

**City of Leawood  
Planning Commission Meeting  
August 22, 2017  
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, Levitan, Pateidl, Elkins, Ramsey, Coleman, and Block Absent: Strauss

**APPROVAL OF THE AGENDA**

Chairman Elkins: If there are no amendments to the agenda, I would ask for a motion.

**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, Levitan, Pateidl, Ramsey, Coleman, and Block.**

**APPROVAL OF MINUTES:** Approval of the minutes from the July 25, 2017 Planning Commission meeting and the August 8, 2017 work session.

**A motion to approve the minutes from the July 25, 2017 Planning Commission meeting was made by Hoyt; seconded by Belzer. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

Chairman Elkins: A revised set of minutes was placed on the dais for the August 8, 2017 work session meeting with corrections to Commissioners Block and Coleman's statements. Are there any other changes?

Comm. Hoyt: On Page 13, it should say "may or may not be changing the plat." Also, on Page 14, Commissioner Strauss' last word should be "met" instead of "me."

**A motion to approve the amended revised minutes from the August 8, 2017 Planning Commission work session was made by Coleman; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

**CONSENT AGENDA:**

Chairman Elkins: Commissioner Block, I believe you had a question on Case 76-17. Would any commissioner like to pull either of the other two cases? Seeing none, I will entertain a motion to approve the two cases that remain.

CASE 79-17 - TOWN CENTER CROSSING – BONOBO – Request for approval of a Final Plan for changes to the façade of a tenant space, located south of 119<sup>th</sup> Street and east of Roe Avenue.

CASE 81-17 – TOWN CENTER PLAZA – VERA BRADLEY – Request for approval of a Final Plan for changes to the façade of a tenant space, located north of 119<sup>th</sup> Street and east of Nall Avenue.

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

CASE 76-17 – EXECUTIVE OFFICE SANCTUARY MONUMENT SIGN – Request for approval of a Final Sign Plan, located north of 103<sup>rd</sup> Street and west of State Line Road.

Chairman Elkins: I believe Commissioner Block had a question for staff with regard to one of the visual presentations of the case.

Comm. Block: In the Staff Report at the bottom, the arrow should actually point to the east and not to the north. Isn't that where the sign is?

Mr. Klein: You're talking about the one that was within the Staff Report?

Comm. Block: Yes; I'm assuming that is pointing to where the monument is to be. I don't know if it matters or not.

Mr. Klein: It is just identifying the site, but we can definitely do that in the future.

Chairman Elkins: Just to be clear, the site under consideration in Case 76-17 is the site with a brownish roof that is surrounded in blue?

Mr. Klein: Correct.

Comm. Block: I'm sorry; that was my misunderstanding.

Chairman Elkins: It is appropriate to ask questions. In light of that, is there anyone who wishes to have the applicant make a presentation?

Comm. Hoyt: I have one minor correction. Should it say, "The applicant is requesting approval to install . . .?"

Mr. Klein: We'll make that correction.

**A motion to recommend approval of CASE 76-17 – EXECUTIVE OFFICE SANCTUARY MONUMENT SIGN – Request for approval of a Final Sign Plan,**

located north of 103<sup>rd</sup> Street and west of State Line Road – was made by Pateidl; seconded by Hoyt. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.

**NEW BUSINESS:**

CASE 84-17 – 9239 LEE BOULEVARD SINGLE FAMILY RESIDENTIAL LOT – Request for approval of a Zoning to R-1 (Planned Single Family Low Density Residential), Preliminary Plan, Final Plan, and Revised Final Plat, located north of 93<sup>rd</sup> Street and east of Lee Boulevard. **PUBLIC HEARING**

**Staff Presentation:**

City Planner Staci Henry made the following presentation:

Ms. Henry: Mr. Chairman and members of the Planning Commission, we will be discussing Case 84-17 – 9239 Lee Boulevard. The applicant is requesting a Zoning to R-1 (Planned Single Family Low Density Residential), Preliminary Plan, Final Plan, and Revised Final Plat for one single family lot. The property is 2.9 acres and is located north of 93<sup>rd</sup> Street and west of Lee Boulevard. The Revised Final Plat will combine the primary property with a sliver of the property to the south, with both parcels of property belonging to the owners. An Interact Meeting was held on August 8<sup>th</sup>, with the summary of the meeting attached to the Staff Report. Staff recommends approval of Case 84-17, and I'd be happy to answer any questions.

Chairman Elkins: Thank you. Questions?

Comm. Hoyt: On the second page under Bulk Regulations, can you explain the origin of the legal, nonconforming condition?

Mr. Klein: This is a lot that was created and violated the requirement that the length of the lot be no more than three times the width of the lot prior to the ordinance going into effect. Since that was a condition that existed prior to the ordinance, it is listed as a legal, nonconforming condition.

Comm. Hoyt: I would like to ask Mr. Ley's opinion about whether the issues he recommended were adequately included in the stipulations or not.

Mr. Ley: We put that stipulation in there because in the past, we've had some surveyors not show easements on the plat. Then, when we ran into a problem years down the road, we talked to the surveyors, and they said it was vacated by the plat. We want to make sure it is clear to the surveyor that any existing easements are not being vacated unless they follow a process through Public Works.

Comm. Hoyt: In your opinion, are the stipulations adequate?

Mr. Ley: Yes; when the surveyor resubmits the plat, he will verify that all the easements are shown on the plat.

Comm. Coleman: Does the same owner own Lot 41 and Lot 40?

Ms. Henry: Yes.

Comm. Coleman: What is the reason for getting that sliver of land to move it from Lot 40 to Lot 41?

Mr. Klein: An applicant came in intending to remove a house and build another house. They determined the house they wanted to build wasn't meeting the setbacks. They did own that sliver of lot just to the south, and it made sense to combine it into a single lot since the sliver does nothing and is not a legal lot in and of itself. By doing this, they actually expand the amount of room they have for the setbacks.

Comm. Coleman: They own the lot separately from Lot 41?

Mr. Klein: Yes, this plat was done in 1945, and the entire area has been divided up differently. This will clean up a portion of that and make it a formal plat.

Comm. Block: There is one typo. Under Golden Factors on the third page, "The subject property is located north 93<sup>rd</sup> Street" and should have "of" inserted.

Chairman Elkins: Is the sliver going to Lot 41 or coming from Lot 41?

Ms. Henry: It is going to Lot 41.

Chairman Elkins: Any additional questions for staff? I would invite the applicant to step forward.

**Applicant Presentation:**

Troy Moore, owner of Madi Mali Homes, 8625 College Blvd., Suite 101, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Moore: The report is adequate. The new home that my clients designed did not meet the setback requirements because they were two individual parcels. He already owns the sliver; we are just trying to incorporate it into one lot.

Chairman Elkins: Do you or your client have any objections to the eight stipulations proposed by staff?

Mr. Moore: No objections.

Chairman Elkins: Questions for Mr. Moore? Seeing none, this matter does require a Public Hearing.

**Public Hearing**

**As no one was present to speak, a motion to close the Public Hearing was made by Pateidl; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

Chairman Elkins: That takes us to discussion on the proposal. Are there comments or questions? If there are no comments, I would entertain a motion.

**A motion to recommend approval of CASE 84-17 – 9239 LEE BOULEVARD SINGLE FAMILY RESIDENTIAL LOT – Request for approval of a Zoning to R-1 (Planned Single Family Low Density Residential), Preliminary Plan, Final Plan, and Revised Final Plat, located north of 93<sup>rd</sup> Street and east of Lee Boulevard – was made by Block; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

CASE 86-17 – LEAWOOD SOUTH COUNTRY CLUB – MONOPINE – Request for approval of a renewal of a Special Use Permit for a wireless communication facility alternative tower structure and associated equipment, located north of Sagamore and west of Pembroke Circle. **PUBLIC HEARING**

**Staff Presentation:**

City Planner Jessica Schuller made the following presentation:

Ms. Schuller: Mr. Chairman and members of the Planning Commission, we will be discussing Case 86-17 – Leawood South Country Club Monopine – Request for approval of a renewal of a Special Use Permit for a wireless communication facility alternative tower structure. The current Special Use Permit expires on September 17, 2017. The structure is located north of Sagamore and west of Pembroke Circle within the Leawood South Country Club Golf Course property zoned Rec (Planned Recreation). Surrounding the golf course is Leawood South, a residential subdivision zoned R-1 (Planned Single Family Low Density Residential). The tower is an existing 75’ tall alternative tower structure holding three existing Sprint antennas. An existing fully enclosed storage facility housing ground-mounted equipment is located adjacent to the tower. There are no proposed changes to the tower structure or to the site. Staff recommends approval of Case 86-17, renewal term of maximum 20 years, and I would be happy to answer any questions.

Chairman Elkins: Questions or comments?

Comm. Coleman: It states in here that the owner is Leawood South Country Club. I know there has been a name change to Country Club Leawood. I just want to clarify which it is.

Comm. Hoyt: It is actually a different legal entity, too, and not just a name change.

Mr. Klein: This was on the application, but we will definitely check it to make sure it is accurate.

Comm. Block: I don't know that I understood these engineering reports very well. The one that specifically caught my eye was the Structural Analysis Report from the GPD Group. It is a 2014 report, and the analysis results show the tower components are 63.2% sufficient; foundation is 55.5. Is that good or bad?

Mr. Klein: I'm not an expert at these, either. I talked to the person who reviews these, and he indicated it was fine.

Comm. Pateidl: I note that the term of the Special Use Permit is for a maximum of 20 years, which is substantially longer than the initial Special Use Permit. My question is as it relates to the provisions or established protocol that we're going to have for an inspection in maintenance of the branches and the tower itself. We've had that discussion on previous applications of this nature. What have we done and what have we incorporated into this permit that assures us that there will be a continuum of inspections and requirements as far as maintenance is concerned?

Mr. Klein: When we go out to the site, we have a landscape inspection probably once every 3-5 years. It was brought to our attention a couple years ago that the foliage was starting to turn blue with the UV light. They were required to replace all the branches on that tree. That was done a couple years ago as well as the one that was at the maintenance facility. If that tree falls in disrepair again, they would be required to bring it back up to the standard that was originally approved.

Comm. Pateidl: Within the contents of the Special Use Permit, do we have the requirement that they do that? We do have a requirement regarding landscaping, but I don't see it as it relates to the tower itself.

Mr. Klein: You could add that requirement explicitly. Generally, as far as anything falling out of maintenance for any of the buildings we approve, they would be required to repair the damage, bringing it back into code. We can definitely add a stipulation and make that explicit.

Comm. Pateidl: As we look at the comments made by Commissioner Coleman, we've had a change in ownership. That's not to say we're not going to have a change in ownership in the future. Discretion being the better part of valor, I think it would be to our benefit if we did add a condition of that nature.

Chairman Elkins: Thank you. Additional questions? If not, I would invite the applicant to step forward.

**Applicant Presentation:**

Ann Kooyman, 12008 S. Monroe Street, Olathe, KS, appeared before the Planning Commission and made the following comments:

Ms. Kooyman: I'm here representing Virtual Site Walk on behalf of SBA, the owner of the tower.

Chairman Elkins: Do you have any comments?

Ms. Kooyman: No, I think the presentation they provided was adequate.

Chairman Elkins: Can you comment on the question raised relative to the real estate?

Ms. Kooyman: I cannot. I did not put the package together, but I will confirm the ownership of the country club.

Chairman Elkins: For staff, the appropriate applicant is the owner of the real estate as opposed to the owner of the facility, correct?

Mr. Klein: It is actually the monopine itself. Therefore, if the tower changes ownership, the owner is required to come back through for a new Special Use Permit. The country club owns the land, and Tower Co owns the structure.

Chairman Elkins: Who holds the Special Use Permit?

Mr. Klein: The Special Use Permit would actually be Tower Co, the company who owns the monopine.

Chairman Elkins: Is that your client?

Ms. Kooyman: Yes.

Mr. Klein: I think that is the SBA Steel. Is that the legal name?

Ms. Kooyman: It was originally built by Tower Co, which was purchased by SBA Steel.

Chairman Elkins: Do you have any objections to the six stipulations staff has proposed?

Ms. Kooyman: We do not.

Chairman Elkins: Do you have any objection to a stipulation that would require the monopine itself to be maintained in good order?

Ms. Kooyman: No.

Chairman Elkins: With that, I'd ask for additional questions or comments.

Comm. Ramsey: Could you tell us how frequently the monopine is inspected?

Ms. Kooyman: Regular service is done on the site about once a month to make sure the communications services are within standards. Sprint is actually the carrier that is on that pole, and so they have someone that goes out on a regular basis. If they see an issue with it, they would contact the owner of the tower, which is SBA. Let's say a branch of the monopine falls down before the country club realized it. Sprint would let SBA know so that they could get out and repair it.

Comm. Coleman: For clarification, the country club changed hands 3-4 years ago.

Chairman Elkins: What staff has clarified is the country club owner is not the applicant. The applicant is Tower Co, and they will hold the SUP.

Comm. Coleman: But they are the landowner.

Chairman Elkins: They are, but for purposes of the application, they are not the applicant.

Comm. Hoyt: For clarification, it was a change of ownership and not just a renaming. Will this be amended with the new language once that is confirmed?

Mr. Klein: We will make the change. It isn't in the stipulations, so it doesn't require an override; it is just something we will make sure is correct.

Chairman Elkins: Additional questions? Thank you. Because this is a Special Use Permit, it does require a Public Hearing.

### **Public Hearing**

**As no one was present to speak, a motion to close the Public Hearing was made by Ramsey; seconded by Block. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

Chairman Elkins: That brings us to additional discussion. I'm still a little perplexed about how we ought to amend this. I think Commissioners Coleman and Block have good points. Certainly, the landowner ought to be changed. I'm curious about how staff will validate who the actual landowner is.

Mr. Klein: We will go to the county records.

Chairman Elkins: In terms of form with respect to the title of the report, I'm curious if the country club is mentioned at all as the applicant. It is not identified as the applicant, but it is called out in the title of the Staff Report.

Mr. Klein: We have done that before as more of a location to make it obvious as far as where it is located.

Chairman Elkins: I'll trust you'll make conforming changes any other places in the report that are appropriate?

Mr. Klein: Yes.

Chairman Elkins: I think I heard a consensus from the commission relative to the need for a stipulation. Does someone have a suggestion as to the wording for a stipulation concerning the maintenance of the aesthetics of the monopine?

Comm. Hoyt: What would be a reasonable period of time for inspection or maintenance?

Chairman Elkins: We could approach it from the perspective of a cycle, or we could approach it from the perspective that they have an obligation to keep it in good condition. I'm struggling to come up with a proper statement as to what the standard is. That would seem to empower the city enforcement folks that if it fell out of compliance, they could step in whether it was within a regular inspection cycle or not. We could do whatever the commission feels is appropriate.

Comm. Ramsey: They are already inspecting, so I think if we want to do something, we would be relating it to the original specifications called for in the original application. In other words, the monopine has to be maintained to the original standards that were in place when it was constructed.

Chairman Elkins: Do we need to allow for some sort of degradation over time?

Comm. Ramsey: At what point is it degraded enough that it requires replacement? We're going to leave it up to the judgment of the staff in terms of realistic requirements. When it happened last time, it was blue. It was pretty clear. That is not the standard to which it was supposed to be built.

Mr. Klein: Just like paint color on a building, there is some degradation and fading. If it becomes noticeable that it no longer meets what was originally approved, they will be required to paint it back to its original condition.

Chairman Elkins: Commissioner Ramsey, could you give it to me one more time?

Comm. Ramsey: The applicant is required to maintain the monostructure in its original form and specifications.

Chairman Elkins: Commissioner Pateidl, do you have an add-on?

Comm. Pateidl: Simply language that the applicant would be required to perform maintenance on the tower as required by the city to maintain the original specifications through the terms of the Special Use Permit.

Comm. Levitan: Do you want to add that reasonable wear and tear is accepted and leave it up to the staff?

Comm. Pateidl: I think adding reasonable wear and tear is very reasonable.

Comm. Hoyt: I know when this was originally approved, there was a big concern of the homeowners that it look natural with the surroundings. The wear and tear issue is less of an issue than when it looks glaringly unnatural, but I don't know to what extent we want to get into the fine points of that. I think that is the aesthetic standard that is expected.

Chairman Elkins: Does staff have a suggestion as to what the standard ought to be?

Mr. Klein: I was thinking that Commissioners Pateidl and Ramsey came up with a good suggestion. Basically, the applicant shall maintain the monopine to the condition that was originally approved with the Special Use Permit. I still need to work out some language, but along those lines that would tie it to the original condition of the tree at the time that the Special Use Permit was originally approved.

Comm. Pateidl: The applicant shall maintain the tower as required by the city to the original specifications with wear and tear accepted throughout the term of the Special Use Permit.

Chairman Elkins: That sounds good. Commissioner Ramsey, does it capture what you hoped it would?

Comm. Ramsey: Sure.

Chairman Elkins: Commissioner Hoyt?

Comm. Hoyt: Possibly not. I guess I'm concerned about saying that wear and tear is fine because I think that will be assumed, and I hate to make that explicit in the sense of an argument ensuing as to what reasonable wear and tear would be. I don't know what reasonable wear and tear would be in this situation, so I would actually leave that phrase out, but I would not object to it.

Chairman Elkins: I'm curious as to how you know when it's not exactly where it was when it was originally approved.

Comm. Hoyt: I would think staff could make that decision.

Comm. Ramsey: More than likely, no one is going to complain until it becomes obvious that it doesn't look natural. At that point, they're going to hear about it and inspect it. Then, they will give notice to the get it brought up to standard. There are no better inspectors than the neighbors out there.

Chairman Elkins: Is there a consensus to remove the condition of normal wear and tear? Commissioner Levitan, you proposed it in the first place. Will this create undue heartburn for you?

Comm. Levitan: No.

Chairman Elkins: It sounds like we have a consensus. Commissioner Pateidl, do you have concern about removing that condition?

Comm. Pateidl: I don't have a concern. My primary purpose of even having this is to make it clear that the applicant has the responsibility to maintain the tower, and the city has the right to mandate that. The inclusion of the wear and tear condition makes no difference to me. Commissioner Ramsey has a good point about if it becomes shabby, but this gives the city the right to ask the owner to fix it.

Chairman Elkins: Why don't we go with the language without the wear and tear proviso. Is there any additional discussion?

**A motion to recommend approval of CASE 86-17 – LEAWOOD SOUTH COUNTRY CLUB – MONOPINE – Request for approval of a renewal of a Special Use Permit for a wireless communication facility alternative tower structure and associated equipment, located north of Sagamore and west of Pembroke Circle – with six staff stipulations, in addition thereto correcting the representation of the ownership of the landowner from that reflected in the application and subject to stipulation No. 7, wherein the applicant shall maintain the tower as required by the city to the original specifications as determined by the city throughout the term of the Special Use Permit – was made by Pateidl.**

Chairman Elkins: I would propose we take your stipulation and move it to No. 6; No. 6 becomes No. 7, and the requirement of acknowledgement in writing be for the stipulations through No. 7 rather than through No. 6.

Comm. Pateidl: Thank you.

**Motion seconded by Ramsey.**

Comm. Coleman: I would like to point out that I used to be a member there, and I didn't even know there was a monopole. They've done an excellent job.

Chairman Elkins: That's even better. When I first went out there, the only way I could tell is by looking at the base of the trunk, and the concrete goes right up to the trunk. Kudos to the tower owners for the work they did there and for addressing the concerns of the public. Are there any other comments? Seeing none, we'll move to a vote.

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

CASE 89-17 – 4140 W. 151<sup>ST</sup> STREET SINGLE FAMILY RESIDENTIAL LOT – Request for approval of a Zoning to RP-1 (Planned Single Family Low Density Residential), Preliminary Plan, and Final Plan, located north of 151<sup>st</sup> Street and west of Mission Road. **PUBLIC HEARING**

**Staff Presentation:**

City Planner Staci Henry made the following presentation:

Ms. Henry: We will be discussion Case 89-17 – 4140 W. 151<sup>st</sup> Street. Phelps Engineering is requesting a Zoning to RP-1 (Planned Single Family Residential), Preliminary Plan and Final Plan for one single family lot. The property is 1.6 acres and is located north of 151<sup>st</sup> Street and west of Mission Road. The applicant proposes to tear down the existing residential house and build a new home. An interact meeting was held on August 10<sup>th</sup>, with the summary of the meeting attached to the Staff Report. Staff recommends approval of Case 89-17, and I would be happy to answer any questions.

Chairman Elkins: Questions or comments?

Comm. Block: I didn't completely understand the driveway situation. It is in stipulation No. 4. I think it is missing a word after "Prior to the . . ."

Mr. Ley: The issue with the driveway location is when 151<sup>st</sup> Street is improved, there will be an island. The only access will be at Granada to the south. We want to make the developer aware that it is the future plan, so if they want full access, they would need to construct the driveway on Granada.

Comm. Block: So, they don't have to; it would be a right-in, right-out. That median will be blocking the initial driveway.

Mr. Ley: That is correct. In the future, they would have to go east on Mission Road and make a U-turn if they do not do that additional driveway.

Comm. Block: With that stipulation, you just want to memorialize that with the county.

Mr. Ley: We want them to have that at the county so that, in the future, when we do our construction project, the property owners don't expect the city to construct the driveway.

Mr. Klein: The wording should be, "Prior to building permit. . ."

Comm. Block: Thank you.

Comm. Coleman: In terms of the 151<sup>st</sup> Street project, when is it scheduled to begin?

Mr. Ley: It is approximately ten years out.

Comm. Ramsey: Are there any more scheduled lots available on 151<sup>st</sup> Street adjacent to this lot?

Mr. Klein: I don't believe so. I think this was a leftover piece from the subdivisions to the north.

Comm. Ramsey: I think there's a drainage easement that comes down from the west from what I can see on the plat. It doesn't look like there is enough room.

Mr. Coleman: There is a large tract of land that is a common area in the Pavilion subdivision. That is the drainage area.

Comm. Hoyt: This is a technical point, but under the Bulk Regulations, it states that 135 feet is required for the setback, and this is going to be 105 feet. Is that an issue of any sort?

Mr. Klein: No, they are exceeding the minimum, which they are allowed to do.

Chairman Elkins: I thought the requirement was 135 feet.

Mr. Klein: I apologize. They are not meeting it. That is why part of that stipulation says they need to meet the requirements of the Leawood Development Ordinance, including the rebuild section. You are correct; currently it is not.

Comm. Hoyt: Will the 11<sup>th</sup> stipulation take care of that?

Mr. Klein: It is No. 3: Construction of the new single family home on the site shall meet all the legal requirements of the Leawood Development Ordinance, including those for rebuilt homes, building codes, and fire codes. Basically, you don't approve a Final Plan for a single family house. This is creating a lot on which a single family home can be built. Any application to build a house on the lot would be required to meet all the regulations as far as the setbacks. In this case, since there was a house that was on the lot, it would be considered a rebuild, so there are additional requirements associated with that. Part of the reason we added the stipulation is to make clear that the homeowner would have to meet all of those requirements.

Comm. Hoyt: David, are you satisfied that the stipulations in the report take care of your concerns?

Mr. Ley: The grading along 151<sup>st</sup> Street right-of-way and the swale calculations are all reviewed at the time of building application.

Comm. Hoyt: I just noticed that the language was the recommendation to make the stipulations part of the Planning Commission approval. I'm fine if it's not, but that's the language.

Mr. Ley: Those are standard comments.

Mr. Klein: The intent is to ensure that the Public Works memo is incorporated into the stipulations.

Chairman Elkins: Seeing no other comments or questions, I would invite the applicant forward.

**Applicant Presentation:**

Harold Phelps, Phelps Engineering, 1270 N. Winchester, Olathe, KS, appeared before the Planning Commission and made the following comments:

Mr. Phelps: With me this evening is Nick Jacobson, property owner and also Jeff Robinson of JS Robinson homes, the builder. The Staff Report sums up what we're trying to do here. We have developed a site plan. We had an interact meeting. We met with the property owners, and they are excited that the property will be developed and maintained. The house just hasn't been maintained for some time. We have looked at the stipulations. Obviously, we have to meet Leawood's regulations and ordinances. Staff has reviewed our site plan. If there are modifications we have to make, we will do that. We feel we are in general conformance to the regulations set forth, and we agree with the stipulations.

Chairman Elkins: Thank you. Are there questions? Just for clarity on the record, there is nothing about this report that puts you or the owner under the illusion that the commission is approving any sort of deviation to the setback requirements.

Mr. Phelps: We understand.

Chairman Elkins: Thank you. Because this is a Zoning, it requires a Public Hearing.

**Public Hearing**

**As no one was present to speak, a motion to close the Public Hearing was made by Pateidl; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

Chairman Elkins: That takes us to discussion.

Comm. Ramsey: Mark, when you measure from the setback on the front, it is basically from the property line.

Mr. Klein: Correct.

Comm. Ramsey: Will we need additional right-of-way on 151<sup>st</sup>?

Mr. Ley: Yes, they are providing the right-of-way by a separate document to get to a total of 60 feet of right-of-way.

Comm. Ramsey: Is the house going to be encroaching on the street when 151<sup>st</sup> is developed?

Mr. Klein: (*Inaudible comments*)

Chairman Elkins: Any other comments? With that, I would entertain a motion.

**A motion to recommend approval of CASE 89-17 – 4140 W. 151<sup>ST</sup> STREET SINGLE FAMILY RESIDENTIAL LOT – Request for approval of a Zoning to RP-1 (Planned Single Family Low Density Residential), Preliminary Plan, and Final Plan, located north of 151<sup>st</sup> Street and west of Mission Road – with staff stipulations, including the revision to No. 4 – was made by Ramsey; seconded by Belzer. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

CASE 90-17 – 2016 ANNUAL REVIEW REGARDING THE 135<sup>TH</sup> STREET CORRIDOR TRANSPORTATION FEE. **PUBLIC HEARING**

**Staff Presentation:**

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This case and the one following it are with regard to impact fees that the city collects. These particular fees are related to the 135<sup>th</sup> Street Impact Fee, which includes projects between 133<sup>rd</sup> Street and 137<sup>th</sup> Street. As applications come in, the city charges a per-square-foot fee for commercial properties that are located within there. This is a reporting of the fees we have collected during the last year. The next case deals with the South Leawood Transportation Impact Fee, which includes four projects south of 135<sup>th</sup> Street. There is a formula that goes into those calculations.

Chairman Elkins: Questions for Mr. Klein?

Comm. Pateidl: It sounds like there is a little bit of overlap. If Case 90-17 covers the area from 133<sup>rd</sup> and 137<sup>th</sup>, there has to be some variance on Case 91-17. It can't just be south of 135<sup>th</sup> Street. Can you be just a little more specific as to the area defined in Case 91-17?

Mr. Klein: That is the way the ordinance defines it. The way it actually gets implemented is it is taken from the primary drives into the developments. The fee for the South Leawood Transportation Impact Fee is \$625 multiplied by the gross number of acres of that development, multiplied by the distance of the main drive to 135<sup>th</sup> Street, rounded to the nearest 1/10 mile. Those directly on 135<sup>th</sup> Street don't really owe anything because the distance to 135<sup>th</sup> Street is zero. However, the farther away the driveways are, the more the impact fee becomes more important. With regard to the one that is for 135<sup>th</sup> Street, the ordinance states that between 133<sup>rd</sup> Street and 137<sup>th</sup> Street as the area. That is a little easier to define. Instead of the formula, there are rates defined in the city code.

Office and retail have different rates that we multiply by square feet. We collect that prior to issuing a building permit.

Comm. Pateidl: If there isn't a marked difference in fund balances for the two different districts, then certainly the South Leawood Transportation Impact Fee review shows a much larger value. Is that due to simply the area encompassed? Why do we have such a huge imbalance?

Mr. Klein: I probably can't answer that completely. My assumption would be that the funds were allowed to accumulate a little bit longer in anticipation of a project in South Leawood. I think Mr. Ley has some projects that he can use that for. I couldn't tell you for sure why one is larger than the other.

Comm. Pateidl: Does the 135<sup>th</sup> Street Corridor go back to the initial 135<sup>th</sup> Street Plan? How long has that district been in existence?

Mr. Klein: I think the original 135<sup>th</sup> Street Plan was before I was here, so maybe 1996.

Mr. Coleman: I don't know when it was initiated. We can find out for you.

Chairman Elkins: Did the plan include the fee?

Mr. Coleman: Counsel just said 1998 was the first ordinance for 135<sup>th</sup> Street.

Comm. Ramsey: I would presume that South Leawood has a balance because they haven't used the proceeds against anything. They didn't take anything in this last year because it's basically all built out down there.

Comm. Pateidl: It's not cumulative to-date; that is net as is available today. We don't know what was spent in that district in general. Personally, I find these reports to be minimal at best when it comes to Planning Commission making a recommendation. Be that as it may, if this is appropriate protocol, so be it.

Comm. Hoyt: What are we recommending exactly?

Chairman Elkins: This will be a motion to approve the report in much the same way that we approve minutes or an agenda. It is not any action item by the commission other than to accept the report.

Comm. Hoyt: It is a little misleading, I think, with an annual report along with a recommendation of the Planning Commission. I guess we are just recommending that this information will be sent on for their consideration.

Comm. Ramsey: Yes, because they're budgeting the money.

Chairman Elkins: It is kind of like in other organizations you belong to an approval of the treasurer's report. Commissioner Pateidl raised valid question about why there is such a marked difference in balances, which is an entirely appropriate question. I think we have an explanation for that.

Mr. Coleman: I was going to agree that the explanation is accurate.

Chairman Elkins: I would hope it is since you are one of the ones reporting.

Mr. Coleman: The 135<sup>th</sup> Street balance is due to the fact that 135<sup>th</sup> hasn't been built out while everything south of 135<sup>th</sup> has been built out.

Comm. Block: Under the Director of Community Development portion, the second line in both talks about collecting fees from all properties. I think that should be projects because it is not existing properties.

Mr. Klein: That is probably more accurate.

Comm. Block: My only other question has to do with Case 91-17. The intersection at 151<sup>st</sup> and Mission will have a new lane added with these funds.

Mr. Ley: That is the plan.

Comm. Block: Will that be built to the standard for the reconstruction in ten years, or is it just then torn out?

Mr. Ley: It will probably be removed because islands will be added to 151<sup>st</sup> Street.

Comm. Coleman: I have a question about the South Leawood Transportation Impact Fee review. If we are going to use the funds to construct left turn lanes, what is the projected cost going to be?

Mr. Ley: It is about \$275,000. We were hoping to build it this year. We had funding available to do a mill and overlay on 151<sup>st</sup> this year, but with Overland Park doing all their work on 159<sup>th</sup> Street, we delayed that project one year so we could do it next year. We're going to try to roll the two projects into one.

Comm. Block: If it's going to be \$275,000 and there is only \$271,000 left, how does that work?

Mr. Ley: The remaining will come from the project for the mill and overlay.

Comm. Block: In 2018, the balance would be close to zero.

Mr. Ley: We would hope to have it completed in summer of 2018. There is a bridge being constructed on 151<sup>st</sup> Street over the Blue River next year. We would like to have it completed before that opens up.

Comm. Block: Is there any future earmark for 135<sup>th</sup> Street Corridor?

Mr. Ley: We are planning to do LED lighting later this year. We have a little bit of extra funding from our lighting budget. Whatever we're short, we'll take out of that budget to complete all the lighting on 135<sup>th</sup> Street.

Comm. Block: That is anticipated to be more than \$60,000?

Mr. Ley: Yes, I think \$80,000 was the estimate.

Comm. Block: Next year, that budget will be close to zero.

Mr. Ley: That will be zero at the end of this year.

Chairman Elkins: Additional questions for staff? We'll move to a motion for Case 90-17

**A motion to approve CASE 90-17 – 2016 ANNUAL REVIEW REGARDING THE 135<sup>TH</sup> STREET CORRIDOR TRANSPORTATION FEE – with the revision of the report from the Director of Community Development - was made by Block; seconded by Ramsey. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

CASE 91-17 – 2016 ANNUAL REVIEW REGARDING THE SOUTH LEAWOOD TRANSPORTATION IMPACT FEE.

Chairman Elkins: Does staff have any additional commentary with regard to Case 91-17?

Mr. Klein: No.

Comm. Pateidl: This is the 2016 South Leawood Transportation Impact Fee Review. We are now eight months into 2017. Is there an ordinance or statutory requirement as to the time frame for the development to make this report to Governing Body?

Mr. Klein: We have to do it this year. Our intent was to have this done by March. A lot of it was done at that time. It was determined at that time that we needed to bring in the various committees. We also decided we were going to consolidate the various statements from the various departments instead of having four different memos for each one of these. You are seeing the South Leawood Transportation Impact Fee and also the 135<sup>th</sup> Street Impact Fee. There is also a Public Art Impact Fee that is going to the Public Arts Advisory Committee, and then another Park Impact Fee is going to the Parks Board as well. The intent is to do it much earlier in the future.

Comm. Pateidl: Is this report for this year being made on a timely basis in accordance with the requirements of the statute?

Mr. Klein: Yes.

Chairman Elkins: Additional questions for Mr. Klein?

Comm. Coleman: I hate to go back out of order, but Matt pointed out something on the previous case. There was a paragraph on the second page I didn't catch. Hopefully everyone else caught that.

Chairman Elkins: We were aware of it. Any other comments for the staff? Before moving to a motion, as a matter of order, I would entertain a motion that the testimony of and discussion of the commission relative to Case 90-17 – 135<sup>th</sup> Street Corridor Transportation Fee Review be incorporated into the record for Case 91-17 – South Leawood Transportation Impact Fee Review.

**A motion to incorporate the testimony and discussion of the commission relative to Case 90-17 – 135<sup>th</sup> Street Corridor Transportation Fee Review be incorporated into the record for Case 91-17 – South Leawood Transportation Impact Fee Review – was made by Ramsey; seconded by Pateidl.**

Chairman Elkins: The reason I asked for that motion is, absent that motion, we would have no record for Case 91-17. It seemed like the majority of the comments from the prior case actually related to Case 91-17.

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

Chairman Elkins: Before I ask for a motion, I do note one difference. It goes to the very pertinent question that Commissioner Hoyt asked. That is that this case's title is 2016 South Leawood Transportation Impact Fee Review. I don't know that we're reviewing the fees; we're reviewing the report. I would be inclined to ask for a motion asking for approval of a report rather than a review.

**A motion to approve CASE 91-17 – 2016 ANNUAL REVIEW REGARDING THE SOUTH LEAWOOD TRANSPORTATION IMPACT FEE REPORT – was made by Ramsey; seconded by Hoyt. Motion carried with a unanimous vote of 7-0. For: Belzer, Hoyt, Levitan, Pateidl, Ramsey, Coleman, and Block.**

*MEETING ADJOURNED*