City of Leawood
Planning Commission Meeting
January 28, 2020
Dinner Session – 5:30 p.m. – No Discussion of Items
Leawood City Hall – Main Conference Room
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160

CALL TO ORDER/ROLL CALL: McGurren, Hunter, Belzer, Hoyt, Elkins, Coleman, Block, Stevens, and Peterson.

APPROVAL OF THE AGENDA

A motion to approve the agenda was made by Coleman; seconded by Hoyt. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

APPROVAL OF MINUTES: Approval of the minutes from the November 26, 2019 Planning Commission meeting.

Comm. Coleman: On Page 33, Ms. Knight should be in place of Ms. Bennett.

Comm. Peterson: On Page 11, the first paragraph shows Comm. Peterson, but it wasn't me. Also, beginning on Page 19 and carrying through the rest of the document, it should be "Petersen" and not "Peterson."

A motion to approve the minutes from the November 26, 2019 Planning Commission meeting as amended was made by Coleman; seconded by Belzer. Motion carried with a unanimous vote of 7-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Peterson.

CONTINUED TO THE FEBRUARY 25, 2020 PLANNING COMMISSION MEETING: CASE 01-20 – CORNERSTONE OF LEAWOOD – ONSPRING HEADQUARTERS – Request for approval of a Preliminary Plan, located south of 135th Street and east of Nall Avenue. **PUBLIC HEARING**

CONSENT AGENDA:
CASE 02-20 – LEAWOOD ESTATES – LOT 9 & PARTIAL LOT 8 – RESIDENTIAL EMERGENCY GENERATOR – Request for approval of a Final Landscape Plan, located north of 95th Street and east of High Drive.

CASE 03-20 – HALLBROOK EAST VILLAGE – SECOND PLAT – Request for approval of a Revised Final Plat, located south of 112TH Street and west of State Line Road.

CASE 05-20 – STONE LEDGE SUBDIVISION – SECOND PLAT – Request for approval of a Revised Final Plat, located south of 154th Street and east of Nall Avenue.

CASE 07-20 – PARK PLACE – ENGEL & VOLKERS – Request for approval of a Final Plan for Changes to the Façade of a Tenant Space, located north of 117th Street and east of Nall Avenue.

Comm. Coleman: I don't think it's necessary to pull the case, but I have a question on Case 03-20. What is the reason for going from three lots to two lots?

Mr. Coleman: The potential owners want a larger lot for their house.

Comm. Peterson: I have a related question. When three lots are rezoned as two lots, are the lots renumbered with Johnson County Records?

Mr. Coleman: They will be renumbered.

Chairman Elkins: Thank you. Are there other questions? If not, I'll entertain a motion.

A motion to approve the Consent Agenda was made by Hoyt; seconded by Stevens. Motion carried with a unanimous vote of 7-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Peterson.

NEW BUSINESS:
CASE 04-20 – 135 STREET AND KENNETH – MIXED USE AND MEDIUM DENSITY RESIDENTIAL - Request for approval of a Revised Preliminary Plan, located south of 135th Street and west of Kenneth Road. **PUBLIC HEARING**

Staff Presentation:
City Planner Ricky Sanchez made the following presentation:

Mr. Sanchez: This is Case 04-20 – 135th Street and Kenneth Road – Mixed Use and Medium Density Residential – request for approval of a Revised Preliminary Plan for property located south of 135th Street and west of Kenneth Road. Staff would like to make a change to Stipulation No. 1A. It should read, "The project is limited to the following: 410,200 square feet of construction on 18.25 acres for an F.A.R. (Floor Area Ratio) of 0.43 with a 55% discount for residential within the MX-D zoned portion of the development. That shall meet the requirements of the LDO (Leawood Development Ordinance). This matches what was previously approved Preliminary Plan.

With this case, the applicant is proposing a couple different changes from the previously approved Preliminary Plan. The first has to do with the phasing of the project. Previously, all the residential units were to be constructed in the first phase, including the

units south of 137th Street and the units north of 137th Street on the west side. The proposed change is to have the duplex and triplex units south of 137th Street be constructed first with a common area at the intersection of High Drive and 137th in a second phase with the third phase consisting of the residential units north of 137th Street. The second proposed change is to the stipulations previously agreed upon by staff. You have a table on the dais to show you the proposed changes. These are newer than what is in the Staff Report. These stipulations the applicant would like deleted or modified have to do with the applicant not wanting to construct the public improvements on 135th Street, including the construction of a third lane and burial of power and utility lines. Multiple developments along the 135th Street Corridor have equally conformed to these regulations to construct or pay into escrow for the construction of public improvements along street frontages as the construction progresses. This includes developments such as Market Square and Plaza Pointe. The developments that have three lanes of traffic along 135th Street have already done the projects. Staff is asking for this process to continue what has already occurred with those developments. The applicant has verified that no other changes are being made to the previously approved plan, including the construction of 137th Street from Chadwick to Kenneth, the Mixed-use portion facing 135th Street, and the number of residential units in the whole design of the project. The only changes are the stipulations and phasing. Staff recommends denial of Case 04-20 in order to keep the previously approved Preliminary Plan in effect. I am happy to answer any questions.

Chairman Elkins: Thank you. Questions for Mr. Sanchez?

Comm. Hoyt: Is the primary nature of staff's objections the public improvement and not the phasing?

Mr. Sanchez: That is correct. We would want those constructed in the first phase.

Comm. Hoyt: It's not the phasing itself that is the issue; it is their desire to delay some of the public improvements.

Mr. Sanchez: That is the main issue; however, staff was happy with what was previously submitted. We would like to revert back to that.

Comm. Peterson: I have a question related to the position of the third lane eastbound. I assume it's going from Chadwick to Kenneth or State Line.

Mr. Ley: The third lane is constructed along their frontage of the development.

Comm. Peterson: In addition to that, there will be turn lanes, correct?

Mr. Ley: Correct.

Comm. Block: Could you remind me of the history of the homes north of 137th Street? I didn't think homes would be in the very first iteration, and they were added. Now, they

are in a later phase. Didn't they get some kind of variance to include those homes on the north side of 137th Street?

Mr. Sanchez: I believe those have always been shown on the plans as being part of the first phase. There is a mixed-use portion that includes apartments, retail, and offices. Those have always been shown in a later phase. They want the part that is north of 137th Street to be in its own phase.

Comm. Block: On the Public Works document, it refers to stipulations highlighted in bold print, but I didn't see anything highlighted in bold. I couldn't decipher what was new and what was old.

Comm. Hoyt: If I'm not mistaken, the handout has some of that clarified.

Mr. Ley: The stipulations were changed from the original plan. We updated the stipulations to match what was approved at City Council. There were stormwater issues we had on the prior approved plan. There was a stipulation that stated the developer would work with staff to create some amenities. Those were updated to reflect what was actually approved.

Comm. Stevens: Would it help if you point out the changes?

Mr. Sanchez: On the handout, you'll see that Stipulation No. 4 stayed the same, but the applicant would like to delete it. No. 7 has a change with the word "approved" in the last line. No. 8 has a sentence added before, "however" from the Staff Report. No. 32 appears to be the same as the Staff Report. No. 2(C)I refers to the Public Works memo and remained the same. In that same section, wording changed but seems to have a lot of the same language. No. 2(C)3 changed to match what was in the new Public Works memo. They are requesting to change the timing. The current stipulation requires the fee to be paid prior to the city releasing the Final Plat; the proposal is to require the fee prior to the city releasing the Final Plat for Tracts G and H. No. 7 was previously deleted, and the applicant would like to delete it on this one as well. They added text to it, and it reads the same as what we previously included. No. 19 is a new stipulation that was not in the previous plan, and it was not in the Staff Report. No. 20 was the previous No. 13, and it has the same language that it had before; however, they want to phase all the public improvements. I believe the applicant will be able to go more in depth with the stipulations they wish to change.

Comm. Coleman: Mr. Sanchez, I don't recall an applicant asking for some of these things to be changed, either in the preliminary part of our hearing or after the fact. I assume this is not normal. Could staff comment on that?

Mr. Sanchez: Staff did research on the previous developments along 137th Street. Similar language was either converted to them or part of the stipulations. To my knowledge, none of those developments had any pushback, or they did not communicate that to staff. We

had these stipulations in the first plan, and at Final Plan, some of them went forward with that as well. This is the applicant wanting to come back and change the stipulations.

Chairman Elkins: With respect to the phasing of the residential areas, does staff oppose that? You said you would prefer the original, but when push comes to shove, is staff opposed to changing the phasing?

Mr. Sanchez: I don't believe we would be opposed to phasing the residential. The applicant may be able to talk about it more. If it is all one phase, they would have to construct all the public improvements, which would also mean creating the road north of 137th Street into the separate cul de sac for those residential units. I'm assuming they would like to push that off until they are ready to do that other phase.

Chairman Elkins: I don't think I want to ask you to go through each of the stipulation modifications again, but I'm curious as to staff's position with respect to the modifications. It's obvious to me that staff is opposed to deleting No. 4. Beyond that, can you highlight which of the modifications staff opposes?

Mr. Sanchez: Would be okay with changing the wording on No. 7.

Comm. Hoyt: Maybe I'm misreading this, but I thought the bigger issue with No. 7 is that the current stipulation says that it will be under a single set of construction plans, and the modification is that it's under a separate set of plans. That seems to be the bigger issue.

Mr. Coleman: I think staff is okay with phasing the development project as long as the public improvements that were in the original approval are associated with those phases in a reasonable manner. Of course, the additional villas north of 137th are in the third phase, so that street would have to be built at that time. The other mixed-use developments on 135th Street should have the third lane, burial of power lines, and other public improvements done along with it. We would agree that we don't necessarily want an extra third lane when it is not necessary. There is no time frame associated with any of the phasing, so we don't know if the land on 135th Street will be developed in two years or ten years. We're amenable to having the improvements phased, but it is the city's policy that the improvements are made by the developer and not the city.

Comm. Hoyt: You're okay with their sense of timing.

Chairman Elkins: I want to hone down on the issues of contention, then. With respect to the other requested modifications to the stipulations, are there others that staff stands opposed to? I just don't want to have Mr. Petersen have to go through them all if there are some that you are agreeable to.

Mr. Sanchez: Regarding No. 8, we would want the developer to be responsible for the burial of utilities on 135th Street.

Mr. Coleman: We would want No. 32 to stand as it is. We also want No. 2(C)I to stand as it is.

Mr. Ley: Regarding 2(C)II, we want to make sure they understand that they would still be responsible for the third lane if they construct High Drive with Phase One. It just depends on when High Drive would be constructed.

Chairman Elkins: How about No. 2(C)III?

Mr. Ley: The concern Public Works has with this one is if they construct the High Drive intersection in the roadway and the development on the north side comes in prior to Phase Four or Phase Five, traffic signals could be warranted and we would not have the 50% match for the signal. We would still want to collect the escrow up front if they're going to construct High Drive with Phase One.

Chairman Elkins: No. 7?

Mr. Coleman: We would want it to remain as it is. We don't want to delete or change it.

Chairman Elkins: No. 19?

Mr. Ley: We're okay with modifying it to read how they wrote it to match the phases.

Chairman Elkins: And No. 20?

Mr. Ley: We would be okay with the proposed modification.

Chairman Elkins: We've narrowed the issues a bit. What I understand is there is not agreement with respect to Nos. 4, 7, 8, 32, Public Works Memo Nos. 2(C)I, 2(C)II, and 2(C)III. With that, I would invite the applicant to step forward.

Applicant Presentation:
John Petersen, Polsinelli Law Firm, 6201 College Boulevard, appeared before the Planning Commission and made the following comments:

Mr. Petersen: We're grateful to be here with what we feel is a great project for the city. The most important people in the room are Richard and Rick Lashbrook, principals of Leawood 135, LLC. The give and take helped quite a bit so we can zero in on the issues before us, but I feel a few prefatory comments might help. Some of you were here in December, 2018 when we brought this project before you. It is a vertical and horizontal mixed-use project. It is approximately a 56-acre tract that is intended to be developed with a variety of uses, including attached villas to the south along 137th and then two pods of more vertical mixed-use product with residential over retail, office, and senior living adjacent to 135th Street. The plan before you is the exact plan. As time has gone on, the developer has been resolute in confirming the intent to develop the plan. The dream was to move the entire development forward in a sequential fashion. The

stipulations we're going to talk about contemplated that. For the record, we agreed to every stipulation under consideration this evening with the idea that we had a plan in front of use that we would execute if the market cooperated. I can speak to the 135th Street Corridor and people who have made the wrong decision, which is to put tens of millions of dollars into horizontal infrastructure, hoping that the development would come in and bring a return on investment. I would respectfully ask you to take note that the 135th Street Corridor, despite tens of millions of dollars of additional lanes, reverse frontage roads, and sewage systems, remains essentially undeveloped. These developers are serious about developing in the City of Leawood, but they're not going to make that mistake. To pull the vertical pieces into position, they needed partners with expertise and committed capital. It's fair to say every single well-known mixed-use developer was approached. Every alternative was considered, and there is not a taker for those front pieces. In large part, it is because of the heavy burden of infrastructure costs. We're here today to do two things that staff articulated well. One involves phasing in the different components of the attached villa project, largely due to financing and timing. Banks will finance when they see product coming behind. There are certain banks that didn't provide that due diligence, which is why several pieces of property along 135th Street have now gone through four changes of hands. We're trying to avoid that. Additionally, there is phasing of public infrastructure. We're going to ask that some of it be eliminated in its entirety, but also to modify some elements to not require the infrastructure to be added when we start the first villa, which is how the stipulation reads today. I understand that we are asking the Planning Commission to make decisions about policy of financing public streets and burying power lines. I understand one might say it is not in the purview of the Planning Commission but rather the Governing Body, but there is a process. The only way to change stipulations is to come through this process to reach the Governing Body. I'm not saying we're wasting your time because your input is valuable.

(Shows plan on monitor) The plan was always to have villas north of 137th Street, which results in three phases. The amenity area sits where High Drive ends coming in off 135th Street. We're now proposing five phases. Phase One would be villas south of 137th; Phase Two would be the amenity; Phase Three is the balance of the villa product, designed to allow us to phase in and not put the street in until we're ready for that phase; Phase Four is the pod west of High Drive; Phase Five is the mixed-use portion east of High Drive.

Moving on to stipulations, I'd like to give you some financial comparisons to explain why we are proposing the changes. No. 4 is one we would like deleted. It indicates that we would build a third lane on 135th Street. We would still be responsible for any deceleration and right-turn lanes both at High Drive and at the right-in access on the most eastern mixed-use pod, but we would like to be released from the responsibility to build that third lane. I'll speak later about the cost, the traffic report, and the purpose of that third lane. Staff alluded to the fact that we would be building it for no reason at this point because it goes nowhere until Missouri does something. No. 7 is one we have staff support on. This breaks away from the idea that when construction begins on the villas, all the public improvements need to be designed at the same time. We understand that we can phase some of those improvements. No. 8 addresses power lines and is a similar situation. We ask that it be removed and modified to the extent that it is talking about power lines that run immediately adjacent to 135th Street and not any power lines that are

internal or any electrical service provided internal to the site. We're not asking to be relieved from that responsibility, but we're asking to be relieved from the responsibility to bury the existing power lines along 135th Street. No. 32 says that there are other requirements in the Public Works memo, which is the normal process for Leawood. We're not asking to eliminate it; we're just asking that it be shored up to any changes we do in the Public Works memo, which includes re-dating the memo. Moving to the Public Works memo and No. 2(C)I, we're asking that it be deleted because it is another bite at the apple on the additional lane along 135th Street. No. 2(C)II goes a bit to timing. We understand we will do the right turn lanes at High Drive and do the right turn lanes in the future when the eastern pad is developed. We are asking for a modification that preserves the responsibility for us to do our deceleration and turn lanes at those identified intersections but eliminating the overall lane widening or additional lane construction for 135th. No. 2(C)III goes to the traffic signal. Right now, we would be required to pay that escrow in with the villas. High Drive will be built with this portion of the project, as will 137th. I don't think anyone anticipates that there will be a need for signalization with the addition of these villas. This is based on a need. The stipulation could be fashioned that would require payment when the signal is warranted. It could be 5-6 years, so to ask for payment now is a financial tug at the development. No. 7 refers to the burial of power lines, and we want to be sure we're being consistent and we're talking about the KCP&L lines that currently exist along 135th, and we're asking for relief from that obligation. Any requirements for any other electrical service in the interior of our site, including 137th Street, would not be below ground. I think we have agreement on Nos. 19 and 20, which goes to phasing and doing the public improvements when they are needed. That is a very quick overview of what you had from staff. I'd like to speak to why we're coming back after we have agreed to a plan. Committed development costs include construction of 137th Street from Chadwick to Kenneth Road, High Drive, cul de sac streets, signalized intersection, and eastbound right turn lanes. The deceleration and right-turn lanes would be done immediately and are a large portion of the overall costs of that additional southern lane on 135th Street because all the utilities need to be relocated. The issues we're talking about in the stipulations are over $7.5 million. To add the burial of power lines increases that number by $1,650,000 and another $450,000 to finish the widening of the third lane. It's a showstopper, even to those who are still in discussions about bringing multi-family living over retail. For the record, we have other impact fees that relate to traffic. We're not asking for relief from the 135th Street Corridor Impact Fee, from the Public Art Impact Fee, or the South Leawood Transportation Impact Fee. That approaches another $500,000. I go back to the traffic study to put the third lane in some context. This was studied in a traffic report with a 2040 projection. Until Missouri builds a third lane, this lane would go nowhere.

To summarize, our request is to approve the new phasing plan in terms of the northern portion of the villas. With each stipulation, whether it be from the Planning Department or Public Works, we are seeking the relief we requested. With that, I'm happy to answer any questions.

Chairman Elkins: Thank you. Questions for Mr. Petersen?

Comm. Hoyt: Could you go back to the slide that showed the costs that you expect to incur if the third lane were added? (*slide displayed)* These are isolated costs. What is the total cost of the entire project? I'm trying to determine the scope of this portion to the entire project.

Mr. Petersen: It's probably a relatively small percentage. Off the top of my head, I'm going to guess it's 2%. That's unfortunately not the way a financing structure is put together. The infrastructure doesn't produce income.

Comm. Hoyt: You also said this isn't the total cost of all the infrastructure changes you are making. What is the total of all the infrastructure changes?

Mr. Petersen: $2.1 million.

Comm. Hoyt: Didn't you say the deceleration lanes are included in the $7.5 million?

Mr. Petersen: To restate and emphasize, these costs are the costs attributed to the stipulations we're discussing. There are numerous other costs.

Comm. Hoyt: That's what I'm trying to figure out. I'd like to know all those other ones that don't generate income but are costs nevertheless.

Mr. Petersen: I wouldn't know that off the top of my head. I'll let them figure it.

Comm. Block: Do you have visuals of the lanes? I'm having trouble understanding where the deceleration lanes are and where the third lane fits into that. I don't know what you're proposing to delete and what you've committed to in the past. It seems the deceleration lane would be further into the project, If you're going to delete the third lane, you're proposing to put a deceleration lane where that would go, which would have to be ripped out down the road to add a third lane, and then a deceleration lane would have to be moved further into the project.

Mr. Petersen: There will be setbacks and right-of-way to enable that. As I indicated, all the utilities have been moved out of the way; it is really just breaking the curb and moving the curb line in.

Comm. Block: I thought you indicated you did not want to move all those utilities. They'll be moved in far enough?

Mr. Petersen: The underground utilities in that area include water, sewer, and probably fiber. To do our deceleration lanes, we'll have to move all of those.

Comm. Block: Will you move them far enough to account for that third lane?

Mr. Petersen: We'll move them into the expanded right-of-way.

Comm. Block: You'll do both of the yellow lines with the first phase?

Mr. Petersen: Again, we have a modification to the stipulations. The one to the west of High Drive would be done as part of the villas; the one to the right is the entrance point for the eastern portion of the mixed-use development on the east side of High Drive along 135th We are proposing to do that when that portion of the development actually gets started.

Comm. Block: So, it goes to another street that would not be constructed until Phase Five?

Mr. Petersen: Yes, sir.

Comm. Block: You would build High Drive, 137th Street, not the cul de sac north of 137th Street and not the street that goes east.

Mr. Petersen: Correct.

Comm. Block: Why would you not have to bury the power lines at any point in any of these five phases? Why would you be able to not do that, based on what's happened elsewhere in the city and the LDO?

Mr. Petersen: We want to have a project we can finance. We can't find anybody that is willing to take that as part of the deal. When we get to Governing Body, I assume they'll have other alternatives for making these public improvements that may not put the burden on each project but do a more corridor-wide solution. We know today we can't afford to bury those power lines at $1.6 million and bring a partner in to develop the mixed-use. Right now, we have to do what they want with the villas. We can't live with that; that's just a non-start. Villaggio is an example. Times were good then. They buried power lines and put in all the streets. I don't need to tell you what's happened to that property. I know that property sold the last time in foreclosure for the amount of the assessments only, and it's back in a distressed state again. It can't be done in this day and age. It couldn't be done then, quite honestly. I'm not being critical of the developers, but it can't be done. Those power lines are not there because of the ramifications of this project. Those power lines are there because KCP&L won't bury their own power lines; they make the cities do it if they want it done. Then the cities tell the developers to do it. Some cities don't require it. Overland Park doesn't require it. It all adds up, and $2 million could be a small percentage of all the other investment that comes in, but those amounts can make or break projects. We need some help on two things that we've identified. Anything that our development impacts on the public and requires improvements, we'll pay for: turn lanes, signalization, complete construction of 137th Street because our activity generates the need. We aren't causing the need for a third lane on 135th Street. There is no traffic study that shows that. Also, KCP&L won't bury their own power lines, and it's an aesthetic issue.

Comm. Block: Regarding the traffic signal, I don't know how the 50% was determined, but I assume this part of the project is going to contribute to extra traffic.

Mr. Petersen: We're not arguing with the 50%; that's typical.

Comm. Block: But you don't want to put any of that money into escrow today. We can't come back five years from now because you may or may not be the owners at the time. I don't understand how you want to push that off and not escrow that now if you agree that 50% of the cost is yours.

Mr. Petersen: It does happen in other communities. The commercial portion will be the contributing factor for the south side of the street and the need for signalization. We don't want to have to escrow with the villas. We want the escrow requirement to be phased; we don't want the escrow requirement to be tripped by the villa development.

Comm. Block: Is it half of $165,000 or all of it?

Mr. Petersen: $165,000 represents half of the estimated costs.

Comm. Block: When would you put it in?

Mr. Petersen: At the beginning of development of the Mixed-use portion.

Comm. Block: Which could be ten years from now.

Mr. Petersen: Correct, or the city would have the right to come back against that property as an assessment.

Comm. Block: So, the HOA is going to collect and escrow $165,000?

Mr. Petersen: We suggested that it be on the commercial property.

Comm. Block: It just doesn't make sense to me.

Mr. Petersen: The avoidance of trying to put together all the costs we're facing to start the villa project, including bringing in a public road that will serve commercial traffic as well with High Drive, through the deceleration lane, which is primarily needed for High Drive, at least half of the lane-widening on 135th Street, leads us to consider the signalization as an extra cost that will sit in escrow for potentially ten years.

Comm. Coleman: Mr. Petersen, if I recall correctly, this is the third time this development has been before this commission; is that correct?

Mr. Petersen: At least.

Comm. Coleman: Part of what I'm struggling with is why these issues did not come up the first time, second time, third time, or fourth time. Is it just the money issue that has now come to light? These are standard things that I've seen go through on other projects.

Mr. Petersen: Projects are approved, and developers think there's a chance to do it, but the arbiter in your world is that it's required for the project. The arbiter in our world is the market. I know you're not suggesting this, but it could be that we say we'll agree to it just to come back and ask to have it removed. That is not the case at all. This is very common as an approval gets tested in the market. We're not going to take risks that border on gambling, so we come back and ask for a modification. To ask for modifications three times on a project this size in my world is nothing. It was good faith taking our requirements to the market, but every single multi-family MX-D developer in your city crunched the numbers and said we needed to get rid of these costs. Out of $10 million, we're coming back for $2.1 million for projects that we don't impact. We're going to get a mixed-use partner in here. I bet we'll be back again because there will be something in here we'll have to tweak to make a high-quality project that didn't fit squarely into a more theoretical approach. If there could be a financing mechanism put forth by the city where one project didn't have to take $2 million of these public improvements that many cities don't require at all and others do as part of their Public Works projects. I'm not suggesting Leawood should do that. I recall an effort early on in the 135th Street Corridor to spread it out all the way back from 133rd to 137th. That made sense, but it fell apart and couldn't be done. We're trying to get things started. Everything that is needed to handle our project, we'll pay for, but we need a little help.

Comm. Hoyt: You said it would be interesting if a funding mechanism could be developed that would share the costs. Of the $2.1 million, what would seem to be a reasonable share of that?

Mr. Petersen: There are different methodologies, part by the city at large because there are a lot of people utilizing and enjoying the aesthetics of no power poles. It could be based on square footage. Villaggio did it with $9 million that got paid down to $6 million. City bonds are out there that have been in default for a long time.

Chairman Elkins: I've got a series of questions, but let's focus on the power lines first because that's been a longstanding issue. I'm thinking about the idea, "Don't oppose unless you have propose to go with it." What would be your "propose" for burying the power lines? It's a good discussion on policy. What would you have Governing Body do with respect to power lines?

Mr. Petersen: You're going to get me in all sorts of trouble. I'm not speaking on behalf of my clients; I'm speaking on behalf of myself. It's a city aesthetic issue. If the city wants power lines buried, then I think the city needs to step up and help bury power lines, or there should be incentives. Where you see them buried in other cities is when there was an incentive. It is an extraordinary cost. KCP&L does the work; it can't be bid out. It's honestly a public investment to bury the power lines by allowing tax dollars to be diverted to reduce the costs. In Overland Park at 115th Street and Nall, the city didn't

require burying the power lines. We got a CID approved there, and one of the conditions was that the power lines are buried. I would think maintenance of streets would be a higher priority than aesthetics.

Chairman Elkins: One of the things that concerns me about the power lines is a concern that, if we don't address it now, we'll have the same situation that we had for years at 95th and Mission. That is that it won't be your clients dealing with it, but 40 years from now, when it comes time to redevelop what your clients have put together, we'll deal with it then. I'm really concerned about that.

Mr. Petersen: That's being addressed at Ranch Mart.

Chairman Elkins: Even with an incentive package, your clients are ready to move forward now. If the city could see clear to give you relief on that now and we, as a city, come up with some CID or other incentive program, how would your clients then be qualified to contribute at that point in time since they already have their investment in the ground and going?

Mr. Petersen: That is a conversation to be had as we move through the process. We'd be open to having that discussion, but to get there, I have to stand on the points I've made this evening. We would hopefully anticipate a side discussion to not only solve it for this project but for other projects as well.

Chairman Elkins: You mentioned in your presentation that you and your clients believe it would be appropriate to invest in the escrow at such time when the traffic signal is warranted. How would we collectively determine when a light is warranted? Is it when your folks decide or the city?

Mr. Petersen: That's your responsibility typically. Cities determine when it is time.

Chairman Elkins: Is there a consensus right now that it's not warranted today or at the time that your first phase is happening?

Mr. Ley: I believe they're just doing a right-in, right-out. Is that correct?

Mr. Petersen: Yes.

Mr. Ley: They're not going to have a westbound left turn lane.

Chairman Elkins: So, there is no dispute that the light is not warranted at this time.

Mr. Ley: That's correct.

Chairman Elkins: But prior practice would be to escrow the money at the first instance.

Mr. Ley: We started that policy about five years ago. Prior to that, we had the developers install signals upfront because we were anticipating all the development to occur. They would like to change the stipulation to have them pay when the signal is warranted, but then the problem is that we have to try to find the person to collect money from. It makes it difficult. That's why we try to collect the money upfront.

Chairman Elkins: Dropping back to the power lines, when would it be appropriate to bury the power lines, Mr. Petersen?

Mr. Petersen: Probably when the ultimate improvements are done to 135th. I don't know exactly where they sit in the right-of-way. The frustrating part is if we just do public streets and it's a city project, the utility company moves them. If it's a developer, the developer moves them. That happens on a fairly regular basis. The immense cost is in burying the power lines.

Chairman Elkins: It seems like the best time to bury the power lines if on the front end. I understand what you're saying about the financing issues, but wouldn't you agree that, if financing were available, the best time would be before the development goes into place?

Mr. Petersen: In a perfect world, it would be the best time.

Chairman Elkins: I have a question about the third lane. You mentioned a couple times that the traffic studies available indicate there is not really a need for that third lane until 2040. Frankly, I didn't see that in your record anywhere.

Mr. Petersen: It's in the traffic study that was part of the original. I'm not sure if that land will ever be built because it doesn't go anywhere. It dies at State Line.

Chairman Elkins: The record we have before us is a traffic study suggests 2040 is the earliest a third lane would be justified?

Mr. Petersen: It's clearly not required as part of this development, and the analysis was done under the 2040 condition.

Chairman Elkins: I suspect this may be a bit out of order, but under the LDO, do we even have the authority to grant removal of the stipulations relative to the power lines and the third lane?

Mr. Petersen: You have the power to recommend on any land use plan. As part of any recommendation of any land use plan or ordinance adopting a zoning category or stipulation, you have the right to recommend on any stipulation. I started out by saying that you may say it sounds like a policy issue, but I do think you have the authority to make a recommendation based on any stipulation.

Chairman Elkins: Would we be recommending on the face of it a violation of a standing provision of the LDO?

Mr. Petersen: No.

Chairman Elkins: You're saying the Governing Body could move forward with this without amending the LDO.

Mr. Petersen: I think they could, yes. This is no different than if we had a traffic study that said that the project would be developed and gave levels of service and delays for the intersection, leading you to make a recommendation of an acceptable level of service. I think the necessity for a third lane of a road and an aesthetic issue of burying power lines is in the realm of reviewing a development plan. I think the city could not require it and not be in violation of the LDO. There may be a policy that would have to be considered.

Chairman Elkins: To your knowledge, is there an LDO provision that requires power lines to be buried?

Mr. Petersen: If there is, I'm not aware of it.

Chairman Elkins: We've understood that there is a requirement to bury the power lines, but I've never asked if the requirement stems from the LDO or from a policy.

Mr. Petersen: I've never seen it codified.

Chairman Elkins: Does staff have a view on either the lane expansion or the burying of the power lines?

Mr. Coleman: For the burying of the power lines, under Public Utilities and Public Safety Uses, there are statements that refer to developments burying the power lines. It's Section 16-1-4.1.

Chairman Elkins: Is there anything about the lane expansion?

Mr. Ley: Along 135th Street, we've always required the developers to do the third lane. The city has a fee schedule that addresses arterial street fees. If a developer constructs adjacent to an arterial street, there is a requirement to pay $783 per foot of frontage. It is actually half that cost, but that is the cost going from a collector to an arterial. The developer at 135th and Mission had to do the lane widening of 135th Street as well as paying the linear footage for that improvement. We had the same situation at Cornerstone. They paid $783 divided by two because it falls on the center line.

Mr. Petersen: We're paying that.

Mr. Ley: I don't think that's part of the stipulations because you're not adjacent to an arterial street.

Mr. Petersen: Richard cited the code for power lines, and we're adhering to that. The onsite have to be buried but not transmission lines in a thoroughfare right-of-way that we happen to be adjacent to. I think there's a distinction there, and I made it in my presentation.

Chairman Elkins: I understand there is room for discussion. I was trying to get an understanding of the parameters in our current ordinance. Are there other questions?

Comm. Block: Along the same lines of the traffic signal, is it codified?

Mr. Ley: The city hasn't paid for signals when a developer creates an intersection.

Comm. Block: I'm curious if the requirement to have the developer put money in escrow for the traffic signal is supported by the LDO.

Mr. Ley: Each case is considered individually based on the traffic study.

Comm. Block: I understand that each situation is different as to whether it needs a signal or not, but how do you make the determination as to when they need to escrow for that signal. You say the signal will be necessary in whatever period of time; what are you hanging your hat on to make sure they put that money in escrow today?

Mr. Ley: Typically, we collect upfront.

Comm. Block: Based on what?

Mr. Ley: The traffic study.

Comm. Block: Is there a policy to support that decision?

Mr. Ley: The policy is they have to do a traffic study and address their traffic impacts to the city. That is where the stipulation comes in.

Mr. Petersen: It is on a case-by-case basis with the general policy. I draw a distinction here, and that is that until the commercial is developed and the median is broken, there is no intersection. We're not breaking it as part of the villas. Under the circumstances, we think a fair proposal is to look at when they start developing the commercial or when it is warranted, whichever comes first.

Chairman Elkins: I'm not sure I followed all of Mr. Coleman's reference to the LDO, but a colleague pointed out that in Section 16-1-4.1 at the end, it says, "In the case of a new or amended Preliminary or Final Plan or Plat, the owner/developer and/or applicant shall be responsible for placing all existing utilities underground prior to issuance of a building or occupancy permit or at such time mandated by the approved plan or plat." In your view, Mr. Petersen, does what you're proposing fall in compliance with that?

Mr. Petersen: All the utilities that will be on our property will be buried. These aren't on our property; they're on the public right-of-way. New utilities, we are burying.

Comm. McGurren: Mr. Petersen, do I read correctly that there are approximately 117 villas planned?

Mr. Petersen: Yes, sir.

Comm. McGurren: What is the average projected sale price per villa?

Mr. Petersen: As I recall, around $600,000 per unit. It's a healthy price. We're trying to have good options in that price range. Again, that speaks to the economics. If we're getting $2 million a site, we have a bit more flexibility to address aesthetics. In a position such as this with us coming back, it comes down to what is proposed in that commercial development is state-of-the-art vertical mixed-use. What makes it good is another really expensive structured parking. Then, with another $2 million to bury power lines is extensive. The alternative is to bring down the quality of the structured parking, which is not their intent, but it's a piece of straw out of the haystack.

Chairman Elkins: Other questions? Thank you, Mr. Petersen. Under the LDO, a case such as this provides for a Public Hearing. Before we begin, we'll allow four minutes for comments. We would also appreciate avoiding replicating comments. We want input from the community, and we've spent a considerable amount of time talking about policy tonight. I think that was the applicant's intent to provide that record for the Governing Body.

Public Hearing

Kevin Jeffries, 13451 Briar Drive, Leawood Economic Development Council, appeared before the Planning Commission and made the following comments:

Mr. Jeffries: To speak to the policy issues you are talking about tonight, to let you know, the Economic Development Council (EDC) has been discussing the concept of the widening of 135th Street and if it should be a public project, much like 143rd and Mission Road and part of our Capital Improvement Program. Should we utilize financing mechanisms like TIF (Tax Increment Financing), which has typically been kind of a bad word to use in Leawood. If you really look into what a TIF is, it's not really a giveaway; it's another way of financing a project. When taxes go up on the property because the property has improved, some of that is captured. Tax abatements come back and help pay for those infrastructure improvements. I think for 20-30 years, we have said it's a terrible thing, but I think it's something we might want to at least look at in certain circumstances where there is a big public benefit. I think if we want Leawood to look different, this is a great opportunity for us to take that stand and do a little something like that. The EDC has been encouraging discussions about a lot of infrastructure, including the widening of 135th Street and coordinating with Missouri. In the mornings, there is a huge bottleneck. There are so many people coming in to Johnson County from Missouri that those extra westbound lanes might be warranted. That would relieve some of that congestion. Again,

that serves all of Leawood and Johnson County, so I suspect the county might help pay for some of that. Mr. Ley would know better about the CARS program and what would qualify. I think the hodge-podge we have now is a game. I've been trapped more than once in the wrong lane. I just think it's something we need to look at the future as opposed to putting it on individual developers. Thank you very much.

As no one else was present to speak, a motion to close the Public Hearing was made by Coleman; seconded by Belzer. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

Chairman Elkins: Mr. Petersen, do you wish to respond?

Mr. Petersen: You asked about the 2040 analysis on the third lane. The traffic study that serves as the basis for the approval is on Page 8 of your packet.

Chairman Elkins: Thank you. That will be part of the record. Mr. Petersen, did you have anything else to add to the record at this point?

Mr. Petersen: No.

Chairman Elkins: That brings us to a discussion by the commission. We have some weighty issues before us.

Comm. Hoyt: It seems like there are a couple of non-weighty issues in terms of being agreed to in principle, and that's the phasing of the development and the phasing of the Public Works. We're really strictly looking at the issue of not building the third lane on 135th Street and not burying the 135th Street utilities.

Chairman Elkins: I also heard an issue about escrow.

Comm. Hoyt: It seems like there could be some finessing of the language to give the city the option to call in the escrow at the point the city determines the need is present or imminent. I don't know if that's the way the other commissioners see what we have in front of us.

Chairman Elkins: I think that's a fair statement. The issue is trying to think of how we can best bring this to a conclusion: whether we consider each item individually and then act upon the application in total. Before we get into the technicalities, let's get some commentary from the commissioners about what they think on this whole issue of the city's prior practice of addressing the infrastructure improvements and burying the power lines. Power lines have been an issue as long as I've been a resident, so I'm curious to hear what the commissioners' thoughts are on our prior practice, our current practice, and what Mr. Petersen and his clients are proposing.

Comm. Hunter: I would say we don't have the authority to make that decision based on the current wording of the LDO. In terms of theoretical situations and if the city needs to

change, I'd be open to options. I look forward to seeing development in the city. I'd be willing to look at different options. I think Governing Body should look at different options, but I don't think that's before us right now, and I don't think we can make that decision.

Comm. Coleman: I have concerns of changing things from the way we've done them in the past. A lot of these requirements are required of all of our developers. I don't think we've asked anything out of the ordinary with the plan we and City Council approved. I'm also concerned about precedent if we alter things at this point from the normal way we conduct business in relation to the LDO and the way we hold developers to a certain set of standards that we've applied on everyone. I have some grave concerns with that. Part of this is going to be going to City Council for them to make decisions on what to do. We have to look at what's before us now as opposed to trying to make changes to the way we normally do things on the fly.

Chairman Elkins: I think that's probably correct; although, I do know for a fact that Governing Body looks to our discussion to help inform them around the policy decisions. I don't disagree with Commissioner Coleman or Commissioner Hunter that it may well be outside our ability to move forward, but the discussion is very worthwhile. That is why we have the process we do. I concur with both of you that it's probably the case with respect to what we can do, but I think it's appropriate for us to offer discussion.

Comm. McGurren: I agree completely with what both of you have said. I think we're in short-term and long-term mode. Short-term mode is tonight and the decision we have associated with that. I agree with the precedent-setting concept. On the flipside, I think over a longer period of time, it ought to be assessed whether there are other options and something that makes more sense that creates more development that is successful over time. It feels to me that we've got two different time frames, and it would be seemingly odd to combine them into one time frame.

Chairman Elkins: Other comments? I guess the observation I would have is that I tend to agree with Commissioner Coleman that there's a certain sense of fairness about the fact that historically, we've required developers to put in this infrastructure, to bury the power lines, to do the other things we've talked about tonight. On the other hand, I've been looking at the 135th Street Corridor for over 20 years now as a resident. We've gone through at least two, if not three, iterations of a special corridor development plan. Yet, we sit out there today without really any active development. It would suggest to me that now is the time for the city to consider some radical changes from what we've done in the past, even though it has served us well to date. I don't know that it's a fair comparison to look at 135th Street to the west. My sense is that, while there is infrastructure and buildings, I don't know how economically viable a lot of those developments to the west of Nall are. In some ways, it may not be much different than Mr. Petersen's reference to Villaggio. That remains to be seen. I'm about to a point in my own personal journey here with thinking that the city may need to rethink the approach to some of these things and perhaps, as Mr. Jeffries said, consider some sort of public-private partnership. That's my observation from watching all these years and seeing plan after plan. We've seen this,

and I don't know that we've seen a whole lot of change in the plan. I don't know of the most recent plan for 135th Street encouraged or discouraged Mr. Petersen's clients from moving forward, but there still seem to be obstacles in the way of successful development. Maybe there's a developer right around the corner. It is concerning that we've tried the old ways for so long and just haven't seemed to make much progress. Other comments?

Comm. Stevens: I think it's supportive of this development the way it has come together and has been designed with the distribution of uses, especially the phasing, which makes a lot of sense, assessing the phases with the infrastructure as they are needed. It is interesting to do Phase One and that infrastructure that's part of it and that none of that really affects these two improvements of widening the lanes or burying the power across 135th. I know it's not part of what the ordinance calls for because it's one development, and once it has started, the frontage should be improved on 135th. It could be a way to also phase that improvement. I guess kicking off Phase Four and then Phase Five, when the real need for those improvements along 135th. Phase One and even Phase Two and Phase Three really aren't part of these last two items that we're debating over. It's an interesting way of looking at this development and how it's come together that it seems like that could even be a possibility to attach those improvements to the later phases.

Comm. Block: I had a similar thought through this process as well. What's before us tonight is just to not do the power lanes or the third lane at all. If you kick it to Phases Four and Five, that development becomes unattainable for sure. I don't think we can deviate, and I don't want to deviate as a Leawood resident with what the Governing Body has done with Mission to bury power lines. It's important to the Governing Body and to us as residents. Maybe the solution is the escrow. If 50% because it's a master development goes into escrow, when the other developments kick off, they put in the other half. This portion of the development then puts in the fair share so it's there when it's needed.

Comm. Hoyt: I sort of like that idea. I was thinking the same thing. There's a timing issue in all of this that isn't quite gelling, especially with the additional lane on 135th Street. It seems a little out of proportion to the first phase of the project. I don't know because I don't understand exactly where all the digging is going to have to happen for various things to occur, but in the past, a lot of the logic of doing infrastructure throughout the city is if you're digging up the street to do one thing, you go ahead and do everything that could be done while the street is dug up. At the point where 135th Street has to be dug into for one reason or another, that would be the time to bury the power lines.

Comm. Peterson: I had a real problem with putting the burden of the third lane on the developer when the traffic study has determined that it is not needed for some time. On top of that, there's the additional turning lanes. I kind of view that as overkill. I don't know how we could modify that or suggest modifying it. The biggest problem I had was with requiring the developer to pay for that third lane. I don't know how often you go down 135th, but there's really not a traffic problem because there's nothing around there.

The other issue I have is putting the burden of burying the existing power lines, especially transmission lines, on the developer. There should be some way to work with the city or the county to do that, which is what is happening on Mission Road from 119th to 127th. The city is only paying for part of that. The county is paying for part of it. Those are existing lines that have been there for 30 or 40 years. Those are my two main issues.

Chairman Elkins: Thank you. I guess the one point is that you need to remember that we are planning for 178 townhomes to go in there, and shortly after that, a commercial development. Presumably, that will draw more traffic. It may not justify the third lane for the entire way, but we need to consider the additional demand. I understand that the traffic study suggests that even with the burden of this development on 135th Street, it won't justify that third lane until sometime near 2040, but it is certainly something for us to keep in mind.

Comm. Peterson: One thing that occurred to me, especially when the residential homes go in, in the final phases, is that it is going to clearly increase the traffic problem, but we're only putting in a third lane eastbound, not westbound. There's no one developing north of 135th, but all the burden for the third lane eastbound goes upon the applicant. What happens to the third lane if it's required? Who's going to finance that when it goes westbound?

Chairman Elkins: Under the current program, it would fall to whoever develops that space along the north side of 135th.

Comm. Block: I live down that way, and it might not warrant that lane now, but I definitely think of rush hour, and 135th from Mission all the way to Wyandotte on the Missouri side is well traveled. This is a year and a half old. I assume not much has changed since then, but how much life span does a traffic study have?

Mr. Ley: We work with the traffic engineer upfront to try to calculate the 2040 counts. It's not like they look at what's going to happen in 2025, 2030, until they come to the magic number that it is going to be warranted. We're looking at full buildout in 2040, so that's when everything around the full area is completely developed. If that occurs in 2030, that lane is warranted in 2030. It's just an estimate. In 2030, we'll be looking at 2050 traffic models, and that is a full buildout. As far as the counts, they're typically good for a couple years, so it depends on the growth and how much new development is occurring in Overland Park and also into Missouri. If a new development comes in, in a year, they would be required to do new traffic counts and project those future accounts.

Chairman Elkins: I think we're ready to discuss this. I think the way I would like to approach it is take it in four different pieces. I'd like the commission to weight in by vote how we feel about the phasing for both the development of the residential space and the phasing of the infrastructure as one item. I'd like to take the escrow of the traffic light as a second item and then the relief to the developer for the burying of the power lines as the third. Then, as a fourth, the relief for the widening of the lanes on 135th Street. I think I

know how those will go out, but once we've gone through those exercises, we'll see how we stand for the plan in total.

Comm. Peterson: Would it be possible to take a five-minute break?

Five-minute recess

Chairman Elkins: As I indicated prior to our break, my plan is to take up each of the four issues individually and then see where we are with respect to the overall plan and perhaps vote on the plan in its total, based on the outcome of those four issues. We'll see how it goes as to whether we need to take each stipulation individually when the time comes. Do I hear a motion with respect to the issue of the stipulations relating to the phasing of the residential space and the infrastructure going along with it.

A motion to approve the stipulations with regard to phasing, including No 19 – was made by Coleman.

Chairman Elkins: We'll take it up as an overall issue with the idea that staff can make conforming changes to the case.

Motion seconded by Hoyt.

Chairman Elkins: Discussion on the motion related to phasing of the residential and infrastructure.

Motion carried with a with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

Chairman Elkins: The second issue relates to the escrow for the traffic signal proposed in the plan. Is there a motion relative to the idea of the relief requested by the applicant, relative to the escrow for that stoplight?

A motion to approve the requested escrow relief with the additional provision added that the city would have the option to call for the money at its discretion if it has evidence that a shorter timeline is necessary – was made by Hoyt; seconded by Belzer.

Chairman Elkins: Any discussion?

Comm. Block: I'm going to vote no because I don't think it's a realistic ask. The developer is potentially going to be long gone. Once these 171 units or this first phase even is done, the developer has no responsibility. Then, it is on the homeowners, the HOA, and whatever that entity is that's remaining. This developer is going to sell and move on to the next thing. I don't think there's any going back in 6-7 years and getting it. It's either now or we release them.

Chairman Elkins: You're assuming the developer is going to abandon the commercial development and just not do it, despite the fact they have an approved plan for it?

Comm. Block: If I read the interact meeting notes correctly, they don't have control over those other parcels for these other phases. My understanding is they don't even own the land we're talking about; it is just under contract. They don't own all 57 acres.

Comm. Coleman: I agree with Commissioner Block. When it comes to getting funds for escrow, there's a reason they're upfront. There are too many downsides, and I don't feel comfortable with splitting that cost up.

Comm. Belzer: Can we ask for an answer to that?

Chairman Elkins: I think we're probably past that point. Commissioner Hunter, I'd welcome your thoughts on the subject.

Comm. Hunter: Do we have the authority to approve how money is held by the city for that use?

Chairman Elkins: I don't know the answer to that question. The issue we're dealing with here is if we have the authority to insist on the applicant putting money into escrow, which is a slightly different question.

Comm. Peterson: Isn't it also our recommendation to Governing Body for them to take into consideration?

Chairman Elkins: Yes, it is a recommendation.

Comm. Peterson: We're not necessarily saying it's written as law; this is our recommendation to Governing Body for their consideration.

Chairman Elkins: It strikes me that the need for the stoplight will probably be triggered more by the commercial development than the residential. If it's not this developer that develops the residential space, that would be the appropriate place for the escrow.

Comm. McGurren: Is it fair to say that in the phasing concept that included the phasing of the infrastructure, we've already answered the point that we would assume the light would come later anyway and the question now is all about the escrow?

Chairman Elkins: Yes.

Comm. Belzer: Could we recommend that we tie the escrow to the traffic light at the time of Phase Five?

Chairman Elkins: We could, but there's a pending motion to not do so.

Comm. Block: Mr. Petersen agreed that 50% of the cost was theirs; he just doesn't want to pay today. The 171 units are causing half of the impact that is going to require that traffic signal is how I understood what he's saying. He is saying he wants to put the money in closer to when it's going to trigger the need. I think if we don't get it in the bank today, I don't think we're going to get it.

Comm. Peterson: Related to the phasing, I have a suggestion. We have five phases. Phase One is the main area of the duplexes. Phase Two is basically the community swimming pool, etc. Phase Three begins the northern portion. Regarding the traffic signal, Phases 1-3 are more than 50% of the total land area, but not necessarily traffic. The stoplight in question and potentially the triggering of the escrow could perhaps be triggered at the beginning of Phase Three versus Phases Four or Five.

Chairman Elkins: It is certainly something to consider, but we have a motion pending. We'll dispose of that and move forward how we think it's appropriate.

Motion withdrawn by Comm. Hoyt; second withdrawn by Belzer.

Chairman Elkins: Does Commissioner Peterson have a motion? It doesn't have to be tied to a particular stipulation

A motion to recommend that the escrow is triggered according to the 50% schedule as outlined in the applicant's response at the beginning of Phase Three of the project, as outlined in Sheet A, dated December 20th – was made by Peterson; seconded by McGurren.

Chairman Elkins: Discussion on Commissioner Peterson's motion?

Comm. Block: I have the same concerns.

Comm. Belzer: I don't know about amending this motion again, but I believe it's at Phase Four and not Phase Three where the impact would occur and where the breaking of the median would take place.

Motion amended to change "Phase Three" to "Phase Four" by Peterson; seconded by McGurren.

Comm. McGurren: I agree with Commissioner Block. If it is at Phase Three when villas are still to be built, it is doable and likely; if it is at Phase Four or Phase Five, it is unlikely.

Chairman Elkins: Any other discussion?

Motion did not carry with a vote of 3-5. For: Stevens, Peterson, and Belzer. Opposed: McGurren, Hunter, Hoyt, Coleman, Block.

Chairman Elkins: Where does that leave us on the stoplight? It leaves us with no relief on the stoplight. Let's move to the question of the buried utilities. Is there a motion on the applicant's request for relief from the obligation to bury the utilities? It could be that we don't recommend the relief.

A motion to recommend the city and the developer work out a plan through which there may be some relief associated with burying the power lines, but if it does not come, the exemption of cost associated with burying the power lines would be denied – was made by McGurren; seconded by Peterson. Motion with a vote of 5-4, including an affirmative vote from the chairman. For: McGurren, Belzer, Hoyt, Peterson, and Elkins. Opposed: Hunter, Stevens, Block, and Coleman.

Chairman Elkins: We'll go to the last of the major issues raised by this application, which relates to the relief requested by the applicant from the city's proposed obligation to provide a third lane on 135th Street, eastbound.

A motion to recommend that 50% of the escrow for the third lane until Phase 4 begins, and the developer of the fourth and fifth phase would be responsible for the remainder – was made by Block.

Comm. McGurren: Just to clarify, it would be 50% when Phase One begins; 50% when Phase Four begins.

Comm. Block: I think the other 50% would be borne by whoever develops Phases Four and Five.

Comm. Hoyt: 50%?

Comm. Block: We were discussing the conundrum of potentially different ownership. I might be wrong, but that's what I thought I read. When that final portion begins, I understand it's a Master Plan submission to us. They're asking to be totally relieved of this responsibility; I'm saying they should come halfway.

Comm. Hoyt: Wasn't it $485,000, so it would be half of that?

Comm. Block: Yes.

Motion seconded by Stevens.

Chairman Elkins: Thank you. Is there discussion?

Motion carried with a vote of 7-1. For: Peterson, Stevens, Block, Coleman, Belzer, Hoyt, McGurren. Opposed: Hunter.

Chairman Elkins: That takes us to the overall plan that was presented to us. My perspective on what I've heard is that the plan as presented by the applicant has portions

we are unwilling to recommend to the Governing Body for approval. That should drive your recommendation to the plan. The motion could be either a recommendation for the plan to be approved or denied in total.

Comm. Hoyt: As we either deny or endorse the proposal in its entirety, does there not need to be some reference to those other votes we just took?

Chairman Elkins: Those are in our record. We've got to do one or the other.

A motion to recommend denial of CASE 04-20 – 135 STREET AND KENNETH – MIXED USE AND MEDIUM DENSITY RESIDENTIAL - Request for approval of a Revised Preliminary Plan, located south of 135th Street and west of Kenneth Road – was made by Hoyt; seconded by McGurren. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

Mr. Petersen: Thank you for your time. That was hard work, and the commentary was rich and will be useful as we move forward.

CASE 06-20 – 2019 ANNUAL UPDATE TO THE CITY OF LEAWOOD COMPREHENSIVE PLAN – Request for approval of the 2019 Comprehensive Plan. **PUBLIC HEARING**

Staff Presentation:
City Planner Ricky Sanchez made the following presentation:

Mr. Sanchez: This is Case 06-20 – Annual Update to the City of Leawood Comprehensive Plan for 2019. As the Planning Commission may remember, there was a work session held on November 12, 2019. At that meeting, staff presented some changes to the Comprehensive Plan Map, and I would like to refresh the Planning Commission on those changes.

(Refers to plan diagrams) The first change to the map was at 9609 Lee Boulevard, which is the Fire Station in North Leawood. The city recently purchased that property to the south, and what the Comprehensive Plan is showing is that land that had previously been purchased to be shown as public use for the future of the area that will soon be redeveloped. The second change that staff made is to a property on 133rd and Mission Road, currently, the location of the Kleinwood building. Previously, it had been shown as mixed use. Being that the property is already developed and has been for several years now, we just want to reflect what is existing on the property, which is office. Also on 135th Street and Kenneth Road, we had redone the alignment of the road per the previous Preliminary Plan that was approved, and now this plan that just went through. We updated the future roads and the road alignment with what was previously approved and the zoning as well. The zoning changed from MX-D to show the current zoning they got approved. On 137th and Kenneth, just east of the development we talked about is a small triangular piece, and it just made more sense as an office use. Another change would be at 151st and Mission Road to update some of the streets that have already been

constructed in the first phase of The Hills of Leawood. We're just showing what is already in the ground versus what is still to be constructed. Looking at 148th and Mission Road, we'd like to clarify the map. It had shown part of the park as the Fire Station, and really, the Fire Station has the entire property. Along with the changes to the map, the number from the Census have recently come out. We updated some demographics and housing data with the American Community Survey results. Staff is recommending approval of Case 06-20, and I'm happy to answer any questions.

Comm. Block: I think the refresh of the entire document is a nice improvement overall and.

Mr. Coleman: Ricky and Jessica did all of that. They did a very good job.

Chairman Elkins: I absolutely agree. Other questions? Because this is the Comprehensive Plan, a Public Hearing is required.

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Hoyt; seconded by Peterson. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

Chairman Elkins: Any other comments? I would just reiterate that we are grateful to Mr. Sanchez and to Ms. Schuller for the work they did on refreshing the plan. Once City Council approves it, a new one will be published?

Mr. Sanchez: That is correct. This is a redline version showing all the differences. Once it has been approved by Governing Body, we'll send out another one.

A motion to recommend approval of CASE 06-20 – 2019 ANNUAL UPDATE TO THE CITY OF LEAWOOD COMPREHENSIVE PLAN – Request for approval of the 2019 Comprehensive Plan – was made by Stevens; seconded by Hoyt. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

CASE 112-19 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-6, SIGN REGULATIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to Electronic/Digital Drive Thru Menu Boards. **PUBLIC HEARING**

Staff Presentation:
City Planner Ricky Sanchez made the following presentation:

Mr. Sanchez: This is Case 112-19 – Leawood Development Ordinance Amendment to Section 16-4-6, Sign Regulations, pertaining to digital menu boards. This amendment is to allow digital menu boards for our drive-through restaurants within the City of

Leawood. Currently, these places usually have a box window with paper copies of their menu. They have to be changed manually every time an item or price changes. Staff wanted to make the change to allow for new technologies. These new menu boards would have a maximum of 30 square feet and allow a transition of up to four times for the changing of menus. Often, a restaurant will have morning, lunch, dinner, and late night. This would allow for those changes. It would also allow for the transitions per order, so as each order comes in, we understand that the screen may have to change. Additional transitions or animations displaying advertising, products, or services would not be allowed with this amendment. This comes down to a public health and safety issue. We really don't want different animations going on while the screen is up for one person because somebody may be driving past and could be distracted by the animations. Staff also put in regulations about the illuminations in order to ensure it is not too bright. Staff recommends approval of Case 112-19, and I'm happy to answer any questions.

Chairman Elkins: I've got to ask, what is a nit?

Mr. Coleman: A nit is another way to describe the brightness of one candela per square meter. An average candle produces roughly one candela, and that's where the name comes from. That amount of light spread over one square meter is one nit. To put another way, imagine a box 16 inches on each side with a candle in the middle. The total amount of light hitting the interior surface of that box is one nit.

Chairman Elkins: You obviously knew I was going to ask this question. This may be a harder question, but typically when we have lighting issues, we speak in terms of lumens. Is there any way to connect a nit with a lumen?

Mr. Coleman: There is. I don't know if you want me to go into that.

Chairman Elkins: Are they apples and oranges, or are there a certain number of nits that make a lumen?

Mr. Coleman: Well, there are, but there's a mathematical formula for calculating it. This is a standard for televisions. Some of these high-resolution displays are super realistic. They're very expensive. I think Samsung is coming out with one that is flexible that is around $60,000. Those have up to 10,000 nits.

Chairman Elkins: This is anticipating, so we may need to address it at a later date, but in the event that someone would put a touch screen in to fully automate the ordering process, would it be permitted under this ordinance, or would we have to make another modification?

Mr. Sanchez: At that time, we would want to bring that back toward the Planning Commission and Governing Body for their recommendation just because this is a brand-new technology that we're seeing. We have been working with several companies that do the menu boards. The new technology that they're doing may involve touch screens, but we'd address that at a later date.

Chairman Elkins: Thank you. Other questions?

Comm. Coleman: Regarding the maximum of four times for the menu to change, does it really matter how many times it changes during the day?

Mr. Sanchez: It gets back to the number of transitions. We don't want this thing constantly moving and becoming a public nuisance. Say the lights get brighter in one transition over the other, for example. We want to minimize the number of transitions in order to keep it consistent.

Comm. Coleman: Did that come from a standard, or did you guys come up with it?

Mr. Sanchez: We worked with the restaurant companies, and they typically had four different menus. It made sense to staff to include the option for four transitions.

Comm. Coleman: Is there a current illumination standard for the menus under our current LDO?

Mr. Sanchez: Currently, there is not.

Comm. Coleman: Where did you come up with the 2,500 nits?

Mr. Sanchez: Working with those same companies, we got that number. They also have to meet the photometric study when they come in. If the existing menu boards were to be illuminated with the paper, some sort of action would be taken.

Comm. Coleman: Were there any examples of anyone using this technology in the Kansas City area currently?

Mr. Sanchez: There are multiple fast food restaurants using this in cities around us. We have had interest from different drive-through restaurants wanting this. Unfortunately, our ordinance hadn't even spoken of it, which would then make it not allowed. Putting in regulations for it will now allow it with restrictions.

Comm. Coleman: What cities are currently using it?

Mr. Sanchez: I believe Overland Park, Olathe, and Kansas City, MO.

Comm. Coleman: The people in the audience are giving lots of non-verbal feedback with nodding.

Comm. Block: You might have said this, but did you consult with sign companies or restaurants?

Mr. Sanchez: It was the restaurant companies.

Comm. Block: So, this conforms to national chains' requests?

Mr. Sanchez: It does. We based this on the minimums they have for their signs. We want to make sure we're not coming up with absurd regulations. We want them to be within the City of Leawood while considering what the city would like to see.

Chairman Elkins: Thank you. Other questions? Because this is an amendment to the LDO, a Public Hearing is required.

Public Hearing
Rod Richardson, Wallace Saunders Law Firm, appeared before the Planning Commission and made the following comments:

Mr. Richardson: I'm here representing the McDonald's corporation. Michelle flew down from Chicago and was here when we initially presented this idea to City Council. Michelle has presented these digital sign ordinance considerations literally all over the country. She's here in case you have any specific questions you may want answered. We're very appreciative of Mr. Coleman and Patty Bennett and staff for working with us to address this because we do have two facilities at 95th and Mission and Leawood Town Center that will be in a position to ultimately install these if Governing Body approves these. The real gravamen of why they want to put this in is it's new technology, but more specifically and what I told City Council when we asked that this go to the Planning Commission for consideration is they're smaller signs with reduced illumination. They're much easier to read. They're energy efficient and easier to change because it is digital. Additionally, it confirms the customers' orders very briefly. It basically is a very simple system. They'll be installed nationally across the United States. They've been very effective here in the Kansas City area, including more cities than were mentioned. We're very supportive of the amendment. Mr. Coleman and Ms. Bennett provided us copies to look at ahead of time and to comment on, and there were some questions regarding nits and lumens. That's beyond my pay grade, so Michelle worked with them on that. If you have any questions, Michelle is here to answer any technical questions. I believe I can tell you from our perspective, McDonald's thinks the ordinance is perfectly acceptable and reasonable. It would suit our purposes and would moreover allow us to address the Ranch Mart development and redevelopment of McDonald's. Thank you.

Comm. Block: I am familiar with the store on 133rd and State Line roughly. It's in the Lowe's parking lot on the Missouri side of the state line. I'm curious how similar it is to that.

Michelle Freeman, Kaiser Industries, 9015 S. Kensy Avenue, Evergreen Park, IL, appeared before the Planning Commission and made the following comments;

Ms. Freeman: I'm one of five integrators that are working nationally, and this area has been divided up. It also depends on if the store has gone through an MRP, which is a full remodel, both indoor and outdoor. We didn't do those projects; I'm only working on

those with the new drive-through boards. Nationally, they're all the same boards. They're all made by the same manufacturer and are all pre-programmed by McDonald's corporate. The whole push from corporate is they call this the experience for the future, but it is also intended to be more sustainable, greener, more consistent. They can be programmed on the back end. They can be pre-programmed with the store opening and closing so that the menu boards go dark, even if they're powered on during non-operating hours. It is also more of a safety issue for employees not going out during different times to make the changes. They also can change the prices. For the lighting, there are auto sensors built in. Across the country, sunrise and sunset occurs at different times, and this accounts for that. They're preset to go no lower than 500 nits-2,500 nits. Right now, the boards are fluorescent lighting, and they're measured in lumens. Now, a board is 59,783 lumens at its brightest. Converting the 2,500 nits during the day, it is about 60% less than that. They like them to be consistent so that it adjusts when natural lighting changes. McDonald's is obviously a leader with everything, I think, from 50-60 years ago when they first started. A lot of the other companies are pretty much using LED screens. Your ordinance update is going to allow any new restaurants coming behind McDonald's as well to use a similar sign model.

Chairman Elkins: Thank you.

A motion to close the Public Hearing was made by Hoyt; seconded by McGurren. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

Chairman Elkins: That takes us to discussion of Case 112-19. Any discussion?

A motion to recommend approval of CASE 112-19 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-6, SIGN REGULATIONS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to Electronic/Digital Drive Thru Menu Boards – was made by Coleman; seconded by Hoyt. Motion carried with a unanimous vote of 8-0. For: McGurren, Hunter, Belzer, Hoyt, Coleman, Block, Stevens, and Peterson.

MEETING ADJOURNED