

Minutes Summary

Audio Tape No. 372

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, January 6, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Doug Patterson, Gregory J. Peppes, Peggy J. Dunn, and Louis Rasmussen. Adam Bold was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Scott Whitaker, Director of Parks & Recreation; Deidre Markley, Economic Development/Special Projects Coordinator; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 70 The agenda was approved unanimously on motion of Peppes, seconded by Dunn, after the addition of a discussion of a proposed ordinance granting the Blue Valley School District a franchise to construct a telecommunications system in public right-of-way within the District.

121 **ACCEPTANCE OF ANNUAL DONATION FROM THE CLOISTERS HOMES ASSOCIATION FOR POLICE AND FIRE DEPARTMENT BENEFIT FUNDS.**  
Lowell Benson, President of the Cloisters Homes Association, presented a check in the amount of \$1,060 to Police Chief Cox and Fire Chief Florance, for the departments' benefit or activity funds. (See tape meter #4352.)

206 **CITIZEN COMMENTS.** None.

218 **CONSENT AGENDA**  
A resolution establishing a fee schedule for 1997 and a request by HNTB engineers for \$76,100 for additional construction inspection engineering services for the 135th St. (K-150) improvement project, were removed for further discussion. The following were approved unanimously on motion by Campbell, seconded by Peppes:

1. Minutes of the December 16, 1996 Council meeting;
2. Historic Commission report (minutes) on their December 17, 1996, meeting;
3. Declaration of surplus property no longer used by the Police Department: 1991 Chevrolet Lumina (VIN 9916), 1991 Chevrolet Lumina (VIN 0267), and various equipment;
4. Purchase from low bidder Shawnee Mission Ford through a cooperative bid process of 2 1997 Ford Taurus Sedans totaling \$30,402 for code enforcement;
5. Pay Request No. 1 (FINAL) by Twin Traffic Marking Corp. in the amount of \$20,246.78 for 1996 street striping/markings;

6. Change Order No. 3 to the contract for 135th St. (K-150) improvements in the amount of \$15,000 additional for the removal of contaminated soil at the northeast corner of 135th St. and State Line Rd., cost of removal to be reimbursed by the Missouri Department of Transportation;
7. Appointment of Councilmember Gregory Peppes as Leawood's representative on the Johnson County Stormwater Management Advisory Council for a 3-year term (1/1/97 to 1/1/2000).
8. KDOT request for a construction project - installation of traffic signals at 119th & Brookwood and at 128th & State Line Rd., federally funded and scheduled to be constructed in 1998.

Authorize fee for additional construction inspection engineering services by HNTB engineers in the amount of \$76,100.00 for 135th St. (K-150) improvement project. Reno Construction's request for an extension of time into 1997 to complete the project had been granted by the Council earlier. Public Works Director Johnson explained the additional construction inspection services which would cover the extended time period to September 1997. Councilmember LaHue moved to approve the additional services, seconded by Campbell. Motion carried; Rasmussen, Patterson opposed; Clawson abstained to avoid the appearance of a conflict of interest; Campbell, LaHue, Dunn, Peppes in favor.

- 445 Resolution No. 1331, attached as part of the record, establishing fee schedule for 1997 for fees not specifically provided for in the Code of the City of Leawood. Councilmember Rasmussen moved to adopt the resolution, seconded by Peppes. Councilmember Clawson was concerned about charging fees for replacement and upkeep on property, in particular, replacement of fences; she felt that the City, wherever possible, should keep fees minimal if not nonexistent in areas where residents or homes associations performed replacement or maintenance on property. Planning Director McKay explained that the City had many problems with 6 foot fences, and if no provisions were made to look at replacement sections, then residents could end up with 6 foot fences without the City's knowledge, unless someone complained. A fee would allow staff the opportunity to at least explain requirements to residents, including required inspections.

Council asked questions about increased pool and golf course fees, and future uses of the City Hall community center which would be completed in spring 1997.

Motion to adopt the resolution carried unanimously.

#### PLAN COMMISSION

- 888 **Request by Hills of Ironhorse for a special use permit to install a temporary sales trailer, northeast corner of 153rd and Mission Rd.** On motion of Rasmussen, seconded by Clawson, Council unanimously approved a permit limited to one year from the date of issuance of a building permit.
- 945 **Ordinance No. 1640 adopting an amendment to the 1993 Master Development Plan Map - merely to change the term "Planned Business District" to "Special Development District".** The ordinance was considered and passed on motion of LaHue, seconded by Rasmussen. Roll call vote was unanimous.

- 960 **Ordinance amending Section 9-2 of the Leawood Development Ordinance to repeal Section 9-2.1C which required public hearings for preliminary plats.** Councilmember Rasmussen moved to deny passage of the ordinance, seconded by Patterson (which would override the Plan Commission's recommendation that the section be repealed).

Mr. McKay explained that state statute did not require a public hearing on a preliminary plat.

Councilmember Patterson felt public hearings were needed to give the public an opportunity to give input. Mike Gill, 13016 Falmouth, and Julie Cain, 12813 Delmar, felt the same way. Mr. Gill wanted public notice and, in fact, felt the City should improve that notice, faster with more and clearer information.

Motion to deny passage of the ordinance carried unanimously on roll call vote (an override of the Plan Commission).

- 1412 **Ordinance amending Article 6 of the Leawood Development Ordinance relating to public hearing procedures.** Planning Director McKay described changes and answered Council questions. Councilmember LaHue moved to pass the ordinance, seconded by Clawson.

Mike Gill, 13016 Falmouth, requested that if the Council wanted to pass the ordinance, they do so with one amendment - delete the material immediately after 6-3 which was new language and not needed. He also said that the list of zoning matters requiring public hearing notice in Section 6-3 was incomplete, not comprehensive. Planning Director McKay disagreed, felt that "all the bases were covered".

Councilmember Rasmussen suggested that the matter be remanded to the Plan Commission for further review in order to have an airtight ordinance.

City Attorney Wetzler suggested the matter be continued for further review; it would be counterproductive to send it back to the Plan Commission. Mr. McKay was comfortable with the proposed ordinance. Council discussed new language which might make the ordinance clearer. Mr. McKay preferred to defer the matter to the next Council meeting. Main motion and second were withdrawn.

Mrs. Clawson moved to defer discussion of the proposed ordinance to the next Council meeting (January 20th), seconded by LaHue. Motion carried unanimously.

- 2385 **Ordinance No. 1641 amending Section 4-3 of the Leawood Development Ordinance to allow for revocation of special use permits.** The ordinance was considered and passed on motion of Dunn, seconded by Clawson. On roll call vote, all were in favor except Mr. Rasmussen who had left his seat temporarily. He returned in time for the next item of business.

- 2416 **Ordinance No. 1642 amending Section 3-16 of the Leawood Development Ordinance to change RP-A10 to RP-A5 to allow for a Planned Rural Density Single Family Residential District (homes built on 5-acre tracts rather than on 10-acre tracts).** The ordinance was considered and passed on motion of LaHue, seconded by Peppes. Roll call vote was unanimous.

- 2446 **Ordinance No. 1643 amending Section 7-1 of the Leawood Development ordinance to provide for a Conditional Use Permit fee.** The ordinance was considered and passed on motion of Dunn, seconded by LaHue. Roll call vote was unanimous.

- 2462 **Ordinance No. 1644 amending Section 2-1 of the Leawood Development Ordinance relating to the establishment of zoning districts, to include a new zoning designation of RP-A5, Planned Rural Density Single Family Residential.** The ordinance was considered and passed on motion of Campbell, seconded by Dunn. Roll call vote was unanimous.

**OLD BUSINESS**

- 2628 **Request by the Highlands of Leawood that the City replace a subdivision fence in the amount of \$15,895.00.** Councilmember LaHue moved to approve the request, seconded by Rasmussen. A 755 foot section of a subdivision fence was removed for the construction of a retaining wall as part of the Nall Ave. improvement project (119th St./135th St.). Since the street plans did not show that section of the fence, the decision to remove it was made in the field, and there were no plans to replace it. Public Works Director Johnson did not recommend replacement of the fence since it appeared that homeowners had been advised some time ago that the fence would not be replaced because a wrought iron fence would be constructed on the top of the retaining wall and that they would extend their sideyard fences to the retaining wall, but if the Council wanted to replace it, Mr. Johnson recommended Burge Fence Co. do the work. The main motion and second were withdrawn.

Councilmember Campbell moved to deny the request, seconded by Peppes. Motion carried unanimously. (See tape meter #4412 for reconsideration of vote.)

**NEW BUSINESS**

- 3177 **Authorize design engineering contract for DB-04-017 stormwater management project, Overhill Rd. south of 86th St.** On motion of LaHue, seconded by Rasmussen, Council unanimously approved a contract with Boyd Brown Stude & Cambern in the amount of \$49,950.00.
- 3315 **Schedule work session.** By unanimous consent, Council to meet immediately after the Council meeting to hear a presentation on GIS (Geographic Information System) which the City had on line through an agreement with Johnson County.
- 3330 **Approval of Appropriation Ordinance No. 798.** The ordinance was considered and passed on motion of Patterson, seconded by Dunn. Roll call vote was unanimous.
- 3350 **Ordinance granting a franchise to Blue Valley School District to construct a telecommunications system (fiber optic cable) in public right-of-way within the District.** Councilmember Campbell asked if private schools and other educational facilities and members of the taxpaying public in the City would be able to access the system (broaden the access). The City had already negotiated access for itself with no fee. Councilmember Rasmussen felt that any educational institution should be able to access the system. City Attorney Wetzler said that the Blue Valley Schools did not want to do anything that would interfere with the primary purpose of the system which was to connect the public schools in the District.

City Attorney Wetzler suggested the matter be deferred to the next Council meeting to allow staff to discuss possible access to the system by other not-for-profit public entities with the Blue Valley School District.

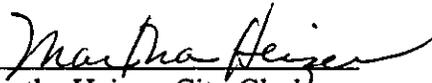
On motion of Rasmussen, seconded by Campbell, Council voted unanimously to defer the matter to the next Council meeting.

4352 **OTHER BUSINESS.**

By unanimous consent, Council officially accepted the donation from the Cloisters Homes Association that had been presented at the beginning of the meeting.

4412 The Highlands of Leawood's request for replacement of a subdivision fence: Public Works Director Johnson said that he had just learned that the City did indeed agree on June 12, 1995, as a condition that a homeowner drop his appeal to the City's condemnation proceedings, to stockpile the fence and replace it. He asked that the Council reconsider the matter at the next Council meeting.

4527 9:50 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 373

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, January 20, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold, Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Peggy J. Dunn, and Louis Rasmussen. John R. Campbell, Jr., and Doug Patterson were absent.

Staff Present: Richard J. Garofano, City Administrator; Joe Johnson, Public Works Director; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Scott Whitaker, Director of Parks & Recreation; Deidre Markley, Economic Development/Special Projects Coordinator; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 57 The agenda was approved unanimously on motion of Dunn, seconded by Peppes.

68 **PROCLAMATIONS.** The Mayor proclaimed:

1. February 2-8, 1997, as "Burn Awareness Week";
2. February 1997 as "YouthFriends Month"; and
3. February 16-22, 1997, as "Engineers Week". (Proclamation was presented to Public Works Director Joe Johnson.)

91 **CITIZEN COMMENTS.** None.

93 **CONSENT AGENDA**

Five items were removed for further discussion. The following were approved unanimously on motion by LaHue, seconded by Clawson:

1. Minutes of the January 6, 1997 Council meeting;
2. Parks & Recreation Advisory Board report (minutes) on their January 14, 1997, meeting;
3. Alarm Appeals Committee report (minutes) on their January 7, 1997 meeting;
4. Fire Department report for December 1996;
5. Acceptance of \$10,000 donation from the Kansas City Golf Foundation to benefit the Ironhorse Golf Club Learning Center (to date, donations totaled \$30,000);
6. Change Order No. 2 to the contract with Seal-O-Matic Paving for the 1996 Residential Street improvement program in the amount of \$5,858.60 for additional work required;
7. Interlocal agreement with Johnson County to increase the County's funding through C.A.R.S. of College Blvd. improvements from \$500,000 in 1996 to \$1,200,000 in 1997 (an additional \$700,000 in 1997).

Planning & Development Activity Report for December 1996. Councilmember Rasmussen noted that the number of code enforcement inspections had dropped. Planning Director McKay said that violations had been corrected and hadn't reappeared. On motion of Rasmussen, seconded by LaHue, Council unanimously approved the Planning and Development report for December 1996.

Change Order No. 1 to the contract with Insituform Missouri, Inc., in the amount of \$7,569.45 for the 1996 Sanitary Sewer Rehabilitation Project. Councilmember Rasmussen said that the Council had budgeted \$750,000 per year for rehabilitation of the Leawood Sewer System. He asked where the City stood on rehab funding at the end of 1996. Public Works Director Johnson said that \$40,000 left in 1996 would be rolled over for use in 1997. On motion of Rasmussen, seconded by Clawson, Council unanimously approved the Change Order.

Pay Request No. 4 (FINAL) by Bob Muehlberger Concrete Co. in the amount of \$29,545.03 for stormwater management project JB-04-005 Belinder to Manor at 95th St.

AND

Pay Request No. 3 (FINAL) by Bob Muehlberger Concrete Co. in the amount of \$52,316.13 for stormwater management project JB-04-006 Meadow Lane to Manor at 96th St. Councilmember Rasmussen noted that the contractor's performance review was less than desirable. Public Works Director Johnson said Bob Muehlberger Concrete would be removed from the bidding list. On motion of Rasmussen, seconded by Dunn, Council unanimously approved both pay requests.

Change Order No. 3 to the contract with Haren & Laughlin Construction in the amount of \$63,720 for installation of audio/visual equipment, lower level of City Hall, 4800 Town Center Drive. After clarification that Acoustical Design Group was the consultant on the equipment and that Harvest Productions was the subcontractor for installation, Council unanimously approved the change order on motion of Peppes, seconded by Dunn.

- 291 **MAYOR'S REPORT.** The Mayor had attended a recent Council of Mayors meeting; a presentation was given on a proposal to add minor collector streets (such as Lee Blvd.) to streets eligible for CARS funding. The mayors also met with representatives of several utility companies to discuss concerns related to cooperation between the cities and utility companies.

The Sister City Committee was planning a February 6th dinner at 6 P.M. at Princess Gardens Restaurant, 8505 College Blvd., to celebrate the Chinese New Year in honor of Leawood's sister city I-Lan, Taiwan.

Councilmember Clawson reported on an art exhibit at Exchange National Bank in Leawood showing the artwork of Leawood resident Joseph Tomelleri. Mrs. Clawson also reported that the Kansas City Brass would give a concert in the spring in the City Hall Council Chambers, and that another art exhibit would be held at Exchange Bank in March.

The Mayor planned to appoint a broad-based steering committee to plan for the City's 50th anniversary celebration in 1998. The Historic Commission wanted to hold a kickoff event in November 1997 - advance sales of its 50th anniversary commemorative book.

#### OLD BUSINESS

- 622 **Reconsideration of request by Highlands of Leawood for replacement of subdivision fence in the amount of \$15,895.00 (Nall Ave. improvement project, 119th St. to 135th St.).** The request was denied at the last Council meeting, however new information was brought to the attention of the Council at the end of that meeting. Initially, residents were told that the fence would not be replaced. Some easements were obtained through condemnation; residents appealed the condemnation. The City agreed in June 1995 to replace the fence along some of the property to have the appeal dropped.

Councilmember Rasmussen moved to reconsider the matter, seconded by LaHue. Motion carried unanimously. Rasmussen moved to approve the request, seconded by Bold. Motion carried unanimously.

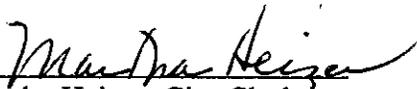
Burge Fence would install the fence for \$15,895.00; the Nall Ave. improvement project would pay for most of the cost, Leawood's share to be approximately \$2,950.00.

- 712 **Ordinance granting Blue Valley School District a franchise to construct a telecommunications system in public right-of-way (deferred from last Council meeting).** The City Attorney had submitted a revision to the school district but had not yet received a response. Councilmember Rasmussen moved to defer the matter again until the City Attorney heard from the school district, seconded by LaHue and carried unanimously.
- 737 **Ordinance amending Article 6 of the "Leawood Development Ordinance" to provide for changes in public hearing procedures (deferred from last Council meeting).** Planning Director McKay said that his staff needed more time to finalize changes. Councilmember Clawson moved to defer the matter again to the next Council meeting to allow staff to finalize wording, seconded by Dunn, and carried unanimously.

#### NEW BUSINESS

- 755 **Acceptance of the 135th Street (K-150) Corridor Urban Design and Development Plan prepared by the ad hoc K-150 Review Committee ("K-150 Review Crew").** The Plan Commission would hold a public hearing on the plan at their February 25th meeting. Councilmember Bold moved to accept (or acknowledge) the Committee's plan report, seconded by Clawson, and carried unanimously.
- 878 **Resolution No. <sup>1392 mk</sup> 1382, attached as part of the record, approving a lease-purchase to finance fire and public works equipment totaling \$680,000 (2 new fire pumpers for \$525,000, and 2 new dump trucks for \$170,000).** Adopted unanimously on motion of Rasmussen, seconded by Clawson.

- 895 **Ordinance No. 1645 conveying an easement to Kansas City Power & Light Co. for electrical service at City Hall, 4800 Town Center Dr.** The ordinance was considered and passed on motion of Dunn, seconded by Peppes. Roll call vote was unanimous.
- 923 **Ordinance No. 1646C relating to cutting of weeds and vegetation (property maintenance).** The ordinance was considered and passed on motion of Clawson, seconded by Peppes. Roll call vote was unanimous.
- 936 **Approval of Appropriation Ordinance No. 799A (1996).** The ordinance was considered and passed on motion of Dunn, seconded by Peppes. Roll call vote was unanimous.
- 950 **Approval of Appropriation Ordinance No. 800 (1997).** The ordinance was considered and passed on motion of Clawson, seconded by Dunn. Roll call vote was unanimous.
- 960 **OTHER BUSINESS.** None.
- 972 8:05 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 374

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, February 3, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold, Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Peggy J. Dunn, Louis Rasmussen, John R. Campbell, Jr. Doug Patterson was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Deidre Markley, Economic Development/Special Projects Coordinator; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 59 The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the addition of 1) an assignment to the Public Works Committee under the Consent Agenda to review Leawood Country Club's request that the City consider vacating some 89th St. right-of-way leading into the Club's property so the Club could improve its property to create a more formal and aesthetically pleasing entrance; 2) Arts Committee report (minutes) of their January 7, 1997 meeting, under the Consent Agenda; and 3) a discussion of federal ISTEA (Intermodal Surface Transportation Efficiency Act) funding program.

- 107 **RECOGNITION OF "HAVE A HEART, HELP A CHILD" (ANNUAL EMPLOYEE GIVING PROGRAM AT CHRISTMAS TIME) COMMITTEE.** Certificates of appreciation were prepared for Julie Hakan and Jana Stuart, Human Resources; Joyce Murphy, Nancy Blackerby, and Geri Viator, Finance; Diane Brooks (chairman of the committee), Doug Allmon, and David Binckley, Planning and Development; Annette Kirkwood and Pete Chronister, Fire; Sarah Hilton, Parks and Recreation; Wade Broussard, Candace Phillips, Public Works; Jill Manson, Michelle Brackeen, and Georgia Steenbergen, Police; Tamara Fitzgerald and Bill Porter, Parks; and Melissa Hall, Municipal Court.

- 289 **PROCLAMATIONS.** The Mayor proclaimed:  
1. March 1997 as "Youth Art Month"; and  
2. March 28, 1997 as "Arbor Day".

302 **CITIZEN COMMENTS.** John Hanrahan, 4501 W. 125th St., President of Berkshire Homes Assoc., addressed the Council about the private streets in his subdivision becoming public. The homes association had one thing left to do to comply with the City's criteria for accepting private streets as public, and he hoped to complete the conversion soon.

333 **CONSENT AGENDA**

The following were approved unanimously on motion by Peppes, seconded by Dunn:

1. Minutes of the January 20, 1997 Council meeting;
2. Appointment of ad hoc Health Insurance Review Committee - Councilmember Marnie Clawson (Chairman), Jim and Susie Rawlings (2212 W. 104th St.), and Thomas F. Lewinsohn (12724 Linden);
3. Purchase of 8 additional in-car video units (Kustom Electronics Eyewitness Systems) for police patrol vehicles for a total of \$44,210.00;
4. Application (renewal) for Cereal Malt Beverage License - Leawood Hen House, 11721 Roe Ave., Camelot Court Shopping Center;
5. Change Order No. 4 to the contract with Reno Construction Co. for 135th St. (K-150) improvements in the amount of \$7,503.00 for additional work required;
6. Change Order No. 1 to the contract with Wiedenmann and Godfrey Construction Co. for Sanitary Sewer Rehabilitation Project #2 in the amount of \$7,189.80 for additional work required;
7. Purchase of an electronic total station (a surveying instrument) and allied accident investigation equipment (Nikon Aim model D-50) from Laser Specialists, Inc. of Lenexa in the amount of \$6,984.71;
8. Resolution No. 1333, attached as part of the record, naming the access roadway between Mission Rd. and Leawood Park as Lee Boulevard (to be an extension of the existing Lee Blvd. passing over I-435 and entering Leawood Park);
9. Assignment to the Public Works Committee to review Leawood Country Club's request that the City consider vacating some of the 89th St. right-of-way leading into the Club's property so the Club could improve its property to create a more formal and aesthetically pleasing entrance;
10. Arts Committee report (minutes) of their January 7, 1997 meeting.

349 **MAYOR'S REPORT.** A presentation on Community Policing would be given at the next Council meeting.

**OLD BUSINESS**

428 **Ordinance No. 1647 granting the Blue Valley Unified School District No. 229 a franchise to construct a cable telecommunications system (install a fiber optic network) in public right-of-way.** Deferred from the January 20, 1997 Council meeting. The ordinance was considered and passed on motion of LaHue, seconded by Clawson. Roll call vote was unanimous.

**NEW BUSINESS**

- 503 **Consideration of annexation agreement between the City of Leawood and L & F Land (Harlan Laner group) to annex 82 acres on the southeast corner of 135th and Nall Ave.** The 82 acres was the only remaining unincorporated tract along the 135th St. Corridor. The tract was surrounded by Overland Park on three sides but was contiguous to Leawood on its western boundary. Mr. Laner wanted to be annexed into Leawood, but only if the City and he could agree on the land use and specifics of his proposed development of the land.

City Attorney Wetzler explained the terms of the agreement which included the right of the developer to request deannexation if the zoning approved by the City was not acceptable to him. Councilmembers Bold and Campbell felt the developer should either want to be part of the City (and comply with the City's zoning guidelines) or not be part of the City; he should not be allowed to deannex simply because he didn't get the zoning he had requested. This matter could end up being a waste of staff's time. Planning Director McKay noted that Leawood didn't have a corner at 135th and Nall Ave. This land could be a "gateway" to Leawood, and he wanted to go forward with the annexation and zoning process.

- 1304 Rod Richardson, attorney for the developers, told the Council that the property owners wanted to develop in Leawood; they wanted a chance to show their plans.

It appeared that most of the Council didn't like the proposed plans for the land, but were willing to take a risk, to explore, in order to have input on the zoning at that corner.

Councilmember LaHue moved to authorize the Mayor to execute the agreement, seconded by Clawson. Motion carried; Bold, Rasmussen opposed; all others in favor.

- 2110 **Authorize contract for services to complete park master plans for Leawood (City) Park, Nall Park, and South Park, and to review the trail system, the K-150 Corridor, and the proposed K-150 Corridor park land.** Councilmember Bold moved to approve the contract with Theis Doolittle Associates in the amount of \$40,900 plus expenses, seconded by Peppes. Councilmember LaHue was concerned about the expenses, felt there should be a cap placed on them. City Attorney Wetzler suggested adding language to the contract such that reimbursable expenses had to be approved in advance. Dr. LaHue moved to amend the motion that there be a cap of \$1,000 placed on reimbursable expenses, seconded by Rasmussen.

Mr. Rasmussen felt the City's standard contract needed to be reviewed; the Council had been frustrated on several occasions.

Motion to amend failed; Rasmussen, LaHue in favor; all others opposed. The main motion carried unanimously.

- 2462 **Schedule work session/special Council meeting .** On motion of Clawson, seconded by Dunn, Council voted unanimously to schedule a work session/special Council meeting for February 10th - work session 5:30-7:00 p.m. to meet with City prosecutor Melissa Hall concerning the general work load of the Municipal Court; special council meeting 7:00-9:00 p.m. to conduct performance evaluation of the City Attorney.

2536 **Approval of Appropriation Ordinance No. 799B (1996).** The ordinance was considered and passed on motion of Rasmussen, seconded by Bold. Roll call vote was unanimous.

**Approval of Appropriation Ordinance No. 801 (1997).** The ordinance was considered and passed on motion of Dunn, seconded by Peppes. Roll call vote was unanimous.

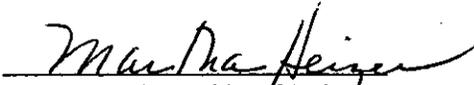
2565 **Executive Session.** On motion of Campbell, seconded by Dunn, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss land acquisition and a matter under attorney/client privilege.

2584 **OTHER BUSINESS.** Discussion of federal ISTEA (Intermodal Surface Transportation Efficiency Act) funding program. Councilmember Rasmussen felt the program was appropriate for the transportation needs of the metropolitan area. Access to interstate highways, rapid transit, and even bicycle paths were addressed. Staff would prepare a resolution for the next Council meeting indicating Council's support in maintaining the current concept of the ISTEA program which was in the City's best interest.

2903 9:15 P.M. Council convened in executive session, same members present.

9:35 P.M. Council returned to regular session, same members present. There was further discussion about the City's standardized contracts. The Mayor thought the Council had approved a standard contract to be used. Councilmember Clawson felt that Council needed to have a work session to obtain a fundamental understanding of contracts. City Administrator Garofano suggested including the change order process. "Leawood" ideas could be added to standard AIA (American Institute of Architects) contracts.

3283 9:45 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**MINUTES  
SPECIAL COUNCIL MEETING**

Tape No.

# The City Council of the City of Leawood, Kansas, met in special session in the main conference room at City Hall, 4800 Town Center Drive, at 7:50 P.M., Monday, February 10, 1997. Mayor Marcia Rinehart presided. The special meeting was preceded by a work session from 5:30-7:40 P.M., with a 10-minute break before the special meeting.

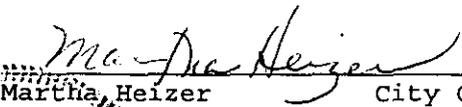
The special meeting was requested by Councilmembers Marnie S. Clawson, Adam Bold, Peggy J. Dunn, John R. Campbell, Jr, Doug Patterson, and Ronald LaHue, for the purpose of convening an executive session to discuss a personnel matter. Councilmembers Gregory J. Peppes and Louis Rasmussen were absent.

Staff present: Richard J. Garofano, City Administrator, and Richard S. Wetzler, City Attorney.

7:50 P.M. On motion of Patterson, seconded by Clawson, Council voted unanimously to convene in executive session for a period not to exceed one hour to conduct a personnel performance evaluation.

8:45 P.M. Council returned to special session, same members present, Council discussed placing items on the February 18th Council agenda - 1) establishment of a rate for legal services, and 2) a resolution relating to municipal judges.

9:05 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer

City Clerk



Minutes Summary

Audio Tape No. 375

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Tuesday, February 18, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Peggy J. Dunn, Louis Rasmussen, and Doug Patterson..

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 71 The agenda was approved unanimously on motion of Patterson, seconded by Peppes, after the addition of 1) a discussion of an assignment to the Public Works Committee under Other-Business; and 2) a discussion of cellular towers.

134 **CITIZEN COMMENTS.** Chuck Digby, 8025 High Dr., said he had heard that some Councilmembers had close business or personal relationships to certain City projects. He asked that all efforts be made to avoid conflicts of interest. The Mayor said that to make statements or implications about alleged improprieties without naming names or facts was improper.

Tom Laming, 4056 W. 124th Terr., addressed proposed cellular tower construction. He asked for a copy of a statement of policy regulating the location of towers near residential property. Specifically regarding the proposed 127th & Mission Rd. location, he requested a list of other properties that would meet the zoning requirements (they might have been included in a site selection study), and a copy of a site selection study if one was performed. Planning Director McKay would talk to Mr. Laming.

Robert Brown, 12000 Pawnee Lane, advised the Council about a congressional bill (the Sovereignty Proposal) that would allow states and cities to obtain funds for infrastructure repair interest free.

351 **CONSENT AGENDA**

Establishment of a rate for legal services was removed for further discussion. The following were approved unanimously on motion by Clawson, seconded by Peppes:

1. Minutes of the February 3, 1997 Council meeting;
2. Minutes of the February 10, 1997 Special Council meeting;
3. Parks & Recreation Advisory Board report (minutes) of their February 14, 1997 meeting;
4. Historic Commission report (minutes) of their January 28, 1997 meeting;
5. Departmental reports;

6. Appointment of Alice and Mel Hawk, 2814 W. 118th Terr., as co-chairmen of Leawood's 50th Anniversary Celebration Committee;
7. Application (new) for Cereal Malt Beverage License - Phillips 66 service station, 11921 Roe Ave.

Establishment of rate for legal services: Councilmember Rasmussen asked why the City didn't go out for bids for legal services, and why the City would consider the matter now since it would soon be considering its legal requirements as a city of the first class. He was not aware that legal fees would be discussed at the February 10th Special Council meeting; he thought the meeting was only for the City Attorney's performance evaluation in executive session. He was unable to attend that meeting, but had furnished his written comments on the City Attorney. The Mayor explained that the subject had come up after the evaluation, after the Council had returned to regular session, and Council felt it should be considered at this Council meeting, rather than at the Special Council meeting. Councilmember Campbell said that the suggestion of going out for bids came up every couple of years, but Councils had decided not to do that because professional services were usually not put out for bid; and the proposed increase in the hourly rate was still about \$50 per hour below the average for an attorney with Mr. Wetzler's experience. Also, it would take a new attorney quite a while to become familiar with the City's business to the extent that Mr. Wetzler was familiar. Mr. Rasmussen reminded Council that the City had saved money by putting its accounting services out to bid.

Mr. Rasmussen moved to go out for bid for those legal services provided by the city attorney. Motion died for lack of a second.

Councilmember Bold said that the Council had not arbitrarily decided new rates. He said that Mr. Wetzler had provided quality services and that his requested new rate was fair.

Councilmember Clawson moved to approve staff's recommendation - increase the rates of \$75 per hour for attorney time and \$55 per hour for paralegal services to \$85 and \$60 respectively. Motion seconded by Campbell, and carried; Rasmussen opposed, all others in favor.

## 718 PLAN COMMISSION

**Request by Church of the Nativity at 119th & Mission Rd. for a special use permit for construction of a cellular tower.** The Plan Commission recommended approval with a stipulation that the applicant allow the placement of the City's civil defense siren (disguised) within the (bell) tower and be responsible for all costs associated with the siren relocation. Staff requested that the Council delete all reference to the siren in their approval since Blue Valley Public Safety was opposed to the relocation of the outdoor siren at 119th and Mission Rd. to the church's bell tower; it would decrease the effective use of the siren.

Councilmember Campbell was concerned about cellular towers being placed "every 8 blocks" in the City (if several carriers were not able to be placed on each tower). Planning Director McKay explained why construction of towers was a special use in Leawood and dealt with on a case-by-case basis, requiring public hearings and close property owner notification. The City might not be able to totally prevent their construction, but could at least cause them to be disguised in some fashion.

Councilmember Bold said he had heard from many concerned citizens. He also did not want towers popping up all over the City in residential areas. He did like how a cellular tower could be hidden in a church bell tower. Mr. Bold asked about radiation emitted from the tower and if there was any concern about the effect it might have on the children at the church school.

Councilmember Patterson moved for approval of a permit, seconded by LaHue.

Curtis Holland, applicant's attorney, addressed the Council. Radiation emitted would be equivalent to a 100-watt light bulb; that would meet FCC standards. Another carrier on the tower would also be considered in an effort to defray costs. Placement in a bell tower was an innovative and creative way to disguise antennas. The applicant agreed with all the Plan Commission stipulations, although they really wanted to have a permit for a period longer than the recommended 15 years.

Councilmember Rasmussen stated that there was public interest in reducing the amount of clutter in public rights-of-way, and visual clutter that was created by present technology with the need for antennas. The City should do everything possible to insist that towers accommodate as many carriers or facilities as practicable.

Councilmember Bold asked about the hours during which a carillon (music) system would be played. The church had not discussed the hours of operation in detail. The church would probably not be opposed to restrictions on early morning or late evening operation. Planning Director McKay said that the City did have current noise restriction ordinances with which the church would have to comply. Mr. Bold moved to amend the motion to state that if and when the church decided upon a carillon system, it would go back to the Plan Commission for approval of decibel levels, seconded by LaHue. Motion failed; Campbell, Clawson, Rasmussen, Patterson opposed; Bold, LaHue, Peppes, Dunn in favor; the Mayor opposed.

The motion to approve a special use permit (without the stipulations on the civil defense siren) carried unanimously.

- 1683 **Request by Quail Crest subdivision for a special use permit for the installation of a temporary off-site sign at the southwest corner of 135th and Roe Ave. to direct potential homeowners to the subdivision further south on Roe.** On motion of Bold, seconded by LaHue, Council unanimously approved a permit limited to one year from the date of Council approval.
- 1701 **Request by Worthington subdivision for a special use permit for the installation of a temporary off-site sign at the southeast corner of 135th and Roe Ave. to direct potential homeowners to the subdivision further south on Roe.** On motion of Bold, seconded by Clawson, Council unanimously approved a permit limited to one year from the date of Council approval.
- 1715 **Ordinance amending Section 4-5 of the Leawood Development Ordinance relating to sign regulations.** Resident Barry Grissom, who had objected to the City's ordinance regulating political signs during the November 1996 General Election, had written to City Attorney Wetzler requesting continuance of Council consideration of the proposed ordinance because he had not received an opinion on the proposed ordinance from the American Civil

Liberties Union. Mr. Wetzler asked that the matter be deferred to the March 3rd Council meeting. On motion of Clawson, seconded by Dunn, Council unanimously voted to so defer.

2085 **Ordinance No. 1648 amending Section 9-1 of the supplement known as the "Amendment of the Leawood Development Ordinance", relating to general provisions of the subdivision regulations (to specifically amend 9-1.3 relating to purpose).** The ordinance was considered and passed on motion of Bold, seconded by Peppes. Roll call vote was unanimous.

2144 **Ordinance No. 1649 amending Section 9-3 of the Leawood Development Ordinance relating to regulations for subdivision design standards (specifically as they pertained to lots in 9-3.1H).** The ordinance was considered and passed on motion of Clawson, seconded by Bold. Roll call vote was unanimous.

2160 **MAYOR'S REPORT**

Police Officer Chris Pickering gave a presentation on the implementation of a community (oriented) policing (long-term) plan by the Police Department.

A delegation from sister city I-Lan, Taiwan, would be visiting Leawood March 23, 24 and 25.

**OLD BUSINESS**

2851 **Ordinance No. 1650 authorizing the sale and delivery of certificates of participation for the lease purchase financing of 2 fire trucks and 2 public works trucks.** The ordinance was considered and passed on motion of LaHue, seconded by Dunn. Roll call vote was unanimous.

2877 **Resolution No. 1334, attached as part of the record, in support of maintaining the concept of the current federal Intermodal Surface Transportation Efficiency Act (ISTEA) program which gave local communities a role in transportation planning and access to federal transportation dollars to address local and regional transportation needs.** Adopted unanimously on motion of Clawson, seconded by Dunn.

**NEW BUSINESS**

3047 **Ordinance No. 1651 annexing land into the City of Leawood pursuant to the consent of the property owner - Harlan Laner property, approximately 82 acres at the southwest corner of 135th and Nall Ave., annexation effective 12:01 a.m., April 2, 1997.** The ordinance was considered and passed on motion of Dunn, seconded by LaHue. On roll call, the vote was: Yeas---Campbell, Clawson, LaHue, Peppes, Dunn, Patterson. Nays---Bold, Rasmussen.

- 3073 **Authorize interlocal agreement with Overland Park for the operation and maintenance of 11 traffic signals of shared ownership (replaced all previous agreements for said signals).** Leawood would pay \$5,244.00 quarterly for the 11 signals. Any additional signals would be added to the list and would not require a separate interlocal agreement for maintenance. On motion of Clawson, seconded by Peppes, Council unanimously approved the agreement.
- 3109 **Authorize amendment to engineering inspection contract for College Blvd. improvements, Phase 1.** Public Works Director Johnson explained (KDOT) project delays which had created the need for additional inspection services to be paid for by the City. Councilmember Campbell asked if the City was legally obligated to pay TransSystems (formerly Johnson Brickell Mulcahy & Associates engineers) the additional inspection services fee requested under their original inspection services contract with the City. He wanted the City Attorney to review the original contract.  
Councilmember LaHue moved to approve the contract amendment with TransSystems for \$51,326.80, subject to review by the City Attorney, seconded by Clawson. Motion carried unanimously.
- 3873 **Authorize contract for engineering design services for the Lions Shelter house, Phase 2, at Leawood Park, 106th & Lee Blvd. - to add a restroom and concession area.** On motion of LaHue, seconded by Bold, Council unanimously approved a contract with Continental Consulting Engineers in the amount of \$14,650.
- 3887 **Authorize engineering proposal for irrigation central control feasibility study.** Landscaping had to be included as part of the design for major street projects, and the park system had a number of landscaped areas to maintain. With limited personnel and equipment available to maintain and water the City's landscaped areas, the City began to install irrigation systems. The study would address the feasibility of installing a central control system that would operate and monitor all irrigation systems, and would identify and establish standards to be used when installing new systems. On motion of Campbell, seconded by Peppes, Council unanimously approved a proposal submitted by Jeffrey L. Bruce and Co. (JBC), landscape architects and planners, in an amount not to exceed \$6,760.00.
- 3902 **Ordinance No. 1652 authorizing Kenneth Road rehabilitation project - from 1000 feet south of 143rd St. northerly to 700 feet south of 135th St.** The ordinance was considered and passed on motion of Dunn, seconded by Clawson. Roll call was unanimous, except for Mr. Campbell who was not seated for the vote on this 1 issue.
- 4024 **Ordinance No. 1653 amending Ordinance No. 1527 authorizing improvement of the Municipal Pool Complex - amendment necessary only to amend the dollar authorization to cover the issuance of temporary notes and ultimately general obligation bonds to cover all the approved expenses including future issuance costs.** The ordinance was considered and passed on motion of Peppes, seconded by Patterson. There was discussion and clarification of pool construction costs, financing costs, interest costs. On

roll call, the vote was: Yeas---Bold, Campbell, Clawson, LaHue, Peppes, Dunn, Patterson.  
Nays---Rasmussen.

4620 **Ordinance No. 1654 authorizing issuance of temporary notes; Project 124, 135th St. (K-150), State Line Rd./Nall Ave.; \$2,900,000.** Motion by Dunn, seconded by LaHue. Roll call vote unanimous.

4855 **Ordinance No. 1655 authorizing issuance of temporary notes; Project 126, Mission Rd., 95th/103rd; \$100,000.** Motion by Peppes, seconded by Clawson. Roll call vote unanimous.

**Ordinance No. 1656 authorizing issuance of temporary notes; Project 131, Nall Ave., 119th/135th; \$500,000.** Motion by Clawson, seconded by Peppes. Roll call vote unanimous.

**Ordinance No. 1657 authorizing issuance of temporary notes; Project 137, State Line Rd., Phase IV; \$100,000.** Motion by Dunn, seconded by Bold. Roll call vote unanimous.

**Ordinance No. 1658 authorizing issuance of temporary notes; Project 140, 83rd St.; \$700,000.** Motion by Peppes, seconded by Campbell. Roll call vote unanimous.

**Ordinance No. 1659 authorizing issuance of temporary notes; Project 144, Mission Rd., 103rd/I-435; \$500,000.** Motion by Campbell, seconded by Clawson. Roll call vote unanimous.

**Ordinance No. 1660 authorizing issuance of temporary notes; Project 146, Town Center Plaza; \$1,200,000.** Motion by Campbell, seconded by Clawson. Roll call vote unanimous.

**Ordinance No. 1661 authorizing issuance of temporary notes; Project 160, Municipal Pool Complex Improvements; \$1,200,000.** Motion by Peppes, seconded by LaHue. On roll call, the vote was: Yeas---Bold, Campbell, Clawson, LaHue, Peppes, Dunn, Patterson.  
Nays---Rasmussen.

**Ordinance no. 1662 authorizing issuance of temporary notes; Project 165, Kenneth Rd. Rehabilitation; \$1,000,000.** Motion by Bold, seconded by Clawson. Roll call vote unanimous.

**Ordinance no. 1663 authorizing issuance of temporary notes; Project 172, Oxford Hills Stormwater Improvements; \$400,000.** Motion by Dunn, seconded by LaHue. Roll call vote unanimous.

4998 **Ordinance no. 1664 conveying a right-of-way to Consolidated Main Sewer District of Johnson County for a permanent sanitary sewer easement along the northern and eastern edges of the proposed public works facility at 143rd St. and Overbrook.** Motion by LaHue, seconded by Peppes. Roll call vote unanimous.

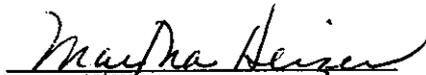
- 5022 **Resolution No. 1335, attached as part of the record, directing staff to initiate the process to employ a part-time municipal judge, and directing that a judicial selection committee be appointed to review candidates and recommend the appointment of a municipal judge.** Adopted unanimously on motion of Clawson, seconded by Bold.
- 5160 **Vote on amendment to the bylaws of the League of Kansas Municipalities - that would provide that past presidents of the League would remain eligible for continued service on the League Governing Body for so long as they remained in municipal office on an uninterrupted basis (to increase leadership opportunities on the League Governing Body for representatives of more member cities in the future).** On motion of Campbell, seconded by Patterson, Council unanimously approved the amendment.
- 5176 **Approval of Appropriation Ordinance No. 802.** The ordinance was considered and passed on motion of Peppes, seconded by Dunn. Roll call vote was unanimous.
- 5192 **Executive Session.** On motion of Peppes, seconded by Dunn, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 20 minutes to discuss 2 matters under attorney/client privilege.
- 5225 **Discussion of cellular towers.** Planning Director McKay said that staff was reading everything about telecommunication towers that they could obtain. There was not a lot of case law since cellular towers was a fairly new concept. The City had not done a site selection study. The City had a special use process requiring a public hearing and notification of residents upon receipt of an application to construct a tower. The City would need to show good reasons in writing for outright denial of an application in accordance with FCC regulations. Public hearings would be held February 25th at 6:00 p.m. at City Hall on proposed towers at 9617 Lee Blvd. (Police Department) and 127th and Mission Rd. (Fire Station No. 2), public land in the middle of residential neighborhoods.  
Tom Laming, who spoke earlier in the meeting, felt a moratorium on towers was needed so the City could establish a policy.
- 5808 **Assignment to the Public Works Committee.** Councilmember Clawson moved to instruct the Committee to discuss the process to be used to proceed with design of the proposed new public works facility at 143rd & Overbrook, seconded by Dunn. Motion carried unanimously.
- 5957 **OTHER BUSINESS. Discussion of 1997 Sanitary Sewer Rehabilitation Project.** Public Works Director Johnson said there was \$500,000 in the 1997 budget for construction on the Leawood Sewer System. He said that he wanted to consider doing a change order for \$400,00-500,000 to the existing contract for 1997 sanitary sewer rehabilitation to perform pipe bursting instead of designing and bidding that work out, to save time, money, and engineering. On motion of Patterson, seconded by Rasmussen, Council unanimously approved the use of a change order.

The second Council meeting in March would be held either March 10th or 31st, instead of March 17th, because of spring break.

On March 24th, the City planned to have one dinner event for the I-Lan delegation and City volunteers, rather than the usual two events.

6506 10:35 P.M. Council convened in executive session, same members present.

6515 10:55 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 376

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, March 3, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Peggy J. Dunn, Louis Rasmussen, and Doug Patterson..

Staff Present: Richard J. Garofano, City Administrator; Joe Johnson, Public Works Director; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 62 The agenda was approved unanimously on motion of Peppes, seconded by Dunn, after the addition of the scheduling of a work session to discuss the landscaping plan and trail system extension for the north and east portions of the City Hall property, 4800 Town Center Drive.

123 **CITIZEN COMMENTS.** Rosemary McCaffrey, 9910 Cherokee Lane, said that Change Order No. 2 under the Consent Agenda, when added to the first change order, totalled a 17.4% increase over the original bid price for 143rd St. improvements. It seemed typical for a contractor to give a low bid and then raise the price through change orders. She also requested that Council consideration of the bid/contract for the construction of the Lee Blvd. sidewalk from 105th St. south over I-435 into Leawood Park be postponed until some public hearings were held with resident notification.

187 **PROCLAMATIONS:** The Mayor proclaimed March 20, 1997, as "Absolutely Incredible Kid Day."

190 **CONSENT AGENDA**

A report from the ad hoc (employee) Health Insurance Review Committee and Change Order No. 2 to the contract for 143rd St. improvements, were removed for further discussion. The following were approved unanimously on motion by Clawson, seconded by Peppes:

1. Minutes of the February 18, 1997 Council meeting;
2. Appointment of Judicial Selection Committee to review applications for new part-time municipal judge position: Councilmember Campbell, facilitator; Linda Forsythe (Ward 1), 8614 Overhill Rd.; Max Skidmore (Ward 2), 10304 Howe Dr.; Brian Gardner (Ward 3), 2901 W. 124th St.; Julia Hoy (Ward 4), 4645 W. 127th Terr.; Ray Sousley (attorney), 5052 W. 129th Terr.; Kenneth Butler (attorney), 10205 Mohawk; and Andrew D. Lyons (attorney), 9200 Ensley Lane;
3. Appointment of 50th Anniversary Advisory Committee (attached as part of the record).

3/3/97  
minutes

February 28, 1997

TO: City Council  
FROM: Mayor Rinehart  
RE: 50th Anniversary Advisory Committee

As you recall, Alice and Mel Hawk have already been designated as co-chairmen of the 50th Anniversary Committee. I am recommending and requesting Council approval for the following members to serve on the advisory committee:

Renny Arensberg (elementary schools)  
Adam Hamilton and Sue Thomen Dolquist (church community)  
Eve Beck and Bill Mallory (civic groups and homes associations)  
Jody Craig (Historic Commission)  
Thomas Hammonds (Sister City Committee)  
Jeri Riley (Arts Committee)  
Marvin Gibian (Foundation)  
(to be determined in May) (Parks & Recreation Advisory Bd.)  
Stewart Stein (Chamber of Commerce)  
David W. Butts (Leawood Country Club)  
Matt Buchmann (Saddle & Sirloin)  
Ed and Pat Mareski (Leawood South Country Club)  
(awaiting designee) (Hallbrook Country Club)

Ex officios - 1997-1999 Mayor;  
Marcia Rinehart

Staff - Alan Marstall  
Sarah Hilton

The advisory committee, which will serve as liaisons to and from their respective community organizations, will report directly to the co-chairmen. The goal is to involve every Leawood resident in the 50th anniversary celebration in some way. It is my understanding that the committee will begin meeting in mid-April.

MR/mh

Report from ad hoc Health Insurance Review Committee re employee health insurance program: Councilmember Patterson requested that the report be removed from the consent agenda merely to abstain from voting to avoid the appearance of a conflict of interest. Councilmember Rasmussen moved to accept the report, seconded by LaHue, and carried; Patterson abstained, all others in favor.

Change Order No. 2 to the contract with Bob Muehlberger Concrete Co. in the amount of \$13,222.19 for improvements to 143rd St., Mission Rd. to Nall Ave.: Public Works Director Johnson explained that the change order was necessary for the installation of an underdrain for the collection of underground water adjacent to the roadway. Without the drain, water could enter the subgrade, reducing the life of the road. There was no way to know there was a groundwater problem until the contractor was preparing the subgrade for the asphalt. On motion of LaHue, seconded by Campbell, Council unanimously approved the change order.

373 **MAYOR'S REPORT**

During the past couple of weeks, the (new) Corinth Elementary School at 83rd and Mission Rd. in Prairie Village was officially dedicated, the Mayor and City Administrator spoke to employees of the Hereford House restaurant at Town Center Plaza about the Leawood community, the Leawood Rotary Club celebrated its second anniversary, and the Mayor and Councilmember Dunn visited with representatives from Slovakia at City Hall.

The Mayor reported that a delegation of 15 was coming from sister city I-Lan, Taiwan, March 23, 24 and 25. The delegation would attend the annual City volunteer dinner on March 24th.

Councilmember Clawson, liaison to the Arts Committee, reported on the art exhibit and musical entertainment held immediately prior to the Council meeting in the Council Chambers: Student art from Mission Trail Elementary School was displayed.

**OLD BUSINESS**

- 700 **Discussion of the waiver of a sidewalk requirement for the west side of Fontana south of 132nd Street in Wilshire subdivision.** Councilmember Patterson said that a sidewalk was not warranted at this time for such a short cul-de-sac with 9 lots built since approximately 1992. Planning Director McKay told the Council that if a sidewalk was required in the future, it would be the property owners' responsibility to fund it. On motion of Rasmussen, seconded by Clawson, Council unanimously approved a waiver of the sidewalk.

**NEW BUSINESS**

- 788 **Resolution No. 1336, attached as part of the record, requesting Johnson County participation in the City's 5-year (1998-2002) Capital Improvements Program through the County's Assisted Road System (C.A.R.S.).** Adopted unanimously on motion of LaHue, seconded by Rasmussen.
- 1056 **Approve bid/authorize contract for Kenneth Road rehabilitation (asphalt rather than concrete), 135th St. to 143rd St.** On motion of Clawson, seconded by Bold, Council unanimously approved a contract with the low bidder Seal-O-Matic Paving Co. in the amount of \$943,843.64.

RESOLUTION NO. 1336

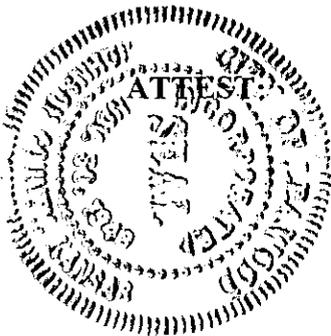
**A RESOLUTION REQUESTING JOHNSON COUNTY, KANSAS,  
PARTICIPATION IN THE CITY OF LEAWOOD'S FIVE-YEAR CAPITAL  
IMPROVEMENT PROGRAM THROUGH THE COUNTY'S ASSISTED ROAD  
SYSTEM (C.A.R.S.) 1998-2002**

WHEREAS, the Governing Body of the City of Leawood has reviewed and approved the submittal of the attached five-year road and bridge improvement program and,

WHEREAS, pursuant to the Johnson County Commissioners' commitment to hold Leawood harmless from any loss, the City of Leawood is requesting participation from Johnson County, Kansas, through the County's Assistance Road System (C.A.R.S.),

NOW THEREFORE, be it resolved by the Governing Body of the City of Leawood, Kansas, that the attached five-year road and bridge program be submitted to Johnson County, Kansas, per Johnson County's Resolution No. 44-90 and Resolution No. 0881-91.

ADOPTED by the governing body this 3rd day of March, 1997.



*Marcia Rinehart*  
\_\_\_\_\_  
Marcia Rinehart, Mayor

*Martha Heizer*  
\_\_\_\_\_  
Martha Heizer, City Clerk

## County Assistance Road System 1998-2002 Program Summary Sheet

Participating City:

Priority	Project Location	Proposed Start/ Finish	Project Type	CARS Route Classification		CARS Program Funding Request	Total Project Cost
				Major	Minor		
*Continuation--1998	College Boulevard Elmonte to State Line Road	July 95 July 97	Capacity	X		2,470,815.00	13,065,000
*Continuation--1999	College Boulevard Elmonte to State Line Road	July 95 July 97	Capacity	X		1,375,000.00	13,065,000
2000	Roe Avenue 124th St. South to 135th St.	May 00 Sept 02	Capacity	X		1,100,000.00	4,040,725
2001	119th Street and Mission Road Intersection	May 01 Sept 02	System Management	X		1,058,610.00	3,367,220
2002	State Line Road 79th Street South to 103rd St.	June 02 Oct. 02	Major Maintenance	X		725,000.00	2,100,920
*	CARS Program request is estimate in accordance with interlocal. at year end 1999. Total funds	net of Each year will be reconciled at year end equal	City collected sales tax, in year end 5,500,000.00. Amendment to			with final settlement interlocal agreement attached.	

## Instructions for Completing Five-Year Program Summary Sheet

Column	Instructions
Priority:	Projects must be listed in order of priority based on the five year needs of your City. Each project should be preceded by a priority number (i.e. 1, 2, 3, etc.)
Project Location:	Project name generally consists of the major street on which the project is located and the limiting streets on each end of the project (i.e. State Line Road - 112th Street Terrace to Carondelet Drive).
Proposed Start/Finish:	The estimated month and year for the start of construction and completion of construction should be entered in this column.
Project Type:	Note the project type using the following descriptions: Capacity, Major Maintenance, System Management, Bridge Replacement, Bridge Rehabilitation, or Route Enhancements. Definitions for the project types are attached.
CARS Route Classification:	Note the route's classification by checking the appropriate box.
CARS Program Funding Request:	The total amount of funding for the project proposed to be furnished by the CARS Program. This can be any amount up to but not exceeding 25% of the eligible, local share of construction costs for the project.
Total Project Cost:	The total cost of design, right-of-way, utility relocation construction and construction engineering for the project. This figure should be identical to that shown on CARS Form A.

Also included for your use in preparing your city's 5-year plan is CARS Form A. This form must be completed for each project and returned with your 5-year plan submittal.

- 1236 **Approve bid/authorize contract for construction of I-435 access road bike trail, Lee Blvd. sidewalk over I-435, soccer fields, and parking lot improvements in the vicinity of Leawood Park, 106th & Lee Blvd.** Public Works Director Johnson explained the project. The project was bid last year, but since the only bid had exceeded the engineer's estimate, Council rejected it and voted to rebid this year. The sidewalk would be along the west side of Lee Blvd. up against the curb from 105th St. south to tie in with the sidewalk on the bridge over I-435. The 4 property owners on the west side of Lee south of 105th St. did not object to the sidewalk.

Charles Russ, 10330 Lee Blvd., said he was not aware of the sidewalk plans. He and many other Lee Blvd. residents south of 103rd St. had opposed a sidewalk for a long time because sidewalk construction would kill the trees, and it was not warranted since very few people walked down Lee Blvd. into Leawood Park; they drove instead. A study by Bucher, Willis & Ratliff consulting engineers had indicated that additional sidewalk right-of-way would have to be obtained to preserve the life of trees south of 103rd St., and the sidewalk would have to meander in front or behind the trees, could not be placed at the curb.

Councilmember Patterson said that construction of a sidewalk north of the I-435 bridge only to 105th St. made it appear that the Council had changed its mind about not building a sidewalk all the way to 103rd St. It seemed the Council had coattailed a very controversial issue north of I-435 onto improvements south of I-435 that were definitely needed; the Council appeared to be laying the groundwork for further extension of a sidewalk to 103rd St. Mr. Patterson was not convinced that the sidewalk north of the bridge was designed properly in light of the number of options the Council would have to make in the future on a pedestrian trafficway, if any, north of 105th St.

The Mayor said there was a consensus of the Council last fall at the first bid letting to construct a sidewalk or a pathway from the bridge to 105th St. - the City had plenty of right-of-way to go to 105th St. and trees would not be damaged.

Councilmember Bold stated that Council did not plan in the budget or CIP for a sidewalk north of 105th St. Future Councils, however, might consider it. He felt the pathway south of 105th St. was needed for safe ingress and egress to and from Leawood Park, especially in lieu of the renovation of the pool complex at the Park and increased attendance at the Park.

On motion of Peppes, seconded by Bold, Council approved a contract with the low bidder TASC0 of Pleasant Hill, Missouri, in the amount of \$342,169.69 base bid plus an alternate of \$34,028.20 for a retaining wall. Motion carried; Rasmussen, Patterson (he felt all alternatives had not been studied) opposed; Clawson abstained to avoid the appearance of a conflict of interest; all others (5) in favor.

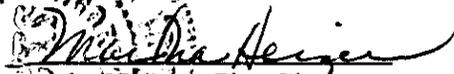
- 2380 **Approval of Appropriation Ordinance No. 803.** The ordinance was considered and passed on motion of Rasmussen, seconded by Peppes. Roll call vote was unanimous.
- 2395 **Executive Session.** On motion of LaHue, seconded by Peppes, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss land acquisition, a personnel matter, and another matter under attorney-client privilege.

- 2415 **Discussion of March Council meetings.** Two meetings, March 10th and March 31st, would replace the regular second March Council meeting of the 17th due to spring break. Both meetings would begin at 7:30 p.m., unless otherwise determined at a later date.
- 2470 **Authorize south park easement agreement.** On motion of Rasmussen, seconded by Dunn, Council approved an agreement with KN Interstate Gas Transmission Company to install a gas line along the northern boundary of the South Park at approximately 148th and Mission Rd.; Patterson abstained to avoid a conflict of interest, LaHue was not seated for this particular vote, all others in favor.
- 2492 **OTHER BUSINESS.** There was a brief discussion of the judicial selection process to review applications for a part-time municipal judge. The Judicial Selection Committee was appointed at the beginning of the meeting.
- 2555 **9:00 P.M. Council convened in executive session,** same members present, except for Mr. Patterson who left his seat to avoid a conflict of interest during the first discussion about land acquisition. Council returned to regular session at 9:30 P.M., same members present except for Mr. Patterson. On motion of Clawson, seconded by LaHue, Council voted unanimously to extend the executive session 15 minutes. Mr. Patterson returned to the meeting for discussions on a personnel matter and another matter under attorney-client privilege. Council returned to regular session at 9:45 P.M., all 8 Councilmembers present.
- 2570 **Ordinance No. 1665 amending Section 4-5 of the Leawood Development Ordinance relating to sign regulations.** The Council was asked to consider a few changes to the proposed ordinance which the Plan Commission had not considered, so a Council override of the Plan Commission would require 6 favorable Council votes. The Leawood Chamber of Commerce had requested that banner provisions be removed for further staff review, and the time limit on informational signs would be changed to read, "Maximum of one allowed all year long (however, an unlimited number will be allowed 50 days or less prior to a public election to be held in the City of Leawood)."

On motion of Patterson, seconded by Bold, Council unanimously passed the ordinance on roll call.

A work session would be held following the meeting to discuss the landscaping plan and trail system extension for the north and east portions of the City Hall property.

9:55 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 377

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, March 10, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Peggy J. Dunn, and Doug Patterson. Adam Bold and Louis Rasmussen were absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 81 The agenda was approved unanimously on motion of Campbell, seconded by Clawson, after the addition of a resolution consenting to the enlargement of Johnson County Consolidated Main Sewer District, and, under the Consent Agenda, a Golf Course Committee report (minutes of meeting).

132 **CITIZEN COMMENTS.** None.

136 **PROCLAMATIONS:** The Mayor proclaimed March 3-9, 1997, as "National Juvenile Arthritis Awareness Week."

139 **CONSENT AGENDA**

The following were approved unanimously on motion by Dunn, seconded by Clawson:

1. Minutes of the March 3, 1997, Council meeting;
2. Parks & Recreation Advisory Board report (minutes) of their March 4, 1997, meeting;
3. Golf Course Committee report (minutes) of their March 6, 1997, meeting.

164 **PLAN COMMISSION**

**Application for special use permit and revised preliminary site plan for Covenant Chapel church, approximately 133rd and Pembroke.** The Plan Commission had denied the application based upon potential traffic problems in the area. Adjacent neighbors were concerned about the one entrance to the church through their neighborhoods. Staff requested that Council remand the matter to the Plan Commission for further review due to negotiations on 133rd St. and the potential for its construction in the near future from Mission Road to State Line Road; the Plan Commission could review the project based on new information which would provide 2 alternative routes to the church.

On motion of Campbell, seconded by Dunn, Council unanimously approved staff's request to remand the matter to the Plan Commission.

217 **MAYOR'S REPORT**

The Mayor reported that Leawood had been named a Tree City USA by the National Arbor Day Foundation and Kansas State and Extension Forestry. She commended Park Maintenance Supervisor Mike Noll and Parks & Recreation Director Whitaker for their efforts in making the designation possible.

The Council of Mayors had met with Kansas City Power & Light President and CEO Drue Jennings to discuss communication efforts, especially efforts put forth during the October 1996 snowstorm.

At the February 18, 1997, Council meeting, mayoral candidate Chuck Digby told the Council that journalist Tom Leathers of Leathers Publishing had met with some City Councilmembers about Council improprieties/conflicts of interest. The Mayor read a letter from Mr. Leathers stating that: 1) he was not the president of the Leawood Chamber of Commerce as Mr. Digby had told the Council (he was a director); 2) he had not held meetings with members of the City Council regarding improprieties or any other City matters; he had interviewed Councilmember Dunn and other mayoral candidates for a recent article in his "Squire's Express"; and 3) he did not know of any conflicts of interest involving Leawood officials.

**OLD BUSINESS**

- 315 **Consideration of City Hall site masterplan.** Staff requested that Council adopt the plan distributed to them as the Master Plan for the City Hall site to serve as a guide for the completion of all future hardscape and landscape improvements to the site. Phasing of the improvements could be discussed in a work session. City Administrator Garofano gave a brief description of the improvements - parking lot expansion (northwest and southern sections of the site), courtyard finish with fountain south of City Hall, landscaping and public use of the site (entry area at the south, natural "amphitheater" and platform or stage area for arts/parks/recreation activities on the north, extension of bike/hike trail from Tomahawk Creek Parkway under Roe Ave. to City Hall site).

Councilmember Patterson moved to approve the concept of the site plan with the understanding that improvements would be phased and that the Parks & Recreation Advisory Board and/or Arts Committee be asked to consider and make recommendations to the Council on guidelines for use of the area, seconded by Campbell. Motion carried unanimously.

**NEW BUSINESS**

- 745 **Approve bid/authorize contract for 1997 Street Slurry Seal Program.** On motion of LaHue, seconded by Clawson, Council unanimously approved the low bid from Musselman & Hall Contractors in the amount of \$.96 per square yard. \$50,000 had been budgeted for the program.
- 760 **Discussion of proposed Williams gas pipeline relocation at Ironhorse Golf Club.** Golf Course Committee minutes of the Committee's March 6, 1997, meeting, were distributed to the Council. Developer Mark Simpson had shown the Committee his proposal to relocate a

70-year old gas line away from the middle of his residential development property Meadows of Iron Horse at approximately 151st Street west of Leawood Mission Valley and east of hole #16 on the golf course. The required 50-foot easement for relocation would be on golf course property (in rough area, not play area) and at the back of lots along hole #16. Mr. Simpson said it would benefit the City as a whole and the overall safety of his development. He also reminded the Committee that two areas of the golf course cart path were on his property and he would be willing to donate those tracts to the City. The Committee voted unanimously to reject Mr. Simpson's offer. They recommended that the Council ask for some monetary consideration for the City's granting a perpetual easement to Williams Pipeline to relocate the line on valuable golf course property, that Mr. Simpson participate (place rock only along the bank where needed) in bank stabilization around hole #17 near his "cart path" property, and that Mr. Simpson donate the cart path property to the City as he had indicated he would.

The Golf Course Committee was concerned about Williams Pipeline's standard policy of tearing up an easement to correct a problem and leaving the easement torn up, other than replacing soil. (Williams already had an existing easement on Mr. Simpson's property and on golf course property). Mr. Simpson told the Committee that if the City granted a new easement to Williams, he was willing to cover golf course repair costs for the first ten years in case a gas line problem occurred on the golf course property. The Committee was also concerned about the number of days it would take to correct a problem on the golf course.

Mr. Simpson did not think monetary consideration was necessary from him or from Williams Pipeline; the City paid nothing for the golf course land in the beginning - it was all donated as far as he knew, and the pipeline was four feet underground and would have no long-lasting, no permanent effect whatsoever on the playability of the golf course. Williams would not pay anything and Mr. Simpson was already paying \$120,000 to Williams to get the relocation work done and out of 18 residents' backyards in the Meadows of Iron Horse.

1773

Councilmember LaHue moved to grant an easement to Williams Pipeline for the relocation of the gas line onto golf course property if Mr. Simpson 1) was willing to execute an agreement with the City to cover possible necessary repairs to course property in the next ten years if gas line problems occurred within that period of time, 2) would donate the cart path property to the City, 3) would participate (provide rock only) in the bank stabilization at hole #17, and 4) that the relocation work on golf course property would not exceed 1 week.

Motion seconded by Patterson and carried unanimously. *See attached*

- 1916 **Ordinance No. 1666C amending Sections 3-113 and 3-207 of the Code of the City of Leawood relating to consumption and possession of cereal malt beverages on public property and to drinking alcoholic liquor on streets or in public places, respectively - to permit both at Leawood Community Center.** Consumption and possession would be permitted inside the Community Center only, not outdoors, to accommodate or attract various events or functions, including wedding receptions, as a service to the community and to generate additional revenue, after municipal court use and City-sponsored events. The City would not serve the beer or alcohol. There was discussion about drinking directly outside the Center doors on a "patio" or "terrace" area. Parks & Recreation Director Whitaker said it was the intent that the outside area be for family activities with no alcohol or beer. All outdoor activities would be alcohol free. Events would be very difficult to control if beer and alcohol were to be considered on a permit-by-permit basis. There would be a continuing enforcement problem.

2293 Councilmember Dunn moved to pass the ordinance, with consumption and possession permitted inside the Community Center only, not outdoors, and that the Parks & Recreation Advisory Board be requested to recommend guidelines or a policy for the rental or use of the Community Center, inside and outside, for Council consideration. Motion seconded by Clawson and carried unanimously on roll call vote.

2321 **Schedule "Committee of the Whole" discussion of the City Hall site masterplan.** On motion of Clawson, seconded by Dunn, Council voted unanimously to meet after Other Business.

2346 **Approval of Appropriation Ordinance No. 804.** The ordinance was considered and passed on motion of LaHue, seconded by Peppes. Roll call vote was unanimous.

2360 **Executive Session re pending litigation.** Residents Mike Gill and James E. Taylor, Sr., asked to address the Council about plans for a Price Chopper grocery store at 135th and Mission Road. City Attorney Wetzler said that would be permissible.

Mike Gill, 13016 Falmouth, reported on a recent meeting at which several concerned area neighborhoods, with the developer and architect, reviewed plans referenced in a document that Council would review in executive session later in the evening. New plans showed a park as a buffer between Price Chopper and residences, instead of duplexes; some highly defined issues came out of several discussions. Residents said that the park should have 1) very significant berms, 8-12 feet tall, to block view; 2) a wrought iron fence to protect residents' security; 3) plantings similar to those at Hallbrook subdivision; 4) centerpiece of the park - to be (relocation of) the historic Oxford Schoolhouse presently located at 135th and Mission Rd. It should not be a generic park. The cost of the park would be approximately \$166,000-210,000, which did not include the cost of relocating the school, which would also be expensive. The City would have to commit to residents that the park would be as residents expected it to be. The City would get the reverse frontage road (133rd St.) ahead of schedule. If the City felt it could not or did not want to expend the funds required for the project as newly outlined to residents, it should say so. Mr. Gill said that the new concept/plan did not comply with the recent K-150 (135th St.) Review Committee's report on development of the K-150 Corridor - public areas or amenities at 135th and Mission Rd. were not shown on the new plans; residents had to raise those issues themselves.

2770 James E. Taylor, Sr., 12505 Sherwood, a member of the Plan Commission, did not understand how the developer was returning and introducing a plan to the Plan Commission and City Council which had already been defeated. The issue was not properly presented to allow the Council to make further decisions.

Chuck Harmon, 15170 Sterns Place, a member of the Covenant Chapel church building committee, stated that construction of 133rd Street was extremely important and vital to the life of the church.

2943 **Resolution No. 1337, attached as part of the record, consenting to the enlargement of Johnson County Consolidated Main Sewer District - to serve residence at approximately 143rd and Granada:** Adopted unanimously on motion of LaHue, seconded by Patterson.

- 2975 **OTHER BUSINESS.** The Mayor requested that as a matter of public information, information concerning a recent visit by Moody's Investor Service for bond rating purposes be sent to homes associations.

**Executive Session.** On motion of Peppes, seconded by Clawson, Council voted unanimously to convene in executive session after the "Committee of the Whole" discussion of the City Hall site masterplan, for a period not to exceed 30 minutes to discuss pending litigation.

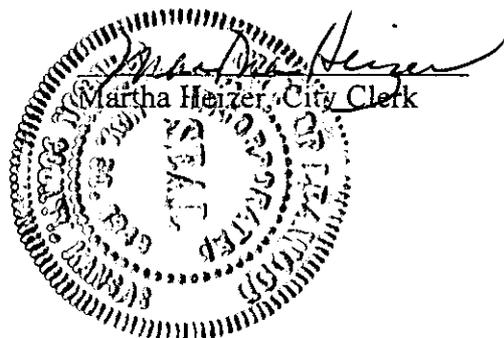
- 3083 9:15 P.M. Council left the Council Chamber to meet in the main conference room to discuss the City Hall site masterplan as a "Committee of the Whole", same members present. They returned to regular session at 10:00 P.M., same members present. The Governing Body had a presentation from the landscape architect Kay Young. Councilmember Peppes moved that available funds, not to exceed \$326,813, be used for landscaping and hardscaping (all of Area A and half of Area B to the creek north of City Hall) as shown on plans reviewed by the Council as a "Committee of the Whole", seconded by Patterson. Motion carried unanimously.

- 3189 10:00 P.M. Council convened in executive session, same members present except for Mr. Patterson who left the meeting.

10:30 P.M. Council returned to regular session, same members present (except for Mr. Patterson). Councilmember Campbell moved to authorize the City Attorney to execute the last draft of the agreement (Stipulation of Proposed Settlement and Joint Application for Remand) reviewed by Council in executive session, or an agreement which was in substantial conformity to the last draft, in the event there were any minor changes to be made, especially any that would further benefit the City, seconded by Clawson. City Attorney Wetzler stated for public record that if the stipulation was authorized, the developer would submit an application that contained stipulations reviewed by the Council. There was no obligation on the part of the City to approve that application; the City remained free to reject it. There was no contract to approve anything.

Motion carried unanimously (except for Mr. Patterson who had left the meeting).

- 3290 10:40 P.M. There being no further business before the Council, the meeting was adjourned.



**Minutes Summary**

Audio Tape No. 378

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 6:05 p.m., Monday, March 31, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, \*Gregory J. Peppes (arrived at 6:20 p.m.), Peggy J. Dunn, and Louis Rasmussen. Doug Patterson was absent.

Staff Present: Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 83 Three items were added to the agenda: 1) an assignment to the Public Works Committee (under the Consent Agenda); 2) a discussion of the use of the municipal pool by the KC Swim Academy; and 3) a discussion of a possible correction to an article in the "Johnson County Business Times."

Councilmember Rasmussen called for a point of order. He felt that the Price Chopper project was being improperly brought before the Council for consideration. He thought there was a 14-day protest period between Plan Commission decisions and City Council considerations to give the public an opportunity to appeal; if that was the case, that had not occurred in this matter. City Attorney Wetzler clarified the point of order. He said Mr. Rasmussen would probably be correct if the Price Chopper project was before the Council under ordinary procedure. The matter had already been through the normal planning process, and was before the Council again, not because of statutory procedure, but because it had been remanded to the City by District Court for additional consideration of modifications to the original plans. The Plan Commission considered the modifications at their March 25th meeting and recommended Council approval. So in his judgement, since he believed there was no statutory procedure providing for the court remand process with which the City was faced, the 14-day statutory provision did not apply.

On motion of Bold, seconded by Dunn, Council unanimously approved the agenda.

- 280 **PRESENTATION TO THE IRONHORSE GOLF CLUB.** Parks & Recreation Director Whitaker presented a plaque to the Mayor which "Golf Digest" had awarded to Leawood's Ironhorse Golf Club as the third best new affordable public golf course in the country in 1996.

**CITIZEN COMMENTS.** None.

327 **PROCLAMATIONS:** The Mayor proclaimed:

1. March 24, 1997, as (Blue Valley North High School) "Mustangs Day," for Boys' Varsity Basketball Team winning the 5-A State Title;
2. April 13-19, 1997, as "Crime Victims' Rights Week." The Mayor presented the proclamation to Police Chief Cox.

350 **CONSENT AGENDA**

Three items were removed for further discussion. The following were approved unanimously on motion by LaHue seconded by Bold:

1. Arts Committee report (minutes) of their February 13, 1997, meeting;
2. Golf Course Committee report (minutes) of their March 27, 1997, meeting;
3. Historic Commission report (minutes) of their February 25, 1997, meeting;
4. Parks & Recreation Advisory Board report (minutes) of their March 11, 1997, meeting;
5. Public Works Committee report (minutes) of their March 19, 1997, meeting;
6. Departmental reports;
7. Letter Agreement with Johnson County for 1997 minor home repair program (Leawood funding of \$1,500);
8. Appointment of Mike Jerde, 8841 Cherokee Lane, as Ward 1 Judicial Selection Committee member to replace Linda Forsythe;
9. Purchase of computerized sign machine from the only bidder TAPCO (Traffic & Parking Control Co.) of Wauwatosa, Wisconsin, in the amount of \$16,485.00 (included traffic sign making integrated software, cutting plotter, and sign inventory/management software);
10. Change Order No. 1 to the contract for stormwater management project JB-04-003 (Sagamore, 97th St. to 98th St.) and the 97th St. improvement project, in the amount of \$128,400.67, for the removal and replacement of remaining curbs and pavement on Sagamore Rd. between 97th St. and 98th St. and a deduct for the substitution of fly ash stabilized subgrade for the lime treated subgrade on 97th St.;
11. Change Order No. 3 to the contract for the municipal pool complex improvements in the amount of \$12,493.00, for additional electrical outlets and better access to the P.A. system, and to provide footings for the pool slide;
12. Replacement of outdoor warning siren at Brookwood Elementary School at 103rd & Wenonga, from Blue Valley Public Safety, Inc., in the amount of \$14,595.00;
13. 1997 employee pay plan;
14. "Expectations and Criteria for Judicial Conduct and Profile (position description)" for the employment of a municipal judge;
15. Purchase of equipment for the Public Works Department:
  - a) 2 dump bodies for single axle trucks from Key Equipment Supply in the amount of \$33,715.00
  - b) 1 dump body for a tandum axle truck from Key Equipment Supply in the amount of \$35,636.00
  - c) 1 12' main and eight' patrol wing plow for a tandum axle truck from Scherer Truck Equipment in the amount of \$14,376.00
  - d) 1 90" snow plow from Knapheide Truck Equipment in the amount of \$2,686.00
  - e) 1 hot water parts washer from Marvel Equipment Co. in the amount of \$3,040.00.TOTAL AMOUNT OF \$89,453.00;

16. Assignment to Public Works Committee to review drainage problem at Galbreath residence, 12664 Sherwood Drive (Lot 3, Block 5, Patrician Woods 6th Plat).

\* 6:20 P.M. Councilmember Peppes arrived.

Minutes of March 10, 1997, Council meeting. Mr. Rasmussen wanted additional information regarding the Williams gas pipeline relocation at the Ironhorse Golf Club included in the minutes:

1. It needed to be clear in the main motion that a new easement for relocation would be granted to Williams Pipeline subject to further negotiations and written and executed agreement with developer Mark Simpson.

2. It was the developer's intent to sponsor a hole.

3. Regarding the bank stabilization at hole #17, it needed to be clear that the City would provide engineering and Mr. Simpson would provide the material for the work.

Mr. Rasmussen said that the Golf Course Committee had voted unanimously to deny the easement. According to the Committee's minutes, Parks & Recreation Director Whitaker was to keep everyone advised of further negotiations with Williams Pipeline. Mr. Rasmussen was surprised that the matter had been added to the Council agenda since he thought negotiations were still under way. The Committee was concerned that Williams had an old existing "blanket" easement. The terms and conditions of that easement were not available to the Committee; they needed to be negotiated and identified. Mr. Rasmussen had requested a copy; he never received one. Mr. Whitaker said he was still trying to identify the blanket easement.

Mr. Rasmussen wanted it noted that not only would Mr. Simpson donate his cart path property near hole #17, but Mr. Simpson said he would also repair the path's concrete damaged during bank stabilization at hole #17.

Mr. Rasmussen said there was a sewer in the area of a new subdivision built along the existing gas easement, and trying to juxtapose the proposed relocation of the gas pipeline would further destabilize the ground area.

Mr. Rasmussen said that the Golf Course Committee had not seen their minutes which had been distributed to the City Council. They left their meeting believing that further negotiations would be undertaken.

Councilmember Campbell, a member of the Golf Course Committee, said it was his understanding that whatever easement for relocation was proposed by Mr. Simpson in the future would be within accepted engineering standards and not adversely impact the golf course. That proposed easement would be reviewed by the City Council and an engineer before any approval was given. And there would be no cost to the City.

On motion of Clawson, seconded by Dunn, Council unanimously approved the March 10th minutes with the foregoing additional information to be attached to those minutes.

758

Minutes of March 5, 1997, Ad Hoc Stormwater Management Review Committee meeting. The Mayor asked if the minutes constituted the Committee's final report to the Council. She reminded Council that the Committee had been appointed to meet for about a 6-month period, and should have finished its report by April 1996. For various reasons the Committee had required more information.

Councilmember Patterson requested that the minutes not be approved, that another meeting be called, and that the Committee continue under the new Mayor and Council with new Committee membership being appointed (which would mean that everyone, including new Councilmembers, would have to be reeducated on stormwater matters). Mr. Patterson, the chairman of the Committee, was not even aware of the March 5th meeting.

There was no quorum on March 5th to conduct business, to formulate any report, or to submit minutes for Council approval or acceptance. The Mayor hoped to conclude the Committee's business before the new administration.

Mr. Rasmussen said there was a crucial matter that would be considered by the City Council in the future - the way cities were handling the so-called pollution from stormwater systems.

The Mayor requested by consent of the Council that the Committee meet once again and attempt to submit a final report to the Council before April 21. The Committee needed to conclude its business.

Appointment to the Plan Commission. Mr. Rasmussen had removed the item merely to abstain from the vote. On motion of Bold, seconded by Dunn, Council approved the appointment of Mark Vlastic, 12809 Catalina, to fill the unexpired term of Lucy Daniels to 1999. All in favor, except Mr. Rasmussen who abstained.

- 1120 **PRESENTATION BY PARKS & RECREATION TO COUNCILMEMBER GREGORY PEPPE.** Parks & Recreation Director Whitaker presented a plaque to Dr. Peppes representing his award as NYSCA (National Youth Sports Coaches Association) 1996 Coach of the Year for District 4 (Kansas side of the metropolitan area).

#### **PLAN COMMISSION**

- 1164 **Ordinance No. 1667 approving the 1997 Master Development Plan with 135th Street Corridor Plan.** Planning Director McKay reviewed the Plan Commission's 10-point addendum to their recommendation for approval, including a traffic study for the entire City starting with 135th St. The deferment of acceptance of applications for development along 135th St. (K-150) would not be lifted until the traffic study was completed. Amendments to the master plan recommended by the traffic study would be considered by the Plan Commission and then by the City Council. In the meantime, staff would have a development plan with which to work. Councilmember Clawson moved to pass the ordinance with the understanding that maps would not be printed until the traffic study was completed, seconded by Dunn. Motion carried unanimously.
- 1616 **Resolution No. 1338, attached as part of the record, approving the revised preliminary site plan for Yahooz restaurant at the southwest corner of Town Center Drive and Roe Ave. in Town Center Plaza.** Adopted unanimously on motion of Rasmussen, seconded by Campbell.

1780 **Resolution No. 1339, attached as part of the record, approving the revised preliminary site plan for an office building, Lot 13, Leawood Commons, at approximately Town Center Drive and Ash.** Councilmember Rasmussen moved to adopt the resolution, seconded by Peppes. There was discussion of the trash containers (enclosures). Chug Tuttle of adjacent Leawood Country Manor subdivision said the container locations had been moved away from the residents and had been approved several years ago by the Plan Commission and subsequently approved by the City Council. The containers were now back closer to the residents on the revised plan. Planning Director McKay said the Plan Commission would review the container locations prior to final site plan submittal. Motion to adopt the resolution carried; Rasmussen opposed (the container locations were approved some time ago and the matter was very unclear); all others in favor.

2226 7:20 P.M. Recess.

7:35 P.M. Council returned to regular session, same members present.

**PRICE CHOPPER PROJECT (northeast corner of 135th & Mission Rd.) - Resolution relating to rezoning from AG to SD (C-R), preliminary site plan and preliminary plat approval; and Ordinance rezoning from AG to SD (C-R).**

City Attorney Wetzler reviewed the history of the project application. It had been denied by the Council several months ago. Following denial, the applicant filed an appeal in Johnson County District Court challenging the lawfulness, the reasonableness, of the Council's decision. The developer had met over the past several months with residents and other interested parties to see if there was a possibility that modifications in the plan would be acceptable to them, and that would also, from the City's standpoint, resolve a pending lawsuit. The Johnson County District Court had remanded the matter to the City of Leawood for consideration of modifications to the plan which might resolve the matter. The Plan Commission approved a revised plan at their March 25th meeting after a public hearing on March 11th. It was Mr. Wetzler's opinion that the revised plan was not a regular zoning matter which would require an appropriate number of days (protest period) between the Plan Commission's consideration and the Council's consideration; it was being considered by the Council on order of the District Court, so was not according to the regular statutory procedures.

2485 Larry Winn III, attorney for the applicant, said he had received a number of calls suggesting that the time between the March 25th Plan Commission and the March 31st Council meeting, with Easter close in time, was not enough time for residents to organize and gather their thoughts on the matter (exhibits and stipulations of approval). He had no objection to the Council's deferring the matter to the April 7th Council meeting.

Councilmember Bold was concerned about the traffic on 132nd Street west of Mission Road. The reverse frontage road east of Mission Road (133rd Street), once constructed, would potentially alleviate that problem. Until then, 132nd Street east of Mission would become the de facto frontage road for traffic off of Mission Road. Mr. Winn intended to talk to Police Chief Cox and others to see if there were short-term measures that could be taken to help alleviate the traffic problem on 132nd Street.

Mr. Bold asked if truck traffic could be entirely eliminated on Mission Road, even between 133rd Street and 135th Street. Mr. Winn thought that might be done. One stipulation of approval for the revised plans already limited truck traffic on Mission between 119th and 133rd. The Police Department did signage within the "Hy-Vee" shopping center at 123rd and State Line Rd. to discourage inappropriate truck traffic, and might be able to do that at 135th and Mission.

2789 Mr. Bold moved that after Council questions and residents' comments, the matter be deferred to the April 7th Council meeting to allow residents time to organize their thoughts in order to make their positions known to the Council, seconded by Campbell. Motion carried unanimously.

Mr. Bold asked about signage. Mr. Winn said that the height of the letters for Price Chopper under the preliminary plan was 5 feet. Planning Director McKay said that signage would be addressed by the Plan Commission at final plan stage, and that for this particular high profile development, Council would also be able to review the final development plans (stipulation of approval #28), a rare situation.

Mrs. Dunn requested that Police Chief Cox review the Pawnee park entry for safety purposes. One of her constituents was concerned about it.

Mr. Rasmussen was concerned that creation of an improvement district for the construction of 133rd Street from Mission Road to State Line Road might be disrupted if Ranchmart, Inc., held up their input into the final route of the street. Mr. Rasmussen did not have much faith in the owners of Ranchmart, Inc. Mr. Winn said that the developers had already shared a proposed preliminary street alignment with Ranchmart. Mr. Wetzler said that drafts of a covenant not to oppose the formation of an improvement district and a petition which included the proposed preliminary alignment of the roadway, had been prepared. The draft petition was delivered to every property owner involved, and Ranchmart's attorney said it appeared to be acceptable. Mr. Wetzler expected to have the signed documents in his possession or to have found out that there was no agreement before the April 7th Council meeting.

Dr. LaHue asked about the funding of phase 2 of the park - the relocation of the Oxford Schoolhouse currently on the northwest corner of 135th and Mission Rd. Mr. Winn said the site was set up in phase 1 to merely accommodate the schoolhouse; no discussions about the developer funding the relocation of the schoolhouse had taken place; the developer had only planned for the donation of the park and \$120,000 of landscaping improvements similar to the landscaping (buffering) of Hallbrook subdivision along the north side of 119th Street. Relocation of the schoolhouse was a councilmanic action at an appropriate time. Parks & Recreation Director Whitaker had written a memo to Councilmember Bold indicating there should be no negative impact on the Parks & Recreation Department's maintenance division from the new passive park (leisure driven rather than organized sports driven.) Maintenance costs were roughly estimated at \$12,000 per year. No jungle gyms were anticipated at this time.

3595 Mr. Rasmussen confirmed with Mr. Winn that the Price Chopper developer, not the current property owner Ranchmart, Inc., would be undertaking all obligations personally as part of the development. The developer would become the property owner before any construction was started.

Planning Director McKay reviewed the traffic study to be performed by Bucher Willis Ratliff engineers which would determine the impact the development would have on the surrounding area, any improvements that would need to be done, which would be presented to the Governing Body and staff before any final development plans were submitted. He noted that the traffic engineers would be advised that there was no desire to widen Mission Road.

3920 Several residents addressed the Council, many of them upset that they had not had enough time between the March 25th Plan Commission meeting and the Council meeting to review plan modifications, and still of the opinion that the development was not conducive to good public safety, health and welfare of the children attending Mission Trail Elementary. Tom Ryan, Pastor of Covenant Chapel Church, said he was in favor of the Price Chopper project because 133rd St. would be constructed to the advantage of the Church, but he did understand residents' concern about the traffic problems near Mission Trail Elementary School at 132nd and Mission. The situation was not ideal, yet realistically, it presented enough of a step forward towards accomplishing the City's goals in terms of 135th St. Corridor development and improving what was already a difficult and challenging traffic situation at the school.

Planning Director McKay said that staff felt that High Dr. should be constructed through to 133rd St. to provide access for residents of Leawood South, Waterford, Greenbrier, but not constructed at this time as a fully completed street, only as a temporary connection, because the future residential development it would go through could shift the alignment of the roadway.

Mr. Winn said it was not known at this time whether or not the grocery store would be a 24-hour operation. Hours of operation had not really been discussed. Mr. Winn pointed to an exhaustive traffic study made of 25 to 30 schools in the Shawnee Mission and Blue Valley School Districts; 25 schools were situated on streets carrying substantially more traffic than Mission Rd. under the worst case traffic study showing 17,000 vehicles per day on Mission. There were virtually no student incidents within the public rights-of-way at those schools.

5500 **Ordinance No. 1668 rezoning from AG to RP-A5, the area at 143rd Street and Mission Road - directly south of 143rd St., running from the 1/2 mile point (between Nall Ave. and Mission Rd.) east to Mission Rd., and then south again to approximately 147th St., to allow construction of a home on a tract no smaller than 5 acres. The ordinance was considered and passed on motion of Rasmussen, seconded by Clawson. On roll call, the vote was: Yeas---Bold, Clawson, LaHue, Peppes, Dunn, Rasmussen. Nays---None. Campbell was not seated for the vote.**

Councilmember Campbell returned to his Council seat.

- 5528 **Resolution No. 1340, attached as part of the record, in support of a land trade at approximately 114th and Tomahawk Creek Parkway between the City and the American Academy of Family Physicians.** The AAFP had expressed a desire to locate their headquarters on a site in the area of 114th and Tomahawk Creek Parkway, the City owning a tract of land contiguous to that site. Resolution adopted on motion of Peppes, seconded by Rasmussen; Dunn abstained to avoid the appearance of a conflict of interest; all others in favor.

5596 **MAYOR'S REPORT**

By unanimous consent, the Council accepted a \$100 donation to the Parks & Recreation Department from the Leawood Garden Club.

The Mayor thanked Councilmember Clawson, Chairman of the Public Works Committee, for preparing a volunteer application form to be used by residents interested in serving on the Public Works Committee.

The Mayor commended Human Resources Director Julie Hakan for her work in planning for the recent visit of the Sister City delegation from I-Lan, Taiwan.

**OLD BUSINESS**

- 5771 **Consideration of guidelines for the use of the Community Center at City Hall, 4800 Town Center Drive.** Parks & Recreation Director Whitaker noted 2 changes: 1) under Community Center E. Liquor Permit, the words "except City-sponsored events" were added; and 2) on page 2 of the "Leawood Parks & Recreation Community Center Rules & Regulations", the second rule from the end would read, "The City of Leawood will not allow the use of its facilities to individuals/groups who charge admission for attendance to an event or who sell an item or product on the premises for profit". On motion of Rasmussen, seconded by Peppes, Council unanimously approved the guidelines with the 2 changes.

**NEW BUSINESS**

- 6303 **Resolution No. 1341, attached as part of the record, authorizing \$6,945,000 General Obligation Bonds to pay the costs of Mission Rd. improvements between 95th St. and 103rd St., Nall Ave. improvements between 119th St. and 135th St., 83rd St. improvements between State Line Rd. and Wenonga Rd., Municipal Pool Complex improvements, and City Hall improvements at 4800 Town Center Dr.** Adopted on motion of Campbell, seconded by Clawson; all in favor except Campbell who was not seated for the vote.

Councilmember Campbell returned to his Council seat.

- 6419 **Authorize 1998 stormwater (SMAC) projects (County funding available in 1998).** On motion of Clawson, seconded by Bold, Council unanimously authorized staff to send letters of intent to the County indicating the City's intent to proceed with the following projects: 1) TM-04-005, Oxford Hills subdivision, southeast corner of Ensley Lane and 119th St.; 2) DB-04-015, channel stabilization near 84th St. and State Line Rd.; 3) DB-04-019, enlarge enclosed system, 91st & Ensley to Wenonga and 93rd St.; 4) IC-04-039, east bank of Indian Creek near State Line Rd.; 5) IC-04-039, channel bank erosion control on Indian Creek south at State Line Rd.

- 6666 **Authorize contract for engineering design services for Sanitary Sewer Rehabilitation, Phase 3 (1997).** On motion of LaHue, seconded by Rasmussen, Council unanimously approved a contract with George Butler Associates in the amount of \$67,540.00.
- 6997 **Authorize Right-of-Way Maintenance Agreement for landscaping for The Estates of Iron Horse.** On motion of Dunn, seconded by Peppes, Council unanimously approved an agreement with Bell Development, Inc., requiring the developer and homes association to be responsible for the maintenance of any landscaping within City right-of-way.
- 7303 **Approve bid/authorize contract for street light and traffic signal maintenance.** On motion of Clawson, seconded by Campbell, Council unanimously authorized a contract with the low bidder Total Electric at their 1997 unit maintenance costs.
- 7428 **Approve bid/authorize contract for 1997 traffic median and right-of-way maintenance (mowing).** On motion of Dunn, seconded by Peppes, Council unanimously authorized a contract with the low bidder Midwest Lawn & Landscape in the amount of \$35,080.
- 7593 **END OF TAPE**

**Start Tape No. 379**

**Request authorization for staff to review possible ordinance amendment(s) to regulate raising pigeons in residential neighborhoods.** Police Chief Cox said there was some concern in one Ward 2 residential neighborhood. He didn't think it was necessary to have an ordinance that specifically addressed raising pigeons since there was apparently only one place of concern in the City. The nuisance animal provisions of the City's ordinances would apply to this situation. However, successful prosecution would require that a neighbor(s) sign a complaint and testify to the nuisance.

Councilmember Rasmussen wondered under whose jurisdiction the matter would fall - the Johnson County Health Department for a serious health hazard, or the City that had issued a building permit for expansion of an existing coop? Was the property owner running a business raising 30-40 pigeons? What about diseases transmitted by pigeons? If the City did have jurisdiction, why was a building permit issued if City ordinances were applicable to the situation? Mr. Rasmussen felt staff should review the adequacy of the City's existing ordinances. If they were adequate, what could the City do about raising and selling pigeons and protecting residents against a health hazard?

Councilmember Clawson said that neighbors were in the process of deciding who would file a complaint. Planning Director McKay said he had no knowledge of a problem with the pigeons when the building permit was issued by his department. Perhaps the City would need to consider amending the zoning ordinances in the future to state that raising pigeons was not a permitted accessory use in residential areas.

The Council felt that existing ordinances could address the problem, and that no ordinance amendments were required at this time.

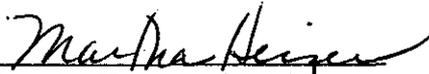
- 512 **Approval of Appropriation Ordinance No. 804A.** The ordinance was considered and passed on motion of Rasmussen, seconded by Peppes. Roll call vote was unanimous.

522 **OTHER BUSINESS.**

Councilmember Rasmussen called the Council's attention to a recent article in the "Johnson County Business Times" which stated that "City officials intend to use \$6.25 million in expected revenues from a new municipal golf course to pay off a portion of the debt". Mr. Rasmussen felt the \$6.25 million needed to be corrected. The article also stated that "the Council last month agreed to annex an 82-acre retail and apartment site near 135th and Nall Avenue". Mr. Rasmussen said the Council agreed to annex the land, but made no agreement for a retail/apartment development. The Mayor noted that the reporter was new to the area.

588 Several letters had been distributed to the Council concerning Parks & Recreation's decision not to allow the KC Swim Academy use of the municipal pool for early morning swim practices. The Academy, with many Leawood resident members, had used the pool facility for many years. The Academy had been told that their fee to use the facility would be raised; it had not been raised in several years. Staff was trying to make the facility self-supporting. The proposed new rate was still considerably less expensive than other rates and other cities' rates, especially in light of the costs to operate a new larger facility. The Academy had paid significantly lower rates for years. The Academy, as all groups using the pool, had been notified that all pool fees would be adjusted appropriately. Parks & Recreation Director Whitaker said the Parks & Recreation Advisory Board would be happy to discuss the matter with Academy members.

956 10:30 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 380

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, April 7, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Peggy J. Dunn, \*Louis Rasmussen (left the meeting after the Price Chopper resolution, tape meter #1130), and Doug Patterson.

Staff Present: Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Doug Allmon, Planner, Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 61 The agenda was approved unanimously on motion of Peppes, seconded by Clawson, after the addition of: 1) an interlocal agreement with Johnson County Wastewater District; 2) a discussion of a request by Longwood Forest Homes Association for additional work along College Blvd.; 3) a discussion of a letter from Galen Meyers concerning problems with his home at 15204 Ash; and 4) a discussion of input into the 1998 budget process.

Councilmember Rasmussen asked when newly elected officials would take their oaths of office. The City Clerk explained that Section 1-206 of the Code of the City of Leawood provided that oaths of office be given at the first regular session following certification of election results to the City.

- 155 **CITIZEN COMMENTS.** Susan Hartman, 8800 Lee Blvd., said she had had vinyl siding put on her home, and was advised after the work was done that vinyl siding was prohibited by ordinance. She could either remove it or request a variance, which she did. However, the Board of Zoning Appeals said they didn't have the authority to grant a variance because the material was not an approved siding by ordinance. The Board suggested she request the City Council consider amending City ordinance to allow such material. Planner Doug Allmon said that if the Council so desired, staff could prepare an ordinance amendment. This would be discussed further toward the end of the meeting. (See tape meter #1600.)

- 252 **PROCLAMATIONS:** The Mayor proclaimed:

1. April 13-19, 1997, as "National Public Safety Telecommunications Week", and presented the proclamation to Police Chief Cox and Police dispatchers;
2. April 13-19, 1997, as "National Volunteer Week.";
3. Special recognition of Dr. Jim Gill, Principal of Leawood Middle School, who was being transferred to a newly-opened middle school on July 1, 1997.

344 **CONSENT AGENDA**

Four items were removed for further discussion. The following were approved unanimously on motion of Patterson seconded by Dunn:

1. Arts Committee report (minutes) of their March 13, 1997, meeting;
2. Purchase of police software - laptop computers and associated software for field use by officers, including a tie-in to the records computer - in the amount of \$47,859.00, which was within the amount allocated for software in an \$85,000 grant for technology upgrades under the COPS MORE program;
3. Declaration of surplus property - 1 1987 Chevrolet Caprice (VIN 8733) and 1 1988 Chevrolet Caprice (VIN 1714) to be sold by the Public Works Department;
4. Proposal by Shaughnessy Fickel and Scott Architects to provide architectural and structural services related to site improvements in the south plaza of the City Hall for implementation of the Kay Young/Larkin Associates plaza design, in an amount not to exceed \$5,200.00;
5. Change Order No. 5 to the contract with Reno Construction for 135th St. (K-150) improvements in the amount of \$42,885.89 - for the additional time traffic control was needed to complete the project.

Declaration of surplus property - Police Department vehicles. Councilmember Campbell thought the 1995 and 1993 cars were too new to be sold. Chief Cox explained that marked patrol cars were turned over every 2 years (approximately 80,000 mileage) to get a fairly high return on the City's investment. On motion of Campbell, seconded by Bold, Council unanimously declared the cars surplus property - 1995 Chevrolet Caprice (VIN 4503), 1995 Chevrolet Caprice (VIN 4514), and 1993 Ford Crown Victoria (VIN 5286).

Agreement with Shaughnessy Fickel and Scott Architects for programming/planning services related to Leawood Police/Justice Center to be located in the vicinity of 115th and Tomahawk Creek Parkway. Councilmember Rasmussen felt the agreement was premature. The City needed to give the temporary court facilities in the lower level of the City Hall a chance to work before expending additional money. The City had no idea when new facilities would be needed. The City also needed to decide if it was going to maintain a police presence at 9617 Lee Blvd. plus a new justice center or was it going to provide a presence in the south end of the City. The Mayor said that the agreement was for public safety/court planning purposes only, not construction. Also, since the City was now involved with The Alter Group and a land trade with the American Academy of Family Physicians at approximately 114th and Tomahawk Creek Parkway, it was necessary in order to know the appropriate amount of land trade involved, to know the kinds of programming in general in terms of space that would be required. It was the Mayor's understanding that the Police intended to maintain a presence at the Lee Blvd. location. On motion of Campbell, seconded by Clawson, Council approved the agreement in an amount not to exceed \$10,500; Rasmussen opposed, all others in favor.

Agreement with Shaughnessy Fickel and Scott Architects for architectural services related to site improvements on the north and west side of City Hall for implementation of the City Hall site master plan. After short discussion of the fees for hardscaping versus landscaping for implementation (rather than design) of the plan, and on motion of Clawson, seconded by Peppes, Council unanimously approved the agreement in an amount not to exceed \$9,800.00.

Agreement with S. Kay Young, landscape architect, for services related to implementation of the site master plan for the north and west sides of City Hall. On motion of Clawson, seconded by Peppes, Council unanimously approved the agreement in the amount of \$7,500, excluding reimbursable expenses.

### PLAN COMMISSION

727 **Resolution No. 1342, attached as part of the record, approving request for rezoning from AG to SD (C-R), preliminary site plan and preliminary plat, for Price Chopper, northeast corner of 135th & Mission Rd.** Mayor Rinehart said a citizen had told her that because she was leaving office, would no longer be Mayor, she would no longer be beholden to the residents of Leawood, and therefore, it was questionable that she would vote responsibly. Mrs. Rinehart said she had always voted her conscience when she had to vote, had spoken to people forthrightly and as candidly as possible. She assured residents that she did care and would vote her conscience if she had to vote.

City Attorney Wetzler reviewed the history of the Price Chopper project, including the Council's original denial of the project application, the developer's appeal of the denial to Johnson County District Court, the Court's recent remand to the City for additional consideration, and the Plan Commission's recent recommendation to the Council for approval of modified plans with stipulations. Mr. Wetzler had received an executed petition for an improvement district from Covenant Chapel Church and Ranchmart, Inc., for the construction of 133rd St. from State Line Rd. to Mission Rd. The Price Chopper developer would also be required to execute the petition. The petition was a condition of the remand to the City and of the Plan Commission recommendation. Procedurally, the Council could discuss the issue as a committee of the whole.

Councilmember Patterson asked if the recent K-150 review report and changes Council had made to the SD, Special Development District, in the Leawood Development Ordinance, were applicable to the modified application. Mr. Wetzler said that the ordinances in place at the time of the original application would be applicable in any continuation of the litigation. However, by agreement, the developer was willing to be flexible in some areas of SD and the K-150 review report.

Mr. Wetzler said that as far as the remand was concerned, there was no agreement by the City that anything would be approved.

1368 Larry Winn III, attorney for the developer, addressed the Council. He gave a letter to Mr. Wetzler from Ed Trainen, 3649 W. 132nd Terr. in Waterford, who, along with Robert Sanders, architect for the developer, had tried to fine tune items in the park buffer area. The letter was to be attached to the stipulations. Among other things, it affirmed a wrought iron fence and a gated park entry off of Pawnee.

1484 In response to Councilmember LaHue, Mr. Winn stated that the developer would not provide the Phase 2 improvements which included the relocation of the one-room Oxford Schoolhouse and small parking lot contemplated for the school should it be relocated..

Mr. Winn said that perhaps speed humps and temporary traffic circles could assist in slowing down the traffic on 132nd St., which was a concern of residents.

Mr. Winn said that the developer had made every effort to bring the project into substantial compliance with the recently approved K-150 guidelines regardless of the ordinances in place at the time of the original application. Technically, as stated before in other discussions, those guidelines did not apply to the project.

Mr. Winn felt the completion of High Dr. to 133rd St. would occur shortly by a private developer, and that was the way that issue should be resolved, at least in the short term, as opposed to a temporary gravel roadway to 133rd St.

Mr. Winn said it would be unfair to allow Hy-Vee and Hen House to be open 24 hours but not Price Chopper. However, the City might be able to convince all three stores to consider limited hours of operation. In that case, Price Chopper would welcome the opportunity to join in that effort. He noted that people were working in the stores 24 hours anyway.

1911 In response to Mr. Rasmussen, Mr. Winn said that the developer would have to have detailed stormwater plans in accordance with City ordinances and criteria, and there would be no sewer capacity problem.

1961 In response to Mrs. Clawson, Mr. Winn said that the park entry gate at Pawnee was to prevent loitering and add security at night for the neighborhood park. Police Chief Cox said that City parks did have hours of closure, but he did tell residents that it would be difficult, if not impossible, for police to ever ~~commit to~~ having an officer at a particular place at a particular time, which included locking the gate.

Chief Cox said that relocating the Mission Trail school crossing to 132nd St. would require full intersection signalization. There would be nothing to gain safetywise by moving the crossing, and it would be very expensive to fully signalize the intersection. Moving the crossing to 133rd St. would be even worse. Police would give attention to speed enforcement on 132nd St. west of Mission Rd., and would ban parking on the park entry stub of Pawnee. They would routinely patrol the park area. Chief Cox felt the current school crossing was in the proper location.

2480 Councilmember Bold said that according to the recent K-150 development study, there was to be small scale retail and institutional uses; retail stores would be limited to 30% of a development's total square footage. The retail of the Price Chopper project was at 57%. The study also called for an allowable site building area of 0-50%, but the Price Chopper project was approximately 84%.

2537 Mr. Winn emphasized that the project was submitted before the recent K-150 development study was completed and approved. The developer had come into as substantial compliance with the guidelines as possible, except for percentage of retail to office. Mr. Winn felt that the project's ratio made the project a viable one, possible to donate almost \$1 million in public improvements. Mr. Winn said the developer could not submit a final development plan until the City had received the Bucher Willis & Ratliff traffic study, and, he assumed, by implication, that there was no finding of adverse impact. Councilmember Dunn requested that Bucher Willis be asked to focus on traffic concerns on 132nd St., taking into consideration Mr. Winn's suggestions for slowing down traffic, and on the possibility of constructing a temporary High Dr. to 133rd St.

3095 Many area residents spoke, some in favor, some opposed. Dennis Palmer, 13100 Canterbury (Waterford), felt the developer should be held accountable to the existing ordinances and to the other development requirements, including the recent K-150 Corridor study. Mr. Palmer was concerned about a negative impact on Hy-Vee and its surrounding retailers at 123rd and State Line Rd. if the Price Chopper project was constructed. He had already noticed that traffic at the 123rd and State Line shopping center had dwindled substantially since the Hen House was built at 119th and Roe. Mr. Palmer said that City ordinance required a fact finding on such possible negative impact.

Some residents said that new homeowners with children attending Mission Trail Elementary School had been told that the area at 135th and Mission Rd. would be zoned for office with less traffic than retail. Residents were concerned about the adverse impact of increased traffic on children's safety.

Representatives of Covenant Chapel were in favor of the project - it would solve the traffic problem for the church with the construction of 133rd St. and help them start their building program. Others in favor of the project liked the park as a buffer, and felt the project was best for the entire City.

Some residents felt a Council decision should be delayed until the traffic study had been received and reviewed.

7095 City Attorney Wetzler said the owners of the airport property at 135th and State Line Rd. had received a draft of the 133rd St. improvement district petition, but had not yet signed the petition; the district could be created without them. An improvement district in Kansas could be created if more than 50% of the property owners of the properties to be assessed were included in the district. The Price Chopper, Covenant Chapel, and Ranchmart, Inc. properties would total approximately 60% of the properties to be assessed. Mr. Wetzler said 133rd St. could not be constructed under this particular petition unless the Price Chopper project was approved.

Public Works Director Johnson said it would take 4-6 weeks to complete the traffic study for 135th St. (K-150).

END OF TAPE

Start Tape No. 381

Mr. Winn said that with the preliminary plan accepted, he could tell the court that a traffic study was needed and request the court allow another 4-6 weeks for that study to be completed.

181 Councilmember Peppes moved to adopt the resolution, seconded by Clawson. Councilmember Campbell felt it would be irresponsible of the Council to even consider the proposal in light of all the uncertainties until the results of the traffic study were received. However, Mr. Campbell was a member of the recent K-150 Review Committee to study future K-150 development and develop some guidelines in the form of a report, which was approved by the Council. The Price Chopper project did not meet the guidelines. Mr. Campbell felt the Council should stick to the K-150 report (and the market square area concept); a traffic study really didn't matter.

Councilmember Bold felt City ordinances should not be negotiable. He agreed with Mr. Campbell; the K-150 report should be followed.

485 11:10 P.M. On motion of Clawson, seconded by Peppes, Council voted unanimously to extend the meeting to 11:30 P.M.

526 Councilmember LaHue was comfortable with the safety issue. He felt the project was a better one, more enhanced, than a year ago. He said the City had the right and obligation to change the master plan in the direction the City was moving, when in the City's best interest. He felt that offices were not appropriate, too long to develop, and that the project was a legitimate retail development with a legitimate developer. He liked the green space.

682 The Mayor said that a year ago, if she had voted, she would have voted against the project based on lack of ingress and egress to the site. She had seen great improvement to the access to 135th St. since that time. She had seen great improvement with 133rd St. going from Mission Rd. to State Line Rd. that would be of assistance to a spiritual community (Covenant Chapel). And the green space was a benefit that truly buffered Waterford subdivision from the commercial area.

731 Councilmember Dunn said she had voted against the project a year ago because of traffic concerns and devaluation of property. She felt the green space improved the valuation of property in Waterford. The project had been improved. The construction of 133rd St. was good. She still understood the need for a traffic study. A favorable vote for the project would be a preliminary approval only and negotiations would continue. She would be prepared to vote against a final plan if the traffic study showed that the project would not work at the site.

795 Councilmember Patterson felt there had been a disservice to everyone in the planning process; a good traffic study should have been done some time ago, and the City changed the rules on the developer. He didn't see how the Council could vote on the matter without a traffic study.

1065 11:30 P.M. On motion of Dunn, seconded by Bold, Council voted to extend the meeting for 30 minutes; Rasmussen opposed; all others in favor.

Motion to adopt the resolution carried; Peppes, Clawson, LaHue, Dunn in favor; Campbell, Bold, Patterson, Rasmussen opposed; the Mayor in favor.

Councilmember Rasmussen moved to extend remaining agenda matters to the next Council meeting, seconded by Bold. Motion failed; Rasmussen, Bold in favor; all others opposed.

\* Councilmember Rasmussen left the meeting.

1130 **Ordinance No. 1669 rezoning from AG to SD (C-R), Price Chopper.** The ordinance was considered and passed on motion of Peppes, seconded by Patterson. On roll call, the vote was: Yeas---Peppes, Clawson, LaHue, Dunn. Nays---Bold, Campbell, Patterson. Mayor in favor. Councilmember Rasmussen had left the meeting.

#### **OLD BUSINESS**

1177 **Request by Longwood Forest Homes Association for additional work along College Boulevard** - to extend the rock wall along the north side of College east of Delmar, east approximately 220 feet, remove the existing rock wall and sidewalk and lower the sidewalk to match the top of the new curb for over a 300 foot section, and to extend the wall on both sides of Delmar towards the intersection, and to have the wall on the west side of Delmar extended further west an additional 30 feet - additional costs estimated at \$50,000-70,000. Clawson moved to approve the request at a cost not to exceed \$70,000, seconded by Dunn. Cost to be part of the College Blvd. improvement project. Motion carried unanimously.

1283 **Authorize engineering contract for citywide traffic study (with an immediate focus on 135th St., Phase 1).** On motion of Dunn, seconded by Clawson, Council authorized a contract with Bucher Willis & Ratliff in an amount not to exceed \$42,000 for Phase 1. Campbell opposed, all others in favor.

1296 **Discussion of traffic signal installation at 119th & Brookwood.** The intersection met the traffic warrants and was approved by KDOT for design. On motion of Dunn, seconded by Campbell, Council unanimously authorized the Public Works Department to proceed with contract negotiations with Bucher Willis & Ratliff engineers for design and inspection.

#### **1355 MAYOR'S REPORT**

The Mayor recognized Police Detective Joe Langer for receiving a first place trophy for handicap score during pistol competition at the annual Metro Squad shoot. Police Officers John Dickey and Doug Heaton would receive the Silver Award for Valor from the Kansas Association of Chiefs of Police for their efforts during the ice rescue of 3 children in early 1996. Chief Cox had received a letter from Jacobson's Department Store at Town Center Plaza thanking the Police Department for its assistance the past six months keeping loss prevention at a very low level.

The gun "concealed-carry" bill would be going to the Governor for his signature. The City Council had already expressed its opposition to the bill.

The April 1997 issue of "Firehouse" magazine referred to the February 16, 1996, ice rescue of 3 juveniles from a pond; several members of the Fire Department were involved in that rescue. The firefighters received Honorable Mention for Heroism and Community Service from the magazine.

**NEW BUSINESS**

1467 **Authorize land trade agreement between the City and The Alter Group, LTD., for exchange of property in the vicinity of 115th and Tomahawk Creek Parkway (related to American Academy of Family Physicians' desire to locate their headquarters in that area).** A draft agreement had been distributed to the Council. Councilmember Clawson moved to defer the matter to the April 21 Council meeting so further details could be worked out, seconded by LaHue. Motion carried; Dunn and Patterson abstained to avoid the appearance of a conflict of interest; all others in favor. -

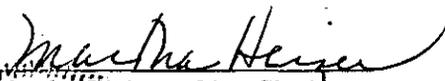
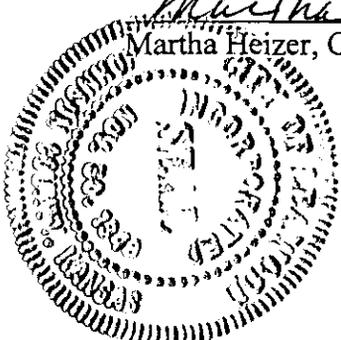
1564 **Approval of Appropriation Ordinance No. 805.** The ordinance was considered and passed on motion of Dunn, seconded by Clawson. Roll call vote was unanimous.

1580 **Authorize interlocal agreement with the Board of County Commissioners as the Governing Body of the Johnson County Unified Wastewater Districts for Leawood's use of County property to construct a bike-hike trail along the I-435 access road (an extension of Lee Blvd. between Mission Rd. and Leawood Park).** On motion of Bold, seconded by Dunn, Council unanimously approved the agreement.

1600 **OTHER BUSINESS.**

Re Mrs. Hartman's remarks under Citizen Comments at the beginning of the meeting about vinyl siding: A few years ago, the Plan Commission had voted not to change City ordinance to allow vinyl siding. Council by unanimous consent requested that staff review the matter and report back to the Council within 1 month. Councilmember Campbell wanted to know if vinyl siding was permitted in the homes association deed restrictions.

1754 11:55 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk  


**Minutes Summary**

Audio Tape No. 382

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:00 p.m., Monday, April 21, 1997. Mayor Marcia Rinehart presided.

Councilmembers present: Adam Bold (arrived at 7:15 p.m. during executive session), John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes (arrived at 7:10 p.m. during executive session), Peggy J. Dunn, Louis Rasmussen, and Doug Patterson.

Staff Present: Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**EXECUTIVE SESSION** - held in the main conference room at 7:00 p.m. Staff members Wetzler, McKay and Malnicof, and Councilmembers-elect Mike Gill and James E. Taylor, Sr., attended. On motion of Clawson, seconded by Campbell, Council voted unanimously to convene in executive session until 7:30 p.m. to discuss 2 matters under attorney-client privilege. Council returned to regular session, same members present. On motion of Dunn, seconded by LaHue, Council voted unanimously to extend the executive session 10 minutes to continue the same discussions. Council returned to regular session at 7:40 p.m., same members present, no Council action to be taken, and went to the Council Chamber to conduct regular business.

**APPROVAL OF AGENDA**

- # 96 The agenda was approved unanimously on motion of Peppes, seconded by Clawson, after the addition of a discussion of the calendar of meetings for the preparation of the 1998 budget.
- 113 **RECOGNITION OF POLICE OFFICER RODMAN LASLEY.** Police Chief Cox presented a plaque to Lasley as recipient of the Instructors' Award on his recent graduation from the Johnson County Basic Police Academy.
- 200 **PRESENTATION ON CIVIL WAR LIVING HISTORY CAMP AT PRAIRIE STAR ELEMENTARY SCHOOL, 143RD AND MISSION ROAD.** Fifth grade teacher Doe Reams and PTO President Joan Redhair described the reenactment camp which would take place May 2nd and 3rd at the school.

295 **CITIZEN COMMENTS.** Paul Welcome, 12843 Sagamore, President of the Leawood South Homes Association, requested that the Council determine if there had been a public policy adopted concerning the use of public property for private gain. He also wanted to know if the cellular tower at 135th and Nall Ave. was approved in exchange for not having a tower placed at 12701 Mission Rd. (south fire station). He wanted to know if there was a process for applying for a special use permit for use of City-owned property. His questions were referred to Planning Director McKay.

398 Resident Ruth Withey spoke about the Price Chopper issue discussed at the last Council meeting. She felt that parliamentary procedure had been ignored, that the procedure used was unethical and unprofessional. The democratic process was circumvented in favor of the Price Chopper developer. A traffic study should have been in place before the Council was ready to vote on the issue. She requested that action on the rezoning be held off to give interested parties time to consider appropriate action; a motion to rescind the decision from the last Council meeting should be made.

490 **PROCLAMATIONS:** The Mayor proclaimed April 17-20, 1997, as "Student Achievement Week."

495 **CONSENT AGENDA**

Two items were removed for further discussion. The following were approved unanimously on motion of Peppes seconded by Dunn:

1. Minutes of the March 31, 1997, Council meeting;
2. Minutes of the April 7, 1997, Council meeting;
3. Arts Committee report (minutes) of their April 10, 1997, meeting;
4. Ad hoc Stormwater Management Review Committee report (minutes) of their April 7, 1997, meeting;
5. Departmental reports;
6. Change Order No. 2 to the contract for the 1996 Sanitary Sewer Rehabilitation Project in the amount of \$13,104.00;
7. Change Order for the construction of the plaza and northwest area of City Hall in the amount of \$553,385 to finish the plaza with fountain and all hardscape and site improvements with the exception of the jogging trail that would run from the stage area on the north side of City Hall south to Town Center Drive;
8. Contract with TranSystems Corporation in the amount of \$9,500 for engineering design services for the installation of traffic signals at the intersection of 117th and Nall Ave.

Resolution No. 1343, attached as part of the record, approving the final plat of Highlands Ranch at approximately 141st and Kenneth Road. The proposed subdivision abutted a lake. Bob Ramm was a property owner on the other side of the lake from the subdivision who was concerned about the maintenance of the lake and what effect construction of the subdivision would have on the lake. He recalled the Royse subdivision lake maintenance which he considered a nightmare. He said it appeared that the developer had allowed \$200 a year for each of only 5 abutting lots to maintain the lake; that was not enough money for maintenance. Other homes around the lake outside of Highlands Ranch development would not be included in the maintenance. He felt the 5 abutting property owners would have a real financial shock in the future trying to maintain the lake. The

developer was not contributing any money for the maintenance of the lake, but pushing that responsibility onto the 5 abutting lots. He asked the Council to defer consideration of the final plat until they could review information he had distributed to them.

Councilmember Bold understood that two-thirds of the homeowners could vote to disband the homes association, so his concern was that those who did not abut the lake nor receive any (recreational) enjoyment from the lake would not want to spend a great deal of money to dredge the lake (say \$40,000 as at the Royse lake) and would disband the association. Planning Director McKay clarified that the lake was not a "Royse" lake; no storm drainage from public streets would go into the Highlands Ranch lake, unlike circumstances at the Royse lake. And there would be an agreement between all property owners around the lake to contribute to the maintenance of the lake.

Highlands Ranch developer Don Donohoo told the Council that in the beginning, only the 5 abutting lake lots would have access to the lake and would contribute to the maintenance - sort of a sub-association within Highlands Ranch. And four or five more property owners abutting the lake had agreed in writing that they were interested in joining the sub-association.

- 1045 Mr. Ramm said that most of his concerns/objections were greatly reduced just knowing that storm drainage would not go into the lake. Councilmember Patterson moved to adopt the resolution, seconded by Peppes. Motion carried unanimously.

Change Order No. 2 to the contract for SMAC stormwater management project JB-04-003 and 97th St. improvements (vicinity of 97th St. to 98th St. - High Dr. to Sagamore) in the amount of \$29,996.95. After a brief explanation of the change order by Public Works Director Johnson, and on motion of Clawson, seconded by LaHue, Council unanimously approved the change order.

1181 **MAYOR'S REPORT**

Mayor Rinehart reported that she had received a letter from Mayor Sherman Kuo of sister city I-Lan, Taiwan, thanking Leawood for courtesies extended to the I-Lan delegation during their recent visit to Leawood.

**OLD BUSINESS**

- 1221 **Discussion of Ad Hoc Stormwater Management Review Committee recommendations.** Councilmember Patterson, Chairman of the ad hoc committee, encouraged the City to continue funding and the matched funding of stormwater improvement projects at a higher level than the present annual budget constraints allowed. The Committee did consider using the County's funding match pledged for a specific budget as cash to go forward on projects, but decided to continue the case-by-case basis as projects came forward and as County funds were indeed pledged or available. The Committee accepted all of Councilmember Rasmussen's recommendations (attached to the April, 7, 1997, Committee meeting minutes), except for the consideration of improvements on private property which could be made on a case-by-case basis in terms of stormwater management and treatment or maintenance. Councilmember Campbell moved to accept the Committee's report with the understanding that Councilmember Rasmussen's recommendations were incorporated in the report for approval, seconded by Patterson. Motion carried unanimously. It was understood that the

"with the specific function of our members' issue on Royse Lake which has had its share of issues." (Councilmember Patterson's direct quote added 5/22/97 on request of Janice Auvinen and after discussion with Mayor Dunn.) *M. Seizer*

Committee's main motion in the minutes was considered to be affirmed; the Committee had forgotten to vote on the main motion.

1351 **Resolution No. 1344, attached as part of the record, authorizing the Mayor to execute an agreement establishing the terms and conditions for exchange of real property between the City and The Alter Group, LTD, said property being located on Tomahawk Creek Parkway between 114th and 115th Streets in the City of Leawood.** Adopted on motion of Clawson, seconded by Rasmussen; Dunn and Patterson abstained to avoid the appearance of a conflict of interest; all others in favor.

1574 **APPROVAL OF APPROPRIATION ORDINANCE NO. 806.** On motion of Rasmussen, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

1588 **OTHER BUSINESS.** Councilmember Patterson made departing remarks and said he would like to stay involved in the City through committee work.

Mayor Rinehart thanked her constituents, City staff, Councilmembers, friends and family for their help during her ten years as Mayor.

1738 **PRESENTATIONS TO COUNCILMEMBERS PATTERSON AND DUNN.** Mayor Rinehart presented Certificates from the Kansas House of Representatives to Doug Patterson and Peggy Dunn in recognition of their outstanding service to the City as Councilmembers from 1993 to 1997. Mrs. Rinehart also presented a City plaque and Key to the City to Patterson, and a City plaque to Dunn.

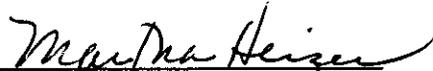
**OATH OF OFFICE ADMINISTERED TO MAYOR-ELECT PEGGY J. DUNN, AND MAYORAL PRESENTATIONS.** After her oath of office, Mayor Dunn presented a Certificate from the Kansas House of Representatives to Mayor Rinehart in recognition of her distinguished service to the City as Mayor from 1987 to 1997. Mrs. Rinehart also received a Key to the City and a set of green crystal bookends engraved with her name, title, term of office, and City logo. Mrs. Rinehart was told she would receive the first copy of the Leawood Historic Commission's commemorative book being written for the City's 50th anniversary in 1998, book to be in print by fall 1997.

**OATHS OF OFFICE ADMINISTERED TO COUNCILMEMBERS-ELECT:** Greg Peppes, Ward 1; Marnie Clawson, Ward 2; Mike Gill, Ward 3; and James E. Taylor, Sr., Ward 4.

2690 **ROLL CALL OF NEW COUNCIL:** Bold, Campbell, Clawson, LaHue, Peppes, Gill, Rasmussen, Taylor.

**NEW BUSINESS**

- 2702 **Ordinance No. 1670 authorizing issuance of \$6,945,000 General Obligation Improvement Bonds, Series 1997-A.** The ordinance was considered and passed on motion of Campbell, seconded by Peppes. Roll call vote was unanimous.
- 3012 **Ordinance No. 1671C amending Sections 1-601 and 1-602 of the Code of the City of Leawood changing the number of Arts Committee members from 7 to 9.** The ordinance was considered and passed on motion of LaHue, seconded by Bold. Roll call vote was unanimous.
- 3078 **Ordinance No. 1672 granting a permanent sanitary sewer easement to Johnson County Wastewater District to construct a new sewer main from approximately the southeast corner of 143rd and Nall east past the City's proposed maintenance facility.** The sewer main would run along the north side of the south park at 147th and Mission Rd. The ordinance was considered and passed on motion of Peppes, seconded by Clawson. Roll call vote was unanimous.
- 3131 **OTHER BUSINESS.**  
Councilmember Rasmussen said he had a conflict with the proposed dates in July for 1998 budget meetings. Finance Director Malnicof would check dates with the Mayor, Council and staff to determine the best meeting times for all involved.
- 3395 9:30 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 383

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, May 5, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, and James E. Taylor, Sr. Louis Rasmussen was absent.

Staff Present: Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 70 The agenda was approved unanimously on motion of LaHue, seconded by Clawson, after the addition of 1) a discussion of traffic congestion in Leawood Park, 106th and Lee Blvd., on weekends, and 2) an assignment under the Consent Agenda to the Public Works Committee to study traffic concerns on 81st Terrace.

207 **CITIZEN COMMENTS.** Jeff Nessel, 12012 Ensley Lane, had made a statement at the April 7th Council meeting that Councilmember Clawson had made a campaign promise to reduce the mill levy. Mrs. Clawson wrote to him stating that she had not made such a promise, but only hoped it could be lowered with a broadening tax base. Mr. Nessel said he had interpreted that to mean a promise, and he apologized for his interpretation. Instead of arguing over words and intent, he felt that everyone should focus on one of his earlier points - that Leawood was the only city in Johnson County not to lower its mill levy as home appraisals had risen. For the 1998 budget, the City needed to look at the enormous increase in retail and see if that revenue stream, as promised, lessened the residents' tax burden.

318 **PROCLAMATIONS:** The Mayor proclaimed May 11-17, 1997, as "Police Week," and May 15, 1997, as "Peace Officers Memorial Day." She presented the proclamation to Police Chief Cox.

**366 CONSENT AGENDA**

The following were approved unanimously on motion of Peppes, seconded by Gill:

1. Minutes of the April 21, 1997, Council meeting;
2. Appointment of presiding officers: Ron LaHue, May-July 1997; Lou Rasmussen, August-October 1997; John Campbell, November 1997-January 1998; and Adam Bold, February-April 1998;
3. Appointments to committees and commissions, attached as part of the record;
4. Declaration of surplus property - 38 chairs in the Police Department;

~~Full~~  
5/5 minutes

May 2, 1997

TO: City Council  
FROM: Mayor Dunn *JD*  
RE: 1997-1998 Appointments

The list of mayoral 1997-1998 appointees to Leawood committees and commissions is as follows:

	<u>Reappointment</u>	<u>New</u>
Alarm Appeals Committee	Richard Webber, Chr. (1999) Shirley Davidson (1999) Paul Converse (1999)	
Alcohol Planning Council- Leawood rep. ( <u>Info. only,</u> <u>previously approved</u> )	Janet O'Neal (12/31/97)	
Arts Committee	Dick Horn (2000) Jeri Riley (2000) Marnie Clawson - Council liaison (1998)	Cindy Cook (2000)
Board of Zoning Appeals	D.A.N. Chase (2000) Cecil Hammonds (2000)	
Budget & Finance (1998)	Dale Putman James Azeltine Bill Miskell Al (Barry) Rubin John Jorgensen	Phillip Collingwood Stan Ricketts

NOTE: This committee will consist of the entire Governing Body as a committee of the whole plus the names listed above. The Mayor will chair the committee.

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Mayoral appointments  
May 2, 1997

	<u>Reappointment</u>	<u>New</u>
Building Code Board of Appeals	Wes Welch, Chr. (2000) Don Roberson (2000)	
Debt Management Awareness Council (Jo. Co.) - Leawood rep.		Lou Rasmussen
Emergency Preparedness Coordinator	Bettie Bridges	
Golf Course Advisory Board - Dick Fuller, Chr.	John Campbell (1998) Mike O'Connell (2000) Lou Rasmussen (1998) Bob Reid (2000)	
Note: 3-year staggered terms for non-council members. Council appointees are annual.		
Golf Course Review Committee	Bobby Davidson (2000)	
Historic Commission - Jody Craig, Chr.	Alice Hawk (2000) Beverly Hurley (2000) Mike Gill - Council liaison (1998)	Patricia Lysaught (2000)
Kansas City Area Development Council- Leawood rep.	Marnie Clawson (1998)	
Leawood Foundation	Adam Bold- Council liaison (1998) Peggy Dunn, ex officio	

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Mayoral appointments  
May 2, 1997

	<u>Reappointment</u>	<u>New</u>
Parks & Recreation Advisory Board	Greg Peppes- Council liaison (1998)	Steve Martens (2001) Cynthia Wendt (2001) Rick Schaffer (2000)
Plan Commission	James Lichty (2000) Charles Munson (2000) Don Roberson (2000)	Carole Kessler (1998)  <u>See attachment</u>
Public Building Commission		Peggy Dunn (1998) James Taylor (1999)
Public Officer for Property Maintenance Code	Bob McKay	
Public Works (1998)	Marnie Clawson, Chr. Adam Bold Tracy Smith Greg Peppes Randy Viot Julie Cain Bill Mallory	Dan Pruett John Campbell  <u>See attachment</u>
Sister City Committee (1998)	Teresa Chien Jill Domoney Tom Hammonds Ann Leitner Alice Putman Dick Reicher Barbara Gadd-Alley Cecilia Thompson Sophie Lin	Ron LaHue- Council liaison

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Mayoral appointments  
May 2, 1997

Reappointment

New

Stormwater Management Advisory  
Council - Leawood rep.                      Greg Peppes (1/1/2000)  
(For info. only)

Addresses and phone numbers for new appointees:

Cindy Cook - 9812 Mohawk 66206; 341-3837

Stan Ricketts - 9707 Manor Rd. 66206; 642-3873 (home);  
234-7073 (office)

Patricia Lysaught - 4905 W. 112th Terr. 66211; 491-4985

Steve Martens - 2109 W. 97th St. 66206; 649-2339

Cynthia Wendt - 13007 Windsor Circle 66209; 338-1986

Rich Schaffer - 11630 L. Tomahawk Creek Parkway 66211;  
498-1944 (home);  
221-1576 (office)

Carole Kessler - 9246 High Dr. 66206; 341-1918 (home);  
782-4646 (office)

Dan Pruett - 12605 Sherwood 66209; 491-1259 (home);  
363-5331 (office)

5. Assignment to the Public Works Committee to study traffic concerns on 81st Terrace.

378 **PLAN COMMISSION**

**Resolution No. 1345, attached as part of the record, approving the revised preliminary site plan for Bristol Bar & Grill at 5400 W. 119th St. in Town Center Plaza. Adopted unanimously on motion of Peppes, seconded by Clawson.**

435 **Resolution No. 1346, attached as part of the record, approving the revised preliminary site plan and preliminary plat for Covenant Chapel Church located at approximately 133rd and Pembroke. Chuck Harmon, representing the Church, presented revised plans.**

630 Councilmember Taylor noted that stipulation of approval #11 of the resolution stated that no building permit for phase 1 would be secured until actual construction had commenced on 133rd St. The Church would be building a segment of that street next to their property. Mr. Taylor said that he did not believe that limiting the construction to that segment of pavement met the conditions that were imposed on the Church to construct their facility, namely to have access to State Line Road or 135th St. Charles Miller, attorney for the Church, said that the issue of that access was addressed by the special benefit district being formed to construct the entire roadway, not just the segment adjacent to the Church property. Once the benefit district was formed, the provision was made for the entire road to be built. The Church had signed the benefit district petition, as had all the property owners in the district, except for the Price Chopper developers, who would sign as soon as they closed on the Price Chopper property. Mr. Taylor asked if the owners of the airport property adjacent to State Line Road had signed the petition for the benefit district. City Attorney Wetzler said that a majority of the approximately 60 owners of the airport property were in favor of the benefit district, but had not yet signed the petition. Mr. Taylor was concerned that Price Chopper owners and airport property owners had not signed the petition. How could the Council make a decision on the Church's revised plan when it didn't have all the signatures required by the conditions imposed on the Church by the previous Council?

836 Councilmember Gill suggested amending stipulation #11 by adding the words "with respect to a segment that connects to State Line Rd. and/or 135th St., or Mission Rd." to the end of that stipulation.

Mr. Wetzler clarified that construction of the Church would not be a reality until such time as 133rd St. was in place regardless of the funding mechanism. He felt the Council wanted the resolution to indicate that clarification. The street could be constructed by a mechanism other than a benefit district which would meet everyone's concerns.

Councilmember Campbell didn't want the City placed in the position of having to figure out how to finance the street if there was a problem forming the benefit district - in no way should the City be involved in figuring a finance mechanism absent the formation of the benefit district. Mr. Wetzler said that the benefit district petition was for 100% assessment to the property owners without City participation.

996 Councilmember Bold moved to adopt the resolution with Councilmember Gill's suggestion for adding to stipulation #11, seconded by Peppes.

1843 **Resolution No. 1347, attached as part of the record, approving the final plat of the first phase of Covenant Chapel.** Adopted unanimously on motion of Clawson, seconded by Bold, with the same changes as to Resolution No. 1346.

1930 **Request for a special use permit to construct a 135-foot cellular tower at the Police Department, 9617 Lee Blvd.** The Plan Commission recommended denial of the permit because the (amended) height was still far in excess of the tree lines and would greatly injure the purely residential area, and public safety (police and fire) was not adversely affected by not having the additional height on the existing 100-foot tower.

Staff's report indicated that the 135-foot tower would provide room for 3 carriers and the City's needs, and the applicant, American Portable Telecom (APT), had agreed to provide needed storage and a vehicle servicing area for the Police Department. The project also encouraged co-location among separate wireless carriers by placing them on a City Police communication tower.

The applicant requested a continuance of the matter. They felt it would be beneficial to have a study or work session (hopefully before the next Council meeting on May 19th) to discuss the issues involved. Council discussed times available for such a session. Councilmember LaHue (in order to hear more information on cellular towers) moved to continue the matter to a date certain, the June 16th Council meeting (the date finally arrived at and agreed to by Jeff Pfaff on behalf of the applicant), seconded by Peppes.

Planning Director McKay said that a valid protest petition had been received, so since the Plan Commission had denied the application, it would take 6 favorable Council votes to approve a permit or to override the Plan Commission's decision. Councilmember Bold said that staff was working on a new ordinance to regulate placement of cellular towers. He felt it would be more appropriate to consider the tower request at 9617 Lee Blvd. after Council had considered the proposed ordinance. Councilmember Campbell agreed; he was not in favor of a separate work session to discuss 1 particular tower. However, he said he would vote for a continuance since the applicant had not previously requested one. Mr. McKay reminded Council that the application under consideration came to staff before the proposed ordinance was started; the applicant would not be subject to a new ordinance. The first draft of the ordinance had already been given to the Plan Commission, and staff had since made further amendments. The Plan Commission would like a work session to discuss the ordinance. Mr. McKay said the ordinance would be ready by June 9th if the Council and Plan Commission wanted to have a work session after their joint bus tour of the City that evening. The applicant could then appear before the Council at the June 16th Council meeting, prior to Plan Commission consideration on June 24th. Councilmember Taylor felt the Council should act on the request before considering the proposed ordinance, since the ordinance wouldn't apply to the application anyway, the application being "grandfathered" as Mr. McKay had already reminded the Council.

2517 Several residents addressed the issue. Some not only opposed a tower for commercial purposes in a residential area, but asked that the Council reject the applicant's request for a continuance - it was a delay tactic by the applicant. The applicant had 1 continuance at the Plan Commission level. The applicant's provision of needed storage building(s) and vehicle servicing area for the Police Department would overcrowd the lot at 9617 Lee and cause increased traffic. The tower was unsightly, devaluing property in the area, and was a health hazard from radio wave emissions, especially for children. The Police Department had

already said that the tower height did not need to be increased for their purposes. And residents felt the one commercial carrier already on the tower of which they were unaware should be removed. Residents felt the Council should deny the application and let the applicant reapply after the proposed ordinance was passed and in effect. Residents felt the applicant was rude not to attend and address and explain his request, while they, the residents, had to appear to voice their opinions and feelings, and might have to do so again at another future meeting.

3440 Councilmembers Bold and Taylor felt the Council should act on the matter, not continue it. A public hearing was held before the Plan Commission and it was now up to the Council to make a decision. Even if the Council denied the request, the applicant could reapply, although he would be subject to a new ordinance regulating cellular towers. Councilmember Peppes, on the other hand, felt he needed more information on cellular towers in order to make an educated decision, so he was in favor of a continuance. Councilmember Campbell said he would vote for a continuance; the applicant should be given an opportunity to discuss their request with the Council. Councilmembers LaHue and Clawson were in favor of a continuance in order to obtain additional information before making a decision. Councilmember Gill was very disappointed that the applicant did not attend the Council meeting and waited until the last minute to request a continuance, and strongly suggested that the applicant put his basis for requesting a continuance in writing, in a timely manner, and send each resident who attended the Council meeting a copy of that report at least 2 weeks before the June 16th Council meeting.

3800 The motion to grant a continuance carried; Taylor, Bold opposed; all others (5) in favor.

### 3813 **MAYOR'S REPORT**

Mayor Dunn reported that former Mayor Marcia Rinehart had donated \$1,000 to the Leawood Foundation to start a public arts fund. On motion of Clawson, seconded by Peppes, Council unanimously accepted the donation. Councilmember Clawson said that the Arts Committee was working on the development of a policy regarding public arts, so would be able to utilize the \$1,000 donation in the near future.

Mayor Dunn presented a plaque from the National Arbor Day Foundation to the City Council declaring Leawood a 1996 Tree City USA. She also presented the Council a print from the Police Department depicting various Leawood Police memorabilia. The print was commissioned by Leawood artist Cindy West.

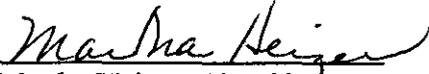
### **OLD BUSINESS**

4000 **Resolution No. 1348, attached as part of the record, authorizing the Mayor to execute a letter regarding repayment of condemnation proceeds in the event of City's default of the lease purchase agreement with Merlyn P. McMorris and Larry D. Parsons for the purchase of land for a south park at approximately 147th and Mission Rd. Adopted unanimously on motion of LaHue, seconded by Bold.**

4109 **APPROVAL OF APPROPRIATION ORDINANCE NO. 807.** On motion of Peppes, seconded by Clawson, Council unanimously approved the ordinance on roll call vote.

4130 **OTHER BUSINESS.** Discussion of traffic congestion in Leawood Park, 106th and Lee Blvd. on weekends. Councilmember Clawson had received numerous phone calls about the congestion on weekends caused by soccer games. There was concern about hitting pedestrians, and some residents felt there was not enough Police presence. Was soccer out of bounds, out of control, beyond what park facilities could handle? Parks & Recreation Director Whitaker said the soccer program had grown tremendously and he had requested money for additional parking (hopefully to be added before fall 1997), and 2 more fields were being constructed. And he was trying to control the size of the soccer program. Police Chief Cox said there was very little self-discipline on the part of soccer parents; they weren't interested in parking in marked parking areas, but parked where it was convenient for them, generally on the grass close to the fields. The Police could not guarantee the safety of children under those circumstances. Cox said he would try to increase Police presence on Saturdays, but the Council should be prepared to hear that "Police were picking on people." Councilmember Gill said he would like to see sidewalks in the Park, and Police officers as traffic directors would help facilitate traffic flow. Mr. Whitaker said the parking issue would be studied during the preparation of the new park master plan. And the issue of accidents on I-435 near the Park would also be reviewed - would the Park need further buffering from the highway.

4630 9:50 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 384

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, May 19, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, and James E. Taylor, Sr. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 334 The agenda was approved unanimously on motion of LaHue, seconded by Peppes.

347 **ACCEPTANCE OF DONATION FROM KANSAS CITY GOLF FOUNDATION.**  
Sally Sportsman, Executive Director of the Foundation, presented a check in the amount of \$49,000 to Parks & Recreation Director Whitaker to be used to help build the IronHorse Golf Club's junior golf learning center. The check was the final payment towards the Foundation's \$84,000 total commitment to help fund the facility.

432 **PROCLAMATION.** The Mayor proclaimed May 18-24, 1997, as "National Public Works Week," and presented the proclamation to Public Works Director Johnson.

484 **CITIZEN COMMENTS.** None.

490 **CONSENT AGENDA**

The following were approved unanimously on motion of Peppes, seconded by Clawson:

1. Minutes of the May 5, 1997, Council meeting;
2. Historic Commission report (minutes) of their March 25, 1997, meeting;
3. Historic Commission report (minutes) of their April 15, 1997, meeting;
4. Departmental reports;
5. Appointment of Renee Gurney, 12800 Glenfield, Leawood, as Municipal Judge;
6. Application (renewal) for Cereal Malt Beverage License - Hallbrook Country Club.

**517 PLAN COMMISSION**

**Request by Phoenix Montessori School for a special use permit for the School to be located at 2012 W. 104th St.** On motion of LaHue, seconded by Campbell, Council unanimously approved a permit for a period of 5 years. The applicant agreed that if redevelopment plans for the area became final, the applicant would vacate the facility within an appropriate period of time, not to exceed 4 months from the date of initial notice.

- 552 Special use permit renewal for Christ Community Church at 14200 Kenneth Rd., and Resolution No. 1349 approving a preliminary site plan and preliminary plat for the church.** Councilmember Clawson moved to approve the special use permit renewal and adopt the resolution, seconded by Campbell. David Joiner, project architect, presented the plans.

Councilmember Taylor was concerned that a traffic study had been waived. It appeared that Phases 1 and 2 (multipurpose building, worship center and chapel) projected approximately 2000 people at any one time on (Sundays), plus additional traffic during the week for various activities. Consideration of traffic at the church should fit into the overall traffic study recently approved by the Council. A study should be a condition of approval. Planning Director McKay said that the waiver was only on Phase 1; it would be determined whether or not a traffic study was necessary when Phase 2 was presented to the City. Taylor felt the study should be part of Phase 1. Mr. McKay said staff felt that Phase 1 would have little bearing on Kenneth Rd. because of the low traffic on that street.

Councilmember Bold asked Mr. Joiner if the church was comfortable with the possibility that the City's recently authorized master traffic study would show that Phase 2 was too intense and wouldn't be allowed to be built, or that deceleration or turn lanes would be required (an additional expense for the church). Mr. Joiner said the church's engineer and the City's engineer, Joe Johnson, felt that the impact of the Phase 1 development upon Kenneth Rd. and 143rd St. would be such that a traffic study and additional lanes would not necessarily be required. Also, Kenneth Road was being torn up, so a traffic study was not possible. Also, the church could borrow information in the future from the City's recently approved master traffic study.

Councilmember Gill was also concerned about traffic, about perils on Kenneth Rd., especially with an industrial park across the street and residential homes in very close proximity, and with a lot of undeveloped land. If the parish was successful, there would be a lot of traffic on Kenneth Rd. Good planning dictated some sort of traffic analysis. Mr. Joiner felt the parish would be willing to undertake a traffic study, but such a study would probably add 30 to 60 days to their construction schedule, plus additional time for completion of Kenneth Rd. improvements, which might cause a problem since their lease with the Blue Valley School District was due to expire and they would have to obtain an extension. They would prefer to go ahead with Phase 1 and then explore a detailed amendment to the traffic for Phase 2. They might even consider incorporating something during the construction of Phase 1 if it was approved. In response to Mr. Taylor, Mr. Joiner said that he had the authority to make commitments for the church.

Mayor Dunn felt that staff's comments/suggestions on planned amenities and landscaping in the staff report should be included in the stipulations for the final plat.

Motion to renew the special use permit and adopt the resolution carried unanimously.

1257 **MAYOR'S REPORT**

Mayor Dunn said that former Mayor Marcia Rinehart wanted to thank everyone for the recent party held in her honor in the new community center at City Hall, the first party to be held in that facility. She also wanted to thank sculptor Rita Blitt who had created the gift given to her at the party.

Mayor Dunn attended a recent Council of Mayors meeting at which state legislation was discussed, including the controversial competitive bidding bill which might not come out of conference committee. She said that the Johnson County visioning final report would probably be completed in late July - people liked living in Johnson County because of police and safety, and public education; their least favorite thing was the taxes. People wanted to see infrastructure improvements and more public transportation.

**NEW BUSINESS**

- 1348 **Authorize interlocal agreement with Johnson County for stormwater management (SMAC) project, south bank of Tomahawk Creek approximately 400 feet east of Roe Avenue (Bongu property).** Councilmember LaHue moved to approve the agreement, seconded by Bold. Dr. LaHue felt that the County should be asked to participate more than 75% (if not at 90% funding, then total County funding) since this was a major artery of the drainage system in Johnson County. It wasn't fair that only Overland Park and Leawood should pay. Public Works Director Johnson said he would make such a request.

Councilmember Gill wanted to see a more evenly balanced limitation of liability clause, indemnity clause. The County advised the City in the agreement that the City would have to follow policies and procedures adopted by the County, but then if the City didn't and something went wrong, the City would have to bail the County out. City Attorney Wetzler said he would be happy to talk to the County about the clause, however, the County had always insisted on having these types of indemnity clauses in their agreements. A change would have to be made to all County agreements; the County would probably not be willing to modify them for any individual entity. The County felt that they really served only as a vehicle for collection of funds ( a funding source), so they should have no ongoing liability for the projects over which the cities actually had control.

In response to a question from Councilmember Campbell, Mr. Wetzler said he could not remember a case in the last ten years, as far as Leawood was concerned, where the indemnity clause had been invoked. Leawood would not use an engineering firm or construction firm that was not fully bonded, so if there was a problem with a project from an engineering or construction aspect, the City would have recourse against those firms responsible for damages. Mr. Wetzler had questioned for a number of years the need for indemnity agreements between public governmental entities, but continued to see them in County agreements.

Motion to approve the agreement carried unanimously.

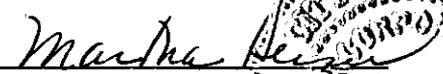
- 1900 **Authorize interlocal agreement with Overland Park for the public improvement (resurfacing) of 95th St. from Mission Rd. to 100 feet west of Wenonga - Leawood's share, \$25,000 (one-half the cost).** On motion of Peppes, seconded by Clawson, Council unanimously approved the agreement.

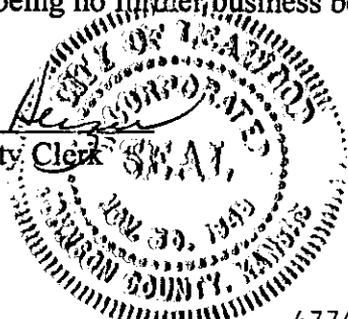
- 1952 **Ordinance granting a franchise to Brooks Fiber Communications of Missouri, Inc., to construct a telecommunications system within public right-of-way - 1st reading.** Councilmember Clawson felt she needed to have a work session with an expert in the telecommunications field, a fairly new and very complicated field, before voting on a franchise agreement or future applications. City Administrator Garofano said that Johnson County cities were looking at the possibility of using one consultant for all of them (the cities). Mid-America Regional Council had staff studying the topic and had a written report that Council could review, and Steve Horner of City Attorney Wetzler's office could provide input.

Section 36 of the proposed ordinance relating to "consideration" stated that the 1997 charge per linear foot to a franchisee would be \$2.50. Mr. Wetzler said that that rate was on the high side as far as other cities' charges in the metropolitan area. He said the City should try to get the highest dollar amount for private company use of the City's right-of-way. Companies may want the charge reduced; they might argue that the high amount would discourage them from laying their lines and would delay competition in the future.

The Mayor suggested that an expert in the telecommunications field, perhaps someone from Mid-America Regional Council or someone from Mr. Wetzler's office, attend the June 9th work session.

- 2504 **Ordinance adding Chapter XVII to the Code of the City of Leawood entitled "Master Telecommunications and Utility Franchise Ordinance."** City Attorney Wetzler suggested that Council might want to defer consideration of the ordinance until after the work session on telecommunication issues. On motion of LaHue, seconded by Peppes, Council voted unanimously to defer the ordinance until after the June 9th work session.
- 2612 **Authorize agreement with the Board of County Commissioners for City's participation in the Community Development Block Grant and Home Investment Partnership Programs for federal fiscal years 1998 through 2000.** Necessary for the County to requalify as an urban county in order to receive CDBG and HOME funds. No discussion. On motion of LaHue, seconded by Bold, Council unanimously approved the agreement.
- 2660 **APPROVAL OF APPROPRIATION ORDINANCE NO. 808.** On motion of Clawson, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.
- 2714 **OTHER BUSINESS.** A ribbon cutting ceremony for the new Leawood Aquatic Center at Leawood Park, 106th & Lee Blvd., was scheduled for June 5th, 6:00 P.M.
- 2858 8:55 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 385

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, June 2, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, James E. Taylor, Sr., and Louis Rasmussen. Adam Bold and John R. Campbell, Jr., were absent.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Captain Patrick McCarthy, Police Department; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Scott Whitaker, Director of Parks & Recreation; and Richard S. Wetzler, City Attorney. The City Clerk was absent.

**APPROVAL OF AGENDA**

- # 38 The agenda was approved unanimously on motion of Peppes, seconded by LaHue, after the addition of 1) a discussion of a letter from William Alburty concerning the condition of a house at 2308 W. 95th St., and 2) a discussion of a memo from Parks & Recreation Director Whitaker concerning the opening of the (renovated) aquatic center at Leawood Park (106th & Lee Blvd.).
- 65 **ACCEPTANCE OF DONATIONS FROM LEAWOOD WOMAN'S CLUB.** On motion of Rasmussen, seconded by Clawson, Council unanimously accepted a \$2,025 donation to the Fire Department (towards the purchase of 2 pediatric vacuum transport mattresses, 2 spineboards and associated straps for new fire trucks, and a battery charger for a heart defibrillator), and a \$1,350 donation to the Police Department not earmarked for any specific purchase.
- 155 **CITIZEN COMMENTS.** Carolyn Meyers, 15204 Ash, said she was living in a house that was not structurally sound and did not comply with City codes or house plans. The Governing Body knew about the situation, but no one had contacted her. She requested assistance from the City in enforcing City ordinances and holding the builder responsible. The Mayor said that staff was reviewing the situation. Lynn Gansert, 10717 W. 128th St., Overland Park, said she had been assisting Mrs. Meyers in efforts to resolve her problems, and also requested Council's help.

**NEW TAPE #386**

16 Don O'Malley, 2314 W. 95th St., spoke about the condition of the house at 2308 W. 95th St. He thought that the owner of the house was to have completed the enclosure of the house last fall. The back of the house had only been covered over with plastic and boards. There was a lot of construction material and debris in the backyard. It was very unsightly and embarrassing. He wanted to know if the owner had a certificate of occupancy to live in the house, and why the owner had been allowed to continue code violations. He requested Council assistance in getting the matter resolved. The matter would be further discussed toward the end of the meeting (see tape meter #1202).

128 G. Gordon Thomas, 10516 Mohawk Lane, said that once Leawood became a city of the first class, there would have to be partisan elections, the City would have to advertise for all services required for public bid, including all legal services, any home rule exceptions would not be in the public's interest, and primary elections could be eliminated. He felt the City should have term limits for elected officials.

#### 216 **CONSENT AGENDA**

Three items were removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Minutes of the May 19, 1997, Council meeting;
2. Parks & Recreation Advisory Board report (minutes) of their May 13, 1997, meeting;
3. Parks & Recreation Advisory Board report (minutes) of their May 27, 1997, meeting;
4. Pay Request No. 3 (FINAL) from Reno Construction Co. in the amount of \$53,507.88, for construction of the south side of Town Center Drive;
5. Pay Request No. 6 (FINAL) from Insituform, Inc., in the amount of \$29,763.14, for the 1996 Sanitary Sewer Rehabilitation project at various locations north of I-435.

Resolution No. 1350, attached as part of the record, approving the final plat of Whitehorse 3rd Plat at approximately 151st and Linden: Removed from the consent agenda because Councilmember LaHue wanted to abstain to avoid the appearance of a conflict of interest. The resolution was adopted on motion of Clawson, seconded by Rasmussen; LaHue abstained, all others in favor.

Resolution No. 1351, attached as part of the record, approving the final plat of the Villas of Leawood 2nd Plat at approximately 139th and Kenneth Road AND

Resolution No. 1352, attached as part of the record, approving the final plat of Pavillions of Leawood 3rd Plat at approximately 147th and Delmar: After questions about the sewer systems and street lights, and on motion of LaHue, seconded by Rasmussen, Council unanimously adopted the resolutions.

#### 428 **OLD BUSINESS**

**Ordinance granting a franchise to Brooks Fiber Communications - 2nd reading.** There was discussion of reasonable fees charged (compensation) for the use of public (the City's) right-of-way, to protect City property and Leawood residents.

**NEW BUSINESS**

692 **Authorize Supplemental Services Agreement No. 1 (TV inspection) to the engineering design contract for Sanitary Sewer Rehabilitation Project, Phase 3.** On motion of LaHue, seconded by Peppes, Council unanimously approved the agreement with George Butler Associates in the amount of \$13,464.00 to allow GBA to hire an outside contractor to video tape approximately 8,200 feet of 6" sanitary sewer lines to determine the condition of the lines and the location of service connections. The low quote was from Aqua-Rod, Inc.

732 **Approve bid/authorize contract for construction of Oxford Hills stormwater improvement project at approximately 119th and Ensley Lane.** Councilmember LaHue moved to authorize a contract with the low bidder Wilson Plumbing Co. in the amount of \$309,605.60, which included contingency, seconded by Clawson. Councilmember Taylor was concerned that the low bid was 20% less than the engineer's estimate while some other bids were much closer to the estimate. He wondered if Wilson had missed something in their bid or was lowballing the bid to allow for future change orders. Mr. Taylor wanted to have the engineer analyze the bid items to see where Wilson was low in comparison with the other bidders. Wilson's bid was unacceptable to him; he wanted to see more justification for the bid.

Dr. LaHue moved to amend his motion to add that Public Works Director Johnson talk to the County since this was a SMAC project to see if they had any concerns, and if they had no problem with the price differences, proceed with the low bid. Motion seconded by Rasmussen and carried unanimously.

Mr. Taylor felt that a representative of the City's consulting engineering firm should have attended the Council meeting to answer questions. Mr. Johnson said that the consultant had reviewed the bids and issued a letter of recommendation on the bid to the City. Their recommendation was Wilson Plumbing.

The main motion as amended carried; Taylor opposed, all others in favor.

1160 **Schedule executive session.** On motion of Clawson, seconded by Peppes, Council voted unanimously to convene in executive session at the end of the meeting for a period of one and a half hours to discuss a personnel matter and a litigation matter.

1190 **APPROVAL OF APPROPRIATION ORDINANCE NO. 809.** On motion of Rasmussen, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

**OTHER BUSINESS.**

1202 Discussion of a letter from William Alburty, 2309 W. 95th St., concerning the poor condition of the house at 2308 W. 95th St. (also see Citizen Comments). Planning Director McKay said that the house was moved to that location in 1995 and had caused problems since that time. The property owner was taken to municipal court on code violations over a year ago. Subsequently, a fence had been placed around the backyard, so City staff had been unable to see the back side of the house. They were finally able to see the backyard from a

neighbor's yard. Staff was in the process of dealing with the property maintenance as well as the enclosure of the backyard. It appeared that the property owner would have to return to municipal court as of June 9th, the date that violations were to be resolved, with a court docket date in July. Mr. McKay planned to request vacation of the house until all violations were resolved, and that an inspector be allowed inside the house to review violations.

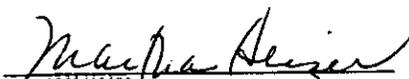
1450 Discussion of a memo from Parks & Recreation Director Whitaker concerning the opening of the Aquatic Center at Leawood Park, 106th & Lee Blvd. Councilmember Taylor asked for elaboration of the Fire Marshal's denial of occupancy until several additional items he had noticed during field inspection which apparently had not been shown on construction plans had been taken care of in the chlorine room. Mr. Whitaker reviewed those items and said a few contract change orders would probably be forthcoming. Mr. Taylor wanted to avoid such change orders in the future, and wanted to be sure that the Fire Marshal had the proper authority or jurisdiction to review plan documents and be able to quote the necessity for additional work.

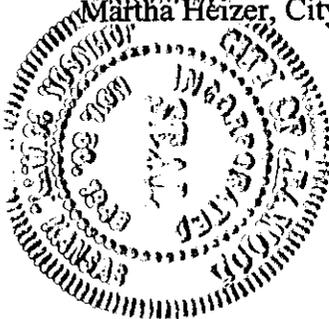
1695 Discussion of park master plan. The Council would meet with the Parks & Recreation Advisory Board on June 30th, 7:00 P.M., to review plans for 3 parks.

1850 Robert Lewis, 9830 Lee Blvd., addressed the Council about a sight distance/driveway problem which he had discussed with staff during the Lee Blvd. improvement project several months ago. He thought perhaps a sign warning motorists of a "hidden driveway" might be appropriate to help traffic. Staff would review the situation to see if a remedy was possible.

1950 8:50 P.M. Council convened in executive session, same members present, and returned to regular session at 10:10 P.M.

There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 387

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:35 p.m., Monday, June 16, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, James E. Taylor, Sr., and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 60 The agenda was approved unanimously on motion of Peppes, seconded by Clawson, after the addition of 1) a discussion of easements required from Saddle & Sirloin Club at 105th & Mission Rd. for the construction of Mission Rd. improvements, 103rd St. south to I-435; 2) a discussion of lot line setback requirements for irregular shaped lots; and 3) a statement from Councilmember LaHue.
- 111 **RECOGNITION OF MUNICIPAL JUDGES RAY L. BORTH AND MICHAEL H. FARLEY.** Mayor Dunn presented plaques to Mr. Borth and Mr. Farley for their service to the City as municipal court judges from 1985 to 1997.
- 163 **STATEMENT TO THE CITIZENS OF LEAWOOD FROM WARD 1 COUNCILMEMBER LAHUE.** Dr. LaHue read a statement (on file in the City Clerk's Office) concerning the federal government's claim that he had violated laws regarding health care providers. He said he was not guilty of violating any laws. If conflicts developed that would interfere with his ability to defend himself and attend to his City Council duties, he would resign his Council position.
- 195 **CITIZEN COMMENTS.** Richard Mende of Citizens Against Consumer Fraud, 5222 Truman Road, Kansas City, Missouri, requested that the Council repeal sections of Ordinance No. 1002C which required registration with the Police Department by persons who wanted to distribute literature or flyers door-to-door in residential areas. He felt that requirement violated constitutional, first amendment, free speech and free enterprise rights.
- 332 G. Gordon Thomas, 10516 Mohawk Lane, spoke about Councilmember LaHue's problems (see tape meter #163 above) which he had addressed about a year ago.
- 463 David Thorell, 12304 Catalina in Berkshire subdivision, said that a very large expansion of the house behind him on an irregular shaped lot had directly affected his property, ruined the view from his home and devalued his home. Trees had been removed which affected his family's privacy. He realized nothing could be done to help his situation,

but suggested the Council consider how the City would view expansions on irregular shaped properties in the future. (See tape meter #32 at end of the meeting.)

600 **CONSENT AGENDA**

The following were approved unanimously on motion of Peppes, seconded by Rasmussen:

1. Minutes of the June 2, 1997, Council meeting;
2. 50th Anniversary Committee report (minutes) of their June 5, 1997, meeting;
3. Public Works Committee report (minutes) of their May 29, 1997, meeting;
4. Historic Commission report (minutes) of their May 20, 1997, meeting;
5. Departmental reports;
6. Acceptance of federal COPS problem-solving grant in the amount of \$150,000 with no matching fund requirement and purchase with the money of laptops and computer accessories and software in the amount of \$114,998 and packet cluster system for \$18,200 (Government Technology Services, Inc., to furnish computers and vehicle mounts; Cerulean Technology to provide modems and some software; and Information Technology, Inc., to furnish balance of software).

**PLAN COMMISSION**

**Resolution No. 1353, attached as part of the record, approving the revised preliminary site plan for the Church of the Resurrection, 13720 Roe Ave.** After a brief presentation of the plans, the resolution was adopted unanimously on motion of Rasmussen, seconded by Bold.

991 **Request by the Church of the Resurrection for a special use permit for temporary mobile units to be used for classrooms at 137th and Roe Ave.** On motion of Rasmussen, seconded by Clawson, Council unanimously approved a permit for a period of 2 years.

1004 **Resolution relating to request for rezoning from AG to CP-0, and preliminary site plan and preliminary plat approval, for Stratco at the northwest corner of 114th and Tomahawk Creek Parkway.** Councilmember LaHue moved to adopt the resolution, seconded by Clawson.

Councilmember Rasmussen reminded the Council that the City had spent a great deal of money on landscaping, essentially from I-435 to 119th St., to retain a park like atmosphere along Tomahawk Creek Parkway and Mission Rd. He was concerned about the coordination of the landscaping in the area, and the extent to which the builders in the area would consider the installation of "public art," for instance water features. He didn't see anything in the resolution about landscaping coordination or "public art."

Councilmember Clawson, Council liaison to the Arts Committee, said that the Committee was in the process of developing a City policy on public art. The Committee was hopeful that builders, particularly those building signature buildings on the Parkway, would consider the placement of public art, to continue the tradition in the metropolitan area of statuary, fountains, stone work, to enhance the future value of properties.

Andy Schlagel, planning consultant for Stratco, said that Stratco would be willing to talk with and work with the City and other property owners along Tomahawk Creek Parkway about accomplishing public art. He felt that the final plan stage was the appropriate time to accomplish that goal.

Planning Director McKay said that the Master Development Plan indicated consistency of landscaping from 114th St. to College Blvd., and staff had even requested that builders place plantings in the City's fairly wide right-of-way to help enhance the area. Staff was working with a developer on the southwest corner of College and Tomahawk Creek Parkway; one requirement was a gateway feature into the City.

There was discussion of building elevations.

1581 Councilmember Gill was very interested in having the Council be involved in the final plan approval, normally a function of the Plan Commission. He said that Plan Commission stipulation of approval #15 of the resolution left many items open to further review. He felt that the parking issue would impact aesthetics along the Parkway. From the plans, he saw too much asphalt and not enough open or green space. And Stratco (which would occupy the second floor only) had planned the parking according to its needs, but building ownership changes, Stratco could move out of Leawood. If that occurred, what would happen to the parking situation. Councilmember Bold wondered where delivery vehicles would park, and what would happen if the work force in the building increased. Mr. Schlagel said that the applicant and City staff felt comfortable with the parking plans, but did mention that there was parking expansion capability to the north.

Mr. Schlagel described the appearance of the building looking west from Tomahawk Creek Parkway - the berming along the Parkway, the depressed parking lot, and elevated building pad - so the emphasis would be on green space. He also explained the reasoning for the setback of the building since it was farther back from the Parkway than the plans for the buildings to the north - it was an extra precaution against water problems that might occur adjacent to the Parkway. And the applicant saw its setback as a transition to the larger building to the south which would be set back even farther to the west. Councilmember Taylor felt that the parking lot between the building and the Parkway violated aesthetics for the area, that berming would really not shield the parked cars from view along the Parkway. Mr. Taylor preferred shifting the building to the front (more to the east along the Parkway), with parking in the back, and a water or sculptured feature along the Parkway.

2470 Councilmember Gill moved to amend the motion for adoption of the resolution by adding a condition of approval of a final plan review by the Council in addition to that of the Plan Commission so the Council could consider the proposed solutions to comments made, especially the comments on the parking plans. Motion seconded by Bold.

Planning Director McKay said that the Plan Commission, in accordance with state statutes and city ordinances, had reviewed the application and made recommendations to the Council (a process in effect for many years). He did not feel it was proper for the Council to return it to the Plan Commission for final plan approval and then have it also go back to the Council for a final plan review. If the Council had concerns, they should return the matter to the Plan Commission with those specific concerns. Otherwise, the Council would in essence be telling the Plan Commission that their work was of no purpose. And it wasn't fair to the applicant. The Council would be setting a precedent.

Mr. Gill said his amendment was based on his feeling that several issues were left open, were incomplete, that there were many changes yet to be made. The Council would not be setting a precedent. Mr. Gill wanted to have a landscape, open space analysis of both lots 1 and 2 singularly and combined and compare them to the landscape open space ratios of the SD ordinance, and he wanted to see how the applicant planned to incorporate the amenities or public art discussed. Councilmember Taylor wanted to see another plan for parking other than that in the front of the building along the Parkway. Councilmember Bold wanted to know about plans for exterior lighting. Mr. Bold felt that because it was a signature project and would help define the nature of the Tomahawk Creek Parkway Corridor, the Council had an increased burden to insure that it was in every way a signature project.

2973 The motion to amend failed; Taylor, Rasmussen, Bold, Gill in favor; Clawson, Campbell, LaHue, Peppes opposed; Mayor opposed.

Dr. LaHue and Mrs. Clawson withdrew their motion and second for adoption of the resolution.

3040 Dr. LaHue moved to remand the matter to the Plan Commission, seconded by Clawson, with concerns about parking along Tomahawk Creek Parkway, the shortage of parking in relationship to the floor area ratios, and the placement of some form of public art. Motion carried; Campbell opposed (he was ready to approve the preliminary and move forward, was comfortable with the applicant's plans), Peppes opposed (he agreed with Campbell, and let the Plan Commission do their job), Rasmussen opposed; all others (5) in favor.

**Ordinance rezoning from AG to CP-0 for Stratco. No action taken.**

3342 **Resolution No. 1354, attached as part of the record, approving request for rezoning from AG to CP-0, and approving preliminary site plan and preliminary plat, for American Academy of Family Physicians at the southwest corner of 114th and Tomahawk Creek Parkway.** Councilmember LaHue moved to adopt the resolution, seconded by Campbell. Councilmember Rasmussen referred to a statement in the staff report that there were no impact fees for Tomahawk Creek Parkway, however, an assessment did exist for the Parkway, and that the City would work with the applicant on sharing the assessment. City Administrator Garofano clarified that since the City had swapped land with AAFP, they would have to work out assessments. The tract abutting the Parkway which was originally City-owned property, wasn't assessed. The property for the City's future justice or judicial center was assessed. There would have to be a "flip flop" of assessments.

Mark Richardson of The Alter Group spoke about land banking of parking in the plan - putting a specific number of parking spaces in grass to they could be converted to asphalt in the future if additional parking was needed. Mr. Richardson also said that the American Academy of Family Physicians was in the process of considering public art.

The resolution was adopted unanimously.

3637 **Ordinance No. 1673 rezoning from AG to CP-0 for American Academy of Family Physicians.** The ordinance was considered and passed on motion of Campbell, seconded by Gill. Roll call vote was unanimous. Councilmember LaHue strongly urged the applicant to consider exterior lighting for the building (other than parking lot lighting).

3745 **Ordinance No. 1674 amending Sections 4-1 and 4-2 of the "Leawood Development Ordinance" relating to Accessory Uses and Prohibited Uses, respectively.**

Councilmember Rasmussen moved to pass the ordinance, seconded by LaHue. Planning Director McKay said the amendments were merely "housecleaning" items to allow for better enforcement and clarity. Councilmember Taylor was strongly in favor of staff and Plan Commission considering more restrictive ordinances to regulate recreational vehicles because they were unsightly.

4043 Councilmember Gill recommended that in view of the status of changing technology and emotional charge surrounding the issue of telecommunications signals, that micro cell antennae referred to in Sections 4-1.3 B 23 and 4-1.3 D 16 be items decided upon by the Governing Body with full public input. He, therefore, moved to amend the motion to delete those sections and any other references to micro cells from the ordinance, seconded by Taylor. Motion to amend carried unanimously.

The motion to pass the ordinance as amended carried unanimously on roll call vote.

4424 **MAYOR'S REPORT**

Mayor Dunn attended a recent ribbon cutting for the newly renovated Leawood Aquatic Center (municipal pool complex) at Leawood Park, 106th & Lee Blvd.

**OLD BUSINESS**

4462 **Ordinance amending the Code of the City of Leawood by adding a new Chapter XVII entitled "Master Telecommunication and Utility Franchise Ordinance."** On motion of Rasmussen, seconded by Gill, Council voted unanimously to table the ordinance. It could be ready for reconsideration in August 1997.

4547 **Ordinance granting a franchise to Brooks Fiber Communications - 3rd reading.**

4562 **Ordinance granting an easement to Williams Pipeline Company to relocate a gas line to a shared position - the west side of the Meadows of Iron Horse with Ironhorse golf course.** The petroleum pipeline easement had already been conceptually approved by the Governing Body. The City Attorney had approved the easement as to form only; content was at the sole discretion of the Governing Body. The easement was burdensome and would be much different if written by the City. Councilmember Peppes moved to pass the ordinance, seconded by LaHue.

Councilmember Rasmussen felt the matter should be referred back to the Golf Course Committee for their review and recommendations. He and others had asked repeatedly over the past several months for copies of the terms and conditions of the existing gas line easement and terms and conditions for a new easement. Councilmember Campbell agreed, and noted that Parks & Recreation Director Whitaker was not present to discuss the issue. Also, it was not on the agenda of the Golf Course Committee's last meeting.

Mark Simpson, developer of the Meadows of Iron Horse, said that the matter had been fully discussed by the Council at several meetings and voted on at an April meeting, and reviewed by the Golf Course Committee at several of their meetings (although Councilmember Rasmussen said the Committee had met only once on the matter). Mr. Simpson said that the form of the easement was very similar, if not identical, to other easements the City had with Williams Pipeline on the golf course. He had waited patiently

for over 4 months to get the matter resolved. He also said that Williams was not going to be flexible about the easement, as had been mentioned before. He had taken great pains to stake the easement along the golf course, and it was 100% in the rough.

4765 City Attorney Wetzler said that the easement was burdensome, imposing a substantial burden upon the golf course property. If Mr. Wetzler had drafted the easement, it would not have had indemnifications on the part of the City (the golf course was City property!).

Councilmember Gill said he would never approve an easement that obligated the City as this one did. Staff should go back to Williams Pipeline and request a reasonable set of terms and ask Williams if they would be willing to indemnify the City - just swapping the words "Grantor" and "Grantee" - against their pipeline blowing up and killing people playing golf. And there was no provision for removal of the line for decontamination if there was environmental damage. The matter should be referred back to the Golf Course Committee!

Councilmember LaHue wanted to know how soon the Golf Course Committee could meet, since he thought that the Council, in a previous vote, had wanted to relocate the line for the safety of residents.

Mr. Simpson said that the easement was no more onerous or harmful to the City than the other existing easements that the City had with Williams on the golf course. Mr. Wetzler said he agreed in general, but when the City acquired the golf course property, it took the property subject to those existing easements. The issue was now a new easement in a new location. To what extent would the City as a property owner figure it would be reasonable to burden its property without any monetary consideration, without anything other than saying it was in the public's interest for safety purposes.

The motion and second to pass the ordinance were withdrawn. Dr. LaHue moved that the matter be referred back to the Golf Course Committee at their earliest possible convenience with appropriate counsel (the City Attorney and perhaps the attorney for Williams Pipeline Co.), seconded by Campbell. Motion carried unanimously.

5717 **Ordinance amending Article 6 of the "Leawood Development Ordinance" to provide for public hearing procedure changes.** Councilmember LaHue moved to pass the ordinance, seconded by Clawson.

Councilmember Gill said that in Section 6-2.4, he thought that RP-A5 through P1 inclusive should be RP-1 through MP-1 to catch all zoning categories. He felt some additional items needed to be included in Section 6-3, "Notice and Public Hearing Requirements." In some cases, there were redundancies, and in some areas, items needed to be added because they should be subject to notice and public hearing:

1. He wanted to see proposed changes to the zoning district map and the rules and regulations presently covered under Section 6-3.8 be subject to notice and public hearing;
2. He wanted notice and public hearing requirements extended to changes in the master development plan;
3. He wanted to recognize the notice and public hearing requirements that existed for preliminary plats for subdivisions presently handled in Section 9-2.1c;
4. He felt that a change in the zoning ordinance under Section 6-3.8 should require notice and public hearing;
5. Final development plans in 6-2.5d and 3-1202 should be subject to notice and public hearing; and

6. Conditional uses under the SD ordinance and site plans under Section 3-1203 should be subject to notice and public hearing.

Mr. Gill felt strongly that the City's notice procedure was geared only to the minimum requirements mandated by state law - mail notice to residents within 200 feet. But with the large areas of undeveloped land in south Leawood, developers sent notices to themselves, and residents never heard about matters they might be concerned about. The City should adopt a simple procedure that required the proponent of a rezoning application to mail notices to organizations/residents who annually or periodically indicated that they wanted to be on a notice mailing list.

The motion to pass the ordinance failed; Clawson, Peppes in favor; all others opposed.

6652 Councilmember Rasmussen moved that Mr. Gill's suggestions (and others' suggestions in writing) be considered in a remand to the Plan Commission, seconded by Taylor. Motion carried unanimously.

#### NEW BUSINESS

6763 **Ordinance granting a franchise to American Communications Services, Inc. (ACSI) - 1st reading.** City Attorney Wetzler said that ACSI in the next couple of weeks would probably want to discuss the structuring of the franchise fees. In their opinion, certain structures would tend to provide more service to residents with a competitive effect on rates so access would be more readily available to more residents.

6970 **Authorize interlocal agreement with Overland Park for traffic signal design and installation at 117th & Nall Ave.** On motion of LaHue, seconded by Bold, Council unanimously approved the agreement. Leawood's share, to be paid from the improvement district for Town Center Plaza, would be approximately \$65,000, 50% of the \$130,000 total cost.

6995 **Approve bid/authorize contract for construction of Mission Rd. improvements, 135th to 143rd St.** On motion of LaHue, seconded by Rasmussen, Council unanimously approved a contract with the low bidder Leavenworth Excavating and Equipment Co., Inc., in the amount of \$626,644.05 (total purchase order in the amount of \$690,000 to cover change orders and/or change in bid quantities).

7195 **Approve bid/authorize contract for construction of stormwater management improvement (SMAC) project (DB-04-020) in the vicinity of High Dr. north of 95th St.** On motion of Rasmussen, seconded by Peppes, Council unanimously approved a contract with the low bidder Site Rite Construction Co. in the amount of \$490,087.00 (total purchase order in the amount of \$539,095.70 which included a 10% contingency). The project also included reconstruction of a portion of High Dr. within the limits of the storm drainage improvements.

7243 Resolution No. 1355, attached as part of the record, consenting to the enlargement of Johnson County Consolidated Main Sewer District to provide sanitary sewer service to the Pavillions of Leawood 3rd Plat. Adopted unanimously on motion of Rasmussen, seconded by Bold.

7270 APPROVAL OF APPROPRIATION ORDINANCE NO. 810. On motion of Rasmussen, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

10:55 P.M. On motion of LaHue, seconded by Peppes, Council voted unanimously to extend the meeting beyond 11:00 P.M. for 30 minutes.

7360 OTHER BUSINESS. Discussion of easements required from Saddle & Sirloin Club for Mission Rd. improvements from 103rd St. to I-435. Public Works Director Johnson said that the Club would convey the required easements for the appraisal offer of \$52,148 if the City would give them an additional \$15,000 and build an extension to the storm sewer near the trap shoot to help with drainage problems which the City could do through a change order of approximately \$5,000. Councilmember Rasmussen moved to accept the Director's recommendation to approve the additional offer which would allow the City to start construction as soon as possible, seconded by Clawson.

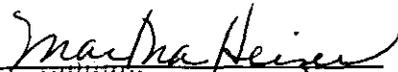
7689 END OF TAPE

Tape No. 388

Mr. Rasmussen's motion carried unanimously.

32 Discussion of irregular lots (from tape meter #463, citizen comments, at the beginning of the meeting). Councilmember Bold felt that perhaps rear setbacks needed to be 30 feet regardless of the shape of a lot. He moved to have staff address the problem and return to the Council with an adequate solution, seconded by Taylor and carried unanimously.

166 11:05 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 389

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, July 7, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, and James E. Taylor, Sr. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Captain Pat McCarthy, Police Department; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 72 The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the addition of an executive session at the end of the meeting to discuss a matter under attorney/client privilege.

Planning Director McKay asked that the request for a special use permit to construct a 135-foot cellular tower at 9617 Lee Blvd. (police station) be remanded to the Plan Commission because he had received an amended application which no one had had an opportunity to review. Councilmember Bold moved to discuss the possibility of a remand at the beginning of the meeting after the Consent Agenda, seconded by Campbell and carried unanimously.

- 206 **CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, spoke about comments he had made at the June 16th Council meeting concerning impropriety in public office, specifically his opinion that Ward 1 Councilmember Ronald LaHue should resign his Council seat as a matter of personal ethics and responsibility because of a federal indictment. If he didn't resign, then perhaps the City should take a stand and consider recall or public petition for retaining him. Councilmember Campbell reminded Mr. Thomas that under our country's system of jurisprudence and Constitution, a person was innocent until proven guilty. Dr. LaHue had only been accused of some wrongdoing that had absolutely nothing to do with his duties or responsibilities or continued service as a member of the City Council. For nine years Dr. LaHue had been a valued and committed member of the Council. Mr. Campbell hoped that Dr. LaHue would continue to fulfill his Council responsibilities.

**394 CONSENT AGENDA**

Councilmember Clawson, Chairman of the Public Works Committee, stated that she was opposed to Larry Galbreath's request for assistance to correct a drainage problem on his property at 12664 Sherwood Dr. The minutes of the Public Works Committee meeting of June 18, 1997, showed that she had voted in favor of the request.

The following were approved unanimously on motion of Bold, seconded by Clawson:

1. Minutes of the June 16, 1997, Council meeting;
2. Golf Course Committee report (minutes) of their June 3, 1997, meeting;
3. Parks & Recreation Advisory Board report (minutes) of their June 10, 1997, meeting;
4. Public Works Committee report (minutes) of their June 18, 1997, meeting;
5. Historic Commission report (minutes) of their June 17, 1997, meeting;
6. Appointments to the Arts Committee - Dr. Doug Fain (5353 W. 130th Terr.) to 1998 to replace Diane Conner, and Elizabeth (Bette) Geiger (3506 W. 92nd Terr.) to 2000 as a new member.

**430 Request for a special use permit to construct a 135-foot cellular tower at 9617 Lee Blvd.**

Councilmember Clawson moved to remand the matter to the Plan Commission as requested by staff at the beginning of the meeting, seconded by Campbell. Councilmember Bold wondered why the request to remand hadn't been made earlier. Many citizens were concerned about this issue and had had to come to City Hall for several meetings on the matter, and it seemed that certain parties were trying to wear down the opposition.

Planning Director McKay explained that Southwestern Bell had withdrawn, leaving the carriers Cellular One (already on the existing 100-foot tower at the Police Station) and the applicant American Portable Telecom (APT). APT decided they could go at the 90-foot level on the existing tower, so they wanted to present an amended application for a special use permit. However, staff and Plan Commission had not had an opportunity to review any new site plan, so staff felt a remand was appropriate.

Attorney Jeffrey Pfaff of Lathrop and Gage law firm represented APT.

Councilmember Campbell felt APT was presenting a substantial amendment and asked if it wouldn't require an entirely new application. City Attorney Wetzler said he didn't really know how substantial the amendment was since he had not seen any plans, but as a practical matter, he thought the same result would be reached. He said that the City had tended to give developers some flexibility in amending applications as long as there was a continuance/continuity of notice to the public through public meetings.

Councilmember Gill asked if APT was dropping or abandoning their application for a new 135-foot tower. Mr. Pfaff said APT merely wanted to amend the current application to go at the 90-foot level on the existing tower. Mr. Gill said that as he understood procedure, whenever the Council acted on the Plan Commission's recommendation for denial of the special use permit for a 135-foot tower, a super majority vote would be required. However, a remand to the Plan Commission would require a simple majority vote. Whether Mr. Gill

would favor a remand would depend entirely upon whether or not a remand was being used as a vehicle to get the matter back before the Council with a majority vote requirement, doing an end run on the super majority vote. Mr. Pfaff said that was not APT's intent. Mr. Gill asked if Mr. Pfaff was willing to state that in exchange for a remand which would save going through another application procedure, APT would abandon the request for a new cell tower. Mr. Pfaff said he didn't understand Mr. Gill's use of the term "abandon." APT did not want to forego their pending application, merely amend it. Mr. Gill asked that if the application was amended as opposed to starting over again with a new application, would that require notice and trigger new protest. He said there was already a valid protest petition on file. Would residents be required to file a new protest petition if a remand occurred and would they be given an opportunity to be heard? City Attorney Wetzler said that as long as the application was merely being amended and a new application not being presented, the protest petition would still be valid. However, if the amendment was so substantial that it really amounted to a new application, then a new notice requirement and new protest would have to be reviewed. However, he felt that it was safe to say that the Council would honor the existing protest when the matter was returned to them by the Plan Commission. Mr. Gill asked if the developer would honor the existing protest and agree not to assert in any future legal action that the failure to file a new protest flawed the issue. Mr. Pfaff said "yes."

805

In response to Councilmember Taylor's question about amenities, Mr. McKay said that staff did not know what amenities APT would offer the City for use of the tower. That was the whole point of requesting a remand - to allow APT to produce the new site information, etc. Mr. Wetzler said that there were 2 separate considerations involved - 1) the zoning which the Council was trying to deal with tonight, and 2) a separate agreement to be voted on separately aside from the zoning issues spelling out the amenities and placement of a tower. Mr. Taylor felt that the Council needed to know the amenities in order to make any kind of decision tonight. Mr. Wetzler disagreed and said that if the application for the 135-foot tower was approved and there wasn't an agreement allowing APT to place the tower, the matter wouldn't go anywhere. The issue required both an approved application and approved agreement. Mr. Wetzler said that several months ago there was discussion of amenities, but there had been no formalization as to a dollar amount of consideration or any other amenities. He was not prepared to spell out possible amenities at the Council meeting; Mr. Taylor could call him at his office.

Councilmember LaHue felt it was prudent to consider a new proposal for the existing tower to try to provide the best communication services available to residents of Leawood. He was in favor of a remand.

Councilmember Bold agreed with Dr. LaHue about providing communication services to residents and businesses, but felt towers should either be placed in commercial areas or be disguised so as to be more palatable to the surrounding areas. He was in favor of a remand.

In response to a question from Councilmember Clawson, Mr. Wetzler said it was his understanding that the applicant had agreed to honor the protest petition on file and a super majority vote of the Council.

Mr. McKay said a remand would save time over a new application.

The motion to remand carried; Taylor opposed, all others in favor. Mr. Campbell and Mr. Gill voted in favor of the remand with the understanding that the developer had stipulated that the filed protest petition would remain in full force and effect for any amended plan they might have. The remand would be heard at the July 22nd Plan Commission meeting.

1159 Several residents addressed the Council. Don Meeker, 9610 High Dr., felt the City should maintain a residential character by not permitting towers in residential areas, except for the presence of public safety (police and fire and medical communications), and should not allow commercial use on the existing tower. He suggested that APT look into the possibility of using a tower located at Rockhurst High School at approximately 93rd and State Line Road, about 1 mile from the police station. The City needed an ordinance regulating cellular towers with safeguards and guidelines for suitable sites. The City should have a moratorium on towers until an ordinance was in effect. He felt that APT was trying to preserve their original filing date so they would not have to come under the requirements of a new ordinance.

Jeff Nessel, 12012 Ensley Lane, felt the City should not be involved in a partnership with Cellular One (a carrier already on the existing tower) or any other carrier. Cellular One was paying the City less than \$5,000-a-year rent for use of the tower, and that simply wasn't worth exposing the City to the possibility of millions of dollars in litigation liability. Cellular One's placement on the tower might even be illegal and should be removed. Mr. Nessel said that there should be a public hearing on a proposed ordinance to be considered very soon by the Plan Commission. He said the Plan Commission chairman had stated that there would be no hearing. Mr. McKay said that the Plan Commission had already held a very substantial public hearing, and was ready to move forward to get an ordinance in place. The opportunity for further public comment would be determined by the Plan Commission.

#### 1760 PLAN COMMISSION

**Resolution No. 1356 approving request for rezoning from AG to CP-0, and approving preliminary site plan and preliminary plat, for Stratco at 114th & Tomahawk Creek Parkway.** Councilmember LaHue moved to adopt the resolution, seconded by Bold. Planning Director McKay said that stipulation of approval #15 would be changed to remove reference to relocation of parking, building citing, screening of rooftop units, which had already been reapproved by the Plan Commission. The question of public art would be dealt with at final plan approval stage. Andy Schlager, planning consultant for Stratco, said there would be a public art feature.

Council questions about flooding and ratio of parking were covered by stipulation #'s 13 and 16 respectively. Mr. McKay said that the Plan Commission felt comfortable with Stratco's amended plan for sunken parking and additional landscaping between Tomahawk Creek Parkway and the building. There was discussion of landscape (berming), parking lot and right-of-way elevations. Councilmember Clawson supported land banking for future additional parking to retain as much green space as possible.

Motion to adopt the resolution carried unanimously.

2318 **Ordinance No. 1675 rezoning property from AG to CP-0 - Stratco at 114th & Tomahawk Creek Parkway.** The ordinance was considered and passed on motion of Campbell, seconded by Clawson. Roll call vote was unanimous.

2340 **Ordinance No. 1676 amending Article 6 of the "Leawood Development Ordinance" providing for public hearing procedure changes.** The ordinance was considered and passed on motion of Campbell, seconded by Gill. Roll call vote was unanimous.

2386 **MAYOR'S REPORT**

Mayor Dunn thanked the City's Special Events Coordinator Alan Marstall and other staff who helped to make the July 4th celebration at Leawood Park fun and successful.

City Administrator Garofano introduced Kathy Rogers, the City's new Accounting Manager as of June 30th. Mrs. Rogers was Finance Director for Kirksville, Missouri, and would become Leawood's Finance Director upon Harry Malnicof's retirement on December 7, 1997.

Councilmember Clawson, Leawood representative to the KCADC (Kansas City Area Development Council), recently hosted an executive committee breakfast meeting at City Hall. KCADC existed to encourage the relocation of corporate headquarters to the Kansas City metropolitan area, to help continue a vibrant economy. Leawood had the capability of attracting small businesses without huge needs for employment.

2570 **OLD BUSINESS**

**Ordinance granting a franchise to Brooks Fiber Communications - public hearing and final action.** Since changes were being made to the ordinance, City Attorney Wetzler requested a continuance on the matter and on the franchise ordinance for American Communication Services of Kansas City (next agenda item). He mentioned that communications companies were interested in giving their input when the Council had more finalized versions of the ordinances. Consideration of the ordinances should be continued to a date certain to avoid republishing notices of public hearing and to preserve the 3-reading process already underway.

Councilmember LaHue moved to continue consideration of the Brooks franchise ordinance to the August 18th Council meeting, seconded by Gill. Motion carried unanimously.

**Ordinance granting a franchise to American Communication Services of Kansas City, Inc. (ACSI) - public hearing and 2nd reading.** The 2nd reading was held. The 3rd reading would be held on July 21st. Final action would be considered at the August 18th Council meeting.

2806 **Report from Public Works Committee - resident request for review of drainage problem at 12664 Sherwood Dr. in Patrician Woods as it related to Nall Ave. improvement project, 119th St. to 135th St.** Property owner Larry Galbreath had requested that the City pay for or have his backyard regraded and landscaped along Nall Ave. at a cost of \$8,200. He was unhappy with the grading that was done when Nall Ave. was widened. The Public Works Committee recommended that the City assist Mr. Galbreath with his proposed improvements in an amount not to exceed \$4,100, and that payment be made to Mr. Galbreath after the improvements were completed.

Councilmember Bold moved to approve the \$4,100, seconded by Campbell. Councilmember Clawson, Chairman of the Public Works Committee, was opposed to the monetary assistance. She said that when Mr. Galbreath purchased the property (after the Nall Ave. improvement), it was in the same condition as it was currently. Nall Ave. had been improved and the City had done nothing to damage the lot since the improvement. If the City had damaged his property, then she would have been in favor of assistance.

Councilmember Bold favored the assistance. He said that the Public Works Director had said that the Nall Ave. improvement project had been built to the specifications in the plans. However, Mr. Bold felt that the plans were flawed, and Mr. Galbreath had undue erosion and water on his property. Public Works Director Johnson did not think the plans were "flawed"; he gave his opinion of the plans - the improvements accomplished what they were meant to do, but a property owner just happened to disagree with the grading and poor or lack of sodding, was not happy with the end product.

Councilmember LaHue reminded the Council of the several thousand dollars approved for a few property owners' special requests for modifications as part of the Nall Ave. improvement project. When would these requests stop? Mrs. Clawson felt that Mr. Galbreath definitely needed to do something to his property, but at what point would the taxpayers stop paying for these types of improvement/remedy requests? She said that the owner of Mr. Galbreath's property at the time of the Nall Ave. improvement project received approximately \$1,400 for a temporary construction easement and did nothing with the money. She said that Mr. Galbreath's lot was the same as it was the day he purchased it from the former owner.

Councilmember Campbell moved to amend the motion to include 2 stipulations - 1) that the payment to Mr. Galbreath be made after the improvements were completed, and 2) that Mr. Galbreath sign a full release which would be recorded and which would be binding on future owners of the property. Motion to amend seconded by Taylor. Mr. Taylor said that *the property to the south seemed to have the same problem; did the City plan to do something with it?* The motion to amend carried; Clawson opposed, all others in favor.

The motion as amended to approve the monetary assistance carried; Clawson, Peppes opposed; all others in favor. Dr. Peppes felt that the City could have negotiated or agreed upon an amount that was more amenable or affordable to taxpayers in trying to help Mr. Galbreath with his situation. The City could grade and seed the problem area and not build a retaining wall for a lot less than the amount that had been requested. Even though he felt there was a problem that needed to be taken care of, at what point could the City still be held liable for these types of problems.

**Resolution No. 1357 amending the 135th (K-150) Corridor impact fee** - updated the amount to be charged by land use category based upon actual costs of the roadway improvements. The present fee was based upon estimated construction costs. The impact fee was a charge to an abutting development for a share of the cost of roadway improvements based upon the amount of traffic generated by a particular land use. Since the fees were collected at the time of building permit issuance for commercial development and plat recording for residential development, the City would front the total local share and apply the fees to debt service as they were collected.

Resolution adopted unanimously on motion of LaHue, seconded by Bold.

3962 **Ordinance No. 1677 repealing golf course impact fee** - a fee no longer in use or applicable. When the City first acquired land for Ironhorse golf course, it levied an impact fee against the abutting residential property to recoup the \$600,000 land acquisition costs. The impact fee was later converted to benefit district financing since the City felt that was a more secure method of collection. The ordinance was considered and passed on motion of Clawson, seconded by Peppes. Roll call vote was unanimous.

3983 **Request to reject bids for park shelter improvements (concessions and restroom for new Lions shelter) at Leawood Park, 106th & Lee Blvd.** - the two bids that were received were higher than the engineer's estimate. Councilmember Taylor moved to reject the bids, seconded by LaHue. Staff asked for authority to negotiate an acceptable price with the low bidder. Mr. Taylor felt it would be better for staff to rebid the improvements since no allowance or contingency had been made for change orders in the estimate. He felt there would be change orders. The engineer felt otherwise.

Councilmember LaHue moved to amend the motion to allow staff to negotiate an acceptable price with the low bidder, seconded by Clawson. Motion to amend carried; Taylor opposed, all others in favor.

The main motion as amended carried unanimously.

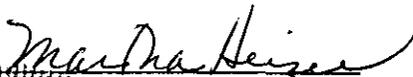
4397 **Request for permit to use parking areas at Leawood Park, 106th & Lee Blvd., for American Royal event August 8th & 9th, 1998.** The Saddle & Sirloin Club, 10515 Mission Road, would be hosting an event, "Royalfest," August 8th and 9th, 1998, to promote awareness of the American Royal and the AFA (Agriculture Future of America). They requested permission to use the two new parking lots by the soccer fields along the extension of Lee Blvd. between Leawood Park and Mission Road, and perhaps some of the park parking on those two days. The Public Works Director, Planning Director, and Parks & Recreation Director all suggested they obtain approval of the event and a permit from the Council because of the increased traffic on the north end of Mission Road during the event.

On motion of LaHue, seconded by Clawson, Council unanimously approved a permit.

4502 **APPROVAL OF APPROPRIATION ORDINANCE NO. 811.** On motion of Peppes, seconded by LaHue, Council unanimously approved the ordinance on roll call vote.

4650 9:50 P.M. On motion of Taylor and duly seconded, Council voted unanimously to convene in executive session for a period not to exceed 15 minutes to discuss a matter under attorney/client privilege.

10:05 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 390

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, July 21, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Louis Rasmussen, and James E. Taylor, Sr. Mike Gill was absent.

Staff Present: Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Diane Brooks, Planning Department; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

- # 72 Councilmember Clawson moved to approve the agenda, seconded by Bold. Councilmember Rasmussen moved to amend the motion to remove an ordinance from the agenda which would grant an easement to Williams Pipeline Co. for the relocation of a gas line in the vicinity of the Ironhorse Golf Course, seconded by Peppes. Mr. Rasmussen said that the Council and chairman of the Golf Course Committee had just received a new proposed easement for consideration, and the golf course engineer had not seen any plans. He wanted the matter continued to the August 4th Council meeting in order for the Council to receive full documentation on the matter, including compensation or consideration to the City for a possible easement on City property, and alternatives considered by the Golf Course Committee, including the placement of the gas line on the developer's property and just simply granting Williams Pipeline Co. a construction easement. Councilmember Campbell felt the matter should not be continued in order to hear new information and hear from Dick Fuller, Chairman of the Golf Course Committee. City Attorney Wetzler felt there was disagreement between members of the Council as to the nature and quality of the easement that the City wanted to convey. Staff needed to hear Council's ideas as to what they wanted in the easement; staff needed Council directives. The motion to amend carried; Rasmussen, Taylor, Bold, Peppes in favor; Campbell, LaHue, Clawson opposed. The motion to approve the agenda as amended was approved unanimously.

- 552 **RECOGNITION OF HALEY HANNAH, MISS KANSAS SWEETHEART.** The Mayor recognized 9 year old Haley Hannah of 11500 Canterbury Circle in Leawood for her contest win. She was Miss Leawood, Kansas Princess in 1996-1997 and competed in the National American Coed Princess Pageant. She would represent the state in the National Miss American Sweetheart Pageant in Orlando, Florida, during Thanksgiving week.

623 **CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, wanted to know why there was a delay in the City's becoming a city of the first class which it could have done several years ago upon attaining a population of 15,000. He felt the City should be bidding all City services, including legal services, and noted that elections could be partisan as opposed to the present nonpartisan elections. Town Center Plaza revenues should be used to reduce property taxes. He wanted to know when the Price Chopper issue at 135th and Mission Rd. was scheduled to come before the Council again. And he asked that the City Attorney and Council review ordinances relating to recall of public officials. He also wanted to send out a citizen survey questionnaire. He had addressed all of these issues several times in the past.

794 **CONSENT AGENDA**

Four items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Taylor:

1. Minutes of the July 7, 1997, Council meeting;
2. Arts Committee report (minutes) of their June 3, 1997, meeting;
3. Golf Course Committee report (minutes) of their June 25, 1997, meeting;
4. Departmental reports.

Change Order No. 3 to the contract for the 143rd Street rehabilitation project in the amount of \$16,853.65. Councilmember Bold said that the contractor Bob Muehlberger Concrete Co. had done a deplorable job, and he wasn't inclined to approve the change order. He wasn't satisfied with the contractor's assurance that he would do the balance of the work. Public Works Director Johnson said that there was a 2-year performance/maintenance bond as part of the contract. Part of the contract was for grading, and he had a letter from the contractor indicating that if there was any additional regrading and reseeding (approximately \$3500) to be done in the fall, he would do the work. Councilmember Bold moved to approve the change order on the basis that \$4,000 be withheld from the final Pay Request No. 4 (next agenda item) until the work was completed, seconded by Taylor. Motion carried unanimously.

Pay Request No. 4 (FINAL) by Bob Muehlberger Concrete Co. in the amount of \$22,053.65 for the 143rd Street Rehabilitation project. Councilmember Bold moved to approve the pay request withholding \$4,000 until the project was completed and acceptable to the Director of Public Works, seconded by Rasmussen. Motion carried unanimously.

Purchase of Interactive Voice Response System for Municipal Court. Municipal Court Judge Renee Gurney reviewed the system for the Council. The system was for the express purpose of having routine questions answered automatically, allowing individuals to call and receive fine amount and court date information after entering their ticket number with the touch tone keys of their phones. The system would greatly reduce work load on court personnel. Lucent Technologies (formerly AT&T) would install and program the equipment and provide training for court personnel. The hardware and software package would cost \$22,270.00. The system would modernize the court and improve public relations. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the purchase.

Authorize agreement with Leonard J. Koehnen and Associates for design and acquisition of a new 800 MHz radio system at the Police Department at 9617 Lee Blvd. in an amount not to exceed \$22,500. Police Chief Cox clarified the new system for Councilmember Taylor. The system would be shared with Prairie Village. Mr. Taylor asked if the design contract was subject to the design coming within 10% of the system's cost estimate. Chief Cox explained that the City did not have a formal contract yet, and there were a number of variables that were yet unknown; the City Attorney would prepare a contract for both parties' signatures.

Mr. Taylor moved to approve a contract with the condition (clause in the contract) that the design cost be within 10% of the estimated cost of the system, seconded by Rasmussen. Mr. Taylor felt the designer should be responsive to redesigning the system or making amends to the City if he did not meet the 10% condition. City Attorney Wetzler said the Council needed to tell him exactly what the penalty would be for insertion in the contract.

Councilmember Campbell said he was opposed to the motion. The City had problems with all kinds of design contracts where final costs exceeded those estimated by the designers. The designers had no control over those costs. Councilmember Rasmussen reminded Council that the designer's fee for the recent pool renovation at Leawood Park was a function of the total cost of the renovation; there was a clause in the contract for that purpose. When the total cost got out of line, the designer agreed not to increase his fee for the overage.

Mr. Wetzler said it was reasonable and frequently used provision in contracts to expect a designer, architect or engineer to do additional work for no additional fee if necessary, if there was overage on a project. The designer had a duty to continue to work with the City for the same fee originally negotiated.

Councilmember Clawson said she was more comfortable voting on a motion for a not-to-exceed \$22,500 since the actual cost of the system was so up in the air. If the designer returned to the Council at a later date with a request for an additional fee, Council could address that at that time. Mrs. Clawson moved to amend the motion to clarify that funds for hand-held radios were excluded from the 10% condition, seconded by Rasmussen. Motion to amend carried unanimously.

Mr. Taylor's main motion as amended failed; Rasmussen, Taylor in favor; all others (5) opposed.

Councilmember LaHue moved to approve a contract for an amount not to exceed \$22,500, seconded by Campbell. Motion carried unanimously.

#### **PLAN COMMISSION**

2370 **Resolution No. 1358, attached as part of the record, approving preliminary site plan and preliminary plat for Country Club Bank at 112th & State Line Road.**

Councilmember LaHue moved to adopt the resolution, seconded by Rasmussen. Architect Tom Nelson presented the plans; the bank would be the first commercial building in Hallbrook. Motion to adopt the resolution carried unanimously. Mayor Dunn stated that if the opportunity had arisen for her to vote on the matter, she would not have voted in order to avoid a conflict of interest.

2822 **MAYOR'S REPORT**

The Mayor reported on the American Revolution Tercentennial Fund certificate of deposit: In 1976 Mayor Eddy had accepted a \$1,000 c.d. from the Leawood American Revolution Bicentennial Committee to remain on deposit until 2076. As of July 9, 1997, the value of the Tercentennial Fund c.d. was \$4,987.89.

The Mayor reminded Council that a work session to recap the 1998 budget was scheduled for July 28th at 7:00 P.M.

Last Friday, the City hosted a breakfast meeting for state senators, county commissioner, county appraiser, and business owners from Town Center Plaza, to discuss reappraisals.

The Mayor attended the final visioning report at the county commissioners' office in Olathe. There was a lot of information about why people consider Johnson County the best place to live - good education, good public safety, parks and green space, infrastructure repair.

**OLD BUSINESS**

3022 **Authorize addendum to annexation agreement with L & F Land (Harlan Laner property at 135th & Nall Ave.)** - to extend the time under which the City had to accept, grant and publish a rezoning ordinance, or reject the zoning and preliminary plan as submitted by L&F Land for the annexed land, to October 12, 1997. Council unanimously approved the addendum on motion of LaHue, seconded by Campbell.

3158 **Ordinance granting a franchise to American Communication Services of Kansas City, Inc. (ACSI) - 3rd reading and continuation of public hearing.** The ordinance was placed on third reading. Councilmember Rasmussen felt very strongly that there should be a minimum charge or fixed amount annually (he recommended \$12,000 annual charge) to companies granted franchises since there was a possibility that at least some of those companies might simply "sit" on the franchises and do nothing, do no building - in order to establish a threshold of responsibility by the companies. For a second concept related to compensation, the City might want to consider whether or not it wanted to just measure the number of feet on public rights-of-way or just use the number of feet in the City. He felt that once companies started to build, they should pay so much per foot, and then as their businesses developed, if the 5% franchise fee started to exceed that footage, then the franchise fee should be charged. Mr. Rasmussen would accept all the recommendations of the City Attorney except for the Attorney's views on compensation. He felt that the \$2,000 (administrative) application fee was totally separate from the annual charge of \$12,000 for the right to utilize public right-of-way, the right to have a franchise.

City Attorney Wetzler was sure companies would want to discuss the compensation issue with the Council; they believed the fees should be kept low to encourage more development and competition, provide lower rates for users.

Councilmember LaHue noted that the companies would probably pass the fees on to the residents as a utility tax. He was interested in seeing a summary of fees charged by other local cities, and an attorney's opinion concerning the arbitrary fee of \$12,000 being knocked down by the courts. Mr. Wetzler said that the percentages of the franchise fee would vary locally; state statute merely set the maximum fee that could be charged by a city for its franchise ordinance to users in the city at 5%. He said that there were some companies that did not provide service, but only passed through a city or cities. Leawood couldn't stop the companies from passing through, but did want to take the position that it wanted to charge them a fair fee for the use of public right-of-way, and that was a figure that was up for grabs. Some cities were in the process of collectively trying to appraise the value of right-of-way, so that could be the basis for the charge.

Councilmember Clawson was concerned about the disruption and tear up and damage to property around the City caused by several companies, and asked if the City could place controls on them. Mr. Wetzler said that the terms of these types of franchise ordinances should not be very long because it was impossible to contemplate all of the possible changes that might occur. The City needed to figure out where cables were located, to whom they belonged. Some cities, when they constructed streets, provided a conduit in which many cables could be placed.

4360 Councilmember LaHue moved to allow the attorney-client privilege information distributed to the Council released to companies at the direction of the City Attorney, seconded by Taylor. Motion carried unanimously.

Brett Bogan, attorney for American Communication Services of Kansas City, Inc., said they would work with City staff and have information ready for the August 18th Council meeting, including fee comparisons with other cities. He said that his clients had not heard about the flat \$12,000 fee. ACSI would hope that a company that would provide services to Leawood residents, provide services off the basic backbone line, would be charged a different rate than a company simply passing through the City with no benefit to Leawood residents.

#### NEW BUSINESS

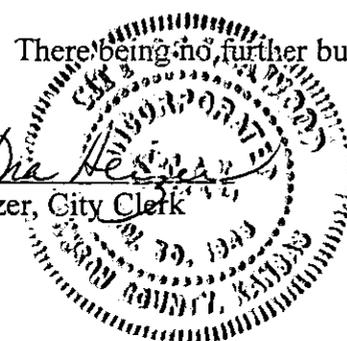
4470 **Authorize interlocal agreement with Johnson County for stormwater management (SMAC) project, Indian Creek at Indian Creek south at State Line Road IC-04-039** - for engineering design to stabilize the north bank of Indian Creek, cost to Leawood of \$16,788.50. Council unanimously approved the agreement on motion of Rasmussen, seconded by Clawson. Public Works Director Johnson reviewed construction costs for this project and the next 3 agenda items based on 1989 estimates, with 10-20% increases since that time. Councilmember LaHue expressed concern that enough funds be available to cover new stormwater projects.

4835 **Authorize interlocal agreement with Johnson County for stormwater management (SMAC) project, improvements on Dykes Branch at 84th Street & State Line Road DB-04-015** - for engineering design to enclose an open channel and stabilize approximately 1100 feet of channel in the area of 84th Terr. and State Line Rd., cost to Leawood of \$20,912. Council unanimously approved the agreement on motion of Clawson, seconded by Rasmussen.

- 4851 **Authorize interlocal agreement with Johnson County for stormwater management (SMAC) project, improvements on Dykes Branch at 91st Street & Ensley Lane to Wenonga & 93rd Street DB-04-019** - for engineering design to complete the storm drainage system in the area of 91st Street and Ensley Lane, cost to Leawood of \$30,060.25. Council unanimously approved the agreement on motion of Campbell, seconded by LaHue.
- 4903 **Authorize interlocal agreement with Johnson County for stormwater management (SMAC) project, improvements on Tomahawk Creek at Oxford Hills subdivision, southeast corner of Ensley Lane & 119th Street** - for engineering design, cost to Leawood of \$10,411. Council unanimously approved the agreement on motion of LaHue, seconded by Taylor.
- 4932 **Request to reject bids received for 1997 Street Rehabilitation Program for residential and arterial streets.** The two bids received were higher than the engineer's estimate. Staff wanted to separate the arterial streets from the residential streets, and rebid the arterials and include the residential streets in the 97th Street Rehabilitation project already underway as a change order. On motion of LaHue, seconded by Rasmussen, Council voted unanimously to reject the bids. (See the next item.)
- 4948 **Change Order No. 3 to the contract with Seal-O-Matic Paving Co. for stormwater management project JB-04-003 & 97th Street improvements in the amount of \$659,719.94 (\$725,691.93 with 10% contingency) to complete the 1997 residential street improvements.** Councilmember LaHue moved for approval, seconded by Clawson. Funds would come from residential street rehabilitation funds, not stormwater improvement funds. Arterial street improvements would be bid later this year. Motion to approve carried unanimously.
- 5105 **Ordinance No. 1678 accepting a permanent drainage easement and 2 permanent utility easements from Saddle & Sirloin Club required for Mission Rd. improvements, 103rd Street to I-435.** The ordinance was considered and passed on motion of Taylor, seconded by LaHue. Roll call vote was unanimous. Mayor Dunn stated that if the opportunity had arisen for her to vote on the ordinance, she would not have voted since she was an honorary member of Saddle & Sirloin Club.
- 5197 **Ordinance No. 1679 accepting deeds from Saddle & Sirloin Club required for Mission Rd. improvements, 103rd Street to I-435.** The ordinance was considered and passed on motion of Clawson, seconded by LaHue. Roll call vote was unanimous. See the Mayor's statement above for Ordinance No. 1678. Saddle & Sirloin would be paid \$67,148 for the easements and deeds.
- 5316 **Ordinance No. 1680 authorizing Mission Road rehabilitation project, 135th Street to 143rd Street.** The ordinance was considered and passed on motion of LaHue, seconded by Bold. Roll call vote was unanimous.

- 5344 **Ordinance No. 1681 authorizing issuance of temporary notes; Project 108, College Blvd.; \$3,800,000.** The ordinance was considered and passed on motion of Rasmussen, seconded by LaHue. Roll call vote was unanimous.
- 5370 **Ordinance No. 1682 authorizing issuance of temporary notes; Project 124, 135th St. (K-150), State Line-Nall Ave.; \$3,000,000.** The ordinance was considered and passed on motion of Bold, seconded by Taylor. Roll call vote was unanimous.
- 5424 **Ordinance No. 1683 authorizing issuance of temporary notes; Project 128, Old Kenneth Road; \$600,000.** The ordinance was considered and passed on motion of Bold, seconded by Clawson. Roll call vote was unanimous.
- 5456 **Ordinance No. 1684 authorizing issuance of temporary notes; Project 144, Mission Rd. improvements, 103rd St./I-435; \$700,000.** The ordinance was considered and passed on motion of Taylor, seconded by Rasmussen. Roll call vote was unanimous.
- 5478 **Ordinance No. 1685 authorizing issuance of temporary notes; Project 146, Town Center Plaza; \$3,500,000.** The ordinance was considered and passed on motion of LaHue, seconded by Taylor. Roll call vote was unanimous.
- 5637 **Ordinance No. 1686 authorizing issuance of temporary notes; Project 170, Mission Rd. Rehab. south of 135th St. (to 143rd St.); \$800,000.** The ordinance was considered and passed on motion of Taylor, seconded by Clawson. Roll call vote was unanimous.
- 5675 **Ordinance No. 1687 adopting the State Line Road Map and authorizing the Mayor and Director of Public Works to execute an official drawing package locating the Missouri-Kansas state line in relation to State Line Road between Kansas City, Missouri, and Leawood, Kansas; and superseding Ordinance No. 690 passed by the Council March 2, 1981.** The ordinance was considered and passed on motion of Rasmussen, seconded by Clawson. Roll call vote was unanimous.
- 5985 **APPROVAL OF APPROPRIATION ORDINANCE NO. 812.** On motion of Bold, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.
- 6007 **SCHEDULE WORK SESSION.** A joint City Council/Plan Commission work session was scheduled for August 11th, 7:00 P.M., to discuss the results of the Bucher, Willis & Ratliff traffic study for the area of 135th and Mission Rd. in conjunction with the proposed retail development (Price Chopper) of the northeast corner of that intersection.
- 6220 10:20 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



MINUTES  
PUBLIC HEARING

Tape No. 391

- # 51 Minutes of a hearing for public comment on the proposed 1998 Budget, held Monday, August 4, 1997, at 7:00 P.M., in the Council Chamber, 4800 Town Center Drive, Leawood, Kansas.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Ronald LaHue was absent. Staff present: Richard J. Garofano, City Administrator; Julie Hakan, Human Resources Director; Captain Pat McCarthy, Police Department; Joe Johnson, Director of Public Works; Harry Malnicof, Finance Director; Ben C. Florance, Fire Chief; Mark Andrasik, Director of Information Services; Scott Whitaker, Director of Parks & Recreation; and Martha Heizer, City Clerk.

Councilmember Rasmussen opened the hearing. Mayor Peggy J. Dunn was absent.

William Bowden, 11005 Alhambra, a member of the City's ad hoc Stormwater Management Committee, said that the committee had given the Council recommendations for the funding of stormwater improvement projects. He hoped that the funds in the 1998 budget would be used to implement the recommendations and not be used only to start new projects. If funds were still available after implementation of the committee's recommendations, then the Council should proceed with any needed new projects. Not to implement the recommendations would constitute a great waste of the City's citizen resources.

Mike Eggleston, 10505 Pawnee Lane, a member of the City's Arts Committee, thanked the Council for supporting citizen demand for arts programs in the 1998 budget. He said that the committee was in the process of drafting a City policy/procedures for the acquisition of public art on behalf of the City. The document would probably be sent to the Council for consideration in 30-60 days.

Councilmember Bold said that the City was appropriating more money for stormwater projects. While the budget as it stood didn't have specific instructions for the use of funds, the Council did realize that the time had come for the City to develop a consolidated strategy for attacking stormwater problems. He said it was also important to note that the budget did have a substantial property tax cut, cut in the mill levy.

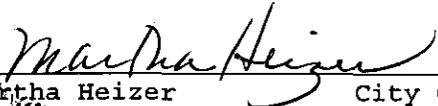
G. Gordon Thomas, 10516 Mohawk Lane, felt there should be another highly publicized public hearing on the budget very soon, in order to have a greater number of residents in attendance to give input about the budget.

Mr. Rasmussen asked for further information about a Police Department request for a School Resource Officer (SRO) for the Blue Valley middle schools for educational programming and enforcement activities. Police Captain Pat McCarthy explained that an SRO acted as a counselor, mentor, friend for students, and handled enforcement when crimes occurred. It had been police experience that some of the more troubled children were in the middle schools. The police could develop a better relationship with the children by having a resource officer on site. Part of the salary would be paid by the school district. A resource officer

functioned much like a D.A.R.E. officer but at a more mature level.

Councilmember Taylor strongly suggested that for the 1999 budget, 3 departments be selected to have a zero budget commitment as a new budget concept, to challenge department heads to justify their expenditures.

The hearing was closed at 7:15 P.M.

  
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Martha Heizer City Clerk



**Minutes Summary**

Audio Tape No. 391

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, August 4, 1997. Councilmember Rasmussen presided in the absence of Mayor Peggy J. Dunn.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Ronald LaHue was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; Captain Pat McCarthy, Police Department; Ben C. Florance, Fire Chief; Diane Brooks, Planning Department; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

# 551 The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after a consensus that the following items be added to or removed from the agenda:

1. Added (by Bold) - a discussion of the Bucher Willis & Ratliff citywide traffic study with first emphasis on the 135th and Mission Rd. area (new Price Chopper location).

2. (Bold) Ordinance amending Section 4-5 of the "Leawood Development Ordinance" relating to sign regulations removed and continued to the August 18th Council meeting because the Council had not had sufficient time to study the proposed ordinance.

3. Added (by Gill) - discussion of the reconsideration of a previous vote to remand to the Plan Commission the request of American Portable Telecom (APT) for a special use permit for a cellular tower at 96th and Lee Blvd.

4. Added (by Rasmussen) - a discussion of the reconsideration of the installation of a pedestrian crosswalk at 119th and Ensley Lane.

5. (Campbell) Ordinance granting an easement to Williams Pipeline Co. to relocate a gas line in the vicinity of the Ironhorse Golf Club removed and continued to the August 18th Council meeting on request of developer Mark Simpson who had not had sufficient time to review Councilmember Rasmussen's suggested changes to the easement. (Mr. Rasmussen felt that the matter should be discussed since it had been formally continued from the last meeting. There was no written ordinance before the Council, only the easement presented at the last Council meeting, not Mr. Rasmussen's suggested material distributed in this meeting's Council information packet. Action should be taken on the easement. If action was against the easement, then the Council needed to give directives to the City Attorney as to how to approach the easement.) Mr. Simpson said it was his goal to revise the (7/21) easement to more closely fit the City's latest requirements/suggested changes.

6. Added (by Taylor) - a discussion of the arbitration settlement with Abend Singleton Associates, the architects for the new City Hall.

1170 **CITIZEN COMMENTS.** Jeff Nessel, 12012 Ensley Lane, addressed the American Portable Telecom (APT) request for a special use permit for a cellular tower at 96th & Lee Blvd. which had been remanded to the Plan Commission. APT had agreed that if they could use their original application to co-locate on the existing police station tower at 90 feet, they would accept the super majority vote requirement for approval when the matter was returned to the Council by the Plan Commission. Now it appeared that if the Plan Commission approved the final plan, only a simple majority of the Council would be required to approve the application. It would appear that the City was trying to preclude litigation by APT (as had occurred in Overland Park) with this kind of "settlement." He asked if it was the City's policy to grant approvals to tenants without any lease agreements in place detailing rent, term of lease, etc. He didn't know of any public discussion of contract terms. Only by public discussion could the City avoid what he called the "disastrous" 25-year, \$400-per-month contract with the current tenant on the tower, Cellular One. He said that part of the contract with Cellular One stated that the City could dismantle the tower if a new police communications system was introduced which would be the case in 1998. He also said that residents were originally led to believe that the tower was for police communications only. He felt that the Council should consider taking the current tower down, not adding more carriers.

Don Meeker, 9610 High Dr., also spoke about the cellular tower. He was concerned that the attorney for APT at the Plan Commission meeting suddenly felt that perhaps he didn't need to pursue the special use permit application, but rather be able to simply enter into a lease agreement with the City. Mr. Meeker felt strongly that there should be a special use process to cover the application. He cited sections of City ordinances relating to special uses. The special use process provided due notice to residents and chance for public input. He urged that the Council reconsider the remand to the Plan Commission and that the special use process remain in force for the application, and that a simple lease agreement not be substituted for that process.

1544 **CONSENT AGENDA**

Four items were removed for further discussion. The following were approved unanimously on motion of Bold, seconded by Taylor:

1. Minutes of the July 21, 1997, Council meeting;
2. Pay Request No. 8 (FINAL) by Seal-O-Matic Paving in the amount of \$52,198.60 for the 1996 Residential Street Rehabilitation project;
3. Pay Request No. 13 (FINAL) by Reno Construction Co. in the amount of \$52,628.72 for 83rd St. improvements, State Line Rd. to west City limits;
4. Emergency replacement and installation of breathing air compressor for the Fire Department in the amount of \$24,500;
5. Authorize low bidder Olathe T-Shirt as uniforms and T-shirts vendor for the 1997-1998 Parks & Recreation season for the amount of \$56,948.00;
6. Authorize 2 additional temporary easements to KN Interstate Gas Co. at the South Park for a total of \$1,000 to be paid to the City.

Pay Request No. 1 (FINAL) by Musselman & Hall Contractors in the amount of \$46,645.44 for the 1997 Slurry Seal project. There was discussion that a slurry seal extended the life of a street 10-15 years before an overlay would have to be done, 1/10 to 1/15 the cost of an overlay. On motion of Bold, seconded by Clawson, Council unanimously approved the pay request.

Proposal by Seal-O-Matic Paving Co. to perform Town Center Plaza Phase 2 Nall Ave. improvements for a total estimated cost of \$53,760.85 (site preparation, reconstruction of storm sewers, and curb inlet and roadway improvements, to expedite the AMC Theater Development). Councilmember Taylor knew Seal-O-Matic as a paving, asphalt (sub)contractor rather than as a general contractor hired to do storm sewer and curb and gutter work.. He was concerned that Seal-O-Matic might not be qualified to be a general contractor with bonding capacity and expertise. Public Works Director Johnson had no problem with Seal-O-Matic doing the Nall Ave. improvements; they had acted as a general contractor on several Leawood projects in the past. On motion of Taylor, seconded by Clawson, Council unanimously approved the proposal.

Authorize Data Access and License Agreement with Johnson County to allow the City to share the AIMS (Automated Information Mapping Systems) information created by the County for an annual fee of \$5,437.50. Councilmember Clawson asked how proprietary information about Leawood residents would be handled and safeguarded. Information Services Director Andrasik said that City staff accessing the information would be required to sign and date a GIS agreement that stated that they had read and agreed to in full the data access license agreement. If any staff member downloaded the information and used it for solicitation purposes, the City would run the risk of losing the license and the staff member would be subject to disciplinary action, including the possibility of dismissal. On motion of Taylor, seconded by Clawson, Council unanimously approved the agreement. It was noted that all of the information on the AIMS was public information through sources other than the City.

Authorize negotiated contract with low bidder KLC (all bids had been previously rejected by Council) for construction of a restroom/concession addition to the Lions shelter at Leawood Park (106th & Lee Blvd.) not to exceed \$124,000. Parks & Recreation Director Whitaker assured Councilmember Taylor that a small contingency for change orders had been included in the not-to-exceed figure. On motion of Taylor and duly seconded, Council unanimously authorized the contract.

#### PLAN COMMISSION

- 1975 **Request for a special use permit to allow the construction of 2 temporary paved parking areas, Steeplechase subdivision Lot 19, southeast corner of 145th & Howe Dr., to serve a neighboring model home.** On motion of Clawson, seconded by Taylor, Council approved a permit for a period of one year; Taylor "disqualified himself from the vote," all others in favor.

- 2030 **Resolution No. 1359, attached as part of the record, approving preliminary site plan for Harrington Financial Group (bank) located at the southwest corner of Tomahawk Creek Parkway and College Blvd.** Councilmember Clawson moved to adopt the resolution, seconded by Peppes. There was discussion of reduction in parking requirements and land banking for additional parking spaces if needed. In response to Councilmember Taylor's concern that there were not enough drive-through stalls, the applicant explained that they were more of a private bank with most transactions occurring inside the bank, as opposed to a commercial bank.

The applicant explained that there would be a small amount of leased space - the bank itself on the first floor, with Smith Breeden Associates (financial consulting and money management firm) taking 75% of the upper floor, and the holding company of the bank and another related bank holding company occupying the other 25% - all related by ownership in some way.

The motion to adopt the resolution carried unanimously.

- 2899 **Ordinance No. 1688 rezoning from CP-0 to CP-1, Harrington Financial Group.** The ordinance was considered and passed on motion of Taylor and duly seconded. Roll call vote was unanimous.

#### OLD BUSINESS

- 2933 **Discussion of Bucher Willis & Ratliff citywide traffic study with first emphasis on the 135th and Mission Rd. area (new Price Chopper location).** Councilmember Bold said that staff and/or the traffic study consultant had determined that the Council should not receive a copy of the study until the joint work session with the Plan Commission on Monday, August 11th, at which time the consultant planned to give a presentation of results. Mr. Bold moved to cancel the August 11th meeting and that it not be rescheduled until such time as the Council had had the study for a minimum of 7 days prior to the meeting. Motion seconded by Taylor.

City Administrator Garofano said it was the consultant's intent to make a presentation of their findings to date. It was a joint work session so the Council and the Plan Commission could receive the information together and review it at that time. Depending on comments and concerns expressed at that time, the consultants would then prepare a draft report.

Councilmember Clawson thought the traffic study was to be information from an independent source telling the Council what the traffic would be. It sounded like the final report would be based upon input from the Council, which to Mrs. Clawson watered it down.

Councilmember Rasmussen recalled that when a study was to be used for decision-making purposes by the Council, it would be available just as soon as it was finished. Mr. Garofano said the study was not finished; if issued today, it would only be a draft report.

Mr. Bold said that he was not an expert in traffic analysis and needed to rely on other advisors to help him sort through the data and understand it. The purpose of the joint work session was to have rational and logical discussion of the study's results. He would not be prepared to discuss the study if he received it the same evening. He would need the report for at least a week before the work session. Mr. Garofano reiterated that the intent was not for the meeting to be the end all to the report; it was to be a presentation "in progress" and a question-answering session. Mr. Bold said he would not be able to ask questions until he had

had a chance to review the document in advance. Councilmember Campbell agreed; it would help him in order to give input and ask rational questions.

Mr. Garofano did not know if the consultant planned to provide handouts; the consultant planned to use a computer model. Public Works Director Johnson said he could ask the consultants what they had that they could make available ahead of time. Mr. Campbell assumed they must have something in writing to show what their presumptions were in some form to help make the work session a more valuable experience for everyone.

Mr. Bold's motion to cancel the meeting carried unanimously. Mr. Campbell assumed that Mr. Johnson would take the vote as a directive to advise the consultant that the Council receive copies of the study, and get them fairly quickly, perhaps for a joint work session on August 25th. Mrs. Clawson was concerned about attempts to bias the traffic study, and without a doubt, there were Councilmembers and Plan Commissioners who had very strong feelings regarding a particular application that had been made to the Council with regard to 135th St. She wanted to receive the report in as unbiased a fashion as possible because 135th St. was a very long stretch of roadway to develop and the traffic study was being done to help the Council in voting on applications that would come forth all along 135th St., not solely for the Price Chopper project at 135th and Mission Rd. The traffic study would be worthless if biased. Mr. Bold took exception with Mrs. Clawson's comment that Councilmembers were trying to influence the study, because he felt that Bucher Willis & Ratliff had made it very clear that it was their intention to produce as objective a traffic study as possible.

- 3454 **Reconsideration of a vote at the July 7, 1997, Council meeting to remand to the Plan Commission a request by American Portable Telecom (APT) for a special use permit for a cellular tower at 96th and Lee Blvd.** Councilmember Gill moved to reconsider the vote taken July 7, 1997, to remand to the Plan Commission APT's request for a special use permit, seconded by Clawson.

City Attorney Wetzler said that a motion to reconsider should have been made at the meeting following the remand which was the July 21st Council meeting, and further, the Plan Commission did have the matter before them the end of July even though they didn't act on it. Normally, a motion to reconsider would be made at the same meeting at which a matter was discussed. There had been no notice to APT that the matter would be considered tonight. He also said that since the remand vote, he had come to the decision that APT had made significant substantial changes to their plans which became an application that no longer required a special use permit, but was rather a revised site plan. He didn't feel that reconsideration by the Council was proper at this time. He said that APT would still have to come to terms with the Council since the Council was the only body with the authority to authorize an agreement for use of City property, but the matter was still pending before the Plan Commission.

Councilmember Campbell wanted Council to direct staff to ensure that all interested parties be notified when the matter was to return to the Council, regardless of the form in which it would return (a special use permit, site plan, lease agreement), so the public could give input, even if procedurally, public comment was not required.

Mr. Gill said that the matter would not come back to the Council as a zoning matter (special use permit) as previously agreed to by APT, but strictly as a contract to use City property. Mr. Wetzler said he was sending notice to APT that if they did not intend to be bound by their agreements made at the July 7th Council meeting, then they should withdraw their current application and start the process over, file a new application. If they were unwilling to do that, Mr. Wetzler would advise the Plan Commission accordingly.

Mrs. Clawson withdrew her second to the motion to reconsider. Councilmember Bold then seconded the motion. Mr. Bold said that the Council would not have reconsidered the matter at the July 21st Council meeting because there was no way they knew at that time that the matter needed to be reconsidered.

Mr. Gill felt a vote to reconsider the remand was appropriate, but he was not in favor of discussing the matter further tonight or taking definitive action because interested parties, including the applicant, had not been notified that he had planned to add the issue to the agenda tonight. He said that if the applicant did withdraw the application that was remanded at their request, then the rules for zoning changes should be followed - applications for those changes were to be made by property owners or their authorized agents. To this point, the City had never authorized APT to do anything with respect to City property at 96th and Lee. APT had not kept promises made at the July 7th Council meeting, so that was why he wanted the Council to rescind the remand to the Plan Commission.

Mr. Wetzler said that he had told the Plan Commission that they should treat the application as a new application if they chose to consider it. The Commission said they would not consider it until they had a staff report for it as a new application for a revised final site plan. The applicant felt they had not made any changes, but Mr. Wetzler felt they had indeed made significant changes - eliminated a tower, and planned to attach another antenna to the existing tower at the police station. If the application was treated as a revised final site plan, it would not have to be returned to the Council on the planning issue. The matter would still have to be considered by the Council at some point in time to authorize an agreement between the City and APT establishing the terms under which, if at all, APT could attach the antenna to the existing tower.

Councilmember Taylor mentioned that some other issues were clouding the whole matter - he had understood that some lease agreement indicated that the existing tower would be removed should it not be used by the Police Department, and he thought that Police Chief Cox had indicated at a previous meeting that the Department would be able to share another tower with Prairie Village at 7700 Mission Rd. And now the City was considering allowing another carrier to use a tower which might be removed in the near future.

The motion to reconsider carried; Peppes, Campbell, Clawson opposed; Bold, Rasmussen, Gill, Taylor in favor.

Mrs. Clawson said that if the existing tower was going to be removed, the APT issue was over. The residents were certainly in favor of its removal.

Mr. Campbell preferred to reconsider the APT issue the first meeting in September to give everyone a little more time to deal with it.

Mr. Gill moved to reconsider at the August 18th Council meeting APT's request that the Council remand its special use permit application to the Plan Commission. Motion was duly seconded and carried unanimously. Resident Don Meeker asked that staff notify Mrs. Knopp, chairman of the resident protest group, if for any reason, the issue would not be on the August 18th Council agenda. Mr. Meeker mentioned that the existing tower probably wouldn't be removed because the existing lease agreement with Cellular One gave that carrier use of the tower for 25 years beginning July 1, 1994. That issue would also need to be addressed.

- 4740 **Discussion of the installation of a pedestrian crosswalk at 119th and Ensley Lane, near The Church of the Nativity.** Councilmember Rasmussen said that the crosswalk was discussed and approved approximately 2 years ago. He felt that the Council should reconsider the matter, review the whole traffic picture; he mentioned there was a bad accident over the weekend at 119th and Mission Rd. Mr. Rasmussen moved to reconsider the matter (in order to reinstruct staff to review the whole traffic picture on 119th St., including the possibility of a crossing guard.) Motion was duly seconded and carried unanimously. Mr. Rasmussen said that the Council was no longer instructing staff to install the crosswalk at 119th St. and Ensley Lane.

Councilmember Campbell moved that the City provide a crossing guard at 119th and Mission Rd. during regular school hours, and study the traffic picture (long-term) to maintain pedestrian safety, with an informational report to the Council by the next Council meeting on the recruitment of a crossing guard, seconded by Taylor. City Administrator Garofano suggested that The Church of the Nativity be contacted to see if they knew of anyone who might be interested in being a crossing guard; it was often difficult for the City to recruit for this position, and the City couldn't rely on police officers to perform this duty.

Councilmember Bold was concerned about left turn traffic at the east entrance/exit of Nativity onto eastbound 119th St. (poor sight distance). It was marked "no left turn" from 3:00-4:00 p.m. but not marked for the morning traffic. He asked that that problem be reviewed. Mr. Campbell felt more police radar presence was also needed.

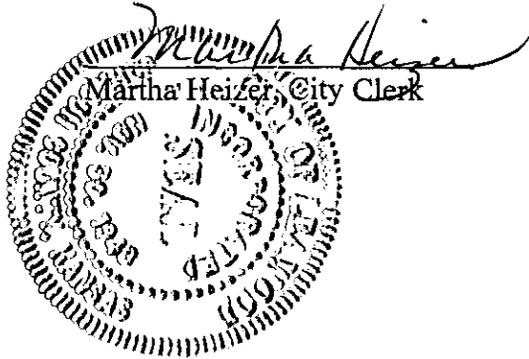
Mr. Campbell's motion carried unanimously.

#### **NEW BUSINESS**

- 5463 **Request to reject one bid received for the 1997 Asphalt Park Trail Rehabilitation/Overlay.** The only bid was in the amount of \$32,463.20, over the engineer's estimate of \$23,533.70. On motion of Clawson, seconded by Taylor, Council unanimously rejected the bid. Staff planned to request a bid from TASC0, contractor on the I-435 access road bike trail, to see if they could offer a proposal within the parks budget. If not, staff would bid the project again early next year.
- 5500 **APPROVAL OF APPROPRIATION ORDINANCE NO. 813.** On motion of Peppes, seconded by Campbell, Council unanimously approved the ordinance on roll call vote.

5517 **Discussion of the arbitration settlement with Abend Singleton Associates, architects of the new City Hall.** Councilmember Taylor complimented legal staff on their success with the arbitration. He suggested that the City modify its contracts with consultants to avoid problems.

5578 9:50 P.M. There being no further business before the Council, the meeting was adjourned.



**Minutes Summary**

Audio Tape No. 392

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, August 18, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: \*\*\* Adam Bold (left the meeting at 2:00 a.m.), John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; J. Stephen Cox, Police Chief; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Gill, after the addition of a discussion of the "sport court" ordinance, and a discussion of the jazzercise program conducted in the Community Center at City Hall.

**RECOGNITION OF DETECTIVE SERGEANT CRAIG HILL FOR 25 YEARS OF SERVICE TO THE CITY.** The Mayor presented a plaque to Sergeant Hill in honor of his service to the City from August 18, 1972 to August 18, 1997. Police Chief Cox presented a Police Department plaque to him also.

**RECOGNITION OF THE FIRST ANNUAL D.A.R.E MIDDLE SCHOOL ESSAY CONTEST WINNERS LAUREN TOWERMAN FROM LEAWOOD MIDDLE SCHOOL AND DANDI RICHARDSON FROM PRAIRIE STAR MIDDLE SCHOOL.** The students presented their essays to Mayor Dunn. D.A.R.E. Officer Anthony Woollen presented a \$500 U.S. Savings Bond to each student. The Leawood Manor Apartment complex funded the bonds.

**CITIZEN COMMENTS.** Steve Melcher, Chairman of the Leawood Chamber of Commerce and Johnson County executive officer with Commerce Bank (in Leawood), spoke about the proposed ordinance relating to banners (see tape meter #1290). He said that Leawood's fairly liberal ordinance regulating banners had been tightened up. The Chamber never felt that the current ordinance had been abused, but they understood that the City was traditionally a residential community and not a commercial one, and that there could be some citizen complaints about prolonged usage of banners. The proposal for banners called for 40 days maximum in 10-day increments. That might be appropriate for some businesses in the community, but many businesses, including banks, ran 30-40 day campaigns through newspapers and television, and wanted to fly banners for more than 10 days to get the full effects of their advertising. He suggested a maximum of 40 days for any one campaign,

followed by 40 days downtime. He suggested a maximum of 100 days be in effect for the banners, with progressively higher fees as longer time periods were used. Banners should be allowed in proportion to the size of a building to be effective. He requested that the Council consider relaxing the proposed ordinance to be more favorable towards local businesses.

Mike Peninger, 12721 Catalina, told the Council that he had put up a basketball hoop on a 20' x 20' slab in his backyard (the usual place, the driveway, was too steep) without knowing that he needed a permit to do so. He did secure the approval of neighbors, however, before hiring a contractor. He found out about the "sport court" ordinance and tried to obtain a variance from the ordinance. There was too much permit work involved. He requested that the Council consider amending the ordinance to allow the type of slab he had put in, which was small and not lighted, and perhaps not contemplated by the "sport court" ordinance. (This issue had been added to the agenda by Councilmember Bold.)

657 **CONSENT AGENDA.** The following were approved unanimously on motion of Peppes, seconded by Bold:

1. Minutes of the August 4, 1997, public hearing on the proposed 1998 budget;
2. Minutes of the August 4, 1997, Council meeting;
3. Arts Committee report (minutes) of their July 22, 1997, meeting;
4. 50th Anniversary Committee report (minutes) of their July 23, 1997, meeting;
5. Historic Commission report (minutes) of their July 15, 1997, meeting;
6. Departmental reports;
7. Application for renewal of a retail liquor occupation license by Faust's Retail Liquor, 11841 Roe Ave. in Camelot Court Shopping Center.

670 **PLAN COMMISSION**

**Resolution No. 1360, attached as part of the record, approving a revised preliminary site plan for an addition to the Hereford House restaurant at 5001 Town Center Drive.** Councilmember LaHue moved to adopt the resolution, seconded by Peppes. There was discussion of a variance from 40-foot building setbacks in Special Development (SD) zoning districts. Planning Director McKay also explained that the addition to the building was for storage space only, so no additional parking spaces were required. The resolution was adopted unanimously.

970 **Resolution No. 1361, attached as part of the record, approving preliminary site plan and preliminary plat for Highlands Ranch 2nd Plat (formerly Leawood Falls) at approximately 138th and Manor Rd.** Adopted unanimously on motion of Clawson, seconded by Taylor.

1020 **Resolution No. 1362, attached as part of the record, approving a revised preliminary site plan for a remodel of Pride Cleaners at 103rd Terr. and State Line Rd.** Adopted unanimously on motion of LaHue, seconded by Clawson.

- 1290 **Ordinance No. 1689 amending Section 4-5 of the "Leawood Development Ordinance" relating to sign regulations.** Councilmember Rasmussen moved to pass the ordinance, seconded by Clawson.

Councilmember Bold moved to amend the motion to change the ordinance to allow for a maximum of 100 days per year for temporary banners in order to help businesses in the City prosper. Mr. Bold clarified that he felt a business should be allowed to put up a banner for a maximum of 30 continuous days with a maximum of 100 days, and he agreed with the Leawood Chamber of Commerce's proposal that in addition to allowing the extended periods up to 30 days, that the fees be increased, and he wanted that included in his motion to amend (increased fees would help offset the City's administrative enforcement costs). He restated his motion to amend - that the ordinance be amended to allow temporary banners to be displayed for up to 100 days per year with a maximum of 30 continuous days at any one time, and that those 30-day periods be separated by at least a 30-day downtime, and that the fees be increased as proposed by the Chamber of Commerce. Motion seconded by Campbell.

Councilmember Rasmussen said that Wards 1 and 2 had had to live with the installation of unsightly banners by a certain long-established commercial owner. The City might have a reputable bank or retail business, but the fact remained that there were weather conditions that caused tatters hanging off structures. He felt strongly that a Plan Commission study of this issue had great validity even though he sympathized with new business people in the community. He could not in good faith state that they would be any different than the experience Wards 1 and 2 had suffered.

Councilmember Taylor supported Mr. Rasmussen. Banners were not compatible with architectural features of buildings or signage already in place, but sometimes trashed the fronts of facades. And sometimes they were not well managed and/or cared for.

Mr. Bold felt that the business community would be amenable to strengthening the ordinance - the Planning Department could regulate the materials and colors allowed. The current ordinance allowed banners. The question was for how long would the City permit the banners to be in place. He didn't feel that an additional 60 days per year would create an unsightly situation in the City.

Councilmember Clawson could not support leaving banners up for 100 days per year based on the number of complaints about poorly managed and cared for banners at the shopping center at 95th and Mission Rd. in her ward that she had received.

Mr. Bold agreed that the City had had problems with one particular commercial property owner, but in general, Leawood businesses tended to be of extremely high caliber.

Planning Director McKay pointed out that when the sign ordinance was originally considered by the Council, the number of banners and their time limit was the only item not approved; that issue was returned to the Plan Commission so that body could discuss the matter with the Chamber of Commerce. All other banner requirements had been approved. He said that the definition of a banner in the current ordinance allowed for any flexible material; there were very few plain paper banners; most were strong nylon paper or plastic. Mr. McKay didn't want to be placed in the position of enforcing colors as long as a business had an appropriate permit; there would still be businesses that would not be aware that a permit was required and would go ahead and put up banners, having spent around \$500 for them, using colors to which the City might object.

Councilmember Gill felt the City had come up with a development ordinance they could be proud of that resulted in attractive appearance and signage, etc., and he noted that other cities in Johnson County didn't allow anywhere near a maximum of 100 days per year. He would be amenable to some flexibility, but was opposed to a maximum of 100 days per year and the length of each incident.

Mr. Rasmussen reminded Council that businesses that came into the City came into the City knowing what the City's standards were.

Mr. Campbell called for the question, seconded by Clawson. Motion to call for the question carried unanimously.

Mr. Bold's motion to amend Mr. Rasmussen's main motion to pass the ordinance failed; LaHue, Bold, Campbell in favor; all others (5) opposed.

Mr. Bold moved to amend the motion to pass the ordinance to state that temporary banners be allowed for a maximum of 60 days per year, no more than 15 days at a time, with 15 days of downtime, seconded by Clawson. It was clarified that discussion of fees was improper at this time since fees were determined by annual Council resolution. Motion to amend carried; Rasmussen, Taylor opposed; all others (6) in favor.

Mr. Rasmussen's main motion as amended to pass the ordinance carried on roll call vote; Rasmussen, Taylor opposed; all others (6) in favor.

Mr. Taylor felt the Council should request the Plan Commission review Section 4-5.10 E) Sign Area Calculations; Maximum Area , to consider that each sign letter not exceed 36" in height. Mr. Taylor said that the current 200 square feet per sign would easily allow a sign to be 5 feet in height and 40 feet long. He felt the 5 feet needed to be tightened; 36" letters were more than adequate for signs for any type of commercial facade. Planning Director McKay was concerned about how 36" letters would look on a massive building. He felt it was the Plan Commission's purview to review and make those kinds of changes. Mr. Taylor moved to add discussion of this matter to the end of the agenda under Other Business, seconded by Gill. Motion carried; Peppes, LaHue opposed; all others in favor.

- 2445 **Ordinance amending Section 4-3 of the "Amendment to the Leawood Development Ordinance" providing for changes in the special use provisions for cellular towers.** Doug Allmon from the Planning Department reviewed 18 issues in the staff report, including health concerns.

Item #7 concerned co-location and cooperation between competing carriers. Section 4-3.10 of the proposed ordinance stated that prior to issuance of a building permit, an applicant would have to provide a signed statement of intent that guaranteed non-discriminatory pricing for access to the tower by any competing carrier, and that the price for access would be based on the current market rate for co-location. Agreements would be reviewed by the City Attorney. Councilmember Gill suggested that in order to keep the City (including the City Attorney) out of the middle of problems between carriers, a third party beneficiary agreement provision be included in the ordinance. The companies themselves would have to attempt to settle their own disputes, and if they couldn't, one of them could go to Johnson County District Court to enforce a third party beneficiary agreement.

Item #8 concerned the requirement of a performance or maintenance bond in the event of a carrier bankruptcy or other problem. The Plan Commission suggested that a performance or cash bond be secured prior to issuance of a building permit so that the City would have a way to maintain and/or remove the tower. Councilmember Rasmussen said there was the problem of towers falling over (in high winds for instance). The City could require carriers to carry the premiums on an insurance policy. Another alternative would be the bonding approach as the Plan Commission had suggested. He highly recommended that the City make sure that if towers fell over, it had a means of funding their removal from City streets or houses.

Item #9 concerned the notification requirement of 200 feet being expanded to a 1000 feet radius. Staff felt it should be left at 200 feet, which was the distance established by state statute for notification. Staff felt that the 1000 foot notification area might actually serve to diminish the chances that a valid protest petition be filed against any particular project. Mr. Gill did not agree. The fact that the City would gratuitously give greater notice for a cell tower than was given for anything else, didn't seem to have anything to do with protests. And he felt the City should give notice at 1000 feet for cell towers. City Attorney Wetzler said that staff felt that by giving more people the right to protest, the City could conceivably set up a situation where it would require more people who might not be as directly affected by the matter as others. Mr. Gill realized the issue dealt with who received notice, not with an attempt to broaden protest rights.

Mr. Gill said he would support the proposed ordinance as written. He did, however, feel that in Section 4-3.4 a), exceptions provided for church sites and governmental property should be deleted. Those properties were not any different than any other properties subject to requirements.

3696 Don Meeker, 9610 High Dr., said the Council should pass the ordinance as soon as possible so the City could have some standards by which to regulate cellular towers within the City limits. He suggested a few changes relating to antennae, variance procedures for cellular tower height, compliance of the cumulative effect of all antennae on a tower with radio frequency radiation emission guidelines, requirement of special use permits for additional antennae over and above the original plan/special use permit for a tower, and the addition of more federal regulatory agencies (FCC, EPA, OSHA, National Institutes of Health) to allow the City to review more studies. If the courts determined that cities were free to take into account the health of their residents in making cellular tower decisions, Mr. Meeker was interested in seeing that included in the ordinance. Mr. Meeker also wanted to be sure that all cellular towers, analog and digital, were covered under the ordinance by changing the megahertz in the definition of "microwave."

4893 Frances Petri, 3403 W. 127th St. adjacent to Fire Station No. 2 at 127th and Mission Rd. where an applicant had requested the construction of a cell tower but withdrew the application after vigorous protest, agreed with Mr. Gill that "government facilities" in Section 4-3.4 a) should be deleted to close the door on any future applications for the fire station location, or a statement added that the fire station location would be an exception to any future applications.

Robert Jones, 13109 Falmouth in Waterford subdivision, an architect, said that cellular towers had no aesthetic value in the middle of a residential neighborhood.

Michelle Rossier, 12705 Mohawk Circle, asked why the City would want to combine public safety radio equipment with cell towers. If the fire station needed that equipment, the City should obtain it, but without a cell tower. Cell towers devalued properties.

Milly Cundy, 12628 Howe Dr., spoke about the aesthetic value of her neighborhood. The City could do a better job of finding locations for cell towers.

Bob Witcher, 9624 Lee Blvd., said that the towers were very unsightly.

5543 Jim Bowers, attorney representing Southwestern Bell Wireless and Sprint Spectrum, said that the proposed ordinance was not fair to his clients, did not reach the objectives set out in the Telecommunications Act of 1996 that mandated fairness, reasonableness, and eliminated barriers of entry into the market place. Note the following:

Section 4-3.3 b) relating to bond requirements - to allow the City to have discretion to determine the amount of cash or performance bond was unreasonable. He recommended that the City look at the Mid-America Regional Council's recommendations in that regard.

Section 4-3.4 b) relating to grid information system - it would require his clients to divulge what they believed to be proprietary information about their systems that was beyond the scope of what the City required to reasonably regulate the location of the facilities in the City. Councilmember Clawson said that as a consumer of wireless services, she found that the company from which she purchased services pretty much provided that information to her as a consumer. She didn't understand Mr. Bowers claim that it was proprietary information. Mr. Bowers said that the precise location of his client's network, the various antennae that related with each other, in adjacent cities were considered to be proprietary, going beyond the scope of Leawood's need to reasonably regulate the location of antennae in Leawood.

Section 4-3.5 line 3 - he suggested that the City exclude the lightening rod from the 150-foot height limitation. They were typically not considered part of the overall height of the antenna for regulatory purposes.

Section 4-3.6 b) - would prefer 200 foot minimum requirement (as in Kansas City) from occupied residential structures in residential districts. He believed that Leawood's rule of 500 feet from the property line of a residential property or property to be used for residential purposes had no foundation for regulatory purposes.

Mr. Bold suggested adding language to Section 4-3.10, Co-location, which would address a third party, a property owner, who was not a telecommunications company, who was interfering with the process and causing the City to build additional towers.

Mr. Gill said that proprietary information about towers in other cities was vital to know because Leawood was very long and narrow. Any tower in Leawood would provide service to adjacent communities. He didn't understand what the big secret was if staff could call surrounding communities and find out information anyway.

Mr. Bowers said his client had no problem with providing an inventory of existing antenna locations within a 2-mile radius of a proposed tower site. That addressed the issue of Leawood being long and narrow. He clarified that the grid information was considered proprietary by his client. Mr. Gill said it was the grid information that was the only justification for citizens to use the towers and Mr. Bowers' clients to build them, indicating whether or not cell phones would work.

Consideration of the ordinance was continued to the September 2nd Council meeting. City Attorney Wetzler thought that some people felt that if the City wanted to construct a tower, then the City should be subject to the same regulatory actions as anyone else; if a special use permit was required, then the City would have to make an application for such a permit which would be subject to protest, etc. On the other hand, when the City needed to construct a police tower or antenna for law enforcement purposes, some would say that that shouldn't be subject to certain zoning requirements. The issue needed to be clarified. The phrase "government facilities" in Section 4-3.4 needed to be clarified to clearly mean city facilities, not county or otherwise.

7044 **END OF TAPE**

**Tape No. 393**

**12 MAYOR'S REPORT**

Leewood's County Commissioner Annabeth Surbaugh said that the Commission was in the process of redistricting, redrawing boundaries. Leewood would probably end up being represented by 2 Commissioners rather than just Mrs. Surbaugh - Mrs. Surbaugh with 63% of a district and Commissioner David Wysong with 37% (stormwater problems were major issues), with I-435 being the dividing line, Mrs. Surbaugh south of the interstate (developing and zoning were major issues). Mrs. Surbaugh would remain the "major" commissioner for Leewood at the request of Commissioner Wysong.

**OLD BUSINESS**

- 225 **Discussion of granting an easement to Williams Pipeline Co. to relocate a gas line in the vicinity of the Ironhorse Golf Course.** Councilmember Taylor moved to continue the matter to the September 2nd Council meeting, seconded by Clawson. Motion carried unanimously.

10:50 P.M. On motion of Campbell, seconded by Peppes, Council voted unanimously to extend the meeting past 11:00 P.M. to 11:30 P.M.

- 398 **Reconsideration of American Portable Telecom's request that the Council remand its special use permit application for a cellular tower at 96th & Lee Blvd. to the Plan Commission.** City Attorney Wetzler reviewed a draft of a lease agreement with APT which had been distributed to the Council. There was no provision for a consideration or compensation to be paid to the City. That needed to be dealt with.

Mr. Wetzler said Council needed to know if the matter was a continuation of an earlier application that included a structure and a new tower on the same site as the existing tower, or was the applicant making a new application that involved the placement of another antenna on the existing tower.

Scott Beeler, attorney for APT, said his client understood that they were not under the special use application procedure, and never had been. They had been told they were under that procedure, but that was a mistake. APT was before the Council to present a lease to allow APT to place its antenna on the existing tower at 96th and Lee. City staff had indicated that APT was under a final site plan review.

Councilmember Gill asked Mr. Beeler if APT was abandoning its request to have a 135-foot tower at the police station. Mr. Beeler said they were, and were seeking an addition to the existing tower at the 90 foot level. They were abandoning the original plan to construct a new tower. Mr. Gill felt that a special use permit was required, with notice, protest, etc., and he had written Mr. Beeler about his belief.

Mr. Gill wondered that if the tower was no longer needed for City use and if it was removed in a period of less than 5 years, would APT agree to have a lease that could be terminated with that eventuality. He wondered if APT would consider a \$2,000 per month rent price rather than the \$600 written in APT's site agreement distributed to Council for consideration, and if APT would consider an exit clause to be available to the Governing Body. Mr. Beeler said that APT was prepared to pay a fair and reasonable market rate and was prepared to furnish information to show what that rate was. Mr. Beeler said that when APT's willingness to make an improvement with a great deal of value on behalf of the City was included in the "equation", the \$2,000 per month rent example was probably too high.

City Attorney Wetzler thought that Mr. Beeler was going to present a statement to the Council indicating that the issue was a new matter to be taken up by the Plan Commission at its next meeting, and not merely a continuation of an earlier application, regardless of who had made mistakes during considerations over the past several months. With a new matter, there wasn't any reason for the Council to have further consideration of the earlier application. The Council just needed to determine if they could come to terms with APT with an agreement that would permit another antenna to be placed on the existing tower. Mr. Beeler clarified that based on meetings with staff and understanding that his client was under final site plan procedure, APT had withdrawn the special use permit application, and staff had on file a final site plan application scheduled to be on the Plan Commission's next agenda, and the lease was the issue now with the Council.

Concerning any early termination of a lease mentioned by Mr. Gill earlier in the discussion, Mr. Beeler said he was familiar with the lease agreement with Cellular One, the current carrier on the existing tower. It did not have any such provision. As long as the tower was in existence and being used for communication purposes, he expected that APT would want its opportunity to be on that tower. On the other hand, if there was an agreement reached with Cell One to remove the tower, the lease agreement before the Council for consideration dealt with that situation, and APT would be subject to some discretion on the part of the City in that instance. Councilmember Taylor asked Mr. Wetzler if it was his opinion that the lease with Cellular One accurately reflected the City Council's ruling at the time they agreed to that lease. Mr. Taylor understood that there was language that had not been incorporated in the lease. Mr. Wetzler said that he had not reviewed the minutes of that Council meeting. Some people had indicated to him that there were additional conditions imposed on that lease that would have permitted an earlier termination. Those provisions were not incorporated in the lease. The question was whether or not there was a provision made by the Council that evening that imposed a limitation that the tower would come down at such time as it was not needed by the police department. Mr. Beeler said that APT would

abide by whatever written conditions there were in a lease with the City, and there was a provision for early termination in APT's lease before the Council.

1548 11:30 P.M. On motion of Clawson, seconded by Taylor, Council voted unanimously to extend the meeting to 12:00.

1828 Councilmember Rasmussen moved that the Council not consider any lease with anyone, seconded by Taylor.

1882 Jeff Nessel, 12012 Ensley Lane, was totally opposed to any tower at the police station.

Don Meeker, 9610 High Dr., spoke about appropriate procedures to be followed, special use permit procedures for due process of law.

12:00. On motion of Rasmussen, seconded by Gill, Council voted to extend the meeting to 12:30 a.m. LaHue opposed, all others in favor.

Councilmember Bold said his first choice was to remove the tower; it was unsightly. Until such time as that might occur, he didn't think it would be any more unsightly by allowing another antenna. Allowing another antenna would 1) relieve the need to have another tower somewhere else, and 2) the City would receive some compensation from APT.

2906 Mr. Rasmussen's motion failed; Rasmussen, Taylor in favor; Gill abstained; all others (5) opposed.

2985 Councilmember Peppes moved that the City enter into lease agreement negotiations with APT, seconded by Campbell. Motion carried; Rasmussen, Taylor, Gill opposed; all others (5) in favor. Mr. Gill didn't feel that there had been any demonstration of need in Leawood, no public need or benefit. He felt it was incumbent on the Council (as a property owner) to look out for the best interests of the citizens; he had not heard any citizen say they wanted another antenna on the property. No one had said they were getting bad phone service in the area. He felt that Cellular One in hindsight was a mistake; the City should have accommodated police needs with the finest communications equipment paid for with City funds, not with lease payments from and construction of a tower by a carrier. Property values had suffered and would continue to suffer. There were concerns about health. Also, APT was not offering the City anything close to fair value. He didn't agree with several provisions of the proposed lease agreement with APT. Mr. Campbell felt there would have to be some drastic revisions to the proposed APT lease that was before the Council. The Mayor stated that had she had an opportunity to vote on the issue, she would have abstained to avoid the appearance of a conflict of interest.

3396 **Discussion of adopting a master (standard) telecommunications franchise ordinance.** A recent effort had been undertaken by Mid-America Regional Council to lead area cities in a metrowide effort to develop an overall franchise fee strategy and a model ordinance for right-of-way management for use in the many requests that cities anticipated for telecommunications franchises in the future. Staff recommended that the City become active participants in the effort. Because of this effort and because Brooks Fiber and American Communication Services (the next agenda items) had requested continuances of their respective franchise ordinances, staff recommended that consideration of a master ordinance be postponed for a few weeks.

Councilmember Clawson moved that consideration of a master ordinance and the Brooks Fiber and ACSI franchise ordinances be continued to the September 15, 1997, Council meeting, seconded by Gill.

3600 12:30 P.M. On motion of Taylor, seconded by Rasmussen, Council voted to extend the meeting to 1:00 a.m. LaHue, Bold opposed; all others in favor.

City Attorney Wetzler said that in the next couple of weeks if it was apparent that there were still many uncertainties in the M.A.R.C. effort, staff would recommend that the Council go ahead and approve the Brooks Fiber and ACSI franchise ordinances under conditions that were acceptable to the Council with dramatically shortened franchise terms.

Motion to continue carried unanimously.

**Ordinance granting a franchise to Brooks Fiber Communications of Missouri, Inc.** - continued to September 15, 1997.

**Ordinance granting a franchise to American Communication Services of Kansas City, Inc.** - continued to September 15, 1997.

#### NEW BUSINESS

3987 **Discussion of jazzercise program at City Hall Community Center.** Tina Mullenix of the jazzercise program, 12505 Alhambra, reviewed her program. She said that in 1994 the City had contacted her and requested that she develop a program for dancing and fitness for Leawood Parks & Recreation. Dancing classes were held at various places in the City. As plans for the Community Center at City Hall progressed, she presented the jazzercise program to Parks & Recreation because it would be a program befitting Leawood held in the Community Center that citizens had funded with their tax dollars. She understood that the program would have to work around municipal court time and City Council meetings due to parking and noise factors. The program would supply funds for Parks & Recreation. She and Parks & Recreation Director Whitaker had agreed that the program needed at least 1 year to mature, then they would discuss the program and options. The program began May 17, 1997, in the Community Center. In 3 months, over 3,000 people had attended the classes. In the 3 months, there had been some conflicts which had caused her to change or cancel classes and move classes to other sites. She had understood after a meeting with the Mayor that any directive or recommendation concerning the program would come from the Parks & Recreation Advisory Board and then the matter would be considered by the Council and a vote taken as to whether or not the program would continue. But last week she received a

letter from Mr. Whitaker dated August 8th informing her that the City would no longer be able to grant a permit for the program effective September 10, 1997. She was never told that this could happen. When the new program brochure came out in July, her ad for the jazzercise program which she had submitted to Parks & Recreation had been omitted, which led her to believe that the City had already decided not to continue the program without her knowledge. People already had tickets for her classes through December 1997. She said that people were beginning to doubt the jazzercise franchise and the program and the City and what she was trying to accomplish through the program's mission statement and goals. She requested that the Council honor the 1-year commitment that she received from Mr. Whitaker and Parks & Recreation.

Mr. Whitaker asked the Council if they wanted to make program decisions or wanted him to make them. The jazzercise program was not a Leawood-run program, but a for-profit franchise business; did it belong in a not-for-profit building? The City simply registered people for the classes. He asked if the Council wanted to decide if the scheduling was the most appropriate for certain times, or did the Council want him to do that.

Councilmember Bold said that other issues concerned him more. Right or wrong, there was an understanding between the City staff and Mrs. Mullenix, and the City owed it to her to give her adequate time to relocate her classes instead of pulling the rug out from beneath her.

Councilmember Clawson was concerned that there was no contract with Mrs. Mullenix. Mrs. Clawson felt that the Community Center should never have been rented out to a commercial enterprise. She also had concerns about the wear and tear on the room from this sort of activity. Mrs. Clawson recommended allowing Mrs. Mullenix use of the Center through December 1997.

Councilmember Peppes, liaison to the Parks & Recreation Advisory Board, said that staff was having trouble accommodating many requests to use the Community Center because of the many hours that jazzercise was using the Center. The Advisory Board felt that the jazzercise program, although a great program, wasn't working out in the best interests of the City.

4857 1:00 a.m. On motion of Clawson, seconded by Taylor, Council voted to extend the meeting to 1:30 a.m. LaHue, Peppes, Bold opposed; all others (5) in favor.

Councilmember Taylor felt that verbal commitments was a contract and would be honored in some states. He felt that Council needed to give a directive to staff in this case.

Dr. Peppes moved to allow Mr. Whitaker to negotiate a fair settlement with Mrs. Mullenix as far as a time extension was concerned if he saw fit to do so, seconded by Clawson. Motion failed; Rasmussen, Peppes, Clawson in favor; all others (5) opposed.

5398 Councilmember Campbell moved that Mrs. Mullenix be able to use the Center until she found another place for the program, but not past December 31, 1997, and that she would continue to be "bumped" when necessary, to work with the Mr. Whitaker on scheduling around other events as she and Mr. Whitaker had done before this meeting, seconded by Taylor. Motion carried; LaHue and Peppes opposed; all others (6) in favor. (LaHue and Peppes felt the time period of the motion was too long.)

- 5813 **Approval of the 1998 Budget** - \$32,531,687; 23.469 mill levy. Councilmember LaHue said that the City needed sufficient stormwater funding. He moved to direct the staff to readdress the issues of stormwater dollar funding for 1998 and find the means of coming up with additional funds prior to the approval of the budget. Motion died for lack of a second.

Councilmember Rasmussen moved to delete \$355,000 from the stormwater fund, seconded by Taylor. Mr. Rasmussen said that the City kept putting money into the stormwater fund but didn't seem to make much progress building projects, especially the "safety" ones that he was very concerned about. The City didn't have a structure for looking at stormwater and no cash flow management system. A recommendation of the ad hoc Stormwater Management Committee - the City needed to go out and ask citizens if they wanted the City to build the big projects on their (private) properties. However, where safety was involved, there was no question but that the City should take the initiative. Councilmember Clawson said that if the City was going to deal with the big problems on the creeks, the City must approve some funds to be able to build the projects, or forever be building bits and pieces of what needed to be done.

1:30 a.m. On motion of Clawson, seconded by Taylor, Council voted to extend the meeting to 2:00 a.m.

Councilmember Campbell called for the question, seconded by Clawson. Carried unanimously.

The motion to delete funds from stormwater funding failed; Rasmussen, Taylor in favor; all others (6) in favor.

Mr. Campbell moved to approve the 1998 budget, seconded by Clawson. Mr. Taylor moved to amend the motion to state that the City would impose a zero-based budget for 3 departments to be determined by staff in the 1999 budget, and that 2 Councilmembers and 1 Finance Committee member be appointed to review the 3 departments' budgets, seconded by Rasmussen. Mr. Taylor said that zero-based budgeting would force departments to justify requested funds. Mr. Campbell said he would vote against the amendment because the issue at hand was the 1998 budget. Discussion of zero-based budget for 1999 could be added to another meeting agenda. Mr. Rasmussen didn't want to see the issue dropped. Mr. Bold said it could be added to the next meeting's agenda. The second and motion were withdrawn.

Mr. Rasmussen moved to amend the motion to approve the budget with a reduction of \$100,000 in the Parks & Recreation budget, to delete the receptionist attendant for the Community Center. The whole Parks & Recreation program needed review to determine whether or not their fee schedules were proper; the City was budgeting losses, budgeting additional expenses for soccer. Motion seconded by Taylor. Motion failed; Rasmussen, Taylor in favor; all others (6) opposed.

Mr. Campbell's motion to approve the 1998 budget carried; LaHue, Rasmussen opposed; all others in favor.

- 6818 **Authorize contract for design of Fire Station No. 3.** Councilmember Campbell moved to approve a contract with Shaughnessy Fickel and Scott Architects, Inc., for compensation as stipulated in the contract. Motion seconded by Bold.

7052 END OF TAPE

Tape No. 394

Mr. Taylor said an architect should be responsible to design within a project's budget, and that there should be a clause in the contract spelling out that responsibility. City Administrator Garofano said that the budget would be established at the end of the program phase. Once that phase was completed, staff would have an estimate, a budget established for the project. If the City made changes later on when the architect was in the design/development phase, then the City would be responsible. If there was no agreement on how the architect would bring the project within budget, then the architect would redesign.

Architect Bill Scott said that the City did have the prerogative to invoke the fixed limit of construction cost under the contract before the Council (paragraph 5.2.2). If the City did invoke that provision, then the architect had the flexibility under the contract to make changes to the design in terms of materials, functions of the project, to get the project down to within the fixed limit invoked.

Mr. Taylor moved to amend the motion to invoke the fixed limit provision, requiring the architect to redesign at his own expense if the design exceeded 10% of the construction cost, seconded by LaHue. Mr. Garofano and Mr. Scott did not understand how the fixed limit could be determined when the budget was still unknown; it would not be known until the end of the design/development phase. Mr. Scott said they should agree to invoke a fixed limit of the construction cost at the end of design/development. The City Attorney could make the appropriate wording change that would reflect the 10% factor to be added to Article 12 of the contract. Motion to amend carried unanimously.

Mr. Campbell's motion as amended to approve the contract carried unanimously.

- 392 **Approve bid/authorize contract for 1997 Arterial Street Improvement Program.** On motion of Rasmussen, seconded by Clawson, Council unanimously authorized a contract with the only bidder Reno Construction Co. in the amount of \$371,312.00 (the engineer's estimate and agreed upon price; Reno's bid was \$371,441.70).
- 440 **Ordinance No. 1690 establishing the 1998 annual assessment for the Leawood Sewer System.** Councilmember Campbell moved to pass the ordinance, seconded by Taylor. 1998 assessments had increased substantially over 1997 assessments because the County had required that the City put in \$1,000,000 of System improvements before the County takeover of the System on January 1, 1999.
- 460 2:00 a.m. On motion of Taylor, seconded by Clawson, Council voted to extend the meeting to 2:30 a.m.
- \*\*\* Councilmember Bold left the meeting.

Councilmember LaHue suggested that Public Works give residents some kind of advanced warning or public relations about the large assessments. Letters would be sent to residents advising them that they would become part of the County system on January 1, 1999, so the increased assessments could be explained in the letter.

Roll call vote was unanimous (except for Mr. Bold who had left the meeting).

520 **Ordinance No. 1691C amending Section 11-205 of the Code of the City of Leawood relating to disturbing the peace (noise ordinance)** - to exempt all activities of municipal maintenance vehicles and equipment, not just emergency activities, in order to help the maintenance of the Ironhorse Golf Club and the South Park as it developed. The ordinance was considered and passed on motion of Rasmussen, seconded by Taylor. Roll call vote was unanimous.

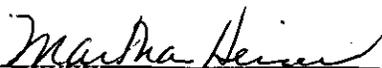
540 **APPROVAL OF APPROPRIATION ORDINANCE NO. 814.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

551 **SCHEDULE WORK SESSIONS.** A session on the 135th St. traffic study was scheduled for September 8th, 7:30 P.M.

The Mayor hoped to schedule a work session for a Council and City management staff "retreat" on October 13th if the facilitator would be able to attend on that date. It would be formally scheduled at the September 2, 1997, Council meeting.

Discussions of the "sport court" ordinance and the possibility of changing signage letters to not to exceed 36" in height would take place at the September 2nd Council meeting.

624 2:05 a.m. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 395

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Tuesday, September 2, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Joe Johnson, Public Works Director; J. Stephen Cox, Police Chief; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the following changes:

- 1) Interlocal agreement with Johnson County for construction of the Oxford Hills subdivision storm drainage improvements was moved from new business to the consent agenda;
- 2) Interlocal agreement with Kansas City, Missouri, for an overlay of State Line Rd. from the northern limits of the City to 85th Terr. was moved from new business to the consent agenda;
- 3) Staff's request that the Council reject bids for the 1997 Sidewalk/ADA repair program and permit staff to negotiate with the low bidder was moved from new business to the consent agenda;
- 4) Added - consideration of the granting of a short form encroachment permit to Williams Pipeline Co. for 143rd St. improvements;
- 5) Added - discussion of zero-based budgeting for 1999.

**CITIZEN COMMENTS.** None.

x657x **CONSENT AGENDA.** Two items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Gill:

1. Minutes of the August 18, 1997, Council meeting;
2. Change Order No. 1 to the contract with Leavenworth Excavating & Equipment Co. for the Mission Road rehabilitation project, 135th St. to 143rd St., in the amount of \$42,679.45;
3. Change Order No. 4 to the contract with Seal-O-Matic Paving Co. for Johnson County Stormwater Project JB-04-003/97th St. Rehabilitation in the amount of \$13,063.41;

4. Interlocal agreement with Johnson County for construction of storm drainage improvements on Tomahawk Creek at Oxford Hills subdivision, southeast corner of Ensley Lane and 119th St., SMAC Project TM-04-005;
5. Interlocal agreement with Kansas City, Missouri, for the resurfacing of State Line Rd. from the northern limits of the City south to approximately 85th Terr. - cost equally shared, Leawood's share estimated at \$45,000;
6. Request to reject bids (2) for the 1997 Sidewalk/ADA repair program which were above the engineer's estimate of \$55,095.00, and permit staff to negotiate a price with the low bidder K & K Concrete Construction (their low bid was \$80,077.50).

Resolution No. 1363, attached as part of the record, approving the final plat of Stratco, northwest corner of 114th & Tomahawk Creek Parkway.

AND

Resolution No. 1364, attached as part of the record, approving the final plat of the American Academy of Family Physicians, southwest corner of 114th & Tomhawk Creek Parkway. Councilmember Taylor thought that both projects were to have an irrigation system approved for all landscaped areas, including parking lots, median strips. He noted that provision in the Stratco resolution, but not in the AAFP resolution. Planning Director McKay said that current ordinance required it, but wording could be added to the AAFP resolution if Council desired for consistency. On motion of Taylor, seconded by Gill, Council unanimously adopted the resolutions.

#### 365 MAYOR'S REPORT

The Mayor received an appointment from County Commissioner Annabeth Surbaugh to serve on the Community Development Block Grant Advisory Committee.

#### OLD BUSINESS

- 461 **Ordinance No. 1692 granting an easement to Williams Pipeline Co. to relocate a gas line in the vicinity of the Ironhorse Golf Course.** (Continued from the August 18th Council meeting) Developer Mark Simpson said that several months ago, he had met with the City Administrator, Planning Director, and Parks & Recreation Director, and they had reached a consensus that the existing approved plat of Meadows of Iron Horse with a gas pipeline running through 19 adjoining residential backyards wasn't the best situation, and that a better alternative would be to relocate the gas line, with 20 feet of the easement being on the rough edge of the golf course and 30 feet on his property. He said that subsequent to that consensus, the Council approved the granting of such an easement (the Council to eventually approve an actual document), and a compensation agreement offered by Mr. Simpson. He said that the alignment of the pipeline would have minimal or no impact on the golf course; the far edge of the easement, which was 15 feet away from the pipeline, in no place touched the fairway, the greens, or the tee boxes. He described a change in one area that was made to avoid tearing up a number of County sewer lines. The area involved was near holes 16 & 17 of the golf course.

Parks & Recreation Director Whitaker said there should be little disruption to golf course play during construction; the holes would not have to be closed off. Mr. Simpson said that the contractor had agreed to a 5-day limitation for tear up, and would plan around any tournaments.

Councilmember Taylor gathered that Mr. Simpson had requested the relocation of the pipeline because in its current location, it would have a negative impact on the sale of the 19 lots. Mr. Simpson said there was a combination of factors - 1) he felt the pipeline would be a detriment to the lots, and would artificially depress the value of the housing in the area, and 2) he felt that as far as the overall public welfare, the new alignment was a superior location for both access and safety of residents while they were digging in their yards, planting trees, etc. He didn't deny that raising the value of the properties would be to his benefit. Mr. Simpson said the line was a petroleum line, not natural gas or high pressure. Mr. Taylor felt that if the current pipe failed, there would be more of an environmental problem, not a combustible one. Mr. Taylor said he knew that high pressure gas lines with a higher risk factor than petroleum lines in other residential areas had not curtailed the development of those areas, so what were the benefits that the City would receive if Mr. Simpson's request to relocate the gas line was granted. Mr. Simpson reviewed his compensation agreement he had offered the City at an earlier meeting. He said the City would probably realize approximately \$25,000 on a couple of items he had offered, and he explained that he would be contributing a substantial amount of money to Williams Pipeline Co. He would probably come out square in the end moneywise, and all the home sites would be equally comparable, and could be remodeled into an upscale, maintenance-provided townhome, patio community, not possible without the relocation of the gas line.

Councilmember Campbell moved to eliminate the following words from the "Grantor shall indemnify..." paragraph on the first page of the proposed easement: (a) GRANTEE'S lawful exercise of the rights herein granted, where such Claims are made by or through GRANTOR, its employees, contractors, customers, licensees or invitees, and (b). Motion seconded by Clawson. Mr. Campbell felt those words represented an extremely broad exposure of liability. If (a) was eliminated, the City would not be doing anything beyond what it would be responsible for anyway - for instance, if the City removed a cart path and in the process dug up Williams' pipe, then the City was agreeing to be legally responsible for the pipe, for which in Mr. Campbell's opinion, the City was legally responsible anyway.

1232

Councilmember Rasmussen (a member of the Golf Course Committee) gave a presentation. The Golf Course Committee wanted to be sure there would be a 25-foot clear, unobstructed open space easement established on all golf course lots prohibiting any structures within the easement. He said that Resolution 1274 approving the final plat of Meadows of Iron Horse included such a stipulation. The proposed 30 feet on Mr. Simpson's property for the relocation of the gas line was in conflict with the resolution's 25 feet of unobstructed space. Mr. Rasmussen explained that the cart path had not been inadvertently placed on Mr. Simpson's property as Mr. Simpson had stated previously. Concrete trucks that were there refused to get close to the area because of the unstable nature of the terrain. So the Golf Course Committee asked the former property owner Don Bell (who had a representative on the Committee) for permission to move the cart path, and he

gave it. After Mr. Rasmussen had drafted 2 approaches to the problem - 1 showing an easement with the pipeline on golf course property, the other showing a construction easement that said the pipeline would not be on City property - he was finally able to obtain the original easements that were applicable to the golf course property today. The original right-of-way contracts signed in 1917 illustrated some of the suggestions that he had made to the Council - took out telephone and telegraph, only wanted one pipeline, and wanted more money if another pipeline was brought in. Looking at the original easement that was now applicable to the pipeline location crossing the golf course property, the terms and conditions were most favorable to the City. If the Council decided to take on additional liabilities, additional concerns about erosion that was already a problem, by moving the gas line easement a few 100 feet, then the City should be compensated. Why should the City grant an easement more onerous (even with Mr. Campbell's suggested change) than what the City presently had? If it did grant a more onerous easement, then the City should be fully compensated for it. Mr. Rasmussen roughly estimated \$60,000. If the City granted a construction easement to Williams Pipeline, the City should be sure that they would not have the right to come in just anywhere or at just any time.

1653 Councilmember LaHue felt that the City, once it took on the responsibility of establishing lots or zoning property or allowing building permits, took on an ethical responsibility to make homes as safe as possible. It made sense to him to have the pipeline as far away from homes as possible. And he didn't see the relocation having a negative impact on the golf course.

1712 Councilmember Taylor didn't feel the present pipeline through the backyards of 19 homes was a harmful condition, as he had stated earlier in the discussion. Relocating the pipeline as requested created the potential for environmental impact on the golf course if the pipeline failed, and he didn't think the City was protected insurancewise to conduct an environmental waste cleanup.

1772 Councilmember Bold tended to agree with Dr. LaHue regarding safety in residential areas. And moving the pipeline would make the lots more marketable and a high quality development, which was important in Leawood. The City would be getting money back in terms of higher assessments on the properties once homes were built. He would be in favor of granting the easement, assuming that the language of the easement was acceptable to the City Attorney and attorneys on the Council.

1860 Councilmember Gill said he would vote in favor of Mr. Campbell's motion only because it improved the proposed easement document; he was not in favor of the overall document because there still remained uncapped, unlimited exposure to the City in other areas. On the second page, second paragraph, last full sentence, there was an absolutely *open-ended indemnity from the City for any and all acts of the City permitted by the Grantee*. He noted that the easements currently in place from 1917 had no indemnity from the property owner, but had indemnity to the property owner from the pipeline owner. He questioned the real need that Williams Pipeline had for extracting indemnity from the City with respect to a small segment of what was a larger pipeline.

Mr. Rasmussen noted that the easement mentioned "pipelines" rather than "pipeline," and the use for commercial transmission of communications through, under and across the tracts of land, which the City didn't have at the present time. The City was very concerned about giving anyone rights-of-way on City property for communications purposes.

2104 Dr. LaHue moved to call for the question, seconded by Clawson. Motion carried unanimously.

Mr. Campbell's motion to eliminate wording as discussed above carried unanimously.

Mr. Gill noted that the proposed easement stated that the only thing the City could do with the property was the current grass landscaping and golf cart paths in existence on the date of the easement unless permission was granted by Williams. An easement was forever or until Williams got out of the pipeline business. The City would not be very smart to grant the easement. In 1917 the people who granted the original easement for the pipeline had the right to do anything they wanted with the property that was not inconsistent with the easement, didn't have to give indemnity but rather received indemnity.

2457 Mr. Campbell felt that the Council needed to keep in mind that the pipeline would be 4-5 feet underground. The chances of the City ever knowing it was there, there ever being a problem, was extremely remote, and there was indemnification to the City in the event that through no fault of the City, there was discharge into the ground or an explosion.

2553 Mr. Campbell moved to pass the ordinance granting an easement to Williams Pipeline with his change in some wording and any previous changes made, and with the considerations in a separate agreement with the developer that the developer make all creek bank improvements that he had previously agreed to do under the direction of City staff; that the homes association and developer indemnify the City for a 20-year period for the restoration of the cart path and landscaping (also to be included in a separate homes association declaration to be filed with the plat); that the developer would deed the land where the cart paths were presently placed back to the City, and that the developer pay for the survey and any expenses associated with the deeding of the property to the City; that the developer sponsor a hole of their choosing and receive any consideration that would flow from the sponsorship (probably just a stone marker). Motion seconded by LaHue.

2983 Councilmember Bold asked if someone could put a tower or some sort of pole with a radio antenna aboveground and wondered if certain wording in the first paragraph of the easement could be changed by adding one word, to read "...underground communication lines and underground (the word added) systems that may be required for..." Mr. Simpson said that it was the intent that everything be done underground, and that Mr. Bold's clarifications would probably be alright with Williams Pipeline. City Attorney Wetzler said that in an earlier draft of the easement, he had specifically deleted the reference to telecommunications transmissions lines because the City was currently dealing with telecommunication franchise agreements, and felt that if Williams wanted to run a telecommunications line through the City, they might be able to do that but it would be subject to a separate agreement. But somehow the language reappeared.

3280 Mr. Bold moved to amend the motion to pass the ordinance that wording be changed in the fourth paragraph of page 2 of the easement to read, "...Any pipeline, pipelines or underground communications lines and/or systems constructed under this agreement shall be buried..." Motion seconded by LaHue. Motion to amend carried unanimously. Since there was very little tillable land, Mr. Bold clarified that everything would be buried, and that any fiber optic cable would be buried at the same depth as the gas pipeline.

3360 Mr. Wetzler said that Mr. Campbell's conditions or stipulations for the passage of the ordinance relating to the developer would be part of a written agreement with the developer to be approved by the Mayor and recorded.

Mr. Campbell's motion as amended to pass the ordinance carried on roll call vote; Taylor, Rasmussen, Gill opposed; all others (5) in favor.

3516 **Discussion of the City's "sport court" ordinance.** Councilmember Bold summarized the problem that a constituent spoke about at the last Council meeting. (See August 18th minutes.) Mr. Bold said that the residents were willing to go through the process of obtaining a variance to have the basketball court in their backyard if they had a reasonable expectation that it would be approved. He moved that the Planning staff be directed to develop an amendment to the ordinance to allow very small courts without having to meet all the requirements such as engineering plans as long as neighbors within an appropriate distance had no objections, with the understanding that a permit would still be required. Motion seconded by Taylor.

Councilmember Clawson felt that the current ordinance should stand; there had been too many sport court problems in the past.

Planning Director McKay reminded Council that his staff had been given the task some time ago of developing the current ordinance to address the very issues that Mr. Bold had just talked about, small sport courts in backyards. It was a good ordinance, especially addressing drainage and noise (screening) concerns. It wouldn't be a good idea for the Council to ask him to rewrite the ordinance all over again.

Mr. Bold felt that for a small backyard basketball court, the current ordinance was onerous. He still wanted to see plans reviewed and the requirement of an application fee.

Mr. Bold's motion failed; Bold in favor, all others opposed.

3882 **Discussion of a change in the size of signage letters.** Councilmember Taylor summarized the brief discussion at the last meeting. (See August 18th minutes.) He moved that Council request the Plan Commission amend Section 4-5.10 E) Sign Area Calculations; Maximum Area, of the "Leewood Development Ordinance", to state that each sign letter not exceed 36" in height, seconded by Clawson. Planning Director McKay said he was concerned about how 36" letters would look on a massive wall, creating a negative impact architecturally, aesthetically. The Plan Commission had to consider architecture and aesthetics, and they had the final say regarding building signs, had the ability to require a developer to alter his signage plans if they deemed it appropriate.

Councilmember Campbell mentioned the old saying "if it's not broke, don't fix it"; he didn't feel the City had had problems with signage. Councilmember Peppes agreed, and felt the Council was not allowing the agencies of government to work. He thought the Plan Commission had done a good job with signage in the City. He felt the Council had begun to attempt to micromanage too many issues.

Mr. Taylor's motion failed; Gill, Taylor, Rasmussen, Bold in favor; LaHue, Peppes, Campbell, Clawson opposed; the Mayor opposed.

4438 **Discussion of the implementation of the ad hoc Stormwater Management Committee's recommendations for stormwater improvements.** Councilmember Rasmussen expressed concern that the Council had not given a policy directive to staff regarding the management

of stormwater. The first part of his recommendation would spell out the projects the City had, an estimated cost, who initiated the projects, the status of the projects. The City should also estimate the timing of the projects; if timed accurately, the City would have enough money to do the projects. The City needed to know the status of right-of-way acquisition. He felt the City should set up a separate fund for maintenance of stormwater projects, not include that maintenance with curbs and street maintenance, and keep maintenance separate from capital improvements. Did the City really want to do all of the projects? Shouldn't the City ask the residents if they wanted certain projects? He also felt the City needed to come to some conclusion about dumping in waterways. The City also needed to determine just what it owned, needed an inventory; it seemed to him that the City just kept spending money without having a grip on what it owned.

Councilmember Clawson agreed that the City needed to work towards a conclusion on stormwater, but was not comfortable with the Stormwater Committee's recommendations, did not feel they were conclusive.

Mr. Rasmussen said he would be happy to help the Public Works Committee review the various problems. Mrs. Clawson suggested that Councilmember LaHue visit with the Public Works Committee to give an overview of the history of the County's Stormwater Management Advisory Council program, then have Mr. Rasmussen attend a follow-up meeting and review the conclusions that he felt had come out of the Stormwater Committee.

Dr. LaHue suggested that the Council meet as a committee of the whole at a work session to broadly discuss stormwater, since it was the Council that made the final decisions. He moved that the Council hold a work session with engineering consultants sometime prior to the Christmas holiday (date to be determined), seconded by Bold. Motion carried unanimously.

#### **NEW BUSINESS**

5425 **Designation of delegates to the annual League of Kansas Municipalities Conference.** Deferred to the September 15th Council meeting to allow Councilmembers to check their schedules.

5500 **APPROVAL OF APPROPRIATION ORDINANCE NO. 815.** On motion of LaHue, seconded by Gill, Council unanimously approved the ordinance on roll call vote.

5674 **SCHEDULE WORK SESSIONS.** Reminder that a joint Council/Plan Commission work session was scheduled for September 8th from 5:00 - 7:00 p.m. to discuss the Bucher Willis & Ratliff 135th St. traffic study.

Another Council work session was scheduled for September 22nd, 7:00 p.m., to meet with County Commissioners Surbaugh and Wysong, to discuss the County's "Living Our Vision" report.

A third work session was scheduled for October 13th, 6:00 p.m., for a Council/management staff "retreat."

5820 **OTHER BUSINESS.** City Administrator Garofano asked for clarification of the City's open records policy as it related to the 135th St. traffic study, which was only a "draft" report. Was a "draft" report considered a public record? The City's resolution policy stated that upon completion of consultant studies, any materials used in the preparation referred to

within such study, would be considered a public record, and at such time as a member of the public requested a copy of the study, such study would also be distributed to members of the City Council. Mr. Garofano said he had received requests from the public for copies of the study. The study would not be completed until after the September 8th work session. Councilmember Gill felt that the "draft" study should be made available to the public; there was nothing proprietary in it, and it was clearly marked a draft. The 135th St. traffic study was a major community issue. Councilmember Bold felt that by not giving the public the draft report, the City created the appearance that it was trying to hide something; however, the public should pay a fee for a copy of the report. Councilmember Rasmussen felt that the intent of the resolution policy was that when public monies were spent for consulting services and then the consultant indicated that a presentation would be made to the Council (would be on an agenda, including work sessions), then that would be the time the drafts or preliminaries or whatever they might be called would be made public.

6283            Discussion of the City's granting a short form encroachment permit to Williams Pipeline Co. for 143rd St. improvements. There was a conflict between a Williams pipeline and an existing City right-of-way, a prior easement that preceded the right-of-way grant. Williams would not permit any more construction until they had an agreement with the City. (City Attorney Wetzler said that Williams had agreed to meet with City representatives sometime in the near future to discuss pipeline easements generally to try to work out some sort of overall plan so the City wouldn't continue to have problems with Williams). Williams had agreed to allow the City to perform work in their easement that needed to be done upon execution of the short form encroachment permit. The permit had a very limited form of indemnification provision. On motion of Campbell, seconded by Clawson, Council approved the permit; Rasmussen opposed, all others in favor.

6496            Discussion of a zero-based budget. Councilmember Taylor wanted to introduce a procedure that would be followed in the 1999 budget review and prior to that review, have a committee that would meet with 2 or 3 department heads and basically review their budgets from the standpoint of starting them from scratch in order to feel comfortable that all the expenditures projected were comfortable, justified, as far as expenditures presented in the final budget. This was a process that was well accepted in the business community.

Councilmember Gill said it would have been helpful to him during the 1998 budget preparation if he had had some core knowledge about departments, not just incremental financial information. He really was not familiar with zero-based budgeting. He suggested that staff come up with recommendations to address the zero-based budget concerns of Mr. Taylor.

City Administrator Garofano said he heard a disparity - the words "overview" and a feel for what was going on in the departments versus "justification" of everything in the budget. Council needed to arrive at a consensus as to what they were looking for in the budget process. He didn't feel it was workable to have a small committee make recommendations about departmental budgets. That was tried in the past and it didn't work. It was the responsibility of the Council as a whole to adopt a budget. It was Mr. Garofano's responsibility as budget officer to present a budget to the Council as a whole, not to a small committee. Collectively needed to arrive at a comfort level, a discomfort level, how could staff provide information to the Council to make them feel more comfortable.

7442 Mr. Taylor moved to form a committee composed of 2 Councilmembers and 1 citizen to review 3 departments' budgets in a zero-based budget process prior to the Budget & Finance Committee review of the budget, seconded by Rasmussen. Motion failed; Rasmussen, Taylor, Gill, Bold in favor; Campbell, Clawson, LaHue, Peppes opposed; Mayor opposed. The Mayor proposed that the Budget & Finance Committee as a whole meet in advance of the (1999) budget process and that additional line item information be available, and that additional directives be given to staff prior to their work preparing the budget.

7705 END OF TAPE

Tape No. 396

The Mayor thanked Fire Chief Florance for sharing a letter of appreciation that he had received from the wife of a man that Chief Florance had saved through CPR at recent Amelia Earhart festivities in Atchison, Kansas.

35 11:00 p.m. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 397

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, September 15, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Ronald LaHue, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Marnie S. Clawson was absent.

*Staff Present:* Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; David Ley, Public Works Department; J. Stephen Cox, Police Chief; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Bold, after the addition of:

- 1) (by Peppes) a discussion of a letter from Patrick L. Dunn concerning the storm sewer project on High Drive between 92nd and 95th Streets and the uncontrolled intersection at 92nd & State Line Rd. as sole access to the neighborhood;
- 2) (by Rasmussen) a discussion of traffic control and security requirements at Saddle & Sirloin Club as a result of further delay in the Mission Rd. improvement project;
- 3) a statement on stormwater by Councilmember Rasmussen;
- 4) (by Taylor) a discussion of the Public Works Committee selection of HDR Engineers/Architects for the design of the new Public Works facility at 143rd & Overbrook;
- 5) (by Bold) a discussion of the traffic situation at 127th & Roe Ave. and authorization of a warrant analysis for traffic signalization.

**PROCLAMATIONS:** The Mayor proclaimed October 10, 1997, as "Double Tenth Day" in honor of sister city I-Lan, Taiwan, and the Republic of China's 86th anniversary on Taiwan; and proclaimed September 17-23, 1997, as "Constitution Week."

**CITIZEN COMMENTS.** Ken Wyatt, 11232 Rosewood in Leawood Country Manor, said that his backyard was adjacent to a planned construction project on Lot 13 of the Leawood Commons office development. He understood in 1990 when the development plan was first considered and approved that the minimum setbacks to residential property lines would be at least 78 feet and perhaps more for 2-story buildings. The development on Lot 13 was just staked out at 47 feet from his property line. He was never notified of any variance in the original setback requirements. This was far too close to residential property for a commercial development. Neither he nor his neighbors were aware of any public hearing at which the setbacks might have been minimized or revised from the original plan. Attorney Bill Watkins proposed suspension of the building permit for Lot 13 until there was a review of

the process or circumstances that had led to the issuance of the building permit. The Mayor said that the City Attorney was reviewing the situation. Councilmember Rasmussen said that since the building permit had already been issued, construction could begin even though the City Attorney was still reviewing the matter. To date, even though he had not completed his review, City Attorney Wetzler said he was not aware of anything out of order; it appeared that City procedures had been followed. Planning Director McKay explained that since 1990, there had been a variety of changes to various lots in Leawood Commons; a 78-foot setback had never been a stipulation or condition of approval in a resolution for a plan approval; the City had not been required to hold public hearings on a variety of revised preliminary plans. However, a public hearing was held on Lot 13 to give notice. The building had changed, but it still met the minimum CP-0 requirements, including those for setbacks of 40 feet minimum. The Plan Commission and Council approved the final development plan which was subsequently sent out for review and a building permit issued.

Councilmember Rasmussen felt that the question was whether or not City procedures and ordinances had been adhered to. On the basis that the City Attorney had not completed his review, Mr. Rasmussen moved that the issuance of the building permit for Lot 13 be suspended until such time as the City Attorney gave a definitive answer as to procedure and ordinance compliance, seconded by Gill.

Mr. Wetzler said there was the possibility that the developer, who was ready to begin construction, could file a claim against the City because of a delay in his building permit. He further said that even if the change in the setbacks did not constitute a substantial deviation, and if the other procedures that the City followed were in compliance with its ordinances in the processes that resulted in the setback change, there was still a risk that the City could be sued.

Mr. Watkins said that if the change in the setback was a substantial change, and a public hearing was not held on the substantial change, then the City was well within its rights to go back and review to see what had happened.

Mr. Wetzler said that residents could challenge the actions of the Plan Commission as long as an appeal or challenge was made within 30 days of the decision. At one point in time, some time ago, this would have been a remedy to the situation. An appeal was no longer possible. Mr. Wetzler said he would complete his review within 48 hours in writing by fax or personal delivery to the Governing Body.

Mr. McKay said that a temporary stop work order would be issued in the morning.

Councilmember Bold called for the question, seconded by LaHue. Motion carried unanimously. Mr. Rasmussen's motion to suspend the building permit carried unanimously.

Chris Hornbeck, 9200 High Dr., asked about the status of the storm sewer project on High Dr. between 92nd and 95th Streets. David Ley of the Public Works Department said that the street should be open in about 3 weeks - about 1 week ahead of schedule. The Mayor said that Southwestern Bell was also laying cable at 92nd and State Line; she understood they would not be blocking any of the street. Residents disagreed; the view at that intersection was blocked and that was a school bus stop. Police Chief Cox reported there was no hazard to children leaving the school bus since they did not have to cross State Line. But he did go ahead and assign an officer on overtime from 7-8 a.m. and from 3-4 p.m. every day until the project was completed. He would look into any problems concerning site distance at the intersection that Southwestern Bell might be causing.

G. Gordon Thomas, 10516 Mohawk Lane, said that in accordance with Kansas state statutes, the Governing Body and citizens had the authority, the right, to invoke the power to recall, specifically the recall of Councilmember LaHue of Ward 1 which he had brought up at many previous Council meetings.

Jeff Nessel, 12012 Ensley Lane, noted that the municipal pool at Leawood Park was only open from 4-8 p.m. during the last week before its closing. He understood it was due to lack of lifeguards who had returned to school. He hoped that next year sufficient lifeguards could be hired so residents could use the pool during the days of the last week.

1700 **CONSENT AGENDA.** Four items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Rasmussen:

1. Minutes of the September 2, 1997, Council meeting;
2. Historic Commission report (minutes) of their August 19, 1997, meeting;
3. Parks & Recreation Advisory Board report (minutes) of their August 19, 1997, meeting;
4. Departmental reports;
5. Declaration of surplus property (furniture and office equipment) no longer needed by the Police Department;
6. Resolution No. 1365, attached as part of the record, approving the final plat for Country Club Bank at approximately the northwest corner of 112th & State Line Rd.;
7. Resolution No. 1366, attached as part of the record, approving the final plat for Leawood Country Manor, 12th Plat, at approximately 111th Terr. & Briar.

Discussion of the Planning & Development Activity Report for August 1997.

Councilmember Taylor said there appeared to be a decrease in monthly revenues, inspections and code enforcement activities from 1995 to 1997. If there was a downward trend in construction activities, was the City overstaffed? Planning Director McKay explained that the apartments on Tomahawk Creek Parkway were built in 1995 under one building permit. That one project alone created enough work to keep his staff extremely busy. And he had the same number of staff he had in 1990 and 1991 which were leaner years for construction activities. He wasn't overstaffed at all. There was discussion that yearly figures would equal out over the next several years. On motion of Taylor, seconded by Gill, Council unanimously approved the report.

Discussion of the Arts Committee report (minutes) of their September 2, 1997, meeting. Councilmember Rasmussen referred to a Leawood Sun article from March 1997 that stated that the amphitheater planned at City Hall was not as rumored - the site would not accommodate 5,000 people, would have no permanent seating, no permanent lighting, and the area would not be for commercial use. Mr. Rasmussen referred to page 2 of the Arts Committee minutes which said that although the technical people/designers had said the hillside would accommodate a maximum audience of 5,000, it was geared for far lower numbers. The minutes went on to state that community theater efforts were typically slow going during the first few years and by the time the audience increased to a few thousand people, a future third park with outdoor theater might be finished. Mr. Rasmussen asked just what the expected limits were for the hillside, and he was concerned that Change Order No. 7

(next agenda item) seemed to include electrical facilities for lighting. Finance Director Malnicof said that as far as he knew the electrical power had nothing to do with lighting, but was for sound. The Mayor said it was never the intent to have 5,000 people on the hillside, and that it was hoped that the south park could be used for productions by the time the numbers approached 1,000 people.

Mr. Rasmussen moved to reject the Arts Committee report, seconded by Taylor. Human Resources Director Julie Hakan suggested that Councilmembers who were interested in the future plans for community theater and how the plans might unfold put their questions or concerns in writing. And they might want to attend the next Arts Committee meeting at the end of September. Mrs. Hakan said that the Council would be involved to some extent in any final decisions related to activities and expenditures.

Mr. Rasmussen's motion failed; Rasmussen, Taylor in favor; all others opposed. Councilmember LaHue moved to accept the report, seconded by Peppes, and carried unanimously.

Discussion of Change Order No. 7 to the construction contract for the City Hall completion project in the amount of \$18,016.43 which reflected the costs of providing power to the stage at the north side of City Hall and a few other items. Councilmember Taylor was concerned that the original contract sum of \$1,075,267 had already been increased 67% by previous change orders without going out for competitive bids. Finance Director Malnicof explained that the addition of the plaza and the landscaping on the north side of City Hall was handled as an amendment to the original contract, as a change order, not as a new contract. That was why the sums appeared to be so large. Mr. Taylor felt it was extremely suspect not to get competitive prices and to go ahead and use an on-site contractor because of the large scope of the work. The size of the project warranted another contracting proposal for a competitive atmosphere.

Mr. Rasmussen reminded the Council that at the time the change order for the plaza and landscaping was approved, the question of extending electrical service to the stage area on the north side of City Hall had not been resolved. He felt that if the Council approved Change Order No. 7, they were essentially saying that there would be enough power at the stage to have lighting there. Mr. Malnicof repeated that it was not the intent to have lighting on the north side, only sound, but it didn't mean the City couldn't plug in a lamp or light tower.

In response to Mr. Taylor's belief that the architect would be paid another \$40,000-45,000 for Change Order No. 7, Mr. Malnicof said that the architect's fee was a set, lump sum fee and not based on construction costs.

Councilmember LaHue moved to approve the change order to provide power to the stage area on the north side of City Hall, seconded by Peppes. Motion carried; Rasmussen, Taylor opposed; all others in favor.

Discussion of the appointment of Ken Conrad (9241 Ensley Lane) to the Plan Commission to fill the unexpired term to 1999 of David Imhoff who had resigned. Councilmember Gill said that Mr. Conrad's firm was doing work for the City and on projects that might come or had come before the City. He wanted to be sure that those facts would not disqualify him from being a Plan Commissioner although it might preclude a vote as a Commissioner on a given project. City Attorney Wetzler said it had always been policy for

Councilmembers and Commissioners to avoid participation in those matters where there was an actual conflict of interest as well as an appearance of a conflict. Just the fact that Mr. Conrad's firm did business with the City did not preclude him from serving as a Commissioner. On motion of Gill, seconded by Peppes, Council unanimously approved the appointment.

#### PLAN COMMISSION

- 2664 **Request for a special use permit for a temporary sales information trailer at the Reserve of Ironhorse, southeast corner of 151st & Mission Rd.** On motion of Rasmussen, seconded by Bold, Council unanimously approved a continuation of the original May 6, 1996 permit to May 6, 1998.

#### OLD BUSINESS

- 2803 **Ordinance granting a franchise to Brooks Fiber Communications of Missouri, Inc.** A little more discussion with Brooks Fiber was needed. On motion of Taylor, seconded by LaHue, Council voted unanimously to continue the matter to the October 20, 1997, Council meeting.
- 2963 **Ordinance granting a franchise to American Communication Services of Kansas City, Inc.** A little more discussion with ACSI was needed. On motion of Taylor, seconded by LaHue, Council voted unanimously to continue the matter to the October 20, 1997, Council meeting.
- 2982 **Ordinance amending section 4-3 of the "Amendment to the Leawood Development Ordinance" providing for changes in the special use provisions for cellular towers.** Councilmember LaHue moved to pass the ordinance (as presented by staff), seconded by Gill.

Councilmember Rasmussen moved to amend the motion so that Section D "Zoning Location Requirements" (staff comment #8) be deleted and all of resident Don Meeker's suggestions be included where applicable, seconded by Taylor.

- 3220 There was discussion of setback requirements or distance from residential areas in relation to permitted exceptions to the placement of towers in residentially-zoned areas. There was a wording error in one of the sections creating a conflict; Doug Allmon of the planning staff explained that the intent of the ordinance was to allow an exception to the buffer in residential areas, that not all towers would have to be sited at a distance of at least 500 feet in all directions from the base of the tower to the property line of any existing or planned residential neighborhood; the Plan Commission and the Governing Body would have discretion to increase or decrease the distance for site exceptions.

- 3422 Regarding Section D "Zoning Location Requirements", Mr. Rasmussen preferred that no exceptions be permitted in a residential area.

Motion and second to amend Dr. LaHue's main motion were withdrawn. The main motion and second were withdrawn. Council decided to vote separately on each point or bullet in the staff report.

- 3621 Resident Don Meeker, 9610 High Dr., spoke about suggestions he had made at earlier meetings - bonding requirements (to protect the City against telecommunications companies that didn't succeed or against changing technology), the need for grid location information to

determine if a tower was needed, a 3-mile search radius, notice provision extended from the required 200 feet up to 1000 feet as a matter of courtesy, and notification procedures provided for in a recently passed zoning ordinance to be referenced or specified in the proposed cell tower ordinance.

4358

Curtis Holland, attorney representing Southwestern Bell Wireless and Sprint Spectrum, L.P., said he couldn't find any of his suggestions in the ordinance. The ordinance was hostile to the industry; the ordinance had gone from bad to worse. Mr. Holland commented on several staff report bullets on ordinance sections. Regarding Section C (2) re performance bond requirement - the majority of jurisdictions that had passed zoning regulations relative to communication towers had not passed a performance bond provision, however, his clients could live within those bounds as long as they understood ahead of time what was going to be required of them. It should be tied to some specific number or percentage of construction so they could budget costs for specific towers - he recommended 20% of construction cost of a tower. Regarding Section E, he preferred that the word variance be changed to deviation or exception. Variances, with very definite legal connotations, were very difficult to justify. Deviations were not governed by state statute, but by local regulations. City Attorney Wetzler suggested changing the word to "exception". Regarding Section D (1) re precluding communication towers within residential-zoned property - when this regulation was coupled with the 500-foot setback regulation, there would be very few areas in which a communications tower would fit. He considered this a barrier to the market, and probably in violation of the 1996 Telecommunications Act which stated that cities couldn't adopt regulations prohibiting wireless communications facilities. He also felt that the ordinance was discriminatory against wireless providers because the regulations were not applicable to public utility companies, high voltage power lines, which in some cases were more unsightly than communication towers. For purposes of state statute, wireless providers were a functionally equivalent "public safety" service, and Mr. Holland could see no reason why a wireless provider couldn't be on the same tower used by a police department. Regarding Section D (4) re grid information - he didn't necessarily have a problem with bringing maps to a hearing which indicated other towers in the vicinity. But he did find that kind of information irrelevant. The focus of an application was a particular site on a particular property. The need for the site would have already been determined by engineers who worked for the industry. He found it difficult for a city council to simply look at grid information and make an intelligent decision as to whether or not it was a good land use decision. He would not be willing to leave maps with the city where they would become public information; the maps were considered proprietary. He would agree to give information on towers within very close proximity to a requested tower in Leawood, not information on towers in Shawnee, Merriam, DeSoto, etc. This issue needed to be clarified in the ordinance. Regarding the height regulation of 150 feet, he suggested that antennae extensions not be included since they were fairly nonvisible. Regarding the 500-foot setback regulation - he felt it was the most aggrieved regulation of all. His clients would not be able to find very many sites where they would be able to comply with the rule coupled with the other regulations. That distance was burdensome and unreasonable. There was no rational basis for it; 500 feet from a safety standpoint did not make any sense and could not be supported; the distance could not be supported from an aesthetic standpoint either (there was no proof of property devaluation). He suggested a setback equal to the height of the tower which appeared to be a standard adopted by other jurisdictions. Regarding Section J and co-

location agreements to be given to the City Attorney for review and approval - private agreements between private carriers were proprietary information.

**7699 END OF TAPE**

**Tape No. 398**

11:00 P.M. On motion of Taylor, seconded by Gill, Council voted to extend the meeting to 11:30; Rasmussen opposed, all others in favor.

185 The Council began voting on each bullet of the staff report on the proposed ordinance.

1) Section C (2) had a bonding requirement - Councilmember Rasmussen moved to accept the Plan Commission recommendation that the Commission would set the bond amount, seconded by Gill. Councilmember Campbell said he was in favor of the 20% (of construction cost of a tower) suggested by Mr. Holland; it was reasonable, there was a built-in inflationary factor, it was fair to give the industry some idea of what kind of bond to expect, and the Plan Commission had enough issues with which to deal. Mr. Rasmussen's motion failed; Rasmussen, Taylor, Gill in favor; all others (4) opposed.

Councilmember LaHue moved that the bond amount be set at 20% of the construction cost of a tower, seconded by Campbell. Motion carried; Rasmussen opposed; all others in favor.

2) Section D (4) "Zoning Location Requirements" would seek grid information (propagation maps) from an applicant regarding towers in adjacent cities, and the Plan Commission favored obtaining this information. Councilmember Rasmussen moved to accept the Plan Commission recommendation in favor of the Section, seconded by Bold. Motion carried unanimously.

3) The proposed ordinance included a lightning rod within the 150 foot maximum allowable height of a tower. The Plan Commission was comfortable with that since the rods (depending on size) could be visually obtrusive, and the applicant could acquire a height variance if needed. Councilmember Rasmussen moved to approve the Plan Commission recommendation, seconded by Taylor. Brief discussion. Councilmember Bold called for the question, seconded by Gill, carried unanimously. Mr. Rasmussen's motion carried; LaHue opposed (he had no problem with a lightning rod in addition to the 150 feet); all others in favor.

Councilmember Campbell moved to change the word variance in Section E to exception, seconded by Gill, carried unanimously.

4) Section F (2) provided for a 500 foot buffer for residential areas from any newly constructed tower. Councilmember Rasmussen moved to approve the 500 foot buffer, seconded by Bold. Councilmember LaHue felt 500 feet was too much. There was brief discussion of holding to the 500 feet for site exceptions in residential areas. That would be further discussed when the bullet on site exceptions was voted upon. Mr. Rasmussen's motion carried; LaHue opposed (it could open the City up to litigation), all others in favor.

5) Section G (4) "Design Requirements" - staff recommended it be amended as follows: Towers less than 75 feet in height must be designed so that their antennae are internally placed, thus creating a smooth, nonprojecting appearance. No antenna bridge or platform will be allowed on any tower less than 75 feet in height. Councilmember

Rasmussen moved to accept staff's recommendation for the amendment, seconded by Taylor. It was noted that a special use permit would be required to have an antenna on a building (to protect the appearance of the tops of buildings). Motion carried unanimously.

6) Section C (3) "Special Use Permit Required" addressed preexisting/nonconforming structures. Staff felt the last sentence should be amended to read, "Placement of antennae on a nonconforming structure shall not be considered an expansion of the nonconforming structure provided that the cumulative effect of all antennae and transmitting equipment on the site complies with the radio frequency radiation emission guidelines established by the FCC." Councilmember Rasmussen moved to approve the Section with staff's recommended amendment, seconded by Bold.

Councilmember Gill moved to amend the motion so that the last sentence would read, "Placement of an antenna on a nonconforming structure shall be considered an expansion of the nonconforming structure unless prior approval specifically contemplated multiple antennae." Motion seconded by Campbell. The Mayor clarified that the motion to amend did take into consideration the radiation emission guidelines of the FCC with multiple antennae.

865 11:30 P.M. On motion of LaHue, seconded by Gill, Council voted to extend the meeting to 11:45; Rasmussen opposed, all others in favor.

Mr. Gill's motion carried unanimously.

On motion of Bold, seconded by Taylor, Council voted to continue consideration of the ordinance to the October 6, 1997, Council meeting; Gill opposed, all others in favor.

#### NEW BUSINESS

- 962 **Approval of Appropriation Ordinance No. 816.** On motion of LaHue, seconded by Bold, Council unanimously approved the ordinance on roll call vote.
- 980 **Designation of voting delegates to the annual League of Kansas Municipalities Conference.** Mayor Dunn and City Administrator Garofano were selected as voting delegates to the conference to be held in Topeka, October 12-14, 1997.
- 1005 **OTHER BUSINESS.** Councilmember Rasmussen's statement regarding stormwater. Mr. Rasmussen recently visited representatives in Washington, D.C., and said that his concern about the expansion of "stormwater systems to cities of Leawood's size" didn't have hearings in August 1997 as scheduled, and as a result there would not be any committee meetings. He felt that nothing would happen, felt that the use of urban centers to expand the definition of stormwater systems to cities of Leawood's size was no longer on the table.
- 1027 Discussion of traffic control and security to be provided to Saddle & Sirloin by the City during the Club's Royal event in August 1998 due to further delay in the Mission Rd. improvement project. Councilmember Rasmussen felt that the Club deserved some consideration from the City to handle the traffic, so he moved that the Council permit the Police Department to provide traffic control and security patrol during the 2-day event in

August 1998 at the City's expense, seconded by Taylor. Police Captain Sid Mitchell said that on-ground around-the-clock security would cost approximately \$2400. There was discussion of public funds being used to secure private property during a private activity. Traffic control, of course, was a public function. But Mr. Rasmussen felt there were special circumstances involved - fences and trees were down because of the street construction - an additional burden placed on the Club, their normal security lessened. Captain Mitchell said that traffic control would be a separate expense. Councilmember Campbell called for the question, seconded by Bold, carried unanimously.

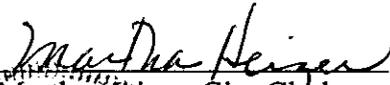
Mr. Rasmussen's motion failed; Rasmussen, Taylor in favor; all others opposed. The City would only provide traffic control.

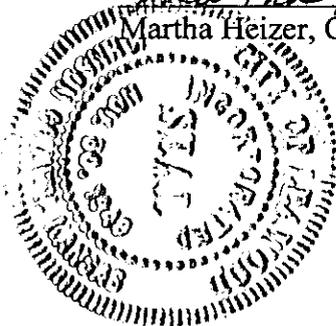
1248 Discussion of the selection of HDR Engineers/Architects by the Public Works Committee to design the new Public Works facility at 143rd & Overbrook Rd.

Councilmember Taylor understood that the Committee interviewed and recommended consultants for public activities to the City Council. He wanted to know why the selection committee for the design engineer of Fire Station No. 3 was made up of 4 staff members only, with no Councilmembers or Public Works officials. The Mayor said that the matter was never referred to the Public Works Committee, and that the Committee typically selected engineering firms, not architectural firms. The Mayor said that perhaps a Councilmember should have been on the Fire Station committee.

Discussion of traffic situation at 127th & Roe Ave. Councilmember Bold moved to authorize the Public Works Department to have a warrant analysis done for traffic signalization of 127th & Roe Ave. for \$2500, seconded by Gill. Motion carried unanimously.

1321 11:45 p.m. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**MINUTES  
SPECIAL COUNCIL MEETING**

Tape No. 399

# The City Council of the City of Leawood, Kansas, met in special session in the Council Chamber, 4800 Town Center Drive, at 8:15 P.M., Monday, September 22, 1997. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Marnie S. Clawson, Adam Bold, Louis Rasmussen, Mike Gill, Gregory J. Peppes, and Ronald LaHue, for the purpose of considering a building permit for Lot 13, Leawood Commons, which had been suspended at the September 15, 1997, Council meeting. Councilmembers John R. Campbell, Jr., and James E. Taylor, Sr., were absent.

Staff present: Richard J. Garofano, City Administrator, and Richard S. Wetzler, City Attorney.

8:15 P.M. On motion of LaHue, seconded by Clawson, Council voted unanimously to convene in executive session for a period not to exceed 15 minutes for the purpose of attorney-client privilege.

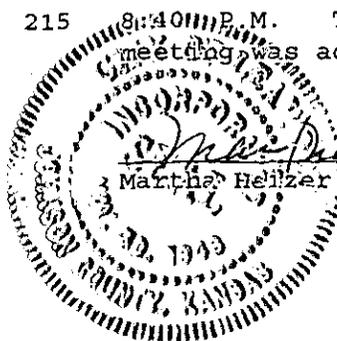
8:30 P.M. Council returned to special session, same members present. Rick Everist, 11225 Rosewood in Leawood Country Manor, said that his homes association would agree with whatever attorney Bill Watkins decided for his client, the property owner in Leawood Country Manor closest to Lot 13. If no agreement was reached, the homes association would have to consider some action.

City Attorney Wetzler said he understood that several parties affected by the development on Lot 13 might have reached an agreement, and if they had, he advised that the Council direct the staff to carry out the effect of whatever the agreement was.

Mr. Watkins said an agreement had been reached that would allow the homeowners to be satisfied with the development, slightly revised from what was previously before the Plan Commission. It involved the movement of the building on Lot 13 10 feet to the west, and some reconfiguration of the parking but no closer to the property line than previously shown. The developer, Sandy Baker, had agreed to spend a certain amount of money for additional landscaping in addition to that already slated for the area. The three property owners closest to Lot 13 who were represented by Mr. Watkins agreed that they had no objection to the lifting of the suspension of the building permit.

Councilmember LaHue moved to rescind the hold on the building permit that was initiated at the last Council meeting against the property owned by Sandy Baker, seconded by Bold. Mr. Baker said he had agreed to the conditions of the agreement. Motion carried unanimously.

215 8:40 P.M. There being no further business before the Council, the meeting was adjourned.



City Clerk

Minutes Summary

Audio Tape No. 400

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, October 6, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawon, Ronald LaHue, Gregory J. Peppes, Mike Gill, and James E. Taylor, Sr. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Joe Johnson, Director of Public Works; Captain Sid Mitchell, Police Department; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the following changes:

- 1) items 6D, 7B, 7C, and 7D under new business were moved to the Consent Agenda (see Consent below);
- 2) discussion of a possible non-smoking ordinance was removed from the agenda to be placed on a future agenda;
- 3) under old business, the ordinance relating to special use provisions for cellular towers was moved ahead of the consideration of a lease agreement with American Portable Telecom (APT) for their use of the City's cellular tower at 9617 Lee Blvd.

**PROCLAMATIONS:** The Mayor proclaimed October 13, 1997, as "Retired Educators Day."

**CITIZEN COMMENTS.** Art Arteberry, 4505 W. 124th Lane, of Berkshire Villas Homes Assoc., said that in October 1995, the City Council had approved the conversion of the subdivision's private streets to public streets. All property owners except one had agreed to the terms and conditions of the conversion; that resident had yet to agree. There must be some conclusion to the matter. Since he understood that the City Attorney was close to meeting with the resident, Councilmember Bold moved to direct the City Attorney to report on the status of the matter to the Council by the 1st Council meeting in November, and if the resident continued to make himself unavailable, then the City should take whatever steps were necessary to conclude conversion of the streets, seconded by Taylor. Councilmember Clawson was concerned about the City's involvement with a private landowner's property rights. City Attorney Wetzler said it was important to protect everyone's rights, and he was trying to mediate the differences between the homes association and the one homeowner, whose business had required that he be out of the country extensively. It was his intention to meet with the homeowner and report back to the Council on the results of that meeting, and

then it would be up to the Council to decide whether or not any additional action was in the best interest of the public at large. Mr. Bold's motion carried unanimously.

Jeff Nessel, 12012 Ensley Lane, said that Southwestern Bell and the Church of the Nativity at 119th & Mission Rd. had cancelled their contract to build a cellular tower disguised as a bell tower at the Church next to the Nativity school. Residents had protested about the threat they saw the tower to be to their children's health. He said that property values had also been threatened.

G. Gordon Thomas, 10516 Mohawk Lane, spoke again, as he had many times previously, about recall of Ward 1 Councilmember Ronald LaHue. He said that most people he had talked to felt that the reputation and integrity of the City would be enhanced if Dr. LaHue resigned. If Dr. LaHue refused to do so, Mr. Thomas wanted to know what action the Mayor and Council intended to take on the matter.

608 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of LaHue, seconded by Peppes:

1. Minutes of the September 15, 1997, Council meeting;
2. Minutes of the September 22, 1997, Special Council meeting;
3. 50th Anniversary Committee report (minutes) of their September 3, 1997, meeting;
4. Public Works Committee report (minutes) of their August 7, 1997, meeting;
5. Public Works Committee report (minutes) of their September 5, 1997, meeting;
6. Appointment of an ad hoc Contract Review Committee - Councilmember Rasmussen as chairman, Councilmember James Taylor, Cal Spradley (12649 Overbrook Rd.), and Paul Barber (4404 W. 94th St.) - to review the structure of construction, engineering and architectural contracts in an effort to provide the City with more leverage; they would report their findings to the Council for review by the end of 1997/early 1998;
7. Change Order No. 3A to the contract for Johnson County Stormwater Management (SMAC) project JB-04-003 and 97th St. improvements in the amount of \$9,136.00;
8. 1996 Audited Financial Statements and Management Letter;
9. (6D) Construction contract with the low bidder K & K Construction Co. for the 1997 Sidewalk Program for a negotiated bid of \$53,405.50 (the engineer's estimate had been \$55,095.00 and the 2 bids received had been rejected at an earlier Council meeting to allow for negotiation); a 10% contingency was included for a total of \$58,746.50;
10. (7B) Supplemental Agreement No. 4 with Bucher, Willis & Ratliff engineering consultants in the amount of \$15,097.72 to modify plans for Mission Rd. improvements, 103rd St. to I-435;
11. (7C) Bid/contract with Wilson Plumbing Co. in the amount of \$36,715.00 (Leawood to pay 51% of the cost, Overland Park 49%) for the relocation of private fire lines for Mission Rd. improvements, 103rd St. to I-435 (water valve installation and relocations);

12. (7D) Amendment to interlocal agreement with Johnson County for 1998 CARS project College Blvd., El Monte Dr. to State Line Rd. - increased the cap for County funding from 1.2 million to 1.7 million for the improvements; the County to reimburse the City \$500,000 in 1998; the ultimate commitment from the County was \$5.5 million to be paid in full in 1999.

Discussion of the allocation of \$27,361 for landscaping of the southern edge of the City Hall property along Town Center Drive to complete the entry to the City Hall and Leawood Pioneer Branch Library and screen parking. The architects for the City Hall, Abend Singleton Associates, had claimed that the City owed them over \$250,000 in fees. As it turned out, the arbitrator's ruling resulted in the City paying only \$12,500. Due to the relatively small size of the settlement, there was still a balance in the project account, and staff requested that the Council allocate \$27,361 for the landscaping along Town Center Drive, which had not been completed with the City Hall construction because staff knew that the parking lot would be expanded out to Town Center Drive, and it had been completed. The allocation would close out the project account. Councilmember Taylor expressed concern about the extensiveness of the landscaping and the use of the potential litigation funds for so much landscaping. He asked if there were any other improvements around City Hall for which the funds could be used. City Administrator Garofano said that there was a plan for extending the trail system through the City Hall site with a bridge over the creek on the north side of the building, and landscaping on the east side of the site would be done at a later date. Mr. Taylor felt the money could be better used on some of the trail improvements rather than the entry landscaping; and perhaps the "windfall" could be used to help reduce the City's debt.

Councilmember LaHue moved to approve the allocation for the subject landscaping, seconded by Clawson. Councilmember Bold also felt that the "windfall" should be used for other more important projects and hold off on anymore landscaping for the time being. Motion carried; Bold, Taylor, Gill opposed; all others (4) in favor.

#### PLAN COMMISSION

- 1127 **Resolution No. 1367, attached as part of the record, approving a preliminary site plan for Ladies Wellness Center (health club and medical building) at 11401 Nall Ave.** On motion of Clawson, seconded by Taylor, Council unanimously adopted the resolution except for Councilmember Gill who was not seated for the vote.

Mr. Gill returned to his seat.

- 1224 **Resolution No. 1368, attached as part of the record, approving a preliminary site plan for Cline-Wood Office Building at 113th & Tomahawk Creek Parkway.** There was brief discussion of the FAR (floor area ratio). Planning Director McKay said he did not know an FAR since there was no FAR in CP-0 districts, only in SD districts, but he would furnish an FAR for Mr. Bold who was curious about it. On motion of LaHue, seconded by Bold, Council unanimously adopted the resolution.

- 1514 **MAYOR'S REPORT.** The Council of Mayors discussed the fact that ISTEA (Intermodal Surface Transportation Efficiency Act) would be voted upon by Congress in October or November. On motion of LaHue, seconded by Bold, Council unanimously voted that the Mayor write letters to Leawood's representatives in support of continuing ISTEA federal funding for streets.

**OLD BUSINESS**

- 1574 **Ordinance No. 1693 amending Section 4-3 of the "Amendment to the Leawood Development Ordinance" providing for changes in the special use provisions for cellular towers.** Steve Sailor, 12703 Glenfield near the south fire station at 127th and Mission Rd., said that residents' goal was to protect the integrity of Leawood neighborhoods from cellular towers. Residents in his area were particularly concerned about exceptions to zoning location requirements that left the door open to another cell tower application at the south fire station. If the exception allowing towers on City facilities was not deleted, residents wanted an exception for the south fire station. Doug Allmon of the Planning staff said that the Plan Commission felt that City sites were appropriate for tower locations because there was an existing tower at the police department and there was an opportunity at perhaps a later date to include a tower at the south park. Milly Cundy, 12628 Howe Dr., also near the south fire station, agreed with Mr. Sailor about the exception, and mentioned that she would suffer property devaluation if a cell tower was built in her neighborhood.

- 1795 The Council continued voting on staff bullets. Bullet #7 re Section D "Zoning Location Requirements" - D(1) to read, "Newly proposed wireless communication antennae, towers, and supporting ground equipment..."; and D(2) to read, "Wireless communication towers, antennae, and supporting ground equipment..." Councilmember Gill moved to approve the recommended wording, seconded by Taylor, and carried unanimously.

Bullet #8 re Section D "Zoning Location Requirements" providing for site exceptions in residential areas - staff and the Plan Commission felt the exceptions were necessary; because Leawood was predominately residential in nature, and in terms of fairness to providers, some avenue of residential placement was necessary. The exceptions were naturally camouflaged to blend with the surrounding residential environment. If an applicant failed to disguise a site appropriately, then a special use permit application could be denied. Mr. Gill said that the most controversial exception was the one for government facilities when combined with necessary public safety radio equipment. Mr. Gill asked if that exception was deleted from the ordinance, would the City still be able to approve a cell tower on public property (for instance the south park at 143rd and Mission Rd.). Doug Allmon said that was difficult to answer; as a rule, the Plan Commission and Council could take exception to the ordinance when they saw fit, that the exceptions in the proposed ordinance were in deed minimum requirements. So it might be possible to place a tower on a piece of land that was prohibited by the deletion of the government exception. With the understanding that a Council could on a case-by-case basis, if it chose to do so, consider an application for the placement of a cell tower on any City property, Mr. Gill moved to approve the "Zoning Location Requirements" section with the deletion of the exception d) 1. C) (government facilities when combined with necessary public safety radio equipment), seconded by Bold. Mr. Gill said that neither residents nor the industry wanted this exception. He further said that the City had an obligation by law and by good sense to accommodate cell towers at appropriate locations - perhaps some residential areas, the City park, the south park at 143rd

and Mission Rd., the Ironhorse Golf Club. Mr. Allmon reminded Council that cell towers would require a special use permit to be considered on a case-by-case basis by the Council. Also the City was the owner of property for any application to use City property, and in that respect, the City didn't necessarily have to negotiate a lease if approached by a carrier. Councilmember Bold felt all of the exceptions should be deleted from the proposed ordinance to allow the Council to decide case-by-case - to grant deviations or exceptions - and to give the residents some confidence in the City. Mr. Bold called for the question, seconded by Campbell, and carried unanimously. Mr. Gill's motion carried; LaHue, Peppes opposed; all others (5) in favor. Mr. Allmon said that approved or soon to be approved cell towers would be grandfathered until their special use permits expired.

2838       Bullet #9 re Section E "Tower Height" which addressed the 150-foot tower height limit, and the variance mechanism for increasing tower height if needed. Staff agreed that a variance allowing construction of a tower of any height based on engineering data was not in the best interest of the community, so recommended that Section E be amended to read, "...exception to this rule may be granted provided that the applicant show clear evidence that additional height is needed to provide necessary signal coverage. However, no exception shall be granted in excess of 30 feet beyond the prescribed height limit, thus establishing an absolute excepted height of 180 feet." Police Chief Cox had written a memo indicating that police radio antennas (sometimes confused with lightning rods) had to remain atop platforms for adequate transmissions and reception, so it was important that the final version of the ordinance not prohibit antennas mounted on top of the platform, even though that resulted in a slightly taller overall structure. A phrase was added to staff's recommended amendment to read, "...excepted height of 180 feet, except when needed for City-directed public safety equipment." On motion of LaHue, seconded by Peppes, Council unanimously approved Section E with staff's recommended amendment and phrase added to that amendment.

3059       Bullet #10 re Section F "Setbacks and Buffer Requirements" which provided that the Plan Commission and Governing Body would determine setbacks for the residential site exceptions listed within the proposed ordinance. Councilmember Gill moved that the 500-foot distance from residential property apply equally to the remaining exceptions under Section D of the ordinance, seconded by Bold. Mr. Allmon said that Saddle & Sirloin Club, master planned for residential use, was an excellent site for a tower. He wasn't sure that the 500-foot setback from residential could be met. He said they could probably apply for an exception, but it was difficult to write an ordinance and grant exceptions left and right. Mr. Gill said there were a number of sites in the City that would be available for towers in commercial areas and parks, giving the City plenty of opportunity at key locations without having to get within 500 feet of homes. Mr. Allmon clarified for Councilmember LaHue that the Plan Commission did not want the 500-foot setback to apply to site exceptions. Mr. Allmon explained that the 500-foot buffer was provided to lessen the visual impact on a surrounding neighborhood, and because the site exceptions were by nature camouflaged, there would be no visual impact. He said that it was very difficult to find a residential site north of I-435 that was not surrounded by at least 500 feet by homes. If the Council incorporated the 500 feet for the residential exceptions, the exceptions would be meaningless. Mr. Gill's motion carried; LaHue opposed (he agreed with the Plan Commission), all others in favor.

3384       Bullet #11 re Section G (7) of "Design Requirements" which was amended by the Plan Commission to cover directional antennae and cumulative radiation as suggested by

resident Don Meeker. Councilmember Gill moved to approve Section G as recommended by the Plan Commission and staff, seconded by Peppes, and carried unanimously.

3434 Bullet #12 re Section J (3) of "Co-location" which allowed approved multi-user towers to add antennae "as a right" until the approved capacity was filled. Any additional antennae beyond the approved capacity was considered a revised plan and required a new special use permit. It was the consensus of the Council that Section J stand approved.

Bullet #13 re Section K "Abandoned or Unsafe Towers and Antennae Support Structures" provided that wireless communication facilities be in conformance with federal legislative action or regulatory guidelines established by the FCC. It had been suggested by resident Don Meeker that several other federal agencies be added to the list (EPA, OSHA, National Institutes of Health, etc.) It was staff's opinion that the FCC had the regulatory authority over the wireless industry. Staff was unsure of the ramifications associated with enforcing rulings or mandates of non-controlling agencies. Councilmember Gill moved to accept staff's recommendation that Section K be left as proposed by staff, seconded by Taylor, and carried unanimously.

3511 Bullet #14 re questions of a 3-mile versus the proposed 2-mile search radius. Staff and the Plan Commission had established the 2-mile radius after review of other City ordinances and comments made by wireless industry representatives. However, staff had no objection to making a 3-mile search ring a mandatory data submittal requirement. Councilmember Taylor moved to approve a 3-mile radius, seconded by Gill, and carried unanimously.

3605 Bullet #15 re Section J (1) of "Co-location" which addressed non-discriminatory pricing for co-location agreements. Mr. Allmon said that the following changes should be made to the ordinance: "Prior to issuance of a building permit, the applicant and property owner must provide a signed.....based on the current market rate for co-location. This market rate will be established by an independent research consultant hired at the expense of the applicant. Failure to provide co-location opportunities to (or negotiate in good faith with) alternative carriers may constitute a finding of non-compliance.....grounds for revocation of the special use permit, and shall be cause for the withholding of future permits to same owners to install, build or modify antennae or support structures within the City of Leawood." Staff was originally going to require signed lease agreements, but decided that would be a burden on carriers and would possibly eliminate tower construction all together; and the City Attorney would not be required to review the leases as originally planned. Councilmember Campbell moved to accept staff's recommendations for Section J but with a change in the wording so that carriers had to provide signed lease agreements or sign a statement of intent to negotiate in good faith and pay an independent research consultant to establish the market rate, seconded by Taylor. Councilmember LaHue was concerned about the Council overstepping its bounds by telling private enterprises how they would conduct their business with competitors. Mr. Campbell disagreed - cell towers had a tremendous public impact, communications affected the general public, and the City had a right to do everything within its power to attempt to minimize the impact, to assure that there would be a minimum number of towers built (a legitimate City planning and zoning function). He said that to some extent, the economics and legislative intent did cross over each other, but that was necessary due to the obvious impact of the towers. City Attorney Wetzler added that there had been some instances where the pricing structures that carriers had established had the effect of creating more tower sites. Further discussion. Councilmember Taylor called for

the question, seconded by Gill, and carried unanimously, except for Dr. LaHue who had left his seat. Mr. Campbell's motion carried unanimously, except for Dr. LaHue.

4051       Bullet #16 - current ordinance allowed for notification of property owners within 200 feet of any proposed tower parcel. It had been suggested that courtesy notice be provided to persons within 1000 feet of any tower parcel. Staff agreed that an amendment to Section C (1) "Special Use Permit Required" should read, "...after notification of adjacent and abutting property owners within 1000 feet of said property..." Mr. Allmon said that the words courtesy notice would be added as a refinement of the language and that the first 200 feet notice would be by certified return receipt mail. Councilmember Bold moved to accept staff's recommendation, seconded by Taylor. Councilmember Gill said that the notification for 201-1000 feet (courtesy notice) should be by convenient means, by regular mail. Mr. Bold's motion carried unanimously.

4134       Bullet #17 re proposed changes to definitions. On motion of Clawson, seconded by Gill, Council unanimously approved the proposed changes. Mr. Allmon suggested a wording change in d)1. of "Zoning Location Requirements" - "Exceptions to this may be provided for the following, upon approval of a special use permit:...", rather than pending approval. On motion of Gill, seconded by Peppes, Council unanimously approved the wording change.

4207       Councilmember Taylor moved to pass the ordinance with all approved changes, seconded by Bold. Roll call vote was unanimous, except for Dr. LaHue who had not returned to his seat.

Dr. LaHue returned to his seat.

4277       **Acknowledge receipt of the final "135th Street Corridor Traffic Study" by Bucher, Willis & Ratliff consulting engineers.** On motion of Clawson, seconded by Peppes, Council unanimously acknowledged receipt of the study. (Resolution No. 1342 approving the rezoning from AG to SD (C-R), Special Development subdistrict (commercial - retail), and approving the preliminary site plan and preliminary plat for Price Chopper on the northeast corner of 135th & Mission Rd., stipulated that the City would not review the developer's final plan until the City had received the results of a traffic study.)

4394       **Authorize lease agreement with American Portable Telecom (APT) for their use of the City's cellular tower at the Police Department, 9617 Lee Blvd.** Don Meeker, 9610 High Dr., opposed the lease, as he had opposed the additional antenna and operating equipment on the site since the matter was first considered by the Plan Commission several months ago. He said there was continuing support for the opposition - he read a protest petition statement that had been signed by 108 residents of the area in just a 3-day period. He was concerned about the precedent the City would set by leasing space on the existing tower for commercial purposes in a residential zoned neighborhood; if followed to an ultimate conclusion, the "new procedure" gave the Governing Body the authority to lease any of its property for any commercial use short of illegality - lease its property without residents having the right to protest under the due process requirements of the City's ordinances.

Councilmember Taylor said it appeared that the application for the lease indicated an address of 9617 Lee Blvd., but it appeared that the Plan Commission had approved the application for 9615 Lee Blvd., which was not the correct address nor the correct platted lot

number. It had also come to his attention that the application for the site development plan approval did not have the City of Leawood's signature as the property owner as required. Also, Cellular One, the current carrier on the existing tower, had not approved the use of the tower by another carrier. Mr. Taylor felt the matter should be returned to the Plan Commission to correct the technical problems, so he moved that the matter be remanded to the Plan Commission. Motion died for lack of a second.

Councilmember Campbell moved to approve the lease agreement, seconded by Peppes. Councilmember Peppes moved to amend the motion to change the wording in Provision #8 of the lease agreement "Signs/Graffiti" to read, "TENANT may place signs on the Premises as required by applicable governmental regulations....." (The wording had been "subject to" applicable....) Motion seconded by Clawson and carried unanimously.

Councilmember Gill said he would vote against the lease, not because he thought it was a bad lease (on the contrary, it was a good lease), but because the tower was on government property, the Council was the custodian of that property, and residents had told the Council that they were opposed to the lease. Under the lease agreement, the City would receive an initial \$50,000 plus \$500 per month rent from APT. If the City needed approximately \$54,000 in 1997, it didn't have to obtain it from APT, but from other sources. So money wasn't a motivation. Nor was need for an additional antenna a motivation. If someone had an Aerial phone and made a call from 96th and Lee Blvd., the call would go through without the additional APT antenna on the existing tower.

Councilmember Bold moved to amend the motion that the \$50,000 initial rent payment plus the \$500 per month rate be placed in the reserve account for the future acquisition of the 800 MHz radio system until such time as the system was paid for in full. Motion seconded by Campbell and carried unanimously.

5416 Mr. Campbell felt that by allowing multiple users on a cell tower, the City could reduce the number of towers, and that was why the Council had just passed the "cell tower" Ordinance No. 1693 to require that applicants come to the City with leases or sign good faith statements. Councilmember Clawson mentioned that she knew of many residents in the area who were not opposed to an additional antenna on the existing tower, but were only opposed to the height of the tower.

5608 Mr. Campbell's motion as twice amended to approve the lease carried; Gill, Taylor opposed; all others (5) in favor. The Mayor said that had she had an opportunity to vote, she would not have voted due to the appearance of a conflict of interest.

#### **NEW BUSINESS**

5650 **Approval of Appropriation Ordinance No. 817.** On motion of Gill, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

5688 **Approve bid/authorize contract for College Blvd. landscaping and site improvements.** Councilmember LaHue moved to authorize a contract with the low bidder Atcheson Lawn and Landscape in the amount of \$455,390.00 (10% contingency added for a total of \$500,929.00).

Bruce Beye, attorney for the second low bidder Wolfert Landscape, said that his client's bid was approximately \$18,000 higher. The bids were submitted in two parts - as

base bid and as alternate bids for specific projects along the job site that individual homeowners might require. The bidders were required to bid both the base and alternate bids. Each bidder received the same specific clarification in their bid packets, including the statement that no qualified bids would be accepted. Mr. Wolfert bid accordingly. Mr. Atcheson's alternate bids however were qualified bids, not specific unit price bids as required. That was in violation of the bid specifications and process. Staff decided not to do the alternate work, and of course, had every right to do that. But his point was that if the City was going to bid that kind of work, the City needed to follow the bid language, make a complete non-qualified bid in case the staff decided to take the alternate bids.

City Attorney Wetzler said there was a provision in the bid documents concerning acceptance and rejection of bids - the owner reserved the right to accept the bid which in its judgment was the lowest and best bid and for the work covered by the proposal to award the work or to reject any or all bids and to waive irregularities and informalities in any bid submitted. Mr. Wetzler had not had time to do research on whether or not Mr. Atcheson's bid was a qualified bid. It was certainly a nonresponsive bid, one not exactly called for. In as much as the staff had determined not to do the alternate work, it would seem like the City would be in a very unusual position to have to accept in effect a higher bid that included work that the City had no intention of doing.

In response to Councilmember Taylor, Public Works Director Johnson confirmed that the base price and alternates were lump sums. Mr. Atcheson's alternate bids of \$25 per hour could not be construed as lump sums. Mr. Taylor asked if there was a provision in the bid documents that allowed the City at a later date to enact an alternate; if there was such a provision, he believed the City could have a problem with this issue and Wolfert Landscape.

Mr. Wetzler recommended that the Council reject all the alternates and accept only the lowest base bid, so as a practical matter, the City could not go back at a later time and contract for one of the alternates with any of the bidders.

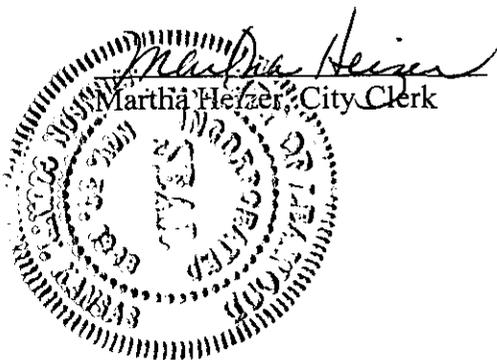
6372 Councilmember Clawson moved to amend the motion to state that the Council specifically reject the alternate bids, seconded by Gill. Motion carried unanimously.

There was discussion between Mr. Gill and Mr. Beye of the interpretation of "qualified" bids and unit prices.

Mr. Campbell called for the question, seconded by Clawson. Motion carried; Taylor abstained, all others in favor.

Dr. LaHue's motion as amended carried unanimously.

6900 10:40 p.m. There being no further business before the Council, the meeting was adjourned.



Minutes Summary

Audio Tape No. 401

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, October 20, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., and Louis Rasmussen. Mike Gill was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; Joe Johnson, Director of Public Works; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Attorney Steve Horner in the absence of the City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Clawson, seconded by Bold, after Council voted unanimously on motion of Bold, seconded by Taylor, to postpone consideration of a Parks & Recreation Advisory Board's recommendation concerning the jazzercise program conducted at the Community Center at City Hall to the November 3, 1997, Council meeting. Mr. Bold said that Tina Mullenix who ran the program had indicated to him that she didn't know the issue was on the agenda; staff, however, felt that she had been told about the meeting, and Councilmember Peppes, Council liaison to the Advisory Board, felt the Council should go ahead and make a decision without Mrs. Mullenix' presence.

**CITIZEN COMMENTS.** Chug Tuttle, 5109 W. 111th Terr. in Leawood Country Manor subdivision, referred to Sunday's Kansas City Star article concerning a master plan for Kansas City's next quarter century taking its cues from neighborhood life a half century ago with dreams of a friendlier future for the city. The Brookside area in Kansas City, Missouri, was used as a model example, courtyards, people walking from shop to shop. Leawood might give it some thought in their future planning process.

345 Jeff Nessel, 12012 Ensley Lane, felt that the legality of the cellular tower at 9617 Lee Blvd. was still up in the air - there should have been a special use permit process at the time it was constructed with notification to area residents and a public hearing, neither of which occurred. He requested that an independent arbitrator be appointed to review the issue once and for all to determine if due process was violated. He said that residents would abide by the arbitrator's conclusions.

476 G. Gordon Thomas, 10516 Mohawk Lane, asked the Mayor if she would comment on a recent Sun Publications article in which the editor felt that Ward 1 Councilmember LaHue should resign. She said she would not, but invited Mr. Thomas to talk to her later by phone.

- 510 **CONSENT AGENDA.** The following were approved unanimously on motion of LaHue, seconded by Peppes:
1. Minutes of the October 6, 1997, Council meeting;
  2. 50th Anniversary Committee report (minutes) of their October 1, 1997, meeting;
  3. Arts Committee report (minutes) of their September 23, 1997, meeting;
  4. Historic Commission report (minutes) of their September 16, 1997, meeting;
  5. Golf Course Committee report (minutes) of their September 17, 1997, meeting;
  6. Parks & Recreation Advisory Board report (minutes) of their October 14, 1997, meeting;
  7. Departmental reports;
  8. Employee benefits renewal for 1998 - Anthem Health to replace Blue Cross/Blue Shield for health coverage; Humana HMO to remain for health coverage; Anthem Health to replace The Hartford for life insurance; The Hartford to remain for long-term disability coverage; Benchmark to remain for Section 125 Cafeteria Plan administration; New Directions to remain for employee assistance program; and Kansas City Dental Care to remain for voluntary dental program;
  9. Re-appointment of Janet O'Neal (9743 Overbrook Rd.) as Leawood's representative to the Johnson County Alcohol Planning Council; *term to expire 12/31/2000 mh*
  10. Purchase of 15 Ruger 9mm carbines (rifles) from Simmons Gun Specialties in the amount of \$5,389.00;
  11. Change Order No. 4 to the contract for the Aquatic Center at Leawood Park (106th & Lee Blvd.) in the amount of \$952.84;
  12. Interlocal agreement with Kansas City, Missouri, for the cooperative maintenance of State Line Rd. - Leawood to be responsible for the normal maintenance of the street, signals, street lights, electricity usage and snow removal from south of 79th St. to just north of the intersection of Carondolet; Kansas City responsible for the same type of maintenance from just north of the intersection of Carondolet south through the intersection of 135th St.

#### PLAN COMMISSION

- 520 **Resolution No. 1369, attached as part of the record, approving a revised preliminary site plan for Cure of Ars Catholic School at 9401 Mission Rd.** - for the addition of 9,050 square feet of building. Councilmember LaHue moved to adopt the resolution, seconded by Peppes.

Councilmember Rasmussen moved to amend the motion to delete Plan Commission stipulation of approval #6 which required that additional landscaping be placed at the southern end of the existing playground on the joint property line with Ranchmart Shopping Center, seconded by Peppes. Mr. Rasmussen said that extensive landscaping had already been committed with the construction of a new grocery store to the south of the school, and it would be an unnecessary burden on Cure of Ars Church to duplicate the landscaping. He added that if the owners of Ranchmart didn't follow through on their commitment, then, of course, the Church could do some landscaping if it so desired. Motion to amend carried unanimously.

After a short presentation of the plans, Dr. LaHue's motion as amended carried unanimously.

1203 Mr. Rasmussen also wanted the 2% of gross revenues paid to the City changed to 5%, even though Southwestern Bell was still paying 2%, to update a 20-year old franchise percentage to current cases. City Administrator Garofano said that staff's intent was to deal with that issue when they started negotiating with Southwestern Bell. He said that the \$12,000 wasn't included because with fiber optics, it was quite unlikely that the City would have several companies placing that kind of infrastructure into the right-of-way; it was more likely that companies would piggyback onto other companies' lines to provide service. It was quite unlikely that a company would be granted a franchise by the City and not act upon it. Why would the City charge the \$12,000, an obstacle, when it was trying to get new providers of service into the community to compete with Southwestern Bell. Mr. Horner confirmed for Mr. Rasmussen that there was no provision in the agreements that required that service had to be provided.

1420 Councilmember Campbell was interested in the market rate. Southwestern Bell's current franchise agreement might have an artificially low rate (2%). He didn't want to do anything to perpetuate that, even at this time. If the market rate or rate other cities were charging was 5%, then why not charge Brooks Fiber and ACSI 5% now. 5% was not going to deter them from coming into Leawood. And charging Brooks Fiber and ACSI 5% would not be discriminatory; it would have been if the City had just finished granting a new franchise to Southwestern Bell at 2%. Mr. Campbell also liked Mr. Rasmussen's suggestion of a \$12,000 fee. Councilmember Bold also liked the 5% and a \$12,000 fee.

Mr. Horner mentioned that staff hoped with the 1-year agreements, that Brooks Fiber and ACSI would take advantage of the 1-year opportunity and expand to the point where they would be providing service to a large number of people, so in a year, the City would be able to say that they were like Southwestern Bell and should have the same agreement.

City Administrator Garofano said that in all probability, Brooks and ACSI would not reach the point at which they would be paying the City a percentage of gross revenues; the financial benefit to the City would not be present with either 2% or 5% in the first year because the companies would not be at the point of providing much. Brooks Fiber was really not planning to aggressively market to businesses immediately, as ACSI probably was. Neither of them would be in a position to offer services to residential customers for some time. If they did, they might even use Southwestern Bell's infrastructure to do it, and that was what was so unique to the telecommunications aspect of it - legally piggybacking.

2350 Attorney Dick Smith representing Brooks Fiber said that he understood that if the franchise was granted for a 1-year period, his client would pay \$2.50 per linear foot (\$51,600) for their initial buildout charge, would not be charged \$2.50 for new plant. If the franchise was renewed for 6 months, they would pay half of that. He did make it clear that the \$2.50 per linear foot charge was not appropriate, was not competitive, and if the franchise was for a 5-year term, his client would never agree to it. Southwestern Bell didn't pay the City anything like that, only 2% of their gross revenues every year. Brooks Fiber was willing to pay the 2%, even the 5%, because it was passed on to the customer, a tax on the community. He said that the only problem his client had now with the agreement was the 2% charge. For the City to charge \$2.50 per linear foot (\$51,600) without any customers, and to charge a percentage of gross revenue if they did have a customer, was completely unfair. Where the 2% exceeded the \$2.50 per linear foot, his client should merely pay the 2%, a suggestion in earlier discussions.

2528 Ron Schaible, Vice President and General Manager of Brooks Fiber, addressed the Council, said they would be ready to service residential customers by the end of 1998. He asked that the franchise be in accordance with federal law and that it be administered completely neutral. The \$2.50 charge was a barrier to entry into the City because their competitors didn't need to pay it. He said that if Southwestern Bell refused to deal with the City, Brooks would be able to service the City, including residents, even though they weren't as cost effective in residential areas as they expected to be the middle of next year. They were proactive in the business community. They planned to service the City of Leawood.

2780 Attorney Jerry Riffel representing ACSI said that Leawood needed some sound competition for Southwestern Bell as soon as possible, so it would be good to encourage Brooks, ACSI and other companies to serve Leawood. ACSI agreed on an interim basis with the proposed \$2.50 per linear foot and a \$2,000 application fee; if their franchise was extended for 6 months, they would pay half. He felt that at such time as 2% of their gross revenues exceeded the per linear foot amount, then ACSI should shift to the same franchise terms as Southwestern Bell. He said that the \$2.50 per linear foot was the very highest level to which ACSI could agree. Nationally, it was a very very high figure and perhaps should only be used when a company was simply passing through, providing competitive access. But where a company provided service, it would not be sound public policy for Leawood to continue charging a very high linear foot charge such as \$2.50.

3269 On motion of Taylor, seconded by Rasmussen, Council voted unanimously to close the hearing.

3295 **Ordinance No. 1694 granting a franchise to Brooks Fiber.** Councilmember LaHue moved that both applicants would pay a \$2,000 application fee plus \$2.50 per linear foot for initial buildout, and at such time as 2% of their gross revenues exceeded the per linear foot fee, then they would only pay 2% of their gross revenues. Motion died for lack of a second.

3366 Councilmember Campbell moved that the consideration in Section 33 be a \$2,000 application fee, plus an initial payment of \$12,000 as a franchise fee, plus \$2.50 per linear foot thereafter, with the \$12,000 credited towards the \$2.50 per linear foot once Brooks started installing cable, and at such point in time as 5% of the gross revenues exceeded the linear foot charges, then the 5% of gross revenues would be charged. Motion seconded by Rasmussen.

3628 Ron Schaible said that ACSI billing customers 5% and Southwestern Bell billing 2% was not in accordance with the telecommunications act, certainly a barrier to entry, noncompetitive and discriminatory.

3660 Steve Horner said the 2% versus 5% probably would be challenged by the companies before the FCC, so he suggested, in order to alleviate ACSI's concerns and address Council's concerns, that language could be drafted stating that it would be 2% until August 1998 (Southwestern Bell's franchise expiration), and from that date on, 5%.

3709 Councilmember Bold moved to amend the motion to change the 5% of gross revenues to 2% until the Southwestern Bell franchise expired (approximately August 1998) at which time the 2% would automatically be increased to 5%, seconded by Clawson. Motion carried unanimously.

3789 Mr. Campbell's motion as amended carried unanimously on roll call vote.

- 3795 **Public Hearing on the granting of a telecommunications franchise to American Communication Services of Kansas City, Inc. (ACSI).** On motion of Bold, seconded by Clawson, Council voted unanimously to close the hearing.

**Ordinance No. 1695 granting a franchise to American Communication Services of Kansas City, Inc.** Councilmember Bold moved to pass the ordinance under the same terms as Ordinance No. 1694 (Brooks Fiber), seconded by Rasmussen. Motion carried unanimously on roll call vote.

**NEW BUSINESS**

- 3888 **Approval of Appropriation Ordinance No. 818.** On motion of Peppes, seconded by Rasmussen, Council approved the ordinance on roll call vote; Bold, Campbell, Clawson, LaHue, Peppes in favor; Rasmussen and Taylor not seated for the vote.
- 3928 **Request for support from the Arts Committee's Leawood Stage Company Steering Committee for their community theater plans and a theater production to be held on the new stage area on the north side of City Hall.** Councilmember LaHue moved to support the Leawood Stage Company Steering Committee's plans, seconded by Clawson. Discussion was halted to hear from a resident concerning the APT cell tower lease approved at the last Council meeting.
- 3977 Ron Goldstein, 9601 Lee Blvd., complimented staff and the Governing Body on the passage of an amended ordinance relating to special use provisions for cellular towers at the last Council meeting. If sensitivity for passage of the ordinance was based on residents' concerns about towers expressed over several months, then the idea of approving the APT lease at 9617 Lee Blvd. seemed unfair, seemed that the Governing Body was saying they wouldn't permit antennae in new areas, but it was all right to have them in older areas. Had residents known about the Cellular One plans for the existing tower at the police station some time ago, the same residents who protested the APT lease would also have protested against Cellular One.
- 4103 **Continuation of Leawood Stage Company.** Mary Reed, Chairman of the Arts Committee, and two members of the community theater sub-committee (Mike Eggleston and Kathy Roberts), told the Council about their plans for a June 1998 theater production of 4 performances of the musical "Bye Bye Birdie" on the stage on the north side of City Hall. They asked for the Council's support for the production at that location. Mrs. Reed reviewed the many events that the Arts Committee had already sponsored. It was time for a theater production in Leawood with a new City Hall stage area which should be used for its intended purpose.

The last 3 or 4 weeks, the question of whether a theater production was really appropriate on the stage had arisen. The sub-committee had been told to scale back the performance. They were told that the outdoor amphitheater with stage area on the north side of City Hall was not the appropriate place for the type of performance they wanted to put on. The Council did allocate and approve \$20,000 in the 1998 budget to use as seed money to gather financial and moral support from the community, and now it appeared that the money

might not be a firm commitment and not be approved at any time. The sub-committee felt as if a rug had been pulled out from beneath them.

The Leawood Stage Company Steering Committee needed final Council affirmation to continue their theater production plans, including a fundraising campaign. The Committee had just recently been informed that the planned performances on the stage area would displease George Lieberman, the developer of the adjacent Edgewood subdivision, who had threatened to file a lawsuit if such performances were staged. So perhaps the Council would not permit theatrical productions to occur at night at the amphitheater. The Committee considered a staff suggestion of performing on the front steps (south side) of City Hall, but decided that idea was not appropriate for many reasons.

4956 Councilmember Bold said that the Council had had very specific discussions about the use of the stage area - there would be no lights, there would be small groups. Mr. Lieberman had a legitimate concern. Mr. Bold asked how the Committee would keep an "overflow" out; there could be too many people; the community could support the theater to too large of an extent for the stage facility.

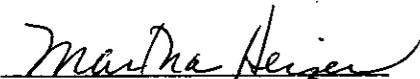
Councilmember Campbell said he had envisioned the stage to be used for productions. He was in favor of trying at least one, and address any problems at that time. Councilmember Clawson said that the Committee had plans to "invite neighbors over" to educate them about the production.

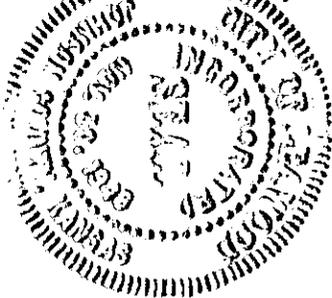
Mr. Bold called for the question, seconded by Peppes and carried unanimously.

Dr. LaHue's motion to support the Committee's plans carried unanimously.

5791 **OTHER BUSINESS.** On motion of LaHue, seconded by Taylor, Council voted unanimously to convene the November 3, 1997, Council meeting at 5:00 P.M. rather than 7:30 P.M.

5882 10:25 p.m. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 402

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 5:00 p.m., Monday, November 3, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, \*Gregory J. Peppes (arrived at 6:20 p.m.), James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Information Services Director; J. Stephen Cox, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Kathy Rogers, Finance Department; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Councilmember Rasmussen moved to remove the scheduling of an executive session concerning a personnel matter and to place it on the November 17, 1997, Council meeting agenda to schedule it at that time, seconded by Taylor. Motion carried; LaHue, Clawson opposed; all others (5) in favor.

Councilmember Clawson moved to add an assignment to the Public Works Committee to the Consent Agenda - to conduct interviews of engineers for stormwater projects DB-04-015 (84th St. & State Line Rd.) and DB-04-019 (93rd & Wenonga). Motion seconded by Taylor and carried unanimously.

The agenda was approved unanimously on motion of Clawson, seconded by Gill with the two changes.

**PROCLAMATION.** The Mayor proclaimed November 15, 1997, as "America Recycles Day."

**CITIZEN COMMENTS.** None.

302 **CONSENT AGENDA.** One item was removed for clarification. The following were approved unanimously on motion of LaHue, seconded by Clawson:

1. Minutes of the October 20, 1997, Council meeting;
2. Allocation of 1998 alcohol tax funds as recommended by the Grant Review Committee of the Drug and Alcoholism Council of Johnson County (DAC) - Leawood included \$55,000 in the 1998 Budget for distribution to agencies;

3. Allocation of 1998 human service funds as recommended by the Grant Review Committee of United Community Services of Johnson County (UCS) - Leawood included \$4,430 in the 1998 Budget for distribution to agencies;
4. Change Order No. 5 to the contract for the 1996 sanitary sewer project (for 1997 construction) in the amount of \$400,185.00 to continue Phase III of the project (pipe bursting process) to prepare for transfer of the Leawood Sewer System to the County;
5. Supplemental Services Agreement No. 1 with George Butler Associates in the amount of \$29,566.00, for inspection services on Phase III of the 1997 sanitary sewer project;
6. Appointment of Amy Vlastic (12809 Catalina) to the Parks & Recreation Advisory Board to replace Rich Schaffer, her term to expire May 2000;
7. Assignment to the Public Works Committee - to conduct interviews of engineers for stormwater projects DB-04-015 (84th St. & State Line Rd.) and DB-04-019 (93rd & Wenonga).

Ad hoc Contract Review Committee report (minutes) of their October 29, 1997, meeting. Councilmember Rasmussen requested Council agreement that the last (back) page of the minutes (mission statement, objective, and strategy) was the ad hoc committee's true assignment or function. So agreed. On motion of Rasmussen, seconded by Taylor, Council unanimously accepted the minutes.

394 **MAYOR'S REPORT.** Mayor Dunn recently attended 2 ribbon cuttings - for College Blvd. improvement project, Phases 1 & 2, State Line Rd. to Roe Ave.; dedication of the City Hall courtyard with fountain as the kickoff event for the City's 50th anniversary in 1998.

Mrs. Dunn attended the Greater Kansas City Chamber of Commerce Kansas Legislative Affairs Committee meeting at which she heard testimony on the commercial property tax scheduling.

She attended a metro area mayors meeting regarding a transit task force. Two Leawood residents, Nelson Mann and Bill Lucas, co-chaired the task force.

The City received an invitation to a countywide Veterans' Day Observance November 11th at the Kansas Army National Guard Armory in Olathe. Councilmember Taylor said he planned to attend.

#### **OLD BUSINESS**

555 **Consideration of the Parks & Recreation Advisory Board's recommendation on the jazzercise program conducted at the Community Center at City Hall.** Parks & Recreation Director Whitaker said it was his opinion that the Council should take action on the formal recommendation of the Advisory Board made at the Board's October 13th meeting. The recommendation had been distributed to the Council in memo form from Mr. Whitaker dated October 16, 1997.

Councilmember Bold felt there still might be other options available and open for discussion. Councilmember Rasmussen said that the priority for the Community Center was the City's municipal court activities. He wondered if the Board's recommendation took into consideration the fact that there were parking problems due to Community Center scheduling problems. Scheduling various groups shouldn't interfere with the overall administration of the City, and municipal court functions.

Councilmember Clawson said there needed to be discussion of priorities and the overall uses of the Community Center rooms, from City administration to civic and community not-for-profit groups to for-profit organizations.

Councilmember Bold said that letters the Council had received indicated that the jazzercise program was very popular. He wanted to know if there was a way to continue the program with certain conditions - 1) that the City take over and control the program (it would not be for-profit), 2) the scheduling of the program would not interfere with the day-to-day functions of City Hall, and 3) the scheduling of the program would not preclude other community and civic and charitable groups from using the rooms, especially the large Oak Room. He moved that the Council direct Mr. Whitaker to attempt to negotiate a contract with Tina Mullinix in such a fashion that his 3 criteria would be met, and report results to the Council in 2 weeks. Motion seconded by Rasmussen.

822 Mr. Whitaker, whose department staff scheduled all Parks & Recreation activities and programs, felt that the Council would be setting a precedent by asking him to report back to the Council on the scheduling of this particular activity. Was he expected to report to the Council on all activities? Mr. Bold said that he didn't want the Council to become involved in the day-to-day scheduling of activities; staff was very capable of doing that. He said that some Councilmembers had specific concerns about the jazzercise program since it had become a contentious issue for whatever reasons. Councilmember Gill said that the jazzercise program was widely and successfully accepted in Leawood and the City needed to find a way to make the program work. He felt it was simply a matter of courtesy to the keep the Council advised of the progress of negotiations. He said that if a contract was involved that was similar to other City contracts, it should be approved by the Council. If it was not similar, he didn't feel the need for the Council to approve it. Mr. Whitaker said the City's standard class instructor contract would probably be used, and he would furnish a copy to the Council. Councilmember Rasmussen reminded everyone that previous Council action taken a few Council meetings ago was that there would be no jazzercise program at City Hall after January 1, 1998. He suggested that the Council vote for Mr. Bold's motion so that something be returned to the Council for acceptance.

1091 Tina Mullinix, 12505 Alhambra, read a statement describing the problems the jazzercise program had had in the Community Center, and how she had improved the program.

1528 Councilmember Clawson said that fundamentally she had begun to believe that staff needed to completely reorganize the Community Center, go back to the drawing board, look at priorities and types of organizations that would be allowed to use the Center.

1741 Councilmember LaHue said that he understood Mr. Bold's motion to mean that the City would definitely have a jazzercise program, and he wasn't sure the City wanted that. He felt Mr. Bold's motion was improper.

Mr. Bold felt that a majority of the Council felt that the program was a good one and beneficial to the residents of Leawood. However, if the 3 criteria in his motion couldn't be met, then he was willing to let the program expire December 31, 1997, the Council's decision at a previous Council meeting.

\* 6:20 p.m. Councilmember Peppes arrived.

2553 Mr. Bold's motion carried unanimously.

**NEW BUSINESS**

2570 **Approval of Appropriation Ordinance No. 819.** On motion of Rasmussen, seconded by Gill, Council unanimously approved the ordinance on roll call vote.

2588 **Ordinance No. 1696 authorizing issuance of temporary notes; Project 124; 135th St. (K-150), State Line-Nall Ave.; \$2,700,000.** On motion of LaHue, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

2781 **Ordinance No. 1697 authorizing issuance of temporary notes; Project 137; State Line Road, Phase IV; \$100,000.** On motion of Taylor, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

2819 **Ordinance No. 1698 authorizing issuance of temporary notes; Project 144; Mission Road, 103rd St. to I-435; \$1,500,000.** On motion of Clawson, seconded by Campbell, Council unanimously passed the ordinance on roll call vote.

2832 **Ordinance No. 1699 authorizing issuance of temporary notes; Project 146; Town Center Plaza; \$1,200,000.** On motion of Taylor, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1700 authorizing issuance of temporary notes; Project 165; Kenneth Road Rehabilitation; \$1,000,000.** On motion of Bold, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1701 authorizing issuance of temporary notes; Project 172; Oxford Hills stormwater improvements; \$400,000.** On motion of Clawson, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

2877 **Discussion of possible "no smoking" ordinance.** Councilmember Clawson said that several years ago the Council had decided not to take any action on such an ordinance. She was recently approached by a Leawood office building worker who was interested in the Council considering such an ordinance. A copy of Overland Park's ordinance had been distributed to the Council. Mrs. Clawson wanted to know if the Council was interested in pursuing consideration of such an ordinance.

Councilmember LaHue was in favor of pursuing a "no smoking" ordinance, one at least similar if not the same as Overland Park's. He felt it would be helpful to hear from Overland Park officials as to how effective their ordinance had been and if there had been any litigation filed. Councilmember Campbell felt that the Chamber of Commerce/commercial establishments should be put on notice that the City was contemplating such action so they could provide input. He was in favor of researching such an ordinance.

Councilmember Taylor said that for health purposes he would favor such research, but from the standpoint of development and private industry controlling the real estate market, he had a problem with government dictating to the public as to where they could and could not smoke. Councilmember Bold was not in favor of researching such an ordinance; it should be up to the individual building owners. Councilmember Rasmussen was not in favor of researching; as the City became more commercial, people in office buildings, restaurants, etc. had some responsibility, and if they wanted to permit smoking, that was their choice. A "no smoking" ordinance would be difficult to enforce as had been, in his opinion, several other City ordinances. The City hadn't had a problem to date, so he saw no reason for it.

Councilmembers Peppes and Gill were in favor of pursuing matter. Since a majority (5) were favor of pursuing the ordinance, research would be done for further Council review with Chamber of Commerce input and any other input.

3210 **Ordinance No. 1702C amending Section 11-603 of the Code of the City of Leawood relating to drug offenses.** Councilmember Rasmussen moved to pass the ordinance, seconded by Taylor. It appeared that before a person could be found guilty of possessing drug paraphernalia, the prosecutor would have to prove that the person intended to use the drug paraphernalia within the Leawood city limits. Absent a confession, that requirement made it very difficult unless the individual was caught using the paraphernalia. All offenses had to occur in Leawood. An offense should be the possession of an object with the intention of using the object as drug paraphernalia. Where the person intended to use the paraphernalia should not be an element of the offense. The ordinance section was amended to show such intention. Discussion. Councilmember Bold called for the question, seconded by Gill and carried unanimously. Mr. Rasmussen's motion carried unanimously on roll call vote.

3575 6:50 p.m. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 403

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, November 17, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, \*John R. Campbell, Jr. (arrived after approval of the agenda), Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; Captain Sid Mitchell, Police Department; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the addition under the Consent Agenda of a resolution certifying to KDOT right-of-way clearance (acquisition of all easements for construction) and completion of all utility relocations for Mission Rd. improvements, 103rd St. to I-435, to allow for final plan approval and preparation for bidding.

Councilmember Campbell arrived.

**RECOGNITION OF LEAWOOD EMERGENCY PREPAREDNESS**

**COORDINATOR BETTIE BRIDGES.** Fire Chief Florance read a biographical statement on Mrs. Bridges. Mrs. Bridges received a plaque in honor of her selection by the Kansas Emergency Management Association as the 1997 Owen U. Turrentine Coordinator of the Year Award. Present for the presentation were Adjutant General James Rieger of the State Emergency Management Office in Topeka, Deputy Director of KEMA Gene Krase, Rita Hoffman from the Johnson County Emergency Management Office, and Dee Stenger, the Divisional Director of Emergency Services for the Salvation Army.

**CITIZEN COMMENTS.** None.

388 **CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion of Taylor, seconded by Gill:

1. Minutes of the November 3, 1997, Council meeting;
2. Historic Commission report (minutes) of their October 21, 1997, meeting;
3. Ad hoc Contract Review Committee report (minutes) of their November 5, 1997, meeting;
4. Parks & Recreation Advisory Board report (minutes) of their November 11, 1997 meeting;
5. Departmental reports;

6. Banking services agreement (extension of existing contract) with Exchange National Bank, 11301 Nall Avenue, for the period January 1 to December 31, 1998;
7. Appointment of Kathy Rogers as the City's Alternate Trustee to KERIT (Kansas Eastern Region Insurance Trust), workers compensation program for employees, effective December 1, 1997;
8. Application (renewal) for Cereal Malt Beverage License - Hy-Vee Food & Drugstore, 12200 State Line Rd.;
9. Letter of Understanding (agreement) for the 1998 Johnson County Utility Assistance Program - City to contribute \$1250;
10. Resolution No. 1370, attached as part of the record, certifying to KDOT right-of-way clearance (acquisition of all easements for construction) and completion of all utility relocations, for Mission Rd. improvements, 103rd St. to I-435, to allow for final plan approval and preparation for bidding.

Golf Course Committee report (minutes) of their October 30, 1997, meeting.

Councilmember Taylor asked about the part of the minutes that indicated that the bonding company for the Ironhorse Golf Club clubhouse contractor had recently sent a letter to the City requesting funds that the bonding company had paid to some of the sub-contractors. Parks & Recreation Director Whitaker said that staff wasn't aware that there was a problem until about one year after completion of the clubhouse. The City Attorney would work to resolve the problem.

Also, a proposal to modify the 25-foot "no build" easement on certain lots in Phase 2 of Ironhorse Estates had been considered by the Committee. Mr. Whitaker clarified for Mr. Taylor that the Committee had merely upheld the easement as it had been established in the past. The Plan Commission would consider subdivision plans, but the Golf Course Committee also reviewed subdivision plans adjacent to the golf course.

On motion of Taylor, seconded by LaHue, Council unanimously approved the report.

Approve expenditures for modification of a "yet-to-be-placed" sanitary sewer line at the South Park to allow for a lake to be built on the site. After a few questions/clarifications, and on motion of Taylor, seconded by LaHue, Council unanimously approved the expenditure of a not to exceed \$2,930.00 for redesign by George Butler Associates, and \$10,433.73 for construction by Miles Excavating, Inc.

Acceptance of Aquatic Center report. The new Center had made money for the first time. For 1997 expenses were \$237,500, and revenue was \$246,850. Councilmember Taylor felt it would be more realistic, show a truer picture, to add the bonding costs of the construction of the Center to the expense total. Mr. Whitaker explained that his report was purely operational, that he had never been asked to report otherwise. On motion of Taylor, seconded by Peppes, Council unanimously accepted the report.

**PLAN COMMISSION**

936 **Resolution No. 1371, attached as part of the record, approving the preliminary plat and final plat for Pride Cleaners at 10314 State Line Rd.** Adopted unanimously on motion of LaHue, seconded by Clawson.

- 1162 **Resolution No. 1372, attached as part of the record, approving a preliminary site plan and preliminary plat for Hallbrook Farms, 8th Plat, at approximately 119th & Cherokee.** Adopted unanimously on motion of LaHue, seconded by Bold. The Mayor said that had she had an opportunity to vote on the matter, she would not have voted to avoid the appearance of a conflict of interest.
- 1546 **Resolution No. 1373, attached as part of the record, approving a preliminary and final plat for Cline-Wood Office Building at approximately 113th & Tomahawk Creek Parkway.** Adopted unanimously on motion of LaHue, seconded by Clawson.
- 1888 **Request for a special use permit for a sport court at 5016 W. 114th St. in Leawood Country Manor subdivision.** On motion of LaHue, seconded by Taylor, Council unanimously approved a permit, good for the life of the court, pertaining only to its use for sporting purposes. Any enlargement or alteration of the court (as approved) would constitute a revised application and would require approval of a new special use permit.
- 2000 **MAYOR'S REPORT.** Mayor Dunn reported that the Johnson County Council of Mayors had changed its name to the Johnson /Wyandotte Counties Council of Mayors in deference to the Kansas City, Kansas Mayor, CEO of Wyandotte County, and the Mayor of Bonner Springs. At a recent meeting, Mayors talked about urging Kansas legislators not to cut tax rebates to cities; a cut might force property tax increases. She said that the Kansas inheritance tax might be cut, reduced to the federal inheritance tax level.

#### **OLD BUSINESS**

- 2127 **Status report on jazzercise program at City Hall Community Center.** Parks & Recreation Director Whitaker said he had informed Tina Mullinix that he recommended the City not take over the jazzercise program. If she chose to continue to use the Community Center, the City would provide space for 8 classes per week with at least half of them being in the Oak Room, and she would be charged a flat fee similar to what a Leawood resident would pay. This rate would commence in January 1998 since Mrs. Mullinix already had other fee arrangements through December 31, 1997. He said that Mrs. Mullinix had hoped the City would charge her on a percentage basis. Mr. Whitaker felt that the City wasn't in the risk taking business, and that it was in the best interests of the City to charge a fee that was comparable to what other organizations or other Leawood residents (Mrs. Mullinix was a Leawood resident) were charged for space. He was unable to negotiate a contract with Mrs. Mullinix. Mr. Whitaker recommended she be charged 1 flat fee for the Oak Room and 1 flat fee for the Maple Room (fees based on the number of hours), and that the jazzercise program shedule be reviewed every 3 months.

Councilmember Bold said that as long as jazzercise would not interfere with the day-to-day operations of City Hall and would not preclude other civic organizations from using the spaces as intended, then he felt that Mr. Whitaker should go ahead and try to reach an agreement with Mrs. Mullinix that was best for the Parks & Recreation Department and the City.

Councilmember Gill said he liked the City having control over the recreation programs, so if there was a way to structure jazzercise so that it was a City program as opposed to the City just being a landlord, that would be a better arrangement - if feasible, 1) the City could handle enrollments to control the numbers of people, 2) pay Mrs. Mullinix so much per enrollee, 3) set the enrollment fee to cover the City's out-of-pocket expenses, 4) all other jazzercise-related issues would be Mrs. Mullinix' responsibility for the fee charged, 5) have specified days at specified times at specified locations for the classes, 6) a 3-month review term a good idea.

2603 Councilmember Peppes moved that the Council favor Mr. Whitaker's recommendations as he outlined at the beginning of the discussion, with the flat fee being the resident rate rather than the non-resident rate, and support other future recommendations from Mr. Whitaker and his department. Mr. Whitaker mentioned that those were the only rates in 1997. He said that in 1998, there would probably be 4 fees - resident, non-resident, civic, and commercial rates, commercial rates being the highest, civic being the lowest. Mrs. Mullinix would be charged the resident rate ( a fair rate) because she was a Leawood resident and because she had a program that had been going on for some time. Councilmember LaHue seconded the motion.

Councilmember Clawson moved to amend the motion that Mr. Whitaker be authorized to enter into an agreement allowing the 1997 resident rate in the first quarter of 1998, rather than a commercial rate, with reevaluation at the end of that quarter (Mr. Whitaker indicated that resident rates might be increased for 1998). Motion seconded by LaHue. Councilmember Campbell moved to call for the question, seconded by Gill and carried unanimously. Dr. LaHue suggested the City give Mrs. Mullinix the \$24 it cost her to bring a person in from the airport on her first check. Since she had already made that commitment, she couldn't attend the Council meeting.

Motion to amend carried; Bold, Campbell, Clawson, LaHue, Peppes, Rasmussen in favor; Taylor abstained (he didn't feel the amendment was necessary, needed to get to the main motion); Gill abstained because he was unclear as to whether or not Dr. LaHue was serious about the \$24 - Mrs. Mullinix very much wanted to attend the meeting, but she had already made a commitment - and he felt it was inappropriate for a member of the Council to demean a member of the public. Dr. LaHue said he didn't intend to demean her, but had merely said that you could bring someone in from the airport for \$24, and he was almost willing to pay the \$24 so that she could have been present at the meeting to give her opinion.

Dr. Peppes' main motion as amended carried unanimously.

#### **NEW BUSINESS**

3298 **Approval of Appropriation Ordinance No. 820.** On motion of LaHue, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

3326 **Authorize right-of-way maintenance agreement with Bell Development, Inc., for the northwest corner of Bell Drive and Iron Horse Drive - to allow Bell Development to place landscaping within City right-of-way on that corner and provide for homes association responsibility for maintenance.** Councilmember Clawson moved to approve the agreement, seconded by Peppes. Councilmember Gill felt there should be "more teeth" added to future agreements where the City not only allowed developers to place the landscaping, but required them to back up responsibility for maintenance with financial

assurance. Public Works Director Johnson reviewed the different aspects of the agreement, and felt it contained the necessary assurance. Councilmember Taylor said that usually the mechanics of homes associations were not sufficient to do maintenance. He felt that some type of financial burden, such as a bond, should be placed on the developer, and not rely on the City to go in and replace landscaping and then ask the homes association for reimbursement (don't place the burden on the associations). Perhaps the Public Works Committee could review this matter.

City Attorney said that the maintenance agreements varied from application to application. The magnitude of some was much greater than others. This agreement, though still important, was a relatively small one. The agreement eliminated the claim that the City had an ongoing responsibility to maintain public right-of-way in any manner other than that which the Council would choose to maintain. Mr. Johnson clarified that the City would have the right to assess the homes association if the City, for some reason, had to maintain the area.

Mrs. Clawson moved to call for the question, seconded by LaHue and carried unanimously. Mrs. Clawson's main motion carried unanimously.

**3785 Discussion of metropolitan area Public Transportation Task Force report and recommendations.** The Task Force had been formed by the Greater Kansas City Chamber of Commerce and Mid-America Regional Council (MARC) to study the issue of public transportation from the perspective of the total metropolitan area. The Mayor asked for comments that she could pass on to the Task Force. Councilmember Rasmussen felt another transportation study was a waste of time; the public used automobiles regardless of distance to travel. And just because someone came up with a federal grant/federal funding was no reason to spend money. One study after another for many years was pretty poor.

The Mayor called the Council's attention to page 7 of the report outlining 6 key initiatives. The first initiative was "Determine market needs; what public transit alternatives will customers actually use if available?" She said that if indeed that initiative showed that the public would not use public transportation, none of the other initiatives would be undertaken.

Councilmember Gill wanted to know what Leawood's financial investment was in the program, if any, and felt that someone from the City should attend the meetings to monitor the matter. The Mayor reported that Public Works Director Johnson or someone from his department was attending MARC's transportation meetings, and the 2 co-chairmen of the Task Force lived in Leawood. The Mayor understood that there was no financial commitment on the part of the City and no tax increase, and there would be no financial commitment unless authorized by the City Council.

Councilmember Clawson cited the ongoing traffic problems on I-35; even after it had been widened by the State of Kansas, it was totally insufficient to carry traffic; that particular problem needed to be studied. She was also concerned about disabled people who couldn't drive, making it difficult for them to work; some additional study needed to be done to help them find transportation to get to jobs. She supported an ongoing study. As cities grew, public transit would become more and more important.

The Mayor would relay the comments to the Task Force.

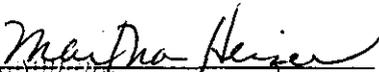
4224 **Schedule executive session.** On motion of LaHue, seconded by Bold, Council voted to convene in executive session immediately following the meeting for a period not to exceed one hour to discuss a personnel matter. Motion carried; Peppes opposed, all others in favor.

**Schedule executive session.** On motion of Clawson, seconded by Gill, Council voted unanimously to hold a special Council meeting on December 8th at 6:30 p.m. to convene an executive session for the City Administrator's annual performance evaluation.

4344 **OTHER BUSINESS.** Councilmember LaHue moved that Council assign an item to the Public Works Committee for study - the new portion of Lee Blvd. between Leawood City Park and Mission Rd. (I-435 access road) needed street lighting to meet minimum code. Motion seconded by Peppes and carried unanimously.

4400 10:10 P.M. Council convened in executive session in the main conference room, same members present. Council returned to regular session at 11:10, same members present. On motion of Clawson, seconded by Gill, Council voted to extend the executive session for 15 minutes to continue the same discussion. Motion carried; Clawson, Bold, Rasmussen, Taylor in favor; LaHue, Peppes, Gill, Campbell opposed; Mayor in favor. Council returned to executive session.

11:25 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 404

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, December 1, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, \*Gregory J. Peppes (arrived at 8:07 p.m.), James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Gene Hunter, Fire Marshal; Robert McKay, Director of Planning and Development; Harry Malnicof, Finance Director; Scott Whitaker, Director of Parks and Recreation; Fran Kessler, Finance Department, in the absence of the City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Bold, seconded by Taylor, after the addition of 1) an open discussion of general items at the end of the meeting if time permitted, and 2) assignment to the Public Works Committee (under Consent Agenda) to review near future residential street rehabilitation (especially slurry seal/other options).

**RECOGNITION OF FINANCE DIRECTOR/CITY TREASURER HARRY B. MALNICOF ON HIS RETIREMENT.** The Mayor read a history of Mr. Malnicof's accomplishments prior to his employment with Leawood. She presented a plaque to him in honor of his service to the City from July 20, 1987 to December 7, 1997.

**RECOGNITION OF EMPLOYEES FOR 10 YEARS OF SERVICE TO THE CITY.** The following employees were recognized for their service to the City with a certificate and award:

25 years	Police Detective Sergeant Craig Hill
10 years	Parks Horticulturist Mike Noll
	Public Works Administrative Assistant Julie Minegar
	Fire Fighter Joe Sullivan
	Accounting Technician Fran Kessler
	Police Officer Bill Burke
	Parks Maintenance Crewleader Steve Lamb
	Finance Director Harry Malnicof
	Director of Planning & Development Bob McKay

**CITIZEN COMMENTS.** None.

- 622 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of Clawson, seconded by LaHue:
1. Minutes of the November 17, 1997, Council meeting;
  2. Pay Request No. 6 (FINAL) by Seal-O-Matic Paving Co. in the amount of \$48,026.66 for Kenneth Rd. rehabilitation project;
  3. Pay Request No. 5 (FINAL) by Tasco Construction Co. in the amount of \$19,533.05 for the Lee Blvd. sidewalk construction/bike-hike trail, soccer fields, additional parking improvements, in the vicinity of Leawood Park (106th & Lee Blvd.);
  4. Proposal from Scanning America of Lawrence, Kansas, for scanning and indexing Public Works construction plans in the amount of \$30,000 (see further discussion at the end of the meeting requested by Councilmember Bold);
  5. Assignment to the Public Works Committee - to review near future residential street rehabilitation (especially slurry seal/other options).

\* 8:07 P.M. Councilmember Peppes arrived.

Ad hoc Contract Review Committee report (minutes) of their November 19, 1997, meeting. Councilmember LaHue asked about the cost of engineering services being included or expressed in a professional services contract. Councilmember Rasmussen said there could be a percentage of construction cost as a measure of reimbursement for consulting services. The Committee rejected that. Another method would be to have a fixed fee. The Committee thought there was a possibility that both the engineering and architectural services agreements could be made one form of agreement. Mr. Rasmussen said that the professional services fee would become a policy issue when the final Committee report was presented to the Council. He said that to the Committee's knowledge, there had never been any reference to the professional services vendor establishing a fee during the Public Works Committee's consultant evaluation process. Regardless of that future policy decision by the Council, the professional services contracts should be based on a fixed fee plus contract time. The only time additional costs would come into play would be for change orders, termination for cause or convenience of the City. He said that the Committee felt the best way to handle additional costs to the contracts up front would be to know the hourly rates to be applied, rather than the direct labor costs plus a multiplier. On motion of LaHue, seconded by Clawson, Council unanimously accepted the report.

- 1140 **MAYOR'S REPORT.** The employees' annual "Have a Heart/Help a Child" (giving program) holiday luncheon was scheduled for December 2nd, 11:30 a.m., in the City Hall Community Center.

A retirement reception for Finance Director Harry Malnicof was scheduled for December 5th, 3-7 p.m., in the Community Center.

#### **NEW BUSINESS**

- 1240 **Approval of Appropriation Ordinance No. 821.** On motion of LaHue, seconded by Campbell, Council unanimously approved the ordinance on roll call vote.

1260 **Authorize interlocal agreement with Kansas City, Missouri, for installation of traffic signals at 92nd and State Line Rd.** The proposed improvements included the widening of State Line Rd. to allow left turn lanes in both directions. Some widening of 92nd St. would also be done to allow left and right turn lanes. Kansas City would secure federal funds in the amount of \$184,000, construction to begin in 1999. Leawood would be responsible for the costs of engineering design and that portion of the construction cost in excess of the 80% federal match which was capped at \$184,000. Leawood would apply to CARS for 50% of the eligible construction cost. Total construction cost - \$340,000.

Councilmember LaHue moved to approve the agreement, seconded by Clawson. Councilmember Campbell was concerned about the estimated \$80,000 cost of design in the agreement, 25% of the hard construction cost. It couldn't be anywhere near that amount; why was it put in the agreement. He was also concerned that there didn't appear to be any contingency, and he didn't know how solid Kansas City's funding was. He felt Kansas City should flat be obligated for the \$184,000; federal funding in that amount might not even be available in 1999 and Leawood would have spent a great deal of money on design. Public Works Director Johnson explained that the Mid-America Regional Council was the clearinghouse for federal funding for the metropolitan area. The \$184,000 would be programmed for the intersection improvements and Kansas City would be obligated for that amount. Mr. Johnson said that the \$80,000 design cost was inflated, and if the Council so desired, the agreement might simply state that Leawood would be responsible for 100% of the design cost. Councilmember LaHue amended his motion to strike out the \$80,000 and use the language suggested by Mr. Johnson. Mrs. Clawson agreed with the amendment.

Councilmember Gill asked why the City was doing the project - what was the need - which he perceived to be the need for residents in Leawood to get onto State Line, and what would be the consequences of a traffic signal, if any, of an already bad traffic problem around 5:00 P.M. on State Line. City Administrator Garofano reviewed the history of the requests for the intersection improvements going back several years. Mr. Johnson said there would probably be very little impact on traffic.

Mr. Gill was concerned that Leawood should have greater control over its money and the contracts that would be let under the agreement than the proposed agreement gave the City. He felt the City should be able to approve the bid documents (even though they might not be negotiable with Missouri and the federal government as noted by Mr. Johnson) because the City's exposure was open in the event of a cost or price escalation, unlike that of Kansas City's. If they were for whatever reason unacceptable to Leawood, Mr. Gill wanted to be able to terminate the project. Mr. Gill also wanted to see change in wording in the section on Leawood's responsibility for 100% of design cost and for 100% of the construction cost in excess of the 80% Federal Aid Grant Programmed by KCMO in federal fiscal year 1999 (\$184,000 programmed amount). He felt the agreement should simply state that Leawood was responsible for costs in excess of \$184,000, and not mention the federal aid grant. City Attorney Wetzler said that a termination provision might be worded to make it clear that if costs were exorbitant, the City could elect to go no further with the project.

2322 Both motion and second to approve the agreement were withdrawn. Dr. LaHue moved to defer the matter to the December 15th Council meeting, seconded by Campbell and carried unanimously. Staff would make revisions.

2435 **Authorize engineering design contract for Phase IV of the City's sanitary sewer replacement (1988 sanitary sewer rehabilitation project).** On motion of LaHue, seconded by Rasmussen, Council unanimously approved a contract with George Butler Associates in the amount of \$49,861.50.

2448 **Consideration of the adoption of the Kansas City Metropolitan Alliance for Economic Cooperation Agreement.** A memo from the City Administrator stated that Mid-America Regional Council (MARC) had for some time been attempting to develop an economic development protocol to encourage a greater emphasis on regional cooperation when enticing businesses to locate in individual cities. The agreement before the Council was slanted heavily toward those cases where incentives were used to entice a business to locate in a community. It required that a city perform a cost benefit analysis to promote an understanding of the true costs of the use of such incentives and required that such analyses be published on an annual basis. It also required the adoption of local economic development policies which governed the use of tax incentives. Leawood already belonged to the Johnson County Partnership and had adopted that economic development protocol. In the past, Leawood had not been amenable to granting tax incentives (tax abatements) and it was not part of Leawood's economic development strategy to do so. Leawood had adopted a policy dealing with tax increment financing (TIF) which mirrored a recently amended state statute. Leawood had limited the consideration of a TIF to two redevelopment areas only - 103rd Terrace and State Line Rd. and Ranchmart North Shopping Center. It was the City Administrator's opinion that the usefulness of the agreement governing the Kansas City Metropolitan Alliance for Economic Cooperation was found only in the philosophical statement that it made.

Councilmember Taylor moved to approve the agreement, seconded by Rasmussen. Councilmember Clawson, Leawood's representative to the Kansas City Area Development Council, shared some of that council's concerns about the agreement. Mrs. Clawson wondered why Leawood would even be interested in the agreement when it was in a position of scrutinizing and discouraging the location of many businesses within Leawood that were the kind of businesses looking for tax increment financing or other kinds of taxpayer-supported financial incentives. And the document that Leawood signed as a member of the Johnson County Partnership stated that member cities would not go to battle with neighboring cities and better Leawood's position as an employer or strengthen its commercial economic base at the detriment of a sister city. It also appeared that areas in Leawood like Ranchmart Shopping Center were beginning to redevelop without the assistance of TIF funding. Mrs. Clawson added that the agreement had been drafted because of tax incentives, written in some measure to put a halt to the war of the tax incentives that were beginning to occur, particularly between cities like Lenexa and Olathe. It was not drafted simply as a feel good spirit of cooperation.

Councilmember Taylor didn't see a problem with Leawood signing the agreement. Leawood wasn't in the war of tax incentives. The agreement was for a unified community on both sides of the state line.

Councilmember Gill felt that all the cities in the metropolitan area needed to think more globally. There was discussion of adding a provision that there would be no penalties for violation of the agreement.

Councilmember LaHue felt the City had the right to use its tax money to best serve its taxpayers; he didn't see a problem with offering tax incentives when necessary to secure development. He agreed with Mrs. Clawson. He liked the idea of cooperation, but reality might call for different measures.

3292 Councilmember Bold called for the question, seconded by Campbell and carried unanimously. The motion to approve the agreement failed; Taylor, Rasmussen, Gill in favor; all others (5) opposed.

Mrs. Clawson moved to respond with a letter to MARC that Leawood would not sign the agreement because the City was not in the business of offering tax increment financing or other tax abatements in master planning for the City, however, would support a cooperative effort within the community as a whole. Motion seconded by Peppes and carried; Taylor, Rasmussen, Gill opposed; all others in favor.

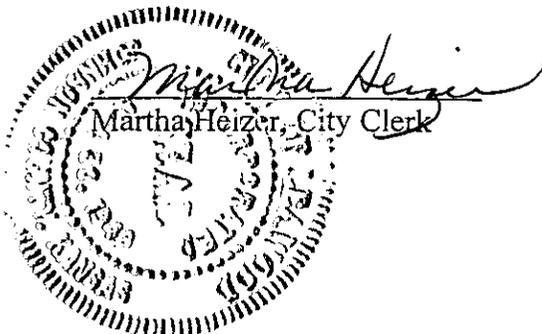
3572 **Schedule work sessions.** On motion of Clawson, seconded by Gill, Council voted unanimously to schedule a joint Council/Parks & Recreation Advisory Board work session on January 12, 1998, 6:00 p.m., to review the completed Master Park Plan.

On motion of Peppes, seconded by Gill, Council voted unanimously to schedule a work session on December 15, 1997, 6:30 p.m., to review plans for Fire Station No. 3.

4036 **OTHER BUSINESS.** Open discussion of general information (added to the agenda at the beginning of the meeting). Councilmember Campbell asked if this type of open discussion might be out of order. City Attorney Wetzler said that this type of discussion was usually held at the beginning of a meeting so the public and the media would immediately know about the topics. He felt that the Council should not take formal action on matters brought up at the end of a meeting. Council decided to dispense with the open discussion.

Clarification of the proposal from Scanning America approved earlier in the meeting under the Consent Agenda. Councilmember Bold was concerned about the low resolutions of the scanning and thus difficult to read on a computer screen and of no use to the City. Public Works Director Johnson was satisfied with the scanning process.

4282 9:40 P.M. There being no further business before the Council, the meeting was adjourned.



MINUTES  
SPECIAL COUNCIL MEETING

Tape No.

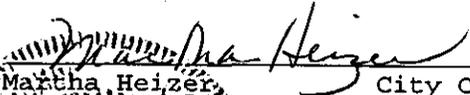
# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 6:30 P.M., Monday, December 8, 1997. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session for the City Administrator's annual performance evaluation. Councilmember Adam Bold was absent.

Staff present: Richard J. Garofano, City Administrator.

6:30 P.M. On motion of Taylor, seconded by Clawson, Council voted unanimously to convene in executive session until 10:20 P.M. for the aforementioned purpose.

10:20 P.M. Council returned to special session. No action was taken. There being no further business before the Council, the meeting was adjourned.

  
\_\_\_\_\_  
Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 405

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, December 15, 1997. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

On motion of Rasmussen, seconded by Campbell, Council voted unanimously to change the order of 2 Plan Commission items - a resolution relating to a revised preliminary site plan for Leawood Commons Lots 11 & 12 would be discussed before a resolution relating to a revised preliminary site plan for American Academy of Family Physicians. The agenda was approved unanimously on motion of Rasmussen, seconded by Peppes, after the removal of the December 1, 1997, Council meeting minutes.

**RECOGNITION OF LEAWOOD 1997 EMPLOYEE OF THE YEAR - POLICE OFFICER RANDY WILER.** Human Resources Director Julie Hakan described the new employee of the year program established by employees. Mayor Dunn summarized the nomination form that was submitted indicating Officer Wiler's accomplishments, and presented a plaque to him.

**DONATIONS TO THE D.A.R.E. PROGRAM FROM LEAWOOD ROTARY CLUB.**

Councilmember Clawson, President of the Leawood Rotary Club, said that the major fundraiser each year was a golf tournament at Ironhorse Golf Club. Mrs. Clawson said the Club had presented a check in the amount of \$10,000 to D.A.R.E. earlier in the year. Over the last three years, the Club had given D.A.R.E. \$27,000.

**CITIZEN COMMENTS.** None.

402 **CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Taylor:

1. Minutes of the December 8, 1997, Special Council meeting;
2. Arts Committee report (minutes) of their October 28, 1997, meeting;
3. Arts Committee report (minutes) of their December 9, 1997, meeting;
4. Ad hoc Contract Review Committee report (minutes) of their December 5, 1997, meeting;
5. 50th Anniversary Committee report (minutes) of their November 4, 1997, meeting;

6. 50th Anniversary Committee report (minutes) of their November 5, 1997, meeting;
7. Golf Course Committee report (minutes) of their November 19, 1997, meeting;
8. Public Works Committee report (minutes) of their December 1, 1997, meeting;
9. Departmental reports;
10. Resolution No. 1374, attached as part of the record, establishing the 1998 fee schedule for fees not specifically provided for in the Code of the City of Leawood;
11. Resolution No. 1375, attached as part of the record, designating holidays for 1998;
12. Application (renewal) for Cereal Malt Beverage License - Osco Drug, 11729 Roe Ave.;
13. Application by Houlihan's restaurant and AMC theaters for a temporary permit to serve alcoholic liquor at the AMC grand opening on December 18, 1997, in the evening;
14. Purchase by the Police Department of software services from Ericsson/GE in the amount of \$19,000 to be shared equally by Prairie Village and Leawood, services required to prepare for installation of the City's 800 MHz radio system;
15. Pay Request No. 5 (FINAL) by Hermes Landscaping in the amount of \$3,035.80 for landscape and irrigation improvements along the I-435 access road between Mission Rd. and Leawood Park;
16. Appointment of Public Works Director Joe Johnson to the ad hoc Contract Review Committee to replace Cal Spradley.

Resolution No. 1376, attached as part of the record, declaring the boundaries of the City of Leawood. After a question about the legal description and the City's latest annexation, the resolution was adopted unanimously on motion of LaHue, seconded by Peppes.

Resolution No. 1377, attached as part of the record, approving the final plat of Pavilions of Leawood, 4th Plat, at approximately 151st and Granada. After staff's confirmation that the subdivision would have sanitary sewers, the resolution was adopted unanimously on motion of LaHue, seconded by Clawson.

Change Order No. 8 to the contract to complete the City Hall in the amount of \$22,804.62, the major portion for the addition of 2 cabinet unit heaters in the first floor lobby area. City Administrator Garofano said that the heating problem in the lobby was brought to the attention of the original mechanical engineers. They offered solutions which staff felt would not address the problem, so recommendations were sought from the mechanical engineers who designed the HVAC system for the Community Center. Councilmember Taylor felt that the initial design should have accommodated the lobby area. Mr. Garofano said that part of the problem stemmed from the fact that the building was originally designed for another site and without a lower floor. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the change order.

#### PLAN COMMISSION

- 611 **Resolution relating to a revised preliminary site plan for Leawood Commons Lots 11 & 12 at 113th & Ash.** The applicant had requested a continuance to the January 5, 1998, Council meeting because one of the architects was out of town; he should answer questions due to the number of changes that had occurred in the design of the building and site and the various conversations and correspondence with the City and residents.

Councilmember Clawson moved to remand the matter to the Plan Commission for review and resolution of several issues, seconded by Gill. The Commission needed to review the design of the building, especially the roof; the orientation of the building on the site; landscaping; the site line from the residential area bordering the site in relation to landscaping and berms; parking.

700 Kristi Wyatt, 11232 Rosewood, adjacent to the site, said that the orientation of the building and the landscaping that screened the building needed improvement. There needed to be additional berming and landscaping to the west of the existing berms. The Wyatts had proposed a rotated building to the architect which was rejected. She also talked about parking between Leawood Commons and her home and the crowding situation.

Greg Trempy, 11404 Cedar, requested that there be public input at the remand. Councilmembers Gill and Bold hoped that the Plan Commission would allow public input. Motion to remand carried unanimously.

1143 **Resolution No. 1378, attached as part of the record, approving a revised preliminary site plan for American Academy of Family Physicians at approximately 114th & Tomahawk Creek Parkway.** Adopted unanimously on motion of Peppes, seconded by Gill.

1240 **Resolution No. 1379, attached as part of the record, approving a request for rezoning several tracts and approving a preliminary site plan for Village Associates at approximately 115th & Roe Ave. and northeast to College Blvd. (old Spears property).** Developer Jeff Alpert gave a presentation followed by Council questions.

2145 Councilmember Rasmussen suggested that there be a provision in the resolution that the commercial area could not be occupied unless the residential area was under construction. Mr. Alpert didn't think that would be a problem; there was strong interest to proceed with every aspect of the overall development.

Councilmember Bold wanted to stipulate in the resolution that should the City decide to build its justice center on adjacent property, it would have access to the facility through Mr. Alpert's property. Mr. Alpert was still talking to another developer about obtaining proper access to his proposed office site on the northeast corner of the property. Mr. Bold stated that the Council would not approve a building on landlocked property. Mr. Alpert could very well end up with vacant property if he couldn't obtain the access. Mr. Bold said that the private drives in the cluster home area should be built to public street standards in case the homeowners asked the City to take them over as public in the future. Planning Director McKay explained the difference between private drives and private streets.

2380 Mr. Bold asked if the Council would be endorsing something contrary to the Spears settlement agreement on the property approximately 1988 if they granted the rezoning request and approved the preliminary site plan. City Attorney Wetzler said the City was not obligated to approve exactly what was approved in 1988. There was no "contract" or "agreement." All parties who signed the agreement had full knowledge that there might well be changes, and if there were changes, substantial changes, they would create a new situation, a new approval process. That didn't mean that the considerations that were in place, the things that people were concerned about in 1988, were any different today. In Mr. Wetzler's opinion, the City would not be committing an action contrary to agreements made in the past by granting the rezoning request and approving the preliminary site plan.

2535 Councilmember Gill hoped that Mr. Alpert would strongly consider adding the CP-0 "day-care center" site at approximately 114th & Roe Ave. across from Leawood Country Manor subdivision to the RP-4 properties. Mr. Alpert was not seeking a rezoning or preliminary site plan for that CP-0 property at this time. If he did in the future and felt it appropriate to change provisions (for instance berms and setbacks) of the Spears settlement, he would request changes at that time. Mr. Gill added that day-care centers in Leawood were appropriate, but not at 114th & Roe where traffic was an obvious concern. Mr. Gill was concerned that the sole ingress and egress for residents was at 114th St. He assumed there would be a traffic study before final plans, and if signalization was recommended, that Mr. Alpert would participate in the cost.

2850 The Mayor said she would be more comfortable if there was a stipulation in the resolution indicating that the fee for any additional traffic signals determined to be necessary after a traffic study either at 114th St. or the College access would be paid for by the developer.

3150 Councilmember Bold moved to adopt the resolution with 2 additional stipulations - 1) costs for any additional traffic signals determined to be necessary after a traffic study would be paid for by the developer, and 2) if the City built its justice center, it would have public access to 115th St. across the developer's property. Motion seconded by Clawson.

3195 Kelly Lyons, 5148 W. 114th Terr., President of Leawood Country Manor Homes Association, addressed the "day-care center" site at 114th & Roe, currently zoned CP-0. LCM residents wanted to see the residential portion of the project carried over to Roe to 114th & Roe, and put a day-care center somewhere else in the development. If an office building or other commercial use was placed there, the homes association wanted the prior requirements of the settlement agreement in 1988 to remain in tact requiring a 200-foot setback with ample buffering and berming. The homes association wanted no commercial traffic through residential areas on 114th St. She asked that the Council not approve the preliminary site plan until they saw and considered the results of the traffic study to be performed, knew about the access problem on the northeast portion of the development, and really had a better understanding of what Mr. Alpert was proposing for the CP-0 "day-care center" site. The homes association was concerned that they would not have an opportunity to speak to the proposed site even if it remained CP-0. The Mayor assured Mrs. Lyons that residents would have such an opportunity since the matter would come back to the Council after rezoning.

3764 Pat Lysaught, 4905 W. 112th Terr., said that at the time of the Spears settlement agreement, there was a significant attempt to make absolutely certain that the residential character of the neighborhood was preserved in a very specific manner, and Leawood Country Manor residents relied on that information. Any office building setbacks would be a minimum of 200 feet from Roe Ave. There would be an 8-foot berm from 114th St. to 115th St. that would be heavily planted for heavy screening.

4737 Councilmember Rasmussen moved to amend the motion to state that the property proposed to be rezoned from CP-0 to CP-1 on Roe Ave. basically running from 115th St. to the entryway to the proposed tract be maintained at CP-0, maintaining the existing zoning including all the original settlement stipulations that went with the property. Motion seconded by Taylor.

4998 Councilmember Peppes called for the question, seconded by Campbell and carried; LaHue opposed, all others in favor.

Mr. Rasmussen's motion to amend failed; Bold, LaHue, Peppes opposed; all others (5) in favor. According to Attorney Larry Winn III, 6 favorable votes were required in order to override the Plan Commission's recommendation for approval of the CP-0 to CP-1 rezoning.

5070 Mrs. Clawson and Mr. Gill felt the cluster homes could be extended to Roe Ave., changing the CP-0 "day-care center" site to RP-4. Planning Director McKay clarified that RP-4 zoning would not preclude a day-care center use.

5359 Mr. Bold moved to amend his motion to adopt the resolution to state that the CP-0 to CP-1 rezoning request (southwest corner of the plan which involved a financial institution site) be remanded to the Plan Commission, seconded by Clawson. Motion carried unanimously.

5563 Mr. Bold's main motion as amended carried; Rasmussen, Campbell opposed (Mr. Campbell didn't feel the development should be handled piecemeal); all others in favor.

5597 **Ordinance No. 1703 rezoning tracts - Village Associates.** The ordinance was considered and passed on motion of Clawson, seconded by LaHue. On roll call vote - Rasmussen opposed, all others in favor.

5670 **MAYOR'S REPORT.** The Mayor attended the annual employee giving luncheon "Have a Heart/Help a Child" on December 2nd and commended staff on their efforts for a successful giving program.

The Mayor reported that Leawood Historic Commission Chairman Jody Craig had been elected President of the Kansas Preservation Alliance for 1998.

#### **OLD BUSINESS**

5757 **Authorize revised agreement with Kansas City, Missouri for the installation of traffic signals at 92nd and State Line Rd.** Councilmember LaHue moved to approve the agreement, seconded by Bold. Councilmember Rasmussen was concerned about the signal being at the top of a hill on State Line Rd., a public safety concern during icy conditions. He thought perhaps there had been discussion in the past about just making the intersection right turn out and right turn in without a signal. Mayor Dunn knew the area residents wanted the signal, not the alternative.

Councilmember Gill wanted to be sure that the agreement had a "walk away right" in the sole discretion of the City if for whatever reason Leawood did not agree with the contractor or the contract presented to the contractor. He said that Kansas City would have the obligation to select and negotiate with a contractor. Kansas City's share of the costs would be from the federal government and not much of its own money, while Leawood would be obligating itself to pay all costs that KCMO wouldn't be providing. Kansas City was not going to have the economic incentive for the project that Leawood would have. City Attorney Wetzler recommended that since some of the work would be done on the Leawood side of the state line, on City property, Leawood should review and approve any bonds to assure the work would be done, but not necessarily have the right to reject the contractor selected under the processes determined by Kansas City's laws.

6324 Mr. Gill moved to amend the motion to approve to add language to paragraph 4.B. so it would read "Make all contracts for hiring a contractor and secure all necessary permits to construct the project, subject to the approval of the Public Works Director of the City of

Leawood.” Motion to amend seconded by Rasmussen and carried; LaHue opposed (he was comfortable with the proposed agreement; Leawood worked frequently with sister cities on projects and hadn't had any problems), all others in favor.

Motion as amended to approve the agreement carried unanimously.

**NEW BUSINESS**

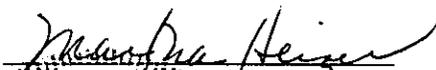
6639 **Approval of Appropriation Ordinance No. 822.** On motion of Clawson, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

6665 **Acceptance of study on possible warrants for traffic signals at 127th and Roe Ave.** Engineering consultant TranSystems Corporation recommended that signals be installed until the widening of Roe and the intersection of 127th was completed. On motion of Bold, seconded by Taylor, Council unanimously accepted the study. Total Electric would install the signals at an estimated cost of \$20,000.

**Schedule executive session.** On motion of Rasmussen, seconded by Taylor, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss a personnel matter.

6734 **OTHER BUSINESS.** City Attorney Wetzler announced that as of January 1, 1998, he would be a partner in the law firm Holman, McCollum & Hansen P.C.

6930 10:35 P.M. Council convened in executive session, and returned to regular session at 10:45 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 406

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, January 5, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Information Services Director; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Gill.

**PROCLAMATION**

The Mayor proclaimed January 1998 as "Crime Stoppers Month."

**CITIZEN COMMENTS.** None.

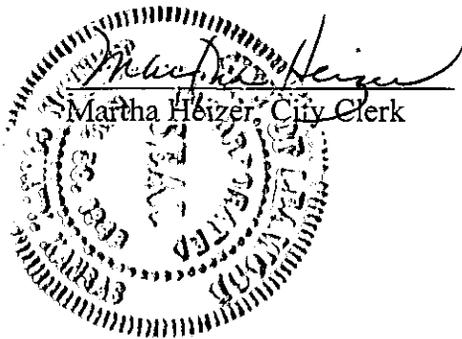
- 94 **CONSENT AGENDA.** The following were approved unanimously on motion of Rasmussen, seconded by Peppes:
1. Minutes of the December 1, 1997, Council meeting;
  2. Minutes of the December 15, 1997, Council meeting;
  3. Golf Course Committee report (minutes) of their December 10, 1997, meeting;
  4. Parks & Recreation Advisory Board report (minutes) of their December 8, 1997, meeting;
  5. Ad hoc Contract Review Committee report (minutes) of their December 17, 1997, meeting;
  6. Public Works Committee report (minutes) of their December 12, 1997, meeting;
  7. Purchase of new software for the Parks & Recreation Department from AEK Computers in the amount of \$13,398.00 to help with soccer scheduling, shelter house and field reservations, community center reservations, registration of classes, and pool memberships;
  8. Letter of Understanding (agreement) with the Housing Services Office of the Johnson County Department of Human Services and Aging for the County's 1998 Home Repair Program - Leawood's funding in an amount up to \$1,500;
  9. Renewal of City's insurance coverages (auto, liability, property) for the period January 1, 1998 to January 1, 1999 - total premium of \$195,129.00.

- 104 **MAYOR'S REPORT.** The Mayor announced receipt of a donation in the amount of \$1,265 from the Cloisters Homes Association for Police and Fire Department funds.

Mayor Dunn received a holiday card from the mayor of I-Lan, Taiwan, Leawood's sister city. The Sister City Committee was planning a Chinese New Year celebration dinner to be held on Thursday, January 29th, in the City Hall Community Center.

**NEW BUSINESS**

- 270 **Approval of Appropriation Ordinance No. 823.** On motion of Gill, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.
- 312 **Authorize interlocal agreement with Johnson County and Prairie Village for the public improvement of Mission Rd., 83rd St. to 95th St.** - Leawood's share estimated at \$240,000. On motion of Rasmussen, seconded by Peppes, Council unanimously approved the agreement.
- 355 **Schedule work sessions.** Two work sessions were scheduled - 1) January 12th, 6:00 p.m., for a joint Council/Parks & Recreation Advisory Board session to discuss park improvement priorities followed at approximately 8:00 p.m. by a presentation of schematic design of a proposed justice center, and 2) January 26th, 7:30 p.m., Governing Body goal setting for 1998.
- 467 **OTHER BUSINESS.** The Mayor called attention to a letter from architect Scott Slaggie regarding the development of Leawood Commons Lots 11 & 12 which was remanded by the Council on December 15, 1997, to the Plan Commission. Mr. Slaggie would be calling Councilmembers for their feedback.
- 500 7:50 P.M. There being no further business before the Council, the meeting was adjourned.



Minutes Summary

Audio Tape No. 407

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, January 19, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

On motion of Clawson, seconded by Bold, Council voted unanimously to remove a resolution relating to a request for rezoning from RP-1 to RP-4, revised preliminary site plan and revised preliminary plat approval, for Village of Ironhorse, 151<sup>st</sup> and Linden. The Plan Commission had recommended denial. The developer, Mark Simpson, said he was going to withdraw his application and reapply later with a substantially changed plan. The remainder of the agenda was approved unanimously on motion of Peppes, seconded by Taylor.

**RECOGNITION OF DIRECTOR OF PARKS & RECREATION SCOTT**

**WHITAKER.** The Mayor presented a plaque to Mr. Whitaker which he had received at the National Alliance of Youth Sports Conference in West Palm Beach, Florida, on January 8<sup>th</sup>, as the 1997 USA Site Coordinator for "Hook a Kid on Golf."

**PROCLAMATIONS.** The Mayor proclaimed January 19, 1998, as "Martin Luther King Day," and January 30 through April 4, 1998, as "A Season for Nonviolence."

**CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, spoke about his recommendations and suggestions concerning "city of the first class" status, salaries for the Governing Body, and partisan elections, that he had brought up at several meetings in the past.

378 **CONSENT AGENDA.** Three items were removed for further discussion and one item was added. The following were approved unanimously on motion of Taylor, seconded by Rasmussen:

1. Minutes of the January 5, 1998, Council meeting;
2. Historic Commission report (minutes) of their November 18, 1997, meeting;
3. Parks & Recreation Advisory Board report (minutes) of their January 6, 1998, meeting;
4. Departmental reports;

5. Appointment to the Golf Course Review Committee – Dick Fuller to replace Cal Spradley, term to expire in 1999;
6. Contract with Midwest Lawn and Landscape for 1998 right-of-way/median maintenance/mowing in the amount of \$61,000.12;
7. Assignment to the Public Works Committee – to study a request that the City close 86<sup>th</sup> Street at State Line Rd. (construct a cul-de-sac) to reduce the intrusion of traffic into the immediate neighborhood.

Rescheduling of the regular March 16<sup>th</sup> Council meeting. The Mayor had requested that the meeting be rescheduled to March 23<sup>rd</sup> because of spring break and her schedule. Councilmember LaHue didn't think the Council should reschedule a regularly scheduled meeting if there would be a quorum. The Mayor said that this had been done in the past. On motion of LaHue, seconded by Taylor, Council voted unanimously to hold the meeting on March 23<sup>rd</sup>.

Pay Request No. 5 (FINAL) from Bob Muehlberger Concrete Co. in the amount of \$5,000 for the 143<sup>rd</sup> St. rehabilitation project from Nall Ave. to Mission Rd. Councilmember Gill said he would have to abstain to avoid a conflict of interest. On motion of Bold, seconded by Campbell, the pay request was approved by the rest of the Council.

Purchase of a hillside mower for the Parks Department. After questions about companies inside the state that might sell the mower, and confirmation that Parks & Recreation Director Whitaker was satisfied that the recommended company met the specifications, and on motion of Taylor, seconded by Peppes, Council unanimously approved the purchase of a Gravely ATM 70 c Mower from Turf Technology in the amount of \$11,500.

At the February 2<sup>nd</sup> Council meeting, the Council will discuss information that Councilmember Gill received from the League of Kansas Municipalities regarding proposed Federal legislation preempting local zoning and taxing powers – H.B. 1534, the "Private Property Rights Implementation Act of 1997," and S. 442, the "Internet Tax Freedom Act."

604 **MAYOR'S REPORT.** The Mayor attended a recent Council of Mayors meeting at which the mayors heard a presentation on solid waste management and recommendations of the citizens' visioning committee report and the steps being developed to implement them; cities would be encouraged for public safety to create an inter-city council of neighborhoods and neighborhood resource centers to support revitalization and redevelopment.

Former U.S. Senator Bob Dole recently visited City Hall after attending a D.A.R.E. graduation at Mission Trail Elementary School.

The Leawood Chamber of Commerce recently hosted a luncheon at the Hereford House restaurant in Leawood to honor former mayors as part of the City's 50<sup>th</sup> anniversary celebration. The former mayors were given a copy of the 50<sup>th</sup> anniversary commemorative history book which had been written at the direction of the Leawood Historic Commission.

**NEW BUSINESS**

- 708 **Approval of Appropriation Ordinance No. 824-B Dec. 1997.** On motion of Rasmussen, seconded by LaHue, Council unanimously approved the ordinance on roll call vote.

**Approval of Appropriation Ordinance No. 825/Jan. (1) 1998.** On motion of Gill, seconded by Clawson, Council unanimously approved the ordinance on roll call vote.

- 835 **Resolution No. 1380, attached as part of the record, providing notice to Southwestern Bell Telephone Co. of the City's intent to terminate the current telephone franchise agreement on the expiration of the current franchise term on August 31, 1998, to negotiate a new franchise agreement.** Adopted unanimously on motion of Rasmussen, seconded by Bold.

- 885 **Ordinance No. 1704 authorizing construction of Fire Station No. 3 on property in the Leawood South Park.** On motion of LaHue, seconded by Campbell, Council unanimously passed the ordinance on roll call vote.

**Authorize engineering contract for programming and master planning for a proposed Public Works maintenance facility at 143<sup>rd</sup> & Overbrook Rd. in the Bi-State Development.** On motion of LaHue, seconded by Clawson, Council unanimously approved a contract with HDR Engineering in the amount of \$52,905.00.

**Ordinance No. 1705 granting a "Right-of-Way Grant and Cancellation of Existing Right-of-Way Grant" to Panhandle Eastern Pipe Line Co. for an easement in the Bi-State Business Park.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1706C repealing Section 4-709 of the Code of the City of Leawood to repeal the effective scope or sunset clause of the ordinance regulating the cutting of weeds and vegetation.** On motion of Rasmussen, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1707C amending sections of the Code of the City of Leawood relating to street trees.** The Kansas State Forester and the Tree City USA organization had approved the proposed ordinance as presented to the Council, and the City could be awarded the "Tree City USA" designation for 1998. Councilmember Rasmussen moved to pass the ordinance, seconded by Taylor. The Council discussed Section 13-404(a) which stated that no street tree would be planted closer than five feet from any street pavement or curblin. Parks & Recreation Director Whitaker explained that the 5 feet would apply only to trees planted in the future. Existing mature trees planted between sidewalks and streets caused damage to streets, sewer lines, curbs and gutters, and sidewalks. Councilmember Clawson said that the overhanging limbs of many existing trees between the streets and sidewalks were damaged by trucks, and those trees uplifted the curbs and were in the way of any new proposed sidewalks. Councilmember Bold said he was not willing to give up aesthetics (streets with

canopied trees) in order to protect the infrastructure from problems in the distant future when trees were fully mature.

Mr. Bold moved to amend the motion to pass the ordinance to state that 13-404(a) be removed, seconded by Gill. Mr. Whitaker clarified that if 5 feet was changed to say 3.5 feet, the City might not be designated a "Tree City USA." Mr. Bold wanted to have an aesthetically pleasing City than to be a "Tree City USA." After long discussion, Councilmember Campbell called for the question, seconded by Peppes and carried unanimously. The motion to amend failed; Bold, Campbell, Gill, Taylor in favor; LaHue, Peppes, Rasmussen, Clawson opposed; the Mayor opposed.

Councilmember Clawson said she was concerned about the trees in the City. Their lives could be prolonged if spaced properly and planted farther away from the streets.

Councilmember Gill moved to amend the main motion to clarify that existing trees that were between sidewalks and curbs that happened to be less than 5 feet from the curb or happened to grow to be less than 5 feet from the curb during their normal maturity, would be grandfathered from the enforcement provisions of the ordinance, and furthermore, that in previously approved and developed or developing subdivisions which contemplated at the time of their approval the placement of curb trees within the 5 feet, that when they engaged in replacement plantings, that those replacements would likewise be grandfathered. Motion seconded by Clawson. Councilmember Campbell suggested less wording to the amendment - "that this requirement shall not be applicable to trees presently in place or trees planted to replace trees in place prior to the enactment of the ordinance." Mr. Gill agreed. Motion to amend carried; Rasmussen, Clawson opposed; all others in favor.

Councilmember Campbell called for the question, seconded by Bold and carried unanimously. The main motion to pass the ordinance as amended once carried on roll call vote; Taylor opposed; all others in favor.

**Discussion of cable television franchise agreement with TCI of Overland Park, Inc.** The City had received a request from TCI in November 1997 for a waiver of an increase in franchise fees from 5% to 5.26% on the amount collected on all revenues besides the franchise fee resulting from a Fifth Circuit Court decision. The Governing Body needed to decide whether the City should collect the franchise fee on the gross or net fee TCI collected from subscribers. The Governing Body needed to weigh the additional income against a possible political backlash of the City receiving what could be deemed a tax on a tax. In addition, it was known that American Cable would be merging with TCI and taking over operations of the Leawood cable market. The Governing Body might want to discuss renegotiation of the current cable franchise agreement with TCI which wouldn't expire for several more years.

Councilmember Rasmussen felt that the increase wasn't in the best interests of the perception of the Council as a Governing Body or the perception of the franchise holder. If the franchise fee was worth 5%, it should be readily determinable without a calculator.

Councilmember LaHue said that if the Council voted for additional revenues, the cable company would simply pass the increase on to the residents. Councilmember Bold said it was not fair to charge a tax on a tax; the revenue impact was minimal to the City.

The Council discussed reopening franchise negotiations with TCI because of new technology and other services not covered by the current franchise without merely transferring the existing TCI franchise to American Cable.

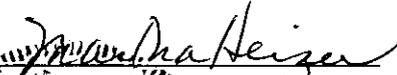
Councilmember Campbell moved to continue the franchise fee on the same basis as in the past, and direct the City Administrator and City Attorney to explore the possibility of renegotiating a franchise agreement with TCI, seconded by Gill. After further discussion, Councilmember Taylor called for the question, seconded by Rasmussen and carried unanimously. Mr. Campbell's motion carried unanimously.

3511 **OTHER BUSINESS.** Parks & Recreation Director Whitaker had received a letter from Dr. Joseph Tauber, 12642 Sherwood Drive (Patrician Woods Homes Association) expressing the desire of residents in the area of the Nall Park at approximately 123<sup>rd</sup> and Nall Ave. to purchase the park land. Mr. Whitaker planned to take the matter to the Parks & Recreation Advisory Board for their consideration and recommendation to the City Council.

Bill Swegle, the Leawood Homes Association tree administrator, said that he had two lists of trees prepared by a professional arborist. He said that the list of trees that were appropriate to plant in Leawood were determined, published by Kansas State University. He said that that list indicated trees that were not appropriate for the Leawood area, and did not contain some trees that were appropriate. He hoped the ordinance could be amended to provide for professional recommendations periodically to update a list that was uniquely a Leawood list. City Administrator Garofano read a section of the Code of the City of Leawood that indicated that the City would maintain an extensive list of recommended trees for planting in public areas...that list to be updated periodically to reflect new developments of species. Parks & Recreation Director Whitaker and staff thought they would review the City's list and Mr. Swegle's lists with a panel of residents.

City Administrator Garofano alerted the Council to a tentative work session on March 9<sup>th</sup> to discuss the capital improvements program. The session could also be held on February 9<sup>th</sup>.

3877 9:30 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk  


**Minutes Summary**

Audio Tape No. 408

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, February 2, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: \*Adam Bold (left the meeting at 8:45 p.m.), John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and \*\*Louis Rasmussen (left the meeting at 10:30 p.m.)

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Information Services Director; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Scott Whitaker, Director of Parks and Recreation; Kathy Rogers, Finance Director; Fran Kessler, Finance Department, in the absence of the City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Approved unanimously on motion of Rasmussen, seconded by Taylor, after the addition of an executive session at the end of the meeting to discuss a matter under attorney-client privilege.

**CITIZEN COMMENTS.** John Peele, 2705 W. 86<sup>th</sup> St., was concerned about the Dykes Branch creek in the area of Overhill Rd. & 86<sup>th</sup> St. He and other area residents were concerned about trees and shrubs along the creek bed being torn up to improve the water flow. He felt the City should simply fix the erosion problem along the north side of the creek behind his residence without tearing up around the creek bed. It would certainly cost a great deal less. (After the Consent Agenda was approved, G. Gordon Thomas was permitted to address the Council.)

159 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Rasmussen:

1. Minutes of the January 19, 1998, Council meeting;
2. 50<sup>th</sup> Anniversary Committee report (minutes) of their January 6, 1998, meeting;
3. Contract Review Committee report (minutes) of their January 7, 1998, meeting;
4. Contract Review Committee report (minutes) of their January 21, 1998, meeting;
5. Purchase of 50<sup>th</sup> Anniversary pole banners for street lights at several locations, including Town Center Drive, College Blvd., Tomahawk Creek Parkway, and Leawood City Park at 106<sup>th</sup> & Lee Blvd., at a cost of \$54/banner plus \$48/banner bracket, for a total estimated cost under \$3,000;
6. Change Order No. 6 to the contract with Wiedenmann and Godfrey Construction in the amount of \$256,410.00 for the 1996 Sanitary Sewer Project (for 1997 construction – Phase 3 of the project); to meet County requirements prior to turning over the north Leawood Sanitary Sewer System to Johnson County on January 1, 1999.

Accept Governing Body and staff goals for 1998. Councilmember Taylor felt it would have been appropriate for staff to have discussed their goals with the City Council to obtain their input. City Administrator Garofano said that normally, staff's goals were presented to the Governing Body when the Governing Body was establishing their goals, but at the end of 1997, the Governing Body was a little late in establishing their goals. Councilmember Bold said it would be helpful for the Council to have department head goals while they were establishing their's to give them a guide or give some directions/ideas. The Mayor said that in the future, staff's goals would be made available to the City Council prior to the latter's goal setting session. On motion of Taylor, seconded by Bold, Council unanimously accepted the 1998 goals.

**CITIZEN COMMENTS** – continued. G. Gordon Thomas, 10516 Mohawk Lane, talked about leadership of elected officials, and other suggestions and concerns about City government he had brought up at past Council meetings.

**PLAN COMMISSION.**

495 **Resolution No. 1381, attached as part of the record, approving a revised preliminary site plan for Leawood Commons Office Building Lots 11 & 12 located at approximately 113<sup>th</sup> & Nall Ave.** This had been remanded to the Plan Commission. Planning Director McKay addressed the issues, including a new orientation of the building. He said that residents were happy with the final design. The resolution was adopted unanimously on motion of Taylor, seconded by Peppes.

**Resolution requesting approval of a master park plan for Nall Park located at approximately 126<sup>th</sup> & Nall Ave.** Planning Director McKay said that approval was requested for a master park plan, not a preliminary site plan as indicated on the resolution distributed to the Council. Councilmember Bold felt that if the Parks & Recreation Advisory Board was supposed to make recommendations to the Council on the park, then the matter should be heard by the Board before the Council was asked to endorse a master plan. Councilmember Peppes agreed; the Board needed to review residents' suggestions, find solutions, as opposed to the Council trying to work out details with the residents with so many unanswered questions.

Councilmember Clawson moved that the Council not address this matter tonight, but instead, refer it to the Parks & Recreation Advisory Board for their recommendations to the Council at a later date and understanding that the resolution concerned a master park plan, not a preliminary site plan. Motion seconded by LaHue.

Councilmember Rasmussen said that the Council agenda had stated that the resolution was to approve a preliminary site plan, so the Council should either vote in favor or against the resolution tonight. Councilmember Taylor said the matter was introduced at the Plan Commission as a preliminary site plan. The Mayor said that the Plan Commission meeting minutes stated that the request was for approval of a master park plan.

Councilmember LaHue commented on a letter from Councilmember Taylor to Plan Commission Chairman Don Brain in which he stated that he had given specific directions to the Parks Director and consultants with no objections made by those present at the joint Council/Parks & Recreation Advisory Board work session on January 12, 1998, relating to

park improvement priorities. Dr. LaHue said that the inference was total agreement and no objections by those present. Dr. LaHue said that he hadn't agreed, approved, nor objected to anything; it was strictly a work session. Councilmember Clawson said that silence on her part was not to have been construed as agreement with Mr. Taylor's statements in his letter; his letter should be viewed as his individual comments. The Mayor clarified that she had polled the Councilmembers at that meeting for direction in proceeding with the park master plan. She said there was unanimous agreement that the City Park and South Park would take priority; however, since Mr. Taylor represented Ward 4 (Nall Park being in that ward), he had made comments as reflected in his letter. She further stated that it was not a time for any formal action to be taken by the Council. Mr. Taylor said that from his standpoint, there had been acceptance of his statements due to lack of dialog, and residents attending the meeting had the same impression. Mr. Taylor added that he had written his letter in response to a memo from Parks & Recreation Director Whitaker to the Plan Commission which had summarized the joint meeting and which he felt was inaccurate.

Joseph Tauber, 12642 Sherwood Dr., President of the Patrician Woods Homes Association, said that residents wanted the park, but had serious concerns about several features of the park plan. The plan was oversized for its stated goals. Parking spaces had been increased and there were too many shelters, allowing for too many people in such a small park. Public restrooms, even though a convenience, would add to the cost of the park. Franklin Park in Prairie Village was the model to which Nall Park had been compared – a passive park, with no restrooms or lighting. Residents were very concerned about a foot bridge for several reasons. He suggested that the area south of the creek was not an important part of the master plan and was in fact relatively undesirable. There were many security and safety concerns. The plan was detrimental to wild life in the area.

Mrs. Clawson's motion to delay consideration and refer the matter to the Parks & Recreation Advisory Board for its recommendations to the Council at a later date carried unanimously.

Councilmember Rasmussen moved that residents who had signed up to speak tonight be given notice by mail of the Parks & Recreation Advisory Board meeting at which the matter would be considered, seconded by Gill. Motion carried unanimously. Parks & Recreation Director Whitaker said that meeting would probably be the March meeting.

\* 8:45 P.M. Councilmember Bold left the meeting.

2076 **MAYOR'S REPORT.** The Mayor thanked the Sister City Committee and staff for the successful Chinese New Year celebration dinner on January 29<sup>th</sup>.

#### **OLD BUSINESS**

**Contract Review Committee report.** Councilmember Rasmussen, Chairman of the ad hoc Committee, gave the Committee's report. Some of the Committee's recommendations – 1) the City should not have a contract that established the professional services fee on a percentage of the construction cost; 2) the professional should be responsible for his cost estimate, and that the City had options – it could terminate the project, it could accept new estimates – but the architect or engineer would have to do the work without any additional fee; 3) if a project was delayed whether by observance or inspection, there would be no additional costs to the City; 4) the City should not be part of automatic arbitration or

mediation; 5) the Committee established a different level of insurance – after the project, there was still responsibility on the part of the architect/engineer; 6) the contracts would go out with RFP's telling professionals that these were the contracts they would have to sign if they wanted to do business with Leawood; 7) if a contract was terminated, the damages would be identifiable up front. Mr. Rasmussen said there were a few items that were outside the Committee's mission, and the Committee recommended that they be referred to the Public Works Committee. He asked that the Council review the proposed documents for final action as policies of the City at the next Council meeting, and that the Committee be dissolved.

Councilmember Taylor moved to continue approval of the proposed architectural agreement, engineering agreement, and documents and specifications for construction contracts, to the February 17<sup>th</sup> Council meeting, and that the City Attorney review the documents for that meeting. Motion seconded by Rasmussen and carried unanimously.

Councilmember Rasmussen moved to refer the criteria for evaluating proposals to be spelled out in the RFP (criteria not a part of the ad hoc Committee's mission statement) to the Public Works Committee for their consideration, seconded by Taylor.

Criteria – design experience of a firm; previous experience with Leawood; quality of personnel; ability to meet schedule; acceptance of contract language terms and conditions; and financial stability and insurability. The Mayor requested that Mr. Rasmussen serve as liaison to the Public Works Committee. Motion carried unanimously.

On motion of Rasmussen, seconded by Taylor, Council voted unanimously to continue approval of a proposed resolution to revise the City's Contractor's Performance Policy in the same manner as the agreements.

On motion of Taylor, seconded by Rasmussen, Council voted unanimously to continue approval of a proposed resolution to establish a Professional Services Performance Policy in the same manner as the agreements.

The Mayor formally dissolved the Committee.

## **NEW BUSINESS**

**Approval of Appropriation Ordinance No. 824-C & D/ Dec. 1997.** On motion of Clawson, seconded by LaHue, Council unanimously approved the ordinance on roll call vote.

**Approval of Appropriation Ordinance No. 826/Jan. (2) 1998.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

3977 **Authorize execution of supplement to City/State agreement for Mission Rd. improvements, 103<sup>rd</sup> St. to I-435.** The City had requested that the State require maintenance bonds from construction contractors bidding local federally funded projects. They were not a requirement of the State. KDOT agreed to include a 2-year maintenance bond as a bid requirement on the Mission Rd. project, however, they would not be a party to the requirement and the maintenance bond would be between the contractor and the City. On motion of Rasmussen, seconded by Clawson, Council unanimously approved the supplement.

**Authorize supplemental agreement to design contract for the 1998 Sanitary Sewer Rehabilitation design of Phase 4.** On motion of Taylor, seconded by Gill, Council

unanimously approved the supplemental agreement with George Butler Associates in the amount of \$87,809.50.

**Discussion of proposed Federal legislation preempting local zoning and taxing powers.** Councilmember Gill said there was legislation which had passed the House and was now in the Senate that would permit a landowner/developer who had received a zoning decision that he didn't like to appeal the decision directly to Federal District Court rather than appealing the decision to the Johnson County District Court and going through the Kansas appellant court system. Also, if a Council was to deny a zoning request, it would have to define what the property could be used for, if not the specific use the Council was considering. Mr. Gill felt that went beyond the Council's province – the Council was not in the land designing business for developers. The League of Kansas Municipalities was opposed to the legislation. Mr. Gill said that the Kansas delegation supported the legislation since they felt it was a relatively minor nonrecurring situation and that it only involved cases where someone's property was being taken, akin to a civil rights violation which would be tried in Federal court. He felt that if other Councilmembers felt as he did, the Council should adopt a resolution opposing the legislation. Mr. Gill added that it would be more expensive for the City to have to defend its actions in Federal District Court than in Kansas courts.

Mr. Gill described another proposed bill that would exempt internet transactions from all state and local sales use taxes. The League was also opposed to that legislation.

On motion of Gill, seconded by LaHue, Council voted unanimously that staff draft resolutions opposing both issues.

**Work sessions.** Work sessions were scheduled for February 23<sup>rd</sup> at 7:30 p.m. to discuss debt management, and for March 9th at 7:30 p.m. to discuss the proposed 1999-2003 Capital Improvements Program (CIP).

## **OTHER BUSINESS**

**Discussion of outsourcing plan review.** Councilmember Gill expressed concern about review of plans for the City's many highly complex and dynamic projects. He felt that on a case-by-case basis it would be beneficial to retain an independent professional outside person beholden to the City and reporting to the Planning Director for architectural review of plans submitted, perhaps as a second opinion or simply for the City's comfort. Councilmember Taylor agreed. Planning Director McKay said that even though he didn't have an architectural background, he did have some design experience. In his opinion, if he had an urban designer, he wouldn't want to go out and hire an architect because architects place their professional seals on plans, and one architect reviewing another architect's plans could cause some strong problems and debate. If the Council wanted to direct that he use outsourcing, he preferred to have an urban designer review plans for compatibility with surroundings, etc., and after the Plan Commission and Council had had the first shot at a development, so to speak. He didn't want to get caught in a crossfire – what was he supposed to do if he liked a particular plan but an urban designer didn't? Was he supposed to give the Council his own professional opinion or both opinions from which the Council could choose? He didn't think that was his roll. He felt that he was to make sure that any development project met at least minimum City standards. He could regulate most things, but could not regulate taste.

City Administrator Garofano reminded the Council that the Plan Commission by state law passed on their recommendations to the Council. If the Council then brought in another element of review who had a different opinion than the Plan Commission, where would the Council go from that point – remand to the Plan Commission asking them to approve per the third party's recommendation, or just override the Plan Commission and go with the third party recommendation? He said that the City Attorney needed to clarify who was responsible for plan review, what the Plan Commission's legal responsibilities were, and what the City Council should review.

Mr. Gill clarified that he would like an architect with urban planning expertise who would review plans in whatever form they were in and make recommendations before the matter was presented to the Council for preliminary plan approval.

Councilmember Clawson suggested that perhaps the City might hire a full-time architect as part of City staff.

The Mayor felt it should be up to the staff to go out for additional review whenever appropriate if they felt it was necessary.

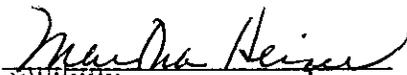
City Attorney Wetzler said that any additional review deemed necessary by staff should be very early on in a process and be part of the staff's report to the Plan Commission.

7063 END OF TAPE  
New Tape #409

\*\* 10:30 P.M. Councilmember Rasmussen left the meeting about this time.

10:45 P.M. Council convened in executive session not to exceed 10 minutes to discuss a matter under attorney-client privilege.

10:55 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 410

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Tuesday, February 17, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and \*Louis Rasmussen (left the meeting at 11:35 p.m.).

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Councilmember Clawson moved to continue consideration of 1) a request by Southwestern Bell for a special use permit to construct a cellular tower at Saddle & Sirloin Club, and 2) an ordinance adopting an amendment to the 1997 Master Development Plan Map for Saddle & Sirloin Club property, to the March 2, 1998, Council meeting, to give Council time to review information from residents in light of the filing of a valid protest petition. Motion seconded by Taylor and carried unanimously. City Attorney Wetzler said that comments from anyone needed to be in writing. On motion of Gill, seconded by Clawson, Council voted unanimously to add an ordinance authorizing the Mayor to execute a deed conveying property in accordance with an agreement between the City and the Alter Group, said property being on Tomahawk Creek Parkway between 114<sup>th</sup> & 115<sup>th</sup> Streets, and consenting to the vacation of right-of-way and park property on approval of a final plat for the American Academy of Family Physicians. The agenda with the changes was approved unanimously on motion of Clawson, seconded by Peppes.

**RECOGNITION OF THE EMPLOYEE SAFETY AND "HAVE A HEART/HELP A CHILD" COMMITTEES.** The Mayor presented certificates of appreciation to the committee members. The Safety Committee was responsible for making sure the City complied with all aspects of the programs mandated by the City's Workers' Compensation Trust (KERIT). Committee members spent a great deal of time analyzing working conditions and making recommendations for improvements; they designed and implemented the annual employee Safety Days program; they reviewed accident reports to determine needed improvements in order to avoid reoccurring accidents.

The "Have a Heart/Help a Child" Committee was responsible for planning the annual holiday luncheon for all employees, and planning the employee giving program which provided a holiday for children who were in less than desirable situations and might not otherwise have a happy holiday.

**CITIZEN COMMENTS.** John Pearce, 8629 Overhill Rd., spoke about the SMAC stormwater project on Overhill Rd. south of 86<sup>th</sup> St. (see first item under Old Business). He said that about 2 ½ years ago, residents along Dykes Branch from Overhill Rd. to State Line Rd. were opposed to any proposed improvements. Residents thought the issue had died, however, a few weeks ago, residents received another notice of improvements. The improvements through backyards would destroy trees and bushes. Residents were also told that the bridge at Overhill Rd. needed to be raised substantially, and that all of the improvements would have to be a package deal. Subsequently, residents learned that County funding would still be available if erosion problems were addressed on individual bases. Residents visited with Public Works Director Johnson last week and told him what they needed on an individual basis. Mr. Pearce said it appeared that there were only 2 or 3 residents with erosion problems. Mr. Pearce said that residents were concerned about the large proposed culverts, about the safety of children who would be able to play inside the culverts.

John Abraham, 8633 Overhill Rd., said that the proposed culverts would raise the bridge approximately 3 feet, taking out vegetation and trees on both sides of the waterway. He didn't believe the design was adequate. Flooding, which was very infrequent, was only about 1 to 1 ½ feet over the road, and due to the fact that the upstream waterway was not kept clear of debris. Overdesigning the project to make it appear that creek maintenance would not be necessary was the wrong approach – creek maintenance would still be necessary.

(See approval of the agenda) Diana Cooley, 10504 Mohawk Lane, was opposed to Southwestern Bell's request for a special use permit to construct a cellular tower on Saddle & Sirloin Club property at 10515 Mission Rd. She asked that the City consider other locations for the tower before the Council considered the request at the March 2<sup>nd</sup> Council meeting. Several other residents in the area of the Club reserved their rights to speak at that Council meeting. Mark Arensberg, 10500 Howe Lane, asked what the deadline was for turning in written comments, additional written information supporting items listed in the residents' protest petition. Written comments needed to be given to the City Clerk by 5:00 p.m., February 25<sup>th</sup>.

G. Gordon Thomas, 10516 Mohawk Lane, wanted to know why the petitioners weren't notified of the possibility of a 2-week continuance. He felt it would have been common courtesy to do so. He also asked why comments had to be in writing. City Attorney Wetzler said that written comments were mandatory to properly consider the matter in compliance with the Telecommunications Act. The Mayor said that some of the petitioners had been notified of a possible continuance.

Curtis Holland for the applicant said he had had no knowledge of the possibility of a continuance.

- 1082 **CONSENT AGENDA.** The following were approved unanimously on motion of Peppes, seconded by Campbell:
1. Minutes of the February 2, 1998, Council meeting;
  2. Departmental reports;
  3. Application (renewal) for Cereal Malt Beverage License – Leawood Hen House, 11721 Roe Ave.;
  4. Application (renewal) for Cereal Malt Beverage License – Phillips Petroleum Towne Center 66, 11921 Roe Ave.;
  5. Purchase of equipment through Kansas City, Kansas cooperative bidding:  
2 1-Ton trucks for the Public Works Dept. and 2 1-Ton trucks for the Parks & Recreation Dept. (Ram 3500 trucks) from low bidder Raytown Dodge for \$17,741.00 each; 1 1998 Chevrolet S-10 Blazer for the Public Works Dept. from the low bidder Sonny Hill Motors for \$24,375.00; 1 3/4-Ton Ram 2500 truck for Parks & Recreation from the low bidder Raytown Dodge for \$23,047.00;
  6. Pay Request No. 2 (FINAL) from Wilson Plumbing Co. for \$2,011.50 for water valve installation and relocations required for Mission Rd. improvements, 103<sup>rd</sup> St. to I-435.

#### PLAN COMMISSION

- 1095 **Resolution No. 1382, attached as part of the record, denying the final plat and final plan for Market Square Center (Price Chopper), northeast corner of 135<sup>th</sup> & Mission Rd.** Councilmember Taylor mentioned a letter from Price Chopper's attorney Larry Winn III to City Attorney Wetzler in which Mr. Winn indicated there were 3 Councilmembers who might have conflicts in the matter, and in which he asked Mr. Wetzler to determine what his (Mr. Wetzler's) advice would be to them. Mr. Taylor said he needed advice. Mr. Wetzler said that advice to the Council as a whole was protected by attorney-client privilege. On motion of Clawson, seconded by Peppes, Council voted unanimously to convene in executive session for 15 minutes.

- 1260 Council convened in executive session in a conference room at 8:15 p.m., same members present, and returned to regular session at 8:30 p.m., same members present.

Mr. Wetzler gave a history of the project.

- 1440 Mr. Wetzler said that in his judgment, the nature of the Council's consideration was for the purpose of determining limited question as to whether the final plan was in compliance with the preliminary development plan and whether it satisfied the criteria established by City ordinances as to final plan. He said that the Council, in arriving at their decision, could consider the traffic study prepared by Bucher Willis & Ratliff engineers and the 4 matters that were of concern to the Council at the time the preliminary plan was approved.

Planning Director McKay wanted the Council to be aware that the original recommendation for the construction of 133<sup>rd</sup> St. by formation of a benefit district was from State Line Rd. to Mission Rd. The section between Mission and Roe Ave. had been added (stipulation #30 of the resolution under consideration). The Jameson tract had not yet been notified that they might be part of a benefit district.

- 1515 Larry Winn III, attorney for Price Chopper, stated points he felt everyone was at the meeting collectively to do and not to do. Mr. Winn said that since there had been virtually no changes in the preliminary plan, the final plan should by City ordinances be deemed to be in substantial compliance with the preliminary plan.
- 1740 Bob Sanders, architect for the project, gave a brief presentation of the exterior materials and color schemes to be used.
- 1905 Mr. Ping Yu of Bucher Willis & Ratliff engineers, the project manager on the traffic study, gave a brief slide presentation of the comprehensive study, and answered Council questions on 1) the effect on traffic (the level of service) of the ratio of office to retail, 2) the effect of different FAR on level of service, 3) the effect of the Laner property development at 135<sup>th</sup> & Nall on the level of service at 135<sup>th</sup> & Mission Rd., 4) projected traffic generations at peak hour traffic in conjunction with various factors, including downsizing the project, 5) the level of service D (the minimum desired standard according to Mr. Yu) between 132<sup>nd</sup> & 133<sup>rd</sup> Streets where Mission Trail Elementary was located, 6) the effect on reverse frontage roads if intersections at 135<sup>th</sup> & State Line AND 135<sup>th</sup> & Nall were level of service F, 7) the effect on traffic of other planned developments along the Corridor and on the Missouri side of State Line Rd.
- 4320 Councilmember Bold felt that the City Attorney's instructions to the Council were different than those he gave the Council on April 7, 1997, and it might be helpful for the Council to view the tape from that meeting. Councilmember Rasmussen said that he had heard Mr. Winn say that the results of the traffic study were irrelevant to the zoning and only that a traffic study was to be done. That was not Mr. Rasmussen's recollection. Mr. Wetzler said that the results were irrelevant to the zoning because the zoning had already occurred, but were not irrelevant to the final plan process. In response to Mr. Bold, Mr. Wetzler said the Council could consider signage since it was part of the final plan process. Planning Director McKay called attention to stipulation #31 of the resolution which addressed the reduction in size of the sign's letters and change in color.
- 4560 Several residents spoke against the project.
- 5000 Public Works Director Johnson reminded everyone that when the traffic study was done, the K-150 Corridor study was reviewed to identify land use and the intensity the City wanted to see along 135<sup>th</sup> St., and to use that information as a base line. If a development would come in that staff felt deviated from it, staff could plug in the intensity and see how that impacted not only the adjacent streets but the surrounding 135<sup>th</sup> St. Corridor between State Line and Nall. The traffic study was done to establish a base line with what was approved in the K-150 Corridor study.
- 5240 Residents continued.

6093 Andy Schlager, 10330 Alhambra, spoke on behalf of the Jameson property (northwest corner of 135<sup>th</sup> & Mission Rd.) as it related to stipulation #30 of the resolution – upon formation of an improvement district for the construction of 133<sup>rd</sup> St., the section between Mission Rd. and Roe Ave. would also be included to ensure that 132<sup>nd</sup> St. through Wilshire subdivision would not become the primary east/west traffic route through a single family residential subdivision. Neither he nor the Jamesons received formal notice of the new condition #30. He said that Mrs. Jameson simply didn't have the funds to participate in an improvement district; it was a substantial unplanned impact. City Administrator Garofano briefly described the formation of benefit districts in the City and financing. A benefit district could proceed without the Jamesons signing a petition for the formation of the district.

7000 END OF TAPE

NEW TAPE #411

Discussion continued on benefit district formation.

90 Councilmember Gill wondered how there could be a district from State Line Rd. to Roe Ave. if property owners at 135<sup>th</sup> & State Line Rd. (Ranchmart, Regniers) hadn't agreed to affirmatively submit a petition for a district that included the Jameson property or hadn't signed a covenant not to oppose a district started by the City that included the Jameson property, not to mention the fact that Mrs. Jameson wouldn't sign a petition. Mr. Wetzler explained state law which provided that if a petition was signed by property owners representing more than 51% of the area of the front footage of the improvement, a district could be formed - with just the property owners between State Line and Mission.

183 11:00 p.m. On motion of Taylor, seconded by Campbell, Council voted to extend the meeting until 11:30 p.m.; Rasmussen opposed, all others in favor.

325 More residents spoke against the project.

884 Councilmember Gill moved to deny the final plan, seconded by Bold. Councilmember LaHue said that he didn't see anything in the traffic study by Bucher Willis & Ratliff that said that Price Chopper was not an appropriate project. Councilmember Peppes said that questions about the traffic had been answered to his satisfaction; he was convinced that the area was being developed in a rational manner, and it was in the City's best interests. He felt that recommended turning lanes and signalization at Mission Trail Elementary at 132<sup>nd</sup> & Mission were adequate to maintain the safety of children.

1040 11:30 p.m. On motion of Clawson and duly seconded, Council voted to extend the meeting until 12:00 a.m.; Gill, Bold, Rasmussen opposed; all others (5) in favor.

Councilmember Clawson said that she had voted for the preliminary plan and had not changed her opinion about the plan.

1088 Councilmember Campbell called for the question, seconded by Gill and carried unanimously.

1095 Mr. Gill's motion to deny the final plan carried; Gill, Bold, Campbell, Taylor, Rasmussen in favor; LaHue, Peppes, Clawson opposed.

Councilmember Rasmussen said that he had expressed his disapproval of the project a long time ago in accordance with the laws of the state of Kansas, particularly the Golden case. He had not heard anything since that time to change his opinion. He was very concerned about stormwater problems in the area, and the developer's proposal to have retention basins, which could cost a great deal to correct if problems occurred. As far as the traffic study was concerned, why should the City change a master plan to accommodate increased traffic? There was no doubt the traffic would increase. If the City's original plan was considered proper for the area, why would the City now change to a plan that increased the traffic in the area?

\* 11:35 p.m. Mr. Rasmussen left the meeting.

Councilmember Gill felt that the traffic study was conclusive that there was a major difference between the project before the Council tonight and the alternative market square project. He felt that the Council, especially with the K-150 Corridor study, would never even consider the size of the project that was hypothecated in the report. When downsized, there were significantly reduced numbers. D was not an acceptable level of service in front of an elementary school on a 2-lane road, and he rejected that as the base line against which the City tested the traffic study. The conditions expressly set forth in both the preliminary plan and in the Plan Commission's plan, specifically #30 and 3 g. of the final plan resolution regarding the reverse frontage road, had not been satisfied, and on that basis alone, would be the basis to reject the final plan. The traffic study was quite clear that the City needed to construct the frontage road as soon as possible, but there was no undertaking to do so. The only thing promised to occur was that the frontage road would go from Mission Rd. to Pawnee. And who was the City to force Mrs. Jameson to come up with say approximately \$750,000 on such short notice? Who was going to pay for the frontage road, estimated cost of \$2,400,000? He talked about the City's debt. The project failed to comply with the zoning ordinance which required a 60,000 maximum big box retail; the building was clearly larger than that. The project didn't comport with the master plans which had been in place over the course of time.

1480 Councilmember Taylor agreed with many of Mr. Gill's comments. Mr. Taylor took exception to the traffic study; he saw a problem with the information that was gathered that established some of the criteria in the traffic model. He was not satisfied after asking several specific questions. He had done some research indicating that there would be two bottlenecks - 135<sup>th</sup> & Nall and 135<sup>th</sup> & State Line.

1520 Councilmember Bold also agreed with Mr. Gill. There were several reasons to oppose the final plan, one being the safety of children attending Mission Trail Elementary.

1554 Councilmember Campbell had voted against the project twice before. The project substantially deviated from the original market square concept. The traffic study did not prove to him that there would not be adverse traffic impact on Mission Rd., particularly in front of the elementary school. Residents wanted to keep Mission Rd. a 2-lane road. With a Price Chopper project at 135<sup>th</sup> & Mission, there was a good chance that Mission would have to be widened to 4 lanes in the future.

1625 **Resolution relating to a revised final plat and plan for Estates of Iron Horse, 154<sup>th</sup> & Iron Horse Drive.** Councilmember LaHue moved to deny the revised final plat and plan as recommended by the Plan Commission, seconded by Clawson. Developer Mark Simpson said that the recommendation to deny was based on 2 conflicting reports from the Golf Course Committee. The Committee had denied a request for a variance to the 25-foot golf course setback rule – Mr. Simpson wanted a 15-foot setback for patios on certain lots. Subsequently, Parks & Recreation Director Whitaker issued a memo indicating that the Committee had reversed their decision and would allow a 15-foot setback on certain limited lots. Mr. Simpson's request for reduction in front setbacks was still an issue. Both motion and second were withdrawn.

Dr. LaHue moved to remand the matter to the Plan Commission, seconded by Clawson. It would be heard by the Plan Commission at their February 24<sup>th</sup> meeting. Councilmember Taylor felt the 25-foot setback requirement should hold. The motion to remand carried unanimously, except for Councilmember Campbell who was not seated for the vote.

1914 **Ordinance No. 1708 amending sections of the "Leawood Development Ordinance" pertaining to Article 6 - for housekeeping purposes only.** The ordinance was considered and passed on motion of LaHue, seconded by Bold. Roll call vote was unanimous, except for Campbell who was not seated for the vote.

1960 12:00 a.m. Councilmember Taylor moved to extend the meeting for 30 minutes, seconded by Gill. Motion carried; Peppes, LaHue opposed; all others (4) in favor. (Campbell not seated for the vote.)

#### OLD BUSINESS

2018 **Discussion of Johnson County Stormwater Management Advisory Council (SMAC) project DB-04-017, Overhill Rd., south of 86<sup>th</sup> Street.** Public Works Director Johnson said that improvements needed to be made to the channel downstream – heavy erosion needed to be addressed. He said that residents were a little bit less apprehensive about the project; most of their needs could be met. He would take a look at downsizing the box culvert.

**Discussion of City standard agreements for architectural services, engineering services, and documents and specifications for construction contracts, as recommended by the Contract Review Committee.** The City Attorney had completed an initial review of the documents. He recommended that the Council consider comments at the next Council meeting, including his comments, and then the Public Works Director could put the documents in final form for Council approval. All comments were to be in writing to the City Attorney.

**Resolution No. 1383, attached as part of the record, opposing the proposed Federal legislation known as the "Internet Tax Freedom Act of 1997."** Adopted unanimously on motion of Campbell, seconded by LaHue. The Act proposed a broad-based moratorium on many forms of state and local taxation of Internet and related telecommunications services and property. The Act would impose a significant burden on the traditional main street retailer by providing companies operating on the Internet with a "tax-free" pricing advantage that could cripple thousands of local businesses and allow companies selling over the Internet public services without contributing their fair share.

**Resolution No. 1384, attached as part of the record, opposing proposed Federal legislation known as the "Private Property Rights Implementation Act of 1997," and the "Property Owners Access to Justice Act of 1997."** Adopted unanimously on motion of Bold, seconded by Campbell. The Private Property Rights Implementation Act would expose cities to substantial new liability for zoning and other land use decisions in federal district court, including payment of a developer/plaintiff's attorney's fees, before the plaintiff had fully exhausted its state remedies for any alleged "regulatory taking," including an inverse condemnation suit. The Act would give federal courts the authority to hear arguments and make decisions that were legitimately the domain of state and local courts.

#### NEW BUSINESS

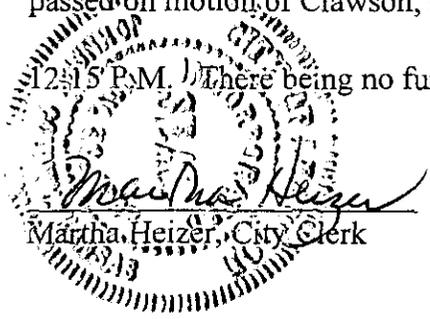
**Approval of Appropriation Ordinance No. 824 E Dec. 1997.** On motion of Bold, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

**Approval of Appropriation Ordinance No. 827 Feb. (1) 1998.** On motion of Taylor, seconded by Gill, Council unanimously approved the ordinance on roll call vote.

2232 **Resolution No. 1385, attached as part of the record, urging the Kansas Legislature to fully fund state FY 1999 Demand Transfer State Aid Programs for local governments, without artificial "caps" or restrictions.** Councilmember LaHue moved to adopt the resolution, seconded by Taylor. After a few questions, the resolution was adopted unanimously.

2314 **Ordinance No. 1709 authorizing the Mayor to execute a deed conveying property in accordance with an agreement between the City and the Alter Group, LTD, said property being located on Tomahawk Creek Parkway between 114<sup>th</sup> and 115<sup>th</sup> Streets, and consenting to the vacation of right-of-way and park property on approval of final plat of the American Academy of Family Physicians.** The ordinance was considered and passed on motion of Clawson, seconded by Campbell. Roll call vote was unanimous.

2381 12:15 P.M. There being no further business before the Council, the meeting was adjourned.



Martha Heizer  
Martha Heizer, City Clerk

**Minutes Summary**

Audio Tape No. 412

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, March 2, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: \*\*Adam Bold (left the meeting at 10:50 p.m.), John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., \*Mike Gill (arrived after approval of the agenda), and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Councilmember Bold asked about the proper order in which to consider a request by Southwestern Bell Wireless for a special use permit to construct a cellular tower at the Saddle & Sirloin Club, 10515 Mission Rd., and an ordinance adopting an amendment to the 1997 Master Development Plan Map for the Saddle & Sirloin property. City Attorney Wetzler said it was not necessary to consider them in any particular order. They were related issues. The Mayor felt it was prudent to leave them in the order shown on the agenda (special use permit first), view them together, but with separate action. On motion of Rasmussen, seconded by Clawson, the agenda was approved unanimously.

\* Councilmember Gill arrived.

**PRESENTATION IN MEMORY OF J. CALVIN "CAL" SPRADLEY.** Mr. Spradley passed away early December 1997. The Mayor presented a plaque to his grandson in honor of Mr. Spradley's long and dedicated service to the community, 1968 to 1997, in many capacities, including service on the Board of Zoning Appeals from 1968 to 1978, and Plan Commission from 1971 to 1986 (chairman from 1975 to 1986).

**PROCLAMATIONS.** The Mayor proclaimed:

1. March 27, 1998, as "Arbor Day;"
2. March 2-8, 1998, as "Juvenile Arthritis Awareness Week;"
3. March 19, 1998, as "Absolutely Incredible Kid Day."

- 274 **CITIZEN COMMENTS.** Kelly McArthur, 12417 Cambridge Circle, was concerned about the absence of a lighting code in the City. His neighbor's high wattage security lighting which lit up Mr. McArthur's yard had become a nuisance. He had tried to shade the lighting with trees and shrubs. The matter would be considered by City staff.
- 440 **CONSENT AGENDA.** Two items were removed for further discussion. The following were approved unanimously on motion of Clawson, seconded by LaHue:
1. Arts Committee report (minutes) of their January 27, 1998, meeting;
  2. Golf Course Committee report (minutes) of their February 16, 1998, meeting;
  3. Public Works Committee report (minutes) of their February 19, 1998, meeting;
  4. Bid of \$1.00 per square yard from the low bidder Musselman & Hall Contractors for the 1998 Slurry Seal Program (\$50,000 was budgeted for the program);
  5. Purchase of a Plymouth Grand Voyager minivan in the amount of \$16,960.00 from Jack Miller Automotive through the metropolitan area cooperative purchasing group for D.A.R.E.;
  6. Replacement of Police Department handguns – the .40 Glock pistol from OMB Police Supply for \$400 per weapon less trade-in of current guns of \$200 to \$260 depending on the model; net amount of \$7,860 for pistols, plus \$5,247 for holsters and magazine carriers, for a total of \$13,107.00;
  7. Purchase of radar (speed awareness) trailer for the Police Department in the amount of \$13,860 from Kustom Signals;
  8. Purchase of a small utility vehicle for the sports and park maintenance departments – a Toro Workman in the amount of \$17,950 from Modern Distributing Co.

Minutes of the February 17, 1998, Council meeting. Councilmember Bold felt that the portion of the minutes concerning the final plat and final plan of Price Chopper at 135<sup>th</sup> and Mission Rd. were too abbreviated. He wanted to be sure that the video tape was the official record of the meeting. City Attorney Wetzler said it was. On motion of Bold, seconded by Campbell, Council unanimously approved the minutes.

Request for a septic tank in Merry Lea Farms subdivision, Lot 2 of 2<sup>nd</sup> Plat, property owner Mickey Doyle. Planning Director McKay said that a (County) sanitary sewer district wasn't formed without the cooperation of residents, and to date, he hadn't seen that cooperation in the subdivision. Mr. Doyle said that the County had no plans to put in sewer lines without the approval of a majority of residents in the subdivision. Mr. Doyle said he would not oppose sewer lines in Merry Lea Farms. Mr. McKay said that the City required a recorded copy of the replat prior to release of a building permit to Mr. Doyle. Councilmembers LaHue and Rasmussen felt there should be a covenant running with the land on Mr. Doyle's property to encourage the installation of sanitary sewers. On motion of Campbell, seconded by Bold, Council unanimously approved the request with the understanding that a covenant as discussed be filed by the property owner.

804

### PLAN COMMISSION

**Request by Southwestern Bell Wireless for a special use permit to construct a cellular tower on Saddle & Sirloin Club property at 10515 Mission Rd.** Councilmember Gill said he would have to abstain from the vote to avoid the appearance of a conflict of interest. He left his Council seat.

Curtis Holland, applicant on behalf of Saddle & Sirloin Club of Kansas City and Southwestern Bell Wireless, gave a brief presentation. He said that last year the City had amended its zoning regulations regarding communication towers. In his opinion, the regulations were the most restrictive zoning regulations in the entire Kansas City metropolitan area. Towers were not allowed in areas zoned or planned residential. That limitation basically ruled out about 90% of Leawood for potential tower locations. In addition, regulations did not permit towers within 500 feet of any property zoned or planned residential. That requirement almost eliminated the rest of the City for potential tower locations. It was very difficult, if not almost impossible, to find a site that would comply with the City's zoning regulations. Also, Leawood had very large, well organized neighborhood associations with which to contend in almost all zoning matters, making efforts of cell tower applicants even more difficult. Against the odds, they found the Saddle & Sirloin property which complied with both the City's zoning regulations and the engineering requirements of Southwestern Bell Wireless. Mr. Holland showed an aerial photograph of the Club property and surrounding properties. The tower would be located on a part of the property which allowed Southwestern Bell Wireless to take advantage of some of the screening on the grounds – location between 2 barns to remove any visibility of the base of the tower; large trees to the east and north of the tower would help screen the tower; elevation of the land significantly rose to the north of the tower which would act as a screen. Mr. Holland described the proposed 4-carrier monopole. Originally, the tower was to have been an architecturally compatible (with surrounding properties) 170-foot windmill style pole (170 feet for greater co-location to reduce further requests for additional towers). After hearing feedback from the community, staff asked Southwestern Bell Wireless to consider changing the style of the pole to monopole. They did so, and the height of the tower was reduced to 150 feet. Southwestern Bell Wireless also hired a consultant to analyze their entire network in the Kansas City metropolitan area, and the consultant recommended other changes – 1) change in the type of antennas normally used by SWBell, from triangular style platform antennas to dual polar antennas (less intrusive) (Mr. Holland couldn't say what style the other 3 carriers would use); 2) to place the SWBell antennas at the 100-foot level rather than at the 150-foot level – still wanted to provide as many co-location opportunities as possible, that was the intent of Saddle & Sirloin for their benefit. Mr. Holland said that there might be some flexibility in reducing the height of the tower to some degree. He described the compound itself shown on the site plan. The Plan Commission recommended approval of the request with a 6-1 favorable vote. The applicant agreed with all stipulations of approval.

Councilmember Clawson wanted to know if Southwestern Bell Wireless would agree to a stipulation that said that if Saddle & Sirloin decided to sell its property for development, Southwestern Bell would take the tower down regardless of the length of their contract with Saddle & Sirloin. Mr. Holland said he would have to consult with his client, but did say that Southwestern Bell was putting millions of dollars of equipment on the facility and expected Southwestern Bell would like to amortize the expense over some time. However, perhaps, if

the Council determined there was another site that was appropriate in the near area, his client might look at that.

Mr. Holland told Councilmember LaHue that there would not be a generator on site and that lighting was not required.

1535 W.R. Ames of Cellular One said that his company needed the height above 100 feet. Because their customer base was increasing, they needed more capacity along the I-435 corridor. They wanted to be near a residential area, to be near their customers. He said there were many towers in the metropolitan area that didn't cause problems for residents trying to sell their homes. Cellular One was in contract negotiations with Saddle & Sirloin.

1630 Becky Garten of Sprint PCS liked the site for future co-location for both capacity and coverage, and was in contract negotiations with Saddle & Sirloin.

1688 Lester Dean, a board director of the Saddle & Sirloin Club, said that the site on the Club's property provided a level of screening/camouflage from most every direction. He said the height was important to maximize the numbers of carriers and lessen the number of tower requests in the City. The tower would give the Club more income. The Club would be willing to have the tower reduced to 135 feet, with 3 carriers. Mr. Dean said that the Club had no plans at the present time to sell their property although they had been approached several times over the past 20 years. Mr. Dean said, in response to Councilmember Peppes, that the Club's membership had been notified about the tower, there was a majority agreement, and Mr. Dean represented the membership at the Council meeting.

2550 In response to Councilmember Rasmussen, Planning Director McKay said that Council approval of the request for a special use permit would be the only reason to change the master plan. Also in response to Mr. Rasmussen, City Attorney Wetzler said that he didn't believe that changing the master plan and the use of the property would have any effect on certain Saddle & Sirloin Club rights, like trap shooting, that had been "grandfathered" in. The actual use of the property was not going to change.

## RESIDENTS

2745 Jeff Nessel, 12012 Ensley Lane, spoke in opposition to the cell tower application, with health concerns, concern for devaluation of property, and concern for aesthetics. As far as health issues were concerned (which could not be discussed in accordance with the telecommunications act), he said that applicants would say that cell towers were on line with federal guidelines regarding radiation, however, Mr. Nessel claimed that there were no federal guidelines for low level radiation exposure. Mr. Nessel stated that towers did have negative impact on the resale value of homes. Mr. Nessel said that when the application was to be heard by the Plan Commission, he discovered that some residents adjacent to Saddle & Sirloin property had not been notified by certified mail of the proposed change in the master plan in accordance with City ordinance, a violation which was corrected by staff. He said that he had never heard any resident speak in favor of a cellular tower. He said that it was

wrong to change the master plan to fit a development; the development should fit the master plan.

G. Gordon Thomas, 10516 Mohawk Lane, opposed the application. The applicant must address the so-called negative criteria, must balance the variance to demonstrate that a so-called public good would not substantially impair the intent and purposes of the zoned plan, the City ordinances, and the will of the people.

Bobbi Higuchi, 10500 Mohawk Lane, opposed the application. She felt that the burden of proof for the necessity of the tower was on the applicant. She wanted to know who would compensate the property owners if there was some property value lost or other damages to residents close to or within sight of the tower. Would it be Southwestern Bell, Saddle & Sirloin, Cellular One? It shouldn't be the property owners.

3222

Sam Goller, 10409 Mohawk Lane, opposed the application. The cell tower was a risk to animals (for instance, horses at Saddle & Sirloin). Saddle & Sirloin property was a regular layover for migrating birds as they traveled north to south; birds might sense and be attracted to the electromagnetic fields generated by cell towers. Estimates placed the average death toll at 2,500 birds per tower per year. Mr. Goller was also concerned about the documented adverse effect on property values, due to fears (whether real or imagined) of adverse health effects, and the loss of a neighborhood's reputation for being a safe and beautiful place in which to live and raise a family. Air and noise pollution was also a concern – from generators at the tower and wind hitting the tower. And lights, that surely would be placed on the tower for air safety (the applicant had stated that lights were not a requirement), were also a form of pollution. It was this type of lack of planning that led residents to believe that Saddle & Sirloin had not thoroughly thought through the needs of the community and were rushing to build the tower so they could selfishly begin collecting revenue. If the tower was constructed, the future use of the surrounding property would be limited to commercial and industrial ventures which would completely destroy the residential nature and value of the neighborhood.

Councilmember Rasmussen wanted it clear that every letter included in the Council meeting packet was part of the record of proceedings.

3435

Mark Arensberg, 10300 Howe Lane, opposed the application. He said that current zoning of agricultural at the Club would not allow a cell tower as the property was master planned for low density residential. He covered several points that he had written in a letter which had been distributed to the Council.

3658

Carroll Boylan, 3410 W. 88<sup>th</sup> St., a member of the Saddle & Sirloin Club, said that some statements made were untrue. She said that Lester Dean did not speak for the full membership of the Club. The full membership had not been notified about the cell tower issue, nor had they voted on the matter. Mrs. Boylan was very involved in real estate, and stated that cell towers did damage property values. It was not good planning for the City to allow construction of a tower at Saddle & Sirloin. She said it was not good for the Club – not good for the horses, and the tower would lower the Club's property value if, in the future, the Club decided to sell the property.

3814

Quentin Cole, 10505 Mohawk Lane, opposed the application. He said that the tower would not be screened and showed pictures of what it would look like from residents' homes to the east. The pictures were given to the City Clerk.

Jill Eggleston, 10505 Pawnee, opposed the application. Reaffirmed her opposition to and concern about a master plan change as indicated in her letter which had been distributed to the Council.

Diana Cooley, 10504 Mohawk Lane, opposed the application. She had also written a letter to the Council. She felt that the applicant had not really addressed the need for the tower, with a tower already in place approximately 1000 feet away. She didn't feel there was conclusive evidence as to whether or not there might be another location nearby for the tower, that was still up in the air. She did commend the applicant for thinking about lowering the tower, and for using dual pole antennas to have control over any other carriers.

4045

Councilmember Taylor mentioned economic blight. He said that there could be 209 single family residential lots developed on the Saddle & Sirloin property, if that property was sold. There could be approximately \$141,000 in tax revenue to the City. If the tower was constructed, all property within 500 feet of the tower would be eliminated from the development, and therefor only 114 lots could be developed, reducing the potential tax dollars to \$76,000. Tax revenue generated from the improvements that would be made around the tower was estimated at \$763. He considered the facts to indicate economic blight; the City would not be able to generate the tax revenue that would be the right thing to do from the standpoint of future development. The applicant, Curtis Holland, said that he had been involved in many redevelopment projects, and that was the most unique definition of economic blight he had ever heard, and didn't feel it was a fair characterization of the tower project.

4204

Councilmember LaHue spoke about the City's master plan. He felt that the City had a right to change its master plan or its zoning if changes were in its best interests. As far as the issue under consideration was concerned, he didn't see it as a great benefit to the City to change the master plan. The City itself wasn't going to gain financially or otherwise from a cellular tower on Saddle & Sirloin Club property. For him, it wasn't an issue of a hazard to animals/fowl, nor a health issue, nor a blight issue, but strictly an issue of the City's master plan.

Dr. LaHue moved to deny the request for a special use permit, seconded by Clawson. Dr. LaHue said that if the master plan had indicated commercial for the property instead of residential as it had been for many many years, he would have been in favor of the request.

Councilmember Bold said he had to believe that if the cost of erecting towers became prohibitive, technology would evolve to place more users on existing towers. An engineer with the applicant said that technology was moving in that direction, however, technology also included creating smaller towers or smaller radius towers in order to meet demands. He couldn't say whether or not the capacity would be met on the tower forever.

Councilmember Rasmussen said that the proposed use would require a change in the master plan. Master plans were developed after long and sometimes exhausting processes and were not to be changed lightly, or as with the request under consideration, to accommodate a use that required such a change under an ordinance equally developed after a long process. He said that his constituents on both sides of the issue had been continuously subjected to change after change in the master plan, zoning, after they had been part of the community for many years. The evidence in the issue under consideration indicated that the City's master plan had been in existence for at least 20 years. The evidence also indicated that the surrounding area had not changed in that time period. Except for the special use permit request, there would be no reason to change the master plan. His constituents had reacted with disgust whenever the master plan was changed even with a preponderance of evidence. Why change the master plan when the only evidence for change was to accommodate the tower application. He knew of nothing in the telecommunications act that required the City to change its master plan to accommodate such a use. In fact, to do so, in his opinion, would so undermine the whole basis of a municipality's right to control land use. And in his opinion, land use was the issue under consideration. He said he would vote against the applicant's request.

4486 The Mayor said that a valid protest petition had been received, and she asked City Attorney Wetzler to clarify how many votes were required to deny the applicant's request. Mr. Wetzler said only 5 (a simple majority) were required.

4511 The motion to deny the request carried; Peppes opposed, Gill abstained to avoid the appearance of a conflict of interest, all others (6) in favor. The Mayor stated for the record that if she had had an opportunity to vote, she would have abstained to avoid the appearance of a conflict of interest.

4554 Mr. Wetzler said that because the request was denied, staff needed to prepare a written record of proceedings and a written statement setting forth the reasons for denial which would then be presented to the Council for approval at the next Council meeting on March 23<sup>rd</sup>.

4581 Councilmember Taylor stated his reasons for voting to deny the request. He said that comments he had made to the applicant, Mr. Holland, a little earlier in the discussion, would suffice; the tower would be an economic burden on the City. He also supported other Councilmembers' comments about not changing the master plan.

Councilmember Rasmussen said that the record already indicated his reasons for denying the request.

Dr. LaHue said that his motion to deny, and his comments prior to the motion, would suffice.

Councilmember Clawson had seconded the motion to deny. She was concerned about a master plan change. The City had a long-standing master plan for low density residential in the area. It was inappropriate to change the master plan to fulfill the desires of the applicant.

Councilmember Campbell said he echoed Mr. Rasmussen's and Mrs. Clawson's reasons for denial.

Councilmember Bold said that the City had prospered because of the high quality of its residential neighborhoods. He felt that the master plan was designed to protect the neighborhoods, and couldn't see changing the plan to facilitate one applicant's desires.

Mr. Wetzler said that the applicant wanted to know when the decision would actually be effective. He told the applicant that the decision would not be final until such time as there was written decision that had been approved by the Council, such written documentation Mr. Wetzler anticipated presenting to the Council for approval at the next Council meeting on March 23<sup>rd</sup>.

4708 **Ordinance to adopt an amendment to the 1997 Master Development Plan Map for Saddle & Sirloin Club property from low density residential to open space - private.** Councilmember Clawson moved to not pass the ordinance, seconded by Bold. The motion carried on roll call vote; Gill abstained to avoid the appearance of a conflict of interest, all others (7) in favor.

4743 **Resolution No. 1386, attached as part of the record, approving a revised final plat and plan for Estates of Iron Horse, 154<sup>th</sup> & Iron Horse Drive.** The matter had been remanded to the Plan Commission at the February 17<sup>th</sup> Council meeting and the Plan Commission, for the second time, recommended denial. Planning Director McKay said that the developer Mark Simpson was requesting front setbacks of 30 feet rather than the 35 feet shown on the approved plan, and rear setbacks of 15 feet rather than the required 25-foot golf course setbacks in order to accommodate patios.

5041 Mr. Simpson explained that he was having difficulty with a number of house plans fitting more than half of the homes on their sites. The sites couldn't be changed because the sewers had already been installed. He said he would need to install decorative retaining walls on some of the steep sites. He said that when he took the development over from Bell Development, the street and storm sewer plans had already been approved by former Public Works Director Ron Brandt. Parks & Recreation Director Whitaker told him that the plans should not have been approved because they didn't address a lot of stormwater discharge onto the City's IronHorse golf course. He said he might undertake correction of drainage problems and the City would understand that he was doing so voluntarily and assist him in making home sites more capable of taking on more expansive homes.

5533 Mr. Simpson said the front setbacks were very important to the development for consistency and only applied to lots that backed up to the golf course. He would agree to front setbacks at 30 feet, 20-foot setbacks in the back for patios, and some kind of retaining walls 15 feet from the rear property lines where needed.

5665 Councilmember Rasmussen said that allowing a change in the 25-foot "no build" golf course setback was a serious matter. The Golf Course Committee had reviewed each lot to determine which ones, in their judgement, could have 15-foot setbacks. They also wanted a covenant running with the land that every home buyer in the development abutting the golf course would not take action against the City because there was a golf course in their backyard. He felt Mr. Simpson's request was incomplete. He moved to remand the matter to the Plan Commission again to review Mr. Simpson's oral modifications, with a recognition of what the Golf Course Committee had stipulated, and with a reflection of how the stormwater would be handled. Motion seconded by Bold.

5934

Councilmember Bold said that the City had prospered because of stringent regulations for residential development. He felt that the Council and Plan Commission had shown a willingness to work with Mr. Simpson, make some exceptions for him. The Council didn't like to second guess the Plan Commission. He felt a great obligation to protect the City's golf course, and felt that the Commission was the proper venue, not the Council.

6067

Councilmember Campbell felt that the Council needed to make a decision. He was opposed to a remand; the Plan Commission had looked at the matter twice and recommended denial twice. He felt that the drainage issues could be nailed down. Public Works Director Johnson said that the plans were complete and approved and a bond received for the work to be paid for by Mr. Simpson.

Mr. Rasmussen said that the document from the Golf Course Committee given to the Council at the last Council meeting should be part of any decision made tonight, because that document had certain Committee stipulations.

6787

Mr. Simpson said he could forget about patios, but needed the retaining walls 15 feet from the rear property lines and 30-foot front setbacks. He would place any patios at 25-foot setbacks.

6850

On the basis of Mr. Simpson's offer and Mr. Campbell's assurances, Mr. Bold withdrew his second to the motion to remand. Mr. Rasmussen withdrew his motion to remand.

6953

Councilmember Taylor moved that the front setbacks be 30 feet, limit the designated lots identified in the staff report to the regulations that had been set forth, and allow decorative retaining walls to be built within 15 feet of the rear property lines on 12 designated lots.....

7028

END OF TAPE

New Tape #413

Motion continued.....Dr. LaHue seconded the motion and confirmed that Mr. Simpson would take care of the drainage work. Motion carried unanimously.

### MAYOR'S REPORT

106

The Mayor showed a limited edition print of a water color "Sorghum Time" by the late Harold F. Nelson, a well known Kansas City commercial artist and former Leawood resident. He had lived at 2029 W. 95<sup>th</sup> St. from the early fifties to the late seventies. The print was donated to the Leawood Historic Commission by Homer E. Paris, Jr., of Prairie Village.

The Mayor and City Administrator recently met with the County Appraiser Paul Welcome to discuss increases in appraisals. Only homes south of I-435 had been reappraised. The Mayor said that overall, there was a 6% average increase.

Councilmember Rasmussen thought that the J.C. Nichols Company was going to have an art auction this month. He wanted to know to what level of discretion the City Administrator had to participate in an auction. He thought the City Administrator could expend up to \$5,000 without Council approval. City Administrator Garofano didn't know whether the City could participate in an auction. Councilmember Clawson said that the Arts Committee was in the process of preparing a policy on public art to forward to the Council for consideration. The policy would provide for the establishment of a committee to select

art work for the City. The Mayor said there might be a way to participate in an auction if recommendation was made through the committee process and approved by the City Council.

\*\* 10:50 P.M. Councilmember Bold left the meeting.

### OLD BUSINESS

352 **Discussion of City standard agreements for architectural services, engineering services, and documents and specifications for construction contracts, as recommended by the Contract Review Committee.** City Attorney Wetzler requested that the Council not take action on the matter. He and the Public Works Director felt there was one fundamental question that needed to be addressed – did the fixed-fee agreements recommended by the ad hoc Contract Review Committee include a limit on expenses? He said that a truly fixed-fee agreement would not have a limit on additional expenses. He said the Committee had discussed a lump sum plus a “not-to-exceed” amount for reimbursable expenses. Mr. Wetzler needed to know the Committee’s intent. He also had questions on what the reimbursable items were.

Councilmember Rasmussen said that the Committee felt there would be a fixed dollar amount which would include reimbursables of a “not-to-exceed” (maximum) amount, to avoid claimants coming before the Council for additional reimbursables. Mr. Wetzler understood that the Committee wanted to track reimbursable expenses. A consultant would receive all of the lump sum fee, but not necessarily receive all of the reimbursable maximum.

Public Works Director Johnson said wording would be changed to state there would be a lump sum fee, and in addition to that, there would be a not-to-exceed fee for reimbursable expenses.

Councilmember Rasmussen moved to continue the matter along with the next two agenda items (resolutions) to the March 23<sup>rd</sup> Council meeting, seconded by Gill. Motion carried unanimously.

**Resolution revising the City’s Contractor’s Performance Policy, as recommended by the Contract Review Committee.** Continued to the March 23<sup>rd</sup> Council meeting.

**Resolution adopting a Professional Services Performance Policy, as recommended by the Contract Review Committee.** Continued to the March 23<sup>rd</sup> Council meeting.

### NEW BUSINESS

518 **Approval of Appropriation Ordinance No. 827 (Feb. 1-A) 1998.** On motion of LaHue, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

**Approval of Appropriation Ordinance No. 828 Feb. (2) 1998.** On motion of LaHue, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

- ~~2232~~  
554 **Resolution No. 1387, attached as part of the record, requesting Johnson County CARS funding for the City's 5-year capital improvements program (1999-2003).**

Councilmember Clawson moved to adopt the resolution, seconded by Campbell. There was discussion about the use of concrete rather than asphalt in the rehabilitation of certain sections of 95<sup>th</sup> Street. Public Works Director Johnson said that the use of concrete would drive the costs up significantly and, thus, the request for funding from CARS. It would create a separate CIP project.

- 667 11:00 P.M. On motion of Campbell, seconded by Gill, Council voted to extend the meeting for 15 minutes; Taylor opposed, all others in favor.

The motion to adopt the resolution carried unanimously.

- 717 **Authorize contract for federal aid road construction engineering by a consultant for Mission Rd. improvements, 103<sup>rd</sup> St. to I-435.** On motion of LaHue, seconded by Taylor, Council unanimously approved the contract. Bucher, Willis & Ratliff engineers would perform the inspection services.

- 856 **Authorize Supplemental Agreement No. 5 for construction engineering services for Mission Rd. improvements, 103<sup>rd</sup> St. to I-435.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the agreement with Bucher, Willis & Ratliff engineers. The total cost of the agreement was \$252,800 with Leawood's share 51%, Overland Park's share 49%.

- 872 **Acceptance of Tomahawk Creek Flood Study** – study along Tomahawk Creek from its beginning in Olathe to its end in Leawood at College and Tomahawk Creek Parkway to identify the limits of flooding and which looked at each city's land use to determine ultimate flooding limits. Leawood's share of the \$600,000+ cost - \$16,647.71.

The Mayor reminded the Council about a work session on March 9<sup>th</sup>, 7:00 P.M., to discuss the capital improvements program.

The Mayor reminded everyone that the regular March 16<sup>th</sup> Council meeting had been changed to March 23<sup>rd</sup> because of spring break.

Regarding the Tomahawk Creek Flood Study, Public Works Director Johnson said he would have a report on elevation certificates for residents along Tomahawk Creek at the March 23<sup>rd</sup> Council meeting.

- 961 11:10 P.M. There being no further business before the Council, the meeting was adjourned.

  
*Martha Heizer*  
Martha Heizer, City Clerk

Minutes Summary

Audio Tape No. 414

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, March 23, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., and Mike Gill. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning and Development; Kathy Rogers, Finance Director; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Approved unanimously on motion of Clawson, seconded by Taylor, after the addition of an executive session to be held at the end of the meeting, not to exceed 30 minutes, to discuss matters under attorney-client privilege.

**RECOGNITION OF EMPLOYEE JOYCE MURPHY ON HER RETIREMENT.** The Mayor presented a plaque to Mrs. Murphy in recognition of her service to the City from June 30, 1989 to April 27, 1998.

~~274x~~ 175 **CITIZEN COMMENTS.** John Abraham, 8633 Overhill Rd., spoke about the stormwater project on Overhill south of 86<sup>th</sup> St. as he did at the February 17, 1998, Council meeting. He said he understood there were 2 requirements necessary to receive County funds - a new bridge on Overhill and an erosion control system along the Dykes Branch tributary. He showed pictures of the area. Trees would be affected by raising the bridge 2 or 3 feet. He felt a smaller box culvert would be adequate. He said that lining the creek for erosion control would drive wildlife away. Residents were in favor of the project and the erosion control and the County's approach to funding, but requested they be allowed to give greater input into the design of the project, especially for the sake of restoring natural beauty.

Ray Pitman, 11400 Brookwood in Hallbrook subdivision, was concerned about a house at 2504 W. 114<sup>th</sup> St. which was covered by blue tarp, roped off and marked hazardous materials. Residents didn't know what was going on. The City needed to review the situation to resolve the problem. The Mayor said that the City was making attempts to resolve the matter.

702 **CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Clawson:

1. Minutes of the March 2, 1998, Council meeting;
2. Arts Committee report (minutes) of their February 24, 1998, meeting;
3. 50<sup>th</sup> Anniversary Committee report (minutes) of their March 2, 1998, meeting;
4. Departmental reports;
5. Resolution No. 1388, attached as part of the record, approving the final plat of Christ Community Church at approximately 142<sup>nd</sup> and Kenneth Rd.;
6. Endorsement of the Johnson County Building Officials mission and vision statements seeking to coordinate uniformity and consistency in the adoption and use of codes across jurisdictions.

Pay Request No. 28 (FINAL) by Reno Construction Co. in the amount of \$101,000 for the 135<sup>th</sup> St. (K-150) improvement project. Councilmember Taylor said he had understood that the 135<sup>th</sup> St. Corridor would have some decorative lighting standards in lieu of the lights in place which he thought were to be temporary. Public Works Director Johnson said the lights in place were in accordance with the plans that were bid, and had the City done the decorative lighting, it would have been out the expense of the lights already in place. Planning Director McKay said the frontage roads would have decorative lighting. Mr. Taylor didn't feel that the design of the standards was consistent, felt the criteria of the light standards should be changed for the frontage roads in order to be consistent along the Corridor. Mr. McKay said that the standards for the frontage roads could be changed in the future when the frontage roads were constructed. Mr. Taylor moved to approve the pay request, seconded by Gill. Councilmember Campbell noticed a \$160,000 discrepancy and asked if it was due to additional materials required to complete the project. Mr. Campbell felt it would be helpful for staff to account for such an amount in a change order. Mr. Johnson said that KDOT audited pay requests for projects with which they were involved. Mr. Campbell didn't feel it was necessary to delay the payment to Reno. Motion to approve the payment carried unanimously.

Purchase of computers for the Police Department. Staff had recommended 2 Gateway Solo 2300XL laptops for the DARE officers for \$3,763.00 each. Councilmember Bold knew there had been a price cut on the Pentium II chip after staff had received their quote. He asked that staff check to see if they couldn't get a Pentium II, more system, for the same price. Mr. Bold moved to approve computer purchase, seconded by Clawson and carried unanimously.

Recommendation to accept the CIP for 1999 – 2003 and forward it to the Plan Commission for adoption. City Administrator Garofano clarified for Councilmember Taylor that the CIP would not be changed when the annual operational budget was reviewed by the Budget and Finance Committee. Mr. Taylor wanted an opportunity to discuss adjustments to the mill levy at that time which might affect the CIP. On motion of Taylor, seconded by Campbell, Council unanimously approved the recommendation.

**PLAN COMMISSION**

1178 **Request by Church of the Resurrection for a special use permit for continued use of an off-site temporary sign, southwest corner of 135<sup>th</sup> St. & Roe Ave.** The Plan Commission recommended denial; since construction of 135<sup>th</sup> St. was complete, the Commission had indicated a position that all off-site advertisement signs in the 135<sup>th</sup> St. Corridor be phased out during the year. It would be more appropriate for the Church to pursue a permanent off-site sign. Councilmember Clawson moved to approve the Plan Commission's recommendation to deny, seconded by Taylor. Councilmember Bold felt the Council should allow the Church to have the sign through 1998 to give them time to prepare a permanent sign. He said that the Church was a good member of the community, and he didn't feel the temporary sign was obtrusive. Planning Director McKay said that staff was in the process of removing all other temporary signs within a few months, so allowing the Church's temporary sign would open the door for all temporary signs to remain through the end of the year. Motion to deny carried; Bold, LaHue opposed; all other (5) in favor.

1421 **Resolution No. 1389, attached as part of the record, approving a request for a special use permit, and approving the preliminary site plan and preliminary plat, for Sunbridge Assisted Living Facility located on 115<sup>th</sup> St. between Roe Ave. and Tomahawk Creek Parkway.** Jeff Alpert of Village Associates and Jeff Stein of the Hammes Co. of Denver (the developer of the project) gave presentations. Councilmember Bold moved to adopt the resolution with an additional stipulation that the roof be concrete tile, seconded by Taylor, and carried unanimously.

1925 **Request by Cellular One for a special use permit for placement of wireless communication antennae at 5100 W. 119<sup>th</sup> St. (Jacobson's department store).** The Plan Commission recommended approval with stipulations, including the stipulation that the permit be limited to 10 years. Councilmember LaHue moved to approve a permit, seconded by Campbell, and carried unanimously.

2305 **MAYOR'S REPORT**

The Mayor attended a recent Council of Mayors meeting at which she heard presentations on the renewed ISTEPA funding being pushed in Congress, the Johnson County visioning efforts (the neighborhood maintenance task force was in place), and reappraisal phone calls in the County.

The Leawood history book commemorating the City's 50<sup>th</sup> anniversary was presented to 13 elementary, middle and high schools earlier in the evening prior to the Council meeting.

2420 **OLD BUSINESS**

**Confirmation of denial of a special use permit for a cellular tower at Saddle & Sirloin Club and approval of written statement of decision.** At the March 2, 1998, Council meeting, the Council voted to deny the application for the permit. City Attorney Wetzler said that federal law required that the findings needed to be in writing, and certain other procedural matters needed to be complied with. He had prepared findings and other documentation for Council approval, and establishment that March 23, 1998, would be the date of the Council's final action on the matter.

Councilmember Campbell referred to "Finding" #3. He felt it could be removed. He said there was some doubt in his mind that the tower had been approved by the Club's board and/or membership. Councilmember Peppes remembered asking Lester Dean, Jr., if he was a member of the Board of Directors, and Mr. Dean had said that he was and that the cell tower had the support of the Club. The first sentence was rephrased to read..."Lester Dean, Jr. stated that he is a member..."

Councilmember Clawson referred to "Finding" #4. She felt there was some question as to whether there was a lease agreement in place even though Mr. Dean had stated there was.

Mr. Campbell suggested rephrasing the second sentence of "Finding" #3 to read..."Curtis M. Holland, attorney for SWB, appeared to pursue an application..." Presumably, Mr. Holland had the authority of SWB, but Mr. Campbell didn't know why the finding had to be phrased that way as far as what SWB authorized him to do or not to do.

Re "Finding" #4, Mr. Wetzler said he didn't know if there was a lease agreement, even though Mr. Dean had indicated its existence. The finding did not need to be rephrased.

Mr. Campbell referred to "Finding" #15. Mr. Wetzler clarified that Saddle & Sirloin would use nondiscriminatory pricing for access, not SWB, so no change was necessary. Mr. Campbell referred to the last sentence of "Finding" #17 which said that one of the other locations on the Club property (south of I-435 and already master planned private open space) was properly planned for use by a communications tower. Mr. Campbell felt that sentence was jumping to a conclusion by saying it was properly planned for that use just because it was shown on the master plan as private open space. Mr. Wetzler said the point was being made that there were other sites within the area where a tower could be constructed assuming that the proper application was presented and other conditions met, and the tower would not conflict with the existing zoning or master planning on the site. The last sentence was deleted. It was noted that the sentence before it covered the other sites.

Mrs. Clawson referred to "Findings" #15 and #24. In #15, she preferred that the first sentence read..."Mr. Dean has indicated that the S & S would use..." In #24, she preferred that the first sentence read..."Mr. Dean has testified that the S & S is regularly approached..." She felt there had been plenty of comments made at the last Council meeting which opposed his contention that he spoke for the Club.

There was discussion about the City requiring applicants to have affidavits for their representatives, or statements of authority. Councilmember Taylor felt there should be such a requirement. Councilmember Campbell suggested board resolutions from organizations like the Club and churches so the City would know that they had dealt with their own internal formalities.

Councilmember Peppes called for the question, seconded by Clawson and carried unanimously. Councilmember Clawson moved to confirm the denial, seconded by Campbell. Motion carried; Peppes opposed (he was opposed to the denial at the March 2<sup>nd</sup> meeting), all others in favor.

3060 **Discussion of City standard agreements for architectural services, engineering services, and documents and specifications for construction contracts, as recommended by the Contract Review Committee.** City Attorney Wetzler said engineering firms had expressed concerns about the broad indemnification provision. It was his understanding that the City of Lenexa's was acceptable. Language stating that a design professional must "indemnify and defend" was the most significant concern. The "defend" language was not in Lenexa's form of agreement. Councilmember Gill felt "defend" could be removed from the form of agreement because he believed that indemnity encompassed defense plus an award. A clause could be added to the form of agreement defining defense.

Bill Cunningham of Larkin Associates said his biggest concern was indemnification. Velma Lane of Van Gilder Insurance Corporation, representative of DPIC (insurance carrier for many engineering firms in the Kansas City area), addressed 2 main concerns - 1) the use of the word "defend", and 2) the alleged negligent acts or errors and omissions and negligent acts. Councilmember Gill suggested obtaining policy language to take a look at the limited form of indemnity so the City would be asking for something that was commercially available.

Councilmember Taylor suggested reconvening the ad hoc Contract Review Committee to review the matter with legal counsel and obtain input from insureds. He suggested that the City Attorney provide wording that would temporarily satisfy Larkin Associates on indemnity (they had a contract pending with the City), and that permanent language be added at the discretion of the Contract Review Committee when it reconvened.

Councilmember Gill suggested wording changes on page 22 E. INDEMNITY #2 of the final draft of the form of agreement - delete the word "defend" and the phrase "or alleged to be caused or incurred", and insert the phrase "in whole or in part as a result of the errors, omissions, negligence or other actionable fault of the Consulting (Engineer or Architect)..." Ms. Lane said she was comfortable with those wording changes. Mr. Gill moved to make the 2 deletions and 1 insertion in the 2 design contracts that would be considered at the April 6<sup>th</sup> Council meeting, seconded by Taylor. Motion carried unanimously.

Mr. Taylor moved to reactivate the ad hoc Contract Review Committee to review the matter at hand. City Attorney Wetzler said he would like to incorporate in the final standard document a broad form coverage and more limited professional liability coverages; he could do that without reactivating the Committee. Mr. Taylor withdrew his motion. Mr. Wetzler would discuss the matter with Committee members, and return the issue to the Council at the April 6<sup>th</sup> Council meeting.

4910 **Resolution No. 1390, attached as part of the record, revising the City's Contractor's Performance Policy, as recommended by the Contract Review Committee.** Adopted unanimously on motion of Taylor, seconded by Clawson.

**Resolution No. 1391, attached as part of the record, adopting a Professional Services Performance Policy, as recommended by the Contract Review Committee.** Adopted unanimously on motion of Clawson, seconded by Taylor.

**NEW BUSINESS**

- 4957 **Approval of Appropriation Ordinance No. 829.** On motion of Bold, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

**Ordinance No. 1710C designating main trafficways** – to add 89<sup>th</sup> Street, 115<sup>th</sup> Street, 117<sup>th</sup> Street, Town Center Drive, 133<sup>rd</sup> Street, and 137<sup>th</sup> Street. On motion of LaHue, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

- 5130 **Authorize agreement with Covenant Chapel Church for its participation in an improvement district for construction of 133<sup>rd</sup> St.** On motion of Bold, seconded by Taylor, Council unanimously approved the agreement.

**Authorize supplemental agreement for inspection services for 135<sup>th</sup> St. improvement project.** On motion of Taylor, seconded by LaHue, Council approved the agreement with HNTB Architects, Engineers, Planners, in the amount of \$19,800. Clawson abstained to avoid the appearance of a conflict of interest, all others in favor.

- 5525 **Resolution No. 1392, attached as part of the record, giving KDOT the authority to award a contract to the low bidder Massman Construction Co., and committing City funds in the amount of \$523,815.98, for Mission Rd. improvement project, 103<sup>rd</sup> St. to I-435.** Adopted unanimously on motion of LaHue, seconded by Campbell.

**Approve bid/authorize contract for traffic signal installation at 117<sup>th</sup> & Nall Ave.** On motion of LaHue, seconded by Clawson, Council unanimously approved the bid of the low bidder Capital Electric, Inc., in the amount of \$83,550.00.

**Authorize interlocal agreement with Prairie Village for improvements to Mission Rd., 83<sup>rd</sup> St. to 95<sup>th</sup> St.** Estimated cost of the project, \$583,000; Leawood's share approximately \$183,645.00. On motion of Peppes, seconded by Taylor, Council unanimously approved the agreement.

- 5775 **Ordinance No. 1711C adopting the 1997 Uniform Building Code.** On motion of Taylor, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1712C adopting the 1997 Uniform Code for the Abatement of Dangerous Buildings.** On motion of Taylor, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1713C adopting the 1997 International Plumbing Code.** On motion of Taylor, seconded by Campbell, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1714C adopting the 1997 Uniform Fire Code.** On motion of Taylor, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

- 6687 **Authorize Right-of-Way Maintenance agreement with Villas of Leawood and Villas of Leawood Townhome Association to allow the developer to place decorative street light poles not to City standard within City right-of-way, and require the developer and homes association to maintain the lights.** On motion of Bold, seconded by Taylor, Council unanimously approved the agreement.

**Ordinance No. 1715 whereby the City conveys unto itself two permanent drainage easements in The Estates of Iron Horse, 2<sup>nd</sup> Plat, at approximately 154<sup>th</sup> and Mission Rd. for construction of the City's storm sewer across IronHorse Golf Course.** On motion of Campbell, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

- 6750 **OTHER BUSINESS.** On motion of LaHue, seconded by Peppes, Council unanimously approved the City Administrator's appointment of Police Captain Sid Mitchell as Chief of Police effective July 31, 1998, on the retirement of Chief J. Stephen Cox.

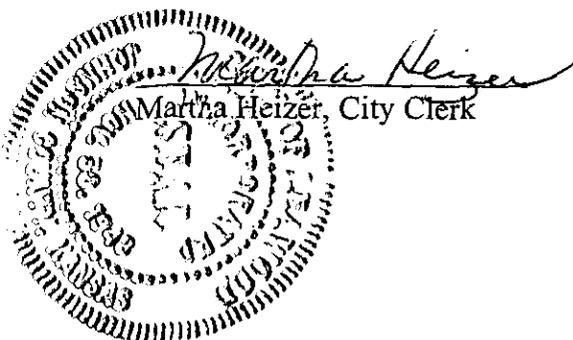
Public Works Director Johnson gave a report on elevation certificates for residents along Tomahawk Creek. (The Tomahawk Creek Flood Study had been accepted at the March 2<sup>nd</sup> Council meeting.) He said there were 11 structures in Leawood in the 100-year flood plain. It would cost approximately \$7,700 to provide elevation certificates to those property owners which they could use if they wanted to refinance their homes or to show that they didn't need flood insurance. The County might share in the cost, either 75%-25% or 90%-10%.

7018 END OF TAPE

New Tape #415

Mr. Johnson thought the County would participate 90%-10%. Councilmember LaHue moved to approve the expenditure, seconded by Peppes. Motion carried unanimously.

- 70 10:45 P.M. Council convened in executive session (which was added to the agenda at the beginning of the meeting), and returned to regular session at 11:15 P.M. There being no further business before the Council, the meeting was adjourned.



Minutes Summary

Audio Tape No. 416

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, April 6, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., Marnie S. Clawson, Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Joe Johnson, Director of Public Works; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Approved unanimously on motion of Peppes, seconded by Gill, after the addition of 1) a discussion of stormwater management (SMAC) projects DB-04-014 and DB-04-024, and 2) a discussion of street lighting on the new part of Lee Boulevard between Leawood Park and Mission Rd.

**PRESENTATION FROM THE POLICE DEPARTMENT TO THE CITY HONORING THE CITY'S 50<sup>TH</sup> ANNIVERSARY.**

A new, one-of-a-kind, commemorative police badge had been created for police employees to wear. Chief Cox and Captan Sid Mitchell presented commemorative badges set in lucite to Jody Craig, Chairman of the Leawood Historic Commission, staff member Sarah Hilton representing the 50<sup>th</sup> Anniversary Committee, and to the Mayor and City Councilmembers.

**PROCLAMATION.** The Mayor had proclaimed March 28, 1998, as "Drug and Alcohol Abuse Services Recognition Day."

342 **CITIZEN COMMENTS.** Carole Brown, 4900 Glendale Rd. in Westwood Hills, stated her objection to the City's ordinance prohibiting rollerblading on public streets; she had received a ticket and had appeared in municipal court. She said the letter she had written to the City Council explained her feelings. The Mayor suggested she might want to visit with the Police Chief.

393 **CONSENT AGENDA.** Two items were removed for further discussion. The following were approved unanimously on motion of Clawson, seconded by Peppes:

1. Minutes of the March 23, 1998, Council meeting;
2. Golf Course Committee report (minutes) of their March 26, 1998, meeting;
3. Historic Commission report (minutes) of their January 13, 1998, meeting;
4. Historic Commission report (minutes) of their February 17, 1998, meeting;
5. Public Works Committee report (minutes) of their March 5, 1998, meeting;

6. Proposal from Shaughnessy Fickel and Scott Architects to design a new communications center for the Police Department at 9617 Lee Blvd. for an amount not to exceed \$16,750.00. The communications center had to be relocated to accommodate the changeover to the 800 MHz radio system. The proposal would be an extension of SFS's contract which included the community center and courtyard at City Hall.
7. Low bids for City equipment for the Public Works and Parks & Recreation Departments:
  - 2 10-foot dump bodies from Scherer Truck Equipment, \$41,170, PW's
  - 2 platform bodies from Scherer Truck Equipment, \$24,068, PW's
  - 2 platform bodies from Scherer Truck Equipment, \$24,068, P&R
  - 2 two-yard spreaders from Knapheide Truck Equipment, \$9,910, PW's
  - 2 six-yard spreaders from Knapheide Truck Equipment, \$23,116, PW's
  - 2 nine-foot snow plows from Scherer Truck Equipment, \$5,872, PW's
  - 2 nine-foot snow plows from Scherer Truck Equipment, \$5,872, P&R
  - 1 road marker from Paving Maintenance Supply, \$28,730.78, PW's
  - 1 tractor-mounted tiller from Blue Valley Tractor, \$2,375, P&R
  - 1 rotary broom from KC Bobcat, \$2,239, P&R
  - 1 stump grinder from KC Bobcat, \$3,510.20, P&R
8. Beverage agreement with Coca-Cola for all City vending machines as well as the Aquatic Center at Leawood Park and IronHorse Golf Club – for a 1-year term with Coca-Cola being granted the first right of refusal on the agreement for an additional 2 years.

Pay Request No. 2 (FINAL) from K & K Concrete Construction Co. in the amount of \$2,981.41 for the 1997 Sidewalk Accessibility Improvement and Repair Program. Brief discussion of material overruns. On motion of Campbell, seconded by Bold, Council unanimously approved the pay request.

Change Order No. 7 to the contract with Wiedenmann and Godfrey for the Sanitary Sewer Reconstruction, Phase 4, in the amount of \$1,163,266.00. The change order would complete the 6-inch line upgrade (pipe bursting) to transfer the Leawood Sewer System to the County at the end of the year. Public Works Director Johnson explained that the contractor had worked on the last 3 phases of the upgrade, so staff didn't bid the completion of the upgrade, but rather negotiated a price for a change order with the contractor. Councilmember Taylor felt there should have been competitive pricing (bidding) for such a large amount, even though a contractor was already on the job. Mr. Johnson explained advantages and disadvantages of not bidding the upgrade completion, including time constraints on the transfer of the system to the County and the contractor's good work and good relationship with residents. On motion of Taylor, seconded by Gill, Council unanimously approved the change order.

#### MAYOR'S REPORT

Councilmember Clawson said that the Arts Committee would be hosting an art show (folk art collection of a retired Hallmark artist) at Exchange Bank on April 17<sup>th</sup>, 5:30 – 8:00 P.M. The collection was "looking" for a permanent home.

**NEW BUSINESS**

- 836 **Approval of Appropriation Ordinance No. 830.** On motion of Rasmussen, seconded by Clawson, Council unanimously approved the ordinance on roll call vote.

**Approval of Appropriation Ordinance No. 831.** On motion of Clawson, seconded by Bold, Council unanimously approved the ordinance on roll call vote.

- 863 **Ordinance No. 1716 authorizing the improvement of a certain section of 89<sup>th</sup> Street, Mission Rd. to Wenonga.** On motion of Taylor, seconded by LaHue, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1717 authorizing the improvement of Mission Rd., 83<sup>rd</sup> St. to 95<sup>th</sup> St.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

- 1010 **Ordinance No. 1718 authorizing issuance of temporary notes; Project 108; College Blvd.; \$3,500,000.** On motion of Rasmussen, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1719 authorizing issuance of temporary notes; Project 124; 135<sup>th</sup> St. (K-150), State Line Rd. to Nall Ave.; \$3,000,000.** On motion of Bold, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1720 authorizing issuance of temporary notes; Project 128; Old Kenneth Rd.; \$600,000.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1721 authorizing issuance of temporary notes; Project 144; Mission Rd. improvements, 103<sup>rd</sup> St. to I-435; \$400,000.** On motion of LaHue, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1722 authorizing issuance of temporary notes; Project 146; Town Center Plaza; \$3,500,000.** On motion of Campbell, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1723 authorizing issuance of temporary notes; Project 170; Mission Rd. rehab. south of 135<sup>th</sup> St.; \$800,000.** On motion of Peppes, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1724 authorizing issuance of temporary notes; Project 168; Mission Rd., 83<sup>rd</sup> St. to 95<sup>th</sup> St.; \$600,000.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1725 authorizing issuance of temporary notes; Project 151; Fire Station No. 3; \$200,000.** On motion of Bold, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

1214 **Authorize contract for design of SMAC project DB-04-019 near 92<sup>nd</sup> St. and Wenonga.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved a contract with Bartlett & West Engineers, Inc., in the amount of \$93,225 (75% to be reimbursed by SMAC).

1325 **Authorize contract for design of SMAC project DB-04-015, 84<sup>th</sup> St. and State Line Rd.** Resident Roy Lutes, 2015 W. 84<sup>th</sup> St., was opposed to the project; it wasn't necessary, was a waste of money, and would destroy trees. Public Works Director Johnson said that before the project started, notices were sent to residents abutting the creek. Only one resident responded and was in favor of the project. Mr. Johnson felt other residents were in favor of the work. Mr. Johnson explained the biotechnical aspects (services) of the project for aesthetics and natural landscaping along the creek. On motion of LaHue, seconded by Clawson, Council unanimously approved a contract with Larkin Associates Consulting Engineers in the amount of \$78,290.00 (75% reimbursable by SMAC).

**Approve bid/authorize contract for 1998 Street Improvement Program.** On motion of Rasmussen, seconded by Clawson, Council unanimously approved a contract with the low bidder Seal-O-Matic Paving in the amount of \$1,753,818.12.

**Schedule executive session.** On motion of Taylor, seconded by Rasmussen, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 20 minutes to discuss a matter under attorney-client privilege.

**Schedule work session.** On motion of Gill, seconded by Bold, Council voted unanimously to hold a pre-budget work session on April 27<sup>th</sup> at 7:30 P.M., for preliminary discussion of the 1999 budget on a very general basis. Councilmembers Rasmussen and Taylor said they would not be able to attend and would furnish some written thoughts.

1820 **OTHER BUSINESS.** Discussion of regulations for situations like the tarped house at 2504 W. 114<sup>th</sup> St. in Hallbrook subdivision. (From the March 23<sup>rd</sup> Council meeting.) City Attorney Wetzler said he had discussed the matter with the City Prosecutor. Mr. Wetzler said he would propose a revised ordinance that would attempt to deal with these types of situations. He said it was a sensitive issue because there were emergencies caused by weather that would call for the use of temporary protective coverings. But that situation should never be a permanent or quasi-permanent solution. An ordinance should specify a maximum period of time that a covering could be on the residence, unless there was an application for a building or construction permit. Councilmember Gill said that an ordinance should require a permit if there was going to be some kind of exterior modification to the appearance of a residence that was more than minor in nature, whether precipitated by an emergency or not. The permit would allow the City to regulate the situation. He said there needed to be an exception for emergency situations, with a reasonable amount of time in which to obtain a City permit. There should be provision for permit renewal when progress was being made toward a

solution of a problem. Councilmember Taylor said an ordinance needed strong enforcement provisions to allow the City to take action when necessary. Councilmember Rasmussen said an ordinance should also cover fumigation; it was not unusual to totally incapsulate a house to fumigate. Mr. Rasmussen moved to direct the City Administrator to research and develop an ordinance that addressed situations discussed, including incapsulation, wholly or partially, of buildings in the City, seconded by Gill. Motion carried unanimously.

2286            Discussion of in-house attorney report. Councilmember Campbell reviewed his written recommendations to the Council. He had concluded that when office space was available, the City should hire a full-time city attorney and one administrative assistant. He recommended that the Council defer a final decision on the matter until approximately six months prior to the completion of fire station #3 (completion expected to be the fall of 1999), and that in the event a decision was made to hire said personnel, the City advertise and begin the interview process within 3 or 4 months of the completion of the fire station. The City Administrator would hire the staff attorney; Council would have ultimate approval as they did with other department heads. Councilmember Clawson moved to accept Mr. Campbell's report and obtain feedback from the City Administrator upon his return from vacation at the April 20<sup>th</sup> Council meeting under Old Business, seconded by LaHue.

Councilmember Taylor thought it might be necessary to have an executive session on April 20<sup>th</sup> since City Attorney Wetzler himself might be involved in any future hiring process. Councilmember Campbell moved to amend the motion to add that there be an executive session for a personnel matter at 7:00 P.M. on April 20<sup>th</sup>, seconded by Taylor. Dr. LaHue was opposed to an executive session; he didn't feel that the matter fell within the guidelines for such a session as did employee disciplinary actions and litigation; hiring a full-time in-house city attorney was merely a policy change. Mr. Wetzler said that personnel matters were not limited to disciplinary actions. Motion to amend carried; LaHue opposed, all others in favor.

Mrs. Clawson's motion as amended carried unanimously.

3220            Discussion of stormwater management (SMAC) projects DB-04-014 (86<sup>th</sup> Terrace & Lee Boulevard to 83<sup>rd</sup> St. & Sagamore), and DB-04-024 (82<sup>nd</sup> Terrace & Wenonga, south to Cherokee and 86<sup>th</sup> St.). Public Works Director Johnson said he had "intent to proceed" forms from the County for the 2 projects. Survey notices had been sent to residents along the projects; of the responses returned, most were in favor of the projects, with the hope that the improvements would be as natural as possible. Councilmember LaHue moved to authorize Mr. Johnson to complete the intent forms and deliver them to the County, seconded by Peppes. Motion carried unanimously.

3411            Discussion of the lack of street lights on Lee Boulevard between Leawood Park and Mission Rd. Councilmember Clawson said that with Mission Rd. being closed south of 103<sup>rd</sup> St., there would be a lot of traffic on Lee Blvd. through the Park to Mission Rd. It was very dark in a park area – a safety concern. Perhaps lighting could be included when Mission Rd. improvements were bonded, instead of waiting for about 2 years for the Lee Blvd. rehabilitation project (from 103<sup>rd</sup> St. south into the Park plus street lighting) for which CARS funding had been requested. Public Works Director Johnson thought perhaps the County might participate in funding the lights as part of the Mission Rd. improvements; he would

keep invoices and ask the County to participate in street lighting that was already part of another request for CARS funding, just that the City did the lighting 2 years in advance. It was noted that at about the time the street lights would be in, the access to the Park from the south would be completely closed anyway. Mrs. Clawson reiterated that her concern was waiting for 2 years for street lights. Mr. Johnson said he was still waiting to hear from the County; they hadn't had their CARS meeting to prioritize and set the projects, and he added that it wouldn't be until the year 2000 that the City would receive any County funding for the street lighting. He said he would know in a few months. Mrs. Clawson said she was willing to wait a few months, and then hopefully to have the matter back before the Council as an agenda item.

3967 9:40 P.M. Council convened in executive session, and returned to regular session at 10:00 P.M., same members present. On motion of Taylor, seconded by Rasmussen, Council voted to return to executive session for 10 minutes to continue the same discussion; Clawson opposed, all others in favor.

10:10 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 417

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:00 p.m., Monday, April 20, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, John R. Campbell, Jr., \*Marnie S. Clawson (arrived at 7:55 P.M.), Ronald LaHue, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

**EXECUTIVE SESSION.** Council convened in executive session at 7:00 P.M. in the main conference room to discuss a personnel matter relating to the hiring of an in-house attorney. Council had voted at the April 6<sup>th</sup> Council meeting to have the session. They returned to regular session in the Council Chamber at 7:40 P.M.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; Captain Sid Mitchell, Police Department; Shahram Pourazari, Public Works Department Special Projects Engineer; Robert McKay, Director of Planning & Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Approved unanimously on motion of Gill, seconded by Taylor, after the addition of 1) information on placing the City's park plan/program on an election ballot, 2) a discussion of a moratorium on the filing of adult entertainment applications with the Planning Department, and 3) a discussion of the City's annexation agreement for land at the southeast corner of 135<sup>th</sup> and Nall Ave. that had been annexed by the City.

**MAYORAL PROCLAMATIONS:**

1. April 13-19, 1998, as "National Public Safety Telecommunications Week"
2. April 23, 24, 25 and 26, 1998, as "Student Achievement Days Celebrating Student Excellence"
3. April 19-25, 1998, as "Victims' Rights Week"

**CITIZEN COMMENTS.**

Al Cinelli, 11509 Juniper, President of the Edgewood Homes Association, said that a recent article in the Kansas City Star had stated that residents were concerned about noise and light from stage presentations to be held in the evenings on the outdoor stage on the north side of City Hall. The article said that the problem had been solved. Mr. Cinelli said the problem had not been solved, that residents were very concerned about noise and distraction from the lighting. The Mayor said there would not be any productions after dark, and productions would be monitored during the first year and review of the situation at the end of the year. She also said that the first possible stage production would be in the summer of 1999.

G. Gordon Thomas, 10516 Mohawk Lane, spoke, as he had in the past, about the City becoming a city of the first class in order to let bids on all public services, and to have partisan rather than nonpartisan elections.

~~393~~  
347 **CONSENT AGENDA.** The following were approved unanimously on motion of Rasmussen, seconded by Gill:

1. Minutes of the April 6, 1998, Council meeting;
2. Departmental reports;
3. Policy Statement for the Disaster Emergency Plan for Leawood, Kansas

### PLAN COMMISSION

358 **Resolution No. 1393, attached as part of the record, approving request for a special use permit, and approving the preliminary site plan and preliminary plat for Kansas City Orthopedic Center for Excellence, south side of College Blvd. east of Buena Vista.** Kevin Fitzpatrick representing the orthopedic center gave an overview of the project and answered Council questions, including those about expansion of the building, parking ratios, and ingress and egress of 2 entrances along College Blvd. (to satisfy the Fire Marshal), the possibility of an additional entrance from Tomahawk Creek Parkway if and when the building was expanded. Councilmember Rasmussen was concerned about having 2 entrances along College with heavy traffic.

\* 7:55 P.M. Councilmember Clawson arrived.

Councilmember Gill was also concerned about traffic on College. He was not concerned with the traffic generated by the site, but concerned about the safety and security of residents along College being able to get in and out of their subdivisions, and of the patients and personnel who would be at the facility, with 25,000 cars per day. Mr. Fitzpatrick said that a traffic study had been commissioned and would be presented to the Plan Commission at final site plan stage. Mr. Gill wanted to add stipulation of approval #19 to state that if the traffic study showed that additional lanes were necessary, they would be incorporated, or if the study was inconclusive and not to the satisfaction of the Planning Director and the Plan Commission, that further study be done, so that to the Planning Director's satisfaction, the City had adequately planned traffic. Planning Director McKay said he wasn't sure that the traffic study would be able to change the 2 entrances along College Blvd.; the traffic engineer wouldn't look at the situation unless staff specifically asked them to do so. Mr. Gill mentioned the possible relocation of the building on the site and relocation of the trash enclosure, along with some other concerns of Village Associates, developers of The Woods (formerly the Spears tract). Mr. McKay said concerns would be addressed at final site plan stage.

1200 In response to Mr. Rasmussen, Mr. Fitzpatrick said he agreed with Longwood Forest residents to the north of the site that a traffic signal was needed at College and Delmar. It would serve the residents and would also contribute to the ingress and egress of the Merrill Lynch regional offices and the orthopedic center. Mr. Rasmussen asked if Mr. Fitzpatrick would be willing to participate 25% of the cost of the signal if necessary. Mr. Fitzpatrick said he was contributing \$130.00 per front foot for College Blvd. road improvements. He felt that was adequate participation. Mr. Fitzpatrick said he would be happy to talk to staff

about his possible participation if the traffic ingress and egress became a problem for doctors, patients and personnel. He said that the percentage of participation would have to be determined by those who would benefit from the signal.

1363 Councilmember LaHue moved to adopt the resolution with an additional stipulation #19 that the developer would adhere to the traffic study recommendations, a traffic study that was satisfactory to the Planning Director, seconded by Campbell. (Mr. McKay mentioned that if the Council wanted to consider the intersection of College and Delmar, it needed to be made clear that the traffic engineer would take a look at the situation.)

Councilmember Bold moved to amend the motion to add a stipulation #20 that the trash area be moved to another location on the site and be fully enclosed, seconded by Taylor.

1645 Tony Kostusik, 4201 W. 110<sup>th</sup> Terr., President of Longwood Forest Homes Association, expressed concerns about the 2 entrances to the site along College and traffic density at the present and in the future.

Jeff Alpert of Village Associates, the developers of The Woods (formerly the Spears property), was uncomfortable with the positioning of such an imposing building on the site. He felt it would hurt the marketing of 5 single family lots in The Woods bordering the site.

Chris Dring of Young & Dring Landscape Architects whose client was Jeff Alpert felt the building could be moved farther to the east.

Dr. LaHue said that the developer of the orthopedic center had met the City's minimum requirements. Mr. McKay said that the idea for the placement of the building had probably 95% to do with residents of Longwood Forest, and 5% to do with The Woods (which was originally planned to be commercial next to the orthopedic center). Staff had worked with Longwood Forest for a long while, to tuck the building into a tree area back away from College to help the aesthetics. The area east of the proposed building location down to Tomahawk Creek Parkway was fairly open space. He said that the Plan Commission didn't have any sufficient notice of Mr. Alpert's concerns about the location of the building. To change the building's location would be a major change requiring a new application - start over again. Mr. Fitzpatrick said that to hold up the project would mean the loss of several thousand dollars of planning costs as well as option money, and revenue loss to the doctors.

Mr. Bold's motion to amend carried unanimously. Dr. LaHue's main motion as amended carried unanimously. The Mayor said that had she had an opportunity to vote on the matter, she would have abstained to avoid the appearance of a conflict of interest.

2888 **Resolution No. 1394, attached as part of the record, approving a request for rezoning from RP-1 to RP-4, and approving the preliminary site plan and preliminary plat for Village at Ironhorse, 151<sup>st</sup> & Linden.** Planning Director McKay said that the Plan Commission recommended approval but did not accept the deviation in sideyard setback and instructed the applicant to reconfigure the lots to meet the 20 feet between structures or 10-foot minimum sideyards. The applicant had requested 8.5-foot sideyards with 17 feet between buildings. So there would be 51 single family lots rather than the 53 with which the applicant had started.

Brick Owens, landscape architect with Ochsner Hare and Hare, gave a presentation on the clustered, villa development.

3550

Councilmember Taylor asked about the protest petition which had been found to be invalid; should the City's property (the golf course) have been counted, and if not, then the petition should have been a valid protest. City Attorney Wetzler said he agreed with staff's calculations. Existing right-of-way had been excluded, which was proper. The golf course property had been included. Mr. Wetzler said that the City Council, as a property owner, was subject to the same rights and responsibilities as any other property owner. He said that the time for protest to be filed by the Council had passed. Councilmember Rasmussen said that this type of situation had come up before. He said that someone had the duty to remove its property or leave it in. He said that the Council, by not signing the protest petition, changed its procedural requirements. He said the Council never had the opportunity to decide whether they wanted to protest or not. Logically, the Council shouldn't be involved at all because the decision making was the Council's. Mr. Taylor was not only concerned about the protest, but was also concerned about a correct procedure at the Plan Commission level when the new redesigned plan was considered.

4430

Bob Whelan, 15140 Sherwood in Leawood Mission Valley (an adjacent subdivision), opposed the new development (on land which was originally supposed to have been part of the City's proposed golf course). He said that the development needed to be carefully reviewed before adding to the density, traffic, loss of trees, and potential flooding to the land and golf course area. He was also concerned about 151<sup>st</sup> Terr. connecting his subdivision with the new development. Residents were also concerned that the smaller lots of the new development were not appealing next to the large lots of Leawood Mission Valley. Planning Director McKay said that drainage plans would have to be approved by Public Works, and there would be a 30-foot tree preservation easement adjacent to Leawood Mission Valley.

Mr. Owens confirmed for the Mayor that the development would not have concrete tile roofs as originally planned with 53 lots; with a reduction to 51 lots, they would build with wood shingle roofs.

4878

Mr. McKay reviewed the history of 151<sup>st</sup> Terr. connecting the 2 subdivisions. It was an effort to create community, to avoid cutting off access to neighbors. Councilmember Bold asked if there was any reason why the street couldn't be a cul-de-sac if residents in Leawood Mission Valley were concerned about increased traffic and lack of adequate separation. It would be a greater buffer between the subdivisions and preserve more of the tree line. Fire Chief Florance said that a cul-de-sac would create an undue safety hazard.

5158

Mr. Taylor felt there were too many changes being addressed, so he moved to remand the matter to the Plan Commission, seconded by Rasmussen. Dr. LaHue said he was in favor of the project, not a remand, and felt that the developer had tried to keep a degree of separation between the subdivisions, and gave some variety to the community as a whole. Mr. Gill was in favor of a remand; he didn't feel a certainty that the size and quality of homes described would actually be built. He said that open space and lack of density in residential areas was important in Leawood, and the new development adjoined the City's southern signature piece of land - the golf course. Residents had raised some valid issues. The Plan Commission needed to review the matter and add additional stipulations for high-end quality, including a grade A roof and materials. Councilmember Campbell agreed with Dr. LaHue; he was not in favor of a remand, Council couldn't legislate materials used or stipulate square footages. He was also comfortable with other developments the developers had built,

particularly around the golf course. The motion to remand failed; Taylor, Rasmussen, Gill in favor; all others (5) opposed. (Some of Mr. Taylor's reasons for a remand would have been lot changes, setback changes, roof material change.)

Dr. LaHue moved to adopt the resolution, seconded by Campbell. Motion carried; Taylor, Rasmussen, Gill opposed; all others (5) in favor.

Councilmember Rasmussen requested a memo from the City Attorney indicating whether or not the golf course property or any City property could be part of a petition drive. Mr. Wetzler said he would be happy to do so, but at the present time, he saw no basis in statutes to exclude City-owned property where the City is the owner of real estate like the golf course. Statutes specifically excluded public right-of-way; that was the only exclusion. Mr. Rasmussen said that the Council had been denied the opportunity to be part of a petition process by not being informed. The Mayor said that in the future, petition matters should come before the Council for a decision.

Plan Commission continued after Mayor's report.

6345 **MAYOR'S REPORT**

The Mayor reported that Elizabeth Chu was the new Consul General of the Taipei Economic and Cultural Office in Kansas City, and she would be assisting with the City's trip to Sister City I-Lan, Taiwan in October.

The Leawood Foundation was planning a fundraiser for the old Oxford School in September at the AMC Theaters at Town Center Plaza.

The Mayor requested Councilmembers give her suggestions for appointments to committees and commissions which would be approved at the May 4<sup>th</sup> Council meeting.

**PLAN COMMISSION – continued.**

6675 **Ordinance No. 1726 rezoning property located at approximately 151<sup>st</sup> & Linden (Village at Ironhorse) from RP-1 to RP-4.** The ordinance was considered and passed on motion of LaHue, seconded by Campbell; Taylor, Rasmussen, Gill opposed; all others (5) in favor.

**OLD BUSINESS**

6711 **Discussion of report on the employment of an in-house attorney.** Councilmember Taylor moved to direct staff to begin a search for a full-time in-house attorney, and to have someone employed by September 1999, seconded by Rasmussen.

6951 **END OF TAPE**

Tape No. 418

Mr. Taylor's motion carried unanimously.

- 52 **Discussion of a revised special event ordinance.** Section 4-3.1(33) of the Leawood Development Ordinance regarding administrative special use permits would be amended. Current ordinance allowed the Planning Director to issue up to 3 special events permits per calendar year. The permits allowed applicants short-term special use of specified land for temporary displays and/or functions. Proposed changes would increase the number of special event permits allowed from 3 to 6.

Councilmember Rasmussen said that the revision would help many religious and educational organizations in Leawood that had various historical and periodic events that occurred almost on time bases. Churches and schools could apply at the beginning of each year for special use permits for all their events, with a maximum of 6 events, for a reduced fee. The revision would also be applicable to commercial events.

Mr. Rasmussen moved to direct staff to present the draft ordinance to the Plan Commission for their consideration, seconded by Gill and carried unanimously.

- 178 **Consideration of a resolution prepared by Councilmember Rasmussen which would authorize and direct the City Administrator to annually recommend to the Governing Body a fixed amount to finance stormwater management program projects authorized by the Governing Body.** Councilmember Rasmussen said that in terms of SMAC, the recommendation of the dissolved ad hoc Stormwater Review Committee was to essentially continue a successful financing method – a fixed dollar amount in the annual budget - used since 1993. Various other financing methods had been considered but no decisions made by the Council on how to permanently finance projects. As a matter of information, he felt the City should set up a separate account for maintenance of stormwater projects, and said that the City had never nailed down what its stormwater system was; that needed to be determined. Mr. Rasmussen moved to adopt the resolution, seconded by Gill.

Councilmember Clawson felt that the resolution appeared to preclude bonding and other funding mechanisms of SMAC projects if needed, especially for very large projects where the City might not be able to come up with its 25% share of the costs in cash in a budget year because of other budget needs. The City would be building a budget around stormwater. City Administrator Garofano agreed. Mr. Rasmussen said the resolution did not preclude other funding mechanisms. Councilmember LaHue didn't feel that the pay-as-you-go financing had done very well, especially when emergency stormwater problems occurred. There was discussion of the budget process.

- 586 11:00 P.M. On motion of LaHue, seconded by Clawson, Council voted unanimously to extend the meeting until 11:30 P.M.

Mrs. Clawson didn't feel the resolution was flexible enough. Mr. Garofano said that at the present time, staff scheduled projects that fit within the funds available (\$300,000 a year), and turned down projects that didn't fit within that funding mechanism. Staff didn't take Council's approved projects and try to fund them. He said that funding for very large projects could be built up over several years through the budget process, but then other projects would have to wait.

Both motion and second were withdrawn. The resolution would be reworded for consideration at the next Council meeting.

- 908 **Consideration of City standard contracts.** Councilmember Gill moved to defer the matter until the May 18<sup>th</sup> Council meeting, seconded by Campbell. There was more information from AIA to review, especially by the City Attorney. City Attorney Wetzler stated that many matters of Council concern involved policy decisions, not necessarily legal issues. Motion carried unanimously.
- 1214 **Approve bid/authorize contract for construction of stormwater management (SMAC) project TM-04-004, Tomahawk Creek Bank Stabilization, in the vicinity of 123<sup>rd</sup> St. and Roe Ave.** On motion of Rasmussen, seconded by Clawson, Council unanimously approved a contract with the low bidder Kissick Construction Co. in the amount of \$198,125.00.
- 1327 **Authorize Supplemental Agreement No. 1 with Bucher, Willis & Ratliff engineers for phase 2 of City comprehensive traffic study.** Councilmember Gill moved to approve the agreement in the amount of \$60,000, seconded by Clawson. (The first phase dealt with the traffic impact along the 135<sup>th</sup> St. Corridor.) Councilmember Taylor wanted the engineers to gather their own data and not necessarily rely on information in City files – have a fresh approach to the study, double check the data the City already had. City Administrator Garofano didn't think that the scope of services entailed that approach and would probably dictate a different cost to the City; he didn't know where else the engineers would get the information, past history, previous traffic counts, other than from City records. There was no additional money available for such a "fresh approach." Phase 2 would set up a model similar to the one done for Price Chopper project at 135<sup>th</sup> & Mission Rd. so when developers did traffic studies, they would have to do them in a format specified by the City, so data could be put into the model enabling the City to generate different scenarios.
- 1545 11:30 P.M. On motion of Taylor, seconded by LaHue, Council voted unanimously to extend the meeting for 30 minutes.
- Mr. Gill's motion carried unanimously.
- 1600 **APPROVAL OF APPROPRIATION ORDINANCE NO. 832.** On motion of Rasmussen, seconded by Gill, Council unanimously approved the ordinance on roll call vote.
- 1615 **OTHER BUSINESS.** Discussion of a moratorium on the filing of adult entertainment applications. Councilmember Gill moved to adopt a moratorium on accepting or processing adult entertainment applications through the May 4<sup>th</sup> Council meeting because staff was in the process of revising an ordinance relating to the issue with the view of complying with the first amendment. Mr. Gill wanted to be sure that when an application was filed, the City would be able to deal with it with the best first amendment advice. He requested the addition of one stipulation to the ordinance – if an applicant tried to file an application before May 4<sup>th</sup>, but because of the moratorium couldn't do so, Mr. Gill wanted a clarification that whatever time parameters the ordinance contained, that the time would be shortened by the number of days that the applicant would have lost due to the moratorium. Motion seconded by Taylor and carried unanimously.

1694 Discussion of annexation agreement for land annexed by the City, southeast corner of 135<sup>th</sup> & Nall (Laner tract). City Administrator Garofano said that the agreement provided that the City would deannex the land in the event the City did not approve plans for development. The City had not yet approved plans, and Laner had requested deannexation. However, the Church of the Resurrection was negotiating to purchase a portion of the property. City Attorney Wetzler said that the church had apparently entered into a contingent agreement for the purchase of a southern portion of the property, and they preferred to stay in the City of Leawood. If the church purchased the land, Laner wanted assurance that the City would deannex the northern most portion of the Laner property. The Laner agreement with the City had some specific dates and trigger times when the deannexation was to take place, and the Laners were asking for some flexibility in those dates and times. If the Council was inclined to agree, Mr. Wetzler would prepare a written document to confirm the Council's approval of the request. The Mayor noted that if the Council was not so inclined, Laner could deannex the entire tract of land and the church would have considerable expense to come back into the City. Mr. Wetzler would prepare a written document for Council consideration at the May 4<sup>th</sup> Council meeting.

2066 **PRESENTATIONS TO RETIRING COUNCILMEMBERS.** The Mayor presented plaques and keys to the City to Councilmembers Ronald H. LaHue and John R. Campbell, Jr. Dr. LaHue had served the City from 1988 to 1998, and Mr. Campbell from 1992 to 1998.

**OATHS OF OFFICE ADMINISTERED TO COUNCILMEMBERS-ELECT:** Patrick L. Dunn, Ward 1; Louis Rasmussen, Ward 2; Gary L. Bussing, Ward 3; and Adam Bold, Ward 4.

2630 12:00 A.M. On motion of Gill, seconded by Clawson, Council voted unanimously to extend the meeting for 30 minutes.

2692 **ROLL CALL OF NEW COUNCIL:** Bold, Bussing, Clawson, Dunn, Peppes, Gill, Rasmussen, Taylor.

**NEW BUSINESS**

2714 **Schedule bus tour of the City.** On motion of Peppes, seconded by Bold, Council unanimously voted to schedule the tour for both the Council and Plan Commission for May 11<sup>th</sup> at 5:30 P.M.

2742 **OTHER BUSINESS.** Discussion of soccer parking at Leawood City Park. On some Saturdays, parking was not available due to scheduling conflicts. Parks & Recreation Director Whitaker said his department would work with the Police Department to resolve the problems. They would focus on safety and people blocking the roadway as opposed to people parking on the grass. Police Captain Sid Mitchell said handicapped parking was a high priority.

2919

Discussion of placing the City's park plan/program on an election ballot.

Councilmember Rasmussen said that if the City planned to go to the public with the parks program (he was in support of it), and if the City wanted to place the issue on the August 4<sup>th</sup> primary ballot, the Election Commission would have to know by June 10<sup>th</sup>. If the City wanted a good voter turnout, a question should be placed on the November ballot; the Election Commissioner would have to know by August 4<sup>th</sup>. City Administrator Garofano believed that the Parks & Recreation Advisory Board needed to make a recommendation to the Council regarding a bond issue for parks. One option they might want to explore would be a mail-in ballot. Parks & Recreation Director Whitaker said the Board had met and would make a recommendation to the Council at the May 4<sup>th</sup> Council meeting in favor of the November election.

The Mayor reminded Council that there was a pre-budget work session on April 27<sup>th</sup>. The time was changed from 7:30 to 7:00 P.M.

3098 12:20 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 419

460 The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, May 4, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, James E. Taylor, Sr., and Mike Gill. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; J. Stephen Cox, Chief of Police; Joe Johnson, Public Works Director; Robert McKay, Director of Planning & Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Approved unanimously on motion of Gill, seconded by Peppes.

**PRESENTATION OF GOVERNMENT FINANCE OFFICERS ASSOCIATION CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING.** The Mayor presented a plaque (The Certificate of Achievement for Excellence in Financial Reporting) that had been awarded to the City of Leawood by the Government Finance Officers Association of the United States and Canada (GFOA) for its comprehensive annual financial report (CAFR) for the fiscal year ended December 31, 1996. The Certificate was the highest form of recognition in the area of governmental accounting and financial reporting and its attainment represented a significant accomplishment by a government and its management.

The Mayor presented a certificate of Financial Reporting Achievement to retired Finance Director/City Treasurer Harry Malnicof as the individual designated as primarily responsible for having prepared the award-winning CAFR.

**MAYORAL PROCLAMATIONS:**

1. May 1998 as "Physical Fitness and Sports Month";
2. May 3-9, 1998, as "Arson Awareness Week" which was presented to Fire Chief Florance.

**CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, spoke in general about the hiring of a full-time in-house attorney which the Council had discussed at the last Council meeting. He felt that the last City election was a waste of time; the cost of the

election was far too great. He felt that primary elections should be eliminated to help lower election costs. He felt the City should submit a question to the voters in November to consider changing nonpartisan elections to partisan. He also felt that the City should not pay any of the Leawood Chamber of Commerce's expenses, an item which would be discussed toward the end of the meeting.

~~893~~  
810 **CONSENT AGENDA.** The following were approved unanimously on motion of Clawson, seconded by Peppes:

1. Minutes of the April 20, 1998, Council meeting;
2. Arts Council report (minutes) on their March 24, 1998, meeting;
3. 50<sup>th</sup> Anniversary Committee report (minutes) on their April 2, 1998, meeting;
4. Historic Commission report (minutes) on their March 24, 1998, meeting;
5. Parks & Recreation Advisory Board report (minutes) on their April 14, 1998, meeting;
6. Pay Request No. 13 (FINAL) by Walton Construction Co. in the amount of \$10,000 for Town Center Plaza/Drive improvements;
7. Reciprocal Investigation Interlocal Agreement with the Eastern Kansas Multi-County Task Force which would allow other fire agencies to assist Leawood in investigations of incidents of fire, explosion, or arson that required more resources than Leawood had available; Leawood in turn would provide assistance to the Task Force;
8. Resolution No. 1395, attached as part of the record, designating the courtyard and plaza area at City Hall as a portion of the Community Center to permit the Chamber of Commerce to serve cereal malt beverage at a May 12, 1998, event, in accordance with Section 3-113© of the Code of the City of Leawood;
9. Mayor's 1998-1999 appointments to committees and commissions, attached as part of the record;
10. Mayor's appointment of presiding officers: Greg Peppes, May-July, 1998; Marnie Clawson, August-October, 1998; Mike Gill, November 1998-January 1999; and James Taylor, February-April, 1999;
11. Executive session to discuss a personnel matter following the Council/Plan Commission bus tour of the City on Monday, May 11<sup>th</sup>.

#### **PLAN COMMISSION**

827 **Resolution No. 1396, attached as part of the record, approving request for rezoning from AG to RP-1, RP-4, and CP-1, and approving preliminary site plan and preliminary plat, for Camden Woods located at approximately the southwest corner of 143<sup>rd</sup> & Kenneth Rd.** Councilmember Gill said he would abstain from voting to avoid a possible appearance of a conflict of interest. He left his Council seat.

The applicant, Paul Robben of Woodstone Development, gave a history/overview of the development. Marketing methods, project phasing, and parking were discussed. Planning Director McKay clarified for the Mayor that all public streets in the development would have sidewalks. Council discussed the timetable for construction of sidewalks along

May 1, 1998

TO: City Council  
FROM: Mayor Dunn *JD*  
RE: 1998-1999 Appointments

The list of mayoral 1998-1999 appointees to Leawood committees and commissions is as follows:

	<u>Reappointment</u>	<u>New</u>
Arts Council	Doug Fain (2001) Mary Reed (2001) Mary Tearney (2001)	Gary Bussing - Council liaison (1999)
Board of Zoning Appeals	Phil Mabry (2001)	
Budget & Finance (1999)	Phillip Collingwood James Azeltine Stan Ricketts Dale Putman	Scott Picker Jim Rollings Greg Bussing

NOTE: This committee will consist of the entire Governing Body as a committee of the whole plus the names listed above. The Mayor will chair the committee.

Building Code Board of Appeals -  
Wes Welch, Chr.                      Chuck Duval (2001)  
Wayne Lishka (2001)

Debt Management Awareness Council  
(Jo. Co.) - Leawood rep.              Lou Rasmussen

Emergency Preparedness  
Coordinator                              Bettie Bridges

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May 1, 1998

	<u>Reappointment</u>	<u>New</u>
Golf Course Advisory Board - Dick Fuller, Chr.	John Campbell (2001) * Mike O'Connell (2000) * Dick Fuller (2001) Jim Dickson (2001) Lou Rasmussen (1999)	Mike Gill (1999)

Note: 3-year staggered terms for non-council members. Council appointees are annual. \* denotes Review Committee members which also includes Bobby Davidson (2000).

Historic Commission - Jody Craig, Chr.	Elaine Steinke (2001)  Mike Gill - Council liaison (1999)
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Leawood Foundation	Adam Bold- Council liaison (1999) Peggy Dunn, ex officio
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Parks & Recreation Advisory Board	Greg Peppes- Council liaison (1999) Dick Fuller (2002)	Karen Reimer (1999)
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Plan Commission	Don Brain (2001) R. Melvin Henderson (2001) Carole Kessler (2001)
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Public Building Commission	Bob Adams (2002) Peggy Dunn (2002)	Patrick Dunn (2000) Adam Bold (2002)
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Public Officer for Property Maintenance Code	Bob McKay
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Mayoral appointments  
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	<u>Reappointment</u>	<u>New</u>
Public Works (1999)	Marnie Clawson, Chr. Tracy Smith Greg Peppes Randy Viot Julie Cain Bill Mallory Dan Pruett	James Taylor Gary Bussing
Sister City Committee (1999)	Teresa Chien Jill Domoney Tom Hammonds Ann Leitner Alice Putman Dick Reicher Barbara Gadd-Alley Cecilia Thompson Sophie Lin	Patrick Dunn - Council liaison (1999)
Stormwater Management Advisory Council - Leawood rep.		Marnie Clawson (1/1/2000)

143<sup>rd</sup> Street, particularly since they would serve the Prairie Star Elementary and Middle Schools. The City might have to construct a temporary asphalt sidewalk and not wait for a future concrete sidewalk to be constructed with 143<sup>rd</sup> St. improvements which might not occur for 10 years.

1694 Councilmember Bold moved to adopt the resolution with an additional stipulation that a temporary asphalt sidewalk be constructed along the south side of 143<sup>rd</sup> Street to the west (sidewalk would also go to Kenneth Rd.), seconded by Taylor. Mr. McKay didn't think a temporary sidewalk was necessary along Kenneth Rd. Mr. Robben suggested attaching a sidewalk stipulation at a later date to the commercial development (the third and final phase) along Kenneth Rd. Mr. Robben agreed to the additional stipulation in Mr. Bold's motion. The motion carried unanimously, except for Mr. Gill's abstention.

1915 **Ordinance No. 1727 rezoning from AG to RP-1, RP-4, and CP-1 for Camden Woods.** The ordinance was considered and passed on motion of Clawson, seconded by Peppes. On roll call vote, all were in favor, except for Mr. Gill who had removed himself from the discussion of Camden Woods.

Mr. Gill returned to his Council seat.

1935 **Ordinance amending Section 4-2 of the Leawood Development Ordinance relating to unrepaired buildings.** Councilmember Gill made comments: 1) 4-2.3 needed to be reworded, making intent clearer; 2) 4-2-4 needed to have some degrees of damage added; and 3) 4-2.9 – be a little more generic in prohibited uses or applicability, not just a tarp, perhaps "encasement." For 4-2.9 there was consensus that staff be allowed to give residents an additional 60 days following the 30 days before returning a matter to the Governing Body. For 4-2.4 Councilmember Dunn requested that the Plan Commission consult with the insurance industry about the typical time for repairs because he wouldn't want a period of time in the ordinance that would place residents in violation if they had hail damage to their roofs.

Mr. Gill moved to refer the proposed ordinance to the Plan Commission for their consideration, seconded by Taylor. Motion carried unanimously.

2295 **Ordinance amending Section 4-9 of the Leawood Development Ordinance relating to adult entertainment businesses.** Councilmember Gill said that the moratorium placed on applications for adult entertainment establishments at the last Council meeting had expired. He said that the special counsel who had been retained by the City to advise the City on this very complicated issue could not attend the Council meeting at the last minute, and his presence during discussion was critical. Mr. Gill moved to place a new moratorium on applications until the May 18<sup>th</sup> Council meeting with the same stipulations made at the April 20<sup>th</sup> Council meeting, seconded by Taylor. Motion carried unanimously. Mr. Gill moved to continue consideration of the ordinance to the May 18<sup>th</sup> Council meeting, seconded by Taylor. Motion carried unanimously.

- 2385 **MAYOR'S REPORT.** The Mayor thanked staff for their work preparing the volunteer appreciation family picnic and concert which took place at City Hall Sunday, April 26<sup>th</sup>. It was very successful and well received.

She and the City Administrator recently attended the groundbreaking for the American Academy of Family Physicians building at 114<sup>th</sup> and Tomahawk Creek Parkway.

### OLD BUSINESS

- 2477 **Resolution No. 1397, attached as part of the record, of preliminary determination and of intention to accept the dedication of certain streets in Berkshire Villas subdivision for public use.** Adopted unanimously on motion of Bold, seconded by Taylor.

- 2673 **Parks & Recreation Advisory Board recommendation on park master plans, and recommendation for a parks bond issue on the November election ballot.** Relative to the Nall Park in the vicinity of 126<sup>th</sup> & Nall, Parks & Recreation Director Whitaker clarified that the Advisory Board had recommended that the wooden bridge not be placed across the creek, that they would try to work out an agreement to deed the portion of the park south of the creek (except for the switchback of the trail system) to the Patrician Woods Homes Association. That would be discussed at the next Board meeting, next week. They also talked about trying to move shelters back from the creek, having no more than 16 parking spaces, and working with the neighbors as to how the parking lot would be lighted. Those items would be passed on to the final design process.

City Administrator Garofano asked if the Governing Body was really desirous of deeding over public land to the homes association. Once done, it was done. It didn't seem to him to be in the City's long-term interest - things changed over time - to give up any public property. If there was a consensus to not dispose of the property, then it was useless to go through a negotiation stage with the homes association.

- 2888 Councilmember Taylor moved to allow the homeowners to purchase the parcel at a value (for flood land) that would be established by 3 independent appraisals, the City to pay for the appraisals, seconded by Bold. Councilmember Peppes wasn't sure about spending money on appraisals for land that really might not sell. Even though he seconded the motion, Mr. Bold wasn't sure about the appraisals either. He had faith in staff to determine a reasonable value.

Councilmember Clawson was opposed to selling green open space. Green space, publicly-owned, to be preserved, was a very precious commodity, particularly in a suburban community. She felt residents' concerns about being infringed upon by development of a park had been addressed by removing the bridge, by taking out the active use of the property, and only allowing the switchback on the trail.

Mr. Bold said that the City would end up with the same green space with a natural boundary, but the City would not be responsible for maintaining what was essentially residents' backyards south of the creek.

Mrs. Clawson added that the City did not maintain active streamways; they were left natural. This streamway wasn't maintained any differently than others.

Mrs. Clawson didn't feel it was appropriate to delegate the sale of publicly-owned land to a committee. The Mayor clarified that the Advisory Board would merely do the research on the issue and make a recommendation.

Mr. Taylor restated his motion to remove the appraisals and to direct staff to proceed with negotiations on the sale of the property. Mr. Bold said his second would stand.

3262

Councilmember Gill said he was not prepared to hear a motion to allow the homeowners to purchase a portion of the Nall Park and for the City to pay for 3 independent appraisals to establish property value. He didn't expect to make a decision immediately on whether or not to dispose of land. He suggested tabling the matter in order to obtain further information. He wanted to know the cost to maintain the park versus what was the desirability of having it maintained consistent with the City's vision of the park looking at it from across the stream. How would the City be sure that the parcel of land was maintained to City standards and did that need to be part of the stipulations of a sale; he felt it should be. He asked why we would dispose of land - to avoid the expense of maintaining it (if so, that was a worthy objective), or to guarantee that there would never be a bridge built across the stream or public use of land that did about the residential property? He would not support any Nall Park plan that connected a bridge across the stream for many reasons, all of which the residents had pointed out. While sale of the land would protect residents from incursion onto their properties which they absolutely deserved, he wasn't sure what the sale would do for the City. He suggested additional information and thoughts in 2 weeks. Staff needed to think about the implications of disposing of land; could the land be protected - what if there was a stormwater issue in the future. Did reservations need to be built in to deal with the right to assess the problem and gain access to the property? Council needed the additional information in order to evaluate the type of strategy to dispose of the property. He said he really wasn't concerned about the money issue of a transaction - the amount would be modest.

3426

Councilmember Peppes said that even if the property was not sold, residents felt assured that the area would be kept left as it was as opposed to being developed. He felt that it was the will of the Advisory Board after listening to residents not to do anything about a sale of the property.

3520

Dr. Joseph Tauber, 12642 Sherwood Drive, Patrician Woods Homes Association, said that residents wanted to prevent future development of a bridge plan on the area in question, leaving it green space. The area was not really maintained, and whatever maintenance was done was done by residents. He said it was not necessary from residents' point of view that they own the property. But it was made very clear to them that no Council could guarantee what actions future Councils might take.

Mrs. Clawson felt that from a practical standpoint, it was pretty unlikely that a Council would allocate enough money to build what would be an expensive bridge, built safely and substantial enough to withstand occasional flooding along the channel.

3606 In light of comments made by Dr. Tauber, Mr. Taylor withdrew his first motion (Mr. Bold withdrew his second), and moved that staff prepare a report (what if the property was sold, conditions and terms) for the next Council meeting as a guide for the Council. Motion seconded by Gill and carried unanimously.

Mr. Gill also requested information on the possibility of considering some kind of deed restriction with respect to the property that might provide the residents some enforceable comfort in the future if future Councils changed their minds.

3762 Relative to the South Park in the vicinity of 147<sup>th</sup> and Mission Rd., Mr. Taylor felt more recreational activities needed to be provided. Mr. Whitaker said modifications, including ball fields, to the current plan could be made at a later time if directed by the Council.

3890 Mr. Gill felt that the South Park didn't meet the demands and pressing needs of residents, especially additional residents in the future south of 135<sup>th</sup> St. More playing fields were needed.

4018 Mr. Bold agreed with Mr. Gill. The City needed to offer residents in the south part of the City the same amenities offered to those in the north and central parts of the City. He was also concerned about resident Bob McQuain's home at 14901 Mission Rd. highly impacted by the proposed Fire Station No. 3 and to a lesser degree the rest of the park. The major park ingress/egress was 50 feet from Mr. McQuain's property line. Perhaps that park entrance could be moved. City Administrator Garofano said that the park roadway had to be aligned with the entrance to the Pavillions subdivision in the event that intersection had to be signalized in the future or for traffic control in the interim. There were very few options for change.

Mrs. Clawson, Council liaison to the Arts Council, said that there was a very active group of residents who were working toward having a community theater organization, and if the amphitheater space in the plan was turned into ball fields, there would be no place for theater or arts activities. There was already a problem using the stage area on the north side of the City Hall.

There seemed to be a consensus for redesign of the South Park.

Mr. Gill wanted to know where and how many fields could be located in the park.

4851 Mr. Garofano said that the acquisition of the property for the South Park was not solely predicated on the provision of fields. There had been a conceptual plan prepared that looked at several tracts of land. He said the Council was trying to make a decision on something that was not necessarily definable. The Council was not taking into consideration other recreational agencies serving the County. Why assume that Leawood would have to duplicate activities (ball fields for instance) or provide so much?

5066 Mrs. Clawson felt that the Parks & Recreation Advisory Board needed to address the possibility of broadening athletic programs which currently were primarily soccer for young children. Should the City provide a soccer program for so many people with residents paying for the facilities? Perhaps the City needed to narrow the scope of who the City would provide activities for in order to better accommodate Leawood residents. \*

Mr. Whitaker said he could provide an overlay showing some fields in the northern

\* See May 18, 1998, Council meeting minutes for correction to this statement.

section of the South Park by the May 18<sup>th</sup> Council meeting. Mr. Taylor hoped to see a list or some indication of as many amenities as possible, including tennis courts, even though the City's tennis program was practically non-existent. Mr. Whitaker said that he could prepare a list of possible active participatory sports to send to residents under the open space category. Mr. Garofano noted that if the Council really wanted certain amenities they needed to be built into the cost up front for the bond issue election in November.

5590 Bob McQuain, 14901 Mission Rd., immediately south of the proposed fire station #3, said he knew that residents thought the park would be a passive park; they were not aware of the plan under discussion. He said that the only meeting notice he had ever received was for the preliminary approval of the design of the fire station. He said that the proposed plan showed a single park entrance and exit 50 feet from his property line, so a lot of traffic would go right by his home. He said that the fire station's training tower was in full view of his front door - there were no obstructions between the 2 properties. He was concerned about the effect on the value of his property from the training tower and the high-usage park entrance. He asked that the City re-think the entrance/exit. He noted that it shared the same drive with fire department emergency equipment and that didn't make sense to him. He felt the fire station could be relocated. He was opposed to a 24-hour access park; there needed to be a curfew for park usage.

The Mayor said that Mr. McQuain would receive Plan Commission and Council meeting agendas when the proposed fire station and South Park would be discussed.

6197 Councilmember Bussing moved to send the plan back to the land use experts/staff with the direction that Council wanted to see a redesign/overlay of the South Park with an amphitheater, ball fields, and other amenities, seconded by Taylor. Mr. Garofano noted that the entrance to the park had been designed along with the fire station and was currently being considered by the Plan Commission; he reiterated lack of options for the entrance.

6772 Mrs. Clawson called for the question, seconded by Bold and carried unanimously. Mr. Bussing's motion carried; Bussing, Taylor, Bold, Gill in favor; Dunn, Peppes, Clawson opposed.

6909 Mr. Gill moved to approve the master plan for the City Park (Leawood Park, 106<sup>th</sup> & Lee Blvd.) as presented and send it to a November referendum, seconded by Taylor. Motion carried unanimously.

The Nall Park and South Park issues would be considered again by the Council at the May 18<sup>th</sup> Council meeting.

6968 **Resolution No. 1398, attached as part of the record, authorizing and directing the City Administrator to annually recommend to the Governing Body an annual funding plan to finance stormwater management program projects deemed necessary by the Governing Body.** Councilmember Clawson moved to adopt the resolution, seconded by Peppes.

7013 END OF TAPE

Tape No. 420

Motion carried unanimously.

- 25 **Authorize interlocal agreement with Johnson County for construction of SMAC project TM-04-004, Tomahawk Creek Bank Stabilization, south bank of Tomahawk Creek approximately 400 feet east of Roe.** Approved unanimously on motion of Gill, seconded by Taylor.
- 85 **Resolution No. 1399, attached as part of the record, authorizing the Mayor to execute an addendum to annexation agreement for land at 135<sup>th</sup> & Nall Ave. (Laner property) annexed by the City.** Adopted unanimously on motion of Taylor, seconded by Gill.

**NEW BUSINESS**

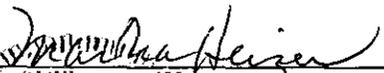
- 140 **Approval of Appropriation Ordinance No. 833.** On motion of Bold, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.
- 154 **Ordinance No. 1728C amending Article 6 of Chapter 1 of the Code of the City of Leawood to change the name of the Leawood Arts Committee to the Leawood Arts Council.** On motion of Clawson, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.
- 184 **Discussion of funding for the Leawood Chamber of Commerce.** Stewart Stein, 4104 W. 110<sup>th</sup> Terr., Chairman of the Leawood Chamber of Commerce, addressed the Council about the City partially funding Chamber operations. The Chamber was formed about 2 ½ years ago due to commercial development and rapid growth pace within the City. He said that the other 9 chambers in the County received funding from their respective cities to promote economic development. He said that the Chamber wanted to partner with the City in funding a full-time development position to be paid ½ by the City and ½ by Chamber membership dues. Funding would be an annual request. Councilmember Clawson said she was impressed with the City of Lenexa's agreement with their chamber. She asked if the Leawood Chamber was prepared to present a detailed proposal of what services would be rendered to the City. Mr. Stein said he would prefer to prepare with the assistance of City staff a document similar to Lenexa's to present to the Council.

Mrs. Clawson felt the issue should be studied briefly by an ad hoc committee. Councilmember Gill didn't think the City needed a recruiter for business at the present time, maybe in the future, and he wasn't convinced that the amount of money suggested (about \$30,000 total) would be enough to hire the kind of expertise to attract the level of businesses that the City desired. He would support authorizing the City Administrator to expend some money to work with the Chamber if it was beneficial to the City. He also suggested the City

might provide some "seed" money for the purpose of augmenting a travel or entertainment budget for a person, perhaps someone retired, who would volunteer some recruitment effort. Mr. Stein said that if the City didn't feel it had a need to promote economic development, then the Chamber didn't feel that way either.

Councilmembers Bold and Taylor, people from the Chamber, Planning Director McKay and some Plan Commissioners, and City Administrator Garofano would comprise an ad hoc committee and would report to the Council in about 1 month.

781 10:50 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



MINUTES  
SPECIAL COUNCIL MEETING

Tape No.

# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 8:08 P.M., Monday, May 11, 1998. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss a personnel matter and a matter under attorney-client privilege.

Staff present: Richard J. Garofano, City Administrator.

8:08 P.M. On motion of Bold, seconded by Clawson, Council voted unanimously to convene in executive session until 9:00 P.M. for the aforementioned discussions.

9:00 P.M. Council returned to special session, same members present. On motion of Bold, seconded by Gill, Council voted unanimously to extend the executive session until 9:30 P.M. to continue the same discussions.

9:30 P.M. Council returned to special session. No action was taken. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer  
City Clerk



Minutes Summary

Audio Tape No. 421

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, May 18, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, \*Gregory J. Peppes (arrived 7:35 P.M.), James E. Taylor, Sr., Mike Gill, and Louis Rasmussen. Adam Bold was absent.

Staff Present: Richard J. Garofano, City Administrator; Sarah Hilton, Special Projects Coordinator; J. Stephen Cox, Chief of Police; Joe Johnson, Public Works Director; Robert McKay, Director of Planning & Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Approved unanimously on motion of Gill, seconded by Taylor.

**MAYORAL PROCLAMATIONS:**

1. May 1998 as "Stroke Awareness Month";
2. May 17-23, 1998, as "National Public Works Week," proclamation presented to Public Works Director Johnson;
3. May 18-25, 1998, as "Buckle Up America! Week," proclamation presented to Police Chief Cox and Sergeant Tom Hogard;
4. May 10-16, 1998, as "Police Week," and May 13, 1998, as "Peace Officers Memorial Day," proclamation presented to the Police Department.

\* 7:35 P.M. Councilmember Peppes arrived.

**CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, said he had attended a meeting at Saddle & Sirloin Club which was to be sold for development. He wanted the Council to be aware of forthcoming plans. He wanted to know the exact terms. The Mayor advised him that the Plan Commission would consider any development plans first before being considered by the Council.

276 **CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Clawson:

1. Minutes of the May 11, 1998, Special Council meeting;
2. Golf Course Committee report (minutes) on their April 28, 1998, meeting;
3. 50<sup>th</sup> Anniversary Committee report (minutes) on their May 6, 1998, meeting;
4. Parks & Recreation Advisory Board report (minutes) on their May 12, 1998, meeting;
5. Municipal Court activity report for April 1998;

6. Declaration of surplus property from the Public Works Department – excess office equipment (file cabinets and plastic cylinders for concrete testing) for the next public auction in which the City would participate;
7. Change Order No. 5 to the contract for stormwater SMAC project JB-04-003 (vicinity of 97<sup>th</sup> St. to 98<sup>th</sup> St. – High Dr. to Sagamore) in the amount of \$23,360.78, to remove overruns from a pay request and place them in this change order to help the County maintain their records;
8. Change Order No. 1 to the contract for the 1998 Street Improvement Program in the amount of \$93,687.86, for the mill and overlay of Roe Ave. from 112<sup>th</sup> St. to Town Center Drive;
9. Application (renewal) for cereal malt beverage license – Hallbrook Country Club, 11300 Overbrook Rd.;
10. Septic system for a non-sewered 10-acre parcel located at 4601 W. 143<sup>rd</sup> St., property owner Dr. Joseph Wackerly.

Minutes of the May 4, 1998, Council meeting. Councilmember Clawson referred to tape meter #5066, page 4943, and the statement which read, "Should the City provide a soccer program for so many people with residents paying for the facilities?" She asked that the statement be corrected to reflect her comment with regard to having soccer, particularly programs that were growing beyond the bounds of what the City's fields could handle. Her comment should have been transcribed to say that the City needed to investigate the wisdom of providing a soccer program for the whole area, including the surrounding cities; even though soccer supported itself, the facilities were provided by the taxpayers of Leawood. On motion of Clawson, seconded by Peppes, the minutes were approved unanimously with the correction.

Fire Department activity report for April 1998. Councilmember Taylor, who had called the Fire Department for assistance 4 years ago, congratulated Chief Florance and his department on their response times, professionalism, and carefulness when called upon to act.

Planning & Development activity report for April 1998. Mr. Taylor asked if the City was training its codes administrators and inspectors on the recently adopted building codes as well as on past codes. Planning Director McKay said that staff participated in training seminars on new codes. There were a variety of certificate programs that the City required of its staff. He said that some retail inspections were outsourced, especially when staff was overloaded with work. Plan review was also outsourced, especially on retail. Mr. McKay said that his 3 current inspectors would be able to meet the demand of the increase in commercial activities with the understanding that the City used special inspections when needed. Special inspections were utilized quite frequently and were working very well. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the reports.

545 **PLAN COMMISSION**

**Request by AMC Theaters at Town Center Plaza to extend movie start times.** At a previous Council meeting, Council had decided that no movies could start at AMC later than 10:45 P.M. AMC said that each night between the early evening and evening round of

shows, their core customer service values were compromised, and that in order to give the flow of traffic and theatre operations some breathing room, AMC requested that the outside time for show starts be extended to 11:30 P.M. The intent of their request was not to add an additional round of late night movies, but simply to aid in the balanced flow of both vehicular and pedestrian traffic through their facility.

Councilmember Clawson moved to deny the request, seconded by Peppes. After brief discussion, Mrs. Clawson reminded the Council that when they initially approved the construction of the theaters, she had made the motion to approve with the condition that movies not start later than 10:45 P.M. AMC representatives said at that time that that would be no problem at all, and without her motion, the theater matter might not have been approved at all. Motion to deny carried unanimously.

709 **Ordinance No. 1729 rezoning from AG to CP-0 – Kansas City Orthopedic Center, south side of College Boulevard between Buena Vista and Tomahawk Creek Parkway.** The ordinance was considered and passed on motion of Gill, seconded by Clawson. Roll call vote was unanimous. The Mayor said that if she had had the opportunity to vote, she would have abstained in order to avoid the appearance of a conflict of interest.

746 **Resolution No. 1400, attached as part of the record, approving a preliminary site plan and preliminary plat for Merrill Lynch, southwest corner of College Boulevard and Tomahawk Creek Parkway.** Councilmember Rasmussen asked about plans for public art at the corner of College and Tomahawk Creek Parkway. Building owner Chuck Peters of Peters and Associates who would be leasing the building space said he had been advised by the developers of the overall Tomahawk Creek Office Park and the Plan Commission that there would be a public art assessment based on square footage of the building to which he had agreed to in writing. Mr. Peters said he had requested a monument/directional “Merrill Lynch and other business name” sign off of College and one at the Tomahawk Creek Parkway entrance, no signage on the building itself. There would also be a waterfall feature and fountain at the intersection of College and Tomahawk. Mr. Rasmussen hoped that the fountain was not Mr. Peters’ concept of public art at the intersection. Mr. Peters said it was not. He also said he had no plans for a 3-dimensional bull logo on the property. There was discussion of parking; there would be plenty of parking for all tenants. Planning Director McKay said that IF additional parking spaces were needed in the future, Mr. Peters would add them at his expense. On motion of Clawson, seconded by Taylor, Council unanimously adopted the resolution.

1265 **Resolution No. 1401, attached as part of the record, approving request for rezoning from RP-4 to RP-1, RP-5 to RP-1, and CP-0 to RP-4, and approving a preliminary site plan and preliminary plat, for The Woods, approximately 114<sup>th</sup> St. & Roe Ave. northeast to College Boulevard.** Developer Jeff Alpert of Village Associates pointed out changes that had been made to the plan as originally presented. Landscape architect Chris Dring presented the landscape program. There was a commitment for public art to be placed in certain areas. The resolution was adopted unanimously on motion of Clawson, seconded by Taylor.

1988 **Ordinance No. 1730 rezoning from RP-4 to RP-1, RP-5 to RP-1, and CP-0 to RP-4, for The Woods.** On motion of Taylor, seconded by Peppes, the ordinance was passed unanimously on roll call vote.

2004 **Ordinance No. 1731 amending Section 4-9 of the Leawood Development Ordinance relating to adult entertainment businesses.** Councilmember Gill moved to pass the ordinance, seconded by Rasmussen. Special Counsel Mark White of Frelich, Leitner & Carlisle law firm gave a presentation.

2627 Councilmember Taylor referred to Section 4-9.5 B. Lighting Requirements. He preferred a minimum of 2.0 foot-candle rather than a minimum of 1.0 foot-candle. Mr. White said a change needed to be made in Section G. of Adult Employee Permits (Section 3 of the ordinance) – substitute “an adult employee permit” for “special use permit” in 2 places. Mr. Gill and Mr. Rasmussen both agreed that the changes were included in Mr. Gill’s motion. Motion carried unanimously on roll call vote.

2906 **MAYOR’S REPORT.** The City received \$88.73 from the Mayor’s Christmas Tree Bowling Tournament sponsored by the Bowling Council of Greater Kansas City. (Note: after the meeting, the Mayor asked that the money be used for the D.A.R.E. program.)

A recent Leawood Chamber of Commerce restaurant tour of Leawood restaurants, a 50<sup>th</sup> Anniversary celebration event, was very successful.

#### **OLD BUSINESS**

3052 **Approve city standard contracts for professional services (engineering and architectural) and standard documents and specifications.** On motion of Taylor, seconded by Gill, Council voted unanimously to continue the matter until the June 1<sup>st</sup> Council meeting.

#### **Parks & Recreation Advisory Board recommendation on master plans for Nall Park in the vicinity of 126<sup>th</sup> & Nall Ave. and South Park in the vicinity of 147<sup>th</sup> & Mission, and recommendation for a parks bond referendum on the November election ballot.**

3233 NALL PARK. Mr. Whitaker said that the Parks & Recreation Advisory Board felt it was best for the City to retain ownership of the land south of the creek, not build a bridge, and leave the south parcel in a natural setting. If creek bank improvements needed to be made in the future, the City would have control. He said that the switchback on the trail would remain and be properly maintained. Councilmember Peppes moved to approve the master plan for the Nall Park and send it to a bond referendum at the November election, seconded by Gill. Motion carried; Rasmussen opposed, all others in favor.

3757 SOUTH PARK. Mr. Whitaker presented an overlay of possible ball fields and other options that was requested at the last Council meeting. The Advisory Board recommended putting a few soccer fields with appropriate parking at the east end of the proposed open space area., and felt that the entrance should remain as planned for alignment and safety purposes. Mr. Whitaker said that since there had been a decline in tennis interest, the Advisory Board didn’t feel there was a need for tennis courts at the present or in the future. Mr. Whitaker said that the fields, their grading and irrigation, and additional parking would cost an additional \$300,000. In response to Councilmember Gill, Mr. Whitaker said there would probably be space for a couple of youth baseball fields. He felt there would be enough

fields in the City to start a youth baseball program. There was discussion of user fees for all possible amenities, including the amphitheater. The stage on the north side of the City Hall could not be used for corporate picnics or festivals, but an amphitheater at the South Park could accommodate those uses. Councilmember Clawson said that if it were not for the problem of not being able to erect scaffolding and lighting and having a back stage area and having evening productions, there would be a musical production this summer for 3 nights at City Hall. There was neighborhood resistance next to City Hall for these types of productions. There would be no resistance at the South Park. Mr. Whitaker explained that the amphitheater would be multi-use. He explained that the South Park would have the same hours as other City parks; it would not be open 24 hours; there would be a gate to secure the park with normal police patrol. He felt that the proposed Fire Station #3 would add to the park security.

4537 Bob McQuain, 14901 Mission Rd., felt that the discussion sounded more like the consideration of a preliminary site plan, not a master plan. He opposed the plan, its concept. If the plan was going to a referendum in November, he felt that proposed uses should be adequately described. There must be more than 1 entrance/exit to the park because of its high density usage next to a residential area. The park was to have been a passive, nature park. He was also opposed to the proposed fire station next to his home. And with overnight camping, there would have to be 24-hour access to the park.

4807 Rick Lombardo, 14720 Delmar in the Pavilions, had 3 concerns – 1) the sole entrance/exit to the Park directly opposite the entrance to the Pavilions, with the Park having many high traffic uses, 2) the concept of 24-hour access to the Park, and 3) the concept of a traffic signal at 148<sup>th</sup> and Mission Rd., the only traffic signal in Leawood south of 135<sup>th</sup> St. and totally out of character. He presented a petition regarding these concerns to the City Clerk. He suggested a new vehicular entrance (now a pedestrian entrance) 2 blocks north on Mission Rd. 148<sup>th</sup> and Mission Rd. could become the pedestrian entrance. He also suggested the City look at the possibility of an access from Kenneth Rd. and from 151<sup>st</sup> St. He mentioned the fire station – it looked more like an office building, a 1-story, 15,000 square feet building. The residents of the Pavilions would have to look at it, the traffic signal at 148<sup>th</sup> and Mission Rd. and the Park entrance/exit. Residents wanted to have some constructive input into the process. He asked that the Council send the matter back to the Plan Commission for a plan that would address residents' concerns.

5213 Other area residents expressed concerns about children's safety due to density of park uses and increased traffic through their subdivision, keeping the naturalness of the surroundings (a passive nature park, a walking park), negative impact on property values. One resident didn't feel there was a need for an amphitheater – residents didn't want it. They also noted that Mission Rd. was not a major thoroughfare that could handle the increased traffic, and that south of 135<sup>th</sup> St., Mission was the prettiest street in the City – it would be destroyed. Shelter houses and cooking facilities were not necessary; overnight camping areas in a residential area would be a haven for people to drink and do drugs. There was concern about lighting of ball fields at night and noise from the amphitheater at night, no different from the stage area at City Hall. Residents felt that the City was creating a need for the traffic signal at 148<sup>th</sup> and Mission, a signal that was not necessary for the area. They felt that the plan had been created in a vacuum and not brought properly to the residents of the area.

6230 City Attorney Wetzler advised that the validity of the petition presented to the City Clerk was not really an issue, did not change any voting requirements; the petition was merely an expression of opposition to a proposed master plan, not styled as a petition in opposition to the proposed fire station which was a matter before the Plan Commission.

6409 Mr. Whitaker reiterated that the park would not be open 24 hours a day; normal park hours would be maintained. There would be a gate that would be locked at the appropriate times. The park plan was a master plan only; staff had worked on it for about a year. There had been several Council work sessions, several public hearings, and discussions at several Parks & Recreation Advisory Board meetings. He advised that when the park was actually designed (perhaps not for another 5-10 years), there would be public hearings at the Plan Commission level. At the present time, staff was trying through the master plan process to gain some themes of use, time frame to development and a cost estimate to take to the public at a November referendum.

6647 Mr. Rasmussen said that the planning for the park as far as he knew had started in the spring of 1990. Since that time, to his knowledge, when developers, potential neighbors, came in around the South Park property for platting, etc., it was written on the plats that the South Park would be an active park with the possibility of lighting, noise, etc. He said that the City Park (Leawood Park) was under redesign; it was intensely used. The population projection for the City was approximately 45,000 people. The City was running out of space and facilities. The South Park was needed and needed to be developed.

6840 Mr. Taylor felt that a better place for a traffic signal would be at 151<sup>st</sup> and Mission Rd. rather than at 148<sup>th</sup> and Mission. He also didn't feel that the park entrance had to be aligned with the entrance to the Pavilions; he hadn't seen such alignments in other subdivisions south of 119<sup>th</sup> St. along Nall, Roe, Mission.

6983 END OF TAPE

Tape No. 422

Mr. Taylor felt the park entrance could be moved to the north; easements and utilities could be moved if they were in the way. He also felt that the fire station needed to be designed to blend in with the residential area. He felt that the Council and Parks & Recreation Advisory Board should probably readdress the amenities like the soccer fields, amphitheater, and trails. Things had changed since 1990, and residents' feelings about the park needed to be considered.

150 City Administrator Garofano noted that Mission Rd. would be a 4-lane roadway within the next 10 years south of 135<sup>th</sup> St.; that had been planned for years. There would be at least 3 traffic signals – at 135<sup>th</sup> St., 143<sup>rd</sup> St. and 151<sup>st</sup> St. The safest way to exit traffic from the park would be through a traffic-actuated signal. An "opticom" system would come into play for the fire department to override a signal for Mission Rd. traffic. There was also a second exit from the fire station – a "drive through" fire station – that could be used when there were organized activities at the park. He said staff had looked at the possibility of accessing the park on the north, but there were constraints to putting a roadway (and fire

station) on the north frontage as opposed to the south frontage – there was a sanitary sewer and a pipeline easement. The City could not build a roadway on the pipeline easement. There was also about a 40-foot drop on the northern tract from Mission Rd. to a creek. A bridge would have to be constructed over the creek to get into the park. These matters would create a significant increase in costs. With a federal grant, the City had acquired the north frontage, to be used as a park in perpetuity in accordance with federal regulations. When the Council approved the lease/purchase of the remaining acreage from the Parsons Trust, there was an agreement that they were to have access into the tract from the south frontage.

Fire Chief Florance said that an “opticom” system would not be installed until Mission Rd. became a 4-lane road. And even then, the exact time frame was unknown.

Mr. Taylor felt that there should still be a study on an entrance to the north to help him and other Councilmembers come to a decision.

Public Works Director Johnson said that no traffic signal warrant study for a signal at 148<sup>th</sup> and Mission Rd. would be done until Mission became a 4-lane road.

In response to Mr. Rasmussen, Mr. Whitaker said the park’s internal roadway would be built in the first phase, then the use characteristics would be developed.

464 Mrs. Clawson moved to accept the Parks & Recreation Advisory Board’s recommendation for the improvements to the South Park as presented with the overlay with the soccer fields, and send the issue to a referendum at the November election, seconded by Peppes.

538 Mr. McQuain said he had been told by City staff that Mission Rd. would be 2 lanes north of 135<sup>th</sup> St. and 3 lanes beginning at approximately 100 yards south of his home for a turn lane on 151<sup>st</sup> St. He noted that the proposed entrance/exit for the park was a fairly substantial grade downhill once on the property. The north entrance was relatively flat or little grade. The federal restriction on the north tract could be removed by substituting it for other property within the park. City Attorney Wetzler said substitution was a very lengthy process which could involve several years.

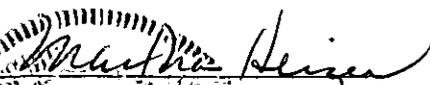
Dr. Peppes called for the question, seconded by Clawson. Motion carried; Gill opposed, all others in favor. Mrs. Clawson’s motion carried; Bussing, Taylor opposed; all others in favor.

#### NEW BUSINESS

710 **Approval of Appropriation Ordinance No. 834.** On motion of Rasmussen, seconded by Peppes, Council unanimously approved the ordinance on roll call vote.

724 11:00 P.M. On motion of Gill, seconded by Taylor, Council voted unanimously to extend the meeting to 11:30 P.M.

- 733 **Authorize supplemental agreement for engineering services for SMAC project DB-04-017, Dykes Branch Tributary at 86<sup>th</sup> & Overhill Rd.** On motion of Peppes, seconded by Bussing, Council unanimously approved the agreement with TranSystems Corporation for plan preparation for Overhill Rd., total amount of \$13,365 of which Leawood would pay \$3,340.
- 817 **Resolution No. 1402, attached as part of the record, endorsing transportation improvements for the City and the enactment by the Kansas Legislature of a new statewide comprehensive transportation program.** Councilmember Peppes moved to adopt the resolution, seconded by Clawson. Motion carried; Rasmussen opposed, all others in favor. Mr. Rasmussen felt that the enactment of such a program by the state legislature was pretty open-ended. Public Works Director Johnson said that Johnson County had been very lax in not pursuing state dollars for road projects when the 8-year state highway program enacted in 1989 expired. The Council of Mayors and County Commissioners were involved in forwarding a list of road projects to the state. Mr. Rasmussen hoped it wouldn't mean a tax increase. Mr. Johnson said that the state hadn't decided how the program would be funded. He explained a little more about the program. Mr. Rasmussen said he didn't have enough knowledge as to what the program meant.
- 902 **OTHER BUSINESS.** On June 1<sup>st</sup> at 6:45 P.M. at City Hall, there would be a presentation by former elected officials of a scale model of the old city hall located at 9615 Lee Blvd., as part of the City's 50<sup>th</sup> anniversary celebration.
- 941 11:10 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk  


**Minutes Summary**

Audio Tape No. 423

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, June 1, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Julie Hakan, Director of Human Resources; Mark Andrasik, Information Services Director; Captain Sid Mitchell, Police Department; Joe Johnson, Public Works Director; Robert McKay, Director of Planning & Development; Ben C. Florance, Fire Chief; Nancy Kelley, Finance Department; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Councilmember Dunn moved to continue consideration of City standard contracts for engineering and architectural professional services and standard documents and specifications to the June 15th meeting to give him an opportunity to review them. Motion was duly seconded and carried unanimously. The agenda was approved unanimously on motion of Peppes, seconded by Gill, after the removal of a request by residents on 91<sup>st</sup> St. to cease use of the street as storage and assembly point for sewer pipe being installed in various other areas of Leawood because the matter had been resolved, and the addition of 1) a donation from the Leawood Woman's Club to the Police Department (under Mayor's report), 2) declaration of surplus property by the Fire Department (under the Consent Agenda), 3) an ordinance whereby the City would convey unto itself a permanent utility easement on land to be vacated by another ordinance under New Business (vacation of existing Kenneth Road), 4) a discussion of property on 104<sup>th</sup> St. adjacent to the Public Works facility used by Public Works for parking, and 5) a discussion of an assignment to the Public Works Committee to review a request by Royse Homes Association for reimbursement for work they had done on their subdivision entrance monuments in conjunction with the widening of State Line Rd.

**MAYORAL PROCLAMATION:** June 14, 1998, as "National Flag Day."

**CITIZEN COMMENTS.** Elizabeth Harrison, 2003 W. 86<sup>th</sup> St., spoke about the possibility of the construction of a cul-de-sac on 86<sup>th</sup> St. at State Line Rd. She appreciated the ideas brought forth about a right turn only lane that would alleviate some of the speed of traffic and lack of regard (for children) by the few motorists who did use 86<sup>th</sup> St. Foot traffic from the Ward Parkway Shopping Center was also a concern. She felt that some kind of buffer was definitely needed at that location. (See tape meter #5373.)

G. Gordon Thomas, 10516 Mohawk Lane, had questions about the proposed large hotel project near Town Center Plaza and City Hall and south of Edgewood subdivision which was adjacent to City Hall. He wanted to know why the City needed a hotel; Leawood had always been recognized as a "bedroom" community, not a commercial venture community for various corporations. He said there was already too much congestion in the area. What would residents get out of it?

276x  
342 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Taylor:

1. Minutes of the May 18, 1998, Council meeting;
2. 50<sup>th</sup> Anniversary Committee report (minutes) on their May 6, 1998, meeting;
3. Historic Commission report (minutes) on their April 21, 1998, meeting;
4. Public Works Committee report (minutes) on their May 27, 1998, meeting;
5. Declaration of surplus property no longer used by the Parks & Recreation Department – a 1984 Ford Ranger (VIN 8848), and pool furniture – to be sold at auction;
6. Resolution No. 1403, attached as part of the record, directing the City Clerk to post adult entertainment business Ordinance No. 1731 in 4 places within the City;
7. Declaration of surplus property (several pieces of equipment) no longer used by the Fire Department to be sold at auction.

Payment to Kansas City Power & Light for utility relocation, 135<sup>th</sup> St. improvement project, State Line Rd. to Nall Ave. Councilmember Bussing was surprised at the large overrun and asked for clarification. Public Works Director Johnson explained that the original agreement with KCPL for the relocation indicated an estimated amount of \$76,852.00. The actual bill they submitted for the completed work was for \$197,227.32. Mr. Johnson explained that most of the relocation was into rock causing the increases in the costs. The most increase was for labor and equipment. Staff and KCPL agreed to split the difference so the City would pay an additional \$60,187, bringing its total to \$137,039.00. KCPL would write off \$60,187.00. Mr. Bussing was surprised that KCPL didn't realize they would hit rock along 135<sup>th</sup> St. and account for it in their estimate. Councilmember Taylor recommended a "rock" clause be included in construction agreements, which in this case would have allowed KCPL to add to their costs based on the cubic feet of rock removed. Pat O'Malley of KCPL explained that typically on road improvement projects, KCPL did not conduct any geotechnical work up front to place poles in the ground, just gave an estimate for the relocation. As far as he knew, this type of problem had occurred only twice in his 30 years with KCPL, and that was probably why there was no good answer to Mr. Bussing's question. He did say that KCPL should have let the City know some time ago that there would be cost overruns. He also said that typically KCPL would enter into an actual cost agreement whereby they would bill the City for the actual cost of the relocation at the end of the project once all costs were in. On motion of Bussing, seconded by Gill, Council unanimously approved the payment.

**PLAN COMMISSION**

697 **Resolution relating to a preliminary site plan and preliminary plat for Fire Station No. 3.** Architect Bill Scott of Shaughnessy Fickel and Scott Architects presented history of, and plan, arrangements and concept alternatives for the proposed fire station. Mike Christianer of the firm described the elevations and materials. The design would have as much of a residential character as possible. The station would have a concrete tile roof. Mr. Christianer described landscaping and signage which would help buffer the building. He described the passive 38-foot (3 level) tall training tower on the south elevation; there would be no fire or smoke, but would be used for rappelling exercises and practice of other firefighting procedures, including rescue techniques.

1170 Fire Chief Florance gave a history of the City's 2 fire stations and personnel. He said that the third station was needed immediately due to the rapid growth south of 135<sup>th</sup> St. He felt that the design of the proposed station was beautiful with as little impact on the surrounding residential areas as possible. There was a great deal of stress placed on response times when the department had to respond from 127<sup>th</sup> and Mission Rd. (Fire Station No. 2) to areas farther south. The new station would allow for daily training, and there would be a police satellite office at the station. Chief Florance said he knew there was concern about traffic going into the park, foot and bicycle traffic, competing with exiting fire trucks, and he said that if a study showed that the alternate site to the north would be a safer entrance to the park, he would support that, but a study would have to show that the line of sight was adequate.

Councilmember Bold had 2 concerns – 1) the road or access into the park, and 2) the training tower. He didn't question the need for the tower, but preferred to see it moved to another parcel of land, or if that wasn't possible, to relocate it somewhere else on the station property, say to the other side of the building. Bill Scott said that the tower needed to be adjacent to the main apron area of the station, and based on the current plan arrangement, the 2 logical areas would be on the south side or the north side of the building adjacent to the apron; the least impact on any of the surrounding areas would be on the south side of the building. Chief Florance addressed moving the tower to another parcel of land – it would cause personnel to have to leave the station with a pumper for training, and keep them from performing other duties at the station. It wasn't feasible. Mr. Bold asked about lowering the tower, the bottom of the tower being below grade as a walk-out basement. Mr. Scott said he would have to study that possibility. Mr. Bold said that if the tower could be lowered to be the same height as the rest of the building, many of his concerns would be eliminated.

2046 Councilmember Gill asked if a valid protest petition had been filed. City Attorney Wetzler said maybe. In response to Mr. Gill, Chief Florance said it would be ideal if fire personnel didn't have to compete with park traffic when they exited the station. There was discussion about doing extra buffering to the south (in addition to the buffering that the Plan Commission would be considering); Mr. Scott described berming that could be done to the area between the park road and the south property after filling in a drainage swale in the area with a drainage culvert under the fill to allow the drainage to continue. That would add additional screening of the station to the north. Mr. Gill asked about the driveway grades on the north and south sides of the building; would fire equipment be able to pull the grades in bad weather to get out of the station? Chief Florance said that wouldn't be a problem.

Comments – Chief Florance said that the majority of the Fire Department's calls were non-emergency with little noise; Councilmember Clawson felt that property values were not damaged by fire stations; Councilmember Rasmussen said he hadn't heard any complaints about property values or "saleability" of property around the City's 2 fire stations.

2959 Planning Director McKay said there was a question as to whether this matter was a protestable issue. But regardless of that question, according to the amount of land included in the notice published in the paper, the protest petition was not valid basically because one property owner failed to have a second joint party sign. If the notice had dealt only with the 2.5 acres for the fire station site, staff felt that the petition would have been valid.

3082 Bob McQuain, 14901 Mission Rd., said that the design of the station was beautiful and functional but it didn't fit on the site, more ground was needed. He was not opposed to a neighborhood, basic service fire station on the site. He was opposed to the administrative office complex part of the station "sandwiched" right next to a residential area, the light industrial type use in full view of his home. He felt that significant buffering from the tower use, sight and sound, could not be done between the station and his property. He said there was no pedestrian access into the park on the plan; he didn't know how the City would berm unless the pedestrian access was placed on top of the berm. He said he understood that fire equipment would have to climb an elevation of approximately 14 feet up to Mission Rd. so headlights would shine into the windows of the homes in The Pavilions. He said that he should have been given an opportunity to give input into the design of the station; the design was completed before he knew about it. The site selection consisted of piggybacking on park land acquisition, there was only one site considered – that was not adequate planning. The site was too small to accommodate any building expansion.

3670 Rick Lombardo, 14720 Delmar in the Pavilions, expressed concern about the park entrance road being the same as one of the fire station's entrances. He said that if there was an event at the South Park with a lot of traffic exiting and turning right onto Mission Rd., fire equipment wouldn't be able to exit onto either Mission Rd. or the park road expeditiously. He said he had heard that a park entrance farther north was feasible after all. It hadn't appeared to be so at a previous Council meeting. Residents of the Pavilions were also concerned about the looks of the tower.

4044 Mike Gossman, 4041 W. 147<sup>th</sup> Terr. in the Pavilions, asked if a proper feasibility study had been done for a fire station, not just for this site. Was a proper traffic study done? Was an environmental impact study done? Were the proper notifications given to residents? He felt that a mixed-use station with administrative offices and a training tower was detrimental to property values of surrounding residential development. He felt that fire training was not appropriate at a heavily used entrance to a park.

There was further discussion about the validity of the protest petition.

4586 Councilmember Bold moved to continue the matter to the June 15<sup>th</sup> Council meeting in order to resolve the issue of whether proper notice had been given residents and if the protest petition was valid, and whether or not the tower could be lowered and still be functional. Motion seconded by Taylor. Councilmember Rasmussen mentioned that there was the possibility that the protest petition would not be valid because pieces of the petition were filed with the City Clerk at different times, that each piece might be considered a separate petition. Councilmember Gill said that he favored Mr. Bold's motion as long as it

was deferral for only 2 weeks, otherwise he wanted to see a condition added that before final plan approval, the Council would have an opportunity to review the matter with a full range of reasons to approve or reject the plan. He said that his final decision would rest largely on what was done on the final plan regarding buffering, and what a serious look at the issues raised regarding the location of the tower brought forth. He would also want to know a resolution on the park road, which he understood was a separate issue, a park issue. Mr. Bold's motion carried unanimously.

- 5204 **MAYOR'S REPORT.** The Council acknowledged 3 donations: 1) from the Leawood Woman's Club to the Police Department in the amount of \$1,935.00 (\$860.00 earmarked for DARE, and \$1,075.00 to pay part of the cost of a portable electronic defibrillator); 2) from the Leawood Woman's Club to the Fire Department in the amount of \$860.00; and 3) \$1,000 from the Kearney Wornall Foundation, UMB Bank, n.a., Trustee, in recognition of Leawood resident Durant Abernethy's creation and installation of 25 plaques along the nature trail in Leawood City Park as part of his Eagle Scout project.

Before the Council meeting, former elected officials presented a scale model of the original city hall building at 9615 Lee Blvd. to the City as a 50<sup>th</sup> anniversary event. The model would be on display in the lobby of the (new) City Hall.

The Mayor went on the 1998 Leawood Garden Club's Garden Tour on May 26<sup>th</sup>, another 50<sup>th</sup> anniversary event. The Tour was also hosted by the Leawood Welcomers.

#### **OLD BUSINESS**

**Approve city standard contracts for professional services (engineering and architectural) and standard documents and specifications.** Continued to the June 15<sup>th</sup> Council meeting. (See approval of the agenda at the beginning of the meeting.)

- 5373 **Public Works Committee report on residents' request for a cul-de-sac at 86<sup>th</sup> and State Line Road.** Councilmember Clawson, Chairman of the Public Works Committee, said that this was the second time the Council had considered the matter. The first time, the Council denied a request to construct a cul-de-sac. This time the Committee recommended that the Council only consider a right turn out only improvement to 86<sup>th</sup> St., and only consider this option if a petition was received from the property owners on 86<sup>th</sup> St. for an improvement district. The right turn out only could be accomplished by providing for median closure down the middle of State Line Rd. and curbing that would allow residents only to exit to the south or right as they left 86<sup>th</sup> St. There would be no way for vehicles to turn onto 86<sup>th</sup> St. off State Line from either direction. She said that many of the residents had expressed opposition to closure of 86<sup>th</sup> St. in any fashion.

Public Works Director Johnson said that traffic counts showed that 86<sup>th</sup> St. was not used as a through street, that signalized 85<sup>th</sup> Terr. carried the majority of the traffic. The Fire Department felt they had quicker access if 86<sup>th</sup> St. was left the way it was. Police position was that closure wouldn't have much of an impact as far as reduction of crime was concerned. Mr. Johnson said it would cost the City approximately \$29,000 to construct a cul-de-sac.

5700 Bill Hopkins, 8520 State Line Rd., corner of 86<sup>th</sup> & State Line, was opposed to any alteration of the intersection. He stated his reasons, including the possibility of being assessed for an improvement that would lower the value of his property while enhancing the value of others. Other residents expressed their opposition to any improvements and opposition to the formation of a benefit district.

Gail Roberson, 2016 W. 86<sup>th</sup> St., was in favor of a cul-de-sac. It would eliminate the increasingly dangerous intersection at 86<sup>th</sup> & State Line. She felt crime, assault and robbery, would be reduced; criminals would no longer have direct access to 86<sup>th</sup> St. She said that almost 70% of the residents had signed a petition for a benefit district for a cul-de-sac. She said they might consider contributing to the right turn out only, but they would have to study that issue more. (She mentioned she would be willing to pay for one elderly resident's share of a benefit district for a cul-de-sac minus whatever she would be reimbursed for the taking of some of her property.)

Bill Snelling, 2015 W. 86<sup>th</sup> St., favored some improvement for safety reasons.

6974 END OF TAPE

Tape No. 424

Arlene and Harold Kirk, 2000 W. 86<sup>th</sup> Terr., were opposed to a cul-de-sac and a right turn out only irregardless of any kind of funding.

Celia Honeycutt, 2024 W. 86<sup>th</sup> St., spoke in favor of improvement.

Gail Roberson requested tabling the issue in order to obtain bids for both improvement concepts. She presented a petition to the City Clerk regarding both concepts.

There was discussion about the taking of property for improvements from homeowners who did not want to give up any of their property.

There was discussion about closing the median on State Line Rd. Public Works would have to contact Kansas City, Missouri, and the Ward Parkway Shopping Center.

650 11:00 P.M. On motion of Gill, seconded by Clawson, Council voted unanimously to extend the meeting to 11:30 P.M.

700 Mr. Bold moved to accept the Public Works Committee's recommendation. Motion died for lack of a second.

Councilmember Dunn said he wanted agreement for any type of improvement by all residents who would be affected, not just the 51% required to form a benefit district, because the Council was considering substantial effect on residents' properties, unless there were very *compelling safety reasons for an improvement (and there didn't appear to be any)*. Mr. Dunn moved not to consider a right turn out only and request Public Works Director Johnson to investigate the possible closure of the median on State Line Rd., that to be the limit of Council's investigation of the matter. Motion seconded by Clawson. There was discussion of structuring a special benefit where only those residents who signed in favor would bear the cost of improvements. City Attorney Wetzler said it might be possible. There was discussion of crime statistics and trends in the area. Police Captain Mitchell noted that a cul-de-sac did not necessarily reduce criminal activity; sometimes it enhanced it because it

restricted Police access into an area from different directions. A cul-de-sac would not stop criminals running away from the Ward Parkway Shopping Center into Leawood. He described other instances. He also mentioned the small number of reported traffic accidents in the general area over the past several years, none of them being at the intersection. Mr. Dunn's motion carried; Bold opposed, all others in favor. Public Works Director Johnson would report to the Council about the median closure at the July 6<sup>th</sup> Council meeting.

**NEW BUSINESS**

950 **Approval of Appropriation Ordinance No. 835.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

963 **Resolution No. 1404, attached as part of the record, approving the transfer of Leawood cable television franchise from TCI of Overland Park, Inc., to Kansas City Cable Partners.** Adopted unanimously on motion of Rasmussen, seconded by Taylor.

**Request by residents on 91<sup>st</sup> St. to cease use of the street as storage and assembly point for sewer pipe being installed at various other areas of Leawood.** Removed from the agenda at the beginning of the meeting because the matter had been resolved.

**Ordinance No. 1732 vacating the existing Old Kenneth Road south of 135<sup>th</sup> St.** The section of Old Kenneth Road between 135<sup>th</sup> St. and Kenneth Parkway was relocated during the construction of 135<sup>th</sup> St. That construction was completed. The section of right-of-way being vacated was no longer needed and sat in the middle of a tract of land owned by Fleming Companies. The City would replace the vacated right-of-way with a permanent utility easement (see the next agenda item). On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1733 whereby the City conveyed unto itself a permanent utility easement on land (formerly Old Kenneth Road) vacated by Ordinance No. 1732.** On motion of Clawson, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

**Authorize supplemental agreement for construction inspection services for SMAC stormwater project TM-04-004, Tomahawk Creek Bank Stabilization (Roe Ave. & 123<sup>rd</sup> St.).** On motion of Rasmussen, seconded by Gill, Council unanimously approved the agreement with Phelps Engineering in the amount of \$26,700, Leawood's maximum cost to be \$6,675.00 or 25%.

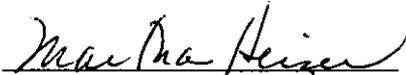
1235 **OTHER BUSINESS.** Councilmember Taylor asked that the Public Works Committee investigate a claim by Pathmark Development Co. that the property on 104<sup>th</sup> St. adjacent to the Public Works facility was being used improperly by the City and without Pathmark's permission. Public Works Director Johnson said he understood that there was a verbal agreement made in 1986 or 1987 with former property owner Kansas City Testing which was no longer in the area that allowed the City to use the property for parking instead of having to park on 103<sup>rd</sup> Terr. Mr. Johnson said that Pathmark had erected "No Trespassing" signs, so Public Works would have to park on the street again until the matter was resolved. Mr.

Taylor felt something could be worked out. City Attorney Wetzler seemed to remember an agreement. Staff would investigate and report back to the Council on June 15<sup>th</sup>.

1340

Councilmember Gill moved to refer to the Public Works Committee the issue of whether or not Royse Homes Association should be reimbursed for work that they did on their subdivision entrance monuments/fountains in connection with the widening of State Line Rd. Motion seconded by Bussing. Councilmember Clawson asked if there wasn't a conclusive determination when State Line Rd. was built as to exactly what would be done with the homes association monuments. It was a little unusual to have a homes association come back to the Council after the fact claiming that they had done more work and requesting that the City pay for it. The Mayor remembered some offers made in the past that were documented; the homes association had taken a little longer than the City thought they would to make their reimbursement request. Mr. Gill's motion carried unanimously.

1425 11:30 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 425

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:35 p.m., Monday, June 15, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: \*Adam Bold (left the meeting after the discussion of the master plan for the South Park), Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, James E. Taylor, Sr., Mike Gill, and Louis Rasmussen.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; Captain Sid Mitchell, Police Department; Joe Johnson, Public Works Director; Robert McKay, Director of Planning & Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Bold, after the addition to the request for an executive session of a second matter regarding land acquisition.

**CITIZEN COMMENTS.** None.

105 **CONSENT AGENDA.** The following were approved unanimously on motion of Rasmussen, seconded by Clawson:

1. Minutes of the June 1, 1998, Council meeting;
2. Arts Council report (minutes) on their April 28, 1998, meeting;
3. Golf Course Committee report (minutes) on their May 28, 1998, meeting;
4. Departmental reports;
5. Appointment to the Historic Commission – Bill Swegle, 8125 High Dr., 649-3036, term to expire May 2001;
6. Agreement with Wald and Co., Inc., d/b/a All American Display Fireworks, in the amount of \$15,000, for the July 4<sup>th</sup> fireworks display at Leawood City Park, 106<sup>th</sup> & Lee Blvd.;
7. Pay Request No. 9 (FINAL) by Seal-O-Matic Paving Co. in the amount of \$52,074.09 for the JB-04-003 SMAC stormwater improvement project (High Dr. and Sagamore Rd., 97<sup>th</sup> St. to 98<sup>th</sup> St.)/97<sup>th</sup> St. Rehabilitation/1997 Street Improvements;
8. Final payment to KLC, Inc., in the amount of \$4,967.50 for the construction of concession and restroom facility at Leawood City Park, 106<sup>th</sup> & Lee Blvd.;
9. Purchase of replacement helmets for the Fire Department from Conrad Fire Equipment with the lowest price quote of \$166.00 per helmet – total cost \$9,960.00.

**PLAN COMMISSION**

117 **Request for a special use permit for a sport court in the Pavilions of Leawood, Lot 107, 14904 Alhambra (Julie Robinson property owner) - to allow the continued use of an illegally installed basketball court in the backyard (no building permit was obtained), property owner to comply with the City's ordinance requirement of a 10-foot setback. On motion of Rasmussen, seconded by Bold, Council unanimously approved the permit.**

167 **Resolution relating to a request for a special use permit, rezoning from SD-0 to CP-0, and preliminary site plan and preliminary plat approval, for Town Center Park located at approximately the northeast corner of 117<sup>th</sup> Street and Nall Avenue.**

Councilmember Clawson left her Council seat due to the appearance of a conflict of interest.

Whitney Kerr, real estate broker with Colliers Turley Martin Co., represented the Marned Corporation, applicant and owners of the property considered for development. Mr. Kerr gave a history of the 154-acre property located between Roe and Nall and 119<sup>th</sup> St. and the south edge of Leawood Country Manor since 1980, which included the development of the "town center" concept with a mixed-use development of residential, office, retail, institutional, and park/open space, and which early on included the City Hall and adjacent library. He talked about the history of the zoning application for office, retail, and a hotel. He said that the original density of the Leawood plan as it was approved taken from the 4 corners of the property was .253 FAR; the plan before the Council tonight, added to the portion that was already built (Town Center Plaza shopping center) and excluding Edgewood, had a .273 FAR density. He believed that density and traffic were the 2 main concerns of residents.

Mr. Kerr said that the density was not the highest FAR in Johnson County as some people had claimed. Corporate Woods density was .283 FAR; the Sprint Campus was .486 FAR. He said that FAR was determined by density of a project within its 4 corners. He said the applicant was trying to complete the town center with a fine hotel which could bring civic and social events to Leawood not presently accommodated as well as they should be in Johnson County.

626 Mr. Kerr said that the applicant had had a traffic study done by TranSystems; they had already done such a study for the Sprint Campus. He said that he understood that the present infrastructure surrounding the property with the improvements to be made to it by the development of Town Center (executive, high rent offices) Park would accommodate the traffic needs of the community through the year 2014. He added that most of the Sprint Campus employees lived west of the Campus. He felt that it would be reasonable to assume that they would access the Campus by roads other than those east of Nall.

829 Mr. Kerr presented the plan with changes that had been made. He described the park land along Town Center Drive and extended in toward the center of the project which would  
\* be dedicated to the City, to be maintained by the City.\* He described the parking concept and traffic flow. He said he had had several meetings with Edgewood and had tried to work out access and egress plans to and from the property to diffuse the traffic as best as possible. He described the 2 outlet points onto Town Center Drive, one of which was directly across from the entrance to Edgewood subdivision on the north side of Town Center Drive. Edgewood

\* The Mayor clarified that the park proposal was not an item on the agenda for discussion. Discussion about the 4965 park dedication ceased; it would probably be discussed at a later date. mk

residents didn't like that access point, but City staff (and TranSystems) felt it was the appropriate place for traffic safety purposes, and since Edgewood was a gated subdivision, there wouldn't be the flow of traffic in and out of it that would be encountered at a normal cross intersection.

1321 Councilmember Peppes asked about the phasing and timing of the project. Mr. Kerr said that the hotel and hopefully one close office building with parking garage would be the first phase; they would be at Sprint's "front door" at 117<sup>th</sup> and Nall, Sprint being the largest user of hotel rooms in the Kansas City market. Other phasing would be determined by market demand with 6-8 years to complete the project.

1610 In response to Councilmember Bold, Neil Douthat of the Marned Corporation, said he was willing to stipulate that the Council, as well as the Plan Commission, would have to approve the final project plan.

1655 In response to Councilmember Rasmussen, Mr. Kerr described the connection between the hotel and retail areas across 117<sup>th</sup> St.; he preferred to design a surface crosswalk with special paving across 117<sup>th</sup> St. with pedestrian safety islands and landscaping, and a signalized stop light could be installed if necessary.

1887 There was further discussion of the outlet point on Town Center Drive directly across from the entrance to Edgewood. Mr. Kerr said it would be a fully signalized intersection paid for by the developer when traffic warrants were met.

2490 Tom Swenson of TranSystems engineering answered questions about the traffic study.

Councilmember Gill wanted to know the impact of doing the proposed project as opposed to doing what the master plan (which predated the building of Town Center Plaza retail) showed for the 30-acre tract of land. He had requested additional comparative data of the before and after from staff but didn't see it in the material distributed to the Council. He had wanted data on the Town Center Plaza retail area plus the 395,000 square feet presently shown on the master plan for the 30 acres compared to the Town Center Plaza retail plus what was being proposed.

Mr. Gill was concerned that the traffic study indicated that the proposed development in the year 2014 at three of the four signalized intersections would have level of service E, rather than level of service D which was the desirable operating condition for signalized intersections in most communities in the metropolitan area. He wanted some analysis done of what could be done from a planning standpoint to plan a project where the level of service at critical intersections would be upgraded to D. Would downsizing the project help the situation? Mr. Gill added that there were some unsignalized intersections that showed an F level of service in 2014. Mr. Swenson said that the level of service E was probably caused by a combination of all cities, an accumulative effect of what was approved over time; travel habits did change and could have a big influence in some way.

3000 Councilmember Taylor wanted to see a holiday (November 20-January 1) trip generation for Town Center Plaza retail area incorporated in the traffic study.

3675

Chug Tuttle, 5109 W. 111<sup>th</sup> Terr. in Leawood Country Manor, gave a history of the area, showing plans for Town Center Plaza becoming denser and denser. Increasing density would lead to greater traffic.

Peter Young, 5004 W. 114<sup>th</sup> Terr., was concerned about the traffic impact on Leawood Country Manor. Nall was already too congested. He was concerned about safety ("road rage"). The City should maintain the SD-0 zoning.

Kelly Lyons, 5148 W. 114<sup>th</sup> Terr., president of the Leawood Country Manor Homes Association, felt that the Council should reject the requested rezoning, request for preliminary site plan and preliminary plat approval, and request for a special use permit for the Hilton hotel. Residents didn't object to the development of an upscale office park with a hotel, but the proposed plan was far too dense. E and F traffic levels of service were intolerable. She said that last month a Kansas City Star article suggested that the Johnson County market was rapidly becoming saturated with high-end hotels, and she had heard that there was a possibility of a hotel being constructed at 103<sup>rd</sup> and State Line Rd. - close to St. Joseph Hospital with the convenience of I-435 access and the general lack of residential units in the area - which seemed a more appropriate place for Leawood's "signature" hotel. A hotel at Town Center Park was fine but needed to be smaller. Lighting from the hotel and office structures would harm the neighborhood, especially any neon sign for the Hilton hotel.

Bill Watkins, 11236 Rosewood in Leawood Country Manor, said that the project was too large. Leawood didn't need a 15-story hotel to have a nice landmark - 3-4 stories were enough.

Albert Cinelli, 11509 Juniper, president of Edgewood Homes Association, said that the density was Edgewood's biggest concern. Don Smith, 5209 W. 116<sup>th</sup> St. in Edgewood, said that an entrance to the proposed project on Town Center Drive should not be directly across from the entrance to Edgewood as City staff proposed; the developer had an entrance plan that Edgewood residents agreed with so there wouldn't be a traffic signal at the entrance to their subdivision. Mr. Smith felt that the parking garages should not be more than 1.5 stories above ground level, and suggested the possibility of removing one building and giving its space to the others.

Pat Lysaught, 4905 W. 112<sup>th</sup> Terr. in Leawood Country Manor, talked about SD-0 zoning (as promised to be maintained to protect residents) and the developer's efforts to rezone to CP-0 with no maximum FAR in order to build the project. There was a height limitation however. Mr. Lysaught said that a 15-story hotel in Leawood was ridiculous. He was concerned about the poor traffic levels of service E and F and their effects on all residents, not just those in Leawood Country Manor and Edgewood. It had apparently been forgotten that in order to build AMC and Galyons, the developer had given up 60,000 square feet of development; the developer wanted that back and more. He didn't think residents would use or benefit from the "strip" park along Town Center Drive, and felt that the developer was wrong to donate the park land to the City and then expect the City to maintain it.

Ken Bush (5187 W. 114<sup>th</sup> Place, Leawood Country Manor), Arlene Millard (5175 W. 114<sup>th</sup> Place, Leawood Country Manor) and Glenn Brown (5002 W. 112<sup>th</sup> St., Leawood Country Manor) were very concerned about the traffic problems and traffic safety for Leawood Country Manor residents; it was already very difficult to get out of the subdivision to the east and west.

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Councilmember Rasmussen moved to deny the resolution, seconded by Bussing. Councilmember Gill said he would prefer to keep discussions open and to remand the matter to the Plan Commission for their very serious in-depth review of traffic issues and the possibility of downsizing the density of the project, and to find solutions to the E and F levels of service and to address residents' concerns brought to the Council's attention about their inability to get out of their residential areas. He felt the hotel was an asset, but 8 stories was generally preferable to 15. Both motion and second were withdrawn.

6509

Mr. Gill moved to remand the matter to the Plan Commission for the stated reasons, seconded by Taylor. Mr. Rasmussen asked that the Commission review the overall traffic situation, study the possibility of ~~raising up~~ lowering the parking garages, and study the flow of traffic along Town Center Drive. Mr. Bussing felt that the essential character of Leawood was that of residential neighborhoods, and believed that the Plan Commission and City Council needed to find a proper balance between development of commercial corridors and the residential character. Commercial areas needed to compliment, supplement and enhance the residential character. Mr. Bussing mentioned an article from the "New York Times" that had been distributed to the Council which discussed efforts of communities around the country to stop urbanization of suburbs. He asked that the article be sent to the Plan Commission for their review.

Mr. Rasmussen was concerned about pedestrian flow, and asked that the Plan Commission look at how pedestrians would be able to cross streets safely.

6977

END OF TAPE

Tape No. 426

Planning Director McKay said the remand would be heard in July. Councilmember Taylor felt that the traffic study should incorporate the holiday retail traffic (November 20-January 1), and asked that that be studied and given to the Plan Commission for evaluation.

Mr. Gill's motion to remand carried unanimously (except for Councilmember Clawson who had left her seat at the beginning of the discussions).

**Ordinance rezoning from SD-0 to CP-0 – Town Center Park.** No action taken.

Mrs. Clawson returned to her Council seat.

129

**Resolution No. 1405, attached as part of the record, approving preliminary site plan and preliminary plat for Tomahawk Creek Plaza located at approximately 114<sup>th</sup> & Tomahawk Creek Parkway.** Councilmember Rasmussen moved to adopt the resolution, seconded by Peppes. After brief discussion of traffic signals (especially the timing of the one at 115<sup>th</sup> and Roe Ave.), land banking for additional parking, Plan Commission and Arts Council responsibilities for public art and future public art impact fee, motion carried unanimously.

465 **Resolution No. 1406, attached as part of the record, approving a special use permit and preliminary site plan for Church of the Resurrection at approximately the southeast corner of 137<sup>th</sup> St. and Nall Ave.** Councilmember Bussing left his Council seat. On motion of Rasmussen, seconded by Taylor, Council unanimously adopted the resolution (except for Mr. Bussing).

Mr. Bussing returned to his Council seat.

555 **Ordinance No. 1734 amending Section 4-3 of the Leawood Development Ordinance specifically regarding administrative special use permits.** Section 4-3.1(33) allowed the Planning Director to issue up to 3 special events permits per calendar year which allowed an applicant a short-term special use of specified land for a temporary display and/or function. The amendment increased the number of special event permits from 3 to 6, and applicants who would apply for all 6 allowable permits at one time would pay a lower fee to account for the administrative time saved by processing all 6 requests at one time instead of on separate occasions. On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

570 11:00 P.M. On motion of Taylor, seconded by Clawson, Council voted unanimously to extend the meeting to 11:30 P.M.

#### **OLD BUSINESS**

614 **Resolution No. 1407, attached as part of the record, approving the preliminary site plan and preliminary plat for Fire Station No. 3 located at approximately 148<sup>th</sup> and Mission Rd.** City Attorney Wetzler had reviewed the protest petition and said that in his judgment it did not technically comply with the provisions necessary for protest in Kansas. Councilmember Gill asked about the adequacy of the notice given to residents in the first instance. Mr. Wetzler said that he hadn't studied those particular notices, but the Planning staff did check the notices sent out and believed they were sent to the owners of record of the properties as shown on the County's data base records that were within 200 feet of the larger parcel involved. He had no explanation as to why resident Mike Gossman (4041 W. 147<sup>th</sup> Terr. in the Pavilions of Leawood) didn't receive a notice. The Mayor noted that the County data base did take awhile to catch up with actuality. That might be the explanation for Mr. Gossman's not receiving notice.

Architect Bill Scott of Shaughnessy Fickel and Scott Architects presented 5 options in response to Council's request of him at the June 1st Council meeting. Two options pertained to methods to add additional screening along the area to the south of the proposed road and to the north of the adjacent property owner to the south. The other 3 options pertained to the height and location of the training tower. The first option (Option A) essentially added additional landscape plantings to the south end of the site, south of the entrance road. It would take approximately 4-6 years growth for the plantings to entirely obscure the views of the station, including the training tower at its previously proposed height of 38'6". Option A would add approximately \$9,000 to the overall cost. The second screening option (Option B)

would be to have a stone retaining wall and a berm to the south of the proposed entrance road and add landscape plantings to the berm side of the wall. Again, it would take 4-6 years growth to entirely obscure the station and tower at 38'6". The retaining wall would reduce or obscure headlights leaving the station from the residents to the south. Option B would add approximately \$15,000 to the overall cost. With either Option A or B, Mr. Scott looked at the possibility of incorporating a drainage culvert which would run along the swale across the proposed park entrance road. By adding the culvert, he would be able to raise the elevation of the final grade in the area. It didn't really help to screen the view of the station. The culvert would be an additional \$15,000.

The third option (Option C) reduced the height of the tower 4 feet to 34'6"; the floor height of the tower itself would be reduced from 12' to 10'; no excavation or carving out to a lower level of the training tower would have to occur; there would be a reduction in the overall cost of \$4,000. Mr. Scott said that Options D and E were not functionally appropriate solutions to the tower and not recommended because there were some safety issues related to dropping the tower into a carved out area or pit area. Option D would reduce the tower 8' to the same height as the administration roof, and the patio area for the firefighters would have to be relocated to the east, away from the kitchen and dining area in the station. Option D would add approximately \$27,000 to the cost of the project. Option E would move the tower to the north side of the station, and another flat area around the tower would have to be added with some additional fill at the north end of the station. To do the 8-foot reduction in height on the north side would add \$32,000 to the cost of the project. To move the tower to the north side but just reduce the height by 4 feet would add \$20,000 to the overall project cost.

If the Council desired to have additional screening to the south, either Option A or B would accomplish that. Option B with the retaining wall would provide ample space to the north of the wall to have a pedestrian walkway. With Option A a pedestrian walkway would have to practically abut the south face of the park entrance road. Of the options for the training tower, Mr. Scott recommended Option C. In effect, approximately \$11,000 would be added to the total project cost, accomplishing both screening of the station and reducing the tower height.

Chief Florance recommended leaving the tower as designed at 38'6", doing the screening as proposed with the retaining wall, and leaving the tower on the south side of the station.

Councilmember Taylor said that despite any additional screening, the noise factor would still exist from fire vehicles leaving the station and fire training next to a residential area. And he felt that the fire station structure violated the fabric of the residential neighborhood; the scale was too overwhelming. He addressed the possibility of 2 other sites for the station - 151<sup>st</sup> and Mission Rd. (southwest corner), and 143<sup>rd</sup> and Kenneth Rd. (as a joint site for the fire station and new public works facility). A site and cost evaluation was needed. He felt that staff should be directed to do an evaluation for other sites. He did agree that the City needed the training tower, administrative offices and apparatus. Chief Florance said he couldn't support a site that was on the border of the City; fire stations needed to be located centrally in a City to take advantage of a response radius. He felt that 148<sup>th</sup> and Mission Rd. was an appropriate location, that the station design was not too large for the site, and was designed to serve the needs of residents to buildout.

- 1597 11:30 P.M. On motion of Taylor, seconded by Gill, Council voted unanimously to extend the meeting to 12:00 A.M.

Mr. Scott compared the proposed station to other similar fire stations in the County on their sites, sites with less than 2.5 acres.

Councilmember Bussing said he had 3 concerns about the proposed location - 1) grade of the driveways, 2) common use of the park access road, and 3) the location on Mission Rd., a very dark and dangerous roadway in the area with future Mission Rd. improvements not on the City's 5-year CIP. He agreed that other sites needed to be carefully considered. City Administrator Garofano said that the proposed site was carefully thought out by the Fire Department as far as its use for a fire station was concerned.

- 1916 In response to Councilmember Bold, Chief Florance said he could live with the 10-foot floor to floor height of the tower, but had to have the new administrative office space, could not wait any longer; fire administration should have been back in the fire stations long ago instead of ending up in the new City Hall, to supervise, manage and train with the firefighters daily.

- 1984 Mike Gossman, 4041 W. 147<sup>th</sup> Terr. in the Pavilions of Leawood, said he never received proper notice of Plan Commission hearings regarding the proposed fire station, so was denied an opportunity to give input and express his views. Therefore, he objected to Council approval of the preliminary site plan at this time. Planning Director McKay said that his department had mailed a certified return receipt notice to the Acuff and Rhodes lot (Mr. Gossman's residence) and had received the signed green return receipt back. Obviously someone at Acuff and Rhodes didn't pass it on to Mr. Gossman. Planning staff had used the most current County property printout that they had. Councilmember Bold asked if indeed proper legal notice had been given since the notice hadn't been delivered directly to Mr. Gossman. City Attorney Wetzler said that Planning had mailed notices to those they thought were indeed the owners of record based on the County's printout. The City couldn't do otherwise. Mr. Gossman said that some of his neighbors who had owned their homes longer than he didn't receive notices either. He said that a review of the files would indicate that notice was not even mailed to him or his neighbor. Planning Director McKay said that as far as the County's property printout was concerned, the County usually ran several months behind on updating records.

- 2357 12:00 A.M. On motion of Taylor, seconded by Gill, Council voted unanimously to extend the meeting to 12:30 A.M.

Robert McQuain, 14901 Mission Rd., suggested the City could have gone to a title company to determine property owners. He thought the Planning staff was probably working from County assessment records which were notoriously delinquent in terms of updating and ownership.

Bill Preloger, an architect and land planner representing Mr. McQuain and residents of the Pavilions of Leawood, said that the site was very steep. The proposed station was a big flat building and should have a big flat site. He talked about the steep grades which fire apparatus would have to maneuver, especially in bad weather. He talked about the great amount of compacted fill that would be required, estimated cost of \$250,000 alone. He said there were probably other sites in relatively close proximity to the proposed one that probably were flatter and would probably result in both substantially lower development costs and better long-term operation.

2697 Councilmember Clawson agreed with Mr. Garofano and said that the City didn't frivolously choose the site, and was well aware of alternative sites at the time it was selected. She moved to adopt the resolution with the addition of Option B which would provide for a stone retaining wall to mitigate light to the neighboring property staying with the additional landscaping that was in the original plan, and leaving the training tower at 38'6". Motion seconded by Peppes.

Councilmember Bold said he would support the project with a lower training tower to ease the visual impact from the Pavilions, would only vote for the tower if the park access road was moved to the north, and would vote for Option B to give Mr. McQuain some screening from the station. He said he would not support Mrs. Clawson's motion, so he moved to amend the motion to lower the floor to floor height of the tower to 10 feet. Motion to amend died for lack of a second.

Mrs. Clawson's motion carried; Bussing, Taylor opposed; all others in favor.

2866 **Discussion of master plan for the South Park regarding moving the entry location to the north.** Councilmember Gill moved to change the master plan for the South Park to reflect for the referendum in November that the exclusive entrance to the Park off of Mission Rd. would be at the north end of the Park property rather than at the south end. Motion seconded by Bold.

Councilmember Clawson felt there was a significant sight distance problem at the north end where the entrance could be that would create a hazardous ingress and egress from the Park. Public Works Director Johnson talked about how improvements to Mission Rd. could improve sight distance, but those improvements were not in the City's 5-year CIP. Councilmember Peppes said he was not opposed to moving the road, but was not convinced that moving the road to the north made conditions safer than at the south end of the Park. He suggested making the south road temporary until Mission Rd. was improved. Mr. Johnson said the City was just changing the master plan and not limiting itself to providing access at either end of the Park. At the time of final development plans for the Park, the City could take a look at the access based on the uses of the Park. There were some things that could be done at that time before the major widening to 4 lanes to make the north end safer, like knocking the hill down or putting up traffic signs.

Councilmember Dunn felt that to show the entrance on the north was the Council's good faith plan at the present time satisfying many residents' concerns and answering one of Chief Florance's concerns about sharing the Park entrance at the south end of the Park.

Mrs. Clawson felt that if the Council sent just one entrance to the referendum, that could potentially create an expectation of the public of a final decision that perhaps the Council shouldn't be doing, so she moved to amend Mr. Gill's motion to show 3 proposed roadways into the Park, one from the east side of the property, one to the north of the Schlupp property on the north, and one as it was proposed at the south end, and list all 3 as proposed Park roadways (not something set in stone). Motion to amend seconded by Peppes.

3323 Rick Lombardo, 14720 Delmar in the Pavilions, said he would oppose any entrance to the Park that was directly across from the Pavilions at the south. Traffic from the Pavilions would end up competing with Park traffic. He said the entrance to the north was feasible, it made sense, and it wouldn't hurt anyone.

Mike Schlupp, 14707 Mission Rd., preferred the road to the south because the Park was going to surround him on 3 sides, and he felt that the fire station would have some impact on the security of the Park.

Parks & Recreation Director Whitaker said that the firm that worked on the South Park master plan and the Parks & Recreation Advisory Board recommended that the road remain at the south end. The estimated cost to move the road to the north was an additional \$300,000. There were concerns about crossing the gas line easement twice, the topography, locating erosion control that would meet the guidelines of state, federal and gas line company, and the cost of the construction of a bridge that would be necessary.

3770 12:30 A.M. On motion of Taylor, seconded by Clawson, Council voted to extend the meeting to 1:00 A.M.; Peppes, Rasmussen, Bold opposed; all others in favor.

3843 Councilmember Bold called for the question, seconded by Clawson and carried unanimously.

Mrs. Clawson's motion to amend failed; Clawson, Peppes, Rasmussen in favor; all others opposed.

Mr. Gill's main motion carried; Clawson, Peppes, Rasmussen opposed; all others in favor.

\* Councilmember Bold left the meeting.

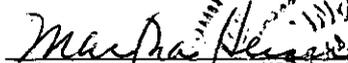
3881 **Approve City standard contracts for professional services (engineering and architectural) and standard documents and specifications.** Councilmember Dunn said more changes needed to be made. Councilmember Gill moved to defer the matter to the July 6<sup>th</sup> Council meeting, seconded by Clawson. Councilmember Taylor asked that the incorporation of the general conditions of the contracts in final form be attached to the final drafts of the contracts to be sure that they interfaced with the contracts. Motion to defer carried unanimously.

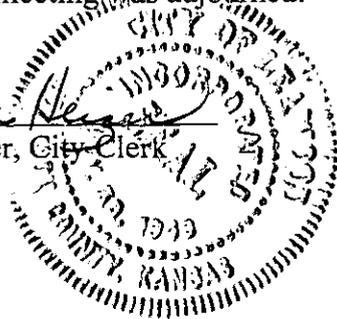
- 4057 **Public Works report on parking problem at the Public Works/Parks & Recreation Facility at 2008 W. 104<sup>th</sup> St.** Public Works staff report stated that there was a lease agreement between the City and Kroh Brothers Development Co. which allowed the City use of an area near the Public Works Facility for offsite parking. The agreement was for a 10-year period beginning March 1986. The new owners of the property, Pathmark Development, said they would be willing to sell the property to the City for approximately \$175,000. The property was next to Indian Creek and for the most part not useable for building. Public Works Director Johnson recommended not spending the money. Employees were parking on the streets and making use of other parking areas, and when a new public works facility was completed in the future, Parks & Recreation employees would have adequate parking space. Mr. Johnson said he would be agreeable to Pathmark donating their land and writing off the taxes.

Councilmember Taylor mentioned that the City might want to consider Pathmark's offer to sell in the future if the public works plan for a new facility changed.

#### NEW BUSINESS

- 4143 **Approval of Appropriation Ordinance No. 836.** On motion of Gill, seconded by Clawson, Council unanimously approved the ordinance on roll call vote.
- 4158 **Authorize interlocal agreement with Overland Park for the microsurfacing of Nall Avenue, College Blvd. to 119<sup>th</sup> St.** On motion of Peppes, seconded by Clawson, Council unanimously approved the agreement.
- 4173 **Authorize interlocal agreement with Johnson County for engineering design of SMAC stormwater project DB-04-024, Phase 1, 82<sup>nd</sup> Terr. and Wenonga Rd., south to Cherokee St. & 86<sup>th</sup> St., estimated cost \$249,075.00, 75% to be reimbursed by the County.** Councilmember Clawson moved to approve the agreement, seconded by Dunn. Motion carried unanimously.
- 4275 **Authorize interlocal agreement with Johnson County for engineering design of SMAC stormwater project DB-04-014, Phase 1, 83<sup>rd</sup> St. and Sagamore, south to Lee Blvd. and 85<sup>th</sup> Terr., estimated cost \$325,406.00, 75% to be reimbursed by the County.** On motion of Peppes, seconded by Dunn, Council unanimously approved the agreement.
- 4294 12:55 P.M. **Schedule executive session.** On motion of Taylor and duly seconded, Council voted unanimously to convene in executive session for 5 minutes to discuss 1 matter regarding land acquisition.
- 4388 Council returned to regular session at 1:00 A.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**Minutes Summary**

Audio Tape No. 427

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, July 6, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, James E. Taylor, Sr., and Mike Gill. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Mark Andrasik, Information Services Director; J. Stephen Cox, Police Chief; Joe Johnson, Public Works Director; Diane Binckley, Planning Department; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Clawson, after the addition of 1) a discussion of recent storms and their impact on the City, and 2) a discussion of Councilmember Bussing's e-mail memo regarding the length of Council meetings.

103

**CITIZEN COMMENTS.** Cindy Sitomer, 3404 W. 89<sup>th</sup> St., spoke about the third and final phase (Mohawk to Cherokee) of the 89<sup>th</sup> St. improvements between Mission Rd. and Lee Blvd. She felt there were too many power poles and light poles planned along with a sidewalk on her side of the street. It would not be aesthetically pleasing. She mentioned another phase of the project in which the power poles and light poles were together with the power poles leaning with new light poles – not very nice looking. She asked if the number of poles could be reduced by possibly attaching street light arms to the power poles, or perhaps placing the new light poles on the south side of the street where they had just been removed, instead of on her side (the north side) of the street. She felt there was no consistency as to placement of poles in the three phases of the project. Councilmember Dunn moved that any further work on placing the poles be deferred until the matter could be considered (and resolved without Council action) at the next Public Works Committee meeting (Thursday, July 9<sup>th</sup>, 4:00 P.M.), seconded by Taylor. Motion carried unanimously.

Linda Samuelson, 13008 Linden in Carriage Crossing, spoke about the poor condition of the creek running along backyards in the subdivision. There was severe erosion and the creek was frequently full of construction debris and trash, causing it to dam. The matter needed a professional resolution. Councilmember Bold said he would be happy to meet with her and Public Works Director Johnson to start formulation of a strategy to resolve the problem.

478

Sharon Bowers, 12613 Overbrook in Leawood South, said that a number of tree limbs had fallen in the last storm, and she had been told by someone at City Hall that it was her responsibility to do cleanup. She said she wasn't going to do it; the limbs were still piled up at the curb. She said the trees were in the right-of-way, not on her property. City Administrator Garofano said that in most subdivisions, the homes associations took care of street trees. Mrs. Bowers didn't feel it was too much for the City to pick up limbs from a severe storm. The Mayor said she knew that homes association trash services had been out picking up debris at the curbs. Mrs. Bowers said that she had not contacted her homes association. Her neighbors' limbs at the curb had not been picked up either. The Mayor said the matter would be discussed further at the end of the meeting (see tape meter #6257). The Mayor suggested that Mrs. Bowers contact Deffenbaugh trash service directly.

Mrs. Bowers also wanted to know when Overbrook would be paved. Mr. Garofano said that that would be discussed at budget preparation time.

607

Jerry Mitchell, 13004 Linden in Carriage Crossing, spoke about the recent storm damage and trees that had fallen into the creek behind his home. He said that the creek was not part of his property, nor part of the property on the other side of the creek. Councilmember Taylor said that in Bridgewood subdivision, a greenway followed the creek pattern, so it was probably open area for that subdivision. The Mayor said that most creeks were owned by property owners. Mr. Mitchell thought the City owned the creek. Councilmember Bold said he would be happy to meet with Mr. Mitchell to review the situation. Councilmember Clawson suggested that Mr. Mitchell check his stake survey. The City didn't own any creeks; property owners owned them.

763

Ray DiTirro, 3900 W. 110<sup>th</sup> Terr. in Longwood Forest, spoke about the Merrill Lynch final plat that was to be considered under the Consent Agenda. He thought that at some point in time, a traffic study was to have been done for that building and the Kansas City Orthopedic Center on College Blvd. He wanted to know if the final plat approval took into consideration ingress and egress to the property for those buildings, and if it did, was the traffic study taken into consideration? Diane Binckley of the Planning Department said that the traffic study didn't indicate any problems as far as ingress and egress along College Blvd. She said that Public Works had reviewed all the traffic information. Councilmember Gill thought he remembered a recommendation for a deceleration lane (perhaps it was for the Orthopedic Center). Public Works Director Johnson said that the traffic study indicated no need to make College Blvd. 5 lanes wide to provide either left turning movements or deceleration lanes.

1011

**CONSENT AGENDA.** Four items were removed for further discussion. The following were approved unanimously on motion of Bussing, seconded by Gill:

1. Historic Commission report (minutes) on their May 19, 1998, meeting;
2. Public Works Committee report (minutes) on their June 11, 1998, meeting;
3. Purchase of 2 Amkus extrication tools from Conrad Fire Equipment, Inc., \$12,500 each;
4. Replacement of outdoor warning siren at 9609 Lee Blvd. by Blue Valley Public Safety, Inc., for \$15,033;
5. Pay Request No. 3 (FINAL) by Reno Construction in the amount of \$3,597.22 for the 1997 Arterial Street Improvements;

6. Pay Request No. 2 (FINAL) by Seal-O-Matic Paving in the amount of \$51,463.89 for Town Center Plaza Improvements, Phase 2;
7. Application (new) for Cereal Malt Beverage License – Eckerd Drugs #8172, 12150 State Line Rd.

Minutes of the June 15, 1998, Council meeting. On page 4965 at tape meter #829, the Mayor asked that the following statement be added after Mr. Kerr's statement that the park along Town Center Drive would be maintained by the City. "The Mayor clarified that the park proposal was not an item on the agenda for discussion. Discussion about the park dedication ceased; it would probably be discussed at a later date." On page 4968 at tape meter #6509, Mr. Rasmussen wanted the Plan Commission to study the possibility of lowering the parking garages rather than raising them up. On motion of Dunn, seconded by Taylor, Council unanimously approved the minutes with the 2 corrections.

Resolution No. 1408, attached as part of the record, approving the final plat of Tomahawk Creek Office Park 3<sup>rd</sup> Plat (Merrill Lynch) located at approximately the southwest corner of College Blvd. and Tomahawk Creek Parkway.

AND

Resolution No. 1409, attached as part of the record, approving the final plat of Sunbridge Assisted Living Facility located on 115<sup>th</sup> St. between Roe Ave. and Tomahawk Creek Parkway.

Councilmember Bussing referred to stipulation #16 of the Merrill Lynch resolution. He wanted it clarified as to who on staff would be given public art details prior to issuance of a building permit. Diane Binckley of the Planning Department said details would be submitted to the Planning staff so that they in turn could submit them to the Arts Council. Mr. Bussing referred to stipulation #15 of the Sunbridge resolution which specifically stated that details would go to the Plan Commission. He asked that the two resolutions be consistent, that they both indicate that details would be given to the Planning staff who would in turn submit them to the Arts Council.

Councilmember Gill said that he felt that the extra lane was indeed in conjunction with the Orthopedic Center. He remembered another point of discussion being the traffic signal at 115<sup>th</sup> and Roe. He referred to stipulation #17 of the Sunbridge resolution which indicated that all traffic study requirements/street improvements would have to be completed prior to final occupancy of the project. He wanted to know what plans existed to get that traffic signal installed. Diane Binckley said that the developer understood that the signal would have to be installed prior to final occupancy. She said she was satisfied that the City was 100% guaranteed to get the money associated with the signal (50% each from property owners Alpert and Morgan according to Mrs. Binckley).

Doug Allmon of the Planning staff said that the traffic study for the Orthopedic Center indicated that as far as capacity analysis was concerned, the results confirmed that no additional turning lanes were required on College Blvd. at the entrances to the proposed medical office building and residential development. Councilmember Taylor suggested adding an additional stipulation to the Sunbridge resolution that in the event the ownership of the property south of 115<sup>th</sup> St. didn't participate in the signal at 115<sup>th</sup> and Roe, then Alpert would have to pay 100% of the cost of the signal and have to later secure 50% from the developer to the south or through an impact fee assessed to the developer to the south. City Administrator Garofano suggested that rather than trying to work out details at the Council table, staff be allowed to carry out stipulation #17 which he felt was very clear. He didn't feel that the City could commit a developer to working out any kind of financial arrangements with another developer. He also said that the City wasn't going to allocate money for the traffic signal, so a developer would have to pay the cost. Diane Binckley confirmed that the traffic study required a signal at 115<sup>th</sup> and Roe.

Mr. Gill moved to adopt both resolutions with Mr. Bussing's changes to both regarding public art details and with the understanding about stipulation #17 of the Sunbridge resolution, seconded by Bold. Motion carried unanimously.

1561

Change Order No. 2 to the contract for Mission Rd. rehabilitation, 135<sup>th</sup> St. to 143<sup>rd</sup> St., in the amount of \$27,585.00. The change order was for an access point installed for property owner Grant Hatfield as part of an agreement to obtain a temporary construction easement on his property. Additional clearing and grubbing on Hayward Spears' property was also completed as part of his temporary construction easement agreement. A temporary safety fence was installed along the sidewalk to protect children while the roadway was under construction. Public Works Director Johnson gave Councilmember Taylor a breakdown of the costs for the work that was done, replacement of items that had been removed for the construction. Mr. Taylor moved to approve the change order, seconded by Gill. Motion carried unanimously.

1715

**MAYOR'S REPORT.** The Mayor complimented all staff involved in planning for and participating in a very successful July 4<sup>th</sup> celebration.

#### **OLD BUSINESS**

1780

**Public Works report on possible median closure at 86<sup>th</sup> and State Line Rd.** Public Works Director Johnson said that he had sent a proposed reconfiguration of the intersection to Kansas City, Missouri, and the Ward Parkway Shopping Center for their comments. He was waiting to hear from them. He had received an estimate of \$32,000 to make the improvements. Councilmember Taylor said it was his understanding that no action would be taken at all until residents were unanimously in favor of an improvement, and then the action would be to create a benefit district. Councilmember Clawson, Chairman of the Public

Works Committee, said that clearly the residents were not going to agree 100%. The Committee did recommend that nothing be done unless residents agreed 100% to create a benefit district. The City probably shouldn't pursue the matter any further. Councilmember Dunn said that if the estimate was that great, the City didn't need to look at the matter any further.

Councilmember Bold moved to table the proposed reconfiguration until all residents agreed on a benefit district, seconded by Clawson. Mr. Bold said that would preclude Mr. Johnson from sending the proposal to Kansas City or to the shopping center.

Councilmember Gill didn't feel it was good policy to require unanimity when the law didn't, the law requiring only 51% to create a benefit district. He supported tabling the matter, but not requiring unanimity. Mr. Bold said he would not be comfortable compelling the other 49% to participate in a median closure that City staff had said was not necessary. He felt that in this particular situation, the City should require 100% participation.

Councilmember Bussing said he remembered that the City had agreed that it would determine for the residents the cost of the median closure and send it to them to make a decision about a benefit district. He felt that Mr. Johnson had done just what the Council had asked him to do.

Mr. Bold moved to amend his motion to table the matter and send the estimate and reconfiguration to the residents, seconded by Gill. Mr. Johnson said he would do so, and state in a letter that per Council's recommendation, until an improvement district with 100% participation was attained by the residents, there would be no improvements made to 86<sup>th</sup> St. and State Line Rd. The amendment was considered a "friendly" amendment and attached to the main motion.

Mr. Bold's main motion carried unanimously.

2230 **Approve City standard contracts for professional services (engineering and architectural) and standard documents and specifications.** Councilmember Taylor moved to approve the contracts, seconded by Dunn. Councilmember Gill asked that the word "and" at the end of E. Indemnity 1.a. and 1.b. on page 22 of the architectural agreement and on page 24 of the engineering agreement be changed to "or." Council agreed. Motion to approve carried unanimously.

2415 **Public Works Committee report on the proposed Bi-State Public Works Facility at 143<sup>rd</sup> and Kenneth Rd.** Councilmember Clawson, Chairman of the Public Works Committee, said that the Committee had recommended further review of the site at 143<sup>rd</sup> and Kenneth Rd. The cost of the facility was much higher than anticipated. The site had some design issues that increased the cost. The Committee recommended that staff look at 2 alternate sites in the Bi-State Development – one at the north end, Lots 5 through 17, and the other at the south end, Lots 27 and 33 adjacent to the existing proposed site with reconfiguration of the current layout, perhaps selling Lots 30 and 31.

Public Works Director Johnson presented his review/findings as outlined in his memo distributed to the Governing Body which involved the Bi-State area, the current Public Works facility at 104<sup>th</sup> and State Line, and the 135<sup>th</sup> St. Corridor.

2564

Councilmember Bold interrupted the presentation to ask if the discussion regarding a potential purchase or sale of City real estate was something that could be discussed in executive session. City Attorney Wetzler responded affirmatively. Mr. Bold moved to defer further discussion to an executive session at the end of the meeting, seconded by Taylor. Mrs. Clawson said that no money offer had been made, there were no real estate interests involved at this point, Council was merely discussing the appropriateness of the site that the City currently owned and alternatives, and the matter had already been discussed in a public meeting. Any action that the Council might take might then necessitate an executive session. Councilmember Taylor said that 2 sites had been identified for potential relocation, and felt it would be inappropriate to identify those sites in an open meeting for the purpose of discussing their purchase. Mrs. Clawson said that the 2 sites had already been identified in a public meeting. Motion failed; Bold, Taylor in favor; all others opposed.

2720

Mr. Johnson continued his presentation, ending with his recommendation that the City's property in the south part of the Bi-State area was the best site available for the cost and limited number of neighbors that would be affected by the public works operations.

3063

Mr. Bold felt that the cost of the proposed facility was deplorable, going from \$1.5 million to \$7 million since the acquisition of the Bi-State property. He gave a history of the City's acquisition of the property which included a defeated motion to have an independent, third party appraiser appraise the property to determine if the City would pay a fair price. He felt that an appraiser would have at least raised the issue as to whether or not the site was appropriate for the City's public works operations and helped to determine what the cost of bringing the site into a buildable condition would have been. He didn't believe that the \$3.00 per square foot purchase price that Mr. Johnson had mentioned in his presentation was correct. He felt that the best option was for the City to go to the owners of the Bi-State development and suggest a land trade within the industrial park. He recommended hiring a real estate consultant to make a recommendation to the Council after examining any and all possibilities, including relocating within Bi-State.

3377

Councilmember Taylor, as a member of the Public Works Committee, was not satisfied that the staff review had been properly done to establish even a program at 143<sup>rd</sup> and Kenneth Rd. He believed that there should be 2 public works locations to serve the City. The one at 104<sup>th</sup> and State Line should be maintained. The City needed further program examination before spending great amounts of money.

Mrs. Clawson said she would not be opposed to having an expert review the site. But based on her many years on the Council discussing the issue, she felt that individual would probably report that the Bi-State site was indeed the appropriate site. She liked the site - the facility would be adjacent to a major street running the entire length of the City, it would not be adjacent to homeowners, not a good idea to permanently keep a facility at 104<sup>th</sup> and State Line since the land was clearly not being used to its potential and there had already been interest expressed in redeveloping the 103<sup>rd</sup> and State Line area.

3838

Mr. Bold felt that the acquisition of the Bi-State property had been a poorly executed purchase. He moved to retain the services of a real estate professional who would determine the most suitable site available to the City for a new public works facility on the basis of economic viability and harmony with existing residential neighborhoods, seconded by Gill.

Mr. Taylor felt that the selection of the Bi-State site was ill advised. He was opposed to spending such a great amount of money for one facility when the City already had one facility serving the north part of the City.

4003

Councilmember Dunn felt that there was a good argument to make that the Bi-State site was the best site available, but he was very concerned about the possibility of having to spend \$7 million when the City's CIP showed \$1.5 million. He would support having an outside professional opinion.

Councilmember Gill agreed with Mr. Dunn and said he would support Mr. Bold's motion. He didn't think that anyone had any notion when the land was purchased that the site improvements would be more than 7 times the land acquisition costs. He was troubled by the CIP difference and by the fact that site improvements in the Bi-State area would cost more than \$1 million. Prudence would dictate that the City look at other alternatives, even the possibility of looking outside the City limits.

Councilmember Bussing asked who would establish criteria for what would be considered "best" or "most suitable." For instance, one criteria would be that the facility could not be next to a residential area. Mr. Bold said that there had been some preliminary engineering and design work done, and engineers had to have looked at a set of criteria. A real estate consultant would have to work from those criteria. Let the consultant bring options to the Council for the Council to decide the relative importance of the various criteria. Mrs. Clawson said that the Public Works Committee could try to establish the criteria that a real estate consultant could use. Mr. Bold said he wanted to be at the Public Works Committee meeting and he might have a scheduling problem. That being the case, Mrs. Clawson suggested that the Council establish the criteria at a work session. It was agreed that the Council would meet at 6:30 on July 20<sup>th</sup> before the regularly scheduled Council meeting.

Mr. Bold's motion to hire a real estate consultant carried unanimously.

#### **NEW BUSINESS**

**Approval of Appropriation Ordinance No. 837.** On motion of Clawson, seconded by Bussing, Council unanimously approved the ordinance on roll call vote.

**Approval of Appropriation Ordinance No. 838.** On motion of Bussing, seconded by Clawson, Council unanimously approved the ordinance on roll call vote.

4980

**Ordinance extending Southwestern Bell Telephone franchise – 1<sup>st</sup> reading.**

5039

**Ordinance No. 1735 authorizing the reconstruction, remodeling and replacement of the bathhouse at the municipal pool complex at Leewood City Park, 10601 Lee Blvd.** On motion of Bold, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

5145 **Resolution No. 1410, attached as part of the record, amending the estimated cost of the Town Center Improvements.** Adopted unanimously on motion of Bold, seconded by Taylor.

5517 **Ordinance No. 1736 authorizing issuance of temporary notes; Project 124; 135<sup>th</sup> St. (K-150), State Line-Nall Ave.; \$2,200,000.** On motion of Taylor, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

5611 **Ordinance No. 1737 authorizing issuance of temporary notes; Project 137; State Line Rd., Phase IV; \$200,000.** On motion of Taylor, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1738 authorizing issuance of temporary notes; Project 144; Mission Rd., 103<sup>rd</sup> St. – I-435; \$1,500,000.** On motion of Taylor, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1739 authorizing issuance of temporary notes; Project 146; Town Center Plaza; \$1,200,000.** On motion of Dunn, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1740 authorizing issuance of temporary notes; Project 165; Kenneth Rd. rehabilitation; \$1,000,000.** On motion of Clawson, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1741 authorizing issuance of temporary notes; Project 171; Municipal Pool Bathhouse; \$100,000.** On motion of Dunn, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

5695 **Schedule executive session.** On motion of Clawson, seconded by Bussing, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss land acquisition and a matter under attorney-client privilege.

5725 **OTHER BUSINESS.** Discussion of the private use of the City's logo. John Landsberg of Bottom Line Communications (BLC) in Leawood had written the Mayor requesting permission to use the City's logo on front license plates of vehicles. The plates would be priced to be readily affordable to all residents, available at local stores and through mail order. He was a Leawood resident and thought it would be a good idea to help celebrate Leawood's 50<sup>th</sup> anniversary.

The City had a service-mark on the logo issued by the Kansas Secretary of State. On motion of Taylor, seconded by Clawson, Council voted unanimously to deny the request.

5830

Discussion of the 1999 Budget. Councilmember Taylor felt it was appropriate to take one City department and have staff justify all their needs from zero amounts. He recommended the Parks and Recreation Department, and wanted the Director and Finance Director to give a breakdown of what Parks and Recreation's needs had been for the last 2 or 3 years and how they had progressed and how they justified their budget for this year. He had suggested "0" based budgeting in the past. At a pre-budget work session, Councilmembers had requested more narrative on all programs, and the Finance Director was in the process of assembling that information. She would not have time to accommodate Mr. Taylor's request. Councilmember Gill wanted to reserve judgement on zero-based budgeting until he had seen the material from the Finance Director. Mr. Taylor said that if the Council wanted a more in-depth review than what was presented, he urged the Council to support his request for a Parks and Recreation review, and said he would make a motion for zero-based budgeting at another meeting if necessary.

6257

Discussion of recent storms and their impact on the City, especially in Wards 3 and 4. Councilmember Gill said that there had been a lot of wind damage and water damage caused by means which were being reviewed. Water got into the basements of many homes. Public Works was looking into the problem and would report to the Council. The stormwater issue was not just an issue in the older parts of the City.

Councilmember Taylor talked about the removal of tree limbs and fallen trees. He had suggested to the Mayor that the City have a program whereby it would place large dumpsters in affected neighborhoods, but found out that that was not possible. He wanted to be proactive to residents in putting out the units that would cost \$200-300 per dumpster. He felt that would have been an appropriate expenditure to assist in storm cleanup, especially in areas where trash services didn't pick up debris at the curbs. Mr. Gill thought that most homes associations didn't pick up storm debris; his certainly didn't. City Administrator Garofano disagreed. He said that usually the City didn't respond until a situation was overwhelming and couldn't be handled on an individual basis. He said that a majority of homes associations did have storm cleanup programs, and had a resident member in charge of street trees and landscaping issues.

6754

Councilmember Bold felt that the City needed to develop a policy regarding storm cleanup. Councilmember Clawson felt that the homes associations in the older parts of the City where there were big old trees probably tended more to have programs to take care of street trees and storm cleanup. Mr. Garofano said he remembered that the City had been involved in the cleanup of only 2 severe storms in the last 19-20 years. Councilmember Dunn said that he was opposed to any policy that would commit the City to any additional services with respect to this matter, except in very special circumstances decided at the specific time. If a resident's homes association didn't have a cleanup program, they could call their trash service directly, and for \$15-20, the trash service would make a special pickup.

7031

END OF TAPE

Tape No. 428

Mr. Taylor suggested enacting a policy for certain emergencies where the Mayor could take some action, like a disaster policy. Mr. Garofano said the City already had disaster policies, a disaster response manual, etc. He felt that the recent storm did not call for an emergency response on the part of the City. In some cities like Liberty, Missouri, it did. There would be a question of public equity in terms of expenditure of public funds and when it was appropriate to do so. Obviously, when damage was widespread and beyond the means and resources of individuals and/or homes associations, it would be appropriate for the City to expend public monies for necessary operations. It would be very difficult to have any kind of an ironclad policy stating that the City would respond under certain circumstances. Each storm was a little bit different.

66

Discussion of Councilmember Bussing's e-mail memo regarding the length of Council meetings. The Mayor said that advanced homework and advanced phone calls to staff could help shorten the length of meetings. Councilmember Bold felt that the Council was not doing the residents a service by holding such long meetings, losing effectiveness as a Governing Body, unreasonable to expect residents to stay so long to hear matters and make comments. He would support having an additional regular meeting on the second Monday if that would shorten the length of the other meetings on the first and third Mondays, and when there were very major issues, there should be a meeting devoted to the consent agenda, the controversial item and appropriations. Councilmember Dunn was opposed to 3 regular Council meetings a month; there would be 3 meetings to midnight instead of 2. The Mayor said that the Planning staff was opposed to 3 meetings, already putting in a lot of time with Plan Commission meetings, and other staff members and Governing Body were already putting in a lot of time. Councilmember Peppes said that despite the number of Council meetings that there might be, Council still needed to wrestle with the issue of the length of those meetings and be able to make good decisions in a reasonable amount of time. He was willing to start meetings earlier, make shorter comments even if he had strong opinions on certain matters. Mr. Bussing said he wanted to discuss some procedural issues with the City Administrator. The Council spent a lot of time discussing factual matters because they didn't have the facts in their Council packet materials. Perhaps there needed to be some guidelines on what would be helpful to insure that Council had all the facts they needed to make decisions.

327

10:55 P.M. Council convened in executive session and returned to regular session at 11:25 P.M., same members present. Councilmember Taylor moved to extend the executive session for 15 minutes to continue discussion of the same matters, seconded by Bold. Motion carried; Peppes opposed, all others in favor.

11:40 P.M. Council returned to regular session, same members present. Councilmember Dunn moved to rescind the June 15th vote on Fire Station No. 3 which adopted the resolution approving the preliminary site plan and preliminary plat, seconded by Gill. Motion carried; all in favor except Mr. Taylor who abstained because he felt he needed to reconsider his original "nay" vote. Mr. Gill moved to immediately "re-notice" the Fire Station No. 3 matter in accordance with Kansas law and coordinate with the City Attorney for public hearing at the earliest possible dates to meet schedules to go through the process in an expeditious manner, seconded by Clawson. There was discussion about discontinuing the architect's work, possibly leaving that matter to the discretion of the City Administrator. Mr. Gill thought about adding a statement to his motion that the City discontinue anything that would create additional expense. There was discussion about provisions of the architect's contract. Mr. Gill said that his priority was public safety, having a fire station in the south part of the City. If not spending money now meant there would be a delay in having that fire protection, then he was inclined to spend the money. Mr. Gill decided to reaffirm his original motion, and consider the architect's work at the next Council meeting. The City Administrator could check the contract during the next 2 weeks. The Council decided that the City Administrator could instruct the architect not to do any foundation work, site work, but continue on with the structure. Councilmember Bussing requested that the City Administrator meet with the Planning Department to correct the notice procedures that had been used when the first notices of public hearing had been sent. Mr. Gill's motion carried unanimously.

605 11:45 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 429

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, July 20, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Patrick L. Dunn, Gregory J. Peppes, James E. Taylor, Sr., and Mike Gill. Louis Rasmussen and Marnie S. Clawson were absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator; J. Stephen Cox, Police Chief; Joe Johnson, Public Works Director; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Gill, seconded by Bold, after the addition of a discussion of Fire Station No. 3.

**PRESENTATION IN MEMORY OF POLICE SERGEANT DAVID B. SLADE.**

Sergeant Slade passed away June 16, 1998. The Mayor and Police Chief Cox talked about Sergeant Slade's duties in the Police Department and his dedication to his work. The Mayor presented a plaque to his wife Pam in recognition and appreciation of his long and dedicated service to the City, 1980 to 1998.

**RECOGNITION OF CITY CLERK MARTHA HEIZER FOR SERVICE TO THE CITY.** The Mayor presented a plaque to Ms. Heizer in recognition of her 25 years of service to the City, July 16, 1973 to July 16, 1998.

**RECOGNITION OF POLICE CHIEF J. STEPHEN COX ON HIS RETIREMENT.**

The Mayor talked about Chief Cox's many achievements during his long career in the Leawood Police Department. She presented a plaque to him in recognition of his service to the City, January 23, 1970 to July 31, 1998.

**CITIZEN COMMENTS.** None.

715

**CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Gill:

1. Minutes of the July 6, 1998, Council meeting;
2. Arts Council report (minutes) on their May 26, 1998, meeting;
3. Arts Council report (minutes) on their June 23, 1998, meeting;
4. Departmental reports;
5. Application (new) for Retail Liquor Occupation License – Ranchmart Wine and Spirit Shop, Ranchmart Shopping Center, 3748 W. 95<sup>th</sup> St.;
6. Installation of interceptor drain pipe, north side of City Hall, to correct a water seepage problem, work to be done by Haren & Laughlin for \$12,495.00.

Golf Course Committee report (minutes) on their June 25, 1998, meeting. In response to Councilmember Taylor, Parks & Recreation Director Whitaker explained the Committee's decision to delay consideration of developer Mark Simpson's request for some additional land for a lot at the Reserve at Ironhorse subdivision next to the Ironhorse golf course. Mr. Whitaker said that several outstanding issues with Mr. Simpson needed to be resolved first (see the minutes). The Committee wasn't leading Mr. Simpson along. Mr. Taylor also asked about the fencing around the golf course. Mr. Whitaker said that the Golf Course Committee didn't have any intention of waiving from the requirements on fencing. Planning Director McKay said it was his department's policy that no more gates would be allowed on the golf course, and if there was another problem with fencing not being able to be located on a property line, then he would negotiate for the fence to go onto golf course property. If a fence couldn't be on the property line, it would be logically placed with the land dedicated to the golf course so the City could maintain the fence. On motion of Taylor, seconded by Gill, Council unanimously approved the report.

Public Works Committee reports (minutes) on their June 29, 1998 and July 9, 1998, meetings. Mr. Taylor said he realized that his questions had been answered, so he moved to approve the reports. Motion seconded by Dunn and carried unanimously.

#### **PLAN COMMISSION**

935

**Resolution No. 1411, attached as part of the record, approving a preliminary plat and final plat for Church of the Resurrection, 137<sup>th</sup> and Nall Ave.** Councilmember Bussing left his Council seat to avoid the appearance of a conflict of interest. Councilmember Gill moved to adopt the resolution, seconded by Peppes. Councilmember Bold mentioned concerns about stormwater on 135<sup>th</sup> St., a primary concern for many. He wanted to be sure it would be handled properly on all future 135<sup>th</sup> St. proposals. Councilmember Taylor felt it was appropriate to require both detention and retention to safeguard storm drainage systems,

especially in extreme weather conditions. Planning Director McKay said that if that was to be a Council directive, then the Council probably needed to consider a new policy because what was designed was to APWA standards. Mr. Taylor felt the Council should address new/additional guidelines for all developments with both retention and detention. The motion to adopt the resolution carried unanimously, except for Mr. Bussing who did not participate in the discussion.

Mr. Bussing returned to his Council seat.

1196 **Resolution relating to a request for approval of a preliminary site plan for Leawood Commons, Lot 9, located at approximately 113<sup>th</sup> and Ash.** Councilmember Gill moved to continue consideration of the request to the August 3, 1998, Council meeting since the applicant was not at the meeting and unavailable for a presentation and to answer questions. Motion seconded by Peppes and carried unanimously.

1297 **MAYOR'S REPORT.** The Mayor reported that the balance of the American Revolution Tricentennial Fund Certificate of Deposit was \$5,277.29 as of July 9, 1998.

The Leawood Garden Club had contributed \$222 to the City towards the cost of the vase/planters at the front of City Hall.

#### **OLD BUSINESS**

1422 **Public Works Committee report on Royse subdivision's request for financial assistance in reconstructing their entrance monument at the intersection of 127<sup>th</sup> and State Line Rd.** The widening and raising of State Line Rd. had caused the entrance monument to be set below the road grade, thus hiding it. Councilmember Gill moved to accept the recommendation of the Committee to pay Royse Homes Association \$14,205.00, with the City receiving a release from the Association prior to payment ending the City's obligation as far as any other future request for funds. Motion seconded by Bussing. Councilmember Bold talked about revisiting the City's landscape policy to insure that for future situations there was a certain period of time in which an association or individual had to request funds. Mr. Bussing felt that as long as there was clear communication between the City and homeowners (there was not in the case of Royse), the landscape policy was sufficient in that regard. Mr. Gill's motion carried unanimously.

#### **NEW BUSINESS**

1567 **Approval of Appropriation Ordinance No. 839.** On motion of Peppes, seconded by Dunn, Council unanimously approved the ordinance on roll call vote.

1677

**Authorize interlocal agreement with Johnson County Unified Wastewater Districts for the transfer of the Leawood Sewer System to the County effective January 1, 1999.**

Councilmember Bussing moved to approve the agreement, seconded by Bold.

Councilmember Gill referred to section 5 starting on page 9 regarding hold harmless, indemnification and defenses. The agreement stated that the City would hold the County harmless for acts of fraud committed by the City or its contractors. He wondered why the City would agree to indemnify for that act; if one of its contractors committed a fraudulent act, why should the City agree to be financially responsible for it. Public Works Director Johnson said that originally, the County wanted the City to indemnify them in perpetuity, but they finally agreed to limit the indemnification to 2 years after completion of the City's work on the system. City Attorney Wetzler said that in contracts with the County, the City gave more than it received; the County set the guidelines for the agreement and were fairly rigid, insisting on the language in the contract. Mr. Bussing's motion carried unanimously.

1870

**Ordinance No. 1742 calling an election on the question as to whether the City should issue general obligation bonds for park improvements (Leawood City Park, Nall Park, South Park).** Parks & Recreation Director Whitaker explained that the 1999 construction cost for all parks was \$8,494,573.00. The figure to be used in the ordinance was \$12,313,542.00. The Mayor and Councilmember Taylor only remembered the \$8 million figure in past discussions. City Administrator Garofano explained that the \$12 million figure included design costs, financing costs, construction inflation since the project was phased for 3 years, AND construction costs. Staff was trying to size a bond issue to account for construction that would take place through 2004. The "not to exceed" \$12 million figure was merely enough authorization; the City wouldn't necessarily spend all of it. The Mayor felt that the \$12 million was going to be very difficult to "sell" to residents.

Mr. Whitaker said that if the City delayed the bond issue another year, costs would probably have to be reevaluated and some of the development or design would be lost. And there was already a lot of concern about safety and parking at the Leawood City Park. In response to the Mayor's question about splitting up the improvements into phases, Mr. Whitaker said there would have to be a bond election for each phase. The Parks & Recreation Advisory Board was concerned that if the first phase passed but the second failed, what would the City do with half a park or an uncompleted park. Councilmember Gill talked about "re-time lining" the improvements, doing the City Park first since it had the most immediate need and the most immediate construction time line, and doing the other 2 parks at later dates. Mr. Gill felt that if Council did a good job with the public's money, they would come back and support other improvements. Mr. Whitaker said that the Advisory Board was concerned about doing improvements for the southern part of the City; they were sensitive to a north-south issue.

2588

Councilmember Bold felt that the residents would support the entire package; parks had made the City very attractive. He wondered if some additional descriptive language could be added to the ordinance telling residents what they would be getting for their money.

Councilmember Dunn was not in favor of splitting up the improvements, fearful of getting a north-south split in a vote. Council needed support from the City overall. He did want to know the financial impact of the \$12 million on residents, like tax impact. City Administrator Garofano said that that information would be forthcoming; the Parks & Recreation Advisory Board had talked about developing a strategy as to how they would issue all the public information, costs per household, etc.

3162

Councilmember Peppes felt it would be helpful for Mr. Whitaker to provide some preliminary breakdowns and strategy guidelines by the August 3<sup>rd</sup> Council meeting. He moved to pass the ordinance, seconded by Dunn. Mr. Taylor was interested in a projection of the cost of increasing the budget to maintain the \$12 million investment. He would like that information included in any informational packets. Mr. Bussing had 3 concerns – 1) increased debt load, 2) he had had no time to understand the issues, 3) wanted Mr. Whitaker to present some details requested in addition to a strategy plan to support the bond issue at the August 3<sup>rd</sup> Council meeting with the opportunity for Council to readdress the vote on the issue on August 3<sup>rd</sup> if deemed necessary.

Dr. Peppes' motion to pass the ordinance carried on roll call vote; Taylor abstained (he felt the full Council should have heard the matter and had an opportunity to vote); all others (5) in favor. Dr. Peppes moved that the dollar figure to be placed in the ordinance be not to exceed \$12,500,000.00, seconded by Bussing. Motion carried on roll call vote; Taylor abstained (for the same reason); all others (5) in favor.

**Ordinance extending Southwestern Bell Telephone franchise – 2<sup>nd</sup> reading.**

3763

**Authorize personal services agreement with Evergreen Alliance Golf Limited (EAGL) for the management of IronHorse Golf Club.** Councilmember Peppes moved to approve the agreement, seconded by Bussing. Parks & Recreation Director Whitaker referred to section 12.b. Indemnification by EAGL which hadn't been clarified. EAGL requested that wording be added at the end, "not to exceed insurance proceeds plus \$300,000." Councilmember Gill asked if EAGL would entertain \$2.3 million per occurrence in lieu of that wording. Mr. Whitaker didn't know. Mr. Bussing withdrew his second to the motion. Councilmember Dunn agreed with Mr. Gill, that there should be dollar limits rather than insurance limits. Dr. Peppes moved to approve the agreement with inclusion of the wording "not to exceed \$2.3 million" or words to that effect approved by the City Attorney, seconded by Gill. Mr. Bussing said that the contract came to the Council incomplete and he was concerned about that; last minute changes made him very uncomfortable. The contract should have been finalized by the Golf Course Committee and forwarded to the Council with their recommendations. Motion to approve carried unanimously. Mr. Whitaker said he didn't know if EAGL would approve of the new language.

4013

**Authorize payment and indemnification and hold harmless agreement relating to the IronHorse golf course clubhouse contractor, Eshenroder Construction, Inc.** The contractor had failed to finish the project, ending up filing for bankruptcy. The City never closed out the contract and took some of the money to finish the airconditioning itself. There was money left in the fund and staff put it in the golf course fund and spent it on other expenses. Eshenroder's bonding company was now, several months later, requesting the leftover funds (balance remaining on the contract) in the amount of \$7,426.50. City Attorney Wetzler said there was never any formal notice to the bonding company that the contractor could not complete the work. He said that the contractor would have been entitled to the funds if they had completed the contract.

Councilmember Taylor moved to approve the payment and authorize the agreement, seconded by Peppes. Councilmember Dunn said that the bonding company would not be released from any of their obligations to the City under the payment of performance aspects of the bond. The bonding company, which had performed by obviously paying off a number of payment bond claims, was asking for any proceeds remaining from the contract. The bonding company was still obligated to pay payment claims that the City might receive. ~~In response to Councilmember Gill, Mr. Dunn said that the contractor, not the bonding company, would have to give the City a release of its (the City's) contractual obligations as part of the payment, but he was bankrupt.~~ *mb*

Motion carried; Gill abstained (he would feel more comfortable knowing more about the transaction), all others in favor.

**Resolution No. 1412, attached as part of the record, ordering a public hearing on proposed assessments for the improvement of Old Kenneth Rd. between K-150 and Kenneth Parkway, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments.** Adopted unanimously on motion of Taylor, seconded by Bold.

**Resolution No. 1413, attached as part of the record, ordering a public hearing on proposed assessments for Town Center Improvements, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments.** Adopted unanimously on motion of Dunn, seconded by Taylor.

4460

**Schedule executive session.** On motion of Dunn, seconded by Taylor, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 15 minutes to discuss a personnel/litigation matter.

4488

**OTHER BUSINESS.** Discussion of City Administrator's July 16<sup>th</sup> memo regarding the design of Fire Station No. 3. Councilmember Taylor referred to Mr. Garofano's statement that the architect owned the site development plans and they were on a CAD disc, property of the architect. Resident Robert McQuain had requested a copy of the design work completed to date by the architect and a copy of the CAD disc. Mr. Taylor said that copies of the plans

could be secured by the City and distributed as long as they weren't used in a fashion that would be detrimental to architectural registration requirements. He urged that Mr. McQuain be given a copy as he had requested. Mr. Garofano said that the matter was a legal issue as to what could be properly disclosed under the Kansas Open Records Act, especially since the City had been threatened with litigation. City Attorney Wetzler said that the City didn't have a contractual right to the CAD disc, so the City had no public record in that regard to give to Mr. McQuain. He was still reviewing the matter of access to the original site development plans (drawings) or copies thereof. Mr. Wetzler said that drawings and model of the proposed fire station presented at a public hearing were public records. Councilmember Gill favored the City granting the architect permission to give a copy of the disc to Mr. McQuain for a fee, and in this particular case, would even endorse a request by the City to have the architect do that, but let the architect and Mr. McQuain work it out between themselves. Of course, it would be the architect's decision as to whether or not they granted Mr. McQuain's request.

4870 10:00 P.M. Council convened in executive session and returned to regular session at 10:10 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



MINUTES  
PUBLIC HEARING

Tape No. 430

# 50 Minutes of a hearing for public comment on the proposed 1999 Budget, held Monday, August 3, 1998, at 7:00 P.M., in the Council Chamber, 4800 Town Center Drive, Leawood, Kansas.

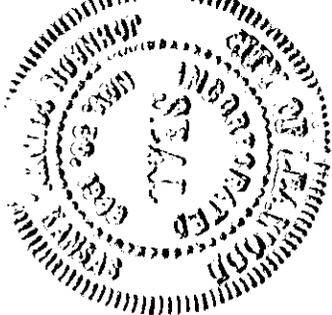
Councilmembers present: Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, and Louis Rasmussen. Adam Bold, Mike Gill, and James E. Taylor, Sr., were absent. Staff present: Richard J. Garofano, City Administrator; Sid Mitchell, Police Chief; Robert McKay, Director of Planning and Development; Kathy Rogers, Finance Director; Operations Chief Randy Hill, Fire Department; and Martha Heizer, City Clerk.

Mayor Dunn opened the hearing at 7:10 P.M.

Mary Tearney, 3308 W. 127th St., representing the Leawood Arts Council, explained the reason that not all of the Arts Council budget was spent last year. She talked about the Arts Council's inability to put on a performance on the stage behind the City Hall. By the time funds had been received and the Arts Council had investigated the staging and location, and had spent time talking with residents in the adjacent Edgewood subdivision to assure them that their privacy would not be disturbed, they discovered they didn't really have time to produce a quality program. They did plan to produce a musical in the future, but there were a lot of details to work out.

192 The hearing was closed at 7:15 P.M.

  
Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 430

194 The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, August 3, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Adam Bold was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Robert McKay, Director of Planning and Development; Operations Chief Randy Hill, Fire Department; Kathy Rogers, Finance Director; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Gill, after the removal of 1) a resolution relating to a revised preliminary site plan for Canyon Café at 117<sup>th</sup> and Roe Ave. and 2) a resolution relating to a request for a special use permit, preliminary site plan and preliminary plat approval, for Town Village Leawood on 115<sup>th</sup> St. between Roe Ave. and Tomahawk Creek Parkway; and the addition of 1) the scheduling of 2 work sessions, 2) an update on Golf Course Committee issues with developer Mark Simpson, and 3) an update on stormwater issues in the southern part of the City.

265 **CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, talked about a "tax windfall" in the 1999 Budget not being returned to residents, but rather being used in the budget for City "emergencies."

Cindy Irely, 9835 Sagamore Rd., addressed the street construction on her street. She said some verbal commitments had been made by City staff; they were not carrying them out. She felt that the City had misrepresented the responsibility they would take. She said that the project engineer would not meet with her. The Mayor said the matter would be discussed further at the end of the meeting (see tape meter #5683). Councilmember Rasmussen suggested that Mrs. Irely immediately write down what was said to her and take advantage of the City's action line.

648

**CONSENT AGENDA.** Four items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Clawson:

1. Pay Request No. 7 (FINAL) by Teague Electric Construction for \$2,000 for Town Center Plaza traffic signal installations;
2. Change Order No. 2 to the contract with Seal-O-Matic Paving for 1998 street improvements in the amount of \$6,620.91 for modifications made during the overlay of Roe Avenue from 112<sup>th</sup> Street to Town Center Drive;
3. Purchase of a commercial mower (a Grasshopper 928D) for the Parks Department from the low bidder Blue Valley Tractor, Inc., in the amount of \$11,047.15.

Minutes of the July 20, 1998, Council meeting. Councilmember Dunn referred to page 4991, tape meter #4013, regarding authorization of a payment relating to the IronHorse golf course clubhouse contractor. He asked the City Clerk to strike the last sentence of the second paragraph because it didn't make sense. On motion of Dunn, seconded by Rasmussen, Council unanimously approved the minutes with the correction.

Committee reports - Parks & Recreation Advisory Board report. Dick Fuller, Chairman of the Parks & Recreation Advisory Board, talked about the upcoming bond referendum on the November ballot for park improvements. Mr. Fuller said that the Board was very supportive of the referendum, and would be formulating a strategy to sell the issue to Leawood residents. He said the Board preferred to go forward with the 3 parks involved in one bond issue. On a master plan basis (with basic, general ideas as to how the parks were anticipated to be developed), he felt comfortable that the bond issue would be well received.

Councilmember Taylor asked how the Board would address the City's \$12.5 million park bond issue versus the County's \$6 million park issue also on the ballot. Mr. Fuller said the Board was in the process of putting together some committees and focus groups to answer questions and be available to various civic and other groups. The Board felt that the City's \$12.5 million project was basically a project that would take care of the needs of the City and residents for the next 20-25 years. The County's \$6 million issue was for the acquisition of land only for future development at some point in time.

Councilmember Bussing said that from his perspective, he would urge the Board in their presentations to the public to be cautious with regard to 1) specific concepts or details about equipment and facilities – the plan was only a master plan, and 2) to the timing of the development of the parks - the development of the land and expenditure of \$12.5 million needed to be carefully planned with regard to other debt requirements of the City – be cautious as to making assurances on how fast the parks would be developed.

On motion of Bussing and duly seconded, Council unanimously approved the report.

Agreement with Blue Valley Unified School District No. 229 relating to the assignment of Leawood police officers as School Resource Officers.

Councilmember Rasmussen expressed concern about the relationship of the parties involved. He wanted it to be very clear that no Leawood police officer would ever find himself in a position of having to worry about an irate parent taking action against him personally as a result of the agreement, and if that happened, the City would back the officer up. He was concerned about police officers having the status of "independent contractors" in the paragraph entitled Relation of Parties. To him, an independent contractor was someone who was fully responsible for making decisions. The agreement then went on to state that the police officers were to be considered employees of the City.

He was also concerned that in the same paragraph assigned police officers would be subject to current procedures in effect for Overland Park police officers.

Chief Mitchell said that "Overland Park" was a typographical error and would be changed to "Leawood." He said that assignment as an SRO was a duty assignment, and any time there was a duty assignment, the City would protect the officer under the City's insurance.

Councilmember Gill suggested that the first sentence under Relation of Parties should read, "The City shall have the status of an independent contractor for the purposes of this Agreement." (omitting the words "assigned police officers")

On motion of Clawson, seconded by Bussing, Council unanimously approved the agreement with Mr. Gill's suggested change and the typo "Overland Park" changed to "Leawood."

Additional language to be added to the 2<sup>nd</sup> Plat of the Church of the Resurrection. Planning Director McKay explained that the additional language was to assure Harlan Laner, owner of the property being purchased by the Church, that he would have access to 137<sup>th</sup> St. for his remaining property that abutted 137<sup>th</sup> St. on the north. On motion of Bussing, seconded by Gill, Council unanimously authorized the additional language be added to the plat prior to recording the plat.

### PLAN COMMISSION

1531

**Resolution No. 1414, attached as part of the record, approving the preliminary site plan for Leawood Commons, Lot 9, 113<sup>th</sup> & Ash.** Architect Scott Slaggie presented the plans. Councilmember Taylor urged that stipulation #3 indicate that the condensers be screened, not with vegetation, but with some type of material that would be compatible with the exterior materials of the building. Planning Director McKay felt that the planned parking spaces in the area (with shared parking) would be adequate.

1996

Councilmember Gill said that stipulation #4 indicated that a letter had to be provided by the Dialysis Center agreeing to the shared use of the trash dumpster prior to final plan application. He felt that should be in the form of a recordable easement which was permanent and couldn't be rescinded or revoked to run with the land in case the Dialysis Center changed ownership.

Mr. Taylor moved to adopt the resolution with his change to stipulation #3 and Mr. Gill's change to stipulation #4, seconded by Rasmussen. Motion carried unanimously.

**OLD BUSINESS**

2337

**Public hearing on the extension of Southwestern Bell Telephone franchise.** There were no public comments. On motion of Rasmussen, seconded by Taylor, Council voted unanimously to close the public hearing.

**Authorize Extension Agreement with Southwestern Bell Telephone Company.** On motion of Rasmussen, seconded by Gill, Council unanimously approved the agreement.

**Ordinance No. 1743 extending Southwestern Bell Telephone franchise – 3<sup>rd</sup> and final reading.** Councilmember Clawson moved to pass the ordinance, seconded by Peppes. In response to Councilmember Rasmussen, City Attorney Wetzler said that it was the City's intention to use the City's standard franchise agreement to the greatest extent possible. Southwestern Bell would be paying the City a franchise fee of 5% of their gross revenues the last couple of months in 1998 (an increase from 2%). Mr. Wetzler said he would talk to Mr. Rasmussen about Mr. Rasmussen's concern of going back to the 2 telecommunications companies granted franchises earlier by the City and asking them to also pay 5%.

The ordinance was passed unanimously on roll call vote.

**NEW BUSINESS**

2753

**Approval of Appropriation Ordinance No. 840.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

2768

**Authorize engineering contract with Phelps Engineering for the design of 2 pedestrian bridges for the City park trail system – 1 located north of the 119<sup>th</sup> St. bridge and the other located south of the College Blvd. bridge, both on Tomahawk Creek.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the contract; \$11,545.00 for the 119<sup>th</sup> St. bridge, and \$15,955.00 for the College Blvd. bridge.

2783

**Authorize agreement with Genesis Surveying, Inc., for surveying services for the 1999 Street Improvement Program (locating right-of-way and property lines) in the amount of \$8,200.00.** On motion of Rasmussen, seconded by Dunn, Council unanimously approved the agreement.

2909

**Schedule executive session.** On motion of Taylor, seconded by Dunn, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss 2 matters of litigation and a personnel matter.

2933

**Schedule September/October City Council meetings – due to a Leawood delegation's trip to Sister City I-Lan, Taiwan first of October.** On motion of Dunn, seconded by Rasmussen, Council unanimously approved the following schedule:

Tuesday, September 8<sup>th</sup>, Council meeting, 7:30 p.m.

Monday, September 14<sup>th</sup>, work session with Arts Council, 5:30 p.m.

Monday, September 21<sup>st</sup>, Council meeting, 7:30 p.m.

Monday, September 28<sup>th</sup>, Council meeting, 7:30 p.m.

Thursday, October 22<sup>nd</sup>, Council meeting, 7:30 p.m.

3311

**OTHER BUSINESS. Schedule 2 work sessions.** Developer Mark Simpson had requested that the Council hold a work session at 6:30 P.M. on August 17<sup>th</sup> to review the Saddle Ridge development at 105<sup>th</sup> and Mission Rd., primarily the residential and golf course portions. The Mayor said that the residential portion of the project (which included a golf course and clubhouse) was denied at the last Plan Commission meeting. The Saddle Ridge project was scheduled to be considered by the Council at their regular August 17<sup>th</sup> meeting at 7:30 P.M. The Mayor said she believed that Mr. Simpson felt he could best answer questions in a more informal setting prior to the regular Council meeting. Several Councilmembers felt that holding such a work session would set a bad precedent. On motion of Bussing, seconded by Clawson, Council unanimously denied the request. The Council agreed to start the August 17<sup>th</sup> Council meeting at 6:30 P.M. due to a very lengthy agenda.

Neil Douthat and Whitney Kerr had requested that the Council hold a work session on August 24<sup>th</sup> at 7:00 P.M. to review the hotel project at Town Center Plaza, one day before the Plan Commission would hear the Council's remand. Planning Director McKay said that there had been some changes in their submittal, and if anything came out of a meeting with the Council, it could be forwarded to the Plan Commission the next day. Councilmember Rasmussen felt that the work session was bad practice, that the City had a public procedure, well defined legally, for an applicant to be heard and for the public to be heard pro and con. The work session would be an "in run" by an applicant who would have extra time with a city council in a forum that was never designed for that purpose. He thought work sessions were for discussions of City problems, not zoning applications. Councilmember Gill felt that if the work session was held, he not only wanted to talk with the developer, but also have an opportunity to talk with residents who had concerns about the project, to have an open discussion. Councilmember Dunn felt the work session would be good because it would give him the proper time in which to hear other Councilmembers' opinions and concerns regarding the various aspects of the project so he could think about the project before a Council meeting itself, not have to absorb information at midnight of a Council meeting. He didn't intend to give the developer a new forum in which to lobby the Council on the project. He said he agreed with the denial of Mr. Simpson's request for a work session because it was clearly designed to merely lobby the Council. Mr. McKay was concerned that having open discussion with the public involved at a work session would be pulling the rug out from under the Plan Commission; it was the Plan Commission that would have a public hearing. He said that the requested work session was only a format for the developer to explain changes that the Council sent back to the Plan Commission. Councilmember Bussing was interested in a work session for Council discussion only, not interested in public comment nor in another sales pitch.

Councilmember Taylor moved to deny the request, but with support for a work session of the Council only with no outside participation, seconded by Rasmussen. Mr. Dunn said it appeared at this point that the Council would not have a packet of material to consider, so it seemed useless to have a work session. Mr. Taylor withdrew the second part of his motion. Councilmember Peppes said that if the Council was going to give the developer some

direction, he would rather they do it at a work session instead of trying to micromanage the project with long discussion at a Council meeting. He said that no matter how it looked, the issue had to be resolved. Mr. Taylor's motion to deny failed; Bussing, Rasmussen, Taylor in favor; Peppes, Gill, Dunn opposed; Clawson abstained (an abstention treated as a negative vote).

Councilmember Gill moved to hold a work session and allow the public to comment and allow a presentation by the developer, seconded by Dunn. City Attorney Wetzler said that the Council would have control over the input at the session since they would be trying to gather additional information of which they might not be aware. He also said that there would be no basis for someone to say that the developer was trying to lobby the Council, since comments and presentation would be in a public forum. Mr. Bussing said that if in fact the purpose of the session was for the developer to have a clear understanding of why the Council remanded the hotel project to the Plan Commission, he suggested that there not be a presentation by the developer, certainly not one that the Plan Commission hadn't seen, and that the Council tell the developer why they had remanded the matter, and even though he agreed that citizen input was critical and essential, he wasn't certain that the Council would hear anything new from the public; citizens would have an opportunity to speak at a Council meeting. Mr. Bussing wasn't interested in trying to defend his vote to remand. Mr. McKay reiterated that the hotel plan had been modified; he felt the developer needed to be given a chance to explain the changes. Mr. McKay also felt that there was information on traffic that needed to be addressed. Councilmember Dunn wanted the developer's presentation to be limited to an explanation of what changes he had made to try to address the Council's reasons for remand.

5199 Mr. Dunn called for the question, seconded by Peppes. Motion carried unanimously. Mr. Gill's motion to hold the work session carried; Taylor, Rasmussen opposed; Bussing, Dunn, Peppes, Gill in favor; Clawson abstained.

5315 Update on the Golf Course Committee's outstanding, unresolved issues with developer Mark Simpson. Mr. Rasmussen said that stormwater at the Reserve at Iron Horse was originally supposed to go into a creek, but instead, because of Mr. Simpson's actions and the acquiescence of the Public Works Department, the stormwater flowed into a lake which the City used for pumping. The City had asked for a construction easement to get down to the lake, but was not sure it had ever been received, so staff was looking into the matter. Also, the fencing was supposed to be continuous and on the property line, but apparently a gate had been put in and fencing moved back away from the property line, so that issue was being reviewed. At the Village of Iron Horse, there was supposed to have been a donation (hole sponsorship) to the golf course of \$7500, but Mr. Simpson claimed it was \$5000. There was a silting problem on the golf course from Mr. Simpson's developments; there were outstanding cleanup bills to be paid. There was silting at hole #11; landscaping was supposed to have been done. A final written opinion was forthcoming from Planning Director McKay in a few weeks. Mr. Rasmussen also mentioned trying to nail down a land transfer to the City for a cart path easement, bank stabilization that needed to be done, and a continuous fence that was supposed to be bolted.

5635

Update on flooding in south Leawood and Public Works response. Councilmember Gill thanked Public Works Director Johnson and his staff for their outstanding work meeting with residents, looking at the problem, and providing valuable information that would help residents deal with problems in the future. The City was being proactive and responsible to residents in their time of need.

5683

Discussion of street construction in the area of 98<sup>th</sup> and Sagamore (from Citizen Comments at the beginning of the meeting). Residents had asked how they could get the remaining portions of their driveways reconstructed. Public Works staff told them that since most of their driveways would be replaced as part of the construction contract, the contractor might do the remaining portions at the same unit price as the City contract. That usually happened. After receiving the contract, Seal-O-Matic Paving asked its sub-contractor Freeman Concrete to look at each driveway to verify that the same price could be extended; Freeman determined that the additional work couldn't be done at the contract bid price. After receiving complaints from residents regarding Freeman's cost, the City tried to add the driveways as a change order to get the same price, and have residents reimburse the City for the cost of adding the additional driveway work to the contract. After removing one driveway, Seal-O-Matic informed the City that the cost of the additional work would be higher than the original unit price bid and that the work was beyond the original scope of plans and outside existing easements. The decision to do a change order was cancelled. Public Works informed residents that they would be responsible for the additional driveway work. Most residents were upset that it would cost them more than they had anticipated. Typically, residents were told that they would be fully responsible for negotiating a price with any contractor of their choice for driveway removal and replacement beyond the construction limits. In this instance, staff had tried to work with residents to keep the cost down, but couldn't accomplish it.

Tony Noland, 9832 Sagamore Rd., read a July 7<sup>th</sup> letter he had received from Public Works which stated that he would pay for the remaining portion of his driveway at the same price the City was paying under the construction contract. Mr. Noland felt that the letter represented a commitment on behalf of the City regarding the price. Public Works Director Johnson said the letter was drafted as staff was working toward the change order. Another letter was sent out after the change order was cancelled apologizing for the inconvenience, explaining that the City wasn't able to do a change order for the same unit price, didn't have the money budgeted for the additional costs. Even if the City didn't have a contractual right to force the contractor to do the work at the same unit price, it was Mr. Noland's request that the City do the additional work at the unit price even though it would cost the City additional money. Councilmember Clawson said that begged a legal issue because it wasn't legal for the City to spend public funds on private property.

7031

END OF TAPE

Tape No. 431

Councilmember Gill said it seemed that Seal-O-Matic had put Public Works in the middle of a dispute by telling Mr. Johnson one thing, but then pulling the rug out from under him when it came down to performing the work. He questioned whether or not Seal-O-Matic had some sort of legal obligation to the City. He felt the City needed to remind the contractor of the size of their relationship with the City, remind them of the importance of Leewood residents, and remind them of the letters the City had written based upon what they had told City staff, and see if they couldn't bring some pressure on their sub-contractor who apparently had taken advantage of demand and supply to mess with the prices. They should fix the wrong they had created.

Peter Jeffreys, 9829 Sagamore Rd., said he had been given a price of approximately \$5.25/sq. ft. by the sub-contractor Freeman on June 18<sup>th</sup>, before the City's letter of July 7<sup>th</sup> indicating a unit price of \$3.11, to do the remaining portion of his driveway. The City's July 7<sup>th</sup> letter upset him because he already knew the City couldn't get the unit price of \$3.11.

Councilmember Dunn said that if Seal-O-Matic told Mr. Johnson in July that they thought they could do the work at the unit price, and yet their sub-contractor had already told residents that the cost would be \$5.25, then Seal-O-Matic didn't do their job. Mr. Dunn agreed with what Mr. Gill had said earlier about Seal-O-Matic's obligation to the City.

Councilmember Peppes moved that Public Works Director Johnson "play hardball" with Seal-O-Matic in the morning, voicing Council's opinions and residents' suggestions, and convey Seal-O-Matic's decision to residents as soon as possible. Motion seconded by Taylor and carried unanimously.

638 10:55 P.M. Dr. Peppes moved to extend the meeting to 11:30 P.M., seconded by Dunn and carried unanimously.

5-minute recess.

11:00 P.M. Council convened in executive session.

670 11:30 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk  


**Minutes Summary**

Audio Tape No. 432

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 6:40 p.m., Monday, August 17, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, \*Gregory J. Peppes (arrived after approval of the agenda), Mike Gill, Louis Rasmussen, and \*\*James E. Taylor, Sr. (arrived 6:45 p.m.).

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Sid Mitchell, Chief of Police; David Ley, Public Works Department; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Dunn, seconded by Clawson.

\* Councilmember Peppes arrived.

84 **CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, asked about savings to residents, any "windfall" to be returned to them, from the transfer of the Leawood Sewer System to the County on January 1, 1999. The Mayor explained that there would be no excess funds that would go into the City's general fund. The sewer system was operated by user fees. Savings to residents would be by way of lower user fees in 1999.

183 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Gill:

\*\* 6:45 p.m. Councilmember Taylor arrived.

1. Minutes of the August 3, 1998, public hearing on the proposed 1999 Budget;
2. Minutes of the August 3, 1998, Council meeting;
3. Historic Commission report (minutes) on their June 16, 1998, meeting;
4. Historic Commission report (minutes) on their July 14, 1998, meeting;
5. Arts Council report (minutes) on their July 21, 1998, meeting;
6. Departmental reports;
7. Resolution No. 1415, attached as part of the record, consenting to the enlargement of Johnson County Consolidated Main Sewer District to serve Camden Woods, 143<sup>rd</sup> & Kenneth Rd.;
8. Application (renewal) for retail liquor occupation license – Faust's Liquor Store, 11841 Roe Ave.;

9. Change Order No. 8 to the contract with Wiedenmann & Godfrey for the sanitary sewer rehabilitation project, in the amount of \$34,249.00 – emergency repair (relocation) of sanitary sewer line exposed in the creek near 9805 Cherokee Lane during recent rain storms;
10. Approve negotiations for the purchase/replacement of an ambulance in 1999 for approximately \$75,000 less the trade-in value of an old ambulance;
11. Change Order No. 3 to the contract for the 1998 Street Improvement Program in the amount of \$46,628.00 to add an asphalt trail overlay (Tomahawk Creek Trail).

Resolution No. 1416, attached as part of the record, approving the final plat of Village at Ironhorse, 151<sup>st</sup> & Linden. Developer Mark Simpson explained why the main street from 151<sup>st</sup> St. would not be lined up with the Whitehorse Estates entrance on the north. Mrs. Clawson said she would not vote on the resolution due to the appearance of a conflict of interest. Councilmember Rasmussen said that unresolved issues between the Golf Course Committee and Mr. Simpson on which Mr. Rasmussen had reported earlier had been resolved. Councilmember Taylor thought that concrete tile or slate roofs were to be used in the subdivision rather than wood shingles or metal roofing. Mr. Simpson explained that concrete tile roofs were no longer economically feasible with the reduction in the number of units from 56 to 51. Mr. Taylor felt that the integrity of the project was sold on the basis of the concrete tile feature, and he wanted to require the concrete tile roofs as a condition of approval. Mr. Simpson said that the preliminary plat had been approved with the use of wood shake roofs on 51 units, consistent with City ordinances. Councilmember Bold didn't believe it was within the Council's jurisdiction to require Mr. Simpson to use concrete tile. In response to Mr. Taylor, City Attorney Wetzler said the Council didn't have the authority to impose the concrete tile roof condition over the Plan Commission's preliminary approval. Planning Director McKay reminded the Council that a final plat, not a final plan, was before them for consideration.

Councilmember Bussing moved to adopt the resolution, seconded by Rasmussen. Motion carried; all in favor except for Mr. Taylor who had left his Council seat.

Mr. Taylor returned to his Council seat.

**Approval of Appropriation Ordinance No. 841.** On motion of Bold, seconded by Bussing, Council unanimously approved the ordinance on roll call vote.

643

**7:00 P.M. Public hearing on proposed assessments to pay the cost of Town Center Plaza improvements.** Tom Shannon of Dean and Deluca (Lot 1, Tract 1 of Town Center Plaza) said it appeared to him after talking to the Finance Director that Tract 3 (Lots 11-A and 11-B, Galyan's and AMC Theaters) assessment was very small compared to that of Tract 1. He asked if there was going to be any potential reassessment of the values, or were the assessments set. Former Finance Director Harry Malnicof said that the petition given to the City for the improvement district was signed by 100% of the property owners, and the allocation percentages for specific improvements were requested by the petitioners, so

assessments were so assigned whether tracts were developed or undeveloped at the time. Finance Director Rogers said that the City had received a letter from the Hereford House requesting additional information and/or disagreeing with computations. She said the computations were in accordance with a resolution adopted by the Governing Body. There was a question about the assessments for the traffic signal on 119<sup>th</sup> St. across from Hawthorne Shopping Center in Overland Park. Some pad sites had been assessed for the signal. Mr. Malnicof felt it was the intent that the assessment for the signal be placed against the shopping center itself or the developer, not against the pad sites. The hearing was closed at 7:10 p.m.

**Public hearing on proposed assessments to pay the cost of construction of Old Kenneth Road between K-150 and Kenneth Parkway.** The hearing was opened at 7:10 p.m. There was no public comment or Council comments/questions. The hearing was closed immediately.

#### PLAN COMMISSION

997

**Resolution No. 1417, attached as part of the record, approving a revised preliminary site plan for Canyon Café at approximately the northeast corner of 117<sup>th</sup> and Roe Ave.** Councilmember Rasmussen moved to adopt the resolution, seconded by Gill. Plan Commission stipulation of approval #8 indicated that the retaining wall along a creek on the north side of the property would be terraced to provide planting areas. Councilmember Clawson wanted the applicant to pay particular attention to what the wall would look like because of discussions over the past several years about another wall in the City along Roe at approximately 123<sup>rd</sup> St.. There should be appropriate landscaping. Mitch Hoefler of Hoefler Wysocki Architects answered questions. Planning Director McKay said that the 100-year flood elevation and the wall would be reviewed at final plan submittal. Motion to adopt the resolution carried unanimously.

1236

**Resolution No. 1418, attached as part of the record, approving a request for a special use permit, and approving the preliminary site plan and preliminary plat, for Town Village Leawood (an independent living facility) on 115<sup>th</sup> St. between Roe Ave. and Tomahawk Creek Parkway.** Doug Patterson, attorney for the applicant Cypress Realty, real estate developer Mike Novelli working with Cypress on the project, and David Lotz of Continental Consulting Engineers, Inc., gave presentations.

It was noted that Plan Commission stipulation of approval #14 relating to public art needed to be changed in the resolution and in the special use permit to add the approval of the Arts Council in addition to that of the Plan Commission.

Concerns were expressed about the density of the project. Mr. Gill felt there was a lot of building being crammed into a space that were the use as zoned, the City wouldn't allow, and were it another form of living unit, the City wouldn't allow. Too massive relative to the size of the tract, not aesthetically pleasing. Planning Director McKay said that the City would be dealing with higher density when dealing with senior housing – assisted living, independent living, nursing homes – than it would expect with an apartment complex because of layout and facilities provided within, with not as much amenity on the outside. Mr. Gill wanted to see some grass and trees. Mr. Novelli said he was sensitive to Mr. Gill's point and had tried to address the issue in the design effort.

Mr. Novelli said the developer would use land (green space up against the building line) on the north side of the project for additional parking (land banking) if deemed necessary by the City.

Councilmember Rasmussen moved to adopt the resolution, seconded by Clawson. Mr. Bussing moved to amend the motion in order to add reference to the Arts Council in stipulation #14 and to add a new stipulation #17 that addressed land banking for parking, seconded by Clawson. Motion to amend carried; all in favor except for Councilmember Taylor who abstained. The main motion as amended carried; all in favor except for Mr. Taylor who abstained to avoid the appearance of a conflict of interest.

2696 **Resolution relating to a request for rezoning from AG to RP-4, preliminary site plan and preliminary plat approval, for Saddle Ridge-Residential and Golf Course, 105<sup>th</sup> and Mission Rd.**

**AND**

**Ordinance rezoning from AG to RP-4.**

**AND**

**Resolution relating to a request for a special use permit, preliminary site plan and preliminary plat approval, for Saddle Ridge-Clubhouse, 105<sup>th</sup> and Mission Rd.**

**AND**

**Request for a special use permit for Saddle Ridge Assisted Living, 105<sup>th</sup> and Mission**

**AND**

**Request by Southwestern Bell for a special use permit for the construction of (Saddle & Sirloin Club) cellular tower, south side of I-435 at approximately Mission Rd.**

The Mayor said that a valid protest petition had been received on the residential portion. Six favorable votes would be required to override the Plan Commission's recommendation for denial.

Councilmember Taylor felt the Council should consider the issues as one overall plan with 4 different uses, as one total package, despite the special use permit process required for 3 of them. He didn't like segmenting the parcels. Planning Director McKay felt that the Plan Commission had dealt with Saddle Ridge as a package during their discussions, but voting had to be done on each special use provision, and only the assisted living and cellular tower were recommended for approval.

2974 John Petersen appeared as the applicant on behalf of the developers Saddle Ridge Land Development Co. (Mark Simpson and Saul Ellis) and Southwestern Bell Wireless. He stated for the record that separate applications had not been submitted in an attempt to inhibit the ability to file a protest petition on the entire project. He knew of many examples in which there were rezoning applications and special use permit applications as part of a coordinated development plan, and they had all been filed as separate applications, requiring separate legal descriptions, separate notice, separate considerations, separate stipulations. He said that golf would be discussed, even though he didn't think it was the most relevant issue that needed to be discussed; apparently it was a relevant issue for the Plan Commission – the underlying premise of the motion to recommend denial of the residential portion had focused on golf, the land use components of a golf course and the potential viability of whether the type of golf course could actually bring a successful operation to the City of Leawood.

In response to Councilmember Rasmussen, Mr. Petersen said he had met with the secretary of KDOT about extending the noise barrier along I-435 west to Mission Rd. Secretary Carlson told him that there was no chance of receiving state or federal aid to construct the extension, that the developers needed to deal with the issue themselves on their property. Mr. Petersen didn't think anyone could legally force the State of Kansas to construct a sound barrier. He also said that even with a sound barrier, it would take more to develop a level of quality – it would take site design. Mr. Rasmussen reminded everyone that KDOT had told the City no also when improvements were made to I-435, but the City finally got a barrier constructed for residents in Leawood Estates subdivision bordering the highway.

Landscape architect Brick Owens of HNTB talked about the design concept, gave a presentation on the site plan which included a precision golf course.

The golf course designer Craig Schreiner talked about the golf course concept, 18 holes, par 3 course, pitch and putt, to hone in on the accuracy aspect of the game, to learn golf etiquette, to introduce young golfers to the game, and to allow seniors and other higher handicap golfers the opportunity to continue to play golf. A hydrologic system, development of ponds, could help reduce and retard stormwater flooding, improve water quality, and help preserve the integrity of the wetland area through the central portion of the site. He described the routing of the course and construction standards.

Councilmember Bold was concerned about golf balls hitting existing homes, a problem that existed at the City's Ironhorse Golf Club. Mr. Schreiner said there would be less chance of that happening with a pitch and putt game and he described the course layout and physical containment provided by the topography. Councilmember Gill shared Mr. Bold's concern; he didn't see anything that would prevent it from happening. Mr. Gill was also concerned about people, especially children, being hit by golf balls where tees/greens were fairly close together.

4952

Councilmember Rasmussen asked about the statement in the staff report that the 20-acre golf course was to be donated to the City. Mr. Petersen said that donation was mentioned by the developer during neighborhood group discussions, that the land would be offered to the City for the ultimate development of a golf course by the City, IF the City was interested in accepting the donation; the City could then, of course, develop it to the standards that it deemed fit. If the City didn't want to develop it as a City public course, private golf course developers were waiting in the wings to be given the opportunity to develop the course. One such group was Club Corporation of America; Mr. Petersen gave the City Clerk their letter of intent, expression of interest, to negotiate to develop the course. Mr. Petersen said the Saddle Ridge developers made 2 commitments to the Plan Commission, offering to make them stipulations to any rezoning – 1) the property legally described for the golf facility would be deed restricted so it could only be used for golf or recreational facility, and 2) there would be a requirement that the developments of the golf facility and residential properties would be contemporaneous. The issue of whether the City would want the land or not would only be considered appropriately once the land use decisions were made.

5366

Ron Whitten, Architecture Editor of Golf Digest Magazine, talked about the viability of the course concept - would it be a successful part of the project. "Precision courses" (par 3 courses, short courses, pitch & putt) were very popular for beginning golfers, for skilled players to practice their short game, and for family golf. "Precision courses" were more

accessible, took up less land, were less expensive to play and maintain and build, and were faster. He endorsed the concept, and encouraged the Council to endorse the golf course concept on the 20 acres which could be a real money maker.

5662

Mr. Petersen continued with comments on the residential component and the rezoning. He said that the Planning staff felt that a proposed master plan change from low density-residential to medium density-detached and subsequent rezoning to RP-4 was appropriate, and had recommended approval of the case with stipulations agreed upon by the developers. He said the developers would encourage and offer a stipulation on the rezoning that if the plan was not built, then the RP-4 zoning would be revoked. He said they had started the process of RP-1 standards along the east side of the project next to Leawood Estates subdivision. He didn't know if they could do the entire project with RP-1 zoning and make the project work, or if they could do part in RP-1 and the remainder in RP-4. They were willing to try to do the project under RP-1 zoning as long as they didn't lose too many units to kill the deal. They would need some time to plan. He requested that the Council remand the residential portion of the project to the Plan Commission to study RP-1 with some of the deviations allowed under RP-1. RP-1, from a crystal clear standpoint, would be consistent with the master plan.

Councilmember Gill asked if it wouldn't be appropriate to remand the entire package to the Plan Commission, not just the residential portion, since the project was an integrated transaction from the developers' perspective. Mr. Petersen said that if the residential/golf course portion was remanded, it would make sense to remand the clubhouse application also. Since staff and the Plan Commission had recommended approval of the assisted living application, he asked that it simply be continued until the remanded portions returned to the Council. As for the cellular tower application, he asked that it be approved by the Council. Mr. Gill asked what would happen to the land transaction if the developers came back to the Council with R-1 zoning, and for whatever reason, it wasn't approved by the Council. Would it go through? And if it didn't go through, would there be a nursing home, a cell tower, a clubhouse? Mr. Petersen said that if the land transaction didn't go through, there would still be a cell tower owned by Saddle & Sirloin, not Saddle Ridge Development; he couldn't speak to the other uses.

7042 END OF TAPE

Tape No. 433

If Saddle Ridge Development was out of the picture, Mr. Gill said that Saddle & Sirloin might have another buyer of their property who wouldn't want a cell tower on their property for whatever reason, so he felt the entire package should be remanded. Mr. Petersen reiterated that Southwestern Bell Wireless' agreement for a cell tower was with Saddle & Sirloin; whether Saddle & Sirloin sold or didn't sell their property, the tower would be constructed if approved by the Council. It had nothing to do with another buyer of the S & S property.

191

Douglas Smith, Administrator of Johnson County Unified Wastewater Districts, spoke on behalf of the Board of County Commissioners. He said that normally the Board took a neutral position on zoning matters, however, they did want to go on record as stating

that all interested parties needed to realize that there was a County sewer treatment plant in the area south of I-435 – a preexisting condition for years – not 100% odor free 100% of the time.

#### RESIDENTS

305 Bob Walrafen, 10413 Cherokee Lane, objected to the RP-4 zoning and the golf course on the north portion of the site. He couldn't imagine buying an expensive home adjacent to a par 3 course populated by children and beginning golfers with golf balls flying everywhere. Par 3 courses were in demand and would be played a lot, a commercial venture that would generate a lot of traffic. He said that he could support RP-1 zoning even with a few more houses added, and reductions or variances in some of the setbacks that wouldn't necessarily comply with the RP-1 setbacks and lot sizes. He had no problem with RP-4 zoning south of 105<sup>th</sup> St. – condos and assisted living facility near I-435 about as good an option as the City could get in that area. He could live with the cut through of 105<sup>th</sup> St. He was neutral on the cellular tower. Based on meetings he had attended, he and others didn't trust the developers. He wanted to meet with the developers.

542 Dale Johnson, 10512 Mohawk Lane, urged the Council to approve the applicant's willingness to work with RP-1 zoning, not to approve RP-4 zoning. He was also concerned about water runoff with the loss of green space due to development.

G. Gordon Thomas, 10516 Mohawk Lane, was concerned about I-435 noise and fumes, and odors from the Indian Creek sewer plant affecting people living in the assisted living facility. He objected to the opening of 105<sup>th</sup> St. – traffic would increase with more vehicles going east to Leawood City Park.

Mark Arensberg, 10300 Howe Lane, didn't object to the sale of the Saddle & Sirloin property, but objected to applications for rezoning to RP-4 and the variance for the setback, the clubhouse, the assisted living facility, and the cellular tower. He asked that the four separate protest petitions with over 150 signatures cover any subsequent amendments or even separate applications. He said that common sense would tell anyone that RP-4, higher density, was less desirable and would diminish property values. Why allow RP-4 just so developers could have a golf course and make more money. Going from agricultural zoning to RP-4 would be a shock to the neighborhood; R-1 or RP-1 was more appropriate and conformed to the master plan. He felt that the golf course was too small, didn't conform to prudent golf course design, would be extremely unsafe. He urged the Council to look at the applications as a package, not piecemeal, and only allow RP-1, no RP-4. He was not too opposed to the cellular tower application.

Joyce Byram, 8725 Mission Rd., as a resident and a member of the Saddle & Sirloin Club, was opposed to the sale of the Club's property. She said that Club members never received answers to some of their questions from their Board of Directors about the sale and the moving of the Club to Missouri.

902 Bill Duvall, President of the Saddle & Sirloin Club, explained that time and progress made relocation to a more rural setting (an offer of land in Missouri) very appealing. Horse population and membership had been declining. The Board of Directors accepted the Simpson/Ellis offer; they did not offer the most money; they were selected because they were local developers with many projects in the area. He said that 86% of the Club's members voted on the sale; 88% of those voted for the move. In response to Councilmember Gill, Mr. Duvall said that upon their move, he felt it would be appropriate for the Club to terminate

their right to use the walking trails so that the trails would be confined to pedestrian and bicycle usage.

1030 Tony Demaria, 3004 W. 103<sup>rd</sup> Terr., presented a petition to the City Clerk with approximately 50 signatures in favor of the project. He felt the project would raise the value of other properties in the area.

1126 Councilmember Bold moved to remand all 4 applications to the Plan Commission for further review, seconded by Gill. Mr. Gill stated his reasons for a remand:

1. the developers needed to meet with residents;
2. stormwater concerns needed to be addressed up front on some kind of preliminary basis, not defer them to the future; he didn't expect a full-blown drainage study;
3. wanted the Plan Commission to revisit the commercial use of the golf course and clubhouse, especially with the expectation of 40,000 rounds of golf per year;
4. consider the impact of golf safety – maybe a 9-hole course would be more appropriate, or protective barriers appropriate; the Golf Course Committee might be of some assistance to the Plan Commission;
5. wanted the Plan Commission to meet with the architectural editor of "Golf Digest" who was aware of 25 "precision" courses and to investigate whether any of them were centerpieces of major real estate developments similar to Saddle Ridge;
6. regarding the assisted living facility, Mr. Gill said there was no preliminary plan to approve and was interested in hearing about more specifics, such as how many dwelling units per acre there would be, in order to be able to talk about density, parking, green space; he did feel however that it was a very appropriate use for the area south of 105<sup>th</sup> St., denser and more commercially oriented;
7. regarding the cellular tower, same comments – he wanted to see details, specifics – deferring the landscaping and designing of the entrance to the Leawood City Park to a future time was not appropriate; he felt the tower should collocate 3 users, not 4; there was no detail on the height of the base; he wanted the Plan Commission to use some creativity to make the tower unobtrusive, for instance different size antennas.

1338 Mr. Petersen talked about the cellular tower, and explained that the height of the tower, whether it was 150 feet or 100 feet as the developers proposed, was measured from the ground, not from the base of the wall that would screen equipment. He felt that the developers had responded to the issue raised by staff and the Plan Commission in regard to the fact that it would be an entrance to the Leawood City Park; it had a very high upscale wall surrounding the tower compound; it had extensive landscaping around the compound and along the roadway; and berming would be implemented as requested by staff. He didn't know what else could be done. No matter how much landscaping they did, they wouldn't be able to hide the tower. He said that the tower would be built and given to Saddle & Sirloin. It would be up to Saddle & Sirloin to deal with other potential users, those users being required to go through the special use permit process also with the possibility of extending the tower at those times. Southwestern Bell Wireless would have no control over that.

1429 Councilmember Bold said that as maker of the motion to remand the entire package, he didn't object to discussing the cell tower tonight; the City needed towers to service

Leawood residents, and the proposed location was about as good a spot in this particular part of the City as any. Councilmember Rasmussen felt the tower should be remanded; it would be on a tract of land that would apparently not be owned by Southwestern Bell; the remaining part of the property was also an issue; if the Plan Commission, after looking at the overall plan for the area, decided that the location was appropriate, then the Council needed to ask what was going to happen to the remaining part of the property. Mr. Petersen mentioned that if Saddle & Sirloin maintained ownership of the tower property, they had indicated they would not donate the rest of the property to the City, not their intention to do so at this time. Mr. Petersen said that the Plan Commission had already considered siting of the tower, distance to neighbors and the Leawood City Park, landscaping and berming, and antennas, and they recommended approval to the City Council. He assumed they would do so again; nothing in the plan was going to be changed. He asked if the Council would consider continuing the tower matter until the other 3 applications returned from the remand.

Mr. Gill withdrew his second to Mr. Bold's motion to remand. Councilmember Dunn said he remembered that when a tower application on another piece of Saddle & Sirloin property north of I-435 was denied by the Council several meetings ago, the Council had indicated they would approve an application if it was for the present proposed location south of I-435 (Saddle & Sirloin manure pit). He couldn't understand why the Council couldn't approve the proposed application tonight as presented.

1744 Mr. Bold moved to remand the zoning, assisted living, and clubhouse applications to the Plan Commission, seconded by Gill. Councilmember Bussing was concerned about density, asked staff to verify the density calculations, and that next staff reports be very complete. The Mayor asked that a few of Mr. Petersen's comments made earlier in the meeting be noted for the Plan Commission - that the property legally described for the golf facility would be deed restricted so it could only be used for golf or recreational facility, that there would be a requirement that the developments of the golf facility and residential properties would be contemporaneous, and that if the plan was not built, the RP-4 zoning approved would be revoked. Mr. Rasmussen suggested that the Plan Commission, in order to get away from indications of possible donation of land, look at just eliminating the golf course and providing a larger area for homes. He also suggested that if the Plan Commission felt that the proposed location for the cell tower south of I-435 was a good location for a 100-foot tower, then it should be a 100-foot tower (no taller in the future) and the land surrounding it would be owned by the owner of the tower, and that way the City would not find itself being responsible for maintaining the property. For that reason, he would not vote for continuation of the cell tower issue; it should be remanded to the Plan Commission.

Mr. Bold called for the question, duly seconded and carried unanimously.

2137 Mr. Bold's motion to remand the 3 applications carried; Taylor, Rasmussen opposed; Clawson abstained; Bold, Bussing, Dunn, Peppes, Gill in favor.

Mr. Bold moved to continue the cell tower application until the other 3 applications returned from the remand, seconded by Peppes. Motion failed; Peppes, Bussing, Bold in favor; Clawson abstained; Taylor, Rasmussen, Dunn, Gill opposed.

Mr. Rasmussen moved to remand the cell tower application to the Plan Commission (for the reasons he had stated), seconded by Taylor. Mr. Dunn said he didn't feel the application should be remanded or continued. Motion carried; Bussing, Taylor, Gill, Rasmussen in favor; Clawson abstained; Peppes, Bold, Dunn opposed.

- 2225 11:00 P.M. On motion of Dunn, seconded by Taylor, Council voted unanimously to extend the meeting to 11:30 P.M.

**MAYOR'S REPORT.** The Mayor had seen a video on the history of the City of Leawood produced for school children in honor of the City's 50<sup>th</sup> anniversary. The City planned to donate 2 copies to each of 7 grade schools.

**NEW BUSINESS**

- 2327 **Approval of the 1999 Budget.** Councilmember Clawson moved to approve the 1999 Budget with mill levy of 23.443, expenditures of \$32,735,633.00, seconded by Peppes. Councilmember Rasmussen moved to amend the motion to reduce the mill levy by 1 mill, to reflect the estimated effect of reappraisal on the City, seconded by Bold. With all due respect for the desire to cut property taxes, Councilmember Dunn said he was in favor of the budget as proposed; the clear majority of the Budget and Finance Committee comprised of the Governing Body and residents, after review of the budget in great detail, was in favor of the proposed budget.

Motion to amend failed; Rasmussen, Bold, Taylor in favor; Bussing, Clawson, Dunn, Peppes, Gill opposed. Mr. Gill said he would support the main motion, but felt there was merit to Mr. Rasmussen's motion to amend. The mill levy was cut for 1998, but staff presented Council with a lot of information that suggested that the Council pause and take a breath of air before cutting the mill levy again because it did have a continuing impact, especially in a City that was continuing to grow and have debt associated with that growth. He said that to the extent that the City did have some additional revenue, it needed to consider spending it on improvements to infrastructure rather than other needed but perhaps less important matters and/or to be sure the City continued to practice good fiscal responsibility in terms of reserves and not necessarily see the additional revenue as an opportunity to incur additional on-going expenditures outside those areas. The Mayor said that one reason the 1999 mill levy was not reduced was to build back reserve funds to retain the City's AA1 bond rating. Mr. Bold wanted to see the mill levy cut; he knew the City provided high level services effectively, but wasn't sure they were provided efficiently; he felt that the citizens of Leawood were having to live with the by-products of commercial development - traffic, congestion, etc. - and that there should be some benefits to residents in the form of property tax relief; reserves should be built up, but he felt the City was trying to build back reserves too quickly in the 1999 budget; he could not support the proposed budget. Finance Director Rogers mentioned that the mill levy for 1999 did drop a little from 23.475 in 1998 to 23.443. Mr. Bussing felt the City needed to do a better job of forecasting expenditures, finding productivity measures, defining measures of effectiveness and efficiency, so the City could explain to residents how the City was spending their money.

Main motion to approve the 1999 budget as proposed carried; Bold, Taylor, Rasmussen opposed; all others (5) in favor.

- 2763 **Ordinance No. 1744 levying assessments to pay the cost of improving Old Kenneth Road between K-150 and Kenneth Parkway.** On motion of Rasmussen, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

2783 **Ordinance No. 1745 levying assessments to pay the cost of Town Center Plaza improvements.** Councilmember Bussing moved to pass the ordinance, seconded by Rasmussen. A public hearing on the proposed assessments had been held earlier in the meeting at 7:00 P.M. There was a question about the assessment allocation to pay for the traffic signal on 119<sup>th</sup> St. between Town Center Plaza and Hawthorne Shopping Center (see the discussion). A revised assessment roll that staff had prepared indicated that the cost of the traffic signal would be assessed against the main shopping center and not the corner lots (pad sites) (the revision addressed Hereford House's objection to that particular assessment). The spreading of all other assessments for the improvements was consistent with the specifics of the petition that formed the benefit district.

The ordinance was passed unanimously on roll call vote.

2990 **Schedule executive session.** On motion of Rasmussen, seconded by Clawson, Council voted unanimously to convene in executive session for a period not to exceed 40 minutes to discuss 2 personnel matters and 2 matters under attorney-client privilege.

3032 11:20 P.M. Council convened in executive session, same members present, and returned to regular session at 12:00 a.m., same members present. On motion of Gill, seconded by Bold, Council voted to extend the executive session to 12:15 a.m. to continue the same discussions; Peppes opposed, all others in favor.

12:15 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



MINUTES  
SPECIAL COUNCIL MEETING

Tape No.

# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 10:10 P.M., Monday, August 24, 1998. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss a personnel matter.

Staff present: Richard J. Garofano, City Administrator.

10:10 P.M. On motion of Taylor, seconded by Gill, Council voted unanimously to convene in executive session until 11:30 P.M. for the aforementioned discussion.

11:30 P.M. Council returned to special session. No action was taken. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 434

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Tuesday, September 8, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Sid Mitchell, Chief of Police; Joe Johnson, Director of Public Works; Diane Binckley, Planning and Development Department; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

A request by the International Association of Machinists and Aerospace Workers to address the Council was removed from the agenda; an Association representative was unable to attend the meeting. The agenda was approved unanimously on motion of Peppes, seconded by Dunn.

**PROCLAMATION.** The Mayor proclaimed the month of September 1998 as "America Goes Back to School Month."

**CITIZEN COMMENTS.** None.

108 **CONSENT AGENDA.** Four items were removed for further discussion. The following were approved unanimously on motion of Clawson, seconded by Peppes:

1. Minutes of the August 17, 1998, Council meeting;
2. Minutes of the August 24, 1998, Special Council meeting;
3. Golf Course Committee report (minutes) on their July 23, 1998, meeting;
4. Golf Course Committee report (minutes) on their August 20, 1998, meeting;
5. Historic Commission report (minutes) on their August 11, 1998, meeting;
6. Parks & Recreation Advisory Board report (minutes) on their August 11, 1998 meeting;
7. Resolution No. 1419, attached as part of the record, approving the final plat of Tomahawk Creek Plaza at approximately 114<sup>th</sup> & Tomahawk Creek Parkway;
8. Application (new) for Cereal Malt Beverage License – Cosentino's Sunfresh Marketplace at Ranchmart Shopping Center, 95<sup>th</sup> & Mission;
9. Appointment to the Golf Course Committee – Dave Fearis, 13909 Fontana, new additional member, term to expire 2001;
10. Purchase by the Police Department of 2 Eyewitness in-car surveillance (video) systems in the amount of \$11,952.00 from Kustom Signals, Inc.;

11. Pay Request No. 1 (FINAL) by Musselman & Hall Contractors in the amount of \$49,132.00 for the 1998 Slurry Seal Program.

Resolution No. 1420, attached as part of the record, approving the final plat of Hazelwood 3<sup>rd</sup> Plat at 119<sup>th</sup> and Pawnee. Councilmember Taylor asked about screening (landscaping) and safety on the north side of the parking lot of the Church of the Nativity; was there a final agreement/arrangement between the Church and Hazelwood developer John Moffitt, Jr., for some type of wall and landscaping? Mr. Moffitt said he had been talking to the Church for about 5 years about screening and a wall that would allow Hazelwood residents to have access to the Church (the Moffitt family had donated the ground for the Church) and they were pretty much in agreement; he didn't realize they would have to have a written agreement, but that could be done. Mr. Moffitt said he had talked to Planning Director McKay about the wall and screening as well as the relocation of the civil defense siren currently on Hazelwood property back onto Church property. He said there was a plan that he and the Church had seen. He officially agreed to that plan. Mr. Moffitt said he would pay for the wall and landscaping (approximately \$200,000) and the Church would pay a portion of the landscaping costs (approximately \$10,000). Mr. Moffitt said that the City would move the siren 10 feet to the west of its present location; City Administrator Garofano confirmed that.

Mr. Taylor moved to adopt the resolution, seconded by Gill, and carried unanimously.

Resolution No. 1421, attached as part of the record, approving the final plat of Hazelwood 4<sup>th</sup> Plat at 119<sup>th</sup> and Pawnee. Councilmember Taylor moved to adopt the resolution with the same understanding as for Resolution No. 1420. Motion seconded by Gill and carried unanimously.

Change Order No. 4 to the contract for 1998 Street Improvements in the amount of \$206,316.78 – for the mill and overlay of Longwood Forest streets.

Councilmember Taylor asked if Seal-0-Matic Paving's original contract had some unit price system by which Public Works had determined the \$206,316.78, or did Public Works have to solicit additional quotations from the contractor. Public Works Director Johnson said they had used both. He said that most overruns were figured on the unit price, but Longwood Forest was considered a separate project, the cost being figured based on unit prices and then negotiated. Mr. Taylor felt that the City, knowing that changes might be made with streets added to original contracts, should lock in a unit price up front that a contractor would guarantee for additional work. Mr. Taylor urged the Public Works Committee to look at this for future contracts, that contractors bid original work and additional work at the same time. Councilmember Clawson said that the City would probably see more projects like Longwood Forest, using unit pricing, but experiencing unforeseen circumstances with mill and overlay. Mr. Johnson said that Public Works did use unit prices to establish the costs of change orders, but when a quantity was not defined in a bid, they negotiated with the contractor to determine that unit cost.

On motion of Taylor, seconded by Clawson, Council unanimously approved the change order.

Change Order No. 1 to the contract for SMAC stormwater project TM-04-004, Tomahawk Creek Bank Stabilization Project, in the amount of \$31,025 – for additional bank protection near the pedestrian bridge to stabilize the earth behind the gabion wall plus channel cleanout downstream to achieve positive drainage. In response to Councilmember Taylor, Public Works Director Johnson explained that the County would pay 75% of the cost. On motion of Taylor, seconded by Peppes, Council unanimously approved the change order.

#### PLAN COMMISSION

734

**Resolution relating to preliminary site plan for Fire Station No. 3 located at approximately 148<sup>th</sup> and Mission Rd.** The Mayor said that a valid protest petition had been filed, and it would take 6 favorable Council votes to approve the preliminary site plan. In response to Councilmember Gill, City Attorney Wetzler said that all technical procedural issues, including notification, had been properly dealt with so that the Council could proceed.

Bill Scott of Shaughnessy, Fickel and Scott Architects gave a presentation. He said that the design of the building and its location on the site had not changed. He described 2 changes – 1) the south egress drive was no longer a combined park and fire station entrance/exit road, but only a fire station egress drive; the eastern portion of the egress drive was curved inward and connected directly to the south apparatus apron, allowing the movement of the egress drive 32 feet farther from the adjacent south residence; there would be a 50 foot outside turning radius for the egress drive, with the inside turning radius

remaining at 32 feet; and 2) a stone wall berm was incorporated on the south side of the south egress drive; it would be approximately 7 feet in height and landscaped with coniferous trees and shrubs along the top and side of the berm; it would screen the view of headlights leaving the station and within 4-6 years would screen virtually the entire station from view from the south residence.

Mr. Scott addressed additional information: 1) the slopes of the entry/egress drives to the station ranged from 7.8% to 7.95% with an average of 7.9% at the steepest areas; he compared the slope to other locations in the City where fire apparatus traveled frequently and maneuvered during inclement weather without problems; the maximum or average slope range on the vast majority of the locations was more than was proposed for Fire Station No. 3; 2) the appropriateness of the size of the location – Mr. Scott had prepared a list of other fire stations he had designed; most of the stations had sites that were smaller than that proposed for Station No. 3; and 3) correspondence dated August 28, 1998, from resident Robert McQuain's attorney Elizabeth Garvin – inaccuracies presented needed to be corrected; the building construction cost was not \$200-250 per sq. ft.; the building itself was \$141.40 per sq. ft.; the assertion that the architects didn't dispute the \$200-250 was neither fair nor accurate – they were not asked by the Plan Commission if they disputed the figures; the architects never reported that the amount of fill was 13,500 cubic yards; Plan Commission meeting minutes indicated approximately 18,500 cubic yards determined 3 different ways; Mr. McQuain's attorney stated in her letter that the training tower would cost the City over \$250,000; the architects estimated the cost to be \$75,000.

Mr. Scott mentioned that the entire estimated cost of construction (as of the design development estimate of July 1998) would be \$177 per sq. ft. based on the 15,000 sq. ft. facility, including site development, and was based on many months of study and detail; he was accountable to the figures in that there was a fixed limited construction cost for the project. Over that amount, he would be required to redesign at no extra cost to the City.

1284 Mr. Scott said that the station was designed to fit to the site. A considerable amount of attention was given to scale and appropriateness to adjacent areas. If the administrative area was removed from the building, he would have to relook at the entire design of the station. And he said that moving portions of the facility around would not affect the slopes/grades of the drives.

1470 Fire Chief Florance gave a presentation. He said that fire stations were located primarily using response time criteria; that was how the site at 148<sup>th</sup> and Mission was selected some time ago. Response time in that area currently exceeded Fire Department goals. He said that the cost of the project would increase with each month of delay. The City had already lost fill dirt from other projects in the City which would have saved some money. If the project had to be started again from scratch, he had heard it might cost residents a conservative estimate of an additional \$400,000. He said that the safety of residents south of 135<sup>th</sup> St. was paramount to the Fire Department. He said that every station in Leawood had an administrative office, and firefighters trained at every station because firefighter safety and knowledge was paramount. If the proposed site was moved farther north, there would be the risk of overlapping with the response area of Fire Station No. 2 at 127<sup>th</sup> and Mission. Fire administration was not meant to be separated from firefighters for management and team reasons.

1843

City Attorney Wetzler said that Chief Florance had stated very well the reasons why the City had chosen to treat itself differently than it treated other developers appearing before the Council in connection with the development process. The City's functions of providing for the safety of residents were paramount for the City. So accordingly, when the City adopted its zoning ordinance (Section 2-4.11), it chose to exempt itself from certain requirements that were ordinarily required of private developers. Under the City's Kansas Home Rule authority, it had the ability to adopt any ordinance as long as didn't conflict with state statute. Kansas State Statute 12-748 established certain procedures for approval of public facilities. Mr. Wetzler said that, in his judgment, the City's ordinance didn't conflict with that statutory provision. It did establish a slightly different procedure, but not a procedure in conflict with state law. The City's zoning ordinance was appropriate. It had some additional safeguards built into it. There had been numerous public hearings on the fire station. The City could have exempted itself from protest provisions, but chose not to do so.

1958

Chief Florance mentioned that until Fire Station No. 3 was constructed, the City couldn't hire the additional firefighters it needed to protect residents to the maximum; the City was falling below the minimum on-duty average number of firefighters per 1,000 residents - .5 firefighters; the City was under .4.

1994

City Administrator Garofano addressed the space needs study prepared by CDFM2 and dated August 26, 1994, and acknowledged and received by the City at the September 6, 1994, Council meeting. He explained that it was not a site selection study, but was commissioned by the City Council to begin to identify building and land needs for all departments through the ultimate buildout of the City at about 41,000 population. The study stated that the City would need to undertake new programming at the time of planning new facilities, so when ready to look at a specific building, the City would hire an architect to begin programming. (Thus, Shaughnessy, Fickel and Scott Architects were hired to program the fire facility.) He read several statements from the study. He also said that there had been discussions about a fire station site for some time, as far back as August 1992 when the City had discussions with the state about the possibility of a grant to acquire the park land (70 acres) for the South Park, and about the possibility of setting aside 5 acres to locate a fire station and the possibility of a satellite public works facility. In March 1995 the Council passed an ordinance authorizing acquisition of the 70 acres for a park, setting aside 21 of those acres to be acquired with federal money with a 2.5-acre fire station site in the federal agreement. The space needs study and discussions with the state were totally independent of each other. Also, two former fire chiefs had endorsed the proposed site primarily because of fire response times. He addressed statements made in Ms. Garvin's August 28, 1998, letter regarding the new City Hall -- underutilized and a victim of an incomplete planning process. He said there had been numerous discussions about the design and what would be included in the building. Some space was planned from the very beginning for fire administration; it was not designed to accommodate municipal court operations now housed in the building. The letter stated that 10,000 square feet was unused, however, the building had only about 30,000 square feet, so it was difficult to understand how someone would claim that one-third of the building was unused. Perhaps Ms. Garvin was referring to the lower level Community

Center with about 11,000 square feet, designed for recreational purposes but being used by municipal court operations on a part-time basis. Her letter also stated that there didn't appear to be any documented safety needs for the Fire Department to leave City Hall; Mr. Garofano said that Chief Florance had already given reasons for fire administration being located at the fire station.

2545 There was discussion about the CDFM2 space needs study not being used for programming of Fire Station No. 3 by Shaughnessy, Fickel and Scott Architects – Councilmember Taylor felt it should have been used for that purpose, even though the City Administrator had explained that that was not the purpose of the study, and doubted that it would suffice for any architect from which to design a facility.

2951 Mr. Scott remembered that he was given certain aspects of the CDFM2 study when his firm first started on programming for Fire Station No. 3 about 1 year ago, but he was told at that time that he needed to look at other aspects of the project, including administration and the training tower.

3153 Mrs. M. Sailor, 12703 Glenfield, lived near Fire Station No. 2 located at 127<sup>th</sup> and Mission Rd. She said they were good neighbors, considerate and quiet. She had no problem with the administrative office. She felt more secure living near a fire station, especially since she was very concerned about good response times and saving lives. She knew of no devaluation of property values in the area.

3382 Mike Gossman, 4041 W. 147<sup>th</sup> Terr., felt that if there was a need for better fire protection south of 135<sup>th</sup> St., the City should have a temporary facility immediately for that protection until a station was built somewhere south of 135<sup>th</sup> St. No one was opposed to proper safety measures; it was just a matter of doing them properly. He felt that if the CDFM2 study had become outdated since 1994, the City needed a new study to support what it wanted to build now as far as the location and administrative offices, with full justifications, justifications which he had not seen. He said that if it was important enough to do the CDFM2 study in 1994 before spending money, it was important to do another study to look at what the true needs were today. He was opposed only to the training tower and administrative offices. He wouldn't mind a basic fire station at 148<sup>th</sup> and Mission if a study showed it belonged at that location.

3563 Robert McQuain, 14901 Mission Rd., said that several experts he had consulted about the proposed fire station had found substantial defects in the site plan, deficiencies from a fire protection standpoint. He said that the CDFM2 study was never given to him as part of his many requests to inspect public records; it should have been provided. He described other records problems; Shaughnessy, Fickel and Scott refused to give him a copy of one of their diskettes without explanation (he would have been willing to sign a nondisclosure agreement). His felt that his analysis of the project had been thwarted because he couldn't get information.

3780 Elizabeth Garvin, Mr. McQuain's attorney, said that the information contained in her August 28, 1998, letter was based on presentations made by the engineer hired by Mr. McQuain, and that information should appear in the Plan Commission meeting minutes. Information about the training tower was received from KU Professor Eric Strauss. She said

that she had reviewed her information about legal issues with a number of attorneys, and she would stand behind the information in her letter. She said that the City's records didn't provide the answers that satisfied her and Mr. McQuain that a thorough process had been put together to build the proposed fire station at 148<sup>th</sup> and Mission. She expressed concern that the CDFM2 space needs study had not been given to Mr. McQuain. She said she hadn't seen a document addressing the site selection process. She felt that the Council should deny the preliminary site plan and that it go back to the Plan Commission and planning staff to answer unanswered questions with neighborhood participation.

3966 Eric Strauss, KU Professor of Urban Planning, gave a presentation. He didn't feel that the City had done as good a job as it could have in justifying the land use decision. He felt that the City should play by the same rules that it required of everyone else (other developers/property owners). He urged the Council to deny the plan and direct that a proper study be done. If the City was going to mix nonresidential land uses with residential uses, he suggested that the City identify the land use implications of the training tower which he considered, with the noise/light/smoke, to be an industrial land use. The administrative offices were essentially an office building – does an office building belong in a residential area? Perhaps, if there was a lot more space. The City would have to ask for a variance for its own building in order to locate all the uses on the proposed site, which Council had heard just wasn't suitable for all that the City wanted to do on the site.

4153 In response to Councilmember Peppes, Dr. Strauss said he had not been made aware that there would be no smoke or fire or water in conjunction with the training tower; he was told that there would be smoke and fire.

Councilmember Rasmussen asked Dr. Strauss about his position regarding historical uses of land in residential areas – for instance, child care, seamstresses, churches, schools. Dr. Strauss felt that generally all those uses at the appropriate site were appropriate in residential areas. He felt that neighborhood fire stations were appropriate in residential areas.

4255 In response to Councilmember Gill, Dr. Strauss said that he felt the City should adhere to the Golden criteria of Golden vs. Overland Park. Dr. Strauss said that a fire station would be compatible in the residential area of 148<sup>th</sup> and Mission if it was designed properly. Dr. Strauss said that if Chief Florance believed the administrative offices were necessary, then it became more than what he (Dr. Strauss) understood to be a neighborhood fire center. Dr. Strauss felt that the character of the neighborhood in the area of 148<sup>th</sup> and Mission wouldn't support the fire station as proposed. Dr. Strauss felt that the placement of the training tower would create some privacy issues for Mr. McQuain. Dr. Strauss agreed that if 148<sup>th</sup> and Mission was the absolute choice of the City, then a fire station on that site would be better than no fire station at all south of 135<sup>th</sup> St., but he didn't believe that it was. He believed that 148<sup>th</sup> and Mission was the wrong site for the particular use. Dr. Strauss said that the master plan was inconsistent with the proposed use of the site.

4651 In response to Councilmember Rasmussen, Dr. Strauss said the matter was a site issue, not an administrative office or tower issue.

4700 Councilmember Bold mentioned that after the City had purchased the park land and set aside space for a fire station, it erected a sign which indicated the future home of a fire station on the site. Mr. Bold asked if surrounding homeowners/potential homeowners didn't

have some responsibility to consider the fact that the sign was there. Dr. Strauss said he would assume that people would think of a fire station like Stations 1 & 2. Mr. Bold said that one of the necessary evils of government in general was that sometimes government had to infringe on the rights of a few to serve the good of many. Dr. Strauss agreed, although in this case, he felt the City had gone farther than it had to in infringing on the rights of neighboring residents. Mr. Bold said that aside from the issue of the fire station, he wanted to see something from the Fire Chief, say within the next month or so, indicating how the City was going to address immediate safety needs. Even if the Council approved the preliminary site plan, the station wouldn't be completed for quite a while. Perhaps the City needed a temporary facility. He felt the City needed to take half a step back to insure that it was making the most efficient use of taxpayer dollars in terms of the site selection. He felt that fire training was essential and not questionable; the question was where should the training facilities be located. He asked the Fire Chief to think about having a separate site for the tower and a central location for fire administration offices. Mr. Bold was interested in an investigation to determine if 148<sup>th</sup> and Mission was indeed the best site for a fire station, and if the tower and administrative offices should be located elsewhere.

5040 J.D. Mooney, 14701 Delmar, said he had been told by the City that the fire station would be a normal small station. No one said anything about a tower or administrative offices. Further investigation needed to be done.

5121 Councilmember Peppes said that he was not convinced by the "experts" that the City was doing anything wrong, that public safety was of paramount importance. He moved to adopt the resolution, seconded by Clawson. Councilmember Taylor asked Dr. Peppes to reconsider his motion, in view of the fact that there was a valid protest petition on file and he didn't think there would be enough favorable votes to adopt the resolution, to add a stipulation that the City engage a real estate consultant to review additional sites for the proposed fire station.

5357 Councilmember Gill said he would not vote against the proposed station; he felt it was appropriate at 148<sup>th</sup> and Mission, that it met the Golden factors whether or not the City was required to abide by them. However, he was open to a short attempt (2 or 3 weeks) to assess whether or not there was a viable alternative site in the vicinity of 143<sup>rd</sup> St. Councilmembers Dunn and Rasmussen said they would also support such a short review period. City Administrator Garofano reiterated that the alternative site would have to be within response time parameters dictated by professionals, not a real estate agent; the location of a fire station would be driven by response time. Mr. Taylor suggested that the consultant currently working on a proposed public works facility site could work with the Fire Chief. Mr. Bold said he could support Mr. Taylor's suggestion in order to eliminate questions.

5990 Dr. Peppes withdrew his motion in order to reach an agreement with everyone; Mrs. Clawson withdrew her second. Dr. Peppes moved to delay the matter until the September 21<sup>st</sup> Council meeting and by that time response time parameters would be done, Fire Chief and City Administrator to work with appropriate people at a cost not to exceed \$3,000 to determine any possible alternative sites, and report on cost estimates. Motion seconded by

Clawson. Council felt that staff could work with Terra Venture, the company engaged to study alternate sites for a proposed public works facility. Council was not willing to consider condemnation of alternate site land; site should be for sale and available.

6341

Dr. Peppes' motion carried unanimously.

Mr. Bold moved to direct the Fire Chief to report to the Council at the October 22<sup>nd</sup> Council meeting as to how the City would provide adequate fire protection to the south part of the City until such time as Fire Station No. 3 was built, seconded by Taylor. Dr. Peppes was opposed to the motion; it appeared that the Council was trying to tell the Fire Chief that he wasn't doing his job properly. Dr. Peppes had complete confidence in Chief Florance to provide fire protection. Mr. Bold said that was not the intent of his motion. No money was budgeted in 1999 for a temporary fire facility south of 135<sup>th</sup> St., and Council heard for the first time that response times were below desired times. Mr. Bold wanted to know if the City needed to spend money now to take care of the problem. Mrs. Clawson also spoke against the motion. She seriously doubted that the City could operate any kind of fire operation from temporary buildings or a trailer. Mr. Bold's motion failed; Taylor, Bold in favor; all others opposed.

6545

**MAYOR'S REPORT.** Voting delegates to the League of Kansas Municipalities annual conference in Wichita, October 3-6, would be selected at the September 21<sup>st</sup> Council meeting.

#### **NEW BUSINESS**

6798

**Approval of Appropriation Ordinance No. 842.** On motion of Taylor, seconded by Peppes, Council unanimously passed the ordinance on roll call vote. The Mayor said that except for some of the City staff who would be using some of their budgeted annual conference fee dollars, elected officials and other delegates traveling to sister city I-Lan, Taiwan, in October, were paying their way entirely. Personal checks were reimbursing the City.

**Approval of Appropriation Ordinance No. 843.** On motion of Dunn, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

6906

**Authorize agreement for design of Leawood City Park pool bathhouse renovation.** On motion of Taylor, seconded by Peppes, Council unanimously approved an agreement with Sullivan Palmer Architects in the amount of \$25,500.00 with expenses not to exceed \$3,000.00.

6940

**Council review of a blasting application for Camden Woods subdivision, 143<sup>rd</sup> and Kenneth Rd.** Blasting was needed to install and construct sanitary sewer lines. A written appeal had been received from one of the residents within the 500-foot inspection area, so City ordinance required that the City Council review the application and decide whether to approve or deny a blasting permit. The engineering company had inspected the resident's

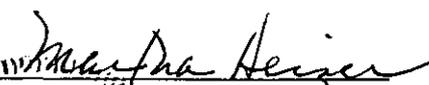
home. Public Works recommended approval of the blasting application. Councilmember Taylor moved to approve the blasting application, seconded by Rasmussen. Public Works hadn't heard any further from the resident. Blasting was the fastest method to remove rock. The blasting company had met all of the City's requirements. In response to Councilmember Bussing, City Attorney Wetzler said that someone could sue the City if damage occurred, but he didn't feel there would be any exposure on the part of the City as a result of the Council's approval of the application. Mr. Taylor's motion carried unanimously.

7118 11:00 P.M. On motion of Taylor, seconded by Dunn, Council voted unanimously to extend the meeting to 11:30 P.M.

7136 **Resolution No. 1422, attached as part of the record, declaring the eligibility of the City of Leawood to submit an application to KDOT for use of transportation enhancement funds for the "Tomahawk Creek Bike Trail" project.** Councilmember Clawson moved to adopt the resolution, seconded by Bold. Parks & Recreation Director Whitaker explained that the County, not the City, would be committing funds at this time. The City had a verbal agreement with the County that the City in the year 2000 would pay 5% of the trail system from Leawood City Park to State Line Rd. (about \$15,000) and 1% of the system from Roe to Nall (about \$3,100). Mr. Whitaker said that the City wouldn't accept the enhancement funds when they became available if Overland Park hadn't acquired some land in Overland Park northeast of Leawood's Nall Park for part of the trail system. The City of Overland Park was also considering a similar resolution at their Council meeting. The Mayor said that the resolution would merely allow the County to submit an application for funding. Motion to adopt the resolution carried unanimously.

7257 **Resolution No. 1423, attached as part of the record, declaring the eligibility of the City of Leawood to submit an application to KDOT for use of transportation enhancement funds for the "Indian Creek Bike Trail" project.** Councilmember Taylor moved to adopt the resolution, seconded by Rasmussen. Motion carried unanimously.

7423 11:05 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



MINUTES  
SPECIAL COUNCIL MEETING

Tape No.

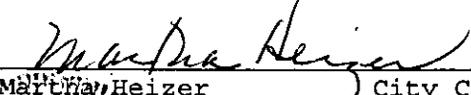
# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 7:25 P.M., Monday, September 14, 1998. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss land acquisition. Mike Gill was absent.

Staff present: Richard J. Garofano, City Administrator, and Ben C. Florance, Fire Chief.

On motion of Taylor, seconded by Bussing, Council voted unanimously to convene in executive session for 15 minutes for the aforementioned discussion.

7:40 P.M. Council returned to special session. No action was taken. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 435

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, September 21, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, and Louis Rasmussen. James E. Taylor, Sr. was absent.

Staff Present: Richard J. Garofano, City Administrator; Sid Mitchell, Chief of Police; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**APPROVAL OF AGENDA**

Councilmember Rasmussen was concerned about the Town Center Park (Hotel) agenda item. He wanted to know what was properly before the Council. City Attorney Wetzler said that the Council had remanded the matter to the Plan Commission with directive that the Commission consider certain issues. The Plan Commission considered the issues but chose not to recommend along the lines that the Council had asked them to consider, and presented the Council with their own views on the matter. The same application was back before the Council. Only a majority vote would be required for Council approval.

The agenda was approved unanimously on motion of Rasmussen, seconded by Clawson.

**PROCLAMATIONS.** The Mayor proclaimed September 17-23, 1998, as "Constitution Week," and October 10, 1998, as "Double Tenth Day" in honor of sister city I-Lan, Taiwan, and the 87<sup>th</sup> anniversary of the Republic of China on Taiwan.

**CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, asked about the declaration of surplus property on the Consent Agenda. He thought that in the past residents had had first right to the items on a bid basis. He asked if those items would be published and how far in advance they would be available. City Administrator Garofano explained the City's use of auctions to sell its surplus property. Residents didn't have first right to the items. Mr. Thomas also wanted to know why the City needed a hotel; how would residents benefit from it? Would any anticipated taxes from a hotel be used to reduce debt or increase the amenities to which residents were supposedly entitled? Why would a "bedroom," residential community want to promote a hotel? There were plenty of hotels in adjacent cities. The Mayor said many of Mr. Thomas' questions would probably be answered later in the meeting.

**CONSENT AGENDA.** The following were approved unanimously on motion of Peppes, seconded by Rasmussen:

1. Minutes of the September 8, 1998, Council meeting;
2. Minutes of the September 14, 1998, Special Council meeting;
3. Arts Council report (minutes) on their August 25, 1998, meeting;
4. Public Works Committee report (minutes) on their September 3, 1998, meeting;
5. Departmental reports;
6. Declaration of surplus property for public auction – 1 1988 Chevrolet ¾-Ton pick up truck (VIN 8438), and 3 OKI bag phones - no longer used by the Public Works Department;
7. Comprehensive Annual Financial Report (CAFR) and Management Letter for fiscal year 1997 from auditors KPMG Peat Marwick;
8. Request that staff obtain proposals with a not-to-exceed amount of \$13,500.00 for outside electrical work at City Hall for holiday lighting;
9. Application by AMC Theatres at Town Center Plaza for a one-day temporary permit to serve alcoholic liquor on October 15<sup>th</sup> for a UMKC Athletic Scholarship Fund benefit.

358 **MAYOR'S REPORT.** The City Administrator would be the City's voting delegate at the League of Kansas Municipalities Conference in Wichita, October 3-6.

The Mayor and City Administrator would be the City's voting and alternate voting delegates respectively at the National League of Cities Conference in Kansas City, Missouri, December 1-5.

#### **OLD BUSINESS**

435 **Resolution No. 1424 approving preliminary site plan for Fire Station No. 3 located at approximately 148<sup>th</sup> and Mission Rd.** Project architect Bill Scott of Shaughnessy, Fickel and Scott Architects said there was no additional information to present. In response to Councilmember Gill, Mr. Scott said that 18,500 cu. yds. of fill dirt would be required at the site based on analysis by Mr. Scott's staff and others.

The Mayor said that the services of John Sweeney of Terra Venture were used to ascertain if there were any other potential sites for Fire Station No. 3. Fire Chief Florance said that 7 sites were ruled out for various reasons. He still felt that the best location was at 148<sup>th</sup> and Mission Rd.

564 **RESIDENTS**

Robert McQuain, 14901 Mission Rd., said that on other projects, the City required developers to talk to surrounding property owners about their proposed developments before plan approvals by the City. No contact with surrounding residents was made concerning the fire station project except for a sign on the site. He said, however, that at some point residents of the Pavilions had been told that the station would be a small, neighborhood fire station; there was never any mention that the station would be a training facility and have administrative office space. They were misinformed. The City never sat down to talk to him about possible resolutions or compromises. He was upset about poor access to public records, roadblocks to public information, which complicated the way in which he could voice his opposition to the project in terms of cost, time and the creation of a true legal issue.

888

Michael Gossman, 4041 W. 147<sup>th</sup> Terr. in the Pavilions, said that residents had always been led to believe that the station would be a neighborhood fire station. Opposition to the project would disappear if the training tower and administrative offices were removed from the building. He wanted it clarified or confirmed that residents were receiving proper fire protection in the area. If they weren't, then the proposed station which wouldn't be completed for approximately 18 months wasn't the answer. If they were receiving adequate service, he didn't think that was a reason for moving on to select the proposed facility on the proposed site with any threat of duress in the air over a time issue. He said that the training tower and administrative offices were not appropriate for a neighborhood fire station. He said that an increase in the building's size since a 1994 space needs study was not supported by any study the residents had seen. That increase related to tax dollars that residents would be asked to spend without support to justify the need for additional space. He felt that the optimum site for a fire station was at 143<sup>rd</sup> and Mission Rd. There was property just north of that that was for sale, a site considerably more level with more access than the proposed site. The training tower and administrative offices wouldn't be appropriate there either. He was concerned about cost - 18,500 cu. yds. of site fill and 18,500 cu. yds. of haul in was estimated at \$220,000, that amount to make the proposed site work; another site could eliminate that cost or at least a significant part of it.

Chief Florance said that the Fire Department had very adequate response times to the southern part of the City, but he didn't want to wait several more years to buildout to do study after study after study and find out that they should have done something in 1998. He addressed the increase in the size of the building - at buildout there would have to be additions to the building, so the City proposed to construct those additions "up front" to avoid excessive costs at a later date. And restrooms, hallways, copy room, closets, etc. added up to additional square feet.

1245

Councilmember Bold asked Chief Florance if, all things being equal with no time pressure for fire station #3 and with no financial issues as to what it would cost to redesign the building, the property that was for sale at 143<sup>rd</sup> and Mission would be a better site. Chief Florance said it could work, but he had a real concern about building a station next to a school, much less 2 schools, with heavy foot and bicycle traffic - not a good mix in his opinion. With a 4-lane Mission Rd. and 4-lane 151<sup>st</sup> Street, the 148<sup>th</sup> and Mission Rd. location was more appropriate. In response to Mr. Bold, Chief Florance said that the grade of the driveways on the proposed site didn't concern or bother him.

1417

Councilmember Peppes moved to adopt the resolution, seconded by Gill. Mr. Gill said that he had asked Mr. McQuain's attorney Elizabeth Garvin to provide him a list of records that had not been furnished to Mr. McQuain, and there were only 2 items - the computer disk belonging to Shaughnessy, Fickel and Scott Architects and the Terra Venture report. He told Ms. Garvin that the disk did not belong to the City, not the City's to give to anyone. However, he understood that a hard copy had been given to Mr. McQuain. (The Terra Venture report was given to Mr. McQuain's attorney Richard Rhyne by fax late afternoon before the Council meeting.) Mr. Gill said he was convinced that the City, under the Kansas Open Records Act, could have refused to provide the Terra Venture report for many policy reasons and as a matter of law, but instead, chose to do what he thought was the

right thing to do – produce it. Mr. Gill felt that problems with notification and access to records had been remedied, and the Council was talking about issues.

1618

Councilmember Bussing felt that the City needed to review some of its processes and procedures to insure that legitimate requests for access to public records were honored. He was concerned about the cost of the project and the changes in the project since the CDFM2 space needs study, however, he hadn't been convinced that there was a viable alternative site.

Councilmember Dunn felt that the Council had paid an abundance of attention to the residents' concerns, compromises had been made. He felt that the only other compromise possible was to change the design of the building or change the location, and he, given everything seen and heard, was not willing to do either.

1831

Councilmember Rasmussen mentioned the Johnson County Debt Management Advisory Council. One of their goals had been to look at the possibility of multiple uses of site. He remembered Council discussions about the acquisition of the South Park and the possibility of the use of the area for not only a fire station but also a public works facility. The Council was concerned about the economics of not only a park, but of the other necessary infrastructure improvements required for the safety of citizens. He felt that the proposed site was the appropriate one. He said that the Fire Department administration was a necessary function of that organization; it belonged close to the employees it supervised. And he felt there was a lack of understanding of the history of the proposed project.

Mr. Gill read Councilmember Taylor's letter regarding the proposed fire station in Mr. Taylor's absence. Mr. Taylor would have voted against the motion to adopt the resolution.

Dr. Peppes' motion to adopt the resolution carried unanimously.

2122

**Resolution No. 1425 approving a request for rezoning from SD-0 to CP-0, and approving a special use permit, preliminary site plan, and preliminary plat, for Town Center Park (Hilton Hotel) at 117<sup>th</sup> and Nall Ave.** Councilmember Clawson said that she had recused herself from previous discussions to avoid the appearance of a conflict of interest. (Her husband was employed by HNTB engineering firm which was working on the proposed project.) She recently received an opinion from the State Attorney General which indicated that she didn't have a legal conflict of interest, so she would now participate in the discussions and the vote. City Attorney Wetzler said that Mrs. Clawson had disclosed in her election filing forms that she had an interest in HNTB by virtue of her husband's employment by the firm, and because she had made the appropriate disclosure, was free to discuss, debate and participate. Mrs. Clawson mentioned that the circumstances with regard to the project application had no relation to her husband's work at HNTB – he was a highway and railroad bridge engineer.

2233

Whitney Kerr, representing the Marned Corp., reviewed the original application process in 1991 and the concept (conceptual) plan for the land. Mr. Kerr said that from the 4 corners of the Town Center project in the concept plan from the beginning, the maximum FAR never exceeded .28. The plan today had an FAR of .26 from the 4 corners. The plan today was a mixed-use plan; it was a mixed-use concept plan in 1991. Mr. Kerr mentioned the gift of the land from the Douthat family for the City Hall and adjacent library, and the desire of the Douthat family to have an understanding before the gifts were made, and that was done. So the developer felt a bargain had been made with the City for the development of the land.

Mr. Kerr talked about the 6-story building proposed for the corner of Nall Ave. and Town Center Drive across from the Commerce Bank building in Leawood Commons. Many residents in the area wanted a 4-story building rather than a 6-story building. Mr. Kerr explained the elevation of the proposed building. When built, it would appear from Leawood Country Manor subdivision to be a 4.5-story building.

Mr. Kerr talked about the phasing of the park construction along Town Center Drive. He said there would need to be a construction phasing worked out where materials could be assembled, construction machinery parked, construction materials stored. If the building directly opposite the hotel was built first, then the entire park would be built out in the first phase. And that was probably what would happen, but he requested that the Council be flexible to allow construction storage, etc., on the park land rather than immediately adjacent to the office building.

With respect to the park, Mr. Kerr said that the City couldn't expect the developers to dedicate the land to the City for park purposes if they (the developers) were going to be asked to maintain it in perpetuity. Therefore, the developers would assume maintenance responsibility for the park, but it would not be a public park and would be under the control of the developers. If the City preferred that the developers dedicate it in the form of a gift, they were prepared to do that.

With respect to the funding of traffic improvements, the question of who would pay for traffic signals had been raised. Brian Pieplow of HNTB said that the responsibility of the developers for any improvements would be evaluated and established by the traffic engineer at each phase of development. Shared costs between the developer and other parties, if any, would be determined at the time the actual impacts and associated costs were assessed to the development. The project would fully fund improvements to address the needs that it placed on the traffic system.

The question had been raised about how the developer would deal with pedestrian crossings on 117<sup>th</sup> St. east of Nall. Mr. Pieplow said the developer proposed to provide 3 improved safety traffic crossings on 117<sup>th</sup> St. to connect to Town Center Plaza - 1 at the drive of the hotel and 2 crossings on each side of the main entry adjacent to parking garage B and between office building B. The safety upgrade would involve construction of an island or pedestrian refuge between an eastbound and westbound traffic lane, the laying of special brick paving or stamped concrete to clearly indicate a pedestrian crossing zone to motorists, and of course appropriate signage for a crossing zone.

There was concern about the height of parking garages. Mr. Kerr said that the levels had been reduced in the new plan, and one structured garage removed entirely, resulting in a square footage reduction from 650,000 to 600,000 sq. ft. At a recent work session, Councilmember Rasmussen had asked what would happen if the deferral agreement (for supplemental parking if needed) on 5 parking spaces per 1,000 had to be invoked. Mr. Kerr said that the developer was planning for 4.5 parking spaces per 1,000, an adequate parking ratio. The developer didn't anticipate that the deferral agreement would need to be invoked, the need to add parking levels not likely. If it did become necessary, the developer would probably build an additional one level where the parking garage had been removed, and landscape it.

The question of the impact on housing values had been raised, especially by Leawood Country Manor residents. Mr. Kerr had information from J.D. Reece Realtors on property sales in Leawood Country Manor, and he felt that those residents should be reassured at the popularity of their neighborhood.

Another question concerned the economic impact on the Town Center on the completion of the hotel and office park. Kent Crippin talked about the new money that would benefit the City, to fund capital improvement projects and the general fund. With the property undeveloped, the City received \$44 a year in tax revenue from the property; the City would receive \$604,573 a year from the hotel alone upon its completion. The City would receive an estimated \$697,541 a year in tax revenues with the completion of the office buildings, for a total of approximately \$1.3 million in tax revenues from the entire project. The economic benefit from the project over time was considerable.

Mr. Kerr read 2 letters of support for the project, 1 from the management of Town Center Plaza and 1 from the owner of the Center, Dan Poag.

Another concern was the height of the hotel. Kevin Pistelli said that a 12-story hotel was important to provide for a better presence on the site for a first-class, luxury hotel. It would competitively give the developer the proper size and floor ratio of number of rooms on guest room floors, important in a first-class hotel.

Mr. Kerr talked about the density of the project. He said the density was not the highest density in Johnson County as many people had claimed. He said that the density of Corporate Woods in Overland Park was .40 FAR, that of the Sprint project in Overland Park was .48 FAR, and that of the proposed project under consideration by the Leawood City Council was .26 FAR, all FARs from the 4 corners. He talked about greater FARs within the 4 corners, the nature of office parks, the nature of projects with density within the 4 corners. Mr. Kerr said that the .26 FAR did include the hotel. Neil Douthat said that the density of the proposed project was in compliance with CP-0 zoning. Mr. Douthat said that the requested height of the hotel did not comply; if it was the desire of the Council to reduce the height, thereby making the request 100% in compliance with CP-0 zoning, that would put Mr. Pistelli at a disadvantage competitively, not good planning to do that. Mr. Douthat talked about the original SD-0 zoning in 1991, and the change in SD-0 zoning that occurred after his donation of land for a city hall and library which led him to apply for CP-0 zoning in order to be in compliance with the City's existing ordinances and to honor and accommodate the spirit of the moral understanding he had with the City in 1991. Mr. Douthat said that he was not trying to invoke as leverage the moral understanding, but trying to accommodate the changes in zoning ordinances since 1991, in order to accommodate the spirit of the understanding and to qualify for the density he felt was promised.

3640

In response to the Mayor, Mr. Kerr said that the developer intended, most likely, to build the office building north of the hotel first; in that case, it would be absolutely necessary to complete the park. However, some construction staging area would be needed as the construction of the project progressed (6-8 years to complete), so it might be required from economic and efficiency standpoints to complete the park in phases. The developer would work with the City in that regard. The developer would like to build the park in the first phase, and that might very well come to pass. The Mayor said that Edgewood residents felt very strongly that the park should be built in the first phase. Mr. Kerr said if that was what it would take to get the project done, the developer could probably figure out some way to do it and stage the construction some other way.

3700 Councilmember Dunn asked if the pedestrian crosswalks would be signalized. Mr. Kerr said that if there were warrants for them, they would be, but said that the pattern they would follow had worked very well for many years on the Country Club Plaza, and the traffic on the Country Club Plaza was, in his opinion, by all projections, much greater than anticipated on 117<sup>th</sup> Street. Mr. Kerr said that the crosswalks would be clearly designed with differences in paving materials and colors (part of final design approval) so it would be understandable to people that those areas were for pedestrians to cross the street.

3778 Councilmember Rasmussen said he didn't see any concern or indication at all in the staff report that there was an attempt to try to get pedestrian traffic across 117<sup>th</sup> St. He asked if the developer was accepting the improvements, in conjunction with the final development plan, of pedestrian traffic control across 117<sup>th</sup> St. Brian Pieplow, Community Planning Director for HNTB, said that the provision for pedestrian traffic improvements across 117<sup>th</sup> St. did not appear in one of the stipulations of approval, but said that the developer was prepared to have that as a condition of approval of the project. Attention was called to stipulation #15 which stated that the developer was to address a pedestrian landscaped link between the hotel connecting it to the park in and along Town Center Drive. Mr. Rasmussen said it didn't say anything about a connection to Town Center Plaza, but he heard the developer agree to a provision for pedestrian traffic improvements across 117<sup>th</sup> St. and that would be stipulation #20 of approval.

Mr. Rasmussen asked Mr. Kerr if he would be willing to have zoning revert to SD-0 if construction of the first phase of whatever was approved wasn't started within one year. Mr. Kerr said he would not be willing to agree to that.

In response to Mr. Rasmussen, Mr. Pistelli said there would be no adverse effects on the operations of the hotel created by construction going on around the hotel. And access to the hotel from Nall and from 117<sup>th</sup> St. was separated from the other sites in the project.

Mr. Rasmussen was concerned about trees ending up too small in diameter over time. Mr. Kerr said that the architect selected to do the design work would be responsible for the landscaping; that selection had not yet taken place. Mr. Kerr said those details would be reviewed at final plan.

Mr. Rasmussen asked if there was any geophysical reason why parking garage B couldn't be lowered one level. Mr. Kerr said it was possible to build parking garages as deep into the earth as desired, but there were very good economic reasons why developers generally didn't do that if they could avoid it because of the tremendous expense caused by fans, elevators, sprinklers, and other complications. Mr. Rasmussen said it was apparent to him that the developer was asking the risk of the parking requirements to be shifted to the surrounding area; the massiveness of the project could increase in one of the parking garages in the future over 12 years if the deferred parking became a necessity. Who should take the risk? Mr. Kerr said that if additional parking became necessary, and being aware of people's sensitivity to the height of the parking structures, perhaps the additional parking could go where one garage C had been removed and construct it the same as others, 6 feet below the grade of the earth with a deck on top of it, with the overall height probably 12-14 feet, probably the least intrusive design solution for additional parking if necessary.

In response to Mr. Rasmussen, Mr. Kerr said that in the original concept plan, the north office park had 395,000 sq. ft. of office on 25 acres.

4203 Mr. Rasmussen read a letter from Councilmember Taylor to the City Council in Mr. Taylor's absence. Mr. Taylor wrote that he could support the project if certain conditions he outlined could be incorporated in the proposed development.

4435 In response to Councilmember Dunn, Mr. Kerr said he was prepared to agree that the City Council would have approval of various aspects (materials, landscaping, signage, lighting) of the final plan. That could be added as a stipulation of approval.

4614 In response to Councilmember Clawson, Mr. Kerr said he intended to coordinate pedestrian crossings with the owners of the Town Center Plaza. Mr. Kerr said it would be very expensive to build a bridge-type crosswalk as suggested by Mr. Taylor in his letter; tunnels, ramps, elevators would be involved, and he knew people were afraid to go into tunnels (not pedestrian friendly); it would not be a practical or economically feasible solution for the pedestrian problem. Mr. Kerr confirmed that he expected the hotel to be built first and then simultaneously or shortly thereafter the first office building (preferably the one adjacent to the hotel) with the park. Mrs. Clawson said that Edgewood residents were concerned that they would have to look at a construction site for many years and not have the park developed. Mr. Kerr hoped the City would be flexible as construction phasing went on; it might be necessary to build only a portion of the park, using the rest for construction phasing. He said that he was committed to leaving the existing trees alone in construction phasing.

5004 There was discussion about the height of office building A at the corner of Town Center Drive and Nall Ave. across from the Commerce Bank building in Leawood Commons. Office building A was a 6-story building appearing to be a 4.5-story building; Commerce Bank was 2 stories. Councilmember Peppes felt it would be more aesthetic, pleasing to the eye, if office building A was shorter, creating a nicer "stepping stone" into the proposed project; a 4-story building which would have the appearance of a 2-story building would match up with the Commerce Bank building.

6117 Councilmember Gill believed that under analysis of what was allowed under the current zoning versus what the "4-corners analysis" allowed if a developer pushed everything off to remaining land provided there was a recalculation to reflect retail instead of commercial or office, the Council was being asked to put more office on the property than otherwise; he needed to justify that. He said that the development would have a traffic impact on the area; traffic was critical. He was not satisfied with the stipulation in the staff report that left way too much open for future decisions and future negotiations; he wanted to see that stipulation tightened up so that there was a firm commitment of some sort that went beyond "we'd evaluate it and talk about it in the future when it arose." Mr. Douthat said he would be amenable to a stipulation of approval that as part of the final plan consideration, the Council could consider whatever undertakings should be done at that time with respect to traffic.

6483 Mr. Gill wanted to see a reasonable time set for the beginning of the hotel construction from the date of Council approval plus a reasonable amount of time to allow for its construction and completion. He had a similar feeling about getting the office project underway, with flexibility as to which office building would be built first. He felt strongly that the park needed to be linked closely to phase 1 of the development. He suspected that that was probably not a stipulation that would be favorably viewed, but he was very

concerned, more so with the office than with the hotel, that zoning would be granted for density greater than that which currently existed. He wanted to see the office project started within some reasonable period of time or the consequence being reversion back to SD-0 zoning which would allow for 320,000+ sq. ft. plus the hotel as currently envisioned. Mr. Gill wanted to know if Mr. Kerr would accept a stipulation that called for some time parameters. Mr. Kerr said such projects were spread out over time in their development, long gestation period from conception to the time of completion. He said it wasn't in a community's best interest for zoning to be uncertain in an area. That was why he had readily consented to a stipulation to give the Council the power to approve the details of the project. But he couldn't guarantee time frames for construction of any of the buildings. He felt that the Council had the control to assure a quality project without placing a sunset clause that would create a lot of instability from the standpoint of the development community. Mr. Gill clarified that he was only looking at time frames for the start of the hotel and the start of one of the major office buildings. Mr. Kerr said that hotels were not easy projects to start for various reasons.

7195 11:00 P.M. On motion of Gill, seconded by Bold, Council voted unanimously to extend the meeting to 11:30 P.M.

Mr. Douthat said the project was in compliance with CP-0 zoning. The plan was in excess of the CP-0 limitations only to the extent that the proposed hotel would have 12 stories which would require a hearing before the Board of Zoning Appeals.

7452 Planning staff had recommended 550,000 sq. ft. of office use for the project (Alternative #3 of the staff report). Mr. Douthat felt that the City should uphold the moral agreement it made with him in 1991 which allowed for more than 600,000 sq. ft. of office space, and an economic benefit to which Mr. Douthat felt he was entitled to in 1991 based on the plan approval at that time. Was the City considering granting the CP-0 zoning if he would request less square footage than what it would afford him? Councilmember Peppes said that the 12-story hotel wasn't the matter for debate; the office space square footage was the major concern. He felt the Council was willing to grant the large hotel if Mr. Douthat was willing to cut back on the office space (a matter of 50,000 sq. ft.). Mr. Douthat said that the original plan submitted was for 650,000 sq. ft. of office use; his request was now for 600,000 sq. ft., so he had already given up 50,000 sq. ft., already a compromise.

8158 Mr. Gill agreed with Dr. Peppes' feeling that building A across from the Commerce Bank building needed to be shorter for a nice transition between the proposed project and Leawood Commons area. He also felt that the City's moral commitment had been met and that the total number of square feet on the 4 corners had been satisfied. Councilmember Clawson felt there was a consensus that the height of building A needed to be adjusted. She was concerned about the potential need to raise the height of the parking garages or to add an additional parking structure in the future.

8598 END OF TAPE

Tape No. 436

11:30 P.M. On motion of Bussing, seconded by Gill, Council voted unanimously to extend the meeting to 12:00 A.M.

#### RESIDENTS

Kelly Lyons, 5148 W. 114<sup>th</sup> Terr., Leawood Country Manor, was very concerned about traffic (an already bad situation becoming worse) and massing of the buildings. She felt that current SD-0 zoning was appropriate. The proposed project would compromise safety, value of homes, and quality of life. The proposed project should compliment and complete Town Center Plaza; increased traffic and congestion could compromise the success of the Center.

392 Pat Lysaught, 4905 W. 112<sup>th</sup> Terr., Leawood Country Manor, said there was no moral commitment between the City and Mr. Douthat. He asked that the Council consider reducing the height of the hotel from 12 to the originally proposed 8 stories. Actually, he felt a hotel was inappropriate for the location, being very close to residential areas. He said the project was supposed to serve as a buffer between a single family residential area and retail, and yet it would have, despite Mr. Kerr's claim, the highest FAR of any project in Johnson County. That wasn't the commitment made by the City to the residents when they approved the original zoning in 1991 - 395,000 square feet of office space, 5 buildings not to exceed 3 and 4 stories. He referred to the Golden requirements for planned zoning. He said the project didn't meet any of the Golden requirements for a zoning change. The developers couldn't justify the zoning change other than for their own economic benefit. He also asked the Council to consider reducing the square footage of the office space; Marned Corp. would still have more than sufficient economic return.

661 Al Cinelli, 11509 Juniper, President of Edgewood Homes Assoc., read a statement. He didn't support the project at the proposed density level; most Edgewood residents did support the project. He could support it at a reasonable density level. He was concerned about the adverse effect of the development on the value of his property. A 12-story hotel and 6-story office buildings were out of character with nearby residential communities. The appeal of Edgewood was diminishing due to the increase in traffic - access to Edgewood was difficult due to heavy traffic. Mr. Cinelli said it was very difficult to sell homes and lots in Edgewood.

857 12:00 A.M. On motion of Bold, seconded by Bussing, Council voted unanimously to extend the meeting to 12:30 A.M.

#### RESIDENTS

Ken Bush, 5187 W. 114<sup>th</sup> Place, noted that the increase in traffic would cause an increase in air pollution for the area, further damaging quality of life for residents.

1372 Councilmember Peppes moved to adopt the resolution with staff's recommendations (Alternative #3 of staff's September 15, 1998 memo to Council), and with new stipulation of approval #20 regarding the pedestrian traffic improvements across 117<sup>th</sup> St. connecting the hotel project with Town Center Plaza (as presented by the developer and subject to the City's public safety and other required staff review), and with new stipulation of approval #21 stating that the final plan application would return to the Council for their approval, and with new stipulation of approval #22 stating that public art details would be approved by the Plan

Commission and the Arts Council. Motion seconded by Bussing. As far as stipulation #21 was concerned, Councilmember Gill said he expected that the Council could consider all pertinent factors including, but not limited to, the traffic impacts and who would pay for them, and that it would not be just an administrative, ministerial review. Planning Director McKay said that staff intended to have a traffic engineer look at each phase and relay their information to the Council. The Mayor said that parking would have to be calculated to comply with the 550,000 sq. ft. Mr. McKay said that staff would do a parking analysis for each phase.

Councilmember Rasmussen moved to amend the motion to limit the office building square footage to 400,000 sq. ft. plus the hotel. Motion died for lack of a second.

City Attorney Wetzler said that since there was a height limitation of 6 stories on buildings in CP-0 zoning, the developers would have to apply to the Board of Zoning Appeals for a variance in height for the hotel. The Board would consider an application for a variance before final plan approval. If the developers didn't receive a variance, they could appeal the decision to the District Court.

In stipulation of approval #3 regarding the park, wording was changed to read, "This park will be private land and the park-like setting will be maintained in perpetuity by the developer."

Mr. Douthat said he agreed to the additional stipulations.

Mr. Gill said he wanted it clear on the record that he was not taking a position for or against any height for the hotel above 6 stories.

1930 12:30 A.M. On motion of Clawson, seconded by Bussing, Council voted unanimously to extend the meeting to 1:00 A.M.

Mr. Gill recommended a 350-room hotel with 259,000 sq. ft., and he assumed the Board would pay deference to the expertise of Mr. Kerr, Mr. Douthat, Mr. Pistelli, on what the hotel would look like. Mr. Gill didn't want to take a position on a structure that the Council hadn't even seen, especially when the Council couldn't do anything about it. The Mayor made it clear that the motion was a recommendation for 12 stories.

Dr. Peppes motion carried unanimously.

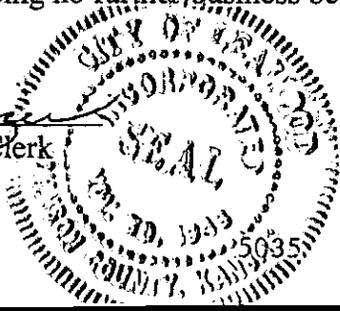
2008 **Ordinance No. 1746 rezoning from SD-0 to CP-0, Town Center Park (Hilton Hotel) at 117<sup>th</sup> and Nall Ave.** On motion of Bussing, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

#### NEW BUSINESS

2031 **Approval of Appropriation Ordinance No. 844.** On motion of Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

2071 12:40 A.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 437

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, September 28, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Captain Craig Hill, Police Department; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Scott Whitaker, Director of Parks and Recreation; Kathy Rogers, Finance Director; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**PLEDGE OF ALLEGIANCE.** Webelo Scout Pack 3197 from Brookwood Elementary School led the Pledge.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Taylor, after the removal of an ordinance amending Section 11-204 of the Code of the City of Leawood relating to public nuisances, specifically residential lighting (wording changes needed to be made by staff and would be considered at the October 22<sup>nd</sup> Council meeting), and the addition of 1) a discussion of a 4-way agreement between the City, Williams Pipeline Co., Assisted Living Investments LLC, and Village Associates, L.L.C., regarding a pipeline encroachment easement that the City had previously entered into with Williams Pipeline Co., and 2) an update on the Mission Rd. project south of 103<sup>rd</sup> St.

**RECOGNITION OF DEPUTY BUILDING OFFICIAL/BUILDING CODES**

**ADMINISTRATOR KENNETH E. ANDERSON ON HIS RETIREMENT.** The Mayor and Planning Director McKay talked about Mr. Anderson's abilities and dedication to his work. The Mayor presented a plaque to Mr. Anderson in recognition of his service to the City from June 1, 1990 to October 12, 1998.

**CITIZEN COMMENTS.** None.

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**CONSENT AGENDA.** Two items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Gill:

1. Golf Course Committee report (minutes) on their September 15, 1998, meeting;
2. Purchase of ~~1998~~ Police patrol cars through area cooperative purchasing - 6 Ford Crown Victorias totaling \$125,482.50;
3. Change Order No. 6 to the contract with Seal-O-Matic Paving for 1998 Street Improvement Program in the amount of \$8,378.56;

4. Change Order No. 2 to the contract with Wilson Plumbing Co. for stormwater management (SMAC) project TM-04-005, Oxford Hills Storm Sewer Replacement, in the amount of \$11,000 (75% to be reimbursed by the County) – for the reconstruction of existing storm drainage structure to eliminate flooding of property at 11905 Windsor Dr.

Approval of audit services for fiscal year 1998. Councilmember Bussing wanted to hear comments from the Finance Director. Mrs. Rogers said she hoped the Council would approve the “premium” audit as described in her memo to them which would allow the audit to be closed and presented to the Council before the next year’s proposed budget was presented. On motion of Bussing, seconded by Clawson, Council unanimously approved “premium” audit services with KPMG Peat Marwick of Kansas City in the amount of \$30,000.00.

Purchase of 1999 ambulance. After brief discussion of the “best and low” bidder process, and on motion of Taylor, seconded by Gill, Council unanimously approved the purchase of a 1999 Ford ambulance from Wheeled Coach in the amount of \$69,069, which included the trade-in value of a 1986 Ford ambulance.

440 **MAYOR’S REPORT.** The Mayor, City Administrator, and Finance Director recently went to New York to give a presentation to Moody’s Investors Service for a forthcoming bond rating.

The next Council meeting would be held Thursday, October 22<sup>nd</sup>, due to a Leawood delegation leaving the first part of October to visit sister city I-Lan, Taiwan. The Mayor, Councilmembers Rasmussen and Peppes, some staff members and residents (a total of 18/16 mk people) would constitute the delegation.

#### **NEW BUSINESS**

475 **Approval of Appropriation Ordinance No. 845.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

492 **Adoption of Public Art Program Policy Guidelines.** Mary Reed, Chairman of the Arts Council, and public art consultant Heidi Bilardo, requested City Council approval. The Arts Council requested a 2% allocation from the City’s share of all City capital improvement projects newly bonded, \$.10 per square foot assessment on non-residential private development, and \$1.00 per year per resident (as part of the budget starting in 2000), as funding sources for public art. Councilmember Bussing moved for approval, seconded by Clawson.

Councilmember Taylor said he would support the 2% from a bonded project being spent on public art associated with that particular project, not simply being placed in the City’s general fund. Mr. Taylor was concerned about the possibility of an architect selected by the City being overruled by an artist coming in to dictate to the architect’s design; he felt very strongly about a team approach on public building. There was discussion. Mrs. Bilardo said there would be a true collaboration effort; she had never seen a situation where an artist more or less dictated unilaterally what he or she wanted to do. She said that the architect for any given project would be a member of the artist selection panel, so there would be lots of

discussion. Mr. Taylor said he wanted to see an artist/architectural team as part of the rules and regulations, and that the architect should have the final say on a recommendation to the panel. Mr. Taylor said he didn't see what he would like spelled out in the proposed policy guidelines.

Councilmember Bold said that in order to build a surplus (reserve) in the 1999 budget, staff had relied on the fact that residential property values had increased. Staff had informed the Council that they might be compelled to increase the sales tax burden on residents in order to take care of priority obligations of street and stormwater maintenance programs. He said that the City was facing some unknown dollar amount for acquisition of the 800 MHz radio system, and had allocated for 5 new full-time employees to catalog the City's stormwater system which would probably bring to light new stormwater projects that would need attention. Mr. Bold felt that the public art program was a good idea and was wholeheartedly behind the concept, but the City couldn't afford it at the present time. He urged that the motion be denied.

Mrs. Clawson said that stormwater was an issue the City had been dealing with since the 1977 flood, and was not an issue that would be resolved overnight. She said that it should be clear that the Council had not taken any steps towards a sales tax increase, and felt that they did have the financing in place to take care of stormwater needs over the next few years. With regard to Mr. Taylor's statements about the proposed public art guidelines, she felt that he had said that he wanted an architect to be in control of who the artist was who was selected. She said that at every step during the process of developing the guidelines, there had been a consistent desire on the part of the Arts Council to involve the architects, landscape architects, City staff, and she felt that the architects for every public art project would work very closely with the Arts Council and the artist selection panel, so she didn't see a need for any greater detail in the selection committee process. She said that if the Council was ever presented with a situation where there would be selection of a piece of art that would be at odds with any member of the City Council or the architectural team for a project, the Council could step in and take some control of the situation, because ultimately the approval of the selection rested with the City Council.

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Councilmember Rasmussen suggested a change on page 2 under A. Artist Selection Panel, Composition: a bullet be added that would read, "in the case where an architect/designer has been selected by the City, that person shall be part of the panel"; the architect would have a voice, but not the deciding voice.

One of the bullets under that same section mandated that one member of the artist selection panel be non-local (non-Leawood). Councilmember Gill felt that there were enough qualified people in Leawood; he didn't see a need to mandate non-local representation, just make that bullet one of permissive membership to read, "one may be non-local."

Mr. Rasmussen also suggested changing the last bullet to read, "advisors representing those who will be in regular contact with the artwork selected (neighborhood representatives, City staff, site users)." (omitting "project architect/designer")

Mr. Bussing, the maker of the motion to adopt the guidelines, and Mrs. Clawson who seconded the motion, both agreed to the inclusion of the 3 bullet changes in the motion.

Mr. Bold recommended that the Council wait to institute the policy guidelines until after it was done building up its budget reserves. He said that the City was borrowing more money than it would have borrowed before the public art policy and adding it to the debt of

the citizens of Leawood. If the City didn't spend money on public art, the money could be used to pay cash for items for which the City was actually going to borrow money.

1497 Mr. Bussing called for the question, seconded by Clawson. Motion carried unanimously. Mr. Bussing's motion to adopt the policy guidelines (with the 3 bullet changes) carried; Bold opposed, all others in favor.

City Administrator Garofano said that the City Attorney would prepare an "impact fee" ordinance in the near future to enact the \$.10 per square foot on commercial.

1545 **Resolution No.1426 authorizing the sale of \$12,340,000 general obligation bonds to pay the costs of public improvements – 135<sup>th</sup> St. between State Line and Nall Ave., Old Kenneth Rd. between 135<sup>th</sup> St. and Kenneth Parkway, Town Center Plaza improvements, Kenneth Rd. from 1000 feet south of 143<sup>rd</sup> St. northerly to 700 feet south of 135<sup>th</sup> St., and Mission Rd. from 500 feet south of 135<sup>th</sup> St. southerly to 143<sup>rd</sup> St. then westerly 600 feet.** Adopted unanimously on motion of Peppes, seconded by Bussing.

1685 **Authorize contract for design of a maintenance facility site plan at Leawood City Park.** Councilmember Peppes moved to approve a contract with Continental Consulting Engineers in an amount not to exceed \$8,500.00, with reimbursables not to exceed \$300.00, seconded by Dunn. There was discussion of the design/build process. Councilmember Taylor didn't have a problem with the contract under consideration, but did have a problem with the design/build process; he felt that there should be a published, advertised selection process for the design/building, that staff should not just select one from a list that they had prepared. He urged the Parks & Recreation Advisory Board who would meet in October to publicly solicit design/build contractors. Councilmember Gill agreed with Mr. Taylor. Dr. Peppes' motion carried unanimously.

1913 **Schedule work session.** Scheduled for October 22<sup>nd</sup> at 5:00 P.M. to review requirements for city of the first class status.

2310 **Schedule executive session.** On motion of Dunn, seconded by Clawson, Council voted unanimously to convene in executive session at the end of the meeting for 10 minutes to discuss a matter under attorney-client privilege.

2330 **OTHER BUSINESS.** Discussion of a 4-way agreement relating to an encroachment easement for a pipeline along 115<sup>th</sup> St. City Administrator Garofano explained that at the time developers built 115<sup>th</sup> St. between Roe and Tomahawk Creek Parkway, the City had an encroachment agreement with Williams Pipeline Co. (Williams had a gas pipeline on the north side of 115<sup>th</sup> St.) which allowed the City to build certain public improvements within Williams' easement, although not over the pipeline. Part of that agreement stated that if for any reason Williams had to do any repair to their pipeline which caused the street, sidewalks or curbs to be disrupted, the City would bear the expense of replacing the infrastructure. The Council recently approved an assisted living facility on the north side of 115<sup>th</sup> St. Assisted Living Investments (ALI) was getting ready to close their deal with developers Village Associates, and wanted to know if the City would guarantee access to their development if something happened that caused the street to become in need of repair. ALI requested a 4-

way agreement between themselves, the City, Village Associates, and Williams Pipeline that would basically state the facts as summarized by Mr. Garofano.

Councilmember Rasmussen felt that if the City incurred additional expenses in keeping access open to ALI's development, ALI should reimburse the City. Public Works Director Johnson said that the 4-way agreement basically stipulated what the encroachment agreement stipulated – if Williams disrupted 115<sup>th</sup> St., and only the street, the City would be responsible for replacing the street, not for replacing ALI's driveways. ALI would be responsible for replacing their property outside of City right-of-way, outside the limits of the City's infrastructure. City Attorney Wetzler felt that the City had an obligation to maintain access to 115<sup>th</sup> St., couldn't close off access completely.

Mr. Johnson clarified that ALI was concerned that Williams could tell the City to remove 115<sup>th</sup> St. from its (Williams') easement, thereby eliminating the street between Roe and Tomahawk Creek Parkway and any access by ALI to a public street. The 4-way agreement stipulated that if the street was torn up, the City was obligated to replacing it only, not anyone's access.

2824 Councilmember Clawson felt that the 4-way agreement indicated that the City would go down ALI's driveway and keep it open, so she suggested adding a sentence to the 4-way agreement to clarify that if work had to be done beyond the City's right-of-way in order to keep ALI's drive accessible, it would be at ALI's expense.

Mr. Wetzler said he would add clarifying language. Councilmember Taylor moved for approval of the agreement based on comments made during discussion, seconded by Rasmussen. Councilmember Gill said he would recuse himself from the vote to avoid the appearance of a conflict of interest. Motion carried; Gill abstained, all others in favor.

3000 Update on Mission Rd. project south of 103<sup>rd</sup> St. Public Works Director Johnson said he hoped concrete could be put down by mid-October. All hurdles relating to sanitary sewers had been cleared, were waiting on equipment and the area to dry out. Hopefully, the City would have a better schedule from the state and contractor in the very near future. Opening of the street this winter would depend on good weather in November and December to get the concrete down the entire length of the project.

3100 Pledge of Allegiance. It was agreed that the Pledge would be recited at Council meetings.

3218 9:25 P.M. Council convened in executive session and returned to regular session at 9:35 P.M., same members present. On motion of Taylor, seconded by Gill, Council voted to return to executive session for 10 more minutes to continue the same discussion; Rasmussen opposed, all others in favor.

3226 9:45 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 438

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Thursday, October 22, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, \* Marnie S. Clawson (left the meeting at the end of Old Business), Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Joe Johnson, Public Works Director; Sid Mitchell, Chief of Police; Ben C. Florance, Fire Chief; Robert McKay, Director of Planning & Development; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Clawson, after the removal of the September 28, 1998 Council meeting minutes (to be considered instead at the November 2, 1998 meeting); removal of an ordinance amending Section 11-204 of the Code relating to public nuisances, specifically residential lighting (to be considered instead at the November 2, 1998 meeting); addition of a discussion of flooding problems in Wilshire subdivision; and addition of the scheduling of a Council work session and Special Council meeting.

**RECOGNITION OF NEW NATIONAL FIRE ACADEMY GRADUATES OF THE EXECUTIVE FIRE OFFICER PROGRAM – BATTALION CHIEF DOUGLAS L. WOLFORD AND OPERATIONS CHIEF RANDY L. HILL.** Fire Chief Florance read a press release regarding the graduates and the nature of the rigorous 4-year Executive Fire Officer Program. The Mayor presented plaques/diplomas to Chiefs Wolford and Hill.

**PRESENTATION OF LEAGUE OF KANSAS MUNICIPALITIES SERVICE AWARDS TO CITY EMPLOYEES.** The Mayor presented League and City certificates of appreciation and City of Leawood watches to the following for their service to the City:

- 25 years - Martha Heizer, City Clerk
- 10 years – Mike Pelger, Police Officer III (DARE)
  - Rob Weber, Police Captain
  - Fran Doll, Senior Communications Officer
  - Jeff Peevler, Street Maintenance Supervisor
  - Steve Lamb, Parks Maintenance Supervisor
  - Scott Whitaker, Director of Parks & Recreation
  - Scott Rutherford, Fire Lieutenant

**PROCLAMATIONS.** The Mayor proclaimed October 19-25, 1998, as "Higher Education Week," and November 15, 1998, as "America Recycles Day."

The Mayor read a proclamation designating the first Leawood City Hall at 9615 Lee Boulevard as a "Leawood Historic Structure" and instructed the Chair of the Leawood Historic Commission to record as appropriate said designation in the Leawood Register of Historic Places. She presented the proclamation to Chair Beverly Hurley.

**CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, wanted to know why the City would send staff to visit sister city I-Lan, Taiwan, instead of sending them to seminars; would the City do that every year, and if so, why not let a few taxpayers go. He expressed concern about the City's recent park improvement bond referendum on the ballot with the County's park land acquisition question; where would all the money come from to pay the costs of the improvements, and where would all the spending stop? Regarding the first Leawood City Hall at 96<sup>th</sup> and Lee Blvd., he suggested it be used as a daily community center run by volunteers, rather than simply designating it an historic monument.

Engineer Ed Schlager spoke briefly about basement flooding problems in Wilshire subdivision, 132<sup>nd</sup> & Roe Ave., east side of Roe (an item to be discussed towards the end of the meeting). There had been a significant amount of erosion and there was no terracing on the property, and over time, the box culvert under Roe Ave. had become plugged up with mud and backed water up into the development, flooding out one home. Public Works cleaned out the culvert, but unfortunately, mud was still getting into the storm sewer system upstream, decreasing the capacity of the storm sewers and capacity of the existing stream bed in the area. He hoped the City could convince the property owner to the south to allow him and his associates to occupy the property in order to make some changes and requested the City's help in extending some of the storm sewer pipes into that property to get better berming behind the pipes and accomplish what they needed to do.

832 **CONSENT AGENDA.** Four items were removed for further discussion. The following were approved unanimously on motion of Bussing, seconded by Peppes:

1. Minutes of the September 21, 1998, Council meeting;
2. Departmental reports;
3. Data Access and License Agreement with Johnson County – to allow the City to share the AIMS (Automated Information Mapping Systems) information created by the County, the base information used in the City's Geographic Information System – at a cost to the City of \$5,589.36 for 12 months of on-line electronic access;
4. Purchase of 6 Automatic Vehicle Locators (AVL System) for the Fire Department in the amount of \$18,000.00 to assist the Johnson County Emergency Communications Center in dispatching the closest ambulance or fire truck to an incident;
5. A one-year banking services agreement with Exchange Bank at 11301 Nall Ave. beginning January 1, 1999.

Arts Council report (minutes) of their September 22, 1998, meeting. The Mayor said that the art show scheduled at Exchange Bank at 11301 Nall Ave. on October 23, 1998, featuring 2 local artists Ellen Sweeney and Mary Lou McBride, had been postponed to mid-November. On motion of Bussing, seconded by Clawson, Council unanimously approved the report.

Federal grant under the COPS Universal Hiring Program (to increase the City's patrol officer base to keep pace with the City's growth and to further efforts in community policing). The grant was for a total of \$373,566 for 3 officers' salaries over a 3-year period, \$255,000 federal money and \$148,566 local matching funds. Councilmember Rasmussen was concerned about accepting the grant; there was a lack of space at the Police Department, and he thought the City had successfully kept pace with a certain number of officers per 1,000 residents over the last several years. He wanted some justification for accepting federal money in 1998 and making a commitment to "pick up the whole tab" in 2001, and where was the space for the 3 officers. As far as space was concerned, Police Chief Mitchell explained that the 3 officers would be out on the street as patrolmen. Chief Mitchell said it was an opportunity for the City to get a head start on the next 3 years of population and business growth. On motion of Rasmussen, seconded by Taylor, Council unanimously accepted the grant.

Agreement with Prairie Village to govern the use of a partially shared 800 MHz police radio system  
AND

Purchase of items for Phase One of the 800 MHz radio system totaling \$147,062.48 for upgrade at Prairie Village and user system test radios.

Councilmember Taylor asked if the City's use of the tower at Prairie Village would eliminate the need to use the tower at 96<sup>th</sup> and Lee Blvd. Police Chief Mitchell said that the City would continue to use the tower at 96<sup>th</sup> and Lee. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the agreement and the purchase of necessary items.

#### **PLAN COMMISSION**

1086 **Resolution No. 1427 approving preliminary site plan and preliminary plat for Pinnacle at Tomahawk Creek Parkway Office Park, 114<sup>th</sup> & Tomahawk Creek Parkway.**

Architect Mitch Hoefler gave a brief presentation for the applicant Clark Development Co.

There was brief discussion of public art and adequate stormwater drainage. Public Works Director Johnson said that Tomahawk Creek Parkway was designed and built for a 10-year flood event, the storm sewers under the Parkway sized according to the expected developments to the west of the Parkway, and the pipes in the developments sized in accordance with City ordinance. He said City ordinance could be changed for a higher intensity storm and increased pipe size in the developments. He said that in a 100-year event where the pipe system was exceeded, most of the water in the office development would be in the parking lots ending up along the right-of-way of Tomahawk Creek Parkway, going through the box system under the Parkway. In the event there was a 100-year event for Tomahawk Creek itself, the channel would flood all the way up to the Parkway and preclude water draining from west to east, so there would be some flooding between the Parkway and the buildings to the west. The buildings wouldn't flood because they were elevated; there would be about 7 inches of water in the parking lots.

There was discussion of a deviation allowed in the off-street parking, discussion of the number of parking spaces allowed based on finished floor area in accordance with City ordinance versus leasable floor area. Planning Director McKay said that the Plan Commission had allowed parking for several buildings in the area to be based on leasable floor area. Councilmember Taylor felt that a stipulation #13 indicating the deviation should be added to the resolution. Mr. McKay said he would word #13 appropriately.

Councilmember Peppes moved to adopt the resolution with the addition of stipulation #13, seconded by Taylor. Councilmember Rasmussen moved to amend the motion to change the wording of stipulation #10 to read, "The applicant must submit public art details to the Plan Commission and Arts Council for approval or in lieu of that pay a \$.10/square foot of finished floor area fee associated with a proposed ordinance to be considered by the City Council." Motion seconded by Taylor. Mr. Hoefer agreed to both stipulations #10 and #13. Motion to amend carried unanimously. Dr. Peppes' motion as amended to adopt the resolution carried unanimously.

1793 **Resolution No. 1428 approving a special use permit, preliminary site plan and preliminary plat, for Crème de la Crème (day-care facility), 115<sup>th</sup> & Roe Ave.** Architect Charles Smith of architectural firm Arete 3 Company of Chicago gave a presentation. The elevation was changed during discussions with developer Jeff Alpert after the Plan Commission had heard the request and recommended approval to the City Council.

There was discussion about 115<sup>th</sup> St. (a primary collector street) being wide enough to meet City standards without obtaining 10 feet additional right-of-way. Planning Director McKay was it was wide enough; he would have liked to have had 10 more feet of right-of-way for a right turn lane if possible, but the City had an encroachment agreement with Williams Pipeline Co. which wouldn't permit obtaining normal right-of-way requirement beyond the pavement of the street. The encroachment agreement was executed in order to get 115<sup>th</sup> St. built. A traffic study which was done for 115<sup>th</sup> St. indicated that what was in place, with the exception of some additional turning lanes which could be constructed with the right-of-way the City did have, was acceptable.

2336 Councilmember Bold felt that the Plan Commission should have an opportunity to look at the changed elevation. Mr. Smith said a remand wouldn't help the construction schedule; he was already 2 months behind schedule. He said there had been talk of pulling the project if construction couldn't begin before the end of the year. Only 2 changes had been made to the plan - new elevation and moving some landscaping around. Planning Director McKay said he didn't know about the elevation change until the Council meeting. He said that if the Council found the new elevation acceptable and approved the preliminary site plan and plat, the Plan Commission would slow the project down at final plan if they had a problem with the new elevation.

2663 Mr. Bold said he appreciated Mr. Smith's time concerns, but the City did have a set of procedures which included the Plan Commission and planning staff. In light of the fact that neither had had an opportunity to review the new drawings, he moved to remand the application to the Plan Commission for their approval, seconded by Bussing. Mr. Smith said that the issue was critical and would be willing to proceed with the original plan/elevation if the Council wanted to remand the new elevation which Mr. Smith felt was a better design.

In response to Councilmember Gill, City Attorney Wetzler said that he didn't see anything wrong with the Council suggesting that the Plan Commission make the final decision on the elevation.

Councilmember Rasmussen asked that stipulation of approval #15 concerning public art include the \$.10/square foot of finished floor area fee associated with a proposed ordinance soon to be considered by the Council (see earlier discussion of Resolution No. 1427).

3035 Mr. Bold and Mr. Bussing withdrew their motion and second for a remand. Mr. Gill moved to approve the recommendation of the Plan Commission for approval of the plan that it reviewed with additional stipulation #19 that the revised elevation be presented to the Plan Commission for its consideration regarding all things dealing with the plan including the final elevations, and with the changes in stipulation #15 concerning public art requested by Mr. Rasmussen. Motion seconded by Rasmussen and carried unanimously.

3234 **Ordinance No. 1747 amending Sections 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance relating to roofing, specifically the addition of 4 Girard roofing colors.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

3520 **MAYOR'S REPORT.** The Mayor reported that the ATA transit lines would be crossing the state line, going down 95<sup>th</sup> St. over to Metcalf and south, and providing service to the Sprint Campus mornings and evenings.

The Mayor, Councilmembers Peppes and Rasmussen, and staff members Joe Johnson, Sid Mitchell, and Julie Hakan, were part of the delegation to visit sister city I-Lan, Taiwan, the last 2 weeks. Staff members utilized some of their budgeted annual conference funds to help pay for their trip. Everyone else paid entirely for the trip themselves. Everyone in Leawood had been invited to go through notices in newspapers. A delegation from I-Lan may visit Leawood in 2000. 1998 was the 10<sup>th</sup> year of Leawood's sister city relationship with I-Lan. Dr. Peppes and Mr. Rasmussen spoke about the many benefits of the trip.

The Mayor congratulated the Fire Department on its 1997 Life Safety Achievement Award in recognition of its work in keeping Leawood free of deaths from fire in 1997.

#### **OLD BUSINESS**

3770 **Resolution No. 1429 denying a request for rezoning from AG to RP-1, RP-4 and REC, and request for preliminary site plan and preliminary plat approval, for Saddle Ridge-Residential and Golf Course, 105<sup>th</sup> and Mission Rd.** The Plan Commission had reviewed the matter on remand from the Council and recommended denial of the application because the proposed plan was not in compliance with the master plan and the overall development density was artificially reduced by commercial property intended for a golf course.

Attorney John Petersen appeared as the applicant on behalf of Saddle Ridge Land Development Co. and Southwestern Bell Wireless and gave a brief presentation. The plan had been changed. There were now 88 villas with requested RP-1 zoning north of 105<sup>th</sup> St. (originally 96 villas with requested RP-4 zoning). RP-4 zoning was requested for 23 living units south of 105<sup>th</sup> St. He pointed out that the lots on the eastern perimeter of the project directly abutting Leawood Estates subdivision were lots of the exact type, size and nature as any other RP-1 lots in Leawood. The only deviation he requested, one that was allowed

under RP-1, was the frontyard setback deviation from 30 to 26.25 feet because of the concept of the villa community, variances in setbacks creating a more interesting streetscape. The average lot size of those lots was 13,766 sq. ft. The average lot size of abutting lots in Leawood Estates was 14,766 sq. ft.

Mr. Petersen requested a minor lot size deviation to go below the RP-1 minimum 12,000 sq. ft. on 28 of the other RP-1 lots. The average lot size of those lots was 11,130 sq. ft. None were below 10,000 sq. ft. He said that having some lots in a subdivision less than 12,000 sq. ft. was not uncommon in other Leawood subdivisions.

Mr. Petersen said the total density for the 60.58 acres of residential development north and south of 105<sup>th</sup> St. was 1.8, a less dense development than those of neighbors to the east and north.

Mr. Petersen said the developers had decided to place the golf course under contract with Club Corp of America to be privately owned and operated. He said the design of holes 1,3,8,10,11 and 14 had been modified in response to course safety concerns raised previously. The developers had prepared a set of covenants/deed restrictions that they would propose would run with the land within the subdivision, and suggested a stipulation of approval that would require that those documents become part of the record running with the land – an acknowledgement by anyone buying a home that any personal injury, liability or property damage liability that they would waive the ability to bring action based on any occurrence on the course against the City. Mr. Petersen gave the City Clerk the proposed document. David Ritchie of Club Corp of America gave a brief report on Club Corp and his specific plans for the Saddle Ridge course. He felt that the Saddle Ridge development had some unique opportunities as a private dining and social club. Mr. Petersen said that membership would be private, not public. Mr. Petersen mentioned the special use permit for the clubhouse – the format developed procedurally with staff was to have the land use approved as part of the special use permit application with the express stipulation that the developers would be required to come back within 6 months with a preliminary plan that would show the specifics of the clubhouse, subject to public hearing, notice, protest and all of the procedural safeguards that were in place. Developers didn't want to have the cost of designing a new facility if they knew they didn't have the underlying land use approvals for the course and the clubhouse.

Mr. Petersen said that in some fashion, the plan was different than the one the Plan Commission had seen. From a procedural standpoint, because the modification to the plan was of a lower intensity than what had been requested, the application did not require a new filing.

4437

As far as indemnifying the City was concerned, Councilmember Bold was not concerned about homeowners who would buy into the new subdivision; he wanted to know what the developers would do to indemnify the City if liability occurred with existing homeowners in Leawood Estates. Mr. Petersen felt it would be very unlikely, if not almost impossible, for golf balls to leave the general site and become a problem for Leawood Estates residents. He said it was not so much an issue of indemnification in terms of proposed deed restrictions, but a release of liability which would legally prevent the new homeowners from bringing any action against the City. In terms of indemnification, if there was a problem of property damage or other types of occurrences, the developers would probably be willing to enter into a stipulation that would address the issue vis-a-vis the landowner and the operator and the City. That would be indemnification.

4520 There was discussion between Councilmember Gill and Mr. Petersen of City procedures/provisions relating to a less intensive use concept and to changing to a more restrictive zoning classification.

4800 Councilmember Dunn said it appeared to him that a golf course in the middle of the development was a commercial operation, and he didn't find a public commercial operation to be in character with the surrounding neighborhood. He would need to know that there were significant stipulations that the developers had agreed to regarding the type of use the golf course would experience, some very strict assurances that it would be a private course with the type of rounds that a private course would generate. Mr. Petersen said the developers would be willing to set forth guidelines of operation that would be centered around the practices and policies of Club Corp of America and would be willing to stipulate to the approval that the course would be maintained as a private for membership golf course, and if at any time in the future, someone wanted to change the character and nature, they would be required to return to the City Council.

In response to Mr. Gill, Mr. Petersen felt comfortable that the dining facility would be of no greater intensity in terms of club membership utilization than that of Saddle and Sirloin Club.

4923 In response to Councilmember Taylor, Mr. Ritchie said he hoped to see a minimum of 1,000 in membership within a year after opening; he could only estimate a maximum of 2,000-2,500. Mr. Taylor told Mr. Petersen that he was concerned that the Plan Commission had not reviewed the modified plan. Mr. Taylor didn't think the plan went far enough to his satisfaction in addressing the development of the care facilities. He was also concerned about the environmental issues along I-435. Mr. Taylor wanted to know where the floodplain was located in the vicinity of the southwest portion of the development and how the developer planned to address the floodplain as far as site development was concerned. Discussion followed, mainly on what Mr. Taylor believed was a lack of preliminary planning and studies for the care facilities and on Mr. Petersen's explanation of the special use permit process.

5707 RESIDENTS. Mark Arensberg (10300 Howe Lane), Nathan Oliver (10328 Mohawk Lane), and Don Sole (10412 Mohawk Lane) expressed many concerns about the development. Mr. Arensberg urged the Council to deny the plan, preserve residents' protest rights; another plan would need to be less dense and fit in with northern Leawood; if remanded to the Plan Commission, another public hearing should be ordered; no golf and no RP-1 with variances. Mr. Oliver wanted a less dense plan with more green space. Mr. Sole requested elimination of the RP-4 rezoning request, denial of the golf course, a berm (sound barrier) along I-435, and elimination of the care facilities because of increased traffic concerns.

6643 Councilmember Clawson said that she couldn't support anything that disallowed further notification, public hearing and citizen protest. Residents had had that opportunity with a much different plan than what most likely the Council would ultimately see, and felt that in all fairness, they deserved the opportunity to have further notice. Mr. Petersen said that if the matter was remanded to the Plan Commission, he would provide a written notice to the residents as previously done to make everyone aware of the modified plan. He said, however, that to have another public hearing would not create a new protest period. He cited Attorney General Opinion No. 81-49. City Attorney Wetzler didn't agree with Mr. Petersen - state statute didn't state that the City couldn't have a second public hearing if properly

noticed and other procedural requirements held. He said that the City could take the very good position under City ordinance which was more specific and restrictive than state statute, that a public hearing, if given the proper period of time and notice and publication, could in fact create a right of protest again.

6932 Councilmember Rasmussen moved to uphold the recommendation of the Plan Commission to deny the request for rezoning and preliminary plan and plat approval, seconded by Taylor. He said procedures had been followed, people had been allowed to review and to have an opportunity to exercise their rights for applications, the master plan would be upheld, commercial utilization would not be permitted in the area particularly in terms of the golf course and clubhouse, the character of the area had not changed (the abutting areas were residential with significant difference in area size). Denial of the application would also mean that the applicants would have to start the process all over again for their modified plan, if they so desired.

Councilmember Bold preferred the matter be remanded to the Plan Commission. There were still items that needed to be addressed, like the golf course. All in all, the project was a pretty good one. He felt there was a need for the type of homes proposed for the project. He felt a public forum should be made available for review of the modified plan. He felt there should be a way to make the project work.

Councilmember Gill felt that the right thing to do was to remand but with a requirement for a full hearing to protect residents' rights whatever they were including protest rights if they existed, to not have those rights prejudiced by a plan change that occurred after the hearing that they did attend. He felt that the modified plan was a much better plan.

7663 11:00 P.M. On motion of Gill, seconded by Taylor, Council voted unanimously to extend the meeting to 11:30 P.M.

Councilmember Dunn called for the question, seconded by Clawson. Motion carried; Bussing, Peppes opposed; all others in favor.

Mr. Rasmussen's motion to deny carried; Clawson, Dunn, Gill, Rasmussen, Taylor in favor; Bold, Bussing, Peppes opposed.

Mr. Gill moved to suspend the 6-month waiting period required to reapply for a zoning change to allow for immediate refile of the plan by the applicants, and to waive the normally required filing fees, seconded by Taylor. Motion carried unanimously.

#### REASONS FOR DENIAL:

Taylor – if the Council had accepted the modified plan, residents wouldn't have had an opportunity to give their input on the new plan or have the right of protest.

Rasmussen – he stated his reasons when he made the motion for denial.

Gill – he agreed with Mr. Rasmussen's reasons; in addition, he concurred with the comments of the Plan Commission with respect to the plan that the Council denied, especially with those dealing with density and lack of conformity with the master plan; he felt that the proposed changes to the plan showed a positive attempt to address the density issues.

Dunn - the plan was not in keeping with the surrounding neighborhood or the master plan; any substantial change in the plan needed to be considered by the Plan Commission; a denial would assure residents would have an opportunity to file a new protest petition.

Clawson - she previously stated her reasons with regard to citizens' rights; the plan was not in keeping with the master plan and not consistent with the surrounding neighborhoods.

**Ordinance rezoning from AG to RP-1, RP-4 and REC - Saddle Ridge-Residential and Golf Course.** No action required.

8023 **Resolution relating to special use permit, preliminary site plan and preliminary plat, for Saddle Ridge-Clubhouse.** Mr. Petersen said he wasn't sure the developers had the time contractually to reapply for the modified plan and go through all of the City's procedures again. Mr. Petersen reiterated that the modified plan was the plan before the Council; he said that pursuant to City procedures, the developer was allowed to modify a plan between Plan Commission and Council meetings. Based on the denial, and only based on that dismissal, and without waiving any further rights with regard to the other applications, Mr. Petersen requested that the developers withdraw the clubhouse and care facilities subject to protest and objection as stated on the record, and if they refiled and renoticed tomorrow, that special use permits 52-98 and 53-98 follow the same procedure. However, with regard to special use permit 54-98, the cellular tower south of I-435 near Leawood City Park, which had always received Plan Commission recommendation for approval, he asked for Council consideration and approval. Councilmember Gill moved to accept Mr. Petersen's request, seconded by Bold. Motion carried unanimously.

**Resolution relating to special use permit, preliminary site plan and preliminary plat, for Saddle Ridge-Care Facilities.** Application withdrawn - see discussion immediately above.

**Resolution No. 1430 relating to special use permit and preliminary site plan for Saddle Ridge-Cellular Tower.** Councilmember Gill moved to approve the Plan Commission's recommendation for approval with changes - 1) stipulation #2 to state that capacity of the tower was limited to 2 users rather than 4, and 2) to strike the second sentence in stipulation #4 so that the stipulation would read, "The tower is limited to 100 feet in height." and 3) a new stipulation #9 that would state that at final review, the Plan Commission and staff very carefully study the aesthetics of not just the landscaping, but also of the base and the pole, and that neither one be oversized, the pole and base to be compatible with a 100-foot tower with the possibility of 2 co-locators which was consistent with City ordinance. Motion seconded by Bussing.

8645

END OF TAPE

Tape No. 439

John Petersen represented property owner Saddle & Sirloin Club and Southwestern Bell Wireless. He said there were probably only 1 or 2 locations in the City that could accommodate a tower. The motion would tie the City's hands to all flexibility in terms of dealing with the issue of co-location in the future. It created the distinct possibility that another tower might have to be constructed somewhere else. Mr. Gill corrected the record -- there were already 3 existing towers with multiple co-location on all of them in the City, and there were numerous other areas in the City where towers might be built in the future. Mr. Gill also said that the City could have flexibility in the future by simply replacing the Saddle & Sirloin tower with a taller pole if deemed necessary. Mr. Petersen said that City ordinance mandated that the tower provide co-location. He understood and acknowledged that if his client built the tower big enough for potential co-location, it wasn't a prejudgement or implication of any future special use permits being approved for the site; they would have to meet City qualifications and the Council would have to deem them to be reasonable applications.

Councilmember Rasmussen was concerned about the maintenance of the site which was close to the entrance of Leawood City Park. He was worried about the property being abandoned, so to speak. He said if Southwestern Bell owned the land, he wouldn't have any concerns, knowing that SWB would take care of the property. He suggested adding a stipulation that SWB be responsible for the maintenance. Mr. Petersen said that SWB would not own the property or the tower. He said that the owner of the property would maintain it -- Saddle & Sirloin if they continued to own the property or Saddle Ridge if successful in getting a development plan approved. He clarified that the maintenance of the landscaping immediately around the base of the tower would be the responsibility of SWB. If Saddle Ridge developed the Saddle & Sirloin property, it would be their suggestion and intent to donate the 5-acre tract around the tower to the City, so the City could maintain it as it saw fit.

- 314 11:30 P.M. On motion of Gill, seconded by Taylor, Council voted unanimously to extend the meeting to 12:00 A.M.

There was discussion about the City's attempt to encourage co-location, to reduce the total number of towers, in accordance with City ordinance. Mr. Bold and Mr. Bussing liked the way the application was originally proposed, to encourage co-location.

Mr. Petersen said that whoever owned the property around the tower would be required to maintain it in accordance with City ordinances.

Mr. Gill's motion to approve with stipulation changes failed; Gill, Rasmussen, Taylor in favor; Bold, Bussing, Clawson, Peppes, Dunn opposed.

Mr. Bussing moved to approve as recommended with added stipulation #9 that the Plan Commission and staff closely adhere to the aesthetics of the site, seconded by Bold. Motion carried; Rasmussen opposed; all others in favor.

- \* Councilmember Clawson left the meeting.

#### NEW BUSINESS

- 786 **Approval of Appropriation Ordinance No. 846.** On motion of Dunn, seconded by Bussing, Council unanimously approved the ordinance on roll call vote.

- 804 **Discussion of liability insurance coverage after 1998.** In response to concerns raised by the Mayor and some Councilmembers, staff altered the City's liability coverage until the end of the current contract, December 31, 1998, by purchasing \$10 million in umbrella coverage effective October 6, 1998, to overlay certain existing coverages. Staff had already sent out specifications for the solicitation of bids for coverage beginning January 1, 1999. An addendum to the specifications would have to be sent out to obtain revised coverages beyond the end of the year. Councilmember Bussing moved to direct the City Administrator to proceed on the addendum, seconded by Dunn. Motion carried unanimously.
- 920 **Ordinance No. 1748 whereby the City conveys unto itself a permanent utility easement in the vicinity of Tomahawk Creek Parkway and College Boulevard for the construction and maintenance of various utility facilities.** Councilmember Taylor moved to pass the ordinance, seconded by Bold. Councilmember Rasmussen and City Attorney Wetzler agreed that any language referring to overhead, above-ground facilities needed to be stricken from the easement document. Council unanimously passed the ordinance on roll call vote.
- 1032 **Ordinance No. 1749 granting a temporary construction easement in the vicinity of Tomahawk Creek Parkway and College Boulevard to Tomahawk Creek, L.L.C., for the construction of sanitary sewer lines to serve the commercial development west of Tomahawk Creek Parkway south of College Boulevard.** On motion of Bold, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.
- 1070 **OTHER BUSINESS.** On motion of Bold, seconded by Gill, Council voted unanimously to defer discussion of the flooding problems in Wilshire to the November 2<sup>nd</sup> Council meeting.  
A Special Council meeting would be held Monday, November 23, 1998, 7:30 P.M., to consider an ordinance authorizing \$12,340,000 in general obligation bonds.  
A work session would be held that same evening at 7:00 P.M. to allow the City's Emergency Preparedness Coordinator Bettie Bridges to conduct a tour of the EOC (Emergency Operating Center) in the lower level of the City Hall.
- 1188 12:10 a.m. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk  


**Minutes Summary**

Audio Tape No. 440

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, November 2, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Gary L. Bussing, Marnie S. Clawson, \* Patrick L. Dunn (arrived after Citizen Comments), Gregory J. Peppes, Mike Gill, Louis Rasmussen and James E. Taylor, Sr. Adam Bold was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Sid Mitchell, Chief of Police; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Scott Whitaker, Director of Parks and Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Peppes, seconded by Taylor, after the addition of 1) an ordinance granting a permanent utility easement for a sanitary sewer line for the Villas of Ironhorse at 153<sup>rd</sup> and Nall, 2) the scheduling of an executive session for 15 minutes at the end of the meeting to discuss a matter under attorney-client privilege, 3) a discussion of the Saddle & Sirloin cellular tower approved at the October 22, 1998, Council meeting, and 4) a discussion of the parking of 18-wheelers in commercial parking lots in the City.

**CITIZEN COMMENTS.** Cynthia Litwer, 10515 Cherokee Lane, representative of the Leawood Stage Company (a sub-committee of the Leawood Arts Council), spoke about fund-raising plans for a stage production being planned for July 1999 on the north side of City Hall, specifically a talent show toward the end of February 1999 open to Leawood residents only. She invited Councilmembers to participate in the talent show. The Mayor said she had received a message from Mary Reed, Chairman of the Arts Council, requesting that the production not be discussed at the Council meeting. Council's participation in the talent show would be discussed at the end of the meeting.

G. Gordon Thomas, 10516 Mohawk Lane, expressed concerns about taxes and the cost of park improvements. He felt that perhaps department heads' use of their budgeted annual conference/seminar funds for their recent trip to sister city I-Lan, Taiwan, was discriminatory against other City employees and Leawood taxpayers. He felt that the brochure in support of the parks improvements referendum on the November ballot which was mailed to Leawood taxpayers was a conflict of interest because the taxpayers paid for the brochure. He felt that the Council shouldn't establish a public art impact fee; it was totally misunderstood. Lastly, the charter ordinances could have been placed at the beginning of the

meeting agenda rather than at the end under new business to accommodate the public in case the meeting was lengthy.

\* Councilmember Dunn arrived.

418 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Allocation of expenditures for 1999 Human Service Fund as recommended by United Community Services of Johnson County (UCS); Leawood included \$4,650 in the 1999 budget for allocation;
2. Allocation of 1999 Alcohol Tax Funds as recommended by the Drug and Alcoholism Council of Johnson County (DAC); Leawood included \$66,000 in the 1999 budget for allocation;
3. Appointment of Kay Martin, 2652 W. 118<sup>th</sup> Terr. 66211, 338-5669, to the Sister City Committee;
4. Appointment of Human Resources Specialist Cindy Pitts as new alternate voting Trustee to the City's worker's compensation trust, the Kansas Eastern Region Insurance Trust (KERIT), to serve in the absence of voting Trustee Julie Hakan, Director of Human Resources;
5. Pay Request No. 5 (FINAL) by Capital Electric in the amount of \$1,000 for 117<sup>th</sup> & Nall Ave. traffic signal installation;
6. Final pay request by B.C. Construction in the amount of \$1,898.00 for the Aquatic Center renovation at Leawood City Park;
7. Purchase of new television camera for sanitary and storm sewer inspections in the amount of \$29,500.00;
8. Resolution No. 1431 designating the main floor of City Hall as a portion of the Leawood Community Center to permit the serving of alcoholic liquor on November 20, 1998 (City's 50<sup>th</sup> anniversary Gala).

Minutes of the September 28, 1998, Council meeting. Correction to be made on page 5037, Mayor's report – change the total number of people who traveled to I-Lan from 18 to 16. On motion of Gill, seconded by Rasmussen, Council unanimously approved the minutes.

#### PLAN COMMISSION

450 **Ordinance No. 1750C amending the Code of the City of Leawood by adding Article 8 (Lighting Nuisance) to Chapter 11 (Public Offenses).** Councilmember Rasmussen moved to pass the ordinance, seconded by Taylor. There was brief discussion of lighting level and glare of filament. Councilmember Taylor noted an inconsistency between the lighting nuisance ordinance and the City's sport court ordinance – the former allowed for light intensity no greater than 0.5 footcandle while the latter allowed no greater than 1 footcandle. Planning Director McKay said that staff would review the inconsistency. The ordinance was passed unanimously on roll call vote.

**OLD BUSINESS**

755

**Resolution No. 1432 (re)authorizing the sale of \$12,340,000.00 general obligation bonds, and repealing Resolution No. 1426.** Councilmember Peppes moved to adopt the resolution, seconded by Clawson. Sale of the bonds rescheduled from November 2 to November 23 to get past the deadline for filing any litigation as a result of the assessments on benefit districts. The resolution was adopted unanimously.

905

**Ordinance No. 1751C establishing a public art impact fee.** The ordinance imposed a fee of \$.10 per square foot on nonresidential (commercial) development in the City. Councilmember Bussing moved to pass the ordinance, seconded by Gill. An exemption from the fee would require approval of staff, Arts Council, Plan Commission, and City Council. There was discussion as to which group would consider exemption first, second, third, etc. City Attorney Wetzler felt that a request for exemption should go to the Arts Council, Plan Commission, City Council, back to the Plan Commission for final plan approval at which time the final art design would be in place, then back to the City Council for final approval of the art piece. An applicant requesting exemption would have to have all approvals in place before applying for a building permit. If approvals were not in place, the impact fee would be assessed. He said that the exemption would only apply in a case where a private developer sought to do something on his private property that would satisfy the City's requirement for public art, something really unusual. If the various City groups didn't feel that the art piece met the public art requirement, then the impact fee would be imposed and the developer would be free to do what he wanted to do to beautify his property. Mr. Wetzler mentioned that the 2% fee in the public art policy (2% of the cost of a construction project set aside for public art) would have to be spent on the particular project. The 2% could be supplemented by the public art impact fees.

Councilmember Rasmussen moved to amend the motion to change Section 12-610 (b) so that the words "and maintenance" would be added at the end of the phrase "utilized solely and exclusively for public art acquisition and development" in 3 places, and to eliminate (e) and (f) of that Section relating to maintenance/repair of existing public art and increasing indebtedness in furtherance of the financing and provision of public art respectively. Subsection (e) was simply not needed and public art was a pay-as-you-go situation. Motion seconded by Taylor. Mr. Wetzler said that by eliminating (f), the Council wouldn't have the authority to create additional debt to help fund public art if it wanted to do so. The subsection was present in the City's other impact fee ordinances. Councilmember Dunn said he supported the impact fee because Leawood was primarily a residential community and there was an adverse impact on the community from commercial development, and public art would have a positive impact on the adverse effects of commercial development and a fee of \$.10 per square foot was an amount that represented a reasonable fee for the City to assess to minimize the adverse impact. Mr. Rasmussen said that public art was used to soften the effects of noise, traffic, and harshness of commercial activities all over the world.

Motion to amend carried unanimously. A typo in Section 12-603 (c) would be corrected – the spelling of the word "required." The main motion as amended carried unanimously.

Councilmember Bussing clarified that the public art policy didn't require that the 2% of the cost of a construction project set aside for public art be bonded; if it was bonded, it would have to be applied to the specific project; if not bonded, it would not be required to be tied to the specific project.

#### NEW BUSINESS

1817 **Approval of Appropriation Ordinance No. 847.** On motion of Taylor, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote. Mary Reed, Chairman of the Arts Council, explained that it was standard procedure in the art world to pay a stipend to members of an art selection panel, and added that everytime there was a different piece of public art, there would be a different selection panel.

1970 **Ordinance No. 1752 authorizing issuance of temporary notes; College Boulevard; Project 108; \$2,900,000.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1753 authorizing issuance of temporary notes; Fire Station No. 3; Project 151; \$500,000.** On motion of Clawson, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1754 authorizing issuance of temporary notes; Municipal Pool Bathhouse; Project 171; \$300,000.** On motion of Peppes, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

2095 **General discussion of charter and general ordinances to be passed for Leawood to become a city of the first class.** Councilmember Rasmussen referred to "new general ordinance C" relating to meetings and special meetings; he felt the word "shall" should be changed to "may" or some other wording to permit some flexibility in meeting times for various reasons. City Attorney Wetzler didn't feel the Council would be doing anything inappropriate if they changed meeting times when necessary. The wording was not changed.

Mr. Rasmussen asked about the general penalty section for the Code in "proposed general ordinance #2." He wanted to know if there could be flexibility to the maximum fine of \$500 indicated in Section 1-122. He also pointed out that some wording in Section 9-119 didn't make sense, that perhaps some words needed to be removed. The \$500 maximum was carried over from current ordinance. City Attorney Wetzler thought that at the time current provisions were enacted, there was a limitation of 180 days or \$500 per offense imposed by state statute upon municipal courts. He hadn't had an opportunity to further review the matter, and hadn't been able to locate that particular limitation. He didn't feel comfortable telling the Council that the \$500 maximum could be increased. The Council was responsible for setting the limitation and could change the \$500 amount by an ordinance amendment at a later date. In response to Councilmember Gill concerning imprisonment in the city jail not exceeding 180 days, Mr. Wetzler felt comfortable in telling the Council that 180 days was probably the outside limit without having a jury trial, and there was no provision for a jury trial in municipal court. Councilmember Taylor was interested in putting some teeth in ordinances relating to City development, building code violations, etc., to permit staff to impose through the court system fines that really had some bearing.

City Administrator Garofano referred to proposed charter ordinance #25, Section 2. He requested that the position of Fire Chief be added to those appointed by the City Administrator, and that the position of Assistant City Attorney be removed from the Mayor's appointments and added to the City Administrator's appointments.

3126 **Charter Ordinance No. 22 concerning elections, dates of city elections, terms of office, officers elected.** On motion of Rasmussen, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 23 concerning officers during transition to a city of the first class, president of the Council, officer qualifications, filling of elected officer vacancies.** On motion of Clawson, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 24 concerning signing and approval of city contracts.** On motion of Bussing, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 25 concerning appointive officers' and employees' terms and salaries.** The first sentence of Section 2 was changed to read, "With the consent of the governing body, the City Administrator shall recommend appointment of all officers whose position has been established by ordinance including but not limited to: City Clerk, Police Chief, Fire Chief, Public Works Director, Planning/Development Director, City Treasurer, Director of Parks and Recreation, and Assistant City Attorney." The sentence relating to the Mayor's appointments was changed to read, "The Mayor, shall, by and with the consent of the City Council, appoint (a) Municipal Judge(s), and a City Attorney." On motion of Peppes, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 26 concerning the hiring practices and retirement system for city firefighters and police officers.** On motion of Bussing, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 27 concerning improvement of certain streets and alleys.** On motion of Taylor, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 28 concerning estimate of cost of public improvements, contracts, bids, bond issue.** On motion of Clawson, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

**Charter Ordinance No. 29 repealing Charter Ordinances 4,7,9,10, and 19 no longer applicable and/or in the best interest of the City.** On motion of Dunn, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

3326

**Ordinance No. 1755C amending Article 1 of Chapter 6 of the Code relating to City elections.** On motion of Taylor, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1756C amending Sections 1-210 and 1-211 of the Code relating to elected officer vacancies.** On motion of Dunn, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1757C amending Section 1-203 of the Code relating to special Council meetings.** On motion of Taylor, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1758C repealing Sections 1-304 and 1-403 of the Code regarding bond requirements for the City Administrator and appointed City officers.** On motion of Clawson, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1759C adding portions of provisions of former Charter Ordinances 7 and 9 to the Code relating to the general penalty for the Code, municipal court provisions, traffic bureau provisions.** The first sentence of Section 9-119 was changed to read, "The governing body may provide, at the expense of the city, a suitable room or office for the municipal judge, and shall hold court in such room and court shall be open every day except Saturdays, Sundays, and legal holidays." On motion of Dunn, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1760C amending Section 1-102(j) of the Code regarding the definition of "Governing Body."** On motion of Taylor, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1761C amending Section 1-108 of the Code relating to powers generally of the City.** On motion of Bussing, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

**Ordinance no. 1762C amending Section 6-201 of the Code regarding division of the City into wards.** On motion of Peppes, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

3671

**Discussion of Leawood Stage Company's fund-raising plans for 1999 stage production.** (Mentioned briefly at the beginning of the meeting under Citizen Comments.) There were questions as to whether the production planning should be discussed. The matter was tabled until the Arts Council could provide more information.

3734

**Schedule work session and special Council meeting.** A Council work session for a first quarterly budget review was scheduled for November 18, 1998, at 5:30 P.M. A Special Council meeting for the purpose of convening an executive session to conduct the City Administrator's annual performance evaluation was scheduled for December 14, 1998, at 5:30 P.M.

**OTHER BUSINESS**

3925

**Ordinance No. 1763 whereby the City conveys unto itself a permanent utility easement for a sanitary sewer line for the Villas of Ironhorse, 153<sup>rd</sup> and Nall.** On motion of Peppes, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

4096

**Discussion of cellular tower on Saddle & Sirloin Club property south of I-435 near the Leawood City Park approved by the Council at the October 22, 1998, Council meeting.** Councilmember Rasmussen said that the Council had received planning staff's report dated August 11, 1998, concerning Southwestern Bell Wireless' request for a special use permit to construct the cellular tower. He said that a statement was made at the Council meeting that the application was in accordance with City ordinance. He said that the applicant had stated that he had furnished grid information and engineering data to support the necessity of the site. Mr. Rasmussen said that a review of the application showed that there was a significant omission in the application. Information distributed to the Council mentioned existing towers and structures within a 3-mile radius. The existence of a cell tower at 95<sup>th</sup> and Mission Rd. was omitted from the application. He mentioned a letter dated May 1988 from the applicant to the City concerning compliance with City ordinances. The omission brought into question whether or not the cell tower at the entrance to the Leawood City Park was needed at all. He said that the application for the tower at 95<sup>th</sup> and Mission was filed by Southwestern Bell Wireless on February 10, 1998, in Overland Park (the lawyers involved were with Polsinelli White law firm); the application was approved by the Overland Park Planning Commission on March 23, 1998, and approved by the Overland Park City Council on April 20, 1998. The permit to construct the tower was dated September 18, 1998.

Mr. Rasmussen moved that a permit to construct the tower in Leawood (if one needed to be issued) be held up for 2 weeks in order to have the applicant explain at the next Council meeting why a significant location of a tower was omitted from their application and why the tower in Leawood was necessary at all. Motion seconded by Taylor.

Councilmember Dunn said it appeared to him that ordinance required the Council to consider any towers within a 3-mile radius. He asked if the Council's approval of the application on October 22<sup>nd</sup> was defective since they didn't consider the tower at 95<sup>th</sup> and Mission. City Attorney Wetzler said staff needed to review the ordinance to determine if it was key to date of approval or date of application, but he understood Mr. Rasmussen to say that the Leawood application followed Overland Park's approval of the tower at 95<sup>th</sup> and Mission. Mr. Wetzler said that if that was the case, it raised some serious concerns. Mr. Rasmussen wanted the applicant to confirm everything he (Mr. Rasmussen) had said, and explain why the tower was omitted from their application. Mr. Rasmussen said that if the Council had known about the tower at 95<sup>th</sup> and Mission, and the procedure under which it was obtained, some of the Councilmembers might have voted differently on October 22<sup>nd</sup>.

Councilmember Gill said he had heard from John Petersen, attorney for the applicant. Mr. Petersen asked that the Council not rescind their October 22<sup>nd</sup> approval without his opportunity to be heard. Mr. Gill wanted the investigation to determine whether or not there were other locations omitted from the 3-mile radius map because the purpose of the grid information in his mind was to allow the Council to ascertain whether or not there were alternative available sites.

Mr. Wetzler said it would take a simple majority vote of the Council to reconsider the matter. Mr. Rasmussen said that he talked to Planning Director McKay when he first learned of the situation, and it was his understanding that someone from the Planning Department contacted the applicant immediately. He felt that the action taken at the Council meeting should be communicated in the same way. City Attorney Wetzler said the City was waiting for a response from Southwestern Bell Wireless, to include an explanation of the sequence of events in terms of the tower at 95<sup>th</sup> and Mission Rd. as it related to the application for the Saddle and Sirloin tower. Mr. Wetzler said that Mr. McKay had received a letter from Southwestern Bell representative Curtis Holland dated November 2<sup>nd</sup> which referenced the issue but didn't really address the questions raised; it might have been intended as their response – there was a statement that there was a need, but it also seemed contradictory to Mr. Rasmussen's statements. Mr. Wetzler felt that there was a reasonable basis for the Council to ask for details that would support the application. Mr. Wetzler read a portion of the letter which stated that the plans for the tower at 95<sup>th</sup> and Mission had not been finally approved nor was the tower constructed when the application for the Saddle and Sirloin tower was submitted. The letter referenced Section 4-3.1 of the Leawood Development Ordinance that indicated that applicants for telecommunications towers were required to provide inventory of existing antenna locations within a 3-mile radius of a proposed site, thus they were not required pursuant to that ordinance to list the Ranchmart South facility. Mr. Wetzler said that the accuracy of that portion of the letter was one thing to check with Overland Park. Mr. Rasmussen said that he received his information today from the Overland Park Planning Department. Mr. Rasmussen said he was disappointed, but not surprised, that the Council was not informed of the 95<sup>th</sup> and Mission location, the tower's existence, or even the application, considering the number of times that the Saddle and Sirloin tower application had bounced back and forth between the Plan Commission and Council. He said that that was a significant amount of information that was necessary for reasonable judgment.

Mr. Rasmussen's motion carried unanimously. Councilmember Bussing said it appeared there might be a deficiency in the City's cell tower ordinance regarding existing towers. He requested that the Planning Department evaluate the ordinance in the next two weeks for any necessary amendments.

4785

**Discussion of the parking of 18-wheelers in commercial parking lots in the City.**

Councilmember Rasmussen said he had observed for a long time that tractor trailers were being parked on the north side of the Ranchmart Shopping Center near the post office at 95<sup>th</sup> and Mission Rd. He didn't believe it was the intent of City ordinances to turn commercial parking lots into long-term "rest stops," especially at night with engines running. He moved to direct the Planning staff to review ordinances regarding the prohibition of long-term parking of 18-wheelers and return to the Council with a recommendation, seconded by Gill. Mr. Rasmussen felt that no more than 5 days was a reasonable amount of time for a tractor trailer to be parked in a commercial parking lot. Councilmember Dunn said it appeared to him that space was being rented to diesel trucks for long-term storage. Councilmember Gill requested that staff also review the noise ordinance, although that was not part of the motion. Mr. Rasmussen said he had talked to the Police Department and to the best of their knowledge, space was not being rented. Planning Director McKay said he would be able to report back to the Council in about 2 weeks on the 18-wheelers, but it would take longer to

review the noise ordinance. Planning staff was in the process of reviewing the noise ordinance. Mr. Rasmussen's motion carried unanimously.

The Mayor reminded the Council about the November 23<sup>rd</sup> Special Council meeting – a tour of the EOC (Emergency Operations Center) in the lower level of City Hall at 7:00 P.M., the Special Council meeting at 7:30 P.M., and an added work session at 8:00 P.M. to discuss right-of-way management/franchise ordinances.

5300 10:30 P.M. Council convened in executive session and returned to regular session at 10:55 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 441

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, November 16, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, \* Patrick L. Dunn (left the meeting after Old Business), Mike Gill, Louis Rasmussen and James E. Taylor, Sr. Gregory J. Peppes was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sid Mitchell, Chief of Police; Shahram Pourazari, Public Works Special Project Engineer; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**PLEDGE OF ALLEGIANCE** – led by Garrett Parker of Boy Scout Troop 282, Leawood United Methodist Church.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Taylor, seconded by Clawson, after the removal of 1) an ordinance granting an easement for a water line on 114<sup>th</sup> St. just west of Tomahawk Creek Parkway (easement no longer required), 2) an ordinance relating to ECO Shake roofing (deferred to the December 7<sup>th</sup> meeting), 3) a discussion of flooding problems in Wilshire subdivision (deferred to the December 7<sup>th</sup> meeting); and the addition of 1) an agreement for public art under the Consent Agenda, 2) a discussion of Plan Commission Case #109-98 fencing amendment relating to stockade fences on hold until further notice, 3) a discussion of the court reporting of Plan Commission meetings, and 4) an executive session to discuss correspondence from Shaughnessy Fickel and Scott Architects dated November 9, 1998, relating to the Police communications project.

**FIRE DEPARTMENT PRESENTATION TO THE CITY FOR THE CITY'S 50<sup>TH</sup> ANNIVERSARY.** Fire Chief Florance presented an inscribed plaque with a fireman's ax to the Mayor from the members of the Fire Department in honor of the City's 50<sup>th</sup> Anniversary.

**PROCLAMATION.** The Mayor read a proclamation proclaiming November 20, 1998, as "Leawood Day." The City's 50<sup>th</sup> Anniversary Gala celebration would be held that evening at City Hall.

390

**CITIZEN COMMENTS.** Grace Barben, 3301 W. 121<sup>st</sup> Terr., President of the Verona Gardens Homes Association, spoke against Cellular One Wireless' installation of a repeater pole antenna on an existing KCPL light pole at 119<sup>th</sup> St. and Aberdeen. A special use permit had not been approved. She said the Planning Department told her that they had requested the antenna's installation; to her knowledge, they didn't have the authority to do that. She said that a Plan Commission member who lived in her neighborhood but who couldn't attend

a homes association meeting concerning the matter had suggested that the matter be kept low key to not get homeowners riled up because the Plan Commission didn't take kindly to a great number of residents voicing their opinions. She said that City government shouldn't operate in that fashion. She expected government officials to obey City laws and to encourage, not discourage, residents to voice their opinions. She urged that the Council update the City ordinance before the City was flooded with special use permit applications for repeater pole antennas.

John Hanrahan, 4501 W. 125<sup>th</sup> St., Berkshire Villas, reviewed his subdivision's efforts over the last several years to have the City accept their private streets as public. Berkshire Villas needed 100% approval and agreement of all homeowners for the conversion to occur since lot lines went to the center of the streets. All homeowners had agreed except for one who had not expressed any reasons as to why he couldn't agree. Mr. Hanrahan asked that the Council review the situation and give the homes association some guidance. Councilmember Bold said that the next step would probably involve some legal issues; he moved to schedule an executive session for the December 7<sup>th</sup> Council meeting to discuss the matter under attorney-client privilege, seconded by Gill. Councilmember Rasmussen requested a copy of a letter that he thought the City Attorney was to have written about a year ago to the only dissenting resident. Councilmember Taylor wanted discussion at a later date; he didn't understand why some private streets in subdivisions went to the centerline of the streets while some did not. Mr. Bold's motion carried unanimously.

G. Gordon Thomas, 10516 Mohawk Lane, wanted to know why the City needed another bank in the Ranchmart Shopping Center area at 95<sup>th</sup> and Mission Rd. (Plan Commission item to be discussed later in the meeting). He referred to Plan Commission items concerning ECO Shake roofing and Perfect Choice roofing. He felt that those roofing materials did not comply with deed restrictions of most homes associations. Lastly, he referred to the site of the Saddle & Sirloin Club cellular tower south of I-435 near the Leawood City Park. He felt that the property was better suited as a parking lot for residents' boats and trailers.

Jeff Nessel, 12012 Ensley Lane, wanted to know why Cellular One Wireless had been allowed to circumvent City ordinance and procedures when they were allowed to install the repeater pole antenna at 119<sup>th</sup> and Aberdeen. It should be removed immediately.

825

**CONSENT AGENDA.** Two items were removed for further discussion. The following were approved unanimously on motion of Bussing, seconded by Taylor:

1. Minutes of the October 22, 1998, Council meeting;
2. Parks & Recreation Advisory Board report (minutes) on their October 13, 1998 meeting;
3. Departmental reports;
4. Declaration of surplus property – a 1988 Ford 1-Ton Flat Bed Truck (VIN 0163), a salt/sand spreader, and a 90" snow plow no longer used by the Public Works Department to be sold at auction on November 21, 1998; and several old and/or obsolete pieces of Fire Department equipment to be sold at auction;
5. Application (renewal) for Cereal Malt Beverage License – Hy-Vee Food and Drugstore, 12200 State Line Rd.;

6. Agreement with artist Richard Hunt for a piece of public art to be unveiled and presented at the City's 50<sup>th</sup> Anniversary Gala on November 20, 1998, and later installed on the grounds of City Hall.

Change Order No. 2 to the contract with Kissick Construction Co. for stormwater (SMAC) project TM-04-004, Tomahawk Creek Bank Stabilization, in the amount of \$13,713.00, for additional bank protection from erosion near the Roe Ave. bridge and 4 additional trees that property owners requested be planted in their backyards. Field inspection had determined that plans should have been designed to extend the improvement to the Roe Ave. bridge. Councilmember Rasmussen wanted to know why the City was going to plant the 4 additional trees. Mr. Pourazari from Public Works explained it was for public relations; residents had been very cooperative during the project. They requested the additional trees for privacy from Roe Ave., and the area was wooded before the project began. Councilmember Rasmussen moved to approve the change order, seconded by Bussing. Councilmember Taylor asked that Public Works expedite the sidewalk replacement on Roe Ave. Motion to approve carried unanimously.

Pay Request No. 4 (FINAL) by Site Rite Construction Co. in the amount of \$15,073.97 for street improvements and storm drainage improvement project DB-04-020 in the vicinity of High Dr. north of 95<sup>th</sup> St. There was brief discussion of repairs to a foot bridge on one resident's property, a condition to granting the City a drainage easement. On motion of Dunn, seconded by Clawson, Council unanimously approved the pay request.

#### PLAN COMMISSION

1070

**Resolution No. 1433 approving preliminary site plan for Ranchmart Bank, 3510 W. 95<sup>th</sup> St.** Jim Tinsman, the applicant and an organizer of the bank, and Larry Lockwood of Lockwood Architects, Inc., gave a presentation. The vacant Waid's restaurant building would be demolished and the area in the vicinity improved, especially the parking at the post office and additional green space. The cemetery would remain untouched.

Councilmember Clawson was very concerned about the parking congestion in the area. Mr. Tinsman said that the parking immediately in front of the post office except for the parking space closest to 95<sup>th</sup> St. would remain the same. To help traffic leaving the parking lot to go east on 95<sup>th</sup> St., Planning Director McKay said that staff would have to ask Overland Park to review the timing of the traffic signal at the only parking lot egress at 95<sup>th</sup> St. to help alleviate stacking of vehicles and potential accidents in the parking lot. Councilmember Rasmussen suggested that the applicant check to see if the post office still had their own traffic engineer. Mr. McKay felt that the elimination of Waid's and the creation of a turn right only for traffic to go west should lessen the number of people waiting in line at the traffic signal.

The resolution before the Council indicated that impact fees would not be required of the property. Councilmember Bussing noted that the new public art impact fee should apply.

Mrs. Clawson noted that the Leawood Lions Club was the only group maintaining the cemetery; she felt that the City should investigate because without the kindness of the Club, it could end up in pretty bad shape.

Mr. McKay thought that the heads of any refurbished light poles would have the same illumination as the remainder of the new poles regardless of the heights of the poles. He said that Council approval of the preliminary plan would allow the applicant to proceed back to the Plan Commission with the illumination pattern and their request to refurbish and reuse existing light poles. He said that the lighting pattern shouldn't spill over onto residential properties. There was discussion that there should be consistency of footcandle at ground level. Councilmember Rasmussen felt that since traffic would be so intense, lighting level appearance should be compatible with that at Cosentinos.

Mrs. Clawson wanted serious stipulation of approval that traffic would be readdressed. There was discussion of backing out parking at the front of the bank.

2165

The Mayor reiterated concerns – 1) a desire for review of illumination pattern and footcandle levels by the Plan Commission, 2) have parking/traffic flow for the entire area and parking space in front of the post office reviewed by a traffic engineer, 3) add “usual” language for a public art impact fee and public art approval process.

Councilmember Taylor moved to adopt the resolution with the Mayor's list of concerns, seconded by Bold. The Mayor asked that stipulation of approval #6 include the language about the illumination pattern and footcandle levels and consistency with the architectural characteristics of the lighting standards, that stipulation #16 include language to study the entire parking/traffic ingress and egress flow, and that new stipulation #18 be added relating to the “usual” language for a public art impact fee and public art approval process. When asked if he agreed with the stipulation changes/additions, Mr. Tinsman said he really wanted to study their impact before agreeing to them, although he said he understood what the Council was doing. The Mayor said that stipulation #19 would be added to indicate that the applicant agreed to the changes/additions except for #6 which he wanted to study. Mr. Taylor's motion carried unanimously.

2460

**Resolution No. 1434 approving request for rezoning from AG to SD(C-R) and SD(0), and approving preliminary site plan and preliminary plat, for T.G. Development at 135<sup>th</sup> and Roe Ave.** Attorney Doug Patterson representing T.G. Development Co. read a letter of support for the project from Church of the Resurrection located directly south of the project. The applicant and architect Phil Owen of Sweers Toben Architecture gave a presentation on the overall plan with 9 lots, lots to return to the Council separately in the future as revised preliminary plans.

3122

Councilmember Gill said he wanted to see the traffic study referred to in stipulation of approval #13 before he would approve any plan, and wanted to revise the stipulation to read that a traffic study would have to be completed and reviewed by the Council prior to the revised preliminary plans coming back to the Council, and wanted it clear that all revisions/all future action on the property would come back to the Council as a revised preliminary plan and that the Council could utilize whatever discretion it had and would not be bound by or limited by any factors that would limit the Council's ability to approve, revise, or reject the plan. He wanted to see the traffic study and specifics of the plans that would be coming, especially since this was the initial project on 135<sup>th</sup> St. (K-150). Even though City ordinance stated that a traffic study was part of the final plan application (and final plans weren't approved by Council) and that was why the applicant hadn't yet done the traffic study, Mr. Patterson said that Mr. Gill's condition would be acceptable. Mr. Gill asked that the City Attorney provide wording that would absolutely guarantee his conditions.

3260

City Attorney Wetzler suggested that the Council might attach a condition that prior to consideration of the first building on the site, the traffic study would have to be submitted, perhaps submitted as part of the approval of the first building on the site. Mr. McKay said that when the first lot returned for its own public hearing process as a revised preliminary plan, staff wanted the traffic study for the entire project to be part of that. Mr. Gill said as he understood it, if the Council approved the preliminary plan before them, it would go back to the Plan Commission for final approval, and as part of that approval, the Plan Commission, and only the Commission, would see the Bucher Willis Ratliff traffic study. Mr. McKay explained that the applicant's next step was not to go to the Plan Commission for a final plan of what the Council was considering, but to start individual lots with a revised preliminary on each lot. The traffic study for the entire project would need to be done by the first revised preliminary.

3855 There was discussion of how the project fit the 135<sup>th</sup> St. Corridor design and development guidelines, including development monumentation and "sense of arrival" in terms of the intersections and the drives in and out. Councilmember Bussing said he would be looking for consistency with the guidelines as the Council considered each revised preliminary plan.

4184 Relative to the responsibility to build the additional lane on 135<sup>th</sup> St., Mr. Gill wanted to add a stipulation that the developer furnish evidence of financial assurance.

4260 There was brief discussion of parking deviation, and preliminary approach to detention/retention of surface runoff which could affect parking areas. Mr. Owen said that underground retention was planned for each site.

#### RESIDENTS

4730 Mary Watson, 13716 Fontana in Leawood Meadows, didn't feel that a service station of any nature was needed anywhere along 135<sup>th</sup> St.. She didn't feel that the pattern of streets meeting at a circle in a very busy development was practical – probably a high accident area.

4920 Charles Schaefer, 13701 Fontana, read from the 1997 traffic study that was done in conjunction with the 135<sup>th</sup> St. Corridor study. It indicated that it was unlikely that a reduction in retail FAR would significantly improve traffic conditions, and it was recommended that the high trip generation type of retail development (such as fast food restaurants, drive-in banks and super markets) be kept to a minimum. Mr. Schaefer said that the types of businesses proposed by the applicant along 135<sup>th</sup> St. were some of the highest trip generation businesses. He mentioned the already present heavy traffic from the Church of the Resurrection. As a gateway/entrance to Leawood, people coming from Overland Park would see a gas station, a McDonald's, and an Arthur Bryant's – not exactly the plan envisioned in the 135<sup>th</sup> St. Corridor guidelines.

5165 Mr. Gill thought about moving to defer a decision in order to re-read the 135<sup>th</sup> St. Corridor program and to study a good map of the project tract, to find out which tracts would be rezoned SD(0) and SD(C-R), to refresh his memory about entrance monuments that would set the tone for the area. Mr. Owen said that the project was specifically designed with the 135<sup>th</sup> St. Corridor, trying to resolve the differences between the master plan, the traffic study that pointed out the problems, and the 135<sup>th</sup> St. Corridor. He said he wouldn't have a problem specifying that a bank office would be on the corner so the Council would know that it wouldn't be a Walmart or similar business. Almost 130,000 sq. ft. of the 169,000 sq. ft.

was downzoned and downtrafficked from retail to office. He was very confident that with the proposed plan there would be a significant decrease in traffic below the projected model that Bucher Willis Ratliff had provided.

5400

Mr. Gill moved to adopt the resolution with the following changes/additions: 1) stipulation #13 changed to read, "A traffic study must be completed prior to each of the revised preliminary plan applications to include internal traffic circulation."; 2) new stipulation #20 to read, "All changes or enhancements to the preliminary plan shall be the subject of notice, public hearing and protest, and must be approved by the Governing Body which may consider the revised preliminary plan as if it were an entirely new plan, utilizing in its consideration whatever factors the law permitted." (Mr. Owen thought that City ordinance already imposed the notice, public hearing and protest requirements, but if that was not the case, Mr. Patterson stated they were willing to enter into a development agreement. Mr. Owen agreed to the last part of new stipulation #20.); and 3) new stipulation #21 that would state that staff would obtain satisfactory evidence of financial assurance regarding all funds due the City in connection with the project. Motion seconded by Clawson.

5643

Mr. Taylor moved to amend the motion to add the following: 1) that the traffic study should specifically address 135<sup>th</sup> & Roe & Nall; 2) that no 4-story building be permitted adjacent to 137<sup>th</sup> St.; 3) that the preliminary engineering design be developed schematically to determine whether or not the civil engineering for storm drainage would affect the traffic flow or the parking; 4) that there be total compliance with all requirements of the 135<sup>th</sup> St. Corridor plan; and 5) that the connection of Briar as shown on the plan be limited to the applicant's property if necessary. Mr. Owen agreed to the additions. Mr. McKay said that as far as #4 was concerned, not every guideline of the 135<sup>th</sup> St. Corridor plan had to be met; Council would lock itself in by requiring total compliance. Mr. Taylor felt that allowing a 4-story building adjacent to either 133<sup>rd</sup> St. or 137<sup>th</sup> St. in this first project would set a precedent for future developments along 135<sup>th</sup> St.; with or without a special grade on Lot 1, it was a 4-story building. Mr. Bold said that with the City's master plan, there was a possibility that "office" could become "retail." He would rather see a 4-story building with a grade on the lot rather than an Old Navy store. And he said a precedent had been set - 5-story buildings on the Jameson tract across the street had already been approved. Mr. Taylor withdrew his addition #2. He also withdrew addition #4. Mr. Gill felt the plan would be evaluated differently if the Briar connection was omitted, and he felt that the developer was willing to undertake discussions with property owner Harlan Laner for the connection through Mr. Laner's property. Mr. Taylor's motion to amend died for lack of a second.

Discussion of Briar continued. Councilmember Clawson said that if the Council was truly concerned about traffic, Briar would have to be part of the plan, and the developer obviously felt that Briar could be accomplished. Mr. Patterson said that the developer had been asked to include the alignment of Briar north to south to the developer's property. Developer's attempts to talk with Mr. Laner had proven unfruitful. Mr. McKay suggested that the traffic engineer advise the City as to whether or not the Briar connection was absolutely necessary for the development to work, or without the connection, how much could be developed until the connection could be made. Mr. Taylor said he could accept that suggestion.

6351 Mr. Taylor moved to amend Mr. Gill's motion to add 3 additional stipulations: 1) that the traffic study should specifically address 135<sup>th</sup> & Roe & Nall; 2) that the preliminary engineering design be developed schematically to determine whether or not the civil engineering for storm drainage would affect the traffic flow or the parking; and 3) that Briar would be provided, be part of the project, only if the traffic engineer dictated it would be necessary for the success of the project. Motion seconded by Rasmussen. There was discussion of the City condemning land on Mr. Laner's property for Briar right-of-way and funding mechanisms for building Briar. Motion to amend carried; Bussing opposed, all others in favor. Mr. Owen said that he agreed with all stipulations to be added.

6593  
6692 Councilmember Bussing felt that the plan was not consistent with the 135<sup>th</sup> St. Corridor guidelines; it was not, in his opinion, what the City had in mind for the Corridor. He was also concerned that the project was the first massive development that T.G. Development had undertaken; he was concerned that the first development along the Corridor would be undertaken by a group of people with no development experience.

6770 Mr. Gill's main motion as amended carried; Bussing opposed, all others in favor.

6793 **Ordinance No. 1764 rezoning from AG to SD(C-R) and SD(0) – T.G. Development, 135<sup>th</sup> and Roe Ave.** On motion of Gill, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

6850 **Ordinance No. 1765 rezoning from CP-0 to CP-1, Town Center Business Park, 117<sup>th</sup> and Roe Ave.** On motion of Clawson, seconded by Bussing, Council passed the ordinance on roll call vote; Mr. Taylor was not seated for the vote, all others in favor.

Mr. Taylor returned to his seat.

6930 **Ordinance providing for the use of "Perfect Choice" shake roofing.** The Plan Commission recommended denial because they had found that said new roofing material was not in keeping with the City's high design and quality standards. Councilmember Gill moved to deny, seconded by Bold. The applicant gave a presentation.

7000 11:00 P.M. On motion of Bussing, seconded by Gill, Council voted unanimously to extend the meeting to 11:30 P.M.

Presentation continued, including statement of the advantages of fire, hail and wind resistance. Fire Chief Florance said that the material was Class A rated, the highest rating. Councilmember Dunn noted that the Plan Commission had wanted to see some history on the product (it had been on the market only about 3.5-4 years) to be sure it was a viable market product before they approved its use.

Motion to deny carried; Bussing opposed, all others in favor.

**OLD BUSINESS**

7625

**Discussion of Saddle & Sirloin cellular tower south of I-435 near Leawood City Park.** (Previously discussed at the November 2, 1998 Council meeting.) Councilmember Rasmussen confirmed dates relative to Southwestern Bell Wireless' cellular tower located at Ranchmart South Shopping Center at 95<sup>th</sup> & Mission Rd. in Overland Park. (The date that the building permit was issued was September 10, 1998, not September 18, 1998.) Planning Director McKay confirmed dates relative to Southwestern Bell Wireless' tower on Saddle & Sirloin property south of I-435 and east of Mission in Leawood – application filed May 22, 1998; application approved by Plan Commission September 22, 1998; application approved by City Council October 22, 1998.

Mr. Rasmussen asked how much the City spent on landscaping associated with the bike trail from Mission Rd. up to the leased land for the City Park; Public Works engineer Pourazari advised \$121,000 on the entrance to the Park from Mission Rd. In the November election, Leawood residents authorized the expenditure of \$3.5 +million to improve the Leawood City Park. Mr. Rasmussen read from the October 22<sup>nd</sup> Council meeting minutes where Councilmember Gill stated that there were already 3 existing towers with multiple co-location in the City and there were numerous other areas in the City where towers might be built in the future.

7963

Councilmember Taylor moved to rescind the October 22, 1998, Council approval of the tower, and to remand the matter to the Plan Commission for review, seconded by Clawson.

Curtis Holland of the law firm Polsinelli White represented Southwestern Bell Wireless. He understood that the Council wanted to know why the tower at Ranchmart South had been omitted from the 3-mile tower study, and whether or not there might have been other tower sites within the 3-mile tower study omitted. He distributed SWB's 3-mile tower study. Mr. Holland said there was no intent on the part of SWB or any member of the development team to deceive or mislead the Planning Commission, Planning staff, or Councilmembers. There was a simple problem of timing and interpretation of City ordinance. He said that the final development plan in Overland Park, as in Leawood, was the final approval received before taking the step to obtain a building permit; that final approval was received June 8, 1998. Mr. Holland said the applicant also failed to let Leawood know about another site that was considered – the intersection of 103<sup>rd</sup> and Metcalf in Overland Park. Both sites were in the process of being approved in Overland Park when SWB was going through the Leawood application. He said the Leawood process had started in October 1997; the generation or preparation of the 3-mile tower study occurred when the first Saddle & Sirloin tower application was submitted for the original site north of I-435 which was ultimately denied by the Council on March 2, 1998. The 2 Overland Park sites didn't enter SWB's mind when the 3-mile tower study was carried over to (resubmitted for) the second Saddle & Sirloin application with the site south of I-435. And the 2 OP sites hadn't even been built. Also, Mr. Holland said co-location didn't make sense in the context of discussing SWB's own sites, but did make sense in discussing someone else's sites. As far as various city ordinances were concerned, when SWB was required to provide a tower study or analysis of other sites, all of the ordinances were in the context of existing structures that belonged to other companies, not SWB sites.

8564 11:30 P.M. On motion of Taylor, seconded by Gill, Council voted to extend the meeting to 12:00 A.M.; Bold opposed, all others in favor.

END OF TAPE

Tape No. 442

Mr. Holland continued. SWB felt that existing meant existing and built structure that belonged to someone else on which SWB might be able to co-locate.

Mr. Gill felt that the omission was unintentional, but did feel it was material. The 3-mile tower grid was very important to Leawood, a fundamental safety net upon which City ordinance was based. He said the City wanted to know every antenna within 3 miles, existing, approved or planned, because the Council didn't want to unduly burden the landscape with antennas and poles.

Mr. Holland felt that SWB had complied with City ordinance when they submitted their application on May 22, 1998. Mr. Gill felt that SWB had had a responsibility to provide supplemental information on non-existing but planned sites so the Council would have had the full facts for their consideration. Mr. Holland said that the Saddle & Sirloin site was a necessary one; there was no co-location opportunity available that would suit SWB's purposes at the S&S location; so the 3-mile tower study could be updated, whatever, but it would not change the fact that SWB needed the S&S site. The duty to supplement hadn't entered SWB's mind. Mr. Holland said that Planning staff's interpretation of the ordinance was the same as his. If there was a duty to supplement, then the ordinance needed to be reviewed.

284 The motion to rescind and remand to the Plan Commission carried unanimously. Mr. Gill wanted the applicant to provide the Plan Commission with a comprehensive 3-mile grid.

\* Councilmember Dunn left the meeting.

#### NEW BUSINESS

362 **Approval of Appropriation Ordinance No. 848.** On motion of Rasmussen, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

374 **Approve bid/authorize contract for remodel of police communications facility to accommodate the new 800 MHz radio system.** Advantage Construction Services was the significant low bidder at \$121,045. However, the electrical subcontractor had made an error in his bid to ACS, failing to include materials necessary to complete the job. ACS was given the opportunity to consider withdrawing their bid without forfeiting their bid bond. ACS decided to stand by their bid by adjusting the amount to the electrical sub and reducing their overhead and profit. Architects Shaughnessy Fickel & Scott weren't comfortable recommending ACS. The situation was almost an exact repeat of the situation encountered with the construction of the new City Hall - a subcontractor submitting an erroneous bid to the general, the general contractor not being able to complete the project, etc., creating numerous significant problems for the City, including a problem with the bonding company. Staff recommended the contract be awarded to the second low bidder Haren & Laughlin in

the amount of \$154,500. The greatest part of the radio system contract was for electrical work.

Councilmember Rasmussen moved to approve staff's recommendation, seconded by Bussing. Councilmember Taylor thought that the City had the authority to award bids in its best interest, so suggested rejecting all bids and negotiating with the second and third low bidders. The Mayor didn't see the situation as similar to the City Hall contract. ACS had received very good references and were financially sound according to Dunn & Bradstreet. City Administrator Garofano said the City Hall contractor also had good references and a good Dunn & Bradstreet report.

Scott Love of ACS addressed the Council. He said he wanted to go forward with the project and had his top superintendent scheduled for the work. He could bring the project in on time and within budget.

Bill Scott of Shaughnessy Fickel & Scott architects said that references for ACS were very positive, and their financial statement was also acceptable. However, the ACS bid was about 30% lower than the average of the other bids, and with about \$29,000 of material costs omitted or about 24% of the total bid price, and that concerned Mr. Scott. To say that the contractor could make up 24% by slashing profit and overhead made him concerned that something else would be lacking in the overall performance. He said that a letter from Mr. Love didn't indicate that a superintendent would be on the job full-time as Mr. Scott wanted.

1023 12:00 A.M. On motion of Bussing, seconded by Taylor, Council voted to extend the meeting to 12:30 A.M.; Bold opposed, all others in favor.

Mr. Bussing withdrew his second to Mr. Rasmussen's motion. Councilmember Clawson then seconded the motion.

Mr. Love said he had committed his superintendent to being full-time on the project.

Police Chief Mitchell said that the project process began in 1994 when the City was awarded the license for the 800 MHz radio system. He had a deadline of the end of June 1999. If the remodel was delayed for any length of time, there would be real problems when the City would lose the license at the end of June.

Mr. Love said he had never failed to complete a project on time. He said he had received the same commitment from his electrical contractor as he had made to the City for the project.

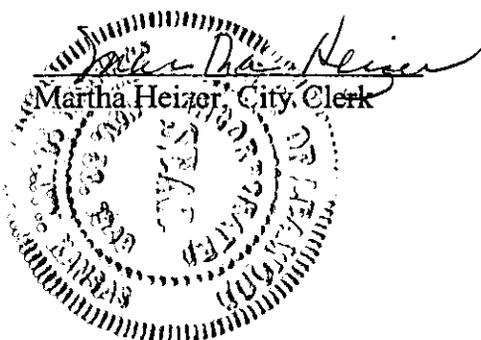
Mr. Rasmussen's motion failed; Clawson, Rasmussen in favor; all others opposed.

1231 Mr. Taylor moved to approve the ACS bid, seconded by Bold. Motion carried; Clawson, Rasmussen opposed; all others in favor.

1250 **Resolution No. 1435 determining it to be in the best interests of the City to become a city of the first class, requesting that the Governor declare it as such effective December 31, 1998.** Adopted unanimously on motion of Rasmussen, seconded by Bold.

1263 **Ordinance No. 1766 granting an easement for a water line, Iron Horse Estates 2<sup>nd</sup> Plat, southeast corner of 151<sup>st</sup> and Mission Rd.** On motion of Clawson, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

- 1300 **Schedule executive session** to discuss land acquisition and correspondence from Shaughnessy Fickel and Scott Architects dated November 9, 1998, relating to the Police communications project. A Special Council meeting to be held November 18, 1998, approximately 8:00 P.M., following a budget review work session.
- 1357 **Discussion of the scheduling of a Special Council meeting for December 14, 1998, 8:00 P.M., for review of proposed Saddle Ridge development at 105<sup>th</sup> and Mission Rd. (Saddle & Sirloin Club property).** Councilmember Gill moved to schedule the meeting provided that all of the residents concerned about the development be appropriately notified of the meeting, seconded by Bussing. Motion carried; Gill, Bussing, Bold in favor; Clawson, Rasmussen, Taylor opposed; Mayor in favor.
- 1507 **OTHER BUSINESS.** Discussion of stockade fences, whether or not the City would continue to permit 6-foot stockade fences, whether or not existing fences would be required to be removed after some period of time. Councilmember Rasmussen wanted to know if the Council was interested in looking into the matter. Councilmember Taylor felt that City ordinance might be revised in the future (not an immediate priority for staff) to require the eventual removal and elimination of stockade fencing. Councilmember Bussing wanted documentation of any concerns and reasons for pursuing a review of City ordinance. The matter would be discussed at another time with more information.
- 1711 Discussion of court reporting for Plan Commission meeting minutes. Mr. Rasmussen said he was getting a better feel for what occurred at the meetings. The Mayor said, however, that the verbatim reporting of one meeting was 94 pages and cost over \$900. Planning Director McKay said that the court reporter was willing to be a little more selective, abbreviated, with the minutes of the major Plan Commission meetings in the future, rather than doing them verbatim and difficult to follow/understand. Mr. Taylor said he liked the greater detail as did Mr. Rasmussen. City Administrator Garofano said that planning staff had not been able to turn the minutes of the many Plan Commission meetings around fast enough to get them to the Council to review with Council meeting agenda items; that was the reason a court reporter was hired. The Council agreed to have the court reporter try abbreviated minutes.
- 1893 12:35 A.M. There being no further business before the Council, the meeting was adjourned.



**MINUTES  
SPECIAL COUNCIL MEETING**

Tape No.

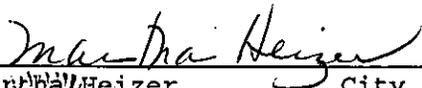
# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 8:45 P.M., Wednesday, November 18, 1998. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Marnie S. Clawson, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss 2 matters, 1 regarding land acquisition and 1 regarding correspondence from Shaughnessy, Fickel & Scott Architects. Mike Gill, Gregory J. Peppes, and Patrick L. Dunn were absent.

Staff present: Richard J. Garofano, City Administrator; Joe Johnson, Public Works Director; and Ben C. Florance, Fire Chief.

On motion of Clawson, seconded by Bold, Council voted unanimously to convene in executive session for 15 minutes for the aforementioned discussions.

8:55 P.M. Council returned to special session. No action was taken. There being no further business before the Council, the meeting was adjourned.

  
\_\_\_\_\_  
Martha Heizer City Clerk



MINUTES  
SPECIAL COUNCIL MEETING

Tape No. 443

# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 7:30 P.M., Monday, November 23, 1998. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, and Mike Gill, for the purpose of considering an ordinance authorizing the sale of \$12,340,000 general obligation bonds and of convening an executive session to discuss land acquisition. Louis Rasmussen and James E. Taylor, Sr., were absent.

Staff present: Richard J. Garofano, City Administrator; Joe Johnson, Public Works Director; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

Boy Scout Troop 10 sponsored by the State Line Optimists led the Pledge of Allegiance.

Ordinance No. 1767 authorizing the sale of \$12,340,000 general obligation improvement bonds. David Arteberry of George K. Baum & Co., the City's financial advisor, gave a presentation on the November 23rd bond sale results. His presentation included interest rate trends, other bonds sold across the country on November 23rd, the 6 bids received by the City, the debt service schedule for the bond issue over the next 15 years, year-by-year interest rates for nationally sold municipal bond issues, and what the City's Aaa bond rating meant to the City in terms of savings in interest costs.

On motion of Bold, seconded by Peppes, Council unanimously passed the ordinance on roll call vote, for the low bidder Prudential-Dallas at a true interest cost of 4.1541%

Executive session. 7:55 P.M. On motion of Dunn, seconded by Clawson, Council voted unanimously to convene in executive session for 15 minutes to discuss land acquisition.

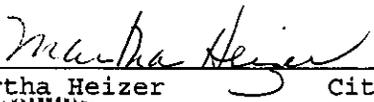
8:20 P.M. Council returned to special session, same members present. On motion of Gill, seconded by Clawson, Council voted unanimously to continue the executive session for 15 minutes to continue the same discussion.

8:40 P.M. Council returned to special session, same members present. Councilmember Peppes moved to have the Public Works Committee look at the 3 extra lots for a public works facility, pay HDR \$1,000 to have the lots laid out, and return to the Council by the second Council meeting in January with comparative values, not only of the costs, but also of the actual operations. Motion seconded by Clawson. City Administrator asked if the Council was interested in the aspects of trying to do some substantial screening of the public works facility from the rest of Bi-State and 143rd St. Public Works Director Johnson said he would make the assumption that the City would have to do screening

Page 2  
Minutes  
November 23, 1998, Special Council meeting

along 143rd St. and bring back those costs. He would have a fairly detailed cost analysis for the Council. Dr. Peppes' motion carried unanimously.

592 8:50 P.M. There being no further business before the Council, the meeting was adjourned.

  
\_\_\_\_\_  
Martha Heizer City Clerk



MINUTES  
PUBLIC HEARING

Tape No. 444

# Minutes of a hearing for public comment on the amended 1998 Budget, held Monday, December 7, 1998, at 7:00 P.M., in the Council Chamber, 4800 Town Center Drive, Leawood, Kansas.

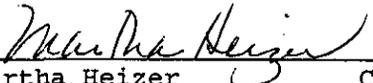
Councilmembers present: Mike Gill and James E. Taylor, Sr. Staff present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Robert McKay, Director of Planning and Development; and Martha Heizer, City Clerk.

Councilmember Gill opened the hearing in the absence of Mayor Peggy J. Dunn.

City Administrator Garofano explained the 2 amendments to the 1998 Budget - 1) an increase in spending authority in the 1998 Sewer Fund to pay for remaining construction repairs to the Leawood Sewer System before its transfer to Johnson County on January 1, 1999, and 2) an amendment that would allow the City to receive additional State LAVTR (Local Ad Valorem Tax Reduction) funds/revenue that were available for distribution.

There was no public comment.

154 The hearing was closed at 7:05 P.M.

  
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Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 444

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, December 7, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen and James E. Taylor, Sr. Gary L. Bussing was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Sid Mitchell, Chief of Police; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

154 **PLEDGE OF ALLEGIANCE** – led by Boy Scout Troop 10 sponsored by State Line Optimists.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Bold, seconded by Taylor, after the removal of an ordinance relating to smoking regulations (a draft would be distributed in the December 21<sup>st</sup> Council meeting packet for Council review; perhaps a work session would be scheduled at that time for after the first of the year); and the addition of 1) a discussion of the IronHorse golf course, and 2) a discussion of an informational letter in the Council packet regarding the Leawood Chamber of Commerce.

**RECOGNITION OF THE 1998 EMPLOYEE OF THE YEAR.** The Mayor presented a plaque to Jana Stuart of the Human Resources Department, and Julie Hakan, Director of Human Resources, read a statement from the selection sub-committee of the employee LEAP Committee which indicated their reasons for selecting Mrs. Stuart.

**CITIZEN COMMENTS.** G. Gordon Thomas, 10516 Mohawk Lane, wanted to know if the employee benefits renewal package and City's insurance coverages under the Consent Agenda for approval were formally bid or simply awarded to the present companies. City Administrator Garofano said it was common procedure to bid the coverages.

507 **CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Bold:

1. Minutes of the November 2, 1998, Council meeting;
2. Arts Council report (minutes) on their October 27, 1998 meeting;
3. Golf Course Committee report (minutes) on their October 29, 1998 meeting;
4. Parks & Recreation Advisory Board report (minutes) on their November 10, 1998 meeting;
5. Public Works Committee report (minutes) on their November 4, 1998 meeting;

6. Resolution No. 1436, attached as part of the record, designating holidays for 1999;
7. 1999 employee benefits renewal – health and life with Anthem; health with Humana HMO; long-term disability with The Hartford; Section 125 Cafeteria Plan with Benchmark; employee assistance program with New Directions; and dental program with Delta Dental;
8. Pay Request No. 8 (FINAL) by Golf Services Group, Inc., in the amount of \$61,046.69, for landscaping improvements along 135<sup>th</sup> St. (K-150).

Purchase of 2 voice mail systems for City Hall and Police Department. In response to Councilmember Taylor, Information Services Director Andrasik explained that existing Audix systems would not be supported/serviced by Lucent Technologies after January 1, 2000, and they were not 2000 compliant. They would be replaced with Lucent's Intuity Voice Mail which was 2000 compliant with greater programming flexibility. Total cost would be \$26,180.00. The old systems probably wouldn't have any value because they wouldn't be serviceable and were run on a 386 computer. On motion of Taylor, seconded by Clawson, Council approved the purchase; all in favor except Councilmember Rasmussen who had left his Council seat.

Councilmember Rasmussen returned to his Council seat.

Approval of City's insurance coverages for 1999 – property, boiler and machinery, contractors' equipment floater, crime, general liability, public officials, EMT, law enforcement, automobile, and umbrella coverage of \$10,000,000. Staff recommended approval of the low bid from Cline Wood Agency in Leawood, total premiums of \$129,625.00; insurance would be placed with "The Reliance" with extension of the \$10,000,000 umbrella over all other liability coverages. Burt Selfridge of Fortune & Company/Risk Managers, Inc., the City's insurance consultant, talked about the wide disparity in property coverage and public officials coverage in the 4 bids received. The Cline Wood proposal included a 3-year guaranteed rate if the City's loss ratio was 40% or less, including excess liability in the calculation. On motion of Gill, seconded by Rasmussen, Council unanimously approved the Cline Wood bid.

Approval of amended 1998 budget. There were 2 amendments which the City Administrator described – 1) an increase in spending authority in the 1998 Sewer Fund to pay for remaining construction repairs to the Leawood Sewer System before its transfer to Johnson County on January 1, 1999, and 2) an amendment that would allow the City to receive additional State LAVTR (Local Ad Valorem Tax Reduction) funds/revenues that were available for distribution. On motion of Gill, seconded by Clawson, Council unanimously approved the amended 1998 budget.

**PLAN COMMISSION**

1040

**Ordinance providing for the use of "ECO" shake roofing in residential areas.**

Councilmember Taylor said he would not participate in the discussion or the vote to avoid the appearance of a conflict of interest; he left his Council seat.

The Plan Commission recommended denial because they had found that the new roofing material was not in keeping with the City's high design and quality standards. The applicant, Doug Veith, gave a presentation with 2 witnesses who recommended the product.

1353

Planning Director McKay explained that the Plan Commission felt that the "verdict was still out" on the product in the area. They had questions about the material fading, therefore, its effect on aesthetics, and other questions about long-term acceptance and upcoming ICBO re-rating/approval or report of the product in January. The Commission wanted to go slow on roofing products since they were so new to them. They wanted to know about the product's durability and performance before approving it.

Councilmember Dunn said it appeared that the Plan Commission had a concern that changes in Leawood were accepted very slowly and that adoptions of such proposed ordinances allowing for use of some alternative products were not unanimous in the first place. Changes in homes association requirements required unanimity among homeowners which was very difficult to accomplish. Mr. Dunn said he couldn't support the ordinance at the present time even though the product might be a good one.

Councilmember Rasmussen moved to deny passage of the ordinance, seconded by Dunn. Mr. Rasmussen said that historically residents wanted to preserve Leawood's aesthetic characterization, so Councils had been very slow and deliberate in terms of changing what was originally a uniformly wood roof. He felt it was important for a Council to uphold the efforts of homes associations to maintain the character of their communities, and to uphold the slow but deliberate process of the Plan Commission in selecting roofing materials that might be used as substitutes for wood roof shingle that would in their judgment continue the aesthetic appearance of the City. He added that wood shingle roofs in Leawood had essentially been a source of pride; they identified the Leawood community. And he could not recall a Leawood fire chief saying that wood roofs were a hazard to the community.

It was noted that Overland Park had granted a 180-day trial period for the product. Mr. McKay felt the City needed to wait to allow installation of roofs in Overland Park in order to see the workmanship and review other matters related to the new product.

1964

Councilmember Bold called for the question, seconded by Gill. Motion carried unanimously. Mr. Rasmussen's motion to deny carried unanimously.

Councilmember Taylor returned to his Council seat.

2050

**MAYOR'S REPORT.** The Mayor reported that on November 18, 1998, she signed a Leawood Postal Service Carrier Alert Cooperative Agreement between the Police Community Partnership of Leawood, the Leawood Police Department, the Leawood branch of the U.S. Postal Service and the Leawood branch of the National Association of Letter Carriers Local Union 5521. The Alert program would offer peace of mind to disabled or elderly citizens living alone in the area served by the Leawood branch of the U.S. Post Office north of I-435 knowing that letter carriers would call for help if there appeared to be an emergency at their homes. Leawood was the first city in Johnson County to initiate such a program.

The Mayor reported that the luncheon for the annual employee giving program "Have a Heart, Help a Child" was held December 1<sup>st</sup> and was very successful.

### OLD BUSINESS

2298

**Discussion of flooding problems in Wilshire subdivision, approximately 132<sup>nd</sup> and Roe Ave.** Ed Schlagel, project engineer for the subdivision, presented background information on the cause of the flooding. He said that the developers of Wilshire, which had been completely developed for several years, had spent several thousand dollars of their own money after they were out of the development trying to reduce the flooding with erosion control berming on the Jameson property to the south, cleaning up silt in yards, doing minor corrective measures. He said the drainage piping system needed to be extended onto the Jameson property to actually solve the problems. The flooding problems would not exist if the Jameson property was developed. He asked for the Council's help in getting the piping system extended.

Mr. Schlagel said he had submitted a signed easement from the Jamesons to the Public Works Department giving authority to occupy the Jamesons' property in order to build the storm sewer system. Unfortunately, City staff didn't accept the easement because the Jamesons' attorney had reworded the document with some identification clauses. He estimated the cost of the project to be \$25,000-30,000, and hoped the City would participate in the funding.

Councilmember Bold felt that the City had some responsibility to help the Wilshire residents solve their flooding problems with public monies – the City allowed the Wilshire development to be built next to a large undeveloped tract of land without placing stipulations on where the water from that tract was to go. He supported City funding participation to some extent.

2734

Councilmember Dunn said it was important to him to understand what the City had done consistently with respect to stormwater projects; his understanding of the expenditure of public funds for stormwater projects had been limited to those that qualified for matching County funds. Public Works Director Johnson was pretty sure the project wouldn't qualify as a SMAC project because the County would probably feel that the problem should have been addressed at the time the development was designed. There was brief discussion of how non-SMAC projects had been treated by the City. City Administrator Garofano said that most of the money spent on storm drainage had been budgeted for the SMAC program; the City didn't budget specifically any other money for storm drainage issues. He said that in accordance with the City's long-standing creek bank erosion policy, the City paid 10% and a resident(s) paid 90% to stabilize creek banks, but most other monies spent were in public rights-of-way for stormwater and SMAC projects.

2870

Councilmember Taylor felt that a developer should be responsible to property owners affected by negative conditions caused by an improperly designed development, including failure to take an adjacent undeveloped tract into consideration with respect to drainage.

After conferring with the developers of Wilshire in attendance at the meeting, Mr. Schlagel said that they felt the drainage system for the development had been designed properly, that the City had accepted the design and construction, corrective measures had been taken upstream, their obligations had ceased, and that the developers requested 100% funding participation by the City. In response to Mr. Taylor, Mr. Schlagel said that if the

homeowners themselves put in terracing and waterways upstream, and if the City continually cleaned out the box culvert under Roe Ave., that would solve the erosion controls.

3120

Councilmember Rasmussen felt there were 3 issues – 1) the City should begin immediately to provide maintenance of stormwater facilities, 2) silting came from adjacent land; the EPA had published and solicited comments on draft regulations regarding stormwater and implications for the future, including post-construction stormwater management in new developments and redevelopments, and 3) what didn't the adjoining landowner do that could have avoided the silting problem in Wilshire? Mr. Schlagel said that if the adjoining landowner had given him the right to occupy his property to install a storm sewer system, the system would have been extended into his property with a large berm behind it to eliminate overland flow carrying the silt through Wilshire. Mr. Rasmussen felt that the City had some responsibility, should participate, in this case, but not 100%. And perhaps the adjoining landowner should just be sued, telling the Jamesons that they had a responsibility.

Mr. Garofano said he understood from the discussion that the developers would have built the improvements on the adjoining vacant land at their expense if they had had an easement from the adjoining landowner. The easement was finally granted, so why didn't the developers proceed with the improvements that they should have made at the very beginning? Councilmember Clawson said there was an innuendo that had they proceeded, they would have silted up the City's facilities. The Council needed to hear from the Public Works Director about the impact of the problem on the City's facilities.

4029

Mr. Bold felt the developers, Mr. Schlagel, and the City shared responsibility/liability. He said the problem had been aggravated by farming techniques on the adjoining land, by the fact that the Jamesons wouldn't allow the developers on their land, etc. But the bottom line was that residents were getting water in their homes.

4220

Councilmember Gill was concerned only about the residents of Wilshire; he proposed that the City pay 25% of the costs (just as if it was a SMAC project) with a cap of \$7500.

Councilmembers Clawson and Dunn were concerned about expending monies that weren't budgeted, establishing a new precedent that would place a large portion of the City's contingency fund at risk, with many more similar stormwater problems throughout the City.

Developer Jeff Ashner explained that the price of each lot was lowered when the developers realized they would not be able to do the drainage system on the Jameson property. They were now faced with not being able to prorate the cost of that system to lots since the development was complete. He said that the developers had spent several thousand dollars over the last several years trying to solve the problems on a system they didn't own and on properties they didn't own (and hadn't owned for several years) – something for the Council to consider.

5137

Mr. Bold moved that the City participate in a solution to be approved by the Public Works Director to the extent of 25% not to exceed \$7500, seconded by Gill. Mr. Rasmussen moved to amend the motion to direct the City Attorney to look into possible action, if any, that the City could take against the Jamesons for silting into the City's stormwater system and recovery of associated costs, seconded by Taylor.

Councilmember Peppes felt that issues should have been dealt with first at a committee level – the Public Works Committee. He was supportive of the residents, but wanted several questions answered first before voting to spend money.

6046

The motions and seconds were withdrawn. Mr. Bold moved to refer the matter to the Public Works Committee for their consideration as soon as possible, seconded by Taylor. Mr. Garofano felt that the Public Works Committee should be informed of the magnitude of other stormwater problems reported to Public Works. The Mayor said the Committee would be expected to do an in-depth study of all the issues. Mrs. Clawson, Chairman of the Public Works Committee, said the matter wouldn't be considered until at least mid-January, that the Committee would want to talk to the Finance Director, and it would probably take 2 Committee meetings. A recommendation to the Council would probably be made at the second Council meeting in February or first Council meeting in March. Mr. Bold expected the Committee to assess whether there was liability and/or culpability on the part of the City for the problem existing as it did. Mr. Bold's motion carried unanimously.

#### NEW BUSINESS

6330

**Approval of Appropriation Ordinance No. 849.** On motion of Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

6380

**Two ordinances amending sections of the Code of the City of Leawood to add regulations relating to parking of 18-wheelers on private property.** One ordinance specifically addressed parking while the other addressed signage on private property. There was discussion that City-owned vehicles would be exempt from the ordinance provisions and that a clause should be added to make that clear. Councilmember Dunn understood that one of the proposed ordinances was telling business owners that they couldn't have their trucks parked continuously on their own property between the hours of 11:00 p.m. and 6:00 a.m. Planning Director McKay said that that provision was meant for overnight storage, and he didn't think the City wanted those types of vehicles parked overnight in private parking lots. There was discussion that such a provision would indeed affect some business owners. Councilmember Gill proposed deferring the take effect of the ordinances for 30 days to investigate Councilmember Dunn's question to be sure some businesses would not be negatively impacted. City Administrator Garofano suggested an exemption for trucks that were providing a service or were servicing a business where they were parked. City staff was really trying to deal with trucks parked in parking lots having no business there whatsoever, using the lots as truck stops. Staff would make necessary ordinance changes for Council consideration at the December 21<sup>st</sup> Council meeting.

7105

**Authorize addendum to agreement with Overland Park for engineering design services for improvement of Mission Rd., 103<sup>rd</sup> St. to I-435 – addendum reflected the increase in design costs, new total \$263,758.00.** Councilmember Rasmussen moved to approve the addendum, seconded by Gill.

7120

END OF TAPE

Tape No. 445

Public Works Director Johnson gave a status report on the project, expected the road work to be completed July 1999, sodding in September 1999. There was no real timetable; the weather had not been cooperative.

Motion to approve carried unanimously.

- 176 **Approve bid/authorize contract for new roof at Public Works facility, 2008 W. 104<sup>th</sup> St.** Councilmember Rasmussen moved to approve a contract with the low bidder American Roofing, Inc., in the amount of \$86,831.00, seconded by Bold. Councilmember Taylor was concerned that American was the only contractor who didn't specify start and completion dates. Public Works Director Johnson said that those dates were not criteria for selection of the contractor; that had been determined at the pre-bid conference. In response to Mr. Taylor's concern about American's unit prices not being fixed for replacement of additional metal roof deck (per sq. ft.), Mr. Johnson said that American's bid remained lower than the second low bid despite their unit price "range" for the replacement. Mr. Johnson said he would talk to American to see if a firm price could be nailed down, and said that whenever American started work, they would finish within 30 days. Motion to approve carried; Taylor opposed, all others in favor.

**Ordinance No. 1768 accepting a deed for right-of-way for improvements to the intersection of College Blvd. and Nall Ave.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**Ordinance No. 1769 accepting a traffic signal easement for traffic signal modifications at the intersection of College Blvd. and Nall Ave.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

- 532 **Schedule executive session.** On motion of Clawson, seconded by Dunn, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 15 minutes to discuss a litigation matter.

- 548 **OTHER BUSINESS. Discussion of IronHorse golf course.** Councilmember Rasmussen informed the Council that there was a problem regarding bank stabilization at hole #17, that staff was still trying to get developer Mark Simpson to work on the problem as he had agreed to do some time ago. The Golf Course Committee was concerned about continual erosion, potential loss of trees and golf path. Mr. Rasmussen had asked the City Administrator to talk with the City Attorney to see what could be done. He also said that the developer had placed fences 3 feet inside the City's property and staff was trying to rectify that situation. Also, some builders had infringed on the City's 25-foot "no build" zone.

- 670 11:00 P.M. On motion of Clawson, seconded by Dunn, Council voted unanimously to extend the meeting to 11:30 P.M.

685

Discussion of informational letter dated November 13, 1998, from the Leawood Chamber of Commerce which had been distributed in Council packets. In response to Councilmember Taylor, City Administrator Garofano said that there was a \$20,000 allocation in the 1999 budget for the Chamber for the purpose of providing them a "match" or grant for what they wanted to accomplish.

Planning Director McKay advised that the Saddle Ridge development issues (Saddle & Sirloin Club property at 105<sup>th</sup> and Mission Rd.) would not be considered by the Council at a Special Council meeting on December 14<sup>th</sup>, but rather at a January 1999 regular Council meeting.

873

11:10 P.M. Council convened in executive session and returned to regular session at 11:35 P.M. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk



**MINUTES  
SPECIAL COUNCIL MEETING**

Tape No.

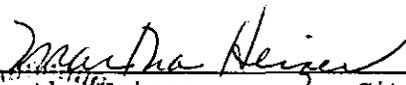
# The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 5:30 P.M., Monday, December 14, 1998. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session to conduct the City Administrator's annual performance evaluation.

Staff present: Richard J. Garofano, City Administrator.

On motion of Peppes, seconded by Taylor, Council voted unanimously to convene in executive session until 9:00 P.M. for the aforementioned purpose.

9:00 P.M. Council returned to special session. No action was taken. There being no further business before the Council, the meeting was adjourned.

  
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Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 446

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, December 21, 1998. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, Gregory J. Peppes, Louis Rasmussen and James E. Taylor, Sr. Mike Gill was absent.

Staff Present: Richard J. Garofano, City Administrator; Sid Mitchell, Chief of Police; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Scott Whitaker, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

**PLEDGE OF ALLEGIANCE** – led by Boy Scout Troop 10 sponsored by State Line Optimists.

**APPROVAL OF AGENDA**

The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the addition of an executive session at the end of the meeting to discuss a matter under attorney-client privilege.

**CITIZEN COMMENTS.** None.

147 **CONSENT AGENDA.** One item was removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Bold:

1. Minutes of the November 16, 1998, Council meeting;
2. Minutes of the November 18, 1998, Special Council meeting;
3. Minutes of the November 23, 1998, Special Council meeting;
4. Golf Course Committee report (minutes) on their November 19, 1998 meeting;
5. Parks & Recreation Advisory Board report (minutes) on their December 8, 1998 meeting;
6. Departmental reports;
7. Application (new) for Cereal Malt Beverage License – Cosentino's SunFresh grocery at Ranchmart Shopping Center, 95<sup>th</sup> & Mission Rd.;
8. Application (renewal) for Cereal Malt Beverage License – Osco Drug, 11729 Roe Ave.;
9. Purchase of a 1999 Ford Explorer from Prestige Ford through cooperative purchasing in the amount of \$23,956; and disposal via auction of one 1994 Ford Taurus and one 1989 S-10 pickup truck;
10. Appointment of an additional member to the Historic Commission – Janine E. Joslin, 12508 Catalina 66209, term to expire May 2002;

11. Resolution No. 1437, attached as part of the record, approving the final plat of Camden Woods located at approximately the southwest corner of 143<sup>rd</sup> and Kenneth Rd.;
12. Resolution No. 1438, attached as part of the record, approving the final plat of the Pavilions of Leawood 5<sup>th</sup> Plat located at approximately 150<sup>th</sup> Terr. and Oxford;
13. Pay Request No. 4 (FINAL) by Wilson Plumbing Co. in the amount of \$18,082.76 for storm drainage improvements in the vicinity of Ensley Lane and 119<sup>th</sup> St. (Oxford Hills), SMAC project TM-04-005;
14. Purchase of red LED lights for all City-owned permanent traffic signals from Mid-American Signal, Inc., (Total Electric to do the installation) in the amount of \$31,844.00;
15. Resolution No. 1439, attached as part of the record, extending the term of the e.spire<sup>TM</sup> Communications, Inc., (formerly ACSI) franchise ordinance as enacted by City Ordinance No. 1695;
16. Resolution No. 1440, attached as part of the record, authorizing the Mayor to sign a second extension agreement with Southwestern Bell Telephone Co. to extend the term of their franchise ordinance.

Resolution No. 1441, attached as part of the record, extending the term of the Brooks Fiber franchise ordinance as enacted by City Ordinance No. 1694. There was clarification that Brooks Fiber had paid a fee (not actually a franchise fee) at the beginning of their franchise for the use of public right-of-way to pass through the City, even though they weren't providing services in Leawood. Staff was in the process of negotiating with Brooks Fiber, e.spire<sup>TM</sup> Communications, and Southwestern Bell to get the 3 in sync for franchise fees. The resolution was adopted unanimously on motion of Taylor, seconded by Dunn.

#### PLAN COMMISSION

300 **Request for a special use permit for a sport court at 2209 W. 124<sup>th</sup> St. in Hunter's Ridge (2<sup>nd</sup> Plat, Lot 7, Block 3).** Councilmember Rasmussen moved for approval, seconded by Bussing. Planning Director McKay said some wording needed to be added to stipulation #3 so it would read, "All landscaping is installed prior to final inspection per staff preference." Staff preferred that landscaping around the court be upright evergreens such as pines or junipers, minimum height of 6 feet at the time of planting. Mr. Rasmussen and Mr. Bussing agreed that would be part of the motion and second. Motion carried unanimously.

372 **Resolution No. 1442, attached as part of the record, approving request for rezoning from CP-0 to CP-1 and approving preliminary site plan and preliminary plat for Tomahawk Creek Office Park Building #5 (bank), located at approximately the southwest corner of Tomahawk Creek Parkway and College Boulevard.** Councilmember Rasmussen moved to adopt the resolution with the change in stipulation #6 that was distributed to the Council to read, "Detailed information regarding public art will be required at the time of final site plan. The applicant must submit public art details to the Arts Council for approval. Once this approval is given, the applicant shall submit the public art details to the Plan Commission for final plan approval. In lieu thereof, the applicant may pay

art impact fee of \$.10/square foot of finished floor area per approved ordinance." Motion seconded by Clawson.

Planning Director McKay said staff could show land banking as a parking deviation if the Council desired even though staff didn't think of land banking as a deviation.

The applicant and developer of the project, architect Jim Cook of Peters & Associates, gave a presentation.

There was discussion of the coordination of the various developments in the area of Tomahawk Creek Parkway with an overall stormwater plan for Tomahawk Creek.

Motion to adopt the resolution carried unanimously.

**Ordinance No. 1770 rezoning from CP-0 to CP-1, Tomahawk Creek Office Park Building #5.** On motion of Rasmussen, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

#### OLD BUSINESS

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**Resolution No. 1443, attached as part of the record, approving preliminary site plan and request for a special use permit for Saddle & Sirloin cellular tower at approximately Lee Boulevard and Mission Rd. south of I-435.** At the November 16, 1998, Council meeting, the Council remanded the matter to the Plan Commission. The Plan Commission reviewed the matter and recommended approval. John Petersen spoke on behalf of the Saddle & Sirloin Club and Southwestern Bell Wireless. He reviewed the matter of the omissions from the 3-mile tower study, and presented a new 3-mile tower map for Council's information and a computer-generated analysis of coverage and capacity to demonstrate why the Saddle & Sirloin tower was needed.

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Councilmember Rasmussen asked Mr. Petersen if, under federal law, there was any City responsibility to insure that every provider of cellular telephone service had the same capacity in any one given location. Mr. Petersen thought that absent substantial evidence of negative detrimental impact to the community, the City would be required to provide locations within the City so that each operator could operate their facility in an efficient manner so they would not be placed at a competitive disadvantage with other providers. Mr. Rasmussen felt that a letter to Mr. Petersen from Kai C. Chang, Manager of System Engineering for Southwestern Bell, indicated that there was service provided in the Saddle & Sirloin area but SWBell wanted more capacity. Mr. Petersen explained that as a network matured and more customers were added to the system, what might be sufficient coverage and capacity at one point in time could change, and he felt that the City would be required to place additional towers in the area. Mr. Rasmussen disagreed.

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Councilmember Bold moved to adopt the resolution, seconded by Bussing.

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Mr. Rasmussen couldn't understand why 2 new tower locations - 103<sup>rd</sup> & Metcalf, and 95<sup>th</sup> & Mission Rd. - hadn't ameliorated or positively changed the situation that had created the "need" for a cell tower at the Saddle & Sirloin location. And the City had a goal of attaining quality levels of maintenance and operations of existing parks, recreational lands and greenways, providing for the aesthetic appearance of the community with the planting of trees and flowers on public property. The City had spent \$120,000+ to landscape the area along the Lee Boulevard extension to Mission Rd. It seemed to him that from a land use point of view, a cell tower was totally inappropriate. There seemed to be a feeling that all a

cell tower operator had to do was enter Leawood and he would be guaranteed a capacity. He would vote against the motion.

2134 Councilmember Peppes said he wanted to see a significant increase in the landscaping with possibly some kind of recognition that the area was the entrance to Leawood City Park, perhaps a monument or sign, to avert a lot of attention from the tower area.

2220 Mr. Bold said that the City had a relatively conservative policy as to where cell towers could be erected, City ordinance considered by some to be most restrictive. There weren't a lot of sites in the City that were suitable for a cell tower. He didn't believe that SWBell would spend \$250,000 to build a tower where they didn't need it. There were a significant number of wireless product users in the City, and while Saddle & Sirloin might not be a perfect site, not the ideal situation, it was about as good as the City could get. He supported approval of the motion.

2285 In response to Councilmember Bussing, Mr. Petersen said any donation to the Arts Council in the form of a public art impact fee would have to be discussed at final plan approval. Perhaps in lieu of any art impact fee, the Council might consider accepting Saddle & Sirloin's donation of the approximately 5-acre tract upon which the cell tower would be built which would give the City total control of landscaping.

2480 Councilmember Dunn said that he supported the motion; cell towers were a fact of life; the location was a good one; it was the City's responsibility to provide the technology to businesses that the City was trying to attract to Leawood; the visual impact would not be so terrible.

500 Councilmember Taylor was not in favor of the motion; he felt that the development of the entire Saddle & Sirloin property – north AND south of I-435 – should be approved for a use as a package.

2540 Mr. Rasmussen moved to amend the motion to change stipulation of approval #4 to read, "The tower is limited to 100 feet in height and that its basic construction will not accommodate an increase above that height." Motion seconded by Taylor. Mrs. Clawson was concerned that that could hamper co-location which City ordinance said the City must allow wherever possible, and possibly create a need in the future for another tower site in the City.

2823 Mr. Bussing called for the question, seconded by Peppes, and carried unanimously. The motion to amend failed; Rasmussen, Taylor, Clawson in favor; all others (4) opposed.

Mr. Bold's motion to adopt the resolution carried; Rasmussen, Taylor opposed; all others (5) in favor.

2875 **Ordinance No. 1771 C amending Sections 14-105, 14-301 and 14-302 of the Code of the City of Leawood relating to traffic regulations on private property, specifically to address 18-wheelers/trucks parking in private, commercial parking lots.**

Councilmember Rasmussen moved to pass the ordinance with the wording change at the end of Section 14-302(a) to read, "...and except for parking of recreational vehicles as provided in the Leawood Development Ordinance." (rather than in Article 4 of Chapter 14 of the Code) Motion seconded by Taylor. Planning Director McKay didn't believe there were any businesses in the City that would be negatively impacted (as discussed at the December 7<sup>th</sup> Council meeting) by the passage of the ordinance. The ordinance was passed unanimously on roll call vote.

**NEW BUSINESS**

3196 **Approval of Appropriation Ordinance No. 850.** On motion of Rasmussen, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

3211 **Resolution No. 1444, attached as part of the record, authorizing the acquisition, construction and installation of park improvements approved by voters at the November 3, 1998, election.** Adopted unanimously on motion of Rasmussen, seconded by Peppes.

3224 **Resolution No. 1445, attached as part of the record, authorizing the acquisition and installation of a new radio communications system for the police and other departments through a lease or lease purchase agreement.** Councilmember Taylor moved to adopt the resolution, seconded by Bold. In response to Councilmember Bussing's cost concerns, Finance Director Rogers explained the "increase" in costs from approximately \$880,000 as discussed during the 1999 budget process to approximately \$1.2 million. At budget time it wasn't realized that Public Works and Parks would not be able to communicate with the new system with their existing radios, so some of the increase included \$300,000 for their hand-held radios. Interdepartmental communications was vital to the City, particularly vital to the City's emergency management plan. Councilmembers Bussing, Bold and Taylor were very uncomfortable with the additional costs realized in the last few months. City Administrator Garofano said that part of the \$1.2 million was for items the Council had previously discussed and known about – for instance, new communications room design/engineering/construction at the Police Department (never part of the \$880,000 for police-only equipment). There was further discussion of the interlocal agreement with Prairie Village to share the system (which tied the cities into a specific vendor and last minute pricing), last minute renegotiations, not knowing many specific details until the last few weeks, favorable lease rates at the present time.

Motion to adopt the resolution carried unanimously.

4120 **Resolution No. 1446, attached as part of the record, authorizing the acquisition of public works equipment through a lease or lease purchase agreement.** Adopted unanimously on motion of Rasmussen, seconded by Peppes.

4150 **Resolution No. 1447, attached as part of the record, establishing 1999 fee schedule for fees not specifically provided for in the Code of the City of Leawood.** Councilmember Dunn moved to adopt the resolution, seconded by Clawson. Councilmember Rasmussen, a member of the Golf Course Committee, said that the City had had a great deal of difficulty with course greens. The Committee decided to let the golf course managers decide when to implement the full 1999 fee schedule, hopefully in April or May.

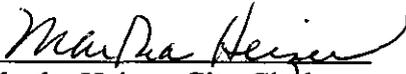
There was brief discussion about soccer fees; Parks & Recreation Director Whitaker said he would ask the Council in the fall to consider resident/non-resident fee modifications.

The motion to adopt the resolution carried unanimously.

4438 **Schedule work session.** Scheduled for January 11, 1999, to have a financial update from 5:30–7:00 P.M., and discuss goal setting from 7:00–9:00 P.M..

540 9:55 P.M. **Executive session.** On motion of Taylor, seconded by Clawson, Council voted unanimously to convene in executive session for a period not to exceed 15 minutes to discuss a matter under attorney-client privilege.

10:05 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

  
Martha Heizer, City Clerk

