowners who have a right to stand by the promises made. As I'm hearing everybody talk this out, I am wondering if there is some compromise between a swimming pool and cabana on one hand and 4 houses on the other hand. I don't hear anybody on the commission discussing the 3 cul-de-sacs and/or public access or walkway. It seems to really come down to the west lots, if I am interpreting everyone's comments. I wonder if there is another plan for those 4 lots that could be entertained. I wouldn't think it would exclusively have to be buffer zone. There is a pretty big gap between putting in a swimming pool and putting in 4 houses. I don't know what that does

to our process and if it is simply a denial of the plan at this point or if that is something that could be worked through more with the various parties and then brought back to us to consider. I guess I'm looking for more middle ground.

Chairman Elkins: Tonight, we have a plan before us that the applicant has brought with 31 stipulations. We have to take action on it one way or the other. Remember that our action is to recommend to City Council. If we were to recommend against approval, the applicant would have the option to proceed to City Council and seek their thoughts on this and the rules around how they approve it over our negative recommendation, or the applicant could go back to the drawing board if that is the choice. Our job is to make a decision tonight. I suppose there is an option out there to continue this, but in the past, continuances have been a matter of the applicant indicating a willingness to continue it. I don't know that there's an appropriate opportunity to continue it. Those are the options.

From my perspective, I am troubled on a couple different levels. On one hand, I see an aerial photo of a large vacant lot that has sat there for 12 years, and it is not the prettiest part of Leawood. It would be a tragedy if our action tonight caused it to continue to be a vacant lot for another 12 years with the neighbors maintaining with their mowers and such. Something has to be done. That is one perspective. On the other hand, from our perspective as a commission, we need to find the right recommendation for the City Council to make the right recommendation for the benefit of the entire city and not just the owner of the 24 lots, the owners of the surrounding lots or just North Leawood. I think in this particular instance, the interests of North Leawood are preeminent, but part of our job is to take the longer look and to try to see, as planners, what makes sense for the city as a whole. That's where the struggle is. I have great sympathy for the comment that was made by a number of the members of the public of the lack of recreational space and green space in North Leawood. There are many reasons for that; most of them are historical. We have to deal with that as a commission, as City Council and as the public. There are opportunities that are few and far between in North Leawood to find ways to increase both the green space and the opportunity for public use of the green space. Green space does have a value simply because it is green space, but what I have heard tonight is a desire by the public to have access to it. Those are all good things. Where I struggle is that the zoning compromise was to move to RP-2 in exchange for maintaining a piece of green space. As I think about it, then, I become troubled by the idea that the piece of property that is zoned Recreational still belongs to those individuals. We say we're not going to rezone it, but they are still at liberty to do what they would like with it within the framework of Recreational, and that is not necessarily available to the public. That is the risk we run if we insist on this piece of property remaining Recreational. That is the balancing act I am struggling with. I also struggle with this idea of the easement. I think it's a good idea and thought the applicant had, but as I mentioned in my questions, I am also concerned that it is too vague. I'll be frank and, admittedly, somewhat speculative here, but to the extent that what the applicant contemplates is an easement that would turn responsibility for the trail over to the surrounding homeowners associations and thus leave them with the responsibility for it, I question whether or not any homeowners association is going to want to accept the liability on the same reasoning that Mr. Petersen's client is not willing to accept the responsibility. It's a great idea in concept. I think there are ways they could get there to execute it, but what I'm concerned about is

that if, after good faith efforts, he can't find anybody to take responsibility for the property, the applicant is going to be back here with us saying that they made the deal and one of the stipulations was for the trail, but they can't find anybody to take the trail. That doesn't seem to be great planning by us or by staff. I question passing this on to City Council with that detail still as vague as it is. I struggle as to where this should go. On one hand, a vacant lot that has been on the brink of being an eyesore. There was a lot of discussion on the upkeep of the property years ago when there was a request for a trailer to be put there. Those are my thoughts.

Comm. Strauss: I just want to add that by denying this, I don't feel the property will sit for another 12 years. I think this is one of the most unique properties in this part of Johnson Counties. It is enhanced by having the green space on the west side of Sagamore. If I lived in the cul-de-sac and had to choose between the house across the street or an open space, I would choose the open space. Having open space behind me and in front of me and the ability to walk to Ward Parkway without crossing any streets is appealing to me. I think this is a great development, and with the changes in lot size and the 3-car garage, I hope it will get them to where they need to be to make this successful. I am just adamant about going back to the agreement that was made with the community in 2004. It's the right way to go.

Chairman Elkins: Additional comments? The chair would entertain a motion.

A motion to recommend denial of CASE 113-16 – VILLAGE OF LEAWOOD – Request for approval of a Rezoning from REC (Planned Recreation) to RP-2 (Planned cluster Detached Residential District), Preliminary Plan, Final Plan and Final Plat, located north of 91st Street and east of High Drive – was made by Strauss; seconded by Coleman.

Chairman Elkins: Any additional discussion?

Mr. Klein: Could we pass along reasons for denial to City Council?

Chairman Elkins: I would refer City Council to the comments of the commissioners in the discussion, unless the commissioners would care to enumerate the reasons.

Comm. Hoyt: Basically, it is simply the Rezoning that is the issue. That is the way I would interpret it. The issue is not the use of the RP-2 property.

Mr. Coleman: That's not what I heard. Mr. Strauss, could you restate what you said?

Comm. Strauss: Restate my motion? I was moving for denial of the whole case.

Comm. Hoyt: But the rationale had to do with the Rezoning piece.

Chairman Elkins: That is what I have heard tonight. I would respectfully refer City Council to commentary by the commissioners at the discussion phase. I don't think it is

necessary for us to enumerate on a point-by-point basis. I think a fairly cogent discussion was had by the commissioners for the reasons. I have a motion to recommend denial. Counsel, do you have comments or guidance?

Mr. Hall: The issue is Stipulation No. 1 concerning the lots because it requires the $\frac{3}{4}$ majority of the voting membership to decide on those issues. You can make no recommendation on Stipulation No. 1.

Chairman Elkins: I think not because as Stipulation No. 1 is currently set, we don't have to make a finding of Hardship. Stipulation No. 1 doesn't fall into the hardship requirement if it is accepted by the commission and City Council.

Mr. Hall: I stand corrected.

Chairman Elkins: Any other comments? With that, we have a motion and a second. We'll move to a vote.

Motion carried with a unanimous vote of 4-0. For: Belzer, Hoyt, Coleman and Strauss.

Comm. Coleman: I have one very quick thing. This hasn't been made notice to us, but I notice on the city calendar that on March 28th, there is a joint meeting with Planning Commission and City Council to discuss the 135th Street Corridor.

Chairman Elkins: Thank you for noting that. Thank you to the public and to the applicant.

MEETING ADJOURNED