

**City of Leawood
Planning Commission Meeting
September 22, 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, Coleman, Bock, Stevens, Hunter, Peterson, and Elkins. Joined after the meeting began: Belzer. Absent: Hoyt

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

A motion to suspend certain rules of the Planning Commission due to the pandemic was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 6-0. For: McGurren, Coleman, Block, Stevens, Hunter, Peterson.

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 pcpubliccomments@leawood.org. Written public comments received at least 24 hours prior to the meeting will be distributed to members of the Planning Commission. Those wishing to appear remotely using the Zoom format media, should register at pcpubliccomments@leawood.org on or before Friday, July 24th at 5:00 pm 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

Chairman Elkins: Are there any changes to the agenda?

Mr. Lang: We do. Cases 82-20 – Town Center Plaza Revised Sign Guidelines – and Case 83-20 – Town Center Crossing Revised Sign Guidelines – will be continued to the next Planning Commission meeting.

Chairman Elkins: Is that October 27th, or does that remain to be seen?

Mr. Lang: I believe that decision is still up in the air.

Chairman Elkins: Thank you. Any additional changes? If not, do I hear a motion?

A motion to approve the agenda, including the two continued cases, was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 6-0. For: McGurren, Coleman, Block, Stevens, Hunter, Peterson.

Ms. Knight: Commissioner Belzer joined the meeting.

APPROVAL OF MINUTES: Approval of the minutes from the August 25, 2020 Planning Commission meeting.

Chairman Elkins: Are there corrections or amendments to the minutes?

Comm. Stevens: I have a minor change on Page 3. After Commissioner Peterson's description, there was a comment by Chairman Elkins, and then I believe it should be Commissioner Peterson rather than Stevens.

Comm. Coleman: I just want to mention I am missing some of the even pages.

Chairman Elkins: I have only odd-numbered pages as well. It looks like there is continuity of commentary, which is why I didn't pick it up to start with.

Comm. Peterson: They were printed in odd-numbered page order, so I downloaded the packet from the website. It provides the correct pagination there.

Mr. Sanchez: That is correct. For some reason, the printed ones are odd-numbered, but the one online is correct. We can continue this agenda item for the minutes to be approved at the next meeting if you would like to.

Chairman Elkins: If the substance of the minutes is correct, we'll make a note that the pagination is off.

Mr. Sanchez: Actually, the even pages are missing.

Chairman Elkins: Then we will not entertain a motion to approve the minutes, and we'll look for those at our next meeting.

Comm. Peterson: This has happened before. What I would suggest is we go to the packet online and download the minutes there. They are correct there.

Chairman Elkins: That raises the issue of which is the official copy. I'd just as soon have them come to the meeting correctly if that's possible, but good suggestion.

CONTINUED TO THE OCTOBER 27, 2020 PLANNING COMMISSION MEETING:

CASE 69-20 – HILLS OF LEAWOOD VILLAS – Request for approval of a Final Plat and Final Plan, located north of 151st Street and east of Mission Road.

Chairman Elkins: Does staff wish to keep this as is or to be subject to call as well? Staff indicates the case should be continued for a time certain for the October 27, 2020 meeting as noted. When we amended the agenda, Case 82-20 – Town Center Revised Sign Guidelines – and Case 83-20 – Town Center Crossing Revised Guidelines – have both been continued to a future meeting, subject to call.

CONSENT AGENDA:

CASE 80-20 – PARKWAY PLAZA – WEBER CARPET – Request for approval of Final Plan, located north of 135th Street and east of Briar.

Chairman Elkins: Do any commissioners wish to hear from staff and/or the applicant? If not, is there a motion?

A motion to approve the Consent Agenda was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 6-0. For: McGurren, Coleman, Block, Stevens, Peterson, Belzer, including a recusal from Hunter.

OLD BUSINESS:

CASE 68-20 – PLAZA POINTE – GUIDEPOST MONTESSORI – Request for approval of a Special Use Permit, Preliminary Plan, and Final Plan, for a Daycare/Montessori, located south of 135th Street and west of Roe Avenue. **PUBLIC HEARING**

Chairman Elkins: Does staff have any additional information regarding developments since our last meeting?

Staff Presentation:

City Planner Grant Lang made the following comments:

Mr. Lang: Since the previous meeting, the applicant met with the property owners to discuss concerns, and changes were made to the plan. The playground on the east side of the building was reduced, allowing for better pedestrian sidewalk connections to the parking lot. The applicant has removed parallel parking on the west side of the structure, creating more room for open space. The proposed sidewalk connection to Roe Avenue was removed at the request of the neighboring property owners. The application does meet all requirements of the Leawood Development Ordinance (LDO), and staff recommends approval of Case 68-20 with the stipulations listed in the report.

Chairman Elkins: Thank you. Mr. Horney, are you present on behalf of the applicant?

Applicant Presentation:

Mr. Horney: As Grant mentioned, we met last Thursday to discuss the concerns from the letter you received previously. As Grant said, we addressed the 24' width, the concern about the parallel parking, the concern about the sidewalk connection to Roe Avenue, and did our best to clarify the questions around the number of staff and parking. I know you also received a new letter recently. I want to make a note that, from the staff recommendations, Item No. 9 asks for a cross-parking easement to be recorded. This was recorded when the original development happened in 2002. I won't be re-recording a new easement, but we will work within the existing easement. I don't know if now is the appropriate time to address some of the concerns from the letter that I receive a couple hours ago.

Chairman Elkins: Thank you. Let me take up one issue first with Mr. Lang regarding the recording. Is it staff's position that something in addition needs to be recorded in the county records, or does the existing recorded cross-easement suffice?

Chairman Elkins: Thank you. Mr. Horney, if you could address the concerns in the most recent letter, that would be helpful.

Mr. Horney: Let me start by saying that I'm not sure, based on the initial letter and now the second letter, if there is anything I can do to satisfy some of the neighbors, one of which owns an existing daycare nearby. It is clear that, despite addressing as many concerns as I can, I'm not going to be able to address the concern that he just doesn't want it to be there. I'll highlight some of the concerns in the new letter. The first page talks about the changes we've already made that you see in the plan. We've confirmed we have 24 feet. We removed the parking on the west side. On the second page, I'm supposedly being accused of baiting and switching the number requirements. I believe you received a copy of the letter of us responding back prior to the meeting.

Chairman Elkins: I believe that is the case.

Mr. Horney: The Kansas Department of Health and Environment has specific laws about this. Under our current plan, we have a 115-child plan. That requires us to have 17 staff.

The reason we are seeking 5,025 square feet is, as you may know, plans can change. There is nothing bait-and-switch about it; we're trying to make sure if the population or age groups of our school change, we don't then become noncompliant with the current requirement. We're trying to make sure we have the ability to change because if there is an infant classroom that goes from nine students to a 3-6-year-old classroom that could have 20-24 students, it would require fewer staff with almost double the number of children. We're trying to give ourselves enough flexibility to grow as the school grows over time. That's why we're proposing the 5,025 square feet. That does not mean that we will have increased staffing. Quite likely, it would be the opposite. As far as capacity or traffic, we provided a study. I'm not sure if it's appropriate to comment on that. We provided the specific parts of the Kansas Department of Health requirements regarding parking. You have the floor plan. I do want to comment that there are comments about assistant teachers and cooks. We have a warming kitchen, so cooking will not happen on the property. Assistant teachers are not required. To me, the third page reads about how someone else believes they would run the property and not how we're required to run the property. I'm not interested in getting into a debate about that. There are clear requirements from the Kansas Department of Health. On the parking lot space and landscaping, all I could refer to is the Staff Report. We've complied with all the requirements and the LDO. Regarding child safety, we created the 2' wall that surrounds the parking lot that will be lined with brick. It will match the property, but the height would stop a car from potentially injuring a child or entering the playground. As far as walking a child from the parking spaces and the lack of parking, I guess we should talk about the plan of how we would actually park this. All of the employees would park in the southeast corner. The parents would drop off in the front or the northeast corner, which is directly accessible to the sidewalk that comes out. These are children under six, and it's a requirement of the school that every parent walks the child into the school. Kids aren't running around in the parking lot. There was a comment about a rear setback. We're not changing the structure of the building, so I would defer to Grant and his team on that. Regarding the sidewalk and shared easement, the sidewalk is there. He is correct in saying that we will be building a playground. Per our access and easement agreement, we have the ability to do so. I'm not sure what to say other than that. On Page 5, there are comments about façade changes. We will be swapping out a couple windows for doors, but the property already has transoms. It wouldn't be much different than what you see today. It will continue to be a glass door with a different window. I'm not sure how to address the snow removal concern. I don't think it's appropriate to comment on the issues that need correction on the Staff Report and LDO violations. If there are questions, I'd be happy to answer them.

Chairman Elkins: Thank you. Does the commission have questions?

Comm. McGurren: Would it be fair to say that you're in agreement with all staff recommendations?

Mr. Horney: Yes.

Chairman Elkins: Thank you. Are there other questions? If not, this case requires a Public Hearing. It will be using the Zoom format. Staff has received indications to provide additional testimony from a number of individuals. Before I open the Public Hearing, I'd like to cover ground rules. We permit four minutes for commentary. You'll see a clock that will count down. When we get down to about 30 seconds, I will attempt to let you know time is running out. We would ask that you be respectful of the clock. We certainly want to hear your comments.

Public Hearing

Kerry Lawing, 4745 W. 136th Street, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Lawing: I'm in the building adjacent to the property we're discussing. The first thing that I guess I would say I'm concerned with because of COVID is our building, which is about 14,000 square feet, only has about 40% occupancy right now. Frequently, the parking is already very tight. One of my predominant concerns is that there are eight parking spots removed. The entire development has shared parking. There is no reserved parking for one building versus the other. I have no qualms against any business – daycare or other. I do think that it's not likely at 7:30 in the morning and in the afternoon that this parking doesn't become a much bigger problem as parents are dropping kids off. We're an investment business. All our staff starts at about 7:30-8:00. We don't even have enough spaces when everybody shows up now. What will it look like when we remove nine spots for parking, certainly at the peak times? That is a major concern. The second thing I would look at is our executive offices will literally be overlooking the playground. I'm not sure what the answer is, and I'm not against any business, but our entire suite of offices looks at the Carpet Corner building. I don't know that it's necessarily what we thought we were getting, and I didn't really think it could be changed in such a significant way as it relates to the setbacks. We had to get approval from the City of Leawood for a paint color. I can't believe we can do the playground. There doesn't seem to be a setback or green space on our side. It seems to be inconsistent with some of the other rules. Lastly, a lot of noise comes from playgrounds. There are other schools in the area. It is literally right next door to our building, so I don't think there's any way to address that. Those are the major concerns with a significant investment with employees and other people from when we bought the building. This is a significant change. I'd respectfully ask that the committee consider those things as we considered the changes overall. Thank you.

Brad Tally, 13650 Roe avenue, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Tally: I just want to thank you for a forum that lets us attempt to be good neighbors. I'm living on faith that people who guide us are using a vision of prosperity. With that said, I've been a faithful community business owner in Plaza Pointe for about 17-18 years. I was one of the first buildings in the development. I worked with the developer and his architect from California. I was also there when the development was transferred from the developer to the owner-run Plaza Pointe Owners' Association. I know a lot went

into the development, the design, the queues. I sat through all the Planning Commission and City Council meetings. It was quite a project to get through. I would like a new neighbor. The building has been disregarded and kind of an eyesore for many, many years. I have tried with the landscaping to help with that, but it's really been a challenge. I'm not against a business or anyone coming in and doing their job. I'd encourage every one of you to visit our corner. It's a very high-traffic corner in the neighborhood. It has special nuances that can't be seen on a piece of paper. I've been in practice for 26 years in the area. My patients are 55 years old on average – anywhere from 3 to 103. I have three major concerns to talk about. Number one is the traffic flow around the buildings. It is very tight where this minimum 24 feet comes into play. That's not the measurement I get between the curbs. It's more like 22 feet. I know the plans will be exact when they come through. I worry about the traffic flow, and I want people to think about that. I would encourage you to look at the Olsson Traffic Impact. Currently, in the morning, the peak AM time, there are only three trips. The proposed trips are going to be 79 between 7:00 and 9:00 a.m. In the afternoon, there are five trips between 4:00 and 6:00 p.m. currently. There will be 90 trips in the afternoon. We're talking about five parking places in the front of that building for 90 or 130 children there. It just seems really challenging that it's going to work. 136th comes out to Roe, and there is a median in the center of Roe. If people are dropping off children, they will have to figure out a way to either cut back through my parking lot and work their way back around to 137th and Roe to turn left to go back toward north, which is Corporate Lakes and Kansas City and where a lot of people are going to head off to work. The traffic flow is a real problem. I guess I don't understand how easement agreements and all of that type of stuff work when you're able to sign all of that and make it a priority that we can just remove sidewalks. There is an open space between my building directly south. Our two buildings are 36 feet across. That concrete area was set by the City of Leawood to be an area where people gather and walk through. Chris is pushing the playground right to the edge of the property line, which goes over the sidewalk. There will no longer be access from that side of the building for patients, for people with dogs going to Sydney's Pet Spa. They will have to walk back along that side to the front of the building to get their children in the front door. On the west side of that area between our two buildings, the sidewalk is actually on my property. I'm not quite sure how that works. I believe there is some type of rule where the Kansas Department of Health requires a fence all the way around an existing daycare. I'm not up on that, but I'm assuming I'll end up with a fence between us, in the middle of a concrete patio that is designed, landscaped, and supposed to be an area to look at that is nice. All of my patient chairs face north and look out onto that center area. They'll no longer have access to that. During the pandemic, I have patients waiting out there and families waiting for patients. They're not going to have access. The parking, traffic flow, and access to the center patio while covering up the sidewalk access are points I really don't understand. Thank you for listening to my comments.

Ken Bowdy, 15415 Ironhorse Circle, Leawood, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Bowdy: In 2001, my wife Anita and I applied for a Special Use Permit for the Primrose School of Leawood, a childcare facility in the Plaza Pointe development. Plaza

Pointe was the first project developed along the 135th Street Corridor, and we were among one of the first projects proposed in the development. We were concerned about the significant number of requirements the city required of our project to meet the Special Use Permit. One requirement was related to the playground. The city required an extensive amount of brick walls to screen the playground from view, combined with a large amount of landscaping to screen the brick walls. We were also required to use a premium-quality metal decorative fence material, and the landscaping was required to soften the view of the fencing. This was just one of many requirements for us to receive a Special Use Permit, and we agreed to these requirements. We knew these needed to be met in order to maintain the standards of the City of Leawood and the Plaza Pointe development. We also knew that, as other projects developed throughout the area, the city would require others to be held to these same high standards. Not only was this evident in the projects presented in just the last two Planning Commission meetings, but also recently in the approval of the Kiddie Kollege childcare facility at 134th and Briar. Kiddie Kollege, Primrose School of Leawood and Crème de la Crème are just a few examples of nearby childcare facilities that required Special Use Permits, and they were all required to these high standards. The proposed design of Guidepost Montessori is clearly not meeting this high standard and is not meeting the requirements for a Special Use Permit. The design of the playground does not meet the requirement for a Special Use Permit. The proposed design is extremely unsafe and would be detrimental to the public health. The lack of an appropriate setback and the fact that cars would be traveling inches from the fence separating the children from moving vehicles is extremely dangerous. This proposed use is in no way operating in a manner compatible with the surrounding uses. These issues are a violation of the LDO standards for approval 16-4-3.5 a and b. The removal of a significant number of parking spaces does not meet the minimum number of spaces that are required throughout the Plaza Pointe development. Every lot in the development was required to have 4.7 spaces per 1,000 square feet of building and is subject to a shared use of these spaces. The removal of any parking spaces would violate this agreement. This is also a violation of the LDO, Section 16-4-3.1, which states that the impact of a Special Use Permit cannot inappropriately affect or impair the use and enjoyment of neighboring properties. The proposed removal of sidewalks would create unsafe access to the only entrance on the north side of the building and would restrict access throughout the development. This is also in violation of the standards of approval, Section 16-4-3.5. The result would be detrimental to the public health and safety, as well as not being compatible with the surrounding uses. The restricted access would inappropriately affect or impair the use and enjoyment of the neighboring properties and be in violation of Section 16-4-3.1. These are only a few of the many reasons this proposal does not meet the standards for approval of a Special Use Permit. The applicant has every right to bring their business to the City of Leawood, but they should be required to find the location and present a design that meets the standards for approval. I'd like to thank each of you for the difficult decision that you make on behalf of the community. I'd also like to thank you for the opportunity to speak tonight, and I recommend that 68-20 be denied approval of a Special Use Permit in this proposed plan.

Sudha Amoran, owner of Primrose School of Leawood, 4820 W. 137th Street, appeared via Zoom and made the following comments:

Mrs. Amoran: A few things have been mentioned with regard to the Guidepost Montessori project, and I wanted to add some context from experience owning and operating a childcare center in Leawood. Most of the traffic and parking space for a center in use is during the morning and evening during pickup and drop-off time. There was a comment made in the last meeting that it would only need to have 3-7 teachers in the center for the morning. This is highly misleading and incorrect. They would require more teachers than that. If you look at the parking space calculation, you'll see that they say the employees at max shift will be 17. They do not include an assistant director, which is required by the State of Kansas for a center over 100, a cook for the planned kitchen, and an assistant teacher required for restroom breaks and to do the staff lunch breaks in the building. Meals will need to be prepped and served to the children, as required by licensing. They cannot possibly do this without a cook or a teacher that will be in charge for all of this. As proposed, they would need at least 21 staff to do this. The project does not take children's safety into consideration. They are removing a sidewalk on the east side of the building. There is no way for children to safely get to the front entrance without a sidewalk. When we do pickup and drop-off for the children, they go to the sidewalk and then inside the building. That's how our procedure is. With this design, parents and children will walk on the driveway where cars are going to go to the front of the building. At the meeting last week, the applicant mentioned that this is like a grocery store without a sidewalk. I want to say very clearly that a childcare center is not the same as a grocery store. There should be a sidewalk on the side of the building if that is parking. There is no space between the playground and the driveway on the site. In the front, there is no landscaping setback before the playground fence. This is very dangerous. At a childcare center in Texas, a car ran into a fence and injured children. They should be required to have a setback like we have at Primrose and at Kiddie Kollege of Leawood. All of you should have a letter from the Association showing the business owners of Plaza Pointe are against this proposed land. Please do not approve this Special Use Permit for this project, and thanks for the time.

Chairman Elkins: Thank you. Is Matt Mitchell present? Is there anyone else from the public who wishes to be heard on Case 68-20?

As no one else was present to speak, a motion to close the Public Hearing was made by Coleman.

Daniel Burkado, 605 W. 47th Street, Suite 200, Kansas City, MO, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Burkado: I'm here on behalf of Matthews Real Estate Group, the current owner of the Carpet Corner building. I just wanted to say that the current owner is in full support of pushing this forward. Of course, one thing to take into consideration is there would be some pretty drastic improvements to the property, which would in turn increase property values for people who are already occupying these buildings. It sounds like Mr. Horney has gone through rebuttals to some of the issues that were brought up. I just wanted to let

you know that the Matthews Real Estate Group is also in support of the Special Use Permit.

Chairman Elkins: Thank you. Any other comments from the public on Case 68-20?

As no one else was present to speak, a motion to close the Public Hearing was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Coleman, Block, Stevens, Hunter, Belzer, Peterson.

Chairman Elkins: This is the time for the applicant to respond to the comments in the Public Hearing. Mr. Horney, do you care to be heard?

Mr. Horney: (*Shares screen*) I'd like to start with a few statements that are, perhaps, a bit misleading. There was a mention of Kiddie Kollege having the same requirements as Primrose. I guess they do not have a brick wall around their fence. It is just a simple metal, ornate fence, similar to the type we would have. That fence would sit above the 2' wall that was put in place to ensure we could have a safe playground. I want to clear up a comment about removing the sidewalk connection. To be clear, the sidewalk that is south would not be removed, and we would not have fencing alongside the property. The only fencing would be around the playground. With that, I'm happy to stop and answer questions if you have any.

Chairman Elkins: Thank you. Questions for Mr. Horney? I know you've addressed this a time or two, but it continues to arise. Can you give us your perspective on the staffing requirements from the State of Kansas for your facility and the question about the need for a cook and assistant teacher and assistant director?

Mr. Horney: In our application, we said 18. In the letter we provided to the neighbors, we have a total of seven classrooms. One infant classroom has nine students and three staff. Two toddler classrooms have ten students each and two staff each. One 2-3-year-old classroom with 14 and three with an age range of 3-6 have 24 students each and six staff. We will have at least one administrator but may end up having two. This is a total of 15 staff, plus the administrator and assistant, which makes 17. We are not required to have a cook. The food is brought in. Even if we were, it would be 18, which is exactly what we said in the application and on the drawings. All of this is dictated by the Kansas Department of Health. When you get a license to run a daycare, they dictate all of this. This isn't something that is really debatable. It is somewhat formulaic. I'm not sure why there is as much confusion or concern about it.

Chairman Elkins: Just for the record, at this point, do you have a license, or is the appropriate time to get one once the building is done?

Mr. Horney: You can't get your license until after the facility is complete and they come out to inspect the facility to ensure that we've actually met all the guidelines. We wouldn't even get that until after we got the Certificate of Occupancy.

Chairman Elkins: So, if there's an error in your analysis of the Kansas regulations, you're at risk for not obtaining the necessary license to operate your business, correct?

Mr. Horney: Absolutely, and by that point in time, we would have spent millions of dollars in doing this. Guidepost Montessori, which is Higher Ground Education, has 45 schools across the country. They're very well versed in ensuring they follow the rules and guidelines of each respective Department of Health.

Chairman Elkins: Thank you. Are there any questions for Mr. Horney? Are there questions for staff?

Comm. Coleman: There are some alarming accusations from some of the people in the Public Hearing, both written and verbal, that we are not meeting the LDO or adhering to our local laws. I just wanted to get your response to that.

Mr. Lang: It looks like a little bit of the confusion is coming from previous installments where they built Primrose or Kiddi Kollege. A lot of times, those setbacks that they're referring to are exterior lot line setbacks. Those are much different than what we're looking at here as far as interior. Currently, the playground doesn't have an additional setback. Where they are at Kiddi Kollege, the main setback would be from that space. That's probably why they required additional landscaping.

Comm. Coleman: To the best of your knowledge, the report says they meet all of the regulations. Is that correct?

Mr. Lang: That is correct.

Comm. Coleman: In this development, everyone owns their own building and property, but they're part of the association for the entire development. Is that correct?

Mr. Lang: I believe so.

Comm. Coleman: On Page 1 of the Staff Report, you highlight an orange rectangle. Is that the property line for the building that is being proposed?

Mr. Lang: Those will be the interior lines for that property.

Comm. Coleman: Then, under the ownership, they can do what they want within regulations for their property that they're purchasing.

Mr. Lang: I believe so. It looks like they have specific deeds and covenants, but as long as they're within those guidelines, they're okay.

Comm. Coleman: Can you also point out the tenants in the building to the west of the proposed building?

Mr. Lang: I believe the tenant in that building spoke earlier today. That was Kerry Lawing. I'm unsure of the business name.

Comm. Coleman: The building to the south?

Mr. Lang: That is Brad Tally's building. He's a dentist. There is also a pet spa.

Comm. Coleman: I believe the building to the west was an investment company. To the best of your knowledge, are there any other businesses in that building to the west?

Mr. Lang: I don't believe so.

Comm. Coleman: The southwest corner of this tract has three buildings and this very large parking lot to the southwest. To me, in looking at the entire development, that tract of land is meant to be shared parking for all three buildings in that square of the development site.

Mr. Lang: Yes, they all have a shared parking agreement.

Comm. Coleman: But I'm not seeing Primrose using that parking lot; it will basically be those three buildings in that tract. Do you know how many parking spaces are in that lot?

Mr. Lang: Off the top of my head, I do not.

Comm. Coleman: It's a significant number.

Mr. Lang: Yes, it looks like it.

Comm. Block: There were comments made about the landscaping around the fence at Kiddi Kollege and the school closer to the subject property. Was that a requirement then?

Mr. Lang: I'd have to refer to Mark Klein on that to know if it was a requirement at that time.

Comm. Block: Bur it definitely isn't now.

Mr. Lang: No.

Comm. Block: I thought there was a rendering of a vinyl fence, but then Mr. Horney said it was going to be something similar to a metal fence.

Mr. Lang: There is a stipulation listed that they will match what is existing within the development. There is an example at the Primrose Schools with a metal, wrought-iron look.

Comm. Block: That will be the case, and the stone 2' structure would be brick to match the existing. Thank you.

Chairman Elkins: Mr. Lang, are there two different traffic studies? Is there a traffic study done by the neighbors and one by the applicant?

Mr. Lang: I believe only the applicant has done one. If the neighbors have one of their own, I haven't seen it.

Chairman Elkins: So, this Olsson traffic study we heard about was done at the applicant's request.

Brian Scovill, City Engineer, made the following comments:

Mr. Scovill: The Olsson traffic study was requested by the city from the developer. We simply asked for a traffic generation comparison to consider what kind of traffic impacts this development might have on public streets surrounding the development. We did not evaluate internal circulation or impacts within the development.

Chairman Elkins: What conclusion did staff draw from reviewing the traffic report?

Mr. Scovill: There would be a significant increase in traffic compared to the previous building. The increase would be very marginal when compared to the capacity of the street network.

Chairman Elkins: Can you tell us a little about how either Olsson or your staff have factored in the current pandemic? I assume they looked at traffic recently, and we hope that's not normal, though it may be the new normal.

Mr. Scovill: That's a great question. With respect to what was evaluated in this case, we really didn't have to look at traffic volumes and the capacity of the current volume on the road. We looked at the trip generations based on the use of the site. If we were to look at the volumes, we would look at the most recent volumes and compare current volumes. Then we look at a factor to grow the volume based on several variables, including what we might consider traditional growth based on commercial and residential development in the area.

Chairman Elkins: Thank you. Could either you or Mr. Lang comment on the analysis that staff has put into the impact of the removal of the five parking spaces?

Mr. Lang: What we're mostly concerned about is needing to maintain a ratio of 5.1 parking spaces per employee on a maximum shift. With this plan, they meet that, and it comes from the LDO.

Chairman Elkins: What about the cross easements?

Mr. Coleman: I think you meant to say 1.5.

Mr. Lang: That's correct; it's 1.5. As far as the cross-access easements go, it appears that they are meeting that within their deeds and covenants.

Comm. Block: We don't typically look at circulation within the property; it is only on the adjacent streets other than for fire apparatus, for example. Is that correct?

Mr. Scovill: Public Works typically does not look within the property. Occasionally, we're asked to help or review it or have our consultants look at it. We don't generally evaluate the circulation unless there's something to flag that. In this case, we didn't have a lot of discussions on the circulation. It's a fairly simple circulation plan here as opposed to the discussion we had with Cure of Ars with significant delays in queuing onto Mission Road.

Comm. Block: Even with the public comments, you don't think that's necessary in this case?

Mr. Scovill: We could look at it if requested. I don't think we'll have any surprises. I don't anticipate the evaluation to come back with any major red flags. It's a very basic grid network within this site. The number of vehicles coming out and utilizing the site during morning drop-off and pickup would be the item to look at and the number of parking spaces utilized for that. I would have to consult with probably Olsson and Associates. Since the developer used them, we would look to another consultant. We could certainly look into that.

Comm. Block: That's okay; I just didn't know if it was typical or not.

Chairman Elkins: Thank you. Mr. Lang, the provisions of the LDO around Special Use Permits direct us to consider the impact of the Special Use on the uses and enjoyment of the neighboring properties. Can you tell us a little about how staff analyzed that in recommending the Special Use Permit, especially in the context of this internal flow of traffic?

Mr. Lang: I would have to refer that question to Mark Klein.

Mr. Klein: You're absolutely right that a Special Use Permit is different than a business that is coming in and doesn't require a Special Use Permit because we are supposed to consider the impacts. It is my understanding that the site came in and looked at the number of required parking spaces of 1.5. I wanted to make note that they are required to still have that amount of parking over time. If they have a maximum of 18 staff, it allows 27 parking spaces. They couldn't go over that amount of staff because they'd be in violation of the Special Use Permit. With regard to circulation, we are requiring 24' drive aisles. I imagine some of the traffic will continue south to go down to 137th Street. I imagine there might be others on the north side that go up to 136th Street and out that way. Obviously, that's a right-in, right-out at that intersection.

Chairman Elkins: What is the term being proposed for this Special Use Permit?

Mr. Klein: By default, there is a 20-year time period. The Planning Commission has the ability to restrict that further.

Chairman Elkins: We have the authority to recommend for approval a shorter term if we think it might be appropriate.

Mr. Klein: Correct.

Chairman Elkins: Mr. Lang, was there another question you referred to Mr. Klein?

Comm. Block: I think it was the history of why fences had screening in the past but this one doesn't need it.

Mr. Klein: I'm not aware of a specific requirement of the screening of the fences. When Plaza Pointe came in, it was in 2000. This is one of the first projects I was exposed to. Market Square was the first development along that corridor because it was here when I arrived in 1999. Plaza Pointe was designed to have a village feel to it. That's why the buildings are lined up along 135th and Roe. The buildings are spaced out with parking interspersed. Some of those features are design features. Primrose Daycare on the northwest corner of 137th and Linden has areas of semicircular landscaping around a drive. The fencing is 5-6 feet from the property line. Staff probably tried to screen to add a softness. It is along 137th Street, which is a public street. In this case, the parking and landscaping go along Roe Avenue, which will help soften it from the public right-of-way. I know there was a question about parking. This was approved in 2000. The current ordinance went into effect in 2003, adopted in 2002. At the time Plaza Pointe came through, they were required to have a minimum of five parking spaces per 1,000. That was citywide with office and retail. In this case now, since we're in the current ordinance, we have a minimum and maximum. We have 3.5-4.5 within the SD-CR district, which this is part of. This development has both office and retail.

Chairman Elkins: Thank you. Among the standards for approval are the requirement that the proposed use not be detrimental to the public health, safety, or general welfare of the city. In some of the public comments, there was concern expressed about the safety issues relating to children and parents entering and exiting this proposed school. In addition, we're directed to determine that the proposed use is operated in a manner that is compatible with the surrounding uses. Can you comment a little bit on staff's take on those two standards?

Mr. Klein: As far as the location within Parkway Plaza, a lot of the circulation will go through common area parking. Even if you're at Primrose Daycare, there is a chance you'll be traversing to the north to 136th Street. It is not uncommon for this development. Staff is looking at the fact that parking is adjacent to the fence, and there really isn't too much of a barrier between the drive aisle and the parking to the east. That is the reason

the 2' wall was important to staff. With regard to cars going parallel to that, the 2' wall would help protect there as well.

Chairman Elkins: Thank you. Other questions for Mr. Klein? Mr. Horney, I have a question for you, and then I want you to have the last comment before the commission makes a decision. We've talked a bit about the license that your client's business is required to have to operate the school. Does that license have a term? Is it renewed annually? What is the term of the initial license that you'll get from the State of Kansas?

Mr. Horney: I'd rather have the tenant answer.

Jocelyn Scotty, VP of Schools for Higher Ground and Guidepost, 100 Orchard, Suite 200, Lake Forest, CA, appeared via Zoom and made the following comments:

Ms. Scotty: Every state is different, so I'm going to apologize in advance. I don't know the length of time for Kansas. We have a whole compliance team that does all of our licensing for all of our schools to make sure we are renewing and are being successful in all of the licensing we pursue.

Chairman Elkins: I'm just curious as a data point for us. Typically, in the states you are aware of, are the licenses for multiple years, or do they have to be renewed annually?

Ms. Scotty: Typically, they're for multiple years, or sometimes, we might need to renew a license if there is a change in leadership.

Chairman Elkins: Any other questions for the applicant? Mr. Horney, do you have anything to add?

Mr. Horney: I guess I appreciate you guys spending the time to listen to us and allow us to answer questions. I would say we did our best to address the concerns of our nearby neighbors. We certainly don't want to go into a situation where we're making our nearby neighbors that we're going to be part of an association with unhappy, but at the same time, we believe that this is a great use for the area. We believe it's additive for the City of Leawood. Unfortunately, I don't know if there's anything we can do to address the underlying concerns of a couple of the residents. I guess we did our best, and I believe we have done the best to satisfy the Planning Commission. I appreciate your time. If you have anything else, let me know.

Chairman Elkins: Thank you. That moves us on to a discussion of the application. Are there commissioners who wish to be heard on this?

Comm. Coleman: In my time on the commission, I cannot remember a period where all the neighbors for a new development were very much against a project, including the property manager as well. With that, I feel for the tenants. This is a big change for the area with the shared parking, but I also do want to point out that there's a very big parking lot to the southwest, which has an intended use for the three existing buildings in

that quadrant. While it's not ideal and not directly in front of the building, it's a short walk. I think it's a viable alternative if there is less parking directly in front of the buildings, especially for staff. I could see them very easily parking in that lot and walking in. I've had much longer walks for my jobs. With that, it meets our guidelines. While the tenants and other owners may not see that this is a good use of the facility, it does meet everything of our LDO. It meets our requirements. I think it's a good addition. Obviously, there's a great need in this area for good quality daycare. I would think they would meet that need. I think it's a good use of the land and of that building.

Mr. Bowdy: Would I have the ability to interject a correction?

Chairman Elkins: We've closed the Public Hearing. I apologize for that.

Mr. Bowdy: There's a misunderstanding of the parking to the Prevail building. That is private property. It is not common area.

Chairman Elkins: Is there a cross easement to that parking?

Mr. Lang: Yes, there is for the entire development.

Chairman Elkins: Thank you. The point I would interject for the commission's consideration is that the public and neighbors in particular have raised questions about the impact that this use might have on their use of their property and the property they've enjoyed since, in some cases, the beginning of the project and also have raised a question about public safety with respect to both the use of the playground as it's configured and to the parking, ingress, and egress from the building. One regulatory tool we have available is the ability, if we think there is a substantial question, of shortening the length of the Special Use Permit and revisiting that after some appropriate time, balancing appropriately the impact on the applicant and their substantial investment but also giving the city the opportunity to revisit the actual impact sooner than 20 years. At this point in time, all we really have is speculation about what we think might happen. One opportunity might be to limit the term of the Special Use Permit to five or seven years and give us a chance to revisit later on. I don't know that I'm advocating that, but I raise it as a possibility. Other comments?

Comm. McGurren: I agree with what has been said. The thing that made me feel better about the conversation we had during the Public Hearing as compared to the subsequent insights was not only that it met the LDO and that staff was in favor, but that the State of Kansas will provide a license and will only do so after having had their onsite review and full assessment, obviously to the intent of protecting children on the property. To me, that's another support mechanism. Your idea of having a shorter time frame and reassessment does seem reasonable.

Comm. Block: With all due respect, I don't like the idea. I think that it is a significant capital investment, and I think we either approve it or don't. I think shortening that time and giving an unknown in five years shouldn't be a factor.

Chairman Elkins: Frankly, that was one of the questions I asked about the term of their license because it would make sense to tie the Special Use Permit to the term of their license. It's unfortunate they're not in a position to share the term of that license. Other comments?

Comm. Peterson: I do agree with Commissioner Block. I don't think we should consider shortening the term of the Special Use Permit from 20 years primarily because the State of Kansas ultimately could close them down within months if they wish to. If there is any hazard to the children or any violation of state law, I would hope the State of Kansas would step in and take appropriate action. I am somewhat confused. I've been in that area many times before, especially because of Sydney's Spa. There appears to be, to the south and west, a reasonable amount of parking available. I do not know what the peak times are because the times I've been there are probably not peak times; however, the large area to the west of Dr. Tally's building and Sydney's Spa is one that I was not aware was not a common area. It is fairly significant. Getting back to Commissioner Block's point, I don't see any reason to shorten the time period on the Special Use Permit. Frankly, if something goes seriously wrong, the most important thing would be the safety of the children. The school wants to protect the license with the State of Kansas and do everything in their power to continue operation. Otherwise, this is going to be a very expensive project for them. That's really the bulk of what I would like to say. I personally propose to support this.

Chairman Elkins: Thank you. Other comments? Is there a motion?

A motion to recommend approval of CASE 68-20 – PLAZA POINTE – GUIDEPOST MONTESSORI – Request for approval of a Special Use Permit, Preliminary Plan, and Final Plan, for a Daycare/Montessori, located south of 135th Street and west of Roe Avenue – with the elimination of Stipulation No. 9 - was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

Chairman Elkins: Thank you to the applicant and to the public.

Adjourning for a five-minute recess

NEW BUSINESS:

CASE 70-20 – VILLA DE FONTANA – Request for approval of a Rezoning from SD-CR (Planned General Retail), SD-O (Planned Office), and RP-3 ((Planned Custer Attached Residential District)(6,000 Sq. Ft. Per Dwelling)) to RP-2 ((Planned Cluster Detached Residential District)(6,000 Sq. Ft. Per Dwelling)), Preliminary Plan, and Preliminary Plat, located south of 135th Street and east of Roe Avenue. **PUBLIC HEARING**

Staff Presentation:

City Planner Grant Lang made the following presentation:

Mr. Lang: This is Case 70-20 – Request for approval of a Rezoning from SD-CR, SD-O, and RP-3 to RP-2. This is a Preliminary Plat and Preliminary Plan. The applicant is proposing a residential development consisting of 63 single-family homes. Planning staff is not supportive of this development, as it does not represent the highest and best use for the 135th Street Corridor or the City of Leawood. The project will create two nonconforming properties located in the existing SD-O and SD-CR zoning districts. Building setbacks to residential from SD-O are 75 feet and 125 feet from SD-CR. These zoning districts are also to maintain a minimum of ten acres. The proposed application does not conform to the LDO, stating that private streets shall be built to public standards, as the current infrastructure was built with commercial development in mind. The proposed application does not conform to the LDO stating lots fronting on a cul de sac shall maintain a frontage of 45 feet on the turnaround and 100 feet at the building line. Lots shall not have a depth greater than three times the width. The application does not meet all requirements per the LDO and Golden Criteria. Staff recommends denial of Case 70-20 with the stipulations listed in the Staff Report. I will answer any questions.

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

Comm. Block: We had a revised Staff Report on the dais. It looks like the only addition was on the fourth page with lot widths. Is that the only addition?

Mr. Lang: Yes, and I believe Staff Comments include the definition for 16-8-6.1, relating to hardships and special requests.

Chairman Elkins: I believe Mr. Lang sent out an email to the commission early this afternoon about it.

Mr. Lang: It might have come from Mark Klein.

Comm. McGurren: I'm curious. This has a bit of the undertones from a case we had last month where land sits almost exclusively vacant. What had originally been intended within the Comprehensive Plan or 135th Street Corridor Plan has never happened on this property. I was curious if staff had a conversation with others within the city or with the applicant. Even though it does not meet the Comprehensive Plan or the 135th Street Plan if it did meet the LDO if there were adjustments made by the applicant, would this come closer to staff recommendation?

Mr. Lang: I don't believe it would as this use is comprehensively planned for MX-D.

Comm. McGurren: To me, that goes back to the idea that the Comprehensive Plan hasn't worked for 20 years or more, and we end up with all this land just sitting there. In the case of this property, it looks quite odd when all the streets and everything are all ready to go and only one or two buildings have been built and obviously a minor portion of what was intended on this property. I fully get the concept that says that this isn't what it was intended to be. On the other hand, I'm curious if there has been much of a conversation

of beginning to adapt to what might be more realistic. For example, when we look at the plan that Mr. Regnier paid for. None of what we want on this property is currently viable. What Mr. Simpson is bringing is listed as viable in the marketplace. That was before the pandemic and not after. I'm just curious whether the Planning Department is beginning to have more of a conversation about whether or not the Comprehensive Plan or 135th Street Corridor Plan is viable.

Mr. Lang: At my level, I don't believe any of those conversations have happened. We might refer to Richard or Mark on that one.

Mr. Coleman: First, we weren't approached to ask about the use of the property. The plan was submitted as you're looking at it. We would have looked to have probably some of the residential south of 137th Street and then have it transition into some commercial, some small retail and other residential north of 137th Street. Not only does this not meet the Comprehensive Plan, as it is, it's creating nonconforming parcels of land, which is against the LDO. They're going to ask you to overlook that. Our recommendation is not to overlook it.

Chairman Elkins: Thank you. Other questions for staff? If not, I would welcome Mr. Petersen.

Applicant Presentation:

John Petersen, Polsinelli, PC, 11817 Norwood Drive, Leawood, appeared before the Planning Commission via Zoom on behalf of Fontana Land Co., LLC and made the following comments:

Mr. Petersen: Mark Simpson and Saul Ellis are very familiar names to the City of Leawood for residential developers for foresight, uniqueness, and quality. We're pleased to bring this application before you. I'm going to ruin your evening tonight and make a point to explain why I'm going to pick up my case tonight. I am the applicant for every remaining agenda item. I know how packed your agendas have been, so I'm going to try to really go through this. Not to be rude or dismissive, but I want to get my presentation in and then be happy to answer any questions so maybe we can get to some of the other applications. I want to start by talking about the context of this application. Commissioner McGurren, thank you for bringing us back to a sense of reality, to look at 135th and Roe and the application of this use against a thought and idea that has had 20 years to come to fruition. This isn't land planning, but this story will put into context and allow you to understand why we are bringing this forward. I'm going to make a contradiction of staff, who says it's not in compliance with the LDO. That's not true. It is in compliance if you use some of the features and some of the mechanisms in the LDO, which allows the Planning Commission and City Council to exert discretion in a unique set of circumstances. The story is represented by the beautiful fountain at 135th and Roe, which is probably one of the more iconic features in the corridor and one of the few vertical features. That fountain is almost analogous to a monument over a battlefield where a battle was lost. The battle plan was the Comprehensive Plan. It wasn't the 135th Street Corridor Plan; it was the plan from the early 2000s that said to build a bunch of

commercial, have it inward focused, pack it up with density, make it walkable inside. That was good street design and all those things that were the idea of the day before we decided to double down on the idea with the 135th Street Corridor Plan and go vertical. That plan with the street system was there in good times, through some bad times, and also through the greatest development atmosphere I've ever experienced before COVID-19. This plan was marketed. People tried to do it. Fifteen years later, it's one fountain, one office building in the southeast corner, and one building in the northeast corner. The bank couldn't survive, so now it's being utilized for office. We're trying to be creative to bring a win not only to this landowner but also to the city. This piece of ground is in the deepest financial hole you'll see as a Planning Commission. To create that grid system, buy that land, put the sewers in, put the streets in, the developer went hard, close to \$10 million. This is an epithet over this dead battlefield of overleverage, overutilization of public money. The public, including the City of Leawood, the county, and all the taxing jurisdictions in Johnson County were not paid back. One TBD bond issuance, three SBD bond issuances totaled almost \$7 million. There were two bank foreclosures, and defaulted bonds. The SBD bonds did not default because the City of Leawood started picking up the tab. Property taxes haven't been paid. \$1 million of general real estate property taxes are in arrears. The City of Leawood is approaching \$2 million out of pocket to continue to pay the general obligation bond that was the risk factor to see if commercial in this type of density would work on this property. Finally, those bonds are still outstanding. We have a very unique approach. We're not asking for incentives to tackle the problem. We're asking for the opportunity to bring a project forward that is viable, actionable, will be a great addition to a different type of residential use in the mosaic of the 135th Street Corridor, will help other retailers who are struggling, and will help bring some retail to other projects that have already been approved. Before we begin, we'll write the city, the county, and all the taxing jurisdictions a check in the neighborhood of \$3 million, filling in the financial abyss, and taking over the responsibility for the outstanding general obligation bonds. We have a product there is actually a market for. It is not a theory or a plan; it is something that can be acted on.

We're going to utilize the street grid system and improve it with some eyebrows and small cul de sacs. We're going to bring the flair and panache of Mark Simpson and Saul Ellis. We're not just going to create some residential to solve the problem; we're going to follow up on the iconic nature of the fountain and create an iconic piece of the puzzle of the 135th Street Corridor. Because it's on a thoroughfare, there will be a wall system around the thoroughfare portion. We're going to pick that theme of the fountain up. The wall will be used for retaining, for part of the grading, and as a buffer from the thoroughfares. It is also going to be part of the décor and the theme and elegance of the project. Our grand entrance is off 135th and Granada. The fountains and statue will be a hallmark of this project. On the right is the wall system with a design that will be incorporated into the wall as the wall moves from the main entrance back to the west toward Roe.

Next is an idea with new eyebrows and cul de sacs. Each street addition will be a place for a fountain or piece of art that will pick up distinctive character and flavor for the 63-lot neighborhood. On the south part of 137th had a multi-story senior care facility approved. We're planning to put one new cul de sac in with seven lots surrounding the cul de sac. We have two lots that will access directly onto 137th Street moving next to the

cul de sac, and then two more lots are farther east. The area is also going to be the amenity area. It's important to note that we have a wall around the project because of the interface with the thoroughfares primarily and becoming part of the art of the project. We're not trying to be so exclusive that we don't want people coming in. We brought the amenity areas out that will be visual improvements for those using the bike-hike trail along 137th Street. Also, the public will be welcome in one. Tract F, which is farthest west, is going to be a Pitch and Putt. It is styled and designed appropriately with a synthetic grass surface and a bunker to do short putting and pitching. The quality of the synthetic grass is unbelievable. It will be a wonderful pocket visual amenity. Tract G to the east will be accessed by the public more often. It will have Bocce, Pickleball, yard bowling, and a pavilion. It is going to be a great open amenity area along 137th Street. There will be a sun shade for the bike-hike trail and a place to sit.

There will be three builders for the project. In terms of size and value, it is 2,200-2,600 square feet on the main floor, 1,200-2,200 on the lower floor, depending on if there is a walkout and if people want to utilize the lower level, with a price range of \$800,000-\$2 million. These will be the villa concept with concierge services. It is another nice piece to bring interest.

We'll move to the issue staff raised. I'm going to move through these quickly, and we can talk about the ones you want to talk about. I made the best case I can make that this is going to be a unique housing addition, but this is the type of project with the flexibility that can fill the financial abyss before we start. Millions of dollars that were expended due to prior developer's failure will be paid. It wasn't these developers. We have a needle to thread and a piece of thread that will be good, but we just don't have all sorts of perfect flexibility to make it nice and tidy for staff. They go to their code where you have the flexibility to work with us. We must use the existing infrastructure. We must officially maximize the site in terms of setbacks. We need to develop and sell 63 lots. I'll emphasize one more time that we designed and can build it within the parameters of the LDO.

Forget the 135th Street Corridor Plan. With all due respect to all those that want to hold out for it, this site is not going to develop in the model of the plan in our opinion. You have heard testimony from other developers and a nationally respected company that did a feasibility study. It's not going to happen. The shopping center with Gaslight Grill has retail, and it still has 40% of the project that hasn't been built yet because of the market. Take the ones that are already zoned and approved and add in the Cameron project and the Lashbrook project that has retail as a part of it. From Roe to State Line is 1.8 million square feet of commercial.

The takeaway from the study done on the 135th Street Corridor is that retail is 300% overbuilt for the area. I not only am going to bring an excellent residential plan; I'm going to suggest that bringing 63 new residences to this corner, within a five-minute walk to the built retail that is struggling, within a five-minute walk to the retail zoned to the east, and a 15-minute bicycle ride down 137th Street to another 700,000 square feet of retail that is approved or pending approval is an asset.

Staff raised some issues. We have two residential-style office buildings on the northeast and southeast corner. Staff says it is out of compliance because it doesn't meet requirements. No. 2 indicates, "The project shall comply with the bulk regulations for SD-O and SD-CR." We're rezoning to RP-2. Those are requirements for an office or CR

commercial development that would not be able to build office buildings too close to residential. The buildings are there. We're bringing residential. With a villa concept, the buying public is okay with snuggling up a little closer to a non-residential use, particularly with a residential-style office building. We're going to use it with buffering our wall system and landscaping. We're going to make the transition just fine. It isn't going to be neighbors asking why you let the office building get built this close to their houses. This stipulation should be deleted because it's not even applicable to our application because we're not operating under that zoning. By the way, the owners of both office buildings support our project and have, in fact, written letters of support. Stipulation No. 8 talks about the new cul de sac or the mini cul de sacs in the main part of the project and how we need to build them to the same standards. I'm good with that. If I read it right, they're saying to tear out the streets.

The next issue is the existing private streets. I could read Stipulation No. 8 as staff saying that the mini cul de sacs are built to exact city standards, which is something we're doing, but it seems to read that we should tear all the streets out and start over from scratch. We're going to pay \$3 million or more to pay for the streets and get the public off the hook for the streets. This doesn't work if we tear the streets out. They work fine. They're going to be private drives. To tear those streets out would mean tearing out all the stormwater, all the utilities, and it's a deal-killer. We don't have to do that. The code allows, under a rule exception, that you and Governing Body have the discretion to wave requirements that the streets are as perfect as they could be if they were built on a virgin piece of dirt and started from the beginning. In our Revised Stipulation No. 8, that is what we are asking to do. All new street construction, we will do to city standards. We'll repair the existing streets. We've had them evaluated by O'Donnell and Sons, who indicated they were in great shape. Given the financial constraints of this project, that's how we must move forward.

I'm moving fast and may sound frustrated, but I know there's a lot on the agenda. I'm a little frustrated by the situation with the cul de sacs and two issues: we have to work to keep the front yard along the street at 45 feet, which we have, and the build line of the house can have a deviation to from 100 feet to 80 feet, which we did on 13 of the lots. Staff is recommending denial because they don't support that deviation. They granted the deviation for front yard setbacks because they always do with villa projects. They've recommended approval on this exact same configuration with Village of Leawood, Hills of Leawood, Leabrooke Town Manor, Hallbrook. We would modify Stipulation No. 11 to allow us to have that deviation.

We have one lot in the southeast corner where the back yard runs up against 137th next to the office building. You can see it's a fairly deep lot. It's deeper than the typically preferred minimum. It's good for that house because of the location. Staff says the lot is too deep. To cure that, all we would have to do is draw a line from east to west at the perfect depth of that lot and have a dangling tract of grass that is inefficient. Again, a rule exception would allow this. We would ask for a deviation for Stipulation No. 11.

We had a cul de sac coming off 137th for seven lots. We have four lots that face onto 137th. Two of them, we were able to put an eyebrow system off 137th to access the drive. We don't have the depth to do it for these two lots because we promised the neighbors to the south that we would stay out of the original no-build area beyond the setback that runs along the south property line. It's two drives that we would require side-

entry garages with a turnaround, which would logically tell you the cars would enter 137th. This is minimal traffic impact. That would be a modification to Public Works Stipulation No. 1A.

The last issue involves an exaction in place in 2002 that the commercial developer of 300,000 square feet of retail would pay \$140,000 toward the future light at 137th and Roe, which is the street that goes west toward Church of the Resurrection. Their share of it would be \$140,000, so we are proposing to pay \$70,000. Staff is stuck on the 20-year-old estimate. That is all I have. I went through it quickly for a number of reasons. I tried to be as direct and to the point as I could. We ask for your support to move us on to Governing Body to solve past problems and create new opportunities for the corridor. I'd be happy to answer questions.

Chairman Elkins: Thank you. Questions for Mr. Peterson? I guess I get to start. You have appeared repeatedly on behalf of a number of clients who have challenged the potential success of the Comprehensive Plan and the 135th Street Corridor Plan. You've made the case repeatedly before this commission that it is not workable and that we should contemplate exceptions. The commission and City Council revisit the Comprehensive Plan on an annual basis. As part of that, the 135th Street Corridor Plan is a subset. Every year, when we look at it, we hear from staff. We have a working session on it. We then have a meeting and Public Hearing, in my recollection, I don't recall you or your clients ever approaching us about a comprehensive approach to revising the Comprehensive Plan. I'm putting you on the spot by asking why not. These plans must have been on the books for at least a year. Why not take advantage of the process and take a comprehensive approach rather than a spot approach?

Mr. Petersen: It's a legitimate question, and it's not unique to Leawood. You don't have developers and representatives on spec just for the good of the order going to cities and saying that something isn't working. They wait until they have a viable project that challenges it. The plans are guides, visions, and in some ways, hopes. It is a challenge to try to take some pieces and move forward. Overland Park did it with Vision Metcalf. Every corner has a ten-story building with a parking structure. Pieces of it were taken. There are still fast-food restaurants along Metcalf, and it's a flavor. The theme is the mixture of uses. I had the client that owned this property before these guys. He came to a session and pointed out that mixed-use wouldn't work without a lot of incentives. There is no office market here. There is too much retail now, and it is never going to be an office building of any significance. You talk about walkability, multi-family, villas, attached villas, townhomes, and single family. All the pieces come together with a submarket for some leisure and retail opportunities. That is how it works, just like it did with the Lashbrook project. Today, the Master Plan has been changed to reflect the Lashbrook project. The 135th Street Corridor is not the Master Plan. It is a planning tool. My client knew the consultant that did your study.

Chairman Elkins: You talked to us about Tracts F and G as amenities. I note that there is a Tract A along 135th Street. Can you tell us what's planned for that?

Mr. Petersen: That's our dog park to be utilized by the residents primarily because of where it's located. It's a nice area with a sidewalk and an area for the dogs.

Chairman Elkins: That will be a private dog park for the residents of the Villa de Fontana group?

Mr. Petersen: I think, given its location, that is the way it will be utilized. There won't be restrictions that say the public can't access it.

Chairman Elkins: You mentioned Tract G would be available to the public. Would Tract F be as well?

Mr. Petersen: That, we would probably leave up to the residents to decide. What would be more likely to be open to the general public would be the Bocce area.

Chairman Elkins: I'd like to ask you to comment on the value and size of the homes that your clients are contemplating. They certainly fit with what we like to see in Leawood. Part of the 135th Street Plan and Comprehensive Plan have always suggested that some sort of buffer between 135th Street as it exists today and residential units should be considered. Your client is contemplating six, if not eight \$850,000 homes that back onto 135th Street. Can you talk about the financial feasibility of that?

Mr. Petersen: First of all, anything facing the two thoroughfares will have a wall system that is decorative and quality and extensive landscaping. These gentlemen know this market, and this is not affordable housing. This is the Leawood residents who like being at 135th and Roe. They still want to walk to Gaslight Grill and the retailers. They like being in the center of things, but they want a little buffering and something that is special. Meadowbrook is not much different. It sits off Nall just off 95th. The kind of living may not be to every person's liking, but there is a market for this size.

Chairman Elkins: Thank you. You found a provision in the LDO that I was not aware of, so I need your thoughts in a bit more detail. It relates to 16-8-6.1 and the rule exceptions. To paraphrase my understanding, it permits us, in the event of finding a substantial hardship or inequity, to permit a variance from design requirements, but it specifically calls out that the exception does not apply to procedure or improvements. You can correct me, but my sense is that the streets themselves constitute improvements. How do I get from the requirement around the specifications for the private streets that we currently have to your exception, given that there is a proviso in the exception that it cannot be used to modify the requirements of improvements?

Mr. Petersen: You're right that it is our provision. Also, one of the other requirements is so that the public welfare and interest of the city is protected. In this case, that is the reason I spent some time bringing the city back on this whole commercial endeavor. Remember, we are not making an improvement to the streets other than maintenance. We want a rule exception for design. The streets we are building are to the exact city standards and city design. We are asking for a variance from said requirements of design.

Our streets are slightly narrower than a city street, and obviously, because they're private drives, we don't give the same amount of right-of-way. We have utility easements. They fit perfectly with the villa concept. We're asking for a variance from the design requirements. The reason staff is suggesting a stipulation, I think, is that they don't meet the design requirements.

Chairman Elkins: How much narrower are the current streets from what is typically required?

Mr. Petersen: 2 feet.

Chairman Elkins: Are there other deviations from the specifications that the city requires of the streets, other than just their width?

Mr. Petersen: It's mostly the amount of right-of-way to get sidewalks in, which doesn't fit as well because it pushes the front yard back and doesn't work as well in the villa. If you built the street today, there may be some different specs with some of the asphalt mixes used. These streets were designed to handle commercial traffic, and we're going to do a typical maintenance of them with milling the top and adding asphalt to bring them to absolute A grade.

Chairman Elkins: What circumstance, in your reading of 16-8-6.1, would the "but not of procedure improvements" apply to?

Mr. Petersen: I have to be honest; I don't understand that phrase. I'm not building anything here; I'm just going to maintain it.

Chairman Elkins: Would you agree that the streets and infrastructure put in by the prior developer would constitute improvements?

Mr. Petersen: Yes, but they weren't seeking a rule exception, and they were approved. I doubt if, magically, someone wanted to use the street system, staff would say that we didn't use the right asphalt mix that we use today, so the streets would need to be torn out. I think maybe they don't like it because it's against the Master Plan. I think we're on firm ground to use the rule exception. I think it's common sense. It's not going to do anything to detract from the quality of the project. We're going to pay the \$1.5 million that was already paid to put in the streets and then another \$1.5 million to solve a problem that will remain exactly as it is today because of that deep financial abyss. That is the concept under hardship, welfare, and interest of the city. Let's do something to solve the past mistakes and bring something cool and viable to the corridor.

Chairman Elkins: I understand that. The question I asked was if the streets are an improvement.

Mr. Petersen: Well, if you want to say it is an improvement as a noun, yes. I think the ordinance speaks to improvement as a verb.

Chairman Elkins: Pretty rare to have an “S” on it and still be a verb, but I follow your thinking.

Mr. Petersen: Would you agree that it’s motion and moving forward?

Chairman Elkins: You made the point earlier that the hardship or inequity that would form the basis for the exception is the burden of removing the streets and replacing them with streets of the proper width. Is that correct?

Mr. Petersen: Yes.

Chairman Elkins: Is there anything else to point us to as a basis for meeting the substantial hardship or inequity test?

Mr. Petersen: Storm sewers would have to be moved, and utilities are already in place that would have to be moved. Honestly, as a city, utilizing this rule exception, I don’t think it is necessarily just a substantial hardship or equity of the developer; I would make the case that the city is left holding the bag of over \$2 million in general obligation bonds paid and another \$2 million left to pay for this to sit and \$1 million general property taxes that haven’t gone to our schools or libraries. That is a hardship to the public at large that needs to be rectified.

Chairman Elkins: Thank you. Could you move to the slide that indicated the action items? I want a clear sense for the record of which of the action items you want us to apply the 16-8-6.1 exception to.

Mr. Petersen: The rule exception approach would be Lot 62 in terms of its depth, which is a unique circumstance, and the hardship is that the lot will look exactly the same but will just sit there. It’s a lot we can sell that will keep the house a distance away from 137th Street. We want it for the private streets.

Chairman Elkins: That is Stipulation No. 8, correct?

Mr. Petersen: Stipulation No. 11 is the lot depth; No. 8 is the private streets.

Chairman Elkins: It is the second, third, and fourth bullets you would ask that we apply the exception to.

Mr. Petersen: There’s a mistake on this. Stipulation No. 11 with the 80’ wide building line is really a deviation. Staff initially said that needed to be a rule exception, but it has now changed to deviation.

Chairman Elkins: It is the second and fourth bullet.

Mr. Petersen: Yes, and the deviation is the third, and it has been granted on the projects I mentioned before.

Chairman Elkins: Thank you. Do any other commissioners have questions? If not, this requires a Public Hearing as a result of the request for Rezoning. I would reiterate the standing practice that comments be limited to four minutes. I do not believe that any member of the public cared to comment.

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

Chairman Elkins: That takes us to discussion on Case 70-20. Comments from the commissioners?

Comm. Block: Overall, it's a nice plan with good use of a hard-to-use area with existing streets. As I've said on previous cases in this corridor, if it doesn't comply with the Comprehensive Plan and 135th Street Community Plan, I don't feel comfortable approving it. Leawood doesn't have much land left, and since so much was put into that plan, at this point, we should follow it and wait for something that comes along that fits it.

Comm. Coleman: I was reviewing my packet over the weekend, and I saw that this was single-family houses on 135th Street and wondered if I was reading it right. This doesn't even come close to the 135th Street Plan. I agree that Leawood needs housing like this. We've seen villas coming through time and time again. Obviously, there is a need for it; however, like Commissioner Block, we have certain regulations and rules that we need to follow as a Planning Commission. One is the LDO; one is the Comprehensive Plan, which includes the 135th Street Community Plan. To my knowledge, we have not started a new committee to look at any of these things. As the chairman said, we have an annual review of the Comprehensive Plan, which includes the 135th Street Community Plan. We don't get input written or in person. That is the opportunity. If this plan is not viable, we can take another look, but it is what we have to go on right now. As far as I'm concerned, this development has merit, but it is spot zoning. With that, I cannot support it in its current form.

Comm. Peterson: I really do appreciate the study brought in by Mr. Regnier. It led me to question the whole 135th Street Plan. I believe it needs to be revisited and probably very quickly. I shared that the full 208 pages that I was able to find on the web have a lot of interesting statistical data. Mr. Petersen makes some interesting points. Where have we gone in 20 years? This land is still basically undeveloped. In the current environment, office space is beginning to crater. Retail space is also under a great deal of pressure. There is a significant need for this type of residential development. I believe that the 135th Street Community Plan needs to be addressed sooner rather than later; however, I

must absolutely agree with Mr. Petersen, and I greatly appreciate the comments from Commissioner McGurren. We need to look at this. I basically am fully in support of this plan and the deviations they request.

Comm. Stevens: I feel Commissioner Block and Coleman said the very same things I would say. Single-family development right on the edge of 135th Street and surrounded by commercial seems inappropriate. I can't get past the nonconformance items of the LDO, Comprehensive Plan, and 135th Street Community Plan. Then there are compliance issues with the Public Works memo. For those reasons, I am not supportive.

Comm. McGurren: First, I'd like to thank Mr. Simpson and Mr. Petersen for bringing a viable option that could finally enable this land to be put to productive use. It is obviously a blue-sky scenario that we would look at a plan that brought residential to the area, where the other forms of development have never panned out if this met the LDO and the Comprehensive Plan, or the 135th Street Plan had been adjusted or updated. I get the logic that says developers ought to ask for changes to the plan, but on the other hand, I would hope that the city would be proactive enough after 20-some years to realize that certain things aren't going to happen and make necessary adjustments. We all sat at a meeting a year ago where we sent people out to Colorado and Lee's Summit and found developments that were a bit different than this one. They plotted them on existing 135th Street land and showed us what had been built in Lee's Summit that was more in the \$400,000-\$500,000 range that would allow people to downsize and stay in Leawood would fit on these parcels of land. There's a part of me that wonders why we keep sitting here having the same conversation, and yet we say we have a goal that would enable us to utilize this land. I think it's a little odd to forget that Hallbrook homes that are of higher value than these sit on State Line and 119th Street with the appropriate landscaping screening, and everybody thinks they are fabulous. I don't see any reason why a development like this couldn't be built on 135th and 137th Street. We basically move into a logic that says that we're not going to have everything in mixed-use in every spot on 135th. We're going to have mixed-use along 135th, and we're going to have developments that are viable and finally fill in this land over some period of time. I would love to be able to say I would vote for that type of plan. Yet, it needs to meet the LDO, and it needs to get the appropriate deviations. I asked staff about whether they would lean toward an approval if the project was not deviating from the LDO but did deviate from the existing Comprehensive Plan. The same question could be asked of the applicant. Would you sign up for the staff stipulations? Obviously not, but it seems that there should be middle ground that would enable this land to finally be put to appropriate public use. I think we're going to come to the conclusion at some point that we should have been reacting much sooner to the market conditions that exist. I, too, would be unable to support the plan as it exists without the changes that staff recommends, but I also would have hoped that before now or subsequent to now, there is a lot more conversation about how we get to the point that the plan becomes one that is approvable.

Comm. Belzer: I agree with Commissioners Peterson and McGurren that it is time for us to start looking at things differently and what the market is going to support. This may not be the exact intended mixed-use that is part of the 135th Street Plan, but I really feel

that, based on the amenities and the things that are open to the public and the likeness to Meadowbrook, this proposal has a very strong sense of place that would bring community together. I feel, like Commissioner McGurren, that there needs to be middle ground. I'm not sure how that gets solved here tonight, whether it's Mr. Petersen and Mr. Simpson deciding they can work within the LDO or how that all works out. I so want to support this plan, and I'm not sure I can the way that it is right now. I really feel very strongly that we have to look at our 135th Street Community Plan sooner rather than later.

Chairman Elkins: Thank you. We're coming up on the 9:00 hour. Is there a motion to extend the meeting?

A motion to extend the meeting for 30 minutes was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

Chairman Elkins: Any other comments relative to this case? I'll make some comments. Some were indicated by some of my questions. I will confess to a certain amount of frustration. Mr. Petersen expressed frustration by a number of his developer clients as he has appeared. Both statutorily and as a matter of common sense, land use planning should be done on a comprehensive basis. That's what a case long ago taught us. That's become a hallmark of planning around the United States. I understand that the developers have been frustrated with the city and with this commission, but we have a statutory process that is mandated by the State of Kansas for us to revisit our Comprehensive Plan on an annual basis. I've served on this commission for more than a decade, and I cannot recall an instance when a developer chose to participate or address their concerns about our Comprehensive Plan. We had the workshops with respect to the 135th Street Plan, and a few developers attended that, but this is an annual thing, and it's frustrating for us to be asked, on a piecemeal basis, to come in and make decisions. We're not bound by statute. The Comprehensive Plan is not something we're mandated to follow, but it is something we should pay heed to. Mr. Petersen and his clients have made very persuasive arguments about the viability of the city's commitment to mixed-use in the traditional manner. Certainly, this commission has indicated a desire to revisit that. We can't revisit in a vacuum. We have to have participation by the public and by the development community. For whatever reason, the development community has opted not to do that. The potential outcome here is exactly what Commissioner McGurren spoke to. We have the potential, if we were to approve this plan, to have one housing development along 135th Street that backs onto that. With the other developments Mr. Petersen's clients have proposed, the rest would be either commercial or office space. Again, trying to abide by the spirit of the mixed-use idea in other context, we have approved the use of that space directly contiguous with 135th Street for commercial and office uses as a barrier toward residential uses deeper in, especially to the south. This is exactly why it is difficult for us to move forward on a case-by-case basis. Having said that, I commend Mr. Ellis and his partner on this plan. This is more again to redevelopment than it is to what has been the history of development in Leawood for the last 75 years. It's not true redevelopment because we're not tearing something down, but this is space that the city and a parade of developers have invested in. It hasn't failed because of time; it has failed for lots of other

reasons. This is essentially along the lines of redevelopment. That's why, in many cases, despite my frustration, were I to vote, I might well support this. Having said that, I think we need to approach this in two respects because of this unusual power that we suddenly find ourselves having with respect to recommending an exception to the rules. I have my concerns about whether it applies to the streets, but I will say that I think the idea of tearing out the streets, utilities, and stormwater infrastructure would certainly qualify for the standard we have with respect to the exception in Section 16-8-6.1 of the LDO. I would suggest that we have an obligation to take up and consider the applicant's request for a rule exception with respect to those two stipulations. What I would ask the commission is to suspend your thoughts about the project overall and consider whether, in the event that we did decide to move forward with this plan, we would be willing to support the application of the exception. I'd ask for conversation from the commission with respect to that specific request.

Comm. Block: Only as it applies to the roads?

Chairman Elkins: We can take them up one at a time. The other had to do with the depth of Lot 62.

Comm. Block: As it relates to the roads, I think the roads can stay, and a deviation is fine. As far as the lot is concerned, as I mentioned, I don't think this plan fits this space, so I wouldn't want to give a deviation on that.

Chairman Elkins: It's a fine point, but it's a rule exception as opposed to a deviation.

Comm. McGurren: Mr. Petersen made the point that an exception similar to that requested on Lot 62 has been done in other places. I believe he referenced Hallbrook, where the 100 was reduced to 80. Was that something the city can confirm?

Chairman Elkins: Just to clarify, the frontage from 100 to 80 feet is in the nature of a deviation. The lot depth, which is the second part, is the matter that requires a rule exception. Does staff have a recollection of a rule exception such as this?

Mr. Klein: Honestly, I can't remember the instance. I know that Hills of Leawood used the deviation for the 80' lot width, but I don't recall one with the rule exception, though.

Chairman Elkins: Mr. Petersen, I know we don't typically let you speak once we get to discussion, but are you aware of an instance in which the rule exception has been applied to the lot depth?

Mr. Petersen: I can't; it just seemed like such a simple issue. I didn't do the research on that. The deviation we asked for on the 80 feet, Mark mentioned one. There are four other subdivisions that they have supported the 80' build line. That is commonly supported by staff.

Chairman Elkins: Thank you. Any other comments about the rule exception?

Comm. McGurren: I would support both of those rule exceptions.

Mr. Scovill: I just wanted to bring to your consideration that, when these roads were constructed, they weren't required to be constructed to city standards. At that time, the city standards did include utilizing things like the Kansas City Metropolitan Materials Board for Concrete. These curbs are not to standard. They are built with substandard materials like poor-quality limestone. We've gone through the city and replaced a lot of the public curbs that were built with that years ago. Another item I might point out is Public Works hasn't seen any information regarding the condition of the road. I would just mention that we would like to evaluate the condition of the road. We just don't want to get into a situation where these roads are passed on to the residents of 63 properties and then later, they can't afford to maintain them. If the road isn't built to the thickness required by standards, which we don't know if it is or isn't, it could be a substantial hardship on those residents.

Chairman Elkins: Thank you. Mr. Petersen, would you like to respond?

Mr. Petersen: They were built to standard. We had the roads inspected by O'Donnell, one of the leading street construction groups in the city. Once they do the mill and overlay, they'll operate at the same level of serviceability as a new public street. By the way, these are private streets. There is a provision in the code that speaks to utilization of private drives and private streets in a villa-type project with all protection built in for the city, including that anybody can't get an occupancy permit until they acknowledge that they are on a private street and it's their responsibility to maintain it. We have reserve funding in place. We're required, as part of this application, to submit a CCNR, in which is the ability fund the streets. This is a red herring.

Chairman Elkins: Thank you.

Ms. Knight: I just wanted to make the commission aware that it is in your Revised Staff Report on Page 6 that it isn't merely something that sounds like a good idea; the commission has to find an unusual hardship, the tract to be subdivided is an unusual size or shape or is surrounded by unusual conditions that strict application would result in a substantial hardship. That section was written in such a way that the intent may not cover this. Mr. Petersen was saying the hardship may be to the city at one point, but if you read on, it says that there must be a finding of unusual hardship. You would have to make that finding on the record, and it does require a vote of $\frac{3}{4}$ of the commission membership, which would require seven.

Chairman Elkins: Thank you. Additional discussion around this idea of rule exception or deviation?

Comm. Block: I find that pretty compelling with what Mr. Scovill said. As a resident of a neighborhood with a small homeowners' association, I wouldn't want to buy an \$800,000 house and then think the streets would be fine, only to find out that 2-3 years

later, all the curbs would need to be pulled out. How were the streets put in, in the first place if they didn't meet city standards?

Mr. Scovill: At that time, we did not require private streets or private developments to be built to city standards. That requirement came around 2010 as I understand.

Comm. Block: I guess getting more information would be important. We don't have a report or anything. The contractor has told the applicant that they just need a mill and overlay, but I do think there's something to be said about the city inspecting before we take action.

Comm. McGurren: I would agree.

Chairman Elkins: I think what I would like to do is take these up one at a time and get a decision on them. Is someone willing to make a motion with respect to Stipulation No. 8? The motion should include a reference to a substantial hardship that justifies application of the 16-8-6.1 rule exception. Hearing none, the idea dies for lack of a motion. I take up the second issue, which relates to the deviation relating to the frontage on cul de sacs. It is a reference to Stipulation No. 11. Would anyone care to make a motion recommending approval of a deviation with respect to the frontage?

Comm. McGurren: Is this in reference to the 100 feet to 80 feet on all lots that would be reduced?

Chairman Elkins: Yes, it approves a deviation to allow Lots 12, 14-17, 21, 54-56, 61, and 62 to provide a minimum frontage of 80 feet at the building line.

Comm. McGurren: If we had a validation from the department that it has occurred in four other locations over time, I would gladly provide my recommendation that we provide that deviation, but I'm a little reluctant not knowing if that is the accurate truth.

Mr. Klein: The deviation has been used in other developments in which staff was supportive. In this case, staff is generally not supportive of the application overall.

A motion to recommend approval of the deviation to allow Lots 12, 14-17, 21, 54-56, 61, and 62 to provide a minimum frontage of 80 feet at the building line – was made by McGurren; seconded by Peterson.

Comm. Block: I'm going to vote against it. I don't think we should be setting policy. I'm going to vote to deny the application, so I don't think setting a standard for changing the rule exception is appropriate. I think we should take it up and change the ordinance if that needs to be done aside from this so we can understand those other scenarios and not take it on blind faith.

Chairman Elkins: The pending motion is on a deviation, which we do regularly. It's not unique at all.

Comm. Block: But if I don't support the underlying application, I don't know why I would approve that.

Chairman Elkins: To inform the City Council. Part of our function is to advise on how we feel on these things. Any other comments?

Motion carried with a roll call vote of 4-3: For: McGurren, Hunter, Belzer, Peterson. Opposed: Coleman, Block, Stevens.

Chairman Elkins: That takes us to the third item, which is the rule exception. Commissioner Block's points are well taken there. With respect to the approval of a rule exception under 16-8-6.1. In order to recommend this to the Governing Body for approval, we must make a finding that there is substantial and unusual hardship in enforcing the lot depth requirements of the LDO. I will admit that I'm not sure I've heard what the hardship is with respect to that particular provision. Is there anyone who would like to make a motion and propose unusual hardship? I don't want to put words in the applicant's mouth, but my sense is that the applicant would tell us that the hanging piece of property would be the hardship. Is there such a motion? If not, that idea dies for lack of a motion. That will take us to consideration of Case 70-20.

A motion to recommend denial of CASE 70-20 – VILLA DE FONTANA – Request for approval of a Rezoning from SD-CR (Planned General Retail), SD-O (Planned Office), and RP-3 ((Planned Cluster Attached Residential District)(6,000 Sq. Ft. Per Dwelling)) to RP-2 ((Planned Cluster Detached Residential District)(6,000 Sq. Ft. Per Dwelling)), Preliminary Plan, and Preliminary Plat, located south of 135th Street and east of Roe Avenue – was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

Chairman Elkins: I believe this next case is moot for lack of approval of a Preliminary Plat and Preliminary Plan.

CASE 81-20 – VILLA DE FONTANA – Request for approval of a Final Plan and Final Plat, located south of 135th Street and east of Roe Avenue.

Mr. Petersen: I'd like to try to short-circuit this. First Ascent is under a time constraint, and I'd really like to try to get that considered by the Planning Commission tonight. We would ask that you take the action to deny the Final Plan and move it to City Council. We'll have them look at this. There's one shot, and if it doesn't work on October 12, this property will go into bankruptcy. We need to get the Final Plan up there to keep the procedure going. We have bonds in default. We have all sorts of intricate financial measures. We need a final decision on the 12th. With that, you're going to deny. We'd ask for a vote to deny and send it on.

Chairman Elkins: Do I have authority to do that?

Ms. Knight: You can consider and deny it. The October 12th Governing Body meeting is a special meeting. I don't know that it's set specifically for this case; it was just due to the backlog.

Chairman Elkins: Mr. Petersen, would you ask that the record that was made on the Preliminary Plan be included as the record for Case 81-20?

Mr. Petersen: I so request; thank you.

Chairman Elkins: The chair notes that the record made for Case 70-20 shall become the record for Case 81-20 as well.

A motion to recommend denial of CASE 81-20 – VILLA DE FONTANA – Request for approval of a Final Plan and Final Plat, located south of 135th Street and east of Roe Avenue – was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

A motion to extend the meeting for an additional 30 minutes was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

CASE 75-20 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-6.3, SD-CR (Planned General Retail) - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to building heights within SD-CR (Planned General Retail). **PUBLIC HEARING**

Staff Presentation:

City Planner Ricky Sanchez made the following presentation:

Mr. Sanchez: You may remember from the August 11 work session that we talked about LDO amendments. This is one we discussed, which is the increase in height to the SD-CR building heights. Previously, in the work session, we showed examples, including an additional 1 foot and 2 feet per 1 foot of height for a building. After the comments we received from the Planning Commission, we thought maybe the setback was too small, so we increased that from 1 foot to 10 feet on each side per 1 foot in height. The LDO amendment we're bringing forward would allow a building to up to a height of 65 feet, but it would increase the setback to 150 feet. We are available for questions.

Comm. Coleman: What is the reason for increasing the height of the buildings from 50 feet to 65 feet?

Mr. Sanchez: We have heard from developers, such as in the next case, that some want taller buildings in existing SD-CR developments. Staff thought it would be okay if this taller building is not near a close-knit neighborhood, or if it is a true SD-CR retail area

and is already set back far enough, the taller building may be acceptable in that range. That is why we even pushed it out to 10 feet. If a developer wants a 65' tall building, it will require a lot of room to do that.

Comm. Coleman: Are there any 50' structures in Leawood now?

Mr. Sanchez: Within Park Place, there are a lot, but that's mixed-use. Mark may be able to answer better if there are others.

Mr. Klein: Within SD-CR, the tallest one I'm aware of is the Restoration Hardware, which is about 49 feet. There are buildings that are taller in SD-O (Planned Office), which is allowed to go to six stories and 90 feet. MX-D also allows up to 90 feet.

Comm. Coleman: Are the tallest buildings in the city in Park Place, then?

Mr. Klein: Yes.

Comm. Coleman: It's about 90 feet?

Mr. Klein: Yes, but parapets aren't included in the height, so it may even be a bit taller than that.

Comm. Coleman: How many stories is 65 feet?

Mr. Sanchez: It is around 4-5 stories, depending on how thick the floors have to be.

Comm. Coleman: How many SD-CR zoning areas are there in the city?

Mr. Sanchez: Maybe 7-10, but I would have to look at a map to give an exact number.

Comm. Coleman: They're variously spread out from 151st Street?

Mr. Sanchez: They are spread out throughout the city. Because the developer has to have so much of a setback, it is not plausible to do within the smaller SD-CR developments, and that was really the intent.

Comm. Coleman: Which SD-CR areas is this a viable option for?

Mr. Sanchez: Town Center Plaza makes sense. Town Center Crossing may be able to utilize this as well, but we would have to check the setbacks.

Comm. Coleman: Anywhere else in the city?

Mr. Sanchez: There might be, but I would have to look.

Comm. Stevens: I think you answered this in the opening statements, but I had a conflict or wanted to make sure I understood the difference between what's listed in the memo and the approved changes in the bulk regulation chart. In the example, if a developer wanted to build to the max, the memo indicates the building will have to have a setback of 150 feet from the property line. I think what we're really saying is that's an additive of 150 feet to the original setbacks to the property lines in the bulk regulations.

Mr. Sanchez: Correct, and we want to clarify that it is an additive.

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

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

Chairman Elkins: That takes us to discussion of the proposed amendment. Are there comments?

Comm. Coleman: One of my questions to Mr. Sanchez was about the SD-CR areas. I have absolutely no problem putting a tall building in Town Center, and I think it's appropriate. I would have a problem putting it in more of a residential area. This is a concern if we throw it out for all SD-CR, even though it may not be practical in the area. I just don't want to open a can of worms and have a developer come in down the road, wanting to put something in the area that really shouldn't be in the area. I'd like to tighten it to just allow it in Town Center Plaza or something more specific instead of the whole SD-CR category or at least have some assurances that it is not viable in those areas that are more residential.

Chairman Elkins: Would that be spot zoning effectively? I don't have an answer to that.

Comm. Coleman: If we get clarification or confirmation that a developer can't have that kind of setback in one of the SD-CR developments, I'd be more comfortable with it.

Comm. McGurren: Your point is interesting. I thought about Ranchmart North and wondered about the bank in the back corner and if there is plenty of room there to have a setback in addition to 150 feet that would be quite visible to the homes on the cul de sac behind Cure of Ars. That would be a good example in my mind. I can see a scenario that would merit a limit or a justification that disqualified that situation and only allowed it in the two Town Center options.

Mr. Sanchez: If this gets continued, we can bring it back to the Planning Commission with a study for each SD-CR zoning that we have to show you where 150 feet plus the setbacks would be. We want to note that this does affect the next case on the docket.

Comm. Block: When we talked about this in the work session, my recollection was there were other situations that were 1-2 feet per 1 foot of height. This goes all the way to 10 feet to account for things like you're talking about. It probably wouldn't even apply to Ranchmart North because of the room needed. I'm comfortable with the 10 feet. I think the calculation was to push it back far enough away from the residential areas in close proximity that the sight line would not be as daunting. I'm supportive.

Comm. Coleman: I'm in support of the ordinance; I just think maybe before it gets to Governing Body that it gets researched a bit more for them. They're going to read our minutes and understand our concerns, and you could have the answer ready for them.

Chairman Elkins: Good thought. Is there a motion?

A motion to recommend approval of CASE 75-20 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-2-6.3, SD-CR (Planned General Retail) - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to building heights within SD-CR (Planned General Retail) – was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Coleman, Block, Stevens, Hunter, Belzer, Peterson.

CASE 64-20 – TOWN CENTER PLAZA – FIRST ASCENT (CLIMBING/HEALTH CLUB) – Request for approval of a Preliminary Plan, located north of 119th Street and west of Roe Avenue. **PUBLIC HEARING**

Staff Presentation:

Assistant Director made the following presentation:

Mr. Klein: This is Case 64-20 – Town Center Plaza – First Ascent (Climbing Health Club) – Request for approval of a Preliminary Plan, located north of 119th Street and west of Roe Avenue. This will remove five existing tenant spaces and construct a 64' tall rock-climbing / health club. The square footage of the building will be 24,719 square feet. It is located directly east of Bravo Italian restaurant on the north elevation. The eastern half will go up to 64 feet. Another portion to the west will stay at about 32 feet. It does meet the setback discussed and approved in the previous application. I would like to change Stipulation No. 1 to refer to approval of a health club rather than the name Ascent. Staff is recommending approval of this application, and I'll be happy to answer questions.

Chairman Elkins: Questions for Mr. Klein?

Comm. McGurren: My question relates to the nice arial shot that shows the proposed location. Based on the height and the new setback, this doesn't appear to show it back any farther than Bravo on the front of the proposed building. Should it be different?

Mr. Klein: The setback for the main center is already pretty substantial and goes well beyond the required setback for the development. The exterior property line is by Town Center Drive.

Comm. McGurren: So, because this is in a large facility, the height of the building will be dramatically higher but no farther from the people driving by on that side street or walking in front of it? It will sit on the exact same property that exists today? In a sense, there is no benefit to seeing a whole bunch of additional landscaping or sidewalks or whatever the case may be because the building is not going to be set back.

Mr. Klein: Correct. Right now, the building is almost 500 feet from Town Center Drive. The building will be about 14 feet taller than the limitation. It's so far back that it really wouldn't have an impact as far as planting additional trees.

Comm. Coleman: The setback is from the property line all the way over by Hereford House.

Comm. McGurren: I understand, but at the same time, the city is allowing additional height that has no consequence based on the hugeness of this particular development. I was thinking there was a give-and-take or visible adjustment. The setback is obviously appropriately figured out. It seems surprising.

Mr. Sanchez: Staff would like to add that we discussed green space in the work session. The issue is it's hard to calculate those types of numbers when discussing height and square footage. It made it a whole lot harder to try to make a calculation.

Comm. McGurren: I was thinking that we are going to potentially allow the character of the development to look very different. There is no brick on this. It will be dramatically higher and substantially different than what was built to begin with. I just assumed there would be an offsetting benefit somewhere. Thank you.

Comm. Coleman: I'm not familiar with all the retail there now. I know Kim's Tailor was in the road between. What is currently there, and what will be demolished?

Mr. Klein: Kim's Tailor is in there. Z Gallery used to be in that location.

Mr. Lang: Kansas Sampler used to be there.

Comm. Coleman: Commissioner McGurren brought up a good point about the building looking vastly different than the shopping center. I'm not complaining. I am all for repurposing the shopping center because, as we all know, retail is struggling now, and if we can get a business in there, I'm more than happy to do it. I'm just wondering if there was more of an effort to try to make it look like the existing buildings? It's really going to stick out next to all the other brick.

Mr. Klein: They have not given elevations because it is a Preliminary Plan. There is still time for conversation with the applicant. Staff is supportive based on the fact that it provides additional opportunities. The site is large enough. I don't think we're looking at the LDO as a bonusing kind of thing; it is more ensuring that any site where the extra height is allowed is actually large enough to meet those setbacks. You're going to see some future applications that have to do with design guidelines for Town Center Plaza and Town Center Crossing.

Chairman Elkins: Other questions? If not, Mr. Petersen, please proceed.

Applicant Presentation:

John Petersen,

Mr. Petersen: First Ascent is a critical find for Town Center Plaza, and we'd really like to get a vote on it tonight. They are a national retailer and are in demand all over the country. We want to keep them here. Architecture is a Final Plan issue, as is stated in the Staff Report. Very quickly, I have Steve Harris, VP of Development from First Washington; John Shepard, Cofounder of First Ascent; John Zentmyer, CFO of First Ascent; and our architect. I'm going to run through some slides. You have the location just east of Bravo before it was vacated. Staff has given the size. We're going to work on the architecture with staff as we come back with a Final Plan. It is different. That's what retail is today. If we had time for Steve Harris to get on as manager of First Washington's properties all over the US, you'd hear that. We want eclectic impact, places that bring a buzz, people that bring excitement, particularly on the north side of this center. We want tasteful but not all the same. That's what we're bringing. I remember sitting there when Crate & Barrel came in. Everybody wondered about it, and what's evolved is Apple and an eclectic feel in probably one of the coolest shopping centers in all of Kansas City. All the materials meet LDO standards, and again, they'll be addressed in more detail at Final Plan. First Ascent is buzzed about coming to Town Center with climbing, fitness, community. Climbing is the fastest-growing sport in the US. It will be in the 2021 Olympic Games. This is not a wall in the back of Dick's Sporting Goods. This is sophisticated. It is for people who are serious climbers and in events all over the US with the desire to be an Olympian. It is 64 feet because it is the required height for Olympic competition. It's also climbing for fitness buffs, and they want to be part of a fitness center. Another element is that it is a fun event. Families come to try it out. People come from all over to enjoy the opportunities. People are dedicated, and they are part of a community. They stay and eat and shop. Retail is experience today. Tie it in with health and fitness. We think this is a great plan. We'd ask you to move this on to City Council for approval. We would very much appreciate a vote tonight to stay within the timeline. Thank you.

Chairman Elkins: Questions for Mr. Petersen? This does require a Public Hearing.

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Coleman, Block, Stevens, Hunter, Belzer, Peterson.

Chairman Elkins: Comments regarding the case?

Comm Coleman: I am definitely in favor of this development. Not that it has to be brick, but I would ask the applicant to complement the existing structure of Town Center.

Comm. Block: I concur.

Comm. McGurren: I concur.

A motion to recommend approval of CASE 64-20 – TOWN CENTER PLAZA – FIRST ASCENT (CLIMBING/HEALTH CLUB) – Request for approval of a Preliminary Plan, located north of 119th Street and west of Roe Avenue – was made by Coleman; seconded by Block.

Mr. Klein: As far as the change to Stipulation No. 1, it would change out “First Ascent” to “Health Club.”

Motion amended to replace “First Ascent” with “Health Club” by Coleman; seconded by Block. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

A motion to continue Cases 74-20, 66-20, and 67-20 to the next available Planning Commission meeting was made by Coleman; seconded by McGurren. Motion carried with a unanimous roll-call vote of 7-0. For: McGurren, Hunter, Belzer, Coleman, Block, Stevens, Peterson.

CASE 74-20 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-3-3, ADMINISTRATIVE APPROVALS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to Tenant Finishes. **PUBLIC HEARING** - *Continued to the next Planning Commission meeting*

CASE 66-20 – TOWN CENTER CROSSING – REVISED DESIGN GUIDELINES – Request for approval of a Revised Final Plan, located south of 119th Street and east of Roe Avenue. *Continued to the next Planning Commission meeting*

CASE 67-20 – TOWN CENTER PLAZA – REVISED DESIGN GUIDELINES – Request for approval of a Revised Final Plan, located north of 119th Street and west of Roe Avenue. *Continued to the next Planning Commission meeting*

MEETING ADJOURNED