

**City of Leawood
Planning Commission Meeting
September 11, 2018
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

Chairman Pateidl: I'd like to take a moment to pause and remember and honor the victims of 9/11 - 17 years ago.

Moment of silence

CALL TO ORDER/ROLL CALL: Hunter, Hoyt, Pateidl, Coleman, Block, and Stevens. Absent: Belzer, Elkins, and Strauss.

In Chairman Elkin's absence, Vice-Chairman Pateidl served as Chairman.

APPROVAL OF THE AGENDA

Chairman Pateidl: It is noteworthy that there is one item on the agenda.

A motion to approve the agenda was made by Coleman; seconded by Hoyt. Motion carried with a unanimous vote of 5-0. For: Hunter, Hoyt, Coleman, Block, and Stevens.

Chairman Pateidl: I see a number of people in the chamber tonight, you're all welcome, and we're very happy to see the support of the citizenry for these kinds of activities. Many of you, perhaps, like me, before I became a part of this commission, had no idea what these meetings were really about or who these players were. I'd like to take just a minute to explain and introduce some of the participants, their responsibilities, and their activities. What is our Planning Department? They are employees of the city. They are officials and experts educated and trained in planning. Their primary responsibility is to be in charge of the construct of our community in accordance with the laws that we have ordained inside the City of Leawood and the direction of the Governing Body or City Council. Remember, City Council are officials that were elected by each of you and all of us that are sitting here. We are the Planning Commission. Basically, we are citizens just like you. We've been appointed by the mayor to serve in this body. After we're suggested to be appointed by the mayor, we're vetted by our individual councilmen, the people you have elected to be your representatives. Then, we are privileged to have the opportunity to serve the community as volunteers. Our job in this whole process is to make a recommendation to the Governing Body with respect to any given application. We're filtering the activity that is coming through to make a recommendation as to whether or

not a proposal is good for the city or acceptable to the city, as deemed by our body in conjunction with the Planning Department. Last, the applicant is a person wishing to develop a project and make an investment in the City of Leawood and probably the most important part of this whole process. Without them, we don't have any growth. In the process, the applicant brings a project to the Planning Department, who then reviews it. They're reviewing it in the construct of the ordinances, which the Governing Body has passed as law. This is known as the Leawood Development Ordinance [LDO]. They are also directed by the Governing Body as to the desires and intent of development inside of Leawood for the community we want to have. They are, for lack of another description, quality control. We, the Planning Commission, are filtering these proposals. At the end of the meeting, when we take a vote, we vote on whether to recommend a proposal to the Governing Body for their consideration and approval, deny it, or continue it. Those are the three options we have. With every recommendation for approval, you will hear a comment regarding stipulations, which are items that the Planning Department and applicant have codified in the agreement that it is how the application will go forward. It is important to have the stipulations because they are the pathway for the approval. There could be as few as a handful or as many as 25-30; it depends on the application. If a continuation becomes a decision, it is simply an opportunity for the applicant and the Planning Department to have more time to work toward an understanding if there is a problem or discrepancy as far as the application or design. The last option that the Planning Commission has is to deny the application or state in the denial that we don't believe it is ready to be recommended to the City Council. At this point, the applicant has the right to go to City Council and seek a hearing with them as far as their proposal is concerned. However, if the denial takes place and the applicant moves forward, the City Council would then have to approve the application with a super majority, meaning 2/3 of the members. That brings us to where we are this evening. To begin with, it is noteworthy that there are no stipulations associated with this application. There are any number of stipulations that are common to an application that would deal with compliance with certain elements of the LDO. Some stipulations should be there. It also has a position for the Planning Department that they do not believe this application should be approved and moved to City Council. With that comes a question that I want to raise to my fellow commissioners in the sense of the conduct of this meeting. We don't have a pathway to approval. We don't have stipulations. We don't know how to judge this. It is sort of like having a swing set and not having any instructions. How are we going to get this done? Therefore, if we don't have a pathway to an approval, are we left with a decision of either a continuance of the application or a denial? I'm open and asking for your thoughts and your feeling toward how, after having studied this application, you would like to proceed.

Comm. Hoyt: I guess I anticipated we would follow the same basic protocol that we typically do; however, I don't know at what point it is appropriate to enter into various issues, but clearly, from my perspective after reading through the materials, there does seem to be a rather huge gulf between what the applicant is proposing and the issues the city has that make it difficult and, as they speculate, impossible to pass on as a recommendation even with extensive stipulations. One of my biggest questions is the process that has been followed up to this point and why and how we've gotten here.

Mr. Hall: If I could interrupt, your best course of procedure would be, as Commissioner Hoyt indicates, to follow your normal procedure: hear from the staff, the applicant, and the public, and then hold discussions. I think if you proceed in that fashion, all of your questions should be able to be answered.

Chairman Pateidl: Based on legal counsel, that is the city's position. Are there any other commissioners wanting to make any comment?

Comm. Block: I think we should follow that path.

Chairman Pateidl: All right; following the path of the normal procedures and noting that there are myriad of issues contained in this as the gap that Commissioner Hoyt pointed out, I'm going to suggest that we ask for an overview from the city and an overview from the applicant. Then, we will take the points of contention, for lack of another description, one-by-one, and we will discuss those points so we can maintain focus. If we've got 16 wheels going this way and 16 going that way, we'll never get this truck out of the parking lot. If that is agreeable to the city, the applicant, and to counsel, we will proceed on that basis.

NEW BUSINESS:

CASE 71-18 – 135th STREET AND KENNETH ROAD – MIXED-USE AND MEDIUM DENSITY RESIDENTIAL – Request for approval of a Rezoning from AG (Agricultural) to MXD) (Mixed-Used Development) and RP-3 (Planned Cluster Attached Residential District), Special Use Permit for an Assisted Living Facility, Preliminary Plan, and Preliminary Plat, located south of 135th Street and west of Kenneth Road. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Mr. Vice Chair and members of the Planning Commission, this is Case 71-18 – 135th Street and Kenneth Road – Mixed-Use and Medium Density Residential project. The applicant is requesting approval of a Rezoning from AG to MXD and RP-3, Special Use Permit for an Assisted Living Facility, a Preliminary Plan and Preliminary Plat. The project itself is located south of 135th Street and east of Kenneth Road. I have a presentation with pictures that might make it easier to understand.

(Refers to presentation throughout) The aerial photo shows the general area. The subject property is about 56 acres. It is currently being used for agricultural purposes and also some natural area as well. There is now alignment and extension of 137th Street to the east. A vacant property is located west of the subject property. There is a subdivision that has been platted and approved as well.

This application proposes to extend 137th Street from the western terminus. It will proceed northeast and then tie into the property on Kenneth Road. We will talk fairly extensively about the alignment of 137th Street. The applicant is proposing the alignment to be much farther to the north than what the city has shown since 1996 on the

Comprehensive Plan. The applicant is proposing two zonings with this project. The first is MXD between 135th Street and 137th Street. The west side consists of apartment buildings with underground parking. Building C is a combination of Retail, Office, and Residential above. Building D is also an apartment building with underground parking. Buildings A, B, and D are four stories and approximately 58' in height. Building C is 71' in height. The east side of the development has Office and Retail. One building spans the area and accesses the parking that is interior to the site. It has Retail on the first floor and Office above that. They also have another building on 135th Street. That building is Retail and Office above. There is an 84-bed assisted living facility on the far east with 100 spaces of underground parking. This side of the development has 172 residential units. The maximum density in MXD is 15 units per acre. They are well below that at around ten units per acre. Regarding Floor Area Ratio [F.A.R.], the maximum F.A.R. in MXD is .25; however, the LDO allows for bonuses to increase that number up to .45. Anything above .45 is still possible but would require a $\frac{3}{4}$ majority by the Governing Body. In order to receive the F.A.R. bonus, they are proposing increased open space as well as underground parking. Both carry a 15% bonus. I'll give some history on the bonuses.

Chairman Pateidl: I think we'll get into those issues there, and it will be easier for us to focus if we do it that way.

Mr. Klein: The area that is located on the south side of 137th Street and on the north side of 137th street on the western portion of the property, the applicant is proposing to rezone to RP-3 [Planned Cluster Residential Attached]. They are proposing 60 duplexes in 120 units. Nearly 43 of them will be located on the southern part of 137th Street; 17 will be located on the northern side of 137th Street. The maximum density within the RP-3 is 7.26, and they are well below that at three dwelling units per acre.

That was an overview. The items we would like to discuss are outlined in the Staff Report. We'd be happy to discuss those further.

Chairman Pateidl: Are there questions for the city?

Comm. Coleman: I have a question in terms of how we got to this point. Obviously, we have had multiple continuances to get to this point. Usually, when those occur, things are being worked out between the developer and the staff. It doesn't seem to be the case here. Is there an impasse at this point between staff and the developer?

Mr. Klein: As Commissioner Pateidl indicated, staff is charged to consider ordinances and the Comprehensive Plan, which is a guide for the future development of the city. It gets reviewed on an annual basis. It is more of a vision for where the city would like to go in the future. Unlike the LDO with a specific standard for density or F.A.R. on a particular site, the Comprehensive Plan looks at land that is available and tries to project the best future use of the land. In this case, the city hired a consultant and adopted the 135th Street Community Plan in 2014. This looked at the area located between State Line Road, Nall Avenue, 133rd Street, and 137th Street. That is part of the Comprehensive Plan. As part of that process, Mixed-Use was considered as one of the primary directions the city wants to go. We go to planning conferences, pay attention to peers, read the

research, and look across the country. There are certain things that more successful Mixed-Use Development projects have. Those were incorporated into the 135th Street Community Plan. The city looks at projects in that area and applies the principles to those and to any Mixed-Use projects. We'd like to talk tonight about what we're looking for, what was outlined in the 135th Street Community Plan, and what their application is bringing forward.

Mr. Coleman: We explained the 135th Street Community Plan and the Comprehensive Plan to the applicant and the points they can comply with. They acknowledged that and wanted to go a different direction, so the discussion ended.

Comm. Block: I'm looking at the map with the phases. Phase 2 and 3 are the Mixed-Use portions. Do those comply with the requirements for Mixed-Use, aside from the street alignment?

Mr. Klein: They don't contain many of the components we are looking for in Mixed-Use.

Comm. Block: That was with the streets and the nodes, but do the ratios comply?

Mr. Klein: The uses comply.

Comm. Block: You showed the alignment. Where 137th Street should be per the Comprehensive Plan is on the other side of the bio-detention area. Where should the alignment of Kenneth Road have been?

Mr. Klein: It lines up with High Drive to the north, so we would expect full access there.

Comm. Block: The radius of the street on the southwest corner where 137th Street intersects the existing street is too tight?

Mr. Klein: There has been dialogue between staff and the applicant, even today. The applicant has indicated compliance with certain standards, such as this radius. The city has a standard of a 500' radius along a collector street. They are showing a 400' radius but have indicated they would change it to 500'. Additionally, they will comply with the requirement for the roofing material within the RP-3 portion of the development. Also, staff has had conversations with them with regard to the spacing of the side yards of the RP-3, and I think that we have reached a resolution to that as well: they will maintain a minimum of 15' between the side walls of those structures.

Comm. Block: I thought I saw something talking about 137th Street not being so close to the existing homes to the south.

Mr. Klein: Staff would be interested in that. There are some constraints, but we would like to move the street away to preserve the tree line. The rectangle to the east is right-of-way that the city has already obtained. The street will need to go within that right-of-way;

however, from that point on, we would like to start move the street up a bit to the north while maintaining the 500' radius. It would be gradual and not a steep turn.

Comm. Block: Can you do that by acquiring a right-of-way from that property owner?

Mr. Klein: Typically, the developer comes in with a piece of property and then we get the right-of-way for 137th Street. At that point, we would look for the right-of-way to shift to the north.

Chairman Pateidl: Any other questions? I have one. We have 137th Street stubbed at Chadwick, and then there is a piece of undeveloped land and then this property. Is 137th going to be completed at that point?

Mr. Klein: There would be a time when there would be no connection. Basically, 137th Street would stub out. They don't own the property adjacent to the west, so they can't extend the street through that. We don't have the right-of-way for it at this point, and we won't until that property develops. The city requires a temporary cul-de-sac, and the applicant does not want to construct it; they prefer to stub it out. We also require signage at the end of the cul-de-sac just so everybody is aware that the street will go through.

Chairman Pateidl: That stub will remain there until somebody develops that little piece of ground on the bottom?

Mr. Klein: Yes; we typically get the right-of-way as each individual piece of property comes in. The hope is that, as development occurs within 135th Street in that area, more development pressure will occur. Then, other properties would want to develop.

Chairman Pateidl: Thank you. Mr. Petersen?

Mr. Klein: We have a lot of other items, too.

Chairman Pateidl: In terms of an overview, that is pretty much what I wanted to hear. We'll go into each of these objections one-by-one and hear them out from each perspective. To hear all of that in one presentation and then all in another presentation is going to be too difficult to focus on. The city has done an outstanding job of delineating the difficulties that we face, and I think that each of those should be aired but not collectively; it's just too complicated.

Applicant Presentation:

John Petersen, Polsinelli Law Firm, 6201 College Blvd., Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Petersen: I'm appearing on behalf of Leawood 135 LLC, the proposed developer, in conjunction with another entity, of the entire project. I'd like to quickly introduce the members of our team. Two gentlemen will commit millions of dollars to bring actual development to the 135th Street Corridor are Richard and Rick Lashbrook. They are

proposed to be the sole developers of the attached villa concept south of 137th. The Lashbrook Group will take the lead in developing the west side; the Regnier Group will take responsibility for the eastern side with the assisted living and other elements. Henry Klover is the architect for the MXD portion. Jeff Wilkey has provided expertise in terms of traffic management. Tim Tucker with Phelps Engineering has done our civil work, helping us lay out Site Plans and ensuring we have adhered to every single element of the LDO. Jason Myer is our landscape architect, playing an important role with our existing neighbors to the south as we've moved our project along that southern property line. Len Corsi with Vic Regnier Builders is also here this evening.

I am going to have to try to break ranks in terms of how I do it because I hear your message about not getting into too many details. I have to say that I found the initial dialogue interesting because I understand it. Regarding stipulations, I asked for them. I wish we had some. It's pretty hard to actually get a project that can come to fruition if we don't have those typical stipulations. There is a reason for that, and it gets to the point of the gap. The gap can be perceived as a reluctant, dismissive developer. The city put the rules out with the LDO, a Master Plan, and the Community Plan. They say the developer ignored it. I want you to know that we are at a gap, but it wasn't because we were dismissive, because we were being hypercritical, because we don't respect the expertise of your professional planning staff, nor the deliberations that took place to come up with the 135th Street Community Plan. Our problem is that we can't build the project in strict accordance with the 135th Street Community Plan. We can't finance it. The market is not there to support it. It is not just us. Nobody can. I would respectfully suggest that it is the exact reason this corridor shows up as plowed ground while billions in investment has taken place to the west and millions of dollars of development has taken place directly to the east. Maybe you're good with the reason, but there is a reason. The development community in Kansas City and beyond has been waiting for this day since 2014. Somebody has to bring an application in. It's going to have a gap, and we have to see what we can do to work it through and find common ground. We can get into the details of the differential, but the bright line is not the LDO. We've met every setback, every landscaping requirement. We have density issues we can deal with through the process that's embedded in the LDO. Then we move to the Comprehensive Plan. Pre-135th Street Community Plan, we had issues to deal with. The Comprehensive Plan has been in place and showed 137th with a certain configuration. Somebody drew that line in 1996. It's been sitting on a piece of paper for 22 years. I don't think anybody said that they would draw the line and it should be exactly where the road should be built without thought for circumstances for where the road should go when the development goes in. Staff alludes to the fact that it shows it very close to the neighbors in the southwest corner of the project. We'd like to move it. That issues is not based on the LDO; it is based on a vision from 26 years ago.

Chairman Pateidl: I think we're getting into specifics.

Mr. Petersen: This gets to where the rubber meets the road.

Chairman Pateidl: The rubber will meet the road shortly.

Mr. Petersen: It is the concept of a Mixed-Use project. What we tried to do in the overview of our efforts was to say that we understand the LDO; we understand the Comprehensive Plan and the vision. We want Mixed-Use in this corridor. We tried to buffer those headwinds of a market that won't respond, banks that won't finance and developers' inability to bring forward a certain type of plan that staff has staked their position on. We tried to find a middle ground. This is a Mixed-Use project. It is partially vertically Mixed-Use and partially horizontally Mixed-Use. The whole 52 acres is a mixture of Residential of different classes and different types, Retail, Office, and even some assisted living opportunities. Portions on 135th Street with that presence are vertical with structured parking. The allows for more open space. As we move south, our compromise was to move to a more horizontal Mixed-Use and bring buffering techniques that blend better with the neighbors to the south. Staff's position, standing firm on the 135th Street Community Plan is that they want all vertical Mixed-Use with all the parking underground. They want three-story to nine-story buildings up against 137th Street. They want mass and verticality. That is the gap. That is our plan, and staff walked you through it. We have details we can talk about. We have buffering to the south, elevations that we can discuss, LDO requirements, and Comprehensive Plan elements. I can make the case for why we moved 137th Street. It is an additional seven acres out of 52. It is not a significant move, but it makes for a better mixture of vertical and horizontal planning. I can walk through our bike lanes and trails. The grid street system is in the 135th Street Community Plan, and that is why staff is recommending denial. We can't build that. It just can't be built. I don't need to talk to you about Park Place. It can't be replicated in the kind of size and density it is. I would suggest that this actually has been tried in the 135th Street Corridor itself: verticality, internal streets, cool urban stuff. It hasn't worked anywhere in Johnson County. The Villaggio said they could do it. What stands vertical in Villaggio are two buildings and weeds. The street system on the left side is in. Because it's in and the market didn't respond, that property went through foreclosure and is now owned by another client of mine. He bought it for the cost to put the streets in. He won't bring a plan forward. He's one of the most prolific Mixed-Use developers based out of Denver. That is the dilemma. I need to speak to the golden criteria sometime tonight to close out our Public Hearing. I am ready with a plethora of details. I have design team members who can come up and speak to any issue. That is the reason there is a gap. The other dilemma is if this developer chooses to do the grid street system, the transects, and the buildings to 8-9 stories, it couldn't be done in Leawood because the LDO doesn't allow it. I'd be happy to answer questions now, or I'll follow your lead.

Chairman Pateidl: I would offer an opportunity of the commissioners to ask questions of Mr. Petersen.

Comm. Hoyt: To clarify, in your opinion, the main sticking point that creates this huge gap is the fundamental concept of a Mixed-Use development and that the city is defining it in vertical terms, and you and the applicant think that horizontal is the way to go. Is that correct?

Mr. Petersen: That's close. Mixed-Use is very specifically dialed out. It is Residential, Office, and Retail. In this case, it is primarily vertical. We have Residential over Retail

and Office over Retail. We designed to the code of what Mixed-Use means in that section. The idea of verticality is alive and well and in full compliance with the LDO. Where we break is we want to move down for the overall project and build horizontal Mixed-Use where we take another type of living opportunity and do it in a more horizontal fashion as we move to the south. We think it is a more compatible transition for our neighbors to the south. It is more economically viable. It is a market that is there today, but it still brings vibrancy to the area. It supports the amount of Retail and Office and other uses along the street. That is the difference. It is a difference of opinion, and we have some flexibility to take pieces of what the Community Plan spoke to, which is mass and height, utilizing structured parking. Can we speak to part of that up along the street but not have to do the entire program? Again, it's a matter of opinion, proved by the fact that nobody has tried it yet, that we can't do it. We're not going to say we can do something we can't produce. I'm always careful to use an analogy out of another city, but it is so relevant in this case. It is the concept of Vision Metcalf in Overland Park. There was a study commissioned and paid for by a highly regarded consultant. It had 25-story buildings at 435 and Metcalf, 15-story buildings at 103rd and Metcalf. It was this thing. What happened is people said they couldn't do it but they could take pieces of it. In certain specific nodes, we will build some height and mass. We could be at a gap forever. We want to move it through the process.

Comm. Coleman: You've referenced that, on this whole tract of land between Roe and State Line, the plan is not feasible. Why not redo the plan? I haven't heard any negativity about that until you mentioned that. Why aren't the developers asking us to change the plan instead of altering it piece-by-piece?

Mr. Petersen: They did. I was at some of the workshops. People said it was a lot. Maybe in these 600 acres, there is one node that could support something like this, but it can't be 600 acres. Atlanta couldn't support something like that. Whether it's the brokerage community, the landowner community, professionals, or lawyers, we all sat there. Your own consultant came back after the plan was adopted and said that retail has totally changed, and we have to rethink this. That's typical. That is what Master Plans are. We are putting in as little as we can. Nobody knows what retail is doing. Nobody knows what Class A Office will do this far from an interchange. What we do know is that, very early on, Leawood didn't want large-format Retail here. That left it plowed ground. There was probably an opportunity that not all 52 acres had to be planned at the same time, so Multi-Family could come in. Now, we're trying to find a balance with the concept and do what we know we can do. We can connect 137th. We can bring some great residential in that will feed in. We have the walkability. We will put this higher-density stuff in, and it's trying to get that one started. Maybe if another one starts, one can merge as a Park Place-kind of node. When a developer looks at what you want and goes to the bank, it creates the gap. I guess we can just wait, but we have landowners who want to use the land and put in some vitality. I think it's important to drill through the issues. Let's go to the LDO. Did we adhere to the LDO? I will tell you, when it comes to transects, grid streets, and nine-story buildings, we don't comply by intention.

Chairman Pateidl: Thank you. Mr. Petersen alluded to the Golden Rule and the factors involved. They will be discussed. I believe, perhaps, right before or right after the Public Hearing would be an appropriate time to address that subject. Passing from roughly Page 9 to Page 12 and getting to some specifics, we've got alignment on 137th Street. If I understood Mr. Petersen correctly, you've stated you're simply not in compliance with that particular aspect of it.

Mr. Petersen: I can give you an exhibit that will give you the parameters of the so-called noncompliance. (*Shows graphic*) The street as depicted takes 137th from our western property line intersecting with Kenneth Road. We solved the radius problem. We have proposed to curve the street. We took the same kind of curve in the road that interfaces with the single-family homes at Tuscany. It is bent around it with the exact same configuration. We incorporated that into our plan and popped a little bit of our Residential on the north side of 137th just like they did at Tuscany. We are just trying to follow a pattern that was approved.

Chairman Pateidl: I think we're getting a bit away from the point. We have the position that the applicant is stating noncompliance. Mr. Klein, what is the importance of this from the city's point of view.

Mr. Klein: I'd like to clarify a few things with regard to the LDO. I understand Mr. Petersen's position. With regard to the Mixed-Use Development, the LDO originally came about in December 2002. To a large extent, it was developed in response to Park Place. The city wanted to allow Mixed-Use, but the LDO wasn't the best at doing that. They already had a bit of that pressure at Mission Farms, who wanted to be a bit more Mixed-Use. The city got a consultant and developed the current LDO. I want to read one section with regard to MXD. Mr. Petersen is right that it specifically calls out number of uses. Again, this was written in 2002, so well before the current 135th Street Community Plan. "The MXD District allows for traditional town center marketplace development and other coordinated pedestrian-oriented Mixed-Use Development by authorizing interrelated uses and structures. This specific additional regulation of design, architecture, lighting, green space, and other site requirements appropriate to ensure the location of the appointment and retail centers in proximity to higher density housing." The argument is that the application before you actually does have higher-density Residential; it has Office; it has Retail. Where we are differing is how that is interrelated to each other. For the city, Mixed-Use means a lot more than just a mix of uses within a particular site. It goes into how those uses fit together and what kind of environment they produce. There is a big difference between developments like Park Place, Mission Farms, City Center, and Prairie Fire. It's a different feel than a lot of what we typically have along 135th Street. The majority of what is on 135th Street is the strip-style development. Before 2008, we were having three regular Planning Commission meetings a month. We did away with work sessions because we had so much development pressure. A lot of that was strip-style development with a lot of Retail and Office. I want to make sure everyone understands that Villaggio wasn't really Mixed-Use. It had split zoning. When they originally brought in the project, it was a lot of individual buildings within a massive parking lot. There was no internal network of streets at all. Staff worked very hard to get

the looped street so vehicles could circulate through there without having to go through a parking lot to get to each of the buildings. It was zoned SD-CR [Planned General Retail] and SD-O [Planned Office]. Mixed-Use was available at that time. That is some of the background.

Chairman Pateidl: Thank you. I'm not clear on the city's position as to the importance of this relocation of 137th Street.

Mr. Klein: Pictures might be able to make it easier to understand the city's position (*places pictures on the overhead*). We tried to show alignment as well as Mr. Petersen's display. This does not include the change that Commissioner Block brought out with regard to moving 137th Street to the north for that section to preserve the trees. The exhibit Mr. Petersen used showed it diving down more in another area and coming up the other way. The city would like to respond to that. The alignment is the crux of the whole dilemma. In order for Mixed-Use to be developed and incorporate the elements that the city is looking for, we need enough depth of land and/or area to do that. We still want to buffer the existing homes. The land needs enough depth for a grid network. Currently, this has 720' from 135th Street down to the area where the street would be. That is significantly more than 440', which is more or less where they have the alignment. There is also a difference with how they lined it up. There is an area in the middle that is approximately 23 acres. That is a lot of land that is shifting from MXD to Medium-Density Residential. I do understand that it makes a great transition from the existing homes to the south to MXD, which is a little bit higher density; however, the plan does take into account 137th Street being used as a buffer, the Medium-Density as a transition, and also transects, which vary the density, which gets higher from south to north within the area between 137th and 135th Street. Part of why this is so important is that if this alignment is moved, the depth becomes much more difficult to get a grid network of streets. Without the grid network, it will be difficult to get activity nodes designed around that. It will make it difficult to incorporate the green areas. It has a huge effect on what we will be able to do if that street alignment moves to the north. You're seeing the style of development they have for the Mixed-Use with the buildings organized more around the parking lot as opposed to interior streets. Some of the pictures Mr. Petersen showed with regard to the 135th Street Community Plan is a totally different environment. If you walk into the development they're proposing, you will pull into a parking area. They did try to incorporate a larger green space, but it is located within a parking area. Visitors would have to walk through the parking lot to get to the green area. We have tried a little bit of that at Town Center Crossing with the large median between the main center and Crate & Barrel. It's a beautiful green area, but we've found that it's not really used.

Chairman Pateidl: Are there questions?

Comm. Hunter: What is your reason for not deviating from the grid network that's in the plan?

Mr. Klein: We would like to create more of a village-style or town center-style development. The grid network is important for that. It is not that it can't have other

things, but it actually does create an environment with nodes of activity with uses that attract more pedestrian but also other areas to gather or a community element. It is not supposed to be this big, high-density thing throughout the entire corridor.

Mr. Coleman: They help create walkability, which is one of the key components of the plan. The plan they presented does not really have walkability in it. It is really focused around the parking lots.

Mr. Klein: (*Refers to overhead*) This is the 135th Street Community Plan. It shows the overall 135th Street Corridor. It shows the nodes of activity. It will have mini downtown-type areas with a little more density, a little more activity, a little more interest. Then they bleed out into different street types. This is something we'll talk about a little later as well. It will still have businesses along there but also a little bit more Residential. Finally, they disperse out into more Residential. The grid network is a way to incorporate all those different pieces, trying to create a unique sense of place for each one. Even in the LDO, it does not call for vertical Mixed-Use. Park Place is horizontal. The city is supportive of both. The difference between Park Place is that the horizontal element is integrated into the development as a whole with the nice park area between some of the buildings. That bleeds into Berkley Square with the ice-skating rink and more of the Office and Retail.

Chairman Pateidl: Mark, interpreting what you were saying with the example you gave, as I recall, Mixed-Use requires a minimum of ten acres. Of the area that is being proposed, does that meet that minimum requirement?

Mr. Klein: The ten acres is for all development to ensure the piece is unified. They have about 17.43 acres on that parcel that is proposed to be Mixed-Use.

Chairman Pateidl: What you are proposing is that the element of property to be used in the Mixed-Use concept be expanded to 33 acres?

Mr. Klein: Yes, we are looking for something that would increase that area and still maintain Medium-Density Residential on the south. It would increase in density from 137th Street to 135th Street, starting out with lower building heights and less density. As it moves toward 135th Street, that height and density would build, creating a transition between that area that is Mixed-Use. Then, 137th Street would be 80' of right-of-way that also acts as a buffer, and the Medium-Density Residential would create a buffer to the south.

Chairman Pateidl: Are you envisioning additional retail, apartment, office space, etc., in that 23 acres?

Mr. Klein: As you mentioned, there are certain usage minimums. A larger area would allow for more in there. It could also have more features within there as well. It doesn't mean it needs to have more buildings. It could have gathering areas, a town square, and a lot of different things.

Chairman Pateidl: Are there other questions?

Mr. Petersen: May I respond to that point?

Chairman Pateidl: Mr. Petersen, you conceded that you're not in compliance with that, and we've heard a lot from you to begin with.

Mr. Petersen: I'm not in compliance with what?

Chairman Pateidl: At the very beginning, you said you admit that you're not in compliance with the desires of the city and the Comprehensive Plan as it relates to 137th Street. Did I misunderstand you?

Mr. Petersen: No, as long as we keep it to the Community Plan. There is no LDO requirement for where 137th Street goes. There is no Master Plan requirement. Quite honestly, if you look at the transect that Mark put up there, you'll see that 137th Street is in a totally different configuration than what's in the Master Plan today that they're asking us to adhere to. It's a floating, conceptual document. Bottom line is the reason they want us to push 137th Street down south is so we have a bigger area to do the transect grid system Mixed-Use Development. It's not a safety issue. By pushing the street south, we're forced to do more commercial north of 137th.

Mr. Coleman: They're not forced to do more commercial to the north; it is basically the overall layout and plan of the project that doesn't meet many criteria.

Mr. Petersen: You keep making statements like that for the public record. This record will stick all the way through until we find out who's right or wrong. We can't keep saying that we don't adhere to a lot of the requirements. It needs specificity.

Mr. Coleman: Outlined in our report.

Chairman Pateidl: Gentlemen, I would appreciate brevity. My second question is about access from 135th Street and its location in relationship to the intersection of Kenneth Road and 135th.

Mr. Petersen: I'll be brief. We understood, as rules of engagement, that the Master Plan concept of the city for the 135th Street Corridor should not have any signalized intersections any closer than ¼ mile from each other. Let's be cognizant of where we're placing signalized intersections. First, it's been violated because from State Line to Kenneth Road is less than ¼ mile. So, why do we have a signal at Kenneth Road? We studied it. There is no reason to have a light from a traffic management standpoint. It's a loop road that goes right back to a street that has controlled interactions. Maybe to the north, but is that the best place to serve the property to the north? The proposal was to decommission Kenneth Road. We observed during our traffic counts that State Line backs up through the light at Kenneth Road. We proposed to move it farther than ¼ mile,

and then we'll take the next one to Chadwick, which has always been contemplated as a signalized intersection. I know the property owner that owns the property this development is proposing to be developed on owns the property on the north side of 135th, which would welcome the idea of a public street back to 133rd Street.

Chairman Pateidl: Mr. Ley would respond to that, I believe.

Mr. Ley: The Kenneth Road intersection with 135th Street is about 1,100' from State Line Road. That intersection has existed since 1941. That's not something that was recently built. Back in the '90s, the city worked on trying to develop an access plan for 135th Street to try to maximize access for the developers. It was determined not only to maximize access for the developers but also try to get the east-west traffic through 135th Street. That's when it was determined to maintain the ¼ mile max close spacing. It is not a minimum of ¼ mile; it's supposed to be in ¼ mile intervals. We're trying to coordinate the signals between Metcalf and all the way over to old M150. It's 3 ½ miles. Every signal, except for Kenneth Road, is at a ¼ mile interval. Our concern with this is they're not coming anywhere close to being ½ mile from State Line Road. They're 600' short of that. It's a fairly large difference. The other issue is we would never recommend removing this traffic signal. It's been there for over 20 years. It's access for the development on the southeast of this property, and the engineer never provided future traffic counts at this intersection to determine if the signal would actually be warranted in the future. They would be permitted a signal, but it would be approximately 400'-600' west of where they're currently showing it on their plan. He also mentioned traffic flowing through the PM peak, and that is true; it does happen for about ½ hour per day. We have that at many signals in Leawood, but it doesn't mean we're going to start removing traffic signals to account for that. This street is coordinated for 13 hours of the day, so for 12 ½ hours of the day, it's being coordinated where there is no traffic backing up through that intersection. By not installing the signals at the ¼ mile interval, it would really impede traffic flow. Their traffic engineer never provided any time-space diagrams to show us how that would actually flow, either currently or in the future along 135th.

Chairman Pateidl: To simplify your comments, basically, the importance of the ¼ mile interval is the overall timing and traffic flow through the busy periods of time on 135th Street.

Mr. Ley: The ¼ mile is for the 13 hours of the day we are coordinating signals along 135th Street and not just the PM peak. The PM peak is critical, but the timing to get the traffic flow with the fewest stops possible is to maintain that ¼ mile access.

Chairman Pateidl: For the benefit of the general public that's here, I understand we go to great lengths with Mid-America Regional Council or others to consult, coordinate, and establish this timing.

Mr. Ley: That is correct. Operation Green Light is through Mid-America Regional Council, and they provide the traffic signal timings along the 135th Street Corridor. They

work with Overland Park. They share timings back and forth so we can try to keep the traffic moving.

Chairman Pateidl: Even out to Olathe, don't they?

Mr. Ley: It's metropolitan-wide into Missouri.

Chairman Pateidl: I guess the point is that it is an important factor as far as the community is concerned.

Mr. Ley: That's correct.

Chairman Pateidl: Mr. Petersen, do you have any further comments you would like to make?

Mr. Petersen: No, sir; we were just trying to adhere to the stated plan with the ¼ and ½ mile sections. It doesn't comply today, so we were trying to suggest what would be a good alternative.

Chairman Pateidl: Where is the noncompliance?

Mr. Petersen: Kenneth Road is too close to State Line. It violates your principle that you have at least a ¼ mile separation between signalized intersections.

Chairman Pateidl: It is roughly 1,368' for a ¼ mile.

Mr. Petersen: It's 900'.

Mr. Ley: It's 1,100', so it's a couple hundred feet off, but like I stated, this intersection existed in 1941. The signal has been there for 20 years. The city adopted these standards back in the '90s to try to maintain this ¼ mile. We are stuck with this one intersection, but going forward, we still need to try to maintain those ¼ mile distances. They could be ¼ mile from this intersection, and we would be perfectly fine with that.

Chairman Pateidl: Let's go to land use designation. Mr. Klein, would you like to present what this means to the city?

Mr. Klein: We've been talking about this regarding the rest of the plan. Really, it's kind of that with the alignment of 137th Street. What it comes down to is the city's Comprehensive Plan. It shows alignment of 137th Street in that location. It's been shown that way for a while. The intention was to have Mixed-Use to the north. We've already talked about the amount of land and depth of land that's available to the north to do the type of Mixed-Use development that the city would like while still maintaining that area to the south of 137th Street as the buffer to the existing residential neighborhood. The street itself is considered a transition and buffer. It has 80' of right-of-way. I believe back of curb to back of curb is 45'-49'. It is a critical component for the Mixed-Use.

Chairman Pateidl: Are there questions? I have one. It deals with the last sentence on Page 15 of your comments. It states that the proposed plan provides little transition or buffering between the duplexes on the north side of 137th Street from the higher density and taller buildings within the Mixed-Use Development along 135th Street. What bothers me about that statement is that we, in the City of Leawood, or on the Planning Commission have received frequent complaints from residents of The Woods as to the light pollution that goes into their residences. We went to great lengths talking about that issue for the apartments down in Mission Farms as it related to the homes to the east of the apartment complex and the buffering that was required. I'm bothered that taller buildings will be constructed in Phase 3. By the time we get around to constructing those buildings, there's a strong likelihood that we will have residents that would be directly impacted by that. I know we haven't gotten to the illumination study, and I know that it's all part and parcel of the Final Plan, but it concerns me that we're looking at creating the exact problem that we are living with. How does the city feel about that particular issue?

Mr. Klein: The city is always concerned about the buffer and transition between Residential and something that is denser. Mixed-Use is a little bit different animal in that it also has Residential as a part of that. The Woods definitely had some issues. When that subdivision was constructed, the houses maximized the size of the lot. They removed many of the trees that were providing the buffer. Suddenly, there is a lot of exposure to the office buildings that were already constructed. As new office buildings came in, there was a bit of conflict. Regarding this one, the units have a 30' rear yard setback. There will be street trees, but then there is a private street on the north side of that, which typically isn't as wide as a public street. The LDO has a requirement for a residential setback. It is measured from the building to where the zoning changes. The applicant complies with that at 75'. Staff has concerns because it is still in close proximity of the RP-3 and apartment buildings with not much buffer. If they had 137th Street creating the transition from the Mixed-Use to the RP-3, it would have the 80' of right-of-way adding to the buffer.

Mr. Petersen: I think there was a first question about land use. I think we've already covered it. I'll just reiterate that it goes to the issue of the placement of the road. We followed the rules. For the most part, we've got a line with Mixed-Use north. We've put another higher density Residential to the south. Just like they did at Tuscany, we had one piece that was just being discussed, which interfaces more closely. That's not uncommon. Tuscany will have some commercial uses interfacing them to the north. At Prairie Fire, where Jim Lambie built those townhomes on the south side of the golf course directly across the street from Multi-Family and Commercial, it was appealing to some buyers. The villa concept that the City of Leawood approved at 133rd and State Line right behind the shopping center has lots that are the back door to retail establishments. Some like to be closer to activity than others. When we come back with Final Plan, we'll show the screening that the Lashbrooks always do in these types of situations. One difference is that you've got people buying with the understanding that commercial development will

be there. We're not concerned that we can adequately buffer it, and it will actually just be another choice for those who want to buy a home in Leawood.

Chairman Pateidl: On to Question No. 4: preservation of natural areas. Mr. Klein?

Mr. Klein: Part of the Comprehensive Plan for the City of Leawood as a whole is the preservation of natural areas. Part of that is the city recognizing that there are not a whole lot of areas that are left with native trees or drainage areas. Natural areas can be viewed as an obstacle to development, in which case a developer would deal with drainage and create other drainage structures underground and provide more buildings and density. That sacrifices aesthetics. I realize some of these aren't native trees and are not grand oaks lining beautiful streets, but they do have a natural ambiance to them, and once that ambiance is gone, it is gone. It also creates some opportunities for buffering. For instance, with the road alignment located on this side of the development is the RP-3, and then there are fairly tall trees creating a full buffer. There are opportunities within the MXD to try to take advantage of some of those natural features and turn them into an asset. There may be a gathering area located within a shaded area, providing seating or passive recreation. It would offer not only a buffer to the existing residential area but also an asset as far as a gathering space. It could be an amenity that can't be found throughout the city. Their development has access of 135th Street through the stand of trees adjacent to 135th Street. If the road shifts, the access shifts to the west. Those trees could actually be saved and comply with the city's ¼ mile regulation. Farther down with the roundabout, more trees would be taken out. They are creating an amenity area located at the southwest corner of that roundabout where there is a large stand of trees. They would take out the trees to provide the pool and cabana. Farther south, they have the street network going in that would take out some more. Some is understandable, but this pretty much wipes out a lot, and then duplexes are located on either side, which takes out a lot more. The bioretention basin will take out that large stand of trees. Again, this is one of the areas with a significant number of trees. I think the city has thought that would provide some opportunities to do something. This particular development is proposing to remove most of those. They are proposing to keep a 20' tree preservation easement, which staff supports. The only area of contention is we would like a 35' easement.

Chairman Pateidl: Are there questions? Mark, the very first picture you showed in your presentation was an overhead of the property. Can you bring that back up?

Mr. Klein: *(Shows picture)*

Chairman Pateidl: Can you indicate what trees will be left after this proposal?

Mr. Klein: The developer might be able to further talk about this. Not all these trees will remain because I think the assisted living facility is located in there, and that will take out a portion of those. The area in the northeast corner will stay. I believe there is an area running down along the east property line on the southern portion that would stay as well and most of the trees on the southern boundary.

Chairman Pateidl: The bulk of the trees on the center piece of property would be gone. All right; Mr. Petersen?

Mr. Petersen: First of all, I think Mark pretty well described it. Let's just drive down with a bit more detail on the hard corner at 135th and Kenneth. That's right at an area of about 31,000 square feet. It will remain. We'll minimally impact it with the assisted living. That's moving toward an acre of vegetation. We consider that a passive open space amenity for the project. One that really has been the focus of our efforts is our southern border. We have done a tree survey. On our property, we have identified 108 specimen trees of 8" caliper or more that we are going to design around. Then, on top of that, we are planting thousands of additional trees so we not only have a good buffer but a good strategic buffer, taking into account what we are trying to buffer. The piece in the middle will go away whatever goes on this site. If we bring 137th Street down to where staff wants it, it is in the middle of it; it's gone. It's a bio detention facility. It is where we're treating our stormwater. We are putting some streets in there. There is grading that has to go on. At Final Plan, we'll look to see if we can't save this and this in here, but please don't think if you say no to our plan and wait for the city's plan to come in that the t-shape of trees will remain; they're not. If this site is developed, those trees are not going to remain if it is developed for a use other than Agriculture.

Chairman Pateidl: Any other questions? I think we've touched on this, but the next section is pedestrian connectivity. This gets into the issue of the grids that both have discussed. I think more the issue of importance is what I would like to hear from the city and the applicant.

Mr. Klein: I believe the issue with the grid is at the heart of the Mixed-Use, including the feel, the connectivity, and the walkability. Basically, Mixed-Use is trying to create an environment that doesn't encourage parking at one location and needing to get back in the car to get to another location in the same development or navigate a large sea of parking surface. The plan that is proposed provides a good contrast between the two as far as the feel. This feels much more vehicular oriented. It has the surface parking lot. The buildings are organized around the lot. To be fair, they have done a great job and have provided underground parking. Another applicant could come in with structured parking to meet the enclosed parking requirement. That would take up another footprint, so it will get even tighter and, depending on how it's developed, push the buildings even further apart. The current concept lends itself to a visitor driving from one side to the other. The whole concept of Mixed-Use is to have these connections so that there is a network of streets. They're like blocks similar to what would you would see downtown. The blocks are short enough to walk a short way to find another street that goes in the opposite direction. It is intended to be a fabric with a lot of opportunities to disperse traffic. The development they are proposing with certain points has certain points of building exits and certain access points on the private drive on 137th Street. It is more of a multifaceted fabric with a lot of different routes. There might be mid-block crossings interspersed. There might be a gathering area.

Mr. Coleman: In the psychology of walking, if there is a lot of visual impact, people will walk farther. People won't walk far through a big parking lot. That is what we see on this. Also, the roundabout between the north-south street and 137th Street is a pedestrian barrier. Roundabouts are terrible for pedestrian connections, so it is essentially blocking off all the people that are in the duplexes from the commercial area to the north. No cars stop for pedestrians.

Mr. Klein: Really, what it comes down to on a lot of these is creating a sense of place. There are a lot more opportunities and flexibility to create a sense of place with each of these. Park Place, Mission Farms, City Center, and Prairie Fire are all a bit different. The city doesn't want to replicate Park Place down the corridor; that is not the intent. Some of them will be horizontally integrated; some will be vertically integrated; some will have both. The idea is they would create more of a destination that gives visitors a sense that they know they are located in that particular development as opposed to just most of the strip center development that goes along the corridor.

Chairman Pateidl: Are there questions? The Mixed-Use component consists of north of 137th Street as it is configured. Realistically, is there any potential for integrated streets?

Mr. Klein: I can't say never because I'm not a land planner or developer. I do know that the blocks have to be a certain width. There must be distance for a deceleration lane to turn in. That block width is going to have to vary probably 300'-600'. There is flexibility as far as design, but it can't just have one intersection next to another. I think that is part of the reason their development has less land depth between 135th Street and 137th Street. They don't really have that ability to create that separation from the intersection coming off 135th Street to create a grid network. That is one reason staff is concerned with regard to the alignment.

Mr. Petersen: We did not design to replicate downtown Kansas City. We did not factor in the psychology of walking. I'm not being demeaning when I say that. What we tried to do was get back to the balance. The grid system is part of the reason for the gap. You'll note in all the descriptions of the street network, the psychology of walking, and the high buildings, something is missing: parking. There is street parallel parking. Every bit of parking is underground or structured. This is millions and millions of dollars. No project in this county has been developed without literally millions of dollars of incentives given by the community that those things are built in. I don't think this city is in the mindset to do that. It can't be done. Again, we go to a balance. Half of our parking is underground. Not one dime in incentives is being requested. Half is surface parking. Let's go to pedestrian. I'd like to go to our Site Plan (*refers to overhead plan*). We paid a lot of attention to pedestrian utilization of the corridor. We have 10' sidewalks on both sides of 137th Street. There is going to be ample opportunity for walking along 137th Street, interaction between pedestrians, bikes, and kids. As you can see, we have designed a trail system that will traverse through the site and be open to the public. It's an 8' trail that will move through from those living in the multi-family units. It will have plenty of sidewalks they can come down, use the trail system, the city's trail system, and a diversionary 8' trail that comes through our residential community. There are 5'

sidewalks on all the internal streets on both sides and 6' sidewalks on 135th Street as required. Additionally, we are designing 137th Street to not only have those sidewalks and trails but also dedicated bike lanes within the curb-to-curb area of the street on both sides. We don't have a short place for people to walk so they'll walk farther, but we've got a denser community living, working, and playing. There are protected pedestrian ways through any of the exposed parking lots. They can access classic utilitarian sidewalk systems, recreational sidewalk systems, and systems dedicated solely to bikes very easily. Really, this is honoring what is going on east in the city and west in connecting with the overall trail system throughout Johnson County. We paid a lot of attention to the pedestrian and leisure component of the project.

Chairman Pateidl: The next issue is Mixed-Use activity nodes. I think we've had a lot of discussion on this already. At least we know from the previous discussion that the bulk of the commercial activity is either going to be apartments or offices with a minimal amount of retail if I'm accurately recounting what Mr. Petersen told us earlier.

Mr. Klein: You are correct. We have talked a lot about activity nodes and how important that is. The activity nodes are integrated into the rest of the development. They don't have to be fixed locations as suggested, but the one thing that would stay the same is that there would be more activity to create an interest in walking. These are intended to have a little bit more glass storefronts with a little more visual interest, more seating areas, and more weather protection over the building fronts. Additionally, parking was brought up as well. It does not all need to be structured parking. We understand that there is going to be surface parking. It does propose on-street parking along the private streets, creating the internal grid. The 135th Street Community Plan looks at surface parking as well. It doesn't want large parking fields out by the street; they just feel like the streetscape has a much more viable use to it as far as showing off the activity with the buildings. They gave us a number of different examples of things that could be done. They could be enclosed or behind the buildings, as is the case in Lawrence on Mass Street. The parking isn't overly visible but easy for people to get through. Teaser parking could be utilized as well with parking located directly in front of the building or along the storefronts. Lawrence would be an example again with diagonal parking that goes along Mass Street. It shows activity and creates a buffer between the pedestrians on the sidewalk and the street; yet, it creates an inviting atmosphere. The activity nodes would be clustered around, and then moving into more residential-style development. It is all based on street types, which we can talk about a little bit later. That would be an example down in the activity node itself. There is much more visual interest with the planters, storefronts, awnings, and a mixture of Retail, Office, and Residential. The idea is to create an environment that attracts people. Moving away from that, it goes into areas that have a bit more Residential but still some businesses. This is trying to create a sense of place.

Chairman Pateidl: Any questions? Mr. Petersen?

Mr. Petersen: I think we've drawn the stark difference between what the Community Plan would be and what we are proposing to do to find that middle ground. I think I would just be repeating myself.

Chairman Pateidl: Very good. The next question deals with the variety of street types tailored to the land use and sense of place. I sense that we've discussed that.

Mr. Klein: That's what I just showed. It is an important part of the activity nodes.

Chairman Pateidl: Frankly, I note that a number of our citizens have left the chambers, and I apologize to those who remain. Quite candidly, these are the conversations that should take place between the planning department and the applicant before this matter comes to the Planning Commission. Had they taken place and dealt with stipulations, I believe this process would go much quicker. These are the problems, and these are the issues that need to be faced and questioned. They're done in the interest of our community. I do apologize. We will try to expedite this and move it along because we are getting to some important issues as they relate to the Golden Rule. I think we're okay on transects to ensure transitions and compatibility of uses. Do you want to address opportunities for multiple forms of transportation?

Mr. Klein: The one point that has been stated tonight from pretty much all parties is that things change. The city is a much different place than it was in 2000 and 2008. The concept of future planning regarding Mixed-Use is to accommodate a variety of modes of transportation. This includes vehicles, walkers, bikers, and some transit. This would provide more access to the region itself. Walkability and small street connections are very much for the internal areas. What makes the city accessible is the ability to have transit and other means of transportation to traverse much larger areas. In addition to the regional bus system coming through, it also considers a commuter bus system. That would circulate within the area between 133rd Street, 137th Street, Nall, State Line, and Prairie Fire and actually connect some of these developments to where it would be easy to move from development to development without having to get in a car. Part of what is called for in the 135th Street Community Plan is to provide nodes to allow for the interfaces. It may not be a demand now, but we want to make sure we preserve certain areas along that street front so that something could be developed in the future to allow that interface between bus, bicycles, and walkers.

Chairman Pateidl: Mr. Petersen?

Mr. Petersen: Those are nice thoughts: a reserve area set aside that there may be transit. The gap is that we have land today. We have development that could be activated today. We have investments today. The city says we have to reserve places for bus systems that aren't in place. We do the best we can to have vehicular pedestrian interaction. We could talk about some areas for a transit system, but for the whole system to be set up for that, we don't have the luxury to wait and see how it works out. Maybe that's the defining moment of the gap, and it's not important to the city that we're making people who own property in the city to just wait and see how it plays out, then the gap that's going to remain, and the project ought to be denied. These guys can't wait for this.

Comm. Hoyt: You're saying you not only can't wait but you're not prepared to put in the money it would take to do what the city's plan calls for. Is that correct?

Mr. Petersen: The Community Plan as presented by the city with the grid system and high densities all the way through the project and reserving areas for transit stops that may be used in the future? No, we're not willing to do that.

Chairman Pateidl: We now go into the elements of the LDO requirements. We start with the Floor Area Ratio [F.A.R.]. Mr. Klein, you might explain a little bit for the general public as to what that really means and then your conclusions regarding the proposal that is before us.

Mr. Klein: It can be a little bit confusing, but basically, there are two measures as far as density or the intensity of a development. Generally, for residential development, we measure dwelling units per acre. People have probably heard that term more than they've heard Floor Area Ratio. Dwelling units per acre is the number of household units divided by the number of acres. The higher the number, the more houses I have in a smaller area and the denser it is. The lower the number, the more spread out they are. Vertical development tends to make the densities go up a lot more. Floor Area Ratio is typically used on commercial projects. That is another measure of how much density and intensity is located on a site. Since commercial development doesn't typically have dwelling units, it tries to consider the amount of floor area, which is the amount of horizontal surface that is walked on. This would include all the stories of a building. This takes all the floor area proposed on the site and divides by the amount of square footage on the lot. The LDO has a maximum allowable F.A.R. for most zoning districts; however, it also allows bonusing to increase it. Within MXD, it allows .25 F.A.R. This takes the area of the site in square feet, which is approximately 740,000, multiplies it by .25. The result tells how much square footage is allowed on the site. In this instance, the result is 186,600 square feet of floor area. It could be one-story buildings that would fill up the entire site; it could be five-story building that take up a smaller footprint but go up vertically. They proposed a four-story residential apartment building on Buildings A, B, and D, and then Building C is a five-story building. On the other side, Buildings E and F are two-story buildings, and Building G is an assisted living facility. All of the square footage determines the F.A.R. In this case, the F.A.R. is more than .25. They are proposing 393,300 square feet, and 186,600 is allowed by the .25 F.A.R. The LDO does two things to get them to have a bit more density. The first one is an offer that 25% of the residential floor space can be removed. Additionally, there are bonuses. Most are limited to 10%-15%. In this case, the applicant has proposed two bonuses. They originally had three. The first had to do with underground parking. They are allowed .15 F.A.R. bonus for that. The way that is calculated is by multiplying the site area by .25 to get 186,600 square feet as the base. Then, that is multiplied by .15 to give me an increment above that, which they are allowed to add on to the 186,600 square feet. It gets them a little bit above. It has maximums on it. They can't just provide a lot more open space and then get all the bonus or provide a lot of structured parking and get all the bonus. It does cap it at .15 or .1. In this case, they are asking for underground parking. The theory is that if parking is provided underground, it is not provided on the surface. If parking is not on the surface,

green space is preserved, so there is credit for that in a 1-1 ratio. For every square foot of area they are putting underground parking in, they get an extra square foot of building area that they can actually have on their floor area. Staff agrees completely with the request for the underground parking. They have provided 190 parking spaces underground, and we don't dispute that they've earned that F.A.R. bonus. The other one they are proposing is a bonus of .15 based on additional open space. In MXD, 30% of the site has to be green or pervious surface. For the additional open space they provide over and above that, provided that it provides a community asset, they can also get a 1-1 ratio. Over the 30% open space, they are providing 37%. For the extra, if it provides a community amenity, they can get an extra square foot of building area for each extra square foot of open space. The open space must add value to the community and can't be stuck out in the parking lot island or along the perimeter where nobody will go. This is the one that the applicant has applied for and staff does not support. They want additional F.A.R. because of the area created in a fairly large parking lot area. It has a grill. Staff has had requests like this in the past, and past Planning Commissions told staff that they didn't feel that something in a parking lot met the requirements for the open space bonus because most people aren't going to traverse out to the middle of a parking lot to enjoy the area. If it was between two buildings and creates something of a courtyard, it would be different. They also have one along the private drive. It's a private drive, so we don't see a whole lot of circulation that would go along that area to go to other parts of the community. It is along the periphery and is not easy to get to. Those are some of the reasons we didn't feel this met the requirement that it provide a community asset.

Mr. Petersen: I was good all the way down to the open space. We were working through the code and did our calculations. We worked with staff. There were numerous meetings with staff to work through this plan. We just knew we were at the gap. We worked through all of these issues. Even as recently as today, we were exchanging information to make sure we all had our numbers set. As Mark indicated, we have about 1.3 acres of open space in excess of what is required by code. A big chunk of that is the open area at the corner that is just short of an acre. Remember, the definition of increased open space per the code is such permanent natural open space valued by preserving natural habitat, areas for native flora, fauna, stormwater recharge, management potential. That is that area and some other areas we're using with our discharge. It also includes passive recreation potential for the public. In an urban setting, we call that a compromised urban setting with people living upstairs with retail establishments below. The streetscape that staff put up and said would be great had people dining with a car parked right next to their table. It is no different. There are going to be places to sit, recreate, and talk. It is just a different modification of passive open space. We hit the calculation. We are confident that we have earned that bonus. If we don't earn that last piece of the bonus, maybe we will ultimately shave a building on one side or the other. Interestingly enough, if I did their project the way they want to do it, I'd have to put parking garages somewhere. There is no way I could meet the open space requirement or the F.A.R. requirement. There is no mechanism in your LDO that allows for it. We're just supposed to wait until it all gets worked out. That is the dilemma that creates the gap.

Chairman Pateidl: Any questions? Moving on to prohibited roofing materials.

Mr. Klein: The applicant contacted staff today and indicated they could meet the required roofing material criterion. Currently, they are showing asphalt shingles on the duplexes, and they are only allowed in single-family districts.

Chairman Pateidl: Moving on to residential side yard setbacks. Did I understand we can scratch that off the list as well?

Mr. Klein: Yes, we clarified with the Fire Marshal and Building Department.

Chairman Pateidl: Mr. Petersen just disappeared, and I think I know where he went. I would ask if any of my fellow commissioners need a break.

Comm. Coleman: I think a break is necessary.

Five-minute break

Chairman Pateidl: I would like to address the issue of the Golden Rule. Mark, would you like to address that issue from the city's perspective, please?

Mr. Klein: Do you want me to address each one individually? Some of them are the character of the area. It is staff's position that, with regard to the Golden Rule, if the alignment the application proposes of 137th Street going to the north, just like we talked about tonight, it really limits the ability to do the types of characteristics the city is looking for and what most developments that are doing Mixed-Use around the country are looking for as well. There are a lot of Mixed-Use developments that have some very nice one. Scottsdale has Carolyn Commons. It is much larger and very nice. I don't want to give everyone the impression that it is all very mechanical and they have to meet this requirement, this requirement, and this requirement. We don't want to have the same development replicate itself over and over again. The idea is that there would be flexibility. Some will have more Residential; some will have more Office. Retail is hurting right now, and we understand that. Some will have more passive areas with opportunities for gathering; some will have more active recreational opportunities. We also understand that this is a complicated process. We understand phasing. We understand one developer with a component here, and a different one will come in with another component that they have more experience implementing. We're asking that it be part of an overall plan. That plan can change over time. We understand that. It happened at Park Place 20-30 times. Staff's position on the Golden Rule is if something is approved that has that alignment, it limits the opportunities to add the types of characteristics that would develop that sense of place. That could be detrimental to the community. It really is missing out on an opportunity. Before 2008, we had so many applications, and it would have been easy to develop out the entire corridor within a short amount of time. I think it looked a lot like the rest of the corridor. I think Leawood is looking for something that has a little bit different sense of place. We understand it will bleed out into Residential. The whole thing is not going to be this massive, dense piece of development that is going along 135th Street. We are, in fact, hoping for variation.

Chairman Pateidl: Thank you. Mr. Petersen?

Mr. Petersen: When you're a real estate lawyer, you talk about the Supreme Court. I'm not going to do that. I'm going to try to cut to the chase. We all know I don't usually start off talking about Golden Criteria because the implied message is there's going to be a lawsuit here. That's why we're talking about the Golden Criteria. This is the legal context. The Supreme Court said that you, Governing Body, and ultimately the city should stay within the rails to say, "We don't own the property, but we're going to restrict how you use the property that you own." That is the bottom line. Character of the neighborhood, zoning of the property are facts. Suitability of subject property for use to which it's been restricted could be argued both ways. I want to really focus on Nos. 4 and 5: the extent to which removal of restrictions will detrimentally affect nearby property. That speaks to the potential detriments to any surrounding property. Staff commentary is that the surrounding properties wouldn't have the benefit of building the plan in accordance with the Community Plan. Mark said that it could be detrimental if we don't get to do this. It would be detrimental. If this gentleman can't use his property because he can't afford, can't finance, and can't do something, it creates the gap. The most important of all is No. 5. The Supreme Court has said that. It is a balance, just like we're trying to achieve here today. It says, "The relative gain to the public health, safety, welfare, due to the denial of the application. . ." which is one side of the scale. What is the public gain if you deny? I guess you wait, and you have vacant ground. I guess there is some modicum of value to the public to wait and hope we get the coolest thing. We can wait. That's our gain. The counterbalance is that owners of property in Leawood don't get to use their property. We know what happens when somebody tries to put in infrastructure and grid systems. We know what happens when people do the main street that looks so cool. It's happening at Prairie Fire. It's happening at Villaggio. If I try to invest that kind of money to do it, it's going to be a financial disaster. My only alternative is I don't get to do anything with my property. They don't get to develop. People that own the property don't get to sell it. I would respectfully suggest the weight of the evidence of where we are today, particularly with the compromise, shows we're meeting the LDO and almost all provisions of the Master Plan. We have tweaks of roads. The balance is in favor of the applicant. We should be allowed to move on. As Mark said, not every site has to be the same. Let's get something going. Let's get a piece of the road built, and maybe the next guy will come in and want to be the node guy. It can interface with what we're doing along 135th Street. We think these neighbors will be happy with the transition to their property, and they'll have a good, single-family neighborhood developed as part of this property. I really appreciate your patience. With that, we would ask for you to override the staff's recommendation and move us on to City Council.

Chairman Pateidl: Before there's any discussion of the meeting, this application requires a Public Hearing. If there are members in the chamber who would like to make a comment, you are certainly welcome to come to the podium.

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Coleman; seconded by Hoyt. Motion carried with a unanimous vote of 5-0. For: Hunter, Hoyt, Coleman, Block, and Stevens.

Chairman Pateidl: I think we've come to a point where we have certainly heard a lot about the proposals. We've tried to address this in the normal fashion, hearing from both the applicant and the city. Although it's been a little different than normal, it's been because this application is a little different than normal. Certainly, the opinions of each of the commissioners is important, and I would open the meeting for comments.

Comm. Block: Unfortunately, I think the plan, as presented, offers little regard for the Comprehensive Plan or the 135th Street Plan as it is today. There have been numerous opportunities. A lot of time and effort went into creating both of those plans. The Comprehensive Plan is reviewed annually. We just looked at the 135th Street Plan in the recent past this summer. I don't feel comfortable moving this proposal as written. I think Governing Body is willing to wait. The folks who helped put those plans together were. That's why I will support staff's recommendation.

Comm. Coleman: When I look at this plan, I think that "gap" is such a small word. It is more of a chasm between what the applicant wants and what staff is recommending. I agree with Commissioner Block that this does not meet a lot of the criteria of the Comprehensive Plan and doesn't meet one part of the LDO. I think Mr. Petersen touched on something early on that maybe we do need to reexamine our 135th Street Corridor. If it's not a good plan, maybe it's time we take a look at it and maybe tweak it. What we have in front of us just doesn't meet a lot of our criteria. I don't see how we can pass it in good conscience.

Comm. Stevens: I'm also very concerned with the proposed plan for this property not being thought of as more of a comprehensive or complete development, which is really the division of this area along 135th. It creates a Mixed-Use District, even though that's being partially provided within the Comprehensive Plan that's being reduced in this proposal. I think it's been talked about here tonight that some of those missing elements that are important in making that a successful future Mixed-Use Development, including a unique sense of place, amenities, neighboring connections both north-south and east-west, so the reconfiguration of this Mixed-Use area, I think, is limiting on how that can work in a successful way and in a future way for the neighboring properties. Finally, too, it is proposed in phasing, which is very concerning. It pushes the Mixed-Use portions of this into later phases and really is losing the benefit of initiating an area or a first phase of this plan that would be a catalyst for not only this property but for the surrounding areas' success. For the many deviations that are requested on Rezoning and all the provisions and the nine items that staff has commented on, as well as the noncompliance items in the LDO, I guess my recommendation would also be denial of the proposed plans.

Comm. Hoyt: First of all, I really appreciate the immense volume of work that has gone into this on both sides of the issue, and once again, Mr. Klein has shown his uncanny command of detailed provisions of the LDO and all manner of Leawood regulations. Mr.

Petersen, you are an excellent advocate for your position. I have appreciated both sides' commentary tonight. One thing I keep coming back to that we really got into more in the latter phases of the discussion is this issue of sense of place. Many of the provisions of the Comprehensive Plan as it relates to Mixed-Use Development has to do with creating a unique sense of place. I think there definitely are opportunities to do that within the plan that is before us, but I didn't see anything specific in the plan that spoke to that unique sense of place. The other item that I'd like to see more detail on would be the contention that Mr. Petersen made late in his argument that it is categorically impossible to meet our LDO codes if we followed our Mixed-Use Development plan. That is an interesting argument, but I would like to see the calculations and the detail and exactly how we couldn't do that. I also feel like, because of all the deviations from the Comprehensive Plan, this is something that, if we're going to move forward – and I appreciate using this as a test case – there has to be some further discussion by the City Council itself on what the future of this Comprehensive Plan and the 135th Street Corridor Plan is. I would not be able to recommend approval of this plan, but I would be very interested to see the conversation continued.

Comm. Hunter: I agree. I'll throw in my two cents. I understand the need and desire to develop 135th Street, and I appreciate the work the applicant has done and the plan you put forth. I thought there were a lot of interesting elements. I do have some concerns over what the city has brought to light with the discrepancies. Toward the end of your discussion with the comments about the Golden Rule, I would have liked to have seen more of that legal standard and hardships. I would also have liked to hear from some neighbors to see how this would impact the surrounding area. I think it is up to probably the City Council to sit down and determine if the plan is viable right now. I appreciate that Mr. Klein said it was fluid and doesn't have to be set in stone, but right now, it's just too early to approve it.

Chairman Pateidl: Thank you. In the interest of objectivity, I'm going to refrain from making comments. Also, in the interest of following the traditions, if there were to be a recommendation for approval, traditionally, that is followed with a set of stipulations. I would ask the city if you could even offer a set of stipulations at this point in time.

Mr. Coleman: If you moved it forward, it would be up to City Council to look at any stipulations and refer it to staff for stipulations.

Chairman Pateidl: I'm not sure I understand your comments.

Mr. Coleman: We can't offer any stipulations now. If you approve it and it moves forward, it would be up to City Council to determine to ask staff for that.

Chairman Pateidl: I see that as the crux of the problem. If we are to find a pathway to approval, it needs to be a qualified pathway where there is some agreement, even if it is an agreement to disagree between the applicant and the city that we can meet our responsibilities as a commission to the Governing Body when we make this recommendation. I would offer this to a vote and will ask for a vote, subject first to

offering to Mr. Petersen and the applicant a continuation of this to meet the deficiencies we have in this application to reach that agreement, even if it is an agreement to disagree before we take a vote on recommendation or denial.

Mr. Petersen: I never give up in terms of being able to sit down and work through issues. In this case, there are no stipulations. Quite honestly, I asked for stipulations. I don't know how you do it because they don't have any specificity about what they want to see; they just don't like what they see here. That's a way of saying with the utmost respect that I'd like a vote. We'll move on to City Council. Part of it is Governing Body has to weigh in on this and decide if we're going to stick with this piece of paper called the Community Plan. It's really going to be a gradation of what that tool is supposed to be, moving forward. Not that this isn't a very important process, and I actually think the approach that we took tonight was the right way to do it here because we were able to make it clearer, but I think it's time to get it up to City Council for a more global discussion about the Master Plan.

Chairman Pateidl: I will remind you that if there is a denial, it will move this to a super majority for consideration from the Governing Body.

Mr. Petersen: I understand.

Chairman Pateidl: I would call for a motion.

A motion to deny CASE 71-18 – 135th STREET AND KENNETH ROAD – MIXED-USE AND MEDIUM DENSITY RESIDENTIAL – Request for approval of a Rezoning from AG (Agricultural) to MXD) (Mixed-Used Development) and RP-3 (Planned Cluster Attached Residential District), Special Use Permit for an Assisted Living Facility, Preliminary Plan, and Preliminary Plat, located south of 135th Street and west of Kenneth Road – was made by Coleman; seconded by Stevens. Motion carried with a unanimous vote of 5-0. For: Hunter, Hoyt, Coleman, Block, and Stevens.

Mr. Petersen: I would like to say on behalf of the entire development team, we very much appreciate the special session and three hours of grueling give and take. Our hope is to be back before you again, talking about this piece of property. Thank you for your time.

Chairman Pateidl: Thank you, Mr. Petersen, and thank you to the general public who has borne with us.

MEETING ADJOURNED