

City of Leawood
Planning Commission Minutes
September 14, 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: Roberson, Jackson, Neff-Brain, Rohlf, Williams, Elkins and Heiman and Rezac. Absent: Pateidl.

APPROVAL OF THE AGENDA:

Chair Rohlf: We do have one change to the agenda: Case 47-10 will be continued.

A motion to approve the agenda as amended was made by Roberson; seconded by Neff-Brain. Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

APPROVAL OF MINUTES:

Approval of the minutes from the August 24, 2010 Planning Commission meeting.

A motion to approve the minutes of the July 27, 2010 Planning Commission meeting was made by Williams; seconded by Roberson. Motion approved with a unanimous vote of 6-0. For: 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**

NEW BUSINESS:

CASE 83-10 – TOWN CENTER BUSINESS PARK – LOTS 8 & 9, Request for approval of a Final Plan, located east of Roe Avenue on Granada Road

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the commission, this is Case 83-10 – Request for approval of a Final Site Plan and Final Plot for Lots 8 and 9 of Town Center Business Park. The applicant is seeking approval of a Final Plat to consolidate two tracts into one and a Final Site Plan to construct a 32,500 sq. ft. office building for Reece and Nichols. The associated Preliminary Site Plan was approved by the Planning Commission on July 13th and by the City Council on August 2nd. As with the Preliminary Site Plan, the Final Plan proposes that the building be located at the north end of the property with its main entrance facing south toward the parking lot. A 10' wide pedestrian and bicycle trail is shown across the south side of the

property on the north side of an existing stream. The applicant has reduced the number of parking spaces to 128 to comply with the requirements of the Leawood Development Ordinance, has removed the previously proposed detached trash enclosure and will have trash removed from the building daily. The Final Site Plan now shows a pedestrian connection to the trail at the south end of the property. Staff is recommending a public access easement be dedicated over this sidewalk across the property to provide access from points in the north to the trail on the south side of the subject property. The elevations provided with the Final Plan are consistent with those reviewed during the preliminary site plan review. They show that the building will be constructed primarily of brick and dryvit with green windows. The contents of the Landscape Plan comply with the requirements of the LDO. The plan itself identifies several plaza and pedestrian amenity areas. The patio is shown on the south side of the building within a parking lot island. A sunken lawn space is shown surrounded by planters on the west side of the building. A patio is proposed on the north side of the building, and an additional patio is proposed on the east side of the building. All of these areas are connected either with a stone footpath or sidewalk to the greater pedestrian network on the site. The Final Site Plan shows a 10' wide pedestrian and bicycle trail on the south side of the property. The plan proposes that the trail will cross the stream channel at a northwest-to-southeast angle, such that the bridge will land on the adjacent condo property on the south side of the creek. This alignment is shown on the Site Plan in the packet. Staff is recommending the trail cross the stream at a north-to-south angle, such that it is parallel to the east property line. The diagram in the Staff Report illustrates the staff-recommended alignment. Staff is recommending this alignment for the following reasons: to provide direct access to the future public property south of the stream, to avoid conflict with an existing drainage swale on the west side of the condo property, to provide a greater distance between the trail and the nearest condominium and to reduce the span of the bridge, thereby reducing the assumed cost. Staff is recommending approval of this plan, subject to the stipulations in the Staff Report with one modification: to omit Stipulation No. 17, as the Landscape Plan has been revised to address that stipulation.

Chair Rohlf: Questions for staff?

Comm. Elkins: I've got questions relative to Stipulations 5 and 6. I think we looked at those briefly when we looked at the preliminary plan. As I understand it, No. 5 tells us that if we have utility boxes less than 55" in height and a footprint of less than 15 sq. ft., all that is required is approval of the Director of Planning for that type of box. Is that correct?

Mr. Rexwinkle: That is correct.

Comm. Elkins: And No. 6 tells me if I have utility boxes in excess of those parameters, the matter comes back to the Planning Commission and the Governing Body for review. Is that correct?

Mr. Rexwinkle: That is correct.

Comm. Elkins: In the event that the specifications are exceeded, is there a limit on what this commission and the Governing Body can do in review of the box? I note that both of those speak merely to compliance with the Development Ordinance. Is that a legal or jurisdictional limit on the extent to which we may review those utility boxes?

Mr. Klein: There are requirements in the LDO that specify that the boxes will be screened. The Planning Commission has the ability to interpret what is provided to ensure that it happens. As long as the applicant meets the requirements of the LDO, that is the purview and the limitation of the Planning Commission.

Comm. Elkins: That is true for the Governing Body as well?

Mr. Klein: I believe so.

Comm. Elkins: It is a judicatory function to determine whether or not they are in compliance with the LDO.

Mr. Klein: Yes, there is some design element to that, of course, as far as what it will look like. However, the primary issue is that they are screened as indicated by the LDO. Plant materials and things like that might be an issue. I know of a number of previous cases in which the plants did not adequately screen, which led this commission and the Governing Body to adjust the landscaping plans to ensure adequate year-round screening.

Comm. Elkins: Does the city have any regulatory authority for the placement of the utility boxes within the public utility right-of-way, or is the utility within its rights to place the boxes wherever it wants within the right-of-way?

Mr. Ley: Are you talking about a transformer specific to the building?

Comm. Elkins: Yes, the big green boxes used by KP&L.

Mr. Ley: Switchgears are required along their main lines, but they also have transformers required for individual buildings. I imagine they would just have one transformer that would not be in the right-of-way, but rather closer to the building within an easement between the property owner and KCP&L.

Comm. Elkins: To the extent that they are not in a public utility right-of-way, is that really between KP&L and the owner?

Mr. Ley: That is correct.

Comm. Elkins: Would we have regulatory authority over where those boxes might be placed outside of the public utility right-of-way?

Ms. Shearer: The reason I hesitate to answer that question definitely is there sometimes is language with the easements that are granted that might indicate specifics about where things are to be placed. I think that can be a case-by-case basis. In general, barring any special language in an easement, you have the same purview that we have in regulating any other planning and zoning issue. If there is an issue with where the utility box is to be located, you can request that it be changed as long as it is not contrary to the easement; but that goes back to the needs of the utility and what the utility tells us as far as where it has to be located in order to provide the service.

Comm. Elkins: Certainly with any technical requirements that the utility may have. Thank you.

Comm. Neff-Brain: I have questions on Stipulations 12-15. When we last visited this issue, it was the sidewalk and the bridge crossing that was debated; I think it still may be to some extent. I wanted to walk through and see the best picture you have in larger scope of what the city is requesting and what the applicant wants to do.

Mr. Rexwinkle: *(Places diagram on the overhead)* This is the diagram that was included in your report. Everything in red is what staff is proposing in terms of the bridge crossing.

Comm. Neff-Brain: How about to the bridge? Are we all in accord with the sidewalk going down from the cul-de-sac to the bridge?

Mr. Rexwinkle: Yes, the applicant did re-submit the plan showing the sidewalk connecting to the trail, and the alignment of the trail on the property up to the point where we get to the bridges is mutually agreed upon. (*Refers to plan*). Right here, where trail would end before it curves, would take it from a northwest-to-southeast angle. The property line is right here, so basically the approach of the bridge would be on their property. The landing would be across the stream channel on the condo property. At this property line right here, we're looking at the subject property up here, the stream channel here, and then the property to the south is potential future public property. The position of the city is that the bridge should cross on the property so that there is direct access to the trail from the public property. The trail would be within 20'-25' of someone's porch if it were to cross the property line north of the creek, which is another reason staff is recommending it cross entirely on the subject property.

Comm. Neff-Brain: None of that has to do with the functionality of the bridge.

Mr. Rexwinkle: Functionality was a major issue. You do have to maintain certain grades. The curve cannot be too tight. Given a considerable change in grade on the south, there is little wiggle room for putting the alignment. You want it to cross the stream channel perpendicular or as perpendicular as possible to the actual channel itself so this band isn't too long. (*Refers to 3-D image*) The trail runs along here. Then they're proposing that it cross off the property and angle. We're recommending that it curve and cross the stream on the property. Another reason we want it to stay off the property is an existing drainage swale, and we don't want interference.

Comm. Rezac: I noticed on the diagram that the proposed location of the bridge aligns with a future pathway, or is it existing?

Mr. Rexwinkle: That would be a future pathway.

Comm. Neff-Brain: So you're extending the easement from 15' to 25'.

Mr. Rexwinkle: Yes, that would be across the width of the property. It is especially necessary toward the southeast corner so that the right curve is right.

Comm. Jackson: On Stipulation No. 11, it says, "The Preliminary Site Plan shall remain in full force except to the extent expressly modified herein." What is that referring to?

Mr. Klein: It is a standard stipulation.

Comm. Jackson: So it is just being used as a catch-all.

Mr. Klein: Right, we aren't targeting any individual component. If this plan modifies anything from the Preliminary, the Final Plan takes precedence; but just because a stipulation doesn't get mentioned in the Final Plan, it will stay in force if it is still applicable.

Comm. Jackson: Going back to Commissioner Elkins' concerns, I think a lot of times, specifically with the Mission Farms outbuildings along there, the applicant was also surprised as to where KCP&L put their boxes. How can we be proactive in making sure these boxes go where we would prefer to see them go? I don't think we understand, as a commission. Is KCP&L putting it in the only spot they can, or are they putting it in the easiest spot to put it?

Mr. Ley: The line you're referencing is their main transmission line with certain requirements they are to follow. On an individual site like this, it is just switchgears. All the transmission lines are in place; they are just adding a transformer, so that will be set on the property adjacent to the building.

Comm. Jackson: Is staff surprised as to where they put it sometimes, or do you know ahead of time?

Mr. Ley: They have average spacing of every 500' or something like that. We don't know until we give them a set of plans. They have to go through engineering to locate them.

Comm. Jackson: Can staff stop them if they put it somewhere we would prefer not to have it?

Mr. Ley: We have had discussions with them before about locating them in different areas, but when there are so many of them, it is fairly difficult to get them all moved to a certain area that will be hidden. They do have to have access to them on two sides to pull their lines.

Comm. Jackson: But in general, they will work with you as to where to put them?

Mr. Ley: Yes, if we talk to them and if it is a specific one. If it is all the switchgears, that is a problem. If there is a specific reason on one or two of them, they typically try to work with us.

Comm. Rezac: I have a question about the cost of the bridge of \$100,000, \$50,000 of which is the applicant's responsibility because the approach to the bridge is on their property. Is that a standard way of calculating the fee? I ask that because it seems like this bridge is part of the city trail system. I was curious why they are responsible to pay half.

Mr. Rexwinkle: Yes, the trail is a public facility. It has been the city's policy to require adjacent property owners to share that cost of a public improvement at the time of development. Since the development is proposed on this property at that time and this channel was identified on the Comprehensive Plan as having that public improvement, the requirement was triggered. The cost will vary with the project.

Comm. Roberson: Is the city paying half the cost of the pathway on their property then?

Mr. Rexwinkle: The owner of the property on the other side would pay the other half of the cost.

Comm. Roberson: No, I'm talking about the pathway that crosses the applicant's property. Does the city pay for half of it?

Mr. Rexwinkle: No.

Comm. Roberson: Then I don't understand why they're being required to pay half of the bridge.

Mr. Rexwinkle: Half of the bridge would be on the subject property, and half would be on the city's property to the south. That is where it crosses the property line.

Comm. Roberson: So if we like the original alignment, will the condos have to pay half since it would be on their property?

Mr. Rexwinkle: If that is what was approved, then yes.

Comm. Neff-Brain: You can't go back to the condos and have them pay; that's the key. Is there some kind of rational proportionality when you say, "This is a city path that is benefitting the city as a whole"? There is some benefit to the property, but is there 50% benefit to this property alone that would require them to pay 50% of a bridge spanning a creek? That would be questionable to me.

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

Applicant Presentation

Chuck Peters, Peters and Associates, 9990 College Blvd, Overland Park, KS, appeared before the Planning Commission and made the following comments.

Mr. Peters: First, I want to thank you for getting us on the agenda this evening. Secondly, we bring the same building we had at our earlier Preliminary Plan. A few minor items have changed on the Site Plan. After discussion with staff, we felt it was easier to eliminate the dumpster pad than it was to deal with the city's concerns. We also showed future parking, and my understanding was if we provided future parking, it could be placed with a permit at a later date. Since that is not the case, we would have to come back through Preliminary and Final Plan to get those parking spaces approved. We removed them to avoid that difficulty. We also provided the pathway through the parking lot, against my best judgment. I think it's a mistake because of the safety of the people going through the parking lot, but I won't address that anymore. Other than that, everything is pretty much the same.

We do have a few issues on some of the stipulations. The utility boxes, Mr. Elkins and I discussed at length. There are three sectionalizers that exist currently. The LDO does not cover what exists versus what is installed. I will be happy to report that KCP&L decided not to use the sectionalizer that was placed for Sunrise, which is closer to Roe. They used the sectionalizers on this property. We are planning on screening it, and it will match what is on Dr. Peppes' property. We are having to tunnel to Peppes' property and to the easement to get our room for power for this building, which is already screened. I want to let Mr. Elkins know that we have met KCP&L and have confirmed that no other devices will be placed in that easement and that the transformer is well off the right-of-way.

We do have concerns about Stipulations 12-14. In the first week of September, I was given a staff comment on a Final Plan submittal that said I was to coordinate funding with the Public Works and Parks and Recreation for the new bridge that is proposed on this property. I called David Ley when I received it and met with him, Joe Johnson and our engineer. We met out on the site to locate what made sense. I'm really not sure why we're involved in where it is being placed because we were asked for an easement, and we gave a 25' easement (*Refers to display board*). We were asked to provide a 25' construction easement along the entire length of the back side of this property. We tie in to the existing pedestrian way down to this point. I didn't agree with placing this easement since we planned on constructing the pathway, but we're trying to do what they ask us to do. We just received staff comments that they want to make that a permanent easement. That has been there since 1995 when the original plat was done on Lakes of Leawood. In 2002, The Chairman of the Planning Commission signed a Revised Plat on this property showing a pedestrian easement. (*Refers to display board*) The next drawing started in 2001 and was signed in 2002. This is Tomahawk Creek Condominiums. This is the same location as the one in 1995. When I met with staff, one of the things that came up was this path and an easement. I'd already looked at the files, and I knew an easement already existed. It shows a bridge coming down alongside this property and links to the future. We've been showing that up until the first week of September, when we received those comments from the staff. Mark and Richard told us they wanted the bridge angled, which made sense because of the existing easements. This is the plan that we sent in for our Final Plan after working for three days. We want the grading to be similar so as not to tear up the property.

I just saw this new recommendation yesterday. This was what we showed them and what the engineer drew up, and it fits within the easements. It's tight, but there is no easement over here, and it is not the city's property. I kept trying to figure out why they wanted to place the bridge on an uphill slope. Richard said to put in a retaining wall. I don't know why the bridge needs to be here or why we need to pay \$50,000. I don't know who governed that decision since City Council has made no mention of it on the record. Richard Coleman told Mike Gill that the bridge would cost \$40,000. We checked on our own. The bridge behind City Hall was produced in 2007, but the company would not give a price on it. They said they could do the same bridge in today's market for \$32,000, not including installation. It gets sent on a flatbed from Minnesota and bolted to the site. Richard Coleman had a deaf ear on that. Now, the stipulation lists

\$100,000 for a cost. I've been a contractor for a lot of years. I've not done a bridge, but I have the documentation to tell you the bridge is less than \$50,000 for sure.

I am still trying to find out why the bridge is being pushed onto this property. I realize now they want my client to pay for half of this bridge. Joe didn't address this, but when there is a bridge, turning lane or pedestrian way in a public right-of-way, first you go through a benefit district on the entire development. This is not a development; this is a building inside a development. Now, all of a sudden, someone on staff - without the direction of City Council that I can see - forced me to move the easement to our property, thus requiring us to pay for half the bridge. It doesn't matter where it goes, so I don't think it's smart just to jeopardize the location of the bridge just as a vehicle for someone to pay for it. If it is to be shared, I'll tell you how that would normally happen. All the work is on a pro-rata basis. The property it serves immediately is broken down per square foot and divided among the individual parcels. This is 118, 618 sq. ft. in this office park. It is 380,000 sq. ft in the condo. Our estimate is \$50,000, so \$25,000 would be split up between the properties. This property would pay 6% of that. If you were to take just this development without the condos, it is 20%, which is \$5,000. That is a far cry from \$50,000. To arbitrarily move this easement because it is too close to the condos only moves it 5' from where we are.

Joe talked about widening this easement from 15' to 25'. We gave this 25' easement, and Joe just pointed out that they need it so they can turn in here. If they want it, they can have it; but I don't know why they want it. This needs to be re-platted. I oppose it, but it's not a deal-breaker. It's nonsensical and does not affect the egress. If they want to move the bridge, they could do it. I take exceptions to those stipulations for the reasons stated.

I also want to say that I love the path. It's regional, and Leawood is proud of it; we're proud of it. On every project I've done in Leawood, we have paid for Parks and Recreation items. I suspect this would be a part of it. I asked Joe Johnson to look for a government bond, but there ought to be a vehicle because this is benefitting a lot of people. To ask an individual to pay for a regional thing is a heavy, inequitable burden. At the last City Council meeting, Joe Johnson said he didn't realize the grade change was so intense. The swale is so insignificant at not even 6" deep, and it is in that 25' separation. The water will go right over the sidewalk and fall off the sides of the bridge. It will not be disturbed. I tried to cover every base to understand what I was to coordinate.

The last thing I have may be good, but I would like to ask for some clarification. Stipulations state that no construction shall be permitted on Sunday. I don't know where that comes from. It makes good sense since we're next to a residential project. I would only ask that, once the building is enclosed, we be allowed to work on Sunday if we need to because we are squeezed on time. That's really all I have unless you have questions.

Chair Rohlf: Questions for the applicant?

Comm. Roberson: We have seen that last issue before, just as an FYI.

Comm. Neff-Brain: Is the paved area of the bike trail 8'?

Mr. Peters: It is 10'.

Comm. Neff-Brain: Why do you take a 25' permanent easement for a 10' path?

Mr. Klein: Mr. Peters has been diligent, and I apologize that so much has happened at the last minute. (*Refers to display boards*) I'd like to start with the cost of the bridge. The Parks Department was asked to come up with a number for the cost of the bridge. We got an estimate for the bridge itself, and the amount should double with installation. I checked with the Finance Department to see what would happen if the applicant paid too much money. If that is the case, the applicant would be refunded what wasn't used. Regarding the easement, Mr. Peters indicated it was a 15' easement, and that is correct. A pedestrian easement is shown on the condominium portion of it. The first question was why the bridge comes from the

applicant's property and heads straight south to property the city is attempting to acquire. My understanding is the city wants the public trail to have access to a public piece of property for any future municipal uses that might be there. It didn't make sense to bring the bridge to the condominium side and then cross back over this way. The construction easement would eventually go away after construction, but in order to be able to make the trail meet the radius and have that bridge cross at that angle, the trail would not lie exactly within that 15' easement; however, a 25' easement would allow the appropriate room. The Public Works Department had concerns about water running along the west side of the condominiums that are located here. The concern was water flowing over the bridge, making the bridge slick. Lastly, the idea was brought up that if the bridge were angled in a different direction, it might not have to be as long, thus reducing the cost of the bridge.

Comm. Neff-Brain: So we're going to take more property so we can turn the bridge so that it will go on public property and benefit the city more, and then we're going to charge the applicant for that bridge. That's not right.

Comm. Williams: You said that with your proposed bridge location, it would be a shorter bridge and thus less expense. According to Mr. Peters, you take that orientation, and you're into a grade situation which has to be taken into account. Have you factored those costs in?

Mr. Klein: The engineers indicated a grade issue. My understanding is that the way it is shown on the plan, it would not be a situation. If the bridge crossed directly, it would be the shortest distance, but that would be going directly into a hill. I understood the grade issues with that scenario.

Comm. Williams: If the city acquired the property, you would have a public connection to that bridge, connecting then to the trail on the condo property?

Mr. Klein: Eventually, it would connect to the property here. The easement that exists is a strange shape. It is 30' wide and then broadens out. The intent is for this trail to eventually connect to the sidewalk that runs along 117th Street. I also believe that is to be converted into a hike/bike trail. That would connect with the trail system along Tomahawk Creek Parkway.

Comm. Williams: If you have the easement in place for the trail system, could you not just go from the potential future city property and connect into the trail with the bridge and trail as it's shown on this plan?

Mr. Klein: That might be a possibility. I understood the city's position that the bridge would connect to city property.

Comm. Williams: I'm still confused on the sequence of things. Is this a recent decision that the city wants it this way? The applicant said he just heard about it. We got our packets Friday with this information.

Mr. Klein: I was informed of it after a meeting with Mr. Peters and Mr. Coleman Thursday or Friday.

Comm. Rezac: Has this bridge been engineered yet, or is this a diagram?

Mr. Ley: No, it's just a layout and possible future location. There is a sanitary sewer there that we can't be within 10' of. We did a layout that showed bridge crossing parallel with property lines. Staff believes it will be a 60' bridge. The bridge behind City Hall is 50', and it is ¼ mile downstream with quite a bit more drainage underneath it. It will be at least that, if not greater.

Comm. Rezac: It sounds like there are two different drainage issues here. There is concern that water will run over the bridge if it is in this position, but how high is the bridge off the ground?

Mr. Ley: The bridge would be approximately 2' above the top of the stone wall. A channel runs through the property as a stone-line channel, and the bridge would be about 2' above the stone. The water flowing down is the water that is on the condo property to the north; they have a swale draining from north to south. Joe Johnson met with the condo management company, and they informed us they plan on removing the top layer of stones along their channel and regarding that swale that comes from the north because it's a fairly flat slope, causing a constant water problem for them. They are trying to make the swale larger. We were concerned with being in conflict with their swale unless we moved the bridge to the west.

Comm. Rezac: Until the grading in this whole area on either side of the property is determined, it seems to me that it's hard to know which placement is the best for this bridge. I don't know how anyone can make that decision without first grading that area.

Mr. Ley: We looked at their grading plan and then at the property to the south, which the city is trying to acquire. We can't have a slope at 90 degrees, so it is pulled back a little bit, and it's enough to get that trail in there, especially since the trail is going to be up a couple feet from the top of the creek bank. We feel we can do it without building a retaining wall.

Comm. Rezac: Then there is the whole issue of grading on the south side.

Mr. Ley: That's what I was referring to, but it would be the northeast corner of the property the city is trying to acquire.

Comm. Rezac: So the swale needs to be addressed; the south side of the bridge needs to be addressed.

Mr. Ley: Yes, and the swale will be the condos' responsibility. They stated the desire to do that and also to do some improvements to their lake because they have to remove silt periodically.

Mr. Peters: I took a photograph of your bridge so you can have a visual of the grade of the bridge (*Shows photograph*) This is on-grade, and there is a footing that steps down and is bolted. The bridge is literally brought in that fashion. This is from Continental Bridge. These are today's prices for the bridge (*Refers to e-mail*). The bridge north of City Hall cost somewhere around \$26,000.

Mr. Ley: And the city paid \$70,000 for that bridge. On all our projects, we take low bid, and that's how much the bridge came in. The average price for that bridge was \$66,000. When we refer to cost, we have a database of twelve pedestrian bridges over the past fifteen years. We pay for total installation, and the low bids have been around that cost. That's where Brian Anderson came up with the estimate.

Mr. Peters: We didn't go out and get bids; we just asked the company that provided the bridge. He originally didn't want to give us a price, and I wanted to know why the price went up from \$27,000 to \$32,000 in three years. Seems like routine business, rather than having to pay \$100,000 for a bridge that you can have delivered for \$32,000. If we got other bids, we could probably get a better price because that's what we do.

Comm. Roberson: How much is the pathway?

Mr. Peters: Right now, it's over \$15,000. We are planning on putting this path in the easement. You mentioned you wanted 25' because you might want to move it. I don't know if you'll tear it out and put it in again.

Mr. Klein: No.

Mr. Peters: But the reason we left it short in that easement was that you could maneuver a little bit, whether it was in the 25' on this side of the property, the 30' on the other side of the property or if you put the bridge in the middle of the property.

Comm. Roberson: How many other pathways have a situation in which the developer pays for an improvement like this?

Mr. Klein: The standard practice the city has is the developer pays to put in the path, and in the instance of a pedestrian bridge, the developer also pays the portion that is on his property. The ones that I'm aware of are the ones along 133rd Street and 137th Street. They are required to pay for the hike/bike trail. There was a pedestrian path not all that long after I started working here in Camden Woods with a pedestrian bridge that crossed over from the residential portion to the shopping center on the corner. My understanding is the developer paid for that bridge, but I'm not truly aware of the details. With regard to signals, each corner will pay ¼ of the cost. With regard to the 25' easement and the expansion, I don't think there was anything duplicitous in that, other than the fact that they knew it needed a radius in order to make the alignment work, and the requirement was to provide a large enough easement to where it could be maneuvered. I think people were trying to figure out the best location and alignment of the path. In the Preliminary, it was indicated that the alignment would be determined at the time of Final Plan. I know there have been several alignments proposed. There was an easement already in place on the condominium property. There was also an alignment that Mr. Peters showed at an angle from his property to the condominium property, pulling it farther from the condominiums. Again, my understanding is the primary reason for the bridge being located where it was is that they wanted it to actually connect to a piece of public property with municipal uses. There might be a number of different alignments. The reason staff wrote the stipulations is public improvements have been shared by property owners along there.

Comm. Roberson: In this situation, I think the city is forcing the property owner to do something different. I don't have a problem with the easement, but it strikes me that somebody in the city is trying to force this bridge in a different manner than what was originally contemplated. From that standpoint, I think the city bears more responsibility for that action as opposed to forcing the property owner to bear that burden.

Comm. Neff-Brain: I agree wholeheartedly with that. I have no problem making a developer put in a pathway in lieu of a sidewalk, but to change the rules five days before the meeting and move the bridge for the city's benefit so that it will empty onto city property, then to put that cost on the developer is not right.

Mr. Peters: I would like to know who directed the staff to bring this about.

Comm. Roberson: That's not our responsibility.

Chair Rohlf: No, it's not. Does anyone else have more questions for the applicant? Then this brings us to our final discussion about this matter. Mark, where is it spelled out specifically what the requirements are of a developer when the pedestrian bike path comes into play? How do they know exactly what their responsibilities are to be with that subject property?

Mr. Klein: Typically there are many things that go on in a development that are not specifically called out in the LDO. I know there are certain policies the city has, and Mr. Peters was well aware of the path he had to put in and was happy to construct that path. That is something we see as a standard stipulation. The disconnect seems to be on the location of the bridge. Pretty much everything staff has asked for and the applicant has provided is pretty standard when a building comes in. The issue here is the location and the financing of the bridge.

Chair Rohlf: Was this pedestrian bridge shown on their preliminary plans in the location they have it, or was it even on that plan?

Mr. Klein: No, at the time of Preliminary Plan, we were focusing more on the site and other items. The alignment of the bridge would be determined at Final. At that time, they were working on a pretty fast track.

Mr. Peters: Not to oppose Mark, but I was specifically told to put the bridge on the Preliminary Plan, and that was where it was in the easement.

Chair Rohlf: What was the explanation given to you for that? It was just part of that piece of property?

Mr. Peters: It showed it on the easement. This discussion about other locations and arrangements, we actually diligently worked with Joe Johnson and Roger. The position of the bridge was worked on. They merely told us they would like it more angled, and the intent was that it would fall within the easements.

Chair Rohlf: So when this plan was presented to Council, there was no concern brought up about the bridge at that time.

Mr. Peters: In the minutes, Lou Rasmussen mentioned that the pathway was what he was most concerned about. The only question directed to us as the developer was, "Where is the money coming from to pay for the bridge?" I will read my response if you'd like.

Chair Rohlf: Yes, that would be good. I'm trying to figure out the sequence of these events and what we're seeing at preliminary versus what we're seeing in your Final Plan versus what we're seeing in the Staff Report.

Mr. Peters: It is on Page 9 of the August 2, 2010 minutes. "Councilman Gill wanted clarification on who would be responsible for the cost of the future 10' pedestrian bike trail and bridge. Mr. Peters stated that the easement is located on the east of the condo property on the condo property. He indicated they would be responsible for the pedestrian access point to the bridge; however, the city would be responsible for the cost of the bridge." Following that, Mr. Coleman estimated the cost of the bridge to be \$40,000.

Chair Rohlf: At that time, it was your understanding that you would not be responsible for that bridge.

Mr. Peters: That is correct, and I didn't hear another discussion about it until I received comments after we submitted our Final Plan. The comment stated I was to coordinate the financing of the bridge with Public Works and Parks and Recreation, which is what began phone calls and meetings. I didn't get direction from City Council.

Chair Rohlf: Mark, without Richard being here, I'm not sure exactly what conversations might have taken place. From what Mr. Ley has said, there are some engineering reasons why this particular bridge should be moved back to the west side. Is that correct?

Mr. Ley: Yes.

Chair Rohlf: To be shown where it was on the staff overhead.

Mr. Ley: Yes, where it is parallel with the property line.

Chair Rohlf: It is your position this evening that the proposal that was in the Preliminary Plan, as well as what is in this Final Plan that the applicant has presented, is not workable from an engineering or Public Works standpoint.

Mr. Ley: Right, and part of that has to do with some flooding that we were made aware of by the condo property over the past month. Not to change subjects, but I was wondering if I could update one of my stipulations. Number 10, I list out, "Building Permits will not be issued until all improvements have been constructed and accepted by the city engineer." Actually, it should read, "Certificate of Occupancy . . ." instead of "Building Permits."

Chair Rohlf: Mr. Peters, even though your presentation is complete, after your opportunity to look at Public Works comments about why the bridge would need to be moved to that location, have your engineers had a chance to look at that and agree or disagree?

Mr. Peters: He's here tonight. I really don't know the importance of the placement of this bridge. I know that you have an easement now to do it wherever you'd like to do it or where it works out best in engineering. We have all spent a great deal of time out there, and we're literally within about 10', which makes sense. We're squeezed between a very uneventful swale and a hill that is coming down. If you just toss out the window the issue of easements, I suppose you could place it anywhere you like. We could work within the present easements and get it to where Joe Johnson thought he should do it and also in alignment with what David Ley thought in that meeting when we were in his office.

Chair Rohlf: We're presented with what our staff believes to be the best options for this particular bridge. I'm not in a position to be able to agree or disagree with that. I have to believe what the professionals tell us in their reports. I am concerned, however, with the cost of this bridge. Mr. Peters, are we really talking about the money, or are we talking about the easement?

Mr. Peters: The easements mean nothing.

Chair Rohlf: So we're down to No. 14, which is the cost.

Mr. Peters: Yes, \$50,000 is a lot of money.

Chair Rohlf: It is.

Mr. Peters: Based on the information I uncovered about bridges, it is a whole lot of money. The next issue is we are happy to participate in a cost. Even if no one else pays, we will pay something if that is what is required of us. It should be somewhere around \$5,000 for our participation based on 25%.

Chair Rohlf: I might need Ms. Shearer's help to do this. I don't want to stop your project. If we're really just talking about Stipulation No. 14, if there is some language we can put into it that would help both sides, we could evaluate the cost of the bridge, get agreement on your portion of it and see what the city government wants to do. I don't think we're in a position to know exactly what that bridge is going to cost.

Mr. Peters: It may not be for a few years.

Chair Rohlf: Right, and I also know that some of the reasons for moving it where it is are legitimate, based on concerns about the drainage. We heard that in the last Public Hearing. Unless we would see something from your engineering department that says the bridge doesn't need to be there, I'm not sure we're quibbling over the location.

Mr. Peters: That is a flat area back there, and that's an issue in itself. It's a very small swale, and there is a huge amount of erosion on the creek bed from other issues.

Chair Rohlf: We have to take, at face value, what is in here. I'm looking for help from staff about what our position could be on this in order to move this plan forward. Could we delete it? Could we say it will be discussed at the City Council level? We don't have the power to do anything about finances; they do.

Ms. Shearer: That is certainly up to you. Per the LDO, you are allowed to change, add or delete stipulations. When you do that and the Governing Body gets the case, they will have to override anything you change by a 2/3 majority if they want to do that. As far as what you want any of these to say, that is your purview.

Comm. Neff-Brain: Can I take a stab at a motion, and then we can discuss if it's seconded?

Chair Rohlf: All right. Before we do that, does anyone else have any comments about this plan overall before we move to attempting a motion?

Comm. Elkins: I heard Mr. Peters' view in response to Councilman Gill's question about who would pay for the bridge, but were the alignment of the bridge to remain the way it is currently in the applicant's plan, in staff's opinion, who would be responsible for paying for the cost of that bridge?

Mr. Klein: The way it is currently aligned, it still is on Mr. Peters' property and then over to the condominiums' property. As Commissioner Neff-Brain indicated, it is very difficult to go back on a development to request them to pay. I imagine it would probably be the same as what it currently is.

Comm. Elkins: And what is it currently?

Mr. Klein: The 50% that was proposed in the stipulation.

Comm. Elkins: If we got to a place where the bridge is on that same alignment, the condominium property would not be responsible. We collect half from Mr. Peters' client. How does the bridge ever get built? Does the city have to come up with the remainder?

Mr. Klein: I imagine the city would have to come up with it.

Comm. Williams: As Mr. Peters pointed out, there has been a pedestrian trail easement in place for quite a long time. It has been part of all the development that has gone on, leading to this last piece of land that is involved. The trail crossed the creek. A bridge should have been anticipated. As Mr. Peters pointed out, it serves the entire community. Why weren't the other property owners assessed for a portion of what might be a bridge at some point in the future to pay their fair share instead of putting 50% on this development? It strikes me as being unfair.

Mr. Klein: I don't have personal knowledge with regard to that as far as a benefit district being formed. I know that this easement on the condominium property has been in existence for quite some time, but I wouldn't be able to tell you why the bridge wasn't anticipated.

Comm. Williams: Is the condominium property expected to put in their share of the trail at their cost?

Mr. Klein: If we were to go back and look at the stipulations that were approved and they had something in there about the cost of the trail, we could go back to them and indicate they owe a certain amount.

Comm. Williams: Thank you. My other point goes back to the stipulation that talks about moving this bridge to where a full half of it is on Mr. Peters' property. As I understand it from Mr. Peters and staff, a lot of discussion went in to the location of this bridge, with some consideration given to engineering issues. Then it seems that, in the last minutes before our packets went out, that whole discussion from the city's side changed and pushed it on to Mr. Peters' property with some of it going on to property the city doesn't yet own. My concern with that is that an actual design for that area has not been executed, factoring in all the conditions that would dictate a good design for a bridge that would address drainage, water flow, grad changes, etc. How can we dictate that it has to go on that spot in a last-minute decision?

Mr. Klein: It's not like this just occurred to everybody when they started thinking about it on Thursday or Friday. This is something that has been in the mix for a long time. Perhaps it was adjusted in the end with regard to reasoning for the location.

Comm. Williams: I don't mean to imply that it was that quick of a decision. Obviously there are a number of things that played into that conversation. It just seems that, considering how much time seems to be invested in the bridge, changing it to this proposed location was toward the end of the process after Mr. Peters did everything else asked of him to submit his Final Plans.

Mr. Klein: I'd like to back up a little bit. This is from the Preliminary Plan (*Refers to overhead Staff Report*) This is Stipulation 3d. The first part is, "Prior to Governing Body consideration, the Preliminary Site Plan shall be revised as follows: to show the pedestrian bike track curving southward to cross the stream channel at the southeast corner of the subject property." At that point, there was mention of the possibility that it would cross the stream channel on this application.

Comm. Williams: Does the bridge they show meet the material?

Mr. Klein: Mr. Peters did show it crossing at the southeast corner per the stipulation shown. This is what was being discussed. There was concern with regard to the proximity of the bridge and trail to the condominiums. That was part of the reason this was curved. My understanding was that was a major concern. In further discussions, it became evident that the city would also like it to actually cross on to the city's property.

Comm. Rezac: If the property to the south were not proposed to be city property, would the location of that bridge change? I'm asking that because I'm still struggling with the correct location and design for the bridge. I want to know what's driving it.

Mr. Klein: It's been my understanding that the major reason for the bridge to cross where staff had it shown is connecting city property, first and foremost. Proximity to the condominium property would be second. Thirdly and equally as important as the second is the drainage situation along that west property line. I also know it is a possibility that the condominium properties have had flooding issues, and they are considering doing some grading to the channel to make the water flow better. If that is the case, it is possible that more water would be contained in the channel.

Chair Rohlf: Any other comments?

A motion to recommend approval of CASE 83-10 – TOWN CENTER BUSINESS PARK – LOTS 8 AND 9 – Request for approval of a Final Site Plan and Final Plat, located east of Roe Avenue on Granada Road, including Staff Stipulations, removing Stipulation Nos 14 and 17 and the change to No 10 to read "Occupancy Permits" in place of "Building Permits" was made by Neff-Brain; seconded by Roberson.

Comm. Williams: Could I make a friendly amendment to delete Stipulation No. 12, which dictates that the bridge be moved to where it is perpendicular to the creek and going into what hopes to be city property? I only say that because, in my view, we can't necessarily dictate to them that it absolutely has to go in that particular spot.

Comm. Jackson: Could I make a different suggestion? For No. 12, substitute, "Applicant shall continue to work with staff to determine the location of the pedestrian/bicycle bridge."

Comm. Neff-Brain: Except that he should have no input as to where it is located if he's not paying for it and it is within the easement that he has given.

Comm. Roberson: Can I add one more comment?

Chair Rohlf: We're getting outside of Robert's Rules.

Comm. Elkins: My view would be that we're still in the realm of discussion and that at the conclusion of these comments, we'll come up with a friendly amendment. Madame Chair, I'd say you're still in the purview of what you can do.

Comm. Roberson: I have no problem revenue-sharing or cost-sharing; however, I don't think it's appropriate in this case that we have a 50/50 split with the situation. Most of these public improvements, as staff has pointed out, are split between property owners and not the city. In this situation, I think the city is dictating certain things, and I think they should bear the majority of the burden and cost of this bridge.

Chair Rohlf: By deleting No. 14, we've taken care of that issue.

Comm. Roberson: I just want to make it clear that I'm not opposed to cost-sharing.

Chair Rohlf: I don't think the applicant is, either.

Comm. Elkins: Just to continue on with that discussion, let's assume that we have these two choices for alignment on one side of the creek that always starts on Mr. Peters' clients' property. If you accept, for a moment, Mr. Roberson's approach, it doesn't make any difference. The applicant would still be paying for half. As he indicated, there has always been an easement along here. It's not clear to me yet if there has always been a bridge at that point in time or not, but if you take the analog of signaling a corner, the fact that I, as a property owner, have one of the lots means that I get to pay for ¼ of that stoplight. It seems to me that we have three issues. One is where to site the bridge. Two is whether Mr. Peters' client should have to pay for it. Three is if he should have to pay for it, how much should he have to pay? It seems to me that regardless of where it ends, the bridge starts on his property, and that property owner ought to pay the appropriate share. I don't think it's split pro-rata amongst everybody up and down the parkway; it's the fortune or misfortune of having the piece of property where the bridge starts.

Comm. Neff-Brain: There are some legal cases that really question the whole philosophy that cities have been using in the past to allocate these costs. For instance, with the street lights, to tell the four corner owners that they will pay the whole ¼ even if they are tiny lots, has no rough proportionality. If those were ever challenged, they would never stand.

Comm. Elkins: Historically, has Leawood's ever been challenged and defeated?

Comm. Neff-Brain: Not on street lights, but on the improvement districts on streets. Olathe, Overland Park and Leawood were all challenged at approximately the same time. That is why some cities have changed

their policies. Improvement districts used to be used almost totally to fund thoroughfares. When those cases struck down that policy, the whole impact fee and excise tax came into play.

Comm. Williams: With all due respect to conversations on Stipulation No. 14, which is being proposed to be stricken, is it really within the purview of the Planning Commission to determine how it is funded?

Chair Rohlf: No, that's why I think deleting it is the best policy.

Comm. Williams: We've spent well over an hour discussing this little corner of the site, which is a 32,000 sq. ft office building, over 128-car parking lot and several acres of ground. We've had no conversation about the rest of the project.

Comm. Neff-Brain: We discussed that last time.

Chair Rohlf: I think it is because it is identical to what we saw previously, and this is different. I think this was the only unresolved issue.

Comm. Williams: Going back to Stipulation No 12, there is an easement for a bridge, pathway, etc. It is not this property owner who is designing and developing that bridge. In many respects, to stipulate that the bridge has to go in a certain spot almost doesn't make any sense. The real estate is available to fit whatever bridge ends up going in there. I think we should remove the stipulation that makes reference to where a bridge should go. It still leaves it wide open to get a bridge.

Comm. Neff-Brain: I agree to that friendly amendment.

Chair Rohlf: With the friendly amendment, we have deleted Stipulations 12 and 14, as well as staff's deletion of 17 and the changes to 10.

Comm. Elkins: Are you ready for additional discussion on the motion as it sits now?

Chair Rohlf: I'm troubled and still not sure what to do. I very much appreciate my colleague's comments about Stipulation No. 12. I am concerned that the outcome is that we will never get a bridge. Do we end up with a situation where the path goes to the edge of Mr. Peters' property and there is no incentive for the condo owners to ever come forward to staff or the Governing Body? The one thing that gives me some comfort and confidence is it sounds like a reasonably plausible outcome that the city will end up owning that one piece of property. Maybe the impetus for the bridge will then come from the south instead of the north. I am mildly concerned that if we go down the path – which isn't necessarily the wrong path – we never get a forum to get this bridge built. That's what troubles me.

Comm. Jackson: This puts the ball into the City Council's court as to how they want to allocate the funds. They certainly have all of our discussion to look at. This will give more time for city staff to look at what has happened in the past, evaluate who is responsible for some of these fees and seek legal advice. City Council can certainly add it back in at some rate. Certainly they don't deny that they shouldn't pay something for it. City Council should determine what that ought to be.

Comm. Roberson: I agree.

Comm. Jackson: I would like to commend staff for their concern for the bike path. I like how they're trying very hard to link up these properties and link up the potential city property. I commend what they have done to maintain the health of this community. Leawood has been on the cutting edge of some of that, and I do commend them for that. The only other comment I would have is as far as the parking lot, I do have

concerns over that. You're adding more parking spaces because you don't want to come back before the City Council and because of the cost when you could just bank them instead. It sounded like you were willing not to build all those parking spaces, and yet you're going to because you don't want to have to come back and ask for them later. At this point, I don't think you need to add a comment to that. If that's an issue with the ordinance somehow and we could change that, I would recommend the city look at that.

Comm. Elkins: Given the discussion that Mr. Peters and I had at Preliminary Plan, I would be remiss in also not thanking Mr. Peters for the attention he gave to my favorite topic – the utility boxes - which is dim in comparison to the topic we've discussed tonight. I very much appreciate the diligence with which Mr. Peters and his team addressed the concerns I've expressed repeatedly with respect to the placement of utility boxes.

Chair Rohlf: Anything else before we vote?

Motion approved with a unanimous vote of 6-0. For: Roberson, Jackson, Neff-Brain, Williams, Elkins, Heiman and Rezac.

MEETING ADJOURNED.