

**City of Leawood
Planning Commission Meeting
August 24, 2021
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, Block, Stevens, Hunter, Belzer, Hoyt, Peterson. Absent: Elkins.

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 Belzer; seconded by Hunter.

Chairman Coleman: Do we need to do a roll-call vote?

Ms. Knight: Since the meeting is open to the public, you do not have to. You could choose to call for a hand vote when voting on items.

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

APPROVAL OF THE AGENDA

Chairman Coleman: Does staff have any additions?

Mr. Lang: We do not.

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

APPROVAL OF MINUTES: Approval of minutes from the August 10, 2021 Planning Commission work session.

Chairman Coleman: Are there any revisions to the August 10, 2021 work session draft minutes? Is there a motion?

A motion to approve the minutes from the August 10, 2021 Planning Commission meeting was made by Block; seconded by Stevens. Motion carried with a unanimous vote of 7-0. For: McGurren, Hunter, Belzer, Hoyt, Block, Stevens, Peterson.

CONTINUED TO THE OCTOBER 5, 2021 PLANNING COMMISSION MEETING:

CASE 82-21 – COCHERL FAMILY SUBDIVISION LOT 1 – HEARTLAND ENTERPRISES – Request for approval of a Revised Preliminary Plan and Revised Final Plan, located north of 143rd Street and east of Kenneth Road. **PUBLIC HEARING**

CONSENT AGENDA:

Chairman Coleman: Do any of the commissioners wish to pull either of these items from the Consent Agenda?

CASE 91-21 – LEAWOOD EXECUTIVE CENTRE – SIGN CRITERIA – Request for approval of a Final Plan, located south of College Boulevard and east of Roe Avenue.

CASE 106-21 – RANCH MART NORTH – MEAT MITCH – Request for approval of a Final Plan for a Tenant Finish, located north of 95th Street and east of Mission Road.

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

NEW BUSINESS:

CASE 83-21 – TOWN CENTER PLAZA – LOT 12, NORTH RESTAURANT – Request for approval of a Preliminary Plan and Final Plan, located south of 117th Street and east of Nall Avenue. **PUBLIC HEARING**

Staff Presentation:

City Planner Grant Lang made the following presentation:

Mr. Lang: This is Case 83-21 – Request for approval of a Preliminary and Final Plan. The project allows for the addition of a restaurant in the north parking field of Town Center Plaza, just south of Hereford House. The applicant has submitted a parking study that allows for the reduction of required parking for the development. The existing landscaping will be removed and replaced, and trees exceeding 12 caliper inches will be replaced on a 1:1 basis. The site lighting will match the existing development pad sites. Since the distribution of packets, I wanted to note a few typos that I have corrected digitally. Staff is requesting the south and east elevations receive a decorative screen element or replace the proposed stucco with exterior tile. The applicant meets all requirements of the Leawood Development Ordinance (LDO), and staff recommends approval of Case 83-21 with the stipulations listed. I'll answer any questions.

Chairman Coleman: Thank you, Mr. Lang. Are there any questions?

Comm. Block: I just had a question on the screening. It wasn't clear in the packet. I didn't understand what you're looking for. Do you have another graphic or rendering?

Mr. Lang: The elevations on the adjacent sides show a decorative bronze, almost honeycomb-look architectural screen on the façade of the elevations. It is toward the end of the packet in the large plans. They're black or bronze.

Chairman Coleman: So, it's on the west elevation, and you're saying you want it added to the north and south?

Mr. Lang: South and east.

Chairman Coleman: You want the screen down low? On the east elevation, it looks like it's on the top.

Mr. Lang: Yes; it is just to create more architectural interest. On the south side, you'll see that there's not much there as far as stucco to match the other sides of the property.

Chairman Coleman: Have you discussed that with the applicant yet?

Mr. Lang: I think they're in favor of replacing the stucco with tile. I don't think they want to do any of the screening.

Chairman Coleman: Thank you. Anyone else?

Comm. Hoyt: In the Fire Marshall's report, there was reference to a vetting process for the outdoor fireplaces. It said it would happen during the plan review and permitting process. Is that something that we would take up at this point, or is that something that will happen later on?

Mr. Lang: No; they typically look at all of the specifics at the time of building. They look for cutoff switches and to make sure safety is covered. They go over it in more detail. What is being considered tonight is the general location of the firepits.

Chairman Coleman: Thank you. Any other questions? In terms of the location, within the parking lot that is designated as parking now, are there assigned pad spots for future development, or is it just up to Town Center Plaza to put things wherever they want?

Mr. Lang: When this development came in, this was not assigned as a pad site. Neither was Pottery Barn or Arhaus. Those had been developed since the property first came in, in 1995. They can come in and choose other areas, but then we get into parking requirements. That is why they supplied us with a parking study.

Chairman Coleman: With Hereford House, the Sprint building, and everything on that side, is that all still part of Town Center Plaza?

Mr. Lang: Hereford House is independently owned. All of the pad sites are as well, with the exception of Pottery Barn and Arhaus. All of the pad sites, while independently owned, are part of the overall development.

Chairman Coleman: So, there is some relationship. Even though the site for Hereford House is owned by their own entity, do they still have to adhere to the Town Center Bylaws?

Mr. Lang: When they first came in, they had outlying design parcel guidelines. Further, they have a shared parking agreement like we do in all Leawood developments. They do still tie into borrowing parking at peak times.

Chairman Coleman: As far as the parking with the shared agreement, any part of the parking lot, whether it is in front of Hereford House, Sprint, or general parking, it's open to anyone at any time?

Mr. Lang: Yes, if it is a parking field within Town Center Plaza, it can be used by any of the tenants.

Comm. Belzer: I have some questions about the parking and also the study that was done. It was done recently, so is there any data that would take into account the nature of the pandemic and the lower traffic counts that are probably been seen?

Mr. Lang: Not to my knowledge, but the traffic engineer should be able to speak to that.

Chairman Coleman: Are there other questions? I'll invite the applicant to come forward.

Applicant Presentation:

John Petersen, Polsinelli PC, 900 W. 43rd Street, Kansas City, MO, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Petersen: I'm appearing on behalf of Leawood TCP, LLC, known as Washington Prime, who has continued to keep this a vibrant and active center, particularly the north side. We're pleased to be here with another addition to maintain the great presence the shopping center has today. Stephen Harris, VP of Development for Washington Prime, is with us via Zoom tonight, as is Doug Ubben with Phelps Engineering, who has worked through the Site Plan requirements as we laid it in not just where we want to but taking into account existing driveways, parking fields, and everything that has been done to bring in density and activity. At the same time, we've tried to make sure all the utilitarian features of the center continue to work well. We're pleased to come before you tonight in strict conformance with all the LDO regulations. We have three stipulations we'd like to briefly address tonight and seek slight modifications. Before we get to that, I'll quickly speak to the parking study that was conducted. It was conducted recently to take into account current situations, but it had actually built upon other parking studies that had been done over the last several years as the shopping center has been evaluated and set forth a consistent theme as set forth in the current traffic study: the site is way overparked. Maybe it wasn't when the codes were established. In the earlier days of development, the requirements were aggressive in terms of making sure there was enough parking. The negative impact from an aesthetic standpoint is large expanses of surface parking as opposed to the denser and

more walkable feel that shopping centers enjoy today. I don't think it will surprise anyone that has driven by there or seen massive rock concerts in the parking lot with still enough parking spaces for all the retail tenants at the same time, that on Friday, 31% of the parking spaces on the north side were occupied. Even factoring in December, when in-person shopping is at its peak, only raises that by 25-50%. This presents a palette, so to speak, to bring in some new elements to the shopping center and still make sure there is plenty of parking. I'll go through the stipulations quickly. No. 10 speaks to the south and east side of the proposed building. Before we get to that, staff referenced No. 9, where they requested, instead of the originally offered stucco treatment on the south and east elevations, to kick up the quality and add tile. We've agreed to do that. Our design is in conformance with the requirements of the LDO. We have taken their suggestion as set forth in Stipulation No. 9 and put that format tile on those facades. The issue we want to talk about is Stipulation No. 10, which speaks to trash enclosures that are part of the south façade. Again, we comply with the LDO. They are incorporated into the building, and the gates that have to be opened to utilize the trash enclosure are painted and treated so they blend with the architecture. This is what our renderings indicate. Staff is suggesting that we take a decorated element off that we are using in the front of the store and put them on those doors. They want us to do it not to comply with the code, but because it is the Director of Planning's preference. It's our preference we do not do that for two reasons. One is that we don't want to draw attention to the doors. They're a utilitarian function of a building such as this. We've designed them so they blend in and don't draw attention to the fact that they are trash enclosures. Also, bolting on decorative elements is a recipe for damage because of how they are being used. We think it will not enhance the aesthetics but rather create opportunity for aesthetics to be negatively impacted. We stand on requests to remove that requirement from Stipulation No. 10, deleting the highlighted sentences. We understand the suggestion, but we stand on the fact that the way we are proposing it is in strict compliance with the LDO.

Next, I'd move to Stipulation No. 21. That is the stipulation in the zoning and plan approval part of the packet that then refers to the Public Works memorandum. The items we're talking about are in that memorandum as items 1B and 1C. This was a rather late-occurring request, as we brought this application forward, that we would be required to do a traffic study. Usually, at the beginning, we're required to do a traffic study that would be prepared and ready for the Planning Commission. Here, it says to have it done by the time of City Council. We will comply with that. There have been a number of traffic studies done on this area in recent years. We will take those as a premise and update the study as we move to City Council. However, even though we are going to take staff's suggestion and requirement that we drill down further on not only the traffic being generated by this new addition to the center but the impact on the identified intersections, including 117th and Town Center Drive, the Public Works memo says to require the applicant to pay 33% of the cost for a potential traffic signal at 117th and Town Center Drive. We would suggest that item 1C be deferred to City Council once we do the traffic study. We've been scrambling here because all of this came up relatively late. Park Place had a similar stipulation, we think. When Park Place did the addition of the office building and new apartments, we asked if they paid into the escrow. We have been told that they maybe did and maybe didn't. All we're saying is that we're going to do this traffic study by the time

we get to City Council. I think we should thus defer this requirement to when that information is presented to them. Against that backdrop, we can then revisit the stipulation.

Finally, we go to Stipulation No. 23, which goes to the issue of valet parking not restricting parking within the Town Center Plaza development. There is a cross access easement for parking in the area, and we understand that. There are private agreements between different tenants in terms of parking, but it is cross parking for all that do business within the center. This entity will offer valet parking. Because it might be a necessity, it is one of those amenities that sets businesses aside and brings a bit of an urban, cool factor to it. It will be offered. I think the same thing occurs at Sullivan's across the street. We would ask that it be acknowledged that, for each night, they will evaluate the vast sea of parking that is typically 35% utilized, and pick an area that is not being used. That's where they'll take the cars to park. Although we won't permanently restrict an area saying that it is valet parking, for a couple hours in the evening, it only makes sense that we might put a sign up that says the valet-parked cars could be there. It will make the entire operation work well and make sure that those cars are remotely parked and that those young people can run back up to the front. Other businesses are not losing prime parking spaces for their businesses.

With that, we ask that Stipulation No. 10 be modified to eliminate the add-on aesthetic treatment to the trash enclosure doors. We ask for Stipulation No. 21, although it says no action is necessary, to acknowledge that we will do the traffic study before we get to City Council, but the decision on the amount will be deferred to City Council. Then, Stipulation No. 23 would acknowledge that we could have temporary designation of where valet-parked cars could park in the evening. With that, Mr. Harris is here to answer questions. He may have some quick additional comments. Doug Ubben is here as well. Thank you for your time.

Chairman Coleman: Thank you. Any questions from the Zoom call?

Comm. Hoyt: On Stipulation No. 21, it just says, "The applicant shall obtain all approvals and permits." I don't think the paying of the escrow would qualify under that verbiage, would it?

Mr. Petersen: I want to make sure I understand the question.

Comm. Hoyt: I thought you wanted some notation on Stipulation No. 21 to indicate that 1C didn't need to take place until after the City Council meeting.

Mr. Petersen: It would be decided by City Council.

Comm. Hoyt: I don't see that No. 21 says anything about item 1C because it only refers to approvals and permits.

Mr. Klein: We have two stipulations in there. No. 21 is the Public Works memo; No. 22 is the Fire memo. These are standard stipulations, and the intent is that they actually incorporate all of the requirements of the Public Works and Fire departments. It would be

the intent that they would qualify anything in the Public Works memo as part of the approval.

Mr. Petersen: That is our understanding as well.

Comm. Hoyt: Our approval tonight?

Mr. Klein: Correct.

Mr. Petersen: And again, No. 21, in essence, brings the Public Works memo in its entirety in as a stipulation. We're asking that the Public Works memo, which stands as a stipulation in its entirety, would be modified in the portion that would require the exact percentage and the exact amount. We'd like that to be deferred because we haven't done a traffic study yet to support the calculation of how trips will be allocated from this location to specific drives.

Comm. Hoyt: Since this was prepared by Public Works, we don't typically change Public Works reports so much as we would comment that it would be excluded from our decision-making.

Mr. Petersen: In normal course, if we're given enough time to provide a traffic study, all of this data would be available to you and us. We're suggesting is they've deferred the evaluation of the traffic study by stipulation to City Council, so we're suggesting that a decision based on a traffic study should be deferred along with it.

Comm. Hoyt: I'm trying to get at what we actually change to make it so that it's clear that what you're stating is, in fact, the intent of the Planning Commission. Where would you suggest we make a written change?

Mr. Petersen: I think it would be an indication that you would approve Stipulation No. 21 but B: acknowledge that the traffic study would be reviewed by City Council, C: as a requirement, the Planning Commission is leaving it to the discretion of City Council once they have the opportunity to hear from the Public Works Director and our traffic consultant about the findings of the traffic study.

Comm. Hoyt: In the same vein, on Stipulation No. 23, you indicated that your preference would be to strike the sentence, "Valet parking shall not restrict parking within the Town Center Plaza development." Would it also be acceptable to simply modify that sentence by saying, "Valet parking shall not permanently restrict parking within the Town Center Plaza development"?

Mr. Petersen: I think that would absolutely address the issue.

Comm. Hoyt: There is going to be some restriction, but it will be on a night-by-night basis is what you're saying.

Mr. Petersen: That would definitely serve the purpose.

Chairman Coleman: Thank you. Any additional questions? Since this requires a Public Hearing, I'll open the Public Hearing. If anyone wishes to speak, please come forward. We'll put four minutes on the clock per person.

Public Hearing

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

Mr. Musil: Thank you for your time. I'll go pretty fast because four minutes isn't very long. This is about a parking problem. With all due respect to John Petersen, whom I've been a partner with and worked with since 1980 in Washington, strict conformance is up to you, not to the applicant. They're here to request a deviation from your parking standards. They have to prove to you that parking will work and that reducing from your ratios works. This center will be 545 spaces below code with this new proposal. It's already 154 or 169 below, depending on who you believe. This new restaurant needs 200 stalls. It's not in your Staff Report. It's 171 for the restaurant and one for every employee. There would be 20-30 employees for a restaurant this size. There's a significant parking issue. A parking study for the entirety of Town Center Plaza is irrelevant. I don't care, and my client, Hereford House, doesn't care what the parking is at Houlihan's or by Banana Republic, or The Bristol or any of the places on the south side or the west side or the far east side. They care about their parking field, which is where their customers park. We relied on various pieces of information that were at the time of our rezoning in 1995. We've been in business since 1996. We have a letter from Town Center Plaza guaranteeing us 80 sites, and they sent that to Mark Klein with the city to demonstrate that there would be enough parking. We only have 52 spaces on our own lot. Everybody knew in 1996 that this could not park itself; it had to park in the field. There's a recorded declaration, which is a private matter between us and Town Center Plaza that guarantees us 171 spots for our customers and our employees. When the Planning Commission and City Council approved this, it knew there had to be cross parking and shared parking. Hereford House would not have come to this site and you would not have approved it if there wasn't significant parking off this lot where there's only 52 spaces. I respect Jeff Wilkey at TranSystems. They did a great job, and everything they said is true. It's irrelevant what parking is available on the south side or on the west side or the east side. There's a letter in your packet and a recorded declaration. Exhibit C shows in the cross-hatching the 171 spaces reserved to Hereford House. Those in the middle are gone, as you know from the Site Plan. Staff recommendation said, "At the time, Town Center was 750 spaces over-parked." That was significant. That was when Hereford House was 8,500 square feet. It is now 12,500 square feet because it added the second floor at the request of city leaders that wanted a banquet facility in Leawood. It went from 750 over to 545 under. That is 1,300 spaces off and it is significant. The Governing Body resolution reflected that. In 2004, a site plan proposed for a smaller 8,000-sq.-ft. retail building with much less parking demand. There's a site to the west of where this 12,000-ft. restaurant will go. That was denied. Staff recommended against it. It was withdrawn and was never refiled. Let's talk about real-world parking quickly. Hereford House has 645 seats and needs 323 spaces with 52 onsite.

It does have shared parking. Let me speak to the valet. If you allow them to temporarily take any spot within the shared parking of Town Center, they can park their valet in Hereford House's lot. That's why that stipulation is important. You can't affect other people's critical parking because you put the valet there. I listed a number of other places that are all open until 8:00, 9:00, and 10:00. All of them are in the same parking field. Bravo needs 143 parking places. This is going to be right between Bravo and Hereford House, where there isn't sufficient parking. Hereford House has been here since 1996 as I said. Regarding the parking study in August, Mary Holland and Camilla Hill are both owners of Hereford House and will come up here. They'll tell you that August is the slowest time. The first weekend in August is the slowest time in their business. Look at the numbers in December. Where are we going to put those people when 170 new stalls are needed and 142 stalls are gone? There is a limit to how far people have to walk in the Midwest in the heat of the summer or the cool of the winter and still have a viable restaurant. I'll show a video from July 29th, and you'll see in the background, there are numerous cars – 20-25 cars in the middle of this. This is July 29th. August 2nd, Mayor Quinton Lucas announced a mask mandate. The variant is in every bit of the news. People are confused, and people are careful. When they come in on August 7th, we have a different field because our customers tend to be more mature, sometimes more careful. Curbside went up; dining went down after the mask mandate, even though the mandate didn't affect Leawood. On August 11th, there are still cars back in that field. On August 17th, there are fewer cars back in that field. This is contrary to all of the planning that Hereford House and the city did when it went into effect. It came in 1995 and asked for approval for a preliminary plan and rezoning and in 1996 for a final plan. This is more damaging than the 2004 retail plan, which staff opposed. It is unclear to me why staff is supporting this one, other than that they have a parking study that says that the entirety of the center, at its peak time of 2:00 pm on Saturday is only 31% parked. That's irrelevant to this restaurant, to Bravo, to the sushi place, to Blue Chip Cookie. They want people to be able to park conveniently at the times they come, which is not 2:00 pm on a Saturday afternoon. This basically misappropriates Hereford House parking, and it's going to create parking problems and congestion. In the 2004 plan, the Fire Department said they were concerned about traffic congestion and accidents. I had that in my slides, and you have that in your packet. The retail required 27-35 parking spaces. This one requires 171. That plan reduced parking by about 30 spaces; this one reduces parking by 142 spaces. I know parking has changed. I know we want it to be able to be reflected, and we all want to walk. You don't go and walk ¼ mile to your restaurant; you go to a different restaurant. Let me just leave you with this: strict compliance requires consideration of Section 16-3-7 in your code, consideration of preliminary plans; no. 3: when the development is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected; no. 4: whether an identified community need exists for the proposed use; no. 5: whether the development will impede the normal and orderly development and improvement of the surrounding property or impair the use, enjoyment, or value of neighboring properties; no. 6: whether the development incorporates as approved by the city, adequate ingress and egress, and an internal street network that minimizes traffic congestion; no. 7: the capability of the site to accommodate the building, parking, and drives with appropriate open space and safe, easy ingress and egress. You don't see me up here opposing plans. This plan doesn't meet those standards. Thank you.

Mary Holland, 11408 High Drive, appeared before the Planning Commission and made the following comments:

Ms. Holland: I am one of the owners of Hereford House restaurants here in Kansas City, and I am also a 20+ year Leawood resident. Please forgive me; I'm trying to read this, this evening because as you can imagine this is very personally emotional. I'm used to just yelling loud. The Hereford House restaurant strongly objects to this restaurant plan. Hereford House restaurants have been an original, locally owned and operated Kansas City tradition since 1957. We are proud of our Leawood location, which is now celebrating its 25th anniversary, and we are proud of our local beef and rancher affiliations. Putting a 12,000+ sq. ft. building in our existing and promised parking field will have a potentially devastating impact on our restaurant and, I believe, other restaurants and shops in Town Center Plaza. COVID has already been an extreme devastation to our restaurant industry and to our company, but we have survived because of our loyal customers, and our recovery continues. This parking study does not represent a realistic view of our restaurant's volume or the impact of another 341-seat restaurant where many of our customers park. The first week of August is historically one of our slowest weeks of the year, as is the week of the 4th of July. Moreover, on August 2nd, the Mayor of Kansas City, in response to health officials and with significant media coverage, imposed a mask ordinance because of the Delta variant surge. Even though it didn't apply to Leawood, it resulted in lower volumes at all of our locations, including Leawood. We attribute this to a mature and informed guest base. These are regular guests who have decided to stay out of the restaurant for a bit until this variant has declined. The photograph that Greg showed you from July 31st demonstrates that difference. A few additional inaccurate pieces of information to note in this traffic study: on page 3, "The parking demand in August is 3% less than peak December demand." Our guest count in December versus August is a 200% increase. That's quite a variance. On page 6, inaccurate assumptions are made for the peak demand. They quote a 30% for seasonal variations. This is absolutely contrary to our experience over 25 years in this location. National assumptions or averages do not mesh with our 25 years of experience in Leawood and even longer in the Kansas City market. Simply put, the assumptions reported in this traffic study in no way reflect our actual guest numbers. In addition, the study does not take into account any of our banquet business. We have a dedicated second floor that accommodates up to 130 people. Due to COVID, this banquet business has been very slow to recover, but as of this fall as the holidays approach, we are already seeing a return uptick in that banquet booking business. Parking is critical to our business success. Many years ago, at one of our other locations, we actually purchased land adjacent to the restaurant to build a surface lot to accommodate guest parking. Kansas City diners require convenient and accessible parking, or many will go elsewhere. Our Hereford House Zona Rosa guests continually cite parking as their number one consent. Because it only has street access parking, this location has the least volume of any of our restaurant locations, and the inconvenient parking is cited as the number one complaint or comment. This is a physical challenge that we cannot change. We do not need that handicap in Leawood after 25 years. I sincerely, sincerely encourage the commission to deny this proposal. It will be detrimental to the Hereford House and others in Town Center Plaza, as

it eats up needed and used parking spaces. Thank you very much for your time this evening. If you have any questions, I'd be happy to answer them.

Chairman Coleman: Thank you, Ms. Holland.

Stephen Valente, 10882 South Harwick St., Olathe, KS, appeared before the Planning Commission and made the following comments:

Mr. Valente: I would like to point out the pandemic impact, comparing 2017 to 2019 average guests versus 2021 as is in your packet. In March, it was a decrease of 37%; April, 27%; May, 19%; June, 18%; July, 10%, and August to-date was 46%. That's all; thank you.

Chairman Coleman: Thank you. Is there anyone else?

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

Chairman Coleman: Mr. Petersen, would you care to respond?

Mr. Petersen: Thank you. I'll make a few comments, and Steve Harris, VP of Washington Prime may want to have a few comments as well. Greg does great when he has to talk fast in four minutes. He threw out a lot of stuff, so let's try to unpack that. There's a lot of history there. 2004 was 17 years ago, and the AMC Theater had 3,100 seats. Today, it has about 1,500 seats. Times change. Parking changes. Preferences of patrons to whether it be restaurant or retail change. I think, over those 16 years, we can see that the city has recognized ratios that sometimes make sense when you look at the practicality of the situation and studies are done. I'm not going to take umbrage on every comment that was made about 2:00 pm in the afternoon on Saturday or those things. I will tell you that we gave the protocols of the study to staff, and staff has accepted that. Back to my point, whether it be Ranch Mart or Camelot Court, we use parking studies in coordination and cooperation with professional staff to make real-life, applicable decisions of what works and can work well, other than just math. I'm going to ask my assistant to put up a slide to put another thing in perspective. It would be the site plan of our building against this issue of parking. We stand here today with a full evaluation with data from TranSystems that has studied the traffic and parking for every development that is in this area from Park Place to Town Center to additions to both. It really does understand the traffic patterns and parking patterns. That is the basis upon which we requested this application move forward, and it's the basis upon which your professional staff, including planners, Public Works Directors, Fire Department, took the very same criteria that Greg listed out and, within the context of those criteria, said that this is a plan that meets or exceeds all the guidelines and development requirements of the City of Leawood and will work well. They're recommending approval. Now, we got into a lot of numbers thrown around about agreements between the parties. Those are private agreements. We have agreements. We have cross access in the parking, but we also have agreements in terms of making sure that

every business within the overall center, whether Washington Prime owns that business or not, work and work well. This is really nothing that I suggest the city get involved in. I want to state for the record that there is not an agreement to provide 171 spaces. There was a very well-designed agreement that would allow 71 spaces that would be available to Hereford House within the hatched area, which accounts for about 122 spaces. If you see Hereford House on this, you see the parking immediately available on the north side of the drive that would be available to them. You would see, even after the proposed restaurant, the available spaces to the east and to the west of that building and along the north side of the drive that travels west toward AMC and to suggest there is not parking in that area and that people would walk ¼ mile is a bit of an embellishment of the circumstances. I would ask people to have common sense and practical observation skills in play. We stand, from a planning standpoint, on the recommendation of your professional staff. The issues raised by Mr. Musil and his clients about requirements or private agreements, they have other avenues to take those up with Washington Prime. Based on your standard and your staff's professional opinion, we ask that you move this application forward with a recommendation for approval. Mr. Harris, if you want to add anything to that?

Steve Harris, 6074 Congressional Drive, Westerville, OH, appeared before the Planning Commission and made the following comments:

Mr. Harris: I just want to add a couple modifications to the exhibit that was up. The actual exhibit they used in the proportional scale was originally designed to have 267 stalls, and it appears to be roundabout the agreement that Hereford House signed many years ago. The 71 can park anywhere within that. There are no specifics to be anywhere specifically within it. It could be anywhere. As far as the one comment that was made about valet and parking in Hereford House, I think that's the last thing that anyone would do. Plus, it's private property, and we don't want to control it. Even though it's a cross-access easement, it's not designed to reserve parking stalls in a fashion such as valet. The same thing would happen in the private agreement for the parking easement. We are honoring all those agreements, and we would never suggest that our tenant would violate them. We do not think the valet is going to be an issue.

Chairman Coleman: Before we move on, I have two questions for the applicant that I forgot to ask earlier. One is in regard to the North Restaurant. I assume that they are moving from their location in Town Center Crossing to this location and will terminate their lease in the other location.

Mr. Petersen: This is not a site for relocation.

Mr. Harris: It's new to market.

Mr. Petersen: I think the reference to North was that it is on the north side of the shopping center, not North Restaurant in Town Center Crossing.

Chairman Coleman: Is this not the same restaurant?

Mr. Petersen: No.

Comm. Hunter: He's saying it is referencing the north side of the developing and not the North Restaurant.

Chairman Coleman: I'm asking if this is the same North Restaurant that is at Town Center Crossing.

Comm. Hunter: No.

Chairman Coleman: With all the parking fields to the west, why not take that part and move the restaurant over to the west side of the parking field as opposed to that specific location? Why that location and why not something farther to the west?

Mr. Harris: The location is, in a fact, part of the parking lot. Just to the left, you can see a property line that is owned by Macy's, so we don't have permission to put it over there. If we place it farther to the left, we're getting a little too cozy to AMC. We are placing it where we think it is going to do best. Plus, our tenant is very keen to be on this side of the mall to be adjacent to Park Place.

Chairman Coleman: Thank you.

Comm. McGurren: Can you tell us anything about the tenant and the type of restaurant that is proposed?

Mr. Harris: This is going to be a top-drawer sit-down restaurant. We're restricted from telling you precisely who it is. They've asked us to restrict that. It is going to be a fine-dining establishment that will be considered a destination, if you will, for dining within the greater Leawood area.

Comm. McGurren: Can you speak to the style of food?

Mr. Harris: I would say its American cuisine with steaks, fish, and kind of a chophouse environment.

Chairman Coleman: Now I understand. Thank you. Any other questions?

Comm. Belzer: On this exhibit from February 7, 1996, there is a recorded declaration that depicts the reserved parking. Is that designated by any kind of signage? Where it says, "Customer and employee area," I'm assuming that's referring to Hereford House customer and employee parking, and it stretches across that entire lot for the first top 3-4 spaces, and then the one that's facing Park Place. Is that designated with any kind of signage or marked in any way?

Mr. Petersen: It's still part of a cross-parking element, but it would be within that area. The commitment was that there would always be 71 spaces available. They're not designated exclusively.

Comm. Belzer: I guess I don't understand how that works. How is that a commitment, and how is that customer/employee parking area designated but not actually designated? Anyone could park there. If I was going to Blue Chip or Park Place, I could park there and walk across the street. I'm confused as to how that's designated or committed parking.

Mr. Harris: There is a multitude of agreements, similar to the one that you've been given. These are private agreements, typically not discussed in meetings like this because they are between the two property owners, but they work something like this: because there is a recognition that people want to drive between properties to use the parking, it is to everyone's advantage to have reciprocal-access agreements in which we can park on their property and they can park on ours. There is no restriction or signs that say, "Thou shall not park there" and no one can park there; it's a free world. We have to make sure that there is a private agreement. I'm sure many of you have been in a parking lot with multiple tenants, and there is a curb that is seemingly preventing you from driving across to someone's business. That is a sheer lack of a reciprocal-access agreement. We like to have them, so that's the purpose. The signage there is unnecessary; it's just to say that they can do this. In this particular case, there was an area that was circled that said, "If we're going to park in your parking lot, we agree to park in these areas," and then this particular agreement went even further to say that there were 71 stalls. I wasn't there when the agreement was signed. Hereford House was there. Based on our research, zoning would have required an additional 71 stalls in order for their building to meet zoning code. I think it was prudent for them to therefore place a specific number of 71 stalls parking on our site so they could meet code and operate. That's what it seems the purpose is. That little detail is not in the agreement, but that's the assumption made for the 71 stalls. To be specific, there are no signs, and there are at least five agreements I'm aware of that have a similar concept. AMC has restrictions. Dick's Sporting Goods has restrictions. Everybody wants to be able to park on the lots, and sometimes we say that we'll park, but we'll park in these areas. Nothing is enforced; nobody gets towed. It's there in case something becomes a problem and we have to adjust it.

Mr. Petersen: If I could add, tenants work together because the viability of the center that everybody is successful even though they both may be restaurants or they both may be sporting goods stores, they work together. Activity brings success for everybody. As Steve alluded to, they were short 71 spaces, so they said, "Can we make sure that we meet code, and we have 71 spaces within an area that has 200-some spaces, but in that area, there are 71." If you read the agreement since they've entered it into the record, the agreement drills down on this and says that they will actually pay Town Center parking lot maintenance costs based on 71 spaces. This was very specific, and things work well. I'm sure Hereford House people probably park in Macy's lot and walk across, even if it may be ¼ mile. In a good, vibrant center, that happens. To say that they don't want someone successful next to them and so now they'll say that staff is wrong and the analytics are wrong, so there shouldn't be any more activity in that center not only doesn't really follow the agreement

that the private parties are into, but it really doesn't speak well for the continued viability and vitality of the shopping center, with all due respect to Hereford House.

Comm. McGurren: Mr. Harris, Lot 6 is the private property that is Hereford House. Lot 7, if my memory serves me correctly, is American Century and T-Mobile? I'm curious whether the agreement that has been discussed related to the 71 spots enables people to park for Hereford House in the Lot 7 parking lot.

Mr. Harris: I'm not familiar with whether they have a cross-access easement between the two properties. Every agreement we have is between our property and the out-parcel.

Comm. McGurren: Can anyone speak to Lot 7 parking?

Mr. Klein: I know there is a cross-access parking agreement that Mr. Harris mentioned as well that basically states that the Town Center Plaza Development and the out lots have a cross-access parking agreement. It goes on to state that each of the property owners has the ability to limit some of the excess parking, meaning if one was taking advantage of another. The cross-access parking agreement was required, and it looks like it covers the entire site.

Comm. McGurren: I may not be a parking expert, but my theory is if there is parking availability within and in front of American Century and T-Mobile, and if I counted correctly, there are 44 spots east of the greyed out area on Sheet C4, including 20, 15, and 9 spots that are adjacent to the private street in front of Hereford House and American Century, I will fully admit that I have had to walk across the street to park because the Hereford House parking is small. The reality is that maybe those 44 spots and 10, 15, 20 or whatever you want to count could be available in the dinner hours when American Century are not open. Is that a fair assessment?

Mr. Klein: That would be my understanding as well.

Chairman Coleman: With all the parking that has been discussed, I want to get your feedback on the thoughts from both sides.

Mr. Klein: It's a difficult situation. Basically, I understand some of the discussions with regard to the parking. I also know that the center is trying to maintain viability, especially in a time when retail has changed over the years. I know we talked about that even before the pandemic. Basically, staff looked at what the LDO allowed. We looked at the parking, and we asked the applicant to focus on that area that we're looking at here. Yes, the pandemic is affecting it. It is my understanding that they did a bump up through it. I also visited the site on Friday nights to see if I could see anything. Honestly, they match the photos that were in the traffic study itself. I was seeing the same thing. With regard to August being the low time, they obviously track their numbers, and they know that. I was looking at the ITE (Institute of Traffic Engineers) parking generation book, and for quality restaurants, it listed August as the busiest month. Granted, that is a national standard, and obviously, Hereford House tracks its own numbers. Staff is looking at this as an opportunity for the center, especially on the north side, to create a bit more interest and a

bit more demand. I know it's been talked about a number of times that the south side looks pretty busy, but the north side is more difficult to keep the businesses.

Chairman Coleman: Thank you. Any other questions?

Comm. Hunter: What has changed from the late '90s and early 2000s to now?

Mr. Klein: First of all, I wasn't here in the late '90s. It was said that a letter was sent to me, but I didn't start with the city until nearly 2000. We had a different parking requirement at that time with a minimum of 5 parking spaces per 1,000. The city does have a new LDO that came into effect in December, 2002. It actually had different parking requirements in it. It did allow this flexibility to allow the applicant to come forward if they weren't meeting the parking numbers required by the LDO. Retail has changed over time. The center has changed over time. I think Mr. Grant indicated that there are pad sites that originally weren't planned. Now, Arhaus and Pottery Barn are located there. Movies have changed, and theaters have now gone to drastically reduced seats. I used to work on that side of the building with a window that looked over Town Center Plaza. Back in the early 2000s when it was Christmas, just the movie theater itself would fill up that whole thing. I haven't really noticed that in the last several years. Times change; demands change. Those are some of the things that have changed since 2004 or 1995.

Comm. Hunter: Tell me again why it can't get moved to the west. Is there a deed restriction, or is it owned by somebody else?

Mr. Klein: I think right now, the Macy's parcel is owned by them. It juts out into that area to the north. There is a cross-access parking agreement, but they can't build there. Moving farther to the west, the parking lot shallows up a bit more. Then the main center is closer, and then there is the AMC Theater. The applicant may be able to answer that as well.

Chairman Coleman: Mr. Petersen, would you like to comment on that?

Mr. Petersen: No, I think the Director of Planning stated it well. It was a lot of time and thought in planning it where it would fit well within the parking lot, given the current configuration. We were cognizant of being sure there were good, adequate fields, based on realistic, updated, 2021-type utilization. We were also very cognizant of commitments that we had made to Hereford House. As you can see, to the left toward that drive that intersects with 117th Street, there is a lot of parking well within Mr. Musil's ¼ mile for the Hereford House and T-Mobile, which Washington Prime doesn't own. There is a good amount of parking here in the days of increased walkability, hoping people will go from the bookstore to Hereford House. There is a good basis for staff to say that it will work well for all the participants in the shopping center and, again, create some excitement. I hope choice doesn't mean competition and we aren't arguing over things because we don't want competition. I think choices for patrons with one night at this restaurant and one night at another wins the day here so that it's a good, viable center for everybody.

Mr. Harris: If I could add to that, one other interesting thing that happens in retail/restaurant industry is a term we coined called food clustering. It is the concept of a large selection of restaurants that are available for folks, and they tend to go to those areas because, if they don't have a reservation or they don't like their reservation, they might go and look for other opportunities. We have found that restaurants that are in close proximity to each other actually benefit each other. On many occasions, when I'm laying out development plans, we are putting 4-6 restaurants within 100 yards of each other because they create a synergy. We don't see proximity restaurants to be a negative. We consider it a competitive advantage.

Chairman Coleman: Thank you. Other questions for staff or the applicant?

Comm. Hoyt: This is a question for anybody who would have happened to be a part of this. I'm just curious to what extent there have been direct conversations between the applicant and the Hereford House folks. I saw the Interact Meeting and read the notes. It said that there were representatives of the Hereford House there who gave a comment and that Mr. Harris asked if they would elaborate additionally on some of their concerns. The attendees from the Hereford House declined. Have there been any extensive conversations trying to hammer out the nuances such that folks could feel beneficially good about what's going on?

Mr. Harris: We received a letter several days ago from Hereford House's counsel, listing several objections to the project, many of which have been discussed here tonight, and some additional things were discussed tonight as well. We responded even as late as today some of these things we would bring up on the screen, saying "if you're losing only 40 stalls out of 267, is it really material?" The letter stated that they were having significant impact, and it doesn't appear to be significant impact. We have not had any direct conversations with them. We felt our next step was a letter, so we sent that out. Typically, these types of things are between two property owners. We are a little disappointed. I reached out to Hereford House during that meeting and asked them to talk about it. It was deferred. I think they wanted to talk about it here tonight, which they did. That's their right. It has not been a series of private conversations about this, unfortunately. It's not for lack of trying at that meeting.

Mr. Petersen: I'd like to correct one thing that I know Steve didn't mean to say. They didn't lose any parking spaces. The benefit of their bargain was 71 parking spaces. There are 71 parking spaces, as you can see, in close proximity. I think probably to interject themselves instead of continuing conversations here tonight to get us derailed. I would suggest the city stay out of the private agreement side, rely on the staff recommendation that this will work and work well, and move us on to City Council. I think I can speak on behalf of Mr. Harris that we're more than happy to sit down and speak with Hereford House between now and the City Council meeting.

Chairman Coleman: Mr. Musil, because Commissioner Hoyt mentioned anyone in the room, I'll allow you a chance to respond.

Mr. Musil: I don't hold this against anybody, but I did get an email from John's assistant, Amy Grant. I know her well. She heard Rouse Frets was involved and asked who the attorney was. I emailed back and said it was me. I got a voicemail from Mr. Petersen. I left a voicemail back with Mr. Petersen, and I haven't heard anything. To suggest we're here to sabotage or that we didn't reach out and try is simply inaccurate. There's been no effort. If they expect Ms. Holland and Ms. Hill to carry the water at the Interact Meeting, which was the first time we'd ever heard about the plan, I don't think that's a fair expectation. That sets the record straight as far as our efforts to reach out to them and see if there was anything that could be done.

Mr. Petersen: I would have a lot to say, but really, this is dragging the city into "He said, she said, he said." I stand on behalf of Washington Prime on the recommendation of your professional staff that this is good land-use planning. I'll be happy to talk to Mr. Musil as we move toward City Council.

Chairman Coleman: Thank you. With that, any further questions?

Comm. Stevens: I guess I'd like to go back on the two staff comments that relate to Stipulation Nos. 9 and 10. Understandably, the changes to exterior finish with the tile, the decorative screen suggestions were, in a sense, to establish a better four-sided appearance to the building and what would really be a front appearance to the north side of the shopping center. The applicant, I believe, said that they agreed that the stucco material on the trash enclosure side, the south side, and a small portion of the east side should be changed to the same building tile. Then, similar with Stipulation No. 10, I think the suggestion of the decorative metal might be a way to break up the south façade and do it in a similar way that the other three facades have been done. I guess to maybe clarify the reluctance on Stipulation No. 10 of using that material, how does staff feel that these two stipulations have been resolved or addressed? If only the tile material is added to the south, does it achieve the desired appearance?

Mr. Klein: I think that helps quite a bit. I'll go over the reasoning behind our request. Typically with trash enclosures, we try to screen as much as we can, usually with landscaping or something around the side. Obviously, there are still gates. With this one, there aren't a lot of opportunities to do anything else with it. We have the four-sided architecture, and we wanted to include the other materials on the building. We're glad the applicant has agreed to do that. The thought with the trash enclosure itself is that it's nice to have it painted the same color so it tries to blend, but sometimes with those trash enclosures, the gates are fairly wide. Even if they're painted the same color, they still have that corrugated look. This isn't that far from the main center and faces toward the main center. Most of the rest of the elevations have that black screen on them. We thought that might be another way to break up the façade. Hereford House, on their trash enclosure gates, has the sculpture to try to make it a bit more personable to the actual building itself as opposed to simply a trash enclosure with painted gates.

Chairman Coleman: Any other questions? So I have it down, we have three stipulations the applicant is pushing back on: 10, 21, and 23. Is No. 9 okay because of the tile?

Mr. Klein: They agreed to the tile.

Chairman Coleman: We can take them in order and discuss each one before we move forward. Let's start with No. 10. Commissioner Stevens has already commented. Are there other feelings from commissioners on that one?

Comm. McGurren: I would lean toward leaving it as is.

Comm. Peterson: I would tend to agree with Commissioner McGurren on this and leave it as is.

Chairman Coleman: Are there other comments on No. 10? Moving on to No. 21, which incorporates the Public Works memo dated August 20th, and specifically 1B and 1C.

Comm. Hoyt: I don't think 1B was a big problem. I think it's the timing of them performing 1B. Regarding the difficulties with 1C, I think it makes sense, given the timeline on all this, to rework that just a little bit. I think we could do it by saying, "The applicant shall obtain all approvals and permits from the Public Works department per the Public Works memo, Exhibit A on file with the city planning services . . . issuance of building permit, however, 1C of Exhibit A is to be determined after 1B has been performed by City Council" or something to that effect.

Comm. McGurren: I agree.

Comm. Hoyt: After, "Prior issuance of a building permit, however . . ." and then qualify it with, perhaps, some more artful language, but basically saying that 1C is to be determined by City Council after the traffic study is referenced and 1B has been completed.

Chairman Coleman: I may come back to you on that one.

Brian Scovill, City Engineer, appeared before the Planning Commission and made the following comments:

Mr. Scovill: The intent was that the traffic study would be performed between now and City Council consideration, and we all agree to that. On item C, it is really a requirement that, regardless of what the traffic study comes back with, the previous applications with respect to Town Center had a similar stipulation. In fact, it was noted in one previous application that was smaller than this had a similar stipulation. The intent is that this development participates in 33% of the future signal, and whatever application comes through, this stipulation would be attached to the application. If this project were to go away and another were to come along, we would have this same stipulation on that project. It's the same percentage in dollars that was required and requested of the Park Place development. We're trying to be consistent. That cost and percentage was discussed and approved by City Council for Park Place. Like I said, we're trying to be consistent. I have no issued with your request or recommendation that it be discussed and looked at by City

Council after the study, but I wanted to clarify a few points related to that. It is staff's intent to require participation in a traffic signal with whatever development occurs at Town Center.

Comm. Peterson: With respect to 1B and 1C, is the real issue here the timing of the escrow payment by the applicant?

Mr. Scovill: I'm not sure what the applicant's concerns or issues are with respect to 1C. I think he may have mentioned he wants to be sure they are treated fairly and similarly to Park Place. They're asking that it be a discussion item at City Council. I think that is reasonable and fair, and staff doesn't have a problem with that. I would anticipate it would be discussed at City Council regardless of what is discussed here tonight with whatever recommendation or however it is modified.

Chairman Coleman: Any other discussion on No. 21? Moving on to No. 23, I think we already had Commissioner Hoyt with a solution by putting "permanently" between "not" and "restrict." Is there any other discussion on that?

Comm. Block: I might go further and add to not include the east side of the building at all. I don't know how that would be enforced, but if there is concern with Hereford House parking, I don't think it would be fair for this entity to potentially block spots there. It would be the back side of this proposed building.

Chairman Coleman: If there is a shared parking agreement, how could it be enforced?

Comm. Block: I don't know how you would enforce any of it.

Comm. Belzer: It's enforced in the same way that some is designated as Hereford House employee parking. It's the same concept.

Comm. Block: To go further, my expectation would be, if the phrase remains, that this would be somewhere in front of the building or to the south side, but as much discussion as we've had about this parking, I don't think they should send the valet guys out and say it's okay to block a bunch of their spots that night. I think it should be restricted to not be on that side of the building. They could go anywhere else in the parking lot, just not taking more spots from Hereford House, arguably.

Comm. Belzer: I agree. It's the same concept as those agreements that Hereford House has parking areas within a shared parking lot.

Comm. McGurren: I would agree, also.

Comm. Hoyt: How specifically can you designate that restricted area? Can you give the language on that?

Comm. Block: My proposal is to say that the valet parking cannot be on the east side of the building.

Comm. Hoyt: At all, or just the immediate east?

Comm. Block: Far east, near east, any east.

Chairman Coleman: Any comments on that addition?

Comm. McGurren: I think that's an excellent idea.

Comm. Peterson: Regarding the restrictions on the east side of the building, I'm looking at Sheet C1. It would be not on the east side of the building; however, it may be on the east south side of that building. If you say the east side of the building, it would be literally everything completely to the east.

Comm. Hoyt: That was my concern, too.

Comm. Peterson: If it is restricted to no valet parking on the east side of the building, north of the south border of the building, it would eliminate it.

Comm. Belzer: Can we get that specific? I'm not sure we can.

Mr. Klein: Staff has concerns with designating even for a temporary time. We've relied so heavily on the cross-access parking agreement. I understand they want to keep it all in one spot. Mr. Petersen also indicated they would choose a place that wasn't being utilized and would run it off that. That could change at any time. When I was there, the south side of the parking lot was busier. That's where more cars were located than farther north in that parking lot. It seems that if they can identify areas that aren't being used, they could actually just use that area without roping it off or designating it for valet parking. I'm just concerned, as the night proceeds and parking shifts that it would block off. It seems inconsistent with a cross-access agreement.

Mr. Petersen: Could we speak to this for a minute?

Chairman Coleman: Mr. Klein, how was this handled with Sullivan's?

Mr. Klein: I wasn't aware that Sullivan's was doing it, honestly. As far as we know, all of the center is cross-access parking.

Chairman Coleman: Mr. Petersen, you have a comment?

Mr. Petersen: This is operating a business, and Mark is right; every night, depending on what the night is, a different area could be selected. What we do know is most nights, after 6:00, many of the businesses close and natural areas come up. I understand the east side is directly on that drive, but if we could, other than that, have the ability for the handful of

cars that this amenity will park in an area, be able to do it. Once we take the car, we have to know it's there. We know where to get it in a timely fashion. We keep an eye on them. It's all those things that come with high-class facilities that provide valet parking. Remember, we're going to have a fine restaurant here. We're also going to have Town Center that is going to be sure that it is not negatively impacting the rest of the tenants in the center. It's just good business management and operations. I don't think anybody suggests Town Center is not well managed. I just think it's a workable approach. Sometimes, you can't necessarily pass a specific law that covers every situation. The one about the east side is one that I understand the concern. That seems that directly east of the building would address the perceived problem that was articulated.

Chairman Coleman: Any other comments on No. 23? Let me open it up to discussion on the entire proposal.

Comm. Hoyt: This reminds me a bit of a case we had within the past six months or so that involved the Montessori going into the old Carpet Corner spot. There were a lot of concerns about parking and potential traffic flow changes and so forth. I know the ultimate answer that came down, to me, when I raised those issues was that those were private agreement issues within the shopping center itself and that our role was to interpret what, specifically, the city's interest is, and that these side agreements that various tenants or owners within a shopping center might enter into with each other is really something that we can't get involved in. That was at least my impression at the time.

Comm. Hunter: Remind me, though, is the distinction with the Montessori that the buildings were already there and it was just how they were getting configured? It wasn't a new structure, was it?

Chairman Coleman: No.

Comm. Hoyt: Well, the playgrounds and so forth were new.

Comm. Hunter: This is a bit different. I'm glad you reminded me of that, but this is distinct because it's going to be a brand-new building. I'm actually a little troubled by the application. As much as I like the idea of a new development and keeping Town Center vibrant, we don't want to do anything to negatively impact our existing businesses. The parking appears to be negatively impacted. I'm troubled that we can't move it farther west or have it be a smaller footprint. I'm also a little bit troubled by the traffic studies during a pandemic. It's submitted by the applicant; it's during a pandemic. I don't know, but I think Commissioner Hoyt's point about the Montessori was a good point.

Comm. Block: I see similarities to that case as well, but I think in that case, it was the competition that's not wanted in this case. I think that's the crux of the issue. I understand. If you're a Burger King, you don't want McDonald's moving in across the street. They're similar restaurants. I understand the concerns about parking. I know the north side of the complex is not utilized like the south side is. I agree with staff in having another option there. I think it was actually commented by the developer that if you walk into one place

and there's a wait, rather than get in your car and drive somewhere else, if you can walk across a parking lot, it will help both in that case. It's not ideal that it impacts the agreement that was made in the past over the parking, but I think there is still a lot of parking that is actually better than what was shown to us in this 1996 version. I'm not sure about the distance, but it's quite a distance where you could park much closer. I've been to Hereford House and have parked in this area across the drive. I think that's much closer and convenient than walking past where the new building would be.

Chairman Coleman: I have one comment. I think we've all been to Hereford House. I know we've had our holiday celebrations there in the past. I was always curious in how they set this up because the parking lot is so small, and it would bleed over. I questioned it at the time with how it got through because it isn't really a good plan for it. With that said, it's been commented tonight about how Hereford House will be impacted, and we should not negatively impact our existing restaurants in the area. I, too, share that concern. I do not want to hurt a fine establishment that has been here a long time. I questioned why the building couldn't be moved to the west. Ideally, it could be moved to the west, maybe even about Macy's parking lot. Even moving it a little to the west would help, alleviating some of the parking concerns with Hereford House. Some of the restaurant configurations would probably have to be changed a little bit. I feel where Hereford House is coming from tonight. I wish there was a better solution to move this building to the west, but with the Macy's parking constrictions, that isn't possible. With that, is there anyone who has a motion?

A motion to recommend approval of CASE 83-21 – Lot 12, NORTH RESTAURANT– Request for approval of a Preliminary Plan and Final Plan, located south of 117th Street and east of Nall Avenue, with the following modifications to the stipulations:

- **No. 21: after the word “permit,” add, “however, 1C of Exhibit A is to be determined by City Council upon completion of 1B of Exhibit A.**
- **No. 23: “Valet parking shall not permanently restrict parking within Town Center and shall not be located directly to the east of the existing Hereford House restaurant building.”**

- was made by Hoyt.

Comm. McGurren: Should the last reference be directly east of the new proposed restaurant building?

Comm. Hoyt: Is that what we're talking about? I thought it was both. Primarily, we're going to discuss the parking that is directly to the east of the proposed restaurant.

Comm. McGurren: That would be my understanding.

Motion amended to modify No. 23: “Valet parking shall not permanently restrict parking within Town Center and shall not be located directly to the east of the proposed restaurant.” Motion seconded by McGurren. Motion carried with a vote of 6-1. For: McGurren, Belzer, Hoyt, Block, Stevens, Peterson. Opposed: Hunter.

Chairman Coleman: Let's take a five-minute recess.

Five-minute recess

CASE 93-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.3, PERMITTED ACCESSORY USES, BUILDINGS AND STRUCTURES - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to beekeeping. **PUBLIC HEARING**

Staff Presentation:

Planning Director Mark Klein made the following presentation:

Mr. Klein: This is Case 93-21 – Leawood Development Ordinance Amendment to Section 16-4-1.3, Permitted Accessory Uses, Buildings and Structures. It would allow beekeeping as an accessory use within the City of Leawood. The main components of the proposed change are that it would restrict beekeeping to residential areas zoned RPA-5 (minimum 5-acre lots), R-1 (minimum 15,000 square feet), and RP-1 (minimum 12,000 square feet). It would not be allowed on lots as small as 6,000 square feet simply because setbacks would be difficult to meet. We had a work session on this application on August 10th. Probably one of the major things you noticed as a difference between what you see tonight and what was discussed at that meeting is a lot of other regulations that had to do with permitting and maintenance. It was decided that those would be better dealt with in the City Code. It is not that those have gone away; it is just that we are focusing on bulk regulations and setbacks with regard to beekeeping and the LDO. There will be an amendment to City Code that will go forward and will mirror the LDO as far as setbacks but will go further into maintenance and permitting procedures. Currently, this proposal would limit to a maximum of two beehives. It would require a minimum setback of 50 feet from any developed piece of property. It is a bit different than other setbacks. This allows flexibility of being able to move closer to an undeveloped lot; however, if the lot is later developed, it then puts them in violation. It would be the responsibility of the owner/beekeeper to bring the beekeeping into conformance by moving the beehives. That is something you're probably not used to seeing with other setbacks. We also have a minimum 75' setback to another adjacent structure on another property. That does not include the house on the property of the beehives. We also have a minimum 100' setback from any traveled pedestrian way, including sidewalk, multiuse path, or street. This is to try to keep some separation. Height is limited to a maximum of 5 feet. It also requires a flyway, which we discussed. As the bees come out of their hive, they travel in a cylinder shape. The flyway creates a barrier in front of them and would be a minimum of 6 feet. It forces the bees up, so as they're traversing adjacent property lines, they would be at a higher elevation and then come down for pollination. The flyway has to be a minimum of 10 feet on either side of the beehives. It also requires the beekeeper to be identified on the beehives or with a sign that includes name, phone number, and contact information. Staff is recommending approval of this application. I'll be happy to answer any questions.

Chairman Coleman: Questions for Mr. Klein?

Comm. Stevens: In your presentation, you answered some of my questions. I'm sorry that I have a number of other ones. To start, on the new Section 8B on page 4, in regard to preexisting conditions or nonconforming use, the inclusion that's made under Item 8B, Permit Required, is language, "maintain any hive," which also implies an existing hive on a property. Similar to that, under 8D on location, it talks about "or kept in violation." It feels like this amendment, with those two areas, is kind of implying that locations that are not quite abiding by these requirements would be required to be removed. I'm recalling from the notes we had in the previous discussion that maybe there was a condition that anything that currently exists on a property could remain, but if any improvement or change to it would then be a nonconforming use.

Mr. Klein: Currently, beekeeping is not a permitted use within the City of Leawood. Any beehives out there would technically be illegal. If we had a situation where one was out there and we weren't aware of it and it did not meet these requirements, they would be required to come into conformance. It is very similar to a situation with beekeeping that was set up legally with this proposed amendment, and then the nearby lot is developed, it would then have to come into compliance or remove the hive.

Comm. Stevens: So, there is not grandfathering.

Mr. Klein: Currently, beekeeping is not a permitted use, so there would not be any grandfathering.

Comm. Stevens: You discussed the flyway and the conditions. It almost seems like the term needs to have more definition. It could even be included under the definitions, but as you mentioned and I recall from the notes, it is described as the area closest to the beehive openings, whether a slot at the bottom or holes in the beehive. In relationship to the barriers, I guess I think it's confusing. Does that mean either fencing or landscape barrier? Is it location, as you mentioned between 10 feet on either side? That's really on the flyway side of the hive or the opening of the hive, or is it meant to be that it surrounds the hive or is at every property line from the hive?

Mr. Klein: From what I've seen, there is a hive, and at the very bottom, there is an area where the bees enter and exit. That is the flyway, and that is where they fly out. Everything I've seen only has the flyway barrier required to be directly in front. In other words, it doesn't require that the whole thing be surrounded. There is only one city that had beekeeping and limited it to the rear yard, as this does, and then required a 6' fence around it. That 6' fence would become a barrier no matter what direction they move. That was really the only one I saw with regard to that. Most of the information I read on beekeeping had it in front of the bees where they exit, and then they go up and continue on that way. You're right that it could be a fence or shrubbery. It would need to be dense. It couldn't be something that had a bunch of holes in it, like a chain-link fence because the bees could simply go through the holes.

Comm. Stevens: It seems that I would propose that flyway is described. The definition under 8F, which is the barrier required, seems a little confusing on where the barrier is. It

seems that you mentioned it in relationship to the openings or parallel to a property line, and it seems that it would be helpful to include that restriction here along with the barrier restrictions.

Mr. Klein: We tried to keep it parallel to the property line that extends 10 feet and beyond.

Comm. Stevens: That's good. Maybe it's just a matter of what a flyway is. Then, not to complicate it, but if the proposed hive is not centered within the rear yard but maybe is shifted to a side yard or some location, it seems like it would help to understand where the barrier is required. It would be the closest proximity. If the beehive is centered in the rear yard, it almost seems not that effective to have the 6' fence or landscaping that could be 100 feet away from the beehive. Is there a proximity to the flyway area?

Mr. Klein: In everything I've looked at, the flyway is primarily to get the bees up before they go to another property. I didn't see a lot as far as how close it has to be to the beehive; it was more that once they hit the flyway barrier, they have to go up before they transverse the property line, regardless of how far away the barrier is from the hive. It is to protect the other properties. It has the requirement that the flyway barrier extend 10 feet on either side of the flyway. If the beehive is located off to the side, it would still need to be 10 feet on either side. It could be the entire width of the yard, but it would have to extend a minimum of 10 feet.

Comm. Stevens: I'm sorry; I do see that it says, "Over the property line." I think that's your intent.

Mr. Klein: Everything I've read says that it is the primary reason for that. It is to get them up as they go across other properties.

Comm. Stevens: And protect the neighbors. Then, regarding setbacks, you clarified some of those. I recall they've all been changed from the previous recommendations of the SBA (Scottish Beekeepers Association) and maybe other cities, where we had the 25 feet to a property line as being the closest proximity. Then it was 50 feet to an adjacent home or structure on an either undeveloped property or developed property. That has increased now to 75 feet, and the property line is increased to 50. The public way increased to 100, and that is understandable. I guess what concerns me is those changes where the 25 feet to a property line seemed to be a fair distance, and knowing that your neighbor's property might be 25 feet from that, so in a sense, it is 50 feet from the neighbor's structure or house. It feels like the increases are really too restrictive for a lot of neighborhoods that have smaller lots. I'm thinking of myself. I have a 100' wide lot, and so the increase of 50 feet on both sides means I can't have a beehive. That affects more than just my neighborhood or my lot size. I don't know. I guess I would propose that we go back to the original recommendation for those distances of 25 feet to a property and 50 feet to an adjoining structure. Maybe there were changes?

Mr. Klein: Part of the reasoning was to take a little bit more conservative approach because beekeeping is being introduced into the city. It's a lot easier to reduce those setbacks later

on as opposed to starting with the reduced setbacks and try to increase them if there is a problem. That would potentially cause existing beehives to become nonconforming. We proposed what Lenexa and Overland Park have, with even a little less than what Lenexa has on some. Another reason for the 25 feet is talk about water for the bees. The recommendation that will be in City Code because of being a maintenance issue is 25 feet. If it is 25 feet and then 25 feet for the water, and then the water for the bees could be pretty close to the property line. I didn't want to get it to where the water was right next to the property line. I wanted a setback for that. You're right that it is a little bit more conservative. The thought is that it could be reduced if there aren't issues over time.

Comm. Stevens: Maybe related to the distance to an adjoining lot, it says, "to the adjoining house or any other structures." I don't know. I think that would mean that even structures that could be closer to a side yard setback or within a rear yard, like a garden structure or outdoor kitchen. This is saying that it has to be 75 feet from those.

Mr. Klein: That is a good point. I wasn't thinking of it from the perspective of a garden structure. I was thinking about a neighborhood commercial retail center, for example. A lot of the ordinances have distance requirements from a residential structure. If a neighborhood commercial center will still have people parking in a parking lot, walking to and from. That's why it was broadened to include structures. I definitely understand your point about a pergola or something like that. That was not my intent.

Comm. Stevens: That's really either a house structure or a building?

Mr. Klein: Maybe a structure that could be occupied by humans, so an occupied structure.

Comm. Stevens: I think that's it. I was also going to bring up the water facility, but you answered that. It does seem vitally important to have that. I didn't know if it needed to be part of this ordinance.

Mr. Klein: Legal felt it was better to have that in City Code. We talked about mouse guards and elevating to discourage stings on animals. That would be more in the City Code as opposed to this.

Chairman Coleman: Any other questions for staff? This requires a Public Hearing.

Public Hearing

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

Chairman Coleman: Any discussion on Case 93-21? Mr. Stevens, would you like to make a motion?

Comm. Stevens: I guess I can. I am concerned about the changes in the setbacks, so I don't know if that can be part of a motion. I guess I'll give it a shot.

Mr. Klein: You have the ability to do that.

A motion to recommend approval of CASE 93-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.3, PERMITTED ACCESSORY USES, BUILDINGS AND STRUCTURES - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to beekeeping, including the change to paragraph 8D(3) to list 25 feet versus 50 feet from the property line and (4) to be a minimum of 50 feet from a house or other occupied building – was made by Stevens.

Chairman Coleman: There is no second. Is there anyone else who would like to make a motion?

A motion to recommend approval of CASE 93-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.3, PERMITTED ACCESSORY USES, BUILDINGS AND STRUCTURES - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to beekeeping – was made by Hunter; seconded by Belzer.

Comm. Block: I think Commissioner Stevens made some good points, but I think I probably side with staff and agree that we can always make it more restrictive in the future, see how it goes, and go from there.

Motion carried with a vote of 6-1. For: McGurren, Hunter, Belzer, Hoyt, Block, Peterson. Opposed: Stevens.

CASE 100-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.2, LOCATION AND HEIGHT OF ACCESSORY USES, BUILDINGS AND STRUCTURES - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to beekeeping. **PUBLIC HEARING**

Staff Presentation:

Director of Planning Mark Klein made the following presentation:

Mr. Klein: This is Case 100-21 – Leawood Development Ordinance Amendment to Section 16-4-1.2, Location and Height of Accessory Uses, Buildings, and Structures. This speaks more to the accessory structures and whether they can be located outside of a setback. Typically, an accessory structure must meet setbacks; however, the LDO provides exceptions to that. That's what this does. It tries to bring forward some of the setbacks in the previous amendment that we had, since we have a situation that can allow encroaching into areas such as an undeveloped lot. It includes a minimum of 75 feet from any house or building, other than residences where the beehives are located and a minimum of 100 feet

from the traveled pedestrian way. This would typically not happen unless it was an undeveloped property adjacent to it.

Chairman Coleman: Thank you. Any questions?

Comm. Stevens: I think you said this was focused on the undeveloped lot, but it seems that it's the same requirements for the developed lot. I'm wondering why it is just adjoining undeveloped lots. It would either be developed or undeveloped property that would need to provide these setbacks.

Mr. Klein: This would apply whether it was developed or undeveloped; it is just that the current 50' setback mostly won't allow it to be much closer to the property line. It will still be within the 15' side yard setback since there is already a 50' setback; however, if it is an undeveloped property, it could go a lot closer.

Comm. Stevens: But then it would be in violation and would have to be moved if the property developed.

Mr. Klein: That is correct. That was something we saw in a lot of other cities' ordinances. They were trying to add flexibility with being next to a vacant lot or a less-traveled pathway beyond what would normally be allowed with a strict setback. It is intended to be more flexible.

Comm. Stevens: Maybe my real point on that is if the term "undeveloped" is needed here. It's the same requirement whether it's undeveloped or developed. It's just that beehives adjoining a property need to provide these setbacks. To be consistent with what was in the previous section, it talks about being adjacent to a property.

Mr. Klein: The intent is that it would apply if there is an undeveloped property, allowing them to encroach into it. I'm thinking about if we take out the word "undeveloped."

Comm. Stevens: Then the first stipulation of 75 feet to any house or building, if it is undeveloped, could get closer.

Mr. Klein: Yes, the intent is to allow it to get closer. If we struck the language about 75 and 100 feet, it really just comes down to meeting the setback of the lot. Despite what was in the previous section and setbacks required of that, this section just says that it needs to be within the zoning setbacks or it doesn't need to be within the zoning setbacks. If it were to every property line, it would just be saying that it needs to be within the setbacks of R-1, which is 15 feet on the side, 30 feet on the rear. This is trying to say that it can encroach into the setbacks if it is undeveloped, provided the 75' setback from an adjacent property is still being met.

Comm. Stevens: Thank you.

Chairman Coleman: Thank you. Are there other questions? This case requires a Public Hearing.

Public Hearing

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

Chairman Coleman: Any discussion on Case 100-21? The chair will entertain a motion.

A motion to recommend approval of CASE 100-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.2, LOCATION AND HEIGHT OF ACCESSORY USES, BUILDINGS AND STRUCTURES - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to beekeeping – was made by Block; seconded by Belzer. Motion carried with a vote of 6-1. For: McGurren, Hunter, Belzer, Hoyt, Block, Peterson. Opposed: Stevens

CASE 101-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.4, ATTACHED ACCESSORY STRUCTURE REQUIREMENTS AND EXEMPTIONS - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to structures associated with beekeeping. **PUBLIC HEARING**

Staff Presentation:

Director of Planning Mark Klein made the following presentation:

Mr. Klein: This is Case 101-21 – Leawood Development Ordinance Amendment to Section 16-4-1.4, Attached Accessory Structure Requirements and Exemptions. This application pertains to an accessory structure being attached to a building. Typically, all accessory structures must be attached to the building unless they are specifically exempt. That's why playground equipment isn't required to be attached; neither do garden structures. This would make it so beehives would not have to be attached to the primary residence. Staff is recommending approval.

Chairman Coleman: Questions for Mr. Klein? This case requires a Public Hearing.

Public Hearing

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

Chairman Coleman: Is there any discussion? Is there a motion?

A motion to recommend approval of CASE 101-21 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT TO SECTION 16-4-1.4, ATTACHED ACCESSORY STRUCTURE REQUIREMENTS AND EXEMPTIONS - Request for approval of an amendment to the Leawood Development Ordinance, pertaining to structures associated with beekeeping – was made by Block; seconded by Stevens. Motion carried with a unanimous vote of 7-0. For: McGurren, Hunter, Belzer, Hoyt, Block, Stevens, Peterson.

Chairman Coleman: Anything else, Mr. Klein? When is our next meeting?

Mr. Klein: The next meeting is September 14th, which is Cameron’s Court.

Ms. Knight: I’ll just mention that the Bylaws that were discussed at the last work session included a couple things I discovered afterward. I’m still working on those. They will be ready at the end of September.

MEETING ADJOURNED