

City of Leawood
Planning Commission Minutes
February 23, 2010
Meeting - 6:00 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: Pateidl, Roberson, Neff-Brain, Rohlf, Rezac, Williams, Elkins and Heiman.
Absent: Jackson.

APPROVAL OF THE AGENDA:

A motion to approve the agenda was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

CONTINUED TO MARCH 23, 2010 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 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.**

CASE 64-09 – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless communication facility for Clearwire Wireless Broadband, located at 13401 Nall Avenue. **PUBLIC HEARING**

CASE 67-09 – BI-STATE CENTENNIAL PARK – PARS ENGINEERING – Request for approval of a Revised Final Site Plan, located north of 141st Terrace and east of Cambridge, within the Bi-State Business Park Lot 17.

CASE 86-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-6 – SIGNS – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 72-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-5.3 – R1 DISTRICT FRONT ENTRIES – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 73-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-2-5.3 – RP1 DISTRICT FRONT ENTRIES – Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 06-10 – PINNACLE CORPORATE CENTRE III – UNION BANK & TRUST – Request for approval of a Sign Plan for Union Bank & Trust, located at 11460 Tomahawk Creek Parkway.

CASE 15-10 – THE WOODS AT IRONHORSE – Request for approval of a Revised Final Site Plan, located at 153rd Street and Nall Avenue.

CASE 16-10 – CAMELOT COURT – JIMMY JOHN'S GOURMET SANDWICHES – Request for approval of a Final Site Plan for a Tenant Finish, located at 4302 West 119th Street.

CASE 20-10 – PINNACLE CORPORATE CENTRE – SIGN CRITERIA – Request for approval of Revised Sign Criteria, located northwest of 115th Street and Tomahawk Creek Parkway

CASE 22-10 – CAMELOT COURT – SIGN CRITERIA – Request for approval of Revised Sign Criteria, located at the northeast corner of 119th Street and Roe Avenue.

A motion to approve the Consent Agenda was made by Williams; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

NEW BUSINESS:

CASE 07-20 – CITY OF LEAWOOD – CAPITAL IMPROVEMENT PROGRAM – Request for approval of the 2011-2015 Capital Improvement Program. **PUBLIC HEARING**

Staff Presentation:

Kathy Rogers, Finance Director for the City of Leawood appeared before the Planning Commission and made the following comments:

Ms. Rogers: I believe Joe Johnson has already been here and has answered any technical questions related to the projects themselves. As far as the calendar goes, it is a requirement that the CIP comes before the Planning Commission before it goes the Governing Body for discussion. They will hear it on March 1st. At that time, we will discuss the necessary financing for the projects that are included and how that relates to the 2011 budget and budgets going forward. If you have any other questions about the project, I think David and Joe are here tonight.

Chair Rohlf: I think the majority of the commissioners were at the works session, but if anyone was not and has a question or if anyone has a follow-up question, please ask it now.

PUBLIC HEARING:

As no one was present to speak, a motion to close the Public Hearing was made by Roberson; seconded by Heiman. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

A motion to recommend approval of CASE 07-10 – CITY OF LEAWOOD – CAPITAL IMPROVEMENT PROGRAM – Request for approval of the 2011-2015 Capital Improvement Program – was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

CASE 12-10 – CORNERSTONE – GASLIGHT GRILL – Request for approval of a Final Sign Plan, located at 5020 West 137th Street.

Staff Presentation:

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Madame Chair and members of the Planning Commission, this is Case 12-10 – Cornerstone Gaslight Grill. The applicant is Michael Howard with Castor Architects and is requesting approval of a Final Sign Plan for one wall sign. The proposed project is located at 5020 W. 137th Street within the Cornerstone development. The applicant is proposing to extend the existing parapet by 30" in height to allow space for the sign. Staff recommends extension of the parapet to run the entire length of the wall to allow for a sign band for the building. Staff recommends approval of this application with the stipulations stated in the Staff Report and would be happy to answer any questions.

Chair Rohlf: I believe we have a revised Stipulation No. 5 on the dais, so I'll leave a moment for you to read through that, and then I'll open it up for questions. Does anyone have questions for staff?

Applicant Presentation:

Dick Hawk, owner of Gaslight Grill, 5020 W. 137th Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Hawk: We appear before you with a very simple request. We wish to increase the size and change the location of the sign on the face of the building that is in the direction of 135th Street. Our reason is we need to get some more visibility for the location. As the previous owner found out, this is not an easy location in which to operate a profitable business facility. We find that people have difficulty finding the Gaslight Grill. It has an address on 137th Street, but it actually faces Briar Drive. It is not visible from 135th Street, which is the only main thoroughfare in the area. The proposed sign is intended to enhance that visibility. We generally agree with the stipulations. I'd like our architect to address one slight variance.

Michael Howard, Castor Architects, 7304 W. 130th Street, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Howard: Madame Chair and members of the Planning Commission, we are in agreement with Stipulations 1, 3 and 4. As we noted, Stipulation No. 5 has been stricken. The question is regarding Stipulation No. 2, which is a request and recommendation from the Planning Department that the extension of the parapet be continued all along the roof. I do have a handout to present (*hands out photographs*). This is a photograph of the Gaslight Grill. The proposal, as noted in the handout, is to have the sign along the existing sign band in place. The new sign would basically be closer to the corner to the east. If we were to extend the parapet all along the north façade as shown here, the sign band would then be popping above the low roof, and the intent is to conceal that piece back behind there. I'm certainly available for any questions you may have regarding this issue.

Comm. Pateidl: If you extend the sign to the full length of the parapet wall, what is your objection to that? How does the roof interfere with that?

Mr. Howard: *Inaudible comments* The lower roof, at this moment, actually conceals that object. Right now, we're proposing to extend the sign band about halfway down the façade, which will allow us to surround our sign. The recommendation of the Planning Staff was to extend it all the way down, which means it's going to pop up above the adjacent roof, which conceals the end of the parapet.

Comm. Pateidl: Are you suggesting that, if you extend the backing for the sign the full length of the parapet wall, you would move the sign farther to the right as we're looking at this picture?

Mr. Howard: No, the sign would not be moved.

Comm. Pateidl: So there is no objection to the visibility of the sign itself.

Mr. Howard: No, not at all. The objection is to the architectural element projecting above the existing roof that conceals where that parapet ends at this time.

Comm. Pateidl: So you're looking at the aesthetics from an architectural point of view.

Mr. Howard: That is correct.

Comm. Pateidl: Could I ask the Planning Department for their input?

Mr. Klein: What we are proposing is, in order to create an architectural element for the building, to create a sign band that would extend across the entire façade. That would allow for signage to be placed on that building in a way that it could be placed anywhere along there. The way they currently have it proposed, they basically would raise a portion of the façade and then bring it back down as soon as it was done with the sign, thus being more obvious that the extension of the façade was strictly to allow that sign to be there. The intent was to make this more compatible architecturally with the building by continuing that band at the elevation of 30" all the way across the building.

Comm. Neff-Brain: How is it going to end on the left side, and how is it going to end on the right? If you see it above the roofline, is it just going to drop off at the end of the building?

Mr. Klein: I believe it is a rectangular element that would probably drop horizontally down behind that portion of the roof elevation.

Comm. Neff-Brain: On the left side, it looks like there is a little window.

Mr. Klein: Correct, on the left side, it ends just after where they have the sign on the left. Currently, they have the flame that they're proposing, and just to the left of that, the parapet wall terminates. The parapet wall, they're proposing to extend above. You can see that where they have it dimensioned out at 44'. That's where they're proposing to extend the parapet wall 30" in height. We're proposing that they extend that 30" in height all the way across to the right as it goes to the end of the parapet wall, so it would terminate at that point.

Comm. Neff-Brain: But you'll see it above the roofline on the right side, and it will go to the end of the building and then just stop and come down to the roofline.

Mr. Howard: If you'll look at the image (*places photograph on the overhead*), the proposal we're making now is this being the north façade. This is the parapet with the sign and the darker portion of this. That continues the architectural element that's already there. (*inaudible comments*)

Comm. Roberson: Coming down off your chart, is that a parapet, too?

Mr. Howard: That wall is actually not projecting above the roof. The roofs come up and simply die at that point.

Comm. Roberson: So it dies against the roof.

Mr. Howard: That's correct.

Comm. Roberson: If you add 30" to 18", you have 48". It will appear above the smaller roof. It appears that it will also peak above the roof.

Mr. Howard: That's correct. It would appear on the west end of the building as well, which is something we're trying to avoid.

Comm. Roberson: On the south side of the building, I assume that's another 18" parapet?

Mr. Howard: Yes.

Comm. Neff-Brain: So it can't die into the roofline on the west side if it's raised.

Mr. Howard: It could die, but the issue is that it would simply be a portion of roof that comes down and disappears back to the west. It wouldn't actually be concealed from the north, which is the primary visibility into the site. There are no buildings currently off to the west of this.

Comm. Rezac: It seems that you're trying to almost frame the signage band.

Mr. Klein: Correct.

Comm. Rezac: So if the higher parapet stopped at a similar distance away from the roof on the north side as it is on the south side, would staff have any opposition to that?

Mr. Coleman: The reason for our position on this was to have the parapet wall be consistent as it is consistent in the original building, even though it's now going to be 30" higher. If you look at the original design of those parapet walls, they're continuous all the way around. That's what we were looking for. We weren't looking for creating somewhat of a board or special space for the sign, but simply an architectural element that the sign is placed on. I think they want to keep the sign as far to the east as possible for visibility. If we moved it to the middle of the parapet wall and raised it to 30", then I think it would look like it was created specifically as a roof sign, in a sense, which is not allowed. That's why we recommended having the parapet be continued. We just felt like cutting it off halfway down the façade and dropping it back down to the 18" was awkward from an architectural standpoint.

Comm. Williams: I agree with part of what Mr. Coleman just said about it being awkward. However, just looking at the elevations that were submitted in the packet, I think if we do raise that parapet all the way across, we end up with a large wall at the sacrifice of losing view of the barrel structure behind with the windows. You'll see the roof of the barrel structure, but you lose the detail of the windows back there. I think that's a nice component of the building. I'd like to see keeping those windows. I can see keeping what the applicant has proposed.

Comm. Heiman: I would concur. I was wondering if it would be possible to show what is there now (*photograph is placed on the overhead*).

Mr. Howard: In this view, the windows would be concealed because you're close enough to the building where you can see behind.

Comm. Williams: You get farther back in the parking lot, and you can see the window wall behind it.

Comm. Heiman: The white line across the top of our rendering here, is that a feature on the sign, or is that just something on this particular drawing?

Mr. Howard: That is actually the parapet cap. It is a whitish color. It will match the existing parapet cap. All we're seeking to do is remove that existing cap, extend the wall and replace the materials that make the background for the sign exactly as they are now, simply higher.

Chair Rohlf: Does anyone else have questions on this issue? Does anyone else have anything they would like to discuss? If not, I would ask that we try to move forward with a motion.

A motion to recommend approval of CASE 12-10 – CORNERSTONE GASLIGHT GRILL – Request for approval of a Final Sign Plan, located at 5020 West 137th Street, eliminating Staff Stipulation Nos. 2 and 5 – was made by Williams; seconded by Heiman.

Comm. Pateidl: I appreciate the desire of the Planning Department to maintain the architectural integrity of this building, not only in their recommendations for the stipulation to extend that sign board, but particularly in their stipulation to require the removal if we approve this, as has been moved, in the event that the location is vacated by the Gaslight Grill. This reminds me of the Wild West when you had a false front so you could have a sign on the saloon. It's a little better than that, but should this building be vacated and used for another purpose, I don't think it would be appropriate to leave that wall standing. Stipulation No. 5 required that they or the developer/landlord remove that in the event of a vacancy. I have a problem with that. My question to the Planning Department would be if we maintain that stipulation, how could we enforce it, and what recourse do we actually have as a city, should the developer/landlord not remove that signboard. To that end, we might seek some financial security for the removal of it if we allow this to move forward. If Stipulation No. 5 remains in this authorization, how would you enforce, "The parapet shall be changed back to its original condition within 30 days of the vacancy of the tenant"?

Mr. Klein: We have had this stipulation on some other tenant finishes that change the façade significantly. In all honesty, it would fall more on the developer of the overall development to make that change.

Comm. Pateidl: If they didn't what recourse would you have?

Mr. Klein: It would have to go through Neighborhood Services and go through the court system that we have for enforcing ordinances.

Comm. Roberson: This is a privately owned building, is it not? There is no developer to fall back on. So if the owner has set this up properly and it goes out of business, there is no recourse. I'm not a lawyer, but I assume he's smart enough to do that.

Mr. Hawk: I'd just like to clarify that there is no tenant; it is owner-occupied.

Comm. Neff-Brain: If this restaurant would go out, something else is going to need that same size to be seen on 135th Street when it goes in. I think once the parapet is higher, it's going to have to stay that way for economic reasons.

Ms. Shearer: Just as a point of order, we do have a motion on the floor that removes these stipulations. I'm not sure if there was a second or not.

Chair Rohlf: There is; this is discussion before we vote. Would anyone else like to make comments before we vote?

The motion passed with a vote of 6-1. For: Roberson, Neff-Brain, Williams, Elkins and Heiman. Opposed: Pateidl and Rezac.

CASE 14-10 – TOWN CENTER PLAZA BATH & BODY WORKS – Request for approval of a Final Site Plan for a Tenant Finish and Sign Plan for Bath & Body Works, located at 5012 West 119th Street.

Staff Presentation:

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Madame Chair and members of the Planning Commission, this is Case 14-10 – Town Center Plaza Bath & Body Works. The applicant is Tim Shank with Bath & Body Works and is requesting approval for a Final Site Plan for a Tenant Finish and Sign Plan. The proposed project is located at 5012 W. 119th Street within Town Center Plaza Development. The applicant is proposing two wall signs and a blade sign. These three signs meet the sign criteria for both the development and the Leawood Development Ordinance. In addition to these three signs, the applicant is proposing white metal panels on the west-facing wall beneath the canopy. Staff is fine with the metal panels, but also proposed on this wall is an internally illuminated box sign that staff does not support. Staff recommends approval of this application with the stipulations stated in the Staff Report and would be happy to answer any questions.

Chair Rohlf: Was the applicant made aware of the ordinance on the box signs?

Mrs. DeBoer: Yes, they have received that information.

Comm. Neff-Brain: What do the signs look like now? They're not moving locations, but changing their signs, correct?

Mrs. DeBoer: I don't have a "before" sign, but I have what's on the west-facing wall (*places photograph on the overhead*).

Mr. Coleman: Essentially, they're moving one of their signs to the main façade outside the overhang and then changing this wall.

Comm. Neff-Brain: Those are just letters on the wood wall?

Mrs. DeBoer: I think they're just painted on there.

Comm. Rezac: Can you explain again why staff opposes the box sign?

Mrs. DeBoer: Per Section 16-4-6.9 of the LDO, box signs are prohibited, and there are no deviations available for this.

Comm. Rezac: So it is just in general and not for this particular building type.

Comm. Elkins: If I'm looking at the storefront elevation and façade that was attached to our packet, is the sign that violates the ordinance the big one on top, the little one on the bottom or neither?

Mrs. DeBoer: It's the one in the left-hand corner in the box labeled "N".

Mr. Klein: (*refers to elevation*) Here you see the staircase with the railing. A wall faces off this other direction. The wall that Melissa showed you is along here as you're walking down in front of Bath and Body Works. It is perpendicular to the signage along the front.

Comm. Neff-Brain: So we're not seeing it on any of these.

Mr. Klein: Correct, it's facing a different direction. It's down lower and underneath that colonnade where the walkway is.

Comm. Roberson: It's kind of hard to make a decision without seeing it.

Comm. Neff-Brain: Not that we can approve it, but what are they proposing it to look like?

Mr. Coleman: It is a box sign, which is not allowed by the ordinance. Actually, the sign that is painted on the wood is not allowed either by the ordinance.

Comm. Neff-Brain: What is a box sign?

Mr. Klein: It's a box where the entire face of the sign is illuminated from within.

Comm. Neff-Brain: How deep is a box sign?

Mr. Klein: It can be any depth. It has a light source from within, and as long as the entire face is illuminated, by definition in the LDO, it is a box sign. This one is 1 ½" deep.

Chair Rohlf: Would we be asking the applicant to remedy that existing wall with the paint?

Mr. Klein: Right now, they're proposing white metal to replace the wood. Then they're proposing this sign be placed upon that white metal wall. Staff isn't supportive of the box sign because it's not allowed in the LDO and also because staff feels like the signs they currently have are sufficient.

Comm. Neff-Brain: So you're not supportive of any kind of sign on that façade.

Mr. Klein: Right.

Comm. Roberson: And the blade sign is located somewhere along that walkway?

Mr. Klein: Correct, the blade sign is actually located perpendicular. Again, if you're walking into the colonnade, you obviously can't see the sign on this.

Comm. Heiman: Can they do a blade sign?

Mr. Klein: Yes, blade signs are allowed.

Comm. Roberson: Can you show me where the blade sign would be?

Mrs. DeBoer: *inaudible comments*

Comm. Roberson: The blade sign is right above the door. Is that an overhang?

Mrs. DeBoer: When you're over here, you would only see this blade sign.

Comm. Roberson: If I'm walking on the sidewalk, I can see the blade sign.

Mrs. DeBoer: Yes.

Comm. Roberson: So you know it's Bath & Body Works if you see the blade sign.

Applicant Presentation:

Ken Siemers, Casper, WY, appeared on behalf of Bath & Body Works and made the following comments:

Mr. Siemers: I'm here on behalf of Bath & Body works.

Comm. Roberson: While he is looking for his information, I'd like to get clarification from counsel. This commission has no authority to overturn the LDO, correct?

Ms. Shearer: Correct.

Comm. Roberson: And I assume there is no deviation in this ordinance for the box sign?

Ms. Shearer: No.

Comm. Roberson: So the request for a box sign is moot at this point, is it not?

Ms. Shearer: An applicant is allowed to bring any application before you.

Comm. Roberson: I understand, but we can't approve it.

Ms. Shearer: I would say no.

Mr. Siemers: This is where the locations of the different signs are (*refers to elevation*), including the one in question. They would like very much to keep it since it is an existing sign, whether it is illuminated or not. If they can keep it, they would be willing to forego the signage on the canopy to be able to keep that illuminated on the step side, to keep the steps illuminate as well as the signage. If there are any questions I might have information for, I'd be glad to show you.

Chair Rohlf: Does anyone have questions for the applicant?

Comm. Williams: If you want to keep that sign, in lieu of a box sign which we cannot approve, would you be interested in doing a wall-mounted sign with external lighting, similar to what you have now but just in a different form? I'm assuming a similar sign with a light hanging over it would meet the LDO, would it not?

Mr. Klein: Actually, when the applicant first approached us with the box sign, we pointed out that it was not allowed. At that point, they accepted it but then asked to substitute a sign for that particular sign. This was right before the Staff Report went out. We didn't have a design for the sign, so we needed to continue the case so we would have a chance to look at the details of the sign. They decided to go forward with the application as it was. If the Planning Commission wants to do that, rather than approving something tonight, I think we would need to continue this case in order for them to provide us with designs and also look for direction from the Planning Commission as far as whether they support all the signs or one in lieu of the other ones.

Comm. Williams: Would a wall sign with external lighting be allowed?

Mr. Klein: It would be allowed by the sign criteria of the development; however, staff still feels that the number of signs they have is sufficient.

Comm. Williams: Yes, and I'm just looking at the style and location of the sign.

Comm. Elkins: Under the ordinance, is there a limit to the number of signs?

Mr. Klein: Two signs are allowed per building. Obviously on a multi-tenant building, you can't limit the entire building to two signs. We more or less go to the sign criteria at that time for the individual development. The sign criteria for the Town Center Plaza were written some time ago when that shopping center was initially developed. Currently, they don't have a limitation for number of signs.

Comm. Elkins: So it's an interesting issue where, if it were a single building, they would not be able to have the number of signs, but because it's an establishment within the larger Town Center, they can have more than the two signs.

Mr. Klein: We are looking at sign criteria and what staff feels is reasonable. Obviously, businesses would like as much signage as they possibly could. Suddenly, you start getting proliferations on the façade on maybe a canopy that goes over an entry and underneath the canopy, a blade sign. Staff is trying to determine what is reasonable.

Comm. Heiman: Is there an existing sign where this is being proposed?

Mr. Siemers: They showed you the picture of it. They're looking at it as upgrading to match their new store criteria. Basically they feel they're making the existing sign better and more appealing to the customer.

Comm. Neff-Brain: I would be supportive of a sign in that location, but only if one of the two signs on the front was removed.

Mr. Siemers: They're willing to forego the one on the canopy, which is underneath the main sign on the storefront to be able to put this sign at this location.

Comm. Neff-Brain: Then it seems to me that you would be better off to continue at this point and come back with a new plan that we could see that had only the two signs and the blade sign.

Chair Rohlf: Is that acceptable to you, or would you rather not have a continuance?

Mr. Siemers: That's fine.

A motion to continue CASE 14-10 – BATH & BODY WORKS – Request for approval of a Final Sign Plan for a Tenant Finish and Sign Plan for Bath & Body Works, located at 5012 West 119th Street to the March 23 Planning Commission meeting – was made by Williams; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

CASE 18-10 – LEAWOOD SOUTH COUNTRY CLUB – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless antenna, located at 3891 West 123rd Street. PUBLIC HEARING.

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is CASE 18-10 – Leawood South Country Club. It is a request for a Special Use Permit approval to allow a wireless communications antenna for Clearwire Wireless Broadband on the existing Monopine adjacent to Leawood South Country

Club maintenance building. It's located at 3891 West 123rd Street. The applicant is proposing three new wireless antenna requiring the relocation of three existing Sprint antenna, as well as one new back hall dish mounted to the tower. The applicant is also proposing one new GPS antenna in a cabinet, both of which are located on the ground adjacent to the tower within an enclosed screen wall. Previous approval of the Monopine tower and the LDO require that all antennas be flush-mounted to the tower. The proposed antenna will measure 42" in height by 12" in width and will be flush-mounted to the tower and painted a color that blends with the colors of the branches in the structure. Staff recommends approval of this case, subject to the stipulations in the Staff Report and would be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Elkins: Stipulation No. 1 from staff talks about limiting to three new Clearwire Wireless Broadband antennas and a back hall dish. Is staff's position that the applicant can have the three new Clearwire antennas, but they have to eliminate the existing Sprint antennas? What's the difference between the request and the stipulation that staff is requesting?

Mr. Rexwinkle: The stipulation is specifically limiting it to what's being requested with this application. The existing Sprint antennas were previously approved, and they are just being moved.

Comm. Elkins: So staff's proposal is to give them exactly what they're asking for.

Mr. Rexwinkle: Yes.

Applicant Presentation

Curtis Holland, Polsinelli, Shughart Law Firm, 6201 College Blvd., Ste. 500, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Holland: Thank you for having us here tonight. As you know, I've been before you on several occasions with similar applications for Clearwire, who is building a WiMax network in the city of Leawood. I also have Doug Machamer from Clearwire to answer any questions you may have about the technology and so forth. You are very familiar with the location of this facility. This was recommended for approval by this body back in '08 and ultimately built in the fall of '09 by Sprint. As indicated by staff, all we're doing is adding an antenna to the existing mounting mechanism that is on the Monopine today and adding a back hall dish, very similar to what was done and approved by the city with regard to the other Monopine facility at the fifth tee box. All of the equipment will be screened inside the enclosure that is there today. The antennas will be painted to match and will not be visible. It's a very simple application, but because we are adding an antenna, your ordinance requires a Special Use Permit. We agree with all stipulations and would stand to take any questions if you have any. We did have a neighborhood meeting on this. I sent out nearly 80+ invitations, and no one appeared. That's a good thing. With regard to the earlier application with Sprint, we had some concerned neighbors who raised some issues at that time. This one does not seem to interest most of the folks we sent invitations to; however, our nearest neighbor, Mr. Todd, who was here on the Sprint application, was here. I think he will talk about some of the landscaping that was approved for the Sprint facility. Some of it may not have been installed correctly. We were notified of this just yesterday by staff. We've contacted Sprint about it, and as far as they knew, everything has been planted correctly. Apparently that's not the case. I did talk to Sprint today, and they indicated that they are very committed to making sure the landscaping is done in accordance with the plans. Just so you know, that project has not received Certificate of Occupancy from staff, so it's really within staff's purview to make sure it's all done. We've talked to staff about meeting with them to ensure everything is planted and put in the right spot. Hopefully that will ease Mr. Todd's concerns. If you have questions, I'd be happy to take them now. Perhaps I could have an opportunity to address Mr. Todd's comments.

Chair Rohlf: What is a back hall dish?

Mr. Holland: Most of the wireless facilities use what's called a T-1 line – a telephone line – that acts as the transmitter of data ultimately through the telephone line system (*places photograph on the overhead*). In this case, they don't use T-1 lines; they'll use these small dishes as their back hall to take the information and bring it back through the switch. There is a switch that it would ultimately go to and take the calls where they need to go. It's a method to transmit and receive.

Doug Machamer, 12635 W. 121st Terr., Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Machamer: I'm a wireless back hall engineer for Clearwire here in town. The particular antenna we're looking at is designed by Motorola, who is also our designer of our WiMax equipment. This particular antenna is a 5.8 gigahertz unlicensed system. It runs up to 300 megabits of capacity. In this particular model here, the radio equipment is hooked to the backside of that antenna and only extends a few inches; so you really don't see the radio in the integrated, self-contained unit. It has a mounting device in the back that wraps around the tower itself so it can be flush mounted.

Chair Rohlf: So there is other technology on the other towers doing this, but this one is just newer.

Mr. Machamer: It's one of the models. We have different kinds of back hall equipment we use. This is just one of them. A lot of the remote spurs that aren't hooked to our ring structure that carries the majority of the traffic use this kind of antenna. Anything that goes into something that doesn't give me really good direct line of site so I can use one our licensed systems would use something like this. Because we're going into the Monopine, it would end up having a little bit of a blockage in front of the antenna. This type of system works through that very easily. It has a really good multi-path propagation characteristic, so it goes through leaves and clutter around trees, through buildings and over the top rail. We use it in this application because it works so nicely.

Comm. Elkins: Is the landscaping issue relating to the brick structure serving as a planter box?

Mr. Holland: No, the landscaping plan calls for a number of species of trees to be planted, including deciduous trees, evergreen trees and shrubs around the actual Monopine facility and out along 123rd Street. Mr. Todd raised a question about landscaping our trees that should have been added or placed along his property line to help screen the maintenance yard area. That's the area where a tree is not of sufficient height.

Comm. Elkins: I was speaking more of a figurative planter box. When I drive by, it appears to be a 75' Monopine sitting in a planter box that's about 8'-10' tall and made of brick. It's pretty obvious as I drive down 123rd Street. I don't recall what the landscaping plan was, but does it provide for some sort of landscaping in front of that large brick structure?

Mr. Holland: (*Refers to landscaping plan*) You can see all these different shrubs or trees that were to be planted. You can see a number of them. The trees, some of which are an issue, are along this area here. This would be Mr. Todd's residence right here, and so we're talking about some of these trees here. There is also an issue with the amount of sodding that has been done. Apparently, there are additional areas they would like to have sodded, so we'll talk about that with them. We may have to bring in some more shrubbery of greater mass to fill in. It's not a complete project. We haven't gotten a Certificate of Occupancy yet. We were building this in the fall and getting into winter. We were doing what we could to get the landscaping in. We'll work with staff to complete it as we go forward.

Comm. Elkins: For the landscaping on the north side of the facility, do you know whether that landscaping is in as we speak, or is that part of what remains to be installed in spring?

Mr. Holland: All the landscaping is generally in. The city did an inspection today, and there was some discrepancy in the number of trees. Apparently, there are dead and missing trees. We knew one was dead, so we took it out because we knew we needed to replace it. Some of it had to do with the sizes of the shrubs that were there, what they should have been and what they are out in the field. Generally, all the landscaping is there. It's relatively new.

Comm. Elkins: Thank you, and I would note as an observation that the brick wall stands out pretty starkly as we drive by, but of course, it is wintertime; it's hard to tell what foliage will be there in the spring. Also, as always, you've done a great job of attaching the propagation model. Do I understand correctly that the antennas before us tonight are antennas for a different spectrum than the wireless cell phone antennas that are on currently?

Mr. Holland: Yes, these antennas that we're adding tonight are specific to Clearwire's WiMax service. It operates at 2.5 gigahertz. The existing antennas that Sprint operates there are on a frequency of 1,900 megahertz. It's definitely a different frequency and different licenses. This is purely WiMax high-speed Internet data.

Comm. Elkins: So the propagation models here compared to the ones we may have looked at in other plans are really a question of apples and oranges.

Mr. Holland: Yes, they're completely different and specific to this company. Sprint's propagation maps were specific to their network.

Comm. Elkins: Do I correctly understand that, as we proceed with the installation of these Clearwire antennas and the back hall dish, it will not change the outward appearance of the facility noticeably?

Mr. Holland: That's correct.

Comm. Pateidl: I'd like to make one observation about Staff Stipulation No. 5: "All the stipulations originally approved with this tower shall remain in full force and effect," which would include the landscaping that was anticipated, the maintenance of that landscaping, and I might also point out that was Case 56-07. I find it pretty hard to have a whole lot of sympathy that the landscaping hasn't been done at this point. If we have problems with that landscaping, I suggest that we take efforts to enforce the terms and conditions of our Special Use Permits for the benefit of our residents. They shouldn't have to come here on this type of an application to file a complaint on an item that's this old.

Mr. Holland: I don't disagree, but it's not that old. It was built in the fall of '09. It took some time to get a building permit and to get the landscaping plan correct. There were a number of revisions to the landscaping plan. I generally agree wholeheartedly with what you're saying. Residents shouldn't have to come back here and raise objections for items that should have been done.

Chair Rohlf: Mr. Holland, I know it really isn't important on this application, but I know on the other Monopine, the ownership changed to TowerCo. Is that anticipated to happen here?

Mr. Holland: No.

Chair Rohlf: On this chart we have attached to the Clearwire Plan for Leawood, there is a column entitled "MLA Owner." Can you tell me what that stands for?

Mr. Holland: In some cases, we're putting new antennas on top of, say, the Bank of Blue Valley building. You'll note that is Private Landlord, as opposed to co-locating on the Monopines, where you have an ownership by Sprint in this facility and then TowerCo, which is the owner of the Monopine at the fifth tee box.

Chair Rohlf: Does Sprint still have equipment on that TowerCo Monopine?

Mr. Holland: Yes.

Chair Rohlf: I think we've seen this before on the Clearwire plan. Didn't it also go on the Monopine as well?

Mr. Holland: Yes, we were here a month or so ago and received approval to do the same thing we're doing here on that other structure.

Chair Rohlf: Thank you.

PUBLIC HEARING

Alan Todd, 12314 Mohawk Lane, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Todd: I just have one question for Mr. Holland. Is Sprint going to get revenue from Clearwire on this? Are they renting space? Whether they do or they don't, they had plenty of time to get this landscaping done. This is my house right here (*refers to overhead*). A lot of this was already in here. They basically put a few trees in. I put in this tree and this tree, and Sprint is claiming to have put them in. I've got a receipt to show I purchased them. It was sent to the maintenance facility at Leawood South, and I paid them to plant four trees, two of which have died (*shows photographs*).

Chair Rohlf: You said those are reflected in the landscaping plan underneath the photo?

Mr. Todd: Yes, those are trees that I planted, and they've incorporated them and said that they planted them. From my conversations with Mr. Coleman, they were going to plant 10'-12' trees.

Mr. Coleman: They varied from 8' – 12'.

Mr. Todd: The consideration I was going to get for the cell tower that is 192' from my home was that this maintenance facility was going to get covered up. This is what it looks like (*refers to photograph*). I see a 30-yard dumpster.

Chair Rohlf: Is that the property of Leawood South?

Mr. Todd: (*continues to refer to photographs*) The maintenance facility, and there were supposed to be trees to block that. Here's the one dead tree that they planted. This one was probably about 8' tall. These two are my trees. This is one they planted. These are two farther up that do nothing to shield from that vantage point. I did send Mr. Coleman an e-mail, and we've been discussing it. I was looking to get something fuller and denser for coverage back there. My biggest problem is they've taken things that I paid for and incorporated them and said they paid for them. This started in the fall, and they've had plenty of time to get the tower up, the brickwork done – everything that needed to be done. They were multitasking. Fall is a good time to plant, but you've got to put in good trees, and you've got to put in the right size and number. They did none of that. If they're going to get revenue from this, my feeling is to finish the job they

started and then move on. This was all set out in the original requirements set up by the city. I wouldn't be here if they'd done things right in the very first place.

Chair Rohlf: Would you mind showing the landscaping plan again? If I understand this correctly, the trees that you planted are not actually on your property, but on the maintenance facility property, which belongs to the country club.

Mr. Todd: Correct, and I have a receipt that shows that (*reads receipt*).

Chair Rohlf: I don't doubt that it's true. Mr. Coleman or Mr. Holland, is there an agreement between Sprint and Leawood South to do this landscaping?

Mr. Coleman: That was my understanding.

Mr. Todd: These large trees were planted in '05 before the cell tower came along.

Comm. Roberson: Did you have an agreement between Leawood South and your property to screen?

Mr. Todd: In '05, we did; I planted four trees and paid them to do it. Two of them died; the other two are still there.

Comm. Roberson: You have a written agreement with Leawood South?

Mr. Todd: No, it was a verbal agreement between Jim Noday, the superintendent of the golf course, and me.

Chair Rohlf: So your concern tonight with Sprint is exactly what, then?

Mr. Todd: My concern is they haven't finished the project. The problem I have is seeing back there, and that was a consideration that was drawn up in the original requirement by Sprint to put landscaping in.

Chair Rohlf: All right, is there anything else that you'd like to share this evening?

Mr. Todd: The city hasn't signed off on this, I know. I hope to work with Mr. Coleman and get this rectified.

Chair Rohlf: And I think Mr. Holland has made representations that it is their intention to complete the landscaping. I don't know that we are privy to the arrangements that have been made between Leawood South and Sprint as far as that landscaping.

Mr. Todd: This was all supposed to be included in the tower between Sprint and the city.

Chair Rohlf: We don't have that information. Do you have anything additional?

Mr. Todd: If things had been done right the first time, I would not be here wasting your time or mine.

Chair Rohlf: I appreciate you coming this evening and sharing with us. Is there anyone else in the audience who would like to speak about this case?

Comm. Rezac: Mr. Todd, what was your understanding of the completion date for this project? Were you given a date from someone?

Mr. Todd: The tower went up, and the landscaping should have been in. That's the easy part. They just didn't live up to the number of trees.

Comm. Rezac: So there was no date in any kind of agreement that you know of.

Mr. Todd: No, just when the tower went up, I was supposed to get trees and have a green shield.

Chair Rohlf: Is there anyone else in the audience who wishes to speak?

As no one else was present to speak, a motion to close the Public Hearing was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

Chair Rohlf: Mr. Holland, you may speak to Mr. Todd's comments.

Mr. Holland: First of all, just to separate the two applications, we're here on behalf of Clearwire. What is being discussed is something relative to an application that was approved for Sprint. That said, we're in agreement with Mr. Todd. I sympathize that he has had to come up here to discuss issues. I would say that, relative to the credit that he expressed we might be taking for his trees, this is clearly not the case. These plans reflect new trees that are to be installed by Sprint. It is Sprint's obligation, not the city's or Leawood South Country Club's. These plans were developed between Sprint and the city. What is shown here is what is supposed to be installed. I can't verify what is there or not there today. I relied on the inspection by the city, which indicated two trees were missing and one was dead. Clearly, trees need to be added to the area. I guess I would take issue with the representation that it is supposed to be a solid screening wall; it never really was. It was intended to provide some screening between Mr. Todd's yard and the maintenance facility area. I will say that it is a maintenance yard and has been a maintenance yard for 40 years before any of the houses were there. It will likely be in a similar condition because it is a maintenance yard. That said, the screening was an attempt to try to mitigate some of that view. I really can't get a good context for what he sees from his property by looking at those pictures. Clearly, to the extent that the trees weren't planted, they need to be planted. I understand that and apologize if it's taken more time than Mr. Todd wanted it to take. That is something we need to address. We did know, going in, that some of the heights requested by the city were difficult to obtain, as 8', 10' and 15' tall trees are difficult to find and to keep alive. We may have to figure out a way to plant a mixture of trees or more trees to provide the screening. We're going to continue to work on the issue. Hopefully, Mr. Todd won't have to visit with the city or come up here to discuss it. We'd be happy to visit with Mr. Todd about the landscaping and try to make sure it is done in accordance with the plans.

Comm. Neff-Brain: It's my assumption that a permit won't be issued and these antennas won't be allowed to be operational until the landscaping is complete and a final permit is issued. Is that right?

Mr. Klein: They have a building permit, and the tower is obviously constructed. They do have a Temporary Certificate of Occupancy that expires in June, and I believe the tower is operational.

Comm. Neff-Brain: They have until June to get this right.

Mr. Klein: We won't issue the Certificate of Occupancy until the landscaping is complete.

Comm. Neff-Brain: Will tonight's antenna be able to be placed if it's approved prior to the Occupancy Permit?

Mr. Klein: This is a separate application. The city will go after Sprint based on that approval, and we'll take it through Neighborhood Services and pursue that course.

Comm. Neff-Brain: Why would you have to go through Neighborhood Services? If they don't have their Occupancy Permit by June, they turn everything off.

Mr. Klein: Yes, but they've been talking to us, and we've agreed to meet onsite as well. Basically to keep things moving, we can issue a courtesy notice, a citation and then going to court. There are financial penalties that go along with that as well. We still have the ultimate leverage if the TCO expires and is not renewed.

Comm. Neff-Brain: Who would renew the TCO?

Mr. Coleman: The Building Department would renew the TCO.

Comm. Neff-Brain: So they could operate on a TCO for a long time.

Mr. Coleman: Not unless we issued it, and we have control over that.

Comm. Neff-Brain: It would seem to me that we wouldn't reissue a TCO, and we wouldn't be issuing a Permanent Occupancy Permit unless all the landscaping was in according to plan.

Mr. Coleman: Yes, and the tower was done in the fall, and they started installing landscaping. In November, we checked it. Our inspectors counted, and all the trees had been installed and the berm had been built.

Comm. Neff-Brain: Had the proper size trees been installed?

Mr. Coleman: Two of them were undersized at 6' instead of 8'. They still had some sod that they had not done, and then the winter set in. We were going to follow up when the weather is more conducive to planting new trees. It's a difficult site to do installation there for large trees because it's not readily accessible and is on a hill. The reason we hadn't issued an Occupancy Permit is the undersized trees and lack of sod. In the meantime, two trees have died, so those are going to be replaced also.

Comm. Neff-Brain: I appreciate the weather has been a factor, but I also know that we need to make sure the plans that were approved are followed.

Mr. Coleman: The staff is well aware that they haven't completely fulfilled their landscaping plan, and that's why we wouldn't issue the Occupancy Permit. If they haven't completed the plans by the expiration, we can just not renew it and shut it down.

Mr. Holland: To your point, this won't be an issue in June. This will be rectified as soon as the weather is nice. In the meantime, we can meet with staff, go onsite and see what needs to be done and then fix it. This isn't terribly uncommon with construction projects, as you well know.

Chair Rohlf: Does anyone have any other comments? I think we're ready to move forward with a motion.

Ms. Shearer: Madame Chair, I have one correction to make to Stipulation No. 5. I believe the words "Special Use Permit" were left out for the tower.

A motion to recommend approval of CASE 18-10 – LEAWOOD SOUTH COUNTRY CLUB – CLEARWIRE WIRELESS BROADBAND – Request for approval of a Special Use Permit for a wireless antenna, located at 3891 West 123rd Street to include the six stipulations and the change noted by staff counsel to add in the words, “Special Use Permit” to Stipulation No. 5 – was made by Elkins; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

CASE 19-10 – TOWN CENTER PLAZA – OVER THE TOP CUPCAKE AND YOGURT – Request for approval of a Tenant Finish, located at 4825 West 117th Street.

Staff Presentation

City Planner Melissa DeBoer made the following presentation:

Mrs. DeBoer: Madame Chair and members of the Planning Commission, this is Case 19-10 – Town Center Plaza – Over the Top Cupcake and Yogurt. The applicants are Sam Smith and Angie Anderson with Over the Top. The applicants are requesting approval for a Final Site Plan for a Tenant Finish. The proposed project is located at 4825 West 117th Street within the Town Center Plaza development. Proposed is one wall sign and outdoor dining. The proposed sign meets the Leawood’s sign criteria and the sign criteria for the development. The outdoor dining includes two benches, two café-style tables and a total of four bar chairs. The furniture is made of metal and wood. Staff recommends approval of this application with the stipulations presented in the Staff Report and would be happy to answer any questions.

Comm. Rezac: I have a question about Stipulation No. 2. It calls out for a 5’ path to remain in front of the store, but I don’t see on the plan if, in fact, there is a 5’ clear path.

Mr. Klein: This is a requirement we have on a lot of applications which require outdoor seating areas just to ensure there is a 5’ path for pedestrians. They would have to meet the stipulation to maintain that pedestrian path.

Comm. Elkins: The benches that we see attached, are they consistent in style with other benches that are installed at Town Center?

Mr. Klein: At the time Town Center went through, the design guidelines weren’t quite what you see now in current developments, so there was not a series of benches approved. Each applicant is proposing furniture with each application. I have not gone through and actually looked to see what others are there.

Chair Rohlf: Does Town Center have to go back through for owner approval before anything gets put in?

Mr. Klein: Yes, Town Center Plaza has to approve the project.

Comm. Neff-Brain: There are benches on the other side, and they’re not as contemporary; they’re a heavy iron.

Applicant Presentation:

Samuel Smith, 4825 W. 117th Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Smith: I appreciate your time and just ask that this be approved. We are aware of the stipulations and respect them. We want to do what it takes to get this open. We’re on a pretty tight time frame here. That’s all I have. We’re looking forward to opening here in Leawood. It’s a shop for kids to come in and design their own cupcakes, serve their own frozen yogurt and things like that.

Chair Rohlf: Is this a new concept?

Mr. Smith: It is one-of-a-kind, and we've been working on it for over a year now.

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

Mr. Smith: As far as the 5' limit, yes, there is quite a bit of space on the sidewalk, and we agree to that.

Chair Rohlf: Does anyone have any comments?

Comm. Elkins: The only comment I have is what I implied when I asked staff about the benches. I'm not sure there is anything we can do about it. I guess just to understand context here, by approving this, we'll approve benches that are described in this plan, correct?

Mr. Klein: Yes.

Comm. Elkins: Having said that, I guess my preference would be for consistency with the furniture around Town Center. I'm having trouble visualizing what we have here. To the extent that these folks are having their own outdoor dining area, I can see being consistent with their store as opposed to consistent with the overall architecture. I find myself at a little bit of a loss if the developer doesn't have standards for the consistency of style of the furniture, I'm not sure what we can do about it, other than record my concerns. This is a very contemporary look for a contemporary store, so I can understand where the applicant is coming from. The overall Town Center, at least in my mind, is a little less contemporary and a little more classical. It would seem to make sense for the furniture to match that.

Chair Rohlf: Anything else?

A motion to recommend approval for CASE 19-10 – TOWN CENTER PLAZA – OVER THE TOP CUPCAKE AND YOGURT – Request for approval of a Tenant Finish, located at 4825 W. 117th Street with Stipulations 1-4 – was made by Roberson; seconded by Williams. Motion approved with a vote of 6-1. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams and Heiman. Opposed: Elkins.

CASE 19-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-1-4 – PUBLIC UTILITIES AND PUBLIC SAFETY USES – 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 09-10 – Leawood Development Ordinance to Section 16-4-9.4 – Fences and Wall Heights and Location Requirements. This is a table located within Article IV of the Leawood Development Ordinance that specifies the various types of fencing and walls that are allowed and heights associated with each one. This amendment adds a category into that table specifically for fencing and gates for utility and service facilities. As part of that ordinance, it limits the height to 6' maximum, which is typically the allowable maximum in a number of other categories as well. However, it does go on to specify a deviation to allow up to an 8' height as long as it is shown to be necessary for governing standards for security fencing for that utility. Part of the reason this is being brought forward is the Water One case that you reviewed in your previous meeting. As you recall, there was a 7' high fence and an 8' gate. This would allow that type of facility, provided they could demonstrate

that it was required by their ordinances and rules. Staff is recommending approval of this amendment and would be happy to answer any questions.

Comm. Rezac: Regarding the height, given the fact that there is already a stipulation that a deviation can be granted through the planning process, I wonder why we would limit it to 8' in case something happens in the future.

Mr. Klein: I believe that would be an issue we would have to change at that time. From everything they indicated, that's what met their requirements. Staff is willing to amend the ordinance to meet what they indicated they required, but we didn't want to leave it so open-ended to allow anything they came in with. If they did and it was deemed by the Planning Commission and Governing Body that it was something that needed to be done, then another amendment could be initiated to do that.

Comm. Rezac: I was looking at this from a high level from the LDO and not necessarily from the particular applicant that this is being changed for, which is why I wonder if we want to look at it from a broader perspective at this point in time.

Mr. Coleman: The only comment I would have is that this pertains to utilities, and the likelihood of the city entertaining another very large secured utility facility is probably remote.

Comm. Pateidl: Commissioner Rezac took the words out of my mouth. If we add the stipulation that it can exceed 6' if a governing authority allows or establishes that as a standard, the only reason I could conceive that we would have that would be a position of major security interest. Should we have some kind of event that has an impact on the security of the general populace, I'd hate to have a redundant stipulation in here that would have to be and would unequivocally changed in the interest of public safety to exclude that 8' limitation that's in here. Personally, I don't see a good reason to have that redundant stipulation in here.

Chair Rohlf: They were putting in a 7' fence?

Mr. Klein: Yes, if you'll recall, they originally wanted an 8' fence; however, they agreed to curve it. That made it 7', but still maintained the security that they needed.

Chair Rohlf: Do you think they would want it higher if they could get it higher?

Mr. Klein: They were looking for an 8' fence at that point.

Chair Rohlf: I was thinking about this after that meeting. Did we find out what their Governing Body is? We were talking to them about why the facility looks like it does and some of these requirements. Who controls Water One?

Mr. Coleman: They have a board that is elected in their district.

Chair Rohlf: Where do their building requirements come from?

Mr. Coleman: In respect to this, they come from federal regulations for the protection of utilities and water facilities. There is a water association they belong to, and those are the guidelines they have and that they're following. They proposed the fence and the gate that they proposed because they fit the guidelines of their association.

Chair Rohlf: Does anyone else have questions for staff?

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

Chair Rohlf: This takes us to additional comments, hopefully leading to a motion.

Comm. Elkins: The Chairwoman's question to staff on who establishes the standards raise a really good question. What we're proposing here is that the 6' limit on fencing can be exceeded "under governing standards of security fencing for such utility." The question in my mind is what are the governing standards? As Mr. Coleman pointed out, what we're really told is that there is an association. Is that really a governing standard? To my way of thinking, governing standards would be, for instance, a federal regulation. If TSA or Homeland Security had a requirement that the fencing had to be 8' or taller, that would fit under here. I don't want to demean it, but if it is a rural water district association and their best practices standards, that is a different thing. You've got insurance regulations for state insurance commissioners, and then you have best practices from various professional insurance organizations. From a records standpoint, I don't know that this would yet permit Water One, if what they're operating under is truly an association, to stand.

Comm. Roberson: To go along with that, we didn't even get to see the standards.

Chair Rohlf: I wasn't sure what they were. I remember him quoting them.

Mr. Coleman: I think they were developed in light of 9-11 and with Homeland Security.

Comm. Elkins: Again, even if they're developed in conjunction with or in association with Homeland Security, that's a different issue than if there is actually a regulation that says, "You shall have an 8' fence." There may be a vagueness issue. When we're talking about governing standards, what does that mean? I'm not being critical because I can't think of a better way to write it. I just want to raise the issue that sparked in my brain when she asked the question.

Chair Rohlf: It went back to when I asked the applicant about the look of that building and all the specifications that went into choosing that style of retention. He alluded to the fact that he was operating under some organization's standards; I just don't remember what it was or if he said what it was.

Comm. Neff-Brain: It may be if the Water Board has formally voted to approve these standards, they can be considered government standards. We don't know that it happened, but like the traffic standards and the manual on uniform traffic control devices – it was formally adopted by the Governing Body and by the state, for that matter, so it becomes the legal standard. Whether that is the case here, we don't know, but I assume if they haven't, this isn't going to work for them.

Mr. Coleman: They would need to adopt some standards.

Chair Rohlf: Does it have an impact on the actual ordinance to leave it like this? Is there a negative side to that?

Comm. Neff-Brain: It just may not fit for what the Water One is asking.

Mr. Coleman: It may require their board to vote on adopting standards if they haven't already done so, but my impression from talking to them is that they had.

Chair Rohlf: Would it be in our best interest to determine what that is before we modify the language? I probably agree with you that the chance of this coming up again is remote with any other utility or even this one. Obviously since it is encompassing the water utility, would we want to make sure we know what they did?

Mr. Coleman: I don't know that it's necessary. If we have another utility that should locate within the city, they would have to follow its governing standards and adopt them also.

Chair Rohlf: Does anyone have any further comments?

A motion to recommend approval CASE 09-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-9.4, FENCES AND WALLS : HEIGHT AND LOCATION REQUIREMENTS – Request for approval of an amendment to the Leawood Development Ordinance – was made by Roberson; seconded by Williams. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

CASE 14-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-1-4 – PUBLIC UTILITIES AND PUBLIC SAFETY USES – 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 04-10 – Leawood Development Ordinance Amendment – Section 16-1-4.2 – Public Utilities and Public Safety Uses – Minimum Standards. This amendment references the amendment you just heard and approved. Again, it's just a reference to Article IV directing to that section. Staff is recommending approval of this amendment.

Chair Rohlf: Does anyone have questions for staff?

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Roberson; seconded by Rezac. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

Comm. Elkins: I would like to ask that the record reflect that the comments I recorded with respect to Case 09-10 be included in the record for our consideration of Case 04-10.

A motion to recommend approval of Case 04-10 – Leawood Development Ordinance Amendment – Section 16-1-4 – Public Utilities and Public Safety Uses – Request for approval of an amendment to the Leawood Development Ordinance – was made by Roberson; seconded by Neff-Brain. Motion approved unanimously with a vote of 7-0. For: Pateidl, Roberson, Neff-Brain, Rezac, Williams, Elkins and Heiman.

MEETING ADJOURNED.