

**City of Leawood
Planning Commission Work Session
February 12, 2019
Leawood Development Ordinance Amendments**

Planning Commission Members in Attendance: Block, Hoyt, Coleman, Stevens, Belzer, Elkins – **Absent:** Hunter, Pateidl, Strauss

Staff in Attendance: Mark Klein, Planning; Richard Coleman, Community Development; Ricky Sanchez, Planning; Jessica Schuller, Planning; Andrew Hall, Legal; Brian Scovill, Public Works; Debbie Brenner, Planning

Mr. Klein: We wanted to talk to you tonight about some Leawood Development Ordinance (LDO) amendments. We don't currently have specific language that we are proposing; we just would like to get input from the Planning Commission as well as keep you informed about what is coming. We would like to add Recreational and Entertainment, Indoor to the Table of Uses. The other is Street Trees. The Street Tree section of the City Code has been updated, and we would like to make the LDO consistent with the City Code. We have two issues we would like to discuss regarding fences. The first is estate fences within RPA-5, which is single family on a minimum of five acres. The Board of Zoning Appeals has received many requests with regard to these fences meant to enclose an entire lot. The other has to do with fences extending beyond the build line. Calculations in Mixed-Use Districts (MXD) and Floor Area Ratio (F.A.R.) will focus on residential discount and adding criteria. The other amendment has to do with legal nonconformities.

Table of Uses

Mr. Klein: Currently, Recreation and Entertainment – Outdoor is allowed within the Business Park (BP) section with a special use permit (SUP). However, Recreation and Entertainment – Indoor is not. That seemed inconsistent as far as allowing one that would have more impact on the surrounding properties. The definition for Recreation and Entertainment – Indoor is an establishment offering recreation, entertainment, or games of skill to the public for a fee of charge and that is wholly enclosed in a building. Typical uses include bowling alleys, indoor theaters, bingo parlors, pool halls, billiard parlors, and video game arcades. Recreation and Entertainment – Outdoor is an establishment offering recreation, entertainment, or games of skill to the public for a fee or charge wherein any portion of the activity takes place in the open. Typical uses include archery ranges, batting cages, golf driving ranges, drive-in theaters, and miniature golf courses. We would like to make it more consistent by allowing Recreational Indoor with an SUP in the BP district.

Chairman Elkins: Remind me what SD-CR is.

Mr. Klein: SD-CR is Planned General Retail. Town Center Plaza is SD-CR. We also have SD-NCR and SD-NCR-2 (Planned Neighborhood Retail). Those are surrounded by residential but might want some small commercial uses available.

Chairman Elkins: In your research into the ordinance and Table of Uses, is there any history as to why the distinction between indoor and outdoor was made?

Mr. Klein: We couldn't find anything. We hired an attorney when we were going through the LDO back in 2002. I think it may have been a situation where they provided a table, and it never occurred to us at the time to raise the question. You might see this amendment at the next meeting.

Chairman Elkins: What does BP stand for?

Mr. Klein: Business Park, and we have two BP districts: 143rd Street and Kenneth Road and 103rd and State Line Road. The area at 103rd and State Line Road is older and has a different variety of uses.

Chairman Elkins: And an SUP would be required?

Mr. Klein: Yes.

Chairman Elkins: Why require an SUP in the context of an indoor recreation complex?

Mr. Klein: We just figured it would give a little bit more opportunity for scrutiny with regard to the Planning Commission and Governing Body to consider any potential impacts. The BP district at 103rd and State Line is extremely close to residential neighborhoods. Many of them don't meet the setbacks. Buildings exist legally, and we can't make them tear them down. It is possible that one of these uses may move into one of these buildings. It is just to offer a bit more control.

Chairman Elkins: I have a vague recollection that we changed the rules on SUPs. What are the terms? Do we have some discretion on the length of term for the SUP?

Mr. Klein: All SUPs, unless we state otherwise, have a limitation by default of 20 years.

Chairman Elkins: Can we limit it to fewer years than that?

Mr. Klein: You can set a lower limit. You're probably thinking of the cell towers that we typically used to give five years. The last couple ones, we have allowed 20 years, as the legal framework has changed. The car lot used to get one year at a time, and we moved it to two years.

Chairman Elkins: What do some of the rest of the commissioners think about the time period for these SUPs? Would you be up for permitting them for 20 years?

Comm. Coleman: I think five years is appropriate, especially given a recreational use. I don't know if the axe-throwing place would be under this.

Mr. Klein: The axe-throwing place is actually a permitted use, so they didn't need an SUP.

Comm. Coleman: It will be here for probably two more years.

Comm. Hoyt: In that case, if we thought it was in the public interest to have it less than 20 years, we could vote to have it for less than 20 years.

Mr. Klein: That is correct.

Comm. Hoyt: I guess I think it would be hard to get someone to want to invest the money required to put in a movie theater or something if they could only have a five-year SUP. I would find that a huge turn-off.

Comm. Coleman: It depends on what it is.

Comm. Hoyt: Exactly, but since we have the ability to scale the time period between 1-20, it seems like a good possibility.

Mr. Klein: We also have stipulations on these applications. If they are in violation of a stipulation, it could trigger possibly loss of the SUP.

Chairman Elkins: What do you see as a typical term of a commercial lease?

Mr. Klein: I'm not sure.

Mr. Coleman: Usually around five years, and then sometimes, they have the right to extend the lease for another 5-10 years. It depends on the owners.

Chairman Elkins: I think there could be some logic to tracking it with a lease if there was a lease involved. We wouldn't want it to be shorter than the lease term.

Mr. Coleman: We have usually extended them for a good period of time unless there's a good reason to have them shorter. Part of the parking lot that Mark mentioned is something we're not excited about. It's unapproved and in the floodplain.

Comm. Belzer: You said one is at 143rd and one is at 103rd?

Mr. Klein: Yes, with the Gates Barbecue.

Comm. Belzer: That's going to be a nice, big space coming up there when US Toy leaves.

Street Trees

Mr. Klein: The City Code has changed regarding spacing of trees. We want to try to bring it into conformance so we don't have a conflict. Currently, the LDO requires street trees to be planted one per 35 linear feet. City Code divides it out. Medium trees are allowed to be planted 30 feet, and large trees are allowed to be planted a minimum of 40 feet. That would take into account the canopy spread. We thought we would try to match that with the LDO.

Comm. Coleman: If there's a new development, I know this comes up. What happens with existing developments? Would someone have to replace a tree?

Mr. Klein: The LDO is primarily for new development, so that's what's actually it is being applied to. Anything that is new development comes through the Planning Commission and City Council. The landscape plan shows the types and spacing of trees. Once that is approved, say, 20-30 years down the road, the ash borer starts taking out trees, or the subdivision would like to change the trees they have. They would be required to replace based on the approved plan. They can come back through the Planning Commission and City council if they would like to modify the plan. They would have to meet the ordinance in place at the time.

Chairman Elkins: It seems that we had a couple controversies here recently over a redevelopment and the caliper of trees as well as distance between them. Does any of this address that, or do we need to talk about it in the context of this discussion?

Mr. Klein: This doesn't change the context as far as what they wanted. They said they did not have the room to plant the street trees in certain areas. Staff has tried to be fairly flexible as far as where the trees can be planted. If there is an existing sidewalk and it is back-of-curb by three feet, there is probably not enough room to plant a street tree there, but generally, it could be planted on the other side of the sidewalk and still achieve the same effect. These are street trees, so they tend to be larger, and the canopies will grow. That same issue would still be an issue with this.

Chairman Elkins: Is there anything we could do about the types or species of trees used for street trees?

Mr. Klein: Brian Anderson the Parks Department put together a list of great trees for Leawood.

Mr. Coleman: There is a regional tree list that we use.

Chairman Elkins: The reason I'm asking is one of the attractive things about Prairie Village is the canopy along Mission or Roe from trees planted 50 years ago. I think they are mostly Oak trees.

Mr. Coleman: Pin Oak.

Chairman Elkins: They're beautifully. They're straight as an arrow going down the street, and I always think that someone did some really good planning. I think it may have been the developer at that time.

Mr. Coleman: You wouldn't get that now, though. What Brian and a lot of landscape people recommend is mixing all the trees together so that we don't end up in a quandary similar to the American Elm and Ash tree issue. I'm okay with it, but you have to recognize that we may have a problem eventually. Our list was developed from a national tree program.

Comm. Coleman: If I remember correctly, I was on Parks and Recreation when this came up, there were 25 people from the area that came up with this. I tend to agree that there is a place for doing something similar to what is in Prairie Village. I don't agree that all the trees on this list are great trees. Everybody has a favorite, such as Gingko, for example. It's not a native tree. It is very hardy, but it is extremely slow-growing. If you planted a Gingko in your front yard, you'll be dead long before it provides any shade.

Chairman Elkins: Given what we've been through the last few weeks or so, did the Parks Department look at it for resilience against ice and whatnot?

Comm. Coleman: This was just a list of landscapers and arborists in the area that came up with what trees would be able to survive and what trees would work well on the side of the road. We didn't really approve it; it was just an informational list. People would plant trees that would fail because they just weren't hardy enough.

Mr. Coleman: There are some trees we shouldn't plant, especially for street trees, such as small trees that are prone to breakage and disease.

Chairman Elkins: It was amazing to see how many trees came down in the snow and ice storms. Mark, what is the approximate distance between the trees in the picture you have up?

Mr. Klein: Those would be 35 feet. Sometimes, the plans are misleading because they will draw the mature canopy, and they look giant. As far as the size of trees, we already changed the LDO to decrease from 4" caliper to 2.5" caliper for shade trees and street trees.

Chairman Elkins: Why did we do that?

Mr. Klein: We had a lot of discussion. Several developers indicated that the 4" caliper tree had a little shock, so a 2" caliper tree could easily catch up to the 4" caliper tree because it was in much less shock. Additionally, the availability of species in the higher caliper is not as robust. This would allow for more species to be used. Cost was another factor.

Chairman Elkins: From the research you have done, does the business about catching up hold water?

Mr. Klein: I talked with Brian Anderson, and he agreed.

Mr. Coleman: Part of it is that developments don't do a great job of preparing the soil for the landscaping. A good example is Walgreens across the street, and the trees don't get established and then die.

Chairman Elkins: Do we typically require medium trees or large trees?

Mr. Klein: We typically have shade trees. The City Code had small trees on the previous version but removed them for the current version because they shouldn't be used for street trees.

Chairman Elkins: Other comments?

Fences and Walls

Mr. Klein: This is basically for estate lots. A lot of them like to have the entire lot enclosed. Currently, the ordinance states that the fence cannot go beyond the front line of the house as it extends to the side property lines unless it is less than 36 inches in height and no more than 24 feet in length. That would be a very small, decorative fence. This amendment deals with what we have seen on the estate lots with fences that have gates at the entry. Under the current ordinance, this would not be allowed and would have to go to the Board of Zoning Appeals to get permission to build it. If the house is set way back, the fence would be set back also. Currently, this section states that fences and walls, with the exception of retaining walls three feet or greater in height shall not be permitted in the front of the building or line of the building as it extends to the side property line and shall not be permitted beyond the build line of a street-side side yard of a corner lot. The fence could go along the interior property line setback. On the corner lots, there is typically a setback for the street-side side yard. Most of the zoning districts have a setback of 30 feet, and the fences are required to meet that as well on the street-side side yard because if it sticks out, views get cut off, and a box effect could result.

Chairman Elkins: On the corner lot, would the side yard setback require a variance? It seems that it is tight.

Mr. Klein: This might be RP-1, so it would be 12 feet. Some of the lots up north were under the zoning ordinances in place at the time.

Comm. Stevens: On the fence on that lot, it would be from the garage to the left to the back and then to the front of the building.

Mr. Klein: That is correct, and we are trying to keep this as open as possible. The ones with RPA-5 have five acres or more, so these are big lots. A lot of times, those houses are

set 150-200 feet back. A lot of times, the house isn't even visible from the road. It is not the same situation as with these because with these, the side yards may be 12-15 feet. In RPA-5, the side yards are massive, so there isn't the same kind of boxing-in effect.

Chairman Elkins: Your proposal would be for the RPA-5?

Mr. Klein: Yes, just for the RPA-5, which is limited. It only exists starting at 143rd and Mission Road and going along Mission Road on the west side up to Meridee Farms.

Comm. Stevens: The only differentiator is the five acres?

Mr. Klein: Correct.

Comm. Stevens: A four-acre lot would be an issue.

Mr. Klein: Correct, and it seems like we don't typically have the big lots. People like to divide them up.

Mr. Coleman: We would probably specify the type of fence to some extent.

Comm. Coleman: Why would you not include a material type?

Mr. Coleman: Maybe we would include it. We wouldn't want a fence that is a solid wall of fence. A picket fence would be perfectly fine.

Mr. Klein: The gates are another issue. We would like to limit the height of the fence to no more than 6 feet, which is the highest we allow, even with a pool. Some of the gates in the past looked like they go considerably higher. We would still like to keep it down to 6 feet.

Mr. Coleman: They could still go to the BZA for a variance if they want a bigger gate. This would allow them to not have to go to the BZA. We get a lot of these, and all of them have to go to the BZA.

Chairman Elkins: Talk to us about what the BZA has authority to do, generally speaking. We always find ourselves boxed in by the ordinance. Sometimes, that is frustrating to developers; sometimes, it is not. Can you talk to us about some of the things that the BZA can approve?

Mr. Coleman: They can grant a variance to anything in the LDO except uses. This includes height restrictions, square footage restrictions, and building material restrictions.

Chairman Elkins: They can do that, but we can't.

Mr. Klein: That is correct. The applicant has to meet five factors, and there must be a public hearing as well.

Mr. Hall: It is a statutory beast that allows the Board of Zoning Appeals to vary anything in the LDO except for use.

Chairman Elkins: What is the standard the applicant has to meet to do that? Is it fairly well defined, or is it discretionary?

Mr. Coleman: There are five factors. The main one is that the applicant can't have created the need for the variance. If an applicant wants an addition in the side yard and they want it closer to the property line, the addition is causing the problem; whereas, a physical issue with the lot could be causing the hardship.

Chairman Elkins: Will these be grandfathered in?

Mr. Coleman: The one on the left got a variance. The one on the right may have been. It is older, so I'm not sure.

Mr. Klein: The requested variances have typically been allowances to extend to the front property line, allowing the fence to exceed three feet in height and more than 24 feet in length, and then allowing the entry gates to exceed 6 feet in height. There is a part of the ordinance that allows the supports to extend 8 inches taller than the fence.

Chairman Elkins: What is the build line?

Mr. Klein: The build line denotes where a structure cannot go beyond. That is what we would like to discuss as well.

Mr. Coleman: I'd like to back up for a minute. In RPA-5, the build line is either going to be platted, or it will be the 35' front yard setback. In RPA-5, it may be 50 feet?

Ms. Schuller: It is 100 feet for the front and 150 feet for the side.

Mr. Coleman: It's pretty far back.

Mr. Klein: Typically, with a plat, the zoning district defines the building envelope. For instance, in R-1, a 35' front and rear yard setback is required and 15' side yard setback unless it is a corner lot, at which point, a 30' setback is required. Typically, the only one defined as a build line on the plat will be the lines adjacent to the public street. The reason we don't like to see them on the interior lot lines is it can create some confusion as far as what is allowed to extend beyond. For instance, accessories are allowed anywhere in the rear yard. This confuses the issue. We occasionally have plats that will have lines platted beyond the ones adjacent to the public right-of-way. That has caused a little bit of a problem in the past because the city has typically not allowed the fence to go across a platted build line. With this, we would like to allow them to go past the platted build line if it is an interior lot line. We would like to make it clear in the ordinance that a fence could go along the interior property line setbacks, even if it is a platted line. We want to

make sure we have some exceptions. If the plat specifically states that fences are not allowed by that point, we want to make sure that would still be the case. Often times, a landscape easement would run across, and we would not want to allow a fence to enclose the easement. That would need to be specifically stated on the plat. In general, we would like to make it clear that interior lot line fences are allowed to extend to the property line.

Chairman Elkins: In its current state, in something less than RP-5, do side yard fences have the same limitation?

Mr. Klein: They would have the same limitation to the platted build line. In most cases, we really don't have an issue because, as the plats come through, we make sure they don't plat the interior setbacks. If they did, suddenly, the fence wouldn't be usable beyond the fenced-in area.

Chairman Elkins: Don't most of the homes in our neighborhood have their fences at the lot line? I'm struggling to put this into real life, and I can't believe every house in the neighborhood got a variance.

Mr. Klein: Most of the subdivisions don't plat the interior lines, so we allow them to extend.

Chairman Elkins: It is roughly akin to the setback, but it is not the setback.

Comm. Stevens: For a future change, you may expand on the language of a side yard setback.

Mr. Klein: That is exactly correct. We would make it clear that it can go beyond the platted line for interior only. There are situations such as a platted setback with no fencing allowed that would take precedence. We would also not want through lots (lots with two frontages) to have a fence going all the way back. Currently, in the LDO, this is treated as two front yards. There are many that have already done that because it wasn't in the past ordinances.

Comm. Hoyt: So, you're proposing a change?

Mr. Klein: At this point, we are proposing to keep that part of it.

Comm. Hoyt: On the ones that were grandfathered in, what happens when their fence rots and has to be replaced?

Mr. Klein: They are considered legal, nonconforming structures. The way nonconformities are dealt with is that it is in the interest of the city to see them come into compliance. Most cities have regulations that say that if more than 50% is being replaced, it must be brought into conformance.

Comm. Hoyt: In the meantime, the first person to have to replace their fence will create a weird line.

Mr. Klein: It will.

Comm. Hoyt: From an aesthetic standpoint, especially along a major thoroughfare like 123rd Street between Mission and State Line Road, I'm just struggling with it and how junky it could look with the dramatically different setbacks.

Comm. Stevens: Would that be appropriate for a variance?

Mr. Coleman: Some have gotten a variance for that.

Comm. Hoyt: There is a good stretch where every fence lines up, and it looks good.

Mr. Klein: The thing about the variance is that once it's granted, it runs with the land.

Chairman Elkins: What is the contrary argument?

Mr. Klein: Honestly, I think the main objection would be if I platted a lot line and didn't want the fence to go beyond it. The way we do things now, there would be a lot of questions. If a platted line is included on an interior lot line, we would ask about it. If they want it, we would ask for text on the plat specifically stating what is allowed and what is not allowed in that section. We've talked about playground equipment or garden structures.

Chairman Elkins: Why would someone plat a build line in the first place?

Mr. Klein: The build line should be platted along the street frontages just to make it very clear where the build line will be for developers when determining where a house will go.

Chairman Elkins: If they didn't have a plat line, the setbacks would still mandate that, right?

Mr. Klein: The setbacks would, but the plat is something everybody looks at. If they truly want to keep fences out of there, we are fine with that; we just want to avoid tough situations where people can only enclose a tiny portion of the lot. (*Shows examples*)

Chairman Elkins: Any other thoughts?

MXD and F.A.R.

Mr. Klein: We have just started working on this one. Currently, in MXD, the F.A.R. is calculated using the full square footage amount of commercial space: office and retail and a 25% discount of the square footage of residential space divided by the square footage of the entire site, including any dedicated right-of-way. A discount of up to a

total of 55% of the square footage of residential space may be recommended by staff and will be subject to Governing Body approval. There really isn't much guidance if someone wants a 55% discount on the residential to lower the F.A.R. and allow more square footage on the site. Staff may not feel that they've done things that are really called for in MXD. We have to give them a base of 25%, but there are not criteria to justify giving them anything between 25% and 55%. This is an example. Staff is trying to brainstorm how to do it and came up with a menu of things that would be required, such as spatial integration of residential buildings with proximity and orientation to commercial uses. We are trying to go back to what was in in the 135th Street Community Plan. Another element could be vertical integration of residential and commercial. It would be nice to have some residential above the retail or office. Currently, multi-family is required to have one totally enclosed parking space and one surface. If both were either underground or totally enclosed in a parking garage, it would save space. Community space could be centrally located. We saw with the project at 135th and Kenneth and the open space in the corner. This is an effort to integrate the open space and gathering areas. One of the four earns 25%; two of the four earns 35%; three of the four earns 45%; four of the four earns 55%. This is just an example. I'm sure there are many different ways to do it. We wanted to get input from the Planning Commission as far as what is important.

Comm. Hoyt: The logic behind offering the discount is encouraging these denser applications, which seems reasonable. Would you say these are the only four criteria?

Mr. Klein: Oh, no.

Mr. Coleman: We divided it into a bunch of different categories.

Comm. Hoyt: Are there some that are particularly more desirable from the city's standpoint? It could have tiers of some sort with some carrying more weight.

Mr. Klein: That's a good point.

Comm. Hoyt: Then maybe there are a few that are nice but not as impactful, and they would receive a smaller discount. If you could somehow prioritize that, it could work.

Mr. Klein: Those are just examples. We'd like to hear what you want to offer as the biggest carrot.

Comm. Hoyt: I see two things as the sticking points in previous discussions: vertical integration and this difficult-to-define term, "sense of place." To some extent, meaningful sense of place could be the most important one of all. If there is community space that is thematically executed throughout the development, it seems to be maybe the most important criterion to getting some activity excitement going on. The vertical integration seems to be a desirable piece from a consumer standpoint and also from the city's perspective.

Comm. Stevens: Right now, the 25% is a given?

Mr. Klein: Yes.

Comm. Hoyt: Back to sense of place, I have something to consider in the future. I think it's hard for applicants to figure out what we mean by that to some extent. We can't tell you what it is, but we'll know it when we see it.

Mr. Coleman: It's a little bit like that.

Comm. Hoyt: Has the city had discussions as to what the city is trying to cultivate with this criterion? Is there any way of even defining it or state what it should incorporate? We haven't talked about this a lot with applicants, but they seem to have one idea of what it means, and it doesn't always line up with ours.

Mr. Coleman: We can define criteria that lead to that. Ultimately, it might not be successful. We could include a list including spatial parameters of the space, social interaction potential, business aspects, materials, and so on.

Comm. Hoyt: Some of these articles we read about it being where people come when they live and work together, focusing on organic gardening or something. Maybe each mixed-use development along that corridor will have its own sense of place, but I would think there might be some real value to having some serious discussion with all different stakeholders in the community as to what we want it to be.

Mr. Klein: Sometimes, the sense of place is unique to that particular development.

Comm. Hoyt: Maybe that's what we want to do - allow for many different types.

Mr. Klein: It may embrace the Oregon Trail or history or whatever is unique to the area. We used to see the strip malls in the '70s, and everyone started replicating the pretty strip malls, and they pretty much looked the same.

Comm. Hoyt: I think it's much easier in communities where there is an obvious feature. I was recently in St. Petersburg, and we were in the old section. The sense of place is being on the waterway. They have fabulous mixed use. It was awe-inspiring to see the vertical integration, the parking garages. They start with a huge asset, but then they also do other things, too.

Mr. Klein: Not all projects we see have a big stand of trees in natural areas. I think they could probably use that to their advantage in the 135th Street project and separate themselves out.

Chairman Elkins: The challenge is that it all remains very subjective in how to apply the standards from one development to the next.

Comm. Belzer: Maybe that's why this menu makes sense. Then, a developer could pick and choose how to make it work. We have to also make it so that it is attainable for applicants.

Comm. Hoyt: It would maybe help applicants if you could come up with a prioritization of these. Then, they would know what you're really looking for.

Mr. Klein: I like the idea of tiering them because some do have a bigger bang.

Chairman Elkins: I think it would make sense to do it in another work session. I'd love for you guys to come back with a whole list of things like these four that maybe all contribute to the sense of place and have a robust discussion amongst ourselves in a work session to talk about those that you think are effective.

Mr. Klein: That's great. This meeting was meant to just introduce the topic. The next topic will be the same.

Comm. Belzer: I think we should consider including developers in this conversation because we seem to not always be on the same page, and they tend to have different views of what would be successful. Maybe it would be interesting to hear from their perspective so that we could come to an agreement.

Chairman Elkins: These work sessions are always available. On occasion, we've had developers come.

Comm. Hoyt: If you come up with this list and put your stamp of approval on the priorities, developers certainly couldn't say they weren't informed. If you specify that community space also needs to be centrally located with multiple uses and social interaction or whatever bells and whistles you want to include with that, they could refer to that.

Mr. Klein: I thought Kip had a good point that many developers were at the community meetings, and they brought those points up. Unfortunately, we didn't hear as much discussion.

Chairman Elkins: All we can do is invite them. I agree with Kip. I've been to some of those meetings when they sat on their hands, and then they come to the meeting and are dissatisfied and unhappy about how the 135th Street plan is laid out.

Comm. Belzer: Maybe they didn't feel comfortable asserting themselves in that forum.

Chairman Elkins: Those forums are more open than these are, but it is what it is. We can't complain; we just give them the opportunity to participate.

Comm. Hoyt: I think the overall impetus to make it clearer how one gets from 25% to 55% is great still.

Mr. Klein: The city administrator indicated he wanted to see something to make it clearer.

Chairman Elkins: What is the permitted F.A.R. for MXD?

Mr. Klein: It has a limitation of .25 as the base. The Deviations section of the LDO offers F.A.R. bonusing. That has seven different categories. Once it gets up to .45, it requires a super majority vote by the Governing Body.

Chairman Elkins: That's a lot of open space. For any particular development, less than half of the total development can have a building on it.

Mr. Klein: That is correct.

Chairman Elkins: It forces the vertical development.

Mr. Klein: You have to remember that parking doesn't count against the F.A.R, so surface parking eats up open space. It is also good that we don't count structured parking against them, either. That would encourage them to have structured parking.

Chairman Elkins: So, structure parking goes in the denominator and not the numerator.

Mr. Klein: The denominator is land area, and the numerator is gross building area.

Mr. Coleman: I think a lot of the criteria out of the plan need to be looked at with a fine-toothed comb more like this. This would be a start.

Chairman Elkins: I think that's a good idea. Does anyone else have comments or thoughts?

Lawful Nonconformities

Mr. Klein: Currently, we may have an older development with a use that is allowed to be there, but at the time that it was developed, there were no landscaping requirements, and the parking requirements were different. They were allowed to build their parking with practically no setbacks. Now, that development wants to upgrade and expand. Currently, the way the LDO reads, if the property owner adds more square footage of any size, the development must come into conformance. That goes for landscaping, lighting, and setbacks. This creates a financial hardship for some, and site restrictions may even prevent these changes from happening altogether. The LDO reads, "When an otherwise lawful, existing use is permitted generally in any given zoning district but where, due to the adoption of this ordinance, required off-street parking, paving, parking area, landscaping, screening, and similar regulations are not provided, such deficiencies attributable to the use shall be considered lawful." That says that they are fine as long as they don't change it. It continues, "Nonconforming characteristics of such use: Said

deficiencies shall be brought into conformance when use or structure is expanded, enlarged, or the intensity is increased, even though the use itself is permitted generally.” That is where we are struggling a little bit. We have a site that wants to add a vestibule to their front door. Per the ordinance, they are supposed to bring everything up to standard, which can be quite an undertaking. I think it is missing a threshold for when this would kick in. Can they increase 5% of their total and still not have this kick in? That would allow some of the smaller expansions, or we could keep it the way it is. Ultimately, the goal is that the city does want these properties to improve. It is not just simply to allow them to exist in perpetuity and keep adding without meeting these requirements. The city would like to see the ordinances followed, but maybe it could be a situation where they could do a small expansion without triggering it, or they could perhaps phase those other improvements over time. We don’t have an example; we are looking to the Planning Commission for input. Overland Park has the same kind of language, but they can get a permit approved by the Governing Body that allows them not to meet everything.

Mr. Coleman: They really don’t have any criteria for that, though.

Comm. Hoyt: Is there any way of connecting this back to whatever improvement it is that they’re doing in the sense that, if it really is putting in a vestibule like your example, conceivably, once they build the new vestibule, lights and landscaping may be affected.

Mr. Klein: Are you saying just limit the requirements to the contiguous area?

Comm. Hoyt: Yes; it seems that it would be a reasonable and minimalist approach. If an improvement is next to something that is nonconforming, it would make sense to bring those nearby areas into conformance. Then, the problem with that is if the rest of the property is a gross mismatch to that, it is not great, either.

Mr. Klein: Are you saying if they’re in that 5%, they would make the improvement right around it, but if it were more than that, it would be the whole site? The other scenario is adding 50,000 square feet, which is still under the F.A.R. allowed on the site. The parking, light poles, and landscaping don’t meet current requirement. Do you have thoughts on this type of situation?

Comm. Hoyt: In other words, at what point does the change they are making become so significant that it warrants looking at the entire site?

Comm. Belzer: I think US Toy is a good example. It’s a very large building, and it is a mess over there. If the US Toy building were to have an indoor entertainment business coming in, they would be faced with limited parking and infrastructure issues.

Mr. Coleman: They can’t do everything. There is no way to bring the site entirely up to current code. The question would be at what point and how much can they do? Do they do nothing?

Mr. Klein: We've had people talk to us and ask if they could phase the improvements. We are concerned that there is no guarantee they would come back for Phases 2 and 3.

Comm. Block: Could you make an amount equal to a percentage of the project toward conformance?

Mr. Coleman: That could work, similar to the ADA requirements.

Mr. Klein: Are there certain things that you would prefer for the conformity priorities?

Chairman Elkins: I wonder if we should prioritize them just like we talked about giving credit to the F.A.R. Would it not vary considerably by site, though?

Mr. Klein: It definitely could.

Comm. Hoyt: On one site, the landscaping might not be all that bad, but the lights might be terrible. The other might be the other way around. I think somehow connecting this to the scope of the project itself makes a lot of sense because, as you said before, one of the big objectives here is to incentivize property owners to make improvements and not to just let something rot. If it seems like an onerous thing we're asking them to do, they'll let it rot. It becomes a phased-in process then, basically.

Comm. Block: I'd rather come up with something more incentivized. On some of the older property, we need to incentivize people to make the changes.

Chairman Elkins: Is this a representative list, or is this a pretty complete list of ways in which nonconformities exist?

Mr. Klein: The area at 103rd and State Line is pretty extreme in that it meets almost nothing as far as lot area, open space, lighting, and parking. With the other ones, the landscaping ordinance and open space ordinances have changed dramatically. Some of them out there just don't have much green area and have no place to put open space. Sometimes, that makes a big impact as far as the public view of it.

Chairman Elkins: Does F.A.R. come into play?

Mr. Klein: A lot seem to be under the maximum. The parking ratio used to be a minimum of 5 per 1,000. When some would come in with a request for 12 per 1,000, staff would review it and allow it because it was more than 5 per 1,000. To a certain extent, it is going to be very individual to each site. Some could have huge light poles with adjacent residential, and maybe that would be the feature to focus on. It seems landscaping have a bang for its buck as far as curb appeal. If parking is tight, it may need to be addressed as well.

Chairman Elkins: I like the idea of a percent of the improvement, but would we want to leave the selection of the corrections to the developer, or is that something we would want to dictate to them?

Mr. Coleman: I think staff would evaluate it, and we would probably make a recommendation to you on what we think. Using the lighting as an example, if it is creating a nuisance to an adjacent residential neighborhood, we might want to make that a priority.

Comm. Coleman: Every development is going to be different, so it could be very subjective. What we deem and what the developer deems as a need to address first. They may go the cheap route.

Chairman Elkins: I guess I'm asking who should prevail because I think almost always, it's going to be a different developer.

Comm. Coleman: Staff should always prevail over the developer because the developer will probably choose the less expensive option. I don't know why this is in my head, but I wonder if this topic came up in one of the sessions. If not, it should. This seems ripe for a session. I think it did come up last year, but I can't be sure. That may be something to look into. They APA may already have covered this with a good, viable suggestion.

Mr. Klein: That's true. They have digitized a lot of their PAS reports, so it makes it easier to scan through them and do a word search.

Comm. Hoyt: These language changes that might eventually be made would exist where?

Mr. Klein: In this case, it would primarily be in this section to address the characteristics of use. This is a much larger section that gets into a use that is nonconforming, This is one we run into more than the rest of them.

Comm. Hoyt: Theoretically, you might include a sentence or two in your changes. Let's say it's a formula based on improvements being made to the site, and the applicant would work in conjunction with staff to create a plan for it.

Mr. Klein: Would you want a certain threshold? If they are expanding in phases, would you have a percentage at which they would need to come into full compliance?

Comm. Hoyt: Personally, I would think there would be a critical mass point, but I don't know what that would be. The changes would be so significant that a piecemeal approach to bringing this into compliance wouldn't make sense, but I don't really know what the magic number would be.

Mr. Klein: We'll try to do some more research as far as the planning literature. We'll also see what other cities are doing as well.

Chairman Elkins: I'll be interested to see how you draft that up. Richard, does Kansas City, Missouri have anything in this space? I would think they would have more issues with this than the Kansas suburbs would.

Mr. Coleman: They're a bit more tolerant or whatever you want to call it.

Comm. Coleman: We'll maybe need to find other suburbs in the country that mirror the age of Leawood.

Mr. Klein: That was pretty much all that we have. The first couple were almost housekeeping.

Chairman Elkins: One addition I would like to throw out on the table to see if people want to talk about is in the mixed-use context, we see a number of instances where the applicant is proposing mixed use, but it is fairly obvious that one of the uses is more attractive than the other. This goes back to before anyone else was on the commission, but I know there was a useful tool for Park Place. There was a development agreement that had limitations on how much of the commercial space could be utilized without building some of the residential portions. I know we raised this with a developer but got huge pushback, which gave me pause for concern as to whether or not we've put enough enforcement mechanisms into our mixed use to assure that we'll actually get the correct ratios, especially with market fluctuations. Developers could then ask for alterations in the ratios based on the market. What do you think about requiring more in the way of development plans when it comes to mixed use? Is that overregulating? Should we let the developers allow the market to dictate what goes in?

Mr. Klein: That is typically what we hear from the development community. I think the risk is the developers like to do what is hot at the time. For mixed use, it doesn't seem like that works very well. What we're trying to do is create a mix of uses that integrated and walkable. When they just want to do that one section, they typically will build residential in one area and not really know what they will put in the other areas. No matter what, it will be separated and isolated. Unless it requires something to be developed together with a mix of uses, there is a chance that it won't. Parkway Plaza is a good example. It is mixed use, but all the residential is behind 134th Street, and all the commercial is separate. The residential hasn't developed, and there isn't really a connection.

Chairman Elkins: It seems like we need to find a way to incent the developer on both sides. With Park Place, did you feel that was an effective regulation that effectively forced them to build the residential before they built more commercial?

Mr. Klein: I don't remember if it was 20% of the commercial could be constructed before residential. I think there was actually pushback because they kept saying there was no market for the residential. The city did keep pushing based on the agreement. Eventually, it seemed like the market came alongside, but I don't think the residential would have come nearly as fast without the city pushing.

Chairman Elkins: And being able to force them to come back and make the change. I think we modified it toward the end.

Mr. Klein: I think we did because they went beyond the 20%, and the city kept bringing that forward to them.

Chairman Elkins: What do the other commissioners think about that as a tool that could be used? Is it overregulation? I'm not sure where I stand on it. I feel like it was effective at Park Place, and I have concern with other developments that don't have that same level of oversight. I'm sure developers will resist having those limitations put on them.

Comm. Hoyt: When they come with a plan, do they usually come with a time frame of when they say they're going to be doing these things?

Mr. Klein: We ask them for phasing.

Chairman Elkins: But there is nothing that requires them to do Phase 2 or Phase 3?

Mr. Klein: Correct; they can put it on the plan and say when they expect the phases to occur, but until it actually happens, I don't know that we have much leverage?

Comm. Hoyt: What did the Park Place plan have that addressed this?

Mr. Klein: No more than a certain percentage of the square footage of the commercial use could be constructed until residential has started.

Chairman Elkins: It stepped up along the way, too.

Comm. Coleman: I don't think it's heavy-handed at all because the whole point is we want mixed use to flourish together. I don't have a problem with it. I think it's in the city's best interest instead of just that they'll do the nursing home first and then maybe get to the other part. I can see that coming in on some of the developments we've had where it is just a drawing with no intention to ever get there.

Chairman Elkins: They wouldn't say that out loud.

Comm. Coleman: They wouldn't say it out loud, but it could be their strategy just to appease us and appease Governing Body to get it through. Then, they will do the part that makes the most money for them and sit back and rest.

Mr. Klein: It does seem like some of the development community takes mixed use to mean that they have retail, office, and residential that aren't really integrated.

Chairman Elkins: It kind of goes to that sense of place.

Comm. Hoyt: If they had that vertical integration, it would be happening together because a building would be built with people living on top of it.

Mr. Klein: In the 135th Street Plan, they gave us 1-2 buildings like that, but then the rest was not integrated.

Chairman Elkins: Giving all due deference to the developer, even after the good faith effort, there is one use that makes sense to them but the others don't make economic sense. They would say that we shouldn't force them to build something that is going to be a loser.

Mr. Klein: That is what they said this last time.

Chairman Elkins: They'll build it if the market dictates it, but who knows when that will be?

Comm. Coleman: The developers or attorneys come in and say that all this land is sitting vacant. I'm fine with it sitting vacant. I know they want to make money, but I want to put the right stuff in there. I don't want something just because the land is vacant and we have to build on it. Look at Overland Park. I don't want that here in Leawood. I want something that is going to be viable for the next 100 years for my children and my children's children. I don't think they have that in Overland Park. It's just that they had land and wanted to make tax revenue on it. I see it time and time again with what they approve. We shouldn't be in a rush to build something because once it's built, we can't tear it down.

Chairman Elkins: And it's a vanishing commodity.

Comm. Coleman: I think we should go slow, make sure we have the right stuff in there, and adhere to the plan. If the plan isn't viable, let's go back and look at the plan.

Chairman Elkins: I just wanted to get it out there. It's really a matter of phasing and how to enforce or incent it.

Comm. Hoyt: That's been mentioned before that even if it doesn't get built, we're still okay with the percentages. I think that is another way that we can exert some influence on it. I never thought about it until you started raising those questions.

Chairman Elkins: Anything else for the good of the order?

Mr. Klein: I have one more situation to discuss. Currently, the LDO requires any tree 12 inches or larger to be replaced on a 1-1 per caliper inch basis if a site is being developed. There are a couple lots in Leawood with large masses of trees. The landscaping requirements for Leawood are fairly robust. There are certain situations where they may not have enough room to put all the trees on the site. They are tearing down an asset by removing the larger trees. There has been talk of a tree bank. If all the trees don't fit on

the site, the developer could pay into a fund that would be used to plant those trees elsewhere in the city. Staff has been considering that as well. We might be coming to discuss that more with you. We don't want to tell these property owners that they can't develop their site or that they can only do a little building because of the trees. On the other hand, it would be great if we could get them to save as many of those signature trees as possible. That is part of the reason that the size of 12 inches or larger was used. Is that something the commission would like us to explore further?

Chairman Elkins: I think we are all in favor of this. It is hard. I know there are some lots south of 143rd Street where there is a huge tree in the middle of the lot. The only way to keep it would be to build the house around it. It's a cool idea, but I'm sure it has some challenges. It's sad to lose those big trees.

Mr. Klein: The ordinance was written to try to preserve some of these significant trees, but it seems that more often than not, the way the site is laid out, they would prefer to take them out.

Chairman Elkins: I wonder how hard they try sometimes. I wouldn't want to make it too easy for them to just buy their way out of saving the tree.

Mr. Klein: Maybe there was another caliper that we could consider, such as 40 inches.

Comm. Stevens: It seems like that is done in other cities.

Chairman Elkins: Anything else? When is our next meeting?

Mr. Klein: It is on February 26th.

MEETING ADJOURNED