

**City of Leawood**  
**Planning Commission Work Session**  
**August 8, 2017**  
**Comprehensive Planning**  
**Zoning**  
**Planned Districts**  
**Planning Department Work Flow**  
**Applications and Review**

**Planning Commission Members in Attendance:** Bill Ramsey, Kip Strauss, Dave Coleman, Matt Block, Jim Pateidl, Stacy Belzer, Chairman Marc Elkins

**Planning Staff in Attendance:** Richard Coleman, Director of Community Development, Mark Klein, Jessica Schuller, Staci Henry, Debbie Brenner

**Other Staff in Attendance:** David Ley, Public Works; Andrew Hall, Legal

Chairman Elkins: Kipp, you represented us at the APA in New York in the spring. Could you please share what you came back with?

Comm. Strauss: I really appreciated the opportunity to go there and learn what's going on. It was May 5-9. It was a conference with about 3,000 planners mostly as well as other people. Planning commissioners go with all different backgrounds, but it attracts mostly planners from around the country. They had 170 different sessions. I was there Saturday, Sunday, and Monday. I'll send a link out to everyone. Of those 170 different sessions that were available, for the attendees, they are free. There is a PDF and a recording of every session. Topics ranged widely from a planning perspective. I printed one copy of the 170 sessions. I'll hit the highlights on a few of these. The opening keynote was The Reinvention of America. Peter Lyndon, managing editor of the Original Wired magazine spoke. His talk was about technology and how it is changing how we live, work, and play. Since I'm in the transportation industry, you'll see a few more transportation sessions, but I went to a planning commission session as well. Multimodal level of service was a topic. Every once in a while, we'll have a traffic study connected to one of our applications. It will talk about the vehicular level of service. This will go more into how to measure pedestrian, bicycle, and transit level of service. Market-drive strategies for corridor redevelopment was a topic. This got into market trends in the future. What will increase and decrease? You can imagine senior living and shared workspaces for offices increasing. The presentation went through a lot of that. Engaging planning in smart cities got into a lot of research on autonomous and connected vehicles, but they called it the internet of things.

Mr. Coleman: Big Data.

Comm. Strauss: Yes, so it's not just going to change how we drive and our mobility; it will change everything we do.

Mr. Coleman: That's going on in downtown Kansas City right now. They have sensors on the street lights and poles. They are picking up your movement and what you're doing. That data is aggregated.

Chairman Elkins: Have you ever read George Orwell?

Comm. Pateidl: Took the words right out of my mouth.

Comm. Strauss: I just talked to a company today. We're pursuing a study looking at flows of people and good between Mexico and the US. This is a company that tracks cell phones and looks at patterns. Bicycle mobility information might be helpful with the bicycle plan we put together. Driverless cars will change how we plan. Other topics included driverless cars for shared mobility and allotting transportation spending. They also had ethics for planning commissioners.

I'm hoping to go into more detail and spur some discussion. As we forecast out into the future, this looks at a massive increase in population and distribution around the world. By 2065, it is estimated to grow to 10.4 billion, with 2/3 in urban areas. That is like adding 456 New York Cities. They discussed how all the areas would be impacted. They discussed challenges with access to good water. Regarding technology, everything we do will be connected to our phones. Population projections show baby boomers getting into senior years and how it will affect our economy. Demographic reports show a large increase in Hispanic population. The problem is we have to plan for people who haven't been born yet with the support of people who will be dead.

Looking out five years, the highlighted topics included the potential for technology to disrupt meaningful civil discourse. Where will millennials live when they have families?

Comm. Ramsey: What all did they have to say about water?

Comm. Strauss: The western states don't have unlimited water supplies. They fight over the Colorado River. With climate change, they are worried about future water supply. Flint, Michigan has concerns.

The infusion of place-making into infrastructure is a gigantic ball of transformation that is rolling at different speeds in different places.

Chairman Elkins: What does that mean?

Comm. Strauss: I think it is saying that infrastructure and technology are changing so rapidly, but they are changing at different speeds. I think maybe an example is the technology that Richard mentioned going on downtown with the tracking. When will that come to Leawood? Is that something that might not occur for a decade or two? Communities are going to experience technology at different speeds. I certainly don't remember what he said; I am just speculating.

Mr. Coleman: To some extent, it already occurs with your phone. If your GPS is on and you are going down Tomahawk, the cells pick it up. The carrier is mining the data all the time as an aggregate.

Comm. Strauss: So far, Leawood is not using that data.

Mr. Coleman: No, the city doesn't, but the city does have more and more sophisticated technology, including the Green Light Program.

Mr. Ley: We're running fiber. We're a little bit behind doing that.

Mr. Coleman: The city has a drone now, so we have a pilot. Initially, it is more of a crime issue. I could say that we want to use the drone to fly around a site and film it so we can show it to you guys.

Chairman Elkins: I think I have a sense of what infrastructure is, Richard. In your world, what is place-making?

Mr. Coleman: Place-making is a combination of a whole bunch of different things, but it would involve economics, design, and planning to create something that is recognizable and memorable and has an environment. A lot of that occurs over a long period of time. There is even a book that delves into all of it. It is really urban design and it really is conceived. It is a weird way to say things. Basically, they are saying that they are trying to create an environment that is special and recognizable into the infrastructure, which would be our transportation system and wastewater. It's always changing, and different people are doing it in different ways.

Comm. Strauss: An example would be a program with the residential streets being redone every couple years, and maybe the streets would have technology in them so that rather than doing it on a regular basis, it is done as needed. They could have sensors to let them know when the pavement needs to be replaced.

Mr. Coleman: A little example of that is the transformation of infrastructure in Leawood. We approved the Bike/Ped plan, so as we do certain streets and follow that plan, we add features such as bike lanes. That changes the environment and the infrastructure. Five years ago, it didn't exist; now, it exists. It is a change.

Chairman Elkins: We decide as a Planning Commission that we want to be bicycle friendly, and that then drives change in infrastructure.

Mr. Coleman: Exactly.

Comm. Strauss: You know how fast a cell phone moves on a bike versus walking versus in a car. They can tell you how many people are biking along that street now.

Mr. Coleman: Yes, and if your house is connected, they can tell if you're cooking or washing clothes. All that data is available. On my house, there is a smart reader for my water. That reader reads how much water is being used and the time frame. If I'm watering my lawn and the water comes on at 6:00 in the morning but the gas isn't on, then I'm watering or taking a cold shower. If the gas is on and the water comes on, I'm probably showering. I could be washing my clothes, but then the electrical charge would pop in because of that. Combining all that data gives people an idea of what is going on. That's an example of how much information is available through electronics.

Comm. Pateidl: Kipp, regarding your comment about the relative speed of a cell phone going down the street, is there a movement in your profession to start using that kind of data in lieu of transportation reports?

Comm. Strauss: No, it is just data to add into our understanding of what is going on.

Comm. Pateidl: How readily available is that to developers?

Comm. Strauss: I think it is readily available. The companies that do it contract with Sprint and Verizon, but they strip out all the personal data. By the time it gets to me, it's just data. There is no personal information. I bet developers are already using it.

Comm. Pateidl: If that kind of information is becoming more readily available, accessible either by the Planning Department or the developer, should that be incorporated into some of the information we see as commissioners with applications? There have been many times when the last traffic study was done ten years prior. Could we maybe do better than that using this type of information?

Comm. Strauss: Yes, it is a new data source.

Comm. Ramsey: Don't misunderstand, though; just doing it alone is not a traffic study.

Comm. Pateidl: I understand, but having that in conjunction with a traffic study or some kind of indication rather than a blank sheet of paper for ten years, leaving it to anybody's guess what it is.

Comm. Strauss: This is a big topic, and where I think it affects us is parking ratios. Should we be expecting the same parking ratios? In 10-20 years, people aren't going to own cars is what all the research is saying. Do we need all the parking spaces, then, if there aren't cars to park there?

Mr. Coleman: Did you use Uber in New York?

Comm. Strauss: Yes, I did. When I travel, I use Uber a lot and I don't rent a car. It slows me down to rent a car. Hotels charge for parking.

Mr. Coleman: That has big implications for infrastructure and all the parking.

Comm. Ramsey: Right there is something that will affect us: cities will be where the wealth is concentrated. Johnson County is only going to continue to expand exponentially as the rest of out-state Kansas populates. There is nothing left for high school kids who graduate and go on to college. There is nothing to go back to, particularly in a service-based economy or an information-based economy. There is nothing left in those communities to speak of. That is going to have significant impact on us.

Chairman Elkins: We have to remember, too, that certainly the city is land-locked, and there are limits on Johnson County. What I think may also happen is either there is going to be a difference in the population density and the way that we build as opposed to the suburban we have now, or Miami County and the counties farther south are the ones that are really going to feel that influx from the out-state as opposed to Johnson County or Wyandotte County.

Comm. Ramsey: There has been some work done on the amount of spread that's reasonable, considering the edge communities, depending on the size of the metro area and so forth. What they may be talking to us about, though, is redevelopment. I remember when I worked at Booker Willis and we were at 435 and Holmes. We were up on the 6<sup>th</sup> floor, and we looked back to downtown. In the summertime, all we saw was green. There was no density. What we may be seeing is a focus or a pressure to redevelop.

Chairman Elkins: A paradigm shift to build up.

Comm. Ramsey: Yes, to go up and to have higher densities. If that is the case, how do we deal with that with our quality of life that we want to have in not only Johnson County but particularly in Leawood?

Comm. Strauss: Also, we need to look at what autonomous cars will do as far as traffic goes. I think it will put more vehicles on the roads because handicapped, elderly, and disadvantaged people will be able to use vehicles, while they are not able to right now. There could be empty trips to pick up someone. How do we deal with increased traffic in Leawood?

Comm. Ramsey: Did they talk about Artificial Intelligence at all, coupled with this?

Comm. Strauss: They did. I don't remember what they said, though. They got into increased growth and mass transit. Johnson County hasn't had a lot of transit, but maybe that is something we should think about.

There was discussion about shared office space and shared hobby space. It looks like there is already a place called Hammer Space Community Workshop.

Chairman Elkins: There is an interesting space like that in Overland Park just north of 435.

Comm. Strauss: If you want me to download something, I can do that for you.

Comm. Pateidl: There was one topic I didn't see when I flipped through there. I was curious if, during the course of the meeting, it was discussed. That is mixed-use zoning in suburbia and what, if anything, we could have picked up from other cities that have gone through those.

Mr. Coleman: I just ran across an article about that where they basically said that the millennials will actually be moving to more suburban mixed-use developments because that is what they want.

Comm. Strauss: There was a slide on mixed-use. The idea is where we will see some mixed-use with commercial on the bottom floor and office on the top.

Mr. Coleman: We need to be a little bit careful because sometimes there are market distortions from different things. On 63<sup>rd</sup> near Troost, they built new condominiums, but they are over \$.5 million. The houses in the area aren't even single-family houses that sell for that price. I've talked to real estate agents about it, and they see it as kind of a gamble.

Comm. Pateidl: More and more, I'm reading articles about the Internet, Amazon, and the impact that is having on retailers, particularly with the millennials, and how we address that or if we address that is the question that keeps rolling around in my mind. Are we on the right track with our expectations of market retail inside of our mixed-use?

Mr. Coleman: I think the retail market in most areas in Kansas City has been overbuilt for 30-40 years, probably since the 1970s. Certain stores and businesses are just probably going to go out of business because they can't compete with Amazon. Amazon is building these giant distribution centers. They are here in Kansas City. They're in all the major population centers. They will have some of the product because they know what you're going to buy before you buy it. They will have those readily available. Then there will be other things that are just off-the-wall that may take a little longer to get there. It is definitely a game-changer on a lot of stuff. Like Kip said, that will probably increase truck traffic because all that stuff has to be delivered. Or they may be delivering them with thousands of drones every day.

Comm. Pateidl: Let's stick with my lifetime.

Comm. Strauss: The Kansas Secretary of Transportation told me that when Amazon moved into the Intermodal, they requested air rights to test drone delivery on their site. They're testing the concept within their own property right now.

Comm. Coleman: Did you go through your office through work? How did you go to the conference?

Comm. Strauss: Through Richard.

Mr. Coleman: I sent out something asking everybody if they wanted to go.

Comm. Coleman: I don't recall getting that email.

Comm. Block: I think it was before I was on it.

Mr. Coleman: Kip was right on it. Regarding retail, retail will be in locations and areas that are an experience. Probably a lot of brick-and-mortar stuff that would compete with Amazon may go away. The retail will be more like an experience. People will want to go to places where they have a social experience. The ones that have a good experience are going to draw people in. I don't have the numbers on Power and Light District, to tell you the truth. I know the city subsidizes it for \$15 million a year. A lot of people go down there because of all the other people and because of the experience. I think it's the same reason that people went to the Plaza for the last 80 years. It was because it was a pleasant place to be and was a different environment and experience than they had anyplace else in the area. They gravitated to it.

Comm. Strauss: I think that's the key with even 135<sup>th</sup> Street. When we think of that corridor, how can we make it a destination place? Is this an environment that draws people in?

Chairman Elkins: In fairness, we've done some pretty decent planning here. Look at 119<sup>th</sup> and Roe, and that's exactly what has happened there with Town Center and Village Crossing. It has drawn people out of the Plaza. That is largely a function of the Leawood Planning Staff taking a bunch of pastures and barns and having the vision to build a destination place. We've had successful planning.

Mr. Coleman: From my standpoint, it is interesting that 5-6 years ago, investors who bought Cornerstone did a market analysis of the area and Leawood. One of the big deficits was furniture stores. While the Seville store was at 135<sup>th</sup> Street, what actually ended up occurring was they all came to 119<sup>th</sup>. If you want upscale furniture for your new home, this particular area would be the place to come to see all kinds of different environments. That is interesting that they did the market study, and while it wasn't what they were looking for, the hole was exposed, and it became filled.

Comm. Strauss: It's the car dealership for upscale furniture.

Chairman Elkins: Mark, are you ready? As an introduction, it occurred to me at the end of last year that, as a commission, we've gotten pretty focused on the trees. I wouldn't say we've gotten lost in the trees, but every meeting is dealing with individual plans. That, combined with the fact that other than some of our members, our commission has a relatively low tenure. That, combined with the fact that we have not been great at getting folks to the APA meetings, made it clear to me that we need to do a bit of a level set. I asked Mark and Andy to put together a program on Planning 101. It approaches the process, and sometimes, it strikes me that we lose a little bit of a track between what is appropriate when considering a preliminary versus a final plan and the planning process

and then also the legal side of things in terms of, as a body created by the state, what we are doing and what we can and are better suited not to do with respect to our processes. With that, I asked Mark and Andy to put something together.

Comm. Pateidl: As you pointed out, it's a body politic created by the state. Do you want to amplify a little bit on what the state statute is all about and what it is intended to do and how that influences not just Leawood but communities in Kansas in general?

Chairman Elkins: I'll take a start and then let the experts weigh in. This sounds a bit like legal speak because it is, but it also informs how and what we do. In operating as a Planning Commission, there are times when we operate in a legislative capacity like when we are adopting changes to our ordinances and whatnot. In other instances, we are operating in a quasi-judicial capacity. There are issues with what is appropriate for us to consider when we are operating in that quasi-judicial capacity. That is part of what these guys will approach. To your question, Jim, the state has created not only cities but also the idea of a Planning Commission with the idea that there is a requirement at least every five years of reviewing the Comprehensive Plan. We've had a lot of conversation about what a Comprehensive Plan is in terms of a guideline as opposed to a set of handcuffs and how that plays into the ordinance. Andy or Mark, you could probably answer Jim's question better than I can.

Mr. Klein: I'll just give a little history. Planning has been around a long time, even with the ancient Greeks and Egyptians. As it moves forward, cities try to organize themselves in a way that is livable. Before the turn of the century, the US had a huge influx of population. There was added pressure with density and technological innovations. The elevator came in, so stairs weren't always required. The subway came in as well. All of this led to greater density. As a reaction to these issues, different groups formed to address them. Some were focused on making beautiful places in cities as part of the City Beautiful movement. Other groups emphasized parks: some more regional, some smaller parks where people could recreate. There was a sanitation movement as well. Moving toward the influx in population, there are urban problems that are just starting. They're trying to figure out how to deal with a lot of the issues. Planning came around to try to solve some of the issues. Many uses were located next to one another. For instance, a meat packing plant might move in next door. That might have been dealt with more on a nuisance basis, which would mean a lawsuit. There really wasn't anything to prohibit that from the start. Slowly but surely, through the court systems, cities were allowed to regulate the height of buildings, setbacks of buildings, and separation of uses. In 1916, New York City passed the first comprehensive zoning ordinance as part of that. They designated several districts and the uses allowed within them. Other cities in the country began to model. A lawsuit based on all this was Village of Euclid vs. Amber Realty. The big question at that time was if zoning was even legal.

Chairman Elkins: Does the city have the power, or should a property owner be allowed to do whatever is desired with the property? That is the fundamental question. It went to the United States Supreme Court.

Mr. Klein: The courts came down in favor of zoning as a legitimate tool. The states are the ones with the police power and the ability to plan. As a way to delegate that authority down to the cities, about 1924, the Standard State City Planning Zoning Enabling Act. It was more of an advisory tool, but it developed a number of standards. In those standards was enabling legislation to allow states to delegate police power and the ability to plan and zone to the cities. It also set up and codified the division of cities into districts as long as there were rules to go along with it. Each zone needed to have the same rules, but rules could vary from zone to zone. We take it for granted, but at that time, it was a major consideration as far as what could be done. Additionally, there was a requirement that zoning had to be in compliance with the Comprehensive Plan. There had to be some sort of planned component to this. They also recognized that if all the regulations would be in the different zones, the public needed to know about it. It required that any ordinances and regulations that were done would have to be approved through public notice and through Public Hearing. They also realized that those rules could also change. They weren't set in stone. People could appeal, repeal, and amend. They needed a body that could manage that. The Planning Commission came to be that body. They became designated as the body that would make recommendations. They also would oversee the Public Hearing process. That is why you see certain applications come before you with regard to a Public Hearing. That is required by state statute. The reason a lot of it is required by state statute is the Standard City Planning Zoning Enabling Act was adopted by a whole bunch of cities following the act itself. A lot of the statutes in a lot of the cities are very similar because they followed this model. That, in large part, is how the Planning Commission came to be. In addition to that, it also put in place different zoning ordinances to actually enforce the rules put in place. A little bit later in 1928, they also had the Standard City Planning Enabling Act, which went a little further. It basically went a little further as far as what the Planning Commission did, including some of the responsibilities that went into subdivision regulations. It basically established that the Planning Commission has the ability to oversee the subdivision of land, the policies, and the Comprehensive Plan. That is where a lot of this comes from. Again, all the power comes from the state delegating it down to the cities themselves.

Chairman Elkins: Just as a postscript to that, we've all been very painfully aware of the basic constitutional law where the basic powers of the states, but for what we've delegated to the federal government, and the federal government has decided of late that their obligation to regulate interstate commerce in the form of cellular telephone trumps both the state and city rights with respect to land use. The interest of the whole nation in cellular telephone communications has priority over the powers we have as a commission or that the state has to delegate to us, which is why so much of our ability to regulate cellular telephone towers has gone away over just the last six years. Congress has taken it back. The Supreme Court gave it to us in Euclid, and now Congress has taken back this issue and has claimed that they have a more important mission than our mission to regulate our local land.

Mr. Klein: You've seen a couple examples in the last year of federal government coming in, especially with telecommunications with what can be regulated and what can't. The

two planners will give a presentation. Jessica will start, and Stacy will take a portion as well.

Ms. Schuller: Mark hit on the legal side of things. Stacy and I will give more of a broad overview of the Planning Department itself, our duties and responsibilities, and how we operate and communicate with the residents of Leawood. I'll go a little into the Comprehensive Plan itself, Zoning, and Planned Districts. Stacy will take over and talk about the department work flow and how we review the applications that come in.

There are really three overarching documents that establish how and where we develop land. We have the Comprehensive Plan, Zoning Ordinances, and the Leawood Development Ordinance. The Comprehensive Plan is really the overarching document where we talk about quality of life and use of resources. We talk about the kind of place we want to be. There are really two main components: Zoning Map and Goals and Objectives. We provide recommendations and proposals about future land use, population growth, economics, all of that. The plan is reviewed annually. We actually are in the process of updating that now. You can expect to see updates the census data as well as the Mixed-Use section as we're going through the 135<sup>th</sup> Street Corridor Plan. The Comprehensive Plan does require a Public Hearing, but it is actually not a legally binding document. Zoning is a legally binding ordinance. The other different between Zoning and the Comprehensive Plan is that zoning is present; it is not looking into the future. It is ensuring we are conforming to our zoning ordinance. We're concerned about the health, safety, and welfare of citizens, so that is why we have zoning as a device that we use and not just what planners would do. Zoning does not expire. A change of zoning would require an application and both Planning Commission and Governing Body approval for a change of zoning, which would then last until zoning changed again.

As we get new applications, we confirm that the zoning matches with our map. There are 15 zoning districts within the city. These are found in Article 2 of the Leawood Development Ordinance. They are broken into Special Use, Residential, and Commercial districts. They are generally listed from most restrictive to least restrictive. All of the uses in Leawood are planned districts.

Chairman Elkins: Why is it that the zoning letters don't appear to bear any resemblance to what they cover?

Mr. Klein: When I first got here, they were using the same nomenclature as Overland Park was. They had CP1, CP1, CP3, and CP4. There were a couple areas that they carved out special along 103<sup>rd</sup> Street. They called them SD for Special Development District. When they redid the whole zoning in the LDO, they decided to move away from what Overland Park was using and use the Special Development Districts.

Chairman Elkins: What about RP?

Mr. Klein: Residential Planned.

Comm. Coleman: Is there a national standard that the American Planning Association comes up with?

Mr. Klein: No, they actually do have a standard as far as the colors but not the names. Red is almost universally retail; yellow is residential.

Chairman Elkins: Sorry to get you off track, but I've wondered for 15 years about that.

Ms. Schuller: Once in a while, we run across a use that is not listed. Those would have to be approved by the Planning Commission and Governing Body as well. The LDO provides a great description of all of these in Article 2.

We also have the Table of Uses. These are the primary uses permitted either as a planned use, permitted use, or special use. Special use would require a permit granted by the Governing Body. The Bulk Regulations Table shows regulations listed under each district except for Special Use, Planned Recreation and Flood Overlay. This provides a guideline to setbacks, maximum building size and structure, and other elements to ensure the requirements are met. To bypass this would require approval from the Board of Zoning appeals. They vary slightly from each district within the zoning.

I mentioned everything within Leawood is a Planned District because we give a lot of care to the type and character of development we have here in Leawood. That means most of these applications are going to have a Preliminary and Final Plan that accompany them. That helps us to provide for a combination of Residential, Recreation, and Open Space so we can ensure a healthy mix. Are there any questions on this half of the presentation?

Comm. Strauss: On the Comprehensive Plan, are you on a set schedule for a major update of it versus a standard update? In my six years, they have always been minor updates.

Mr. Coleman: At this point, they probably will always be adjustments. The bulk of the city is already planned and zoned and built. A large portion is Residential.

Comm. Strauss: So, the 135<sup>th</sup> Street Corridor study was the in-depth look at the undeveloped area, so that's the major change.

Mr. Coleman: Yes, so then we would look at specific areas within that. There is nobody saying we should rezone a huge section of the Residential to Industrial. We are fixed for the most part. We will make adjustments in certain places as time goes on.

Chairman Elkins: That is a great point. If you look at our Comprehensive Plan, the 135<sup>th</sup> Street Study is an appendix to it, so it is effectively a part of our Comprehensive Plan. That is where the major revision has been in the work that you all did on the 135<sup>th</sup> Street Plan.

Mr. Coleman: That's right.

Comm. Strauss: What about if this body wants to make changes to the LDO, kind of like I talked about with our parking requirements? Not that it's a decision we need to consider

today, but at some point, we should think about that. Is that something that comes out of the Planning Commission? Does it come from the public or Governing Body?

Mr. Coleman: It can come from the Planning Commission if you realize there is a need for a change. We would probably have a work session like this, and staff would write up the change. It would go through the process just like everything else. If Governing Body agreed with it, it would get approved and put into the docket.

Chairman Elkins: If you think there is something we should consider for revision, come to me with it, and we will get it on the agenda. The process would be for staff to do some studying for us. Then, we would have a work session and ultimately generate an ordinance amendment and put it through the process. That is what we did years ago when we struggled with the McMansions in North Leawood. We struggled to find a formula that would find a balance between the property owners' ability to do what they wanted to do on their lots and build as big a house as they want and still respect the rights and sensitivities of the prairie ranch-style homes that surrounded them. That was an example of us trying to come forward as a commission to address what was perceived as an issue at the time of the way North Leawood was getting rebuilt. We still had limited success.

Mr. Coleman: It is working pretty well. Usually, it is a square footage issue.

Ms. Henry: We're going to talk about Preliminary Plan. Before people even come in, we have informational meetings as well as pre-application meetings. We are constantly working with applicants as they get through the development plans. We have Preliminary Plan, which is the initial stage of planning. Compliance with the Comprehensive Plan is discussed as well as use, density, access, and general layout. The Preliminary Plans require approval by Planning Commission and Governing Body. Some people decide to have a Final Plan concurrent; others bring it separately. After the Preliminary Plan, details of the project are reviewed and considered such as building material for the Final Plan, amenities, specific landscaping, and lighting.

Chairman Elkins: Is there a list someplace of the things that are appropriate for us to consider?

Ms. Henry: We'll get there. We'll talk about a Special Use Permit as well. Land Uses are not permitted by right but are considered to be due to unique circumstances. I know the wireless communication facilities fall into this category. They require public notification as well as a Public Hearing. Special Use Permits are issued for a stated period of time that is considered. At expiration, the user must resubmit for a new Special Use Permit for consideration.

Rezoning involved assigning land or property to a different planning zone. It requires approval of a Preliminary Development Plan as an act of rezoning. It requires Planning Commission and Governing Body Approval.

The work flow begins with public notifications of Rezoning, Special Use Permit, Preliminary Site Plan, and Preliminary Plat. They do require public notification. The ones that don't require public notification are Final Site Plan and Final Plat. Jessica handed out

a timeline as well as work flow. We are working with Fire Department, Public Works, Neighborhood Services, and Legal. This takes us through the public notifications.

Mr. Elkins, we have some of the information about land use and conformance as well as bulk regulations, which include density, height, and open space. Other application types include Final Plan and Final Plat. This would include building elevations, landscaping, and lighting.

Chairman Elkins: What is the difference between a plan and a plat?

Mr. Klein: Basically, a plan is something where you actually see the location of the buildings, the access to adjacent roads, and location of the parking lots. There are two types of plats: Preliminary and Final. The Preliminary Plat is done at the time of Preliminary Plan, and it is much more detailed. It will have the building footprint on there, both existing and proposed, easements, and topography. It is basically the existing conditions even down to fences. At the point of a Preliminary Plat, it is really just discovery of what is on the site, what we're dealing with, and what they're proposing. The Final Plat is for the sale of land. It is to create a legal description in which this piece of property is shown. It will have very little on it: outside boundaries of the lot or tract, a legal description, title of the plat, and a description of easements. There will be signature blocks by the developer and property owner. This will go to the city after approval by the Planning Commission and City Council. We will then check that plat against what was approved by Planning Commission and City Council to make sure it matches. We also give a copy to the Public Works department, who will then also check easements and check to make sure the legal description actually closes. Joe Rexwinkle had a funny story in Leavenworth when a legal description was written wrong, and it resulted in a property in Colorado being accidentally rezoned.

Comm. Ramsey: Can you have a Preliminary Plan but not a Preliminary Plat?

Mr. Klein: Yes. Sometimes, we will have a situation with a piece of property that has already been platted. They may or may not be changing the plat. They may leave the property lines exactly where they're located. They are changing as far as what is located on that piece of property. It might be completely vacant. If it is, then any kind of development they're doing is going to require that Preliminary Plan as part of it, or it could be the fact that they actually have a plan that is on the piece of property with a development or shopping center, and all of a sudden, the shopping center wants to add a building. If the change exceeds substantial compliance regulations of the Preliminary, they are back to the new Preliminary Plan, and the plat may not change at all.

Chairman Elkins: The plat describes the real estate, and the plan describes the improvement going on the real estate.

Mr. Klein: That is excellent. The plat get recorded at the county. For instance, when the Preliminary Plan comes through, if it is not platted, there will be a meets and bounds description. This can go on for pages with a legal description. Once it gets down to a

Final Plat, the legal description is going to change to something more succinct, such as Cornerstone of Leawood, Lot 1. It is meant to convey property.

Chairman Elkins: I once had a big piece of property that was a golf course development. It was not built in accordance with the legal description. When we went to sell, we actually closed down the County Recorder of Deeds' office for two days to record all the correcting. Houses had already been built, but when we did the survey, the houses didn't match what the legal descriptions were on those deeds.

Mr. Klein: Those legal descriptions are very important. With regard to what is considered on different applications, typically in a Preliminary Plan with Rezoning, what is being considered is the use allowed on that piece of property. Does it meet the Comprehensive Plan and the zoning? Is it a use that is compatible with that site. This is especially important when considering a Special Use Permit. The density, traffic, access, and general layout of the site are being considered. In the staff reports, when we get to landscaping, lighting, and signs, typically the first bullet point states that the item is not reviewed or approved at the time of Preliminary Plan. The reason for that is we want to make it clear to everybody, especially the developer, that it hasn't been approved. This is a way to say it has been approved for layout, concept and what was proposed but not for a particular brick or landscaping. At one point, we used to highlight all the areas that were issues taken up at the time of Final Plan so that you would know to not get locked into it. It is giving general direction, but it will come back again with more detail on signage, landscaping and lighting. When it comes back as a Final Plan, we are focused in on making sure that it still matches the layout of the plan that you saw at the time of Preliminary Plan and that you are able to look at the nitty gritty as far as the building materials, landscaping location, and lighting specifics. That is why you will occasionally see plans that you didn't see in the Preliminary Plan. The photometric study is a good example. At the time of Preliminary Plan, they don't know where the lights are going to be. They know they will have parking lot lights, but they don't know the type. However, once they get to the Final Plan stage, they need to know exactly what type of light fixture and where it will be located. That is why they do the photometric studies.

Comm. Strauss: Your staff report already tells us what LDO requirements are met.

Mr. Klein: We have the section for staff comments as well, where we are looking for direction from the Planning Commission. Life isn't really smooth all the time. Often times, the process will start with a general information meeting. They will show up and discuss what they were considering and don't have a lot of plans. Then they get a little bit more serious. For Rezoning, Special Use Permits, Preliminary Plans, and Preliminary Plats, we have a requirement that they have a preapplication meeting. At that meeting, we want to see some plans and see where things are laid out, what they're thinking, what the density is. That way, we can guide them as far as what applications they will need and what kind of process they'll have to go through. Once they go through that preapplication meeting, they'll file an application with the Planning Department. At that point, if it kicks into Rezoning, Special Use Permit, Preliminary Plan, or Preliminary Plat, there is a legal notification process. For us, that is the first deadline that has to be met. As we talked

before, all those state statutes come in at this point. We have to notify in the paper a minimum of 20 days prior to the Public Hearing before the Planning Commission. We have to have them send out a public notification letter to all the property owners within 200 feet of the property. It has to be certified mail, return receipt requested. Then we get the cards as evidence that they have actually done that. They are also required to provide a sign on the property. Overland Park uses the same yellow signs that we use. It is to notify people around that there is an application pending. It lets them know they can call City Hall. Those letters that they send out also states that people can come and view the plans at City Hall as well. It has a phone number for them to contact. In addition to that, the City of Leawood tries to go further than just the standard public notification process. Leawood uses an interact process, which is an attempt to notify everybody within 500 feet of the property or 1,000 feet if it happens to be a wireless communication facility. It does not have to be certified mail, but we do have them provide us a list of who they sent to. They are required to set up a meeting. It has to be within the City of Leawood. These are things we learned along the way. For instance, we had a developer set up his meeting, and he put it down on The Plaza. We said it needed to be within the City of Leawood. We've had some put it on a holiday, and we tell them we want the meeting to occur Monday-Thursday, early evening to get people time to get home. We want the letters to go out a week ahead of time at minimum so people have a chance to rearrange their schedules. They are required to take minutes and pass around a sign-in sheet. All that gets back to us, and then we put it in the packets for you.

Comm. Strauss: Do you ever attend those?

Mr. Klein: We don't. A lot of residents don't really understand the process, so a lot of them think the city is actually responsible for those applications. They get very angry with staff, thinking we allowed it to come in. We don't really have the choice to say that someone can't come in and make an application. That is not our role, and it is not legal for us to do. When they tried that before, everyone ignored the developer and turned on staff. It really defeated the purpose it was for, which was to try to get a conversation happening between the applicant and the residents. The applicant knows a lot more about that project at that early stage than probably what even staff knows. It's also an opportunity for the applicant to learn from the property owners what their concerns are so they can incorporate some of that. We ask for that interact summary so we also know what is associated with it. Honestly, we get calls from the residents as well. The whole time this is going on, we're also receiving phone calls from the residents. We have people coming in to the Planning Department to see the plans.

Ms. Henry: Kip talked earlier about a parking study. We do look at that. We work with Public Works to determine if we also need a photometric study as well as tree inventory. We do consider and vet everything to make sure it has everything that is required.

Chairman Elkins: Something that might be helpful there is if you could take the same slide and divide it between which studies are relevant to the Preliminary Plan and which studies are relevant to the Final Plan. I think in this case, most of them are relevant to the

Preliminary Plan, but it would be helpful for us to keep things straight as to what we should be focused on at the Preliminary Plan level versus the Final Plan.

Comm. Coleman: For the Planning Department in terms of numbers, are there just the four of you, or are there more that we've never seen?

Mr. Klein: No, this is it.

Ms. Henry: We vet everything and get it to you as quickly as possible.

Mr. Klein: Leawood is very detailed. A lot of cities do the same thing; they just don't do quite the detail that we do. They aren't quite as diligent as far as the landscaping. A lot of this takes a lot of time. When we get those landscaping plans in, we're measuring the frontages and the backs. We're counting bushes and plants to make sure it meets what is required by the ordinance. We're looking at the photometric study to make sure it is no more than .5-ft. candles at the property line. We're looking down to see what the uniformity ratio is for the parking lot. We're looking at the parking lot light fixtures to make sure that they're no taller than 18 feet in height. A lot of that is still present in a lot of other cities; it is just not quite as detailed.

Chairman Elkins: That is, in part, why the developers sometimes rebel. They like big, broad brushes, and you guys are painting with .5mm.

Mr. Klein: You probably hear that to a certain extent because it is easier to go to other cities. A lot of times, it transfers in the amount of quality here. Landscaping is very important. It makes a big difference. You can have a beautiful building with no landscaping around it, and it looks stark and not great. Adding in landscaping and site planning makes it look good. Traffic circulation can make a big difference, too.

Comm. Pateidl: You're busy, and I can see that an awful lot of stuff goes through here. A critical consideration for adjoining pieces of property is drainage. Who is addressing drainage, and when is it being done?

Mr. Klein: That one is addressed both at Preliminary and Final Plan. There are a couple plans that we actually see twice. Drainage is one of those. Traffic is something that could be updated at the time of Final Plan. Public Works is usually who looks at the drainage and also the traffic. They have modeling that they do with software.

Mr. Ley: We'll review the study usually on commercial developments. We'll send out a stormwater study to get reviewed. It kind of depends on how big of a project it is and whether staff is available to review it.

Mr. Coleman: There is a difference between commercial and residential.

Mr. Ley: I usually review traffic studies, but if it's a pretty large one, I'll send it out to a consultant to get another opinion.

Comm. Ramsey: Jim, what were you referring to?

Comm. Pateidl: Issues with one neighbor next to another and the drainage coming over and flooding his back yard.

Mr. Coleman: We review that when they submit a building plan. Public Works reviews it, also. They may be required to mitigate it through swales, holding basin, or underground pipes to deal with it.

Comm. Pateidl: I was just curious where in the process it comes into play. You are busy, and I don't know your engineering background, but some of it is pretty tough.

Mr. Klein: When it comes to the Planning Department and a subdivision, the overall gross drainage gets approved at the time of Preliminary and Final Plan. With Single Family Residential, we don't know what house is going to go where or what it's going to look like. Then, the drainage is reviewed again. When they submit an application for building permit, it goes to the Building Department. They will look at the site with Public Works, and there are certain percentages that are required for impervious surfaces. They are not allowed to have the water flow onto an adjacent property. They could probably speak more to what they do with that.

Comm. Block: In the past, we've dealt with these technical studies and questions. Some of these traffic and stormwater studies are 10 years old. Is there something in the ordinance that says a study is only good for a certain amount of time, or is that a call by you guys as to when you get a new one?

Mr. Ley: Cornerstone is a good example. When that was developed, they used current traffic counts. If they come in and do a modification, we would look at it at that point. We would look at the building and try to use current ITE counts for square footage of the basis of the building and determine if it is an increase or decrease in traffic. If what they are doing has a decrease in traffic, we don't require a new study.

Comm. Block: Is it the same with stormwater?

Mr. Ley: If they increase the improvements, they would account for that with their intentions.

Comm. Block: An example that comes to mind is the retirement community.

Mr. Ley: That stormwater had nothing to do with Brightspace. They did all their calculations based on their Site Plan for detention. It was on the south side of 137<sup>th</sup>, which was the only building on that side. They did a full-blown traffic study, also, for that.

Comm. Block: I thought we were dealing with one that went beyond just the property.

Mr. Ley: When they do a stormwater study, they look downstream a certain distance. They have to verify that the storm sewer has that capacity. In that instance, we had the original stormwater study. In addition to that, they were required to reduce the water over what a typical development would be required to do. They did a new study. We compared it to the old one and verified that the release rates were the same because there is a maximum release rate. It had nothing to do with the age of the study.

Comm. Block: So, it doesn't matter how old it is; it depends on the use as compared to the initially proposed use.

Comm. Pateidl: Are they waiting for the corn crop to mature until they file for a building permit?

Mr. Ley: They have plans. I don't know what's going on.

Comm. Ramsey: I don't know why these guys take so long.

Mr. Klein: A lot of times, we don't have control over what is going on at the site, so some of these things may never come back. They have 10 years to come back legally, and as long as they come in that time frame, it is fine.

Comm. Block: Is that typical?

Mr. Klein: We used to have a 5-year sunset clause. Ironically, the Milano development's property owner went to the Kansas Legislature and got it changed to 10 years. That is what we have now. It used to be 5 years for Final Plans. We still have 2 years for Preliminary Plans.

Comm. Block: Is that dictated by the state as well?

Mr. Klein: That part is with the state. If they come back within that time, they are okay to go. The city has an ordinance that allows them to extend that period of time. I think they can get two 6-month extensions. The concern is that conditions change, and all of a sudden, somebody wants to build what they got approved 20 years ago, and it might be a 1970s strip mall that really nobody thinks is a great idea anymore.

Comm. Strauss: Applicants can still want to take it to the Planning Commission even if you tell them you're going to deny it, which is interesting. When do they find out?

Mr. Klein: They usually know pretty early. What you have to understand is there are usually a lot of issues that we're working through. I would say the majority of them, we actually get resolved between us. Occasionally, there are 1-2 sticking points that we are not going to agree on. That is typically when there will be a staff comment and a stipulation stated with it. Part of the reason we stipulate it is that you will have the ability to see it and make a decision as to whether you want to keep the stipulation or modify it.

If we didn't have a stipulation, it would be too easy for everybody to be talking about the case and going off in a different direction with that issue being forgotten, and then there is no stipulation addressing it. It is a safety mechanism. It is there, and if the Planning Commission would like to see it removed, it can be done. Furthermore, it goes on the record, so there is reasoning that is discussed with that. Then it goes to the Governing Body, so they know what your thought process was with regard to that.

Chairman Elkins: Depending on what the stipulation is. Some, we don't have the jurisdiction.

Mr. Klein: And some of the stipulations are very standard. For instance, the first stipulation is almost always going to be that the project is limited because we don't want them to come back and say that they got "x" amount of more square feet. We try to give a synopsis in the first one. There are other standard stipulations you will see with regard to the lighting with no more than .5-ft. candles at the parking line or that parking lot light fixtures have to be no more than 18 feet in height. Some of those are standard stipulations and are required by the ordinance. There will be other stipulations that will be tailored much more closely to what they're actually proposing for that development that won't be on other developments.

Comm. Strauss: What we're doing is providing a recommendation to the Governing Body, and if I understand right, if they vote the same way that we recommend, they just need a simple majority, but if they vote differently, they need a super majority to override.

Comm. Block: Going back to the interact meeting, if you just saw that the comments were horrible, even though it complied with the LDO and everything, would you ever say, "We're not going to recommend this to the Planning Commission"? Has there ever been a time that you would do that from the interact meeting, or are you just always passing it on?

Comm. Ramsey: What if the comments are that the developer promised there would never be anything right there?

Comm. Block: I understand that's probably not enough.

Mr. Coleman: We are advocates of the LDO, so the neighbors adjacent can make their particular argument to you or to City Council if it goes that far, but we're looking at their application through the lens of the LDO.

Comm. Block: You're just passing those comments on, and then we decide whether or not something should be acceptable.

Mr. Coleman: We see if the application meets the criteria set forth in the LDO. Most of the time, the applicant agrees with that. The times they don't agree are usually smaller issues. They don't end up being the big issue because if the use, for example, which is a

broad issue, is not allowed, we just flat-out tell them that the use is not allowed by the LDO. At that point, they usually go away. Usually, at that point, we've met with them and talked to them, so they know to some extent what our concerns are. We also know that the application meets the LDO.

Chairman Elkins: Could you speak to the fact that we do not function as an architectural review board? Often times, those comments at the interact meeting are referring to the aesthetics. I'd love to hear your take on what is going to be within our jurisdiction to recommend "no" to the Governing Body, or if they want to build something ugly there, it's their piece of property, and to an extent, they are allowed to build something ugly.

Mr. Klein: The city does have requirements as far as some architectural elements within the LDO. Building materials will come into discussions occasionally. However, as far as the actual architecture, we don't have an architectural review board, which is a special board set up as a different body. They'll actually review the architecture of that project. That is not something the Planning Commission can use as a deciding factor.

Comm. Strauss: We kind of had those discussions when Len was here because he was an architect.

Mr. Klein: We mentioned height and massing of the McMansions. An architectural review board was tossed around a little bit at that point. There are a lot of legal implications that go with that as well for the city.

Chairman Elkins: There is an ongoing debate as to whether that is something that should be with the homeowners association. Frankly, they don't want to touch it because of the litigation that tends to arise from the decisions. One of the things I'm concerned about with the city is the city doesn't want to have the litigation that comes with an architectural decision. As an example, Mission Hills has an architectural review board, and it is one of the most painful boards to sit on. You couldn't pay me enough to sit on that board.

Comm. Pateidl: Can you give a synopsis of the Golden Rule?

Mr. Klein: The Golden Rule came from a Kansas Supreme Court case. It was located in Overland Park.

Chairman Elkins: The litigant in the case was named Gold, which is why it is named what it is.

Mr. Klein: These are considerations that aren't written rules. It is meant to guide decisions. Things to take into consideration would include impact on the surrounding properties, character of the neighborhood, surrounding zoning, how long the property has been vacant, the impact on the site, and if the hardship is more to the property owner if it is denied or to the surrounding community if it gets approved.

Comm. Pateidl: Let me back up to one of the early points you made about if it fits within the confines of the neighborhood. Isn't that the essentially architectural review?

Chairman Elkins: It looks at use.

Mr. Klein: Yes, it goes more to use, and an architectural review board looks at architecture.

Comm. Pateidl: That is why I asked the question.

Mr. Klein: We look at the use, the site, the traffic, the parking, the lighting, and all the very specific standards that they have to meet. The architecture does not. Leawood goes a lot further than some communities that don't do material boards. When I worked in Oregon, we didn't do material boards. There are a lot of different Golden Factors around the country. In Oregon, we had a case that was used in a similar fashion. Many states have gone through this same situation with different factors that have to be met in order to ensure the development is compatible.

Ms. Henry: As Mark talked about earlier, the public notification requires being published in a local paper. We also review the notification letters to make sure everything is included. The letters need to be certified mail and sent within 200 feet of the property. We also have a sign that goes along the adjacent public right-of-way. For the interact meetings, we have been working with the Parks Department, and we try to hold the meetings here at City Hall so they are centrally located. For the interact meeting, they would invite property owners within 500 feet and within 1,000 feet for wireless communication facilities of the property. There is also a Public Hearing before the Planning Commission.

Chairman Elkins: If there is no rezoning or replatting, is there still a requirement of a Public Hearing? What is the trigger for a Public Hearing?

Ms. Henry: Public Hearing is for Rezoning, Special Use, Preliminary Plan, and Preliminary Plat. Those are the four main ones.

Chairman Elkins: That creates a stressor for us because, often times, what the public is interested in is the appearance and materials used, but that is a detail we don't really review until the Final Plan. There is a little bit of a disconnect there because we're really not in a position to address the biggest part of the public's concerns in that stage of the process. We're not reviewing it. You'll hear me make comments to the developers that I hope they will consider issues when they come in for Final Plan, but we're not in a position to either recommend for approval or disapproval based on materials or external factors at the preliminary stage.

Mr. Hall: To your point, Marc, you should have minutes, and those minutes will incorporate the Public Hearing. If what you're seeing in a Final Plan doesn't seem to comport with what was talked about in the Preliminary Public Hearing, you can make it

known on the record that it was not what they said they would do and that it perhaps is influencing your vote.

Chairman Elkins: Some of you are really good and go back and look at those minutes. I appreciate that. You'll call out the developer. Frankly, often times, I just can't get to those minutes.

Comm. Block: That's why I asked. I'll go through it, but I don't keep the old ones and compare them. It's helpful if we could.

Comm. Pateidl: If you are curious, they're on the website.

Comm. Block: I'm not going to do that.

Ms. Henry: We do have site plan reviews for the Fire Department, Parks Department and Public Works Department. When applicants submit, we have reviews. When they resubmit, we have discussions as well. We also work very closely with the residents, so we know who has a complaint about a certain case. We try to work with the residents, and we'll sit down and discuss concerns. We take emails and get back to them as quickly as we can. We do the same with the applicants. We work with them to make sure everyone's voice is heard.

We review the notification letters before they go out. We try to make them as easy as possible. Even this week, we had people come in and ask to see plans. Sometimes, they want to discuss other issues. We let them know the appropriate departments for that.

Every applicant receives a sheet that shows deadlines for their application project. We're working on research projects, sign plans, landscape inspections, and other issues in which we work with residents, applicants, engineers, and more to try to get everything turned around in a short amount of time.

Chairman Elkins: Can you speak to the issue of open meetings?

Mr. Hall: I want to, but the changes made at this most recent legislative session are a lot to swallow. Open meetings, as they apply to us, will be handled by staff. When you need to reset for Executive Session, I have to revamp all the scripts that I wrote because the order has been changed as well as the requirements of a Closed Session that is not open to the public.

Chairman Elkins: What I was hoping to get to is that under the definition of an open meeting, anytime more than two of us are together discussing city business, it is considered a meeting of the Planning Commission, even though there is no quorum or official agenda. All the requirements of the Open Meeting Act kick into play.

Mr. Hall: That has not changed.

Chairman Elkins: So, if Jim, Staci, and I were to talk about what is going on at Cornerstone, theoretically, the public is entitled to know that we are getting together to

talk about it. If they don't know about it, it's an inappropriate meeting. One of our sister cities in Johnson County got in trouble for meetings that weren't appropriately called. This is ultra-technical now. It is no big deal if you send an email saying you will not be at the meeting, but if you reply to everyone, you have essentially created a meeting that she needs to record. It is problematic if people begin to discuss an application. It becomes a legal issue for the city.

Comm. Strauss: "Reply All" is not necessary.

Mr. Hall: The Attorney General's office has been very clear that even a technical violation will be pursued. It goes for any medium: text messages, phone calls, in-person, etc.

Chairman Elkins: Two of us can have a conversation and we're not in violation. It is when we add the third person and discuss business.

Mr. Coleman: It's probably a good idea not to pull your cell phone out during the meeting.

Chairman Elkins: That's a different issue. Do you want to speak to that?

Mr. Hall: Yes. Marc talked about this early on. There are two functions of the Planning Commission and City Council. There is a quasi-judicial and a quasi-legislative function. When we talk about a quasi-legislative function, we get to act like a politician. You can bring in whatever crazy leaps you may have into the conversation, such as, "I think pink is a great color." When we act on a quasi-judicial issue, we have to act on what the record is before us. If Church of the Resurrection has a website that a commissioner read, that information can't be considered by the body because it is not part of the record. In order to get it to be part of the record, we could go through the process of putting it on and making sure the minutes note that it was shown. What I'm really getting at is if it's not in the packet and is not discussed in the Public Hearing, it is not part of the record and can't be considered when discussing the application.

Chairman Elkins: If an application is in a quasi-legislative context such as a zoning change, it is a very black line that we have.

Mr. Hall: There is a lot of minutiae and useless nuance in there, but for practical use, it is accurate. If it's a zoning change, regulatory change, we are talking about a quasi-legislative function. If Jon Peterson is talking about a specific place, it is quasi-judicial, and we need to be careful about what we consider and put on the record because later, if we've considered something on the record, it can start to point to an improper decision.

Chairman Elkins: Some of our applicants will file suit if they don't like what we do. Part of the process of filing suit is to review the record upon which we made our recommendation and upon which City Council made its decision. To the extent that there is information that is outside of that record, now the decision could be reversed because

there is no way for the trier of fact to analyze what was actually motivating the decision. If we, for instance, bring in something from the smart folks, I should be asking what the URL is for the site and get it into our record. Even that is in a grey area. Obviously I have not done this in the past because it totally interrupts the flow of what we're trying to do.

Mr. Hall: I try to avoid it, too, because we need the entire URL. If it is any kind of a situation with a branch of a branch of a branch of a huge corporation's website, getting somebody to spell it out can be an issue, and getting it into an official record is also a challenge. If you go online beforehand and have pictures, let staff know, and we can see if we can include it as part of the consideration. It is mostly about making sure we have a record we can refer to.

Chairman Elkins: That we can defend if necessary. We've had 3-4 instances since I've been on the commission that have ended up in litigation.

Mr. Hall: Those are a few of the small things I wanted to talk about. Chairman Elkins talked about the Open Records Act a little bit. It doesn't apply so much to what you all do. We handle the Open Records requests for whatever might come through.

Chairman Elkins: Distinguish between open records and open meetings.

Mr. Hall: Yes, those are two different statutes. Open Meetings Act applies to your behavior. Open Records Act is what applies to the plans that the city is keeping or opinions that we might have internally. Police reports are the easiest example to understand of an open record. That's an exception. We don't have to release certain parts of police reports, but they are public record. We handle open records; you have to worry about open meetings: cell phone conversations, meeting at the bar, emails to more than one person.

Chairman Elkins: You talked about disposing of minutes. We're not in Executive Session, but let's talk about it a little bit. I'm the worst offender of everybody in the room because I'm a compulsive note-taker. When I'm taking notes during a meeting, if I don't toss my notes after the meeting and there is litigation down the road, the litigants are within their rights to ask for all the notes made during the meeting. We had an instance when a litigant pushed it. We had to go out and ask every commissioner if there were notes from the meeting. Unfortunately, I did have some, which was a lesson for me to be learned. According to the Saltzman Records Act, the notes that you take during the course of a meeting are fair fodder for litigation if it arises. They are not an official record of the meeting.

Mr. Hall: I will vigorously defend that as word product or the other executive privilege you can have: pre-dispositional process privilege. That's a good point on record retention.

Comm. Ramsey: With regard to reply on email, as long as we're only saying we will or will not be at the meeting, it is fine. The reason I send it to everyone usually is just as a courtesy to let you know that I'm not going to be there.

Chairman Elkins: It's really not an issue until you talk about the substance, but it is a technical point, and the Attorney General's office has been coming down on cities for that.

Mr. Hall: You can reply all, but at that point, you have created a meeting.

Chairman Elkins: Bill, you've been doing this longer than anyone in the room. Do you see problems?

Comm. Ramsey: Not really, with the exception that when we were talking about the meetings, we've had a couple meetings where the room was overflowing. Fortunately, I missed the one where you went all night long. Not necessarily for this group, but I've seen Planning Commissions in another life that got swayed by all that when they had no business because they were not paying attention to the record. It's difficult when listening to people get emotional about a particular plan or whatever. If it's within the confines of the record and if it meets all of our requirements and is within the LDO, it is allowed. There's really no appeal process in the LDO. It is either yes or no. If it meets the LDO, there is no reason not to let it go forward. If it doesn't meet the LDO, we can't turn around and let them go ahead and do it.

Chairman Elkins: That's the harder one. If the LDO prohibits it and it makes sense to us to go forward anyway, we simply don't have the jurisdiction to do that, despite what some of the attorneys for the applicants might tell us.

Comm. Pateidl: There are certain parts of the LDO that are subject to deviations.

Chairman Elkins: They are specifically called out, though. Staff will tell us if that is the case. Thank you for this presentation. Mark, if you don't mind, could you distribute the deck. We want to make sure Liz gets it. The only thing we haven't talked about is Executive Session, and you say that has changed, so that will be another work session. Are there questions for the staff?

Comm. Strauss: Can I distribute my presentation, too?

Chairman Elkins: We would be happy to have that.

Comm. Block: I think we've gotten bogged down a couple times when people have missed meetings. I think if you're not at a meeting, it is incumbent upon yourself to review the minutes from that meeting. I think some questions have been asked and have taken a considerable amount of time reviewing things that were already discussed at previous meetings. If we all would read the minutes ahead of time, we wouldn't get hung up on it.

Chairman Elkins: That's a good reason to keep your copies of the minutes.

Comm. Block: I know I'm going the other direction. I'm bogging things down by asking too many questions, but at least I know they weren't already asked at the meeting prior.

Chairman Elkins: I think for the most part, the commission has done an excellent job of appropriately considering the issues that come before us. I think the questions generally are very pertinent and show good preparation. From my perspective, I want to try to keep the meeting going. I feel like we've made a lot of progress in the last year or so. It's not from my doing; it's from your doing.

Mr. Coleman: Since we're talking about all these procedural issues, occasionally, an anomaly. Last month, most of you were at the meeting when we approved the Preliminary Plan for the Johnson County Wastewater Facility at Mission and 435. There is also an interloper agreement that has taken precedence over that project. Because the county has asserted its independent authority, you won't be seeing it come back to you for Final Plan approval. Governing Body approved the plan. What you will see come back through is a KCP&L substation application on the same site. It turns out that the engineers didn't do their due diligence in estimating the power requirements for the new facility, and so when they went to KCP&L and told them the plans, KCP&L told them they couldn't provide the power on the existing lines. Their solution is to build a new substation on the site. They are changing the filtration system for the overflow. On the good side, the overflow lagoon will go away and will be substituted with a building that has a high-capacity filtration system in it. On the downside, there will be a new KCP&L substation there with a couple of new high-powered poles because they will connect directly to the transmission lines on the site. We are still talking with the county about the power lines along Lee Boulevard and the location of those. I just want to let you know that will not come back to you.

Comm. Pateidl: In essence, the county asserts sovereignty?

Mr. Coleman: Yes. It is something like the state telling us about the towers, except they actually passed something.

Comm. Block: Where is the overflow going? I thought the whole thing was they didn't want to go to KC, MO anymore.

Mr. Coleman: They will treat 95% of all flow at that plant. There was an overflow basin. In a flood event with a lot more water than normal, if they couldn't handle the capacity, the overflow would dump into this basin. That would be treated after the fact.

Comm. Block: It was necessary a month ago but not now. Why is that?

Chairman Elkins: They expanded the capacity of the plant.

Mr. Coleman: It's a new technology and a new, special filtration system that doesn't require backwashing in the traditional sense, so they don't have to shut the plant down.

Any excess flow goes into that special filtration system to take care of it. It gets treated quickly, so it is a high capacity system.

Comm. Strauss: In the paper this week, they talked about the flooding around Coach's and that the Corps of Engineers needs to look upstream. Is that related to the capacity of the plant?

Mr. Coleman: There was talk about a flood-control program on Indian Creek. I'm not sure, and neither is Johnson County Wastewater, on how that would impact their facility, if at all. It may be 20 years or more.

Chairman Elkins: Many years ago, there was a plan in the middle of what is now Leawood for there to be a reservoir, a lake, built by the Corps of Engineers for that very purpose: stormwater retention for Tomahawk Creek and Indian Creek. We would have had a lake.

Comm. Pateidl: Not to change the subject, but did the car parking lot on Indian Creek get flooded?

Mr. Coleman: Yes, it did. They had dozens of cars that were ruined. Any cars parked in that area were flooded. It was two feet higher than on record.

Comm. Pateidl: The limo company got hit, too.

Chairman Elkins: It was an amazing thing to see water over State Line.

Mr. Coleman: Everybody was under water. We require any renovation of those buildings to be floodproof. Larson wasn't quite done, so they got a little water, but Ferguson Plumbing was required to be floodproof. They actually called us up and thanked us for making them do that because their building was virtually dry.

Chairman Elkins: Put that message in the file.

Mr. Coleman: They got almost no water.

Chairman Elkins: Good planning.

Mr. Ley: Larson was about two weeks away from putting up their floodproof door. They had a plywood door.

Mr. Coleman: They said it didn't do anything for a long time.

Mr. Ley: Part of the floodproofing is to the interior in case water does get in. They had those, so they can just wash it out.

*MEETING ADJOURNED*