

**City of Leawood
Planning Commission Meeting
February 22, 2022
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, Belzer, Peterson, Elkins Absent: Hunter, Hoyt.

APPROVAL OF THE AGENDA

Chairman Elkins: There is a quorum present. Does staff have any revisions to the agenda?

Mr. Lang: We do not.

A motion to approve the agenda was made by Coleman; seconded by Block. Motion carried with a unanimous vote of 6-0. For: McGurren, Coleman, Block, Stevens, Belzer, Peterson.

APPROVAL OF MINUTES: Approval of minutes from the January 25, 2022 Commission meeting.

Chairman Elkins: Are there any revisions to the January 25, 2022 draft minutes?

Comm. Peterson: I have one minor one. On page 22 in the very last paragraph, it should be Peterson and not Petersen.

Comm. Coleman: Also on page 22, in the fifth line down, the commercial drops off on 119th Street instead of 135th Street. On page 23, in the fifth entry, it should be myself instead of Chairman Elkins.

Chairman Elkins: At the top of page 22, there is discussion about 135th Street earlier. Is that consistent with your recollection, or should that be changed?

Comm. Coleman: No, I think I was referencing 119th Street, and I said the commercial drops off on 119th Street at Tomahawk Creek Parkway.

Comm. Stevens: I have a minor one on Page 9. Within the motion, it should read "Following modifications: removal of Stipulation # 4, #5, and #6."

Chairman Elkins: Are there other corrections?

A motion to approve the minutes as amended from the Planning Commission meeting was made by Coleman; seconded by Block. Motion carried with a unanimous vote of 6-0. For: McGurren, Coleman, Block, Stevens, Belzer, Peterson.

CONTINUED TO MARCH 22, 2022

CASE 110-21 – BI-STATE CENTENNIAL PARK – INTERNATIONAL AVIATION – Request for approval of a Preliminary Plan and Final Plan, located north of 141st Terrace and east of Kenneth Road. **PUBLIC HEARING**

CASE 03-22 – CHURCH OF THE RESURRECTION – ADA DROP-OFF – Request for approval of a Revised Final Plan, located south of 137th Street and east of Nall Avenue.

CONSENT AGENDA:

CASE 19-22 – RANCH MART NORTH – SUMMERSALT ICE CREAM – Request for approval of a Final Plan for changes to the façade of a tenant space, located north of 95th Street and east of Mission Road.

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

OLD 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 – Town Center Plaza – Lot 12 – North Restaurant. This is a request for approval of a Preliminary Plan and Final Plan, located south of 117th Street and east of Nall Avenue. The project was last heard at the January 25th Planning Commission meeting, where it was continued by the applicant, allowing for additional time for the applicant and neighboring property owners to reach a parking agreement. Since that meeting, the applicant has reached a private agreement with the neighboring property owners. The applicant is requesting the approval to build a 12,681-sq.-ft. restaurant in the north parking lot of Town Center Plaza, zoned SD-CR (Planned General Retail). The front of the building includes a covered porte-cochere facing the west. The north side includes a covered patio. The building is primarily constructed of stucco, tile, and decorative metal panels. The project is removing 103 parking spaces in the northern parking field. The restaurant will also require 171 spaces per the Leawood Development Ordinance (LDO). A parking study was conducted to show the removal of parking spaces will not impact existing parking demands. The application meets all requirements per the LDO. Staff recommends approval of Case 83-21 with the stipulations in the report. I'd be happy to answer any questions.

Chairman Elkins: Thank you. Are there questions for staff? If not, I would invite the applicant to step forward.

Applicant Presentation:

Curtis Petersen, 900 W. 48th Place, Kansas City, MO, appeared before the Planning Commission on behalf of Leawood TCP, LLC, the owner of Town Center Plaza, and made the following comments:

Mr. Petersen: Steven Harris, VP of Development for Washington Prime, was not able to make it today. He'll join by Zoom. Staff did a good job of racing through. There are a couple more historical items. Whenever a file spans over a number of months, I need to look back to make sure exactly where we've been, where we are, and where we're trying to go. In August of this year, this proposed restaurant was before you. There was a positive recommendation to City Council. The next month, City Council considered the item. After discussion with the adjacent property owner, they continued it to a future meeting. The next month, as we considered moving the building around, City Council said it was enough movement that it come back to Planning Commission. There were many discussions about how there's a positive culminating cooperation. I came before you in January and said we needed a bit more time. We are here a month later. With that, Mr. Harris, if technology works, is going to describe in summary where we were able to get with the adjacent property owner. I will briefly talk about the couple of revisions we think are most revisions that we think are most significant since you last saw this plan. Finally, we'll have a couple stipulation modifications for you to consider.

Steven Harris, VP of Development, Washington Prime, 180 E. Broad Street, Columbus, OH, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Harris: We appreciate your time in reviewing this application. There are changes we're looking forward to sharing with you. The good news is, after much discussion and making sure all parties had a voice, we have reached an agreement with the property owner for Hereford House. As far as parking is concerned, this took several months. At this point, all parties are in support, as indicated by letters received. We have made changes. I'd like to turn it back over to Curtis.

Chairman Elkins: Thank you. We appreciate you engaging with the neighbors.

Mr. Petersen: *(Refers to display)* There are three main items I'd like to highlight that happened after discussions with the property owner. The most significant is the building moving. The porte-cochere was reduced in size, so we were able to move the building 45 feet to the west. This put us in the way of nearly half a million dollars in utility relocation. We wanted to work something out, and it came at a cost that we are happy to pay. The last bit is parking. As compared to the original plan recommended to City Council, moving the building preserves an additional 39 stalls.

With that, we would like to discuss three modifications to the stipulations. All are satisfactory to the applicant other than these three: 2C, 22, and 23. Stipulation 2C says that

there will be a single contribution of \$93,324 from the applicant at the time of the Temporary Certificate of Occupancy (TCO) for the subject building for the intersection to the north and west, at 117th Street and Town Center Drive. Our traffic engineer and the city's traffic engineer don't really see eye to eye on the trigger or warrant for a signal. There really is no sign from Public Works that the signal will be installed in the near future. It is not in the five-year plan currently. To be clear, it is not that the developer is not willing to make the signal contribution; we just have a question about timing. We don't want to park nearly \$100,000 for some indefinite period of time. We have agreed to a concept of a letter of credit that provides the city the outcome they want. The proposed stipulation could read, "The developer shall provide to the City of Leawood an irrevocable letter of credit for 33.33% of the cost for engineering, construction, inspection, and administration of a future signal at 117th Street and Town Center Drive prior to issuing a Temporary Certificate of Occupancy. The estimated signal cost is \$280,000. The irrevocable letter of credit should be an amount of \$93,324.00". In addition to that, I corresponded with the City Attorney, and between now and City Council review, the details of length of time for the letter of credit and other terms can be discussed. The other two stipulations we would like to ask for consideration are 22 and 23. I'll summarize them and treat them together. Stipulation 22 deals with valet parking and the overall Town Center shopping center. It talks about not giving stalls exclusively to valet parking, and it also addresses valet parking for the proposed restaurant and where it is prohibited. Stipulation 23 sets forth the area for construction staging. We would request that you recommend to City Council deletion of these two stipulations. Your inclination may be that these are not that important or that City Council can deal with them. While it's true that, on issues like this, the final decision is up to City Council, I would ask for your careful consideration, weighing what I'm saying, and clear articulation of those thoughts. With that, we would like no further delay. This is not a small issue. We would ask you to delete stipulations 22 and 23 for two reasons. First, the only reason that these stipulations are on the page is because Hereford House raised issues related to construction staging and valet parking in a previous meeting. If that had not happened, we would not be having this discussion. Because we have reached agreement with the adjacent property owner on these issues and have a private contract, these topics are completely taken care of. Hereford House supports removal of these stipulations. While the city originally created these stipulations to protect Hereford House's interests, Hereford House has not protected their own interest with these private contracts. Why, then, would the applicant and Hereford House support removal of these stipulations? It is because things change. Shopping centers and tenants change. Parking habits change. If Hereford House and the developer want to address issues, they can do it. Simple changes can be made in a day. If we want to change something that is proposed in stipulations, we would have to come back through the planning process. Not only that, but it is not just the private parties deciding; it is the city as well. City involvement in the way the stipulations refer to are not needed nor wanted by the private parties. Secondly, should the city want these stipulations so that the city needs to enforce where valets park cars or where there is construction staging? If the city gets into this policing role, is that the new normal? Also, the very private agreement we have just entered into has restrictions on where Hereford House parks. Should we be adding stipulations in this so the city can police where Hereford House parks? We think not because we are very happy with our private agreement with Hereford House. When the private parties are not asking for help and want to keep the

flexibility to govern the relationships as things change, we would ask you to delete stipulations 22 and 23. Subject to the three stipulations we just discussed, we would ask that you support moving this forward to City Council.

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

Comm. Block: Everything you just said makes sense, but what happens if the tenants do change? Not being an attorney, I don't know. I'll be interested to hear what the city says about these.

Mr. Petersen: The agreement we reached that we shared with staff is a recorded document that runs with the land. It could be changed by a potential future private party. On the letter of credit, if the owner has financial trouble, the letter of credit is a separate document of security.

Comm. Block: That binds Washington Prime then, if they continue to be the property owner?

Mr. Petersen: Yes.

Comm. Block: Washington Prime's financial situation is out there; they're in bankruptcy?

Mr. Petersen: You're right; in the past, there was a transition.

Comm. Block: So, what happens in that case? How does it get funded?

Mr. Petersen: I'll let the city speak to it. That's the benefit of the letter of credit.

Comm. Block: But if there are no funds there?

Mr. Petersen: A letter of credit comes from a third party.

Comm. Coleman: We'll just have a bunch of discussion on parking tonight. As I recall from previous cases, Macy's owns their own parking lot. Where does that line begin?

Mr. Petersen: I'll insert a fact first. There is still cross-access parking on the Macy's lot. I'll show where the line is.

Comm. Coleman: I have questions about the agreement we received this afternoon, specifically Exhibits C and C1. If I'm correct, Exhibit C is the parking area during construction.

Mr. Petersen: The part labeled Construction Staging Area on the west side?

Comm. Coleman: Yes, it says, "Exhibit C, Customer and Employee Parking Area/Construction and Renovation Staging Area."

Mr. Petersen: There are two different things going on. On the west is the construction staging area. To the east of the building is where Hereford House is required to have employees park if they park in the shopping center parking lot.

Comm. Coleman: I'm a little confused because the legend has Customer and Employee Parking Area: seven parking stalls, but there are three different shaded areas in that exhibit. There is one to the east of the proposed restaurant and two smaller ones to the northeast.

Mr. Petersen: It's all the same concept. This is a recorded public document, so there's no issue talking about it, but it's an amendment to a broader web of declarations. The fine terms are misleading. All that's going on in this area is saying that Hereford House is welcome to park employees on the shopping center parking lot, but it needs to be in those three areas.

Comm. Coleman: In the small print, the seven-parking stall reference is incorrect? Or does it say 71?

Mr. Peterson: It's 71 spaces as a total of the three areas.

Comm. Coleman: Flipping over to Exhibit C1, it has similar shaded areas. There is a bit bigger shaded area east of the new restaurant. The legend indicates is it not restaurant valet or employee parking.

Mr. Petersen: That is exactly right.

Comm. Coleman: Is that for both Hereford House and your restaurant?

Mr. Petersen: In contrast to what we just talked about, this is only a restriction on the new restaurant. For the record, this is what took months and is what we think completely solves the problem.

Comm. Coleman: I hope it's clearer in the verbiage of the agreement.

Mr. Petersen: It is.

Comm. Coleman: That's all I have for the applicant. I have questions for staff after the Public Hearing.

Chairman Elkins: Thank you. Other questions for Mr. Petersen? I have one. You mentioned that, in your experience, you have not seen a circumstance where the city has attempted, by stipulation, to regulate parking in this fashion. Conceptually, how is this different than parking cross-easements, which are a very normal part of the process?

Mr. Petersen: This is all extremely normal. We do private agreements in every shopping center in every state we build in. What we just did in the last few months was hard to negotiate, but it was completely normal.

Chairman Elkins: I understand that. My question refers to the flip side. Conceptually, how is that different than the cross-parking easements that we require as a normal course of business?

Mr. Petersen: I would call it a macro versus a micro. You're right that there are cities that require different lots with a recorded cross-parking easement. That's what I would call the macro. When it gets into the micro for something like valet parking, I do not have recollection of a city requiring that level of detail.

Chairman Elkins: Thank you. Ms. Knight, would you care to elaborate a bit about the benefits of an irrevocable letter of credit as a substitute for our normal funding mechanism?

Ms. Knight: My first bar exam question was on a letter of credit, and I still am nervous about it. I actually don't know. I learned of this letter right before the meeting. I was not involved in those discussions. I believe Mr. Lambers and Ms. Bennett were. My understanding is the city is agreeable to that concept, but we would like to work out more details. Staff's position would be to leave the stipulation as it is, and it would get worked out before City Council consideration.

Mr. Klein: We talked with them this morning, discussing a letter of credit. It is my understanding that we are supportive of that; however, as Ms. Knight indicated, we want to make sure we work out the details. I agree with her suggestion to leave it as it is and work on it before Governing Body consideration.

Chairman Elkins: Mr. Petersen, will the issuer of the letter of credit be a financial institution and not be related to Washington Prime?

Mr. Petersen: I'm completely confident that we can work things like this out with city staff. I don't know because we haven't gone there yet. I didn't talk to the client. It will have to be sufficient for city purposes. That's what I'm saying we would work out before City Council.

Chairman Elkins: What you're saying, it is still really in the concept stage and you haven't gotten into the specifics of an issue.

Mr. Petersen: That's right; I didn't talk to Scott directly. We all got comfortable with the concept. We'll work with Patty on the details between now and City Council.

Comm. McGurren: Can you point to the specific language in the Deeds document that would say for Hereford House, customer and employee parking area is specified in the shaded area?

Mr. Petersen: Are you looking at the text or the key of the document?

Comm. McGurren: If I heard you correctly, the words that are missing in Exhibit C reference the Hereford House and where their customer and employee parking is, and in Exhibit C1, the words that are missing are “for the new restaurant.” Where is that?

Mr. Petersen: I told staff that this document would cause confusion because you’re not seeing the documents that come before it. There are defined terms in there that Mr. Musil and I worked carefully to determine.

Comm. McGurren: Before this gets to Governing Body, are you going to add those words to the two documents?

Mr. Petersen: No, because it is completely clear when you read it with the document that it’s omitting.

Comm. McGurren: That we didn’t get.

Mr. Petersen: Nobody asked for it, but we can show them. We’re not trying to hide anything.

Chairman Elkins: I note that Mr. Musil is here tonight as well. Any other questions for Mr. Petersen? If not, you may step back, and we’ll move to a Public Hearing, and you’ll have an opportunity to rebut. Commissioner Coleman, do you want to defer your question to staff until after the Public Hearing?

Comm. Coleman: Yes, sir.

Chairman Elkins: With that, I will open the Public Hearing. Mr. Musil, I think we’d like to hear from you if you don’t mind regarding the parking situation and if you feel it is adequate to protect your client.

Public Hearing

Greg Musil, 5250 W. 116th Place, Suite 400, Leawood, appeared before the Planning Commission on behalf of Hereford House and made the following comments:

Mr. Musil: We have agreed to the description that Mr. Petersen made, and we have no objection to the request they’re making tonight.

Chairman Elkins: And that document has been recorded?

Mr. Musil: I know it’s been signed. We don’t sign it because we’re the tenant, but Mr. Herd has signed it.

Comm. McGurren: I appreciate what you said. It just seems odd to me that any person besides one or two of you that looked at this can claim that the shaded area on either Exhibit C or C1 is for the other restaurant. It does not say that it is specifically for the Hereford House customer / employee parking.

Mr. Musil: I don't know what you have in front of you. I gather from the conversation that you have the two exhibits but not the language from the first amendment to the reciprocal easement agreement.

Comm. McGurren: Mr. Petersen said what we've been given does not have the specifics. If you and the various attorneys are all comfortable with that, it seems odd to me and unspecific.

Mr. Musil: The language from the first amendment to the reciprocal easement agreement specifically states what C and C1 mean. I understand that it is confusing separated from the document, but we are comfortable with what's in there.

Chairman Elkins: Those stipulations were in there primarily to protect your client, amongst others. If you're comfortable, I think we ought to be comfortable.

Mr. Musil: We have no objections.

Comm. Coleman: We were provided with this first amendment, and there are references to C and C1. This isn't a standalone document; it goes with the documents before it.

Comm. McGurren: That's why I asked specifically where it states in this document, and it is not in here.

Mr. Musil: Paragraph 3 speaks to New Exhibit 3 for the customer and employee parking area. That relates specifically to Hereford House's customer and employee parking. Paragraph 4 speaks to Exhibit C1, restricting no valet or employee parking for the proposed restaurant.

Chairman Elkins: Thank you. Are there other questions for Mr. Musil? Is there anyone else who wishes to speak?

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 vote of 6-0. For: McGurren, Coleman, Block, Stevens, Belzer, Peterson.

Chairman Elkins: Mr. Petersen, do you have anything further? Thank you. Let's move to a discussion of the pending application.

Comm. Block: I'd like to hear thoughts from staff on striking 22 and 23.

Mr. Klein: What it comes down to is, with this stipulation, the city has the ability to enforce it. As Mr. Petersen indicated, the private agreement can be modified. It allows more flexibility to change more quickly, but it also means they do not have to come before the city to modify them. If the Planning Commission and Governing Body struck those stipulations, it leaves it in the private realm. They could make changes without the city ever knowing about it. The city would prefer to leave the stipulations in. The one that refers to staging won't be relevant for very long.

Chairman Elkins: Can you speak to why the city has a desire to regulate the parking relationships within the development? Can you give examples when the city has engaged in that regulation elsewhere?

Mr. Klein: The city deals with cross-access parking agreements all the time as a standard stipulation. It has always been the position of the city to encourage a free flow of parking access across the site. As far as specifically regulating valet parking, this is the first that I can remember. It got specific because the application came before us, and then there was concern about impact with the existing tenant. The city had concerns and added stipulations to try to protect the parking. Both restaurants are in agreement, and we're happy about that. I want to make sure the Planning Commission understands that removal would put the agreement in the private realm with no requirement to come back through the planning process to change it.

Chairman Elkins: Let's take the cross parking as an example. That could be modified by the parties, and they would not be required to bring it back before the Planning Commission.

Mr. Klein: You're correct. We had the discussion with Town Center Plaza originally. They had 71 parking spaces reserved for Hereford House. That wasn't something that they came to Planning Commission and City Council. We didn't know about it until it was brought up. The same thing could happen here.

Chairman Elkins: Thank you.

Comm. Coleman: Can someone talk about the proposed future light at 117th and Town Center?

Mr. Scovill: The traffic study indicated that a light is not warranted with this additional restaurant. Staff has reviewed that. We had our consultant traffic engineer review it as well. We had some concerns with respect to it with a difference of opinion as referenced tonight. It is and has been anticipated that a signal will eventually be required at this intersection. Similar to how we have stipulated with Park Place, we have requested 33% of that signal cost to be paid for by Town Center. With this restaurant being one of the last outparcels to develop, we included the stipulation with this application. Staff's recommendation is to leave the stipulation as written and we work out any details regarding a letter of credit prior to City Council consideration. I was in the meeting this morning regarding letters of credit,

and we agreed to request advice from our legal department. They indicated they would be supportive of a letter of credit with details to be worked out in the following weeks.

Chairman Elkins: Other questions for staff? Comments?

Comm. Block: If its staff's preference to leave in the stipulation until the details are worked out, that is okay with me. I'm overall supportive of moving the application forward. I don't see the need for 22 and 23. I know it was more necessary before this agreement. The agreement goes with the land, so to have them come back to make revisions seems unnecessary to me.

Comm. McGurren: I appreciate the fact that the various parties involved were able to come to the agreements represented tonight. I am supportive of the overall concept. I would leave the stipulations in as written today with future modifications to occur if warranted and appropriate, based on some aspects still being a work in progress.

Comm. Coleman: I am also in favor. I think this is going to be a great addition to Leawood. It is definitely a destination place. I'm not in the restaurant business, but putting two steakhouses next to each other doesn't seem to be the best use, but the market is what the market is. I just hope that one is not hurt in the process, not to mention we have a third steakhouse within walking distance as well. That's my major concern. In terms of the stipulations, I am fine with keeping 2C in there. I could go either way on 22 and 23. I'd like to hear other viewpoints on that.

Comm. Peterson: I agree with Commissioner Block regarding the removal of 22 and 23 and probably leaving in 2C so it can be further researched. I disagree with Commissioner Coleman regarding having another steakhouse so near the others. After the August meeting, my wife and I decided to take a mini vacation to Chicago. We stayed in Oakbrook, Illinois, where there happened to be a Perry's Steakhouse in Oakbrook Shopping Center. It is similar to Town Center Plaza but considerably larger. There are numerous steakhouses right next to each other. When we were there, it was not a prime time, one would think, but the restaurants were all booked. There were four steakhouses within walking distance. They all had valet parking, which I found interesting. They seemed to draw more people to the shopping center. Hopefully, this restaurant will attract more people to spend the afternoon at Town Center. I would like to move this forward. I agree with Commissioner Block to remove 22 and 23 and possibly even 2C.

Comm. Stevens: I would support that as well as far as the stipulations. Leaving 2C is important for now until it's worked out. I'm in support of removing 22 and 23. I do want to acknowledge that all the talk tonight has been about this agreement and the stipulations. I'd like to acknowledge that the applicant and the owner's team have made great improvements to this application. They have found a better site for the building and have resolved all the parking issues. I also feel that the revisions to the architecture with the reduced porte-cochere and the agreement on changing building materials to the rear all make it a great application. It is a good improvement to an already nicely conceived building. I'd be in support.

Comm. Coleman: When this first came up on August 24th, I didn't think we'd get here, to be honest. I'm very pleased that both business owners came together to come to a mutual agreement.

Chairman Elkins: I would join in that thought as well. I join generally with Commissioner Block and a number of other commissioners. It seems to me that the regulation of parking is something for the commission and city to get involved in when it looks like there are irreconcilable differences between the owners. To me, it's a better practice to let them come to an agreement and not impose the city's regulatory powers on top of that. I think everybody should be rewarded by the fact that people of good intent came together and, after a lot of hard negotiating, ended up with something that seems to have no question that all the concerned parties have come to an agreement. I think it's the better approach to let that stand. With respect to the letter of credit, I can't remember exactly what Mr. Petersen's words were in the change of stipulation. A letter of credit, in my mind, is even stronger in some ways than a requirement that they pay because a third party that is bonded is making the commitment to pay. That commitment stands regardless of what happens to the owners of the property because it is issued on an irrevocable basis. This might tip the scales against Mr. Petersen, but if it was a letter of credit that was acceptable to the city, it sounds that it could be acceptable. We're hearing third-hand about how Ms. Bennett responded, and I'm sure she has a lot of details she'll want to put into that letter of credit. The mechanism of a letter of credit is fine, especially when there is not a sense that there will be a need to actually incur the expense and pay the bills in the immediate, foreseeable future. Those are my thoughts. Is there a motion that a commissioner would like to make?

A motion to recommend approval of 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 with the following changes: striking Stipulation Nos. 22 and 23 with the understanding that No. 2C may be modified prior to going to Governing Body – was made by Block; seconded by McGurren. Motion carried with a unanimous roll-call vote of 6-0. For: McGurren, Coleman, Block, Stevens, Belzer, Peterson.

CASE 144-21 – MARKET SQUARE – ADVANCED AMBULATORY SURGICAL CENTER – Request for approval of a Final Plan, located north of 135th Street and east of Mission Road.

Staff Presentation:

City Planner Grant Lang made the following presentation:

Mr. Lang: This is Case 144-21 – Market Square – Advanced Ambulatory Surgical Center – Request for approval of a Final Plan, located north of 135th Street and east of Mission Road. The applicant is requesting a Revised Final Plan for the addition of 197 square feet for the placement of an emergency backup generator located at the northwest corner of the building. The addition to the building will be constructed of the same material as the existing structure and will be screened with various landscaping, including evergreen. The

generator will be required to be a maximum of 60 db at the property line. The application meets all requirements of the LDO, and staff recommends approval of Case 144-21 with the stipulations. I'll be happy to answer any questions.

Chairman Elkins: Thank you.

Comm. Block: This looks familiar. Did this get continued?

Mr. Lang: It has been included in your packet before, but it was continued by staff.

Comm. Block: In that packet, staff recommended denial if I remember because of the sidewalk. Has it now shifted to the south side?

Mr. Lang: The placement of the generator is in the northwest corner. What they have done differently is incorporated the structure into the building, so it is a true addition. They have added louvres, and they have corrected the sidewalk issue.

Comm. Block: The concern before was the sidewalk wasn't continuous?

Mr. Lang: There is an existing cross-connect sidewalk that goes between the property lines. The original one led to the parking lot; this one connects to the front.

Comm. Stevens: Some of this was just talked about in your presentation, and maybe this is just a typo, but the staff comments mention the new addition being on the northeast. I think it is meant to be the northwest.

Mr. Lang: Yes, that is a typo.

Comm. Stevens: The final bullet comment says there are no other changes proposed than what is described. It looks like they are proposing a new canopy over the northeast façade. Is that also a part of this?

Mr. Lang: Yes, that is a part of this application. They are matching the existing canopy in the center of the building.

Comm. Stevens: Are they removing the fabric and installing this new canopy?

Mr. Lang: Yes, it will be a new structure that matches the one in the center.

Chairman Elkins: Additional questions? If not, I'll invite the applicant to step forward.

Applicant Presentation:

John Dudek, 15225 Broadmoor Street, Overland Park, appeared before the Planning Commission via Zoom and made the following comments:

Mr. Dudek: I just wanted to thank the Planning Commission and staff in assisting us in developing a solution that seems to be acceptable for everybody. We have reviewed the stipulations, and we acknowledge and accept them. I'm available for any additional questions.

Chairman Elkins: Thank you. Are there questions for the applicant? If there are no further questions, we'll move on to discussion. Are there comments or discussion? If not, is there a motion?

A motion to recommend approval of CASE 144-21 – MARKET SQUARE – ADVANCED AMBULATORY SURGICAL CENTER – Request for approval of a Final Plan, located north of 135th Street and east of Mission Road – with 21 stipulations – was made by Block; seconded by Stevens. Motion carried with a unanimous roll-call vote of 6-0. For: McGurran, Coleman, Block, Stevens, Belzer, Peterson.

CASE 12-22 – MACALLISTER PLACE – Request for approval of a Final Plat and Final Plan, located south of 135th Street and east of Roe Avenue.

Staff Presentation:

City Planner Grant Lang made the following presentation:

Mr. Lang: This is Case 12-22 – MaCallister Place – Request for approval of a Final Plat and Final Plan. The Rezoning, Preliminary Plat, and Preliminary Plan for this project was recommended for approval at the January 25th Planning Commission meeting and was approved by City Council at the February 21st Governing Body meeting. The project consists of 63 single-family homes on 7 tracts zoned RP-2. The project received variance approvals from the Board of Zoning Appeals regarding setbacks for existing commercial buildings located on the site. Since Preliminary Plan consideration, the applicant has provided additional detail regarding monument signs, fencing, and material options for the homes. They have also noted that they would like to change the name of the development. Prior to Governing Body consideration, all the plans should be updated to the new name. The application meets all requirements of the LDO. Staff recommends approval of Case 12-22 with the stipulations listed in the report. I'll be happy to answer any questions.

Chairman Elkins: Are there questions?

Comm. Block: If I remember correctly, staff did not recommend approval of the Preliminary Plan because it didn't comply with the 135th Street Community Plan or the Comprehensive Plan but complied with the LDO.

Mr. Lang: That is correct.

Comm. Block: So, now that those changes have been made, the ship has sailed and we're looking at the plan itself and whether it complies to the LDO, which is really the only thing applicable now.

Mr. Lang: Yes.

Comm. Block: In our packet, we had minutes from the September 20th work session of City Council. Why did we get these now and not before the last one?

Mr. Lang: I believe there was a question last time from the Planning Commission about why they weren't included, so we thought this was the best opportunity to include them.

Comm. Coleman: When we had our last meeting, during the interact meeting, there was a question of meeting with City Council. I asked Mr. Petersen when that occurred. I went in the next day and found the minutes where Councilmember Cain asked that the minutes be made available to the Planning Commission. I went back to staff and the mayor to ask why we didn't get them during the Preliminary Plan. I asked Mark the other day to make sure they were in the packet.

Chairman Elkins: Any other questions for Mr. Lang?

Applicant Presentation:

John Petersen, 11817 Norwood Drive, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Petersen: I'm appearing as part of MaCallister Land Property, LLC in a joint venture with Grata Development. I'm not here as a representative but as a participant in the development group. We're pleased to be here tonight with City Council last night adopting the recommendation of the Planning Commission in terms of approving the zoning, land use, and Preliminary Plan. We also appreciate staff, although recommending denial because of inconsistency with the Master Plan, staying within the rails of review for the Final Plan and determining it is compliant with the approved Preliminary Plat. They have found that it is. Stipulations 1-30, including the rather extensive Public Works memo that is part and parcel have all been reviewed. We find them acceptable, and we would appreciate your support for the Final Plan and Final Plat.

Chairman Elkins: Thank you. Questions for Mr. Petersen? I'm still trying to connect the dots a bit here. I understand the history, but the minutes of the work session with City Council were presented. That seemed to be a lot of discussion about a development agreement with the city. Can you share where the negotiations are with respect to the development agreement?

Mr. Petersen: As you may recall, this property at 135th and Roe goes back to the original Villaggio development. It is under a tremendous amount of financial burden with a lot of debt on the property. Property taxes, as we stand here today, are \$1,093,000 past due. The city has made bond payments because the prior owners of the property defaulted. The city is essentially out of pocket \$1.6 million in bond payments, trying to uphold the credit and reputation of the city. TDD (Transportation Development District) bonds are outstanding to the tune of \$850,000. The property sits in a mangled web of foreclosure. The good news

is when we had that work session, we merely suggested a land-use proposal that could be executed quickly and efficiently. We explained that we would try again with a new development group. Probably, the fumble at the goal line was as much on the developer's side of the ball. We're going to get to business, meeting with staff and Public Works in terms of turning the streets into public streets. We're not asking for a commitment. Again, since the first effort, the property has sat there for one more year. The only thing happening is the city made more bond payments and the city, county, and school district went another year of not having property taxes that are due. That was the purpose of the work session. We have moved forward. We could not bring the development agreement forward to City Council until we have an approved Final Plan and Final Plat. If we get support of the Planning Commission, we will take it to City Council on March 21st. I got into a little trouble with Scott and Patty because I said it was done, and they're still working out a few words. There is no indication we won't have a full package for City Council on March 21st. You had a chance to meet Mr. Schram with Grata Development. It's going to be a great project.

Chairman Elkins: What are your current thoughts on breaking-ground day?

Mr. Petersen: We've had discussions. The city is going to be responsible, as required by policy, to oversee the contracts for bringing the public streets in. We had a meeting saying we want to get in the dirt. We feel comfortable that the city will work with us. We have to do streets. We have to modify the stormwater systems. Once we get through that, you're going to see action this year for sure. We'd love to try to show people foundation work in the fall.

Chairman Elkins: The plan with the development agreement is that all these issues will be resolved.

Mr. Petersen: Within days of the development agreement being approved, we will close on the property. We'll pay the property taxes and past bond payments. We'll buy the TDD bonds.

Chairman Elkins: That will be a good day for the city.

Comm. Stevens: I know you have a large team that are maybe more involved, but since this is the Final Plan, the landscaping submission is final as well. It appears that, for example, the dog park is shown differently than the other landscape plans.

Mr. Petersen: It is essentially the same, but Grata wanted to use their expertise and create a bit more of a focal gathering point. There may be a couple other amenities. If we bring those forward, we'll have to do a Revised Final Plan possibly. Grata is involved with the community. They want everyone on board. Travis would say that this isn't his community; it is their community. It is a nice, flexible approach.

Comm. Block: It's going to be called "Aventino"?

Mr. Petersen: Yes.

Chairman Elkins: Thank you, Mr. Petersen. This takes us to a discussion. Comments?

Comm. Block: Like I said at the last meetings, I have not been supportive of not following the Comprehensive Plan and not following the 135th Street Community Plan; however, as I understand, that ship has sailed. Governing Body approved it. I think it's a nice plan. I just didn't feel that it fit within the Comprehensive Plan and the 135th Street Plan when we saw it last. As Mr. Petersen said, there's a lot of debt and burden on the city. It's also a bit of an eyesore. It will be nice for new development.

Comm. McGurren: I would agree with Commissioner Block. It is very impressive what has been accomplished over a short period of time. The financial aspects associated with this are significant, and the end result is as well. Something people want will be available and will be done in an impressive way. I am supportive and appreciative of the progress.

Comm. Belzer: I would agree with Commissioner McGurren. I really like the idea of single-family residential. I think that piece of land really lends itself to that. I would support this.

Comm. Coleman: When this first came before us, I was with Commissioner Block in wishing that we would not have single-family homes up against 135th Street. Again, that ship has sailed because it passed Governing Body last night. I had the privilege of listening to most of the discussion, which was very interesting, and changed some minds on the Governing Body from not wanting it to having it. I think it will be good for Leawood. I think it will be good for that piece of property. I wish it was Mixed Use with a little bit more transitional housing from 135th St. going south, but all in all, I think it will be a good addition to the city.

Chairman Elkins: Thank you. Is there a motion?

A motion to recommend approval of CASE 12-22 – MACALLISTER PLACE – Request for approval of a Final Plat and Final Plan, located south of 135th Street and east of Roe Avenue – with 30 stipulations – was made by McGurren; seconded by Peterson.

Comm. Peterson: Should the motion be changed from MaCallister to Aventino?

Chairman Elkins: I don't think so at this point because it will come as a legal matter when the time comes to record the plat.

Motion carried with a roll-call vote of 5-1. For: McGurren, Coleman, Block, Belzer, Peterson. Opposed: Stevens.

Chairman Elkins: Is there any other business to come before the commission?

MEETING ADJOURNED