

**City of Leawood
Planning Commission Meeting
May 26, 2020
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, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block, Elkins. Absent: none

APPROVAL TO SUSPEND CERTAIN RULES OF PLANNING COMMISSION DUE TO PANDEMIC:

A motion to suspend rules of remote attendance by commissioners and others that could limit the ability to hear business was made by Coleman; seconded by Hunter. Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

MEETING STATEMENT:

Chairman Elkins: To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Planning Commission is being conducted using the Zoom media format, with some of the commissioners appearing remotely. The meeting is being livestreamed on YouTube and the public can access the livestream by going to www.leawood.org for the live link. The public is strongly encouraged to access this meeting electronically; however, if you wish to comment on a public hearing item, please contact the Community Development Department to make arrangements.

Public comments will only be accepted during the public hearing portion of each agenda item where a public hearing is required. The City encourages the public to submit comments in writing prior to the public hearing by emailing comments to planning@leawood.org. Written public comments received at least 24 hours prior to the meeting will be distributed to members of the Planning Commission. Individuals who contacted the Planning Department in advance to provide public comments will be called upon by name.

Electronic copies of tonight's agenda are available on the City's website at www.Leawood.org under Government / Planning Commission / Agendas & Minutes. Because this meeting is being live-streamed, all parties must state their name and title each time they speak. This will ensure an accurate record and make it clear for those listening only. This applies to all commissioners, staff, applicants and members of the public who may speak. All motions must be stated clearly. After each motion is made and

seconded, a roll call vote will be taken. The Chair or staff will announce whether the motion carried and the count of the vote. Reminder, please mute all microphones when you are not speaking. Thank you.

APPROVAL OF THE AGENDA

Mr. Sanchez: Staff provided the Planning Commission with an updated agenda to reorganize the beginning of the agenda. No cases were changed. We have filled the empty planning spot with a planner. Grant Lang is going to be the new planner. Behind him is Matthew Smith, our intern for the summer.

Chairman Elkins: Welcome to an auspicious time to join our group.

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

ELECTION OF OFFICERS:

Chairman Elkins: Section 16-6-5.2 of the Leawood Development Ordinance (LDO) provides that the Commission shall elect a Chairman, Vice-Chairman, and Secretary, each of which will serve a one-year term or until their successors can be elected. The Planning Commission Bylaws provide that the election of officers shall take place at the first regular meeting each May, so we will proceed to the election of officers. I declare the nomination process for Chairman is open.

Comm. Hoyt: I'd like to nominate Marc Elkins as Chairman

Chairman Elkins: Are there other nominations? Seeing none, I would entertain a motion to close the nominations.

A motion to close nominations for Chairman was made by Coleman; seconded by Stevens. Motion carried Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Motion to elect Marc Elkins as Chairman carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Chairman Elkins: I'll open nominations for Vice-Chairman.

Comm. Block: I nominate David Coleman.

Chairman Elkins: Are there other nominations for Vice-Chairman?

A motion to close the nominations for Vice-Chairman was made by Peterson; seconded by Belzer. Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Motion to elect David Coleman as Vice-Chairman carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Chairman Elkins: I'll open nominations for Recording Secretary.

Comm. Coleman: I nominate Mark Klein for Recording Secretary.

A motion to close the nominations for Recording Secretary was made by Block; seconded by Hunter. Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Motion to elect Mark Klein as Recording Secretary carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

CONSENT AGENDA:

CASE 24-20 – VILLAGE OF SEVILLE – REVISED SIGN CRITERIA – Request for approval of a Revised Final Sign Plan, located north of 133rd Street and west of State Line Road. CASE 26-20 – MANSFIELD BUILDING – Request for approval of a Revised Sign Plan, located south of 103rd Street and west of State Line Road.

CASE 32-20 – TOWN CENTER PLAZA – DRY GOODS (RETAIL: WOMEN'S APPAREL) – Request for approval of a Final Plan for Changes to the Façade of a Tenant Space, located north of 119th Street and east of Nall Avenue.

Chairman Elkins: Do any commissioners wish to pull any of the cases to discuss?

Comm. McGurren: I'd like to ask a question regarding Case 38-20.

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

CASE 38-20 – WHITEHORSE RESIDENTIAL SUBDIVISION, LOTS 1 & 2 – Request for approval of a Revised Final Plat, located north of 148th Street and east of Nall Avenue.

Chairman Elkins: Do any commissioners request a presentation? Commissioner McGurren, feel free to pose your questions.

Comm. McGurren: In this case, is it fair to say that Lot 1 and Lot 2, as previously existed within Whitehorse, are going to be combined into Lot 1? I'm curious what the plan after that is.

Mr. Lang: There is currently a residential house on the lot line. The applicant came to us wanting to put in a swimming pool, which necessitated a request to combine the lots.

Comm. McGurren: Do they intend to tear down the house that is currently on Lot 2?

Mr. Lang: No, this is more of a clerical issue. When the subdivision was first built, the house was built on the lot lines. This is cleaning up the parcels to reflect one lot.

Ms. Knight: Harold Phelps is on the Zoom call if anyone has questions for him as well.

Chairman Elkins: Questions for Mr. Phelps? Seeing none, do I hear a motion?

A motion to recommend approval of CASE 38-20 – WHITEHORSE RESIDENTIAL SUBDIVISION, LOTS 1 & 2 – Request for approval of a Revised Final Plat, located north of 148th Street and east of Nall Avenue – was made by Hoyt; seconded by Block. Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

NEW BUSINESS:

CASE 23-20 – THE HILLS OF LEAWOOD VILLAS – Request for approval of a Rezoning from R-1 (Planned Single Family Residential) to RP-2 (Planned Cluster Residential Detached), Preliminary Plan, and Preliminary Plat, located north of 151st Street and east of Mission Road. **PUBLIC HEARING**

Staff Presentation:

City Planner Ricky Sanchez made the following presentation:

Mr. Sanchez: Staff would like to make one small change to the Staff Report. Under the Requested Deviations portion on Page 6 of the Staff Report, the applicant is asking for deviations to the front yard setback for 13 lots, and the Staff Report refers to a single lot. This is Case 23-20 – The Hills of Leawood Villas – Request for approval of a Preliminary Plan, Preliminary Plat, and Rezoning. The project is on the northeast corner of 151st and Mission Road. This project was presented and recommended for approval by the Planning Commission on August 27, 2019 with Case 74-19. The case was then withdrawn by the applicant and not acted upon by the Governing Body. The applicant then applied to the Board of Zoning Appeals for a variance to the Bulk Regulations, which requires lot areas for new lots to be the greater of 12,000 square feet or the average, up to a maximum of one acre, of all lot sizes within 300 feet of any lot line. The Board of Zoning Appeals denied the request. Since the first application was withdrawn, the applicant needed to reapply, which is why this is a new case. I'll review some differences with the new proposal. The total number of lots was reduced from 25 to 24. The density was also reduced from 1.85 to 1.78 lots per acre. The number of total

deviations were reduced, and the average lot size increased. Now, all lots are over 12,000 square feet. The applicant is still proposing to construct the 150th Street connection from the second phase of The Hills of Leawood over to Mission Road. The applicant is also still proposing a 10' tree preservation easement on the northern property line shared by the park. Deviations are still requested for 13 lots. Staff's major concern with the application is that it is still proposed to be rezoned to RP-2 [Medium Density Residential]. This contradicts the City of Leawood 2019 Comprehensive Plan, as it is shown as Low Density Residential. The applicant is willing to enter an agreement with City of Leawood with regard to rezoning the property back to R-1 if they do not make an attempt to move forward with the project. The applicant may be able to talk more about this agreement. The application will meet the requirements per the LDO if the project is approved with the RP-2 zoning. Staff is recommending denial of Case 23-20- with the stipulations listed in the Staff Report. I'd be happy to answer any questions.

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

Comm. Coleman: Do you have a map of that where we can see the different zoning currently in place?

Mr. Sanchez: (*displays map*) To the east of the development is The Hills of Leawood, Phase 2; to the west is Mission Heights. There are portions to the south, also.

Comm. Coleman: Specifically, what is the current zoning for those other neighbors?

Mr. Sanchez: It is currently zoned R-1.

Comm. Coleman: How far does that zoning extend?

Mr. Sanchez: The park and Fire Station are Agricultural, I believe. The neighborhoods are R-1. On the other side of Mission, I would assume it's a residential development but would need to confirm that.

Comm. Coleman: Is any part of the general area RP-2 or even RP-1?

Mr. Sanchez: I believe The Hills of Leawood are RP-1.

Comm. Coleman: Is there anything close by that is RP-2?

Mr. Sanchez: Not to my knowledge.

Comm. Block: They were asking for the variance as RP-1?

Mr. Sanchez: I believe they went to the Board of Zoning Appeals as R-1. Single-Family Low-Density Residential developments require a buffer at a measure of 300 feet, and the lot sizes in that area are considered. They were granted that with The Hills of Leawood, so they were asking for the same consideration with this development.

Comm. Block: They weren't asking for the variance from R-1; they were asking from RP-1?

Mr. Sanchez: I believe they were asking for any Low Density Residential. The applicant may be able to better answer the question.

Comm. Block: I just was wondering which zoning the Board of Zoning Appeals based their denial on.

Mr. Sanchez: The minimum lot size in R-1 is 15,000 square feet per lot. Because their lots are 12,000 square feet, I believe they are considering RP-1.

Comm. Block: On Page 6, it reads, "A deviation may be granted only if compensating common space . . ." Has that been met?

Mr. Sanchez: Anywhere the developer allows for additional open space can be counted toward that area, so Tracts A-E will count toward that.

Comm. Block: Those are deviations under the RP-2 zoning?

Mr. Sanchez: They are for all zoning districts.

Comm. Peterson: On Page 1, it indicates the applicant is requesting approval for a Rezoning from R-1 to RP-2. Yet, Page 5 states, "The current application would meet any of the Leawood Development Ordinance Bulk Regulations within an RP-1 zoning other than the regulations stating the lot areas for the new lots shall be greater than 12,000 square feet or the average, up to a maximum of 1 acre, of all lot sizes within 300 feet of any lot line." I did a comparison of the August 27th documents from Phelps Engineering, submitted with the prior application, to the documents submitted on January 30th with the current application. In Sheet 1 on each of the submissions, the lot areas are broken down. In comparing all the lot sizes, they went from 25 lots to 24. On the original application, the average lot size was 14,145 square feet. On the current application, it is 15,000 square feet. On the prior application, of the 25 lots, there were 17 lots which were under the average of the 14,000 square feet. In the current application with the reconfiguration, only 4 of the 24 lots are under the average, which is now 15,000 square feet. In RP-1, the minimum lot size is 12,000 square feet. In the current application, the smallest lot is 12,004 square feet, and the largest is 18,575 square feet. They are clearly within the requirements of RP-1. Is the applicant requesting to move to RP-2 or RP-1?

Mr. Sanchez: This goes back to the deviation that they requested. With the Low-Density Residential R-1 and RP-1, they have to meet the 300' boundary rule; in RP-2, they do not.

Comm. Peterson: They clearly meet all the density requirements on the current application. We're really talking about one item; is that correct?

Mr. Sanchez: Yes, they would have to meet the 300' boundary requirement. The density and average lot size would increase as well.

Comm. Peterson: The applicant has agreed to revert back to R-1 if construction is not complete.

Mr. Sanchez: That is correct.

Comm. Hoyt: As a point of clarification, if this property were to be rezoned as RP-1, since the Board of Zoning Appeals turned down the Variance request, does it mean that the 300' boundary can't be worked with under any circumstances within the RP-1 classification?

Mr. Sanchez: That is correct; they would have to meet that buffer. The applicant could go back to the Board of Zoning appeals with a new request if they chose to do so.

Comm. Hoyt: Would that happen before or after this goes to Governing Body for consideration?

Mr. Sanchez: I believe they would want to go through Governing Body first, just as with the previous application.

Comm. Stevens: I'd like to go back to Commissioner Coleman's question about zoning. There is description on some of the properties beyond this area. R-1 surrounds the site, including The Hills of Leawood. Across Mission Road is RP-1 to the west. To the south, R-1 is north of 151st Street, but south of that is an RP-1 district, which is Reserve at Ironhorse. At the corner of Mission and 151st Street is a retail development. West of Mission is an RP-2 district called Mission Reserve. There is an RP-2 development nearby. I recall the Planning Commission approving the prior plan with a close decision to RP-2 with similar lot sizes but a bit denser. Then, I noticed in the history, part of the reason the project was pulled was a protest. Could you give us more background on that?

Mr. Sanchez: A protest petition was filed with the surrounding neighbors, who are able to do so within 15 days of the Public Hearing. That was filed with the city, and it requires Governing Body to have a ¾ majority vote to approve the plan.

Comm. Stevens: To recap, we're looking at the same rezoning to RP-2, one less unit, a larger lot size to 15,000, and fewer overall deviations.

Chairman Elkins: Thank you. Mr. Coleman, did you have a comment?

Mr. Coleman: No.

Chairman Elkins: I want to make sure I understand correctly. On Page 5, the bullet point Commissioner Peterson referenced stated the current application would meet any of the

LDO Bulk Regulations. Is that a different way to say that they would meet all of them with the exception of the one noted here?

Mr. Sanchez: Staff should clarify that the entire development, with a Rezoning to R-1, would meet all the Bulk Regulations. Setbacks would still need to be adjusted because the Bulk Regulations change in different zoning districts. With the current plan, everything is met with the exception of the 300' buffer.

Chairman Elkins: Thank you. If there are no other questions, I would invite the applicant to step forward.

Applicant Presentation:

Greg Musil, Rouse Frets Law Firm, 5250 W. 116th Place, Suite 400, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Musil: I'm appearing on behalf of The Hills of Leawood Villas. Mr. Mark Simpson is in the audience. Saul Ellis is appearing by Zoom. Tim Tucker, Civil Engineer, is also appearing by Zoom if you have questions. You are already prepared for this. Before I jump into my presentation, I'll answer some questions. I appreciate what Mr. Sanchez said because we would not be here with a Rezoning request if the Board of Zoning appeals had granted the deviation from the requirement that the lot size be the average of all lots within 300 feet of the development. We pulled the last application to work with the neighbors and go to the BZA to get the deviation. Under the current Bulk Regulations for R-1 or RP-1, our average lot size would have to be 29,632 feet. This development, with all the streets, sidewalks, and sanitary issues, cannot do that with 30,000 sq. ft. lots. We are here tonight asking for RP-2, which is Medium-Density Residential. All of our lot sizes meet RP-1 standards, but we can't do that because we didn't get a deviation from the BZA to go below 30,000 square feet per lot. When we went to City Council for approval last August, City Council was concerned about a Rezoning to RP-2 because it runs with the land, and somebody could come in and change the plan to smaller lots with higher density. I understand there is skepticism, so we worked with the legal and planning department to get to Stipulation No. 2. We will have a written agreement with the City of Leawood before Governing Body consideration that says if we do not start building this plan, presumably within two years from approval, the owner and the applicant will be legally required to rezone back to R-1 to alleviate concerns. We have reduced the number of lots, increased lot sizes, and agreed to the enforcement mechanism if it is not built. The lots on the western boundary with driveways onto Mission Road were concerned because our lots backing up to them in the last plan were not full R-1-size lots. This plan has full R-1-size lots backing up to those neighbors. They have other concerns as well, and I'm sure you'll hear those tonight. It has been a civil relationship, if a disagreeable one because we haven't been able to reach consensus. We're down to 1.78 homes per acre, which is pretty low density. We know the quality of the development is high. The villas they have built already have added significant value to Leawood. The entrance of 150th Street was platted as a public street with designated right-of-way in 1961 when the Mission Heights subdivision, under which these homes developed, was platted. The most important visual is the side-by-side on the west side. Mr. McClain

eloquently called it Rowhouse Lane because of the piano key lots along the neighbors' boundary. All of those lots are now full-sized R-1 lots. There are now 3.1 lots next to them instead of five in response to concerns. We've talked about development challenges on this lot. We have 160' high-power transmission line easement along the angle on the east side. As I pointed out last August, that easement doesn't limit KCP&L to 160 KV lines. It is an easement from back in the 1960s. They can add to that line, put more poles in, and put higher voltage transmissions. That creates another development challenge. The Staff Report lists the same concerns as it did in the past. Commissioner Stevens mentioned 1.7 units per acre in the righthand column, which is less than 2.9 units per acre in R-1, way less than 3.63 of RP-1, and certainly less than RP-2. We match the lot size of 15,000 square feet of R-1. Our lots have 100' width in the back. They may not be that in the front because of the pie shape of the lots. The depths are 120 feet along the western side. We are asking to go from a 30' setback to 26.5' setbacks, and I appreciated the question about whether that matches the LDO, which it does. We are asking for deviations of .07 acres, and we have additional green space of .19 acres, which is almost three times as much additional green space as we need under the LDO to qualify for the deviations, all of which are internal to the subdivision. They will be on lots purchased by people who know it will have a slightly shorter front setback to their building. We talked about density. We have beautiful neighborhoods around us, and our density will fit right about in the middle of those. It is lower than three of them, about equal to The Hills of Leawood, and higher than Reserve at Ironhorse to the south. The Planning Commission found compatibility last August. We have added Stipulation No. 2 to make sure the compatibility is followed. This is a villa development. If it has R-1 or RP-1, it will have two-story houses with the same setback, which will be more imposing. (*shows examples of RP-1 adjacent to RP-2*) Villas of Whitehorse at 150th and Nall is just north of the shopping center and is really a buffer to the R-1 to the north and east of it. Mission Reserve at 151st and Mission Road is separated by the homes along Mission running on septic tanks, but it is immediately adjacent. Villas of Leawood at 145th and Kenneth are adjacent to lower-density developments. We showed distances between the houses last time between the houses. The distances between our houses and the ones to the west, south of 150th Street, range from 114-218 feet. One house north of 150th Street is 69 feet house-to-house because it lays back further on the lot. We have a greater distance between houses than the LDO requires. Pavilion of Leawood is 70-85 feet; Steeplechase is 55-65 feet; Hallbrook is 75-90 feet. We have some deviations that I want to highlight. They are all front yard setbacks in order to fit the lots onto the site. We wouldn't be skipping here if we didn't have the 300' lot average that we had to do. The only alternative after the BZA turned us down was to come back here with RP-2 and explain what protections we're willing to put in place for Leawood. The Comprehensive Plan is a guide, and there are places where similar zoning has worked. There is no situation like this with legacy lots surrounding the development. If we went all the way to Mission and all the way to 151st, I don't think staff would have an issue with RP-2. The problem is this legacy center infill that cannot be developed any other way than RP-2. We've had an Interact Meeting on this application and on the other ones. Mr. Simpson has met with the neighbors as individuals and as groups. We proposed additional buffering with a 10' tree preservation and tree-planting easement. Residents have expressed concerns about traffic and how 150th Street is going to cause traffic problems on Mission Road. Staff has

reviewed that and does not believe it will. There was concern about stormwater, and our plan has been submitted. If staff doesn't agree that we have proposed a plan to take water away from the neighbors, we won't get approved by Public Works. We have not been able to satisfy our neighbors on the west. We do not have easements with the neighbors to the north and south of 150th Street to implement the buffering plan. I'd like to talk about Stipulation No. 3, which says that there will be no deviations. We've obviously requested deviations to meet the LDO. The same thing was included in the stipulations last August, and you removed it in the motion that passed. We would request that it be stricken. The rest of the stipulations are all acceptable.

I'd like to go through the history. We were here in August and went to City Council in October, where there was concern about RP-2 instead of RP-1. They asked us to work more with the neighbors, which we did. We also withdrew the application because we realized we could probably get RP-1 zoning if we received a variance from the BZA, but they turned it down. Staff recommended the variance, but it was not granted, so we have brought another application to you. We think we've met the concerns of the neighbors. With that, we would ask for your approval tonight. This is a better plan for the neighbors and a better plan for Leawood.

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

Comm. Block: On Stipulation No. 3, you still need the areas highlighted in yellow on the front setbacks?

Mr. Musil: That is correct; those are the deviations we need.

Comm. Block: Can you offer information on why the BZA decided not to approve your request?

Mr. Musil: The BZA is an interesting animal. There are five criteria for granting a variance: Uniqueness, Hardship, Public Safety and General Welfare, Rights of Adjacent Property Owners, and Spirit and Intent of the LDO. When we took The Hills of Leawood through, we were granted a deviation. The BZA votes on all five of the criteria. There were four people there that night. On two of the items, we tied 2-2, which means we lose. On two of the items, we won 3-1. One of the items, we lost 3-1. They had concerns about whether that kind of variance was appropriate. The only appeal from them is the District Court, and we didn't want to do that, so we came back to you.

Comm. Block: You're saying staff recommended approval of that?

Mr. Musil: Staff supported the variance.

Mr. Sanchez: I was not at the meeting. I would have to refer back to city staff that was.

Mr. Coleman: I can vouch for that. Staff supported the variance.

Comm. Coleman: When was the BZA meeting held?

Mr. Musil: December.

Comm. Coleman: You stated if BZA approved the variance, you wouldn't be here.

Mr. Musil: We would be here with an RP-1 zoning because we would then meet all the criteria for RP-1. We're asking for a deviation for the one thing we can't meet, which is the average lot size within 300 feet.

Comm. Coleman: With regard to the March 10th interact meeting, the minutes state that the developer advised the neighbors the principle reason they were continuing to try to develop this 14 acres was to avoid a small, neglected parcel from becoming a legal dumping ground for unwanted waste, a convenient party site for high schoolers, and to provide a western access point to Mission Road for the residents of the The Hills of Leawood community. Is that correct?

Mr. Musil: I wasn't there; Mr. Simpson was and could speak to those. I don't know if they're in priority order, but this gives a second entrance for The Hills of Leawood. It eliminates a vacant area that will be accessible by streets from The Hills of Leawood, and it completes the neighborhood.

Comm. Stevens: To clarify, you mentioned you could meet all the requirements of RP-1 if that one rear setback requirement were not in place. You do have a much better plan, and is a very difficult site to work in, as you mentioned. I think you would also have trouble meeting the setback requirements of the RP-1. A benefit of going to RP-2 is you're in compliance with all the setbacks except these front yards that are slightly altered from 30 feet

Mr. Musil: There would be other deviations required. What we cannot meet is the overall lot size, not the rear setback.

Comm. Stevens: The front and side yards grow, so it's a domino effect on every unit.

Comm. Hoyt: I'm not sure if this is a question exclusively for the applicant, so staff can jump in, too. Can you outline the process that would occur relative to Stipulation No. 2? If the property is not developed within the time frame, how does it work that the developer/owner rezones the property back to R-1.

Mr. Musil: The preliminary discussions I've had with City Attorney Patty Bennett have suggested that we would provide an already signed application for Rezoning that, under contract, would be filed under the 365x2+1 day so that it would be a contractual obligation. Instead of the city having to sue to enforce the agreement, we would provide an escrow signed by the landowner and the applicant. That would automatically happen and be filed by the City Attorney and come back to this body. I don't know of anybody who would consider opposing that. It would be our commitment to do that, so we certainly wouldn't.

Ms. Knight: That is my understanding as well. The agreement has yet to be finalized, but it will be, prior to submission to Governing Body.

Comm. Hoyt: Once the 365x2+1 occurs, that petition goes to which body?

Mr. Musil: My understanding is it would come back to the Planning Commission as a normal application for a Rezoning.

Comm. Belzer: Is there a process for appealing a BZA decision?

Mr. Musil: The BZA is a separate statutory body, and it would be appealed to the District Court of Johnson County. There is no appeal otherwise. We would have to file a petition for judicial review, and that is not something anybody does lightly. It was unlikely to get us where we needed to be, which was in RP-1-consistent zoning in an RP-2 application.

Ms. Knight: Mr. Musil is correct; it would go to District Court. The standard of review is whether the Board of Zoning Appeal's action was reasonable. It's a difficult standard to overturn.

Comm. McGurren: I'd like to follow up on what Commissioner Hoyt had to say. I'd like to know about the entity that starts this process, having already received the signed documentation in escrow. Is that the City of Leawood?

Mr. Musil: The City of Leawood would be a party to the agreement, along with the current owner of the property, because the owner has to agree. Mr. Simpson and Mr. Ellis would represent the development entity.

Comm. McGurren: Did I understand correctly that everybody but the City of Leawood would have already signed the document before Governing Body approval if the Planning Commission were to approve this? There would be no additional approval needed at that time by the developer or the owner? The City of Leawood would have the right to take it back to R-1?

Mr. Musil: I don't want to speak for City Attorney Bennett, but we will have to have an agreement before the Governing Body acts. I assume the written agreement will include an application form that is fully executed and ready to file 365x2+1 days later.

Comm. McGurren: I would think for this to proceed in the way you're intending, there would be no further approval needed by the developer or owner. They would have given the approval before Governing Body votes. In my opinion, it would reference that the property is not constructed in accordance with the submitted plan. It's not just that the property doesn't start, but it doesn't start and finish according to the plan. Is that a fair assessment?

Mr. Musil: Absolutely.

Chairman Elkins: I'm not trying to challenge your integrity, but I'm thinking of possible outcomes that could derail this agreement. It's creative, and I like the approach. In the unlikely event that the owner would sell the property before the expiration of 365x2+1, how would that impact the enforceability of this agreement?

Mr. Musil: I should mention there are owners other than just Dr. Reddy. He owns the bulk of it, but all of the owners with real property would have to sign that agreement. It would be binding on all successors and transferees. I assume it would probably be recorded. I know how diligent and careful your attorneys are. We expect to be building and moving dirt well before a year, let alone two years.

Comm. Block: Is it possible to sunset the decision and it would revert on its own without having to deal with the agreement?

Ms. Knight: My understanding is once it's approved by Governing Body, those rights would vest. It doesn't just revert if a condition is not met.

Comm. Block: We couldn't place that condition on it to make it revert?

Ms. Knight: Correct.

Mr. Musil: I agree with Ms. Knight. The zoning will run with the land. The Preliminary Plan will die after two years, but the zoning will continue. The concern is if we don't build this plan, someone will come in with a different RP-2 plan. We don't want medium density next to our The Hills of Leawood, but we also recognize we have a weird parcel next to a transmission line. This is the development that makes the most sense.

Chairman Elkins: Thank you. Mr. Musil, you'll have an opportunity to reply once the Public Hearing is closed. As I open the Public Hearing, I'd like to go over a few ground rules. We've had a number of individuals who have shown an interest to be heard, both in person and participating through Zoom. The period for each individual's comments shall be four minutes. For those participating through Zoom, please pardon me, but I will interrupt to let you know when you have a minute left to let you know. I'll look to those who are participating by Zoom first. Have there been additional people who are not on my list now?

Mr. Sanchez: No additional people have contacted staff or have entered City Hall since the beginning of the meeting.

Chairman Elkins: Thank you.

Public Hearing

Connie Krupko, 15005 Mission Road, Leawood, appeared before the Planning Commission via Zoom and made the following comments:

Ms. Krupko: I'm one of the existing adjoining homes to the west of the proposed development. For the purposes of this presentation, I will refer to the nine homeowners located west of the proposed development as the Mission Heights residents, and my comments speak for those nine homeowners. I'd like to address a couple of the criteria you're required to consider in connection with the rezoning request. The first factor is the character of the neighborhood. As you know, the developer is requesting approval of a Rezoning from R-1 to RP-2. The Mission Heights neighborhood has been zoned R-1 since its creation. The Master Plan and suitability of the R-1 zoning has been reviewed and approved annually by the city. If this rezoning is approved as RP-2, the minimum lot size requirement would be 6,000 square feet, as we've talked about. To put this in perspective, the average lot size of the Mission Heights residences is 45,691 square feet. My lot is 57,448 square feet. The three lots that are proposed to be developed behind me and adjoining me could all three fit on my lot and still have over 12,000 square feet left. Further, on the east side of the proposed development is The Hills of Leawood, which was approved for development by the city with an average lot size of 19,000 square feet. The low-density makeup of the surrounding neighborhoods is truly what defines the character of the neighborhood. It is unreasonable and unfair to define our surrounding neighborhood as a legacy problem. Consequently, the requested rezoning proposal fails the neighborhood character factor. The next factor is the extent to which zoning would detrimentally affect nearby properties. I believe common sense tells you that when you change the density and compatibility of adjoining property this dramatically, the market value of the existing homes will be detrimentally affected. The rezoning proposal before you is nothing more than the developer's attempt to circumvent the 300' rule. I believe this rule is in existence homeowners like us that are situated on low-density lots from having lots developed adjacent to them that are proportionately smaller. In addition, the RP-2 zoning reduces the rear setback requirements from 30 feet to 20 feet. Behind me, they haven't included any kind of landscaping to buffer between our adjoining properties. As we've talked about, the biggest concern is the RP-2 zoning running with the land and possibly staying in effect for another developer wanting to come in and develop lots as small as 6,000 square feet. Based on these factors, it is clear that this rezoning would detrimentally affect nearby properties. Lastly, this developer has argued that one of the main reasons he is not able to (*connection dropped*).

Chairman Elkins: I just lost the entire Zoom off my device.

Connection regained

Ms. Krupko: Lastly, the developer has argued that the main reason he is not able to maintain the R-1 zoning is that it is not financially feasible. This was repeated to us at the three interact meetings attended by the Mission Heights residents. This is a highly subjective argument by the developer. More to the point, the economic impact on the developer or how good or bad his return on investment would be should not be a factor. Because of that, this developer's unsubstantiated financial hardship should be irrelevant

in your consideration of this proposal. I want to thank you for upholding the criteria defined in these factors, along with the high standards of the LDO and the Master Plan that have all been put in place to protect our neighborhoods. The Mission Heights residents ask that you deny this application.

Lori Hull, 15007 Mission Road, Leawood, appeared before the Planning Commission via Zoom and made the following comments:

Ms. Hull: We are also one of the Mission Heights residents group that are opposed to this rezoning. Our property directly abuts the proposed development to the west. First, I would like to address the vacant history saga that has continued since we last met with you for this property. Dr. Reddy purchased this property 25 years ago and has shared with some of my neighbors that he purchased this land as a retirement investment. Mr. Simpson stated he has tried to purchase this land since 1999 and several times since then over the last 20 years. The city staff has also commented that they have had multiple inquiries as well. I believe that explains the vacant history factor. In fact, the developer did purchase The Hills of Leawood property from Dr. Reddy in 2017 but left this parcel out of his initial plan to develop it all. Therefore, any hardship was self-created in 2017, which will be further discussed from another member of the Mission Heights group. Also, I would like to speak briefly about the power lines. First of all, the power lines were there when Dr. Reddy bought this property. Secondly, the developer claims he cannot sell these lots for million-dollar homes because of the sight and buzzing sounds of the power lines. In fact, the same exact power lines run through Reserve at Ironhorse, for which Mr. Simpson himself was the developer. These lines cross this development street so close in front of two of these big, beautiful homes, that they go over the curb of their front yards, and a half dozen look directly at these power lines. These million-dollar homes do exist under equal circumstances. I believe it goes to show that where there's a will, there's a way. I would also like to address the Landscape Plan. It shows substantial landscaping along the developed streets but no planting at all on the common, abutting property lines; although, in previous meetings, it existed. In fact, the developer threatened to strip the buffer if we opposed his zoning. This exact subject was discussed at a previous meeting with the Governing Body. I believe it was definitely frowned upon. I also believe the 20' setback prohibits them from even making the buffer that they offered originally anyway. Over 100 feet of what they're talking about is my property. What would happen if I sell my home someday? I've lived here since 1986. We love our little ranch home. We searched for months to find something where we would not be in a cookie cutter neighborhood. If I sell my home, it could get torn down because it's just not big enough or new enough. Then, all of a sudden, there's no back yard if someone builds a large home on my acreage. They would have villas 20 feet on the other side of my property. I don't think that seems fair. I've paid taxes on time every six months since 1986. This is my life investment. I don't think it's fair that the developer should get to use my property as his green space. A lot of times when I prepare for these minutes, I review minutes. The BZA minutes from December, 2019 are still not reported for public record. I know my fellow Mission Heights neighbors have more to say, so I will turn that over to them. Thank you for your consideration.

Chairman Elkins: Thank you.

Paul Klehn, 14905 Mission Road, Leawood, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Klehn: I have three points and one question. Primarily, my concerns about this development all along have been about traffic and safety. If you are aware, Mission Road itself frequently has a lot of bicycle traffic on the road itself. It's a two-lane road currently, as is 151st. There's also a lot of pedestrian traffic and a signal crosswalk over to Ironwoods Park, which is not marked well. It's dark at night. Then the third safety issue is all of these properties currently back up to Mission Road itself, so getting in and out of those driveways on our own properties is getting increasingly difficult as development continues. One of the things about the history that has not been addressed is there was an original plat and approved plan from back in 2016, all R-1, including both the west and east side of the power lines. That was not very much opposed. There was some opposition, but it fell within the city ordinances at that time; therefore, it was approved. It wasn't until the developer decided that he could not sell it at a particular profit level, whatever that may be, whatever the market was at that time, but they then decided to split that property, pull their application, and only develop the west side under another zoning ordinance level. It is higher density than what was originally proposed. At the time, during the Board of Zoning Appeals meeting, I had commented that it seems to me that without having a plan in place for the west side of those power lines, we were leaving ourselves open to even more BZA requirements and approvals to develop it for even smaller pieces of property. The density of housing, over the last several years, has continued to increase with every time that this developer has approached the Planning Commission and the BZA. That is quite concerning to me from a safety standpoint and the volume of traffic out there. I do not believe there has been a traffic study done on Mission Road or 151st recently. It may be difficult to do now, given the construction going on and road closure of Kenneth Road and 143rd because there are a lot of detoured traffic. That is probably my primary concern with this development. I had a question for Mr. Musil. One of his comments was about the density level and that it is higher than most developments in the area. My question to him is in that calculation of density, does it include the area of property that is actually the easement for the electrical company? If it does, it is a very misleading number. If it does not, I appreciate having that number and that reference. It is somewhat comforting to me that we have similar developments in the area. For the Planning Commission, my final point is that if, in the future, these legacy homes as they have been designated do become pieces of property that someone may want to sell or redevelop a larger home on it, it is limited because it is on septic. Through the county, we would not be able to develop a larger home because we would not be able to get approval for a larger septic system on that property. That has not been addressed at all; although, during the initial plans, there was a lot of conversation around providing septic access to all the property owners along 151st an Mission Road. That particular topic has since dropped. Those are my comments. I appreciate what the developer has done to try to increase the size of those lots, but I do also agree with my neighbors about the buffering and the density of the housing. That is a concern for me, so that's why I

agree with our homeowners and request that this plan be denied, as recommended by the staff.

Bob McClain, 14901 Mission Road, Leawood, appeared before the Planning Commission and made the following comments:

Mr. McClain: I'm part of the Mission Road group. For further clarification, you need to know that the nine houses along Mission Road represent 100% of the pieces of property that have abutting and adjoining property lines, and 100% of those homes oppose this plan. I want to talk about three things this evening. The first is density. That's where most of the conflict comes in this application. The second is the aftermath of the City Council hearing on this matter when previously presented. Lastly, I want to go through the results of the BZA meeting on a similar plan request. I believe that you have a map of the plan in front of you. I know that you know that the power line easement is on the east side. It's a considerable tract of property, and because of the rules, you can use that undevelopable property to calculate the density. The actual number of acres being developed under this plan are nine. If you divide that by 24, that's 2.66 houses per acre. If you further look at that plan, what we see as the Mission Heights resides is a row of houses – not Rowhouse Lane – a row of houses that have a density of 3 per acre. We don't see the street. We certainly don't see the power line easement. Adding up all of those houses that meander and border our properties is 3 houses per acre. Our property, which Mr. Musil left off his comparison, is .8 houses per acre. The distinct difference is their density is three times the density of our residential properties. My second point is when we were here before, we protested the determination of this body and took it to Governing Body for a hearing. At the Governing Body hearing, before they voted, they recommended that the developer and the Mission Heights residents sit down and try to solve their differences. I took it upon myself to make that request of the developer, and it was rejected. There were no discussions. The next word we heard from the developer was the application before the Board of Zoning Appeals to grant a variance on a 24-lot plan that was not this plan but very similar. The minutes of that meeting are not yet available, even though it was held in December. Consulting with my neighbors who were there and confirming with Wade Thompson, the liaison for the Board of Zoning Appeals, the applicant failed substantially on four of the five points requested in their variance. I'm sure you already know these five characteristics that are required, but I'm going to condense them and read them again. One is that the property is so unique that it won't fit the zoning or that it was not created by the act of the developer. They lost. They were not able to convince the BZA that this property was unique and had to be developed in this fashion. In fact, the report from the staff indicated that this property could be developed with eight houses. They also failed in that the BZA said their development would adversely affect our properties. They also failed to show that there would be undue hardship to the property owner or the developer if their plan was not approved. Lastly, they lost because their plan would be opposed to the general spirit and intent of the ordinance. In conclusion, you've already heard that this development and the common boundary line that it shares with our houses has no buffer. There's no natural separation, no manmade separation. I'm going to issue a challenge to the developer to find me, in the City of Leawood, anyplace where the

transition of the residential density goes from .8 to 3 with no buffer of any type. You can't find it because this city doesn't permit that.

Shannon Maize, 14913 Mission Road, Leawood, appeared before the Planning Commission and made the following comments:

Ms. Maize: Thank you for listening. Like everyone else, I have a couple things that I want to talk about. Mostly, it's just about the Comprehensive Plan, some financial items, uniqueness of the property, and safety of our children and neighbors. Leawood has already amended the lot size requirements on Mark Simpson's other development The Hills of Leawood. Leawood allowed the neighboring Overland Park Villas to factor in the lot size requirement, which is one reason the variance got reviewed and they could put smaller homes in there. The Comprehensive Plan has this property designed as R-1. We bought our house with the thought that 36 homes would be built behind us. The number of homes being built has changed, but the current development is still R-1. The Leawood Development Ordinance on Page 1, 16-1-2.1 states, "The zoning regulations and districts have been designed and developed to lessen congestion in the streets, prevent the overcrowding of land, and to avoid undue concentration of population." This also discusses the intent to minimize auto travel, conserve land and resources. This development plan is to encourage the most appropriate use of land throughout the community in accordance with the city's Comprehensive Plan. The plan is set. Rezoning to RP-2 allows concentration of population. It will add to the already busy Mission Road and the four-way stop sign that is just down the street. At the last Board of Zoning Appeals meeting, the lawyer said that the land goes with the zoning, not the approved development plan. If this gets rezoned, this land is 100% zoned for 6,000 sq. ft. lots at a minimum. I know you're trying to work out something, but it's not even worked out before you vote today. I don't see how anything can be in writing where the developer can't back out and a new developer comes in. The current owner probably has a line of people wanting 6,000 sq. ft. lots. Also, with RP-2, there are more accessory uses than R-1, such as more parking areas, tenant-use minor buildings, trash collection containers, vending machines. If this gets redeveloped into 6,000 sq. ft. homes, it would be like an apartment complex behind us. I'm very leery of living behind an apartment complex. This property is only unique because Mark and his lawyer state so. This property was one large unit broken into two by Mark Simpson. The land, prior to development, was purchased by Dr. Reddy. Last time around, you voted for it. There was a big discussion on the owner and how he won't get his money out of it if we don't let Mark Simpson develop it. Dr. Reddy has held it for Mark for many years. We don't even know who would like to take a crack at that land. Hayward's property was sold for \$3 million and torn down. I bet Dr. Reddy could make more money selling it to two people than having Mark Simpson develop it. The property that Dr. Reddy bought, he bought for \$300,000. He sold his property to the current development for over \$3 million. I would say there's no hardship on Dr. Reddy. Last time the Zoning Committee voted, that was a big discussion, but we were unaware of the financial impact already made to Dr. Reddy. Selling or not, this group should not be concerned about the person who owns the property. That was his investment when he purchased it in whatever year. This property has been called unique multiple times. Unique is in the eye of the beholder. It's unique

because it was carved out when they revised the plan. Mark and my husband have been talking about property because we would like to extend our back yard. We're the lot with the pool. Mark Simpson said in an email that the property he wants to buy is 9 acres. One of the last meetings, it was 13 acres, and today, I heard the lawyer talk about 14 acres. This property keeps getting larger when, really, it's 9 acres. Bob was correct at 2.7 houses per acre, not 1.7. Lastly, I value being outdoors like all of us. The sidewalk on Mission Road is already poor. You have to cut back and forth three times. No one can ride a bike to Prairie Star; it's very unsafe. The road is busy. What we're not really realizing is there are 73 homes behind us already. When that street goes in with 24 more homes, that's almost 100 homes with 300 cars probably going down a residential street, trying to pull left or right onto Mission. That is dangerous. There are studies out there. Community and Environmental Defense Services organization likes to help neighborhoods design their streets. Poorly managed growth equals accidents, which is the leading cause of death. Poorly planned growth exacerbates accident rates by increasing congestion, causing more drivers to speed up and take more risks. Is there even a public facility law that states what types of streets and intersections we should have and how four-way stops should be managed? That's a lot of cars coming forth, and I don't believe any study has really been done; it's just been, "Oh, it's okay." There's entry points. There's a study that states going from ten access points to 60 access points per mile triples the accident rate. Now, we're adding 73 new access points, plus 24 possibly. What type of accident rate might we have with this street now coming onto Mission Road? I don't know if anyone has considered that. The last thing I wanted to say is that Mark Simpson's plan with the landscape by the street that would come in between our property lines was a verbal stop-by that he offered us. There was nothing in writing, nothing official. We would have to give up some of our property to make that happen. When we said we weren't sure, he said if we didn't agree then, he'd take it away and never offer it again. When he referenced that in the proposal, that hasn't been discussed in over a year. I don't know where that came from. All of us neighbors are just concerned that you're jamming some houses back there with no landscape plan. We don't know the street width or plan for sidewalks. We oppose this development until there's a better plan in place for all of us to be happy. Thank you.

Chairman Elkins: Thank you for your comments.

Mark Maize, 14913 Mission Road, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Maize: *(refers to the plan diagram throughout)* My wife hit on some of the points. I've been dealing with Mark Simpson now for six years, maybe, or seven. He knew our lot was set back farther than anyone else's lot. He knows I've always wanted a back yard, and I've tried to either purchase it or work out an agreement with him. In addition to the email, he's also verbally told me that he did not want me to oppose this development here because there was a misunderstanding. The area behind us, we thought was going to be villas. He basically just took those out. We were all going to protest the variance for the lot sizes of the R-1. He did not want me to go to that meeting and protest it. I said I would not go because I didn't want villas behind me. I misunderstood that you were going to put

villas behind me. Five of the neighbors came, and we didn't say anything. We let that get approved, just like our neighbor Paul mentioned to you. None of us contested it, and it was approved. Now, here we are, back once again. He wants my driveway now only to give us a buffer behind us. He verbally told me in a phone call that he would sell me "75 feet, probably; 150 feet, probably; 300 feet, no." I said I wouldn't go to the meeting and we could work out something. Maybe we could have something in our driveway. We never got there. He knows I'm just going to leave the buffer. It is 25 feet behind me, and basically, a house could be built where the first tree is. We still don't know anything like that. We don't really want to give up any of our property. We also have septic. I don't know how it would possibly work. Basically, we deserve better than another development 20 feet away. They could build a development 20 feet from basically my house. My house sits next to our pool. We'd love to work something out. We just feel like we deserve better than having another development 20 feet away from our homes. I'm a real estate professional; it's all I do. We moved from 9510 Lee Boulevard, which I still own and rent. We know that trees are selling very well in Leawood. They conserve the environment, air quality, and noise pollution. We're already hearing the development behind us loud and clear. We can hear the train a lot more already. I don't do any air quality studies, so I can't tell you about that, but I do know from reading. The current traffic is getting more and more congested, as we've talked about. I don't know what they're talking about with people behind our yard; there's nobody there. They can't even get there (*shows a picture*). I can barely get out of my driveway as it is. They also failed to mention at the last meeting that there are also homes being torn down. My buddy bought one just down the street from Prairie Star. They're all over 1-acre lots. That's what I thought was going to be behind me when I bought out here. He bought it for \$350,000, blew it down, and built a \$1 million house. There's a house right across from us just down the street as well that is for sale on five acres for \$800,000. They built a \$1.5-\$2 million house as well as one on 143rd Terrace. There shouldn't be any hardship now that Dr. Reddy was paid. It's just never been marketed, so no one knows about it. There's plenty to do right behind our back yard and not just this by slamming all these little houses behind us, which is not what I bought or was told was going to be developed when I spoke with the agent who was listing his house who was also a homeowner/agent. Thank you very much for listening.

Chairman Elkins: Thank you.

Theresa Entrekin, 15009 Mission Road, Leawood, appeared before the Planning Commission and made the following comments:

Ms. Entrekin: We live directly west of and next to the proposed development. My husband Corey is here as well. I'll speak for both of us, so if I go a little over time, I appreciate your patience. While we appreciate the developer's attempt to redesign the lots to be minimally larger than the lots in their initial plan of August, 2019, the lots in this proposed plan are still only 1/3 the size required by the existing R-1 zoning and LDO. We aren't opposed to the size or style of the beautiful houses the developers are known to build. We are opposed to the large number of houses and the small lots proposed for the land. By omitting this tract from their initial Hills of Leawood plan, the developer self-

created their design and density problem in this so-called weird parcel, and therein the landowner's purported financial constraints. If it isn't sufficiently profitable for this developer to build, nor for the landowners to sell unless rezoning is approved, the onus should be on the landowners and developers to consider price reductions and find other financially feasible alternatives rather than transfer the adverse consequences of rezoning to us nine adjacent property owners. It is logical to retain the existing zoning because in R-1, low-density residential development will also bring high-value, high-quality, detached, single-family homes and enhance our and the surrounding neighborhood's property values and the city's tax base as much, or more than a higher density RP-2 development will. To say that this proposed rezoning will be good for us and for the surrounding neighborhoods and that we won't get anything better is presumptuous. As for the HOA presidents of the nearby neighborhoods such as Reserve at Ironhorse and Villas of Ironhorse and the Olathe realtor that are in favor of rezoning, the residents of these communities don't directly border the development, and most of their residents will not even see it. They may not have thoughtfully considered the adverse impacts a higher-density development will ultimately have. To tell us there will never be another opportunity for a better development employs fortune telling, condescension, and fear tactics. To say that this tract of land will instead become a construction dumping site and a partying place employs the same fear tactics. In all the years we've lived here since 1995, those things have not been concerns, and they may never be. Rezoning the land as a prophylactic measure to these things would be an excessive and unnecessary move. As we've discussed, if zoning is changed, you also open up the prospect of this developer or another coming back to claim that the design still isn't feasible and to request even higher residential density, which RP-2 zoning would readily allow. A proposed mere stipulation that the developer agrees to rezone as R-1 if the property isn't built according to their submitted plan does not provide sufficient assurance because there is no guarantee that this would be enforced or even enforceable and may even be forgotten. We Mission Road residents adore the homes and large lots that we purchased between the 1980s and up to a few years ago. These homes on large lots are one of the primary factors that drew us to Leawood, as was the assurance from the city's Master Plan, which is regularly reviewed and reapproved, that the property behind us would be developed as R-1 [Low Density Residential] and in accord with the LDO. To the developers and to others whom we've heard condescendingly state that our Mission Road properties are out of character or do not fit with the surrounding neighborhoods or with the proposed development, we say, "You're welcome" because each of you directly benefit from our large properties. The fewer number of our houses per acre, the fewer number of our driveways, the fewer number of our cars, the vast amounts of green space and mature trees, the improved air quality these trees provide you, and the less traffic and less noise, air, and light pollution that our homes and large lot properties afford you. You may not recognize it, but all of these factors contribute to enhancing our and your daily quality of life. The developers benefit additionally from our large lots, as they've consistently cited our lot measurements and our large amount of green space to their advantage when they describe the buffering and green distances between their proposed houses and ours. For example, stating that there's 150 feet between my house and the houses to be built behind us doesn't portray a fair and complete picture. The developer's own proposed landscape buffering is minimal, and we do often leave the interior of our home to fully use and

enjoy our large yard. We will suffer tangible adverse effects and incur additional costs if the zoning is changed to allow higher-density construction. We trust in and expect the City of Leawood officials to uphold the existing zoning and its requirements for us long-time Leawood residents and to respect our support of this community and the investments we have made in it and to not discount or dismiss the short- and long-term adverse consequences of this proposed higher-density rezoning on our daily quality of living and our future potential. Thank you.

Chairman Elkins: Thank you. Is there anyone else in the public who wishes to be heard on this case?

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

Chairman Elkins: I would invite the applicant to step forward and please respond as you see fit.

Mr. Musil: Thank you. What's frustrating for an applicant or his attorney is that, at every stage of this process, including seeking the deviation with the BZA, we have faced the opposition of the neighbors. When they get up here and say we don't oppose development of this site, what they're saying is they don't oppose development of 30,000 sq. ft. lots behind them. When we talk about character of the neighborhood, there are 500 homes within a ½-mile radius of their homes that are on lots the size of these lots: 15,000 square feet or 12,000 square feet. In terms of Mission Reserve on the southwest corner, the lots are down to 6,000 square feet. You need to determine what is the real character of this neighborhood. The character has been developed over the last 20, 10, 5 years. I like the fact that Dr. Reddy has been brought up because you owe an obligation to the owner of the property that is being rezoned as well as to the neighbors, and Dr. Reddy has also been a resident of Leawood and an investor in Leawood for 40 years. We keep hearing about higher density. Let's take Mr. McClain's argument that you don't get to count the easement area for the KCP&L easement. First of all, your LDO allows you to count that. Just like every other development along that entire 160' corridor got to count that easement as part of its density calculation. If you assume, then we don't get to count it. We should only get to count 9 acres. Mr. McClain's calculations said we were at 2.66 units per acre. If we're at 2.66, are we out of character for the neighborhood? We're equivalent to The Pavilions, Mission Reserve, and Villas of Ironwood. We're still within the range of reasonable. That would be cheating us out of the ability to count our density the same way every other development in the City of Leawood gets to count its development. I heard concern because they want high-value, high-quality, detached, single-family homes. We're going to get 15,000 sq. ft. lots, which is exactly what R-1 allows next to them, with a 30' setback, which is exactly what R-1 allows behind them, valued at \$800,000 and about 3,500-4,000 square feet. These aren't little homes being slammed in next to the neighbors. I understand that the change is difficult, but this is the only way this gets developed. We can put a plan on there that might be zoned RP-2, but it's planned R-1. It will be developed R-1, or it will go back to R-1. Unfortunately, the

only way to do that is the way we're doing it today. Otherwise, you would have a simple planning decision about whether this should be RP-1 or R-1 if we didn't have the Bulk Regulations. I don't think that would be a difficult decision. The distances between houses is important because the neighbors in the first meeting brought it up and said we'd be too close to the houses. I said we could be 30 feet on one side and 30 feet on the other with R-1 zoning, so they can be 60 feet apart. We felt it incumbent upon us to give you the data that shows 114 feet to 230 feet as the distances between the homes. We have support of the HOAs in the area because they believe this would be beneficial to the neighborhood. You can use your own judgment because you've been doing this for quite a while. Does having a very nice, high-quality development next to you hurt or help your property values? This plan deserves to be advanced to City Council with a favorable recommendation. It meets all the criteria, save one, and that one is taken care of by the stipulation and the qualifying agreement that will follow it and be in place before Governing Body consideration. The stipulation itself carries legal weight, as Ms. Knight will tell you. I'd be happy to answer any additional questions, but I'd ask for your support of this very reasonable plan.

Chairman Elkins: Thank you.

Comm. Hoyt: Mr. Musil, maybe you can address this issue. Several mentioned in their comments that City Council requested that the applicant work closely with the Mission Heights residents to work out their differences, and at least one or two of them mentioned that they were not able to engage with you on this. Can you comment on that?

Mr. Musil: I'd be pleased to let Mr. Simpson comment because he had the discussions and contacts, but I think it would be unfair to say there weren't efforts to communicate with the neighbors. What we know is we've never been able to resolve anything, including at the BZA, other than that we must develop 30,000 sq. ft. lots behind.

Mark Simpson, 15145 Windsor Circle, appeared before the Planning Commission and made the following comments:

Mr. Simpson: We did meet at Mr. McClain's house at his request. We spent time speaking with him about what could be done, and he said that we could develop estate homes in this area. We tried to explain that this was an impossibility and would never work, that people would not invest over \$1 million in estate homes to be next to 160,000-volt power lines. There are no buyers for that lot. We developed 4,500 lots, including Lionsgate and Hallbrook. We had pretty deep experience in this, and it was not a saleable plan. We offered to make every single lot backing up to their house an R-1 lot, which is exactly what it was when they bought their house. They said they didn't want any lots behind that were of any size, particularly that weren't estate sized. We explained that the houses were all built on septic tanks and served by existing water line, that the houses average 1,600-1,700 square feet. Our houses would be 3,500 square feet, which is about double the size. The houses would start in the \$700,000 range. Their houses appraise, according to the county, between \$225,000 and \$350,000. We didn't see any way that our houses, at double the value, would do anything to depreciate the value of their houses and

that this should be a welcome addition for them. They just didn't want to hear any of that. We left the meeting agreeing to disagree. I've had multiple meetings with the Maize family. We've had multiple meetings, so it's not for lack of effort; the parties just don't seem to see eye-to-eye. We're never going to build houses with septic tanks. We're never going to build 1,600 sq. ft. ranches that are consistent. This is nine homes in a sea of 500 homes that are sure that they are representative of the area, but I don't believe the city will ever approve another septic tank-served home again. These are outliers that I'm sure will sell for a lot of money. I'm sure no one will ever do anything other than to take these houses and build a bigger house on them and hook into sanitary, which we will provide for every home in the area. In fact, if they tried to go in and remodel their septic tank system, the county will tell them that they have to hook up with sanitary, which will probably cost less money than redoing their septic system. We will provide a financial benefit in this regard. As far as traffic, I can't tell you how many they have, but the public right-of-way was dedicated in 1961, and that was always going to be a public road. It's going to be a public road one way or another. I think the traffic demands of the 70-some houses in The Hills will one day call for the city, at their expense of about \$100,000, to build that road just to The Villas and another maybe \$40,000 to build it into The Hills. City of Leawood will be spending \$140,000 of their money if this development doesn't go through to address those demands. As one of the neighbors to the south who owns two properties noted, "I'm not looking forward to 72 homes coming out exclusively onto 151st Street." I don't think the split between those houses coming out on Mission Road is going to add much to the 5,200 cars currently on Mission Road. To add 24 houses to that is in the single-digit percentage that we'll add on. I'd be happy to let city staff evaluate it. Right now, they've asked for sight distance, and we think we have good sight distances. We've tried to work with the neighbors. We've had numerous meetings with them, and we're just unable to come to an agreement with them. I can't develop 1,600 sq. ft. houses on septic tanks.

Comm. Hoyt: The other concern that was raised was the lack of meaningful landscape buffer between the lot lines. The impression was given by several neighbors that, if this plan does go through, they would like at least some meaningful landscape buffer. Is that being addressed by anybody at any place?

Mr. Simpson: Yes, there is a 10' landscape buffer all the way along, which will be planted at the expense of the development. It will be an easement to the HOA, maintained in perpetuity by the HOA. It will be a combination of evergreen, conifers, and pines so they maintain their leaves year-round. That will be done to screen the 150'-200' differential between the backs of each of the homes for the benefit of the new villa owners and the existing homeowners. We have offered both the homeowners on the north and south side, if they will provide an easement, to do a heavy landscape area on the north and south sides of 150th Street that would be a combination of berms, landscaping, and trees that would be irrigated. The cost for that would be paid by the HOA. That would provide a blockage of headlights, traffic, and noise to their homes. On the Maize's side, it would be necessary to make that a total screening. We've offered to relocate their driveway at our expense to make that screening effective. If their driveway enters in the middle of 150th Street, the screening would not be very effective. We've asked them to

figure out where they'd like their driveway to go on Mission Road, and we will have that done. We've dealt with landscaping 100% across all the western neighbors. These nine houses out of the 500 that are within .5 mile from us were put there in the '60s and '70s. We've said each will have a thick landscape barrier. It will be built at the time the houses are done. They won't have to worry about residents not replacing trees that die because it is the responsibility of the HOA. For those who live off 150th Street, if we are granted the easement, we will do berming, landscaping, and irrigating. We don't have enough room in the city right-of-way, nor do I think the city would even let us do an extensive berming, landscaping, irrigation plan.

Chairman Elkins: Thank you. Other questions for the applicant? Mr. Musil, to cover it again, how do the density and the lot sizes proposed here compare to The Hills of Leawood?

Mr. Musil: The Hills of Leawood, by our deviation, have a minimum lot size of a little over 19,000 square feet. There's an estate development with larger lots and then a manor development on the western side with smaller lots next to the power line. The minimum lot size was 19,000. The manors are 15,000. These would be consistent with the manor on the east side.

Chairman Elkins: Refresh me on what the average size of these lots is.

Mr. Musil: The average is 15,000; the smallest one is 12,004. All of them are over 15,000 except four.

Chairman Elkins: How would you respond to the suggestion by a number of the witnesses that this challenge that Mr. Simpson has with this part of the property is really a challenge of his own making because of the way he chose to split up The Hills of Leawood versus The Hills of Leawood Villas.

Mr. Musil: I think there are two ways to respond. First, they are now separate tracts. This was always the harder piece because it was 13.5 acres, 9 of which are bounded by a jagged line on part of the west and the power lines; whereas, The Hills of Leawood was a large, 40-acre tract that could be developed. There are different development challenges there. The second part is that we end up with something very similar to what is on the east side because the lot sizes are equivalent to the manor lots along the east side of the power line. Could he have done it at that same time? We would have ended up the same place we are here today with neighbors opposing anything less than a 30,000 sq. ft. lot and believing that an R-1 lot behind them with all of the qualifications of setbacks being met was not something that they would accept. I've done it either way, but you end up pretty much at the same point.

Chairman Elkins: So, you would take exception to the idea that there was essentially cherry-picking going on here where the applicant dealt with the easy part first and then kind of left all of us to figure out what to do with the hard part?

Mr. Musil: I don't think there's any doubt that a developer ought to take the easy part first, the larger part with more ability to plan. If he had done it all at once, he would still get the credit for the 160' power line easement that goes for half a mile, so the density calculation would still have been distorted, according to what the neighbors believe, but not distorted according to what the LDO is. Cherry-picking is probably in the eye of the beholder, but when you end up trying to get to the same place with the same size lots and the neighbors are still opposed to it, I don't know where we could have gone to avoid placing you in a position of having a difficult decision to make and the same with City Council.

Chairman Elkins: Thank you. Other questions? Seeing none, we'll move to discussion of the application.

Comm. Hoyt: First of all, let me say that I think this is a greatly improved plan, in my opinion, than the first one we saw. It's a matter of public record that I voted against the plan the first time. I'm disappointed that we're not looking at RP-1, and that seems to be a function of what the BZA decided. I would have a really easy time, as Mr. Musil suggested, going for this if it were RP-1. I am somewhat encouraged that the landscaping that the homeowners want seems to be coming along; although, I'm a little confused because they didn't seem like they were fully aware of what that landscaping was that was being planned. Maybe that was just a miscommunication. I am inclined to vote in favor of this plan on the absolutely ironclad guarantee that this proposed Stipulation No. 2 has sufficient legal clout and teeth so that there is absolutely no way that this plan can be executed in any other way than keeping with what aligns with R-1 as well as with RP-1 and that there won't be any issue if this plan goes forward in the zoning going back to R-1. I guess we've received assurances from the legal folk that it wouldn't be a problem, but it is a little unnerving to go forward with No. 2 reading that it will be worked out.

Comm. Belzer: I agree with Commissioner Hoyt. I also am comforted and feel different in that the assurances are there that it will revert to R-1. I'm also a little confused and do have a concern about the disconnect in hearing from so many residents that they don't feel comfortable and confident in the landscaping and buffering of their property. I'm hearing from the developer that it's all there and that they've listed many improvements, including the septic and sewer lines. What they're offering sounds great. I'm just not sure why there is this disconnect and why the residents don't feel that they have that assurance and that they will see that buffering and landscaping. I would really like to see some compromises. It's concerning to hear from resident upon resident that they don't feel comfortable.

Comm. Peterson: I must say that when I first received the packet, I went back to the original packet from August, and I was incredibly impressed with the work that Phelps Engineering did in the redesign to go from 25 to 24 lots. It really stands out if you compare the actual documents. More importantly, comparing the lot areas, they went to considerable amount of work redoing those lot sizes. I spent quite a bit of time comparing the two, and I was very impressed. I am actually very comfortable with the city's ability to work out an agreement to make sure Stipulation No. 2 has significant teeth. I would

agree that it would have been nicer if we would qualify for RP-1 versus RP-2. However, I think there is a significant advantage to developing this property because, frankly, I can't see any way in the near future it will ever be developed. I'm fully in support of approving this.

Comm. McGurren: I would agree with what each of the three previous commissioners said. I won't repeat everything, but I think the change from what we saw before is significant. I kept the original plan and compared the two. As a person who has a lot that's $\frac{3}{4}$ of an acre and the people that back up to me having substantially smaller lots, I think it is a huge advantage for Lots 24, 25, 23, 22, and 21 to become 24-20 on the new plan and not be laid out like piano keys, but for them to have fewer of their lots backing up to the legacy lots. I think that's a huge improvement. I think there's a variety of things here. I, too, would have preferred to see a scenario where there was a way to make this R-1. I would have preferred a scenario with more resolution between the developer and the existing owners to the west. I do also believe that this plan is dramatically improved. It is worthy of our consideration, and Stipulation No. 2 is the key. If somebody sat here today and said that this stipulation was in the hands of the developer and not the city, I would have a differing opinion. I assume that our legal group and staff will create the appropriate documentation for Governing Body, and I also was someone who voted nay the last time and will vote for this time.

Comm. Stevens: I have very similar thoughts. I was one of the four who voted against it initially. I think it's greatly improved in the design and layout. Even though it is requesting higher density, it is compatible with The Hills of Leawood. It is very similar in lot size and layout, and there is precedent around this overall neighborhood to go to the higher density housing layout. Even its proximity dividing the older Mission neighborhood feels natural. Then, even saying that, it is very compatible to the Mission housing that was approved with The Hills of Leawood. I considered a worst-case scenario with it being redeveloped, and the 6,000 sq. ft. lot size would be roughly like dividing each of these lots in half. With the setback requirements of the zoning, it would be difficult to change or increase the number of units within the same configuration, even if it were broken into 6,000 sq. ft. lots. It couldn't meet setbacks. I think there is comfort in knowing it would be unrealistic to make this denser than what is being proposed. I feel much better about it this go-around and would support approval.

Chairman Elkins: Thank you. Under our bylaws, our meeting is scheduled to end at 9:00 p.m. We're coming close to that time, so if there is interest in continuing this discussion, I would entertain a motion.

A motion to extend the meeting for a period of 30 minutes was made by Coleman; seconded by Peterson. Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Comm. Hunter: I approved this the last time, and now you're in front of us with an approved plan. I intend to support it again. I'm also comfortable with Stipulation No. 2 because the city is comfortable with it.

Comm. Coleman: I'd just like to ask staff in the future to include the BZA minutes to see what transpired. I don't know if they're available.

Mr. Sanchez: The issue with the Board of Zoning Appeals minutes not being available is there has not been a BZA meeting since that meeting, so they have not been able to approve the minutes to make them finalized. I believe their next meeting is in June, and they will approve the minutes then.

Comm. Coleman: Thank you for the explanation. I know in the past, there have been draft minutes. I know City Council sometimes gets ours before we approve them. I'm sure there's something out there that we could have seen.

Mr. Sanchez: The Planning Commission minutes are a bit different because they get approved by the Planning Commission after the fact. The timing for this just did not work out.

Comm. Coleman: Thank you. I would also like to commend the public. They've done a lot of research on this and really delved into our statutes and Comprehensive Plan. When I looked at this application, I did not go back to our August meeting. I have no idea how I voted. I really wanted to look at this with fresh eyes and not be influenced by my thought process back then. With that said, my concern in the beginning and my concern now is still that this is a development surrounded by R-1. To move to an RP-2 would be a dramatic change on paper for this land that we're considering. With that, it does not meet our Comprehensive Plan, and I do have a problem with switching from the Comprehensive Plan to another zoning category. It's a big jump, especially with going to RP-2, no matter the merits of the development. Finally, Stipulation No. 2 concerns me because I see the court system nowadays, and things get so overturned that you wouldn't think would. I constantly see agreements that the courts overturn. I think that the neighbors are concerned that, even if we do put something in writing with the developer and the city, while it may not be that great of a chance, it's still a potential that it could be overturned and we could be stuck with RP-2. With that, I will be voting no on this proposal.

Comm. Block: I don't know that I really have anything to add. I do think the improvements on the west side were positive. I don't like the precedent of moving from R-1 to RP-2, but all in all, I think it's probably the best development for this space.

Chairman Elkins: I've got a number of conflicting thoughts here. I, too, am concerned about changing the Comprehensive Plan. As has been pointed out by the public, the Comprehensive Plan is reviewed every year. There was a review of it this year. Public notice went out about it. It's not unusual that the public does not appear, but there was an opportunity to modify the Comprehensive Plan on all the same grounds that the applicant is here on today. For whatever reason, the applicant did not choose to participate in that particular process. This heightens my concern about changing the Comprehensive Plan. If we were just a year in and were just getting ready to review it again, it would be different,

but it was recent. I'm also troubled by the BZA decision. They had an opportunity to examine the very issue that has us here today. This is effectively a different way to avoid the Bulk Regulation issue. There's nothing wrong with it. I'm not taking issue with the fact that the applicant has come to us, but I do pay some deference to the decision-making process of the BZA, where the issue is basically the issue this decision is turning on as well. That has caused me concern. On the other hand, I am struck by the fact that the lot sizes planned here are the lot sizes that are required by R-1. I appreciate and commend the efforts by the applicant to do that. Essentially, what I think they're telling us is even though they're getting RP-2 zoning, they're building a development that is consistent with all but one of the requirements of an R-1 zoning, acknowledging that the one is not insignificant. I was concerned after our last hearing that we didn't have teeth and what might happen if this doesn't go the way the applicant wants it to and would be forced maybe because of something unforeseen to walk away from this. I think Stipulation No. 2 has gone a long way in that direction. That said, my third concern is the bulk density and the idea that the lots ought to be based on the average of the lots within 300 feet. That regulation, frankly, was designed to protect the homeowners that were before us today. Yes, the adjacent lots are consistent with R-1, but the idea that you have to be consistent with the average of the lots next to them provides for a gradual change. Those are the things that trouble me here. At the end of the day, I'm still persuaded by this question of what better use of this property there is. The question of the character of the neighborhood has to be something beyond the nine homes, though not insignificant. On balance, I would probably be supportive. Frankly, it's a closer call for me now than it was back in August because of the thought and analysis that went into the BZA decision. I am disappointed that we don't have the BZA minutes in front of us to understand better what was said. I think Mr. Musil was forthright with us in terms of how the voting went, but the minutes would have been helpful to understand more of the color, and it wouldn't have been fair to ask Mr. Musil to provide that color; he's an advocate for his client. Those are my observations with respect to the application. Are there other comments?

Mr. Sanchez: Staff would like to add a stipulation after talking to the applicant to add a western boundary buffer, a tree preservation easement, along the western common boundary of the proposed development. As it stands, the tree preservation easement is not shown. The applicant would like to add them to it, so a stipulation could state, "By the time of Governing Body consideration, the tree preservation will be added to the Preliminary Plan and Preliminary Plat."

Chairman Elkins: Just for clarification, that easement would be all on the applicant's property.

Mr. Musil: That is correct. We would incorporate the 10' utility and 10' tree preservation into the stipulation for those lots.

Chairman Elkins: I guess the other issue we haven't really addressed here is Mr. Musil also noted that the third stipulation seemed to be inconsistent with the application. Does staff have an objection to striking that prohibition on deviations?

Mr. Sanchez: Staff feels if the applicant is able to meet many of the Bulk Regulations of R-1, they should be able to meet those of RP-2. The applicant is asking for it to be removed.

Chairman Elkins: No. 3 talks about deviations rather than rezoning. I think Mr. Musil pointed out some setback deviations that I haven't heard staff objecting to.

Mr. Sanchez: I think we would be okay with the removal of the stipulation.

Chairman Elkins: Any other comments or questions? If not, is there someone who would like to make a motion?

A motion to recommend approval of CASE 23-20 – THE HILLS OF LEAWOOD VILLAS – Request for approval of a Rezoning from R-1 (Planned Single Family Residential) to RP-2 (Planned Cluster Residential Detached), Preliminary Plan, and Preliminary Plat, located north of 151st Street and east of Mission Road – with the removal of Stipulation No. 3 and adding a stipulation to require a tree preservation easement on the western boundary, to be provided before Governing Body Consideration - was made by Peterson; seconded by Hoyt. Motion carried with a roll-call vote of 7-1. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, and Block Opposed: Coleman

CASE 37-20 – TOWN CENTER CROSSING – PELOTON (RETAIL: FITNESS) – Request for approval of a Final Plan for Changes to the Façade of a Tenant Space, located south of 119th Street and east of Roe Avenue.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: This is Case 37-20 – Town Center Crossing – Peloton – Request for approval of a Final Plan for Changes to the Façade of a Tenant Space. The applicant is proposing to change out the mullions and add a black surround around the storefront itself with two lighted bands. Outside of that, they will have an addition of a composite panel that will also surround the storefront. Outside of that, they would like to paint the brick an iron grey color. Staff is recommending that this application be continued to allow us to continue to talk with the applicant. We have been working with the applicant throughout the process. The reason staff has concerns is the Design Guidelines for Town Center Crossing were approved and specifically state in several areas that the bulkhead and neutral piers are not to be modified. Staff will be happy to answer any questions.

Chairman Elkins: Questions for Mr. Klein?

Comm. Hoyt: You're recommending to continue the case. What have your discussions with the applicant along those lines been? Have you all talked about continuing it?

Mr. Klein: They received the Staff Report Friday, and before that, there have been a number of conversations, trying to find a solution to maybe achieve the look they're looking for without modifying the storefront as prohibited by the Design Guidelines. Staff feels like it would be beneficial to keep doing that. We don't feel it is something we could approve based on the fact that it isn't to be modified.

Comm. Block: There is a staff comment that refers to Stipulation No. 5, but I don't see anything there that correlates to No. 5.

Mr. Klein: There should be a correction to reference No. 4. A stipulation got added, and the numbering wasn't updated.

Comm. Block: Then is there something in this proposal that has visible lighting, or is that protection to ensure that would not be the case?

Mr. Klein: Staff doesn't really have any problems with the application, outside of the fact that they would like to paint the brick. If they paint the brick, basically, it is a permanent change as it would be difficult to remove the paint and return it to its natural state. When this development originally went in, it was agreed that each storefront could vary the material; however, the common piers and the bulkhead would remain the same.

Comm. Block: I understand that a sign wouldn't be part of this application, but would there be a sign on that bulkhead, or is it just the logo on this new space on the sides?

Mr. Klein: There are two logos on either side within light bands. Staff is considering those architectural elements and not signage. I would imagine there would be signage; however, that application would be approved administratively.

Comm. Block: The Apple Store to the west predates my time on the Planning Commission, but is that not a bulkhead change?

Mr. Klein: You're correct. They achieved that by providing something in front of the storefront. If Apple leaves, that storefront can be removed. We talked with the applicant about doing something similar. We'd probably continue to achieve what they're looking for without permanently modifying the bulkhead or piers.

Chairman Elkins: Thank you. Our prior motion extended the meeting until 9:30. We're clearly going to go beyond that. Do I hear a motion to extend to 10:00, which is the absolute limit?

A motion to extend the meeting an additional 30 minutes, not to extend beyond 10:00, was made by Coleman; seconded by Hunter. Motion carried with a unanimous roll-call vote of 8-0. For: McGurren, Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block.

Comm. Coleman: I understand your comments about the bulkhead. Can you go into a bit more detail about the bonded aluminum siding that is not allowed in the LDO?

Mr. Klein: What they're proposing is a composite panel. The Planning Commission has already seen an application with regard to updating the approved and prohibited materials list. We are suggesting that composite panels be allowed. That particular application is due to go to Governing Body on June 1st. Staff doesn't have an issue with the material, but it would need to be approved prior to that. The way the schedule is working out, I think that would probably happen.

Comm. Block: The actual issue is with the paint on the bulkhead, then?

Mr. Klein: Correct.

Comm. Hunter: Will this continuance delay the opening of the business?

Mr. Klein: That would probably be a better question for the applicant. I don't know their timeline.

Comm. Coleman: Is the only reason for the continuance the paint on the bulkhead, or are there other issues?

Mr. Klein: No, it is modifying the paint on the bulkhead.

Chairman Elkins: If there are no other questions, 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: I am here representing Peloton and Washington Prime Group, which owns both Town Center Plaza and Town Center Crossing. Ryan Badger and Ralph Costella are on the phone from New York with Peloton. We want to get this approved so we can get the store open. (*Displays presentation on monitor*) Destination Maternity is the façade. It is the 1990 version of what was cutting edge at the time. It is not what it takes to attract the type of retail mix the City of Leawood wants. Obviously, we have the demographics, the buying power, the public, the desire for it, but this does not represent a modern center. In part, as we have seen, the center looks no way near what it looked like in 1994-1995. The bulkhead has been modified in a variety of matters. Apple brought aluminum panels up, glass, different colors, undulations. Some used the brick; some put things on top of the brick. It creates an architecture of mix-and-match in a way, but it's distinctive and compatible with the quality parameters that were set forth in the Design Guidelines back in 1994. I don't think anybody anticipated that the original façade would need to be maintained in order to maintain quality. Reading out of those Design Guidelines, it refers to storefront design and colors, "The unique characteristics and quality tenant mix of One

Nineteen calls for bold, dynamic storefronts.” It goes on to talk about storefronts that may need approval through the development before coming to the city. That’s a living, breathing set of Design Guidelines that maintains quality. As the owners of this shopping center have done is keep a 1995 shopping center current without asking for Capital Improvement District (CID) funds to improve the center. They let the tenants do it, and that’s how you bring the quality of tenants like Apple to a shopping center. Peloton is one of the hottest retail shopping center concepts in the country. I have been monitoring this for a while. I’m amazed because we show up here tonight, and if we move forward, the reason for denial is because we have aluminum and a light element to it. The source is shielded. Color variations are not unique to this center. It all boils down to us taking a sound, architectural approach to change the color on our façade, not much different than Mitchell and Gold. They happen to put a different coating on the brick, but its paint. It is not much different than the paint on the brick at Crate & Barrel. The fear and concern is about what happens if Peloton leaves. We hope they don’t, but the next guy comes in, and you can retreat the façade. I doubt the goal would ever be to go back to the original, but if it is what is required by the city, when the next tenant comes in, they take the paint off. I refute that we don’t meet the Design Guidelines. I disagree with that. We do meet them, and it is exactly represented by two letters from Washington Prime, who owns the shopping center. We are being bold and different, and they approve it. They do not think we are degrading their substantial investment in the City of Leawood; rather, we are enhancing it. Staff went on to say that painting the brick is not in compliance with the LDO, but I have not heard anything about this. We had conversations, and we came to the same conclusion that we are in compliance with the LDO. We would respectfully ask that this be treated like any Final Plan that is part of the re-facing the center. We have a little difference in the process, but we think it presents a standard of quality that Leawood should expect, that this shopping center should expect, and that patrons should expect. We ask for your approval. I’m happy to answer questions.

Chairman Elkins: Would you mind putting the letter on the monitor? I don’t think it was in our packet.

Mr. Petersen: There are two actually. We did not get the Staff Report until late on Friday. I was surprised to see the letters were not in the packet because they were delivered last week. One dated April 15 came from Washington Prime to Peloton saying they approved it. Then, we asked the Vice President of Development for Washington Prime to send a second one that goes into the issue of flexibility that allows us to go after the best tenants we can go after. The concept is called trade dress; it is no longer just distinction by words on a blank wall. That is not how they create a distinctive value to the market. It is the image. The sign will be approved as part of a sign package.

Chairman Elkins: Questions for Mr. Petersen?

Comm. Block: The guidelines weren’t in our packet, either. Your argument is that the existing guidelines cover what you want to do and don’t need to be changed. I think Mr. Klein mentioned several places in the guidelines that say this does not comply.

Mr. Petersen: Remember, these are guidelines. The shopping center owner creates guidelines with things that will be done at the time. There are things that wouldn't be their choice, but they allow for review. It said that it didn't want the brick façade touched, and yet, Apple, LL Bean, Zoe's all had different designs. The city tries to take a position that if the words were on the paper in 1995, every time something different is brought in, the guidelines need to be changed. It's a little bit like what you did tonight with zoning a piece of property that is inconsistent with the Master Plan. Sometimes, the situation merits deviating from the Master Plan. You don't go back and redo the entire Master Plan. Staff has not cited any specificity about painting being prohibited. It just says it is the preference to not treat the bulkhead, but those have been changed over the years.

Comm. Block: You referenced 1995 several times. This was a gas station and an open lot back in 1999 or 2000.

Mr. Petersen: One Nineteen was developed probably in the late '90s. The first guidelines that I referenced were dated 1994. It might have been in the approval and the center didn't get built out. I know Crate & Barrel came in about 1998 or 1999.

Chairman Elkins: I think I'm probably the only one on the commission who was here when it came before us, and I think it was actually after 2000.

Comm. Coleman: Mr. Petersen, Stipulation No. 3 states that the project shall not alter the shell of the building, including painting of the brick on the bulkhead of the main structure, per Town Center Crossing Design Guidelines. You're saying that your client wants to paint the bulkhead or put something on it like Apple did?

Mr. Petersen: Paint. I'm not an architect, but part of it is we want to have little different treatments, and painting is a well-accepted way to change shading, color, and style.

Comm. Coleman: Were some of the other examples you used painted, or was there something on top of them?

Mr. Petersen: To me, it looks like they put a spackling over the brick and painted it white.

Comm. Coleman: Is there another store in Town Center Crossing that has paint on it, or do they all have something stuck on to the building?

Mr. Petersen: I didn't have the construction records to go back and look. I would suggest that Crate & Barrel's brick is painted.

Comm. Block: Why not just change the guidelines to be explicitly clear that you can update it for 2020 so you don't have to do this the next time a store wants to come into one of these places?

Mr. Petersen: We finally saw staff take the position that it's inconsistent with the guidelines, and it's the paint. We could do that and have it done by the time we get to City Council. If we have to do that every time we're moving through, it will be cumbersome. The Vice President was pleading for this to work. This is challenging for tenants. This is holding up opening the store, but we can change the guidelines. I understand the technicality of it, but the owners are supportive. Apple wouldn't have been consistent, and they feel that Apple was bold and brought ideas. They reviewed it and approved it. They're not going to allow everybody to paint; it will only be where it will fit the development. I ask you not to hold this here at the Planning Commission.

Mr. Coleman: I just wanted to clarify that we suggested that revising the Design Guidelines run parallel so there would not be any holdup. They did not want to submit a change.

Chairman Elkins: The applicant or the owner?

Mr. Coleman: The owner's representatives.

Chairman Elkins: Thank you. Additional questions?

Comm. Stevens: You referred to it, and I understand what the guidelines say about bringing fresh ideas. Are the two letters giving the approval from the owner?

Mr. Petersen: It gave approval to Peloton to do the trade dress for this store.

Comm. Stevens: If that was part of staff's review, wouldn't that suffice for approval of the change in the Design Guidelines?

Mr. Petersen: That is my position. It is a living document. We are changing it. In cases, we will let somebody treat the bulkhead. I want to make it clear that it also specifically says the shopping center owners make the guidelines. They're comfortable with what they think looks good. It still has to come before this body. We didn't hear any question that it isn't a great addition; they're worried about us and our Design Guidelines. We're not worried about our Design Guidelines. I could specifically have them changed, but in their mind, as they used the document, they did change it based on their recommendation. If the next tenant comes in, they'll change for them, too. I just don't think anybody thinks it will revert to what it is now. It is not a modern look.

Chairman Elkins: As a matter of process, do Design Guideline changes come before this body, or is it at the discretion of the owner?

Mr. Petersen: It comes down to a pattern of practice that has been deemed workable with you. As we've seen, we didn't change the guidelines for Zoe's or Apple. It was approved and shown to be consistent with their interpretation of their Design Guidelines and brought to the city for approval.

Chairman Elkins: That wasn't exactly my question. I wanted to know, as a matter of process, if the Design Guidelines come to the Planning Commission for review and approval. They don't. It also struck me in terms of timing that there is a material issue that need Governing Body approval.

Mr. Petersen: He said it's the issue of aluminum. I didn't hear that was an issue. You've been reviewing the materials section in the LDO for some time. The aluminum is not bonded; it's ACM. It is the darker grey band under the sign. Your LDO says that metals can be used for accent, which is what we've done. Crate & Barrel and Apple did the same. Aluminum siding is what is prohibited. I'm going to suggest that aluminum siding was much different when that code was written. This is an accent. I disagree that the code prohibits it, but as Mark indicated, you're getting ready to change the code, and you've already approved other projects in anticipation of the change.

Mr. Coleman: I just wanted to clarify that when the development project came into the City of Leawood, as part of the planning process and recommendation by Planning Commission and City Council, the Design Guidelines for the shopping centers were part of the ordinance that was approved when they went through. Leawood has done it a little bit differently than other cities have in some respects. They are part of the original planning approval for Town Center Crossing. We've been asking for those to be updated, and Washington Prime is going to do it. They are part of the approval process.

Chairman Elkins: Thank you. We're running short on time. Are there other questions for Mr. Petersen?

Mr. Petersen: You submit Design Guidelines and they're part of the package. Then changes are made, and you approve. In this case, we would take a specific modification to those Design Guidelines to allow this and have it ready for City Council. If you're open to approving this and letting Peloton move forward, we would take your approval, subject to delivering that modification to City Council before they hear it. Thank you for your time.

Chairman Elkins: Discussion or comments? Is there a motion? Mr. Petersen has asked for an up or down vote; staff has asked for a continuance.

A motion to recommend approval of CASE 37-20 – TOWN CENTER CROSSING – PELOTON (RETAIL: FITNESS) – Request for approval of a Final Plan for Changes to the Façade of a Tenant Space, located south of 119th Street and east of Roe Avenue – with the removal of Stipulation No. 5 and adding a recommendation that the Design Guidelines are amended as suggested at the time of Governing Body consideration – was made by Block; seconded by Stevens.

Comm. Hoyt: Stipulation No. 3 says that the project shall not alter the shell of the building, including painting the brick. Maybe that's where you add the wording, "unless guidelines are changed and approved by Governing Body."

Motion amended by Block to remove No. 5 and amend No. 3 to read, “Shall not be painted unless the Washington Development guidelines are changed;” seconded by Stevens. Motion carried with a roll-call vote of 7-1. For: Belzer, Hoyt, Peterson, Stevens, Hunter, Coleman, Block. Opposed: McGurren.

Comm. Coleman: I’d like to mention that Commissioner Hunter and Commissioner Peterson were appointed to three-year terms, effective March 1st.

MEETING ADJOURNED