

City of Leawood
Planning Commission Minutes

August 24, 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, Jackson, Neff-Brain, Rohlf, Williams, Elkins, Heiman and Rezac.

APPROVAL OF THE AGENDA:

Mr. Klein: Case 77-10 – ONE NINETEEN – RASPUTIN RESTAURANT AND VODKA BAR – has requested a continuance to the September 28th meeting.

A motion to approve the agenda as amended was made by Roberson; seconded by Williams. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

APPROVAL OF MINUTES:

Approval of the minutes from the August 10, 2010 Planning Commission meeting.

A motion to approve the minutes of the August 10, 2010 Planning Commission meeting was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

CONTINUED TO SEPTEMBER 28, 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 64-10 – TOWN CENTER PLAZA – LOT 9 – WALGREENS – Request for approval of a Special Use Permit and Preliminary Site Plan, located at 4701 Town Center Drive. **PUBLIC HEARING**

CASE 77-10 – ONE-NINETEEN – RASPUTIN RESTAURANT AND VODKA BAR – Request for approval of a Final Plan for a Tenant Finish, located at the southeast corner of 119th Street and Roe Avenue.

CONSENT AGENDA:

CASE 74-10 – MARKET SQUARE CENTER – CHINA KING – Request for approval of a Revised Final Sign Plan, located at 3634 W. 135th Street.

CASE 75-10 – TOWN CENTER PLAZA – CLARKS – Request for approval of a Final Site Plan for a tenant finish, located at 5000 West 119th Street.

CASE 76-10 – PARKWAY PLAZA – SAZZY'S – Request for approval of a Final Sign Plan, located at 4800 West 135th Street.

CASE 78-10 – PLAZA POINTE – CROSSFIRST BANK LEAWOOD – Request for approval of a Final Site Plan, located at the southwest corner of Roe Avenue and 135th Street.

CASE 79-10 – PARKWAY PLAZA OFFICES – LASER SHARP FITNESS – Request for approval of a Final Sign Plan, located at 13420 Briar.

CASE 80-10 – BI-STATE CENTENNIAL PARK – LEAWOOD HIGHLANDS BUSINESS CENTER, 2ND PLAT – Request for approval of a Final Plat, located north of 141st Terrace and east of Overbrook Road.

CASE 82-10 – SOMERSET SHOPS – DOG PAWZ – Request for approval of a Final Sign Plan, located at 7960 Lee Boulevard.

A motion to approve the Consent Agenda was made by Roberson; seconded by Rezac. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

OLD BUSINESS:

CASE 66-10 – I-LAN PARK – JESSE SMALL SCULPTURE – Request for approval of public art, located at 12601 Nall Avenue. (Continued from the August 10, 2010 Planning Commission meeting.)

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Commission, this is Case 66-10. It is a request for approval of a public art piece located at I-Lan park. The piece is titled "Gate to I-Lan" and resembles a gate with lanterns. The piece is proposed to be located within the park and north of the shelter house, between the parking lot and pedestrian trail. It is proposed to be constructed of hot-dipped galvanized steel with silver-grey finish and is proposed to be approximately 21' in height by 19' in width and 13' across. The proposed lantern pieces will be attached with 1' diameter bolts to provide a rigid mounting. The bottom of the lanterns will be approximately 12'9" above grade. Staff has suggested that the piece be placed over the adjacent pedestrian trail, and the applicant has indicated this is a possibility. Staff recommends approval, subject to the stipulations in the report.

Chair Rohlf: Questions for staff?

Comm. Williams: I didn't have a Site Plan in my packet. Is the proposed location what we saw at the last meeting?

Mr. Rexwinkle: The location the applicants proposed is the same as last time, but Staff has recommended it be moved over the trail. Mr. Small has agreed that it might be possible. The final location is not ironed out.

Applicant Presentation:

Anne Kenney, Chair of Public Art, 9814 Overbrook Court, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. Kenney: I have Jesse Small here, and I think he can do a better job of answering questions. I'd like to address the question of moving it over the trail. We thought that it was an entrance to the whole park and not just to the trail. The way we had it oriented, it went east to west, and we liked the idea that it was a gate to the east. We also felt it would be less likely to be a danger to anyone. We're afraid kids going by on skateboards or bikes might find some neat way to use the structure. I'll let Jesse speak.

Jesse Small, 1909 W. 42nd Avenue, Kansas City, KS, 66103, appeared before the Planning Commission and made the following comments:

Mr. Small: In our initial planning, we were concerned about how wide the gate would have to be so that the vertical support poles would be far enough away from the trail to avoid a hazard. We felt it would have to be too broad, turning into a whole different project. Also, to reiterate what Anne said, it is very symbolic that it is connecting the east and the west. To cross the trail, it would unfortunately have to face north/south. Finally, visibility from the street and parking area is a big deal. It is going to be in the best possible posture to be visible from those areas in its current orientation. I would like to firmly state that our plan is to have the sculpture in the original orientation, not crossing the trail and facing east/west. I also brought a material sample to address concerns (*brings a material sample forward*).

Comm. Neff-Brain: I think it looks fabulous, and I'm really excited about it. I agree that, as much as I'd like to have people walk under it, I can see kids on bikes jumping at it. I think it is better by itself in a safe location.

Comm. Williams: In that regard, I don't have the Site Plan, and I don't remember if it called out dimensions as far as the location off the trail. Do you have an idea of that?

Mr. Small: Yes, and I'm sorry we don't have a better Site Plan prepared for you. Basically, there is a walkway around the parking area. Then there is a part where the trail loop gets closest to the parking area and back. It's about midway between the pagoda form and the outdoor picnic area. There is a slight slope from the parking level down to the trail, and I want to say it's about from here to where you are sitting. There is a good 12'-14' to work with to position it away from the trail.

Comm. Williams: What, if any, additional site work would be done at this location? Is there shrubbery, plantings or pavement, or is it strictly just the sculpture sitting in the grass field?

Mr. Small: It is strictly the sculpture in the grass field. Last year, I did a project which involved similar uprights that were holding a heavy structure up in the air that presented a wind-load issue and a general weight-in-the-air issue. The engineering solution for that was to put in heavy foundations. We will have some foundation work in the area. We are already sure there is no wire or anything in the area that would interfere with that. (*Refers to overhead*) Here, you can see the Site Plan, which shows the orientation. The other concern with engineering was the wind load. I want to reassure you that I work with an engineer and will run everything past the engineer before anything gets built. From previous experience, I'm sure with the footings I am planting and all the gauges of material that I've been selecting for this, we are completely in the green. I run all of my wind-load calculations as though the metal work is not cut out, so that keeps me in the green because I am cutting out patterns all throughout. In reality, it is a lot lighter than what I am calculating.

Comm. Williams: I don't have the drawing, but I remember the footings to be about 7' deep.

Mr. Small: Yes, 6'-7', so very substantial footings. Then I use four 1" threaded rods and a 1" thick base plate that is 20'x20'.

Comm. Williams: On that base, is the concrete footing going to be covered?

Mr. Small: It is 3" under grade; the sod covers the bolts.

Comm. Williams: Are the lanterns a firm, fixed piece that won't be blowing in the wind?

Mr. Small: Yes, the piece is designed to give the feeling that the lanterns are hanging, as they would traditionally hang from a wooden gate with a rope. It is only the image of hanging; in fact, it is a solid-steel connection that goes down to the lantern. It has two 1" bolt connections to the armature, and it is actually welded into the knuckle that all the lantern fins bolt to individually. As with any steel object, there will be movement. This is what makes steel durable.

Comm. Heiman: In a memo dated August 13th to Anne, you put in your notes that you've designed the footings of the support poles according to lessons learned during the Iowa project. Can you tell us what those lessons were?

Mr. Small: I worked with an engineer up in Des Moines, Iowa. We put up seven large outdoor steel sculptures at a hospital campus. I don't want to suggest that something bad happened, but working with that engineer was really interesting because that is up in tornado alley. The engineer was a specialist working with wind loads and such. He helped me determine these deep footings, threaded rods and deep base plates. When I do projects, I like to over-engineer them so I can still sleep at night. The hard part is making things that don't look too clunky. I feel that this project has a good balance of a strong engineering approach and an elegant object.

Chair Rohlf: Does anyone else have questions?

Ms. Kenney: In selecting this site, we also considered the trees at the park. Three trees would be around that, one of which looks sick. This would leave two trees with one on either side.

Chair Rohlf: What is your timetable for this project?

Ms. Kenney: We don't know when the delegation might come. It probably would be fall '11, but I think Jesse would be ready to start on it anytime.

A motion to recommend approval of CASE 66-10 – I-LAN PARK – JESSE SMALL SCULPTURE – Request for approval of public art, located at 12601 Nall Avenue with all of Staff Stipulations in the Staff Report – was made by Neff-Brain; seconded by Roberson. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

CASE 60-10 – LEAWOOD JUSTICE CENTER – Request for approval of a Preliminary Site Plan located at the southwest corner of 117th Street and Tomahawk Creek Parkway.

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 60-10 – Leawood Justice Center. This came before the Planning Commission originally on June 22, 2010. At that time, the Staff Report and submitted plans were in error regarding future programming of the site. This application is only presenting the Justice Center itself. It is located on 12.2 acres, which are divided into three tracts. The Justice Center is proposed to be located on a 7.04-acre tract in the northeast corner of the site at the intersection of 117th Street and Tomahawk Creek Parkway. The Justice Center itself is proposed to be 87,811 sq. ft. Also proposed is a 19,669 sq. ft. parking garage at the south end of the building. The building

itself will be two stories above grade and a basement with surface parking lot to the south and west. The grade slopes to the east about 36'. The parking lot contains 172 parking spaces, which is 1.96 parking spaces per 1,000. This is less than what is required by the LDO for that size building; however, it does not take into account the parking structure. There are three points of access into the site: one on 117th Street and two on Tomahawk Creek Parkway. The project meets all the bulk regulations; the only one that needs to be nailed down is the height of the building, which needs to be a maximum of 40'. With it being two stories above grade, we do not see that coming into play. Staff is recommending approval of this application with the stipulations stated in the Staff Report, and I'll be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Neff-Brain: Will the whole tract be taken out of the flood plain?

Mr. Coleman: Yes, only a portion of the tract at the northeast corner is in the flood plain. That portion where the building is will be mitigated and not in the flood plain.

Comm. Neff-Brain: Does the city have to pay for flood insurance if the lot is in the flood plain?

Ms. Shearer: I don't know the details of the insurance. I do know that we have other city properties in the flood plain, and while I am fairly certain we are insured, I would hate to speak out of turn.

Mr. Ley: If there is a loan on the property, you have to have flood insurance.

Comm. Neff-Brain: (*referring to aerial photo*) It looks like other buildings are located here. Oh, we're over here. Just because we're told there was an error and any future programming of the site should not have been indicated, that does not give me any comfort in thinking that fire station is still asking to be put where it was shown last month.

Mr. Klein: Any future programming would have to come before the Planning Commission and City Council. The emphasis right now is to focus on the Justice Center.

Comm. Neff-Brain: Right, but when you set that where you're setting it without showing any other details of the property, you're kind of hamstringing the ultimate development. I thought we would come back with some kind of Site Development Plan.

Comm. Roberson: My understanding is that this drawing of the Justice Center is an imaginary drawing at this point in time and may or may not end up being what the Justice Center is going to look like. The parking lot may or may not look the same as well. I thought we were going to have a more detailed drawing with respect to this. All we're getting is the same information we got last time, eliminating the words "Fire Station" and "Rec Center."

Chair Rohlf: I was absent at that meeting and have had a chance to look at the minutes. I'm a little concerned that things got sidetracked with the Fire Station. Is this a real building, or is this a concept? What is the background of this tract of land, and what is the overall plan for this? This is an incomplete set of plans.

Mr. Klein: This is a very real project and has been discussed in great detail for some time. The city went through condemnation on this property, in large part, due to the need for the Justice Center. What this application intends to do is to show you the general location and layout of the Justice Center. Granted, there are no preliminary elevations or anything shown with this, but elevations really are approved at the time of Final Plan. It has provided some square footage calculations so we could compare it against the bulk regulations and check setbacks and F.A.R. requirements. It is also intended to show the parking layout. The final details that typically aren't approved until Final Plan have been left until more detail could be worked out, including lighting, landscaping and elevations.

Mr. Coleman: The city has not hired the architect for the project at this time, so this is the Preliminary Plan. The city is getting ready to hire an architect, and they will be taking these plans and developing the architecture, materials and so forth.

Comm. Roberson: My understanding was that this would be a design-build by a contractor, and no architect would be involved.

Mr. Coleman: I understand that was considered a year or so ago, but that has changed. It is going to be a design-bid-build project with a traditional construction delivery process.

Comm. Roberson: So there will be an actual architect involved.

Mr. Coleman: Yes, there will be an actual architect and engineer on the project. The city put out an RFP for and has hired an owner's representative, who is helping the city prepare an RFP/RFQ for the hiring of the architect for the project. We anticipate that will probably occur in the near future.

Comm. Roberson: And the city will then go out for bids to construct it?

Mr. Coleman: Yes, once the city has the Final Plans approved by the Planning Commission and City Council, the city will then advertise for bids for the construction of the project, take those bids and begin construction as soon as possible.

Comm. Rezac: I'm less concerned about the development of the design than I am with the issue brought up at the last meeting about the three tracts of land and whether it is responsible of us to plan for just one tract without having a master plan of some kind. I don't see where anything was amended before it came back to us.

Mr. Klein: Part of the concern was the uses shown to the west of the Justice Center. This focuses on the Justice Center because it is the component that we know where we want. We thought that removing the future uses leaves a little more flexibility on the site. Then we can focus on the Justice Center. There are accesses and parking. As the other uses are solidified a little more, we will look at how they tie in. There is no design that places those municipal uses there. I am not really sure what those would be at this point.

Comm. Rezac: That's my point, I think we should have a little bit better understanding of what is happening on those other tracts of land.

Mr. Coleman: The problem is we really don't have concrete information to provide to you. The previous plans were in error.

Comm. Williams: I think what we are getting at is that if this were coming to us through a developer, we would be seeing how that entire tract could be utilized. They would be putting buildings of some size, addressing the F.A.R., addressing the parking and giving us a better picture of how that tract of land would be used and how the components would relate to each other. Granted, it's a little easier when you have a retail center, but I would like to see what size of structures could fit here and how they relate to this proposed Justice Center. I'd like some clarification before we go on. I heard you say there are three accesses into the site, including two off Tomahawk. I see one access off Tomahawk.

Mr. Klein: There is one directly south of the building.

Comm. Williams: So the one that serves the retail center and the Waterway is one of those?

Mr. Klein: Yes.

Comm. Williams: So that actually accesses the site, but not the Justice Center.

Mr. Klein: Yes.

Comm. Williams: So there are only two points of access proposed for the Justice Center itself.

Mr. Klein: Yes.

Chair Rohlf: With the zoning we have in place on this entire piece, those will be municipal uses and will not revert back to something else?

Mr. Klein: The best information I have to provide you is that they will be future municipal uses.

Comm. Neff-Brain: If the land were condemned, it would revert back to the owner if it was not used for municipal purposes.

Chair Rohlf: I guess I have some overall concerns that we don't have a lot of answers. We don't know the ultimate density or impact of traffic. I'm not sure that we can look at this as an isolated building and feel comfortable making a decision.

Mr. Klein: The site the Justice Center is on is pretty well defined by the tract. The Justice Center and the parking actually fill up that portion of the tract, which meets the F.A.R. of .2, which is allowed within the SD-NCR zoning district. We do know that this site is not limiting the other two tracts.

Mr. Coleman: On some of the developments, we don't know what the future buildings are; we only know what the F.A.R. is. Centennial Park has many lots that are undeveloped. We don't know what those buildings are going to look like. I see no substantial difference between that and this.

Comm. Neff-Brain: What size building could you put on the tract to the west?

Chair Rohlf: It is one acre.

Comm. Roberson: Can you give me some sort of time frame when this will be built if it is approved?

Mr. Coleman: Yes, I would expect that the RFP for the architect would go out in the next several weeks. It probably will take several weeks to a month to select the architect and get a contract in place. They would start working on the design for the project this fall and probably through spring of '11. I would expect we would break ground on the project sometime next summer. Then the project will take a little over a year to build. I would expect that, before the end of 2012, they would start to move in at the Justice Center.

Chair Rohlf: What will be in that building?

Mr. Coleman: The courts that are held here are held on Wednesdays, and there are also afternoon meetings here. The court offices are located on the ground floor of the west wing, as are the law offices. All of that would move to the Justice Center. That includes the police offices that are currently on Lee Boulevard. They will be vacated and moved to this location. We also are moving in a hardened IT center to this location that would provide IT security for the operations of the city, police and Justice Center.

Comm. Jackson: For me to be excited about this project, I would like to see Leawood looking like it is at the forefront of what we try to bring about when we bring developers in: structure parking and a little more density. I would like to see more bike paths and more walking to promote healthy activity. This is so close to the most gorgeous bike path in the area, and we're not taking advantage of it. We need a link from the Tomahawk Creek bike path through this development, and then if you could get it to Sprint, you have so much retail and office space that could be accessed from that path. It really needs to be part of this, and Leawood needs to show how it can be done and make it look exciting. I'd like these architects to consider this.

Mr. Coleman: I think something along those lines would be considered in the project because our LDO requires those sidewalk and trail connections to the Tomahawk Trail. The project is also looking at the energy efficiency. I don't know whether it will be certified or not, but it will be an energy-efficient building.

Comm. Elkins: On these plans, we see three different tracts. Are these three tracts platted as three different tracts? When we talk about tracts one, two and three, what are we really talking about?

Mr. Klein: These tracts are part of a Preliminary Plat that is going before you right now. This was originally platted as part of the Camelot Court Shopping Center. There are pad sites located along those. This will re-plate those into this configuration. The preliminary plat comes before you and shows where the different tracts are located. It does not take effect as legal tracts until the Final Plat, at which time the legal descriptions will be recorded and all of this will be solidified.

Comm. Williams: So if they need to tweak the tracts somewhat to better fit the parking or building that will take place at that time?

Mr. Klein: Yes.

Comm. Williams: If you're looking at this plan with the parking and anticipated entrance, which is facing that parking lot, you're also facing directly to the backside of Camelot Court. That has got to be one of the ugliest views in Leawood right now. I would hope that, in the development of the Justice Center, something is done on this property to screen that. You're talking a major municipal project that needs to be an elegant, good-looking statement for the community. Along that same line, we don't have any uses identified for those other two tracts. Right now, they are basically grass fields, weeds and rocks. Since the entrance off Tomahawk Creek would be a primary entrance to the facility, I would hope that the tract along Tomahawk - at least for the portions that abut the parking lot, certainly the entrance drive and the street - get improved to the point that it's an attractive green space. Likewise, the piece along 117th Street cannot be a weed bed as we've seen some of the developments around the city become when those properties don't get developed for 5-10 years. The city should be held to a higher standard than what we expect developers in this regard.

Chair Rohlf: Any other questions? Are you also the applicant, or is there someone else who would like to speak on behalf of the city?

Applicant Presentation

Ken Henton, Hoefler Wysocki Architects, 14321 W. 53rd Terrace, Shawnee, KS, appeared before the Planning Commission and made the following comments:

Mr. Henton: We worked with the city to do the preliminary planning. I'm here to answer questions. These guys did such a good job explaining everything. If you have questions, I'd be happy to answer them, but they've purveyed everything we needed them to.

Chair Rohlf: What role do you play in this?

Mr. Coleman: He is the planner for the Preliminary Plan and Plat.

Mr. Henton: We were hired to plan. We're not the architect for the building, but we hope to be. We were hired to help the city determine their space need requirements, programming and then also do a test on the site to make sure the site would handle the facility and give maximum future flexibility.

Comm. Pateidl: I found it interesting that you said this is the first phase of the Master Plan. I think the discomfort this commission had last month when we visited on this subject was that we lacked a Master Plan for the 12 acres. I've heard tonight that this will fit in the confines of the tract, and then I hear that the tract is actually being established now. It's like putting your foot down on the ground and drawing a circle around it. Unfortunately, I don't see that as a lot of planning. We asked about alternatives for this site and if there is a different place to put the Justice Center. We got sidetracked with concern about the Fire Station, but the reality is that we've got 12 acres of

ground on which we really have, as a Planning Commission, no idea of what is going to happen, other than a Justice Center. While I have full sympathy with our law enforcement group's present housing and needs, I have a real problem with the lack of a Master Plan. Describe what your planning consists of and how you can come to a conclusion to where you can give us something we can grasp.

Mr. Henton: The scope of the work was to evaluate the use of the site. We did look at a variety of different locations on the site for the Justice Center. We looked at what was left for alternative uses to give the city maximum flexibility for whatever they wanted to build. We wondered if a fire station would fit there, so we drew it on and then unfortunately left it. Several people on the Council said it wasn't going to happen; they felt the same way. We worked with 20 city staff to do this analysis, and this was heads and tails above any other solution we actually came up with in terms of the best bang for the buck and the best location for the Justice Center, creating a civic campus with this building and the library next door. This is a long-range positive thing for the city. That was one of the primary reasons that, for instance, the building did not go in the back corner of the site against the retail.

Comm. Neff-Brain: Realistically, if we want a Community Center someday and a Public Safety building and a Fire Station, clearly you can't put a Community Center on one acre; so it will have to go on the other space. This will leave only that little tract for the Fire Station. Without planning the whole thing with what we think the uses will be for now, we're not just going to be locking ourselves in for those other two uses.

Mr. Henton: I can see how you would jump to that conclusion because of the way the site is laid out. Again, it is a Preliminary Tract, but we talked about at least a half a dozen uses for that small site: everything from relocating the old City Hall building on Lee Boulevard to relate to the public campus to a Fire Station to expanded parking, a park or parking garages. Whether you'll build a community center or aquatic center on that site is up to you. Its relationship to the park and the soccer fields and the synergy formed along Tomahawk Creek Parkway, we thought, was a pretty important thing. We looked at trying to put a bigger building on the corner of the site, and it just had so much disruption with the rest of the campus that it became a negative feature for the site.

Comm. Neff-Brain: Up where Waterway is?

Mr. Henton: Yes, we looked at that, and quite frankly, a bigger building destroyed the use of the site. It allowed for about half of the development of this layout in terms of the long term. It chopped the site up to the point where you really didn't have that big parcel on the south end.

Comm. Jackson: Part of my understanding as to why this is in a corner like this is the 60/40 rule with the parking which prohibits too much parking by the street. When you want to make a statement with a city building, does that ordinance get in the way? It seems like if you are truly trying to incorporate this with the park and the soccer fields and make a statement with it, it's pretty subdued with its back toward the community.

Mr. Henton: The dynamic thing about this site is that it falls off the most right there. We've taken a two-story building with a basement that actually exposes itself as a three-story building. Every time I drive to Leawood and drive up behind this building here and look at the magnificence of the

structure, I am thinking, "This is what this building wants to be. It wants to be something that has two front sides." By getting all the parking off the street, you don't create another shopping center like we have with the big parking lot that you have to look across before you get to the buildings. You actually bring all that internally and let the public have a safer, more confined area. Then you have another front side of the building, which is actually the back and faces the public. It allows a nice, formal nature.

Comm. Jackson: In your mind, does that make it approachable for pedestrians from that back side? Would there be an actual approach?

Mr. Henton: We drew some site plans that showed parking back there, and we felt it would be too disruptive and confusing in terms of how the internal parts of the building function. Staff might have access to a lower level, pedestrians would not. We've given some relief so we can create a fountain or something civic in nature.

Comm. Jackson: The nice thing about this building is, when you drive by, you have a beautiful view straight into the building. It seems more open to the public and as if the community is trying to draw the public in. This doesn't say that to me.

Mr. Henton: We did some 3-D models with it. You mentioned things you'd like to accomplish with the trails, and certainly, screening the back of that shopping center is nice. If you look at the way the parking has been laid out with spaces between the stalls of parking, the idea was to try to break that parking down so it wouldn't be a sea of parking and then to let it terrace down. We're showing diagonal sidewalks through the parking lot, but the idea is to enhance that so that the environment that we can control is as beautiful as it can be. Then staff will have the ability to see a nice beautiful pond across the street and all the woods along the creek. We think, with the opportunity with the plaza in front of the building, we can make this beautiful. Our company has done almost 70% of the buildings along Tomahawk Creek Parkway. The internal and external environments we've created are very thoughtful. We can certainly accomplish something here that is even more beautiful than that.

Comm. Rezac: If this plan is approved, to what extent is the design set or not set?

Mr. Coleman: It's not set at all. This shows a general layout and location of the building on the site. It's a two-story building with a basement with a parking lot, and that's pretty much the extent of it. It will be up to the architect the city hires to develop the actual design and those relationships with the shopping center, City Hall and other surrounding properties.

Mr. Henton: I agree. I wasn't trying to mislead you; I maybe got a little overzealous in terms of scope.

Comm. Williams: Even though we're looking at a plan today that shows an L-shaped building, an entry plaza next to the parking lot, from what you're saying, that may not be the Final Plan.

Mr. Coleman: The Final Plan is likely to be similar, but I wouldn't say that it is necessarily going to be exactly this. This gives us the square footage on the site, parking requirements, the bulk

requirements and the location of the building. That's the extent of the Preliminary Plan. At Final Plan, it will be fully developed with an architectural design and materials.

Comm. Williams: So in the development of this plan, you're just basically looking at a program that defined the square footage and how it can be achieved on the site. You didn't get into fitting together the parts and pieces that make up that program.

Mr. Henton: No, I think everybody knows what the parts and pieces are, but how they work together is relatively undefined.

Comm. Williams: In the case of the Justice Center, I can see where that is going to heavily affect what the final shape and configuration and certainly the nuances that you have shown on your plan would do.

Mr. Coleman: There are a lot of technical requirements for the prisoners and the relationship between the courts and the Police Station and so forth. Those will all be developed at the Final Plan.

Comm. Williams: Generally speaking, what we're to do here with the limited information we have, which is not to the same level we'd expect a developer to have, is to see that it's a land use with a building close to the corner and a parking lot inward. We've got two tracts of undeveloped land on either side of the building and the parking lot. That's pretty simplistic, but that's what we're looking at. Thank you.

Chair Rohlf: Richard, is there something that makes a city building different? We have guidelines as far as what we should be looking at with Preliminary, and under commercial development, this doesn't come close. Is it different because it's a city building? I'm wondering if there is some leeway granted to the city.

Mr. Coleman: There is. The city had been planning this project for a number of years, and the city wanted to proceed as quickly as possible with that plan. The Preliminary Plan doesn't have the elevations you might see, but those will be coming fully at the Final Plan. That is really the main thing that is left out.

Chair Rohlf: We'll get into setbacks and traffic?

Mr. Coleman: They've provided for setbacks.

Chair Rohlf: I guess that is all in the bulk regulations. I'm questioning why this plan is not coming back after the architects have been hired and we have the kinds of details we would typically see. I'm curious because when we see a plan in Final for commercial development, we are still looking for compliance. We can't look at a plan that is totally different than it was at Preliminary. I think we're setting ourselves up if we approve this at Preliminary. We don't really know what is going to come back at Final.

Mr. Coleman: At Final Plan, you will have the ability to approve or deny all the design details.

Chair Rohlf: Wouldn't it make more sense, particularly from a financial standpoint, to see this after the architects draw it up? If we go all the way through to Final Plan and we think it's not the right use for this site or any other number of things, we've wasted that time.

Mr. Coleman: We're just laying out the major points you would see in any development plan, including the location and footprint of the building and the parking. It's giving you the facts that it meets the F.A.R. and other regulations. At Final Development Plan, the bulk of the design is brought forth. The preliminary design is always held at Final Plan approval anyway. They really do have the right to change those design elevations between Preliminary and Final.

Mr. Henton: One of the things I think is unique about this specific process is that we actually have the city staff engaged in the process. If we draw a line, they'll tell us to pull it off if it's not appropriate. I think there are a lot more safeguards in that regard.

Comm. Neff-Brain: From a legal standpoint, we make developers do certain things. Is there something in the code or regulations we follow that say what the Preliminary Plat should cover?

Ms. Shearer: In Section 16-3.5 of the LDO, it lists what is normally required in a Preliminary Development Plan. However, under the section about application and requirements, the last sentence reads, "The Preliminary Development Plan shall be accompanied by a completed application form, approved by the Director, which shall include, except as may be otherwise required by the Director." There is some leeway with what Mr. Coleman, as Director, can require as part of a Preliminary Plan.

Comm. Neff-Brain: If a developer were coming in with this, would we move forward?

Mr. Coleman: The direction we were given was to do the Preliminary Plan and Plat without the elevations. We are in the process of hiring the architect, and we didn't want to prejudice whoever we hire with those designs. We did want them to know the location and size of the building.

Comm. Pateidl: I think Commissioner Neff-Brain asked a very direct and good question. If John Q. Public Developer came in with this proposal, saying, "We want to stick one building here, and we're not going to talk about the rest of the five acres that are in this site; and we want to have a Preliminary Plan approved," would the Planning Department bring it before this Commission?

Mr. Coleman: As far as the site goes, yes, we probably would have asked for the elevations of the building; as far as the rest of the site goes, not necessarily. Centennial Park has no buildings planned.

Comm. Pateidl: Regardless of the use within the zoning restrictions? Okay. You're saying that would be brought to us.

Mr. Coleman: I believe it has in the past, as in with Centennial Park, for example.

Comm. Williams: Even beyond that, when we think about some of the retail developments that have come before us, the difference is that they come with the entire tract laid out as to what possibilities could be in that entire tract, whether it be 12 or 40 acres. That is preliminary. Then as

they come in with a bank, restaurant or store, they come back with a more detailed design and elevations. That is what we don't have here. Again, I think we all were hoping to see how a building might sit on the one-acre tract and likewise with the larger tract so we get some sense of what the relationship is to the Justice Center, the parking and the potential development.

Mr. Coleman: If there was a consensus among the city on that, then we could; but there is no consensus about that, so we can't.

Comm. Williams: Consensus is city staff and Governing Body?

Mr. Coleman: I think it is staff and the city in general. The only thing we have consensus about right now is the Justice Center.

Comm. Roberson: If you use a shopping center as an example, the shopping center would come in and have pad sites. You don't have a clue where the building is going to sit on that pad site. You might almost look at this as two different pad sites.

Comm. Williams: You're right. And even though they are pad sites, there is a footprint that establishes a square footage and parking requirements for that building.

Comm. Roberson: He has already said that these would have to comply with the F.A.R. and such. I think the biggest concern is maintenance of these two tracts of land so they don't look like what they look like now. I'm inclined to vote for this thing. I know a lot of you may not be, but I think the city needs a Justice Center. This has been on the drawing boards for a long time. I, too, am uncomfortable with the way this has been presented to us. I'm uncomfortable with the fact that we've been left out of the planning and we're being asked to react to something. Having said that, I think the city needs a Justice Center. I think the Police Station itself is overcrowded and somewhat archaic. The hardened IT Center is important. The city needs to move into the 21st Century in some respects. I'll vote for it. I'm disappointed in what we have here, but I think we'll have an opportunity to look at this again at Final and maybe more than one time if we don't like it then. Let's see what happens. Maybe we're all very happy with what happens.

Chair Rohlf: Any other comments? We do need to have a Public Hearing.

Public Hearing

As no one was present to speak, a motion to close the Public Hearing was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

Chair Rohlf: That takes us up to further discussion.

Comm. Williams: I completely agree with Mr. Roberson. I think the placement of the building is appropriate. I see that there is some potential for a very good, elegant public building with good visibility. I would much prefer to see the building at the corner than to see a parking lot. I think if we had a developer come in with an office building, for example, on the corner with a parking lot behind it, we would probably applaud his efforts to do so. This truly has the need to be four-sided

because it would be seen from all directions. I am supportive of the plan as presented. I share Mr. Roberson's concerns about how it was presented with lack of information on adjacent tracts.

Comm. Rezac: I agree that there is a need for this building and that would be a definite need for the city. I am comfortable with what is shown here to the extent that the design has been done. I still feel like the city, more than anyone out there, should be pushed to create this Master Plan and answer these questions so that we are putting forth to this community a well-developed plan for this parcel of land. Therefore, I will continue to deny this case.

Comm. Neff-Brain: I will wholeheartedly agree with Ms. Rezac. I think, as the city, when we make these requirements of others in the community, we need to be at the forefront of following the requirements.

Comm. Elkins: I find myself in agreement. I have to note the irony because the record will reflect that when we last considered the proposal, I was the sole person favoring the plan. Now I find myself agreeing with Commissioner Neff-Brain and Rezac. If all we were being asked to look at was the Justice Center, I completely agree with Mr. Williams. My challenge is that we are also being asked to approve a Preliminary Plat of this property, which effectively becomes ad-hoc planning. We're going to back in and find ourselves with that one-acre tract. We'll be presented with, "That's the only thing we can use it for." Today, we have the opportunity as a Planning Commission to actually plan for that land. I like the position of the building, but I am struggling with the idea that we'll eventually be left with a piece of ground with few options. If we're planning, we have to hold the city to a higher standard. The first step is not building a Justice Center because we needed a Justice Center. The first step in terms of a long-range plan for the community is to look at this 12-acre piece of property and get an idea of what the plan is for that property. There was a lot of discussion about it a month ago, but at least we were presented with a plan. That is why I think this plan before us is so much less attractive than what we had before.

Comm. Jackson: I'd like to see the city commit to a parking structure. The city has been very good about putting in bike routes, but they don't bring them up to the building. They don't have a place at the building for pedestrians who want to come in. We're building everything for our cars and motor access. We need to start showing how buildings can be built for foot and bike traffic. Draw people in with those bike paths and make the retail start putting in places to park those bikes.

Comm. Heiman: I'm a little torn as well. I certainly agree that this is a Preliminary Site Plan, and I'm in favor of it. I think the idea of a Master Plan is long-gone. We had that opportunity many years ago, and how nice it would have been to incorporate the Justice Center in this area; but we don't have that opportunity anymore. We do have a finite amount of land in the city, and I think the idea of a Justice Center looks like a reasonable building that we need. It is a great place for it, and I'm tired of seeing it the way it is. Last time, we had a plan that was more comprehensive, but we shot it down for various reasons. Now, we're asking them to provide us with a more comprehensive plan. I think it's a mixed message. I liked it before. I live close to a fire station now, and it's not that intrusive. I would have been for it more so last time because the plan was more comprehensive. I'm for it and think it is a definite need. I don't know that we can do a Master Plan on 12 acres.

Comm. Pateid: I think we're looking at a bit of a rush to justice here. I appreciate the need of our law enforcement community, but from a principle point of view, if I'm going to sit on a Planning Commission, I would like the tools to actually plan. I don't see those presented before us in this proposal, at least sufficient for my own gut feeling that I'm doing the job I was appointed to do. I would be opposed to this proposal.

Chair Rohlf: I believe we've had all the comments.

A motion to recommend approval of CASE 60-10 – CITY OF LEAWOOD – JUSTICE CENTER – Request for approval of a Preliminary Plan and Preliminary Plat, located at the southwest corner of Tomahawk Creek Parkway and 117th Street – was made by Williams; seconded by Roberson. Motion denied with a vote of 3-5 For: Roberson, Williams and Heiman. Opposed: Pateidl, Jackson, Neff-Brain, Elkins and Rezac.

Chair Rohlf: The record should reflect that Mr. Roberson and Mr. Elkins have left the meeting.

CASE 54-10 – MISSION FARMS – DEVELOPMENT MONUMENT SIGN – Request for approval of a Final Sign Plan, located at Mission Road and 105th Street. (Continued from the August 10, 2010 Planning Commission meeting.)

Staff Presentation

Senior Planner Joe Rexwinkle made the following comments:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 60-10 – Mission Farms – Development Monument Sign. It's a request to alter an existing development monument sign at Mission Farms. The sign is located at the main entrance along Mission Road in front of the commercial portion of the Mission Farms project. The sign currently reads, "Mission Farms," and the plan proposes adding the words, "Restaurants and Shops." The LDO prohibits signs identifying information about the tenant other than the name of the tenant. Staff has interpreted this provision as it applies to development signs as prohibiting any such sign that includes any information other than the name of the development. Furthermore, the proposed lettering would increase the height of the sign above the maximum height of 18". For these reasons, staff is recommending denial of this case. Should the Planning Commission vote to recommend approval, staff advises that such a recommendation be accompanied by the three stipulations in the report.

Chair Rohlf: Questions for staff?

Comm. Rezac: The first comment refers to Section 16-4-6.9(AA). I didn't see that in the LDO.

Mr. Rexwinkle: It is the very last subsection of that section. It is right above 16-4-6.10.

Comm. Rezac: Thank you.

Comm. Pateidl: I have a question regarding the recommendation, "Should the Planning Commission decide to approve this case . . ." Under Stipulation No. 1, "All signage shall meet the requirements of the Leawood Development Ordinance." Under Staff Comments, it says, "Signs cannot identify the specifics of the activities within the development." It seems a little bit circuitous to me that this decision pretty much speaks for itself. We're being asked to do something that is outside the legal parameters of the LDO, period. If we were to approve it with your recommendation, it would go right back to the very paragraph I just cited.

Mr. Rexwinkle: That is true. Staff's interpretation is that this does not meet that specific section of the LDO. The reason we included that in there is that it is a standard stipulation, but also, the Planning Commission would have made the determination that it is not how this section of the LDO applies.

Comm. Pateidl: How could we do that?

Ms. Shearer: You, in effect, would have to say that it is not a tagline.

Chair Rohlf: Anything else?

Applicant Presentation:

Chair Rohlf: Is there anyone in the audience to represent this case? This is the second time they were notified, so they have lost the opportunity, haven't they?

Mr. Klein: They get three continuances.

Chair Rohlf: That is based on them asking. We are doing it because they are not here.

Mr. Klein: We continued it last time because they were not here. This would be their second one, as a result of them not being here.

Comm. Neff-Brain: Can we just move to deny it? Why should we keep reconsidering it if they're not even here?

Chair Rohlf: We can't approve it the way it's written.

Mr. Klein: Correct; you have the ability to continue it one more time.

Comm. Neff-Brain: Do we have the ability to vote and deny it?

Mr. Klein: I believe you do.

Noting the absence of an applicant, a motion to deny CASE 54-10 – MISSION FARMS – DEVELOPMENT MONUMENT SIGN – Request for approval of a Final Sign Plan located at Mission Road and 105th Street on the basis of direct violation of the LDO – was made by Pateidl; seconded by Neff-Brain. Motion passed with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Williams, Heiman and Rezac.

CASE 20-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1 – ACCESSORY USES (GENERATORS) – 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 20-09 – Leawood Development Ordinance Amendment to Section 16-4-1 – Accessory Uses for Generators. The Planning Commission saw this at the last meeting, and at that time, there were concerns primarily regarding portable generators and that they be required to meet the same setbacks permanently installed generators would have to meet. The revisions we have made to this ordinance eliminate the need for the portable generators to meet the location requirements. They still must be removed within 48 hours of the power being restored. Another issue raised was the fact that, due to the location, the manufacturer's specifications might contradict as far as what was previously proposed at 3'-5'. The same issue was raised about screening. That language has

been modified to include, "per manufacturer's specifications." We are recommending this application with the amendments as provided. I would be happy to answer any questions.

Chair Rohlf: Questions for staff?

Comm. Pateidl: Mr. Klein, you commented about the wording being changed to reflect the manufacturer's recommendations. I think under Subparagraph (d), it says, "All generators shall be situated no more than 5' away from the primary residential structure or as provided in the generator manufacturer's specifications." The city is continuing to establish some criteria for the placement of the generator as our discussion at the last meeting went forth. Part of our concern was the assumption of some liability as a result of our directives. Are we really accomplishing what we set out to do with the modification of this language?

Mr. Klein: It was staff's intent to provide a guideline of within 5' of the structure if the manufacturer's specifications allowed for it to be that close. However, if the specifications exceeded the 3'-5', they would be allowed to follow those specifications. We wanted to keep it close to the building but still allow the specifications to take precedence if they need to.

Comm. Pateidl: If the language were to read, "In accordance with the manufacturer's recommendations for installation, but no more than 3' or 5'," would you not accomplish just that? If the manufacturer says it's got to be 6', we're saying that is not allowed because it is over 5'. We're not saying they can put it within 5'. Again, this addresses the issue of liability as a result of our directions with respect to installation.

Mr. Klein: I thought the Planning Commission wanted to allow more flexibility. For instance, if the permanently installed generator could be located farther away, we would provide some sort of language that would allow that. It sounds like what you are saying is that basically we would draw a line in the sand at something like 5'. If it meets that, great; if the manufacturer's specifications say they can't meet that, then they would just be out. Is that what you are saying?

Comm. Pateidl: If that is your concern with respect to the aesthetics, at least that absolves us from liability as a result of indicating it would be appropriate to have the unit closer to the house than would be approved by the manufacturers. As it stands now, it can be 5' in. We're saying it can be within 5' even if the manufacturer's recommendations say it should be greater than that. I don't see how we're protecting ourselves from assuming that responsibility.

Comm. Neff-Brain: With what you say, we still have a liability problem because if the manufacturer says it must be 6' for safety and you say it can't be more than 5', you are asking for problems.

Comm. Pateidl: All that would be saying is if it can't be 6', then you can't put it in.

Ms. Shearer: Perhaps the sentence could read, "All generators shall be situated no more than 5' away from the primary residential structure, unless provided otherwise in the generator manufacturer's specifications." Do you think that would resolve the issue, Mr. Pateidl?

Comm. Neff-Brain: It would resolve the liability.

Ms. Shearer: Mr. Klein is right; it was our intent, in drafting this, to allow flexibility. If the manufacturer says 7' and we say 5', then clearly it should be 7'. Reading this during the meeting, I thought adding those two words might clear that up.

Comm. Neff-Brain: You need them for legal reasons. That doesn't solve the aesthetics. They may be at odds with each other.

Ms. Shearer: It will also be the same in Paragraph E: "Such screening shall be installed within 3'-5' of the generator, unless provided otherwise in the manufacturer's specifications.

Comm. Jackson: Did anyone look at a basic generator's manual and see how far most of them ask for?

Mr. Coleman: Yes, we did. Basically, they look for clearance around the generator and don't really specify how far from the house. The minimum clearance was 3' so it doesn't overheat.

Comm. Neff-Brain: So the issue isn't being so close to the house to cause a fire.

Mr. Coleman: I suppose if you didn't have the air and the generator burned up, it could start a fire. That's the reason for the 3' clear area around it.

Comm. Neff-Brain: Within 5' or as specified by the manufacturer's specifications because then it could be 3'.

Mr. Coleman: I think the language Ms. Shearer gave is better and would resolve the issue.

Comm. Pateidl: Another point that I think may require some clarification is in Section 28, Paragraph C, Subsection 5: "Portable and permanently installed emergency-use generators, provided such generators shall meet all requirements contained in Section 16-4-1.3(A)." As I review all of that, I don't see much, if anything, that relates to portable generators other than it saying that they may be used. The rest of the regulations, I believe, are dedicated to permanently installed emergency power units.

Mr. Klein: The reason for that is we wanted to make sure the portable generators didn't have to come in conformance with location in the rear yard. Those other sections were written for the permanently installed generators.

Comm. Pateidl: Would it not be appropriate to incorporate the comment that the portable generators are eligible for usage in accordance with manufacturer's recommendations? We discussed that matter in our last meeting. I'm trying to get away from the issue of carbon monoxide and electrical line usage. One last comment goes to Subparagraph D, Section 14: "Portable or permanently installed emergency-use generators are permitted, provided that permanently installed generators shall be required to be reviewed as part of the Final Site Plan, subject to approval by the Governing Body and recommendation of the Planning Commission, pursuant to the LDO." While I think it is very important that permits be drawn from the Public Works Department or the appropriate authority for building permits, I question the need to have this matter

come before the Planning Commission and the Governing Body. Is there a good reason for doing that?

Mr. Klein: This section deals with commercial developments, so that is in keeping with the rest of the exterior changes and that we require all commercial developments to come back before the Planning Commission and City Council. That is part of the reason you see tenant finishes, landscaping plans and sign plans. A generator would entail not only the location, but also the screening.

Comm. Pateidl: So that is directed solely at commercial development.

Mr. Klein: Correct.

Comm. Williams: I was trying to track this last discussion. A residential permanent generator would not be coming before the Planning Commission.

Mr. Klein: Not unless it was over 20kw or 48 cubic feet.

Comm. Williams: But they would have to get a permit to locate it.

Mr. Klein: Yes.

Comm. Williams: Is there a reason we are regulating the permanent generators more than we regulate air conditioning units, which are approximately the same size?

Mr. Klein: Part of the concern with portable generators is they are more a matter of choice. Also, there have been concerns about noise or the look of an additional box. The idea is that most single-family houses will have an air conditioning unit, but we didn't want to create a situation in which they add boxes without an approval process.

Comm. Williams: Is there anything in this to prevent them from locating the generator with their air conditioning units?

Mr. Klein: I don't think there is anything that would prevent them from doing that as long as it met manufacturer's specifications. They would be required to screen the generator.

Chair Rohlf: Any other questions? This case requires a Public Hearing.

Public Hearing

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

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

A motion to recommend approval of CASE 20-09 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1 – ACCESSORY USES (GENERATORS) – Request for approval of an amendment to the Leawood Development Ordinance with the change of language in Section 6, Item D to read, “unless provided otherwise in the generator manufacturer’s specifications,” and then likewise in Paragraph E – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Williams, Heiman and Rezac.

CASE 67-09 – BI-STATE / CENTENNIAL PARK – PARS ENGINEERING CONSULTING, INC. – Request for approval of a Revised Final Site Plan, located north of 141st Terrace and east of Cambridge

Staff Presentation

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 67-09 – Bi-State / Centennial Park – PARS Engineering – Revised Final Plan. This has been before the Planning Commission on a number of other occasions. It was originally approved per the plan attached in the application with two colors of stucco in bands with relief between. A metal awning was over the entrance. The applicant came back and asked to have this application approved with some changes in the construction. One change is cultured stone to be located in the place of real stone. In addition, they put stucco over the canopy that was located under the front entrance, and the applicant has changed that back to the way it was approved. Then there was a retaining wall on the north side of the project that was supposed to be natural stone and red CNU units. At time of the approval, the developer of the overall development was not supportive. The City Council remanded it back to the Planning Commission to allow time for the applicant to discuss it with the developer. They could not reach an agreement. This application, therefore, is before you with the stipulation that the cultured stone be used in place of the real stone, the awnings be added to break up the façade, and also the area for the retaining wall on the north side of the building be re-graded, which would eliminate the need for the wall. This time, the applicant agrees on real stone. Staff is recommending approval of this application and is happy to answer any questions.

Chair Rohlf: I noted on Page 2 of the Staff Report, there are dates that need to be changed to 2009. Was there some time sensitivity with regard to this the last time with regard to and occupancy permit? Have they moved in?

Mr. Klein: They have a Temporary Certificate of Occupancy.

Comm. Neff-Brain: Will the awnings go up?

Mr. Klein: They are proposed with this application, so they would go up.

Comm. Neff-Brain: Are they colored?

Mr. Klein: They are a grey metal.

Chair Rohlf: So this is now in compliance with what we asked them to do.

Mr. Klein: This is in compliance with the previous application that the Planning Commission recommended approval of.

Comm. Rezac: The only difference from the original design is the awnings in lieu of the two different colors of stucco, but all the other items that had previously been constructed correctly, according to what was approved, they have agreed to change.

Mr. Klein: Yes, the only other change is a sidewalk that continued to the north of the building, but it went down such a steep slope and just terminated into a landscape bed. They agreed to remove that portion of the sidewalk and replace it with landscaping, which is safer.

Chair Rohlf: Anything else?

Comm. Pateidl: I have a question as it relates to time because I am very sensitive to this park. Under No. 4 of Staff Recommendations, it says, "Final approval shall lapse in five years if construction has not begun." I was looking through the minutes of the meeting in which we discussed this. I would hope that nothing inside of this dilutes the stipulations and everything that went forth with the approval of the application at our last hearing. Secondly, it sticks in my mind that, while the applicant was under a Temporary Occupancy Permit, we were not going to renew or provide a Permanent Occupancy Permit until the requirements of that application had been met. Is that right?

Mr. Klein: Yes, a Permanent Certificate of Occupancy has not been issued.

Comm. Pateidl: When does this Temporary Occupancy Permit come up for reconsideration?

Mr. Coleman: It comes up in September.

Comm. Pateidl: I would suggest that, unless we see significant progress on this by the time of that renewal date, that be denied.

Mr. Coleman: This will go to City Council. If they approve it, we would expect them to begin the work immediately.

Comm. Pateidl: The previous application went to City Council, did it not?

Mr. Coleman: It was remanded back to the Planning Commission; that is why we're here.

Comm. Pateidl: When did we last hear this?

Chair Rohlf: October of last year.

Comm. Pateidl: It was remanded in October of last year, and it is just getting back to us now?

Mr. Coleman: Yes, we were working to get two parties that were opposed to each other together and also trying to get an out-of-state architect come in. It took a long time to get the parties to start talking to each other. Yes, it has taken a long time.

Comm. Pateidl: If the Temporary Occupancy Permit is renewed, how long will the term of a renewed permit extend?

Mr. Coleman: It usually is extended for 30 days.

Chair Rohlf: Any other questions from staff?

Applicant Presentation

Jeff Zimmerman, attorney for the owner, 5819 Nieman Road, Shawnee, KS, 66203, appeared before the Planning Commission and made the following comments:

Mr. Zimmerman: The owner would just urge you to adopt the staff recommendations. I do have one point of clarification. This is an application to approve change in the Final Plan. The owner realizes the stone has to be taken off and replaced with what was originally approved. We have time to do that before the Temporary Occupancy Permit expires. That is not really part of the application. The owner would prefer not to change that, but he realizes he needs to. This is not part of what is proposed tonight. The other aspects are what we have worked out with staff, and we would ask for approval.

Comm. Neff-Brain: This needs to be broken up. It is not a very attractive building as it stands. Will awnings be over each of the front windows?

Mr. Zimmerman: I believe that is right.

Mr. Klein: It is all the windows.

Comm. Neff-Brain: Why wasn't it built according to plan in the first place?

Mr. Zimmerman: There was a problem with the contractor. Part of the delay is we have been in legal discussions with the contractor to try to remedy the situation. We have, just recently, reached an agreement with the contractor. They are actually out of business, but they will provide the labor to demolish the stone so we can replace it. We have a pending insurance claim, also.

Comm. Williams: So you are in full agreement with the stipulations?

Mr. Zimmerman: Correct, we have no issue.

Chair Rohlf: Anything else for the applicant? Thank you. This takes us to perhaps a motion. I believe we have discussed this case at length prior to this meeting.

A motion to recommend approval of CASE 67-09 – BI-STATE/CENTENNIAL PARK – PARS ENGINEERING CONSULTING, INC. – Request for approval of a Final Site Plan for a tenant finish, located north of 141st Terrace and east of Cambridge with all of Staff Stipulations – was made by Williams; seconded by Jackson.

Chair Rohlf: Anything else before we vote?

Comm. Pateidl: In our conversation the last time this application was before us, we said there would be no wiggle room. I am very concerned that the inclusion of item No. 4, giving five years of

time to do this work is a substantial change from what had been approved by this commission previously. I don't have that documentation in front of me, I believe. Once again, this is such a blatant disregard for the authority of both the Planning Commission and the Governing Body that patience is something I find difficult to extend to this owner and this problem. I would encourage that this be completed in a reasonable period of time and not five years and that Temporary Permits of Occupancy will not be allowed beyond six months or 180 days from the approval of this application. I would like to encourage some urgency.

Mr. Coleman: I think we would be agreeable to add a stipulation for that and also a stipulation that the awnings would be on all the windows. It is not part of the current stipulations even though it is not on the drawing.

Comm. Neff-Brain: Mr. Zimmerman indicated the awnings were just on the front.

Mr. Zimmerman: I am not sure, but we don't have a problem with the awnings all around and the 180 days. We need to get the building in shape to get our Occupancy Permit, and we're going to do it as soon as possible.

Chair Rohlf: Would the motion-maker consider making a revised motion?

Comm. Williams: I would not mind. Mark, is the five-year time frame standard?

Mr. Klein: Yes, but it is tied to the ordinance. It refers to the Final Plan lapsing. I would recommend that stipulation be kept and you add the other stipulation that the Temporary Certificate of Occupancy would not be issued past the 180 days.

Comm. Williams: What language should we have for that?

Mr. Klein: "No Certificate of Occupancy, including a Temporary Certificate of Occupancy, shall be issued beyond 180 days from the date of approval by the Governing Body."

Ms. Shearer: They will get a Permanent Certificate of Occupancy if the work is completed.

Comm. Neff-Brain: We will not expand the Temporary Occupancy Permit beyond 180 days.

Mr. Klein: Right, and that way, they could get a full Certificate of Occupancy.

A revised motion to recommend approval of CASE 67-09 – BI-STATE/CENTENNIAL PARK – PARS ENGINEERING CONSULTING, INC. – Request for approval of a Final Site Plan for a tenant finish, located north of 141st Terrace and east of Cambridge with all of Staff Stipulations and adding Stipulation No. 5 to read, "The Temporary Certificate of Occupancy shall not be extended for more than 180 days from the date of approval by the Governing Body," Stipulation No. 6 to read, "The awnings shall be on all windows all sides of the building," and No. 7 shall be the currently stated No. 5 – was made by Williams; seconded by Neff-Brain. Motion passed with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Williams, Heiman and Rezac.

NEW BUSINESS:

CASE 73-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1.3 – RECYCLE BINS – 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 73-10 – Leawood Development Ordinance to Section 16-4-1.3 – Permitted Accessory Uses to Buildings and Structures - Recycle Bins. These are not currently addressed in the Leawood Development Ordinance. This is an attempt to provide some regulations for them. The goal is to allow recycling with some parameters. We are proposing that recycling bins be allowed as an accessory use to both churches and schools or as part of a public park. The limitations would include allowing no more than two recycle bins per church or school. The maximum size would be limited to 7' x 6'. No roll-off recycle bins would be allowed, including the purple ripple glass bins. Recycle bins would be required to be placed on a hard surface, such as asphalt or concrete. We would encourage them to be located adjacent to trash bins in order to provide opportunity for screening. They must be a minimum of 10' from all adjacent residential properties, outside of residential areas, and screened on three sides. That screening can be masonry, materials to match the adjacent buildings, or evergreen plantings. There would be an exception provided through the Board of Zoning Appeals to allow modification of the screening; however, it would still have to be screened on two sides of the bin. Staff is recommending approval of this application as presented and will be happy to answer any questions.

Chair Rohlf: Are these bins that will be picked up by a company or just available for public use?

Mr. Klein: Generally, schools or churches will use them as a fundraising mechanism. They would make arrangements with the companies. There is a limitation as far as time to empty, and that is from 7:00 a.m. to 5:00 p.m. Monday through Saturday.

Comm. Williams: You ask for them to be located outside of all vehicular and pedestrian traffic areas. If it is outside vehicular traffic areas, how is an individual supposed to get to the bin?

Mr. Klein: Often times, these are placed in parking lots. If they jut out into the drive aisle, we are worried about a problem with traffic circulation. If they are located within a defined area outside that drive aisle, it would not.

Comm. Williams: So this could be taking up two or three parking spaces, and that becomes the recycle bin area? Then you could drive by it without driving in to it?

Mr. Klein: Yes, not as likely to drive in to it.

Comm. Williams: You talk about screening the bins. I looked at half a dozen locations to find schools doing this. I don't see that the schools are going to put up masonry walls because of the expense. All the ones out there are for fundraising purposes. This isn't for the facility's recycle

purpose, but rather to encourage the kids to learn about recycling. I feel they will not do it if we require an enclosure.

Mr. Klein: That is why we offered landscaping as an option. You're right that most will not construct a masonry wall to go around them. Most will plant landscaping.

Comm. Williams: Even with that, you're talking about locating the bins in a grassy field, which they don't have vehicular access to, in order to have a planting area. Otherwise, they would need to tear up asphalt. All of the areas I saw were tight. In fact, one had three bins, and I saw that as a traffic problem. I would really encourage the schools to do this. As a citizen of the city, I didn't feel the existing, unscreened bins pose a visual problem. I agree with the distance from residential properties. I would like some language to push these toward the back of the building when possible, but not force them to spend potentially thousands of dollars to screen a fundraising program.

Comm. Neff-Brain: Are these fairly permanent structures?

Comm. Williams: No.

Comm. Neff-Brain: If they were permanent, I don't see much difference between that and a trash dispenser that we require to be screened.

Comm. Williams: Those aren't screened at the schools, either.

Comm. Neff-Brain: Why do we make commercial development screen if we don't make schools screen?

Mr. Coleman: Staff's feeling was if you live next to a school, you should not need to be subjected to the bins out your back door. If you live next to a commercial area, the bins are required to be screened.

Comm. Williams: I can see some effort to screen these. Leawood Middle School had three bins in the parking lot outside the gym. The residential property was probably at least 30' away. There is already a row of trees at the property line, which is screening the school, in a sense. Below the branch lines, you will see the cars and other elements of the parking lots. In that case, I don't see how they would end up screening it, short of tearing out the asphalt and removing parking spaces. We're making them go away with this.

Mr. Coleman: One of the things we would ask to be added if you approve this would be that it not take effect for a minimum of 18 months once it is passed. That would give the school districts time to put it in the budget cycle.

Comm. Williams: I don't see it happening. They're going to go away.

Comm. Jackson: Are we getting complaints now? The schools have had bins out for years.

Mr. Coleman: We have gotten complaints. There is a ripple glass roll-off container in the front of Barstow. I have no qualms with the recycling; I think it's a great thing. It's just that we have certain ordinances, and they should be applied as equally to the schools as they are to businesses. Because it's a philanthropic activity, I don't think that negates the rights of adjacent property owners.

Comm. Jackson: Is there an ordinance that covers the commercial areas that says they have to be enclosed?

Mr. Coleman: That is correct.

Comm. Williams: For a community that is taking a very strong green position, I don't see the school districts spending the money it will take to do this.

Mr. Coleman: I need to clarify my previous statement. The ordinance applies to the school districts. We were trying to modify the ordinance to make it less onerous for the school districts. We had gotten complaints, and we have talked with the City Council about the issue.

Comm. Neff-Brain: So school districts are not complying with the ordinance now?

Mr. Klein: The recycle bins are not allowed as an accessory use anywhere right now. The LDO is silent on it. We have received a few complaints about the recycle bins, particularly from the adjacent neighbors. That is part of the concern. I want to clarify that the bins would be limited to the rear or side yard.

Comm. Williams: When your only yard is your front, it is the only option. Leawood Elementary is a prime example. They don't have any other place but the front parking lot.

Mr. Klein: I just want to be up-front that this ordinance proposes limiting them to the side and rear yards. This ordinance also does not allow the recycle bins in commercial districts. It limits it to an accessory use in a church or school or park. It would not allow it in any commercial area.

Comm. Rezac: Are you saying they are not allowed in the commercial?

Mr. Klein: That is correct; they are not allowed in the commercial areas. The way this ordinance is written, it would strictly limit them to an accessory use for a church, school or public park.

Comm. Rezac: I'll take this conversation a step further and address where we are going as a community. We are going toward more sustainability and being greener. It seems to me that, as a city, we should do whatever we can to make that happen for anyone out there, including commercial facilities. The hope is that these commercial facilities will start to recycle. I'm questioning how this addresses that aspect of the ultimate goal. It feels like we're dealing with a small portion of this recycling issue when there is a much larger issue out there.

Comm. Williams: I don't think we're telling the businesses they can't recycle. What they are saying is you can't put a designated, public-use recycle bin in the parking lot. If the commercial

establishment has a space for a trash bin and recycle bin in their enclosed area, then the ordinance does not prohibit that.

Comm. Rezac: That clarifies it for me.

Mr. Klein: Typically the schools and churches are the ones that invite people in to recycle on the property. People generally aren't encouraged to use commercial trash enclosures for personal use.

Comm. Williams: I guess this has come about because there are businesses which have started doing this as a fundraising option. In the midtown area, we have access to these bins at Home Depot and the schools.

Chair Rohlf: The glass is not in Leawood?

Mr. Klein: No, I believe they have inquired about coming in. Part of the concern with the commercial districts is that when a Site Plan comes in, there is much discussion about the trash enclosures and location. The intent is to make sure they are screened adequately and blend. We are seeing the majority of these at churches and schools. The city is supportive of these efforts but did want some screening to address the complaints. The location requirements would take place immediately; however, the screening of the bins would not go into effect until 18 months after the publication of the ordinance.

Comm. Pateidl: Mark, did you check into standardization of the size of the bins to come up with 6' x 7'?

Mr. Klein: Yes, staff looked at a number of bins throughout the city to see the general size, general location, number and screening. From what I understand, two was average per lot. Some of them had them in the parking lot, some in the islands with the wheels tipped over the curb. That concerned us.

Comm. Pateidl: I was curious about the 6' x 7'. I stopped at 143rd and Mission Road and measured. When you add the hook-ups on the side, they are 6' 10" wide. That's why I asked about standardization in the industry. And are we further complicating the effort to go green by these efforts?

Mr. Klein: I understand your point. We may not have taken those sides into consideration.

Comm. Williams: You're offering the opportunity for the BZA to grant an exception to the screening requirements. Based on the conditions I saw for these containers today, could we expand that to have the BZA address the rear yard / side yard location, as in some cases, there is no possibility of using a rear or side yard for the bins? Leawood Elementary, for instance, has no way to meet this.

Mr. Klein: With the BZA, you could make a recommendation for that. It could be that the criteria mentioned for the screening would be appropriate.

Chair Rohlf: Mark, why are the revisions regarding recycling bins listed under these districts when they are not allowed in these districts?

Mr. Klein: Schools and churches are allowed in these districts, so we had to permit it in each one.

Chair Rohlf: Do we have questions?

Mr. Klein: Commissioner Williams asked about the BZA and whether we could add in the location as something they could evaluate. Legal Counsel has a few other recommendations to clarify that these are bins for public use as an accessory use for churches and schools. Also, we indicated this would not take effect until 18 months but the location requirement would be immediate. That should be added into the ordinance to make it enforceable.

Ms. Shearer: It would possibly be helpful if we added, "Recycling bins for public use located at a church or school." I don't know if that would resolve the issue with public coming on to the property to drop off. Then with the issue of 18 months, I did jot another subparagraph here that I can add to the record. We could add Paragraph H, which would say, "All existing recycling bins and recycling bin sites shall come into compliance with the revisions of this section of this ordinance within 18 months of the effective date of the adoption of this section of the ordinance by the Governing Body."

Comm. Neff-Brain: So basically, there is an 18-month grace period for everything.

Ms. Shearer: Yes, Mark, was that the intention?

Mr. Klein: I thought it would be immediate for location and the 18 months would be for the screening.

Ms. Shearer: So you're saying the 18 months only pertains to the screening.

Comm. Heiman: We could remove 6a, "Recycle bins shall be placed on asphalt or concrete surfaces only." If they are on those surfaces, they can't be screened with trees. If you remove it, they could be screened with trees. They still need to be within 10' of the building. I'm just trying to think of places I am around that have these. It could be tucked around a corner, screened with landscaping and still accessible. I don't know if that helps.

Mr. Klein: They can be further than 10' from the building; they cannot be within 10' of a residential property line.

Comm. Williams: Would it be reasonable to allow these locations to screen with a wood fence?

Mr. Klein: We don't really allow the wood to go around the trash enclosures. Prior to our current policy, some of the businesses screened with wood, which then deteriorated and looked worse than the bin itself.

Comm. Heiman: What about PVC fencing?

Comm. Pateidl: I am particularly sensitive to what Commissioner Williams and Commissioner Rezac said about the impact that the ordinance would have on the green initiative. While we may have gotten a few complaints about recycling, we are potentially talking about eliminating opportunities at the educational facilities that teach our children about what recycling is all about, as well as the environmental and charitable impact that comes from this activity. I believe we should have some direction, but I don't believe that this ordinance, as it is recommended, provides that. I would suggest that, perhaps, in a work session, the Planning Committee could address the aspect of recycling in greater detail so we could reach concurrence in that forum rather than a meeting of this nature.

Comm. Neff-Brain: Until it becomes a bigger issue, could we not just send a letter to schools and churches letting them know it is important that they be maintained properly? Then if we see more problems, we could move forward.

Comm. Jackson: In light of those remarks, if you screen these, nobody will see them and contribute to them.

Comm. Williams: I think the aspect of policing is important. That said, on my tours, the sites around the containers were clean. The containers themselves are in good condition. They are in far better shape than the trash dumpsters we put behind closed doors. If it's just a few complaints, let's analyze what the complaints are and address those and allow the institutions to do some self-policing rather than institute a provision that will, in effect, eliminate these completely. I don't think that is our goal.

Mr. Klein: Part of the reason the ordinance is necessary is to make sure everyone understands this is an allowed use. Right now, if someone complains, it's difficult because it is not listed as an allowed use. The city is supportive of the recycling, but right now, the LDO does not speak to it. If it is not listed, it is therefore not allowed. This is to clarify that they are uses.

Comm. Pateidl: We can defer this enforcement for 18 months, and in 18 months when the schools still don't have money to enclose these, they will go away. Passing an ordinance so we can answer the phone and say, "Yes, we have an ordinance on that and we might do something 18 months from now" is not right in my mind. I believe that it should be addressed. I don't believe this ordinance does so. If the chair would entertain a motion, I would move that this be denied as submitted.

Chair Rohlf: We need to have a Public Hearing.

Public Hearing

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

A motion to deny CASE 73-10 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-1.3 – RECYCLE BINS – Request for approval of an amendment to the Leawood Development Ordinance – was made by Pateidl; seconded by Williams. Motion

passed with a unanimous vote of 6-0. For: Pateidl, Jackson, Neff-Brain, Williams, Heiman and Rezac.

MEETING ADJOURNED.