

**City of Leawood
Planning Commission Minutes
July 28, 2009
Meeting - 6:30 p.m.
Dinner Session – No Discussion of Items – 5:30 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

CALL TO ORDER/ROLL CALL: Roberson, Jackson, Neff-Brain, Rohlf, Rezac, Williams and Elkins. Absent: Pateidl and Heiman

APPROVAL OF THE AGENDA:

A motion to approve the agenda was made by Roberson, seconded by Elkins. Motion approved unanimously with a vote of 5-0. For: Roberson, Jackson, Neff-Brain, Rezac and Elkins

APPROVAL OF MINUTES: Approval of the minutes from the July 14, 2009 meeting.

Chair Rohlf arrived at the meeting.

A motion to approve the July 14, 2009 Planning Commission meeting minutes with the change on the last page to read: “Opposed: Pateidl, Roberson and Rezac” was made by Elkins, seconded by Roberson. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

CONTINUED TO AUGUST 25, 2009 MEETING:

CASE 54-06 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-10 – ARCHITECTURAL STANDARDS – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 81-08 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-9.3 FENCES AND WALLS – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 20-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1 ACCESSORY USES (RESIDENTIAL EMERGENCY GENERATORS) – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING.**

CONSENT AGENDA:

CASE 40-09 – MISSION FARMS – OPPENHEIMER SIGN – Request for approval of a Final Sign Plan, located at the northeast corner of Mission Road and I-435.

CASE 44-09 – PARK PLACE – TORTOISE CAPITAL ADVISORS – Request for approval of a Final Sign Plan, located at 11500 North Ash Street.

A motion to approve the Consent Agenda was made by Williams; seconded by Neff-Brain. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

NEW BUSINESS:

CASE 41-09 – GARDENS OF VILLAGGIO – LOT 3 – Request for approval of a Revised Final Site Plan, located north of 137th Street and east of Roe Ave.

Comm. Jackson recused herself.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 41-09 – Gardens of Villaggio – Lot 3. The applicant is requesting approval of a revised final site plan. The original final site plan was approved by the Planning Commission as Case 78-06 on December 12, 2006. The changes had to do with some elements on the building, particularly some of the minor architectural elements such as medallions and landscaping. In addition, the applicant has also added some lighting around the soffit of the building. An art feature was to be located at the northwest corner of the building within this small circular plaza area, and the picture is in your packets. It is a four-sided piece of art with trees representing the different seasons. I don't believe it is bolted down. Staff is recommending approval of the application with the stipulations stated in the Staff Report, and I'll be happy to answer any questions.

Chair Rohlf: Any questions for staff?

Comm. Neff-Brain: It's my understanding they have some of this art and some of the green spaces in exchange for something?

Mr. Klein: Yes, when the Villaggio development came through, it was divided into three zoning districts. Along the north and west sides of the site, it is zoned Commercial Planned General Retail. At the southeast corner, it is zoned SD-O, which is Planned Office. The retail portion of the site did not require any F.A.R. bonuses because they were under the .25 allowed in that district. However, in the office portion of the development, I believe they had a .3, so they needed some bonuses in order to get that additional square footage in there. At the time they came through with their final site plan, they clearly designated which areas would count toward the bonus within the SD-O portion of the development.

Comm. Neff-Brain: I know there are certain things in the ordinance you can do to count for the bonus. Did they just do green space or green space and art?

Mr. Klein: They had green space and the art feature we just discussed, as well as increased landscaping. (*Places plan on the overhead.*) This is the plan that was approved for the overall development. You're seeing the boundaries of the office development here, where they needed F.A.R. bonuses. They proposed those bonuses to be located within this area. The Gardens of Villaggio actually consists of three buildings grouped around this central open plaza area, in which they also had a fountain counting toward the bonus. They had the art feature located in the northwest corner of Building S, which is the building we're talking about here. The only building currently

constructed is Building S, which is this one here. They also received F.A.R. bonuses with regard to a parking structure, which has not been constructed at this time.

Comm. Neff-Brain: When is the fountain required to go in?

Mr. Klein: I would imagine it would go in with the last building so it doesn't get torn apart. Basically they're constructing about 1/3 of the plaza area with this building. As each of those three buildings gets constructed, this landscaped area will be enclosed with the fountain and art feature.

Chair Rohlf: Any other questions for staff?

Comm. Rezac: On the enlarged site plan, it says Building S is that south building. Is that correct?

Mr. Klein: Right, they changed it from Building R to Building S.

Chair Rohlf: Anything else? Then we'll hear from the applicant, please.

Applicant Presentation:

Doug Patterson, 4630 W. 137th, Ste. 100, Leawood appeared before the Planning Commission and made the following comments:

Mr. Patterson: I just came from a meeting in which lawyers were prohibited from wearing suits, so I apologize for that. The need for this came as a result of some landscaping adjustments. Frankly, it was our mistake in that when the original plan was approved, we didn't anticipate two KCP&L transformer boxes that would be placed on the property where KCP&L says they're going to go. A good portion of this application, in addition to dealing with typos in the original plan that showed roof dentals where they never were supposed to be, is an "as-built" final site plan for this project. I want to generally address three staff recommendations and describe where I think we could compromise on them. On No. 1, I just want to clarify that while it says, "The project shall meet all requirements of LDO currently adopted," basically what you see is what you get. We have a temporary Certificate of Occupancy, which indicates that with all items including plumbing, electrical, mechanical, building and planning site inspection, there are no deficiencies. The TCO indicates the only items are the landscape plan and the art features. We have cultured stone, and that won't be changed.

The two real issues I want to talk to you about are in No. 3 and No. 4. In No. 3, "The revised final site plan approved shall be required for the two additional buildings." This approximately two-acre tract is platted in three buildings. The building you see there now is Building S. Another mirror image of this Building S, which contains approximately 5,000 square feet, will hopefully be built to the north of it about 16 feet north, separated by a sidewalk. The building on the west will be 10,000 square feet, creating a total of 20,000 square feet. We have revised final, and as you can imagine, the beauty of having a final site plan approved is essentially, you're building-permit ready. In these days, I get a call from the broker on any of the buildings saying, "Can you have the building up in six months?" Well, we're working on a letter of intent now for Building R, and I think we can get it up in six months. If we were to go back for a completely new final site plan approval, we're plugging in 60-90 plus days. We really don't want to give up the final site plan approval we have now on the other two buildings. The only issue I

think we have to deal with is that the original final site plan did not consider taking out of green space the area upon which the KCP&L transformers are located. It's approximately 30 square feet. We're really close to our required amount of green space because of the bonus that was granted in the rest of the development. We have the obligation to build the bonus features, and we have no problem with that. I'm trying to wrestle with how we can avoid telling brokers who have someone interested in building a building that needs it immediately and the fact that we've always said we have final site plan approval when the staff recommendation says we need a revised final, adding precious time. Maybe it could be required that we will submit a final site plan approval for the next building, the only issue being that we would eliminate 30 square feet from that building to provide green space. I don't know; there are other people who know how to deal with that better than I do.

The other item is a sidewalk. I invite you to the building. It's the prettiest building in Leawood. The sidewalk on the north side of our building is slanted, and it was built that way pursuant to construction drawings that were submitted to the city. The slanting is because the area to our north, which we own a part of and the developer of Villaggio owns a part of, is vacant, and water drains down to that sidewalk. The sidewalk has a drain through it, and on the south side of the sidewalk between the sidewalk and the building is a storm water inlet that carries the storm water underground to 137th into a storm water receptacle. It's not a noticeable slant; it's approximately 6" over a span of approximately 100'. It's not the prettiest thing, but it's functional. Even if we put a storm water inlet on the north side, the raised sidewalk would be a dam. The grade of our front door is lower than where that freeboard water would be on that sidewalk. If, for some reason, that inlet on the north side were to become clogged or didn't function, our building would flood. I have always known that when Building R (The 5,000 sq. ft. building immediately to the north of the existing building) is built, there won't be an entire three acres draining into this area. There will be essentially 8' between that north sidewalk and the building that will be flowing. At that point, we'll be able to raise that sidewalk to make it flat and to provide appropriate storm water drainage between the two buildings. I would like to recommend that No. 4 would be that identical language, but the sidewalk would be constructed to eliminate the slope at such time as a building permit for Building R is requested or at such time a Certificate of Occupancy is requested. It's always been a bone of contention. I've talked to Mr. Coleman about it. It doesn't cause any accessibility problems; it just looks weird, but it prevents flooding. The rest of the recommendations are fine. Nos. 11, 14, 15 and 16 are all done. What you see is what you get, which is the prettiest building and structurally the soundest building in Leawood. We are okay with the recommendation, other than No. 3 and the suggestion I have on No. 4. I'm open for questions.

Chair Rohlf: Mr. Klein, would you have any comment or response to his explanation of No. 3?

Mr. Klein: Let me go through a little bit of history. I can show you a picture that will make it easier to understand (*Places a diagram on the overhead.*) This sidewalk is located on the north side of the building. Building S is right here, and this is the bonus area I showed you before. This sidewalk runs right along the north side of this building. This pad is currently vacant and has a substantial grade change from the sidewalk on the north side. It slopes up steeply and then levels out and increases in grade as it heads to the north. An inlet was provided on the south side of the sidewalk, and it silted up. We had a lot of water that came down to the north and went across the sidewalk,

where water pooled as well. The building is actually occupied by two tenants: the applicant and one other tenant. We just recently saw a final plat for this building two months ago that involved removing one of the internal lot lines on the condominium plat. That was to take care of some issues with fire rating of walls between the two tenants. Because of the silt and water pooling, we were concerned that it would freeze in the winter and create a dangerous situation. (*Places a photograph on the overhead*) We talked to the applicant, who put in a French drain that went across. The sidewalk slopes down toward the center. As you can see, silt still goes across the sidewalk and collects, so it really isn't functioning the way it was designed to function. Staff is recommending that sidewalk be taken out, raised up, meet ADA and take drainage to the storm water system. That's the first issue with the sidewalk.

The second issue with requiring a final site plan for each of the remaining buildings as they go through comes down to a number of concerns. The first is the fact that we have a building that has been constructed, and we have some concerns with that building as far as the construction. A lot of the landscaping has died. Some of the irrigation doesn't appear to be functioning. Some of the pavers do not appear to be finished the way they were approved. We are also concerned that, since this area was related to the overall SD-O portion of the Villaggio development and those bonuses were based on the superior quality of this particular portion, it is staff's and the city's responsibility to ensure that the trade off for that extra square footage is that superior site planning, landscaping and artwork. You can see substantial landscaping here with the approved site plan. Now we have this building sitting there, and staff wants to ensure the courtyard is built out the way it should be built out, as it is where they earn a substantial amount of the bonus.

Comm. Roberson: Mark, is a sidewalk supposed to be between those two buildings based on that plan?

Mr. Klein: Yes, between this building and the one to the north (*refers to site plan*).

Comm. Roberson: I don't see a sidewalk, or is the sculptured courtyard part of a sidewalk?

Mr. Klein: There is supposed to be a sidewalk around here. I believe that changed a little bit to provide access from one of the parking lots.

Comm. Roberson: Is that one large courtyard? It looks green to me over here.

Mr. Klein: You're absolutely right. It changed a little bit from the time of the final site plan for the overall development where they called out the bonuses. Part of the change was a sidewalk extending from a parking lot through this area where you currently see the trees and the green area here. Here, they show it as a blue area where a sculpture would be, without indicating the exact location. When Gardens of Villaggio came through, they provided the sculpture you have in your packets. At the time this was approved, this was not defined yet; however, in your packets, you can see the fountain that was supposed to be located in the center of that courtyard as part of the building plans. Things got defined a little more as far as bonus areas.

Comm. Williams: What you're showing us and concerns you've expressed with dying landscaping and sprinkler that are maybe malfunctioning - aren't those more

construction issues than planning issues? We wouldn't be addressing any of that if we were to revisit a revised final site plan for Building R. What are you hoping to achieve? I heard you say you wanted the landscaping, but we've got a plan that shows that. If they build it per that plan or bring in construction documents for the permit for Building R and meet that plan, is that not sufficient?

Mr. Klein: Part of the concern is this building was approved in 2006 and has been constructed. Now, we have a situation with a revised final site plan, and some things have not been constructed per their currently approved plan. We're trying to ensure that the rest of the buildings still meet that same intent going forward and create this overall concept that was originally approved. For instance, in this case, you have a door located on the east side of the building that has now been split in two. Before there was a great entrance, and now there are two steps. We have a sidewalk on the north side that doesn't function the way it should. The plaza area is getting difficult to define how it will look, especially when parts are finished piece-meal. There is a construction element to that, but staff is also concerned to make sure that the Planning Commission has an opportunity to try to make sure the whole thing still makes sense in order to justify the bonuses.

Comm. Williams: Again, if they brought in a plan on a building that matched the final site plan that's been approved at this point, you still would have issue and want to bring it to the Planning Commission?

Mr. Klein: Now that this building has been constructed with changes, we would want to revisit it to make sure the plan still had carried forth the original intent. If no changes had been made to this plan, they wouldn't be back here. There would be no revised final site plan, and they would be able to come in with a final site plan for the other buildings. The changes make us feel that it is appropriate to require a revised final site plan for the other buildings. Again, we have no idea when these buildings are going to be constructed. The applicant has indicated they're working on a letter of intent right now, but if that building doesn't come in for another five or ten years, a lot could change in that period of time. We'll have to look at how it all will fit together and look complete.

Comm. Williams: I agree on your comment about the aging. If it doesn't come in for three or four years, things will look substantially different. In that regard, with the changes that have occurred and the reason for the applicant being here with a revised final site plan, what are the items that are of most concern to you and to staff that you have concerns with on Building R, if that's the next building?

Mr. Coleman: One thing that has become evident with that north sidewalk is the grading of the site. That's one of the reasons we would like to have the new buildings come in for revised final site plan approval. We want to make sure the grading, as it relates to all the property owners in the Villaggio development, fits well together and that the drainage is good as well. We feel right now there is potential for a problem with this plan and the fact that Building R is a couple feet higher than Building S. Another issue brought up by the applicant is the transformers and electrical boxes. This would give a chance for them to locate any additional electrical equipment in their revised final development plan. They have to come back for it anyway, so it would be better to have it up-front, rather than to have it always coming on the tail end of the development, where it's just placed wherever it ends up. This would allow for forward planning with KCP&L for both of these new buildings. Those are two reasons: grading and making sure it all works properly

together and the utilities. The sidewalk on the north side with the drainage is something I don't think was anticipated by the Planning Commission or City Council. We have had some complaints about it from the other owner in the property. As Mr. Klein pointed out, in winter, it poses a challenge with ice. Our suggestion in the Staff Report is to raise the sidewalk up 6 inches, put an area drain on the north side of the sidewalk and connect that drain into the storm sewer system. If you look at that picture, you might see the pipe with the trench drain in the sidewalk isn't even actually connected to the area drain between the sidewalk and Building S. Trying to fix something after the fact is never a good solution. We would like the opportunity to make sure the final plan and grading for this project is adequate and serves the function so we don't to come back before you and change things to get them right after the fact.

Comm. Williams: In the final site plan that was initially submitted and approved for these three buildings, was there not a grading plan to address the storm water?

Mr. Coleman: It had a grading plan, but it was a very generalized plan. It was difficult for staff or even the Planning Commission to understand, unless you were looking at it very carefully, that this sidewalk would dip down and that water was going to drain over the top of it.

Comm. Williams: I'll speak for myself, but I seldom look in great detail at the grading plans. I know one of our former commissioners went to that in great detail, but he's not with us on this panel anymore. Thank you.

Comm. Neff-Brain: In Stipulation No. 1, Mr. Patterson kept saying, "What you see is what you get." Is there something that doesn't comply with the Leawood Ordinances?

Mr. Klein: I think he was just indicating that these are the changes he is proposing, and therefore what you're seeing is what he's proposing, and that is what is to be approved. However, in the original approval, all the ADA, building codes and LDO ordinances that are applicable have to apply anyway. This is just a way to ensure everybody understands that is the case. I know the applicant indicated this building has cultured stone on it, and things have changed as far as the city's support of cultured stone. I think maybe that's what he was getting at. However, cultured stone was approved with this development, so this is not against the LDO.

Comm. Williams: So in that regard, there really shouldn't be an issue with No. 1.

Chair Rohlf: Any other questions for the applicant?

Comm. Elkins: Mr. Patterson, you started your presentation by making reference that at least part of what has triggered your appearance before us tonight is the installation of the transformer boxes. That's an issue that, over the course of the last few months, I've really developed an interest in. Can you tell me, as the applicant, how is it that these transformer boxes just seem to appear "wherever KCP&L wants to put them"?

Mr. Patterson: That's what they told me. I didn't buy them. They were willing to adjust the locations of them. At the time the final development plan was approved in '07, we did not have the location for placement. At that time, KCP&L told us that those two boxes were going to come in within the size that allows the Planning Director to administratively approve them. When KCP&L showed up and poured the concrete and

put the boxes in, they exceeded that maximum that the Director can approve by ten square feet. Therefore, we were plugged into a need to come back to you. They did work with us, but they let us know that if we want power, we're going to have to make it so it works. They're sized to provide that any further above-ground utility boxes will come in within the size that allows the Planning Director to have discretion in approving them without having to come back for final site plan approval. We were first told they would be within the administrative approval realm, and they were not.

Comm. Elkins: Mr. Klein, can you help me with this a little bit as well? Like Mr. Williams, I don't typically look closely at grading plans. Is there another part of the plan packet that we get that would show me the size and location of these transformer boxes?

Mr. Klein: No, and I think that's what the applicant is saying as well – that he was told by KCP&L not to worry about it and the boxes would be small enough to be administratively approved when they do come in. Currently, the LDO breaks out the approval of these boxes by size. For instance, if they're under 55" in height and don't have a pad area of more than 15 square feet, then it can be administratively approved. When it exceeds either one of those, it has to be shown on the final site plan. Staff has worked with KCP&L and a number of the applicants in trying to get these things shown on the plans early. In the past, we've heard from a lot of the developers that KCP&L basically does what they want as far as placement and size. According to the applicants, they don't find out where they will be until the last minute. Then we're thrown into the situation of a revised final site plan in order to comply with the ordinance. We're trying to get applicants to contact KCP&L as early as preliminary plan stages and get them to indicate where the boxes will be placed, preferably closer to the buildings as opposed to the sidewalk. This case came forward in 2006 before it became a hot issue, but now requires approval for the screening.

Comm. Elkins: Mr. Klein, is the placement of the boxes a function of technical requirements with respect to the delivery of electricity, or is it more ease of access for maintenance? I understand what you're saying about size of the boxes, and I'm not being critical of staff or the applicant here. If anything, I'm being critical of KCP&L, but it seems to me that regarding the placement of the boxes, KCP&L is avoiding the planning process. These boxes, especially the ones that are over 55", take on a fairly significant role in the appearance of these projects. Sorry, Mr. Patterson, but this is a good opportunity for us to explore this since it is what triggered this particular event.

Mr. Klein: I'm not an expert, but I believe it is both technical requirement and ease of access. They have sectionalizers that need to be every 300' or something like that. Then they have transformers that provide power to the buildings. From what I've seen in the past, it's my impression that the transformers are a little easier to move around. A lot of times, they're the larger boxes there. We've seen them placed next to the building, allowing an architectural screen wall that matches the building to screen them pretty effectively. However, the sectionalizers seem to typically go along the right-of-way. There is some leeway, I think, as far as specific location of the boxes. A lot of times it seems like KCP&L wants to place them adjacent to the sidewalk where they open toward the sidewalk because they want to be able to "pick the box" from the street, which leaves no opportunity to screen the box from the public right-of-way. We've had certain situations where the developers worked with KCP&L and actually turned the box to the side so, although I can't be picked from the street, it still allows a 10' clearance,

which they require and allows landscaping between the street and the box. They just have to walk around to the side and access it that way.

Comm. Elkins: I think we have a real dilemma here. One way to try to get these boxes in the planning process is to require the developers to deal with KCP&L before they come to us, but that doesn't seem to be very fair to the developers, either. I know what it's like to deal with a utility company, and I'd be reluctant to foist that upon the developers. On the other hand, we need to find a way to get these boxes in the planning process because they're popping up in the middle of neighborhoods and right off the street. It's a real concern for me. Thank you for giving me the opportunity to discover what the issues are.

Mr. Patterson: Actually when we were dealing with the connection, a gentleman who has since retired even suggested that maybe the Public Affairs staff of KCP&L would meet with cities to develop criteria where you could anticipate those transformers and equipment in excess of the 55 square feet.

Comm. Neff-Brain: Since the piece of art is part of the bonus, I wondered if you could tell us a little bit about it. Is it made of sheet metal or stainless steel? In this picture, it doesn't look very finished. I don't know how it will be landscaped. Will it just be on a concrete pad?

Mr. Patterson: You'll recall the green sheet he had. That was the preliminary plan that the developers for Villaggio anticipated for that block. That had a two-story building on it and didn't have a sidewalk between the two buildings. Our preliminary and final plans that were approved in 2007 were fine-tuned essentially to what you see today. The sidewalk is built exactly as it was designed and submitted. At the end of that sidewalk toward the west begins a brick area with a circular area, and upon that is the art piece. It is consistent with the design originally filed and approved by you in 2007. It is a metal structure, over which is mounted powder-coated lattice (big-screen metal) colored the colors of the seasons. Over that is mounted a bowed stainless steel piece which has cut out of it by laser cutters the symbol for the Leawood tree. That is supposed to designate the four seasons in Leawood. It is bolted into the brick now and is within a circular area which has now been expanded to be ADA accessible. It's big; it's 8' tall. The art piece is called Fi (nature's number). It is high, wide and diagonal per nature's perfect number. It is complete. It took me back at first because it looks a little out of place, but to me, all art that is not a statue of a deer looks a little out of place. I couldn't complain because the artist is my daughter.

Chair Rohlf: Any questions for Mr. Patterson before I offer him the opportunity for a brief response to staff comments?

Comm. Rezac: Mr. Patterson, you referred a couple times to maybe fixing the drainage problem when Building R is complete. Do you have a timeline on that? Also, would you be willing to adhere to one?

Mr. Patterson: Yes, I am as motivated as anyone to get that building underway because I'm a property owner. It's what the market will do. I would say that is in connection with this final plan approval. I would say two years, because at that point, we're going to have to hunker down for a longer recession than we think we're in. Our broker calls these things eagle buildings because they're granite. She thinks that, notwithstanding

the economy, it's going to fly. It's not just eliminating the slope. It is a true drainage, flood-control, storm water issue because as soon as we raise it up, it will dam water. That water, if it exceeds a certain level during a particular storm event, will flow into the front doors of the building. That was why it was built exactly per plans submitted to the city. The recession from the east and west sides of the sidewalk is at 2006'. The plan shows very specifically that the water flow will go south, and that the sidewalk will drop down from 2006.14' on the west to 2005'. It shows exactly the drop, and it works. The picture that Mark showed does not reflect what's on there now. We have installed a pipe under grade that captures water from the French drain and puts it into the storm water receptacle sub-grade. As soon as we get the sod guys out there, we'll sod it over so it will look like a French drain is supposed to. I would say if we don't have Building R in two years, we'll rip it up; but I'm going to have to deal with my neighbor to the north in terms of what we can do if we have a major storm event and if we get flooded as a result of the freeboard that would be created by raising that sidewalk.

Comm. Rezac: Mr. Klein, I understand that the raising up of the sidewalk is only one piece of this stipulation, and the other part was actually trying to solve the drainage issue.

Mr. Klein: Correct, it was to install a drain on the north side of the sidewalk to catch the water and take it into the storm water system.

Chair Rohlf: Mr. Ley, do you have any comment on the situation from what you've observed?

Mr. Ley: It was built according to the plan; however, as they've stated, without that building to the north, quite a bit more water flows into that inlet than what was originally designed. One of the issues is if the inlet even has the capacity to collect the water that's flowing there. Another is if the pipe has the capacity to move it out of there. If that area does flood currently, it would have to rise high enough and then flow east or west to get out of there. I don't know if, by raising the sidewalk, you're really creating any additional flooding because if the area inlets get clogged, the water still is going to have to go east or west to get out of that low point.

Chair Rohlf: You would be in favor of reconstructing this?

Mr. Ley: If we're going to allow them to go a couple years, I think they need to reanalyze that storm sewer system for the area that's actually flowing to it.

Comm. Neff-Brain: Are we talking a private or public sidewalk?

Mr. Ley: It's a private sidewalk and private storm sewer.

Chair Rohlf: Mr. Patterson, did you have any additional comments you wanted to make in response to comments about Nos. 3 and 4?

Mr. Patterson: Sure, I think we've talked about the sidewalk enough. Regarding the final plan, I agree with Mr. Williams. In Leawood, you better build what's on the plan and build it right. We were going to have a double door on the east side, and we made provisions for a mechanical room and took one of those doors and put it in the mechanical room. We took another and kept it where it was as the front entrance and

another entrance to our suite that has about 3,500 square feet. That's the only deviation we made, except for these power boxes and so forth. What Mr. Coleman discussed is coming back to revisit this in terms of the overall elevation. Villaggio has submitted a grading plan that has been approved, and we cannot change that. The good part about Gardens of Villaggio is the building on the north will be 3' higher than this building. We don't want to build it on a flat plain. There will be some breakage of elevation. It will look Tuscan. We want to build under the grading plan we have that was submitted by the developer. We can't deviate from it. It's like a bubble – you change grade on one area, and you're going to have problems in another part of the development. I think that, with the exception of the KCP&L boxes, which KCP&L says are going to come in within the administrative guidelines anyway, we need the ability to tell buyers that we have a final site plan. If, from a "building what's on the ground" point of view, we begin to deviate from what is in a final site plan, we're going to be stopped during construction and told we can't continue. We've got a good plan with a good building on the ground. If you're developing a building and get an inquiry, you need to jump. We've told them we have a final plan for the next two buildings that is good and has been approved. At this time, there are no planning site inspection problems and no building final inspection problems. We have a planning site issue with landscaping. We don't think it's necessary to come to us now while we're in front of the Planning Commission and ask us to scrap our final plan off and agree to start fresh. Final site plan approval from Leawood is a very valuable thing to have; it's worth months and can make all the difference between having a proud business owner in Leawood or elsewhere. That's what we're dealing with and why we came for final site plan approval. It's a good plan that has been approved. Hold us to it. We will build pursuant to it. I've heard no merit to making us start all over in the next building.

Comm. Roberson: Mr. Coleman, did you have any issues with the building itself?

Mr. Coleman: I'll give you my history. I haven't been here quite a year, but this is one of the first buildings I went out and visited. The new part-owner in the building came out immediately to talk to me about the building and to express his concern about a number of issues he was having with the building. That piqued my interest in the project, so I went back to research more. Mr. Patterson does have a TCO, and we've extended it multiple times over the past year in an effort to get him to comply with both the building codes and the Planning and Governing Body's stipulations in the final development plan, which includes the landscaping, ADA accessible ramping, some of the other sidewalks and screening of the utilities. We had to go back and have Swiss hammer testing of the concrete to make sure that the concrete met the specifications of the building code. The re-platting was part of this investigation. The plat lines didn't correspond with the actual building, so that was the reason for the re-platting. There have been a number of issues on this particular project over an entire year. That is one of the reasons we're recommending to the Planning Commission that the rest of this particular development have a revised final development plan for the other two buildings – so we can try to make sure some of the things that were not taken care of up-front are, including the grading, utilities, ADA accessibility and other issues. There were some planning issues and some building issues. The building issue is a whole other side of things. It is part of my duties with our building official to make sure those things are complied with. It also is my duty to make sure they are complying with the Planning Commission and Governing Body's actions, which is what we've been trying to do over the past year. That's partially why Mr. Patterson is before you now asking for a revised final development plan – because the original final development plan was not complied with.

Comm. Roberson: Thank you.

Comm. Williams: I don't mean to belabor this point, but outside of the KCP&L transformer and screening on that, could you go through what they're not in compliance with? Are we talking just location of shrubbery?

Mr. Coleman: It is species, number and location of the landscape plan including the utility screening. Over the past year, we have had additional items that have not been complied with.

Comm. Williams: We're not really talking major planning issues if we're talking species of plants and they come back and correct those; it doesn't necessarily affect the building. I understand your comment about the grading; that's another issue. Where I'm going with this is their need to have to come back with a revised final site plan for Building R if they are going in with the same building footprint, the same plan and landscape placement that shows on that final site plan as Mr. Patterson said they would do.

Mr. Coleman: I think staff would like to take a closer look at that whole development, and that's one of the reasons we're asking for this. Since it's been opened up with this revised final plan for this project, we put in the stipulation that they come back through.

Comm. Williams: In that process, what are you looking to revisit and ask for them to change? Is it strictly the grading? Any thoughts?

Mr. Coleman: One thing would be the grading and also be locating the utility boxes.

Comm. Williams: And if they can't get the utility boxes located before they come in with the plan, you're not going to go forward?

Mr. Coleman: I didn't say that.

Comm. Williams: No, I'm only asking if that would be the case, knowing the city-wide problem we have with KCP&L.

Mr. Coleman: We have had meetings with KCP&L concerning these issues. KCP&L is reluctant to finalize their plans before they're ready. You probably have to start the process of getting their engineering group working on those plans long in advance. They do have certain rules of thumb for locations of these transformers and switch gear, which can readily be put on the final plan. As long as they're within a reasonable distance of that location, I have the authority to approve those slight deviations from locations. Plus, it also might give the opportunity to actually have the transformers enclosed in part of a screen wall with the building, which we have done in other projects in Leawood and has worked out the best.

Comm. Williams: Again, my reason for asking the question is trying to give the developer a little benefit of the doubt. They've got a development plan that was approved. They've built the first building in what sounds like large compliance with a few minor exceptions. To have them go through the revised final site plan process for the next building and add 2-3 months to that process, to me, just seems a little excessive on

the developer. If they're looking to make major changes, certainly resubmit and redo it to get approval.

Mr. Coleman: Of course, they're going to have to come back with a revised final development plan for any utility boxes that KCP&L might put out there. We have that situation now with Park Place, where they have to come back with a final development site plan for those utility boxes.

Comm. Williams: But they can come back and do that after a building is under construction.

Mr. Coleman: What has happened is they're coming back and doing that after the transformer boxes are in. It's left the barn, so to speak. Once the transformer is in, there's not much we can do but try to put a few plants around it, rather than having the ability to really plan where those go.

Comm. Williams: I am in full agreement of the concept of trying to plan where those go. I know from my personal experience how difficult it is to work with KCP&L. I hate to see us penalize the building developer for the lacksidical attitude of KCP&L when it comes to timeliness in locating boxes and stating a size and then coming out with a box that's bigger. It's happened to me several times, and it's happening to me right now on a project.

Mr. Klein: Commissioner, one of the issues we face with this development is when it initially got approved with the three buildings, it didn't show a phasing plan. At the time we thought it was one of the first phases, and although one building might go in sooner than another building, they would all be substantially completed as a package deal. The reason I bring that up is now that we have a building constructed and a lag in time before the next building, unfortunately what happened at the time of that original approval was we really didn't account for only one building being built for a substantial period of time. Where exactly is the edge of what they're expected to improve? How will they make it look like a completed project? How much of that central plaza are they going to construct? Right now we have a situation where things are haphazard out there. Part of the advantage of going back through and having them do a revised final site plan for each building is we can start addressing some of those issues. Now we're in an economy that is looking like we might have one building out there for a couple years, and we might get the next building built, and the third one might come along later. As least it will look like a project that's proceeding according to a certain structure, as opposed to waiting for that last building to go in to finish up anything the other two didn't do.

Chair Rohlf: We've had quite a number of comments and have already had a significant discussion on this. Is anyone in a position to make a motion at this point?

A motion to approve CASE 41-09 – GARDENS OF VILLAGGIO – LOT 3 – Request for approval of a Revised Final Site Plan, located north of 137th Street and east of Roe Avenue including all of Staff Recommendations 1-19 – was made by Roberson; seconded by Neff-Brain. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

CASE 42-09 – ONE NINETEEN – DESTINATION MATERNITY – Request for approval of a Final Site Plan for a tenant finish, located at the southeast corner of 119th Street and Roe Avenue.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 42-09 – One Nineteen – Destination Maternity. This is a tenant finish located within the One Nineteen development, and the applicant is proposing a storefront and also some signage. The storefront itself will be a standard storefront with clear windows as well as brick. Staff is recommending this for approval; however, there is one outstanding issue between staff and the applicant having to do with the signage. Per the sign criteria for the One Nineteen development, the letter height is limited to 24” in height. I believe they have what they call an ascender, which is a portion of the first letter that goes above. That is 28”, and staff is recommending the sign criteria be adhered to. Another issue with regard to signage is there is a transom sign just over the entry doors. It reads “Motherhood” and “a pea in the pod” which are brands of the Destination Maternity, their superstore. Staff is recommending approval of this application with staff stipulations regarding sign criteria. Staff is also not supportive of three signs, but rather just the main “Destination Maternity.” The LDO does prohibit advertising of brands on the names, and we believe these are brands. The sign criteria for the development limit it to whatever the lease name is. The applicant stated that it does say “Motherhood, a pea in the pod.” However, staff considers these to be brands. With that, I’d be happy to answer any questions.

Chair Rohlf: Questions for staff? Then we’ll hear from the applicant.

Applicant Presentation:

Roman Goodfellow, designer and project manager for Destination Maternity, 456 N. 5th St., Philadelphia, PA, 19123, appeared before the Planning Commission and made the following comments:

Mr. Goodfellow: We intend to comply with staff recommendations. We do want to discuss No. 1, regarding the signage. A 24” letter is too short. We have a very unique logo that is all lowercase letters and does create an ascender for the “d” as well as a descender for the “y” and a couple dots for the “i’s”. We have several letters that are out of compliance. We feel as though it does conform to the landlord’s criteria and the design intent. Further, there are a few other in-line tenants that also exceeded the 24” criteria. (*Passes out display boards*) One of them shows the sign as we have currently proposed. The other one shows it in-line with the rest of the development. We also show the West Elm signage, which is similar in using lowercase ascenders as well. I have one in there of a 24” mock-up of a capital letter sign, which isn’t our logo and we wouldn’t install it; but you can see that it actually uses more square footage than what we’re actually proposing. The transom sign, we’d like to get permission to install. Motherhood and pea in the pod in this particular scenario are with our Destination Maternity stores and are not brands. These are actually two stores we’re closing in the area and building out. We had the Motherhood store in Oak Park Mall and pea in the pod in Town Center that we’re closing. I have another board here to present with different build-outs for each of these stores within this facility, as well as the superstore

being an enhanced shopping experience for our clients (*passes out another display board*). Overall, the smaller letters are 20"-22", and the "d" and "y" are 28".

Comm. Roberson: Mark, with respect to the signs in One Nineteen, disregarding the apple because that's an exception, are there other deviations in terms of height?

Mr. Klein: I believe the West Elm also had a deviation with regard to that. This is a situation in which the sign criteria for the overall development are what are being evaluated. Staff will always support that sign criteria because staff always feels like it's better for the developers to come in initially without the pressure of an individual tenant trying to increase the amount of signage they have, because everybody wants more visibility. If they develop criteria that makes sense with their facades up-front, that's what staff supports. In this case, the One Nineteen development has spelled out 24" maximum letter height for small tenants, which is what this falls into.

Comm. Roberson: So all the small tenants are adhering to the sign criteria.

Mr. Klein: West Elm did not. I believe the Planning Commission actually granted a deviation, which is something the Planning Commission can do. Per the Leawood Development Ordinance, if there is sign criteria in place, then that should rule; but it has happened in the past.

Mr. Goodfellow: It's also a sign that uses lowercase letters. The ascenders go to 3', and we're only looking to be a 2'4".

Comm. Williams: The variance may be granted for West Elm. Looking at dimensions and placement that was provided in these boards, even though it exceeds the height in a couple of places, overall it's a much smaller sign. It is 19' from one end to the other versus this one being 26'-29'.

Mr. Goodfellow: It was 30'.

Comm. Williams: Looking at how that sign reads on the building versus the West Elm signage, it fits very nicely on the overall façade and doesn't take up too much space.

Comm. Neff-Brain: I don't have a problem with the main sign going a little above the 24"; I do have a problem with the transom sign. I think it gets to be too much. The blade sign and main sign are both fine, but I object to the transom sign.

Comm. Rezac: I think you said only two of the letters exceeded the 24".

Mr. Goodfellow: Correct, the "d" and the "y" and the dots are slightly above 24".

Chair Rohlf: Does anyone have anything else for the applicant?

Comm. Jackson: Do you agree that the transom sign isn't going to be there?

Mr. Goodfellow: We would like to try to keep the transom sign. For one thing, it gives us some more recognition. Most of our clients will identify with one brand or the other. Destination Maternity is a new concept. It's our next tier up, but we don't want to lose the customer base that we have from both of those stores. They may recognize

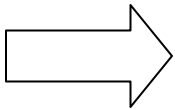
Motherhood Maternity or pea in the pod, but not Destination Maternity. We want to be able to have that presence.

Comm. Jackson: If we made a motion and passed it tonight based on that, would you rather have that than a continuance?

Mr. Goodfellow: I would have to go back to my vice president, unfortunately, and see where he would like to go.

Chair Rohlf: Anything else? Thank you. Does anyone have any further comments or thoughts on this particular sign?

A motion to approve CASE 42-09 – ONE NINETEEN – DESTINATION MATERNITY – Request for approval of a Final Plan for a tenant finish, located at the southeast corner of 119th Street and Roe Avenue with the change to Stipulation No. 1, allowing a deviation for the sign as presented to be allowed and a blade sign to be allowed, but not the transom sign and including all four other stipulations – was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 5-1. For: Roberson, Jackson, Neff-Brain, Williams and Rezac. Opposed: Elkins.



CASE 37-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-3 SPECIAL USE PROVISIONS – Request for approval of an amendment to the Leawood Development Ordinance. PUBLIC HEARING

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 37-09 – Leawood Development Ordinance to Section 16-4-3 – Special Use Provisions. This amendment removes the requirement for preliminary and final site plan for Special Use Permits as determined in other sections of the ordinance. Those site plans are required with the Special Use Permit, so they would still be required; however, this eliminates the need to specifically call them a preliminary and final site plan. It also corrects a discrepancy between two parts of the ordinance with regard to utility boxes. We have one section of the ordinance that calls out 15 square feet for the pad site, which we just talked about with the last application. However, within the SUP section, it does refer to the utility boxes and calls out 12 square feet as well. This makes them both require 15 square feet and 55 square inches, as opposed to 54 square inches.

Comm. Roberson: Mine says “540.”

Ms. Shearer: Actually, there is a “5” underlined, and the “4” does not have a strike-through as it should.

Mr. Klein: I’ll be happy to answer questions.

Chair Rohlf: Questions for staff?

Comm. Elkins: Ultimately, what’s the effect of the first change, by providing exemption for preliminary and final site plans for Special Use Permits?

Mr. Klein: What it's really accomplishing is we require those as part of the Special Use Permit as far as site plans in general. To require both a preliminary and then a final site plan to go along with the Special Use Permit was being more or less redundant. This intends to clean up what they have to do. We had a situation with the Sprint antennae with the Monopine under a Special Use Permit. With this in the ordinance, it requires them not only to come back for a new SUP every time the ownership changes, but to also specifically come back with a preliminary site plan, which isn't changing since the project is completed. We would have a final site plan with a Special Use Permit anyway.

Comm. Elkins: So if we pass this, the applicant will be permitted to come in to us presenting strictly a Special Use Permit request.

Mr. Klein: Yes, and part of the requirements of having a Special Use Permit request is that they provide a site plan to go with that. Again, it takes out the fact that they specifically have to call it a preliminary site plan and final site plan. A Special Use Permit requires a lot of notifications, including a legal notification in the paper, legal notification within 200 feet, the interact meeting and a sign next to a public right-of-way indicating a Special Use Permit is pending. The preliminary plan has the exact same notification minus the sign. Even the notifications were redundant, and the SUP has the higher level to be met.

Comm. Elkins: Does this mean they only come to us once instead of twice?

Mr. Klein: A lot of times what we did anyway was to allow them to bring forward a preliminary site plan, final site plan and SUP. If you take it from Sprint's point of view with the Monopine already constructed, they are just simply changing ownership. The site plan isn't changing, and now they have to pay for a preliminary site plan when they aren't changing it. The same is true for the final site plan.

Comm. Elkins: Is there any difference in the standard of approvals, either here or at the Governing Body? The quorum and voting requirements are the same to pass it in either event?

Mr. Klein: Correct, and quite honestly, the SUP has the highest standard of all of them.

Comm. Elkins: Referring back to some of the materials we were provided in Plan 41-09, there were pictures of these boxes. Help give some scale here. There are two boxes in the picture. Would one of those be compliant, such that staff could approve it and the other one would not?

Mr. Klein: Actually, I don't believe either one of those was able to be approved. The one you have there is actually shorter, so the height wasn't an issue with it. That came down to the footprint of the pad. It doesn't take much to go above 15 square feet. The change with this ordinance takes the more liberal view of 15 square feet, as opposed to the 12 square feet that the SUP section of the ordinance called out.

Comm. Elkins: Thank you.

Comm. Rezac: We were discussing that something could be done administratively regarding these boxes. Can you address how that ties into this, if at all?

Mr. Klein: The SUP portion of the ordinance was calling out 54” and 12 square feet for the pad site. To be administrative, you would have to be below 54” and 12 square feet. The changes not only make it match the section of the ordinance that deals more specifically with the utilities, but it also means that it would be a little easier for them to actually get an administrative approval, as opposed to going through a final site plan because it would increase the height from 54” to 55”. While it’s not a lot, it can actually make a difference. More significant is the 12 square feet versus the 15 square feet. It can make it a little bit easier to get administrative approval.

Comm. Rezac: Based on the discussion that we had at the beginning of this meeting, I would hope that whenever people could do things administratively for a box here and there, that they could do that without having to come back to the Planning Commission. The 15 square feet, I don’t know what that does in general, based on what you see throughout a year. I just want to make it easier for people, because they are not always in control of those boxes, to do some of this administratively.

Mr. Coleman: We agree. We’d like to do as much administratively as possible. As Mark said, this cleaning up some of the conflicts in there will allow for that. Our hands are kind of tied in the LDO in that if they exceed those measurements, they need to get a permit through the Planning Commission and City Council.

Comm. Jackson: Mark, does that first change that you’re looking at mainly with respect to these communication towers affect any other Special Use Permits that generally come through – pharmacies and banks with drive thrus and those sorts of things?

Mr. Klein: I’ll defer to counsel.

Ms. Shearer: Actually it won’t change anything else. The reason we picked the language, “unless expressly exempted herein” is that next on the agenda, we’re expressly exempting herein wireless communication facilities, towers, antennae from having to go through the preliminary and final plan process for all the reasons that Mr. Klein has already stated. As you will recall from a few months ago with Mr. Holland, he was not very happy to find out he needed a preliminary and final plan due to a technicality in the LDO. This will clean that up.

Comm. Jackson: So there is no other LDO out there that gives an exception for anything else.

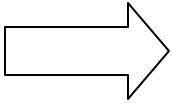
Ms. Shearer: No, and that’s why we chose that language. Instead of more inclusive language, we chose to use exempting. That way, we would have to specifically go through the LDO and exempt them by section, thereby not accidentally exempting anything.

Chair Rohlf: Anything else? This case does require a Public Hearing. Is there anyone in the audience that wishes to speak about this case?

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Williams. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

Chair Rohlf: That takes us to a motion.

A motion to approve Case 37-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-3 – SPECIAL USE PROVISIONS – Request for approval of an amendment to the Leawood Development Ordinance – was made by Williams; seconded by Roberson. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.



CASE 38-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-12 – WIRELESS COMMUNICATION TOWERS AND ANTENNAE – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 38-09 – Leawood Development Ordinance Amendment to Section 16-4-12 – Wireless Communication Towers and Antennae. This amendment proposes four changes. It excludes all wireless facilities, towers and antennae from a preliminary and final plan process. It clarifies transferability of the wireless facilities, towers and antennae. Part of the reason that became an issue is we had the Sprint Monopine. Sprint owned the tower and all the antennae and then decided to sell the tower portion of it but keep the antennae and associated equipment. It also clarifies the circumstances in which an applicant may need to apply for a single Special Use Permits or multiple Special Use Permits. It also exempts the city from the requirement of a Special Use Permit as long as the antennae are located on city property for city use. Staff is recommending approval of this application and would be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Elkins: Mr. Klein, you say that this clarifies the transferability of the wireless facilities. Let's take the example we had a few months ago with the Sprint Monopine. If this goes into effect, what are the implications? How does it clarify that?

Mr. Klein: I'll defer to counsel.

Ms. Shearer: It was not easy, but we tried to develop some language wherein if Sprint wanted to transfer the Monopine and all the antennae located on the Monopine, they could do that as long as they transferred it to a single ownership. If they decided to transfer the tower to TowerCo and their antennae to T-Mobile, then they'd have to come back for new SUPs. The reason for that is we in the Planning Department need to be able to track who owns the antennae and the towers for purposes of bonding and other requirements that are in the LDO in the Wireless Communications Section. If it's going from single ownership to single ownership, that's fine. If we're going to divide up ownerships, we'll need to do new SUPs.

Comm. Elkins: And in the instance that it goes from single ownership to multiple ownerships, the owners of both the tower and the antennae each would have to seek a Special Use Permit – one for the tower and one for the antennae.

Ms. Shearer: You mean if Sprint were going to keep the tower in that case?

Comm. Elkins: No, I mean the tower is going to TowerCo and the antennae are going to Verizon, as an example.

Ms. Shearer: Each new owner would have to come in and apply for a Special Use Permit, just like we did recently. TowerCo applied for a Special Use Permit for the tower, and then Sprint applied for a Special Use Permit for the antennae, but only because they didn't call out the antennae in their original application. That was another technicality we had with them.

Comm. Elkins: Can you enlighten us a little more on the justification for an exemption for the city?

Mr. Coleman: The city currently has wireless communication facilities on several of its locations, including this building right now, that have preceded the ordinance as it was written. We'd like to be able to upgrade those antennae without having to spend the citizens' tax dollars to go through the entire process. We feel that if it's been operating like it has since the building was built in '96, that to upgrade them wouldn't have any impact on the citizens or anyone else in the city.

Comm. Elkins: So if a private owner upgrades technology, does that require a new Special Use Permit?

Mr. Coleman: No, for example, on the Sprint Monopine, they do not have to come in and get a Special Use Permit.

Comm. Elkins: I'm having trouble understanding the distinction then with the city's circumstance. If the city was subject to this and the city upgraded their facilities, they wouldn't have to get the SUP either, would they?

Mr. Coleman: Some of it depends on the change in technology. Periodically Sprint or T-Mobile upgrades their antennae. We require them to still have slim-line antennae on the Monopoles. One of the reasons it was changed in here from the omni-directional is because some of the city's antennae are not omni-directional. That was part of the reason for it. Our antennae are slightly different in use. They're local and are not designed for extreme long-distance communications. They are also the police communications facilities that the city ties into the county's emergency communications facilities.

Comm. Williams: We're not talking Sprint antennae on City Hall.

Mr. Coleman: No, we're not.

Comm. Elkins: So at one time, we were looking at a Sprint antenna on the fire station. That would still be subject to a requirement for a Special Use Permit.

Mr. Coleman: That's correct.

Ms. Shearer: To help clear this up, I'll give an illustration. We currently are going through a process amongst the city employees, of which I don't know all the technical

aspects. We're upgrading our system of cell phones for city employees. We also have the Nextel system, of course, so emergency officers and other city officials can walkie-talkie each other, and it's a very efficient way of communicating. In order to upgrade the system, I think we need an additional antenna here on the building. Going through the plans for this, we realized that there are situations like this, where technically we would have to go through the SUP procedure. Not that, as a city, we're necessarily opposed to following our own rules, but for occasions where we're getting an additional antenna for city cell phone use and not by use for the general public, we would like to be able to do that without having to go through the entire SUP process. It's on city properties for use by city employees, including emergency personnel.

Comm. Neff-Brain: There isn't a definitional provision in here, is there? I get very confused. Wireless communication facility is one; tower is one; antenna is one. Then there is support structure and ground equipment for the antenna. Is the wireless communication facility tower plus antenna plus ground equipment?

Mr. Coleman: The wireless communication facilities would include the equipment that's located in the building. For example, in City Hall, the tower was taken out. We took out the omni-directional.

Comm. Neff-Brain: We just don't have a definitional section.

Ms. Shearer: In Article 9 of the LDO, all these terms are defined.

Comm. Rezac: If there was a private owner who wanted to do an antenna and use it similarly to what the city is doing, would they still need to get a Special Use Permit?

Mr. Coleman: I believe they do. There is a term for facilities that are incorporated into the building's architecture, like a bell tower or something like that. There are some provisions in the ordinance that allow that, but they would still need to get a Special Use Permit and go through the process.

Comm. Roberson: I don't think that's her question.

Comm. Rezac: Right, my question is if we're giving an allowance for how the city is going to use it and not have to get a Special Use Permit, there is potential, I would think, for some private owner out there to use an antenna in the same way.

Comm. Roberson: For example, AB May would use radio communication to talk to their plumbers and electricians, etc.

Ms. Shearer: It's not my understanding that it would be our intention to allow that to go forward without a Special Use Permit. This would be city antenna for city purposes.

Comm. Roberson: Would AB May have to have a Special Use Permit to have an antenna like that?

Ms. Shearer: What I'm saying is yes.

Comm. Rezac: But the city wouldn't. I just want to make sure we're on balanced, fair ground here for what we're allowing the city to do versus what we may or may not allow for private.

Mr. Coleman: That's fairly common, that there is a differential between the public service operations and private business operations.

Chair Rohlf: This case does require a Public Hearing. Is there anyone in the audience who wishes to speak?

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Roberson. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

Chair Rohlf: That takes us up to further discussion, hopefully leading to a motion.

Comm. Elkins: Madame Chair, I have to rise in opposition to the second point on creating a free transferability in the SUP in any context. When we had the case of the Monopine, I spoke to this. The Monopine idea is still new, fresh and controversial enough and we have so little experience with it that, as I recall, the SUP that we approved there was for a 25-year lifetime. As I've gone on record before, I'm a strong supporter of the Monopine, but it's only a year old. I don't know how it's going to fade. I don't know how it's going to weather. I don't know what it's going to look like any of the incremental years between now and 25 years from now. One of the procedural items I have taken some comfort in is that, in the event as we had here recently, that the owner desires to sell it, at least we'll have another chance to look at it then. Otherwise, it won't be until our children are sitting on this body that we'll get another chance to look at it. I think that's true not just with the Monopine. I pick it out because it's the most obvious example. I think that because technology changes so frequently, it behooves us to jealously guard the opportunities that we're given to review these SUPs. I rise in opposition to that part of the case and would encourage my colleagues on the panel to consider their thoughts about the lack of opportunity we'll have as a body over time to reevaluate these SUPs, particularly in the context of wireless communications usage. Staff made a very nice case about an exemption for the city's use, and I think I can support that; but I'm a little bit reluctant on that. It's not because I think the city is going to misuse it, but it gives us an opportunity to review how the city has tended to its facilities and gives us an opportunity to encourage them to do a better job if necessary. I strongly oppose the transferability and believe I could support the rest. Thank you.

Ms. Shearer: I'd like to add a point to make sure we're clear. Any transferability would still have to be approved by a stipulation in the original Special Use Permit by the Governing Body. If we adopted this amendment and Sprint came before us with their Monopine, they would have to ask for us to add the stipulation saying that they could transfer it down the road instead of going through the SUP process. It would still have to be provided through a stipulation. It wouldn't just be a free ability to transfer without the stipulation.

Comm. Elkins: And that's a stipulation by the Governing Body? They'd have to come through here before they got to the Governing Body.

Ms. Shearer: Yes, and in either one of those scenarios, as you know, the Governing Body can add a stipulation that the Planning Commission has not. It can either be added at this level or at the Governing Body level.

Comm. Elkins: Thanks for the clarification. That weakens my resolve a bit, but it doesn't completely remove it.

Ms. Shearer: I understand your points. I just wanted to make sure everybody was clear that we did not take that part out of the LDO.

Comm. Elkins: Thank you.

Chair Rohlf: Does anyone have anything else?

A motion to approve CASE 38-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-12 – WIRELESS COMMUNICATION TOWERS AND ANTENNAE – Request for approval of an amendment to the Leawood Development Ordinance – was made by Williams; seconded by Neff-Brain.

Comm. Roberson: I think I have to agree with Commissioner Elkins on his concern.

Comm. Neff-Brain: I don't have concern because of the ability to add or delete the transferability at the Planning Commission level; otherwise, I would.

Comm. Williams: I guess I didn't understand this revision to reflect the concerns that Mark had expressed. It's just simplifying the process and the expense to the applicant if there is a change in ownership. They still go through the SUP process and still submit a site plan, but they don't have to submit the preliminary and final and incur the costs associated with those processes.

Mr. Klein: It's my understanding that you might be talking about two different aspects of it. One part is that, but I think Commissioner Elkins has a concern as far as the transferability of the SUP without having them come back and get a new SUP. I could be wrong, but it's my understanding that you're absolutely right that this would remove the requirement to have a preliminary and final plan to go with that SUP and pay for application for them when a site plan is already required with a Special Use Permit. I don't believe that Commissioner Elkins is as concerned about that as if the SUPs are based on the owner of the facility. In the instance of Sprint, if they decided to sell the tower to TowerCo, TowerCo has to come in and get a new SUP for that. The way this is written is that Sprint, when they come through with the initial tower, can request a stipulation be added by the Planning Commission and City Council that states that, if they decide to sell this facility to somebody else, the SUP they get at that time is transferable to the new owner, who doesn't have to come back for a new SUP.

Comm. Williams: That would be a stipulation they would ask for; it's not a given in the LDO.

Mr. Klein: Correct.

Comm. Elkins: Just to clarify my concerns a bit, I'm concerned that we'll have a situation come to us where Sprint brings a tower to us and asks for the stipulation. We, as a group, really want the tower, but Sprint holds us hostage because we're not going to get the tower unless we agree to that stipulation. Every one of the telecommunications companies is going to have, as a standard part of their application, that stipulation. I don't want to be placed in a position where I have to say yes to the tower and stipulation or no to the tower completely. As I understand the current state, the SUP is personal to the owner. There is an issue with that stipulation, but right now, if they sell either the tower or the antenna, the new owner has got to come before us, and we get a chance to review that situation. This is at least one step toward removing that obligation, in my view. Staff counsel has made a great point.

Ms. Shearer: Let me read the specific language in the current LDO. In 16-4-3.2, it states, "A Special Use Permit shall allow the specified use only by the applicant and shall not run with the land and is not transferable unless otherwise approved by the Governing Body by stipulation in the Special Use Permit approval." What happened in our most recent example is that, in their initial approval back in 2007, this stipulation was not in the ordinance for that SUP that said it could be transferable. That's why Mr. Holland had to come back before this body and the Governing Body to ask for a new SUP for a new owner. In 2007, had either you or the Governing Body proposed and approved a stipulation allowing for transferability, he wouldn't have had to come before us again. This has been a provision of the LDO all along. We're just clarifying how it can be used in the amendment that is currently before you.

Comm. Jackson: With Mr. Elkins' point, I'm not sure if what you just said nullifies it or not, but it would seem to me that if you require the new buyer to come in and get a new SUP, that promotes the original owner to maintain and keep the tower in the best repair. Otherwise, the next owner can just come in, buy it at a lower price because it hasn't been cared for, and incur no expense in getting another SUP, thereby discouraging any upkeep of the tower. I think it encourages maintenance of the tower to have to make them pay again to get another SUP.

Chair Rohlf: Thank you. Anything else? We do have a motion and a second, so we'll call for a vote unless anyone else has a comment.

The motion did not pass with a vote of 2-4. For: Neff-Brain and Williams. Opposed: Roberson, Jackson, Elkins and Rezac.

Comm. Roberson: Can we submit an alternative? Mr. Elkins?

Chair Rohlf: I'm not sure if that would be appropriate in this case if this is language that has been developed by the City Attorney. Ms. Shearer, what would you like for us to do here? Obviously, you must understand the comments.

Ms. Shearer: If I understand correctly, Mr. Roberson is asking if you, as a group, can propose a new amendment rather than what has been proposed in the language as written.

Comm. Roberson: That's correct.

Ms. Shearer: You have voted and turned down this language. I think what I'm processing right now is if this would require a motion to reconsider. To be honest, I'm not sure off the top of my head. Normally how this happens is there would be amendments made and you would vote on that while we were discussing this amendment. As a body, I guess you are allowed to reconsider and vote on whatever motion you would like to vote on. We've already turned this amendment down, but I think if you would like to reopen the matter and propose new language –

Comm. Neff-Brain: Why don't you re-draft and bring it back?

Chair Rohlf: I think, given the comments made this evening, it would be more appropriate for the City Attorney or members of staff to go back and re-draft language.

Ms. Shearer: If you're asking my opinion personally, I would agree. I think there is a lot of language here and several issues, and it would be somewhat difficult for us to craft an amendment verbally this evening. That's my personal and legal opinion. If you, as a group, would like to do that, you most certainly can. I think it just would be a matter of reopening the matter and choosing to re-craft your own amendment and vote on it.

Comm. Roberson: I'm not sure we're trying to craft an amendment. I think what we'd like to do – and Mr. Elkins, don't let me speak for you – is to restrict a transferability of a Special Use Permit. If you would like to draft language to that, I think the Commission would be agreeable.

Chair Rohlf: I really don't feel comfortable with us proposing any language to the LDO. I think that's something you can take into consideration based on comments this evening. You may not agree when you get back and listen to them again. There may not be a way to re-craft the language that accomplishes what it is you think we need to accomplish here. I don't know if it's appropriate to continue this matter.

Mr. Coleman: You'll have to vote to re-open it and then continue it because right now you voted it down, and it will go forward to the Governing Body.

Chair Rohlf: Is this something you would like to have reconsidered?

Ms. Shearer: I'm more than happy to work on this again if you'd like to continue the matter, and we can address the issues that were brought forth on the record this evening and try to come up with a solution to some of those concerns. We are more than happy, as staff, to do that.

Comm. Williams: In light of the fact that this body has taken a vote and taken an action, the next step would be to go to Council. If Council gets our comments and agree with it, they'll turn it down and turn it back to staff or remand it back to us. Maybe that's the most appropriate course of action at this point.

Comm. Jackson: I like the idea that staff wants to reconsider with our remarks and rewrite it. I'd prefer to do that.

Comm. Williams: If they want to do that, that's fine with me, too.

Comm. Roberson: I think that's the better course of action.

Chair Rohlf: We run the risk that, if it goes forward to Council and they approve it as written, we have no opportunity for any reconsideration of the language.

Comm. Rezac: I agree because we have had a considerable amount of discussion here, and the same discussion and points may not occur in the Governing Body.

Comm. Roberson: Procedurally, what do we need to do?

Chair Rohlf: We need to make a motion to re-open and reconsider the matter.

A motion to re-open CASE 38-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-12 – WIRELESS COMMUNICATION TOWERS AND ANTENNAE – Request for approval of an amendment to the Leawood Development Ordinance – was made by Roberson; seconded by Elkins. Motion approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

Mr. Coleman: Staff would like to have some direction on the language because, as counsel pointed out, this was a redraft of the provisions and removal of the preliminary plan approval requirements and that the provision that allowed the applicant to ask the Governing Body for the stipulation to be added for transfer of ownership is currently in the LDO.

Ms. Shearer: I would agree with that. I think what we would need to know, going forward, in order to redraft this is if you are opposed to transferability at all. If that is the case, we're going to have to also revisit the other section of the LDO that says that a Special Use Permit can be transferred upon stipulation approved by the Governing Body. We'll also have to figure out a way to work with that as well. I'm sure you have read this, but I want to make sure I point these out, going forward, to see if you also disagree with these provisions. In Article 4, Page 2, the second paragraph that is mostly underlined, about halfway down, it says, ". . . provided further transfer of any individual component of a wireless communication facility that was approved originally by a single Special Use Permit shall be completed only by approval of a new Special Use Permit for such component." That means if Sprint comes in for approval for a facility which includes towers and antennae, if they want to transfer a portion of the facility, they need a Special Use Permit. The next sentence says, "Should the Governing Body approve a transfer of ownership of a wireless communication facility, tower and/or antennae by stipulation in the original Special Use Permit approval, prior to completing such transfer . . ." and then it talks about notice given to the Planning Department. I don't think you have a problem with notice. If I'm incorrect there, let me know. One more thing in the sentence above: "Provided that a Special Use Permit for a wireless communication facility shall only be transferable as approved by the Governing Body, by stipulation and Special Use Permit approval if the wireless communication facility is transferred in its entirety from one single ownership to another single ownership." That also limits this circumstance in which the entire facility (tower and antennae as defined in the LDO) is transferred from Sprint to, for instance, T-Mobile as a whole.

Comm. Roberson: From my standpoint, that's where I have an issue. I think that any time there is a transfer of ownership, we should be allowed to look at it, whether it has a stipulation or not.

Comm. Neff-Brain: That general provision was for every Special Use Permit.

Comm. Roberson: We're talking wireless because it is so long – it's a 25-year permit.

Comm. Neff-Brain: Right, but the provision that you wanted changed is all SUPs.

Ms. Shearer: Right, as of right now, that applies to every Special Use Permit – that a stipulation can be added, allowing it to be transferred.

Comm. Roberson: This is for 25 years, which is one of the longest Special Use Permits we have. Is that correct?

Ms. Shearer: Under the LDO, all Special Use Permits can only be 20 years at a maximum. I don't remember us approving this for 25.

Mr. Klein: I would have to go back and look. I thought I remembered five.

Ms. Shearer: I didn't think it was that long a term. I could be wrong because I don't have it in front of me now.

Comm. Roberson: Did we approve five years?

Mr. Klein: That's what I thought. I can find out.

Comm. Neff-Brain: I've never seen a 25-year permit.

Comm. Elkins: I'm the one who came up with it, and that's just what I have in my memory.

Comm. Roberson: If it's 25 years, I have an objection.

Comm. Elkins: The telephone boxes are at least 20, if not 25.

Ms. Shearer: 20 is the maximum under the LDO.

Comm. Jackson: I thought the boxes were 15.

Ms. Shearer: I can't remember specifically. Sometimes we do go through and recommend a shorter time, and it has been approved. As Mark said, this one might be five; but 20 is the maximum under the LDO.

Comm. Neff-Brain: I would object to changing the part of the LDO that refers to all SUPs.

Ms. Shearer: So Mr. Roberson, do I hear you saying that you do not think we should allow transferability at all when it comes to wireless?

Comm. Roberson: That's correct. I think what we're asking for is, if there is a transfer on the wireless communication tower - antennae or any part of it - that it comes before this body for a Special Use Permit.

Comm. Elkins: I think to accomplish that, we'd have to make a modification that is an exception to the exception for wireless in 16-4-3.2.

Ms. Shearer: Actually, it would be something similar to the previous item on the agenda when it came to the preliminary and final plan provision and said, ". . . unless expressly exempted herein." We would add language like that to the transferability section under "General Special Use Permits" and then I would have to find a way to go in here and reference. Actually, it would be a lot shorter if that's what everybody wants to do. I'm not necessarily saying I'm looking for less work. A lot of this language that has been added reflects the provisions and new regulations for transferability. If, as a Commission, you decided you did not want transferability, a lot of this language would be eliminated.

Comm. Jackson: I'm certainly in agreement with that. I think that's where we're standing right now.

Comm. Roberson: Exactly.

Comm. Elkins: At least three or four of us.

Chair Rohlf: So how could we have avoided that situation with Mr. Holland that night? That was not a good situation.

Ms. Shearer: No, it wasn't our finest moment.

Chair Rohlf: Would there have been a way to do that with a stipulation that would have prevented that?

Ms. Shearer: No, how we will prevent that going forward is with our previous agenda item that cleared up that we no longer need a preliminary and final plan. When I say that, I mean that it was a situation where we had been in a routine with Special Use Permits, and in reading the LDO and following it strictly, we found that every SUP required a preliminary and final plan. That's what happened that evening.

Comm. Elkins: I'd like to make a comment for the record because I know staff has expressed concern about this before. It was also not the applicant's finest hour, either. The attorneys that appear before us have an obligation, in my view, to read and understand our LDO. City Council doesn't serve as counsel, nor does staff serve as staff to the applicants. I appreciate staff's wanting to do their job for all the citizens, including corporate, commercial and private in the city of Leawood. I take a little bit of exception on a positive note because that issue wasn't so much staff's issue as it was the applicant not having done their homework. That's where that response really needs to lie as far as I'm concerned. I very much supported staff that night, and it was the applicant who didn't come prepared.

Ms. Shearer: Mr. Elkins, staff appreciates that comment, and I would like to add, for the record, that my comment was meant to be tongue-in-cheek.

A motion to continue CASE 38-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-12 – WIRELESS COMMUNICATION TOWERS AND

ANTENNAE – Request for approval of an amendment to the Leawood Development Ordinance to the August 24, 2009 Planning Commission meeting – was approved unanimously with a vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Rezac and Elkins.

MEETING ADJOURNED.