

**LAWRENCE BOARD OF ZONING APPEALS**  
**Meeting Minutes of APRIL 6, 2017 – 6:30 p.m.**

---

Members present: Gardner, Gascon, Holley, Mahoney, Wilbur, Wisner  
Staff present: Cargill, Crick, Day, Miller

**ITEM NO. 1      COMMUNICATIONS**

- a) Acknowledge communications to come before the Board. no
- b) Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration. no
- c) Announce any agenda items that will be deferred. no

**ITEM NO. 2      MINUTES**

Consider approval of the minutes from the March 2, 2017 meeting of the Board.

**ACTION TAKEN**

Motioned by Mahoney, seconded by Wilbur, to approve the minutes from the February 2, 2017 meeting of the Board.

Motion carried 5-0-1.

**ACTION TAKEN**

Motioned by Mahoney, seconded by Holley, to approve the minutes from the March 2, 2017 meeting of the Board.

Motion carried 3-0-3.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 4      APPEAL OF AN ADMINISTRATIVE DECISION REQUIRING PUBLIC IMPROVEMENTS REQUIRED AS PART OF A FINAL PLAT APPROVAL FOR NAISMITH CREEK ADDITION AT 751 W. 29TH TERRACE [SLD]**

**B-17-00109:** Consider an appeal filed by Brian Strum, Landplan Engineering, P.A., representing Savannah Holdings, L.L.C., property owner of record of the real property at 751 W. 29<sup>th</sup> Terrace. The appeal challenges an administrative determination and certification, issued by letter dated February 3, 2017, by the Planning Director, which requires construction of a pedestrian pathway across city property to be paid for by the developer. The appeal was filed under the guidelines of Section 20-813 (f)(1) in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated March 3, 2017, and received in the Planning Office on March 3, 2017.

**STAFF PRESENTATION**

Ms. Sandy Day presented the item.

**APPLICANT PRESENTATION**

Mr. Brian Sturm, Landplan Engineering, said this is a culminating point of a project that has progressed over several years. He explained previous steps in the project, including the rezoning of 14 acres of land, and ultimately explained that the point of contention is over the financing of the proposed bike path.

Mr. Dennis Snodgrass, property owner (Savannah Holdings) said he's had many discussions with the

City over the years and explained the history of the property and the reason for their request.

Gascon asked if they are putting in the roadway and dedicating it back to the City.

Snodgrass said he doesn't know. He stressed that this is not a typical situation.

## **NO PUBLIC COMMENT**

## **ACTION TAKEN**

Motioned by Gardner, seconded by Wilbur, to close public comment for the item.

Unanimously approved 6-0.

## **BOARD DISCUSSION**

Mahoney thanked the applicants for attending this evening. He said this is an unfortunate situation and doesn't believe the Board has the power to act on decisions made in the past. He thanked Mr. Snodgrass for his contributions and he reminded the Board of their task this evening.

Gardner said it doesn't seem right.

Wilbur asked staff what requires an applicant to pay for the construction of the bike path.

Mahoney directed him to a page in the packet. He said he has no doubt it is the responsibility of the developer to construct the path and does not feel the City erred in their decision.

Wilbur agreed.

Gascon asked if this was disclosed to the appellant when the land was donated.

Day said they've known all along that there was an expectation for that sidewalk and they made it clear to staff they didn't feel it was their responsibility. A change in the subdivision regulations in 2006 streamlines the appeal process for such matters directly to the BZA instead of the Planning Commission or City Commission.

Gascon asked when the land was donated.

Day said probably around 2014.

Gascon asked if the City disclosed their intent to charge the developer with the costs in question.

Day said she can't confirm that specific statement was ever made.

Gascon feels it was the moral responsibility of the City to disclose those costs.

Mahoney said it's important to note that the landowner intended to develop for financial gain and this issue is based purely on financial matters.

Gardner said it's kind of an insult to injury to donate land and then not disclose those development costs.

Mahoney said it may have been but he doesn't feel the Board can make decisions based on past discussions, and as a developer they should know what is required to develop a piece of land.

Wisner asked staff if the City has any discretion as to whether they can waive cost assessment to the

landowner.

Day said it's not an assessment. She said the City could work with the developer, but what is currently proposed is a very specific type of sidewalk. She's unsure if they could work with the applicant on different materials or sidewalk width.

Wisner said he supports staff's decision but would like to know if the City can consider the circumstances to defray the costs.

Day said the land that was donated is primarily floodway and is not a developable portion of land. She explained the difficulty in finding a suitable location for the pathway south of the floodway. The City does have an ability to work with the applicant on finance of structure based on design.

Mahoney said

Holley asked if the applicant would have a way to request that the donated property could be subdivided out.

Day said the donated land is not part of the subdivision. She explained the public improvement plans and how they tie into the subdivision.

Gascon said most people would consider this a trail- typically a sidewalk is connected to urban fabric but this is essentially a sidewalk floating in space.

Mahoney said it connects to Missouri street.

Gascon said he understands and supports the loop, but if it wasn't the City's desire to create a loop no developer would have to connect to it. Perhaps this shouldn't be required based on the definition of a pedestrian way.

Mahoney said the simple answer is because it's required.

Crick pointed to the definition of "pedestrian way" included in the staff report.

They discussed the definition of pedestrian way and connections to the Lawrence Loop.

Gascon said he's not convinced and he won't be.

Day brought up a map of other subdivisions in the City that have made similar loop connections.

Gascon ultimately feels this is a wrong that needs to be made right.

Holley said he shares similar views with Gascon.

Mahoney said it's too bad it got to this point but the time for negotiation has passed.

Gascon reiterated the definition of pedestrian walkway.

Wilbur said he can see where Gascon is coming from. He feels the City needs to be more consistent.

Mahoney said he feels a street is a street and it's connecting two streets.

They chose to take a vote on whether staff erred in their decision:

Gascon, Wilbur, Holley, and Gardner voted yes.

Wisner and Mahoney voted no.

### **ACTION TAKEN**

Motion to make the determination that staff erred in their decision to require the developer to pay for the roadway carried 4-2.

### **ITEM NO. 5      VARIANCES FROM FLOODPLAIN REGULATIONS FOR THE RIVERFRONT MALL FROM FLOODWAY RESTRICTIONS AND MECHANICAL EQUIPMENT ELEVATION AT 1 RIVERFRONT PLAZA [AAM]**

**B-17-00124:** A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The first request is a variance from the code allowing an existing development to remain in the floodway as defined in Section 20-1204(b) of the City Code. The second variance is to allow certain existing mechanical equipment to remain in their current locations without being elevated 1 foot above base flood elevation as required by Section 20-1204 (e)(3)(i)(a)(1) of the City Code. The property is located at 1 Riverfront Plaza. Submitted by the City of Lawrence, the land owner of record, and Riverfront L.L.C. and Spring Hill Suites by Marriott, the structure owners of record.

### **STAFF PRESENTATION**

Ms. Amy Miller presented the item.

Gardner asked if they would consider alternative solutions to elevating the mechanicals.

Miller said they believe there are two units in the enclosure that would not meet the elevation requirements and they're already on blocks, which seems to be the cheapest and easiest solution.

Gardner asked if the City is responsible for the damage or repair if the variance is approved.

Miller said the City would not be responsible regardless of who the property owner is. It also doesn't exempt them from any insurance requirements. The decision wasn't just made based on the structure but also on the contours of the property. She said the electric that services those mechanicals is well above one foot.

Gardner asked how FEMA feels about the request.

Miller said they were supportive of the variance. Everyone recognizes that this is an existing situation.

Holley said he appreciates the thorough investigation on this item.

### **NO PUBLIC COMMENT**

### **ACTION TAKEN**

Motioned by Gascon, seconded by Gardner, to close public comment for the item.

Unanimously approved 6-0.

### **BOARD DISCUSSION**

Mahoney said these are always cut and dry and feels this is a slam dunk.

### **ACTION TAKEN**

Motioned by Holley, seconded by Wisner, to approve the variances based on Board discussion and the staff report.

Unanimously approved 6-0.

### **ITEM NO. 6 MISCELLANEOUS**

a) Consider any other business to come before the Board.

Crick clarified the requirements about ex parte communications.

Gardner asked whether an email that is received but not opened is included in those requirements.

Crick said yes just because you received it.

Mahoney mentioned a training they had regarding these rules.

Gascon asked if it's best practice to just email and ask for staff's opinion.

Crick said yes that's fine.

**ADJOURN 7:45 PM**