

Minutes Summary

Audio Tape No. 447

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 4, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, * Gregory J. Peppes (arrived at 8:00 P.M.), Mike Gill, Louis Rasmussen and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Information Services Director; Sarah Hilton, Special Projects Coordinator/Management Assistant; 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.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Clawson, seconded by Bussing, after the addition, time permitting, of a discussion of a letter distributed to the Council concerning a request for deannexation of property (Laner property) at 135th and Nall Ave.

RECOGNITION OF PUBLIC WORKS EMPLOYEE NORMAN CASS. Mr. Cass, Public Works Fleet Maintenance Technician, had participated in the mechanics competition in the 11th annual American Public Works Association Snowplow and Equipment Rodeo October 5-9, 1998, and won second place. Mr. Cass finished 5th last year. The competition involved 28 technicians from government agencies all over the metropolitan area and from as far away as Columbia, Missouri.

CITIZEN COMMENTS. None.

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

1. Minutes of the December 7, 1998, public hearing on the amended 1998 Budget;
2. Minutes of the December 7, 1998, Council meeting;
3. Minutes of the December 14, 1998, Special Council meeting.

285 **MAYOR'S REPORT.** The Mayor reported that the Cloisters Homes Association had sent a check in the amount of \$1,575.00 representing their annual holiday gift to the Police and Fire Departments.

The Mayor thanked Cindy Pitts of the Human Resources Department and other staff involved for their employee safety efforts in 1998 which resulted in a 5% discount credit available toward the City's 1999 KERIT (worker's compensation) premium.

OLD BUSINESS

362 **Resolution relating to request for rezoning from AG to RP-1, RP-4 & REC, and preliminary site plan and preliminary plat approval, for Saddle Ridge-Residential and Golf Course, 105th and Mission Rd.** John Petersen, appearing on behalf of the applicant Saddle Ridge Land Development Co., thought there would be a full Council present at the meeting, and given the fact that a valid protest petition had been filed, he asked that the Saddle Ridge issues be continued until such time as a full Council could meet. The Mayor thought that Councilmember Peppes intended to be at the meeting but would be late. She said the Council would change the order of the agenda and proceed with new business until Councilmember Peppes arrived.

NEW BUSINESS

432 **Approval of Appropriation Ordinance No. 852.** Councilmember Taylor urged the Planning staff to require vendors who updated the master development plan map and similar documents to furnish the City document data on disks for the City's own use and for the City to provide the data to competitors which might reduce the cost to the City of such work. Mr. Taylor also urged staff to go out for bids on equipment/furniture and not necessarily continue to rely on "original" vendors like John A. Marshall Co. who supplied the furniture for City Hall. City Administrator Garofano said that John A. Marshall Co. was selected because the City was piggybacking on a State contract for furnishings under the Herman Miller line and other lines. Piggyback purchasing was a common practice for public procurement to take advantage of good prices and discounts. Mr. Taylor asked that staff consider looking at other vendors who might give such discounts.

On motion of Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

650 **Ordinance No. 1772 whereby the City conveyed unto itself a permanent utility easement for relocation of a water line along Mission Rd. near I-435 on Greenway and Park property.** On motion of Clawson, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

735 **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 15 minutes to discuss litigation.

* 8:00 P.M. Councilmember Peppes arrived.

RETURN TO OLD BUSINESS.

795 **Resolution No. 1448, attached as part of the record, denying request for rezoning from**
AG to RP-1, RP-4 & REC, and denying preliminary site plan and preliminary plat
933 **approval, for Saddle Ridge-Residential and Golf Course, 105th and Mission Rd. (Saddle**
& Sirloin property). John Petersen reviewed the components of the project. The first was
the single family neighborhood north of proposed 105th St. with a request for RP-1 zoning for
88 single family lots and a density of 1.8 units per acre. Of the 88 lots, 60 exceeded the
12,000 sq. ft. minimum of RP-1 zoning. The developer had initially requested a permitted
deviation in lot size for 28 lots, all interior lots, of less than the 12,000 sq. ft. minimum. The
homes on the eastern perimeter adjacent to Leawood Estates subdivision would be larger than
12,000 sq. ft. for a classic R-1 to RP-1 interface, 11 lots in Leawood Estates and 14 lots in
1048 Saddle Ridge. Mr. Petersen said that if the deviation for the 28 interior lots was a critical
issue for the Council, the developer would withdraw that request if it was the Council's
preference, and would commit at final plan and final plat that the lots would meet the
minimums of RP-1 zoning, no lots being under 12,000 sq. ft. Also at final plan and final
plat, the developer would reconfigure the lots on the eastern perimeter for an 11-12 ratio as
opposed to 11-14.

The second component of the project was the single family neighborhood south of
proposed 105th St. with a request for RP-4 zoning for 23 lots and a density of 1.8 units per
acre, totally buffered from any perimeter neighbors by the golf course.

The third component was the fully irrigated, 20 acre 18-hole precision golf course.
The course and related clubhouse would be owned and operated by Club Corp of America. It
would be a private course, in essence a private country club, with an anticipated 7,000-10,000
rounds of golf per year. The clubhouse would have dining facilities for its members, the
concept of a business or town club. There would be no golf carts on the course. A
maintenance facility would be part of the clubhouse structure. As far as course safety was
concerned, several holes had been redesigned – holes 1,3,4,8,10,11, and 14. The applicant
was convinced that the course would be viable, would be successful and would interrelate
and work well with the Saddle Ridge community and Leawood community as a whole and
would bring a positive benefit to both. The golf course and residential area would be
developed simultaneously. The developer continued to offer as a condition of the approval of
the REC zoning that, as part of the final approval, there would be conditions, covenants and
restrictions in place before the first person moved into the Saddle Ridge community that
would address the release of liability for property damage and injury for the City of
Leawood, for those living in the subdivision, as well as the reverter issue – if at some point in
time the viability of the course came into question or the course was abandoned, there would
be a mechanism whereby the control of the course ground would revert to the homes
association so it would have the opportunity to make decisions with regard to the destiny of
the land. As far as site engineering was concerned – safety of the dam of the current lake,
stormwater runoff management after the property was developed, the floodplain south of
proposed 105th St., the existence and remediation of any lead on property south of 105th St.
due to trap shooting over many, many years – from a preliminary design standpoint, there
were no insurmountable problems in terms of the dam, controlling stormwater runoff,
bringing appropriate pieces of land out of the floodplain, remediation of lead. Certifications
that issues had been addressed would be made to the City, the State of Kansas, and the

federal government, depending on the particular jurisdiction of those agencies over the variety of issues identified prior to the issuance of any final plan or building permit.

1483

The fourth component was the clubhouse. It appeared that a new structure close in size to the present Saddle & Sirloin Club structure would be built. Mr. Petersen said that if the land use was deemed appropriate, he suggested that a special use permit be granted with the stipulation that within 6 months of the granting of the permit, the developer would file a preliminary plan setting out the size of the clubhouse, what it would look like, location of the parking, location of signage, etc., with public hearing, notice, the entire process. If the applicant couldn't meet the challenge or the standards, then the approved land use wouldn't become reality.

The fifth and last component was the adult care facilities – independent living, assisted living and skilled nursing - to the south. Mr. Petersen suggested the same 6-month stipulation for the filing of preliminary plans. The 3 facilities would have to interrelate with each other from operational, architectural and design standpoints, and would interrelate with the single family development.

1666

Developer Saul Ellis addressed the attempt to have a special "balance" to the project on a difficult site – due to its contours and layout, and it being the corner of 2 highways. It would not be a typical project, and would have to be economically feasible. It was important to him to keep the lake and green space and save the trees. The project needed all the "parts" or components to work; as a business venture, it had to have all the income from all the various parts. He said that Saddle & Sirloin Club had to have the money to relocate; if the Club couldn't move, they had a riding club with no place to ride.

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Mr. Petersen addressed one last issue – balance which was critical to the project. He knew there were other proposals for the property floating around waiting for Saddle Ridge Land Development's proposal to be denied. For the area north of the proposed 105th St., those proposals might not include a golf course and would have residential just like that of Leawood Estates to the east. In that case, the use to the south of 105th St. would have to be a higher use, probably office, to give the entire property some value. Mr. Petersen said that whatever developer took on the site would have to play with the balance. Mr. Petersen commented on the Plan Commission's 4 reasons for recommending denial as noted in the staff review sheet distributed to the Council.

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In response to the Mayor, Mr. Petersen said that the willingness of the developer to reduce the density to RP-1 lots, bringing them up to the 12,000 sq. ft. minimum, would have very, very little effect on the golf course size/configuration. A few lots might have to be eliminated.

2390

Councilmember Dunn was concerned that the golf course would become a commercial operation, and he didn't feel that a commercial operation was compatible with the surrounding neighborhood. He would be looking for types of limitations the golf course owner would be willing to stipulate to as far as rounds per year and/or memberships that would be allowed. Mr. Petersen said that the developer would be willing to stipulate as a condition of approval of a special use permit that the course would be operated as a private membership only course, and if Club Corp or some other owner wanted to open it up as say a Deer Creek public course, the special use permit wouldn't be valid, and the owner would have to return to the City for approval of the new operation. Mr. Dunn said that "private membership" was subject to a variety of definitions, and he wasn't really sure what Club Corp would have in mind stipulating to private membership only. Mr. Petersen said that not

all of the clubs under Club Corp's ownership and operation were private membership. He said that Club Corp's intent would be that a person would not be able to play the course unless he/she was a member or a member's guest. Exact language of the stipulation could be available at final plan approval.

2826

Councilmember Bold said there were several high quality subdivisions in the City built to RP-1 standards; that RP-1 wasn't as good as R-1 wasn't the case at all. He felt that something would have to be done with the southern portion of the property that was different than low density residential - no one wanted to live next to I-435 - and he felt the developer had done a good job of conforming to the master development plan. As far as lack of continuity with the surrounding community, times had changed, and the types of houses had changed due to demographics and lifestyles, so regardless of what the Council allowed to be built, homes were going to be different from the Leawood Estates homes that were approximately 20-30 years old. Regarding flooding and lead on the property, the developer had stated that he was willing to stipulate that he would address those issues before final plan approval. As far as long-term viability of the golf course and difficulty in converting the course to something else in the future, Club Corp was a large, publicly-traded company that was investing a substantial amount of money in the project. Viability was not really a land planning issue; the question was whether or not it was an appropriate use for the particular parcel of land. Mr. Bold was willing to give Club Corp the benefit of the doubt on viability. In terms of converting the course in the future, the developer was willing to stipulate that the property would revert to the homes association, and that was appropriate. He felt that the developer had seriously taken into consideration the objections the Plan Commission had to the project. He said that something would be built on the property, and felt that the project was as good or better than anything that might appear in the future.

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Councilmember Gill asked what would happen to downstream properties if water that was currently accumulating on the Saddle & Sirloin property during heavy rains was diverted, and wanted to know what part of the proposed development was in the 100-year floodplain. He asked if the developer would be willing to remove the golf course from Council's consideration until several questions about number of rounds, number of memberships and operating costs could be answered or cleared up. It appeared to Mr. Gill that Club Corp would attract approximately 2,000 members from the business community who would dine at lunch and dinner in private facilities, and the golf course was really an ancillary use, not the centerpiece for Club Corp. Club Corp wanted to have a private dining and eating facility. If that was true, why did Saddle Ridge need the golf course at all? Why couldn't they find a more pastoral ancillary use to support the real revenue engine that he felt was being developed after listening to comments? Mr. Gill wasn't comfortable voting on the golf course concept sight unseen; he wanted to know what the business plan/strategy was that was going to support a multi-million dollar investment by Club Corp; he wanted the names and locations of target golf courses that were surrounded by private residential developments and that had succeeded. He didn't want Leawood to be the guinea pig of a good idea gone bad.

Mr. Petersen gave Mr. Gill a listing of similar type golf courses. He indicated that the adult care facilities would be in the floodplain, but the ground would be built up out of the floodplain with no effect on water flow. Mr. Petersen reemphasized that the developer knew that he could not adversely impact other land by building the one area up out of the floodplain, and would have to prove that to the City, but that was a final plan, final engineering design issue. Mr. Petersen explained the issue of 40,000 rounds as opposed to 10,000. The 40,000 rounds were discussed very early on in the context that the course would be public, possibly under the ownership and operation of the City. The concept and projected utilization had changed as it moved from private ownership to private membership. He said that the golf was a component of the private membership club; it was not, as at other clubs, the primary component, but important to Club Corp for their array of benefits for the club, willing to market and anticipate approximately 10,000 rounds of golf per year. Mr. Gill said that if there were approximately 2,000 members, then either 1) there would be a lot more than 10,000 rounds per year or 2) Club Corp was not really selling the golf course which was causing area residents so much grief. Mr. Petersen said that the facility would be utilized very similarly to that utilized by Saddle & Sirloin Club for 50 years. Most members of the Saddle & Sirloin Club didn't take advantage of an ancillary, but prominent, flavor-generating, character-establishing component of the Club - riding horses. Saddle & Sirloin did serve as a social club. Mr. Petersen said that the commercial activity to support the Saddle Ridge project wouldn't have any greater impact than the commercial activity that supported Saddle & Sirloin. He said that the development wouldn't take place without the golf course. Mr. Petersen said that if the project was denied or remanded to the Plan Commission or the golf course component pulled out tonight, the developer would not spend any more time or money on the project.

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In response to Councilmember Rasmussen, Mr. Petersen agreed that residents to the east and north of the proposed golf course facility hadn't assumed the risk of having a golf course facility in their backyards since a golf course didn't exist when they purchased their properties. Mr. Petersen said that there was extensive existing vegetation along the east and north property lines that would not be removed which would make it virtually impossible for golf balls to get through.

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RESIDENTS

Several residents 1) were opposed to commercial development of the Saddle & Sirloin property, 2) expected continuity with the surrounding residential areas if development occurred 3) were opposed to the golf course, clubhouse, dining facility, 4) wanted proposed 105th St. to remain closed to preserve security, low traffic and safety in the Leawood Estates area, 5) favored keeping the beauty of the Saddle & Sirloin property, restricting the development so some beauty would be retained, 6) questioned the development of any significant membership for the club and its commercial viability, 7) questioned building elderly care facilities near I-435 with treatment plant odors, noise, fumes, and lead in the soil from years of trap shooting on the property, and building them in a floodplain, 8) felt that R-1 zoning should be maintained, RP-1 too dense for the area, 9) were concerned about the safety of the golf course.

Tom Dickmeyer of the Board of Directors and Executive Committee of the Saddle & Sirloin Club stated the Club's position. In early 1998 the membership voted overwhelmingly to sell the property and move to a new location, and remained committed to that course of action. Membership and revenues continued to decline primarily due to the conflict between their type of club and the facility they had. The Club chose developer Saul Ellis' offer for the property. It wasn't the highest offer, but Mr. Ellis was a local developer with an excellent reputation. The Club felt that the initial plan had the best chance to be a positive addition to the neighborhood and the City. The Club felt that the developer had responded to the concerns of the Plan Commission and neighbors. The Club felt that the plans with the concessions agreed to represented a good collaborative effort between the City Council, the Plan Commission and developer. They felt that the plan did conform, that there was potential for a continuation to adjust the plans to conform even further to comply with the City's concerns. The project was a quality project, plans were consistent with the quality of the neighborhood, a situation very creatively planned to overcome the challenge the property presented.

6743 Councilmember Clawson moved to deny the applicant's request for the same reasons that the Plan Commission had recommended denial – 1) the lack of conformity to the master plan, 2) lack of continuity with the surrounding community, 3) issue of rezoning the property without having clear answers on how to address the issues of flooding and lead on the property, and 4) the long-term viability of the golf course and the difficulties of converting the golf course to something else in the future. Motion seconded by Rasmussen and carried; Peppes, Bold opposed; all others (6) in favor.

Ordinance rezoning from AG to RP-1, RP-4 & REC for Saddle Ridge-Residential and Golf Course, 105th and Mission Rd. On motion of Rasmussen, seconded by Dunn, Council voted unanimously to deny passage of the ordinance.

6980 **Resolution No. 1449, attached as part of the record, denying request for a special use permit and denying preliminary site plan and preliminary plat approval for Saddle Ridge-Clubhouse, 105th and Mission Rd. (Saddle & Sirloin property).** Adopted unanimously on motion of Rasmussen, seconded by Clawson.

7020 **Resolution No. 1450, attached as part of the record, denying request for a special use permit and denying preliminary site plan and preliminary plat approval for Saddle Ridge-Adult Care Facilities, 105th and Mission Rd. (Saddle & Sirloin property).** Adopted unanimously on motion of Rasmussen, seconded by Clawson.

7076 **Reasons for denial.** City Attorney Wetzler felt that reasons for denial had been adequately stated throughout discussions, but also felt that the Council couldn't have too much in the record, so if some Councilmembers had additional reasons, he appreciated having those made a part of the record. Mr. Petersen objected to reconstruction of the record after the vote and after the public had left the meeting. Mr. Wetzler said that Council still had the opportunity to set forth on the record their reasons for their votes.

Councilmember Rasmussen gave his reasons for denials- 1) the application was contrary to the City's master plan, 2) the commercial use of the property was inconsistent with the surrounding property which had not changed since the master plan was developed, 3) from the City's experience, inadequate planning of a golf course could be an unreasonable safety concern to existing neighbors who had not assumed the risk much less to those who might purchase knowing of the course's existence, 4) the Plan Commission had rejected the proposed rezoning unanimously.

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Councilmember Gill gave his reasons for denials (in addition to his concurrence with Mr. Rasmussen's reasons and reasons in Mrs. Clawson's motion for denial). The evidence was pretty clear from the developer and club representative that there were alternative uses available for the land so the land owner was not deprived of the opportunity to engage in a commercial transaction with respect to the land. The alternative uses might implicate a trade-off but might also afford the single family, smaller density residential homes that many of the surrounding residents had requested and which the master plan called for. The Plan Commission's unanimous recommendation after so much consideration was a major factor. The Saddle & Sirloin Club property was in Ward 2 and Council representatives Rasmussen and Clawson of that Ward knew the property, the history, the people, the needs, better than anyone. The City had in effect been asked to subsidize an otherwise non-economic transaction, a burden which Leawood residents shouldn't have to bear. Despite repeated questions during prior meetings, the applicant had failed to provide a true plan for the golf course and dining facility and total failure to provide a prototype of a similar situation anywhere, leaving a question as to what kind of usage the neighbors would be subjected to.

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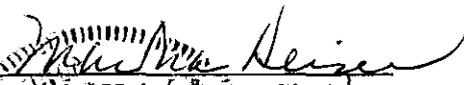
Councilmember Dunn echoed Mr. Gill's reasons. Questions had not been answered, a commercial venture was not in keeping with the neighborhood and master plan, and the Council would have had to override a unanimous decision of the Plan Commission.

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

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11:10 P.M. Council convened in executive session and returned to regular session at 11:25 P.M. There being no further business before the Council, the meeting was adjourned.


Martha Heizer, City Clerk


Minutes Summary

Audio Tape No. 448

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 18, 1999. 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, Information Services Director; Sarah Hilton, Special Projects Coordinator/Management Assistant; Captain Craig Hill, Police Department; 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.

PLEDGE OF ALLEGIANCE – led by Brownie Troop 587 of Mission Trail Elementary School, Boy Scout Troop 10 sponsored by the State Line Optimists, and Webelo Scout Pack 3381.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Clawson, seconded by Bold, after the removal of a resolution to approve the final plat of The Woods at approximately 114th St. from Roe Ave. to College Blvd. It would be considered by the Council after a few issues were clarified with the developer.

PRESENTATION OF HISTORIC DESIGNATION PLAQUE FOR FIRST LEAWOOD CITY HALL LOCATED AT 9615 LEE BOULEVARD. Leawood Historic Commission Chairman Beverly Hurley presented the plaque to the Mayor for the City to be placed on the front of the building.

231 **CITIZEN COMMENTS.** Dr. Scott Frankel, an allergist, 7904 W. 117th St., spoke about asthma being triggered by cigarette or secondhand smoke. He was in favor of no smoking in public areas. (See tape meter #900 re smoking ordinance.)

G. Gordon Thomas, 10516 Mohawk Lane, wanted to preserve Leawood's heritage – Saddle & Sirloin Club. Perhaps the Club could be designated a historic foundation or area.

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

1. Minutes of the December 21, 1998, Council meeting;
2. Historic Commission report (minutes) on their September 15, 1998, meeting;
3. Historic Commission report (minutes) on their October 13, 1998, meeting;
4. Historic Commission report (minutes) on their November 10, 1998, meeting;
5. Departmental reports;

6. Resolution No. 1451, attached as part of the record, to allow alcoholic liquor to be served on the main floor of City Hall for Arts Council event on January 23, 1999;
7. Appointment of an additional member to the Board of Zoning Appeals – Mel Hawk, 2814 W. 118th Terr., term to expire May 1999, appointment to be effective upon the effective date of ordinance amendments that would allow for more than the present 5 Board members;
8. Appointment to the Plan Commission – J. Paul Duffendack, 8403 Cherokee Lane, to fill the unexpired term of Jim Lichty to May 2000;
9. Pay Request No. 6 (FINAL) by Leavenworth Excavating (LEXECO) in the amount of \$11,000 for Mission Rd. improvements, 135th St. to 143rd St.;
10. Purchase of equipment for the Public Works Department through cooperative bidding process – 1) 1 utility vehicle in the amount of \$22,986.00 from low bidder Prestige Ford; 2) 1 cab and chassis in the amount of \$17,894.00 from low bidder Raytown Dodge; 3) 1 platform body in the amount of \$12,034.00 from the low bidder Scherer Truck Equipment; 4) 1 2-yard material spreader in the amount of \$4,955.00 from low bidder Knapheide Truck Equipment; and 5) 1 snow plow in the amount of \$2,936.00 from low bidder Scherer Truck Equipment.

395

MAYOR'S REPORT. The Mayor asked for a moment of silence in honor of the late Dr. Martin Luther King, Jr., January 18th being Martin Luther King, Jr. Day in the United States.

The Mayor reported that the Johnson and Wyandotte Counties Council of Mayors recently endorsed National Youth Information Network policy on fair treatment for teens to insure that young people were made aware of their rights as consumers and employees to make informed decisions. The Council of Mayors opposed the deletion of motor vehicle taxes, and further requested that a legislative bill be drafted for an expansion of the homestead exemption, that it look at need as opposed to strictly age and need. Half of Leawood would be facing another reappraisal.

A reception to recognize the City's 50 Anniversary Committee was scheduled for February 1st at 7:00 P.M., immediately prior to the regularly scheduled Council meeting at 7:30 P.M.

The Chinese New Year celebration in honor of sister city I-Lan, Taiwan, was scheduled for February 18th at Andy's Wok at 99th & Holmes in Kansas City, Missouri.

OLD BUSINESS

566

Public Works Committee report on 1) proposed public works facility site and 2) flooding problems in Wilshire subdivision, approximately 132nd and Roe Ave.

Councilmember Clawson, Chairman of the Public Works Committee, said that the public works facility would be discussed in executive session at the end of the meeting. As far as the Wilshire flooding problems were concerned, the Committee recommended that the Council assign the Committee to review stormwater projects, Wilshire's problems included, that didn't fit within the context of SMAC and conduct the review within the context of the greater stormwater policy of the City. Mrs. Clawson moved to make that assignment,

seconded by Taylor. Councilmember Rasmussen moved to amend the motion to state that not only would all Councilmembers be notified of the Public Works Committee meetings, but would be allowed to participate in discussions, which was not usually the rule of procedure for a committee. Motion to amend seconded by Gill and carried unanimously. Mrs. Clawson's main motion as amended carried unanimously. There was clarification that a policy would be evaluated that would include both SMAC and non-SMAC projects and new developments. The Committee felt that Wilshire should be considered in a larger context, not just by itself.

NEW BUSINESS

865 **Approval of Appropriation Ordinance No. 853a&b (1998).** On motion of Peppes, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 854 (1999). On motion of Dunn, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

900 **Ordinance No. 1773C amending the Code of the City of Leawood by adding Article 9 (Smoking) to Chapter 11 (Public Offenses).** Councilmember Gill moved to pass the ordinance as presented but with the deletion of Section 11-908 relating to minors and of Section 11-909 relating to prohibited sale of tobacco products or cigarettes to minors, and the deletion of the repeal section (Section 2) of the ordinance; Sections 11-908 and 11-909 were duplications of current state laws and could be enforced by City police officers under existing statutes. Motion seconded by Clawson. Mr. Gill felt that the Council had an obligation to bring the City in line with health needs, public needs and the community's needs. The ordinance was not a tobacco ban. Mr. Gill described some of the requirements for bars, restaurants, and office buildings. It was not the City's intent to cause existing businesses enormous and unreasonable financial expenditures in order to comply with the ordinance, and the requirements didn't put businesses at a competitive disadvantage with businesses in communities on either side of Leawood. He didn't know of any restaurant in the community that didn't come very close to meeting the ordinance requirements, if not already in compliance. He felt that the ordinance was entirely in line with existing ordinances in Overland Park and Kansas City, Missouri.

1218 Councilmember Bold had several concerns. Section 11-903(A) of the proposed ordinance said that no person could smoke in or within 30 feet of a public place. Mr. Bold felt that as long as people smoked outside of an office building, whether within 30 feet or outside of 30 feet of the building, that would provide adequate protection for nonsmokers working in the building, even if they had to walk by smokers to get into the building (the amount of potentially hazard smoke being miniscule). Secondly, if a restaurant designated an amount of seating capacity adequate to meet nonsmoking customer needs as required by Section 11-903(C), and one more (overflow) nonsmoker came into the restaurant, would the restaurant have to take an area designated as smoking and make it nonsmoking? He didn't understand what the phrase "existing physical barriers and ventilation systems shall be used and, to the extent commercially reasonable, enhanced to minimize smoke in nonsmoking

areas" meant in Section 11-903(F). It didn't say "financially reasonable." He felt there needed to be a balance between the desires of nonsmokers and the citizens of Leawood and the needs of the businesses in Leawood, including facilitating their success. Smoking in a restaurant was an issue that should be decided by a free market – if a restaurant permitted smoking, and customers didn't like it, they didn't have to eat there; if enough people didn't eat there, then the restaurant would either go out of business or have to change their smoking policy. He also wondered if the City really should, even if it had a legal right, force requirements on private businesses.

1470 Regarding Section 11-903C, City Attorney Wetzler didn't feel there was any intent to dictate to a restaurant the numbers of seats designated for smoking or nonsmoking – might add a phrase "in the judgement of the owner or restaurant operator" to clarify that. There was no intent to create a right on the part of a nonsmoker to insist that a restaurant change a designated smoking area to nonsmoking to accommodate him. As to Section 11-903(F), "commercially reasonable" did concern him. He thought the phrase could be deleted. Mr. Gill felt that changing "commercially reasonable" to "financially reasonable" was a valid change. If the phrase was deleted, then existing physical barriers and ventilation systems would absolutely have to be used to minimize smoke in nonsmoking areas, cost not a consideration. Mr. Bold asked who would determine what was "financially reasonable." The Director of Planning and Development? Was there an appeals process?

1600 Councilmember Rasmussen was concerned when legislative bodies tried to mandate human behavior. If customers didn't like a facility, they didn't have to go to it. He said that there were many code enforcement issues annually in the City and many of those were of long duration. It was very expensive to enforce the City's existing ordinances, and some attempts to enforce them even failed. He had no idea what it would cost the City to enforce a smoking ordinance. What kind of manpower would be needed to enforce such an ordinance? He didn't know why the City wanted to be involved with a smoking ordinance at all – health was an issue of choice, and a City Council shouldn't be in the business of enforcing human behavior patterns of customers in commercial establishments.

 Councilmember Taylor said he couldn't support the proposed ordinance and wanted to have a work session to discuss the many issues involved; there were too many unanswered questions. He was in favor of some kind of smoking ordinance.

1945 Councilmember Bussing said that the City did legislate many forms of human behavior, outlawing many of them for the common good, infringing upon individual rights in certain instances to insure that. The proposed ordinance was probably flawed, however, the Council was trying to send a message about the kind of community they wanted to have and trying to protect individual citizens in the community from the effects of smoke and secondhand smoke which were considered quite dangerous.

2053 Councilmember Dunn felt that consistency was very important. Adults consistently sent out the message to young people that smoking was an evil, unhealthy, and that they shouldn't do it, and for the Council to abdicate that responsibility at this point by not passing the proposed ordinance to embody and codify those beliefs that they tried to engender in young people, was inconsistent and dangerous.

2162

Mr. Bold agreed that smoking was hazardous to health, but felt that the City was potentially harming Leawood business owners with the costs of complying with the ordinance (he wasn't sure what the costs would be because the terms of the ordinance were so vague). Planning Director McKay said he didn't have a good feel for any impact on businesses. He said that if the Council passed the ordinance, he wanted greater clarification of criteria in order to proceed in handling some questionable issues. He said that most Leawood restaurants had designated smoking areas but some didn't have required barriers. Mr. Bold said that Leawood restaurants didn't know about the proposed ordinance. Mr. Gill felt they were aware of it; the City hadn't heard from them, probably because they weren't concerned about it.

2420

RESIDENTS AND GUESTS. Patrick Morgester of the Kansas City, Missouri Health Department explained his responsibilities for enforcement of Kansas City's clean indoor air ordinance, low key and nonconfrontational enforcement with good results.

Several residents, including students and physicians, spoke about the health risk of secondhand smoke. Student Jeff Gill, 13016 Falmouth, submitted petitions with over 350 signatures in support of the proposed ordinance, gathered during a petition drive at area high schools.

Dawn McGillis, General Manager of the Bristol restaurant, was unaware of the proposed ordinance. She said the restaurant had a new nonsmoking banquet room that patrons couldn't get to without walking through a designated smoking area; she didn't know how to fix it to be accommodating. The restaurant was designed with a very open air atmosphere, very few walls or barriers; it wasn't a financial issue but a realistic one of how to make the restaurant workable to comply with the proposed ordinance.

3580

Councilmember Peppes called for the question, seconded by Clawson, carried unanimously. Mr. Gill included the following changes to his motion - 1) the words "commercially reasonably" in Section 11-903(F) changed to "financially reasonably," and 2) Section 11-903(A) wording changed to read, "No person shall smoke in or within 30 feet of an exit or entrance to a public place or..." Motion to pass the ordinance carried on roll call vote; Bold, Rasmussen opposed, all others in favor.

3750

Ordinance No. 1774 deannexing certain property (Laner property at 135th & Nall) from the City pursuant to consent of the property owner and the City. There was brief discussion of the history of the annexation of the property and the agreement and supplemental agreement with the property owner. On motion of Peppes, seconded by Dunn, Council passed the ordinance on roll call vote; Taylor opposed, all others in favor. Mr. Taylor felt there had been too much of an on-again, off-again relationship with the property owner.

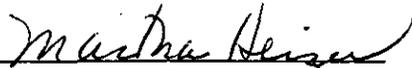
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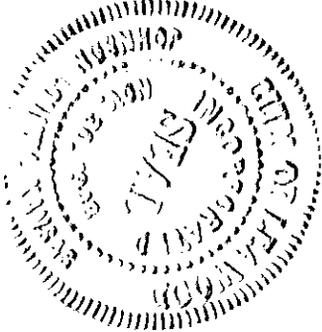
Resolution No. 1452, attached as part of the record, authorizing the execution of a lease purchase agreement between UMB Banc Leasing Corp. and the City with respect to certain radio communications (800 MHz) equipment and certain Public Works vehicles (street sweeper and back hoe). Adopted unanimously on motion of Rasmussen, seconded by Clawson.

4483 **Schedule work session to discuss goal setting.** Scheduled for January 25, 1999, at 7:00 P.M.

4541 **10:00 P.M. Schedule executive session.** On motion of Clawson, seconded by Taylor, Council voted unanimously to convene in executive session for a period not to exceed 30 minutes to discuss land acquisition.

10:30 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. 449

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 1, 1999. 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: Julie Hakan, Director of Human Resources; Mark Andrasik, Information Services Director; Sid Mitchell, Chief of Police; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Sam Maupin, Building Official; 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 the State Line Optimists.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Taylor, seconded by Clawson, after the addition of 1) a discussion of the City's lighting nuisance ordinance, 2) a discussion of support for a candlelight walk and issuance of a proclamation for crime victims' rights week April 25-May 1, 1999 (see Citizen Comments), 3) a discussion of the enforcement of Council resolutions and stipulations on zoning matters, and 4) a second matter under attorney-client privilege for the executive session to be scheduled later in the meeting. The order of the agenda was changed so that a discussion of the Ironhorse fence issue/developer Mark Simpson would be the first item under Old Business.

PROCLAMATION. The Mayor proclaimed January 30 through April 4, 1999, as "A Season for Nonviolence."

RECOGNITION OF MEL AND ALICE HAWK AS CO-CHAIRMEN OF THE CITY'S 50TH ANNIVERSARY COMMITTEE. The Mayor presented a plaque to Mel and Alice Hawk for their service to the City during the year 1998, the City's 50th anniversary. Mr. Hawk described the scrap books that Alice Hawk had put together chronicling the many anniversary events. He said that unexpended funds in the Committee's budget would go towards the Oxford School preservation efforts and lighting for the water feature in front of City Hall.

434 **CITIZEN COMMENTS.** Attorney Fritz Edmunds addressed property damage (flooding) to a house at 14261 Granada Court owned by his clients Richard and Catherine Rhodes, caused, in their opinion, by a flawed drainage system under 143rd Street behind their house. His clients wanted compensation for the damages. Information concerning the claim had been distributed to the Council. The Mayor advised Mr. Edmunds that the matter would be discussed in executive session at the end of the meeting, and City Attorney Wetzler would contact him later.

Peggy Schmidt, 3416 W. 122nd Terr., said that National Crime Victims' Rights Week was April 25th through May 1st, 1999. She requested that the Mayor issue a proclamation to recognize that week as Leawood Crime Victims' Rights Week. A silent candlelight walk and rally would take place April 25th at 7:30 P.M. beginning at the City Hall fountain. She hoped the Mayor would be able to attend and present her proclamation. (See Other Business at the end of the meeting.)

Emily Broxterman (8445 W. 113th St.) and Jonathan Ng (13012 Sherwood), students at Blue Valley North High School, thanked the Council for passing the (non)smoking ordinance at the last Council meeting.

G. Gordon Thomas, 10516 Mohawk Lane, asked that a list of City surplus property be available at City Hall for residents to pick up.

Nancy Cornwell, 9815 Overbrook Court, expressed opposition to commercial development in old established residential neighborhoods like hers in Leawood Estates subdivision. They shouldn't be "touched." She said some efforts were being made to develop property commercially in the vicinity of 98th and State Line Rd. She was disappointed that the City's master plan showed the area zoned for office use and hoped it could be changed to residential.

John Geiger, Manager of the Hereford House restaurant at 5001 Town Center Drive, said that as far as the recently passed smoking ordinance was concerned, the Council should be aware of and recognize financial hardship on business owners. He felt that his restaurant was in compliance with the new ordinance requirements, but there were restaurant owners who had invested heavily in their businesses, didn't know the ordinance would be proposed, and would feel a financial hardship in attempts to comply with the ordinance. Smoking might be a health hazard, but was part of a restaurant's business. (See tape meter #3430.)

1198 **CONSENT AGENDA.** Two items were removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Minutes of the January 4, 1999, Council meeting;
2. Public Works Committee report (minutes) on their January 12, 1999, meeting;
3. Resolution No. 1453, attached as part of the record, approving the final plat of The Woods at approximately 114th St. from Roe to College;
4. Resolution No. 1454, attached as part of the record, approving the final plat of Highlands Ranch 2nd Plat at approximately 138th and Belinder;
5. Declaration of surplus property no longer used by Administration to be sold at public auction February 20, 1999 - 4 file cabinets and 1 typewriter;
6. Final payment to Theis Doolittle Associates in the amount of \$330.00 for the park master plan project for Leawood City Park, Nall Park, and South Park.

Arts Council report (minutes) on their January 26, 1999, meeting.

Councilmember Bussing, Council liaison to the Arts Council, reported on an art show and reception scheduled for February 19th at Exchange National Bank in Leawood; one of the featured artists would be Leawood Police Officer Tim Anderson who created bronze sculptures of wildlife. On January 23rd, the Kansas City Brass performed in the City Hall Council Chamber. On motion of Bussing, seconded by Taylor, Council unanimously approved the report.

Approval of 1999 fees charged by the Planning Department. Building Official Sam Maupin clarified that the fees for mechanical, electrical, and plumbing subcontractors would be assessed at 3% rather than 4% of the building permit fee with a minimum of \$150.00. Mr. Maupin described how Leawood's fees compared with those of other cities. One of Mr. Maupin's goals was to establish a periodic inspection program for all elevator equipment and an inspection fee. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the fees.

- 1453 **MAYOR'S REPORT.** Due to spring break, the March 15th Council meeting was rescheduled to March 22nd.

A memo from the Arts Council had been distributed to the Governing Body inviting the Mayor and Council to be the featured performance (lawn chair or briefcase drillteam) in a talent show fundraiser for a July community theater stage production at City Hall. The show was scheduled for Sunday, March 7th. On motion of Bussing, seconded by Taylor, Council voted unanimously to participate.

The Chinese New Year (Year of the Hare) celebration dinner would be held February 18th at Andy's Wok approximately 99th and Holmes in Kansas City, Missouri. The owners of the restaurant were from Leawood's sister city I-Lan, Taiwan.

OLD BUSINESS

- 1752 **Discussion of disputed wrought iron fence encroachment onto Ironhorse Golf Course.** Councilmember Rasmussen had prepared a list of the actions that the Golf Course Committee and the City Council had taken regarding the issue. He said that the Golf Course Committee met last week to review the situation and reconfirmed its position that the fence should be placed on the property line in accordance with its prior recommendations to the Council and the Council's agreement with the recommendations.

Dick Fuller, 10309 Sagamore Rd., Chairman of the Golf Course Committee, said the Committee was very concerned about the fence and other situations that had continued unresolved for the last year or year and a half. There was a continuous problem with silt erosion onto the golf course, and bank stabilization issues persisted. The Committee hoped to see Council support for some kind of time constraint or penalty placed on developer Mark Simpson to enforce Council's decisions regarding the issues. Damage to the golf course continued to occur. Mr. Rasmussen said there was something wrong with the City's enforcement and ability to get issues resolved; the Governing Body needed to enforce its laws.

Planning Director McKay said that if the Council advised him to proceed with court action, he would give Mr. Simpson a certain period of time to move the fence, and if the fence wasn't moved, he would file a complaint in court. Councilmember Taylor said that Mr. McKay had the authority to hold up issuance of temporary and permanent certificates of occupancy for Mr. Simpson's homes in an effort to get Mr. Simpson's compliance instead of going to court and paying legal fees. Mr. McKay said he had done that and had even refused to issue some building permits. Mr. McKay said that one option the City had but had not taken because of the cost involved was to move the fence and place a lien on the property if the cost of moving the fence was not paid by the developer.

2368 Parks & Recreation Director Whitaker hoped the developer would move the fence off the golf course property within the next 30 days, end of February. How would the City enforce that and should it be the City's responsibility to continue to have a consultant go out and survey the lots and bill the City? Mr. Whitaker wanted a mechanism in place to deal with those questions. The developer was to have the silt removed by the end of February; the little work done to date was not acceptable. Some nice rock work had been done, but not complete, so Mr. Whitaker wanted a deadline for that because it was major work and ideally done during the frozen season. Bank stabilization on hole #17 was an ongoing issue; there was suitable rock to get the work done, no reason why it couldn't be done by the end of February.

Councilmember Bold moved that by the February 16th Council meeting, staff prepare 2 lists – one of all outstanding issues regarding Leawood Land Company and all of their various projects surrounding the golf course, and the other of potential penalties, impunative measures, that the Council could take to insure the prompt completion of the outstanding items in a timely fashion. Motion seconded by Dunn. Discussion about setting an end-of-February deadline for completion of outstanding issues. Councilmember Clawson called for the question, seconded by Gill and carried unanimously. Mr. Bold's motion carried unanimously.

2664 Councilmember Gill moved that the Council endorse the Golf Course Committee's recommendation that the fence be placed on the property line, not on the City's property, by February 28, 1999, and the fence would not have gates that would open to the City's property. Motion seconded by Peppes and carried unanimously. (As a City, Council was directing staff to take any enforcement measures that would be consistent with its ordinances and regulations, and as a property owner, Council was authorizing City staff to take whatever action they felt was necessary to remedy the situation.)

2839 Councilmember Peppes moved that all rock work and bank stabilization on hole #17 be completed by February 28, 1999, in accordance with Continental Consulting Engineers' design and approval, seconded by Taylor. This work needed to be done while the ground was still frozen and before play started picking up on the course. Motion carried unanimously.

2951 Councilmember Taylor moved that the developer would remove any silt on the lake at hole #11 for which he was responsible and be specifically addressed to Continental Consulting Engineers' scope of services to be done in a proper manner, by February 28, 1999, seconded by Rasmussen. Motion carried unanimously.

3430 **Discussion of the City's smoking ordinance.** Councilmember Gill moved to direct the City Attorney to prepare an amended ordinance for Council's consideration at the February 16, 1999, Council meeting, incorporating the following proposed changes/additions:

- 1) Section 11-903(A) – Mr. Gill wanted a clarification that a service access doorway that was not generally used by the public would not be subject to the 30 foot restriction in (A).
- 2) Section 11-903(B) – Mr. Gill proposed an additional permitted designated smoking area that would be an exterior area such as an outside eating area at a restaurant, provided that it was expressly designated and was appropriately signed, and that the criteria generally stated in subsection (F) Barriers and Ventilation were implicated.
- 3) New subsection under Section 11-903 that would require businesses not regulated by Section 11-904, essentially restaurants, to provide the City with a plan or statement of how they intended to comply with City ordinance (or of how they were already in compliance). Planning staff would have a period of time to review and approve it in accordance with the criteria, or reject it, giving reasons for the rejection and providing an opportunity for discussion, so certain issues such as financially reasonable means could be discussed and determined administratively rather than by the City prosecutor in some enforcement action. After that process, if there was still disagreement between a restaurant owner and City staff, then the owner could appeal to the Governing Body. The City prosecutor would enforce a failure to have an approved plan or the failure to comply with the plan. Mr. Gill proposed that a restaurant would have 60 days in which to submit a plan and City staff would have 60 days to respond.

Motion seconded by Bussing.

Councilmember Taylor asked that Mr. Gill consider the financial feasibility of the renovation of any structure, office building or restaurant, that any renovation work on the ventilation system to ventilate a smoking area properly not exceed 3 % of the gross income of the establishment.

3725 Councilmember Rasmussen was very disappointed – the Council passed a smoking ordinance at the last Council meeting 2 weeks ago and was already redrafting it. He preferred that if the intent was to make the ordinance enforceable, that there be a 2-week moratorium and have a committee composed of Council, restaurant representatives, and public at large, review it in detail to see if it was enforceable. Mr. Rasmussen said that no one had had a chance to review Mr. Gill's changes. The Mayor said that the discussion and Mr. Gill's motion were based directly on questions that staff had as outlined in a memo from the City Administrator that had been distributed to the Council. The intent of the motion was to clarify questions for staff.

3928 Councilmember Bold felt that the ordinance passed at the last Council meeting had more style than substance, and that continued to be the case with an amendment. He had no problem with the concept of the ordinance, but felt there were still many aspects of the ordinance that were vague and punitive to businesses. The Council needed more time in which to hear concerns of business owners and to address any outstanding issues, in order to pass an ordinance that was good for the public and fair to business owners. Mr. Bold said that City staff would have to go by what was written in the ordinance, not by what the spirit of the ordinance was.

Mr. Gill felt his motion was close to what Mr. Rasmussen wanted – he gave some proposed solutions to some questions, staff would draft an amended ordinance over the next 2 weeks, there might be other additions/changes to improve it. But he felt that the ordinance was pretty good the way it was passed. The City was willing to work with the restaurants and the ordinance indicated that.

4275 Councilmember Bussing said that the ordinance very closely matched the ordinances of Kansas City, Missouri, and Overland Park, and if Leawood had so much trouble enforcing its ordinance that neither KCMO nor OP had, he suggested that the City had an enforcement issue, not an ordinance issue. He felt that the ordinance should be reaffirmed and strengthened, not picked at.

4325 Rick Harman, Executive Vice-President of the Metropolitan Kansas City Restaurant Association and the Missouri Restaurant Association, said that restaurants had done things themselves, automatically, to serve their nonsmoking customers, and urged the Council to have some concern for restaurants that had invested a great deal of time and money trying to figure out how to do that. He felt that 2 weeks was too short a time in which to deal with the complexities of some issues. Restaurant owners should have an opportunity to give their input on the ordinance. Mr. Harman said that he himself had not had enough time to comprehend the ordinance. Even if he faxed the ordinance that had been passed along with the amendments suggested by Mr. Gill to restaurant owners by the end of the week, February 5th, he felt there would be some “shooting from the hip” thoughts without really being able to explore the issues, particularly costs if they had to make some changes to their facilities.

Planning Director McKay said that he and his staff had visited 93-95% of the restaurants in the City, not the country clubs or office buildings yet. He felt that with the ordinance and amendments, his staff would be in a position to take necessary corrective actions. If staff disagreed with a restaurant owner about any corrective measures, the owner could appeal to the Council. He thought that perhaps only 15% or less would need to make adjustments. The Mayor said that unless each restaurant owner worked with City staff, there would still be questions on what they needed to do or didn't need to do.

5270 Melissa Hall, City Prosecutor, had some reservations about portions of the ordinance which she didn't feel had been addressed and didn't agree with as an attorney. She mentioned that the ordinance was more closely modeled on Lenexa's ordinance, not Overland Park's. She pointed out that if the Council wanted to consider violations as municipal offenses, appeals would not go back to the Council, but would go to the District Court. Mr. Gill said that Ms. Hall would prosecute under 2 circumstances only – 1) if business owners didn't have an approved plan or 2) if they had an approved plan, were they complying with it, which would be fact specific to the plan approved. She would not be prosecuting the administrative process ending at the Council. Ms. Hall felt that was a better way, like a Board of Zoning Appeals issue, done under an administrative review situation rather than a quasi-criminal situation.

5766 Steve Schieszer, owner of Bogey's Bar & Grill at 12924 State Line Rd., didn't feel that restaurant and bar owners had been properly notified of the proposed ordinance, not giving them the opportunity to give their input. He felt that the ordinance could be financially devastating to his business, and that his customers, not the Governing Body, should be allowed to regulate how he would want to run his business. He felt the ordinance was fast-track legislation, and that there should be a moratorium for further study and input from restaurant owners. He submitted petitions signed by Leawood residents and his customers.

6000 Mr. Bold talked about the City Administrator's memo regarding staff's concerns, some of which Mr. Gill had addressed in his suggested amendments. Mr. Bold felt there should be a better definition of "financially reasonable," and thought that Ms. Hall felt the same way. He didn't think that the requirement to provide "seating capacity to meet nonsmoking customer need" was stated in the ordinance. Mr. Gill said that every Councilmember who voted in favor of the ordinance at the last Council meeting voted with that expressly on the record as their understanding; the Mayor said the Council had talked about not making that a moving target. Mr. Bold reiterated his concern that the ordinance should clearly state what the Council meant it to say, not just have something implied. Mr. Gill thought that the City Attorney felt that where consent was required for a minor, the parents had to give it as a matter of law, so what was wrong with parents consenting to a minor working a smoking area. Mr. Bold had no problem with that as long as a restaurant owner was given a reasonable amount of time, say 2 weeks, from the date of hire to receive the consent.

Councilmember Dunn called for the question, seconded by Clawson. Motion failed; Clawson, Dunn, Bussing, Peppes in favor; Bold, Rasmussen, Gill, Taylor, and the Mayor opposed.

6213 Mr. Rasmussen said he would vote in favor of Mr. Gill's motion because it was an honest attempt to try to improve the language of the ordinance.

Mr. Taylor said that employed minors were also subjected to smoking in private office buildings and that also needed to be addressed.

6254 Mr. Gill's motion carried unanimously. The City Attorney would draft an amended ordinance for Council's consideration at the February 16th Council meeting.

6317 **Discussion of the City's lighting nuisance ordinance.** The Mayor understood that there had been one violation case since the ordinance was passed in November 1998, case closed and then reopened due to language in Section 11-804 of the Code of the City of Leawood regarding glare from filament onto another property.

6464 Councilmember Gill said there was no boundary on the amount of glare, so he moved to place a moratorium on the enforcement of subsection (a) of Section 11-804 only until March 1st, and to direct staff to figure out an objective way to measure glare by appropriate standards such as IES (the Illuminating Engineering Society), what measurable level of glare was unacceptable and therefore a nuisance and that could literally be enforced. Motion seconded by Rasmussen.

City Attorney Wetzler said he understood that residents were complaining that they were seeing the visual light in the filament, and if lights were directed in a different direction, there wouldn't be a problem. He was in favor of trying to develop an objective standard, but

he wasn't sure that the vehicle wasn't already in place to deal with the particular complaints he had seen. Councilmember Bussing said that there couldn't be a criteria that couldn't be measured, so if staff couldn't find an adequate way to measure glare, then it needed to be removed from the ordinance.

6864 Kelly McArthur, 12417 Cambridge Circle, said that compromise with his neighbor Christopher Martin at 2104 W. 125th St. hadn't worked. He turned to the City for help in 1997. He asked that as long as glare was being reconsidered, that .5 footcandle light be reconsidered also. He said he had learned that the nuisance problem was not necessarily the brightness of light, but the directness of the light. He expected his neighbors to have some respect for his right to privacy in his own home and to direct their exterior lights onto their own property and away from his.

Linda Pickett, 12419 Cambridge Circle, agreed with Mr. McArthur.

Jim Nichols, 4916 W. 131st St., also had had a problem with glare from a neighbor's exterior lights. The neighbor turned the lights off after receiving a letter from the City after the ordinance became effective in November 1998. He hoped the Council wouldn't change the ordinance; candle power didn't mean anything, but rather the way light was directed, and if directed into someone's home, that was a nuisance and invasion of privacy.

7587 Mr. Gill's motion carried unanimously.

NEW BUSINESS

7620 **Approval of Appropriation Ordinance No. 853c&d (1998).** On motion of Peppes, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 855 (1999). On motion of Peppes, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

7673 **Authorize site and concept study for possible Justice Center site, south of 115th St. and east of Roe Ave.** In response to Councilmember Taylor, Julie Hakan said that the City had received a signed commitment from Village Associates, L.L.C., to pay Shaughnessy Fickel and Scott Architects an amount not to exceed \$22,000 for a site and concept design study for the Leawood Police/Justice Center, and up to \$5,000 for a site survey and geotechnical analysis if necessary. The City would not incur the costs. Mr. Taylor was concerned about the extent of the work that was being proposed. He thought the City was simply going to have a civil engineer do a schematic approach in analyzing 2 sites in the vicinity of 114th and Tomahawk Creek Parkway (City property)/115th and Roe Ave. (Village Associates' property), where a "building platform" would be produced and an estimate of the cost of utilities that were not on site figured, as well as road systems, etc. But the proposal was for schematic drawings on the entire justice center as well as the sites analysis; the extent of the study was way beyond what the City needed. He felt that the City needed more information on the value of the 2 properties. He also felt that by having the developer pay for the site and concept study, the City might be somewhat obligated to commit to the site near 115th and Roe.

- 7851 11:00 P.M. On motion of Dunn, seconded by Clawson, Council voted to extend the meeting to 11:30 P.M.; Rasmussen opposed, all others in favor.

Councilmember Clawson agreed with Mr. Taylor. The Mayor asked if it was appropriate for Village Associates to pay for the analysis of whether or not the City should "swap" sites for the justice center. City Attorney Wetzler said that Village Associates had asked the City to consider the proposal. He knew that City Administrator Garofano would say that the City was willing to consider an alternative site but without making any type of commitment to Village Associates that that would be done. Mr. Wetzler said it was his understanding that the City wanted to see if Village Associates' site was feasible, that the Council might want to consider it without any obligation on their part to move the site or change the site. Mr. Taylor commented that nothing had been done by the architects on programming to this point that could not be done at any site, so all the City should be looking at was land and the cost of developing it into a pad site.

- 8270 Mr. Taylor moved to direct staff to reanalyze the scope of the work and to limit it to studies relating to the site itself as far as utilities, grading and cutting and filling costs, and road systems, and comparison of land costs. Motion seconded by Clawson. The Mayor suggested that when the Council looked at the reanalyzed scope, they could have further discussion about who would pay for the civil engineering and real estate services; the City might decide to pay for the services itself.

Mr. Taylor's motion carried unanimously.

- 8394 **Authorize engineering services contract for design and engineering of Leawood City Park (106th & Lee Blvd.).** Councilmember Rasmussen moved to approve a City standard engineering contract with Continental Consulting Engineers, Inc., in the amount of \$388,870.00, plus \$8,500 for reimbursable expenses, seconded by Dunn. The Parks & Recreation Advisory Board elected to have CCE oversee construction management; Councilmember Taylor noted that construction management or services was not part of the City's standard engineering contract. Mr. Taylor noted in the scope of engineering services that costs for on-site construction material or subgrade testing would be incurred by the City; he said that the costs of those services needed to be included in the contract. He also asked about 2 other items at the end of the scope of services – 1) if the City eliminated lighting of 2 soccer fields from the scope of the design services, the engineering fee would be reduced by \$10,000.00, and 2) if Continental Consulting Engineers was awarded the design contract for the proposed Lee Boulevard improvements, they would reduce the engineering fee by \$10,000.00 due to reduced coordination efforts with another design firm. Parks & Recreation Director Whitaker explained the 2 items. Mr. Taylor said that the \$388,870.00 needed to be specifically defined in the contract – how much for the design phase, how much for the bidding phase, how much for construction services – and the 2 alternates (credits) relating to the soccer fields and the Lee Boulevard improvements also needed to be defined in the contract.

Mr. Rasmussen's motion carried; all in favor, except Councilmembers Bold and Clawson who abstained to avoid the appearance of a conflict of interest.

- 8817 **Authorize third supplemental agreement for engineering services for plan preparation of Overhill Road for SMAC project DB-04-017, Dykes Branch tributary at 86th &**

Overhill Rd. Public Works had met with residents to discuss their concerns about the design, concerns that had held up getting some necessary easements from residents. If the Council approved the supplemental agreement, Public Works Director Johnson and Councilmember Dunn intended to go back to residents one more time to be sure that by proceeding with the additional plans, they would have more resident approval than they would have had without the additional plans. If residents still had objections, the compensation for the third supplemental agreement would not be spent and staff would proceed with condemnation.

On motion of Peppes, seconded by Clawson, Council unanimously approved the supplemental agreement with TranSystems Corporation in the amount of \$18,680.

- 9016 **Approve bid/authorize contract for construction (replacement) of two pedestrian bridges over Tomahawk Creek – one north of 119th St. and one south of College Blvd.** Councilmember Taylor moved to approve a contract with the low bidder L.G. Barcus & Sons of Kansas City, Kansas, in the amount of \$142,673.00, seconded by Rasmussen and carried unanimously.
- 9152 **Schedule executive session.** On motion of Dunn, 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 one matter of litigation and 2 matters under attorney-client privilege.
- 9237 11:30 P.M. On motion of Clawson, seconded by Rasmussen, Council voted unanimously to extend the meeting to 12:00 A.M.

END OF TAPE

Tape No. 450

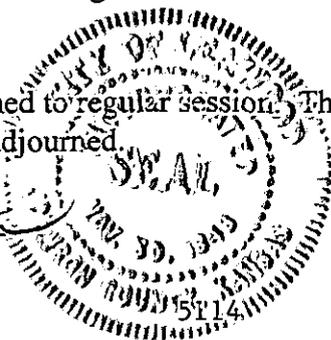
OTHER BUSINESS. Councilmember Taylor moved that the Mayor issue a proclamation proclaiming April 25-May 1, 1999, as Leawood Crime Victims' Rights Week, and that Council endorse a silent candlelight walk and rally scheduled to take place at City Hall on April 25th. Motion seconded by Gill and carried unanimously. (See Citizen Comments.)

A discussion of the enforcement of Council resolutions and decisions that had been added to the agenda was postponed to the February 16th Council meeting.

- 66 11:35 P.M. Council convened in executive session, same members present, and returned to regular session at 12:00 A.M. On motion of Gill, seconded by Clawson, Council voted unanimously to extend the meeting and return to executive session for 15 minutes to continue the same discussions.

12:15 A.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. 451

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 16, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Gary L. Bussing, Marnie S. Clawson, Patrick L. Dunn, *Gregory J. Peppes (arrived 9:20 P.M.), Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Adam Bold was absent.

Staff Present: Richard J. Garofano, City Administrator; Captain Rob Weber, Police Department; Sarah Hilton, Special Projects Coordinator/Management Assistant; 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 282.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Clawson, seconded by Bussing, after the addition of 1) a discussion of some outstanding issues involving developer Mark Simpson and the Ironhorse Golf Course, 2) an executive session relating to land acquisition, 3) a discussion of the stormwater review committee, 4) a discussion of the enforcement of Council resolutions and decisions relating to zoning, time permitting, 5) a discussion of recent news articles on the widening of Nall Ave. and Overland Park's and Leawood's financial commitments for same, time permitting, and 6) a discussion of having a work session to quantify the Governing Body's short-term goals for 1999.

CITIZEN COMMENTS. None.

CONSENT AGENDA. The following were approved unanimously on motion of Taylor, seconded by Dunn:

1. Minutes of the January 18, 1999, Council meeting;
2. Golf Course Committee report (minutes) on their January 28, 1999, meeting;
3. Historic Commission report (minutes) on their January 12, 1999, meeting;
4. Public Works Committee report (minutes) on their February 3, 1999, meeting;
5. Departmental reports;
6. Application (renewal) for Cereal Malt Beverage License – Leawood Hen House, 119th & Roe Ave. in Camelot Court Shopping Center;
7. Application (renewal) for Cereal Malt Beverage License – Phillips Petroleum Towne Center 66, 119th & Roe Ave.;
8. Purchase of trucks for Parks & Recreation Department from low bidders through cooperative bidding – 1 compact pick-up extended cab 4x4 from Olathe Ford for \$21,366.00, and 1 ¾-ton cab and chassis from Raytown Dodge for \$18,455.00;

9. Purchase of equipment for Fire Department – 5 fire hose nozzles (\$5,738), 1,000 feet of fire hose (\$2,500), 6 portable radios (\$4,800), and 1 thermal imaging camera (\$23,000), totaling \$36,038.

PLAN COMMISSION

297

Request for a special use permit for a Cellular One infill repeater site (placement of wireless communication antennae on a KCPL light pole) at 119th and Aberdeen. The Plan Commission recommended approval of the permit limited to 5 years. Bill Ames, Property Manager for Cellular One, gave a brief presentation on the requested repeater site that would enhance signals/reception in the area of 119th Street with its rolling topography. Signals would be repeated off antennae on top of Jacobson's in Town Center Plaza. In order to make such a site unseen or "stealth," an existing KCPL street light pole would be utilized. A new cellular tower would not have to be built to obtain a stronger signal in the area. Mr. Ames said he expected Cellular One to use repeaters in other small locations in the City in the future. If the City didn't allow the "stealth" sites, additional height would be required on the Jacobson tower to cover areas presently not being covered properly. An increase in height would expand coverage because of radiation pattern.

Councilmember Bussing asked if there would be co-location available. Mr. Ames said that other carriers would have to use other light poles, no co-location on a pole with Cellular One.

755

Councilmember Gill mentioned interference with phones and other devices. He asked Mr. Ames if he would agree to a stipulation that Cellular One's special use permit would expire early if there was demonstrated interference in the neighborhoods. Mr. Ames said he could not agree to such a stipulation. He said that Cellular One was already liable for taking care of any interference within a particular range, and he had not heard of any interference problems in residential or commercial areas. Mr. Gill was concerned about interference outside a particular range and his vote on the issue would be affected by Cellular One's refusal for whatever reason to remediate interference outside the area for which they were liable. Mr. Ames spoke about the Federal Communications Commission's report on interference which had been distributed to the Council, spelling out Cellular One's responsibility for interference. Mr. Ames understood that Cellular One had no responsibility for interference outside a given range.

Mr. Gill asked if compensation would be paid and to whom to locate on the pole. Mr. Ames understood that KCPL owned the pole and leased it to the City. No compensation had been worked out. Mr. Gill wanted to know if the City had the right to control what went on the pole as part of its lease rights. City Attorney Wetzler didn't know; there were a number of leased poles in the City and he thought that at the time the leases were drafted, repeater projects weren't contemplated, so the matter might have to be negotiated. Mr. Wetzler said he and staff were in the process of drafting a new right-of-way ordinance dealing with all utilities, service providers, using public right-of-way in some fashion. Whether it was KCPL's use of the right-of-way for repeater purposes or the City permitting the use, that would probably be addressed in the new ordinance. He suggested that if the Council was inclined to approve the special use permit, they add a stipulation that the applicant would agree to abide by the right-of-way ordinance including provisions that might require a payment of compensation for use of the right-of-way. In response to Mr. Gill, Mr. Ames said that the going rate for repeaters was \$100 per month.

Mr. Gill asked if Cellular One would agree to a stipulation that would terminate their special use permit early if the FCC or telecommunications act was changed so that medical evidence could be considered or if medical evidence was developed. Mr. Ames said that since his company was regulated by the FCC, he was sure they would adhere to anything that the FCC required. Mr. Ames also said as a private citizen that he was sure that Cellular One would do anything they needed to do because their business was generated by the public and the use of their product, and he knew what the company did. He could not state that as Property Manager of the company, only as a private citizen.

1053

In response to Councilmember Clawson's questions about procedure, Mr. Wetzler said that with a protest petition, 7 of 9 votes would be required to approve, and the Mayor could vote. If 2 members of the Governing Body were absent, the remaining members could vote or continue the matter to a later date.

Mr. Wetzler said that matters of interference were matters that were for determination by the FCC and an individual property owner, not really matters that were subject to City regulation. Mr. Gill asked if there was anything that would preclude the City from considering in its decision process the willingness or lack of willingness of a potential interferer to voluntarily agree to do more than the FCC's minimum requirements. Mr. Wetzler felt that issue might be protected by attorney-client privilege. Councilmember Rasmussen thought that volunteerism was not a function of the telecommunications act. If 2 parties were willing to agree, he didn't believe there was any prohibition in the act; the prohibition in the act was if the City based its judgement on potential interference, then the City was in violation of the act.

1416

Councilmember Taylor moved to approve the permit with a stipulation #6 that the applicant would abide by the forthcoming right-of-way ordinance including the provision of compensation that might be required for use of right-of-way, seconded by Clawson. Mr. Gill suggested a stipulation #7 that would state that if interference was proven by residents in the vicinity irrespective of the FCC minimum, the City could reexamine the special use permit, and if interference was found to exist, the permit could be terminated. Mr. Taylor and Mrs. Clawson agreed to include #7 in the motion. Mr. Ames, not being legal counsel for Cellular One, could only say that he felt sure the company would do what was right. Mr. Rasmussen said it was not proper or fair for the Council to ask Mr. Ames to represent Cellular One; it was the Council's prerogative to add stipulations if it so desired. Mr. Taylor's motion carried unanimously.

1598

Resolution No. 1455, attached as part of the record, approving the preliminary plat for Steeplechase at approximately the southeast corner of 143rd and Mission Rd. Casey Hill, President of Pulte Homes of Greater Kansas City, gave a presentation. There was discussion of the connection of the trail system with the future trail system in the City's South Park south of the subdivision. Councilmember Taylor asked who would maintain (cut weeds and grass) the area beyond the 10-foot wide asphalt trail. Planning Director McKay said that the homes association would have that responsibility. The Mayor suggested clarifying stipulation #11 for maintenance purposes so it would read, "The trail is to be privately maintained by the homes association which includes a 20-foot access easement for access to the park."

Councilmember Gill was concerned about stormwater problems along 143rd St. A Public Works Department memo indicated concern about surface water impacts on Lots 83,

84 and 85, and adequacy of the existing open channel located in Tract F to convey flows. He said that the City needed absolute guarantee that there wouldn't be flooding on the properties so there wouldn't be finger pointing after the fact which had occurred in other subdivisions. Mr. Hill said he would work with the City with whatever the City recommended for stormwater management. There was discussion of APWA guidelines and design for a 10-year flood event versus 50 or 100-year events; for a 10-year event, stormwater would be contained in underground structures, and anything above that, surface swales designed to handle water so it wouldn't go into basements. It was noted that if cities didn't continue to require detainage systems to limit runoff, developers couldn't design systems large enough to keep up with the amount of runoff from increased development. The size of a structure placed under Mission Rd. would dictate the amount of water getting behind Lots 83, 84 and 85, not the size of the pipes placed in the subdivision. If the City forced detention on all upstream developments, the City could have Mr. Gill's absolute guarantee. As long as there was increased runoff upstream, there would be flooding downstream. When Public Works looked at a developer's flood study, they made the assumption that the drainage area upstream was developed based on the City's master plan so that that volume of runoff was used to run through the development; the pipe system was the same - Public Works looked at a 10-year event with the assumption that it was developed upstream, so that when upstream development occurred, the pipe system would be in place and sized correctly.

2280 In response to Councilmember Clawson, the developer's engineer said that the swales in Steeplechase were specifically designed so that water would not get into a walk-out or walk-up basements.

2830 In response to Mr. Taylor, Mr. Hill indicated that if there were indications in the stormwater plan that there would be problems with Lots 83, 84 and 85, he wouldn't design homes to be placed on those lots.

2970 Mr. Gill moved to adopt the resolution subject to an additional stipulation that *Council review the final plat, specifically with respect to stormwater issues raised.* Planning Director McKay said that normally a final plat would be considered by Council under a consent agenda. Mr. McKay said that staff could specify that the developer actually have the drainage concerns answered before they submitted the final plat, and have a letter from Public Works indicating that they were satisfied with the plans. He said that generally, prior to recording the plat, the developer would have to submit all engineering drawings to be reviewed by Public Works. He understood Mr. Gill to say that he wanted the information before the Council approved the final plat. City Attorney Wetzler said that if the Council was concerned that staff was using the wrong engineering standards, then they needed to change them by ordinance and then expect developers to comply with those standards. He said he didn't want the City to assume the responsibility of blessing, so to speak, the plans for stormwater/flooding; it was the responsibility of the developer to see that plans were drawn properly, and that flooding protections the Council wanted were in place. He said that most of the Council didn't have engineering expertise to make certain determinations, and would have to rely on staff and the developer and his engineer to be sure all information was complete. In response to Councilmember Bussing, Mr. Wetzler said he knew of no instance where the City had been found culpable and responsible to any developer or property owner for flooding that had occurred. Mr. Bussing said it seemed more and more that homeowners were left with flooding problems, with the City saying that those problems were not its problems, and the developers not assuming responsibility because they were no longer

involved in the subdivisions they had developed; how could the City help resolve the problems for the homeowners? Mr. Wetzler felt the Council was trying to help by establishing standards, questioning standards, were probably going to review them and change some of them; that was all the Council could do, nothing was perfect.

* 9:20 P.M. Councilmember Peppes arrived.

3303

Mr. Gill withdrew his motion; he didn't see the developer agreeing to it. He moved to continue the matter for 2 weeks pending the answers to 3 questions: 1) how critical was the detention pond and open channel to the solution, and depending on the answer to that question, what was the financing plan to pay for the maintenance of the open channel and the pond, specifically desilting; 2) he wanted the City engineer's assessment of risk with respect to the lots he had identified and any other risks he saw and to get a feel for any solution needed; 3) wanted a recommendation as to whether the City should hire its own outside water engineer to review the plans or was the City comfortable doing it in-house. Motion seconded by Taylor. Councilmember Dunn said he would vote against the motion – he understood the desire for answers to the questions, but didn't want to become an engineer, and further review of the plans would place him in that position.

Mr. Hill said a 2-week continuance would impact his plans to proceed, and he didn't know if he could adequately provide answers to Mr. Gill's questions without engaging his engineer's services significantly more than would be required on a preliminary plat approval. He would stipulate that those answers be given to the Council's satisfaction prior to the final plat approval, which was generally the case with development projects. Mr. Hill said he currently contracted for desilting of the ponds in Steeplechase, but he had no authority to encumber the homes association on that question.

3468

Mrs. Clawson said she would vote against the motion because the Council was not in a position to assume the responsibility for the developer's actions for his own development. Up to now, the Council had not taken responsibility for desilting ponds used for detention of water within subdivisions. The City would be reviewing that issue and other stormwater issues very soon. She could support a motion that included a stipulation that the Council would have a chance for a final review of the plan for handling stormwater. There was further discussion and clarification that the 2 ponds were not designed and did not function as detention ponds for the subdivision; they were aesthetic ponds. If the ponds silted up, that would not change the hydraulics of the subdivision. They would become an aesthetic maintenance issue for the homes association if they silted up, not a downstream flooding problem.

3822

Mr. Wetzler said that as a general matter, Council's review of final plat was ministerial in nature. The Council could add additional requirements at this point in time if they so desired, what they wanted included at the time of final plat approval. Mr. Wetzler thought that Mr. Gill was looking for a representation by the developer at the time of final platting that the plan would meet the requirements and that he wanted the City's engineer to state that staff had reviewed the plan and concurred that it met the requirements; there was nothing wrong with adding those as conditions. He added that the Council needed to be concerned that every developer who went through the City's process needed to know what the process was and what the standards were by which they would be judged; that was why Council's review of a final plat to a large extent had to be ministerial. Mr. Hill came to the

Council meeting understanding that he needed to comply with certain standards, and shouldn't be told at the meeting that those standards were going to be changed at the meeting.

3943 Councilmember Rasmussen recommended that the preliminary plat be subject to the stormwater standards that would be approved by the Council as a result of the Public Works Committee's actions following their review of stormwater management in March 1999.

Mr. Gill and Mr. Taylor withdrew their motion and second.

4037 Mr. Rasmussen moved to adopt the resolution, approve the preliminary plat, with a stipulation that in the plat's final review, it would be subject to any stormwater standards approved by the Council as a result of the Public Works Committee's review of stormwater management in March 1999, and with the wording changes in stipulation #11 mentioned at the very beginning of the discussion of the preliminary plat. Motion seconded by Dunn. Mr. Hill said he understood that when he came in for the final plat and the plans were reviewed by staff, it would be subject to whatever ordinances were in place at that time, even though he also understood that the Public Works Committee was making every effort to complete their review by mid-April. Motion carried unanimously.

4201 **Ordinance No. 1775 amending Section 5-5 of the "Amendment of the Leawood Development Ordinance" specifically providing for changes to Plan Commission membership.** Councilmember Clawson moved to pass the ordinance, seconded by Bussing. The ordinance permitted one of the 9 members to reside outside the City limits. Councilmember Gill felt that there were many talented Leawood residents who could serve on the Commission; it wasn't necessary to go outside the City limits. The Mayor said that the Plan Commission, after lengthy discussion, decided to follow what state statute permitted, and not totally tie the City's hands. Councilmember Taylor felt that the interests of the City should be maintained by residents of the City. Councilmember Bussing felt there should be no restrictions placed on membership; the criteria should be the best people regardless of where they resided. Mr. Bussing called for the question, seconded by Peppes and carried unanimously.

The ordinance was passed on roll call vote; Taylor, Rasmussen opposed; all others in favor.

4460 **Ordinance No. 1776 amending Section 5-4 of the "Amendment of the Leawood Development Ordinance" specifically providing for changes to Board of Zoning Appeals membership.** Membership increased from 5 to 7 members. On motion of Gill, seconded by Bussing, the ordinance was passed on roll call vote; all in favor except Mr. Taylor who was not seated for the vote.

Councilmember Taylor returned to his seat.

OLD BUSINESS

4712 **Ordinance No. 1777C amending sections of the City's smoking ordinance.** Councilmember Gill moved to pass the ordinance, seconded by Clawson.

4847 Avery Murray, 12816 Linden Lane, past president of the Greater Kansas City Restaurant Association, and a former food service operator, felt that the ordinance was sending a message to patrons in Leawood that if they wanted to smoke in a restaurant, they should go across the state line or to another city where smoking was allowed, and was

imposing an undue hardship on restaurant operators. He was concerned about the language "to the extent financially reasonable" where existing physical barriers and ventilation systems were to be enhanced to minimize smoke in nonsmoking areas; that was imposing an undue hardship on smaller operators in the City.

Rod Anderson, owner of the Hereford House, described parts of the ordinance that he could never comply with. He added that he didn't want to be placed in the position of having to police the ordinance. Ron Barkley, Director of Operations for the Hereford House, said that many Leawood restaurants would lose market share if the smoking policy was enacted, losing customers to other cities. Eating, drinking and smoking were part of the dining experience. If the City eliminated that market, Leawood restaurant operators would be at an economic disadvantage. In response to Councilmember Gill, Mr. Barkley said he could personally support confining smoking to bars (bar areas) in Kansas City, Missouri, Overland Park and Leawood, but wasn't sure that other restaurant operators or the Greater Kansas City Restaurant Association would.

The ordinance was passed unanimously on roll call vote.

Councilmember Gill left his seat.

5615 **Ordinance No. 1778 amending Ordinance No. 1202 authorizing the improvement of the intersection at State Line Rd. and 92nd St. – to update the costs of the improvements.**

Councilmember Dunn moved to pass the ordinance, seconded by Clawson. Ordinance passed on roll call vote; Rasmussen opposed; 5 in favor; Gill not seated for the vote. Mr. Rasmussen said that the project had been going on almost 9 years and the traffic situation on State Line had changed dramatically. He said that people turned onto 92nd Street if they saw any delay at 95th and State Line. If a traffic signal was installed and people had to stop, there would be a bypass.

6022 **Approval of site study for proposed Justice Center, site in the vicinity of 115th & Roe Ave.** Councilmember Taylor felt that the study done by Shaughnessy Fickel & Scott Architects for the site on Tomahawk Creek Parkway was usable for any site for square footage and parking requirements and basically building configuration. He felt that all the City needed was a civil engineering study to determine the cut and fill requirements to compare site improvements on both sites. And he said the City needed to know the value of the 2 sites; he thought there was a sharp difference in the values and that needed to be addressed before any engineering study. Should the City find that there was an acceptable "trade" in sites from the standpoint of location, then all the City needed was a schematic civil engineering site study that would address utilities, necessary grading, etc. Mr. Taylor was uncomfortable having the developer of the site near 115th & Roe pay for the study as discussed at the February 1st Council meeting. He felt staff was going overboard on the site analysis.

Councilmember Gill returned to his seat.

6276 **City Administrator Garofano said that SFS had proposed an abbreviated study of the site near 115th & Roe to determine whether or not there would be any difference in construction costs on the new site versus the TCPkwy site. SFS indicated they would have a**

civil engineer do some of the analysis, but the architect's programming and schematics, square foot requirements, would be adapted to the new site which had different topography.

Councilmember Bussing moved to authorize the City Administrator to have SFS conduct their proposed abbreviated study, and include an evaluation of the assessed values/marketability of the 2 sites, and further that the City Administrator and City Attorney draft a hold harmless agreement with the developer of the 115th & Roe site so that the developer would pay for the study (\$3,900.00). Motion seconded by Dunn.

Councilmembers Clawson and Taylor questioned the need to swap sites at all. Mr. Taylor felt that the site at 114th & Tomahawk Creek Parkway was probably a better site for the City to use; the site near 115th & Roe was an interior lot. He said he also understood that the developer who would pay for the study didn't own the land.

Councilmember Gill said he would vote for the motion to gather information, but he liked the City's property at 114th & Tomahawk Creek Parkway more from an aesthetic, vocational standpoint.

Mr. Bussing's motion carried unanimously.

6696 **Change Order No. 10 to the contract with Wiedenmann & Godfrey in the amount of \$61,405.00 for sanitary sewer rehabilitation project** – for pipe bursting 662 feet of 6 inch sanitary sewer to increase the size to 8 inch sanitary sewer, including the installation of 3 new manholes and restoration. Approved unanimously on motion of Dunn, seconded by Clawson.

NEW BUSINESS

Approval of Appropriation Ordinance No. 853e&f (1998). On motion of Rasmussen, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 856 (1999). On motion of Peppes, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

6781 **Approve bid/authorize contract for Aquatic Center bathhouse renovation at Leewood City Park.** Councilmember Taylor was concerned that there wasn't a contingency amount for potential change orders, and he didn't feel it was appropriate to use funds from the Parks & Recreation budget to pay for items that had been deleted from the construction contract, work that would be done by park maintenance staff. Mr. Taylor felt that the project needed to be scaled down to get everything within the budget for the project, including a contingency amount. Parks & Recreation Director Whitaker said that the project had been scaled down as far as possible. Some key elements had to be done and addressed, and staff tried very hard to stay within limits and looked at all options, and still provide amenities that pool members wanted enhanced.

Councilmember Peppes moved to approve a contract with the low bidder Heartland Construction in the amount of \$382,240.00, seconded by Bussing. Motion carried; Taylor opposed, all others in favor.

11:00 P.M. On motion of Clawson, seconded by Taylor, Council voted to extend the meeting to 11:30 P.M.; Dunn opposed, all others in favor.

7337

Ordinance No. 1779C repealing existing sections of Article 3 of Chapter 16 of the Code of the City of Leawood relating to the Board of Zoning Appeals – eliminated the Board from the Code since it was covered in the Leawood Development Ordinance. On motion of Clawson, seconded by Bussing, Council passed the ordinance on roll call vote; all in favor except for Peppes who was not seated for the vote.

Councilmember Peppes returned to his seat.

7365

Approve inspection fee for City staff review and inspection of public improvements required of private developers. Projects included residential street and storm sewer, street lights and public improvements associated with private developments. On motion of Rasmussen, seconded by Taylor, Council unanimously approved a fee of 7% of construction cost.

7436

Ordinance No. 1780 accepting a permanent drainage easement from Acuff Rhodes Group for drainage purposes in the Pavilions of Leawood to Whitehorse connection. The easement was in the vicinity of Linden Avenue and 148th Street. On motion of Taylor, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

7460

Ordinance No. 1781 accepting a permanent drainage easement from Naomi J. Jameson Trust, Richard A. Jameson Trust and Jane L. Jameson, to allow the developers of Wilshire subdivision to extend the City's storm drainage system onto Jameson property adjacent to Wilshire. The extension of the system would help prevent future drainage problems for Wilshire lots backing up to the Jameson farm property in addition to properties further downstream. Councilmember Taylor moved to pass the ordinance, seconded by Gill. Public Works Director Johnson said that the developers of Wilshire would pay for the work, but were reserving the right to come back to the Council whenever the City established its stormwater policy to request City funding participation (reimbursement).

A February 3, 1999 letter to Mr. Johnson from Ed Schlagel, engineer for Wilshire subdivision, stated, "The developers have agreed to fund this expense at this time, although they will look to the City for reimbursement of a portion of the cost. These were comments made at the City Council meeting by the Mayor and City Council to this effect." The Mayor said she did not make such comments; Councilmember Clawson agreed.

City Attorney Wetzler was satisfied with the language of the easement which was a *compromise of sorts with a land owner who really had no inherent interest in seeing* extension of the system at the present time, an acceptable risk in order to get urgent drainage problems solved.

The ordinance was passed unanimously on roll call vote.

7721

Ordinance granting a permanent drainage easement and temporary construction easement for storm sewer construction by developer Mark Simpson on Ironhorse golf course property. One of the issues involving the golf course and Mr. Simpson was the availability of rock to do bank stabilization at hole #17. Mr. Simpson felt that construction of the storm sewer system would provide that rock, so Public Works Director Johnson brought the easement directly to the Council rather than to the Golf Course Committee to see what

the Council wanted to do. There was discussion about the wording of and time period for the temporary construction easement.

Councilmember Rasmussen moved that the matter go to the Golf Course Committee for review and that the easements be properly drafted, seconded by Taylor. Mr. Rasmussen said that plenty of rock had been available for several weeks; Continental Consulting Engineers had confirmed that.

Chase Simmons, attorney for Mr. Simpson, said that Mr. Simpson's engineers were not comfortable saying that there was enough rock on site to complete the bank stabilization, so wanted to go forward with the installation of the storm sewers prior to determining that there was excess rock for the riprap. Mr. Simmons said that Mr. Simpson's agreement with the City only related to excess rock; he was not required to bring in rock from other locations. City Administrator Garofano didn't agree with Mr. Simmons. There was a recent meeting with Mr. Simpson and others at which a specific agreement was made – if Continental Consulting Engineers determined that there was a volume of rock sufficient to meet riprapping needs, then Mr. Simpson would proceed with the riprap. Mr. Simmons said that he did not say that he would take Continental's word for whether or not there was enough rock to do the riprap, but that he would speak with his engineers as well. City Attorney Wetzler saw Mr. Simmons' statements as a change of position from statements made at the meeting.

Councilmember Dunn called for the question, seconded by Gill and carried unanimously.

If he could get the easement tonight, Mr. Simpson said he would start the riprap within 30 calendar days of receiving approved stormwater plans. He said it was impossible to do the riprap, then go back and do the storm sewer construction, because the storm sewer construction went through the center of the riprap. The work had to be done at the same time, couldn't go into the creek twice due to expense.

Mr. Rasmussen's motion carried; Bussing opposed, all others in favor. The matter would return to the Council at the March 1st Council meeting.

11:30 P.M. On motion of Rasmussen, seconded by Clawson, Council voted to extend the meeting to 12:00 A.M.; Taylor opposed, all others in favor.

9045 **Schedule executive session.** On motion of Clawson, seconded by Gill, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 10 minutes to discuss land acquisition and a matter under attorney-client privilege.

9060 **OTHER BUSINESS.** Discussion of outstanding issues involving developer Mark Simpson and the Ironhorse golf course. Chase Simmons, attorney for Mark Simpson, addressed the golf course irrigation pond access easement. He said they were waiting on County approval to grant an easement; they had been waiting for several months, even though they understood that there shouldn't be a problem. The issue was holding up building permits for Reserve at Ironhorse which he felt was inappropriate. Planning Director McKay felt he had been given a clear directive by Council to do what was necessary to get the issue(s) resolved; he had stopped permits over a variety of Mr. Simpson's properties and that action evoked a meeting with Mr. Simpson. Holding up the building permits served its purpose. His staff was issuing permits on Ironhorse Estates. He was still holding up permits on 2 properties in 2 other

subdivisions, but they weren't really ready for permits, and staff was watching the situation closely to be sure in the end that the easement and road were put in place so the City would have its requested access to the pond. Mr. McKay said he was still holding up 2 permits in the Reserve, aware of only 1 property owner wanting to build.

9485 END OF TAPE

Tape No. 452

Mr. Simmons said that once the easement was granted, Mr. Simpson would do the construction and would give Mr. McKay that agreement in writing. Councilmember Gill wanted similar issues documented in writing and signed by Mr. Simpson.

There was discussion of the release of an existing easement on Lot 32 in the Reserve, a swap of easements basically, and the status of an easement from property owner Mr. Large.

Mr. McKay felt that Resolution No. 1301 on the Reserve gave him the right to hold up building permits until the final easement was given to the City.

266 Councilmember Bussing moved to immediately release building permits for people who had purchased land in the Reserve at Ironhorse, seconded by Gill. Motion carried; Rasmussen opposed, all others in favor. The Mayor said it appeared that the issue would be resolved in the next week or two.

360 Mr. Simmons addressed the wrought iron fence issue. He felt that they had complied with all the major deviations; there were a few areas where the fence was about 6" onto the golf course property, which was simply a way to try to save old growth trees. Councilmember Gill said he understood that Mr. Simmons was requesting an agreement whereby there would be no more than a 7" variance off the true property line. Council was shown an as-built survey furnished by Mr. Simpson's builder; the furthest encroachment of the fence onto golf course property was 0.6' (a little over 7") after it was relocated. In response to Councilmember Rasmussen, Mr. Simmons said that Mr. Simpson was not going to offer or commit to pay or reimburse the City for surveying work that had to be done to correct the fence location. He said that the encroachment was an honest mistake in order to avoid removing old growth trees. Planning Director McKay said he intended to send the bills for the surveying work to the owners of the lots in question; had the mistake not been made, the City would not have had to send survey teams, and frankly, the mistake might never have been found if the survey work hadn't been done.

Mr. Simmons said that the gate on Lot 15 had been replaced by a solid panel. The fence on Lot 31 had been completed to the end of the subdivision.

615 12:00 A.M. On motion of Gill, seconded by Bussing, Council voted unanimously to extend the meeting to 12:30 A.M.

790 Councilmember Bussing moved that for Lots 22, 25, and 26, the corrections/adjustments made by the developer were substantially in compliance with Council's directives and that Council found them acceptable, the issue of survey work funding to be dealt with by Mr. McKay. Motion seconded by Dunn. Mr. Bussing clarified

that his motion was not conditioned upon the City being reimbursed. Motion carried; Rasmussen opposed, all others in favor.

827 Regarding removal of the silt from the lake at hole #11, Public Works Director Johnson said he had determined that the silt identified by the construction plans had been removed.

Parks & Recreation Director Whitaker explained that there were 3 developments that impacted the lake, 2 of Mr. Simpson's on each side of the hole and the third on the south in Overland Park. He said that some silt remained in the pond from those developments. Mr. Simpson said that to the extent that someone could say that silt came off the the second phase of the Estates of Ironhorse, he would participate in remediation. If someone said it came off the first phase, that would be developer Don Bell's responsibility; Mr. Simpson took over that phase from Mr. Bell already developed and built with half the lots sold. Mr. Simpson said that a majority of the silt came off of Hampton Place in Overland Park. Mr. McKay said he had contacted Hampton Place. Councilmember Gill said it should be on the record that the City would not prejudice any rights it might have to get the balance of the lake cleaned up by whoever was responsible, including Mr. Bell, Mr. Simpson and Hampton Place. Mr. Simmons said that was acceptable.

1227 Regarding bank stabilization at hole #17, Mr. Simmons said that his offer put forth earlier in the meeting still stood, that work would be started within 30 days of the approval of storm sewer plans. (See tape meter #7721.) Council would discuss this further at the March 1st Council meeting.

1275 Public Works Committee's review of stormwater issues. Councilmember Clawson said there had not been a very recent review of the City's legal responsibility with regard to stormwater damage. She felt that City Attorney Wetzler should provide an update. On motion of Dunn, seconded by Clawson, Council unanimously authorized Mr. Wetzler to prepare an update, the motion to include the recommendations of the National League of Cities for legal review.

1352 Discussion of the widening of Nall Avenue. Councilmember Gill felt the City was being unfairly criticized in news articles by Overland Park stating it was holding up the widening waiting on Leawood to come up with its share of the costs. He wanted staff to investigate all means of financing, including federal, county and state, and to report on alternatives. The largest single impact causing the need for the widening was the Sprint Campus in Overland Park from which Leawood would derive zero revenue, but other jurisdictions, the county and the state in particular, would enjoy enormous revenue and should participate in the solution. The widening needed to occur and should have been scheduled to coincide with the opening of the Campus. Public Works Director Johnson would report at the next Council meeting.

1461 Work session to discuss the Governing Body's short-term goals for 1999. Scheduled for March 8th at 7:00 P.M.

1548

12:30 A.M. On motion of Bussing, seconded by Gill, Council voted unanimously to extend the meeting.

Council convened in executive session.

12:40 A.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. 453

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 1, 1999. 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; Sarah Hilton, Special Projects Coordinator/Management Assistant; 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 282.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Peppes, seconded by Clawson, after the addition of a second land acquisition matter to the executive session to be scheduled towards the end of the meeting; and the removal of 1) an appeal to the Council concerning additional roofing colors denied by the Plan Commission (postponed to the March 22nd Council meeting), and 2) a discussion of the City's lighting nuisance ordinance (postponed to the March 22nd Council meeting).

PROCLAMATIONS. The Mayor proclaimed:

1. March 26, 1999, as "Arbor Day," and presented the proclamation to Leawood's Park Supervisor Brian Anderson;
2. March 18, 1999, as "Absolutely Incredible Kid Day";
3. March 1-7, 1999, as "Juvenile Arthritis Awareness Week."

396

CITIZEN COMMENTS. Don Smith, 5209 W. 116th St. in Edgewood subdivision adjacent to City Hall property, asked that the Council require outdoor activities on the stage at the north end of City Hall to end at a reasonable hour; last year's concerts ended about 8:30 P.M. and that was reasonable. The Mayor said that the City had one 4-night musical production planned for July which would end at about 10:00 P.M. each night. The Council and Edgewood would evaluate the event. Mr. Smith hoped the Council would have it end earlier than that as he thought the Council had agreed to last year. Regarding the widening of Nall Ave., Mr. Smith said that he hoped the Council would vote to participate in the financing of the improvements; Edgewood would be directly affected by the project.

Steve Millin, 12405 Pembroke, neighbor of and attorney for Chris and Anita Martin at 2104 W. 125th St., addressed the lighting nuisance problems his clients had with their neighbors. He understood that an amended lighting nuisance ordinance had been drafted (it would be considered by the Council at the March 22nd Council meeting) that would affect the Martins' ability to provide security for their home. Mr. Millin said that the Martins were black and were concerned about their security in the community, so that was why they put lights up in their backyard several years ago. The Martins thought their neighbors' complaints had been resolved and that they were in compliance with City ordinance when the Council passed the original lighting nuisance ordinance last year. Mr. Millin said he and the Martins felt that the amended ordinance was motivated by neighbors' concerns other than the exterior lights. Councilmember Bold said that in the process of developing the ordinance, there had been complaints about lighting from several different parts of the City, and the ordinance was intended to allow people to provide security for their homes as long they didn't infringe on neighbors. Kelly McArthur, 12417 Cambridge Circle, a neighbor of the Martins, said the lighting issue was not a personal issue, but simply a matter of the Martins' right to have security lighting which would not infringe on his right to privacy in his home and backyard. Mr. McArthur wasn't asking the Martins to remove their exterior lights or to change the lights or the bulbs, but that the lights not shine on his property or into his living space. Linda Pickett, 12419 Cambridge Circle, said that the Martins' lights were dimmer but she could still see the filaments, the glare still existed; the light needed to be directed away from her backyard.

858

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Peppes, seconded by Bussing:

1. Purchase of computer software for a membership identification system for the Aquatic Center at Leawood City Park in the amount of \$10,250 from AEK Computers, Inc.;
2. Resolution No. 1456, attached as part of the record, authorizing the execution of a lease purchase agreement with UMB Banc Leasing Corp. with respect to certain radio communications equipment, certain Public Works vehicles, and golf carts and golf course maintenance equipment;
3. Resolution No. 1457, attached as part of the record, approving the final plat of Berkshire Villas at approximately 123rd & Roe Ave. (a replat to provide for right-of-way to convert street from private to public).

Arts Council report (minutes) on their February 23, 1999, meeting. Councilmember Bussing pointed out that Mike Gullion of Exchange National Bank in Leawood would donate \$700 for every art show and reception held at the Bank. The Arts Council intended to honor Mr. Gullion later in the year. On motion of Bussing, seconded by Taylor, Council unanimously approved the report.

933 **MAYOR'S REPORT.** The Mayor reported that the Chinese New Year celebration held February 18th at Andy's Wok restaurant at 99th and Holmes in Kansas City, Missouri, was very successful.

The Mayor described the process for residents to appeal reappraisal of their property. Leawood realized a 9% increase overall; north Leawood had a 14% increase. Commercial in Leawood increased 30%.

OLD BUSINESS

1151 **Discussion of enforcement of Council resolutions/decisions/stipulations on zoning matters.** Councilmember Rasmussen said that for almost 3 years the Golf Course Committee had spent its time (and the Council had spent theirs, too) and taxpayers' dollars to protect the Ironhorse Golf Course from occupation by others, destruction by mud, uncontrolled watering by neighbors, delay in needed access, erosion control problems, and violation of "no-build" zones. To date, the Committee had reported the issues promptly to staff and the Governing Body. Some of the issues were so old that determining who was responsible was difficult if not impossible. Future events would determine whether the City could collect for the damages. At the last Council meeting, one way used to enforce stipulations was removed; staff was unsure of what they could do to enforce stipulations or protect City property. Mr. Rasmussen proposed 1) that the City Administrator report at the March 22nd Council meeting on the ways that the City had historically used to protect its property and enforce zoning stipulations, and 2) that within 10 days after the golf course staff, Golf Course Committee, or the City staff reported a violation, that the City prosecutor be responsible for initiating whatever legal action was appropriate to protect City property and whatever else needed to be done to enforce the City's rights, including recovery of funds the City had to expend to enforce its rights.

Councilmember Gill moved to direct the City Administrator to report as proposed by Mr. Rasmussen in his suggestion #1, seconded by Taylor. Councilmember Bussing felt that the City Administrator should report on what the City had done, what it could do, with recommendations on what should be done, a more encompassing report. Mr. Gill and Mr. Taylor agreed that should be part of the motion. Motion carried unanimously.

In connection with Mr. Rasmussen's suggestion #2, City Attorney Wetzler said that if a violation was reported that ran afoul of a City ordinance that imposed a criminal sanction, a penalty, an action would be initiated in municipal court to impose whatever applicable fine was on the books. Another alternative would be to initiate a civil action; if there was a recognizable cause of action for perhaps negligence or some other standard that had been breached, action could be initiated in District Court for a claim. Mr. Wetzler said that if Council had particular concerns, they should be discussed in executive session under attorney-client privilege.

Mr. Gill suggested that the Council have an executive session at the March 22nd Council meeting to discuss civil options to recoup expenditures the City had made. Mr. Rasmussen felt that the City needed to consider direct line responsibility – someone damaged City property, didn't conform to stipulations that the Council passed, then there would be one attorney responsible for taking action. Councilmember Bussing wanted more information – what the current process was in the event of a violation, where was the City's enforcement process breaking down, what was the best alternative to that. Mr. Gill wanted to know what the enforcement activity in this area was and what the enforcement options were. Personally,

he wasn't comfortable with the Council directing a criminal prosecution to the City prosecutor, but was comfortable letting the prosecutor know the frustration in the expectation that City ordinances be enforced in this area. He also wanted to know if the Council could direct the prosecutor to do anything.

The scheduling of an executive session would be placed on the March 22nd Council meeting agenda. Mr. Gill asked that the City prosecutor attend that executive session.

1706

Ordinance No. 1782 granting a permanent and temporary drainage easement to Village Development, L.L.C. (developer Mark Simpson), to permit the construction of proposed drainage facilities on Ironhorse Golf Course property as indicated on Village at Ironhorse subdivision construction plans dated February 3, 1999. Councilmember Clawson moved to pass the ordinance, seconded by Bussing. Public Works Director Johnson said that developer Mark Simpson sent him a permanent easement and temporary construction easement in one instrument. Mr. Johnson didn't have a chance to discuss it with the City Attorney, so he cleaned up the separate easements he had and added the stipulations to each one concerning restoration of the golf course to its original condition or better to be approved by the golf course and that the developer would be responsible for cleanup of any silt as long as he had ownership of the lots within the development. Mr. Johnson said that City Attorney Wetzler, after his review of the developer's single instrument, felt that the single instrument was the best route to go that would obligate the developer to the 2 conditions and give the right of entrance to construct the storm sewer on the permanent easement.

There was discussion of including rip-rap work as a condition of the easement. Mr. Wetzler felt that the developer's duty to install the rip-rap was covered in an agreement between the City and the developer; the easement was just a permit to allow the developer to go onto City property to do the drainage work. City Administrator Garofano clarified that there were 2 areas to be rip-rapped – the original, major rip-rapping to be done in conjunction with the movement of Williams pipeline in a different location, and the rip-rap to be done in conjunction with the easement under consideration. Time frame for the major rip-rapping was addressed in a February 25, 1999 letter from Mr. Simpson which was distributed to the Council. The rip-rap in a different location couldn't be tied into the easement under consideration. Mr. Gill felt strongly that a third condition should be added to the easement to get a firm commitment on the rip-rap work at hole #17 per plan specifications. Mrs. Clawson said that her motion was based on the assumption that between the prior agreements and the easement or easements and the February letter from Mr. Simpson, the City was sufficiently protecting itself. Parks and Recreation Director Whitaker said that the Golf Course Committee was concerned about what recourse the City had if Mr. Simpson didn't do the rip-rap (from the "old agreement") within 15 days as he stated in his letter and the bank fell down; the bank was close to falling down and the City would lose trees and perhaps part of the cart path; what recourse would the City have if Mr. Simpson did the easement work and didn't follow up with the rip-rap. In response to the Mayor, Mr. Wetzler didn't feel it was appropriate to include the February 25th letter as an exhibit to the easement.

2419

Councilmember Gill suggested an amendment to the easement, a third commitment for the developer – within 5 days following completion of the storm sewer construction, but no later than 20 days following commencement of the storm sewer construction, Village is to commence the rip-rap work on #17 as per Continental Consulting Engineers' specifications;

once commenced, rip-rap work must be completed within say 20 days and that failure to do that gives the City the right to terminate the easement given by the City. Mr. Simpson said he couldn't commit to an end date because of the difficult working conditions he would be under. He thought it was highly likely that all the work could be completed in 90 days under normal weather circumstances.

2733 Mr. Gill moved to amend the motion to add a third condition under the single instrument easement covenants that would state that within 90 days following commencement of the storm sewer construction, the rip-rap work would be completed on #17 per the specifications of Continental Consulting Engineering, seconded by Taylor. Mr. Simpson indicated to Mr. Wetzler that that language would be generally acceptable to him with a force majeure clause. Motion to amend carried unanimously.

Mrs. Clawson's motion as amended to pass the ordinance carried unanimously on roll call vote.

2911 **Report from Public Works Director on the widening of Nall Ave. between 119th St. and I-435.** Public Works Director Johnson described a meeting with Overland Park about the widening. Overland Park estimated Leawood's share to be \$765,000. Overland Park proposed that Leawood pay its share of the design cost (approximately \$167,000), construction costs of improvements between 119th and College would be absorbed by Overland Park for a time period, but when both cities felt it was appropriate to widen Nall from 135th St. south, Leawood would reimburse Overland Park or pick up its share of that construction cost.

Councilmember Bussing said the widening needed to be done, but he wanted to be sure that the city benefitting the most – Overland Park with the addition of the Sprint Campus – would pay the majority of the cost of the improvement.

3588 City Administrator Garofano said that Overland Park was seeking a commitment from Leawood that once OP had figures available on how much the engineering would cost, Leawood would allocate its share of the engineering cost so OP could proceed with design. Councilmember Dunn noted that the percentages of the engineering and construction costs that each city would pay were not based on any notion of how the need for the widening was being created (on perceived benefit), but on abutting frontages.

Councilmember Gill supported the widening, felt it should have been completed contemporaneously with the opening of the Sprint Campus. He felt that Leawood should receive credit for the widening work it had already done on Nall, and cause a greater percentage of the third party monies to be allocated to Overland Park. In fairness, some portion of the expenditure that Leawood was being asked to bear should be borne by the taxing jurisdictions who would receive the incremental tax benefit/revenue from the Sprint property, specifically the County and the State. He felt that OP's proposal between OP and Leawood was very fair. Mr. Johnson said there were no state or federal funds available, only funds from the County through C.A.R.S. which OP was going to request on behalf of both OP and Leawood. Mr. Gill felt that Leawood needed to talk to County officials to get a true community investment in the widening that somewhat matched the revenue stream from Sprint.

Mr. Taylor felt the Council should not make a decision until after they had discussed the matter in executive session.

Mrs. Clawson felt the Council should go forward with the widening and negotiate with OP so that they would bear the share they ought to bear given Sprint being an asset to OP tax-wise, and look at all possible funding avenues.

4244 Mr. Bold felt it would be prudent to make a counter offer to Overland Park – OP needed the widening done and Leawood had some leverage and should use it. If Leawood participated in the widening, it should be to a lesser extent than what OP proposed.

4416 Mr. Dunn was inclined to say no to OP's proposal and hear their response. Council wanted to see Nall widened, but needed to know if OP was willing to do any more than simply carry the funding of Leawood's proportionate share that didn't have anything to do with need for the widening.

4455 Mr. Bold moved that even though the Council felt that Nall should be widened, the City should pursue a more equitable division of the costs, seconded by Taylor. Mrs. Clawson felt the City should also discuss maintenance of Leawood's northbound lanes with Overland Park due to the extra wear and tear from Sprint traffic, another bargaining point. Mr. Dunn told Mr. Johnson that the Council wanted to see a proposal based on use and benefit. Mr. Johnson said that Leawood and OP would look at all possible outside funding to reduce their obligations of general funds.

4696 Mr. Bussing called for the question, seconded by Bold and carried unanimously.

Mr. Bold's motion carried unanimously.

NEW BUSINESS

4748 **Approval of Appropriation Ordinance No. 857.** On motion of Peppes, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

4766 **Ordinance No. 1783 authorizing issuance of temporary notes; Project 137; State Line Rd., Phase 4; \$200,000.00.** On motion of Rasmussen, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1784 authorizing issuance of temporary notes; Project 144; Mission Rd. improvements, 103rd St. to I-435; \$1,500,000.00. On motion of Clawson, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1785 authorizing issuance of temporary notes; Project 148; City Park Design, Phase 1; \$200,000.00. On motion of Peppes, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1786 authorizing issuance of temporary notes; Project 151; Fire Station No. 3; \$600,000.00. On motion of Taylor, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1787 authorizing issuance of temporary notes; Project 158; Traffic Signalization (intersection of 92nd & State Line Rd.); \$200,000.00. On motion of Dunn, seconded by Clawson, Council passed the ordinance on roll call vote; Rasmussen opposed; all others in favor.

Ordinance No. 1788 authorizing issuance of temporary notes; Project 171; Municipal Pool Bathhouse renovation; \$100,000.00. On motion of Peppes, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

4893

Request to intervene in KCPL/Western Resources merger; approval for the City to retain the law firm of Finnegan, Conrad & Peterson to represent Leawood.

Councilmembers Bussing, Gill and Taylor recused themselves. Philosophically, Councilmember Clawson didn't think the residents of Leawood should lose the savings that could potentially be garnered in the merger to benefit Wichita's additional cost from a prior merger, but she had a hard time believing that a city the size of Leawood with almost no industrial-type usage of electricity could possibly lose \$10 million in savings out of the \$900 million savings expected from the merger. The Mayor said it appeared from an article in the "Business Journal" that rates wouldn't be raised; in a memo to Council, staff seemed to indicate otherwise.

Leawood resident Bill Watkins, 11236 Rosewood, was familiar with the merger proceedings. His law firm represented Western Resources from time to time. No one proposed that rates be increased. What was proposed was that the merger savings be taken and applied in a fashion that would bring rate parity, rate equality, to all rate payers in the various service areas. He felt it was ill-advised for Leawood to hire an attorney and become involved in the proceedings at the Kansas Corporation Commission. The Citizens Utility Rate Payers Board already existed, existed specifically to protect residential rate payers of the state. The Board was actively involved in the merger and proposed rate reductions far beyond what the 2 merging parties wanted to see. So Leawood residents already had a "voice" in the matter at the KCC. Councilmembers should get more information, and Leawood's involvement might even be counterproductive.

Councilmember Bold urged the Council to do further research before getting involved. Finance Director Rogers explained that her memo to the Council talked about a new KCC rate schedule that had been approved which substantially benefitted the Wichita area, reallocation of rates, not rate increases. Mrs. Rogers said that a rebuttal to recent Wichita testimony had to be given by March 9th. City Administrator Garofano said he assumed that Overland Park City Council would vote to become involved, but didn't know as yet about other Johnson County cities.

Councilmember Dunn said that the only way Council could approve the request on such short notice would be to approve a specific dollar amount, and he really didn't understand what he would be spending it for. He couldn't approve any amount on such short notice.

Mr. Bold said he was concerned that the request to intervene came from the attorney (Ed Peterson) who would be receiving the fees.

The Mayor said that if staff could gather additional information, Council could decide to call a special Council meeting on March 8th, the same night as the next Council work session.

5736

Resolution No. 1458, attached as part of the record, requesting County participation in the City's 5-year (2000-2004) capital improvement program through the County's Assisted Road System (C.A.R.S.). Adopted unanimously on motion of Rasmussen, seconded by Dunn.

5765 **Authorize amendment to interlocal agreement with Johnson County for the public improvement of College Boulevard from El Monte Drive to State Line Road – provided that the City be reimbursed \$350,000 by the County (C.A.R.S.) for the year 1999. On motion of Rasmussen, seconded by Clawson, Council unanimously approved the amendment.**

5782 **Request to fund a \$500 scholarship relating to Shawnee Mission East High School-Friends of the Arts to be presented to a Leawood student.** Councilmember Peppes explained the money would be an annual renewable donation upon the request of the SME Friends of the Arts, an impressively organized 501©(3) parent support group for SME students who participated in any arts programs. Robert Beachy, 8108 El Monte in Prairie Village, described the purpose of the successful parent support group for the arts. A scholarship seemed to validate the whole high school experience.

Councilmember Clawson said she wasn't in favor of the Council sponsoring a scholarship directly, using property tax dollars, even though she felt it was a worthy scholarship; it would be appropriate for the City's Arts Council to raise funds for a scholarship. Dr. Peppes said the Arts Council was very supportive of the scholarship but didn't budget any funds for it – their 1999 budget had been cut back. Perhaps the Arts Council could budget for it in the future.

Dr. Peppes moved to approve a \$500 scholarship from the general fund, seconded by Gill. Motion carried; Clawson, Bold opposed; all others in favor. Mrs. Clawson didn't feel it was fair to grant a scholarship to a single high school in a single area of discipline, and she was disappointed that the Council would vote to do that with taxpayer dollars. The Mayor requested that the City Administrator prepare a policy relative to such funding for Council consideration at a future Council meeting, a policy with a formula similar to that used for requests for funding for after-prom, after-graduation events.

6364 **Schedule executive session.** On motion of Bold, 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 2 land acquisition matters.

6393 **Work session to discuss the proposed CIP for 2000-2004.** Scheduled for April 12th. Councilmember Bussing was interested in seeing Overland Park's debt model which helped illustrate alternative courses of action and hearing the City Administrator's viewpoint on those types of models.

This was Parks & Recreation Director Whitaker's last Council meeting. He was leaving the City for a similar position in Carrollton, Texas. The Governing Body wished him great success in the future.

6560 10:45 P.M. Council convened in executive session and returned to regular session at 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. 454

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 22, 1999. 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; Captain Rob Weber, Police Department; Sarah Hilton, Special Projects Coordinator/Management Assistant; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE – led by Jeff Welch of Boy Scout Troop 282.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Clawson, seconded by Peppes, after the removal of 1) an appeal to the Council concerning additional roofing colors denied by the Plan Commission (postponed to the April 5th Council meeting at the request of the applicant), and 2) Consent Agenda item - purchase of vehicles for the Planning Department.

152

CITIZEN COMMENTS. Donald Brod, 4323 W. 112th St., spoke about the widening of Nall Ave. from 4 to 6 lanes necessitated by the increase in traffic from the Sprint Campus in Overland Park. He felt that a majority of Sprint employees would go home after their shifts, not go to Town Center Plaza for lunch, dinner or shopping; they could eat at the Campus also which would have several restaurants to accommodate them; not much of a revenue impact for Leawood. Leawood shouldn't participate in the financing of the improvements; the portion of Nall between I-435 and 119th St. was entirely in Overland Park; Nall improvements was an Overland Park problem and responsibility. Leawood participated in the financing of 119th St. improvements when Town Center Plaza was constructed because it was a Leawood responsibility. College Blvd. improvements were different – a section from Nall to Roe was in Leawood, so Leawood should participate.

305

G. Gordon Thomas, 10516 Mohawk Lane, spoke about the Kansas Open Records Act and the City Clerk's denial several months ago of his request for access to certain public records. He contacted the District Attorney's Office requesting their opinion which led to staff having to research certain information he had requested and billing Mr. Thomas for staff time. Mr. Thomas was unhappy with the information he received for which he had paid in advance. He said that he filed a complaint with the Attorney General.

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

1. Minutes of the February 1, 1999, Council meeting;
2. Historic Commission report (minutes) on their February 9, 1999, meeting;
3. Parks & Recreation Advisory Board report (minutes) on their February 9, 1999, meeting;
4. Public Works Committee report (minutes) on their February 24, 1999, meeting;
5. Public Works Committee report (minutes) on their March 3, 1999, meeting;
6. Departmental reports;
7. Declaration of surplus property – 1 1985 Chevrolet S-10 pickup truck (VIN #8738) no longer used by the Public Works Department to be sold at auction April 24, 1999;
8. Low bid of \$1.00 per square yard from Musselman & Hall Contractors to do the 1999 Street Slurry Seal Program which involved approx. 100,000 sq. yards of Type 1 & Type 2 slurry seal (\$100,000 budgeted for slurry seal);
9. Low bid of \$85,409.90 negotiated down to \$70,954.30 from Midwest Service Co. for the 1999 median maintenance (mowing);
10. Proposal from S.E.C.T. Theater Supplies in the amount of \$7,000 to provide a complete production package required for the Arts Council's musical production at City Hall in July.

PLAN COMMISSION

470 **Ordinance No. 1789 adopting amendments to the 1997 Master Development Plan Map.** Planning Director McKay said the amendments had already been approved, most within the last year; the ordinance exhibit was a compilation of all rezonings and changes that had occurred, and staff wanted to proceed with printing a new plan map.

There was discussion of the properties on the northwest and southwest corners of 135th and State Line Rd., old State Line airport property and Fleming property respectively. Mr. McKay explained that in order for development plans to have "rights" so to speak or be "vested" for retail property, even though the plans might have previously been approved by Council, substantial construction had to be completed, and there was no substantial construction on either property. Mr. McKay said that both developers would have to go back through the revised preliminary plan process because quite a lot of time had elapsed since the development plans were submitted and there had been numerous changes within the 135th St. Corridor (the traffic had changed for one thing); the zoning, however, would remain intact.

742 Councilmember Bold asked about 143rd and Nall changing from "low density residential" to "public." Mr. McKay said the tract had been purchased for a future church site. Staff felt that since the Archdiocese had owned the property for at least 2 years, they went ahead and showed the tract as "public," basically to get the word out so that prospective surrounding property owners would know about the church on that corner. Mr. Bold asked if the change to "public" would change the protest status for surrounding homeowners. City Attorney Wetzler said there would be no impact on the ability to protest anything that was constructed there; no zoning was being changed, only the master plan. Mr. Wetzler said Council was only taking a forward look to see if the possible use would be in the long-term interest of the City, and in the event that a law suit was filed in the future stating that the proposed use had been denied, the status of the master plan was a factor that the courts could

consider and review. Mr. Bold moved to strike the change from the ordinance; he represented that part of the City and was just now hearing about it. Councilmember Taylor said he had known about it for the last 3-4 years and was opposed to striking it; the matter had been in the newspapers and the Archdiocese had not hidden the issue. Mr. Bold withdrew his motion.

On motion of Peppes, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

OLD BUSINESS

945 **Discussion of request to intervene in KCPL/Western Resources merger.** Councilmember Bussing moved to participate in the cost of the intervention in an amount not to exceed \$5,000, seconded by Bold. The Mayor said that Overland Park, Lenexa, Westwood and Mission Hills had committed to participate in the intervention.

Councilmembers Gill and Taylor recused themselves. Councilmember Rasmussen said he would vote against the motion. It had been his experience that rate payers had been well represented by consumer groups; staff of the commissions did a very good job proposing a point of view that was a challenge for companies to refute in terms of fairness. He said he had seen attorneys, engineers, activists, etc., delay or impede the legislative hearings which in the end increased the costs for everyone, especially the taxpayers.

Councilmember Bold felt that the intervention was an attempt to have a fairer allocation of savings from the merger between rate payers of Johnson County and those of the rest of the state, and it was unfair to ask Leawood citizens to not receive their fair share of the savings because of mistakes made by another corporation some years ago. While the intervention might hold up the process and delay things and cost the company money, in the long run, spending \$5,000 was a good investment with regard to the potential dollars for the citizens. The Mayor said the intervention effort would take place with or without Leawood's participation.

Mr. Bussing's motion carried; Bussing, Bold, Peppes, Clawson in favor; Rasmussen, Dunn opposed; Gill and Taylor had recused themselves.

1204 **Discussion of the widening of Nall Avenue.** Previously discussed at the March 1st Council meeting. Public Works Director Johnson said that improvements that needed to be made from I-435 to 119th St. had been nailed down, and from an updated cost breakdown of the Nall Ave., College to 119th St., Improvement Project, came a reduced cost estimate of \$784,506, including engineering, for Leawood's share, based on the actual construction to take place within Leawood. Mr. Johnson gave a presentation on the improvements with a map displayed. He said that Neil Douthat of Marned Corp., developer of the hotel and
1511 business park along Nall in Leawood, had agreed to participate in the financing (approximately \$80,000) of the widening of the third lane between 117th St. and Town Center Drive and the need to construct a southbound left turn lane onto Town Center Drive from Nall. There was discussion of funding responsibilities for modifications to traffic signals. City Attorney Wetzler clarified that there would be a separate agreement between the City and Neil Douthat that would confirm and establish Douthat's legal obligations to pay for the 2 improvements, either at final plat approval or when the City had to reimburse Overland Park for fronting Leawood's share of the costs of the widening. Douthat would pay for other improvements related to Town Center Park, but those wouldn't be part of the widening

project, would be done later in conjunction with the office park. Councilmember Rasmussen was concerned that Nall would have to be torn up again for those improvements. City Administrator Garofano said staff could talk to Douthat to see if he might be willing to proceed with other improvements in conjunction with the widening project.

2000 Councilmember Taylor thought it would be appropriate, something for Overland Park to consider, for property owners in Overland Park abutting Nall other than Sprint to help pay the cost of the widening as Douthat would be doing on the Leawood side.

2420 Councilmember Bold said there was no question that the improvements needed to be done. He was concerned, however, about how the costs were allocated. He didn't understand how the total cost of the project could decrease by 17.7% (that percentage of the project entirely in Overland Park) and Leawood's share decrease by only 7%. Mr. Bold pointed out that Leawood required the developer of the hotel to pay 100% of the improvements which were a direct result of the hotel project, but with Nall, Leawood was to pay for a portion of the improvements which were a direct result of Sprint in Overland Park. Mr. Garofano said there was still pass-through traffic using Nall regardless of Sprint or the hotel, so Sprint wasn't paying 100% of the improvements that had to be made. Mr. Bold said that the subsidies from Sprint for the road improvements were all going on the Overland Park side of Nall; Leawood wouldn't receive any benefit from that. The only benefit Leawood would receive was basically an interest-free loan from Overland Park. He felt the same way he did at the last Council meeting.

3090 In response to Councilmember Dunn, Dan Miller of Overland Park believed that the plan was the best use of money on the roadway and did provide pretty much the ultimate buildout of the roadway best as possible within the area given to it.

3215 Mr. Rasmussen wanted it understood that the developer would build a sidewalk along the east side of Nall. He wanted to be sure that when Nall was designed for 6 lanes, any stormwater effects were recognized financially by those who caused them. He said that where the developer was responsible for the improvements, he expected easements to be given to the City.

3317 There was discussion about "e" levels of service even with 6 lanes. Councilmember Gill wanted to know why the roadway couldn't be designed in a way that would try to generate levels of service that were more consistent with planning principles that were typically followed. Were 6 lanes going to be adequate to handle the traffic volumes generated, and if not, what would be required to do so? Tom Swenson of TranSystems traffic engineers said that the 6-lane facility would accommodate demands through 2020 as currently projected through the Overland Park traffic model.

It was noted that there wouldn't be any State KDOT or federal funding for the project. Dan Miller said that as a general rule, Overland Park would be in favor of getting assistance from the state or federal government when possible to help defray costs.

There was discussion that signalizations would not be done piecemeal but as part of the overall widening scheme so there would be a minimal amount of redo in order to save money. Signal coordination, a little bit different issue, might be facilitated by some of the work on the project, several areas were identified where there could be better coordination now, a revised improved coordination plan was suggested even with current lane configurations that improved the level of service.

4197

Councilmember Peppes moved to proceed using the updated information in City Administrator Garofano's memo dated March 22, 1999 with the 4 statements explaining the reduction in Leawood's share of the project costs, and that the Council move forward with the recognition that Leawood would be responsible for the engineering to be paid for at this time with the remainder of the construction costs to be paid by Overland Park until Nall south of 135th St. was improved, and with the recognition of the other items that Overland Park would pay for; and that the City proceed with a written agreement with Neil Douthat as discussed. Motion seconded by Rasmussen. The following were added as "friendly" amendments to the motion by Mr. Gill: 1) that an interlocal agreement with Overland Park be drafted to be approved by Council containing the provisions that Dr. Peppes and Mr. Rasmussen had referred to; 2) that it be contingent upon what it was assumed the County would do - a full 50% CARS participation of all eligible CARS expenses; 3) that it be clear that no Leawood money would be expended north of College Blvd. or south of 119th St.; 4) that the estimated right-of-way acquisition costs be confirmed before Leawood was asked to approve them so Leawood wouldn't be signing a blank condemnation check; 5) that there be a provision that Overland Park and Leawood would join in a best faith sincere effort to seek funding from the State of Kansas expeditiously and by special legislation if necessary; and 6) that the agreement indicate that Overland Park's "loan" to Leawood on the construction costs be interest free.

Mr. Miller said that normally right-of-way and easement acquisition costs were excluded from interlocal agreements; the agreements only indicated that each city would procure their own rights-of-way and easements at their own expense. Mr. Gill wanted the interlocal agreement to be contingent upon the Governing Body being satisfied as to the right-of-way acquisition costs, now estimated at \$90,000. If that figure significantly increased, the Council might feel differently about the proposal they were being asked to approve. Mr. Garofano said that staff couldn't give Council a final figure until final design showing the exact amount of ground required. Staff could have some preliminary discussions with property owners to see if the City would be faced with any condemnation, if there would be acquisition costs and estimate the amount of ground required.

Dr. Peppes' motion carried unanimously. Mr. Gill thanked the Mayor for her efforts and leadership to find an equitable arrangement with Overland Park.

4588

Ordinance No. 1790C amending Article 8 (Lighting Nuisance) of Chapter 11 (Public Offenses) of the Code of the City of Leawood. Previously discussed at the March 1st Council meeting. Councilmember Rasmussen moved to pass the ordinance, seconded by Clawson. Planning Director McKay said that linear halogen and linear tungsten halogen lights (very bright tubular lights and the biggest problem in residential areas) over 50 watts were added to the ordinance and would be required to be fully shielded. Incandescent lights over 150 watts would also have to be shielded. Mr. McKay didn't think the Martins at 2104 W. 125th St. had a real major change to make in one of their exterior lights in order to comply with the new ordinance - the fixture that was in question simply needed to be rotated.

4777

Steve Millin, 12405 Pembroke, attorney for Chris and Anita Martin, said that the Martins installed their exterior lights ten years ago for security. Mr. Millin was opposed to the new ordinance; it was different from the one he had been given on March 1st which had no shielding requirements for the Martins' lights because it exempted halogen lighting and had illumination requirements on another person's property of .5 footcandle. However bright

the lights were on the Martins' house, the light that they were casting onto Mr. McArthur's home was below the threshold that the City set as to what constituted a lighting nuisance. The new ordinance proposed to lower the .5 footcandle requirement to .2 footcandle so the Martins would no longer be in compliance. He believed that the shielding requirements of the new ordinance were irrational. He said that in December 1998, a City code enforcement officer reported that he didn't find the light intensity from the Martins' fixtures to be offensive or intrusive even though they weren't shielded and were rotated a little different. The Martins were in compliance with City ordinance in December. The Martins were told that they couldn't obtain shields for their lights as presently constituted, were told that they would have to change their lighting system in the amount of \$1,800-2,400 with no assurance that the lighting would cause any difference on the back of the property.

5308 Kelly McArthur, 12417 Cambridge Circle, Linda Pickett, 12419 Cambridge Circle, and Anita and Chris Martin of 2104 W. 125th St., spoke about the issues.

6037 Councilmember Gill thought that the point of concern with the 1998 ordinance was the section dealing with glare, and a moratorium was placed on its enforcement because it was to open to many interpretations. He thought that staff was to look for a measurable definition of glare that would be offensive and he didn't see that in the new ordinance. Mr. McKay said that that section had been eliminated. Mr. Gill didn't realize there was an issue with light footcandle at the property line, so he wanted to know why .5 was changed to .2 and what difference it really made. Councilmember Bussing agreed and was totally opposed to changing the footcandle to .2. City Attorney Wetzler agreed that staff had been asked to address the glare issue; they found formulas to determine glare but they were so complicated that any ordinance trying to incorporate them would be unenforceable. So staff searched other city ordinances on residential lighting; .2 footcandle, a stringent standard, was not uncommon in those ordinances. Mr. Wetzler said that shielding was an attempt to address the glare issue. Mr. McKay said that staying with .5 didn't bother him just so the ordinance addressed a fixture and the location of its rotation.

6332
6548 Councilmember Rasmussen said there were 3 points to the new ordinance that tried to address the problem of brightness/glare – 1) the measurement across the horizontal plane at the lower end of a fixture, 2) change to lower the wattage, and 3) proper use of a light meter. He agreed with Mr. McKay that the Martins would be in compliance if the one fixture could be rotated a little. Mr. McKay said that apparently the fixture couldn't be rotated or adjusted further because of the way it was attached to the house, getting in the way of guttering.

6686 Mr. Rasmussen who moved to pass the ordinance and Mrs. Clawson who seconded the motion agreed that the .2 footcandle should be changed back to the original .5 footcandle in Section 11-804. Councilmember Bold called for the question, seconded by Peppes and carried unanimously. The ordinance (with .5 footcandle) passed on roll call vote; Gill and Bussing opposed, all others (6) in favor.

6861 **Ordinance granting a franchise to Southwestern Bell Telephone Company – first reading.**

NEW BUSINESS

6908 **Approval of Appropriation Ordinance No. 858.** On motion of Peppes, seconded by Bussing, Council unanimously passed the ordinance on roll call vote, except for Councilmembers Clawson, Gill and Rasmussen who had left their seats.

Clawson, Gill, Rasmussen returned to their Council seats.

6932 **Ordinance No. 1791** whereby the City conveys unto itself a permanent utility easement for construction of a sanitary sewer system onto park property along Tomahawk Creek in the vicinity of 124th Terr. and east of Nall Ave. On motion of Dunn, seconded by Taylor, Council unanimously passed the ordinance on roll call vote. Sewers to serve Linden Place subdivision in Overland Park.

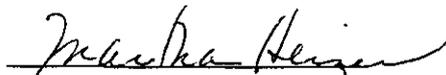
7084 **Authorize Right-of-Way Maintenance Agreement with Villas of Leawood, L.L.C., for the installation of decorative street light poles not to City standards within City right-of-way.** The agreement outlined the responsibilities of the developer and Villas of Leawood Townhome Association to maintain the street lights. On motion of Taylor, seconded by Bussing, Council unanimously approved the agreement.

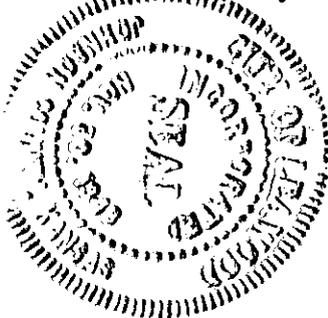
7105 **Ordinance No. 1792** adopting a new (revised) State Line Road Map and authorizing the execution of an official drawing package locating the Missouri-Kansas state line in relation to State Line Road between Kansas City, Missouri and Leawood, Kansas from 79th Street to 135th Street. On motion of Taylor, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

7203 **Schedule work session with the Parks & Recreation Advisory Board to discuss Leawood City Park improvement plans, including a proposed pedestrian tunnel under Lee Blvd.** Scheduled for Monday, April 26th, 7:00 P.M.

7278 11:00 P.M. On motion of Clawson, seconded by Dunn, Council voted unanimously to extend the meeting and to immediately convene in **executive session** for 10 minutes to discuss a matter under attorney-client privilege.

11:20 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. 455

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 5, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: * Adam Bold (left the meeting at 9:30 P.M.), Gary L. Bussing, **Marnie S. Clawson (left the meeting at 10:15 P.M.), Patrick L. Dunn, *** Gregory J. Peppes (arrived at 8:40 P.M. and left at 10:15 P.M.), Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff Present: Richard J. Garofano, City Administrator; Sid Mitchell, Chief of Police; Mark Andrasik, Director of Information Services; Sarah Hilton, Special Projects Coordinator/Management Assistant; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE – led by Boy Scout Troop 10.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Dunn, seconded by Clawson.

PROCLAMATIONS. The Mayor proclaimed:

1. April 25-May 1, 1999, as "Victims' Rights Week" and said she would present the proclamation at the candlelight walk at City Hall on April 25th;
2. April 11-17, 1999, as "National Public Safety Telecommunications Week" and presented the proclamation to several dispatchers from the Leawood Police Department.

CITIZEN COMMENTS. G. Gordon Thomas, 10516 Mohawk Lane, felt that the City should hold partisan elections instead of nonpartisan elections.

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Arts Council report (minutes) on their March 23, 1999, meeting;
2. Public Works Committee report (minutes) on their March 10, 1999, meeting;
3. Purchase of equipment for the Public Works Department – melter applicator for \$34,660.00 from only bidder Paving Maintenance Supply, Inc.; a backhoe/loader for \$78,918.00 from third lowest bidder Dean Machinery; a skidloader for \$22,615.00 from second low bidder Coleman Equipment; a planer attachment for \$10,430.00 from low bidder Dean Machinery – total amount of \$146,623.00.

Minutes of February 16, 1999, Council meeting. In response to Mr. Rasmussen, staff said that the County had not yet granted an easement needed for the Ironhorse golf course irrigation pond access nor had they received a written agreement from developer Mark Simpson stating that he would do the construction work once the easement was granted. These issues were noted in the February 16th minutes under Other Business, outstanding issues involving Mr. Simpson and the golf course. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the minutes.

PLAN COMMISSION

397

Appeal to the Council concerning additional roofing colors denied by the Plan Commission. The Plan Commission had denied a request for additional roofing color choices for Timberline Ultra and Elk Prestique Plus; when the original materials were approved, they were limited to simulate natural materials and the intent was not to expand the colors. Applicant Allan Abrams, 2241 W. 124th St., sent Planning Director McKay a letter requesting that the matter be remanded to the Plan Commission for reconsideration rather than being heard by the City Council since he had new information for the Commission.

Councilmember Taylor said that the color Mr. Abrams wanted was somewhat of a yellow, natural looking wood finish, non-weathered. Mr. Taylor felt the matter should be remanded to the Plan Commission; the wood shingle roofs of office buildings on the southeast corner of College Blvd. and Nall Ave. had been treated with a material that cleaned up the grayness of the shingles, a permanent application that maintained the color. People in residential areas could have that same process provided for their homes. The color that Mr. Abrams wanted for his own home pretty closely matched that of a treated roof. Mr. Taylor moved to remand the matter to the Plan Commission to give Mr. Abrams an opportunity to present his new information to the Commission, seconded by Clawson. Mr. Taylor wanted the Commission to decide if the color of new product matched that of the refinished wood shingle roof product that had been treated for fireproofing and preservation.

Mr. McKay explained that the Plan Commission had already accepted and approved a palette of colors; the color that Mr. Abrams wanted was lighter than those approved in the past, thus the Plan Commission's denial.

Councilmember Gill hoped that if the matter was remanded, the Commission would take Hunter's Ridge Homes Association's views into consideration (they were opposed to Mr. Abrams' request), and notify the Association of the date of any hearing. If the Council didn't vote to remand, Mr. Gill felt another continuance would be in order to allow Mr. Abrams to appear before and present his case to the Council.

The Mayor said that normally when a matter was remanded, Council gave a specific directive(s) to the Commission stating Council's concerns about a matter. She felt better about having a continuance instead of voting for a remand when the Council hadn't even seen the requested product.

There was clarification that Mr. Taylor proposed that the Plan Commission reconsider the requested color in light of a naturally occurring color of wood shake after it had been treated. Mr. McKay said that the Commission looked at weathered wood as the basis from which to choose the colors.

Councilmember Dunn said if the Plan Commission didn't consider the color of treated roofs in making the decision that the requested color was not a natural color, that was a basis for remand.

Mr. Taylor's motion for remand carried; Rasmussen, Bold opposed; all others in favor. Mr. Rasmussen felt that the Commission had done their job well.

810

Ordinance amending Section 3-7 of the Leawood Development Ordinance to allow for drive thru bank facilities in CP-0 zoning (already permitted in CP-1). Councilmember Bold moved to pass the ordinance, seconded by Bussing. The ordinance amendment would allow Council and staff to look at uses without the property involved having to be rezoned to CP-1. Councilmember Gill asked if a parallel amendment needed to be made to the SD zoning ordinance which had subdistricts distinguishing office from retail. Planning Director McKay said that staff was in the process of reviewing the SD districts and would probably bring that to Council before the end of the summer; a similar amendment should be included. Mr. Gill asked what would happen if a drive thru bank facility granted CP-1 zoning moved out. Mr. McKay said that the land would then be zoned for general retail as opposed to general office, and that was the reason for the amendment, to allow a drive thru facility in a CP-0 district which could be converted to office use if it moved out without having to worry about the underlying zoning. Mr. Gill thought that drive thru facilities typically had pretty high per square foot traffic counts. He asked Mr. McKay if he thought the City would be a risk when CP-0 was granted of increasing the traffic impact; CP-0 to him usually generated a lower overall traffic count than retail classifications did. Mr. McKay didn't think so; generally the City asked for an engineering traffic study, looking at stacking, placement of the facility adjacent to arterials or collectors, etc.

Councilmember Taylor felt that the ordinance needed stacking requirements. Mr. McKay explained that there were none in the ordinance; stacking was a performance standard that staff had historically looked at, looking for a minimum of five stacking lanes. Mr. McKay said he had never had a problem with stacking because the Plan Commission and City Council reviewed situations at preliminary plan, a traffic engineer and City staff reviewed them. Mr. Taylor felt it would be more fair for an applicant if stacking requirements were written into an ordinance so the applicant would be aware of the requirements up front for his site selection process.

Councilmember Clawson felt that stacking wouldn't be a problem with the rapid movement toward internet banking and the fact that payroll and social security checks were electronically transferred. And she wasn't sure she would agree that traffic generation would be increased.

Councilmember Rasmussen asked what would happen if a bank decided to remove its structure and leave multiple drive thru lanes. Mr. McKay said that a drive thru facility was an accessory use and the lanes could not stand alone on the property. Mr. Rasmussen didn't think it was clear in the ordinance.

Mr. Bold's motion to pass the ordinance failed on roll call vote; Dunn, Clawson, Bold in favor; all others (4) opposed. Mr. Gill voted nay because he felt that greater thought needed to be given to things such as performance criteria; was not fundamentally opposed to drive thru facilities being CP-0 versus CP-1; was concerned about projects already approved CP-0 zoning which were not yet built but which had had lots of discussion about what impact they would have, traffic generation figures indicating that they did have a higher per unit traffic count, although Mrs. Clawson's point was well taken; was concerned about granting the right to place drive thru facilities in already zoned areas where they weren't contemplated at the time plans were discussed. Mr. Taylor reiterated his concern about stacking lanes.

Mr. Gill moved to remand the matter to the Plan Commission for reconsideration, seconded by Taylor. Mr. Gill wondered if drive thru bank facilities could be permitted via special use permit in connection with the CP-0 general zoning as opposed to opening up the zoning classification, in order to gain better control of the specifics of a drive thru facility. Mr. Taylor reiterated the need to interface or coordinate with SD zoning. City Attorney Wetzler felt that procedurally, a remand was in order even though the City was the applicant; another alternative - Council could direct staff to withdraw the application. Motion to remand carried; Clawson, Dunn opposed; all others in favor.

1578

MAYOR'S REPORT. The Mayor recently attended a media event with Police Chief Mitchell and other staff for the Carrier Alert Program started earlier in the year and co-sponsored by the Leawood Police Department and Leawood Branch of the U.S. Postal Service. Southwestern Bell Wireless recently became a new party to the Program; they donated 15 telephones for use by mail carriers to report emergencies/problems with disabled and elderly residents north of I-435. The Police Department planned to expand the Program to the southern part of the City.

OLD BUSINESS

1725

Request to purchase golf course property. It was the Golf Course Committee's recommendation not to sell golf course property or grant easements to 3 abutting property owners in The Estates of Iron Horse whose new homes or appurtenances thereto encroached into the 25-foot "no build" zone around the golf course, thus absolutely maintaining the 25-foot "no build" zone. The 3 new homes were in developer Mark Simpson's developments and involved the same builder Reed Fuller. Dick Fuller, Chairman of the Golf Course Committee, addressed the Committee's recommendation, particularly the minimum setback requirement of 25 feet from property lines to the golf course for safety and aesthetics. He said that the City Council would have to consider and rule on any exceptions or special requirements to the "no build" zone.

City Attorney Wetzler explained that the encroachment issues would not be treated as variance issues to be considered by the Board of Zoning Appeals; the 25-foot easement was established by the City, nothing required by ordinance or City codes, just a matter of City policy. The City Council was the owner of the easement, and as the owner, had the right to agree to alter the easement or buffer.

Dick Fuller explained that the 2 homes (Lots 94 and 95) on hole #11 were basically not in harm's way. The patio of 1 finished home and a corner of the other finished home encroached into the buffer but were basically out of harm's way. Perhaps the City could deed, transfer or change some land in some manner in order to allow retention of the 25-foot setback and to not impact the golf course or the safety of the situation. As far as the third uncompleted home (Lot 59) above the common tee box for holes 11 and 18, Mr. Fuller was again not too concerned about safety, but was concerned about aesthetics and noise that might affect the players on the tee.

8:40 P.M. Councilmember Peppes arrived.

2125 Councilmember Rasmussen said that for the 2 homes on hole #11, the Golf Course Committee had suggested that rather than removing the encroaching appurtenances, the City would sell the homeowners the land sufficient to bring them into compliance at the same price that they had paid for their lots per square foot (the City needed to receive fair market value in any kind of a land transaction involving City property), and that the new land conveyed would have the same golf course restrictions. But builder Reed Fuller didn't want to do that (felt the asking price was too high) and made counteroffers; the Committee didn't want to bargain. Then the Committee found out that the third lot above the tee box might want to build a swimming pool, and that really concerned them.

2250 There was discussion about developer Mark Simpson's responsibilities for plans and errors made in his developments. Councilmember Taylor felt that Mr. Simpson had let the City down in failing to comply with the 25-foot setback requirement. Mr. Taylor felt that if the Council remedied the situation, that would probably open pandora's box with other property owners abutting the golf course asking for encroachment and purchase of City property. Mr. Simpson said that he was concerned about what kind of standard a Council remedy would set, but believed with 72 of 75 homes in compliance the situation wouldn't get out of control, and there weren't very many more houses to build, and the builder was sorry about the situation. Mr. Simpson said that the encroachments were inadvertent, just happened. Councilmember Clawson said she was astonished that the encroachments had occurred given all the discussions in the past about the 25-foot buffer. Mr. Simpson said that Planning staff now required him to do as-built surveys after the foundations were in place to be sure his properties complied with the 25-foot buffer.

2652 Matt and Julie Kincaid of Overland Park whose home (15426 Ironhorse Circle, Lot 59) was still under construction said that if their home was finished according to the plans, a small portion of the driveway and a corner of the house close to the driveway would encroach into the easement. If the 25-foot easement was enforced, the Kincaid's driveway would be rendered useless, could not access the garage. Mr. Kincaid also said that during the selling process he understood that a change in the 25-foot easement to a 15-foot easement was being considered for some of the lots, including his. Planning Director McKay said that that change request by the developer was denied by the Plan Commission and City Council; only designed retaining walls were allowed to encroach into the 25-foot easement. Mrs. Kincaid said that the Plan Commission/City Council process was over a period of several months, and in that time, their foundation was put in. Mr. Kincaid said they would withdraw their plans for a swimming pool knowing it would never be approved. He said they didn't have a proper

opportunity to discuss pool plans with proper screening and aesthetic value to the golf course with the Golf Course Committee. He distributed plans to the Council.

3146

Councilmember Bold said that the City approved the plans for the homes, the builder built them wrong, and Leawood residents were affected; Mr. Bold felt compassion for the people who bought their homes in good faith, none for the builder or developer. Mr. Bold didn't like the existing problems on Lots 94 and 95, and he was very upset about the situation. He didn't think the City's asking price for golf course land was high enough; there should be punitive charges for "breaking the City's rules." Mr. Bold moved that for Lots 94 and 95, the City would in fact sell the small amount of square footage of golf course land at the price suggested, price equal to what the people paid the developer for their lots, seconded by Rasmussen. If it was up to Mr. Bold, the price would be higher, but when other expenses necessitated by the sale (replatting, real estate contracts, etc.) were taken into consideration, there was a significant financial penalty for making a mistake.

Mr. Rasmussen clarified the motion and Mr. Bold agreed that Mr. Rasmussen's clarification be in the motion – that the asking price was the same price that the developer charged the homeowners on Lots 94 and 95 per square foot, the City selling them enough land to bring them into compliance with the 25-foot "no build" zone; those slivers of land would be platted, surveyed at the expense of the builder, whoever was buying the land, and that the same restrictions that were applicable to the rest of the property would be applicable to those slivers of land (25-foot "no build" zone, continuous standard fence if built be on the lot line without gates, "no liability" clauses); a time frame of 90 days was set.

The Mayor asked that the City Attorney review the hold harmless agreement from Fuller Homes, Inc., and the buyers of Lot 94 that was distributed to the Council.

3462

Reed Fuller said that the owners of Lot 95 really didn't want additional land, and it seemed ridiculous to pay thousands of dollars for replatting, attorneys' fees for preparing contracts, etc., when the City would come out better by just changing the 25-foot easement to a 15-foot easement. He said there had never been a requirement with the over 500 homes he had built to keep patios and driveways off of easements; he didn't think he was totally to blame for the problems, that several people missed some things.

3500

Mr. Rasmussen called for the question, seconded by Clawson and carried unanimously. Mr. Bold's motion (with clarification) carried; Bussing opposed, all others in favor.

3535

For Lot 59 Mr. Rasmussen moved that the same terms and conditions be applicable to it but only to the extent of ameliorating the existing encroachment (driveway and porch), not for an additional swimming pool encroaching into the golf course easement (for noise reasons), seconded by Clawson. Dick Fuller of the Golf Course Committee clarified that the Committee could make a recommendation regarding a possible variance for the setback, but the Committee had no authority on the pool – that was strictly Planning's responsibility. If Planning approved a pool, then the Committee could make a determination as to whether or not the screening, etc., would be in compliance so it wouldn't be detrimental to the golf course, the tee box.

3698

Mr. Rasmussen called for the question, seconded by Bold and carried; Gill, Taylor opposed; all others in favor.

Mr. Rasmussen's motion carried unanimously.

* 9:30 P.M. Councilmember Bold left the meeting.

3743 **Ordinance granting a franchise to Southwestern Bell Telephone Company – 2nd reading.**

NEW BUSINESS

4016 **Approval of Appropriation Ordinance No. 859.** On motion of Gill, seconded by Peppes, Council unanimously passed the ordinance on roll call vote (except for Councilmember Bold who had left the meeting).

4028 **Ordinance No. 1793 authorizing the acquisition of property in the vicinity of 143rd Street and Overbrook (an additional 3 Lots 33, 27, and 26 in the Bi-State Industrial Park) for a future public works facility.** On motion of Rasmussen, seconded by Clawson, Council unanimously passed the ordinance on roll call vote.

4045 **Charter Ordinance No. 30 amending Charter Ordinance No. 25 relating to City Attorney position – provided for appointment by City Administrator rather than Mayor.** On motion of Rasmussen, seconded by Peppes, Council unanimously passed the ordinance on roll call vote.

4250 **Authorize interlocal agreement with Kansas City, Missouri for State Line Road resurfacing, 85th Terrace to just north of 92nd Street.** Total cost of construction estimated to be \$80,000.00 with Leawood's share \$40,000.00. On motion of Rasmussen, seconded by Peppes, Council unanimously approved the agreement.

4285 **Discussion of adult entertainment ordinance relating to massage therapy.** Planning staff had received requests to amend City ordinance to allow ethical massage therapists to perform full body massages as permitted in other municipalities. Planning Director McKay said that if full body massage was considered under adult entertainment, it would have to be approved by Council as a special use and would have to meet the 1,000-foot requirement making it difficult to do that type of massage at Town Center Plaza and Camelot Court and other places in the City. He said that staff would have to prepare an amendment relative to therapeutic massage, licensing, and qualifications. Staff would stay enforcement or proceedings against establishments already performing full body massages until the ordinance was prepared.

Councilmember Dunn moved to direct staff to prepare an ordinance which would include Neighborhood Services Administrator Jeff Cantrell's suggestions listed on page 2 of his March 29, 1999 letter to the City Attorney and Prosecuting Attorney, seconded by Taylor.

Mr. McKay thought that Council would be the body to approve licenses for massage establishments under an amended ordinance as done in Overland Park. Councilmember Rasmussen asked staff to consider the license fee to be sure it was sufficient to cover staff administrative costs.

Motion carried unanimously. Mr. McKay expected to have the ordinance prepared in 90 days.

4552

Approve engineering study regarding silt removal from golf course pond.

Councilmember Rasmussen moved to have Continental Consulting Engineers to find and report on the silt for an amount of \$5,000, seconded by Peppes. There was discussion of cleaning mud off the streets in southern Leawood near several home construction sites. Councilmember Gill said that he would support remediation recovery efforts by the City to insure that those who caused mud to end up in the pond would pay for the removal and felt that developers should be put on notice of the City's intentions. City Administrator Garofano said that the \$5,000 would be charged to the golf course, not the City's general fund. Motion carried unanimously.

4895

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 45 minutes to discuss a personnel matter and 2 items under attorney-client privilege.

4925

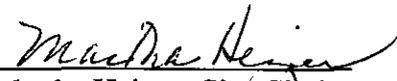
OTHER BUSINESS. Discussion of Governing Body tour of the City/joint meeting with the Plan Commission. A joint meeting with the Commission to discuss respective responsibilities, authority and procedures under planning statutes and ordinances was scheduled for Monday, May 24th at 5:30 P.M. A bus tour could be scheduled at a later date for those who were interested.

5225

10:15 P.M. Council convened in executive session. Councilmember Peppes and Clawson left the meeting.

**

11:00 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. 456

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 19, 1999. 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. (arrived at 8:00 P.M.).

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sid Mitchell, Chief of Police; Sarah Hilton, Special Projects Coordinator/Management Assistant; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE – led by Boy Scout Troop 10.

APPROVAL OF AGENDA

Councilmember Rasmussen moved that the third and final reading of an ordinance granting a franchise to Southwestern Bell Telephone and a franchise extension agreement with SWB be removed from the agenda and considered at the May 3, 1999, Council meeting. Motion seconded by Gill. Mr. Rasmussen said that Councilmembers hadn't received new information in a timely manner in order to review it. He also said that there was information in the Council packets concerning calculation of a line charge, a significant part of any franchise. Several months ago, he and City staff came up with an initial line charge of about \$2.50 per running foot. They also came up with an approach to documenting the reasons why that particular charge was appropriate. He wanted Council to have more time to review that information.

City Attorney Wetzler said that the current franchise would expire before the new franchise became effective, so Council needed to authorize an extension agreement. Mr. Wetzler also said that some components of Mr. Rasmussen's 3-part formula were contained in a right-of-way ordinance that was being drafted and weren't part of the franchise agreement, so not part of Council's consideration. He also said that the proposed franchise had been noticed up for public hearing, so he suggested that the hearing be held even if Council wanted to continue consideration of the matter to the next Council meeting.

Councilmember Clawson felt that Council should hear the presenters before just continuing the matter for 2 weeks, adding what they had to say to the information already received.

Mr. Rasmussen and Mr. Gill agreed that the motion would not include the extension agreement, that it would remain on the agenda. Mr. Rasmussen's motion carried unanimously.

Mr. Rasmussen moved to defer the public hearing on the final proposed franchise ordinance to the May 3, 1999, Council meeting, seconded by Gill. Motion carried unanimously.

The agenda was approved unanimously on motion of Peppes, seconded by Gill.

PUBLIC HEARING ON PROPOSED SOUTHWESTERN BELL TELEPHONE COMPANY FRANCHISE ORDINANCE – deferred to the May 3, 1999, Council meeting.

RECOGNITION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARDED TO THE CITY OF LEAWOOD AND AWARD OF FINANCIAL REPORTING ACHIEVEMENT TO FINANCE DIRECTOR KATHY ROGERS. The Mayor presented the Certificate of Achievement (in the form of a plaque) given to the City by the Government Finance Officers Association of the United States and Canada for the City's Comprehensive Annual Financial Report (CAFR) for the fiscal year ended December 31, 1997. She also presented a certificate Award of Financial Reporting Achievement from the same association to Finance Director Kathy Rogers.

PROCLAMATIONS. The Mayor proclaimed:

1. April 18-24, 1999, as "National Volunteer Week" and noted that the City had planned a volunteer appreciation event to be held April 25th at City Hall to recognize people who volunteered their time and talent to serve on committees and commissions.
2. April 29, 30, May 1 and 2, 1999, as "Student Achievement Days Celebrating Student Excellence."
3. April 1999 as "Fair Housing Month."
4. April 22-28, 1999, as "Community Development Block Grant Week/Opening Doors for More Americans: 25 Years of CDBG."

CITIZEN COMMENTS. G. Gordon Thomas, 10516 Mohawk Lane, commented on a newspaper article about the City having to loan money to the Ironhorse Golf Course. He felt several years ago that the golf course property should have been a public park instead of a golf course. Was the City (the taxpayers) going to charge the golf course interest for borrowing \$500,000, and where would the money come from if the general fund didn't have it?

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

1. Minutes of the March 1, 1999, Council meeting;
2. Historic Commission report (minutes) on their March 9, 1999, meeting;
3. Parks & Recreation Advisory Board report (minutes) on their March 9, 1999, meeting;
4. Public Works Committee report (minutes) on their March 24, 1999, meeting;

5. Public Works Committee report (minutes) on their March 31, 1999, meeting;
6. Public Works Committee report (minutes) on their April 7, 1999, meeting;
7. Departmental reports;
8. Purchase of 6 1999 Ford Crown Victoria Police patrol cars totaling \$130,872.00 through cooperative purchasing.

* 8:00 P.M. Councilmember Taylor arrived.

MAYOR'S REPORT. The Mayor reported on a recent Council of Mayors meeting at which County disaster/recovery planning, charter reform for the November 2000 ballot, CARS funding, and the Redevelopment of the Sunflower Army Ammunition Plant/Oz project were discussed.

The Mayor reminded the Council about their April 20th meeting for an overview of the 1999 budget and discussion of CIP priorities at 7:00 P.M.

The City's volunteer appreciation event was scheduled for April 25th at City Hall at 3:30 P.M. to recognize people who volunteered their time and talent to serve on City committees and commissions. And about 7:30 P.M. that evening, a candlelight walk for Victims' Rights Week would take place at City Hall.

OLD BUSINESS

1005

Authorize execution of franchise extension agreement with Southwestern Bell Telephone Company. On motion of Gill, seconded by Bold, Council unanimously approved the extension.

1030

Report from Public Works Committee re stormwater management. Councilmember Clawson, Chairman of the Public Works Committee, moved that the Council approve the following Committee recommendations, seconded by Dunn.

1. To direct staff to prepare a policy which would include the following:
 - a. program to heighten citizen awareness with regard to current policy and ordinances to be called the "Clean Creeks Initiative."
 - b. funding for maintenance of existing systems.
 - c. funding for improvement of existing systems.
 - d. review and necessary revision of development standards as they pertain to the stormwater system.
 - e. funding and criteria for non-SMAC projects.
2. That the Mayor appoint a committee to work jointly with staff in the preparation of the policy.

The Committee also wanted to inform the Council of the initial recommendation for new annual funding; a Council decision on the funding would follow the policy formulation and adoption. The Committee identified probable funding needs – 1) maintenance of existing improvements, \$150,000.00 per year; 2) capital expenditures for improvements and replacement of existing facilities, \$150,000.00 per year; and 3) City funding toward non-SMAC projects, \$150,000.00 per year – funding over what was already budgeted annually for stormwater.

Councilmember Bold was concerned about the review and revision of development standards – a review of the scope and size that Council would be asking staff to undertake was going to take some period of time. He said that the City had some development projects already before the Plan Commission or rapidly approaching them that were immediately adjacent to areas that already had stormwater problems. The City's current development standards were inadequate, requiring developers to build to a 10-year event which wasn't working. He wondered if review of the standards could be fast tracked. Mrs. Clawson expected the review to receive some prompt attention because Public Works staff would be working with Planning staff, and it was the Public Works Committee's intent that the policy receive priority attention.

Mrs. Clawson's motion carried unanimously.

1310 **APPROVAL OF APPROPRIATION ORDINANCE NO. 860.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

1335 **PRESENTATIONS TO RETIRING COUNCILMEMBERS CLAWSON AND PEPPE.** The Mayor presented plaques and keys to the City to Marnie Clawson who represented Ward 2 from 1993 to 1998, and to Gregory Peppes who represented Ward 1 from 1995 to 1998.

OATHS OF OFFICE ADMINISTERED TO MAYOR-ELECT AND COUNCILMEMBERS-ELECT – Mayor Peggy J. Dunn, Ward 1 Councilmember Shelby Story, Ward 2 Councilmember Jim Rawlings, Ward 3 Councilmember Mike Gill, and Ward 4 Councilmember James E. Taylor, Sr.

1860 **ROLL CALL OF NEW COUNCIL:** Bold, Bussing, Rawlings, Dunn, Story, Gill, Rasmussen, Taylor.

NEW BUSINESS

1885 **Authorize contract for preliminary engineering study for SMAC project DB-04-014, Phase 2 (86th Terr. & Lee Blvd. to 83rd & Sagamore).** Councilmember Bussing moved to approve a contract with SK Design Group, Inc., in the amount of \$123,708.93 (Leawood's share \$30,927), seconded by Taylor. There was discussion and clarification of design and construction funding budgeted for the project and DB-04-024 (the next agenda item) in 1999 and 2000. Motion carried unanimously.

2272 **Authorize contract for preliminary engineering study for SMAC project DB-04-024 (82nd Terr. & Wenonga, south to Cherokee and 86th St.).** Councilmember Dunn moved to approve a contract with Black & Veatch in the amount of \$129,852 (Leawood's share \$32,463), seconded by Bold. Motion carried unanimously.

2320 **Authorize engineering contract for Lee Boulevard improvements, 103rd St. through Leawood City Park.** Councilmember Taylor moved to approve a contract with Continental Consulting Engineers, Inc., in the amount of \$195,500, seconded by Bold. Concerns about a proposed pedestrian tunnel at the Park would be discussed at a joint Council/Parks & Recreation Advisory Board meeting on April 26th. Motion carried unanimously.

2603 **Approve bid/authorize contract for 1999 Street Improvement Program.** On motion of Rasmussen, seconded by Bussing, Council unanimously approved a contract with the low bidder Seal-O-Matic Paving in the amount of \$2,202,812.80.

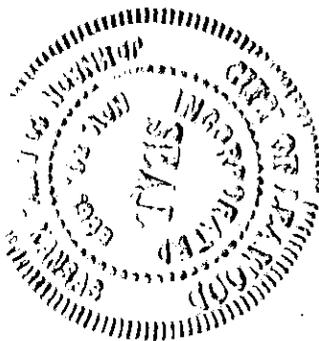
2665 **Resolution No. 1459, attached as part of the record, consenting to the enlargement of Johnson County Consolidated Main Sewer District to service general vicinity of 143rd St. and Nall Ave.** Adopted unanimously on motion of Bussing, seconded by Taylor.

Schedule executive session. On motion of Dunn, seconded by Gill, 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 land acquisition.

OTHER BUSINESS. Councilmember Taylor asked the status of the deannexation of the Laner property at 135th and Nall Ave. City Attorney Wetzler said that the deannexation ordinance passed by the Council a few months ago had not been published because he had been waiting for a legal description from Mr. Laner. The ordinance should be published in the next couple of weeks, and then it would be appropriate to discuss any controls that the City might have on the property even though it wouldn't be part of Leawood.

2847 9:05 P.M. Council convened in executive session, and returned to regular session at 9:25 P.M.. There being no further business before the Council, the meeting was adjourned.


Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 457

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 3, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, 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; Sarah Hilton, Special Projects Coordinator/Management Assistant; Joe Johnson, Director of Public Works; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Interim Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE – led by Webelos from Cure of Ars Elementary School.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Dunn, seconded by Bussing, after the removal of the March 22, 1999 Council minutes (to be approved at the May 17th Council meeting); and the addition of 1) a proclamation for National Public Works Week, 2) the scheduling of an execution session to discuss litigation (15 minutes) and a matter under attorney-client privilege (15 minutes), 3) a discussion of Budget and Finance Committee meetings, and 4) an assignment to the Public Works Committee relative to improvements to Lee Blvd. south of 103rd St.

INTRODUCTION OF SHAHRAM POURAZARI AS LEAWOOD CITY ENGINEER.

Public Works Director Johnson introduced new City Engineer Pourazari, formerly Leawood's Special Projects Engineer.

RECOGNITION OF MIKE EGGLESTON, RETIRING ARTS COUNCIL MEMBER.

The Mayor read and presented a proclamation to Mr. Eggleston in recognition of his service to the Arts Council from May 1993 to May 1999, and the Arts Council's many achievements under his chairmanship from 1995 through May 1997.

PROCLAMATIONS. The Mayor proclaimed:

1. May 1999 as "Stroke Awareness Month"
2. May 16-22, 1999 as "National Public Works Week"

3. The Mayor officially designated the area with all properties facing High Drive, Lee Boulevard, Meadow Lane, Manor Road and Somerset Drive between Somerset Drive and 83rd Street in Leawood as a Leawood Historic District and instructed the Chair of the Historic Commission to record as appropriate said designation in the Leawood Register of Historic Places.

4. The Mayor read and presented a proclamation to Jody Ladd Craig for her service to the Historic Commission from May 1993 to May 1999, and the Commission's many achievements under her chairmanship from 1993 through September 15, 1998.

761 **PRE-BUDGET PUBLIC INPUT.** Kevin Jeffries, Executive Director of the Leawood Chamber of Commerce, and Marga Spangler of Exchange National Bank in Leawood and the Chair-elect of the Chamber of Commerce, spoke about the benefits that the Chamber offered the community. The Chamber's proposed budget for 2000 had been distributed to the Council with a deficit of approximately \$37,800. They planned to overcome a portion of the deficit by expanding their membership and increasing their fundraising activities. They asked that the Council consider budgeting \$30,000 for the Chamber in 2000.

1147 **PUBLIC HEARING ON PROPOSED SOUTHWESTERN BELL TELEPHONE COMPANY FRANCHISE ORDINANCE.** The hearing began at 8:10 P.M. and was closed immediately, there being no public input.

1186 **CITIZEN COMMENTS.** None.

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Bussing:

1. Golf Course Committee report (minutes) on their March 23, 1999, meeting;
2. Parks & Recreation Advisory Board report (minutes) on their March 9, 1999, meeting;
3. Public Works Committee report (minutes) on their April 14, 1999, meeting;
4. Mayor's annual appointments to committees and commissions (attached as part of the record);
5. Appointment of presiding officers -- Patrick Dunn, May-July, 1999; Louis Rasmussen, August-October, 1999; Gary Bussing, November 1999-January 2000; Adam Bold, February 2000-April 2000;
6. Purchase of equipment for Parks & Recreation Department: a ¾-ton truck utility body from the second lowest bidder Knapheide Truck Equipment in the amount of \$6,486.00; a 60" zero-turning radius (Toro Z255) mower from the low bidder Olathe Ford Tractor in the amount of \$6,300.00; and a 126" rotary mower (Jacobsen HR-5111) from the high bidder Outdoor Equipment Co. in the amount of \$34,500.00.

April 29, 1999

TO: City Council
FROM: Mayor Dunn
RE: Annual appointments to committees and commissions

The names of appointees to Leawood committees and commissions are as follows:

	<u>Reappointment</u>	<u>New</u>
Alarm Appeals Committee - Richard Webber, Chr.	Paul Converse (2001) Shirley Davidson (2001) Richard Webber (2001)	
Arts Council	Loretta Allebach (2002) Gary Bussing - Council liaison (2000)	Dan Throckmorton (2000) Kathy Roberts (2002)
Board of Zoning Appeals	Mel Hawk (2002) Sally Reicher (2002) Wes Welch (2002)	Bill Clawson (2002)
Budget & Finance (2000)	Scott Picker James Azeltine Greg Bussing	Howard Ellis Mark Meierhoffer

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.	Harold Mitts (2002)	Marnie Clawson (2001)
Debt Management Awareness Council (Jo. Co.) - Leawood rep.	Lou Rasmussen	
Emergency Preparedness Coordinator	Bettie Bridges	

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Mayoral appointments
April 29, 1999

	<u>Reappointment</u>	<u>New</u>
Golf Course (Ironhorse) Advisory Board - Dick Fuller, Chr.	Charles Lewis III (2002) Lou Rasmussen (2000) - Mike Gill (2000)	
Historic Commission - Beverly Hurley, Chr.	Len Williams (2002)	Diane Sharp (2002) Shelby Story- Council liaison (2000)
Leawood Foundation	Adam Bold - Council liaison (2000)	
- Parks & Recreation Advisory Board	Karen Reimer (2003)	Greg Peppes (2001) Jacquie McKinney (2003) Julie Cain (2003) James Taylor- Council liaison (2000)
Plan Commission	Janice Auvinen (2002) Ken Conrad (2002)	Pat Colloton (2002)
Public Building Commission	Adam Bold (2002)	Shelby Story (2000) Jim Rawlings (2003)
Public Officer for Property Maintenance Code	Bob McKay	

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Mayoral appointments
April 29, 1999

	<u>Reappointment</u>	<u>New</u>
Public Works Committee (2000)	Pat Dunn, Chr. Gary Bussing James Taylor Randy Viot Bill Mallory Tracy Smith	Jim Rawlings Cy Perkins Carolyn Long Jon Grams
Sister City Committee (2000)	Teresa Chien ✓ Jill Domoney ✓ Tom Hammonds ✓ Ann Leitner Alice Putman Dick Reicher Barbara Gadd-Alley Cecilia Thompson Sophie Lin Kay Martin	Mike Gill - Council liaison
Stormwater Management Advisory Council - Leawood rep.		Pat Dunn (1/1/2000)
Stormwater Policy Committee (ad hoc)		Lou Rasmussen, Chr. Gary Bussing Paul Barber Joe Johnson Shahram Pourazari

Declaration of surplus property, office/field equipment no longer used by the Public Works Department to be sold at public auction on May 22, 1999: 2 CalComp digital apparatus, cords, mouse; 4 Eclipse II antennas (new in the box); and a 31" cubicle work surface (new in the box). Councilmember Taylor asked why Public Works purchased the items still in their boxes and then never used them. City Administrator Garofano said he would check and report back to the Council. On motion of Taylor, seconded by Rasmussen, Council unanimously declared all the property surplus.

PLAN COMMISSION

1282

Resolution No. 1460, attached as part of the record, approving preliminary site plan and preliminary plat for Asset Management Medical Office, south side of College between Roe and Nall. The Mayor asked if the public art impact fee of \$.10 per sq. ft. shouldn't be an additional stipulation in the resolution. Councilmember Rasmussen said that an additional stipulation #18 should indicate that a public art fee in the amount of \$.10 per sq. ft. or an approved piece of public art would be required. Planning Director McKay verified that sidewalks would be required on the property; that would be additional stipulation #19.

The applicant Chuck Peters of Peters & Associates gave a presentation. Councilmember Bold expressed concerns about the building's architecture being so different from the older existing buildings nearby, having a negative effect on aesthetics along College. There was discussion of deviation in the setback requirements and parking.

On motion of Rasmussen, seconded by Gill, the resolution was adopted with additional stipulations #18 & #19; Bold opposed, all others in favor.

1992

Ordinance amending Section 4-3 of the Leawood Development Ordinance relating to special use provisions, specifically sport courts and wireless communication facilities. The Plan Commission recommended approval. Ordinance amendments were aimed primarily at clarification of minor points found within the text of the current ordinance. The amendments were also necessary to provide consistency with other sections of the zoning ordinance as well as consistency within the special use section. Many of the revisions were considered a "clean up" of minor wording found within the existing provisions. Recent approval of a residential lighting nuisance ordinance required light readings at the property line to be no greater than .5 footcandles. Accordingly, to make the sport court section consistent with the lighting ordinance, the special use provisions had to be changed to also read .5. For wireless communication facilities, a few sections of text needed minor modifications to clearly define intent and to make the text consistent throughout.

Councilmember Rasmussen moved to pass the ordinance, seconded by Bussing. Councilmember Gill felt that Council needed an opportunity to compare the proposed ordinance with the text of the current ordinance; in addition to some technical changes in the proposed ordinance, he felt that there were some extremely important functional changes that needed to be considered. Council was being asked to make fundamental changes to the current ordinance that everyone had worked very hard on to get passed and that had served the City well. Both motion and second were withdrawn. Mr. Gill requested that Council pay particular attention to sections dealing with changes, modifications to previous plans and wording that limited review to the Plan Commission. Mr. Rasmussen moved to continue the matter to the May 17th Council meeting, seconded by Taylor and carried unanimously.

2236

MAYOR'S REPORT. The City volunteer appreciation event (dinner) and concert at City Hall on April 25th were successful and were followed later in the evening by the Crime Victims Week candlelight walk.

OLD BUSINESS

2335

Ordinance No. 1794 granting a franchise to Southwestern Bell Telephone Company -- 3rd and final reading. Councilmember Rasmussen moved to pass the ordinance, seconded by Gill. Mr. Rasmussen said that the definition of gross revenues excluded long distance revenues. He said that the City might revisit that issue in the future; in light of possible action in the legislature regarding the issue and similar issues, it was premature to add long distance to gross revenues. He felt that long distance properly belonged in the definition of gross revenues. For some strange reason, the legislature had decided that long distance service was not local service. He also said that over the years, for whatever reason, there had been controversy whenever there was auditing of revenues associated with franchise taxes. He said that in Section 5 of the proposed franchise ordinance, there was reference to codes (undefined), and he wanted SWB to provide the City with the key to the codes that itemized and specified the different revenues listed on SWB's gross receipts report. Mr. Rasmussen asked for consensus that the Council would consider long distance revenues as part of gross receipts whenever the legislature passed appropriate legislation, and consensus on his comments on auditing and the codes.

Mike Moeller of SWB said that SWB provided an internal SWB report that SWB considered confidential and the City agreed that it would remain confidential. During franchise negotiations with the City, SWB said they would have someone from SWB meet with the appropriate City official to make sure there was an understanding of what the codes represented. He didn't know if there was a piece of paper, a code sheet, that would be provided that specifically delineated which code corresponded to which service. If the line of communication was not satisfactory, SWB would be amenable to further discussions concerning the matter. Mr. Rasmussen felt that there should be a definite statement by the Council in the record that what Mr. Moeller stated was expected to occur.

In response to Councilmember Bussing, City Attorney Wetzler said that the City needed to be able to identify those entities that provided services in Leawood. Mr. Bussing seemed to suggest the notion that a company like SWB could set up a subsidiary and divert services through that subsidiary and thereby avoid payment of a franchise fee. Mr. Wetzler said the City had an understanding with SWB that they had an obligation to disclose on a semi-annual basis those entities with whom they had entered into an interconnection and/or resale agreement within the State of Kansas so the City could go to those entities and assess a franchise fee.

Mr. Rasmussen moved that his remarks regarding long distance revenues in the future and SWB codes be part of the record, seconded by Gill and carried unanimously.

Mr. Rasmussen's motion to pass the franchise ordinance carried unanimously on roll call vote.

3036

Approve bid for street sweeper (part of a lease purchase). On motion of Rasmussen, seconded by Bold, Council unanimously approved the low bid of \$102,615.00 from American Equipment Co.

- 3052 **Change Order No. 11 to the contract with Wiedenmann & Godfrey in the amount of \$95,182.00 for the Sanitary Sewer Rehabilitation Project, Phase 5.** On motion of Rasmussen, seconded by Bussing, Council unanimously approved the change order.
- 3140 **Change Order No. 8 to the contract with Seal-O-Matic Paving in the amount of \$9,508.81 for the 1998 Street Improvement Program** – for additional grading and sod work beyond the project construction limits on 89th Street, and a concrete sidewalk constructed at 8901 Mohawk Lane. On motion of Taylor, seconded by Rawlings, Council unanimously approved the change order.
- 3190 **Discussion of 135th Street Corridor Plan.** Councilmember Bussing wanted the Council and Plan Commission to reaffirm their understanding of and commitment to the Plan. New Councilmember Story asked that any action on Mr. Bussing's request be postponed to the May 17th Council meeting so he and new Councilmember Rawlings could read the Plan. The matter was continued to the May 17th Council meeting.

NEW BUSINESS

- 3330 **Approval of Appropriation Ordinance No. 861.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.
- 3608 **Authorize contract for fence removal/replacement along 135th Street.** The fence installed by KDOT during the 135th Street improvement project was located outside the clear zone. The project would remove and replace fences to the right-of-way line on 3 properties along 135th Street. On motion of Rasmussen, seconded by Taylor, Council unanimously approved a contract with the low bidder Mac's Fence in the amount of \$14,195.00.
- 3730 **Ordinance No. 1795C amending Section 12-101 of the Code of the City of Leawood relating to membership of the Parks & Recreation Advisory Board** – 5 members changed to "up to 7" to allow the Mayor to appoint 2 additional members. On motion of Taylor, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.
- 3760 **Ordinance amending Chapter II of the Code of the City of Leawood relating to animals.** In view of a complaint he had received from a constituent who had received a ticket for a violation of the animal control ordinance and his subsequent talk with the City prosecutor, Councilmember Gill moved to continue consideration of the ordinance to the May 17th Council meeting so the Council could compare the proposed ordinance with current ordinance, seconded by Bussing. Motion carried unanimously.
- 3850 **Request to use City Hall parking lot.** The City Administrator had received a request from Town Center Plaza for parking space at City Hall for recreational vehicles that would transport art to be displayed at the Town Art Show at Town Center Plaza in June. Councilmember Rasmussen moved to approve the request for June 17th, 18th, 19th and 20th, seconded by Gill. City Administrator Garofano said that the artists would be living in the RV's; he didn't know if the motors would run every night. He also said that the Community Center would be heavily used on June 18th and 19th, on the 19th a wedding reception with 200 people. So he didn't know how many parking spaces would be available. In response to

Councilmember Bold's concerns about people living on City property, City Attorney Wetzler said there was always the possibility of liability for the City. Also, City Hall offices were open and conducting City business on June 17th and 18th.

Mr. Gill withdrew his second. Mr. Rasmussen's motion failed for lack of a second. Councilmember Taylor moved to deny the request, seconded by Bold. Motion carried unanimously.

4053 **Schedule executive session.** On motion of Dunn, seconded by Rasmussen, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss litigation and a matter under attorney-client privilege.

4070 **OTHER BUSINESS. Discussion of Budget & Finance Committee meetings.** Councilmember Bussing moved that the Finance Director schedule at her convenience a session for preparatory work for any interested Councilmembers/Committee members in advance of the Budget & Finance Committee meetings for the 2000 Budget, seconded by Taylor. Motion carried unanimously.

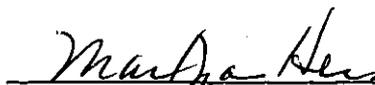
4150 Discussion of assignment to the Public Works Committee to discuss the improvements to Lee Blvd. south of 103rd St. prior to holding meetings with citizen groups affected by the project. Public Works Director Johnson said the Committee would focus more on the street improvements through the Leawood City Park. The Parks & Recreation Department planned to hold public meetings May 19th & 20th on the City Park improvement plan. Public Works wanted to specifically discuss concerns/uncertainties about a proposed tunnel with the Committee in order to make a recommendation to the Council.

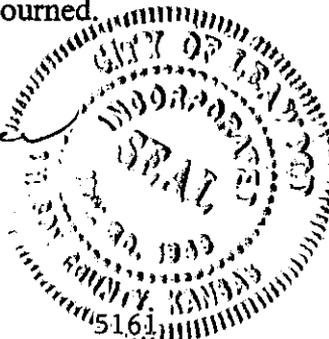
Councilmember Dunn, Chairman of the Public Works Committee, explained that he had suggested the assignment. Continental Consulting Engineers needed to proceed with respect to the plan. Their traffic consultant had recommended a traffic crossing, and Continental felt it was important that the Public Works Committee review that information before Council made a final decision on the crossing.

Mr. Dunn moved that the assignment be made to the Public Works Committee (they planned to meet May 6th), seconded by Bussing and carried unanimously.

4310 9:50 P.M. Council convened in executive session, same members present, and returned to regular session at 10:20 P.M. On motion of Taylor, seconded by Gill, Council voted unanimously to return to executive session for 15 more minutes to continue the same discussions.

10:35 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. 458

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 17, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Louis Rasmussen, and James E. Taylor, Sr. Mike Gill was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sid Mitchell, Chief of Police; Sarah Hilton, Special Projects Coordinator/Management Assistant; Shahram Pourazari, City Engineer; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Interim 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 Bussing, seconded by Bold, after the removal of a discussion of an amendment to the Master Development Plan relative to 98th and State Line Rd. (to be discussed later, possibly at a July Council meeting); and the addition of 1) a discussion of the purchase of police motorcycles, 2) a discussion of a memo from Sarah Hilton concerning surplus furniture, an answer to a question that Councilmember Taylor had at the May 3rd Council meeting about surplus property that was new and still in the box, never used, and 3) a discussion of a memo from the City Administrator about change orders for the Aquatic Center's bathhouse remodeling.

PROCLAMATION. The Mayor proclaimed May 20, 1999, as "Camp Invention Day."

CITIZEN COMMENTS. Don Smith, 5209 W. 116th St. in Edgewood subdivision adjacent to City Hall, said that very few people, no Councilmembers, attended a recent concert at City Hall, and it was loud. He reiterated his opposition to 4 late nights of a summer musical production and rehearsals at City Hall. He believed that his homes association had an agreement with the City that concerts would be over by 8:00 P.M. He suggested that the July production be moved to the Shawnee Mission East High School auditorium or to the Leawood City Park. The Mayor suggested that he talk with her later about the matter.

550

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

1. Minutes of the March 22, 1999, Council meeting;
2. Departmental reports;
3. Application (renewal) for Cereal Malt Beverage License – Hallbrook Country Club;
4. Group admission policies for the Leawood Aquatic Center at Leawood City Park.

Public Works Committee report (minutes) on their May 6, 1999, meeting.

Councilmember Dunn, Chairman of the Committee, noted 2 corrections to the minutes -- 1) to add that Mr. Bussing's motion that the Committee approve their April 7th meeting minutes carried unanimously, and 2) to add at the end of the first paragraph of page 2 "that all parking should be moved to the north side of Lee Blvd." Mr. Dunn said that the main purpose of the May 6th meeting was to review with the engineers the design of Lee Blvd. south of 105th St. as it went into the City Park, to address concerns about a proposed tunnel underneath Lee Blvd. He said that the Committee unanimously recommended engineering plan #22 without a tunnel for Council to approve for presentation to the public at the May 19th and 20th public meetings on the City Park master plan. He so moved, motion included approval of the May 6th minutes, seconded by Bussing and carried unanimously.

Pay Request No. 3 (FINAL) from Kissick Construction Co. in the amount of \$28,446.75 for SMAC project TM-04-004, Tomahawk Creek bank stabilization at 123rd and Roe Ave. The Mayor had noticed that rocks had come loose from some of the gabions close to the pedestrian bridge and asked Mr. Pourazari to check the situation. On motion of Taylor, seconded by Bussing, Council unanimously approved the pay request pending Mr. Pourazari's review.

Donation policy. Councilmember Bussing asked that the policy be discussed at a Council work session to hear Council's opinions about the City making donations to various groups and to allow staff some time to do more research on what other cities did. Sarah Hilton said she had done quite a bit of research and had found that no cities in the metropolitan area had policies; only Overland Park and Olathe had guidelines for making donations. The matter was deferred; Mrs. Hilton said she would start looking for policies outside the metro area.

PLAN COMMISSION

925

Resolution relating to revised preliminary plat for Willow Creek at approximately 140th and Mission Rd. The Plan Commission recommended approval with stipulations, one being that 140th Street connect Fontana and Mission Rd.

City Attorney Wetzler made some introductory comments regarding procedure. He said that the matter was rather atypical in nature primarily because the property was zoned R-1 several years ago with one large lot, and that lot was now being replatted for a few smaller lots, with a concern about whether or not 140th St. should cut through from Fontana to Mission Rd. He explained that the only reason the Council considered plats was to accept the public dedications within the plats. The Council could accept the dedication of 140th St. or reject it, in which case the matter could simply die or could be remanded to the Plan Commission for additional consideration with Council's reasons for not accepting the dedication and indications of what would be acceptable. Councilmember Taylor asked if the developer's cul-de-sac proposal for 140th St. was an appropriate change from the master plan which was approved several years ago. Mr. Wetzler said it would be appropriate to discuss a change from the master plan, but master plan issues weren't controlling. Mr. Taylor asked if the Council had the option of making modifications to the Plan Commission's recommendations and approving the revised preliminary plat on the basis of the Council's statements. Mr. Wetzler reiterated that the purpose of Council's review of a plat was to accept the public dedications thereon; City ordinance and state statute didn't really address the question posed by Mr. Taylor.

1195

Attorney Larry Winn III explained 3 procedural options – 1) as Mr. Wetzler suggested, Council could let their views be known to the Plan Commission with either rejection or remand, 2) a possible rule exception; if there was a rule so to speak that the type of street was generally expected to cut through (say as suggested by Mr. Taylor according to the master plan) and Council wanted to make an exception to that rule, then there was some evidence in City ordinance that Council could deem the matter to be a rule exception and indicate that in the particular case Council believed that a cul-de-sac configuration was appropriate, and 3) make the situation analogous to a zoning situation whereby with some type of super majority vote, the first time up from the Plan Commission Council could overrule the Commission. Mr. Winn said that the type of street configuration that the applicant proposed in the plan with some type of emergency gate, temporary road arrangement, had been used in Overland Park developments, and it was extremely remote that that type of arrangement would be utilized, but was none the less necessary for public safety.

1300

Andy Schlagel, planning consultant for developer Reed Fuller, presented the preliminary plat design with new 140th St. running east from Fontana culminating in a cul-de-sac with a couple hundred feet between that new cul-de-sac and an existing cul-de-sac in Merry Lea Farms which had an exit onto Mission Road. He mentioned that he liked Mr. Winn's options 2 and 3 more than option 1; they had been before the Plan Commission twice and had hoped that the project would occur this year. Mr. Schlagel felt that a majority of area residents preferred a plan that didn't extend the cul-de-sac streets as recommended by the Plan Commission, but which was in compliance with the developer's proposal.

1460

In response to Councilmember Bold, Mr. Schlagel said that the plan indicated an opportunity for an emergency access for fire and police between cul-de-sacs if the Council felt it was a critical necessity.

There was discussion of stormwater. City Engineer Pourazari had no real concerns about stormwater problems and was confident that there was an acceptable solution for dealing with stormwater.

Mr. Pourazari didn't like the "gate" concept for the street, just wanted 140th St. cut through from Fontana to Mission Rd. to improve traffic flow between residential areas. Mr. Bold said that he preferred to preserve the nature of neighborhoods; he wasn't too concerned about inconveniencing residents who had to travel a greater distance to get to another subdivision, say from Merry Lea Farms to Worthington. Mr. Pourazari felt the street should be cut through for better traffic flow and for operation of Public Works equipment and for faster police and fire response time. He said the developer Reed Fuller would build, extend the street to tie into the existing 140th and Fontana.

1850 Councilmember Taylor said that Leawood's street system was more meandering than grid; the City didn't necessarily plan thru streets, but had many curving streets and cul-de-sacs, including cul-de-sacs which were very close to other streets without connecting. Mr. Taylor noted that a subdivision that was recently approved at 127th and Mission Rd. had a cul-de-sac opposite the Fire Station at 127th and Mission that didn't require a connection to either 127th St. or Mission Rd., increasing fire response time to homes on the cul-de-sac. Mr. Taylor asked if the Planning staff asked for Fire Department input to have a street pattern with a response time which met the 5 or 5.5 minute response time before a matter went to the Plan Commission. Diane Binckley said that staff expected the Fire Marshal to take into account whatever he needed; they didn't specifically ask about response times. Mr. Taylor asked if staff had advised the Plan Commission that the 140th St. connection from Fontana to Mission Rd. was already on the master plan which might have influenced the Plan Commission's decision making process. Mrs. Binckley said she did so advise the Plan Commission; it was the Planning staff's role to uphold the master plan. She agreed with Mr. Wetzler's earlier statement that the master plan wasn't controlling and staff never represented that it was.

2075 City Administrator Garofano said that the Fire Department reviewed plans to insure that they had adequate ingress/egress for subdivisions and that generally their response times could be met. City staff didn't dictate to the Fire Department what the response times would be. If the Fire Department had concerns, they would notify the rest of the staff so staff could decide whether or not they would recommend redesign of plans submitted.

2115 Mr. Taylor said that in 1993 the developer at that time and City decided that the master plan would indicate 140th St. as a thru street. There were no homeowners at that time, so there was no input from Worthington and Merry Lea Farms Homes Associations. He didn't think that people were really informed that 140th St. would go all the way through from Roe to Mission Rd.

2240 Mr. Bold asked if there was any discussion of the cut through when Worthington subdivision was planned. Fire Marshal Gene Hunter said that when 140th St. was stubbed off in Worthington to the east, there was every indication/assumption that the street would eventually be cut through. That would be something he would bring up in a meeting, that the Fire Department wanted to see multiple points of access to any development. The Fire Department would have recommended that the street be cut through. It was noted that Worthington was platted in 1993 at the same time the master plan was changed.

Fire Chief Florance described emergency gates which didn't always work. In response to Mr. Bold, Chief Florance said cul-de-sacs did have an effect on emergency calls. The mission of the Fire Department was to reach a patient as quickly, safely and efficiently as possible. Not having a cul-de-sac could decrease response time. The Fire Department inspected emergency gates, and a certain amount of the time, the gates didn't work properly when inspected. Pavers between cul-de-sacs as opposed to an emergency gate probably wouldn't be a good solution. The emergency access between the 2 cul-de-sacs was not recommended by the Fire Department but they would make it work if the Council decided the cul-de-sacs were appropriate. Councilmember Taylor said that from his own investigation, 140th St. didn't need to be cut through, that he agreed with Mr. Schlagel that the City didn't need a thoroughfare and traffic problem that would occur if the street was cut through. Police Chief Mitchell was in favor of cutting the street through; Police officers have had to climb emergency gates that wouldn't open, and many times on certain calls, officers wouldn't want to use their sirens to activate a gate which would announce that they were coming.

2940

Matt Saak, 3916 W. 140th Dr., said that there was aesthetic beauty in the area, and felt there were ways to work around the issues, and the 2 cul-de-sac design with emergency access road between them was preferred. When not used by emergency services, the access could be used as a pedestrian path for children to get through from Worthington to nearby schools.

Scott Kreamer, 4512 W. 140th St. in Worthington, was concerned about the due process received at the second Plan Commission meeting; residents weren't able to voice their concerns or ask questions about the proposed plan. Mr. Kreamer said there was a different proposal taken up at the second meeting, and for the first time, the Fire Chief offered his testimony, and residents weren't allowed to question him or have any response. (The Mayor commented that all residents were heard at the first PC meeting, and then the hearing was closed. That was the procedure under state statute.) He was also concerned about the approval of a thru street when the proposal presented was a cul-de-sac. He said that Merry Lea Farms and Worthington favored the proposed plan. Leawood residents didn't want to live with a grid street system, even though that would be preferable for emergency services. Making 140th St. a thru street would cause safety and health concerns for families with children.

Dorothy Celletti, 4017 W. 138th Terr., agreed with the Fire Chief, that the street should be cut through.

Mary Watson, 13716 Fontana in Leawood Meadows, felt that the City had a moral obligation to have the street open for public safety.

3625

Councilmember Bold moved to remand the matter to the Plan Commission to 1) see if there was some way to have the dual cul-de-sac system with an emergency access thoroughfare between them, and 2) to have more clarification on storm drainage as it related to Worthington. Motion seconded by Bussing.

Mr. Taylor wanted Council to advise the Plan Commission that, in his opinion, the 2 cul-de-sacs would be sufficient without having the connection. He also felt that storm drainage be studied and meet Council criteria before final plat approval. He didn't feel 140th St. needed to be cut through, response times were fine.

3705

Councilmember Rasmussen moved to amend the motion to include the Plan Commission's rationale for not having just 1 cul-de-sac. If fire protection was adequate for the large lot before it was split including the possibility of horse barns, then he didn't understand why cutting 140th Dr. through from Mission for a new cul-de-sac location wouldn't be appropriate. Motion seconded by Taylor. Diane Binckley said that the cul-de-sac in Merry Lea Farms was approved in the early seventies and the City had different requirements at that time; today, the Fire Department didn't allow cul-de-sacs to go beyond 500 feet and the one in Merry Lea Farms exceeded that. Mr. Wetzler said that if Council remanded the matter, it would come back to Council for approval of the preliminary plat and then go back to the Plan Commission for consideration of a final plat, then back to the Council for final plat approval. Mr. Bold said he would incorporate Mr. Rasmussen's amendment in his motion; Mr. Rasmussen and Mr. Taylor agreed.

Mr. Bold's motion to remand carried unanimously. Councilmember Dunn said he was more concerned about the stormwater issue than the street cut through; that was the basis for his vote to remand. The engineer for the project had stated that the stormwater would be dumped into the lake in Worthington and there were already problems. Mr. Bussing was also more concerned with stormwater issues; he thought there was a possibility of a compromise with the street cut through, not with the stormwater.

4195

Resolution No. 1461, attached as part of the record, denying request for rezoning from AG to RP-4, and preliminary site plan and preliminary plat approval, for Bretton Court, southwest corner of 151st and Mission Rd. The Plan Commission recommended denial because 1) the project was too dense, 2) the project was incompatible with the rest of the area, 3) there were drainage concerns with the increased density, and 4) number of front loading driveways/garages. Councilmember Rasmussen moved to deny (to uphold the PC's recommendation), seconded by Bussing. The applicant/developer Jim Hyatt of Kenco Development Co. made a presentation. He had not had a single objection from area residents. He said he had received the Golf Course Committee's recommendation for approval. Diane Binckley advised that staff had recommended approval. Councilmember Rasmussen clarified that the Golf Course Committee didn't approve rezoning; the Committee reviewed applications to see whether or not they conformed to 1) that there was a 25-foot setback from golf course property, 2) that there was a covenant running with the land that indicated that the City didn't have liability, and 3) that fences were placed on property lines without gates. The Committee approved the plan without dissent.

Councilmember Bold said that the odds were against an RP-1 subdivision; who would want to live at the intersection of 2 major streets. With retail master planned to the east, there was great likelihood that if RP-4 wasn't approved for the corner, someday someone might propose a retail development for the corner. He felt that RP-4 was a pretty appropriate use for the land. Mr. Hyatt felt that the Council had been misled dramatically by the Plan

Commission on the density issue. To solve the front loading driveways/garages, Mr. Hyatt had considered turning the homes, but in order to get the minimal turning radius, three lots would have to become two, and that was physically and economically unfeasible for the project. If the garages were set forward and turned in in front of the homes, people would be looking at a sea of concrete outside their front door, no space for flowers or trees. And they would still lack the minimal turning radius.

4705 Councilmember Taylor didn't think the retail master planned to the east would ever happen so didn't think the corner in question would either, and felt that the density already established for the area should be followed. The Mayor said that Village at Ironhorse and Villas of Ironhorse had densities of 2.24 and 2.94 units per acre which included right-of-way, and Bretton Court had a density of 2.71 with right-of-way which was less dense than Villas of Ironhorse; Council needed to compare apples to apples. Without the right-of-way, Bretton Court was over 3 units per acre.

The maintenance (desiltation) of the 2 ponds would be the responsibility of the developer during development and the homes association after development. City Engineer Pourazari advised that he was working on a draft of a covenant/maintenance agreement for all lakes, detention ponds in the City, which could be made applicable to the project. Mr. Hyatt said that he had already offered, if it was the City's desire, to remove the 2 ponds and leave them as a drainage ditch, which of course wouldn't be an improvement for the project. He didn't see any siltation problems occurring.

Motion to deny carried; Shelby, Bold opposed; all others in favor.

Councilmember Bussing wanted the City to draw the distinction between a permitted use and a desired use. The master plan permitted RP-4 density in the area, but it was clear to him by the vote, that it was not a desired density. The project was too dense.

Ordinance rezoning from AG to RP-4 – Bretton Court. No action necessary.

5215 **Ordinance amending Section 4-5 of the Leawood Development Ordinance relating to sign regulations.** Councilmember Rasmussen moved to defer consideration of the ordinance to the June 7, 1999, Council meeting to give Councilmembers an opportunity to compare the proposed ordinance with current ordinance, seconded by Bussing. Councilmember Taylor asked that staff pay particular attention to construction signs permitted in the proposed ordinance and the length of time that the signs could be used, and when a construction project was identified, should it be for identification of the project and all contractors involved, rather than having multiple signs that would advertise each contractor and developer.

Motion to defer carried unanimously.

MAYOR'S REPORT. The Mayor reported that approximately July 1st, there would be an additional reason (a fifth one) for holding an executive session, namely security matters.

OLD BUSINESS

5490 **Ordinance No. 1796C amending Chapter II of the Code of the City of Leawood relating to animals.** Councilmember Rasmussen moved to pass the ordinance, seconded by Bold. The Mayor said that Councilmember Gill who was absent had concerns that the City not overly, aggressively give citations to residents whose dogs did things a few times in violation of the ordinance without their owners' knowledge. City Attorney Wetzler said that the City

Prosecutor had discretion as to the level of enforcement of violations and municipal court had discretion as to what penalties it would impose. He said that if the Council felt that municipal court penalties were too severe, they would have an opportunity to change the ordinance.

Ordinance was passed unanimously on roll call vote.

5703 **Discussion of 135th Street Corridor Plan.** So there would be no misunderstanding with regard to the Governing Body's intent for development in the 135th Street Corridor, it was Councilmember Bussing's desire that:

1. the Governing Body accept the leadership challenge identified in the 135th Street Corridor Plan and reaffirm the City's commitment to the goals, strategies, and ideals of the Plan;
2. the Governing Body ask the Plan Commission to also reaffirm their understanding of and commitment to the Plan since their membership had changed since 1997; and
3. the Governing Body direct the Planning Department to adhere as closely as possible to the letter and spirit of the Plan, and to that extent, Mr. Bussing asked that for any proposed development within the Corridor, the Planning Department be directed to provide the Governing Body and the Plan Commission with written documentation describing specifically how the proposed development complied with the goals of the Corridor Plan.

Councilmember Rasmussen moved to vote consensus for all 3 points, seconded by Bold. Councilmember Taylor wanted to know what had happened to the decorative lighting standards that were proposed in the Plan. He remembered that Public Works Director Johnson said some time ago that the Plan came after the approval and funding of the improvements to 135th Street, so different lighting which was already purchased and stockpiled was installed. Mr. Taylor hoped that those standards could be reinstated in the future so developers could install them along roads fronting the Corridor and replace the current lights along 135th St. Planning Director McKay said that staff had talked about decorative lighting for 133rd and 137th Streets.

Mr. Rasmussen's motion carried unanimously.

NEW BUSINESS

5907 **Approval of Appropriation Ordinance No. 862.** On motion of Rasmussen, seconded by Dunn, Council unanimously approved the ordinance on roll call vote.

6148 **Authorize interlocal agreement with Johnson County for engineering design of stormwater management SMAC project, DB-04-014, Phase II (83rd & Sagamore south to Lee Blvd. and 86th Terr.), design to be done in 1999.** Councilmember Dunn moved to approve the agreement, seconded by Taylor. There was discussion about waiting to consider the interlocal agreement until after the 2000 budget process in 1 month to see if the Council would approve necessary funding for construction in 2000. Councilmember Bold said he wanted to see all requested expenditures for 2000. He noted that there had been several times in the past where Council had approved design and then didn't have the money to do construction. Mr. Bold said that if Council didn't approve construction money for the

project, then expending money for design was just money down the drain. City Administrator Garofano said the Council had already committed to doing the project, and staff was just taking it step by step to get it completed. The Council had already approved a preliminary design study, and design was next. Staff had advised Council many times in the past that the usual \$300,000 annually allocated for stormwater projects simply wasn't enough to cover large projects. If Council decided not to fund the construction in 2000, then the plans would be shelved until such time as Council was ready to fund the project. If Council didn't want to proceed on projects step by step, staff should have been so advised steps ago.

Councilmember Rasmussen said that engineering costs were extremely expensive for the project. He asked why the City should pay for right-of-way acquisition; if a project benefitted certain residents (this project not being done for safety reasons), why should taxpayers pay for the right-of-way costs. Mr. Rasmussen suggested taking the preliminary engineering design to the residents and asking them if they really wanted the project and would give the City right-of-way at no cost to the taxpayers. City Engineer Pourazari said that a majority of residents were in favor of the project; there was money set aside to hire a right-of-way agent to acquire the necessary drainage easements since City staff didn't have the manpower to do so; the money was not for the purposes of negotiating for right-of-way. He said that staff would not have proposed the project for SMAC funding if they knew that people in the neighborhood were not willing to grant the necessary easements to build the project. Mr. Rasmussen was concerned that it would cost \$250,000 for a right-of-way agent; did the City want to spend and commit to an additional \$250,000 without having the right-of-way for the project.

Councilmember Dunn said he understood that engineering for these types of projects was a major expense; engineers served in a different role than engineers did in design of a building, with a much more hands-on approach and much more involved. He felt it was contrary to the City's best interest to not do major projects when the City had the opportunity of SMAC funding. The project was before the Council because the Council asked for it to be placed in the SMAC schedule, and design was the next step in getting the project completed.

Mr. Pourazari said that Council could postpone the matter until after the preliminary engineering study was completed, probably sometime in August. Mr. Garofano repeated that he believed that the City was committed to the project at least through the design phase. He didn't know the result of a delay in approving the interlocal agreement with the County for another 4-6 weeks.

7422 11:00 P.M. On motion of Bussing, seconded by Taylor, Council unanimously voted to extend the meeting to 11:30 P.M.

Mr. Garofano said that if Council wanted to stop projects until they received commitments for right-of-way/easements, a change from past procedure, they needed to let staff know about that also; staff had proceeded with this project as they had with other projects. He said that staff wouldn't know what the right-of-way requirements were legally (with a legal description) because final design hadn't been completed; preliminary design didn't legally define the requirements.

7530 Councilmember Dunn said that to expect residents to sign a right-of-way document without seeing the final design was unrealistic.

Mr. Dunn's motion to approve the interlocal agreement, estimated cost of \$325,406.00 for design with the City being reimbursed 75% by SMAC, carried; Rasmussen opposed, all others in favor.

7600 **KDOT form "Request for Construction Project" for the City's improvements to the intersection of 119th and Mission Rd.** On motion of Rasmussen, seconded by Bussing, Council unanimously authorized the execution of the form so the City could proceed with design and review by KDOT.

7662 **Approve bid/authorize contract for boundary (right-of-way) survey for the 2000 Street Improvement Program.** On motion of Rasmussen, seconded by Bussing, Council unanimously approved a contract with the low bidder Allen Klinkenborg Associates in the amount of \$16,185.00.

7777 **Ordinance No. 1797C adopting the 1998 edition of the "Uniform Public Offense Code for Kansas Cities."** On motion of Rasmussen, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1798C amending Section 11-201 of the Code of the City of Leawood relating to penalties for local public offense violations. On motion of Bold, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1799C amending Section 11-606 of the Code of the City of Leawood relating to penalties for drug offenses. On motion of Bold, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1800C adopting the 1998 edition of the "Standard Traffic Ordinance." On motion of Bold, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1801C amending Section 14-201 of the Code of the City of Leawood relating to penalties for violations of local traffic regulations. On motion of Dunn, seconded by Bold, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1802C amending Sections 14-301 and 14-302 of the Code of the City of Leawood relating to parking of certain vehicles. On motion of Rawlings, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

7925 **Discussion regarding organizational review.** Councilmember Dunn said that several Councilmembers had asked questions as to how the Governing Body could test the efficiency and effectiveness of what the Governing Body and staff did as a City as a whole. He wanted to find a way to find a common foundation for going forward with some understanding of how operations took place and some assurance that they took place in the most efficient way possible. He felt there should be an organizational review with the Council, the City

Administrator and principal staff members. He asked that the Council schedule a meeting with a firm that conducted such reviews. He moved that a meeting be scheduled with the firm FBD (Fringe Benefit Designs) on June 14th at 7:30 P.M. for a presentation on what an organizational review could do for the City, seconded by Taylor. Motion carried unanimously.

8278 **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 45 minutes to discuss litigation, land acquisition, and a matter under attorney-client privilege.

8314 **OTHER BUSINESS.** Discussion of the purchase of police motorcycles. Police Chief Mitchell requested purchase of 2 Harley Davidson Road Kings (typical police motorcycles) from the low bidder Worth Harley Davidson in Belton, Missouri, \$12,500 each, to be paid from the special law enforcement fund (not budgeted money, but money generated by forfeitures and seizures). Motorcycles made sense at this time due to increased traffic congestion and in an effort to conserve costs. He added that he thought his staff might be able to adapt a camera feature to the motorcycles for protection. The purchase wouldn't create a need for additional personnel, just some reassignments.

Councilmember Taylor moved to approve the purchase, seconded by Dunn. Councilmember Bussing felt that \$25,000 was a lot of money regardless of the source of funding. He needed more information on the benefits of having motorcycle patrolmen, wanted a little more detail on how patrolmen would be protected and what the ongoing costs of maintaining a Harley Davidson would be.

Chief Mitchell said there was a motorcycle school scheduled in September in Kansas City and he needed the motorcycles to enroll his staff in the school. The deadline was rapidly approaching for guaranteed delivery of the cycles by that time. He said that the motorcycles would be used for traffic enforcement, accident investigation, security for various events.

Motion carried; Bussing opposed, all others in favor.

8830 11:30 P.M. On motion of Dunn, seconded by Story, Council voted unanimously to extend the meeting to 12:00 A.M.

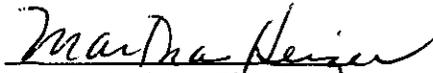
8846 Discussion of Sarah Hilton's memo regarding surplus furniture. (Answer to Councilmember Taylor's question at the May 3rd Council meeting.) Mrs. Hilton explained that John A. Marshall Co. didn't design the Public Works quadrant of City Hall correctly in 1997 and too much furniture was purchased from the company. The City didn't pay for the furniture it didn't need, ending up with extra furniture valued at approximately \$7,000 at no cost. Mr. Taylor wanted to know why the City didn't take a credit against the overall contract. City Administrator Garofano said that staff tried to save some money by having the furniture company design the quadrant rather than having the architect do the furniture design, and that was a mistake. Staff wanted to declare the furniture surplus property in order to get rid of it. Mr. Garofano said that if the City could use any of the pieces, it would be doing so. The majority of the pieces were metal frames.

9054

Discussion of City Administrator's memo regarding 4 change orders for the Aquatic Center's bathhouse remodeling at Leawood City Park. Councilmember Taylor wanted to be sure that the City didn't approve any additional fees to the architect for the increase in costs due to change orders. Chris Claxton of Parks & Recreation said that had already been noted.

9155

11:45 P.M. Council convened in executive session and returned to regular session at 12:25 A.M. There being no further business before the Council, the meeting was adjourned.


Martha Heizer, City Clerk



Minutes Summary

Audio Tape No. 459

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 7, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Shelby Story was absent.

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, Public Works Director; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Interim Director of Parks & 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 Taylor, seconded by Gill, after the addition of 1) an executive session at the end of the meeting to discuss a personnel matter and litigation matters, 2) an update on Mission Rd. improvements, and 3) a discussion of a possible assignment to the Public Works Committee relating to a concern for pedestrian traffic on Tomahawk Creek trail near Tomahawk Creek Parkway.

RECOGNITION OF FORMER COUNCILMEMBER MARNIE CLAWSON FOR HER YEARS OF SERVICE TO THE PUBLIC WORKS DEPARTMENT AND PUBLIC WORKS COMMITTEE. Public Works Director Johnson presented a plaque to Mrs. Clawson in recognition of her service as a member of the Public Works Committee from 1995 to 1999, chairman of the Committee from 1996 to 1999.

PROCLAMATIONS. The Mayor proclaimed:

1. June 21-25, 1999, as "American Society of Certified Engineering Technicians Week."
2. June 14, 1999, as "Flag Day" with a Pause for the Pledge of Allegiance on that day.

CITIZEN COMMENTS. None.

415

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

1. Minutes of the April 5, 1999, Council meeting;
2. Minutes of the April 19, 1999, Council meeting;
3. Arts Council report (minutes) on their April 27, 1999, meeting;
4. Arts Council report (minutes) on their May 25, 1999, meeting;
5. Historic Commission report (minutes) on their May 11, 1999, meeting;
6. Purchase of Kansas City Wizards soccer game tickets in the amount of \$15,492.00 to be utilized as a portion of the awards for the City's spring soccer program.

Golf Course Committee report (minutes) on their April 28, 1999, meeting.

Councilmember Rasmussen asked if the City had received the contract from developer Mark Simpson for the access road construction from basically 151st St. down to the sewer district right-of-way, and if the City had received the right-of-way across the sewer district property, both of which the City should have received some time ago. Interim Parks & Recreation Director Claxton said the City hadn't received them. City Administrator Garofano said that the wastewater district didn't seem interested in simply dedicating an easement to the City, but were interested in selling the City 7 acres of ground, far beyond what the City had initially talked to the district about in terms of an easement. He said the City wasn't interested in purchasing ground so staff would have to go back to the point of trying to obtain the easement from the district as opposed to the 7 acres of ground the district looked to convey to the City. He felt that the easement was still on the table for discussion.

AND

Ad hoc Stormwater Management Committee report (minutes) on their May 20, 1999, meeting. Councilmember Rasmussen informed the Council about the ad hoc Committee's progress. He said one thing had justified the appointment of the Committee – there was some suspicion that the City's standards relative to stormwater level were inadequate. Storm sewers in subdivisions were essentially designed for 10-year storms, bridges for 25-year storms, retention ponds for 25-year storms. Comments had been made in Committee that perhaps it wasn't the standards that were the problem, but the stormwater engineering within the subdivisions was inadequate. He didn't want the Council to be surprised if the Committee didn't recommend any changes in the City's standards.

On motion of Rasmussen, seconded by Dunn, Council unanimously approved both reports.

Declaration of surplus property. There was clarification that a 1988 asphalt crackfiller would be traded in for a new hot pour crackfilling machine which was approved in the 1999 budget, and that Public Works requested that the old machine be

declared surplus property so the trade-in could occur. On motion of Dunn, seconded by Taylor, Council unanimously declared the following equipment no longer needed by Public Works and Parks & Recreation as surplus property:

1. a 1988 asphalt crackfiller
2. 2 1988 Toyota pickup trucks (VIN 5699 and 5492)
3. a 1993 72" Woods rotary mower (tractor pulled)
4. a 1988 48" John Deere walk behind mower
5. 2 Sears push lawn mowers
6. 4 Lawnboy push lawn mowers
7. 10 chaise lounges (pool furniture)
8. 12 pool chairs

Nos. 2 through 8 to be sold at June auction.

Resolution No. 1462, attached as part of the record, approving the final plat of Steeplechase 2nd Plat located at approximately 143rd and Mission Rd. Councilmember Rasmussen wondered if there was any indication on the part of Parks & Recreation or Planning staff as to where fencing might be placed to surround the City's South Park. Were there any standards to be established for consistency? Would there be fencing at all? To Interim Parks & Recreation Director Claxton's knowledge, the issue hadn't been addressed, still being in the master plan phase for the Park, but it was a valid concern to be looked into further in the design stage. Mr. Rasmussen said that a Whereas clause of the resolution indicated that the developer agreed to limit fencing to wrought iron or aluminum fencing adjacent to the Park, or he wouldn't have to put up fencing at all. He wondered if the City had a standard for fencing around the Park similar to fencing standards at the golf course. Planning Director McKay said that if the City wanted to establish perimeter fencing for the Park itself, that would be fine. He said that Steeplechase subdivision had been around a long time and when it was started, the City didn't have the park land. Steeplechase was R-1 zoning which didn't have the same planning requirements. Property owners who backed up to the Park had the right to put up a 4-foot wooden or wrought iron fence. He thought perhaps staff was being asked to consider standardized material and height, adopt a uniform standard before the master plan was completed, and that would be fine. Mr. McKay said that it would be appropriate to remove the Whereas clause and add it as a stipulation, but that wouldn't establish a height for the fence. Mr. McKay noted that the Plan Commission was working on a fence ordinance amendment.

Casey Hill of Pulte Homes said it was his understanding that Pulte Homes would restrict anyone who wanted to place a fence along the boundary of the Park at their rear lot to a 6-foot aluminum/wrought iron fence, same style currently at Steeplechase. They weren't going to fence the entire perimeter of Steeplechase. Mr. McKay said that was an issue that would be debated. Did the City want to restrict access to the South Park; if so, it should probably be mandatory that the fences be placed or the City would go back in and plug the holes.

Mr. Hill said that the 2nd Plat had very little of the perimeter of the Park. Future plats would have several more lots adjacent to the Park. Councilmember Taylor urged that the matter be sent back to the Plan Commission and staff to consider a standard that would be acceptable. The Mayor said that an additional stipulation could read that if the Plan Commission completed its fencing ordinance amendment, then the developer would indeed put up the aluminum fencing per their recommendation. Mr. Casey said he couldn't agree with such a stipulation. He said it was still uncertain as to what the Park would be, didn't seem right to necessarily restrict access to it when it was an unknown, and many people who backed up to open space didn't want a fence.

Mr. Taylor moved that as a condition of approval, the developer would immediately install at his expense a 6-foot fence on the perimeter of all Steeplechase lots adjacent to the Park, seconded by Rasmussen. Mr. Rasmussen seconded the motion because Mr. Hill said he wasn't willing to return to the Plan Commission and let that group and staff decide.

Mr. McKay noted that one of the reasons the Plan Commission was reviewing the fence ordinance was to try to create an "open" Leawood, and Council was talking about making it mandatory that all properties along the South Park needed to be fenced. That was an issue, not only for the Plan Commission, but also for the Parks & Recreation Advisory Board and other staff.

Councilmember Dunn understood the feelings for uniform fence standards for the South Park and a remand to the Plan Commission, but felt that all Council had to do to approve the development was to get the developer's commitment that whatever the standard the Plan Commission decided on for a fence, he would comply with. Mr. Dunn agreed with modifying the resolution to require that the developer commit to complying with whatever standard the Plan Commission decided on for perimeter fencing for anyone desiring to put up a fence, but he didn't want to put the plan off for the purpose of seeing if the Plan Commission wanted to put a perimeter fence around the whole park. That was a much larger issue that would take some time.

Councilmember Bussing felt it was an unreasonable request to hold the developer to a standard that didn't exist. If the City decided in the future that it wanted to set a standard for fencing around the park, then it should be established and any development from that point on should be held to the standard. Pulte Homes had met the requirements of the City's ordinances and requested Council approval; it wasn't fair to "hold the developer hostage."

Regarding the final plan that would be developed for the park, Councilmember Taylor felt that the designer/consultant would probably recommend a perimeter security fence for control that would eliminate people going through adjacent residential properties into the park.

Mr. Bussing didn't see any rationale for enclosing a public park, unlike a golf course.

Mr. Rasmussen said he wanted the Whereas in question to be part of the condition of approval – that the developer limit fencing to wrought iron or aluminum fencing adjacent to the park which the developer had agreed to. Then wait until the Plan Commission and the Parks & Recreation Advisory Board decided whether there would be fencing at all.

Mr. Hill said that he had agreed that if individual lot owners wanted to put up a fence, would put up a certain type of fence which was outlined in the resolution. He didn't agree to putting up the fence himself.

Mr. Taylor and Mr. Rasmussen withdrew motion and second.

1448

Councilmember Gill moved to add stipulation of approval #12 to state that the developer agreed to limit fencing to wrought iron or aluminum fencing adjacent to the park, seconded by Dunn. Mr. Gill said that obviously whenever fences were put in, residents would be subject to whatever ordinance requirements were in existence at that time including height. Mr. Hill said that as he marketed and conveyed lots, he would disclose the type of fencing required if residents chose to put them up, and would adhere to whatever changes in requirements the Parks & Recreation Department might come up with and mandate that that type of fencing be put up. He agreed to stipulation #12. Mr. Gill's motion carried unanimously.

On motion of Rasmussen, seconded by Taylor, Council unanimously adopted the resolution with additional stipulation #12.

PLAN COMMISSION

1552

Ordinance No. 1803 amending Section 4-5 of the Leawood Development Ordinance relating to sign regulations (entry monuments and letter size). On motion of Rasmussen, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

1680

MAYOR'S REPORT. The Mayor reported that the Leawood Woman's Club donated \$1,200 for the Oxford Schoolhouse relocation project, \$2,400 to the Fire Department, \$2,400 to the Police Department, \$350 to the D.A.R.E. program. The City received a check for \$80.62 from the Mayor's Christmas Tree Bowling Tournament sponsored by the Bowling Council of Greater Kansas City.

The Historic Commission received a \$10,000 grant from the KC150 Anniversary Legacy Fund for the relocation and restoration of the Oxford Schoolhouse.

OLD BUSINESS

1870

Request by AMC Town Center 20 theaters for a modification in show scheduling. AMC requested the Council consider a slight modification to the restriction placed on the theaters at the February 20, 1996, Council meeting – no movies to start later than 10:45 P.M. as a condition of approval for the construction of the theaters. In order to give the flow of traffic and theater operations some breathing room, AMC asked that the outside time for show starts be extended to 11:00 P.M. The intent of the request was not to add an additional round of late night movies but to aid in the balanced flow of both vehicular and pedestrian traffic through the facility during the early performance times.

Frank Rash, Senior Vice President of Real Estate for AMC, said he had agreed to the original time limitation, but it quickly became clear after the theaters opened that the restriction placed a burden on operations and on vehicular and pedestrian traffic in and around the property. He explained the problems.

Councilmember Gill asked what had changed since the original approval of the theater complex that was unplanned or unanticipated, and was the parking and traffic underplanned looking back in hindsight because there had been a great deal of discussion and assurance given by the traffic engineers that parking and traffic were more than adequately provided for. Mr. Rash explained that their market share had grown from 50% to close to 80% which wasn't foreseen to occur in the near term and which precipitated some of the problems. He perceived traffic flow, not parking, as a problem. The primary problem was the scheduling in late afternoon, early evening. The Mayor noted that Mr. Rash had requested an extension to 11:30 P.M. in April 1998 which was denied, and wondered if 11:00 P.M. was the final request or would he be back before the Council in the future with another time extension request.

In response to Councilmember Taylor, Planning Director McKay said that he authorized a recent showing of Star Wars at midnight as a short-term special use/event as City ordinance allowed him to do because of a national promotion for the movie. Mr. Taylor said there was a Council meeting shortly before that movie presentation, and he wanted to know why the Council wasn't given an opportunity to take action on the matter since they had decided that movies wouldn't start later than 10:45 P.M. Mr. McKay explained that he issued short-term special use permits based on special events, and he had done that for 12 years. Other such events would be analyzed before he would issue a short-term special use.

2526 Councilmember Bold felt that once a business located in the City, the City had an obligation to try and help that business be as successful as possible within the guidelines of standards that were appropriate for Leawood residents and protecting residents. He understood the rationale of the previous Council when they set the time limit of 10:45 P.M., but Council had to look at what was happening now, for instance traffic congestion, and try to relieve the problems.

2784 Chug Tuttle, 5109 W. 111th St. in Leawood Country Manor, felt it would be a bad precedent to change the restriction.

2831 Mr. Bold moved to approve the request to change the last movie start time to 11:00 P.M., seconded by Bussing.

3068 Councilmember Rasmussen moved to amend the motion to put the change in effect for a period of 6 months and ask Planning and Police staff to let the Council know at the end of that period of time if there was any improvement or decrease in traffic flow. Motion seconded by Taylor. At the end of 6 months, AMC, City staff and area residents would return to the Council with presentations. Motion to amend carried unanimously.

Mr. Bold's motion as amended carried unanimously. Mr. Gill asked AMC to do a baseline going back for 3 months showing how many start times there had been to this point in time, and a comparison of the number of start times with the expanded hours. Mr. Gill said he would be looking for perceptable, noticeable improvement, and if he didn't sense improvement from observable conditions that he experienced himself and if he heard residents say that they remained concerned about the various problems such as traffic through the neighborhoods after late hours, he wouldn't be persuaded.

3460

Discussion of possible improvement district for Normandy Place subdivision for improvements to streets and storm sewers for conversion of private streets to public. Two proposed petitions for the creation of improvement districts were distributed to the Council. One would be paid 100% by the property owners and would allow the subdivision to make repairs to the storm sewers and overlay all streets, eliminating maintenance costs for 7 to 8 years at which time the streets would be slurry sealed; estimated cost, \$139,140.00. The second petition was for the outside chance that the wingwall on the culvert under the street would need any additional work other than what was proposed in the first petition; estimated cost, \$90,750.00, with the city-at-large paying a portion. It was unlikely that it would be needed. William Chiles, 12816 Cedar in Normandy Place, addressed the Council and described the improvements. The matter was before the Council for discussion only and approval of the concept of a benefit district, not for acceptance of a petition. Since an improvement district couldn't be formed on private streets, there would have to be an agreement that included conveyance of the streets as public and petition at the same time so the City would have the ability to be sure the improvements were completed and assessed 100% to the district.

Councilmember Taylor moved to approve the concept of a benefit district and an agreement that would be coupled with the petition that would accept the streets as public, seconded by Bold. Motion carried unanimously.

NEW BUSINESS

3765

Approval of Appropriation Ordinance No. 863. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 864. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

4100

Approval of Leawood City Park plan for Park renovation. The plan included the elimination of a proposed pedestrian tunnel, Lee Boulevard (as it came from Mission Road to the Park) realigned to the south, and all parking along that route moved to the north of Lee. The plan also allowed for a t-intersection and three-way stop with left turn lanes. Councilmember Dunn moved to approve the plan, seconded by Rasmussen. In response to Councilmember Bold, Interim Parks & Recreation Director Claxton felt that staff had addressed all parking issues for adequate and safe parking. Motion carried unanimously.

4355 **Authorize addendum to engineering contract with George Butler Associates in the amount of \$24,403.80 for completion of inspection of Sanitary Sewer Rehabilitation Project, Phase 4, required for the transfer of the Leawood Sewer System to Johnson County Wastewater District. On motion of Rasmussen, seconded by Gill, Council unanimously approved the addendum.**

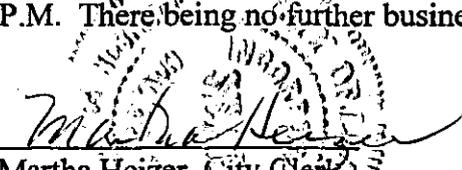
4460 **OTHER BUSINESS. Update on Mission Road improvements, 103rd St. to I-435. Public Works Director Johnson said that barring heavy rains, there should be access from the south by the end of the month, providing access to the City Park. In the event rains occurred, a temporary access would be provided for the 4th of July. The contractor should start paving the southbound lanes next week, so the south 3 quarters of the project would be all concrete. The contractor estimated the road would be done end of July, first half of August, with access for full use of the road. Seeding/sodding would be done late fall, and staff would look into updating the landscape plans and finalizing and bidding them out for fall and spring plantings.**

4575 **Executive Session. On motion of Bussing, seconded by Taylor, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 45 minutes to discuss 2 litigation matters and a personnel matter.**

4600 **Discussion of concern for pedestrian traffic on Tomahawk Creek trail versus Tomahawk Creek Parkway automobiles – Mayor's concern about the short distance without curbs and wondering about a highway guardrail similar to what was north of College Blvd. on Tomahawk Creek Parkway. Public Works could install a guardrail for approximately \$1,000. There hadn't been any accidents where vehicles had misjudged the road or swerved off the road, ending up on the park trail. Councilmember Taylor moved to refer the matter to the Public Works Committee for further analysis, seconded by Gill. Motion carried unanimously.**

Citations to pedestrians/joggers on Tomahawk Creek Parkway. Police Captain Hill said that City ordinance stated that if there was a sidewalk available, joggers had the right to jog on the sidewalk. If for some reason the sidewalk ended and picked up on down the road, they had the right to jog to that next section of sidewalk along the curb. But if they were jogging on the roadway and to their right was a sidewalk, they were in violation of ordinance. Police officers would issue warnings for an additional week to educate the public and would then start issuing citations. Captain Hill would contact the press and contact apartment residents and anyone else along the Parkway.

4840 **10:00 P.M. Council convened in executive session and returned to regular session at 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. 460

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:40 p.m., Monday, June 21, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Louis Rasmussen, and James E. Taylor, Sr. Mike Gill was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Sarah Hilton, Special Projects Coordinator/Management Assistant; Captain Craig Hill, Police Department; Joe Johnson, Public Works Director; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Interim Director of Parks & 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 Rasmussen, seconded by Taylor, after the addition of an executive session at the end of the meeting to discuss a personnel matter.

PRESENTATION OF LIFE SAVING AWARDS TO LEAWOOD POLICE

OFFICERS JASON ARHING AND MATT BROWN. The officers saved a man's life in the afternoon of May 29th near 103rd and Pawnee. Police Captain Craig Hill presented the life saving award to Officer Matt Brown, and Major Bob Ahring of the Blue Springs, Missouri Police Department presented the same award to his son Officer Jason Arhing.

PRESENTATION ON AND ACCEPTANCE OF THE 1998 COMPREHENSIVE ANNUAL FINANCIAL REPORT (AUDIT).

Drew Blossom of KPMG Peat Marwick audit firm described the sections of the CAFR booklet which had been distributed to the Governing Body. He also described the management letter which indicated that 5 of 6 of the auditors' prior year recommendations had been corrected. On motion of Taylor, seconded by Dunn, Council unanimously accepted the report.

PROCLAMATION. The Mayor proclaimed June 21-27, 1999, as "Amateur Radio Week."

CITIZEN COMMENTS. Chug Tuttle, 5109 W. 111th Terr., spoke about joggers and sidewalks. It was more difficult for joggers to run on concrete sidewalks, so they used the streets. And there were some sidewalks that weren't safe. It seemed to him that Leawood had taken a negative approach to pedestrian traffic. He didn't feel the City did a good job of

enforcing its ordinances regarding safe sidewalks. But the City chose at times to enforce pedestrian laws. Not very consistent. The City needed to take a more positive stance to accommodate increasing pedestrian traffic. He suggested the City adopt a policy to construct and replace all future sidewalks along major thoroughfares and that they be constructed of asphalt which would encourage runners to use sidewalks instead of streets. He also thought the City could place asphalt over the existing concrete sidewalks along Tomahawk Creek Parkway to decrease the number of runners using the Parkway.

Cindy Dippel, 12717 Briar, requested that the City require the developer of the proposed Highlands Creek subdivision to change the name of the development to avoid so much confusion. She lived in the Highlands of Leawood and she and her neighbors enjoyed their individuality. And there was already one other "Highlands" – Highlands Ranch subdivision.

Jeff Leiserowitz, 4969 W. 132nd Terr., spoke about traffic problems in Bridgewood subdivision, particularly speeding along 132nd Terr. between Nall and Roe. He requested that a traffic calming device be considered. On motion of Bold, seconded by Taylor, Council voted unanimously to assign the matter to the Public Works Committee for study. Mr. Bold asked if the Police Department could in the meantime take the radar trailer to the subdivision to remind drivers to slow down. Mr. Leiserowitz noted that most of the speeding occurred on weekends, weeknights and during the summer.

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Minutes of the May 3, 1999, Council meeting;
2. Golf Course Committee report (minutes) on their May 27, 1999 meeting;
3. Parks & Recreation Advisory Board report (minutes) on their May 11, 1999 meeting;
4. Parks & Recreation Advisory Board report (minutes) on their June 8, 1999 meeting;
5. Ad hoc Stormwater Management Committee report (minutes) on their June 3, 1999 meeting;
6. Departmental reports;
7. Pay Request No. 13 (FINAL) from Atcheson Lawn & Landscape in the amount of \$23,085.49 for College Blvd. landscaping and site improvements;
8. Payment to Wald and Company in the amount of \$15,000 for July 4th fireworks display.

Revision to group admission policies for Leawood Aquatic Center at Leawood City Park to accommodate Leawood children; revision for Brookwood Camp only. The Mayor was glad that the children would have 2 days a week to swim and hoped that Interim Parks & Recreation Director Claxton would keep an open mind to perhaps people who purchased a family membership being able to use it 2 days. On motion of Taylor, seconded by Rawlings, Council unanimously approved the revision.

PLAN COMMISSION

894 **Resolution No. 1463, attached as part of the record, approving request for rezoning from AG to R-1, and preliminary plat and final plat for Mission View 2nd Plat, 12000 Mission Rd. Adopted unanimously on motion of Rasmussen, seconded by Dunn.**

Ordinance No. 1804 rezoning from AG to R-1, Mission View 2nd Plat, 12000 Mission Rd. On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

966 **Resolution relating to request for rezoning from AG to RP-1 and preliminary site plan and preliminary plat approval for Highlands Creek, approximately southeast corner of 143rd and Nall Ave. Developer Don Donohoo representing the Highlands Group gave a presentation. He said there was a detention pond, and realizing the Council's concerns about storm drainage, he decided from the beginning to include a detailed storm drainage study in the original submittal. Such a study would typically be included in the final engineering for the final plat. Both the City's engineer and engineers hired by some surrounding neighbors reviewed the study and suggested some changes, and those changes were incorporated in the plan. He believed he was in full compliance with the City's requirements, and had the City Engineer's approval of his handling of stormwater, including the design and location of the detention pond.**

Councilmember Taylor asked if there was any concern about stormwater runoff from the Lion's Gate development in Overland Park. Would the developer and the City be able to handle the runoff from that development? Mr. Donohoo said he wouldn't be able to handle the excess runoff, and didn't believe he should be required to do so. Mr. Donohoo said that Overland Park didn't believe at the present time that there was need for a major detention area. He didn't actually believe there was a need for detention of the magnitude he proposed for his own project. He said there was no downstream flooding that would require his project's detention, but would still provide detention because he wanted to be a good neighbor.

City Engineer Pourazari said that if property owners downstream to the east of Highlands Creek could produce documentation (of existing conditions, not future conditions, as Mr. Taylor understood Pourazari to say) that their properties had flooded, Overland Park might consider placing some requirements on the developer of Lion's Gate to provide on-site detention in the final plat process in the City of Overland Park (the preliminary plat had already been approved). Mr. Taylor was concerned about stormwater runoff for the fully developed properties of Lion's Gate on the west side of Nall and those on the east of Nall, and asked if Leawood didn't have some type of cooperation agreement with Overland Park or some input in the matter. The Mayor said that when the final phase of Highlands Creek was submitted to the City, the Plan Commission planned to look at the issue, and there was space for additional detention and retention that would be analyzed at that time. Mr. Pourazari said that Leawood required that runoff from Overland Park would be routed through Highlands Creek and go downstream as it had done. The flooding problems experienced by property owners to the east of Highlands were really caused by the drainage basin to the north of 143rd St., north of Worthington.

Regarding the Baptist Church site at the northwest corner of the property, Mr. Donohoo said there wouldn't be a change in his site plan - it had already been adjusted with respect to the City's comments regarding both sites. And Mr. Donohoo's detention pond provided capacity for the church site; whatever the development of the site, that ground was sized into his study for detention. Regarding runoff from Lion's Gate - Mr. Donohoo said that since Leawood and Overland Park would be making improvements to Nall Ave., and runoff would go under Nall through a culvert, he thought that Leawood would have some control sizing the culvert, a position of strength from which to negotiate, but he didn't feel that Highlands could be asked to provide their (Overland Park's) storage.

Councilmember Bold asked who would be responsible for the siltation management of the pond. Mr. Donohoo said that the homes association would be responsible for maintaining the detention pond; maintenance funds would be part of the homes association dues. Mr. Bold expected silt and debris from Lion's Gate and that the pond would fill up very quickly. He asked who would pay for that cleanup and would there be a separate funding pool required for the siltation management. Mr. Donohoo said that initially that management would be a development expense because the homes association wouldn't be able to generate enough funds. When he initially turned the development over to the homes association, he would determine a certain portion of the association payment from each homeowner to be earmarked for that purpose, but ultimately, when the homeowners had complete control, they could make the decision as to whether or not they wanted to earmark funds for siltation management.

Mr. Donohoo noted that he moved the pond more to the east boundary instead of more to the west of the central location to try to satisfy potential concerns of the City and actual concerns of the downstream homeowners.

2060

Chris Wally, 4501 W. 143rd St., second property owner east of the Highlands Creek project, expected that APWA standards he had heard about in the past (especially during 1993 Plan Commission/Council discussions about the Worthington subdivision north of him) be adhered to and enforced. He said that neither he nor his neighbors could go to Overland Park and say that their homes flooded today (that might change in the future), but they could say that access to their homes flooded today. He didn't feel the City had enforced the APWA standards with respect to Worthington; he showed pictures of flooding from stormwater coming from Worthington, which would probably get worse because Worthington wasn't fully developed. As far as Highlands Creek was concerned, he didn't want a repeat of the "Worthington" experience. Mr. Wally asked that the water that came off of Highlands Creek onto his neighbor to the west and all of his neighbors to the east not exceed the amount of discharge that there was presently.

2233

Harry Wigner of Lathrop & Gage law firm, attorney for Mr. Wally, engaged the services of Dr. David Parr, Professor of Engineering at the University of Kansas and expert on stormwater drainage, for advice on lingering problems from Worthington and what should be incorporated into the planning for Highlands Creek and other undeveloped areas, even though Mr. Wally felt it was the City's responsibility to do the engineering and enforce its own ordinances. Mr. Wigner talked about Dr. Parr's suggestions. Mr. Donohoo's revised

plan didn't incorporate all of Dr. Parr's recommendations. Mr. Wally was told at a Plan Commission meeting that City staff was going to talk to Overland Park and ask them to be a good neighbor and require detention on Lion's Gate so Leawood wouldn't have to require the additional changes suggested by Dr. Parr. The only way to get Overland Park to require detention (which they currently didn't do) was to actually show that Mr. Wally's house was flooded. Mr. Wigner asked that the Council either remand the matter to the Plan Commission to give him a chance to study a letter from the City Engineer which was referred to in the Planning staff report or until the City completed a stormwater study to take to Overland Park to see if Overland Park would do anything, or condition any approval of the rezoning application upon the City staff forcing the developer to do what Dr. Parr suggested before final design – namely, that the pond spillway be raised 1.4 feet and use 3 instead of 4 outlet pipes, a suggestion which was ignored. Mr. Wigner distributed Dr. Parr's suggestions to the Council. Mr. Donohoo said he was happy to rely on the City Engineer's judgement, so a condition of approval should be based on what City staff came up with and not on what Mr. Donohoo's engineers or some other engineers came up with.

City Engineer Pourazari said that City staff didn't want to have liability for the contents of the drainage study; they had criteria and standard procedures that they followed to determine if study submitted was in compliance. The drainage study was sealed by a registered professional engineer working for the developer, and based on his expertise, he was certifying, based on Mr. Pourazari's calculations, that that was the location of the spillway, etc. That was adequate for the Public Works Department. If Council chose to place a stipulation that the spillway should be designed and constructed 1.4 feet higher and reduce the number of outlet pipes to 3, there could be legal problems in the future. Mr. Pourazari didn't think a decision needed to be made tonight, to place a stipulation on a preliminary drainage study.

2925 Mr. Taylor wanted to incorporate Dr. Parr's engineering suggestions raising the spillway 1.4 feet and eliminating 1 of the discharge pipes, and additional studies supporting Dr. Parr's conclusions. There was discussion of wording for a condition. Mr. Wigner asked as a condition that the final drainage study made sure that Overland Park's stormwater drainage coming from Lion's Gate also be detained somewhere whether by re-engineering the detention pond, 1.4 feet or whatever, or by obtaining Overland Park's agreement to do it, or by a second pond which Mr. Donohoo offered at the Plan Commission meeting. Mr. Wigner said that his engineer felt that by making a very minor modification, the Overland Park problem could be taken care of. The City didn't take care of the Worthington problem when it could have; the City was now being asked to take care of the Highlands Creek problem. After further discussion, Mr. Taylor said he wanted to make sure that whatever the engineering requirements were, it was a condition that the developer and the downstream property owners agreed with them.

3115 Councilmember Rasmussen moved to continue the matter until the next Council meeting for the specific purpose of bringing before the Council an engineering study that outlined the responsibility of Highlands Creek, and if there was any additional water responsibility, whose was it. What was the effect of the development in Overland Park, what was the effect of the Highlands only which Mr. Rasmussen assumed the developer's engineers designed in accordance with City ordinances. Motion seconded by Taylor.

3171 Dr. Joe Waeckerle, 4601 W. 143rd St. (downstream property owner), wanted assurance that he could get across his property and have access to his property. He wanted guarantee as a property owner and taxpayer of Leawood that there be no adverse impact on his property from future developments surrounding his property.

3387 Councilmember Bold suggested continuing the matter longer than 2 weeks and expanding the scope of the study the City was going to have done of the runoff in the Worthington area by including the Highlands Creek area, especially since there was a "dualing" engineers problem. There was discussion of the street stub at the northeast corner of the development, Dr. Waeckerle's property, that staff requested in case the property was ever sold, subdivided and developed with a need for additional access. Dr. Waeckerle wasn't pleased having a street which dead-ended next to his home; he didn't anticipate subdeveloping his property.

Mr. Bold said he couldn't vote to approve something, whether it was for a Leawood reason or an Overland Park reason, if flooding to the east of the project was going to occur, putting existing homeowners at risk.

3840 Councilmember Bussing agreed with Mr. Bold. He said he would have to vote against Mr. Rasmussen's motion to continue. He didn't care where the water came from; he was concerned about the safety of lives and property. Once water came into the City, it was the City's responsibility. He was concerned about the developer not wanting to take responsibility for water flowing through his development project regardless of its source. Mr. Bussing had no choice but to vote against Mr. Donohoo's application.

4136 Councilmember Dunn voiced the dilemma - if there was no development on Mr. Donohoo's property, and yet the property to the west (Lion's Gate) was developed, then property owners to the east of the Highlands would still experience an increased flow of water. So it appeared that Council was debating how far to go in requiring Mr. Donohoo to handle whatever might happen to the west of his development as far as increased water was concerned. There was no simple answer. Council couldn't guarantee property owners to the east that they (Council) wouldn't allow anything to happen that would increase the flow of water to their properties; developments were going to occur to the west, to the west, and further to the west, increasing the flow of water. Council had to be very cautious in taking action. He was supportive of Mr. Rasmussen's motion.

4282 Motion to continue the matter to the next Council meeting carried unanimously.

Ordinance rezoning from AG to RP-1, Highlands Creek. No action taken.

4312 **MAYOR'S REPORT.** A reception for artist Richard Hunt and lecture in the Council Chamber were scheduled for August 19th at 8:00 P.M., and on August 20th at 5:30 P.M., a piece of Mr. Hunt's art (sculpture) would be installed at City Hall in celebration of the City's 50th Anniversary.

A joint Council/Plan Commission work session in August to discuss development of the old airport property at 135th and State Line Rd. would be scheduled at the next Council meeting.

OLD BUSINESS

- 4425 **Discussion of silt study at hole #11, Ironhorse golf course.** Councilmember Rasmussen moved to request that the City Administrator have the City Attorney study whatever remedial action was necessary to recover the costs of returning City property to its original condition, and that the City Administrator return to the Council with a recommendation as to how the City should proceed, seconded by Dunn. City Attorney Wetzler said he could have something ready by the July 6th Council meeting. Motion carried unanimously.

NEW BUSINESS

- 4497 **Approval of Appropriation Ordinance No. 864A.** On motion of Rasmussen, seconded by Dunn, Council unanimously approved the ordinance on roll call vote.

- 4734 **Request to place a fence in Mission Rd. right-of-way for Dorset Manor, 103rd and Mission Rd.** Councilmember Taylor moved to refer the matter to the Public Works Committee for further review and recommendation, seconded by Bold.

Mark Arensberg, 10300 Howe Lane, said the Dorset Manor Homes Association was requesting approval to install a 6-foot fence with stone pillars in the Mission Rd. right-of-way behind Lots 1-5 in Dorset Manor. On April 16, 1999, they made application to the Board of Zoning Appeals for a fence height exception and to locate the fence approximately 9 feet into the newly widened Mission Rd. The Board asked Public Works to approve the location. Mr. Arensberg said that even though Public Works Director Johnson had indicated that the proposed fence location shouldn't impair the City's ability to maintain or use the right-of-way, Mr. Johnson felt more comfortable if the City Council would approve the request since it involved 5 lots instead of 1 lot.

Jeff Cantrell, the City's Neighborhood Services Administrator, explained that the Council would make the recommendation that the fence placement would be allowed in the right-of-way, but the fence height exception would go to the Board of Zoning Appeals. If the Board denied the request for the fence height, Dorset Manor would be allowed to have a 4-foot fence in the right-of-way. Mr. Arensberg said the request for the fence was to "block out" Mission Rd., a major thoroughfare, and to aesthetically continue the fence currently located in right-of-way on Lot 6 and new retaining walls along the northern portion of Saddle & Sirloin. The Homes Association would pay for the cost of the installation, would take care of maintenance, and assume any liability.

- 5055 City Attorney Wetzler said that if the matter was referred to the Public Works Committee, they should consider a recommendation that there be an encroachment agreement spelling out obligations because permitting a 6-foot fence in a right-of-way was a rarity.

Al Hagemann, 10314 Howe Lane, hoped the Council could approve the request tonight and not send the matter to a committee; residents had done everything that City staff had asked them to do. Residents wanted to move forward.

Taylor and Bold withdrew their motion and second. Mr. Taylor moved to approve the request for the location of the fence with the condition that there be an encroachment agreement to be prepared by the City Attorney, seconded by Rawlings. Motion carried unanimously.

5338

Ordinance granting a franchise to Brooks Fiber Communications (World Com) – 1st reading. Councilmember Rasmussen described his calculations to arrive at a line charge or rental charge of \$2.50/lineal foot of right-of-way occupied which he felt was a reasonable charge. His calculations involved the average present day cost of right-of-way, composite depreciation rates (wear and tear on streets), finance/interest costs, cost to maintain streets. The proposed ordinance called for a line charge of \$1.67/lineal foot. Mr. Rasmussen said that any company coming into the City, providing no service, just occupying City right-of-way, should pay a fee. He recommended \$2.50.

Ordinance granting a franchise to e.spire™ Communications (formerly ACSI) – 1st reading.

5774

10:30 P.M. Schedule executive session. On motion of Bold, seconded by Bussing, Council voted to convene in executive session for 30 minutes to discuss a personnel matter; Dunn opposed, all others in favor.

11:00 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.


Martha Heizer, City Clerk



Regular Meeting**THE LEAWOOD CITY COUNCIL****July 6, 1999****Minutes Summary**

Audio Tape No. 461

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:40 p.m., Tuesday, July 6, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Mike Gill and James E. Taylor, Sr. Louis Rasmussen was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Special Projects Coordinator/Management Assistant; Sid Mitchell, Chief of Police; Robert McKay, Director of Planning and Development; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Interim Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE - Led by Mayor Dunn.

APPROVAL OF AGENDA. The agenda was approved unanimously on motion of Bold, seconded by Gill after the addition of discussing referral to the Public Works Committee to discuss the City's current policy in regard to paying for easements of right-of-way on SMAC funded projects.

PROCLAMATION. The Mayor proclaimed July 5th through July 11th as the "City of Leawood Community Theatre Week."

CITIZEN COMMENTS. None.

CONSENT AGENDA. Three items were removed for further discussion. The following were approved unanimously on motion by Taylor, seconded by Bussing.

1. Minutes of the May 17th, 1999, Council meeting.
2. Ad hoc Stormwater Management Committee report (minutes) on their June 15, 1999 meeting.
3. Pay Request No. 10 (FINAL); \$13,975.29; Street Improvement Program; Seal-0-Matic Paving.
4. Resolution No. 1464 attached as part of the record to permit serving of alcohol liquor - first floor of City Hall and City Hall courtyard for Arts Council event.

Contract with League of Kansas Municipalities for codification of City Code.

Clarification was made by Garofano that this only applies to City Code. Motion by Taylor to approve, seconded by Dunn. Motion carried unanimously.

Pay Request No. 3 (FINAL); \$8,683.10; Public Works Facility reroof; American Roofing, Inc.

Taylor wanted Council to recognize that this company was the low bidder and did complete satisfactorily their obligations without any change orders being submitted for additional funding. Motion by Taylor and seconded by Dunn to approve. Motion carried unanimously.

Proposal for design of City Park low water bridge.

Deferred to end of meeting awaiting Public Works Director's arrival.

PLAN COMMISSION

670 **Request for a special use permit for placement of wireless communication antennae on Jacobson's roof, 5100 W. 119th Street.** Chase Simmons from Sprint PCS presented photographs that showed how the antennas cannot be seen. Simmons explained that without these antennas, eventually a cell tower would be needed.

Gill asked if these are being located so that if others wanted to co-locate in the Jacobson's area, would there be available space. McKay stated that this is the second user. Any others would be required to have the same information and would be required that they not be seen from the ground. Motion by Bussing, seconded by Dunn to approve. Motion carried unanimously.

800 **Willow Creek - Request for Approval of a Revised Preliminary Plat - Located at approximately 140th and Mission Road.** It was requested by Andy Schlagel to move them back on the agenda if he was not present in time for it to be heard. It was agreed by council members to wait 30 minutes.

850 **Ordinance No. 1805 amending Section 4-3 of the "Amendment to Leawood Development Ordinance" - request for amendments to the Special Use provisions regarding sport court lighting.**

Mr. McKay stated that this is an amendment that the .5 footcandle to be located on the property line must coincide with the residential lighting ordinance. This was coupled with the special use tower provisions and they chose to back off the tower provisions until they bring it to Council as part of the overall zoning ordinance update.

Mayor Dunn asked if the current sports courts will be grandfathered. Mr. McKay stated that he doesn't think there are many that would be a problem at this point. The majority of sport courts are not lit. If there are any, they will be grandfathered at this time.

Mr. Gill asked if someone were to have a lighted tennis court, would a .5 candle be enough light to play tennis. Mr. McKay stated that he feels it would be fine. The .5 is specifically at the property line which would be a minimum of 10 feet away. The City is allowed to ask for vegetation landscaping which would minimize the effect of the impact on the neighborhoods.

Mr. Taylor asked if there is already a sport court with lighting approved that would be grandfathered. Mr. McKay stated that they would be grandfathered but he doesn't believe there are any. Motion to pass the ordinance by Mr. Taylor and second by Rawlings. Motion approved unanimously on roll call vote.

1006

Resolution No. 1465, attached as part of the record, approving revised preliminary plat for Willow Creek at approximately 140th and Mission Road.

Presentation by Andy Schlagel. He stated this was sent back to the Planning Commission which is a redevelopment of Merry Lea Farms lot 5. Previously there had been a lot of discussion about response times from emergency services. The applicant, Reed Fuller, has proposed a two cul-de-sac plan which is strongly supported by the neighborhood.

Mr. Schlagel spoke with the Fire Marshal, Gene Hunter. They agreed there was an acceptable solution that could be worked out by having a driving surface that would have a 12-foot driving lane, the center of which would be a 4-foot sidewalk to give them something wide in the center to aim for with the use of grass creek type blocks on either side of the sidewalk to withstand the transport of vehicles like fire trucks.

The second issue sent back to the Planning Commission to investigate was the question storm water drainage. They met the City Engineer and they were asked to look at the worst-case scenario in terms of storm water runoff that would be created on this plat and the impact it would have on the downstream lakes system that occur within Worthington.

Mr. Schlagel stated that looking at the worst-case scenario, it did not threaten the capacity of those lake systems at all.

The third item that was remanded back to the Planning Commission was to look at extending the existing 140th Street cul-de-sac as it terminates today in Merry Lea Farms farther to the west. It has not gotten support from the Planning Commission and has been the least desirable.

Mr. Schlagel said the quality of life and needs of the neighborhood are much better served by the use of the dual cul-de-sac system.

1246

Councilman Gill asked if the storm water plan that is proposed is a solution and will not lead to problems in the future.

Mr. Schlagel stated the solution will not lead to problems in the future. He feels this works. It does not create any difficulties.

Brandon Boyd of Payne and Brockway stated that Mark Huggins has mainly worked with Shahram Pourazari on this and stated the storm sewer system that's existing now can handle the additional runoff.

Councilman Gill stated that there was a lack of neighbor input in the Planning Commission minutes. Mr. Schlagel stated the public hearing had been closed at the last Planning Commission meeting.

Councilman Bussing asked where the pipes from the storm water sewer system empty into. Mr. Schlagel stated that they empty to the west which is the first lake and then the second. Councilman Bussing asked what provision can be made once that ground is turned to begin building foundations. Mr. Schlagel stated that one of the code requirements when they move into the final plat would be the preparation of the erosion control plan and use of fences, straw bales, plastic wrapping, et cetera.

Councilman Bussing asked if the City is in the position to monitor the desilting devices. Mr. McKay stated that they do now. If they find that they have failed, they require them to be rebuilt.

Councilman Bussing asked what recourse the people in the Worthington subdivision have if they suspect the devices have failed. What recourse do they have to have the lake desilted again.

Mr. McKay stated these are minimum one-acre lots. They are going to put up silt fences on the property line. When an area is going to be disturbed, they will be asked to put up the silt fencing around to try to catch it right where it comes off the pile.

Mr. Bussing stated they have had these discussions about good intentions with regard to silt prevention and we still end up with silt in these ponds. He is very concerned about the storm water and silt in those Worthington ponds.

Mr. Schlagel stated that Staff is very vigilant in testing them to make sure they are on the side of caution.

Mr. McKay stated he is not sure if there is a siltation device made right now that's going to 1 percent take care of the silt. If there is a big rain like we had. If you had silt fences or dams and they are breached, the silt goes right on top of them. They are a continual maintenance thing.

1577 Mr. Bold asked what recourse do the Worthington residents have if the siltation devices don't work other than a private lawsuit. Mr. McKay stated that's basically their recourse.

Mr. Bold asked if the lakes in Worthington are designed to be water retention lakes or are they just designed to slow the flow.

Mr. McKay stated he didn't know that he could answer that. Mr. Bold stated that they have talked about this before and the water flow is going to be increased and he wants to know what will happen to the water when it gets to the other end. Mr. Bold agrees with Mr. Schlagel about the sidewalk and two cul-de-sacs but will have a hard time approving this subdivision until he knows exactly where that water is going to end up and the impact it will have on the people downstream.

Mr. Schlagel stated he feels Mr. McKay explained how they plan to take care of that and they will error on the conservative side.

Mayor Dunn stated that Mr. Huggins stated at the Planning Commission meeting on page 5 and 6 of the minutes that what they are doing there will not create any significant difference and the actual capacity is usually 50 percent above that.

Mr. Bold asked Mr. Schlagel where does the water come on to the property.

Mr. Schlagel stated that Mr. Huggins was talking about the worst-case scenario and what would cause the most amount of runoff. In the worst-case scenario it is still under capacity.

Mr. McKay stated that when the final plat comes back and that is something they would like them to look at, they could write in that they would need to supply an erosion control plan at that time.

Mr. Bussing stated that he was not concerned as much about the amount of runoff but had concerns about the siltation. Mr. McKay stated Public Works looks at the plats and they could hold those until they are satisfied that there is a siltation plan in place that's going to take care of these lakes.

Mr. Taylor asked if on the final platting if that would also prevent a final certificate of occupancy. Mr. McKay stated that the final plat approval is by Public Works. Mr. McKay would not issue a building permit until the plats have been sent to the County.

Mr. Schlagel stated that the submission to Council is for approval of a preliminary plat with the two cul-de-sac design, the cul-de-sacs that extend eastward through the Worthington area. It also includes a provision for an emergency access path.

Mayor Dunn stated that this street cutting through was master planned for a long time.

Mr. McKay stated that when Merry Lea Farms was platted, each one of three cul-de-sacs showed a 60-foot easement clear to the west property line which is quite evident that the street was someday going to be extended. They did temporary turn arounds, cul-de-sacs and a lot of people purchased large lots. They recognized that and when Worthington came in, made particular effort to make sure that the seller, the Planning Commission and City Council knew that they were asking for one connection to Mission Road and the logical connection was 140th Street, and, therefore, Worthington was required to give the right-of-way.

They were not required to build the street. At that time Public Works agreed that it was best to allow it to remain just as a right-of-way. It's a fire safety issue. The Planning Commission has spoken in that regard. The Planning Staff, Public Works Staff and Police Staff have recommended that the street go through.

If Council chooses to go with the cul-de-sacs then they would prefer the pavers instead of the wire mesh or whatever underneath the surface because it's recognizable and can be driven on.

1988

Mr. Dunn asked what their options are. They are being asked to approve something that's different than what the Planning Commission has recommended. He asked Mr. Wetzler

if they need to first turn down the recommendation and then on motion approve this other plat that's in front of them.

Mr. Wetzler stated that he didn't think so because it's not dealing with rezoning. It's a preliminary plat. When it's drawn into a final plat those changes should be incorporated into the final plat.

2036 Mr. Bold asked if the Fire Department is officially saying that their preference would be to have the street cut through.

Fire Chief Florance stated it is not the safest way, but they would make it work if that's what the Council decides.

Mr. Bold asked if he would prefer pavers versus another system. Fire Chief Florance stated he would prefer pavers.

2107 Mr. Taylor asked about the response time. Fire Chief Florance stated he felt they could still be there in the desired amount of time. The response time depends on who is servicing the call. There are other fire stations that go on calls if the closest fire station is already on a call. They feel they can be there, but when Mission Road becomes a four-lane road, it may be more difficult.

2250 Matt Saak, 3916 West 140th Drive. He is presently occupying lot 5. He's been to the Planning Commission meetings and Council meetings and is ready to see a resolution to this. He is for the cul-de-sac plan rather than the through street.

Reed Fuller spoke about the drainage/silt problem. He stated that when Merry Lea Farms was built 23 years ago and has no storm sewers right now. They are putting in storm sewers so the water will be much cleaner after they are put in and the silt problem will be much improved.

Scott Kreamer, 4512 West 140th street, resident of Worthington subdivision. He stated there are a large number of residents that are concerned about the through street. There's a petition that has a number of signatures that indicates the strong desire to not see that go through. He feels it's been pointed out that the emergency service response time is adequate. There are three points of access in the Worthington subdivision. He's not aware of too many other neighborhoods that have more access points than Worthington. He stated you can drive through almost any neighborhood in Leawood and can see a straight shot from Mission to Roe or whatever the through streets are.

He stated concerns about the storm drainage. It was stated in previous Planning Commission meetings there were concerns regarding the first lake. He feels other than the silt issue, the real concern has always been the last lake. There has been flooding on that lake and it flooded one of the residents in his neighborhood and it hasn't been explained that the current system will not exacerbate the current situation. That is a concern to him.

2440 Motion by Taylor and second by Gill to approve a plan that would incorporate a cul-de-sac coming from Fontana to the east, connecting with an emergency type of laying to the

cul-de-sac, which is 140th Street off of Mission Road, and that would be received before the final plat, the storm water management design would be reviewed and given final approval.

Mr. Bold asked that an amendment to the motion be made to include a siltations management plan prior to plat approval.

Mr. Taylor stated that is part of the storm water management.

Mr. Gill wants to make sure that the lakes referred to by Mr. Kreamer are incorporated into the storm water drainage plan that's referred in item six of the Public Works memo.

Mayor Dunn asked Mr. McKay if all the lakes in Worthington are incorporated in the Public Works memo, or would they be without this directive.

Mr. McKay stated he would guess the lake to the north would be the critical one. Mr. Gill stated the residents in the audience are shaking their heads to the contrary.

Mr. Dunn stated that this development has had him in a quandary. He asked Chief Florance if the pavers will work with regard to the safety issue. If so, then he will support the motion with the amendment. If that's not going to answer the safety issue, then he will not support it. Chief Florance could not guarantee that they will work. He said they will make every effort to make them work, if that is the wish of the Council.

Chief Florance stated from the public safety brain, there may be times in a blinding rain or snow storm that even though they have it on their maps they see a cul-de-sac and they say they have made a wrong turn and have to go back. That is why their recommendation was for a through street. If the Council wants pavers, they'll make them work to the best of their ability.

Mr. McKay stated if they choose to do that, then numbers 5 and 7 need to be removed from the Planning Commission recommendation.

Mr. Taylor stated to let that be part of the motion.

Mr. Bold asked Chief Florance if it would help to have some sort of signage there.

Chief Florance stated that that would certainly not be a bad idea, but fire departments are not looking for signs. They are looking at their maps or looking for that glow in the sky or that address of where that patient is.

Mr. Bussing stated he shares Councilman Dunn's quandary. He is well aware of the problems the residents of Worthington are having with the water problems. He is very concerned about emergency vehicle access, the public safety issues. The master plan is an important document, so he feels a responsibility to work with the master plan. He is concerned about the open city concept. He is concerned about the storm water issues. He is looking for a compromise so everyone can come out with some sort of win. He is frustrated with the Planning Commission and feels they failed.

Mayor Dunn stated she does not feel the Planning Commission takes directives from City Council to change their opinion after further analysis. They are governed by State Statute, and they have to vote it the way they see it. The fact that it is remanded to them does not mean that they change their vote.

Mr. McKay stated that he struggles with Mr. Bussing's comments. He believes that the Mayor's directive was to send back and see if they could reach a compromise. The Planning Commission did that and they are saying this is the best scenario. The Planning Commission has given their best information possible.

Mayor Dunn stated that there is new information that was brought back from the Planning Commission which is the pavers.

2845 Gill stated he is going to vote in support of the motion for several reasons. It's been encouraged for developers and residents to get together and agree. It's certainly in what the spirit of Leawood is. Master plans are important, but they are guides and when you've got the present day view that's unanimously shared, it's important to give way to the unanimous contemporary view as opposed to the future strategic view developed at a different point in time.

Mr. Gill is concerned about the public safety issue, but feels there are other public safety issues such as the potential impact on children with increased traffic. He feels it would have been beneficial to hear the residents at the last Planning Commission meeting. For those reasons, he's going to vote in favor of the motion.

2960 Mr. Taylor stated the response time is no different than the average response time in the city itself. Regarding Mr. McKay's comments regarding the master plan, it is not etched in concrete. It is able to be maneuvered or changed. There were other cul-de-sac connections that were made after the development of Worthington development was put in and not when Merry Lea Farms was made.

3025 Mr. Bold stated he would like to echo comments from Mr. Gill and Mr. Taylor that this is an excellent solution. His first concern is public safety. It gives credence to that. It gives the emergency vehicle the access they need and appeases the concerns of the neighbors. He feels the master plan is important. It is important in the respect that it allows people who are considering moving to the city or building in the city to have an appreciation of what might be on the vacant land next to them. He feels they are improving the quality of life for the residents of Leawood.

3075 Mr. Dunn stated these are tough decisions, and feels he hears some inconsistencies in talking about the purpose of the master plan. He doesn't feel being consistent with the master plan or the Planning Commission is a foolish consistency. He remains opposed to changing the plan that's been approved by the Planning Commission.

Mayor Dunn stated that the remark about the siltation management plan could be added * to number and that would incorporate the review of storm drainage information prior to approval of final plat. Mr. Taylor's motion to approve the two cul-de-sac concept with the emergency type access and addition of siltation management plan being added to

* to number 6

number 6 and removal of numbers 5 and 7 carried. (Bussing and Dunn against) Bold, Rawlings, Story, Gill and Taylor in favor.

Mr. McKay stated the sidewalk issue was not dealt with. Mayor Dunn stated that the sidewalk issue will remain as stipulated by the Planning Commission. Mr. Schlagel stated he did not want the sidewalk issue to hold up the construction of the five lots. Mr. McKay stated it can be dealt with at the final plat.

3255 **MAYOR'S REPORT.** Mayor thanked the Park & Recreation Department for the 4th of July celebration. Thanks to Police Department, Fire Department and Public Works. It was a great celebration.

Thanks to Kathy Rogers and all the staff and the Budget and Finance Committee for the intensive work that was done on the budget.

Mayor Dunn recognized notes of staff praise in the packets. Thanks to the people who worked with the American Heart Association.

OLD BUSINESS.

8A. Ordinance granting a franchise to Brooks Fiber Communications (World Com) - 2nd reading. Mr. Dunn asked if there will be one more reading of this before final approval. Mr. Wetzler stated there will be.

8B. Ordinance granting a franchise to e.spire™ Communications (formerly ACS)
- 2nd reading

NEW BUSINESS.

3450 **9A. Approval of appropriation ordinance #865.** Motion from Taylor to approve, second from Gill. Motion passed unanimously on roll call vote.

3655 **9B. Authorize interlocal agreement with Johnson County Park and Recreation District for the improvement of the Indian Creek Bike-Hike Trail Park from State Line to Leawood City Park.** Motion to approve from Mr. Dunn and second from Mr. Rawlings. Motion carries unanimously.

3756 **9C. Authorize interlocal agreement with Johnson County Park and Recreation District for the improvement of the Tomahawk Creek Bike-Hike Trail Park from Roe Avenue to Nall Ave.** Motion to approve from Mr. Dunn and second by Mr. Bold. Motion carries unanimously.

3850 **9D. Ordinance No. 1806 accepting four permanent (storm) drainage easements for Christ Community Church project at approximately 143rd and Kenneth Road.** Motion to pass the ordinance by Mr. Bussing and second by Mr. Dunn. Motion carries unanimously on roll call vote.

3880 **9E. Work sessions scheduled for August 23rd:** 1) Joint Council/Plan Commission work session to discuss old airport property at 135th and State Line Road, 7 p.m., and 2) Council work session to discuss proposed donation policy approximately 8:30 p.m. Motion by Mr. Dunn and second by Mr. Bussing. Motion carries unanimously.

3990 **9F. Schedule executive session** at the end of meeting for 30 minutes to discuss a litigation matter and a personnel matter. Motion by Mr. Bold and second by Mr. Dunn. Motion passed unanimously.

Leawood City Park low water bridge design proposal which had been discussed at the beginning of the meeting under the consent agenda will be continued to the July 19th meeting. Public Works Director never arrived.

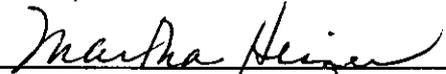
4048 Council voted unanimously to assign the following to the Public Works Committee: Assignment to discuss payment for easements and rights-of-way for SMAC projects.

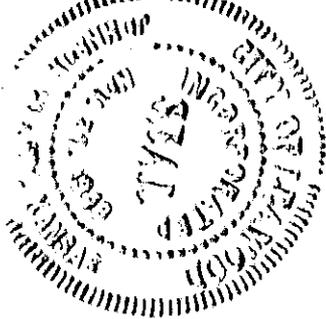
4132 Regular session ended at 9:50 p.m., and Council convened in executive session.

10:20 p.m. Council returned to regular session. Motion by Taylor and second by Bold to extend executive session another 20 minutes. Motion passed unanimously.

10:40 p.m. returned to regular session. There being no further business, the Council adjourned.

Minutes prepared by Gloria Steinle


Martha Heizer, City Clerk



Regular Meeting

THE LEAWOOD CITY COUNCIL

July 19, 1999

Minutes Summary

Audio Tape No. 462

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 19, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Sarah Hilton, Special Projects Coordinator/Management Assistant; Captain Rob Weber, Police Department; Diane Binckley, Planning Services Administrator; Joe Johnson, Public Works Director; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Interim Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE - led by Mayor Dunn.

APPROVAL OF AGENDA. The agenda was approved unanimously on motion by Dunn, second by Taylor, after the addition of a discussion about directing the City Attorney to prepare a transient guest tax ordinance for City Council consideration and an update from the Public Works Director on Mission Road improvements and the entrance to Leawood City Park to the south.

136 **PUBLIC HEARING ON PROPOSED 2000 BUDGET.** The Mayor opened the hearing.

Rasmussen stated that the Executive Summary indicated \$30,000 for the Leawood Chamber of Commerce. It is contingent on a dollar for dollar match. It is \$20,000 direct and a dollar for dollar match up to \$10,000.

Bussing stated that his understanding of the agreement was that the City Administrator was going to work with the Chamber of Commerce to determine what the appropriate match was going to be. It was not defined as a dollar for dollar match. There was some incentive for the Chamber of Commerce yet to be determined.

Taylor's recollection is that \$20,000 be provided and \$10,000 in a fund, and if the Chamber matched dollar for dollar, they would get the \$10,000.

It was agreed to word in the final document that \$20,000 would be provided to the Chamber of Commerce with \$10,000 in matching funds.

Due to an error in the Arts Council expenditures in the published notice of budget hearing, a second hearing will be held August 2nd.

There was no public input. The hearing was closed at 7:45 p.m.

332

PUBLIC HEARING ON PROPOSED TELECOMMUNICATIONS FRANCHISE ORDINANCE FOR BROOKS FIBER COMMUNICATIONS.

Michael Payne, representative of Brooks Fiber Communications/MCIWorldCom, stated that the fees being charged their company for operating in the City of Leawood are unreasonable. Their system does not occupy any additional rights-of-way to existing poles of Kansas City Power & Light. They are not objecting to paying a reasonable fee but feel that the \$2.50 is unreasonable. In other cities they are charged 33 cents a foot to a maximum of \$1.00. They are requesting the City of Leawood make an exception to the ordinance for the difference between an aerial attachment to existing facilities, occupancy of existing conduit by another utility company through a lease provision, and then look at a fee charge structure for new installation where there would be additional burden placed upon the rights-of-way of the City.

Mr. Dunn asked if Payne had seen the calculations that had been done to arrive at the \$2.50 figure and if he had some alternative calculations to propose. Payne stated they are proposing a flat fee of 50 cents a foot which is based over and above the difference of what they have to pay to occupy the Kansas City Power & Light poles. Mr. Payne said that Brooks Fiber did not place any additional burden on City rights-of-way.

Mr. Rasmussen suggested that the Council instruct Brooks Fiber to return to the Council with justification and reasonings for the pricing they proposed.

Mr. Gill asked what is the range of the rates they are paying and could it be verified. Payne stated they are paying 33 cents on the low end and \$2.50 a foot on the high end, and this could be verified.

Mr. Gill asked if the City of Leawood should change the pricing for everyone who is using the right-of-way in order to be fair.

Mr. Payne stated that other states use a banded structure with a charge for aerial, or a charge for new construction in own existing new conduit to be placed in city right-of-way, or a charge for leased conduit or leased fiber.

Mr. Gill stated that creating a separate fee for Brooks Fiber/MCI would put the City in a position inadvertently of having to reprice all of the City's other arrangements.

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Mr. Rasmussen stated that prices charged by KCPL to utilities for use of KCPL poles have to be in a nondiscriminatory manner, have nothing to do with occupying the City's right-of-way. This is rental charge for use on overhead structures. Rasmussen explained there is a three-part rate structure in Leawood. The first is if someone applies for a franchise without doing anything, the cost is a fixed \$1,000 a month. If someone comes through the City and occupies the City's right-of-way, the cost is \$2.50 a foot. If someone provides a service (hopefully underground service), and if gross revenues multiplied by 5 percent are in excess of the \$2.50, then that becomes applicable.

On motion of Dunn, seconded by Story, Council voted unanimously to close the public hearing.

1000 **PUBLIC HEARING ON PROPOSED TELECOMMUNICATIONS FRANCHISE ORDINANCE FOR E.SPIRE™ COMMUNICATIONS (ACSI).**

There was no public input. On motion of Dunn, seconded by Gill, Council voted unanimously to close the hearing.

PROCLAMATION. The Mayor proclaimed Tuesday, August 3, 1999, as "National Night Out" relating to police-community crime prevention efforts, and presented the proclamation to Police Captain Weber.

1055 **CITIZEN COMMENTS.** Members of the Leawood Arts Council and their subcommittee, The Leawood Stage Company, thanked the City Council for their support of the recent very successful musical production of Rogers and Hammerstein's "Some Enchanted Evening" at City Hall.

1275 **CONSENT AGENDA.** Three items were removed for further discussion. The following were approved unanimously on motion by Dunn, second by Taylor:

1. Minutes of the June 7th, 1999, Council meeting.
2. Departmental reports.
3. Application (renewal) for retail liquor occupation license – Ranchmart Wine & Spirit, Ranchmart Shopping Center, 95th & Mission Rd.

Committee Reports and Agreement with Blue Valley School District relating to assignment of Leawood police officers as School Resource Officers.

Rasmussen informed Council that they will be asked to consider at the August 2nd Council meeting a resolution establishing the description of accounting criteria for City-owned stormwater systems from the Ad Hoc Stormwater Management Committee.

Rasmussen pointed out that a typographical error was made in item 6.1 of Officer Responsibilities. The words "violence diffusion" were written twice.

Council Minutes
Tape No. 462

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Motion by Rasmussen and second by Taylor to approve the agreement with Blue Valley School District and Committee Reports – Historic Commission report (minutes) on their June 8, 1999, meeting; Golf Course Committee report (minutes) on their June 24, 1999, meeting; and Parks & Recreation Advisory Board report (minutes) on their July 13, 1999, meeting. Motion carried unanimously.

Declaration of Surplus Property.

Mr. Taylor asked the cost to replace the sweeper. Mr. Johnson stated the cost is in the range of \$110,000. Mayor Dunn asked if it is unusual for the 1995 sweeper to be traded in 1999. Mr. Johnson stated they usually only last about four or five years and lose about 90 percent of their value. Motion to approve by Taylor and second by Gill. Motion carried unanimously.

Public Works Department surplus to be traded in on new units: 1 1980 Mobil Sweeper from Victor L. Phillips; 1 1995 Mobil Sweeper from Johnson, V-3000SP; 1 1990 Bobcat from KC Bobcat; 1 1986 John Deere Backhoe from Mid-America Industrial Equipment.

Finance Department surplus to be sold at the next surplus auction: 1 IBM Selectric II Typewriter.

PLAN COMMISSION

1500

Resolution No. 1466, attached as part of the record, approving revised preliminary plat for Whitehorse at 148th and Nall. Landscape architect Brick Owens of HNTB presented proposal of revised preliminary plat. The revised plat adds more green space and adds islands within the development. They met with members of the Whitehorse Homes Association and also met with one of the neighbors on the east property line and discussed what landscaping would be placed beside his existing home. They hope to be under construction with this phase of the project this fall or next spring.

Mayor Dunn asked if Mr. Blumdahl was the neighbor that he referred to and if extra landscaping would be provided or landscaping sooner. Mr. Owens explained that the landscaping will be provided sooner.

Bussing asked if there are any open channels running throughout the property. Owens stated they have not run specific drainage calculations, but they will comply with all the Public Works requirements.

Gill asked what the Plan Commission's comments and recommendations are.

Binckley stated that Mr. Blumdahl's situation was discussed. The connections around the southeast edge and how that connects into the existing subdivision and the landscaping were discussed.

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Tape No. 462

July 19, 1999

Taylor asked what the southwest quadrant will be zoned and where the commercial zoning will be.

Binckley stated the southwest quadrant is currently zoned RP-4. The commercial area is around six acres and is zoned CP-1 at the intersection of 151st and Nall.

Mayor Dunn asked staff if adding a 9th stipulation stating that the landscaping abutting Mr. Blumdahl's property be provided early in the project would suffice for the agreement the developer made with Mr. Blumdahl.

Binckley stated that would be fine with the addition of adding the lot number.

Mr. Owens stated that the lot numbers are 44 and 45 of the preliminary plat.

Motion by Taylor and second from Bold to approve revised preliminary plat for Whitehorse with the additional 9th stipulation. Motion carried unanimously.

1780

Request for approval of selected site for public art within City right-of-way (within the median of Tomahawk Creek Parkway) for Tomahawk Creek Office Park at approximately College and Tomahawk Creek Parkway. Chuck Peters of Peters & Associates appeared requesting approval to display two or three bronze deer sculptures on Tomahawk Creek Parkway south of College Boulevard. Motion by Rasmussen and second by Rawlings to approve public art for Tomahawk Creek Office Park.

Bussing asked staff about the recommendations from Brian Anderson, Park Supervisor. Binckley stated that stipulation number 4 of the Plan Commission recommendations called for a revised landscape plan and that would include his recommendation of the Bald Cypress.

Taylor asked if Cline-Wood, Heartland Bank, Merrill Lynch, KC Orthopedic and Pinnacle were all participants in the cost of the art. Peters stated they are all involved and may be getting support from other businesses to contribute to the deer so there may possibly be three deer.

Taylor asked who is responsible for maintaining the landscaping and mowing around the deer. Peters stated that they met with the City of Leawood's park officials, and the City is going to maintain the landscaping and do the mowing. Motion carried unanimously.

1973

MAYOR'S REPORT

Annual report on American Revolution Tercentennial Fund. The balance of the American Revolution Tercentennial Fund Certificate of Deposit was \$5,584.35 as of July 9, 1999. The interest rate is checked on a regular basis and is earning the highest possible interest rate.

July 19, 1999

Thank you to everyone who participated in the Leawood Stage Company's recent musical production of "Some Enchanted Evening" at City Hall and making it a success.

Mayor Dunn attended the recent LPGA exhibition at Ironhorse golf course. Thanks to Mrs. Claxton, the Parks & Recreation Department and the Police Department for their work.

Mayor Dunn attended the Mid-America Regional Council Bi-State Area Safety Transportation Summit. It was noted that seat belt usage in Missouri and Kansas is only 60 percent for adults and children over 14. That is down 10 percent from the national average, which is 70 percent.

Mayor Dunn attended the Volunteer Center of Johnson County's dinner honoring Leawood residents, Nelson and Pam Mann.

OLD BUSINESS

2183 **11A. Authorize supplemental agreement with Phelps Engineering for a fee not to exceed \$19,860.00 for design, preparation of construction plans and documents, and inspection of certain parts of the construction, of a pedestrian bridge over Indian Creek in Leawood City Park.** Motion by Rasmussen and second by Taylor to approve. Motion carried unanimously.

2197 **11B. Ordinance granting a franchise to Brooks Fiber Communications – 3rd and final reading.** (See public hearing at beginning of the meeting.) Mr. Rasmussen wanted to continue the matter to the August 2nd Council meeting to allow Brooks time to return with their comments. Mr. Dunn was in favor of the continuance as long as it was for the specific purpose of allowing Brooks to return with some alternative criteria for the Council to consider. Mr. Payne stated that MCIWorldCom agrees with Councilman Rasmussen's figures on the excavation at \$2.50 a foot for new installation. MCIWorldCom wants attachment of the same fee charged for what is already in existing right-of-way. MCIWorldCom will prepare data and a spreadsheet as requested. Mr. Dunn said he was looking for the objective criteria that justifies MCI's request that Council alter the proposed franchise agreement in any way.

Mayor Dunn asked Mr. Payne if there is any reason why the location of the KCPL pole wires that carry the MCIWorldCom wires are located where they are located. Could they be more discreet? Payne stated KCPL dictates the location of the wires. Motion by Rasmussen and second by Bold to continue the matter to the August 16th Council meeting. Motion carried unanimously.

2346

11C. Ordinance granting a franchise to e.spire™ Communications (ACSI) – 3rd and final reading. Gill asked attorney (for the City) Steve Horner if there needs to be supervision in the right-of-way ordinance. Horner stated he does not feel that needs to be addressed right now. Something will be presented to the Council at the end of August or early September. Motion by Rasmussen and second by Bold to continue the matter to the August 16th Council meeting in that the franchise agreements need to be consistent and if there is any change to the Brooks franchise ordinance, it will be applicable to the others. Motion carried unanimously.

2515

11D. Authorize extension agreement for e.spire™ franchise. Mr. Horner stated that the purpose of the extension agreement was to continue the terms of the current franchise agreement until the new one is passed. Horner recommended amending the extension agreement to last 60 days beyond the August 16th Council meeting. Motion by Taylor and second by Gill to approve the extension agreement. Motion carried unanimously.

2567

11E. Request for authorization to proceed with condemnation if easements are not obtained for SMAC project DB-04-017 (Overhill, south of 86th Street).

Mayor Dunn asked Mr. Johnson how he is going about getting dedicated easements. Mr. Johnson stated they've been working over the last two years on the project. They are working on the final plans and sending letters out to residents with a picture of their lot and a picture of the easement shaded on their lot. One or two property owners have stated that they will not sign the easements.

Mr. Rasmussen asked if the basis for the project is a public safety concern that occurred at the bridge crossing. Mr. Johnson confirmed that the road has flooded two times in the last six months. Rasmussen asked in this design, are all the facilities going toward solving that safety issue? Johnson stated the box culvert and raising of the street will help to keep the water from flooding the street. The channel needs to be improved because there is erosion on both sides. Motion by Rasmussen and second by Dunn for approval of condemnation if easements are not obtained for SMAC project DB-04-017.

Mr. Dunn stated that most residents have been supportive, but there are one or two residents who are against the project. Dunn also requested that his name be put in the letter so residents can contact him.

Mr. Dunn questioned if it is appropriate for the City to pay for this or not. One of the people who will not approve it has property in a pie-shaped wedge to the project and has very limited frontage property, but because trees on an adjoining property are going to come down, he will not sign an easement.

Rasmussen stated that the City has an obligation for public safety. If it's necessary, the City needs to condemn because they are helping the area. Policy needs to be established where it affects public safety. Motion carried unanimously.

July 19, 1999

2862 **11F. Report from Public Works Committee regarding installation of a guardrail on Tomahawk Creek Parkway north of 115th Street.** The Committee recommended that Public Works install a metal guardrail between Tomahawk Creek Parkway and the City's trail system north of 115th St. on the east side of the Parkway. Estimated cost \$1,500. Motion by Rasmussen and second by Dunn to approve the recommendation. Motion carried unanimously.

2884 **11G. Report from Public Works Committee regarding traffic calming in Bridgewood subdivision, 132nd and Roe.** The Committee felt that speeding through the development didn't appear to be a significant problem that couldn't be remedied by the usual means. They felt it would be difficult to retrofit traffic calming devices and there were questions as to their effectiveness. The Committee recommended not to proceed any further with the issue of installing traffic calming devices. However, the Police Department would continue to patrol the area and keep a watch on traffic and speeding. Mr. Gill moved to deny, reject the "non-recommendation," not for the purpose of substituting affirmative action, but for the purpose of not closing the door on doing something in the future if the problem continued to persist. Mr. Dunn suggested amending the recommendation to state that it was the Committee's recommendation not to proceed any further "at this time." Mr. Gill withdrew his motion.

Motion by Dunn and second by Taylor to approve the Committee's recommendation with the amendment that it was the recommendation of the Committee not to proceed any further at this time with the issue of installing traffic calming devices in the Bridgewood subdivision. Bold stated he would like to get Bridgewood on the list to use the police radar trailer. Bussing stated that the Public Works Committee had heard a report that after the radar trailer was out at that area it was felt that it was not a good use of the officers' time. They will continue to monitor and put the trailer out there from time to time. Motion carried unanimously.

NEW BUSINESS

3063 **12A. Approval of Appropriation Ordinance No. 866.** Motion to approve by Taylor and second by Dunn. Motion carried unanimously on roll call vote.

3330 **12B. Approve appointment of Parks & Recreation Director.** On motion of Rasmussen, seconded by Rawlings, Council voted unanimously to approve the City Administrator's appointment of Chris Claxton.

3475 **12C. Ordinance No. 1807 authorizing the improvement of Lee Blvd., 103rd Street to Mission Road.** Motion by Bold to pass the ordinance and second from Rawlings. Mr. Taylor still had serious reservations about the sidewalk issues. Mr. Rasmussen said that the ordinance merely authorized the improvement of the street, not any specifics like sidewalks or installation of trees. Motion passed unanimously on roll call vote.

July 19, 1999

Update on Mission Road improvements. Public Works Director Johnson gave an update.

3685 12D. **Ordinances authorizing issuance of temporary notes.** Mr. Taylor asked for a breakdown of the \$500,000 for Fire Station No. 3. Finance Director Rogers explained the breakdown; some architectural fees and legal costs incurred prior to fire station lawsuit were involved, and the City wanted to be ready with financing in place if fortunate in the near future to go out to bid for construction. It was noted that the halt on the project due to litigation would cost the City substantially more than originally planned.

Ordinance No. 1808; Project 108; College Blvd.; \$2,100,000. On motion by Bold and second by Rasmussen, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1809; Project 148; City Park Design, Phase 1; \$200,000. On motion by Bold and second by Rawlings, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1810; Project 151; Fire Station #3; \$500,000. On motion by Bold and second by Gill, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1811; Project 171; Municipal Pool Bathhouse; \$300,000. On motion by Bold and second by Taylor, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1812; Project 166; Lee Blvd., 103rd/Mission Road; \$200,000. On motion by Bold and second by Rawlings, Council unanimously passed the ordinance on roll call vote.

3990 12E. **Discussion of signage for Catholic church site at 143rd and Nall.** All sign applicants, prior to the effective date of a new ordinance, were informed of the new ordinance and given limited permit duration. However, the church sign remained illegal. Motion by Bold to suspend enforcement under former ordinance until September 30th and second by Taylor. Motion passed unanimously.

4052 12F. **Schedule executive session.** On motion of Dunn, seconded by Story, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 45 minutes to discuss personnel matters, land acquisition and litigation.

OTHER BUSINESS

4071 Directive to the City Attorney to draft a transient guest tax ordinance. Mr. Bold moved to direct the City Attorney to begin the process of drafting an ordinance to enact a transient guest tax, seconded by Dunn. Mr. Bussing said that if construction was started on a hotel now, it would be at least 2 years before there would be anyone to tax, and there were other current pressing issues that needed attention. Mr. Rasmussen noted that the City

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Tape No. 462

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was supposed to have a new City Attorney on staff in September; he agreed with Mr. Bussing. Based on discussion, Mr. Bold withdrew his motion, Dunn withdrew his second. The Mayor felt it was very important to make the directive at this time. Mr. Dunn moved to make the directive, seconded by Gill. Motion passed unanimously.

4323 Regular session ended at 10:00 and Council convened in executive session.

Council returned to regular session at 10:45. There being no further business before the Council, the meeting was adjourned.

Minutes prepared by Gloria Steinle.


Martha Heizer, City Clerk



MINUTES
SPECIAL COUNCIL MEETING

Tape No.

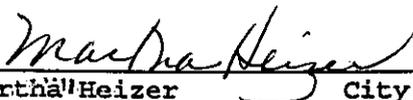
The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 7:00 P.M., Monday, July 26, 1999. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Mike Gill, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss land acquisition. Louis Rasmussen was absent.

Staff present: Richard J. Garofano, City Administrator; Richard S. Wetzler, City Attorney; Bill Hess, City's bond counsel; and David Artabury of George K. Baum & Co.

On motion of Gill, 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 at 9:20 P.M.



Martha Heizer City Clerk



Minutes Summary

Audio Tape No. 463

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 5:30 p.m., Monday, August 2, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: *Adam Bold (for the regular session, took his seat during discussion of the preliminary plan for the Oxford School relocation), Gary L. Bussing, Jim Rawlings, Shelby Story, Louis Rasmussen (did not attend the executive session at 5:30 P.M.), and James E. Taylor, Sr. Mike Gill and Patrick L. Dunn were 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; Shahram Pourazari, City Engineer; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

EXECUTIVE SESSION. On motion and duly seconded, Council voted unanimously to convene in executive session until 7:30 P.M. to discuss land acquisition and a matter under attorney-client privilege.

PLEDGE OF ALLEGIANCE - led by Boy Scout Troop #256.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Rawlings, seconded by Bussing.

PUBLIC HEARING ON PROPOSED 2000 BUDGET. G. Gordon Thomas, 10516 Mohawk Lane, didn't think it was fair to residents that the City's budget hearing was scheduled the same night as the County's budget hearing. He also felt that the hearing and approval of the budget shouldn't be on the same night. Residents were not being properly informed.

There was no other public input. On motion of Taylor, seconded by Story, Council voted unanimously to close the hearing.

CITIZEN COMMENTS. None.

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Bussing, seconded by Rasmussen:

1. Minutes of the June 21, 1999, Council meeting;
2. Minutes of the July 6, 1999, Council meeting;
3. Ad hoc Stormwater Management Committee report (minutes) on their July 15, 1999 meeting;
4. Public Works Committee report (minutes) on their July 14, 1999 meeting.

*** Resolution No. 1467, attached as part of the record, approving the final plat of Willow Creek located at approximately 140th and Fontana. The Mayor noted there was no language in the resolution regarding the sidewalk issue that had been discussed at the Plan Commission meeting, that the developer would be responsible for constructing sidewalks if in fact the City was the only party that could get the emergency access easement. There had been discussion as to whether or not condemnation would be necessary, and if that occurred, the City would be involved. The Mayor felt there should be a stipulation in the resolution regarding the sidewalks. The Mayor also wanted to be sure there would be something going with the land that would allow plenty of right-of-way for the paver emergency access so if emergency vehicles ended up in someone's yard, the City wouldn't be held liable. Fire Chief Florance said staff would make sure that that happened. Councilmember Taylor moved to adopt the resolution with the additional stipulation regarding the sidewalks and the condition that plenty of right-of-way would be worked out with staff in the final plat, seconded by Rasmussen and carried unanimously.

PLAN COMMISSION

341

Resolution No. 1468, attached as part of the record, approving preliminary site plan for historic Oxford School relocation from 135th & Mission Rd. to approximately 142nd and Mission Rd. Councilmember Rasmussen was surprised when he read that the City would have to install restroom facilities which meant the City would have to maintain them and perhaps even police them. The cost of the relocation was becoming much greater than he had ever contemplated. He said that historically the community shared facilities, especially restrooms; the restrooms at Prairie Star Middle School adjacent to the relocation site could be shared. The Mayor thought there would be restrooms in a future phase of the schoolhouse, but in the first phase, the restrooms would be enclosed outhouses. The Mayor said that the Oxford School would most likely be utilized after school hours and possibly even weekends when the middle school was locked. City Administrator Garofano said that restrooms had been planned initially in a second phase of the project but there was a need to accelerate the schedule. He said that the Oxford School would be used by more than just Blue Valley Schools. The Blue Valley School District couldn't guarantee that their schools would be open at all times for tour groups visiting Oxford School.

* Councilmember Bold took his Council seat.

Mr. Garofano said that restroom facilities would be moved up into the first phase; they would not be actual outhouses, but would be freestanding enclosed non-functioning outhouses (fully functioning restrooms) to mimic those that were originally provided at the Oxford School. It shouldn't be a major problem to hook into nearby existing sewer and water.

*** The Mayor clarified that she was talking about acquiring the necessary right-of-way to construct the sidewalks, not the emergency access easement. (Clarification made at the August 16, 1999, Council meeting.)

Councilmember Story, Council liaison to the Historic Commission, said that upon approval of the 2000 Budget, the Historic Commission would do more fundraising from private sources to help defray the cost of the project; there was \$137,000 budgeted for the project in 2000 which didn't include money for the restrooms. They had already raised \$20,000-30,000. Hopefully, the cost associated with restrooms would not be too great.

The Mayor said that the school district offered to take care of landscaping and mowing for the site. The Mayor said the City had received another donation for the project, in the amount of \$10,000. So over \$30,000 had been raised. Mr. Story anticipated that the Historic Commission could raise more than \$37,000 so that the City's outlay would hopefully be much less than \$100,000. Based on discussion, Mr. Rasmussen withdrew his objections.

On motion of Taylor, seconded by Story, Council unanimously adopted the resolution.

985 **Resolution No. 1469, attached as part of the record, approving a special use permit and preliminary site plan and preliminary plat for Baptist Foundation (church facility, assisted living facility, and four-plex retirement village) located at approximately the southeast corner of 143rd and Nall. Stewart Stein, attorney for Baptist Foundation, made a presentation.**

1238 Mr. Stein said that Baptist Foundation accepted the fact that water retention might be necessary and would agree to a stipulation as part of the approval of the plan that the City be satisfied with the drainage plan of the adjoining Highlands Creek project before they (the Foundation) started construction.

1325 Councilmember Taylor said that since the City had dealt with private streets in the past, there should be a condition or statement in the approval process that in the future, no successor or the present owner would be allowed to sell the units as individually owned condominiums which would create a public street system. Mr. Stein said he had no objection to such a condition. Mr. Taylor also wanted to make sure that the exterior brick or stone would be a 4" veneer rather than a 1" material, that that be part of the architectural approval process before final plan. After conferring with his client, Mr. Stein said that wouldn't be a problem.

1404 Councilmember Bold asked Mr. Stein to confirm that he understood there were some very large outstanding issues regarding stormwater from the Highlands Creek development and that the City wouldn't issue any building permits or see Baptist Foundation break ground until those issues were resolved. Mr. Stein said he understood and recognized that the matter needed to be dealt with comprehensively. Mr. Bold asked if there would be any problems for the City as long as the developer was willing to stipulate regarding stormwater from Highlands Creek. City Attorney Wetzler didn't think so. He said there were 2 issues – the developer was willing to add the stipulation referenced by Mr. Bold, but in addition, the Baptist Foundation would still have to meet Public Works requirements for their own property which would of necessity take into account the overall issues.

Mr. Bold asked about the practicality of restricting 143rd St. (a 2-lane road, primarily a residential street) to no truck traffic, forcing that traffic onto 151st St., 135th St., and Nall. With the assisted living facility and with the church to a certain extent, there would be food service vehicles, medical device companies, other service trucks. Mr. Stein thought perhaps very large trucks could be prohibited, but allow smaller service trucks. The Mayor said the matter could be discussed at the time of final plat and plan, and not add a stipulation with so many unanswered questions. City Attorney Wetzler said the discussion was about regulation of public streets. He said that the City always had the authority to impose restrictions on the uses of public streets necessary for public safety. He said that as development occurred, and there was a problem with trucks, the City had the ability to regulate as problems arose. Mr. Bold said Council had been told many times that final plat/plan approval was ministerial in nature and this was the Council's one opportunity to raise some issues. Mr. Bold was concerned about trucks from the conglomeration of projects in the area, not just the Foundation's project.

1726 Mr. Stein described the density and additional green space of the project. He also talked about addition of sidewalks in the interior of the project.

1932 Councilmember Taylor said that residents in the project needed to have access to future public sidewalks along Nall Ave. so he felt that sidewalks in the project should be extended to the proposed sidewalks along Nall. Architect/designer Tom Nolte described the assisted living facility.

2205 Councilmember Bold moved to adopt the resolution with the following additional stipulations: 1) that the sidewalk system be connected from the interior of the project to Nall; 2) that no building permits be issued until the water issues were resolved for the adjacent subdivision; 3) (Mr. Taylor's request) that both stone and brick be a minimum of 4 inches thick.

There was discussion about a 4th stipulation (Mr. Taylor's request) that any future sale of the units as condominiums be void. City Attorney Wetzler felt that condition was unenforceable. There was discussion about such a sale having to come back before the Council, the possibility of having to replat. Mr. Bold supported the Baptist Foundation's plans to own and operate the facility, but was concerned about the property being sold for whatever reason and the units becoming an apartment complex next to upscale residential neighborhoods; he wanted to be sure that didn't happen without the matter going before the Council. He wasn't concerned about the Foundation renting the units, but was concerned about the units being sold to a private entity and then operated in a different fashion than what was presently being portrayed. Mrs. Binckley reminded Council that they were considering a special use for the overall project with one owner, one special use. If the Baptist Foundation sold the property, it would no longer be a special use. Staff would have to return to Council to rezone for a private ownership. The 4th stipulation was not included in the motion.

2376 Mr. Taylor seconded the motion with the 3 additional stipulations. Motion carried unanimously.

2385 **Request by Church of the Resurrection for renewal of a special use permit to continue operation of temporary mobile offices on their property at 137th and Roe Ave.** On motion of Bussing, seconded by Bold, Council unanimously approved the permit (except for Mr. Taylor who was not seated for the vote) for a period not to exceed 2 years from the date of Council approval.

2420 **MAYOR'S REPORT.** The Mayor advised that the City received a \$10,000 donation from the Vic and Helen Regnier Foundation for the relocation/preservation of the historic Oxford Schoolhouse. The Regniers were longtime residential and commercial developers in Leawood.

NEW BUSINESS

2492 **Approval of Appropriation Ordinance No. 867.** On motion of Rasmussen, seconded by Bussing, Council unanimously approved the ordinance on roll call vote.

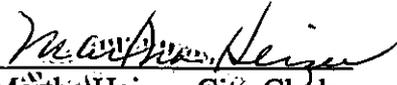
2580 **Approve 2000 Budget.** On motion of Taylor, seconded by Bold, Council unanimously approved the budget. (\$37,631,992 expenditures; 23.456 mills)

2642 **Resolution No. 1470, attached as part of the record, establishing description for accounting criteria necessary to determine routine stormwater repairs and maintenance vs. stormwater capital repairs and improvements for City-owned stormwater facilities.** (One of the goals of the ad hoc Stormwater Management Committee) The Committee was still working on a prioritization schedule for extensions or changes to City-owned stormwater facilities, however, Councilmember Rasmussen said that the facility that needed repair in the worst way was at 127th and Sagamore. After priority procedure was established, projects would be considered for approval by the Council, the same way street improvement projects were handled. On motion of Rasmussen, seconded by Taylor, Council unanimously adopted the resolution.

2895 **Executive session.** On motion of Bussing, seconded by Story, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 1 hour to discuss a personnel matter, a matter under attorney-client privilege, and land acquisition.

2930 **Schedule executive session.** Scheduled for August 30th, 7:00 P.M., for a personnel matter.

2990 9:20 P.M. Council convened in executive session and returned to regular session at 10:20 P.M. There being no further business before the Council, the meeting was adjourned.


Martha Heizer, City Clerk



Regular Meeting

THE LEAWOOD CITY COUNCIL

August 16, 1999

MINUTES SUMMARY

Audio Tape No. 464

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 6:30 p.m., Monday, August 16, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Administrative Services Manager; Captain Rob Weber, Police Department; Joe Johnson, Director of Public Works; Diané Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Chris Claxton, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

EXECUTIVE SESSION. On motion and duly seconded, Council voted unanimously to convene in executive session in the Main Conference Room of City Hall until 7:30 P.M. to discuss land acquisition. Council returned to regular session in the Council Chamber at 7:40 P.M.

PLEDGE OF ALLEGIANCE - led by members of Boy Scout Troop 10.

APPROVAL OF AGENDA. The agenda was approved unanimously on motion of Taylor, seconded by Dunn, after the addition of: 1) an assignment to the Public Works Committee to study traffic hazards at the intersection of 119th Street and Pawnee, 2) an assignment to the Public Works Committee to review a proposed right-of-way ordinance, 3) the scheduling of a Council work session to review the Bucher Willis Ratliff City comprehensive traffic study, and 4) a discussion of a memo to Council from Jeff Cantrell, Neighborhood Services Administrator, concerning the sale of Ironhorse golf course property to Matt Kincaid and Robert Manning, property owners in Estates of Iron Horse abutting the golf course.

160 **CITIZEN COMMENTS.** Bob and Debby Manning, 15300 Iron Horse Circle, voiced concerns about removal and replacement of fence on their property in conjunction with their purchase of a tract of the City's golf course property. They felt that the fence might be moved back onto the original, old property line, instead of being placed on the new property line. They also wanted to know who would pay the costs of moving the fence which involved the sprinkler system, the fence relocation, the sod, and surveying. They wanted the matter to be finalized. The sale of golf course property involved 3 property owners; City Administrator Garofano explained that the City hadn't come to final agreement with one of the property owners. The matter was added to the agenda (see Old Business).

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CONSENT AGENDA. One item was removed for further discussion. Councilmember Rasmussen gave an oral report on the ad hoc Stormwater Management Committee. A final report would be out the first week in September. It appeared that there would not be any change in the engineering standards. The problem was in implementation and enforcement.

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

1. Minutes of the July 26, 1999, Special Council meeting;
2. Golf Course Committee report (minutes) on their July 22, 1999, meeting;
3. Historic Commission report (minutes) on their July 13, 1999, meeting;
4. Parks & Recreation Advisory Board report (minutes) on their July 13, 1999, meeting;
5. Departmental reports;
6. Application for retail liquor occupation license - Faust Wine & Spirits liquor store at 11841 Roe Avenue;
7. Purchase of Pro K Graphics soccer jerseys from Union Jack in the amount of \$30,000.

Minutes of the August 2, 1999, Council meeting. Concerning Resolution No. 1467 approving the final plat of Willow Creek, the minutes stated "that the developer would be responsible for constructing sidewalks if in fact the City was the only party that could get the emergency access easement." The Mayor clarified that she was talking about acquiring the necessary right-of-way to construct the sidewalks, not the emergency access easement. On motion of Bold, seconded by Taylor, Council unanimously approved the minutes with the change.

PLAN COMMISSION

384

Request by Christ Community Church for a special use permit for an additional temporary mobile office building on their property, approximately 143rd & Kenneth Rd. – permit not to extend beyond July 1, 2001. Project architect David Joiner and Executive Pastor John Rich appeared for Christ Community Church and gave a presentation. The proposed building addition would be next to existing module next to Kenneth Road. The church was under construction and was scheduled to open in November. They were going to continue to develop to the south. The proposed office addition, which was temporary, was an 1,850 square foot building directly southwest of the existing building and would match the existing building.

Motion for approval by Bold and second by Dunn.

Mr. Bussing asked if the parking lot would be paved for this project. Mr. Joiner stated that the parking lot was scheduled to be permanent pavement with curb and gutter and was part of the plan that was approved by the Plan Commission and staff.

Mr. Taylor asked what assurances there were that the building would be removed July 1, 2001. Mr. Joiner stated that they had continued use through that time, but after that, they would need to put in a fire suppression system in the modular units.

Mrs. Binckley stated that would only be allowed if the City Council approved an additional special use permit.

Motion for approval carried unanimously.

Resolution requesting rezoning from AG to RP-1 and preliminary site plan and preliminary plat approval for Highlands Creek, southeast corner of 143rd St. and Nall Ave. VERBATIM BY COURT REPORTER GLORIA STEINLE.

Attorney Ron Bodinson of Shook, Hardy & Bacon represented Highlands Group, and developer Don Donohoo of Highlands Group, Lee Bodenheimer of Construction Engineering Services, and Larry Graham of Shafer, Kline & Warren engineers appeared.

MR. BODINSON: I think Council will recall that at the last meeting this came up, and the Council directed Highlands Group to revisit the storm drainage issues on this sight, and specifically prepare a more sophisticated and detailed report on the impact of any storm water from Highlands Creek unto its neighbors to the east, specifically property owner Waeckerle immediately adjoining to the east and further downstream on the Wally property.

To that end, Highlands Group requested its engineers to meet with the City Engineer in order to get his direction on how to proceed with the study, the extent of the study, which would clarify where the storm water was coming from and the nature of the problem, if any.

In addition, a more thorough review was made of the City's ordinance on storm sewers and detention ponds. The City has adopted the American Public Works Standards, known as the APWA. They are adopted by the City under article 3 section 15-306. The standards are published and fairly clear.

Then Highlands, through its engineers, undertook the new study making the detailed survey measurements of an expanded detention model. What they did this time, which was not required, is they made the most sophisticated analysis that the engineer community can do. It's called a HEC-RAS Study, and it's an exhaustive study, and while a lower type of study would have been permissible, they decided to leave no stone unturned in this study.

In addition the study was extended to about 600 feet downstream to the east, which would extend to the property boundaries of property owner Wally. Also, the study was expanded generally to take into account the Worthington development and previously had included information regarding Lion's Gate.

Now, the study results have been made public to anyone interested, and you'll get a more detailed description of the study from the engineers in a few minutes. But the bottom line is that no detention is required under the City ordinances and the APWA standards as a result of the development of Highlands Creek.

Now, the study was available four weeks ago. We provided a copy to the City Engineer. We provided a copy of our information about it to Dr. Waeckerle, the adjoining property owner, and also gave a copy to Mr. Wally and his attorney.

Now, I myself have not talked to Dr. Waeckerle. What I've been told is he believes the problem is in front of his house not in back. A detention pond would require the destruction of the trees, and, again, I want him to speak for himself, but what has been quoted to me is that if the study does not require a detention pond then it's fine with him.

We also gave a copy to property owner Wally and his attorney four weeks ago. They had retained an expert or someone who commented on these types of studies. As of the beginning of this meeting tonight, we had never received any response, any comments, any report to the study that we gave them four weeks ago. The City Engineer was unable to review the study for several weeks.

So after a couple of weeks without any response from the city engineer or from the adjoining property owner, Mr. Wally, or his attorney, we felt it incumbent to go out and find another expert in this area who had no ax to grind about this issue because we weren't getting any response from anybody else. We understood and learned after an investigation that Larry Graham with Shafer, Kline and Warren was the leading expert in this area regarding storm water drainage and detention ponds. We gave him our study and information, and he made an analysis of it and has given us a letter which we have shared with the City Engineer late last week. Mr. Graham states as follows:

"Based upon the information provided, it is our opinion that detention should not be required per APWA Section 5601.5. That section states that detention should be required if the development causes or increases damage to downstream homes, buildings or other structures in a 100-year or more frequent flood. With ultimate upstream development, and entire watershed, the 100-year flood elevation is well below any structure on the Wally and Waeckerle properties downstream at Highlands Creek."

Mr. Graham is here tonight if anyone has any questions responsive to that report.

So basically although the Highlands development, Highlands Creek development will cause the flood at the 100-year level to increase about six inches at the property line and downstream at the Wally property about one-half inch. There's no detention pond required under your standards under the engineering studies because the structures are still 8 to 14 feet above the 100-year flood.

So if this Highlands Creek increases the elevation half an inch at the Wally property, his structures are still 8 feet above. If you put in a detention pond, what would occur you would have about the same level, one-half inch less but you'd have it for 20 or 30 minutes longer?

The detention pond from our point of view and based upon the Council's request to restudy this is unnecessary and not required by your own ordinances. It would be costly to build; you would be removing lots from the tract; you would have a long-term cost really in perpetuity to the homes association of 232 residents to maintain a detention pond and you have the loss of existing trees that could be avoided.

Now, we recognize that there are problems in the front of the properties of Waeckerle and Wally, in front of their houses where the driveways are located, not in the rear where the substantial majority of the Highlands Creek storm water would go. A very small portion, as you'll see from these studies, of the Highlands Creek area drains in front of the properties of the residences of Waeckerle and Wally.

There's very little impact by this development compared to the hundreds of acres coming from the north, Worthington and other developments. Highlands Creek has agreed not to develop that area of their property that drains in front of the property of Waeckerle and Wally. They are also agreeing to riprap the drainage so it will slow it down. There's very little they can do to effect what happens in front of the properties of adjoining property owners. We're willing to work with them in any way we can, but there's not much we can do.

I think we've learned recently that the City Engineer still wants a detention pond, and I think this Council will recall that our prior plan that came in here that was submitted to the Plan Commission also showed a detention pond. It was based upon the fact that city engineers, city officials made it very clear that they wanted a detention pond in our property and as good neighbors we wanted to cooperate and placed one on there.

This Council, however, in its wisdom told everybody to go back to the drawing board and do a complete study of this entire tract and ordered the more thorough report in compliance with your own ordinances and engineering standards. That report in your

standards conclusively showed that no detention pond is required. Basically, I think legal opinion I think requiring a detention pond now is based upon these studies would be an unreasonable action on the part of this the developer. His development is not causing the problems and to require a detention pond would be an impermissible action.

Be that as it may, again, we're here to try to cooperate with the Council and the property owners. I will say that a few minutes before this meeting, I saw Mr. Wally and his attorney and inquired why we have never in the last four to five weeks received any comments to the study that we gave them that this Council asked us to prepare, and I was told that they just got the study today. I said, "Well, I still hadn't received it."

They gave me a copy, and it's a two-page report, and I'm sure all of you have by now from the person who has studied our report, I don't believe he's here tonight to answer any questions. But I will say this, that at the last meeting and if the court reporter does accurately write everything down, Mr. Wally was quoted directly as saying that he quote "expected that the APWA standards would be adhered to and enforced." That's Mr. Wally's quotation. That's what he demanded.

We have prepared a study that shows that those standards do not require a detention pond. He now has his expert four to five weeks later not having shared it with us until a few minutes ago, saying differently.

I would like to now turn our presentation over to Lee Bodenheimer who with charts and maps will show the Council graphically the study.

MAYOR DUNN: Mr. Bodinson, we have a question from Mr. Bold first and then Mr. Taylor before we turn it over.

1035

MR. BOLD: Mr. Bodinson, are you aware that at our last Council meeting we approved a project for the Baptist Foundation that the pledge that was made to us was that not only would the water from the Highlands Creek project be taken care of but that water from the Baptist Foundation would be taken care of as well.

MR. BODINSON: No, I'm not aware of that. Did the church pledge that to you?

MR. BOLD: What I will tell you is that our approval of the church project and subsequently the sale by Mr. Donohoo to the church is contingent upon that being the case.

MR. BODINSON: Again, I don't dispute your approval of the project may have been contingent on that. I'm not familiar with a sale between the two owners was contingent upon that.

MR. TAYLOR: Mr. Bodinson, you made the statement of riprap?

MR. BODINSON: Riprap.

MR. TAYLOR: And that was designed to what?

MR. BODINSON: It would be the northeastern portion of this property, that part of the Highlands Creek that would drain in front of Dr. Waeckerle's property. I think that this Council or the City Engineer requested riprap in that area that's undeveloped in order to --

MR. TAYLOR: You said slow down.

MR. BODINSON: That would be my layman's view of it. Perhaps it's to avoid erosion. I think you have a tremendous drainage from north of 143rd, that part of it will come through there.

MR. DUNN: This is for Mr. Wetzler. The only plan that's been presented to us was one that was presented to the Plan Commission, which included detention ponds. I guess it's the same question I've had on these before. Given the fact that this has never been presented to the Plan Commission, do we have the authority to approve it with that change of plans on it?

MR. WETZLER: I believe that you do. It is a change. I don't know that it would be regarded as a substantial change within the meaning of the development ordinance. So I think it would be something that lays within your discretion to send back to them.

MR. DUNN: Not to quibble on the point, but I've gone over the minutes on the Plan Commission's meeting. This was a major issue. Given that fact, I assume what you're asking us tonight is to approve it without the detention ponds which was what was approved by the Plan Commission; is that correct?

MR. BODINSON: That's true.

MR. DUNN: I simply suggest to my fellow Council members that I don't think there's any way in the world given the Plan Commission's emphasis on the detention ponds as an important feature of this that we should consider passing it without referring it to the Plan Commission.

MAYOR DUNN: The Plan Commission actually talked about not only the detention pond which was brought to us which is on the east portion, but they even discussed having the west detention area left if indeed in phase two that would come to be necessary. So Mr. Dunn is correct. There was extensive discussion and deliberation just about detention.

MR. BODINSON: We're not here to tell you what procedure to follow. We're here to report back to you on the study that you requested.

MR. GILL: First of all, it's procedural, I understand but I agree with what Mr. Dunn said in terms of if we were to consider what you want us to consider tonight. I think this is a material change.

MR. WETZLER: Obviously, it's a significant change, but are you obligated to remand it to them because of this change? I think the answer to that question is no, but it may well be that because of the nature of the change you may still feel it's appropriate.

MR. GILL: I don't have copies of all these studies, and I was out of town at the last hearing where this was before us, so I apologize if I haven't seen the full array. Have those reports been given to the Council, the engineering reports?

MR. BODINSON: I don't know. They were given to the City Engineer several weeks ago.

MAYOR DUNN: They have not been given to the Council.

MR. GILL: If I understood in layman's words what you read from Mr. Graham, my take on it was, yes, there will be an exacerbation of an existing water problem; in other words, it will get worse. But it doesn't violate a standard because a presently existing structure is not in the path of the flood way. They are not saying there isn't a problem. They aren't saying the problem isn't going to get worse. They are saying right now there isn't a building sitting in the way of the exacerbated problem; is that correct?

MR. BODINSON: Again, I wouldn't want to paraphrase Mr. Graham because he's here tonight with their other engineers. I think they are saying there's not a problem.

MR. GILL: There's a floodplain?

MR. BODINSON: Yes:

MR. GILL: The floodplain is going to get higher, 6 inches at the property line and a half-inch at Mr. Wally's according to their study. I consider that getting worse, would you?

MR. BODINSON: I'm saying those are the facts, the water gets higher.

MR. GILL: If you're a property owner, I would as a property owner prefer to not have 6 inches or a half-inch of my property elevation lost to a 100-year flood.

MR. BODINSON: That may be a preference of a property owner but that's why we have the APWA standards to determine what is acceptable or not.

MR. GILL: I don't want to, but I will if I have to. I'm just trying to go cut to the conclusion. What you're saying if there is a structure that was impacted by that 6 inches or a half-inch, then there would be a violation?

MR. BODINSON: If there were a structure already located in the floodplain, it would be exacerbated.

MR. GILL: Is it good long-term planning to prevent the building of such a structure because of what you're doing when there's a solution in your mind?

MR. BODINSON: I think your ordinances prevent building buildings in floodplain. I think that's good long-term planning. Although I do think you can build in a floodplain if you comply with certain requirements.

MR. GILL: My understanding was that Mr. Donohoo before this new round of engineering studies was prepared to do the detention solution that some of these property owners, this letter from Dr. Parr makes reference to that they prepared to do that? Am I misinformed in that?

MR. BODINSON: I think Mr. Donohoo, and he's quoted directly, if we can rely on the minutes was stating that he did not believe the detention pond was necessary but was prepared to do so because the city engineers had told him this could not be passed or considered favorably, then it came to the Council and then you ordered another study.

MR. GILL: It was my understanding that Construction Engineers has issued three reports; is that correct?

MR. BODINSON: They have continued to be more sophisticated analysis.

MR. GILL: One of those reports based upon a summary in some of the materials we did receive indicated that part of the problems that the Wally's and other residents whose names you've mentioned are due to the increasing development in that part of the county; is that not true?

MR. BODINSON: I think that's very clear. The property to the north of 143rd Street has contributed to their problem.

MR. GILL: So with development comes increased water runoff, at least that's happened in this part of the city? In fact, according to your own engineers, right the development of others?

MR. BODINSON: I don't know if we've done a study of what it was like in front of the Waeckerle house prior to the development to the north compared to recently.

MR. GILL: Well, I'd be interested in hearing those engineers tell me. My understanding is that increased development has caused there to be increased water problems in the area. If they didn't say it, I'd like to know. If they don't believe it but said it, I'd like to know that too.

MR. BODINSON: I just think that's a fact of life and we all try to do development --

MR. GILL: This is increased development too, and I feel strongly that as a community and having these sorts of developments, these wonderful developments coming into our wonderful community, we have to be responsible, and if your engineering report which I understand Dr. Parr quibbles with certain ways it was done. He says it's a TR5 study, and you mentioned it's a HEC study, and I don't know which it is or what it all means, but the bottom line is I heard, I think I heard Mr. Graham say, yeah, the floodplain is going up but it doesn't impact the structures so it's okay, but that the floodplain has been going up because of other developments in that general vicinity.

Plus I read in some minutes and have heard you say that Mr. Donohoo was prepared to do some retention which sounds like Dr. Parr who is a well respected expert along with your experts, nobody would say it would be a bad thing.

First of all, I will not vote tonight for what you're asking, and if forced to a vote, then I'll have to decide whether to go with the plan that was there or not, or I'll have to send it back. But I would much rather see the parties get together with their engineers and put together the solution that it sounded to me like you were extremely close to having and willing to do and get in consensus rather than force this Council to make a

call on it, which we will do, and I just think we've had lots of flooding problems and it's going to get worse.

It's a metro area-wide issue, and some of us, myself included, think it's necessary to start taking a more macro view on this problem than we have taken in the past, and I would really like to see all of these wonderful water engineers land put their heads together to and come up with something that's going to work and is not going to have increased downstream impact. Those are the comments I'd like to see addressed tonight.

MAYOR DUNN: Mr. Taylor.

MR. TAYLOR: First of all, I'd like to clarify that the record that you quoted here did not state my question of the developer regarding detention ponds in which, as I recall from my questioning in the public hearing dealt with his willingness to place those detention ponds in, and when I asked him the question whether or not his study incorporated the runoff from the Overland Park side watershed, he said he did not consider that nor did he have responsibility for that.

My question to you when you made your presentation is does your study incorporate properties to the east, but you did not say it incorporated the properties to the west.

MR. BODINSON: The study does take into account the property across Nall and the engineer has that information with Lion's Gate. It reflects what additional impact it would be. That's not our development however.

MR. TAYLOR: We understand that. It impacts the property we do have a concern for and we do have a concern for that property as far as the condition that that water flow would play on this particular property. Additionally, you made the statement that the engineer from Shafer, Kline & Warren developed their opinion based on the information given to them. And I would like to know why they did not go out independently and secure the information.

If they are going to be an independent source, why did they not establish their own information and not rely on the engineering reports and data that was secured by other engineering firms independently secured that information to render their decision?

MR. BODINSON: Perhaps Mr. Graham can answer that, but probably for the same reason Dr. Parr relied on our study. The HEC-RAS study is an engineering study that doesn't have very many variables in it.

MR. TAYLOR: I think if you read the letter, Dr. Parr did not take issue in the reporting. He took issue with the methodology and not the reporting. So I think what I'm hearing you say is data gathered by previous engineers who had passed on to Shafer, Kline & Warren based on that information. They did not go out and check it and do their own investigation; is that correct?

MR. BODINSON: That's correct. Again, at the last hearing the City Engineer stated that he would rely on the certification of an engineer study. I don't know of anyone challenging the study itself.

MR. TAYLOR: I think we are challenging the study. And that was very well spelled out in our last meeting. We are challenging that report.

MR. BODINSON: We didn't know that it was supplied to the City Engineer several weeks ago. I think he told us that he read it last week. We had knowledge that this Council was challenging the data in that report. If so, we'll be happy to address that.

MR. TAYLOR: I think as other Council, the members have already indicated, it's really not our position to render this opinion tonight. We feel perhaps because it is a change, and I think it is a change based on if detention ponds are placed in the plan that does change the configuration of the lots and the street system. So that is a major change in the overall plan this was approved by the City Plan Commission, and I think that that should be really their decision to review before we receive it.

MR. BODINSON: My answer to his first question about Lion's Gate. The study does that into account and shows that Lion's Gate, according to APWA standards, again would have no requirements of detention ponds based on the impact of Lion's Gate, of which we're not responsible.

MAYOR DUNN: I would like to say that this Council did not digest the material, but our City Engineer did, and we'll hear from him momentarily. He's the one that challenges studies.

1557

MR. BOLD: Mr. Bodinson, I don't know want to get into a battle of wits with you, and I'm certainly not going to get into a battle about the law. What I do know is this, and that is I agree with Mr. Gill, and I think it would be in everyone's best interest to try and work out some sort of solution. We can spend a lot of time this evening debating the accuracy of the study or whether Dr. Parr is right or whether your engineers are right.

Quite honestly, I can't answer that question. What I do know is that the intention of this body when we granted this delay was in an effort to reduce the amount of water that ends up on the property line between Highlands Creek and the existing homeowners. That was the intent.

Now, as Mr. Gill said, you can try and force this issue and we can discuss the legal merits and if the Council for whatever reason decided not to approve this project, then you're left with an alternative of litigating with the City or whatever the case may be. That's an expensive process and everybody loses except for maybe you.

On the other hand, were there a solution that was amicable for the City and amicable for the residents, I think that's in everyone's best interest. How many lots are now proposed relative to what were proposed when it came brought to the Plan Commission?

MR. BODINSON: Mr. Donohoo could best answer that but I thought it was 232 now. The same number of lots.

MR. BOLD: Well, I agree that procedurally one option that we have and probably the most appropriate is to send it back to the Plan Commission and let them look at this, but I just wanted to offer my opinion and that is that I think there needs to be some work done to try to find some sort of consensus with all the parties that are involved here.

MR. BODINSON: We're not opposed to that. You'd have to direct an inquiry to Mr. Wally and his attorney why after four weeks we didn't hear back after giving him the plan until tonight.

MR. BOLD: The answer that I've gotten is the letter from Dr. Parr is dated yesterday and received today.

MR. BODINSON: Our plan could have been dated two days ago. We made every effort to get this out very quickly. We went to the office of Mr. Wally's attorney and sat down with our engineers and visited as long as they wanted to visit and subsequently provided them more information. We are open --

MR. BOLD: All I'm saying is that we've got Dr. Parr and Mr. Wally saying one thing. We've got our city engineer saying one thing, and we've got Mr. Donohoo and his engineers who are saying one thing. What Mr. Wally and the City Engineer are asking for is not substantially different than what Mr. Donohoo was willing to do the last time we met with him. I urge you rather than trying to back us up to a wall or us trying to back you up against the wall, let's see if we can find a solution that's good for Leawood as well Mr. Donohoo.

1675

MR. RASMUSSEN: Sir, I'd like to take you through a little scenario and see if I understand your position APWA 5600. I have a development, let's call it A, and I develop it and as a result of that development I increase the peak rate of flow off that development on 100-year basis. And I'm next door B and I don't have any houses in that area. Is it your position in interpreting it that since if there are no houses there, I can dump water and increase the peak rate of discharge?

MR. BODINSON: Yes. That's Kansas law number and then it's incorporated in the APWA standards.

MR. RASMUSSEN: So now B comes along comes before us and requests development. You've now dumped water on us now. You're representing B and the city engineers say wait a minute; these people are going to be affected. You sell the houses and they don't know what's going on. They don't read the City Council section. And it's your position then that the City has no responsibility to control the water in that area?

MR. BODINSON: I think it does.

MR. RASMUSSEN: I thought you told me it doesn't.

MR. BODINSON: No. I said developer A has no responsibility to detain water for the B property if it's not developed. Once B is developed, if there is a flood plane there then the City ordinances of Leawood require B developer to alert you that there's a floodplain, and then you have all kinds of standards on what can be built on the floodplain and how it can be dealt with.

You normally would not allow houses to be developed on the floodplain. The development and these developments would be developed accordingly; it would be parkland. It would be stormwater underground, B would have to develop accordingly. The nature of water is such that B is always going to have a problem.

MR. RASMUSSEN: B now is developed without any control of the peak rate of discharge, and now I'm C down at the end of the hill and there's no houses in there either. So when we look at B, it's your claim that we don't have any responsibility for controlling the peak rate of discharge because there's no houses in C?

MR. BODINSON: What happens with B is to develop the property so it's outside the floodplain, but there would be no requirement in my opinion under Kansas law for B to control flood waters downstream or under APWA.

MR. RASMUSSEN: How about under city standards, engineering standards?

MR. BODINSON: That's what we're talking about, APWA are the standards.

MR. RASMUSSEN: Are you talking about statutory or city standards?

MR. BODINSON: Case law is if you own land upstream, you have no duty to a downstream owner to make sure that water doesn't flood upon him. What the downstream owner can do is do anything he can to protect himself. He can build a China wall there so it all goes around. But the upstream owner has no responsibility.

MR. RASMUSSEN: Does the City have any legal authority to control that flow of water?

MR. BODINSON: Yes. Under the standards, if there are structures that will be impacted by the 100-year flood, the City then can step in and require B to detain to C.

MR. RASMUSSEN: Do the structures have to be existing?

MR. BODINSON: Yes.

MR. RASMUSSEN: In your judgment, do the structures also include roads?

MR. BODINSON: I've studied that myself as to what a structure is determined under that standard.

MR. GILL: Mr. Bodinson, did I correctly hear you say that in your legal opinion as a member of Kansas bar that there is no liability or responsibility for an upstream property owner if he wrecks something on his property, makes an improvement that causes a downstream impact. Is that what you're telling me?

MR. BODINSON: That's my understanding.

MR. GILL: My understand is that some of the discussions that have gone on between your client and some of these others is that they ought to sue either the adjoining city or adjoining property owners for having caused all their water problems.

MR. BODINSON: We haven't recommended anybody to sue anybody. I don't know what Mr. Wally's attorney has advised.

MR. GILL: You think a person with impunity do something with his property upstream that has a downstream impact that ruins Mr. Rasmussen's ability to develop his property and not have any recourse or liability to Mr. Rasmussen?

MR. BODINSON: I think the case in point might be the Worthington and north developments there. I haven't seen any lawsuit filed by Mr. Wally for development.

MR. GILL: I'm not talking about Mr. Wally. I'm talking about your opinion. Have you researched this issue and is there a case that maybe we could take a break and read because I find that very difficult to believe that with impunity I can do something to my property and have no liability or responsibility for that.

MR. BODINSON: I don't have the research here, but I'd be happy to provide Mr. Wetzler with a copy of that.

MR. GILL: Well, an editorial comment, if that is the law, the law is an ass.

MAYOR DUNN: We often go beyond the law in Leawood to protect the residents.

MR. BODINSON: That's why you have these standards. You're doing what the common law doesn't do and that's very reasonable. But even your standards have limits to them. Just because someone builds one structure doesn't mean they have to control and protect the downstream potential floods from everybody.

MAYOR DUNN: I think we'd like to hear from our City Engineer because I know he spent a great amount of time studying all of this. I'd like to hear from Shahram Pourazari.

1894

MR. POURAZARI: Regarding what the gentleman said, the APWA gives each individual city in Kansas City metropolitan area a lot of flexibility to exercise the rights of the City of what's good for the City as they deem appropriate. What we felt regarding this development with the authority given to us under the APWA Design Criteria Section 5600, we stipulated on this property, on this development that the post development runoff should not exceed the existing peak runoff rate as the property sits today. This is a stipulation that we placed on the development.

We went to City Plan Commission. We testified that with Don Donohoo being presented that a detention pond is required. Their engineer has provided the calculations that the existing peak runoff rate is going to be increased. This is how much water they are increasing. This is how much water that we need in order to control the peak rate of runoff on the downstream side.

I reviewed this study. There were some fine details that needed to be done and worked out. It was not a major issue so conceptually we approved the drainage that they submitted. Upon coming to you, there were some issues on the downstream side, which were not addressed as part of the drainage study.

The developer's engineer went back and expanded the scope of the drainage study and incorporated 590 acres from the water shed that drains from the north and about 430 acres from Leawood and the rest is from Overland Park that contributes to the flow of water at Mr. Wally's property.

The results came back, and it's indicated in the report that even if Highlands Creek doesn't develop, the driveway culverts at Dr. Waeckerle's property and Mr. Wally's property are inadequate in the event of 100-year storm. The water overtops the culvert in the event of the storm, and this is mostly due to the drainage basin that comes to the north.

However, there are two parts to this study. The drainage basin that comes from the north and the basin that comes from the west, and they all come together at the rear of Mr. Wally's property.

The notion that the proposed peak runoff rate doesn't flood Mr. Wally's or Dr. Waeckerle's residences is correct. The property sits way high. That calculation that's submitted by their engineer testifies to that. The water surface elevation rises by about one foot along the rear of Mr. Wally's property, and this is indicated in this report. So that means that the flow rates that is now being routed through the rear of the property has also increased.

MAYOR DUNN: I think it's also important to note too, Mr. Pourazari, that in your memo to Diane Binckley was dated August 11th, and it was done prior to the report from Dr. Parr, and both of you were stating the need for detention, individually and separately with your studies. Thank you. Mr. Dunn.

2046 MR. DUNN: Shahram, is that your recommendation that the original plan, including the detention ponds, be what we approve?

MR. POURAZARI: That's correct.

MAYOR DUNN: We have a number of citizens that have signed in to speak. Was there something else, Mr. Graham, that you wanted to say?

MR. GRAHAM: Who is going to speak?

MAYOR DUNN: Mr. Bodenheimer, are you an engineer with Construction Engineering Services?

2061 MR. BODENHEIMER: Yes. The first exhibit I bring is to clarify some things that were asked earlier. Before I get into the study, this is the development plan for Highlands Creek, and it includes this church property. All the calculations that we did where we increased the runoff was with the church property being developed as well, and the detention pond when it was designed was in this area here. For the detention pond, for us to have no increase downstream from our development, that's the area that was allowed for the detention pond.

Part of study was also to prove that should such a detention pond be put in there, that's where it will fit. If there's no detention pond, it will just be left natural, so we're talking apples and apples.

The deal with the church property is yes we're going to take all their runoff, and if there's a detention pond, it takes their part too. If there's no detention pond than the calculations are showing the increase in their runoff too. I just wanted to make that clear before we get started.

MAYOR DUNN: You say if there's no detention pond, the church's runoff will go where?

MR. GRAHAM: The church's runoff most of it goes down through this area, and when we calculated how much of a rise there was off site, it included this property too.

MAYOR DUNN: That's the half-inch at one particular location.

MR. TAYLOR: Will you bring that exhibit back up. This is the original plan presented to the Plan Commission which shows the detention pond; is that correct?

MR. GRAHAM: Basically it is. This plan is a little bit different. The detention is bigger than the one that was proposed there. I should have brought another exhibit that showed everybody exactly what was presented to the Plan Commission, but this one is the same. The layout of the street and lot layout is the same.

MR. TAYLOR: Are you saying that this plan you're presenting tonight is not the plan the Plan Commission saw?

MR. GRAHAM: No.

MR. TAYLOR: Then you're also stating that this plan that you're showing has a larger detention pond than what was presented to the Plan Commission?

MR. GRAHAM: I only brought up this particular exhibit. The detention pond is not a detention pond that was meant to be presented. I probably should get a copy of the original preliminary plat. That would have been better.

MR. TAYLOR: This plan or the other plan, did this consider the runoff, this detention pond, the size of it and also the height of the dam, did it consider the runoff, in addition to that of the Baptist development, the runoff from Overland Park?

MR. GRAHAM: It considers the runoff from Overland Park. It's going to come through our development and go through the pond and go on. We're not providing detention for that runoff.

MR. TAYLOR: You're not providing the runoff from Overland Park.

MR. GRAHAM; We're not providing an extra-large detention pond to compensate for them developing that property.

MR. TAYLOR: You're answer to my question is you've not even considered the development of Overland Park and its runoff?

MAYOR DUNN: I believe your study said it did.

MR. GRAHAM: We're talking about two different things.

MR. TAYLOR: There's two ways of studying the watershed and that is undeveloped and developed. Did you consider the runoff from Overland Park as a developable area?

MR. GRAHAM: We considered it both ways. We took existing flow that's undeveloped and also routed the storm through it whether it was fully developed.

MR. TAYLOR: Fully developed, you're saying that you did not design a detention pond to accommodate for that?

MR. GRAHAM: The detention pond will accommodate for that storm. The water upstream will just pass straight through the detention pond.

MR. TAYLOR: And it passes straight through the detention pond, which the report says you don't need one in the first place, it just passes on down onto 143rd Street on into the Waeckerle property and the Wally property. Is that what I'm hearing you say?

MR. GRAHAM: Yes.

MR. TAYLOR: And you're saying that that impact does not impact these two properties?

MR. GRAHAM: We've shown what that impact is and that's the foot, three inches here and there that we're talking about.

MR. POURAZARI: If I can clarify that, there is an exhibit that indicates if Lion's Gate is developed on the west side and Highlands Creek is developed on their side and what impact that will have on the land, and that's a question that Councilmember Taylor is asking, and you brought a map before the meeting and you showed them, if you want to expand on that.

MR. GRAHAM: When I want to do is show you where the drainage areas are and where the pipes are because I think there's still some confusion in your minds on what those are. This exhibit was prepared to show if we provided detention for Lion's Gate so their development did not increase anything and for Highlands Creek, how big the detention pond will be and impacted 20 lots.

MR. TAYLOR: And that would have been a major change.

MR. GRAHAM: It would have been a major change and required I think a redo of the layout and reduction in lots.

2300 MR. RASMUSSEN: Earlier in the evening, Joe, you heard me orally convey the opinion of the Ad Hoc Committee on stormwater in terms of our engineering standards and practices of the City. Do you still feel that this is not a problem for our engineering standards and practices, and if so, what is the problem here?

MR. JOHNSON: The Council always has the ability to establish policy, and the policy for the City everybody in the governing body is that we require every site to detained regardless of the impact. There are cities, Prairie Village is one, that doesn't care what you do. If you develop your land, you detain your runoff.

There are other cities that look at downstream flooding conditions and based on those existing conditions and existing conditions for flooding then base their decision for detention requirements. So the stormwater ordinance, if that's the policy of the city, it can always be written that the city's policy requires detention and the method of detention will be established as 5600 in APWA, but the standard is you will detain your runoff.

MR. RASMUSSEN: So you still feel where you stood earlier this evening?

MR. JOHNSON: Yeah. Because what we're talking about is a policy decision is whether the City's going to require detention or not.

MR. RASMUSSEN: So contrary to the legal opinion that was expressed earlier tonight, in your judgment the City standards in terms of storm water control in regards to the Highlands Creek development are still applicable?

MR. JOHNSON: Correct.

MR. RASMUSSEN: Now, I have a question for the engineer. If I understand correctly, in one of the reports dated February 3, 1999 revised on March 8th, 1999, this was touched on by Mike earlier, the statement was made the stormwater detention pond and I don't know if the exhibit you're showing us is the same one will reduce the peak storm water off of the development so that other detention basins are not needed.

The final detention pond design will be sized to safely handle a 100-year storm with all areas upstream developed. There's a paren after that. I don't know what it means, but it seems to mean all upstream areas including Lion's Gate. Have you changed your mind since that time?

MR. GRAHAM: No, I think that statement is certainly true. What we're saying is that anything that's developed upstream, we will design the detention pond will have a spillway so anything that's developed upstream like in Overland Park, that increase isn't going to damage our dam.

MR. RASMUSSEN: So you feel from an engineering point of view the way you interpret the City of Leawood's standards is that's a requirement?

MR. GRAHAM: It's a requirement at that time.

MR. RASMUSSEN: Only at that time?

MR. GRAHAM: Well, it's a requirement.

MR. RASMUSSEN: It is a requirement.

2418

MR. BOLD: Madame Mayor, I know that Mr. Wally is here and Dr. Waeckerle is here and other people, but I think that we can have a long debate this evening about the merits and understanding of this project, but I think because of the significant differences between this and what was approved by the Plan Commission, I move that we remand this project to the Plan Commission for further consideration.

MR. DUNN: Second.

MAYOR DUNN: We have a motion from Mr. Bold and second from Mr. Dunn to remand.

MR. BOLD: I will say that my thought in doing so is while I want the Plan Commission to consider it and I think that procedurally we need to let them consider it, my desire is to see in the interim something worked out between the developer and surrounding property owners and the City Engineer.

MAYOR DUNN: I have a question for Mr. Donohoo because I've a number of conversations with you over this, and I understood timing to be a real issue for, and I thought that you understood that if our City Engineer recommended something to us that differed from your study that we would be very apt to not vote in the affirmative this evening.

A remand is certainly an option, but certainly we don't often ignore our City Engineer's advice and I believe I heard you say that you would detain if that was the outcome, and I guess I'm curious about this whole proceeding this evening and the desire not to detain even when we have a report from our engineer suggesting such. I'm asking you, timing evidently wasn't the issue that you expressed to me or we wouldn't be here right now.

2485

MR. DONOHOO: Timing is an issue just to recap a little bit and maybe put it into perspective at least for me. We started off directed by the City to consider basically to provide detention regardless of what the study would show regarding detention. We had a detention in one location. They reviewed it and we moved it.

We went before the Plan Commission and they reviewed it and approved it based upon the location of the detention pond. We told them that we did not believe that the detention was required by engineering studies, but that this was the desire of the City to have the detention, and we came before you all and the scope of the detention became a major issue. Were we going to detain against the recommendations of your city engineers Lion's Gate? We don't have the room to detain Lion's Gate. We put that one exhibit up to indicate that there's interior lines that show the size of the original detention pond and there's exterior lines that show if we raise the dam or the spillway 1.4 feet per recommendations from Dr. Parr based upon not his measurements or his independent studies but based upon his cursory review of our detailed study.

It's not a matter of changing streets and changing layouts of lots. We need our lots to be at least 150 deep. We can't make them 150 feet deep. We lose 20 lots if we do this.

Again, the City Engineer did not and still does not recommend that we detain Lion's Gate. So the study always included a careful review, a very careful review of what's happening in Overland Park. We didn't disregard it. We always regarded it. We're passing it through.

That's the standard procedure. We designed our overflow to do this. You all asked us to revisit our study. We've done extensive study. We want to be good neighbors to these people. We've enjoyed working in Leawood. We've come up and said per the codes, the regulations, your ordinances, detention is not required for those.

As a Council I suppose you certainly can make a stipulation that detention is required, and that would be an approach you can do this evening.

MAYOR DUNN: Would you prefer this Council acting on this tonight with detention required to the remand?

MR. DONOHOO: I would prefer an approval with that stipulation, if you elect to make that stipulation.

MAYOR DUNN: You would agree to detention, to what our City Engineer. Mr. Dunn was kind enough to pass me the minutes from the June 21st meeting that stated Mr. Donohoo said he was having to rely on the City Engineer's judgment.

So a condition of approval on what City staff came up with and not what Mr. Donohoo's engineers or some other engineers came up with. And that was June 21st, and my question is would you in fact reiterate that remark and agree to that to get an approval tonight. I'm not certain that would happen, but it may happen. Or do you prefer this remand that Mr. Bold is suggesting?

MR. DONOHOO: I'm not interested in the time delay, but detention is one thing that we can deal with. We've got a place for detention for our water. We don't have a place for detention for Lion's Gate water.

MAYOR DUNN: I don't believe I'm hearing that either.

MR. DONOHOO: I still hear this from some of the Councilmembers, and that could be a perfectly good opinion to have. There's nothing wrong with having any opinion. That's not the opinion of your city engineer. We would need clarification on that.

I would much rather have an approval on that stipulation than to have a remand. But the report from your city engineer is suggesting detention, but detaining capacity for the Highlands Creek project and overflowing the before, which is now as well as after, which is when it's all down flow from another city.

MR. GILL: I want to make sure I understand what you're saying. The stipulation is a two-way deal, something you would agree to. I'm not interested in voting for something that you're not in agreement with. Right now if what you're wanting is no detention, I would vote against it.

I would consider remand, but frankly I would wonder what that really accomplishes. I'm very interested in what our engineer has to say, and I'm also interested in knowing whether as part of the stipulation, if I read Dr. Parr's letter, he wants the detention basin provided in that second study which I assume is that second study that your engineer prepared with an increase of 1.4 feet height in the dam.

MR. DONOHOO: We can't do that.

MR. GILL: You can't do that or won't do that?

MR. DONOHOO: We can't do that. That is what loses our 20 lots. That 1.4 is to detain for Lion's Gate.

MR. GILL: If Mr. Bodinson is correct in his theory that there is no recourse against Lion's Gate for having increase in the water, do you agree with it or not? Is it your understanding that you don't have any recourse against Lion's Gate for developing out and increasing the downstream impact on your property? How do we deal with this problem?

MR. DONOHOO: I don't know if I'm really smart enough to really understand all of this.

MR. GILL: The water doesn't stop at Leawood and start at the Overland Park border. It flows all the way down through the Plaza and people lose their lives, and if what I'm hearing you say is that this 1.4 feet will be additional water that is currently not passing through your property but it's coming from Lion's Gate.

MR. DONOHOO: Whether or not we develop?

MR. GILL: Whether you develop or not but you're asking to develop. As a member of this community, and I'm talking about the entire metro area, do you think it's responsible government to quit passing the buck and get serious about dealing with water and to start detaining it, and not just current levels but future levels as well.

If we want to stop the increased downstream flow of water coming across your property from wherever it comes, how do we do it? If we don't do what Dr. Parr is asking and you're not willing to do by stipulation or otherwise, how do we do it?

MR. DONOHOO: You're drawing the threshold of black and white, plus or minuses. The water from Lion's Gate does not impact adversely the developability of either the Waeckerle property or the Wally property or the properties downstream from them.

That is why Overland Park is not requiring detention. That would be the same basis for us not to have detention for Highlands Creek. Sure the water rises some, but the water is always going to rise some. You could have calculated the rise for the fully developed ground 100 years ago. When they did the design of the culverts for both the Waeckerle and Wally properties, they could have calculated those. It's not that all of a sudden this just increases it always was going to increase whenever you have pavements.

MR. GILL: When you do something to the property and that assumes that when you do something to the property you don't do something to protect against the incremental know. I'm not just talking about you. I'm talk about Lion's Gate and others.

So what you're saying is because Overland Park chose in its wisdom to not do anything about Lion's Gate, and that developer is not willing to do anything about the water runoff, and it's your property and Mr. Wally's and Dr. Waeckerle's that are in the way of that increased flow, you're saying that you are unwilling to agree to detention that's got an additional 1.4 feet on the dam and/or a second pond as an alternative that would pick up the incremental flow?

MR. DONOHOO. Right, and that's what your city engineer is saying as well.

MR. GILL: I'm not sure about that.

MR. DONOHOO: Well, he just said that 10 minutes ago.

MAYOR DUNN: Mr. Pourazari, would you like to address that.

MR. POURAZARI: Going back again to what we talked earlier, we met with Dr. Parr and we discussed the issue of off site, that whether Mr. Donohoo was responsible to provide storage detention for the City of Overland Park or not.

Based on my practice, anytime there is an off site drainage basin that's routed through the developer's property an onsite detention basin is required to control the peak rate of runoff that's generated by that developer.

The off site drainage area where he's not doing any grading, where's he's not doing any improvement can be routed through the detention basin without providing any kind of storage capacity. This issue was brought up during a meeting with Dr. Parr and Dr. Parr understands that. He agrees with that. We made every attempt here to go to the City of Overland Park that has a completely different set of standards that the City of Leawood has adopted. We asked them if Mr. Donohoo controls the peak rate of runoff from his site, still we're going to have some additional runoff from Overland Park.

We cannot dictate to Overland Park what you should or should not do and would you help us and the answer was that if you could provide us some documentation that Dr. Waeckerle's property or Mr. Wally's property is flooded in the event of 100-year storm, we would be more than happy to consider your request. They went through an analysis and they found that property is never going to get flooded.

That was the reason that the City of Overland Park did not require the construction of detention in the city of Overland Park. Regardless of whether there is a detention of Overland Park or not, this developer is maintaining the same water superceleration at the rear of the properties off site as it is today, and the substantial increase that has gone on there that is reflected on the report that is about one foot without the detention, and as you heard, Mr. Donohoo is willing to provide an onsite detention to the addition superceleration at the rear of the property, so we have done an attempt.

We have talked to Overland Park, and they did say that what we are going to ask Lion's Gate to do is to provide an energy dissipater at the outlet of their basin.

That's all they are going to ask to do. So it is well within your rights to place a requirement on this developer to provide off site detention for the off site area that he's now controlling. And he's here before to let you know you if you place that requirement on him, he's going to lose 20 lots and he's going to have higher volume to store. While from a practical point of view, the city in the metropolitan area like I said per my practice we never placed that requirement on a developer that you are responsible for 160-acre watershed that you are not doing any grading or work on that, that you have no control over, and Mr. Donohoo's property happened to be on the property line of Overland Park. What can you do?

MAYOR DUNN: Thank you. Mr. Dunn, you had your hand raised earlier.

MR. DUNN: Yes, I did, but Mr. Rasmussen asked my question.

2996 MR. RASMUSSEN: I just want to remind my fellow Councilman that innumerable times they get before them these preliminary plats that has this statement. This applicant must obtain all approvals of permits from the Public Works Department.

And in this case it says per the attached Public Works memo, and we normally just assumed that our engineering standards are going to be made applicable to this plat, and we vote on them. We don't reengineer our engineering. And I just want to say that if we get into the practice of saying we're going to redo the engineering and change the standards, I think that's a very dangerous precedent. We may have neighbors who could care less about how they dump their water, that's notorious and now we're in a position where we can rely on the county to buy out the mistakes.

But I feel that tonight if we remand this back to the Plan Commission, what are we saying to them? They came up and said, look, do what our engineers said to do. That's where I'm coming from. I'm coming from the point of view, and you heard our engineer say this is the way we handle this. It's different from Overland Park. It may be different from Liberty, Missouri, but I can care less.

I'm interested in protecting our citizens of Leawood from storm water. If our engineers say that this is the best way to handle it than that's what I'm going to support. Thank you.

3073

GEORGE KAPLAN: My name is George Kaplan. I reside at 4900 West 143rd Street. Twelve years ago I put in a pond, a small creek ran through my property. I hired an engineer and the plan was approved by Leawood. Four years ago when they started developing by Leawood north and west of us, we became concerned and called the city engineers in Leawood and Overland Park to meet with us. They assured us there would not be any effect on our property.

Since then we have experienced great change in volume and velocity of water flow. Pictures of a recent rainstorm have been given to each of you. I would appreciate your thoughts on this subject. Thank you.

BERTRAND GALLET: I'm Dr. Bert Gallet. I live at 4319 West 143rd, just east of Chris Wally's property. I've been to many meetings with Chris concerning this, and it's been stipulated by the developers of Highlands Creek that there's been no damage caused and there has.

We bought the property three and a half years ago. If you were to come out and look at it, you could see the erosion happening. The creek that goes through our property cuts through the 10 acres right down the middle. It's very serpiginous, and it's just eroding along the sides, uprooting the trees, killing trees, dropping them in. Fences have been broken that went through the creek before. We had initially considered building a house on the south five acres which we can't do because of the high cost that it would entail.

We had a study done a couple years ago. It was stated with the bridge it would cost at least \$150,000 just to get back there, and now probably more because of the constant flooding. We plan to redo the barn and add fences for horses. But the question is where do you put the fences? How do you keep damage from happening to those structures or livestock or children, which I have four of them. There's a problem right now. I mean everybody knows there's a problem. The ball was dropped with Worthington. There was no control there, and every time it rains it floods.

Even my 12-year-old complains that her tree fort, 50 feet from the tree, has been damaged and wrecked by rising waters. You know, the developers present something that may meet their standards, but what it lacks is the standards of common sense and responsibility. They abide by probably out of touch state laws and standards. Everybody

knows that flood control is a problem, and if you don't start someplace, it will never get done. It's irresponsible to do otherwise.

So their problem will take care of their flood control. It will not take care of the present flood control that occurs already, and that's another issue.

CHRIS WALLY: My name is Chris Wally. I live at 4501 West 143rd Street. My property has been mentioned many times tonight, and before I enter into my very brief prepared statement, I feel compelled to clear the air about some statements that have been made tonight. They are no particular order as I wrote them down.

First of all, regarding the inference that Mr. Bodinson made of our handling of the letter from Dr. Parr. Harry Wigner and I frankly were in the state of panic that Dr. Parr wasn't going to get back from his vacation because we couldn't locate him for the last two weeks.

I assume it would have been great and not written the letter. He got back yesterday evening to start the fall session and we got the letter this morning. We did the best we could.

Secondly, Highlands Group did make a presentation to Harry Wigner and myself at Harry's office. At that meeting they made no request for a response, and since that meeting, they have not contacted us requesting any response.

Three, Shafer, Kline may have an ax to grind because they are the engineering firm for Highlands Creek with regard to the design of the sanitary sewers.

Number four, there's been a reference made, I believe Mr. Gill made it, if you didn't make, I apologize, about that some residents sue developers and/or the city of single family developments north of 143rd street, most notably Worthington.

Mr. Donohoo denied that claim. He made that suggestion to me on more than one occasion. In fact, when we met about the study number three which was no detention, he told me that if I would support that study, that there would be some consideration involved for me, specifically a new low water crossing in the back of my property or maybe something greater that could be put toward future legal action to Worthington and the City.

Next, with regard to the question that several Councilmembers have asked about with regard to what is the responsibility of someone altering a stream way on downstream neighbors. I can tell you from my own personal experience that my bridge which I built which is my only access to my house took 13 months to get approved by the Kansas Water Resources Board because that creek sheds more than 160 acres, which is the threshold amount to get Water Resources Board approval.

I'm sure that that is a minimum approval and there are many greater ones for the kinds of things we're talking about.

Next item, in a meeting with Shahram, Dr. Parr, my attorney, Harry Wigner, Dick Garofano, and I can't remember all the attendees because I don't have the file here tonight. The standard that was mandated of this developer was APWA standard that the water runoff onto the Waeckerle and Wally properties would be no greater after development than before with specifically focused on the inclusion of all upstream properties after development. I want to make that point clear.

And my final clarification is, if I can borrow Mr. Bodenheimer's exhibit. Unfortunately, I've become an expert in these studies.

Study number one, which predated this one, had a detention pond very close to Nall Avenue on the west of the property. And that's the one in the March 8th study that

was to detain the water from Lion's Gate and says that it would handle 100-year storm basically from Lion's Gate.

Study number two, which I believe is this one has the detention pond sized to deal with the storm water created by Highland Creek, but does not include the storm waters from Lion's Gate. The Plan Commission suggested the possibility of reinstating the Lion's Gate focused storm water if needed in a later phase.

And, of course, study number three is the one that has no detention. With regard to study number three; there are two quick points I'd like to make. First of all, there's been a lot of discussion about it doesn't threaten existing improvements. Well, the Wally family has some other proposed improvements. We have discussed them with the City as far back as when we built the house.

There was one improvement that would have been built in the area that will become flood plane and would have been built this year? And the reason that it wasn't built this year was that in January when this project hit everybody's radar, this project necessitates a new sanitary sewer line that runs in back of the Waeckerle, Wally and Gallet properties. The construction easement for this is 100-foot wide.

There will be significant damage to existing improvements in my backyard, including my septic system. But we've never heard anymore about it. I'm sure subject to the approval of this body of the final plan.

But the point is that the Wally's would have built another structure in the backyard this summer but were waiting for them to come to us about their ultimate sanitary sewer design.

Last but not least, Dr. Parr's letter on page two, the first full paragraph may be one of Dr. Parr's most significant points, and it's the one that says you can't segregate the understanding of the creek through our backyard but runs through Highlands Creek from its marriage with the creeks in the front. The proposition here is really that is one of, well, we're not flooding his backyard and the problem is in the front yard. So he ought to fix that problem and not worry about us.

What Dr. Parr's point here is because they all marry at the Wally, Gallet property that the amount of water that you put through the back does affect what happens to the runoff in the front. They are not mutually exclusive. It is a system.

Now, I believe all of you have seen this booklet of pictures of stormwater events along 143rd Street. If you all don't want me to go over this, I will not. I only introduce it so that it is part of the record.

MAYOR DUNN: I have it and I see it. So I don't believe you need to. Give it to the City Clerk. Thank you.

3485 HARRY WIGNER: Madame Mayor, members of Council, I'm Harry Wigner. I'm an attorney with Lathrop and Gage, 9401 Indian Creek Parkway, in the evil city of Overland Park that doesn't detain.

I'm representing Chris Wally. I do want to clarify one thing I had not mentioned to my client. I did receive a call from Mr. Donohoo a couple of weeks ago asking if we had received a report from Dr. Parr, which I told him we did not at that time. And I'm sorry that although we got it today, we were not able to get it to him until just before the meeting.

As you can tell from pictures that are in the packet that Chris just introduced into the record and we testified before and as the applicant's own studies show we have a major water problem along 143rd Street. We have water going through 143rd Street. We

have problems in the Waeckerle property; we have problems in the Wally property; we have problems in Mr. Kaplan's problem; we have problems downstream. We have problems in Highlands Creek, according to one of the pictures that was shown to my client.

To my client, this is the second verse of the same song that he heard four years ago, five years ago when Worthington was done. He was assured by the City and by developer's engineer, who happens to be the same engineer that designed Mr. Wally's culvert that Worthington was not going to throw off anymore water and not be a problem for his property.

Tonight in the third study, but only for the first time we are told by this developer that we don't have to do any detention; and by the way, that study was done five years ago was wrong and Worthington should have had detention, and why don't you go sue them, consider suing the City.

Again, to my client this is just the same old song, and if the City again does that to him he'll have no recourse than to sue the City and all developers involved.

As you can see, Dr. Parr in the letter that I think has been passed out to all of you, and I'll submit one to the clerk here, is a professor of engineering at the University of Kansas, has looked at the study that was done and was very complimentary that it was much more comprehensive than what had been done before.

But the bottom line was the conclusions drawn on it were wrong, the detention should be required by the City of Leawood, particularly when you already have a severe water problem downstream caused by other developments that had not been adequately dealt with. I'm sorry if that is not Mr. Donohoo's problem and other problems that have occurred, but they are occurring and he's the one asking for a permit.

We agree with the city engineer that the City ordinances and policies are broad enough that the City could require detention here and ask that you would require detention here.

Now, as was drawn out about Mr. Rasmussen's questioning and Mr. Gill's and Mr. Taylor's questioning of Mr. Bodinson, their position is that under the City ordinances, you cannot require detention.

I would submit to you that if the City ordinances say that no detention is required but as is shown my their plan and as they have stated that means that there's going to be more water on my client's property, and if there are going to be more areas that could be developed today but cannot because the City has allowed them to in effect convert them in the floodplains that the City has in effect condemned my client's property, and the City does not have a right to do that under the Constitution which supersedes any Leawood ordinance.

I did not specifically research Kansas law for this evening. I do have the dubious distinction of having taken water law and the general common law rule is that no landowner can gather and throw it onto another landowner's property with greater force than otherwise would have gone there. And I would submit to you that based on Dr. Parr's conclusions and review of their report that they are going to throw it onto our property in full force, which will result in increase in death but as he said in his letter, more of a problem it will increase it more frequently. So again we would ask that you adhere to Kansas law as well as your own policies and not allow that.

So in conclusion, we ask that you either turn this application down or that you require detention of all upstream water, both from Highlands Creek and Lion's Gate. Thank you.

3680

JOE WAECKERLE: Good evening Madame Mayor and gentlemen of the Council, I'm used to being last and I'll make it sweet. With a name like Waeckerle, you're always last. This has become a rather contentious issue. And I don't have a lawyer and I don't have an engineer, but I have faith in the system and as I said last time I worked with this system my whole life, and I wanted to set the record straight on a couple of things.

I have not been privy to any reports from anyone. And when I did meet with some individuals who asked to speak to me regarding these issues, I simply said that I would be happy to review any data given to me and consult with all of the engineers, not that I can understand them, but hopefully I can find some consensus because consensus and compromise and cooperation would be most prudent in this case.

It would seem that everyone has a great deal to lose. I think the only two comments that I wish to make is first I was assured when we move into our residence in two weeks that whatever development occurred would not further negatively impact our new home, and that's what I would expect any of us would want.

And then I guess the other thing I would want to say and this more of a statement about the general health of our country, that people live with honor and integrity, and while we have laws sometimes those laws through legal opinion and legal manipulation and spindoctoring can be turned to benefit those who don't necessarily need to be benefited.

I'm not saying anyone needs to be benefited here. There is a greater law that we all should live by in this situation, and I submit to the counselor and the engineer, and I like Mr. Donohoo, that you do unto others as you would want them to do unto you. And three inches may not mean anything to you, but it means a whole lot to me and my property. And if it was your property, you'd probably have something to say and would be standing up here too.

MAYOR DUNN: Thank you, Dr. Waeckerle. That concludes our citizens who have signed to speak on the issue. And we do have a motion and a second on the table for a remand. I believe I heard Mr. Donohoo state that you would prefer to an approval this evening with the former requirements of detention, but I want to clarify that before we take a vote on that.

3783

MR. DONOHOO: And to answer initially, we'd rather see approval with that stipulation than be remanded to the Plan Commission. But we ask that that stipulation be for detention of the water runoff increasing, flow et cetera for Highlands Creek and Highlands Creek alone, not for Highlands Creek and any and all off-site properties, most notably Lion's Gate.

Shafer, Kline & Warren, we got their softer review of our study based upon their reputation and expertise in this area. It is described that they are designing sewers for our project. They are designing sewers for the Johnson County Waste Water extension, the sewer mains, not our sewers.

To expedite the installation of the sewer mains, we are compensating Johnson County Waste Water for that design, but they are working for Johnson County Waste Water on behalf of designing their sewers, not ours. Compensation was discussed briefly when we met with Chris Wally and his attorney and then later when I met with Dr. Waeckerle.

I indicated to them that our study now shows in detail that per the APWA requirements that detention would not be required. If we're not detaining, we saving some money. If they have a problem in their front yards, we haven't had the opportunity

to really make our engineers to make their presentation and to make clear ground with Shafer, Kline & Warren make his review. Maybe that's not even desirable or interesting at this point in time. But I said that perhaps we could improve their channels, and Chris said maybe that's not going to help me. And I said whatever amount of money it would take to improve the channel on Waeckerle's property. If we weren't doing detention that same amount of money could be used by you for whatever reason.

They were the ones that indicated their options. Our study does take into effect and again our engineers have not had the opportunity yet, and we'd be happy to make that presentation.

There are two watersheds and most of the water goes through the front of the -- most of our water goes through the back of the properties of the Waeckerle and Wally properties. 24 of our acres goes through the front of their properties, four of that is not developed. So 20 developed acres go through the front of their properties. Just a long and maybe still on the property those two channels in front and in back do come together, and all of our studies and most recent version of the study looks at the effect of our water coming around back and intending to back up the water that's in front of the property, and that does impact the amount of water that's in front of the property but it's still in our opinion a small amount.

Three inches, half an inch, does mean a lot to an individual. It doesn't really change the floodplain substantially. It doesn't really change many things in this particular instance. We reported back with the results of our study. If the City wants to make that stipulation and go along with the City's Engineer's recommendations that detention be for Highlands Creek along Lion's Gate then we would prefer that scenario than being remanded back to the Plan Commission.

MAYOR DUNN: Thank you, Mr. Donohoo, for the clarification.

3954

MR. BOLD: Mr. Donohoo, I just want to clarify, are you willing to stipulate to detention including the 1.4 feet to take care of Lion's Gate?

MR. DONOHOO: No. The reference to this 1.4 feet in the previous memo from Dr. Parr and the current memo, if that reference is in there again, that doesn't really say that that 1.4 feet is for Lion's Gate, but that's what it's for.

MR. BOLD: Madame Mayor, I stand behind my motion to remand with an expressed desire for the developer to try and work out something with the City Engineer with the surrounding property owners.

MAYOR DUNN: Your reason for remand, and we have to be very clear.

MR. BOLD: My stated reason for remand is to consider the changes in the plan since the time it was presented to the Plan Commission and as it came before us this evening.

MAYOR DUNN: You'd like the Plan Commission to look at the new study?

MR. BOLD: It's not the study. It's the lack of dramatic changes between what the Plan Commission saw and what was being to us this evening.

MAYOR DUNN: So you want the Plan Commission to review this new drainage study and request for no detention; is that what you mean?

MR. BOLD: Otherwise, it's just to turn it down and ask them to reapply, and rather than that I think it would be fair to the developer to remand it if this is what they want since the Plan Commission had significant discussion about detention, then I think that's an issue.

Second, it's my belief that it's our responsibility to so insure that there is no greater discharge at the property line than there is right now, and I'm not sure where the water comes from, whether it comes from the Baptist Foundation property, from Overland Park. It doesn't really matter. The bottom line is I think we need to resolve this issue so that there's no greater flow on the property line than there is right now.

MAYOR DUNN: And that I think is a given from our engineer's report as well that that will happen. The reason for Plan Commission to review the new drainage study and the request for no detention.

MR. BOLD: No, I'm not asking that they review the new drainage study.

MAYOR DUNN: That's what you just said because I wrote what you said.

MR. BOLD: What I said was I wanted the Plan Commission is we've been asked to approve what is before us this evening is a plan that includes no detention.

MAYOR DUNN: That is correct. However, I just heard by request that he'll do whatever he said on June 21st, with the exception that he didn't want to detain Overland Park's water.

MR. BOLD: No, we're not talking about Overland Park. We're talking about -- Mike, can you help me?

MR. GILL: I think I understand the reasons, at least some of them. I think if we do remand, and I honestly don't know if I'm in support of remand, candidly. I would want to the Plan Commission to consider at least the following in conjunction with the City's Engineering Department.

Number one, we've got several sets of engineers, all who are well respected, who reached dramatically different conclusions. They seemed to be on agreement with a number of facts, primarily that there will be increased water runoff from the property. The degree of it is somewhat in dispute, but the fact of it happening is not in dispute.

Secondly, given that fact that there is a disagreement among well-respected engineers, one engineer says put another 1.4 feet on your dam or do what the Plan Commission apparently was interested in doing according to the testimony we heard today of considering the option of a second retention pond, but do something more than what was on the table the last go around.

Dr. Parr says that's what you need to do. The engineers that the developers hired said, well, actually you don't need to do anything. So we've got a conflict of facts between engineers as to how much solution is required. She I'd like the Plan Commission and the City Engineer to consider that.

I also heard conflicting testimony that we can't resolve here including a statement that the Plan Commission asked for consideration of a pond in the phase one, and phase two they needed the option of a second one. Plus I heard from Mr. Wally that in meetings that did involve the City that the standards that were to be built to was that the water coming off of Highlands was taking into account full build out of the area, which is going to happen is that there will not be incremental discharge on the property line.

Now there may have been -- where engineers don't disagree again, both sets of engineers agree that after Highlands is done, if they don't add that 1.4 feet, or if they don't do anything in either scenario there will be increased discharge at the property line which translates into higher floodplain, more water on existing residents' properties. So I'd like the Plan Commission to consider what can be done to alleviate that and prevent discharge at the property line.

And then I guess I'd like to add a fourth criteria. I'd like the Plan Commission and City staff to consider Dr. Waeckerle's comment about what is good and decent and right. We're talking about a city who one of the major issues, it would be on anybody's short list of issues, and that is flood control in Kansas City. People lose their lives, folks, because we are not adequately planning for storm water runoff. People die and it's time we do something about it, and we can't solve, there isn't a silver bullet that fixes everything. I wish there were, and it's time to start.

Shahram, with all due respect and appreciation for the work that you do, the fact that nobody else does it is not an adequate answer for me. If there's a solution that is -- apparently both sets of engineers agree to one extent or another work and that is put another 1.4 feet on the dam, and that will at least prevent additional discharge of the property line then I think he have an obligation to this community. Not just to the Wally's and the other Leawood residents, but to the community as a whole to stand up and come to grips with this water problem. And I think this is the time to start, and I'd like the Plan Commission and Public Works to consider that as part of the remand.

4276

MR. POURAZARI: Madame Mayor, if I may comment. I have spoken with Dr. Parr in detail and in great depth about this issue. The plan that you have before you, nothing has changed. This is the same plan that was presented before.

What's been put in front of you today is if the developer is required to provide detention, including Lion's Gate, what impact it's having on the size of the detention basin. Going back to City Plan Commission isn't going to solve any problem. The engineer has done the study. They have done what City Council asked them to do and they have done that and we reviewed it. They identified some problems that were not identified before, and they have come in front of you and said, yeah, we're willing to provide onsite detention.

MAYOR DUNN: I think what I heard, Mr. Pourazari, and I don't know if you can comment on this, the big question on this 1.4 that Dr. Parr suggests, and then I hear Mr. Donohoo say that he can lose 20 lots. Do you have any comment on that because that seems to be a tremendous issue?

MR. POURAZARI: He's not making that comment today.

MAYOR DUNN: He is.

MR. GILL: It's on page 1, third paragraph.

MR. POURAZARI: Dr. Parr feels pretty comfortable with the City's position and I've talked to him regularly about this issue, and he believes that the Engineering Department is going to do a good job for the City of Leawood, for the residents of the City of Leawood. I've met with Mr. Wally and Dr. Waeckerle, and I've expressed that we are here to ensure that water superceleration will not be raised, that not additional runoff will be dumped onto their property. This is third submittal of the study that's been prepared by the developer. So going back to City Plan Commission again, it's going to come back to me.

4376

MR. BOLD: Shahram, here's the issue really. Our concerns about this project are not based on Mr. Wally's concerns or Dr. Waeckerle's concerns or Dr. Gallet. It's the fact that we have 10 situations like this in the third and fourth ward that were a direct result of poor planning in the first place.

I don't need to go through the list. You and I have been going through the mud scaring snakes and frogs in the same places. I think what Mr. Gill has said, and I think the point that I was trying to make, when it comes down to an issue like this, I think that because we're getting all these conflicting reports, we're forced to error on the side of caution. And the choices that we have as a governing body are this.

If I sit here as a Council person and I'm not sure, and I'm going to error with caution. If we don't remand my chose is to turn this project down. Well, we've heard Mr. Donohoo say that time is of the essence. I understand that a remand is going to take more time than he'd like. If we turn it down and he has to reapply and that's going to take longer and we're going to be back here some months from now in the same spot that we are right now.

What I'm hoping is that through this remand that maybe the Plan Commission can work out some sort of arrangement that's more equitable for all of the parties. We can sit here all night and argue about it, but I don't think that this body will be able to reach that consensus, therefore, the remand is the only option that's left.

MAYOR DUNN: Well, a remand or approval on the last plan.

MR. BOLD: And I am not comfortable with voting for that.

MR. DONOHOO: There's been some discussion of a second detention pond. That came up in the Plan Commission meeting and approval based upon our layout of this large detention pond on our east boundary was tied to the dimension of the lots that we wanted and the question was not with respect to Lion's Gate. The City Engineer had the same discussion and the same recommendation in the Plan Commission, and the Plan Commission approved based upon that recommendation if detention is required, it would be for Highlands Creek and not for Highlands Creek and Lion's Gate.

That's where the Plan Commission came from and didn't have anything to do with Lion's Gate. The question to me on that second pond didn't have anything to do with Lion's Gate. It had to do with you're tied on those lots, where would you get additional capacity if it was determined that for Highlands Creek you need additional capacity. My answer was we could have some additional capacity at Highlands Creek detention in the original location.

MR. POURAZARI: That's a true statement.

MAYOR DUNN: Yes, it is because I listened to those minutes. Thank you.

4514

MR. BUSSING: Madame Mayor, it seems to me in response to Mr. Donohoo is that what he heard City Staff and Plan Commission has been right. Their perspective has been to enforce or enact City policy-it has been stated to this point in time.

I think what I've heard Mr. Gill state and what I think many members of this Council agree with is that we prefer that they take a different perspective on what City policy, that storm water issues don't begin at Nall. Storm water issues begin at the top of headwaters. We can't separate the water that goes on Mr. Wally's property, this is the Overland Park water and this is the Leawood water.

What we're asking, all of the studies that Mr. Donohoo has done to date are correct in their content to the extent that they are looking at his property. Which as Shahram has suggested is what the City's policy has been, and I'm hearing Mr. Gill suggesting that perhaps the policy should change and we're starting that change tonight, and it's a different perspective that we're asking the Plan Commission and City staff to take with regard to stormwater issues.

MAYOR DUNN: You're hearing one person's opinion and I think you're concurring.

4572

MR. STORY: I have a question for Mr. Donohoo. It's obvious that water retention is going to have to occur in order for this project to get approved. You agreed that would you put a retention pond that would satisfy all of the runoff from the Highlands Creek property?

MR. DONOHOO: We have sized in our preliminary plat that would satisfy the requirements for Highlands Creek.

MR. STORY: And all the additional water from Lion's Gate would pass right through and continue on as it does today? Is there any type of compromise position that will fit on your property such as an additional lake or something less than 1.4 feet that will make some progress in controlling the Lion's Gate water flow and still allow you to have a number of lots that makes your project profitable?

MR. DONOHOO: Any increase in freeboard on the spillway impacts our lots in an unacceptable scenario. We do have some space that some additional capacity can be gained. Acceptable or unacceptable, the studies show per the codes and standards, which are very conservative, we know detention is required. City Council is certainly a step beyond those. But you're talking about what's good for all the people in Leawood, but you're ignoring the 232 people that are going to live in Highlands Creek. It's not good for them to have to take over the maintenance of this pond. I don't think the City's offering to step up and take over the maintenance of this detention pond if and when it silts out.

If a detention pond isn't actually required by conservative codes and one is still required by City Council, you've imposed a burden that some could say are unnecessary on the homes association. And to impose an additional burden to take care of part of the extra water that another respectable city --

MR. STORY: Let's assume that we're willing to accept the risk that we're imposing a burden by building a retention ponds. Is there a place you can and will build an additional pond that will take care of the runoff from Lion's Gate?

MR. DONOHOO: We have the original location for detention ponds.

MR. STORY: And then information on how much of the Lion's Gate water flow that will take care of.

MR. DONOHOO: He can make a comment on this in a second. And I might fall back to another comment that Chris Wally made regarding that original pond. That pond wasn't there to take care of Lion's Gate's water. We selected that location because that's a better location for our subdivision. That lets us leave this new location in its natural state. We don't lose the trees that can be viewed from the Waeckerle property. He has a pond in the area that's more accessible for maintenance by the homes' association. We have a lot of good reasons that the Planning Department in the City of Leawood preferred that location.

We met Planning and Public Works and walked this location, and Public Works wanted to move to it down stream. What we were doing is we were capturing an equivalent of Lion's Gate's water to try to compensate for our water. You can figure out which water is coming from where.

MR. STORY: If you put both ponds in, you're going to control your own water and how much of Lion's Gate's water?

MR. GRAHAM: In this case we haven't got that. When I have been involved in two detention ponds in tandem and the downstream detention pond does all the work, and you really don't gain anything. You're better off making the downstream detention pond a lot bigger.

MR. DONOHOO: I think your comment was if the City was willing to incur that risk. The City wouldn't be, the homes association would be required to maintain the two ponds, one of which didn't work very well because of its close proximity to the other.

We have got a location for one pond. We can put it in the centralized location where it was originally proposed in which initially Joe Johnson in Shahram's absence --

MAYOR DUNN: I think Mr. Pourazari has recommended the current to the east.

MR. DONOHOO: 1.4 feet doesn't seem like a lot and in the first meeting here we said we would look at that. If that didn't impact, we'd be happy to raise something 1.4 feet, if it wasn't an undue burden for us.

4825 MR. TAYLOR: I just happened to notice something per discussion with staff about, and that is the street to the east. Is that something you'd require or is that something staff required?

MR. DONOHOO: That was discussed at the last meeting and the staff was questioned. The City had required from us that future connection, and we are happy to make the connection or not make the connection, whatever the City requires.

MR. TAYLOR: And if staff would you like to respond to this. I had discussion with you after that meeting and I asked you why you required that when that property is zoned for 10-acre tracts.

MRS. BINCKLEY: Some for 5-acre tracks, and I think we discussed at that meeting that in the case that as we always try to look forward to future planning that that property could be rezoned if somebody chose to take those properties and divide them into smaller lots. And we also discussed if Council felt that that wasn't appropriate that we could pull that.

MR. TAYLOR: I want to ask Council to pull that. I don't think it's an item we want to address. Right now we have 10-acre tracts right there and I think it's out of our good master planning to suggest that that's going to be future development.

MR. POURAZARI: If you were to assume that this development will not go through and this property doesn't even exist. You've got Lion's Gate in Overland Park, correct? And they are going to develop. What you're saying in this report is that once Overland Park is developed, the flow rates at the rear of this property would stay the same as if this development would go through.

MAYOR DUNN: Are you saying Overland Park's?

MR. POURAZARI: I'm saying even if this development is not in front you right now, and you've got Overland Park, it's another city developing, it will increase.

MAYOR DUNN: It will increase our flow rate.

MR. POURAZARI: And the same water is going to be conveyed through the City of Leawood. We cannot go down and block and dam what Overland Park is building. And this developer is trying to do and saying that he will install the detention basin to control from our side. I think that might help.

4960 MR. BOLD: Call for the question.

MR. BUSSING: Second.

4975 MAYOR DUNN: All in favor, say aye. May I see a show of hands on the ayes? Taylor, Rasmussen, Dunn, Rawlings, Bussing and Bold. Motion carries. We're ready for the question on remand. May I ask Mr. Bold if he would like all of Mr. Gill's remarks incorporated in your motion as well as Mr. Taylor's stub street issue?

MR. BOLD: I would like that and including the stub street issue.

MAYOR DUNN: And I believe I did write them on down but they're on the tape, so if you don't mind I won't read them. The motion is to remand through the Plan Commission to reconsider all of the items in the motion. All in favor say aye.

MR. RASMUSSEN: I have a point of clarification. We normally take into account the downstream implications of the development, and hopefully what we're saying is we want to make it very sure that when that downstream implementation occurs that if somebody on the other side of the street, now we're looking subsequently downstream,

that you're going to take into consideration what's happening into your property and through it and control it.

That's what we're saying, and I think we're there now. I don't think we're changing a darn thing. I think we're saying very positive that because somebody else decides to dump water, and if this developer comes along, we're not going to permit that dumping to be passed through. I feel we've got it under control.

MAYOR DUNN: All right. All in favor say aye. Opposed nay. It carries unanimously. Thank you for coming.

MR. GILL: I think Gary accurately captured the point. I do not view that as a change in City policy. As I understand City policy, when we have known impacts projected to occur, we're not going to allow for increased water runoff at the property line, and we don't -- that's my understanding of a policy, and if that is the policy I agree with it and all I'm trying to do is make sure that that policy is being carried out. I do not view that as a change in policy.

Ordinance rezoning from AG to RP-1 – Highlands Creek. No action.

5128 **MAYOR'S REPORT.** The Mayor complimented staff on the 2000 Budget book that had been printed.

Councilmember Gill would attend the Northeast Senior Leadership panel on August 26th at Prairie Village City Hall in the absence of the Mayor.

Mayor Dunn reminded everyone that Richard Hunt's public art sculpture would be installed at City Hall at 5:30 P.M. on August 20th.

OLD BUSINESS

5316 **Ordinance No. 1813 granting a franchise to Brooks Fiber Communications – final reading.** Motion for passage by Rasmussen and second by Bussing with the additional words (underscored) on page 5, Section 4 Franchise Fee, that "Franchisee shall pay the greater of \$12,000 or an annual sum of \$2.50 per lineal foot for all fiber in the right-of-way, plus City-owned parks and golf courses." Motion carried unanimously on roll call vote. (Gill and Bold were not seated for the vote.)

Ordinance No. 1814 granting a franchise to ACSI – final reading. Motion for passage by Rasmussen with the same wording changes as Ordinance No. 1813, second by Taylor. Motion carried unanimously on roll call vote, except for Gill who was not seated for the vote.

Councilmember Gill returned to his seat.

5505 **Ordinance relating to massage therapy.** Bussing wanted to defer action on the proposed ordinance to allow for further professional input. The proposed ordinance stated that any massage in residential areas would be prohibited unless under the consent or request of a physician; there would be objections to that. City Attorney Wetzler had received several concerned phone calls; current ordinance regulated massage as part of adult entertainment and made it impossible for certain legitimate therapists to provide services. Mr. Wetzler advised that Council defer action in order to get comments from

the massage industry, and he added that some sections of the current adult entertainment ordinance needed to be repealed.

5817

Barbara Paterson, 12856 Cambridge Terrace, and Karen Duethman, 12600 Ensley Lane, massage therapists, felt there were many other massage therapists who would be interested in looking over the information and having some input before any action was taken. They didn't feel massage therapy was immoral and didn't like it under the adult entertainment category.

Consideration of the proposed ordinance was deferred to the September 20th Council meeting.

6330

Conveyance of golf course property to the Robert Mannings, Lot 95, Estates of Iron Horse, and to the Matt Kincaids, Lot 59, Estates of Iron Horse 2nd Plat. A third potential purchaser of golf course property had refused to sign the City's agreement due to the indemnification language requested by the Council. Funds were in place to close for the Mannings and Kincaids. Motion by Bold and second by Dunn to revise the primary agreement to move ahead and allow means of independent transactions with the Kincaids and the Mannings. It was noted that the agreement contained language and stipulations for fence placement that was a concern of the Mannings; unfortunately, the City couldn't cause the developer or builder to place the fence on property that they didn't yet own. It wasn't the City's position to stipulate the placement of the sprinkler systems and sod; those items would have to be worked out with the builder. Motion carried unanimously.

Bob and Debby Manning stated they had concerns that the builder would install the fence on the old property line and not where they wanted it to be, and understood that the Council was going to assure that the developer would pay the costs. Council stated that they could authorize conveyance of the golf course property, but the City couldn't get involved in private litigation. It was the Council's wish that costs would not be passed on to the Mannings, but the Council couldn't mandate what they didn't have power over. The Mannings understood from the April 5, 1999, Council meeting that within 90 days the builder and developer would be responsible for "all of the mentioned things." Jeff Cantrell, Neighborhood Services Administrator, clarified that the builder, Reed Fuller, presented the check to the City, fronting the deal, would sell the property to the Mannings. Mr. Fuller would have the stipulations placed on the property and filed with the County, and then conveyed to the Mannings. Mr. Cantrell said he would talk to Mr. Fuller about the sod and sprinkler systems, but had not heard of any agreements concerning those items. Mr. Cantrell understood that Mr. Fuller would install the fence at the new property line at his expense; the City would be sure that the fence was placed properly. The Mayor reiterated that it was the Council's wish that none of the costs be passed on to the property owners.

7003

Change Order No. 1 to the contract with Mac's Fence Co. in the amount of \$7,874.15 for fence removal/replacement along 135th St. – for additional fence not addressed on the relocation plans. Motion for approval by Rasmussen and second by Taylor. Motion carried unanimously.

7084

11:00 P.M. Motion by Taylor and second by Bold to extend the regular portion of the meeting 15 minutes. Motion carried unanimously.

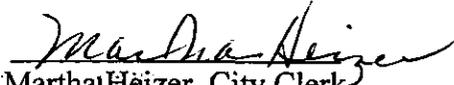
NEW BUSINESS

- 7102 **Approval of Appropriation Ordinance No. 868.** Motion for approval by Mr. Rasmussen, second by Taylor. Motion carried unanimously on roll call vote.
- 7132 **Authorize interlocal agreement with Johnson County for public improvement of 135th Street from Nall Ave. to approximately 1,200 feet east of Nall.** Motion to approve by Rasmussen and second by Story. Motion carried unanimously.
- 7150 **Schedule executive session to discuss a matter under attorney/client privilege and two matters relating to land acquisition.** Motion by Gill and second by Taylor to convene in executive session at the end of the meeting for a period not to exceed 30 minutes. Motion carried unanimously.

OTHER BUSINESS

- 7175 **Schedule work session.** On motion of Dunn, seconded by Bussing, Council voted unanimously to meet at 5:30 P.M. on September 20th to discuss the Bucher Willis Ratliff City comprehensive traffic study.
- 7321 **Assignments to the Public Works Committee.** On motion of Taylor, seconded by Dunn, Council voted unanimously to assign the following to the Public Works Committee for review and study: 1) a proposed right-of-way ordinance, and 2) traffic hazards at the intersection of 119th St. and Pawnee.
- 7455 11:10 P.M. Council convened in executive session and returned to regular session at 11:40 P.M. There being no further business before the Council, the meeting was adjourned.

Minutes prepared by Gloria Steinle.


Martha Heizer, City Clerk



MINUTES
SPECIAL COUNCIL MEETING

Tape No.

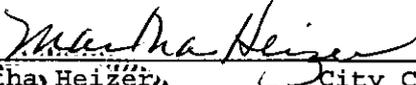
The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 7:00 P.M., Monday, August 23, 1999. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Mike Gill, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss land acquisition. Shelby Story and Louis Rasmussen were absent.

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

On motion of Bold, seconded by Dunn, Council voted unanimously to convene in executive session until 9:45 P.M. for the aforementioned purpose.

9:45 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.

The City Council of the City of Leawood, Kansas, met in special session at the City Hall, 4800 Town Center Drive, at 7:00 P.M., Monday, August 30, 1999. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Patrick L. Dunn, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr., for the purpose of convening an executive session to discuss a personnel matter. Shelby Story and Jim Rawlings were absent.

Staff present: None.

On motion of Rasmussen, seconded by Taylor, Council voted unanimously to convene in executive session until 9:50 P.M. for the aforementioned purpose.

9:50 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. 465

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 7, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, 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; Sarah Hilton, Administrative Services Manager; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE - led by Danny Kellerman, a student at Rockhurst High School and lifeguard at the Leawood Aquatic Center.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Taylor, seconded by Gill, after the addition of 1) the scheduling of an executive session for September 20th to continue the August 30th discussion of a personnel matter, 2) a discussion of the City Administrator's memo to Council concerning planning services, 3) a discussion of a memo from Sarah Hilton concerning consultants the City had used, 4) an update on Mission Rd. improvements south of 103rd St., and 5) a discussion of the maintenance of medians (islands) along 135th St. between State Line Rd. and Nall Ave.

RECOGNITION OF CITY EMPLOYEES FOR RESCUE EFFORTS AT LEAWOOD AQUATIC CENTER, LEAWOOD CITY PARK. Parks & Recreation Director Claxton presented a plaque to lifeguard Charles Wagner in recognition of the quick and professional actions he took when a potentially serious accident occurred at the Aquatic Center, Leawood City Park, on Sunday, July 25, 1999. Mrs. Claxton also complimented lifeguard Mollie Ingham and Leawood firefighters who assisted in the rescue.

PROCLAMATION. The Mayor proclaimed September 1999 as "America Goes Back to School Month."

CITIZEN COMMENTS. None.

277

CONSENT AGENDA. Two items were removed for further discussion. The following were approved unanimously on motion of Dunn, seconded by Rasmussen:

1. Minutes of the July 19, 1999, Council meeting;
2. Minutes of the August 16, 1999, Council meeting;
3. Minutes of the August 23, 1999, Special Council meeting;
4. Minutes of the August 30, 1999, Special Council meeting;
5. Arts Council report (minutes) on their July 27, 1999, meeting;
6. Arts Council report (minutes) on their August 24, 1999, meeting;
7. Golf Course Committee report (minutes) on their August 26, 1999, meeting;
8. Ad hoc Stormwater Management Committee report (minutes) on their August 11, 1999 meeting;
9. Pay Request No. 1 (FINAL) by Musselman & Hall Contractors in the amount of \$102,898.00 for the 1999 Street Slurry Seal Program;
10. Resolution No. 1471, attached as part of the record, approving the final plat of Whitehorse 4th Plat, approximately 148th & Nall Ave.;
11. Declaration of surplus property no longer used by the Police Department to be placed in the next auction – list of 21 items including but not limited to computer equipment, a refrigerator, chairs, typewriter;
12. Purchase of 2 Kustom Signal “Eyewitness” in-car video systems for the Police Department totalling \$11,952.00.

Parks & Recreation Advisory Board report (minutes) on their August 10, 1999, meeting. The Mayor said a correction needed to be made on page 3, 2nd full paragraph – the 3rd sentence in which Councilmember Taylor stated that the City Council reported that Blue Valley was responsible for maintenance of the Oxford Schoolhouse needed to be deleted; that was not Mr. Taylor’s intent and Blue Valley School District didn’t want to maintain the schoolhouse. On motion of Taylor, seconded by Dunn, Council unanimously approved the report.

Kansas Bullying Prevention Program Grant. The Kansas Attorney General awarded the City a Governor’s Discretionary Portion of the Federal State and Drug Free Schools and Communities Grant for which Police Officer Randy Wiler had applied. The City was awarded \$44,343.00 with no grant match required from the City. The Kansas Bullying Prevention Program web-site would provide a database of information for bullying trainers statewide and would allow students a place to report bullying incidents. Besides several cost savings, the grant would also give the City eventual capability for all employees to have Internet and internal electronic mail through a single software program and the City’s connection speed to the Internet would improve dramatically. The Mayor thanked Officer Wiler for his efforts in obtaining the grant. On motion of Gill, seconded by Taylor, Council unanimously accepted the grant.

410

MAYOR'S REPORT. The Mayor attended a recent Council of Mayors meeting at which there were reports on the I-35 commuter rail project (possibly operational by 2001), the community infrastructure summit (see Resolution No. 1472 later in the meeting), and the County Charter Commission (charter to be on the ballot in November 2000 general election).

Councilmember Gill attended the Senior Leadership of Johnson County in the absence of the Mayor. Mr. Gill said everyone was concerned about stormwater and the need to have a metropolitanwide stormwater policy (a coordinated effort) that made sense.

Fire Chief Florance said that 5 Leawood firefighters had qualified to compete in the world championships of the Firefighter Combat Challenge later in the year in Las Vegas. Chief Florance read the Challenge's mission statement which encouraged firefighter fitness and concerned performing one of the most dangerous and demanding jobs better and safer.

Resolution No. 1472, attached as part of the record, in support of the development of a community infrastructure plan to provide for the maintenance and support of infrastructure in the developed, developing, and rural areas of the County. County Commissioner Annabeth Surbaugh and Chip Corcoran, Director of Infrastructure, Johnson County Public Works, gave a brief presentation and answered questions. They didn't request any funding.

Councilmember Gill felt that the County needed to be planning for infrastructure and shouldn't be afraid to spend tax dollars appropriately on infrastructure which was such an important and vital issue. Mrs. Surbaugh said it was clear to her during preparation of the County's 2000 budget that citizens wanted services, especially infrastructure.

On motion of Gill, seconded by Rawlings, Council unanimously adopted the resolution supporting a community-wide process to identify local infrastructure conditions and emerging infrastructure issues, to establish goals and objectives for the maintenance and development of needed infrastructure, and to develop a long-term strategy for meeting those goals and objectives.

OLD BUSINESS

975

Ordinance relating to stormwater management. Councilmember Rasmussen moved that Council accept the ordinance as recommended by the ad hoc Stormwater Management Committee and that the Committee be dissolved since they had completed their assignment, seconded by Taylor. The Committee recommended that the Council review the ordinance from the point of view of "policy" and at the September 20th Council meeting, if the policy as expressed in the ordinance was acceptable to the Council, the ordinance be referred to the City Attorney for legal review and then returned to the Council for final action. The Mayor noted that Mr. Rasmussen who served as Chairman of the ad hoc Committee would not be at the September 20th Council meeting. Councilmember Bussing moved to defer further Council discussion of the ordinance and subsequent referral to the City Attorney to the October 4th Council meeting so Mr. Rasmussen could take part in the discussion. Motion seconded by Taylor and carried unanimously. Mr. Rasmussen's motion to accept the ordinance and dissolve the Committee carried unanimously.

Councilmember Gill asked if APWA standards concerning increased flow and impacting structures were addressed in the ordinance. Mr. Rasmussen explained that the current standard for Leawood was national standard APWA 5600; the Committee felt that that standard was a good standard as they wanted to modify it. He asked Council to review the Committee's meeting minutes to be distributed in the next Council packets and look at them from the points of view of an engineering standard and legal standard. He noted some of the significant portions of the proposed ordinance that the Committee wanted to highlight to the Council – 1) design criteria was based on APWA 5600 as modified to provide an integrated system (Council needed to obtain the latest copy of 5600 from Public Works), 2) sediment and erosion control regulations (dumping of mud on roads and sidewalks a major problem; regulations that didn't exist had been assumed to exist), 3) enforcement provisions and penalties (interim City Prosecutor assured the Committee that the ordinance as written was enforceable in court), 4) control of construction/dumping in drainage swales that impeded the natural flow of the design of the stormwater system. The Mayor wanted the highlighted significant portions discussed at the October 4th Council meeting. Councilmember Bussing said that 2 sections of APWA 5600 were specifically germane to detention and retention of water, germane to the Highlands Creek stormwater issue discussed at previous Council meetings.

1445

Change Order No. 1 to the contract with Seal-O-Matic Paving Co. for the 1999 Street Improvement Program. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the change order in the amount of \$43,942.58.

1475

Discussion of fencing at South Park. The Parks & Recreation Advisory Board recommended a type of continuous split rail fencing that could be reinforced with trees and shrub work with the specifications for the fencing to be clarified by the Planning Department. The Mayor noted that the matter would be returned to the Council for review after Planning clarifications. Councilmember Taylor said the landscaping could help eliminate the encroachment of residential gardens and play equipment into the park; the intent was not to keep people from walking from their homes into the park. He urged the Planning staff and Parks & Recreation Advisory Board to make a recommendation as to what they would see architecturally and aesthetically, an improvement for the area, and to impose that on the developer and property owners bordering the park.

Councilmember Bussing asked why the City needed to fence a public park at all. Encroachments by gardens, etc., were enforcement issues. Parks & Recreation Director Claxton said there had been a great deal of discussion by the Advisory Board about the problems experienced at the City golf course which was fenced (the boundary lines at the golf course didn't work very effectively); there was a lengthy discussion about not wanting to fence open spaces, concluding with a compromise for some type of split rail fence to maintain the openness without the encroachment. Mr. Bussing said he could draw a clear distinction between fencing the golf course which was a revenue generating, publically-owned facility, as opposed to a park with no admission fees and no facilities requiring permits. Mrs. Claxton

said there were many uncertainties with the South Park despite the park master plan; staff and the Advisory Board wanted to deal with the issue, be proactive, while developers were still in the area building and could pass information along to homeowners.

Councilmember Bold said 2 issues needed to be resolved – 1) would the City require fences (as at the golf course) or 2) if a fence was going to be installed, would it have to be a certain type. If it was a split rail, and a property owner next to the park had a dog, would the City permit another type of fence to keep the dog on the property? Would there be a “no build” zone as at the golf course? Mrs. Claxton clarified that the intent was to have fencing through the developer of an adjacent development.

Mr. Taylor clarified that the matter would be considered by the Planning staff, then the Plan Commission, then return to the City Council. Staff would continue working on the issue.

NEW BUSINESS

1895 **Approval of Appropriation Ordinance No. 869.** On motion of Gill, seconded by Rasmussen, Council unanimously approved the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 870. On motion of Bold, seconded by Rasmussen, Council unanimously approved the ordinance on roll call vote.

2075 **Authorize Right-of-Way Maintenance Agreement with Camden Ventures, L.L.C., for Camden Woods 1st Plat** – to allow the developer to install certain amenities in City street right-of-way and to set forth the developer’s responsibilities for maintaining the amenities. On motion of Rasmussen, seconded by Bold, Council unanimously approved the agreement.

2155 **Authorize Letter of Credit Agreement with Camden Ventures, L.L.C.** As a condition precedent to approval of the plat for property located generally at the intersection of 143rd St. and Kenneth Rd., Camden agreed to pay the City the amount of \$342,602.00 to help pay for road construction equal to \$130.00 per lineal foot of frontage on that portion of 143rd St. which abutted the property then being platted. On motion of Taylor, seconded by Bold, Council unanimously approved the agreement.

2190 **Ordinance No. 1815 accepting 2 permanent utility easements for Villas of Iron Horse 2nd Plat, Lots 21 & 22, in the vicinity of 152nd Terrace and Nall Avenue.** On motion of Dunn, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

2210 **Schedule work sessions:** 1) October 4th, 5:30 P.M., to review the Bucher Willis Ratliff comprehensive City traffic study, and 2) for further review of the Capital Improvements Program (CIP), a work session to be scheduled at the September 20th Council meeting.

2335 **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 30 minutes to discuss a personnel matter, litigation, and land acquisition.

2357 **Schedule executive session.** On motion of Dunn, seconded by Bussing, Council voted unanimously to convene in executive session September 20th at 6:30 P.M. to continue the discussion of a personnel matter at the August 30th executive session.

2415 **OTHER BUSINESS.** Request for update on smoking ordinance – to include staff's contacts and review with Leawood restaurants, any requirements needed to bring them into compliance. The City Administrator would have a report at the October 4th Council meeting.

2466 Discussion of ETC Institute's charter (generic) Citizen Satisfaction Survey developed by ETC in association with Mid-America Regional Council. Councilmember Taylor asked why the City needed the survey. Sarah Hilton explained that the City last did a survey in 1994 and it was typically recommended that a survey be done every 2 years, particularly in a rapidly growing city with population changed considerably. A survey would help insure that the City was providing services that citizens actually wanted. Mr. Taylor wanted to know what more the City could gain over and above its action hotline and various citizen letters/compliments frequently received. Mrs. Hilton said that the letters were directed more toward Police and Fire because they were so much more visible and that the number of residents calling the action line had dropped by half, and a majority of those calls were for Public Works – those letters and calls were helpful but represented a limited scope. Mrs. Hilton felt the survey would assist the City in reaching out further.

Councilmember Bold said he was opposed to spending any amount of money on a survey, felt that the City had a tremendous resource at its disposal with its web-site. A tailor made survey could be published on the web-site. The City would likely receive more than 200 responses which would give a statistically more significant response. Mrs. Hilton felt that the ETC survey would be more quantitative than a web-site survey.

2657 Councilmember Rasmussen said that the Council didn't approve a survey at the last budget session; why approve one now? City Administrator Garofano said the ETC survey would be statistically valid; it was ETC's business to conduct surveys and to interpret results. It was too difficult for staff itself through other means such as a newsletter to validate information received. He said that at budget time, the cost of a survey was \$10,000; it was now \$2,300 for the base survey with \$600 for each of 14 other areas that could be surveyed to come from the 1999 Administration budget.

2751 Councilmember Dunn said that if staff told him that participating in a \$2,300 survey would assist them in justifying service decisions and showing the Council evidence of efficiency and effectiveness in the delivery of services, he was willing to support that effort.

Councilmember Rasmussen moved that funding in the amount of \$2,300 for the ETC survey not be provided, seconded by Bold. In response to Councilmember Story, Mr. Garofano said that staff hadn't determined how many of the extra categories they might want surveyed if they did the base survey, but thought customer service, growth management, code enforcement merited some review for an additional \$1,800.

3040 Councilmember Bussing was generally in favor of a survey, but wasn't sure what action plans he could put together based on the questions in the base survey, the questions being too generic.

3078 Mr. Rasmussen called for the question, seconded by Bold and carried unanimously. The motion to deny expenditure for the survey carried; Bold, Rawlings, Story, Rasmussen, Taylor in favor; Dunn, Bussing, Gill opposed.

3130 Discussion of City Administrator's memo to Council concerning planning services. City Administrator Garofano had received a proposal from Freilich, Leitner and Carlisle to provide assistance to the Planning and Development Department on an interim basis since the Planning Department was short-staffed. The proposal outlined 4 tasks. Mr. Garofano planned to have the firm begin immediately with "task 1" which was a review and recommended improvements of the City's development project review process, and intended to opt for the fixed fee rate with a not-to-exceed budget for "task 1" and then assess how staff wanted to proceed with additional services over time. The Mayor had concerns about the proposed fees and wondered why staff would go to a law firm for the services. Mr. Garofano explained that the law firm was very unique in that it specialized in land use law and had done a lot of work for Leawood in the past. They also had a professional planning group that supported their legal efforts. Mr. Garofano still had to negotiate the fixed fee rate. He said that the Chairman of the Plan Commission felt strongly that the City retain FLC and liked their proposal, and there were several issues that the Plan Commission felt needed to be addressed immediately and FLC could help with those issues.

Councilmember Gill suggested there be a joint Council/Plan Commission work session to discuss and rank planning priorities, and contact other cities and the League of Kansas Municipalities to see if they had a scoring system based on certain criteria, instead of hiring FLC to do that work. Mr. Gill felt that with the exception of providing support on an as-need basis with respect to developments, there wasn't anything in "task 1" that merited the large scope that the proposal entailed.

3515 Councilmember Bold felt that Mr. Garofano should have talked to the Council about the matter. He could understand needing additional help to get through the planning process for projects, but felt that things of an organizational and operational nature could wait until a full-time Planning Director was hired so that person could establish his own procedures with his expertise. Mr. Garofano said a new Director probably wouldn't be hired until the end of the year; staff and the Plan Commission didn't want to wait several months to address issues.

Councilmember Story wanted to know and understand the rationale for tackling all 4 tasks of the proposal during such a hectic period when the planning department was terribly short-staffed; he felt they all needed to be addressed but wasn't sure that now was the appropriate time to do them. Mr. Garofano explained how staff and the Plan Commission felt about the tasks; staff didn't perceive tackling all tasks as being burdensome at this point in time.

Councilmember Rasmussen said he was willing to support "task 4" (assist staff with specific major development project reviews), but not "tasks 1,2,3."

Councilmember Taylor said he had outlined credentials that he hoped the new Planning Director would possess; he didn't see those qualifications, other than planning credentials, in FLC's staff. He supported "task 4", and urged that the City move forward with the hiring of a new Planning Director; he didn't feel it would take the City until at least the end of the year to hire someone. He hoped that the new director would meet all of his (Mr. Taylor's) qualifications for the position.

3892 Councilmember Dunn didn't think a new Planning Director would be able to take on the day-to-day operations of the Planning Department and reorganize the entire department, make decisions about long-range issues for the City about which he would have no knowledge coming into the position. The present was an opportune time to get structure in place before a new director was hired, and there was money available (the former director's salary and expenses) to pay FLC for their work. Mr. Dunn would let the City Administrator decide if the present was the right time to do the work, and if the Council didn't want the Administrator to come up with a plan to deal with the Planning Department's problems, Council needed to be specific and tell him what they wanted him to do.

4015 Mr. Gill supported the retention of whatever experienced planners the staff believed had qualifications to assist the on-going planning processes. He didn't favor at this time hiring attorneys outside of the current City Attorney to redraft zoning ordinances or analyze process, etc., and if there was going to be a scoring system, which he thought was a good idea, then the Council's input and values needed to be known first rather than coming up with a scoring mechanism that was done without the benefit of what the Council saw their values to be.

4095 Mr. Dunn suggested that the City Administrator meet with the Mayor and Plan Commission Chairman to discuss issues further before proceeding with a plan and make a recommendation to the Council. Mr. Rasmussen liked the suggestion, but also suggested that the City proceed immediately with "task 4."

Mr. Dunn moved to hire FLC to proceed with "task 4" with the understanding that going forward with additional tasks would be subsequent to meetings with the City Administrator, Plan Commission Chairman, and the Mayor. (No second to the motion) The Mayor was concerned about the hourly rate of FLC's attorney, no problem with the planners' rates. She also wondered why Council approval wasn't necessary to hire FLC. Mr. Garofano explained his spending authority up to \$5,000, and that FLC would not be used 8 hours a day, 7 days a week, but there would be a task at a not-to-exceed figure, and he didn't know at this point whether or not Mr. Leitner's (FLC attorney) legal services would be used. It wasn't staff's intention to employ Mr. Leitner at \$175.00/hour for a protracted period of time; if he was needed, staff could return to the Council and ask for authorization.

4455 Mr. Story felt that a conclusion to the matter would be: 1) regarding "task 4," FLC planners would be hired and used as needed at Mr. Garofano's discretion, hopefully as inexpensively as possible, and keep Council informed; and 2) regarding "tasks 1,2,3," legal services would probably be needed, none of them could be done for \$5,000; Mr. Garofano would return to Council with proposal for those tasks.

4517

Mr. Dunn moved to authorize and proceed with "task 4" as currently stated and negotiate a fee for the work, and that before proceeding with "tasks 1,2,3," Council receive a recommendation for consideration that would be the result of a meeting with the City Administrator, Plan Commission Chairman, and the Mayor. Motion seconded by Rasmussen and carried unanimously.

4550

Discussion of a memo from Sarah Hilton concerning consultants the City had used, a breakdown by department, year-to-date. Engineering consulting services for various Public Works projects and architectural services for building projects were not included. Mrs. Hilton distributed further information indicating the contract amounts for every project in the City, including engineering and architectural services, for 1998 and 1999 year-to-date. Councilmember Taylor asked about payments to Shaughnessy Fickel and Scott architects for their work on the justice center; Finance Director Rogers said \$6,000 was paid them in 1997, nothing in 1998/1999, and explained the budget fund the expenditure was paid from. Mrs. Rogers would get Mr. Taylor a breakdown of SFS architectural fees and architectural special fees.

4980

Update on Mission Road improvements south of 103rd St. Public Works Director Johnson said the contractor was trying to have the road open to through traffic by the end of September. The contractor had exceeded the contract's working days and was approaching 16 days of liquidated damages at about \$900+ per day. The contractor was under contract with the State, but had they been under contract with the City, they would have had an unsatisfactory evaluation/rating. Mr. Johnson said he would take the contractor's performance on the project under consideration if they bid for a City project in the future.

5090

Discussion of the maintenance of medians (islands) along 135th St. between State Line Rd. and Nall Ave. Councilmember Bussing had received phone calls concerning the appearance of the islands. He requested that in the near future, Parks & Recreation Director and her staff develop a plan for the maintenance of the islands to refurbish and enhance the islands which had seriously deteriorated. Mrs. Claxton said she would have a report at the September 20th Council meeting.

5170

10:15 P.M. Council convened in executive session and returned to regular session at 11:00 P.M. On motion of Story, seconded by Taylor, Council voted unanimously to extend the executive session for 1 hour for the same discussions.

11:50 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. 466

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, September 27, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: *Adam Bold (left the meeting at 9:10 P.M.), Gary L. Bussing, Jim Rawlings, **Patrick L. Dunn (arrived at 7:55 P.M.), Shelby Story, 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; Sarah Hilton, Administrative Services Manager; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Director of Parks & Recreation; Martha Heizer, City Clerk; and Richard S. Wetzler, City Attorney.

PLEDGE OF ALLEGIANCE - led by Webelos from Mission Trail Elementary School.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Taylor, seconded by Gill, after the addition of 1) approval of audit services for 1999, 2000, 2001 under the Consent Agenda, 2) the scheduling of an executive session to discuss personnel matters and land acquisition, and 3) a discussion of Parks & Recreation Advisory Board's recommendation relating to the selection of consultants for the Nall and South Parks.

RESOLUTION NO. 1473, ATTACHED AS PART OF THE RECORD, RECOGNIZING THE CITY ADMINISTRATOR FOR 20 YEARS OF SERVICE TO THE CITY. The Mayor presented a copy of the resolution to Dick Garofano; he had served the City since September 24, 1979.

PROCLAMATIONS. The Mayor proclaimed September 17-23, 1999, as "Constitution Week" and October 10, 1999, as "Double Tenth Day" in honor of the 88th anniversary of the Republic of China on Taiwan. (Leawood's sister city - I-Lan, Taiwan.)

CITIZEN COMMENTS. Noah Klever, 12700 Overbrook, felt schools should do more recycling.

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Rawlings, seconded by Story:

1. Minutes of the September 7, 1999, Council meeting;
2. Historic Commission report (minutes) on their August 10, 1999, meeting;
3. Ad hoc Stormwater Management Committee report (minutes) on their September 1, 1999, meeting;

4. Public Works Committee report (minutes) on their September 1, 1999, meeting;
5. Departmental reports;
6. Application for a one-day temporary permit to serve alcoholic liquor at AMC Theaters (Town Center Plaza) on October 14th for UMKC Athletic Scholarship Fund benefit.

Approval of audit services for 1999, 2000, and 2001. The Mayor asked for ratification of the appointment of Mark Meierhoffer and Greg Bussing to the special audit committee. On motion of Gill, seconded by Story, Council unanimously ratified the appointment and approved the audit services of the firm of Cochran, Head & Co. for the 3 years with the possibility of 2 additional one-year extensions. The 3-year contract was for \$85,708.

PLAN COMMISSION

317 **Request by Covenant Chapel for a special use permit for an off-site sign, 135th & Kenneth Rd., to serve as an identification marker for visitors to and congregational members of the church.** Councilmember Rasmussen moved to approve the permit as recommended by the Plan Commission, seconded by Bold. The Plan Commission had recommended approval of a permit limited to one year from the date of Council approval. The applicant, Chuck Harmon, requested that the City not require the church to renew the approval every year. The church intended to have the sign only until Kenneth Parkway (or Road) was built and then they would install the approved entrance signs shown on their development plan. Mrs. Binckley said that now that 135th St. was improved, the Plan Commission and Council didn't want to see additional signs littering 135th St.; the church's request for additional time wasn't made at the Plan Commission level.

Mr. Bold, out of consideration for the church, requested a "friendly" amendment to Mr. Rasmussen's motion for a 2-year permit. Councilmember Taylor said he supported the 2-year time period, felt the sign assisted traffic flow generated by the church, but also believed the City needed to uphold the temporary sign ordinances to deter other applicants from requesting more than 1-year permits. Motion for approval of the permit with a 2-year limit from the date of Council approval carried unanimously.

500 **Resolution No. 1474, attached as part of the record, approving request for rezoning from AG to RP-1, and approving preliminary site plan and preliminary plat, for Highlands Creek, southeast corner of 143rd & Nall.** Council had remanded the matter to the Plan Commission for review of stormwater drainage and stub street; the Commission reaffirmed their previous approval with an amendment to stipulation #9 concerning an erosion control and stormwater plan at final application and at each phase (underscored words added to the stipulation).

Developer Don Donohoo said that the City Engineer maintained his position that stormwater detention should be mandated by the City for Highlands Creek water only; that was reinforced by the City Attorney. He said the Plan Commission voted to approve the project based upon detention of Highlands Creek water as mandated by the City at a location directed by the City and agreed to by the Highlands Group.

** 7:55 P.M. Councilmember Dunn arrived.

In response to Councilmember Taylor, Mr. Donohoo said he was neutral as to the stub street on the Waeckerle property on the east boundary of the project; he wouldn't have a problem if the Council decided to eliminate it from the plan. Mr. Donohoo had stated that the City Attorney had given legal opinions on stormwater management. Mr. Taylor asked Mr. Wetzler what his opinions were. Mr. Wetzler said that his preference, unless the entire Council wanted him to express fully what his opinions were, was to discuss them in executive session. Mr. Taylor wanted to have a little more of a general idea of what Mr. Wetzler had in mind because Mr. Wetzler had expressed his opinion to him (Mr. Taylor) in public session, and Mr. Taylor didn't agree with it. Mr. Wetzler read from a portion of the Plan Commission summary of minutes (not a direct transcription or word-for-word quote) concerning his comments about APWA standards still being accepted as a general standard, *but going beyond them and being bound by requirements of sound engineering and the principles of takings* – in the end, matters had to be based on sound engineering, and the City Engineer had advised the Council on what his sound engineering was, and that was about as far as the City could go. Mr. Wetzler felt that the APWA standards were not the only standards applicable; there were many things the City did for which there were no specific ordinance(s) that required things to be constructed or done in certain ways. Those issues were really engineering questions. He felt the Council had the ability to approve matters as long as they were done with sound engineering principles. And he said there were some legal issues at work with the application; in any approval process, the Council was balancing rights – general rights of the public, and rights of individual property owners – and those matters had to be taken into account when making a decision on Highlands Creek. There were some very clear principles of law at work with the application. Mr. Wetzler said if the Council imposed an unreasonable restriction on the developer, if Council required him to do something that wasn't necessitated as a result of the development of his property or for which there was no rational relationship between the development of his property and that which was being imposed as a condition, there were restrictions. Mr. Wetzler said the discussion was in terms of generalities; it wasn't in the best interests of the City to talk in terms of specifics – those were more appropriate issues for an executive session.

860

Mr. Donohoo said he was unable to meet with neighbors to the east, Chris Wally and Dr. Joseph Waeckerle. Councilmember Bold said that Mr. Wally had mentioned to him that Dr. Parr felt there was a way that by adjusting the number of inlets or the height of the spillway, that there were things that could be done. not using more land that was in the plan, but possibly could result in a greater reduction of the water ending up on Mr. Wally's and Dr. Waeckerle's properties. He wanted to know if Mr. Donohoo had considered Dr. Parr's concepts. Mr. Donohoo said his engineers reviewed their study and looked again specifically at 1.4/1.5 foot increase in elevation of the spillway and the reduction of outlet pipes from 4 pipes to 3, Dr. Parr's recommendation for trying to detain water from Lion's Gate development to the west in Overland Park. Mr. Donohoo said that when you try to get more volume in a specific space, the only way to get the additional volume would be to make the sides steeper and impossible to maintain, and there was already a large burden on the homes association for the detention pond. Mr. Donohoo said that the City Engineer didn't feel that was feasible and that outlet pipes should remain at 4. Mr. Donohoo said that his pond did detain some percentage of the Lion's Gate flow in the 25-year flood, but trying to provide more capacity for Lion's Gate water would be a tremendous economical burden.

The Mayor called Council's attention to a September 17, 1999 memo from the City Engineer that indicated that Dr. Parr's comments in his letters dated August 16 and September 14, 1999, would pertain to the final design of the detention basin and shouldn't have any impact upon the preliminary plat approval. The City Engineer agreed that there were some errors made on the study and calculations that should be corrected prior to final plat approval. The Mayor felt that some things would be changed, remedied, prior to final plat approval. Mr. Donohoo said his study showed that he had room for detaining Highlands Creek water and without trying to microengineer it at the present time, felt everyone was comfortable with that, so he was asking for permission to proceed.

1062

Councilmember Gill asked what mechanism, if any, would be established to provide for the maintenance of the detention pond as Mr. Donohoo proposed against siltation, etc. Mr. Donohoo said that just like any other expense for a homes association, until they had enough residents to overcome the cost, typically he would make up the shortfall for the association expenses, looking at it as a line item like landscaping, etc., and figured into the homes association dues, so they would be able to establish a reserve for pond maintenance. Mr. Gill wanted to explore Mr. Donohoo's amenability to some sort of funding mechanism so that the money would be available at the time it was needed to do maintenance. Mr. Donohoo said he would be calculating the estimates for the costs of maintenance and those would be part of the determination of the homes association dues; as paid in, they would be generating a surplus account for maintenance. Mr. Gill asked if a sudden \$50,000-60,000 bill for dredging would be lienable or assessable to each homeowner; if subdivision was developed, Mr. Donohoo might not be around; how mechanically would one go about enforcing the maintenance if there wasn't some more formal structure? Mr. Donohoo said that the homes association declarations would have provisions for emergency assessments, provisions for liening for non-payment of assessments and dues, etc. Mrs. Binckley said that typically, staff didn't see deed restrictions until final site plan and platting, so at that time, staff could review them. Mr. Gill asked Mr. Donohoo if he would be willing to add a stipulation that as part of final deed restrictions there would be a mandatory formal funding mechanism and enforcement clause so that at the time detention maintenance was required, the funds would be available or could be assessed and backed up with a lien against the property owners. Mr. Donohoo said he had that formal funding mechanism and would use his standard addendum for that. Mr. Gill said other homes associations had faced detention pond problems in the past, so he would rather plan for the eventuality on the front end and not have to deal with it on the back. Mr. Donohoo agreed there could be an assessment and backed up with a lien against the property owners.

1335

Mr. Gill understood there had been mention of the possibility of a second detention pond being set aside or actually built. If there was land that couldn't be otherwise developed and was not part of the development, and if despite all good efforts of everyone reviewing the project, it turned out that additional detention was needed in the future, would there be a way through another stipulation that some of that otherwise unusable land could be earmarked through easement, etc., so it could be used? Mr. Gill wasn't asking anyone to commit to who would pay for it, an issue to be dealt with at a later time. Mr. Gill added that it would be for water from any source. The Mayor asked if stipulation #9 didn't accomplish what Mr. Gill was proposing. Mr. Gill said it gave him some comfort, but he could foresee a problem like the one the City was already facing to the north of Highlands Creek where the phases were done, and it would be nice if the City was trying to solve water problems if they had the

ability to access some land to add some additional detention. His question went beyond the full buildout of Highlands Creek. Stormwater was a metropolitan problem and shouldn't be isolated to one development or property. Would Mr. Donohoo be willing to dedicate some land not otherwise utilized? Mr. Donohoo said there were 2 remaining parcels of ground, and they were local park areas for Highlands residents. He said that if they needed some of the park ground to do a little bit more, which he was confident wouldn't be needed, it would be for Highlands Creek water only. He said he could dedicate the park areas to the City, and if the City wanted to change what they were later on, then the City would be responsible to the homeowners, not to Highlands Group. The Mayor didn't believe the City wanted any more dedicated parkland to maintain. Mr. Gill said he understood the answer to be "no" unless it was solely to trap Highlands Creek water.

1567 Mr. Gill stated that without a funding mechanism to maintain an integral feature and without some flexibility given the great diversity of view from very respected engineers about the need and given the seriousness of the health issue presented, he was disinclined to approve subject to hearing what was being requested. Mr. Donohoo reclarified that he believed he could commit to the funding mechanism; the structure for the homes association dues would have a line item and that would be an appropriate approach to take so that that line item would be monies that couldn't be spent on something else. There would be lienability and future assessments.

1600 In response to Mr. Taylor, Mr. Donohoo said it would cost the loss of 20 lots to raise the spillway 1.4 feet. He said that since the detention issue, he had not redesigned the plat; he couldn't get any more lots on it than they had before the discussion of detention.

1767 Councilmember Dunn said he understood that the City Engineer's approval of the final plat, working toward the final plat, would involve review of the detention and all details of the detention. City Engineer Pourazari said that was correct. Mr. Dunn said that before the final plat was approved, Mr. Pourazari would have worked with Dr. Parr and anyone else necessary to assure that as best as possible there wouldn't be an additional drop of water flowing downstream as a result of the development. Mr. Pourazari said that was correct. Mr. Dunn said ultimately the design of the detention pond might be different depending upon the results of Mr. Pourazari's further study. Mr. Pourazari said that in terms of crunching numbers, that could be correct, but conceptually speaking, in terms of locations, the plan would pretty much be staying where it was and what it was.

1805 Mr. Bold asked Mr. Pourazari if there were other things that could be done to reduce or slow down the amount of water downstream using the same size detention basin. Mr. Pourazari said he was confident that could be done, that parameter had been set all along, that with the construction of the detention basin, the velocity of the water on the downstream side would remain the same, before and after development. He added that both he and Dr. Parr believed there was enough volume of storage to control the 10, 25, 100-year events from Highlands Creek development only; there were issues regarding the design of the detention basin that they wanted to resolve and bring back before the Council before final plat approval.

1960 Mr. Gill asked that if it was determined that a second detention area was needed, was the land that was ideally suited for that detention area located other than in the phase the Council was being asked to approve. The Mayor said Mr. Gill was referring to the section on the west. Mrs. Binckley said the land was in phase 2 and only the final plat would come back before the Council, no further preliminary plats. Mr. Gill was concerned about the Council

having the ability to engage in a dialogue and make a decision to require additional detention if they felt the record mandated it. The Mayor suggested that the City Attorney talk about stipulation #9 of the resolution that mentioned phases; she thought #9 would take care of Mr. Gill's concerns. Mr. Wetzler said that #9 was really a statement to the effect that at each phase, the staff, not Council, would have to review and approve the final public works components of whatever improvements there might be; one of the improvements would be stormwater drainage. He said that in order for Council to add additional capacity for things that were not necessarily a part of the development, he suggested adding a condition that before the next phase was approved, in addition, there would be a specific review of the stormwater element in order to take into account the public need to determine whether the area set aside was adequate for public needs and then deal with the issue of who was responsible for payment for whatever the features might be at that time. Mr. Wetzler explained that typically when phase 2 came in, the final engineering would be done and would come to Council for acceptance of the plat, and Council would not typically review the stormwater component. He said that the Council probably needed to retain the right to review stormwater so everyone knew up front that Council would take a look at it and see what might be required. Councilmember Dunn suggested stipulation wording – that before the second phase was approved, stormwater issues would be reexamined for the specific purpose of determining whether public interest required the placement of an additional detention pond. Mr. Wetzler agreed.

2255

Chris Wally, 4501 W. 143rd St., second property east of the proposed development, said that Dr. Parr maintained months ago and again recently that the proposed detention was deficient. He said that Dr. Parr's September 14, 1999 letter indicated that the detention basin with 3 pipes and a spillway elevation of 935.5 was a reasonable solution; that was the solution he had mandated all along. Mr. Wally felt that the developer was not willing to discuss compromises. Mr. Wally was happy that the Council was dealing with siltation management which Dr. Parr felt was absolutely necessary. Mr. Wally said he had heard the question of what it would cost to go from 934 to 935.5 spillway elevation and reduce the number of outlet pipes from 4 to 3; Mr. Wally said it would be negligible.

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Harry Wigner, attorney for Mr. Wally, urged a mandate on siltation management, that it was enforceable by the City, that the City had a third party right to step in and enforce homes association obligations.

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Dr. Joe Waeckerle, 4601 W. 143rd St., said he didn't want the street on his property stubbed as proposed. The Mayor asked the City Attorney if there was an avenue for an easement to go with a tract of land versus the stub street in the event the future need for a street arose. Mr. Wetzler said the right-of-way could be reserved and not put the stub street in.

2470

Mr. Taylor moved to adopt the resolution with the following conditions: 1) stipulation #9 to include all detention ponds to accommodate all runoff from Highlands Creek and off-site areas in the watershed, 2) eliminate the stub street on the east (no easement or stub street design on the east), 3) that there be a financial mechanism to totally support the maintenance of the retention pond areas. Motion seconded by Rasmussen.

The Mayor asked the City Attorney if any of the stipulations/conditions were substantial changes beyond what the Plan Commission recommended for approval. Mr.

Wetzler said that since the matter had been remanded once, and even if there were substantial changes, Council was in a position to do whatever it wanted with a simple majority.

2561 Mr. Dunn restated his suggested wording for stipulation #9 – that before the second phase was approved, stormwater issues would be reexamined at the Council level for the specific purpose of determining whether the public interest required the placement of additional detention. Mr. Taylor and Mr. Rasmussen agreed that Mr. Dunn's wording should be used instead of Mr. Taylor's.

Mr. Gill requested that Mr. Taylor modify his motion by adding Mr. Wigner's suggestion that the City have the right to enforce maintenance of the ponds. Mr. Taylor so modified his motion.

2760 Mr. Taylor explained his desire to eliminate the stub street and not have an easement for a future street – having the stub street would encourage the possibility of breaking up the estate-size lots to the east of Highlands Creek into smaller subdivisions; he felt that was an improper planning mechanism. Mr. Wetzler said that if the motion was approved, the City would have to condemn property for right-of-way in the event a street was needed in the future. People acquiring property adjacent to Dr. Waeckerle's property wouldn't have any notice that there was the possibility of a future roadway. Staff felt the stub would provide visual notice. He said that an easement would at least provide legal notice, rather than visual notice, that there was possible future right-of-way through the area. Mr. Dunn felt there wasn't any harm in having an easement on the property. Dr. Waeckerle said he didn't object to an easement.

2870 Mr. Taylor's motion failed; Taylor, Rasmussen, Gill, Rawlings in favor; Bussing, Bold, Dunn, Story opposed; the Mayor opposed.

Councilmember Bussing moved the same motion with the modification that there be an easement only (no stub street) for a possible future street, seconded by Bold. Motion carried unanimously.

Ordinance No. 1816 rezoning from AG to RP-1 – Highlands Creek. On motion of Rasmussen, seconded by Taylor, the ordinance was passed unanimously on roll call vote.

* 9:10 P.M. Councilmember Bold left the meeting.

2945 **Resolution No. 1475, attached as part of the record, approving request for rezoning from AG to RP-A and SD(C-R), and approving preliminary site plan and preliminary plat, for Mission Farms, approximately 105th & Mission Rd. (Saddle & Sirloin Club property).** Developer Mark Sutherland gave a presentation. He asked that Plan Commission stipulations of approval #18 and #20 be modified. No. 20 indicated that street, stormwater and sidewalks be designed to meet Public Works standards. No. 18 referred to a July 21, 1999 memo from the City Engineer to the Planning Department. Mr. Sutherland said that 2.b. concerning the extension of 104th Terr. to Lot 13 and 2.c. concerning the 104th Terr. cul-de-sac wouldn't apply if the Council approved the Plan Commission's recommendation, and also if the Council decided to allow covered closed sewers with inlets (no curbs) on the streets, then 4.a. concerning storm drainage and 7.a. and 7.b. concerning design criteria (matters pertaining to specifications for curbs) wouldn't apply either. Mr. Sutherland said that maintenance of streets without curbs was a non-issue; it was aesthetics that was important to him, a country-lane atmosphere. He said he would need a 10-foot variance on

the height of the 5-story office building with the parking garages in the plan. He wanted to delay the construction of the emergency gate and access until Lot 13 was sold and built on so that the homeowner could get the gate they wanted and site their house the way they wanted. He said he would readily agree to see that any traffic signalization along Mission Rd. was aligned with that on the Overland Park side of the street, and agreed to pay for signalization. He also said that Public Works requested a cul-de-sac bulb be constructed at the existing 105th St. rather than a stub, but Mr. Sutherland didn't believe that was necessary because homes didn't have access/driveway to the stub street. The stub could even be vacated. He requested that that request be omitted.

3616 Councilmember Dunn liked the development but was concerned that Council was getting into another engineering debate as to whether Council would redo something that the Plan Commission and staff recommended for approval. Street requirements were for very good reasons - for maintenance of streets and stormwater control basically. As for maintenance, just look at Lee Boulevard's country-lane look and the chunks of roadway fallen out in various areas even with a fairly new street because the edge of the street wasn't protected by a curb. Every other development was required to comply with City street standards. Mr. Dunn recommended approving the project with the stipulations approved by the Plan Commission and staff.

3745 Councilmember Rasmussen said that Mr. Sutherland had offered the City a wonderful development, with what was really the intent of the initial development of the City of Leawood. Residents of Ward 2 had fought to keep some of the characteristics that the City originally had, many times unsuccessfully. It seemed strange to Mr. Rasmussen that the City could plan for an area that in effect tried to destroy the ambience that created the City of Leawood. Residents of Ward 2 approved of the development, then to have some people say that the City couldn't have anything but the street standards that were applicable to high density areas. He felt that stipulation #20 needed to be changed. He didn't feel that the City would be establishing a precedent, but would be trying to establish a symbol of excellence, saying that the Saddle & Sirloin property was an area that required unique planning. He felt that the City should design its infrastructure in the area near I-435 to reflect what the developer thought was necessary and desirable. He said Plan Commission stipulation #10 wasn't clear; was there an intent to extend 105th St. through to Mission Rd.? He didn't think that was the developer's intent, probably not the Plan Commission's intent, but the language certainly left the possibility open. Regarding stipulation #9, Mr. Rasmussen felt that the emergency access should be totally eliminated. He said this was a wonderful opportunity to plan in a most difficult area and to do it right, so he wanted a stipulation that would permit split rail fencing along the streets in the development (as on 96th St. between Lee Blvd. and State Line Rd.) if residents wanted it.

4056 Mr. Rasmussen moved to adopt the resolution with the removal of stipulations #9, 10, and 20. Motion died for lack of a second.

4106 Councilmember Bussing agreed with Mr. Rasmussen and was in favor of recognizing the unique nature of the property, the creative and thoughtful design, and of granting the developer some of the exceptions he requested, in particular the country-lane look for the streets with no curbs and the variance on the height of the office building.

4160 Councilmember Gill suggested new wording to clarify stipulation #10 which would read, "A public hike/bike trail easement must be shown on the final plat and plan that links

hike/bike trails between 105th St. and Mission Rd. and the adjacent mixed-use development.”
(underscored words clarified the meaning.)

4290 Mr. Sutherland said he forgot to mention that he was requesting the ability to put up split rail fence on the east and west sides of the property.

4335 There was discussion of alternative aesthetic design elements that might be used in place of normal curb/gutter system to control stormwater drainage and that could meet City standards. Mr. Taylor suggested that instead of having the apron of the street system be a slope draining into an open culvert, that that be eliminated and have some type of swale of man-made aesthetic material simulate the control curb system and not have the erosion and maintenance problems. Tom Smith of Shafer, Kline & Warren engineers said that the project didn't have a large drainage area occurring in the streets, not a lot of off-site water coming down; debris wouldn't be a problem because the streets were very short and there were fewer residential lots. Public Works Director Johnson explained issues with the roadside ditch system – maintenance was a major problem. Regarding the use of an alternative material acting as a curb, Mr. Johnson said there could be a problem in the future when the City had to go back in and start doing maintenance as the material deteriorated and try to match the existing material. He said there were things that could be done to a roadside ditch as far as slopes, etc., to minimize the impact for maintenance, but it was still a big problem; Lee Blvd. was a good example with its steep grades, erosion, requests for repairs of deep ruts on fairly flat grades. Mr. Taylor said he would back off an alternative design and stick to the position that standard curbs and sidewalks be part of the subdivision.

Mr. Sutherland said the streets in his project couldn't be compared with Lee Blvd. He said that horror stories concerned open ditches. He planned to enclose the ditch in front of each home, covered pipe with an inlet or grate, so there wouldn't be a steep ditch, there would be a nice swale, no erosion. It would handle storm runoff just like a normal curb and gutter. He added that with no curbs, there wouldn't be curbs that would have to be replaced in say 20 years.

4904 Mr. Dunn reiterated that he liked the development. City Engineer Pourazari said that the City's curb and gutter standards didn't apply only to high density areas, but to the entire City, and the City didn't have any rural street standards. Mr. Dunn said it was difficult for him to conceive how curbs and gutters on 2 roads on 46 acres were going to destroy the estate feel of the area. It wasn't difficult for him to conceive of a lot higher maintenance cost for the City to repair the edge of the roads as a result of not having curbs and gutters.

4975 Mr. Bussing asked about the homes association maintaining the ponds (stipulation #7). Mr. Sutherland said the association would maintain the ponds, but it wouldn't take a lot of money since the ponds were existing ponds, were not detention/retention ponds and development upstream was fully developed. Mr. Bussing asked about the timing of construction of the commercial portion of the project. Mr. Sutherland said the primary goal for the commercial area was for it to be of the highest quality possible, so he was going to be patient and wait until the “right partner” opportunity came along. Mr. Bussing was concerned about open-ended zoning; Council had seen idle commercial tracts in the past and wished they had placed a sunset provision on the zoning. Mr. Sutherland mentioned that he lived across the street from the development, and his commercial tract might be similar to the commercial area on the Hall family property on State Line Rd., the Hall's having been very patient and careful about businesses selected for their commercial tract.

5210 Mrs. Binckley felt it would be very important to have the emergency gate at Lot 13 immediately for existing residents to keep potential truck traffic from cutting through the subdivision as Mission Farms construction began. Fire Chief Florance said the optimum was to have a through street, but the next best solution was to have the emergency access drive as a minimum.

5390 Mr. Taylor moved to adopt the resolution with the following additions/modifications: 1) addition of the requirement to align and pay for traffic signalization on Mission Rd., 2) addition that there be a recommendation to the Board of Zoning Appeals for a 10-foot variance in the height (for an increase in the height) of the office building, 3) that stipulation #10 should read, "A public hike/bike trail easement must be shown on the final plat and plan from 105th Street to Mission Road and the adjacent mixed-use development", 4) addition that a split rail fence be allowed on the east and west limits of the project, 5) stipulation #18 be modified (requested by Mr. Dunn) so that 2.b. and 2.c. of the Public Works memo attached to the resolution not apply, and that the cul-de-sac bulb on the existing 105th St. not be required. Motion seconded by Dunn. (The motion was for standard curbs; stipulation #9 regarding the emergency access gate and 30-foot access easement through Lot 13 wasn't modified or deleted.)

5723 Rolan Duffield, 10424 Mohawk Lane, and Don Sole, 10412 Mohawk Lane, liked the development plan. G. Gordon Thomas, 10516 Mohawk Lane, was opposed to the plan.

6332 Councilmember Rawlings said he supported all of the recommendations except for the standard curbs. He supported Mr. Sutherland's request not to put in curbs.

6387 Mr. Taylor's motion failed; Dunn, Story, Taylor in favor; Bussing, Gill, Rasmussen, Rawlings opposed. Mr. Gill agreed with all the stipulations except he would release the developer from the curb requirement.

6536 Mr. Rawlings moved to adopt the resolution with Mr. Taylor's previous additions/modifications and remove the requirement that there be curbs in the development, thus complying with the developer's request for no curbs. Motion seconded by Rasmussen. There was discussion about modifications to stipulation #20 regarding street, stormwater and sidewalk design meeting Public Works standards. Mr. Gill suggested a friendly amendment – the Council was shown a specification of what the developer wanted to do with the streets and drainage, and obviously there were stormwater issues that had to be satisfied, the developer had an engineering solution he intended to go forward with that had stormwater and sidewalk aspects, and street details. Mr. Gill recommended conforming stipulation #20 to the specifications presented by the developer called "Typical Section" prepared by Shafer, Kline & Warren engineers. Mr. Rawlings agreed that would clarify his motion.

Public Works Director Johnson said he understood what SK&W was proposing and would be discussing the constructability of the streets with them. He said that basically they would be building a ditch street with a storm sewer system in the bottom of the roadside ditch, the construction of the street with the absence of curbs and the storm sewer system built to convey water in the roadside ditch.

6755 Mr. Story would vote against the plan only because the City of Leawood, based on Public Works and Planning, was going to be subjected to increased maintenance costs. He was disappointed in the fact that there was some lack of creativity, possibly at a late stage, in

finding a way around those issues. There had to be someone who could design a street with no curb that wouldn't crumble and fall apart at the edges. Someone could come up with some way around the City's issues of maintenance costs associated with an alternative program. He was disappointed that some of those alternatives weren't pursued further.

6833 Mr. Taylor would also vote against the plan; he was disappointed that they didn't come up with a solution that would be more aesthetic and he still felt that the Council would be setting a precedent for future developers in south Leawood.

6897 Mr. Rawling's motion with Mr. Gill's friendly amendment carried; Bussing, Rawlings, Gill, Rasmussen in favor; Dunn, Story, Taylor opposed.

Ordinance No. 1817 rezoning from AG to RP-A and SD(C-R) – Mission Farms. On motion of Rasmussen, seconded by Taylor, the ordinance was passed unanimously on roll call vote.

6980 **Request by Nextel Communications for a special use permit for the placement of additional wireless communication antennae on existing Sprint monopole, approximately the northeast corner of 135th & Nall Ave. (5200 W. 135th St.).** Larry Louk of Selective Site Consultants appeared. Councilmember Bussing moved to approve the permit limited to 5 years from the date of Council approval, seconded by Story. Motion carried unanimously.

7188 11:00 P.M. On motion of Dunn, seconded by Bussing, Council voted unanimously to extend the meeting to 11:30 P.M.

7200 **Request by Nextel Communications for a special use permit for the placement of additional wireless communication antennae on a previously approved Southwestern Bell monopole located on the south side of I-435 east of Mission Rd. and next to Lee Blvd. (Saddle & Sirloin Club property).** Larry Louk of Selective Site Consultants, and Jim Snodgrass, Nextel radio frequency engineer, appeared. Mr. Louk said that Nextel was requesting a permit to install antennae at the 75-foot level of the 100-foot monopole. The monopole was approved with a substantial amount of landscaping, and slimline antennae were approved. He said that Southwestern Bell could use slimline technology, but Nextel couldn't because of the capacity of the radios, etc.

Since the Council would be approving a permit for 5 years, the Mayor was concerned that Nextel didn't have the slimline technology and apparently never would have since the Council would be approving a permit for 5 years. Mr. Snodgrass said Nextel would never have that technology. They could use the slimline antennae, but the problem was capacity; to get the capacity, he would probably have to use 3 sets of slimline antennae, larger than the ones he used now. There were already 2 sets of Southwestern Bell antennae on the tower, and the tower wasn't big enough for that many antennae. He said he was limited on the capacity the antennae would provide him due to the type of system he used. Also, he didn't have repeater capability. He used a specialized mobile radio, a little bit different than cell technology; they used the same type of principle, but it was a little bit different in how the radio frequency spectrum was used. He was limited on size, space and frequency. He could use the slimline technology for a short period of time, but within 6 months, he would probably be back before the Council asking for another site because the Saddle & Sirloin

location was next to I-435 with a lot of traffic. In order to use the Saddle & Sirloin site, he would have to use antennae that would keep capacity on without having to expand the site.

7331

Mr. Taylor reminded the Council that the Southwestern Bell tower was approved with a lot of conditions, lot of controversy, on the aesthetics of the pole and the height of the pole, the landscaping, because it was at the entrance to Leawood City Park. He wasn't impressed with the antennae that Nextel needed on the pole. The Council had studied the Southwestern Bell application at a previous time and weren't really that impressed, but at least there weren't any huge elements hanging on the pole. It would defeat the Council's original approval by granting Nextel the use of the pole with their type of apparatus on the pole. He wasn't in favor of the request. Mr. Snodgrass said that without the site, he would develop a hole in Leawood that he couldn't cover to provide service, and would have to go somewhere to look for an antenna; he was trying to make use of a structure that had been approved for an antenna. He had to go somewhere in Leawood for a site, and the Lee Blvd./Mission Rd. site fulfilled his coverage problem. He didn't know of any other site that would provide coverage for the hole that he had.

7446

Mr. Bussing moved to approve the permit, seconded by Dunn.

Mr. Rasmussen said that staff comments were very clear – that Southwestern Bell had been able to accommodate City's request and accordingly set a design precedent that future applicants were expected to meet. He said there was no evidence in the record as to why Mr. Snodgrass couldn't use other towers. The Southwestern Bell tower was a critical issue to residents in the area. He said Council really couldn't rely on what applicants said they could do; he had heard statements that were eventually proven wrong. He would vote against the permit because he didn't believe what he heard from the applicant.

7620

Mr. Gill asked about the ability to use slimline technology. He would support the request if Nextel was asking for that technology; he was undecided at the moment. He understood if Nextel used slimline, it would work up to a point, and that point was capacity. Would slimline meet Nextel's current capacity needs at the Lee Blvd. & Mission Rd. location? Mr. Snodgrass said it wouldn't because the tower wasn't high enough. Mr. Gill asked if slimline was all Nextel had, where would they have to place an antenna. Mr. Snodgrass said the Southwestern Bell tower would have to be 150 feet because he would need 3 sets of slimlines. Mr. Gill asked if Nextel could use another site, say on top of some buildings in Leawood or on the east or west limits of Leawood. Mr. Snodgrass said Nextel had explored possibilities at State Line and 103rd, further west near I-435 and Metcalf, they were actually planning to use a Southwestern Bell tower at 103rd and Metcalf, a bank near St. Joseph Hospital at approximately I-435 and State Line wouldn't let Nextel locate on the bank. Mr. Snodgrass said from a technical point of view, the bank would have sufficed. Mr. Gill said the reason the Council was being asked to approve bigger and uglier antennae was because a landowner in a neighboring city wouldn't do business for a technical solution that would work and would Leawood to stick with its principles on which it originally approved the tower, use of slimmer antennae.

7800

Mr. Bussing's motion to approve the permit failed; Dunn, Bussing in favor; all others (5) opposed.

City Attorney Wetzler said Council's decision would have to be put in writing with reasons for the decision. He suggested Councilmembers give their remarks for the record, and he would prepare a written decision for Council's consideration and approval at the next

meeting. The Mayor called for remarks from Councilmembers who voted against the motion.

Mr. Taylor said he objected to the aesthetics of the proposed antennae; when the tower at Lee & Mission was originally approved, Council was very cognizant of the aesthetics of the site and the size and height of the pole; the proposed antennae conflicted with that approval.

Mr. Gill said that if Nextel had sought a slimline approval, he would have voted for the permit. His opposition was based on aesthetics, it wasn't consistent with the plan originally approved after careful study for the location, and Leawood was a very active, proactive and appropriate player in cellular technology and had awarded a number of sites in the City. It was unfortunate that Nextel was unable for whatever reason to get an antenna located in a neighboring city.

Mr. Rasmussen made his remarks earlier in the discussion.

Mr. Story was also opposed because of aesthetics, but said that primarily, he wasn't thoroughly convinced that all other possibilities for the slimline design had been researched and ruled out as not being feasible. He didn't hear what could have been done to make the antennae look better and more consistent with the City's overall plan.

Mr. Rawlings basically voted against the motion because of the aesthetics.

8084

MAYOR'S REPORT. The Mayor reported that a devastating earthquake had hit Taiwan. She expressed the City's condolences. Leawood's sister city I-Lan, Taiwan, didn't suffer much damage. The center of the island sustained the most devastation. Double 10 ceremonies honoring the anniversary of the Republic of China on Taiwan had been cancelled in Taiwan and in Kansas City.

The Mayor and City Administrator would be the City's voting delegates at the Kansas League of Municipalities conference in Overland Park, October 2-5, 1999.

OLD BUSINESS

8413

Parks Department report on maintenance of medians (islands) along 135th St. between State Line Rd. and Nall Ave. Parks & Recreation Director Claxton had distributed a memo to Council giving an overview of the number of flowerbeds and the types of current plantings. In the memo, she tried to identify briefly what might have led to some of the problems and to describe some of the solutions. Parks Supervisor Brian Anderson distributed a report on staff hours. Mrs. Claxton mentioned the Little Bluestem native grass which often looked like a weed. Some pictures showed where the mulch bed had failed. Mr. Anderson described the Little Bluestem and mulch problem. The Parks Department didn't have funds for more mulch to keep weeds down. Mr. Anderson contacted some tree services and KCPL that did a lot of line clearances and tree work to see if they would donate their chips, mulch that they produced. He said his staff was catching up with the work since the municipal pool was closed and a lot of work required at the City Hall was slowing down. Councilmember Bussing asked if staff really wanted the highly labor intensive flowerbeds along 135th St. Mr. Anderson said the plantings were basically intended to be non-labor intensive. City Administrator Garofano said the design of the plantings was done by HNTB and approved by Council with the idea that it would be low maintenance, more of a natural design, once the plantings were well established. Mrs. Claxton said she would continue to report on the maintenance plan as staff moved forward.

8857 11:30 P.M. On motion of Story, seconded by Taylor, Council voted unanimously to extend the meeting to 12:00 A.M.

Ordinance relating to massage therapy. Councilmember Bussing asked that the ordinance be returned to staff with the directive that they look at 3 specific areas (and perhaps other areas): 1) the comments of Peggy Smith of BMSI Institute in her letter to Jeff Cantrell dated September 14, 1999; 2) look at the language of the ordinance and attempt to address the minimum standards of the massage therapy profession and exclude all other references – there was a lot of language in the ordinance which was duplicative of the City's adult entertainment ordinance and those references should be excluded where possible, the language and scope of the ordinance should be narrowed to the regulation of the massage therapy profession in the City; Olathe and Lenexa ordinances had very simple language and staff might take a look at those; and 3) the City needed to demonstrate some flexibility in permitting home-based massage therapy businesses while still appropriately regulating them. Mr. Bussing thought staff could return the ordinance to Council within 30 days. Mr. Cantrell said he had been advised that there were some fourth amendment problems that the City might face in attempting to regulate home-based massage businesses; staff might explore a special use option that would be fully revocable if the City received reasonable complaints.

9209 Councilmember Rasmussen asked if there was a way to "grandfather" existing home-based businesses by name and location in terms of prohibiting the expansion of home-based businesses. City Attorney Wetzler said that some parties had obtained licenses when they shouldn't have been granted in accordance with other City ordinances which prohibited those businesses. So the City couldn't "grandfather" something not permitted in the first place. The Mayor thought most people wanted a flexible policy that some how allowed for in-home massage therapy and yet allowed staff some manner to regulate.

9330 **END OF TAPE**

Tape No. 467

Councilmember Gill said he was convinced from reading correspondence on the issue that home-based massage was a legitimate business and shouldn't be treated differently than other legitimate home-based businesses. He wanted to know more about the City's policy on what people could or couldn't do business-wise in their homes.

135 Mr. Bussing moved to return the proposed ordinance to staff to incorporate suggested changes, staff to return the ordinance to Council in approximately 30 days, seconded by Dunn. Mr. Bussing felt it was appropriate for staff to schedule a meeting(s) with professionals to discuss issues, prepare a draft to forward to Attorney Steve Horner in the City Attorney's office, and then return it to the Council for consideration. Motion carried unanimously.

NEW BUSINESS

237 **Approval of Appropriation Ordinance No. 871.** On motion of Gill, seconded by Rasmussen, Council unanimously approved the ordinance on roll call vote.

281 **Ordinance No. 1818 accepting deed for street purposes from Normandy Place subdivision (for conversion of private streets to public).** Councilmember Taylor moved to pass the ordinance, seconded by Gill. The matter had been discussed at previous Council meetings. Public Works Director Johnson said that originally 2 improvement districts had been proposed – one for street improvements and one to be created that could be used in the future. The latter was eliminated, so street improvements would be done to stabilize the wing wall next to the subdivision pool, and the City would take over a brand new overlaid street with no maintenance required for 6 or 7 years. Council unanimously passed the ordinance on roll call vote.

Acceptance of petition from Normandy Place subdivision residents for public improvement of streets (for conversion of private streets to public). On motion of Taylor, seconded by Gill, Council unanimously accepted the petition.

Resolution No. 1476 of finding as to the advisability of and authorizing the improvement of streets and stormwater drainage in Normandy Place subdivision (for conversion of private streets to public). Adopted unanimously on motion of Taylor, seconded by Gill. Resolution attached as part of the record.

Ordinance No. 1819 accepting 12 permanent drainage easements from Normandy Place subdivision residents and homes association (for conversion of private streets to public). On motion of Taylor, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

Work session to discuss Capital Improvements Program. Scheduled for October 18, 1999, 5:30 P.M.

490 12:00 A.M. On motion of Taylor, seconded by Story, Council voted unanimously to extend the regular meeting 5 minutes.

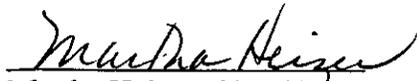
OTHER BUSINESS. Executive session. On motion of Dunn, seconded by Bussing, Council voted to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss personnel matters and land acquisition; Gill opposed, all others in favor.

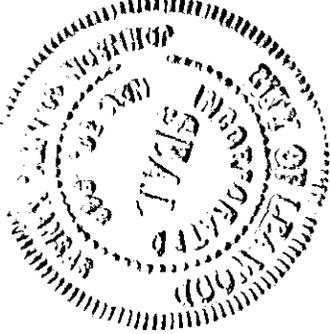
Discussion of Parks & Recreation Advisory Board's recommendation relating to the selection of a consultant for the Nall and South Parks. Councilmember Taylor said that the final design for Leawood City Park was going forward rapidly, but designs for the Nall and South Parks had fallen by the wayside. The Board recommended that the Council authorize staff and the Board to proceed with the selection of a consultant for Nall Park and a consultant for the South Park by separate RFPs. Mr. Taylor so moved, seconded by Rasmussen and carried unanimously.

590 12:05 A.M. Council convened in executive session, same members present, and returned to regular session at 12:15 A.M., same members present. On motion and duly seconded, Council unanimously approved the City Administrator's appointment of Patricia Bennett as (in-house) City Attorney effective September 30, 1999. On motion and duly seconded,

Council voted unanimously to return to executive session for 1 hour to continue the same discussions.

1:15 A.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. 468

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 4, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr. Shelby Story was absent.

Staff Present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Mark Andrasik, Director of Information Services; Sarah Hilton, Administrative Services Manager; Captain Craig Hill, Police Department; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Martha Heizer, City Clerk; and Patricia Bennett, City Attorney.

PLEDGE OF ALLEGIANCE - led by Webelos, Troop #3197, from Brookwood Elementary School.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Dunn, seconded by Taylor, after the addition of 1) a discussion of a memo from Jeff Cantrell, Neighborhood Services Administrator, his report on restaurants' compliance with the smoking ordinance, and 2) an executive session at the end of the meeting for a period not to exceed 30 minutes to discuss litigation and land acquisition.

PROCLAMATIONS. The Mayor proclaimed:

1. November 15, 1999, as "America Recycles Day"
2. October 1999, as "National Dental Hygiene Month"
3. October 4-8, 1999, as "Greater Kansas City Flash Flood Awareness Week"
4. October 3-9, 1999, as "Fire Prevention Week"; the Mayor presented the proclamation to Fire Chief Florance.

CITIZEN COMMENTS. Kevin Jeffries and Marga Spangler of the Leawood Chamber of Commerce read and presented a resolution to the City from the Board of Directors of the Chamber honoring City Administrator Dick Garofano for his years of service to the City and the Chamber.

CONSENT AGENDA. The following was approved unanimously on motion of Bold, seconded by Taylor:

Application (new) for Cereal Malt Beverage License – Pat's Blue Rib'N Barbeque, 12256 State Line Rd.

PLAN COMMISSION

Ordinance No. 1820 amending Section 4-3 (Special Use Provisions) of the "Amendment to Leawood Development Ordinance" to allow drive-through bank facilities in office districts. For some time, banks that incorporated drive-through facilities in their design had only been allowed within retail zoning districts. The Plan Commission and City Council deemed that use to be appropriate within office districts. In the past, because of limitations of the development ordinance, the only procedural action that could be taken to allow such banking uses was to zone small pockets of retail within office developments. Staff wasn't comfortable with that option. Should a bank facility be sold or cease to operate, the "spot zonings" opened the door for less compatible, more retail-oriented uses, and could be deemed illegal by existing zoning laws. Staff proposed that banks with drive-through facilities be listed separately as a special use under Section 4-3 of the Leawood Development Ordinance which would provide a procedure for locating drive-through banks in office districts by overlaying the special use permits on an underlying office zoning.

On motion of Gill, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

MAYOR'S REPORT. The Mayor attended recent kickoff ceremonies with area metro mayors for the American Royal's centennial celebration, and dedication ceremonies for the Sprint World Headquarters in Overland Park.

Councilmember Rasmussen was designated the City's voting delegate to the Annual Congress of Cities in Los Angeles, November 30-December 4, 1999.

OLD BUSINESS

Discussion of final decision on denial of Nextel Communications' application for additional cell tower antennae at approximately Lee Blvd. and Mission Rd. The matter would be continued to the October 18th Council meeting since the required documentation required by ordinance being prepared by the City Attorney wouldn't be completed until then. The Council would at that time affirm, so to speak, the decision they made at the September 27th Council meeting.

685 **Discussion of proposed ordinance relating to stormwater management.** Councilmember Rasmussen moved to forward the proposed ordinance to the City Attorney for review for legal compliance, seconded by Gill.

Re page 13, #7, Failure to Maintain, there was discussion that the Board of Zoning Appeals would be the Council's designated agent to review disputed decisions of the Director of Public Works or Building Official and to resolve disputes regarding the interpretation and implementation of the provisions of the ordinance; there was already a procedure involving the Board for code enforcement violation appeals. There was reference to the Board's involvement on page 3, Section 31.1.4.d.

Re page 19, item regarding Lot Lines, the Mayor asked what would happen to all current fences in lot line swales; was there an intention to "grandfather" current violations that existed. There was discussion about having a policy that restricted the installation of fences and construction of landscaping within overflow swales. The Mayor hoped that existing fences would be "grandfathered."

Re page 32, penalties for violations, driveway fillets were included as violations.

Councilmember Taylor wondered if the Board of Zoning Appeals was the appropriate body to render decisions. They had to render decisions in accordance with certain guidelines under state statutes; would the Board have the flexibility to render decisions on a case-by-case basis on stormwater management? City Attorney Bennett said that generally there were 5 factors under which the Board could grant variances, however, the Board could have other authorities where the 5 factors wouldn't apply.

Mr. Rasmussen reminded Council that it was going to cost money to implement the ordinance. The ad hoc Stormwater Management Committee tried to be sure that the ordinance complied with County SMAC requirements, state statutes, federal requirements. Record keeping alone for the federal government in terms of maintenance of the City's existing stormwater system, identification of pollutants and the sources thereof, could be monumental, let alone what the City normally had to do. And the City would need to keep track of erosion on property and permits on property, from a geographical point of view. The City's database might have to be expanded, so the City didn't know what would be required in terms of software and hardware.

1077

Mr. Gill returned to page 19, Lot Lines. He said a number of residents in his ward had built berms for landscaping purposes, and sometimes the berms redirected the course of water. Mr. Rasmussen said berms could be a violation if they obstructed the stormwater system. There was discussion of grading plans for subdivisions. Public Works Director Johnson said the City wouldn't go back and look at existing berms, but would enforce from the effective date of the ordinance. Mr. Gill said that while "grandfathering" from the prohibition might be appropriate, he wouldn't want to give residents a free pass if what they did was also inappropriate under existing standards. Mr. Rasmussen said that the City might have an ordinance(s) still in effect which would indicate that an existing berm was indeed in violation and the City couldn't "grandfather" in a violation.

1234

Mr. Taylor asked if it would be cumbersome to require a landscaping plan to be part of the site plan approved by the City for a home building permit. That would allow the City to determine whether or not there was a stormwater violation or drainage problem. Building Official Sam Maupin said it could be a possibility; it wouldn't happen during the plan review process because the homeowner wouldn't know for certain what he wanted, but sometime between the time the project began and the certificate of occupancy was issued, then the Planning Department could make it known that there was a requirement to submit a landscaping plan that would be reviewed and checked for compliance with the overall subdivision development plan, and if they matched up, the necessary permits and approvals would be issued. Mr. Maupin said that in the future with the new stormwater management ordinance, Planning would probably require the final as surveyed when the project was finished to be sure the property was graded, including landscaping and other improvements, in compliance with the overall subdivision development plan.

1355

Mr. Dunn said that the Public Works Committee wanted to incorporate with the adoption of the stormwater ordinance some type of public awareness program; there needed to be referral back to the Committee to establish fairly quickly a public information program (or to refer it to staff) about the passage of the ordinance and homeowners' responsibilities. Mr. Bussing felt that a communication and information plan should be prepared outlining how Council and staff would communicate with the entire City on the broad number of issues related to the stormwater ordinance.

Mr. Rasmussen's motion to forward the ordinance to the City Attorney carried unanimously. The Council would take final action on the ordinance by the first meeting in January 2000.

NEW BUSINESS

1812

Approval of Appropriation Ordinance No. 872. On motion of Rasmussen, seconded by Dunn, Council unanimously approved the ordinance on roll call vote.

1977

Authorize Right-of-Way Maintenance Agreement for Village at Ironhorse (developer Mark Simpson) – to allow the developer to install landscaping within traffic islands and underdrains installed within traffic islands and beneath street pavement, all as indicated on approved plans dated March 11, 1999, and to set forth the developer's responsibilities for maintaining the amenities. On motion of Bold, seconded by Taylor, Council unanimously approved the agreement.

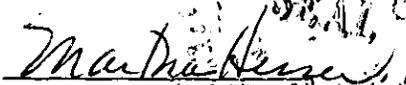
1986

Authorize Right-of-Way Maintenance Agreement for The Woods (developer Jeff Alpert) – to allow the developer to install various amenities within public right-of-way as indicated on approved plans dated September 18, 1998, and to set forth the developer's responsibilities for maintaining the amenities. On motion of Bold, seconded by Taylor, Council unanimously approved the agreement.

OTHER BUSINESS. Discussion of smoking ordinance. The Mayor read a letter from Jeff Cantrell, Neighborhood Services Administrator, in which he stated that it appeared that several smoking restaurants were not going to fully comply with the ordinance. He directed codes enforcement staff to visit each restaurant to determine the situation. Mr. Cantrell personally felt that several noncompliant restaurant owners were financially unable to comply with the ordinance. Staff advised all parties of the option to appeal to the Governing Body, however, no one had requested an appeal. Mr. Cantrell's letter also indicated that there was a problem up front getting copies of the ordinance to the proper people at each restaurant, so the ordinance hadn't had the full attention of the restaurant owners. Mr. Gill felt that once restaurants were informed but weren't making any efforts to comply, then the City should enforce the ordinance.

2183

8:45 A.M. Council convened in executive session, and returned to regular session at 9:15 P.M. There being no further business before the Council, the meeting was adjourned.


Martha Heizer, City Clerk

Minutes Summary

No Audio Tape

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, October 18, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, 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; Sarah Hilton, Administrative Services Manager; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; and Patricia Bennett, City Attorney.

PLEDGE OF ALLEGIANCE.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Gill, seconded by Taylor, after the addition of 1) a discussion about enhancing the City's e-mail system/web page to include members of the Governing Body, and 2) a discussion of October 4, 1999, memo from Jeff Cantrell, Neighborhood Services Administrator, regarding the smoking ordinance. The order of the agenda was also changed due to 2 requests for continuances – affirmation of the denial of Nextel Communications' application for additional antennae on cell tower at approximately Lee Blvd. & Mission Rd., and discussion of proposed right-of-way ordinance to be discussed after the Consent Agenda.

PRESENTATION OF 1998 LIFE SAFETY ACHIEVEMENT AWARD TO THE FIRE DEPARTMENT. Gale Haag, Kansas State Fire Marshal, presented the prestigious award to Fire Chief Florance recognizing his Department's local fire prevention activities that resulted in a zero fire death record in structure fires.

RECOGNITION OF CITY EMPLOYEES FOR SERVICE TO THE CITY. The following employees were recognized with City plaques/resolutions of recognition, and certificates of appreciation from the League of Kansas Municipalities:

Edward Cosgrove, Firefighter II	25 years (City plaque and Department plaque)
Sam Tucker, Police Professional Standards Officer	25 years (City plaque)
Jackman Beiger, Fire Lieutenant	20 years (City resolution)
Bobby Carr, Police Sergeant	20 years (City resolution)
Eugene Green, Jr., Maintenance Worker II	20 years (City resolution)
Nancy Kelley, Police Administrative Services Mgr.	20 years (City resolution)
Timothy Anderson, Police Officer III	10 years
Scott Barton, Police Sergeant	10 years

Jeffrey Culbertson, Police Sergeant	10 years
Steven Duncan, Master Firefighter	10 years
Jeffrey Goehring, Engineering Technician	10 years
Jarrett Hawley, Firefighter III	10 years
Nathan Schrock, Firefighter III	10 years

PROCLAMATIONS. The Mayor proclaimed October 23, 1999, as "Make a Difference Day," and October 18-22, 1999, as "National Business Women's Week."

CITIZEN COMMENTS. G. Gordon Thomas, 10516 Mohawk Lane, asked the Council to reconsider their recent approval of the development of the Saddle & Sirloin Club property at 105th and Mission Rd. as proposed by developer Mark Sutherland, and renegotiate the plan according to the City's master development plan requirements; Council should review and reverse their decision.

Tracy Taylor of Cohen Esrey Real Estate Services raised concerns about the commercial sign ordinance recently implemented in the City; it might impede the ability of the market place to fill the recently constructed office buildings in Leawood. He agreed that commercial real estate signs shouldn't become permanent which would indicate that there was a significant vacancy currently in the office developments in the Tomahawk Creek Parkway/College Blvd. area, but some sort of compromise was needed to ensure that signage could play a role in filling the vacancy and increasing the property taxes derived from the office buildings in Leawood. Until vacancies were reduced, appropriate signage was needed to apprise the economic decision makers of the availability of office space in Leawood. He asked that the issue might be remanded to the Plan Commission for review of the matter. Councilmember Gill asked that a discussion of a possible remand be added to the November 1st Council agenda.

CONSENT AGENDA. One item was removed for further discussion. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Minutes of the September 27, 1999 Council meeting;
2. Minutes of the October 4, 1999 Council meeting;
3. Golf Course Committee report (minutes) on their September 30, 1999 meeting;
4. Parks & Recreation Advisory Board report (minutes) on their September 14, 1999 meeting;
5. Departmental reports;
6. Purchase of Fire Department capital equipment as approved in the 1999 budget totaling \$24,592.00;
7. Purchase from Olathe Ford Tractor of a 1999 Toro Z255 mower for the Parks Department for \$6,300 less \$3,500 trade-in of old Toro 325 mower (old mower was declared surplus property);
8. Renewal of Data Access and License Agreement with Johnson County – to allow the City to share the AIMS (Automated Information Mapping Systems) information that the County created – cost \$5,947.02.

Historic Commission report (minutes) on their September 14, 1999 meeting. The last sentence of the third paragraph of the Oxford School update which indicated that according to Sarah Hilton, City staff liked the Price Chopper project site at 135th and Mission Rd. as a site for the school, was deleted as an inaccurate statement. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the report.

Affirmation of the denial of Nextel Communications' application for additional antennae on cell tower at approximately Lee Blvd. & Mission Rd. Councilmember Gill said that Nextel had requested that the Council delay their decision. Mr. Gill was ready to make a motion for delay provided he get a stipulation of concurrence that by delaying it, the City wouldn't be placed in a position with Nextel claiming that the City wasn't adhering to the Telecommunications Act of 1996. The reason for the delay – Nextel offered to pay for the City to hire an engineer to do some analysis of the technical requirements of the slimline antennae versus the antennae that Nextel wanted to use which was the source of the denial. Scott Beeler, attorney for Nextel, said that Nextel did concur. Mr. Gill moved to continue the matter to the November 15th Council meeting, seconded by Bussing. Mr. Gill said the intent of his motion was not to reopen the record. Motion carried; Rasmussen opposed; Taylor abstained; all others in favor.

(Right-of-Way) Ordinance No. 1821C. Bill Watkins of Polsinelli, White, Vardeman law firm, spoke on behalf of Southwestern Bell Telephone about some remaining issues in the ordinance. He said that SWB and cities were interested in ordinance uniformity in the metropolitan area, but if everyone proceeded independently of one another tonight (Leawood, Overland Park and Prairie Village Councils), then with any changes the Council might be persuaded to make, he would like the opportunity, if the Council wanted to vote tonight, to talk about some open issues that SWB was still concerned about. But hopefully Council would first consider whether or not to wait and see what Overland Park's Public Works Committee did tonight; they might very well address some of SWB's concerns, and by waiting a month or until the next Council meeting, Leawood could consider whether it wanted to address those concerns in the same fashion.

Councilmember Dunn said he understood that there weren't really any questions left between cities as to coordination of the ordinance. Public Works Director Johnson said that everytime the cities had meetings with SWB, SWB presented them with additional concerns or questions. Mr. Johnson said he had learned that Overland Park's Public Works Committee did recommend approval of the ordinance, and they didn't agree to make 3 or 4 changes. Mr. Watkins said he had heard otherwise. Mr. Johnson said the cities had already made 15-20 concessions to address SWB's concerns.

Steve Horner, attorney for the City, reviewed the history of the meetings relating to the ordinance and the numerous delays/changes requested by SWB. Mr. Horner felt that SWB's main concerns had been addressed; on the final 4 issues, everyone basically agreed to disagree. He said there were time issues, reasons for addressing the ordinance now in order for it to become effective by January 1, 2000.

Mr. Johnson said that once the ordinance was approved, meetings with contractors would be set up, and utility companies who wanted to attend, to discuss the implementation of the ordinance. Staff had a lot of work to do before January 1. Mr. Johnson said that the ordinance before the Council as written was in the best interests of the City.

Councilmember Rasmussen said that Leawood had started the research for the proposed ordinance to resolve problems in Leawood. He said there wasn't a problem to solve in Overland Park or Prairie Village. The fact that subsequent to Leawood's work on the ordinance, Overland Park and Prairie Village joined with Leawood, resulted, in his opinion, in an ordinance that was less desirable for Leawood. But in the interests of Leawood to have uniformity, in the interests of trying to be a good neighbor, in the interests of trying to get multiple utilities to agree, staff went along with trying to develop an ordinance that would fit the 3 cities. He felt the ordinance should be passed in its proposed form; the utility companies had had more than ample time to make their comments.

Councilmember Gill had received a phone call from John Petersen of Polsinelli, White, requesting a continuance. Given the fact that the ordinance wouldn't become effective until January 1, and assuming that a 2-week continuance wouldn't impact the effective date, he was willing to vote for a continuance solely based on some informational value as to what Overland Park did or didn't do. Councilmember Bold said he would be willing to second a motion by Mr. Gill for a continuance solely because SWB was going to be one of the companies most affected by the ordinance.

Mr. Rasmussen moved to pass the ordinance, seconded by Taylor. Motion carried unanimously on roll call vote.

PLAN COMMISSION

Request by Molle Toyota for a special use permit for a proposed parking lot at 104th & State Line Rd. for new vehicles (overflow parking for dealership on the Missouri side of the state line). Chuck Webber, representing Frank Molle, described the plan. The Plan Commission had recommended approval with the permit limited to 2 years from the date of approval by the Council. Mr. Webber said that Mr. Molle had spent a great deal of money on the plan and requested relief from the time limit.

In response to a question from the Mayor, Councilmember Taylor said he had been told by the Public Works Director about 1 year ago that the City had no interest in purchasing or releasing the Kroh Brothers property to use as parking area for the Public Works facility on 104th St. (The City's lease of the property had expired.) City Administrator Garofano said the City was concerned about the purchase price of the property; neither he nor the Public Works Director had made comments or talked to the owners of the property about releasing the property, but did express concern about the purchase price.

Dan Murphy, representing the owner of the property, said there was no interest in leasing the property, only to manage and liquidate the property as part of the Kroh Brothers bankruptcy proceedings. The Mayor confirmed that Molle would be purchasing the property, yet the special use permit would be limited to 2 years. Mr. Webber thought perhaps the 2-year limit was because Mr. Molle would be an absentee landlord. Mr. Garofano explained that the City used the property in the past for Public Works facility parking as an accessory use to the main use of the Public Works facility. This would no longer be an accessory use but a use for a separate business not even located in the City, thus requiring a special use permit.

Councilmember Bold moved to approve the permit as recommended by the Plan Commission, seconded by Taylor.

Councilmember Gill said he would vote against the motion - the worst possible case the City could look at for use of the property, a car lot with lights and no tax revenue from sales. It wasn't the highest and best use or appropriate use for the City in that area. There would still be an on-street parking issue, plus new cars would be moving back and forth across the state line; there would be 24-hour lights of a car dealership, especially at night. He didn't want to put Leawood in that category. And the satellite lot could actually be a sales lot.

Councilmember Rasmussen addressed the issue of the buying out of property in floodplains. He said that the Johnson County Commissioners had previously determined that one solution to stormwater problems was to buy out residential property in floodplains. He said that on August 12, 1999, the Commissioners included commercial property. The property under consideration was in a floodplain, and in addition, the City was planning a SMAC project in the area. So the Council would approve the permit, the applicant would buy the property and invest his money, and then the City would come along with requirements to protect the property along the creek bank. There wasn't anything in staff's report about right-of-way or statement that Leawood wouldn't have to pay for the enhancements to protect the property. Under SMAC, the City had to pick up the costs of rights-of-way and enhancements. He didn't think it was right to impede the proper sale of land, however, how could the City encourage the sale of the property and yet protect the interests of the citizens of Leawood, certainly from the point of view of tax dollars going to protect the property if there was a SMAC project. Or maybe say to the Johnson County Commissioners — if the area flooded, buy out the property. There should be stipulations relating to what the City needed concerning flooding. Also, how could the City enforce new vehicle parking; who could know who might buy out Molle Toyota in the future.

Mr. Bold wanted to know if Mr. Molle would stand in the way of any redevelopment of the entire 103rd and State Line area; someone might want to use the property for parking or perhaps green space. Mr. Molle said he wouldn't stand in the way. Mr. Bold mentioned that lighting would be for security of vehicles, not for merchandising. He didn't think the use was ultimately the best use for the larger property as a whole, but considering that the property was in the floodplain, nothing better could be built on it for the time being, and Mr. Molle would be making vast improvements to the appearance of the property and adding to the value of the property.

Mr. Webber noted that Mr. Molle didn't intend for the lot to be a satellite lot for sales.

Mr. Rasmussen felt it would be appropriate to continue the matter for 2 weeks so staff and the applicant could review language that would really protect the City; the City Engineer would be involved. The Mayor said that several issues had been brought up that staff should review and that might be additional stipulations.

Mr. Bold withdrew his motion for approval of the permit, and moved that the matter be continued to the November 1st Council meeting so staff and the applicant would have adequate opportunity to work out the stipulations discussed and to address staff's comments and concerns in staff's report. Motion seconded by Bussing and carried unanimously.

Resolution No. 1477, attached as part of the record, approving preliminary site plan and preliminary plat for Hallbrook Office Building, 111th & Overbrook. Robert Sederberg of Gould Evans Goodman Architects gave a presentation.

There was discussion of who would pay for the traffic signal at 112th St. and State Line Rd. Councilmember Rasmussen said the developer should pay for it.

There was discussion of the master plan for the Hallbrook Office Park development, particularly the portion south of College Blvd., and the design and materials of the building.

Councilmember Taylor moved to adopt the resolution with an additional stipulation that the developer install the required traffic signal at 112th St. and State Line Rd., and with the addition to stipulation #4 that if public art details weren't approved by the Arts Council, then the \$.10/sq. ft. would apply. Motion seconded by Bold and carried unanimously. The Mayor noted that had she had an opportunity to vote on the matter, she would have abstained to avoid the appearance of a conflict of interest. See November 1, 1999 minutes for addition to discussion.

Resolution No. 1478, attached as part of the record, approving revised preliminary site plan to add 2 tennis courts at Hallbrook Country Club, 112th & Overbrook. Greg Watson of Shafer, Kline & Warren engineers, gave a presentation. Councilmember Rasmussen moved to adopt the resolution, seconded by Rawlings. Motion carried unanimously.

Ordinance No. 1822 amending Section 3-2 of the Leawood Development Ordinance relating to side yard setbacks. On motion of Rasmussen, seconded by Dunn, Council passed the ordinance on roll call vote; Taylor not seated for the vote, all others in favor.

MAYOR'S REPORT. The Mayor reported that Elizabeth Chu, Director General of the Taipei Economic and Cultural Council in Kansas City, would be sponsoring a fundraiser on November 20th for the earthquake victims in Taiwan. Mrs. Chu, quite a competent artist, planned to sell reproductions of her art.

OLD BUSINESS

Resolution No. 1479, attached as part of the record, declaring the necessity to appropriate private property and authorizing a survey and description of land to be condemned. (For SMAC project DB-04-017, 86th & Overhill.) Councilmember Rasmussen moved to adopt the resolution, seconded by Bussing.

Councilmember Dunn said that the Public Works Committee had researched the issue of payment of compensation for easements for SMAC projects, and recommended that in the future with respect to non-safety stormwater projects, the City would exercise its authority to have a public hearing, make a determination as to whether the project was in the public interest, and establish a special benefit district for the payment of easement costs should they arise as part of the project. It would not apply to projects, such as this project, that were determined to be public safety needs.

John Pearce, 8629 Overhill Rd., said his primary objection to the project was the loss of all the trees (40-50-60 feet tall) between his house and the creek. Mr. Pearce reviewed the long history of the project, indicating that residents never really wanted the project done. When told by the City that the project would be done, most residents finally decided to sign easements.

Public Works Director Johnson described the project and the efforts that would be made to save trees as much as possible.

Motion carried unanimously.

Ordinance No. 1823 authorizing acquisition of private property and authorizing survey and description of land to be condemned. (For SMAC project DB-04-017, 86th & Overhill Rd.) On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

Authorize Supplemental Agreement No. 6 for construction engineering services for Mission Rd. improvements, 103rd St. to I- 435 – for continued services to be provided by Bucher, Willis & Ratliff for an additional cost of \$48,300.00. Councilmember Rasmussen moved to approve the agreement, seconded by Dunn. The Mayor had asked staff to look into cost participation by Johnson County Wastewater because project delays were caused by wastewater lines which weren't in place where originally platted. Public Works Director Johnson said that the County agreed to take a look at the situation, and if they were in fact responsible, would be willing to participate. He said that since the construction contractor had also had delays, perhaps a nice compromise would be for Leawood, Overland Park, and Johnson County to split the cost three ways. Mr. Johnson said that review of the situation would probably show that the street couldn't be constructed because of the wastewater problem roughly between May and October of 1998.

Motion carried unanimously.

NEW BUSINESS

Approval of Appropriation Ordinance No. 873. On motion of Rasmussen, seconded by Dunn, Council unanimously approved the ordinance on roll call vote.

Approve bid/authorize contract for construction of Normandy Place subdivision street and storm drainage improvements. On motion of Taylor, seconded by Rasmussen, Council unanimously authorized a contract with Obermiller Construction Services in the amount of \$153,356.86.

Accept petition for improvement district for College Blvd. improvements, Tomahawk Creek Parkway to El Monte. (Improvement district involved properties on the south side of College Blvd.) On motion of Rasmussen, seconded by Taylor, Council unanimously accepted the petition.

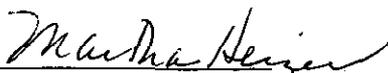
Schedule executive session to discuss land acquisition. On motion of Taylor, seconded by Story, Council voted to convene in executive session at the end of the meeting for a period of 15 minutes to discuss land acquisition. Mr. Gill abstained (he recused himself from the matter), all others in favor.

Schedule executive session for the annual performance evaluation of the City Administrator. On motion of Taylor, seconded by Rasmussen, Council voted unanimously to hold the session on November 8th, 5:30 P.M.

OTHER BUSINESS. Discussion of City's e-mail system/web page. Councilmember Gill said Overland Park's web page had a direct link feature to Governing Body members if someone (a constituent) wanted to write an e-mail to them. He thought it would be a nice feature for Leawood's web page. The Mayor brought up the subject of formulation and narrowing of opinions via e-mail and serial phone calling. Mr. Gill just wanted to provide constituents an easy and immediate way to contact the Governing Body. Councilmember Dunn asked if there was any reason why any e-mails going back and forth couldn't be public record, accessible to the public; that might take care of the Mayor's concerns. Mark Andrasik said he could respond to that in a report. Mr. Andrasik asked if the e-mail would be used for inter-council, inter-staff communication, or just for citizens to contact the Governing Body; there might be legal issues to consider. And there were logistic and virus issues to consider. Mr. Gill moved that staff prepare a recommendation on how this could be done and within what limits it could be done, seconded by Dunn. Mr. Gill felt it was urgent with so many people wanting information about Leawood. Motion carried unanimously.

Discussion of October 4, 1999 memo from Jeff Cantrell, Neighborhood Services Administrator, regarding the smoking ordinance. Mr. Cantrell said that staff felt they knew how to enforce the ordinance, knew in what direction to go from discussion at the last Council meeting; it was just a matter of a little bit more time for restaurants to come into compliance that truly wanted to do so. He was at the point of building cases against those in noncompliance. Bogey's restaurant was trying to submit plans and reconfigure their floor plan, so they were working on coming into compliance; they were sent a final notice.

10:45 P.M. Council convened in executive session, and returned to regular session at 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. 469

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 1, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, 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; Sarah Hilton, Administrative Services Manager; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation Director; Martha Heizer, City Clerk; and Patricia Bennett, 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 Taylor, seconded by Bussing, after the addition of 1) additional items for an executive session to be scheduled for the end of the meeting – a personnel matter and pending litigation; and 2) a discussion of a Police Department report detailing additional costs of phases 3 & 4 of the 800 radio system project.

RECOGNITION OF ATTORNEY RICHARD S. WETZLER FOR HIS SERVICE TO THE CITY. The Mayor read a Resolution of Appreciation, attached as part of the record, recognizing Dick Wetzler's 16 years of service to the City as City Attorney from May 2, 1983 to September 30, 1999. She presented the resolution to Mr. Wetzler.

CITIZEN COMMENTS. None.

265

CONSENT AGENDA. Four items were removed for further discussion. The following were approved unanimously on motion of Gill, seconded by Story:

1. Arts Council report (minutes) on their September 28, 1999 meeting;
2. Banking services agreement with Gold Bank at 11301 Nall Ave. for 1 year beginning January 1, 2000;
3. Purchase of software package (Master Series Infrastructure Management software) for the City's street rating program and storm sewer rating program from George Butler Associates in the amount of \$10,000;

4. Changes to "right-of-way" Ordinance No. 1821C passed at the October 18, 1999 Council meeting: 1) Section 10.7, add to the end of the section "subject to the appeal process contained in Section 13.12.570, as amended"; 2) Section 11.1, delete the word "sole" from the second sentence; and 3) Section 12.3, delete the words "down time" from the section. The changes didn't affect the intent or meaning of the ordinance, nor did they hurt the City's positions in the sections.

Minutes of the October 18, 1999, Council meeting. Re Resolution No. 1477 approving the preliminary site plan and preliminary plat for Hallbrook Office Building at 111th & Overbrook: Councilmember Bussing asked that the minutes reflect the question he asked the applicant Mel Lavery regarding the applicant's intent to return to the Council with a request for increases in density to the overall project and the applicant's response that he didn't intend to do so. On motion of Bussing, seconded by Dunn, Council unanimously approved the minutes with the addition.

Resolution No. 1480, attached as part of the record, approving the final plat for Mission Farms located at approximately 105th and Mission Rd. The Mayor noted that the applicant planned to do standard streets with curbs and gutters rather than the streets without curbs that had been approved at the September 27, 1999 Council meeting. She also noted that on the last page of the October 26, 1999 letter from Lathrop & Gage attached to the resolution, #5, "Final Bullet Point under "Final Plat", should indicate 103rd Terr., not 103rd St. On motion of Rasmussen, seconded by Gill, Council unanimously adopted the resolution.

Approval of the Capital Improvements Program for 2000-2004. The Mayor stated for the record her challenge to staff and the Public Works Committee to find a cost savings in the figure shown for the Public Works complex.

Councilmember Taylor said he shared the Mayor's feelings about the Public Works facility, and he also had a problem with the Roe Ave. expansion and its priority from 124th St. to 135th St. Mr. Taylor said he would not vote to approve the CIP; he felt that the representation of the numbers that Council was being asked to approve was not realistic nor properly scrutinized by various committees and staff.

On motion of Dunn, seconded by Story, Council voted to approve the CIP; Taylor opposed, all others in favor.

Purchase of equipment for Police Department. Police Chief Mitchell explained that \$6,000 was budgeted in 1999 for the purchase of 2 LIFEPAK 500 automated external defibrillator units @ \$3,000 for use in the field. Because of donations from the Leawood Woman's Club and Cloisters Homes Association, his department would be able to purchase a third unit so that each of the 3 patrol districts would have one. Councilmember Taylor asked why the Chief didn't ask to budget for the purchase of 3 units at budget time, and why didn't the department take advantage of donations and grants to reduce the budget that was the obligation of the City based on the grants, etc., and not necessarily spend the money. Chief Mitchell explained that in his experience, donations were usually earmarked for specific uses. He didn't budget for 3 because he already had half of the money and had been told to anticipate donations

enough to purchase 1 unit. Mr. Taylor said he wanted to see some type of financial breakdown for the Police Department in addition to what was appropriated by Council, what the Chief anticipated in the way of grants and donations. Chief Mitchell said that his department tried to plan and apply for grants when they became available, and he never knew when donations would be received. He would prepare a financial breakdown. On motion of Taylor, seconded by Dunn, Council unanimously approved the purchase of 3 units for a total cost of \$8,075.85, a cost savings because 3 instead of 2 units would be purchased.

PLAN COMMISSION

605

Request by Molle Toyota for a special use permit for a proposed parking lot at 104th & State Line Rd. to store new vehicles (overflow parking for dealership on the Missouri side of the state line). Discussed at the October 18th Council meeting. Chuck Webber, representing Frank Molle, said that Mr. Molle had no problem with granting an easement for the future SMAC stormwater project to stabilize the creek bank discussed at the last Council meeting. He said they had agreed upon one 17-foot light pole with 2 100-watt light bulbs to reduce the lighting, and there wouldn't be any satellite selling on the lot.

Councilmember Rasmussen moved to approve the permit, seconded by Taylor. The Mayor asked that stipulation #3 of approval (to hold the City harmless for any damage caused by flooding along Indian Creek) also hold the City harmless for vandalism. Mr. Webber had no problem adding that. Mr. Webber reiterated that Mr. Molle wouldn't stand in the way of future redevelopment of the 103rd Terr. area.

Councilmember Gill said he would vote against the permit. He didn't feel fundamentally that the City should approve a surface parking lot, the sole function of which was to serve a business located in a community outside Leawood. And it wasn't aesthetically pleasing. The City was striving to maintain green space. Parking lots should augment meaningful, important uses to the City.

G. Gordon Thomas, 10516 Mohawk Lane, expressed his opposition to the parking lot; there were too many unanswered questions.

Motion to approve the permit for a period of 2 years from the date of Council approval (with the addition of vandalism in stipulation #3) carried; Gill, Bussing, opposed; all others in favor.

865

Resolution No. 1481, attached as part of the record, denying the preliminary site plan for the relocation of the historic Oxford Schoolhouse at approximately Lee Blvd. and Constitution Court in Leawood City Park. The Plan Commission recommended approval. Councilmember Rasmussen moved to approve the plan, seconded by Story. Len Williams, member of the Leawood Historic Commission, gave a brief presentation of the plan and of the hilltop site on the east side of the Park.

Dick Fuller, Chairman of the Parks & Recreation Advisory Board, explained why the Board recommended that the Council not approve the site plan. He said the master plan for City Park, South Park, and Nall Park had been approved and basically finalized, and staff was getting ready to request proposals for construction of the City Park renovation. So they were involved with specific timing issues. He said that none of the Board members were against the schoolhouse, but there was concern about a number of issues that could impact the Park or impact what was being done in the Park as far as timing. Some Board members felt that South Park might be a better location for the school. The Park would lose Shelters A & B on the hilltop site in order to accommodate the school. The Board felt it was necessary for programming and continued use of the Park that the shelter square footage be replaced in another area of the Park, and wanted to be sure that their budget wouldn't have to pay for the demolition and rebuilding – that was not in their plan and they had planned on using Shelters A & B. There was concern that the relocation might impact the phasing of the Park renovation; they would be starting next summer and fall on the actual construction in the Park. Mr. Fuller anticipated that the cost to demolish the 2 shelters and to build another shelter would be approximately \$20,000-30,000. The Mayor said it wasn't the intent that the park bond issue pay the costs. Councilmember Taylor felt that the burden of costs should be placed on the Historic Commission, to make up any expenditures that might be required to move the school into the Park, including any demolition and rebuilding of shelters, while still maintaining the \$137,000 commitment approved for the relocation of the school.

Mr. Williams explained what he felt was the urgency for moving the school. The building had been deteriorating over several years from neglect, lack of use. Deterioration was excellerating, the roof was starting to fail, water slowly eating away at the building, exterior paint peeling in large sections (exposing the siding, the trim). It was Mr. Williams' understanding that the Commission wasn't prohibited from winterizing the building. They had already started trying to obtain bids for roofing and trim issues, etc. Mr. Williams said that if the City Park was going to be the site for the school, architectural and engineering work needed to be started so a foundation could be put in place before the ground was completely frozen. The movers would ideally like to move the school during the winter. In response to Councilmember Bussing, Mr. Williams agreed that if the Park wasn't going to be the site, the sense of urgency was simply to make needed repairs at the school's current site at 135th & Mission Rd. Mr. Bussing was uncomfortable, not completely certain as to who was going to pay for what. Councilmember Rawlings was also confused about the costs.

Mr. Williams said the owners of the property at 135th & Mission Rd. would like to see the school removed so they could sell the land to someone, and not have to deal with the school issue later.

In response to Councilmember Gill, Mr. Williams explained that based on surveys he had seen, it appeared that overall, the pathway from the parking lot going up to the shelters was in compliance with ADA. Mr. Gill asked if South Park, first phase of improvements scheduled to begin in 2001, was to be the relocation site, would there be a 1-year delay in moving the school or would it be longer. Parks & Recreation Director Claxton estimated a minimum of 1 year, more like 1.5 to 2 years, due to the extensive interior grading and roadway work. Mr. Gill asked how much money would be needed to stop the continued deterioration of the building or at least significantly retard it. Mr. Williams said with a new roof, trim issues, painting, caulking, etc., it would cost tens of thousands of dollars.

Mr. Williams said it wasn't his understanding that the City was maybe a year away from a park plan at South Park, more like 2 or 3 years before being able to move the school to that park. When the Historic Commission first talked about relocation sites for the school a few years ago, they felt that South Park was more remote than they would like, not allowing some of the exposure that would be positive for the school, and being more prone to vandalism unless there was a substantial increase in park use and development around the park site. The City Park was more centrally located in the City and more visible.

In response to Mr. Bussing, Mr. Fuller said that Nall Park wouldn't be an option because of the floodplain and because of what area residents wanted and would allow for that park, a very controversial matter.

Mr. Fuller felt personally that the City Park hilltop could be a good site for the school.

Parks & Recreation Advisory Board member Steve Martens explained why he voted not to recommend approval of the preliminary site plan at City Park. He was concerned about the timing issue, uncertainties about many cost issues and lead paint removal, an environmental issue, and the demolition and rebuilding of the shelters and costs associated with that. One of the reasons that South Park was suggested as a possible site was that the master plan for South Park had a discovery camp with a Kansas homestead, natural prairie reserve. He thought it would be an ideal spot for an historic schoolhouse. The school should be saved, however, a majority of the Board didn't feel City Park was the best site for the school considering the theme of the City Park and possibly the themes of the other parks. He wondered if the school could even be utilized with construction going on at the east end of the park. The school would work on that site, but was it the best spot for the school? It was best not to rush into a decision. He still questioned the urgency.

2030

Councilmember Story felt that the hilltop site at City Park was a good location, a great compliment to sporting activities in the park, giving a new dimension to the park that otherwise wouldn't be there, making it something more than just an athletic arena. He said the Historic Commission hadn't really started their fundraising efforts at this point, primarily because they didn't have an answer to give to possible donors as to where the school would be located. And yet the Commission had already collected \$31,000, and would raise as much money as they could, being committed to raising the funds to make the project a success. He felt that South Park was too far south, not central to Leawood. To fully utilize the schoolhouse as a resource center for school children and other groups, City Park was a better location. It would help the programming efforts and help raise funds through user fees to help perpetuate the schoolhouse and take care of a lot of the ongoing maintenance expenses.

Mr. Bussing said he would have to oppose the preliminary site plan for the following reasons: 1) the Park Board's recommendation after a lot of work on their part, 2) South Park had more of a resource center theme, so the schoolhouse was more appropriate for the South Park, 3) the fact that the Park Board had done a great deal of work planning City Park changes, and 4) the City needed to spend money to preserve the building, but to the extent that the City could do so at its current location and wait for South Park to develop and allow the Parks staff to build the school into the master plan for the South Park.

Councilmember Rasmussen said that South Park was supposed to be an active park, not a passive/pastoral park as he thought he had heard it referred to; in fact, the plat indicated it would be active. He said his constituents in Ward 2 had supported the park bond issue for the very reason that the City Park was overloaded and the City needed additional soccer and baseball fields, etc. Mr. Bussing said he was very careful in his wording to say that the theme was to be a resource center; he didn't say passive; there would be a lot of activity in the South Park.

Councilmember Dunn supported the Parks & Recreation Advisory Board's recommendation because he didn't want to lose the very actively used shelterhouses, he didn't want to see what would happen to the school after it was used as a shelter by soccer teams and volleyball groups, and he was concerned about the cost issues. Basically, the Council was talking about retrofitting a sports activity area for an historical site as opposed to taking a fresh site and fitting it for the historical site from the very beginning. He was concerned that the City would run into cost issues that it couldn't even imagine once the school was at the City Park site. It was hard for him to believe that the pathway from the parking lot to the hilltop area wouldn't have to be changed; it was so long and so high, couldn't comply with ADA standards. The City would run into unforeseen site preparation issues, facing significant cost issues if the City got on a real tight schedule to move the school to the City Park now. The South Park with the discovery camp was a good site.

Motion to approve the preliminary site plan of the proposed site at City Park for the relocation of the school failed; Story, Rasmussen in favor; all others (5) opposed.

Mr. Bussing was prepared to make a motion to relocate the school to South Park at the earliest possible time. The Historic Commission could proceed with preservation activities. The Mayor said that a South Park site would have to go back to all groups involved for approvals. She said it was imperative that something be done immediately to the schoolhouse - reroofing, painting - the funds were in the budget to do those things.

Councilmember Gill moved to authorize up to \$50,000 for immediate repairs for the preservation of the school, seconded by Taylor. Mr. Dunn asked if the \$50,000 was in addition to the \$137,000 already allocated. Mr. Gill said if necessary, yes, but he thought that some of the work would duplicate work that was in the \$137,000, and to the extent it did, he was confident that the Historic Commission would use the money appropriately. City Administrator Garofano said that if the \$50,000 was above and beyond the \$137,000 allocated in the budget, then the source of that money would have to be identified, and if there were contracts over \$25,000, they would have to be approved by Council. The Mayor thought the Council was trying to allow for necessary repairs that might occur in the next two weeks when Council wasn't in session, that most repair items were accounted for in the \$137,000, so the \$50,000 would initially come from the \$137,000. Mr. Gill said that clearly the Commission wouldn't spend \$137,000 in 1999, so earmarking the \$50,000 to that fund if that helped made sense. The Mayor noted that the \$10,000 donation from the KC150 Legacy Fund was to be used by June 2000, so the Commission needed to utilize some of the donations or would have to return them.

Mr. Gill's motion carried; Rasmussen opposed, all others in favor.

OLD BUSINESS.

2785

Discussion of proposed massage therapy ordinance. Jeff Cantrell, Neighborhood Services Administrator, felt staff could return the proposed ordinance to Council for action at the December 6th Council meeting. He asked for Council direction concerning home therapists' ability to make regular "out calls" to other homes to provide massage. Staff didn't support this change because it would be impossible to regulate. Councilmember Dunn thought the purpose of licensing was to be sure who was doing massage therapy more than to control where massage was done. He didn't understand the problem; if the City licensed therapists, knew who they were and had certain requirements for the license, he couldn't understand why they couldn't do massage in their clients' homes instead of their homes. Mr. Dunn felt staff should concentrate on licensing and reporting rather than on limiting the place of practice; he knew it was essential to therapists he knew to be able to travel to practice their trade. The Mayor asked for clarification – was Mr. Dunn saying that the current draft allowing for "out calls" only when prescribed by a licensed healing arts practitioner would not be good? Mr. Dunn said he wasn't in favor of that wording; basically, that was putting the ability of the massage therapist to practice his trade in the hands of a medical doctor and there was enough conflict between the holistic healing community and the traditional medical community, that there was an inherent problem putting holistic practice in the hands of the traditional medical community.

Mr. Cantrell knew of at least one existing home massage therapist who didn't currently meet qualifications required by the proposed ordinance. Staff offered existing home therapists 36 months in which to meet qualifications. Of course, new applicants would be able to meet the requirements with curriculum course work in hand. Mr. Cantrell wanted to know if the Council thought that the 36 months would apply to all existing home therapists who might have any problems meeting the qualifications. For instance, if one or two operators said they couldn't meet the guidelines, would they automatically receive the 36-month extension? Mr. Cantrell said there was minimum criteria that existing home therapists had to meet to qualify for the 36-month extension. Mr. Dunn said the City didn't want to put anyone who was currently doing business in a legitimate fashion out of business because they couldn't meet the criteria, and would want to offer them the 36-month period, but there had to be some minimum criteria for them to meet such as proof that they had been legitimate massage therapists for some period of time prior to being offered the 36-month grace period to qualify. He said that could be validated by use of tax reporting.

Councilmember Gill was concerned about the issue of how to differentiate massage from some of the home activities that the City prohibited (physicians, dentists, chiropractors), and to the extent that drafting the ordinance could draw some clearer lines than he was seeing, that would be great, but when it came time to vote, it was going to be a tough issue. Mr. Cantrell said staff planned to have a very extensive application form to very clearly identify the massage profession. Mr. Bussing felt that the list of prohibited home occupations in City ordinance should be eliminated; there was a specific set of criteria that allowed someone to have a home-based business if the business was maintained within the criteria. If a physician could maintain a business in his home within the criteria, why would the City specifically prohibit his business. He felt that the flaw was in the prohibited list, not in the criteria the City had for what was permitted for a home business. Mr. Bussing said the concern was the traffic in residential areas, not the profession; if a professional was willing to limit the traffic, then he ought to be allowed to practice where he chose.

Mr. Cantrell understood he was to clarify how home-based massage therapists were different from prohibited medical professions and therefore didn't need to quantify them as the same type of items. Mr. Rasmussen and Mr. Gill agreed. Mr. Gill said he would not vote in favor of the proposed ordinance if the price tag of trying to clarify some changes on massage opened up all kinds of home-based businesses.

3535

Discussion of a possible remand of the commercial sign ordinance to the Plan Commission. (Discussed at the October 18th Council meeting.) Mr. Gill said that since no one from Cohen Esrey Real Estate came to the meeting to seek a remand, and he hadn't heard from them since the last meeting, he wasn't in a position to make any motion. The Mayor pointed out the real beauty of less signage versus more, and she knew the amount of time that staff and the Plan Commission had spent on the ordinance and it appeared to truly be an improvement over the previous ordinance. A remand would involve rescinding previous Council approval. End of discussion.

NEW BUSINESS

3648

Approval of Appropriation Ordinance No. 874. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

3745

Request by Leawood Stage Co. to use City Hall amphitheater in summer 2000. Kathy Roberts of the Leawood Stage Co. made the request to conduct a performance (summer 2000) in the amphitheater behind City Hall very similar to the Stage Company's initial show held summer 1999. The Stage Company agreed to comply with the following stipulations: 1) a maximum of 4 performances to be staged, 2) a maximum of 3 outdoor rehearsals to be held, 3) all performances and rehearsals to conclude prior to 10:00 P.M., and 4) every effort would be made to shield the neighboring residents from light and noise. There would be no permanent lighting, facilities, staging.

* There was discussion of the difference in the number of objections to a performance in 2 surveys - 1 conducted by the Stage Co. and 1 conducted by Don Smith of the Edgewood subdivision which indicated more objections. Mrs. Roberts said that the Stage Co. didn't receive any complaints after the 1999 summer performances. There were many favorable comments. There were no security or littering problems, and the 1999 performances ended by 10:00 P.M. The survey questions were different; Edgewood's survey asked if residents were in favor of using tax dollars to subsidize the performances.

Mr. Bussing said that the amphitheater wasn't the ideal location because it apparently infringed upon a few Edgewood residents; the Stage Co. made sure that there were no alternative locations that they could have used at no charge. It was the Stage Company's intent to move productions to the South Park when its amphitheater was developed and to abandon the City Hall site. Mrs. Roberts added that if performances were held on City property, the Stage Co. was covered under the City's liability insurance policy; if they moved off City property, they would have to retain their own liability policy which would be quite expensive.

* The survey conducted by the Stage Company was at the request of the Governing Body. It was part of the commitment to the citizens of Edgewood that the City would conduct a survey to do some evaluation following the initial performance.

Councilmember Rasmussen asked why there wasn't a limit to 400 attending each performance as in the past. Mrs. Roberts said that the Stage Co. found there was no impact based on the numbers of people attending, no real concern about crowd size. They turned away a number of people each evening in summer 1999 so they knew they had overwhelming support, and wanted that particular stipulation removed. Mr. Rasmussen said there was no intent for thousands of people to be at the back of City Hall; that was where the 400 restriction came in. Mr. Rasmussen asked about reducing the number of rehearsals by one. Mrs. Roberts explained why they couldn't do that. See 11/15/99 minutes for further explanation.

4525

Don Smith, 5209 W. 116th St., Vice President of Edgewood Homes Association, spoke about the residents' objections, particularly the noise. The City should pay attention to those affected; he and the Edgewood Board objected. Mr. Smith said residents objected to 7 nights until 10:00 P.M. Mr. Rasmussen said that everyone was entitled to the peaceful enjoyment of their home, but unfortunately, what happened at City Hall was now a fact. So the Council was placed in the position of trying to establish use regulations that were reasonable. The one that really bothered him, because it was the subject of newspaper articles, was the elimination of the attendance level. Mr. Smith said he didn't really have an opinion on eliminating attendance levels. It was noted that the most that would have attended the summer 1999 performances was 450 if everyone who had come had been allowed to stay. Mr. Smith said the number of nights could be reduced.

Mr. Bussing moved to approve the request with the 4 stipulations, seconded by Taylor. Mr. Rasmussen moved to amend the motion to add a stipulation limiting attendance to 500 (with fencing and issuance of tickets), seconded by Gill. Mr. Bussing didn't think attendance was an issue with Edgewood residents, and it was an open area and for the Stage Co. to try and organize themselves to block access to the area and count the number of tickets was a burden, and 1000 people weren't going to attend each evening - 450-500 people would be great. Mr. Rasmussen said that the regulations placed on the Stage Co. summer 1999 worked. Mrs. Roberts said that one of the reasons the Stage Co. eliminated the attendance limitation of 400 was not to let more people in but to eliminate numerous positions that were required to be staffed by volunteers and a lot of other busy and physical work that 9 of the Stage Co. members had to do in addition to all of their other responsibilities. She felt they had all of the procedures in place so there wouldn't have been any difficulty in dealing with more than 400 people from safety and crowd control points of view. With the attendance limited, they had to count off 400 tickets every evening and put fencing up to enclose a very small area, limiting area for people to use blankets and lawn chairs, not spreading out beyond the area and utilizing the full space. The motion to amend failed; Rasmussen, Gill in favor; all others opposed.

The main motion carried unanimously.

5315

Ordinance No. 1824 authorizing issuance of temporary notes; Project 137; State Line Rd., Phase IV; \$200,000. On motion of Dunn, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1825 authorizing issuance of temporary notes; Project 144; Mission Rd., 103rd St. to I-435; \$1,400,000. On motion of Dunn, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1826 authorizing issuance of temporary notes; Project 148; City Park Design, Phase 1; \$200,000. On motion of Dunn, seconded by Story, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1827 authorizing issuance of temporary notes; Project 158; Traffic Signalization (92nd and State Line Rd.); \$200,000. On motion of Dunn, seconded by Rawlings, Council passed the ordinance on roll call vote. Rasmussen opposed, all others in favor.

Ordinance No. 1828 authorizing issuance of temporary notes; Project 168; Mission Rd., 83rd St. to 95th St.; \$100,000. On motion of Dunn, seconded by Story, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1829 authorizing issuance of temporary notes; Project 171; Municipal Pool Bathhouse; \$200,000. On motion of Dunn, seconded by Story, Council unanimously passed the ordinance on roll call vote.

Authorize amendment to interlocal agreement with Johnson County for CARS project, College Boulevard improvements, State Line to El Monte. The amendment increased the CARS funding level by \$1,000,000. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the amendment.

Authorize interlocal agreement with Johnson County for the public improvement of Lee Boulevard from 103rd St. to Mission Rd. (CARS project). On motion of Rasmussen, seconded by Taylor, Council unanimously approved the agreement.

Authorize Right-of-Way Maintenance Agreement with Acuff Rhodes Group for the Pavilions of Leawood, 5th Plat – to allow the developer to install landscaping and underdrains within islands, including irrigation system and lighting, and to set forth the developer's responsibilities for maintaining the amenities in public right-of-way. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the agreement.

5535 **Schedule executive session.** On motion of Bussing, seconded by Dunn, Council voted unanimously to convene in executive session at the end of the meeting for a period of 35 minutes to discuss a matter under attorney-client privilege, a personnel matter, and litigation.

5583 **OTHER BUSINESS.** Discussion of Police Department report detailing additional costs of phases 3 and 4 of the 800 radio system project. Councilmember Rasmussen said some items in the report were incorrect and he suggested that Carl Vineyard, Technical Support Officer in the Police Department, contact the Chief to correct the report. The purpose of the corrections was Mr. Rasmussen's own personal opinion that if the corrections discussed with Officer Vineyard were feasible, and that would require a discussion with the City Attorney, the City might be able to recover some engineering costs. Chief Mitchell said it appeared the City had been charged twice for the \$25,000 engineering fee. He said that the company Ericsson claimed that because of the way the system was designed, they would not guarantee it unless they did the engineering as well. So it might become a legal matter, and he would

talk to the City Attorney to discuss potential recourse to recoup some of the money. There had been other unanticipated changes also. The project was almost finished, but there were still some issues to be resolved, and he thought he would have more information at the next Council meeting.

5720

10:25 P.M. Council convened in executive session, same members present, and returned to regular session at 10:30 P.M., same members present. On motion of Bussing, seconded by Taylor, Council unanimously approved the Mayor's appointment of an ad hoc committee to review applicants for the Director of Planning & Development position. Committee members – Councilmembers Rawlings and Bold, Plan Commission Chairman Don Brain, and Plan Commission member Mel Henderson. Council returned to executive session.

11:15 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.

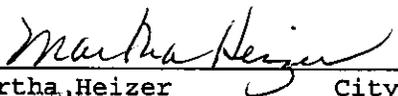
The City Council of the City of Leawood, Kansas, met in special session at City Hall, 4800 Town Center Drive, at 5:30 P.M., Monday, November 8, 1999. Mayor Peggy J. Dunn presided.

The special meeting was requested by Councilmembers Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, 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: None.

On motion of Story, seconded by Rasmussen, Council voted unanimously to convene in executive session until 9:00 P.M. for the aforementioned purpose.

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



Regular Meeting

THE LEAWOOD CITY COUNCIL

November 15, 1999

Minutes Summary

Audio Tape No. 470

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 15, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Louis Rasmussen, and James E. Taylor, Sr. Mike Gill was absent.

Staff present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sarah Hilton, Administrative Services Manager; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation Director; Martha Heizer, City Clerk; and Patricia A. Bennett, City Attorney.

PLEDGE OF ALLEGIANCE – led by Mayor Dunn.

APPROVAL OF AGENDA

Mr. Rasmussen moved to continue AMF Bowling Lanes' request for an exemption from the smoking ordinance to the December 6th Council meeting since no financial hardship information had been distributed in Council packets for Council's advance review. Motion seconded by Taylor. Don Fazio of AMF Lanes in Ranchmart Shopping Center said he had financial information available. There was brief discussion about Council receiving information in a timely manner to allow them to analyze information before Council meetings instead of taking up Council meeting time to analyze material distributed at the Council table. Motion to continue carried; Dunn, Story opposed; all others in favor.

Mr. Rasmussen moved to continue consideration of an ordinance amending Articles 1, 1A, and 2 of Chapter XIII of the Code of the City of Leawood relating to streets and sidewalks to the December 20th Council meeting since it contained provisions which were either duplicatory or in potential conflict with the proposed stormwater ordinance. Motion seconded by Taylor and carried unanimously.

Mr. Taylor requested a discussion be added about October 27, 1999 correspondence from the Johnson County Building Officials Association concerning the development of a Countywide contractor licensing program.

Mr. Story requested the addition of an update on the Oxford Schoolhouse relocation efforts.

The agenda was approved unanimously with the 2 additions.

PROCLAMATION. Mayor Dunn proclaimed November 1999 as "Adoption Awareness Month."

295

CITIZEN COMMENTS. Jeff Nessel, 12012 Ensley Lane, called the City's action line and had a signed neighborhood petition to have his street repaved. He felt it was government's minimal responsibility to guarantee public safety and public health. Mr. Nessel wanted to know what he could do to assure his street would be repaired in the year 2000. Mr. Dunn asked if Mr. Nessel would support an increase in taxes to repair the streets in Leawood. Mr. Nessel brought to Mr. Dunn's attention the cost of the 3/4 of a million dollars to landscape City Hall. He said his taxes hadn't been decreased by the mill levy. The houses on his street had gone up in appraisal value and the money was coming in.

Brian Hardy, 11916 Ensley Lane, said there had been nine patches in the street, one on top of the other, in front of his house. He had called the action line but hadn't heard anything since he called three weeks ago. He received a letter explaining the City was looking into the situation. Mr. Hardy felt there possibly was an oversight as the street was not a main street and was in an older part of Leawood. Regarding taxes, Mr. Hardy said numerous people paid taxes on the street and taxes had increased. He felt it was time to take a look at the situation if this was an oversight and there was great concern for future physical liability because of the poor street condition and poor lighting.

Dick Fuller, 10309 Sagamore Road, Chairman of the Golf Course Committee, said the golf course was designed in 1993 and a creek divided the course in two sections. The pump station that had two very large pumps that irrigated the entire course was located on the south side of the creek. Access to that particular site was from a temporary easement that went down through the developer's tract. It was promised that an easement would be given to the golf course that would give continuous access to that particular site. He had been working with the developer for the past 2 1/2 years to get the easement finalized. The concern was that at some point in time, they would have to have access to those pumps. There were two 3-ton pumps in the shelter house that would have to be taken out the top in order to replace them. Two things had happened - 1) they found out last year that one of the transformers put on that site was undersized. KCP&L agreed to replace that transformer with a larger transformer as they were getting power shortages and it was affecting the pump and its ability to pump water. The transformer had to be replaced in a 60-day window. It would take a flatbed truck and they had to have access into the site and couldn't come in from the south side. They needed the easement to come in from the north. 2) There was a bearing problem in both pumps. They would have to be pulled and replaced. This had to be done in January, 2000, as it would take 30 days to replace them. There were problems with the unit from the Wastewater District and with Mr. Simpson getting the easements finalized and resolved. Mr. Fuller requested help from the City Council.

Mrs. Binckley said that regarding the easement they needed from Mr. Simpson, they were really negotiating with the landowner. In answer to that, Mr. Fuller stated that they did have the easement from Mr. Simpson actually promised to them. They got it from a landowner who acquired the last tract there and gave them the tract adjacent to it.

The easement previously granted to them was on a berm where they couldn't get a truck in. So, they had actually worked with the landowner to get another easement. What Mr. Fuller meant with Mr. Simpson was he had promised the Council and the Golf Course Committee that when the easement was finalized, he would build the road to give them access in there. With Mr. Simpson it was getting the road finalized as quickly as possible and with the Wastewater District to get the emergency easement in there as quickly as possible so they could get from that easement over to the pump house station. Mr. Simpson had committed to build the road at his expense.

620 **CONSENT AGENDA.** Two items were pulled for further discussion. The following were approved unanimously on motion of Taylor, seconded by Dunn:

1. Minutes of the November 8, 1999 Special Council meeting;
2. Arts Council report (minutes) on their October 26, 1999 meeting;
3. Parks & Recreation Advisory Board report (minutes) on their October 12, 1999 meeting;
4. Historic Commission report (minutes) on their October 12, 1999 meeting;
5. Departmental reports;
6. Application (renewal) for Cereal Malt Beverage License – Hy-Vee Food & Drugstore;
7. Drug & Alcoholism Council of Johnson County (DAC) recommendation on the allocation of 2000 alcohol taxes – Leawood included \$69,300 for allocation in its 2000 budget.

Minutes of the November 1, 1999, Council meeting. Mr. Bussing wanted additional detail on page 8 of the minutes concerning a request by the Leawood Stage Company to use City Hall amphitheater in summer of 2000. In the second paragraph there was discussion about the difference in the number of objections to a performance in two surveys, one conducted by the Stage Company and one conducted by Don Smith of the Edgewood subdivision. Mr. Bussing wanted to insert that the one conducted by the Stage Company was at the request of the Governing Body. This was part of the commitment to the citizens of Edgewood that the City would conduct a survey to do some evaluation following the initial performance.

Also, Mr. Bussing wanted to add to page 9, first paragraph, where Mrs. Roberts explained why they couldn't reduce the number of rehearsals by one, more detail about Mrs. Robert's explanation as to why they couldn't do that, that they required three rehearsals - 1) technical rehearsal where they adjusted light and sound, 2) a blocking rehearsal where they practiced their movements and coordinated with lighting, and 3) full dress rehearsal with costumes.

Mr. Rasmussen wanted to open up the minutes concerning the discussion of the proposed massage therapy ordinance on page 7. After reviewing the minutes and reviewing the letter received from Steve Horner on October 27th, and reviewing memo and responses to it from Jeff Cantrell, Neighborhood Services Administrator, he was of the opinion that the City was operating in contravention to its own procedures. What started out as a comparatively simple modification to

an ordinance to accommodate Jacobson's massage operations, expanded over time to include discussions of changes in ordinances regarding home occupation and other items. He felt that Council should remand the issue to the Plan Committee for their consideration and recommendation. He moved to do so. Mr. Taylor seconded the motion.

Mayor Dunn said that although there was a motion and a second to pull (remand) the massage therapy ordinance, the Council was actually just trying to correct the minutes and it would be better order to discuss the matter later in the meeting. Mr. Rasmussen and Mr. Taylor agreed.

On motion of Bussing, seconded by Dunn, Council unanimously approved the minutes with the corrections.

Golf Course Committee report (minutes) on their October 28, 1999 meeting. Mr. Rasmussen said Council had already heard about the emergency situation at the golf course regarding the transformer and pumps. He said the Council should remember the history behind the golf course's attempts for many years to get the easement reconciled. He moved that Council direct the City Administrator to approach Mr. Simpson and obtain the written contract that would state what Mr. Simpson was going to do. Council decided to discuss the matter later in the meeting.

On motion of Rasmussen, seconded by Taylor, Council unanimously approved the report.

PLAN COMMISSION

870

Request by Village at Ironhorse (Lot 47) for a special use permit for a temporary sales information trailer at 151st & Linden for a period of one year beginning on date of Governing Body approval. Saul Ellis, 10800 Farley, Overland Park, KS, said this was a request to put a sales trailer up at a new project they were building at the edge of Ironhorse. When they were able to put all sales in the show model, they would take down the trailer and this should be done within a year. If they got the show model in operation before one year, they would move the trailer off the site. Mr. Taylor moved for approval, seconded by Bold.

Mr. Rasmussen moved to amend the motion to state that the granting of the special use permit would coincide with receipt of Mr. Simpson's contract regarding the access road discussed previously. Motion died for lack of a second. Mr. Bold said he shared the sentiment behind Mr. Rasmussen's motion and asked Mr. Ellis to do everything in his power to ensure that the City get the contract to build the road because next time Council wouldn't be quite as generous when they still had other items that have been hanging as long as this one.

Motion for approval carried; Rasmussen opposed, all others in favor.

975 **Resolution No. 1482, attached as part of the record, approving the preliminary and final plat of Kelly's subdivision, 143rd and Mission Road.** Mike Osbourn, Kaw Valley Engineering, 14631 W. 95th Street, Lenexa, Ks., said that Pat Kelly had purchased 10 acres on 143rd Street west of Mission Road to build his primary residence. There would

be one house, hence, under City ordinance, was required to be platted in order to proceed with building the residence. Mr. Osbourn was present with a preliminary and final plat for the Council's approval. Mr. Taylor asked if this was the site where fill had been placed, large rock and fill on top of that. Mr. Osbourn was not aware of it. Mr. Johnson, Public Works Director, stated he was not sure Public Works had reviewed the fill and was not aware if they had provided for a grading permit. Mr. Taylor asked that Council have an answer before ruling on the matter. Since work had been going on for the past three or four months, he wanted to be sure it was under the auspice of a building permit from Public Works.

Mr. Taylor also asked if there was a drainage pattern that was part of the development. Mr. Osbourn replied that there was a creek that cut across the back of the property. Mr. Taylor stated there were other developments upstream that this could have a bearing on and he wanted to make sure that Public Works had sufficient time to study the flow area of the creek and that this was not being imposed upon by the fill. Mr. Taylor asked that the matter be continued since no one could testify that they had a building permit. Mr. Johnson replied that Public Works wouldn't issue a permit for that fill. If there was a permit to be issued for the fill on private property, that would go through code enforcement. Mr. Johnson was not aware if a permit had been issued. He said Public Works had not seen a study done on placement of the fill within or outside the limits of the floodplain. Mr. Taylor asked if they blocked that channel, would that have an effect on the stormwater drainage pattern. Mr. Johnson said that it would and, being a floodplain, they would have to go in and remedy that. In other words, they would have to remove what they placed there.

Mr. Osbourn suggested that Council make a stipulation to the approval of the plat that a review and survey of the floodplain property be performed. If there were any impedencies associated with that floodplain, Mr. Kelly would then be required to rectify them. Mayor Dunn stated that there was a stipulation #4 that dealt with that. It said that the applicant had to obtain all approvals from Public Works prior to recording the plat. She also stated that Mr. Taylor's concern was there was work being done and this stipulation stated it would not happen prior to recording the plat. Mr. Garofano, City Administrator, said he would get back to Council as to whether or not a permit had been issued and whether or not a permit was required for this type of work. Mr. Bold stated that whether to this point things had been done properly or improperly, Mr. Kelly would have to comply before he received final plan approval for this project. Mr. Garofano agreed.

On motion of Bold, seconded by Bussing, Council adopted the resolution; Taylor opposed, all others in favor. Council would have the report on the permit by the December 6th Council meeting.

1310

Resolution No. 1483, attached as part of the record, approving the preliminary site plan for the J.D. Reece office building located at southeast corner of 115th & Roe. Teh Kon Hu of HJM Architects represented J.D. Reece. The proposed office building was two stories, total area of 25,600 square feet, and provided 128-car parking which met the City's requirements. The overall design met the requirements for setbacks and parking met requirements for setback. The building would be red brick. He also described the outside of the building. Mr. Taylor asked if the building was to be placed

on the same property as the preliminary site plan and plat approved in December 1995 and if they would be maintaining a 40 foot setback from Roe and 40 foot setback from 115th. Mr. Hu answered yes to both questions.

Mr. Taylor asked Mrs. Binckley to explain recommendation #5 regarding details to be submitted at the time of final approval, such as duct work. Mrs. Binckley stated it came from a previous stipulation made by the Plan Commission. They were talking about any sort of pipe sticking out on top of the building, any mechanical units. Mr. Taylor asked if that included projections above the roof line being screened and asked about height requirements of those screens. Mrs. Binckley replied that was why they wanted additional information at the time of final site plan.

Mr. Rasmussen asked Mrs. Binckley to clarify traffic signals. She replied that at 115th and Roe there had been a traffic signal approved by Public Works and it was designed and had gone through their approvals.

Mr. Taylor stated that regarding the comparison preliminary plan, the original plan called for 20,300 square feet and the proposed plan was 5,600 feet more. If the project was approved, would the overall density of the other buildings be reduced by 5,000 feet? Mrs. Binckley replied that when J.D. Reece first went to the Plan Commission they had a single story building. The Plan Commission wasn't pleased with the way it was going to be viewed from the street and requested applicant go back and take a look at doing a two story building. The Plan Commission agreed at their meeting they would not require the 5,000 square feet as long as they could meet the parking standards and not have any deviations on that site, which was what the applicant was able to meet. Mr. Taylor asked if it would be standard policy that ownership of a property would be able to continue to get that exception as long as they made the planning an open space. Mrs. Binckley replied it would be up to the Plan Commission and City Council as to whether or not they would want to do that. Mr. Taylor stated the City was getting into dangerous area allowing this regarding other buildings as they could go to a two story building and get higher density square footage and still maintain the landscaping and setback requirements. He didn't believe it was the intention of the City Council to continue that type of policy. Mayor Dunn said there would be a smaller footprint with this building, which would be nice, but Mr. Taylor stated it allowed more parking which was more density and traffic.

On motion of Bussing, seconded by Bold, Council unanimously adopted the resolution.

1580

MAYOR'S REPORT. There was a recent grand opening of the Dragon Dynasty restaurant at 122nd and State Line in Leawood with a ribbon cutting and dedication.

Mayor Dunn attended Council of Mayors meeting with the Johnson County Legislators regarding Year 2000 issues. Issues endorsed by Mid-America Regional Council were distributed in Councilmembers' packets.

Mayor Dunn also provided Councilmembers a copy of a report on the Charter Commission's recommendations. They planned to add a sixth district to the County with a sixth County Commissioner and a seventh Commissioner to be elected at large to serve as a four-year chairman of the County Commission. Also, the question of whether to have partisan or non-partisan elections would be a separate question and would be put to

the vote of the people. That was one area that was rather debated at the Charter Commission table.

Mayor Dunn also attended the dedication and ribbon cutting for the American Academy of Family Physicians, with the New York Life Brokerage offices housed in that building. There were 400 new employees working in Leawood now.

Mayor Dunn attended a number of festivities surrounding the Grand Opening of Union Station and Science City. She stated that everyone should feel a great deal of pride for that accomplishment and the statement it made regarding bi-state cooperation.

Mayor Dunn represented Leawood at the KCADC annual meeting and luncheon and also attended the Tom Corbin Studio Tour sponsored by Leawood Arts Council.

On November 20th 4:00 P.M. at the Center for International Studies, Elizabeth Chu would be hosting a fund-raiser and selling reproductions of her artwork as a benefit for the Taiwan earthquake victims.

Also in Council packets was an informational memo from Alan Marstall of the Parks & Recreation Department reminding Councilmembers of the holiday lighting ceremony at City Hall on November 30th at 6:30 P.M.

Congratulations to Police Officer Randy Wiler, a Leawood D.A.R.E. officer, for his receipt of the Kansas Attorney General Carla J. Stovall's Commitment to Children's Service Award on October 21st. Officer Wiler was the director of the Kansas Bullying Prevention Program, the first of its kind in the United States..

Mr. Rasmussen explained his and some City staff members' attendance at a seminar called "Roof Top to Rivers." It dealt with the approach that Tulsa, Oklahoma took in terms of trying to solve their stormwater problems. Leawood had almost voluntarily contributed its park system to the floodplains and that was very good. Tulsa was going in that direction. It was a very comprehensive program. Tulsa had had serious flooding over the years and they changed it from one of continual despair to one of hope. They went in and declared whole areas floodplain, prohibiting any building in it. They also came to the same awareness Leawood did some years ago that the Corps of Engineers' FEMA maps were out of date and had to look at full organization of the area to determine what the flood levels would be. In other words, if you got flood insurance today, it would be based on out-of-date maps. It was very good to see some other city moving ahead with a very comprehensive program to solve their storm flooding problems.

OLD BUSINESS

1785

Update on denial of Nextel Communications' application for additional antennae on cell tower at approximately Lee Blvd. & Mission Road. No action to be taken tonight. Mrs. Binckley said the City had selected an engineering consultant to review the application and had submitted his name to Nextel and their attorney. Staff was waiting to hear from them and for them to provide the consultant's fee. City Attorney Bennett clarified that action on the draft packet summarizing the Council's findings prepared by attorney Steve Horner had to be taken for the Council's decision of denial to be final, and that was what was pending the additional report that Mr. Beeler asked the Council to consider. Mr. Rasmussen said the Council was holding up the process for an indefinite period of time – for what purpose? Ms. Bennett responded – to consider the additional report. Mr. Rasmussen believed the findings were determined in the first decision; he

asked the City Attorney to check on that. He thought the record was closed and didn't understand what was happening.

Mrs. Binckley said that everyone agreed at the last Council meeting to allow Mr. Beeler to work with staff, for staff to select a consultant to review the application, to determine if Nextel could use the slim line technology rather than the T-arm.

Mayor Dunn stated that the reason for the denial was simply because it was a matter of the T-arm that Nextel proposed using versus the current monopole slim line. She assumed they would come back attempting to comply with what the Council wanted.

Mrs. Binckley said that Nextel wanted the consultant to prove one way or the other that they could or couldn't use the slim line.

Mayor Dunn stated that the Council did take action to deny so they would need the City Attorney to advise if there would be different action required after viewing the additional information, if indeed Nextel couldn't comply with what the Council wanted. Ms. Bennett said she would check the minutes of the meeting at which Mr. Beeler appeared.

Mr. Taylor said he understood Nextel would come back and give Council the information as to whether they could use the slim line and at that time Council would reconsider their approval.

Mayor Dunn stated "reconsideration" was never used. Reaffirmation was the word that kept being used again and again. The discussion was set aside, waiting to hear from Ms. Bennett on the minutes.

2000

Discussion of proposed stormwater ordinance enactment time line. Mr. Rasmussen moved that the Council request that the City Administrator have the stormwater ordinance now under consideration by the legal staff in such form and shape by December 20th, or whatever date was necessary for publication purposes, so the ordinance would be effective the first business day January 2000. Motion seconded by Mr. Bussing. Mayor Dunn said that City Administrator Garofano had indicated that would be a possibility as long as information was given to staff for the December 20th Council meeting so the January 1 date could be met. Motion carried unanimously.

2035

Change Order No. 2 in the amount of \$38,793.11 for the 1999 Street Rehabilitation Project – for the reconstruction of a section of storm sewer at 10313 Ensley Lane south of 103rd St. On motion of Rawlings, seconded by Rasmussen, Council unanimously approved the change order. Mr. Bussing requested that the expenditure be moved over to the stormwater budget for purposes of 1999 review and that it show up as a stormwater improvement versus a street rehabilitation.

2160

Update on denial of Nextel Communications' application (continued). Ms. Bennett said she reviewed the minutes of the October 18th Council meeting and they stated that Mr. Gill was ready to make a motion for delay provided he could get a stipulation of concurrence that by delaying it, the City wouldn't be placed in a position with Nextel claiming that the City wasn't adhering to the Telecommunications Act of 1996. The reason for delay was Nextel's offer to pay for an engineer to do an analysis of the technical requirements of the slim line antenna. Mr. Gill moved to continue the matter and it was seconded by Mr. Bussing. Mr. Gill said the intent of the motion was not to

reopen the record. The motion carried with Mr. Rasmussen opposing and Mr. Taylor abstaining – all others voted in favor.

In response to Mayor Dunn, Ms. Bennett said that the motion to delay was to delay the formal denial with the formal findings that needed to be made under the Telecommunications Act. Ms. Bennett suggested the Council place the formal findings on the December 6th Council agenda. If the additional report was ready at that point, Mr. Beeler could talk to the Council about it. Whether or not it was ready, Council could consider the formal findings and make a decision at that point. Ms. Bennett suggested Council proceed on December 6th since it wasn't known how long it would take to get the report, and if Mr. Beeler wanted to do the new application with the additional findings, he could do that. Ms. Bennett reiterated that the formal findings, the formal reasons for denial, prepared by attorney Steve Horner, was what the Council would ultimately have to approve.

Mayor Dunn thought it was better to wait until December 6th. Ms. Bennett said that if that was what the Council wanted, Nextel would be notified of the December 6th date, and if they wanted to bring in new information, they should have it on or before that time. Motion so made by Mr. Bussing, seconded by Bold.

Mr. Story questioned if this was in the spirit of agreement reached with Nextel at the last meeting, giving them an opportunity to find an expert agreeable to both sides and have that expert analyze the situation and render an opinion. Mrs. Binckley said that Nextel had provided one consultant option and then staff went out and found its own, a consultant they were familiar with. Staff selected that consultant and provided the name to Nextel at least a week ago, hadn't heard anything back. So Nextel was delaying staff. Mrs. Binckley felt that giving Nextel 3 weeks (to the December 6th Council meeting) to get their information together was a fair amount of time.

Mr. Bussing's motion carried unanimously.

2335 **Report on 800 radio system project.** Mr. Rasmussen said it was the City Attorney's opinion that the City didn't have a chance of recovering the alleged duplicatory engineering fee. Chief Mitchell said what Ericsson Co. did was use the same terminology for two different things. Mr. Rasmussen felt that the Council should accept the report and go on.

Police Chief Mitchell cited some of the benefits to having the IMC integrated multi-site controller. It was a considerable public safety benefit to have it so Leawood didn't risk "all of its eggs in Prairie Village's basket." Prairie Village had saved Leawood an enormous amount of money by letting Leawood piggyback onto their system, but the IMC was the autonomy Leawood needed for that.

Mr. Bussing stated his concern was in paragraph 3 where it said that the Police Department chose to purchase an integrated multi-site controller switch for \$50,000. While that probably was the right decision, Mr. Bussing thought there was a process whereby change orders of significant amounts or acquisitions in excess of what the City Administrator could approve were supposed to go through the Governing Body, and it appeared in this instance that a \$50,000 charge was made without being brought to the City Council. Chief Mitchell stated it was not in the initial proposal done by Leonard Koehnen, but through meetings with him, Ericsson, and Police Technical Support Officer Carl Vineyard, it was determined to be in Leawood's best interest to have that. By the

time it came through for approval in Phase IV, it was included in that. It was not a new item, but it was the cause of the potential overrun in the original budget. Mr. Bold stated the original budget was in the amount of \$400,000. Chief Mitchell said that was when it was just for the Police Department; the City moved forward to put the entire City on the system and that was all approved. This was not an add-on, after-the-fact piece of equipment.

- 2485 **Approval of Appropriation Ordinance No. 875.** On motion of Rasmussen, seconded by Dunn, Council passed the ordinance on roll call vote; Taylor not seated for the vote, all others in favor.

Mr. Taylor returned to his seat.

- 2935 **Discussion of a potential farmers market at Town Center Plaza – Saturdays and Thursdays from May to October, beginning in the spring of 2000.** Mrs. Binckley said the matter would be considered by the Plan Commission, but brought it to the Council first for general discussion to find out if the City was interested. Mr. Rasmussen said this was the third time this type of operation had come before the City Council and he had always voted against it. It seemed to leapfrog the Council's procedures.

Gary Whittaker of Whittaker Flower Farm explained that the farmers market was an open-air market where growers took their produce to sell. The location of the farmers market on Town Center property was subject to negotiation with the managers and operators there, but probably on the north side. There probably wouldn't be any limit to the number of vendors with the capability of handling somewhere in excess of three dozen vendors. Mr. Bold asked about a method to ensure City sales tax would be collected on all purchases made at the City market, and Mr. Whittaker stated there was ample regulation in effect today to assure sales taxes were collected. Mrs. Binckley affirmed that each vendor had to be individually licensed to do business in the City. Mr. Bold wanted to be sure there was a way of knowing who was doing business, and have a way of ensuring that once they were set up, there would be a permit on display. Mrs. Binckley verified they would receive an occupation license and would be required to display that at their booth.

Mr. Whittaker said there would be "easy-up tents," pickups, station wagons, whatever kind of vehicle was used to bring in the produce. There would be a setup in a display manner by the individual vendor, using some kind of table or display to draw attention to himself. The market would be open Saturdays from 7:30 a.m. to sellout and Thursdays, probably until noon.

Mr. Taylor supported the concept but felt the location should be where Town Center Plaza expansion was proposed, on the north side, and the number of vendors should be limited to the square footage permitted for that expansion. He was also concerned about proper signs being displayed, preferably one sign identifying the farmers market. He was against any type of display out of a pickup truck or station wagon, but instead have some type of formal display with parked vehicles placed away from the sales area. Mr. Whittaker said it was desirable for many different products to be protected from the sun, wind, hail, etc. and that vehicles needed to be readily accessible for restocking of produce. Mr. Taylor wanted to see consistency of tent structures and

not have a hodgepodge operation. He felt it would be great for the City of Leawood to take on this endeavor.

Mr. Rasmussen voiced concern about traffic congestion and hoped the market would be placed on the south side of 117th Street. He indicated that Town Center already had severe traffic problems, citing the theatres. He wondered how many parking spots were going to be lost. Mr. Whittaker said if there were 36 vendors, the City would probably lose for that particular period of time something in the area of 70 parking spots. Mr. Rasmussen asked if there had been any analysis of the increase in traffic flow due to the farmers market and Mr. Whittaker said no.

Mr. Bold felt that if there was a special use permit for the operation, it should have some relatively short probationary period. Mayor Dunn concurred, stating she had had complaints about the boat and car shows at Town Center Plaza. She was concerned where the farmers market could be located and not have a traffic tie-up. Therefore, staff's report would be necessary for the matter to go further.

3390 **Ordinance No. 1830 accepting a permanent storm sewer easement in the Pavilions of Leawood, 5th Plat.** Mr. Bold moved for approval, seconded by Story. Mr. Rasmussen wanted the record to show that the developer had been very cooperative with the Golf Course Committee in terms of the siltation of the lake which had been estimated at \$100,000. They had indicated verbally that they were willing, if the City went ahead with removing silt from the lake, for the City to use their property on the south side of 153rd Street. The acreage was agricultural which was exempt by state statute from erosion control. Council unanimously passed the ordinance on roll call vote.

3470 **Ordinance No. 1831 accepting a permanent storm sewer easement in Steeplechase, 2nd Plat.** On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1832 accepting two deeds for street right-of-way in Steeplechase, 2nd Plat. On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

3515 **Discussion of ordinance enforceability and deed restrictions vs. ordinances.** Mr. Rasmussen stated this had to do with a request made to the Mayor to have ordinances reviewed for enforceability. He said over the years there had been problems in the second ward with enforcement of ordinances. He gave three illustrations: 1) homes being moved to different locations and the subsequent problems associated with that, 2) homes under construction/dumpsters being left for long periods of time, 3) recent experiences with animal ordinance. In the past, Council had discussed enforcement – was the problem with the City's judges and their interpretations, with the zeal of the City's prosecutors, with the lack of code enforcement? In the past, the Planning Director had indicated that he had difficulty enforcing ordinances, particularly the first 2 illustrations. And in the past, Mr. Rasmussen understood that the City didn't have prosecutorial activities that required a full-time prosecutor. A full-time prosecutor could review the comments he had received in the second ward over the years about enforceability and the problems the prosecutor had. He felt the Council should request

that the City Administrator direct the new City Attorney's attention to the three areas he described. Ms. Bennett said it was difficult to predict how long it would take to work with the building official to see how adequate City ordinances were in terms of enforcement. She felt she should be able to at least have a good start on it by the December 6th meeting. Mayor Dunn suggested the December 20th meeting and Ms. Bennett agreed. Mr. Dunn stated that the City had plenty of ordinances in place that allowed management of situations, yet situations had escaped management on a number of occasions. He said the Council wanted to know what was breaking down the system. Motion made by Mr. Rasmussen, seconded by Taylor, for Ms. Bennett to report to the Council at the December 20th meeting. Motion carried unanimously.

Mr. Rasmussen questioned how the City would know if City stipulations placed on various matters were in subdivision deed restrictions and questioned how someone could review zoning stipulations if they didn't have the deed restrictions. He recommended that staff develop a file of deed restrictions by planning area to indicate whether or not developers were complying with the requests of the zoning stipulations since the developers were the formulators of the homes association deed restrictions, and to permit access to them by anybody who wanted to know who owned what and where. Mr. Rasmussen moved to direct the City Administrator to establish a file in the City of deed restrictions of respective homes associations, seconded by Rawlings.

Mayor Dunn stated that City Administrator Garofano had estimated it would take two weeks of research at the County. Mr. Garofano suggested the Council talk to Jeff Cantrell, Neighborhood Services Administrator, since his office would be responsible for the project. He added that if deed restrictions or homes association by-laws were revised, and most had provisions for making revisions, somehow the City needed to be plugged into that process, also.

Mr. Cantrell stated that a lot of homes associations underwent a process at least once a year where they had an annual meeting and made necessary changes and modifications. Pulling all the individual files could require perhaps a week's work at the County. He said there were approximately 85 homes associations, but the work could be done.

Mr. Rasmussen confirmed that it was not his intent that the City would assist in the enforcement of private deed restrictions. He simply wanted Council to have access to the restrictions in order to know homes association responsibilities and to review whether or not a developer had complied with zoning stipulations. Mr. Cantrell said that on the five-year comprehensive review, staff had reverted directly to the stipulations of the development, that the resolution itself normally contained the stipulations. Mr. Rasmussen questioned how staff knew if the stipulations were in the deed restrictions. Mr. Cantrell stated a lot of times they were not and were not required to be, but if they were required, most of the time when that was the case, staff had a copy.

Mrs. Binckley stated that at the time of release of a plat for recording, staff looked through the stipulations and made sure everything had been met before releasing the plat, receiving the declaration of restrictions, homes association declarations, and all fees required, to be placed in case file. Mr. Rasmussen stated that what he wanted was a file so in the future councilmembers knew particular subdivisions had to maintain certain restrictions.

Mayor Dunn understood Mr. Rasmussen's desire to have the file but not to undertake commitment of staff time necessary to undertake a review of all deed restrictions throughout the City and compare them to City ordinances, but to take each group as they came before the City. Mr. Rasmussen said he assumed that staff had done its job and the deed restrictions complied with the ordinances on file. He was asking for a file that gave the basis for that. Mr. Cantrell understood the request was for all existing homes associations, not just new, incoming cases. Mr. Rasmussen said Councilmembers were representing their constituents and asked to go to meetings to discuss subjects, but they didn't have the basic underlying developments - the deed restrictions.

Mr. Rasmussen's motion carried unanimously.

4470 **Resolution No. 1484, attached as part of the record, of finding as to advisability and authorizing the improvement and construction of College Boulevard from Tomahawk Creek Parkway to El Monte.** On motion of Rasmussen, seconded by Taylor, Council unanimously adopted the resolution.

4510 **Charter Ordinance No. 31 to provide for a transient guest tax.** Mayor Dunn explained a couple of changes to allow the City to utilize the transient guest tax for other purposes deemed necessary by the Governing Body. New language was incorporated in Section 4. On motion of Taylor, seconded by Dunn, Council unanimously passed the ordinance on roll call vote. The Mayor said that if she had voted, she would have voted in the affirmative.

4830 **Schedule work sessions.** The Leawood Chamber of Commerce wanted to discuss their plan for raising an additional \$10,000 in order to receive the City's additional match of \$10,000 for their budget. On motion of Taylor, seconded by Dunn, Council voted unanimously to hold a work session December 20th at 6:30 P.M.

Mayor Dunn said a joint Council/Plan Commission work session would be a combination social/business meeting, a dinner at the Leawood Country Club on Wednesday, December 15th, at 5:30 P.M., to go over the master plan. Mr. Michael Lauer, Director of Planning with Freilich, Leitner and Carlisle, would have a presentation. Motion to have the work session by Dunn, seconded by Bussing, and carried unanimously.

5090 **Schedule executive session.** On motion of Dunn, seconded by Taylor, Council unanimously voted to convene in executive at the end of the meeting for a period not to exceed 1 hour to discuss two matters of litigation, a personnel matter and land acquisition.

OTHER BUSINESS

October 27, 1999 letter from Johnson County Building Officials Association regarding development of a Countywide contractor licensing program. Mr. Taylor strongly urged the Council to direct the staff to investigate taking the position to license not only contracting sources but general contractors, as well. The proposal of Johnson County indicated the mechanical contractor, plumbing contractor and electrical contractor be licensed, as well as licensing general contractors, not only commercial but residential.

Mr. Taylor suggested a delegation from staff to investigate and support Johnson County's efforts to have licensing Countywide, but add to that general contracting requirements. Mr. Garofano suggested that Building Official Sam Maupin discuss that with the licensing review board.

Mayor Dunn said it appeared they were looking for support at this time and perhaps some correspondence from Mr. Maupin. She said Council could do something as simple as a resolution showing support if legislation did go forward, adding the additional components mentioned by Mr. Taylor.

Mr. Taylor was also interested in whether or not the Council was interested in an ordinance requiring the licensing. There was consensus to have a report from Mr. Maupin before the first of the year.

5385

Report on the historic Oxford Schoolhouse. Mr. Story said that at the last meeting, Council decided not to approve the move of the schoolhouse to City Park. They decided to go ahead and spend up to \$50,000 to winterize the schoolhouse. Following that meeting, the Historic Commission contacted the parties that owned the schoolhouse about making repairs and possibly having ownership transferred over to the City for that purpose. The owner was unwilling, based on legal concerns, for the City to own the building and having to lease back the property for the building to stay there. They didn't want to turn over ownership of the schoolhouse until the City had approved a location and a date for removal of the building. Following that, Beverly Hurley contacted Ms. Bennett to discuss whether or not it was advisable to spend \$50,000 to repair a building the City didn't own; and if the property was to be sold in the very near future, the property owner would have the right to demand the building be moved or he would bulldoze it down. Based on the advice the Historic Commission received, it would be inadvisable to do that. Mr. Maupin was looking into obtaining a tarp to be placed over the entire roof to prevent water and other elements from entering and causing further decay. Mr. Story gave this information to the Council to consider advisability of having a tarp or other mechanism for protection and to generate discussion over what they were willing to do to find a home for the schoolhouse.

Ms. Bennett stated the property owner would send a letter agreeing to allow the City to go onto the land and improve the structure in any way it wanted. The problem was he didn't want to give a recordable instrument or in any way potentially tie up ownership of the property if he got a buyer. He wanted to work with the City but was concerned about the timing if he wanted to sell tomorrow. He didn't want to promise he'd keep the building on the land for any length of time.

Mayor Dunn asked for a motion if action was needed to allow a tarp for the roof, if indeed, ordinance allowed it.

Mr. Story said it would be his request that the Governing Body allow the Historic Commission to go ahead with the tarp or at least have permission while staff was researching options. Motion made by Mr. Story and seconded by Mr. Taylor that if it came to pass that a tarp was needed, then granting of special use permit for the tarp would be allowed.

Mayor Dunn said Mr. Maupin was looking into renting a tarp versus buying. She was sure it was going to be for less than the amount approved at the last meeting. Mr.

Bold stated the City should buy the tarp as it could be there awhile. Motion passed unanimously.

5865

Report on E-mail. Mr. Bold moved that the Council move forward on Mr. Andrasik's proposal for e-mail and implement it as soon as possible, seconded by Bussing.

Mr. Bussing said that to make sure Council didn't violate the open meetings act, he needed more clarification on do's and don't's of how to correspond with fellow Councilmembers via e-mail.

Ms. Bennett said the main danger was that technology made it so easy to reply to "all" or forward something to "all." If you wrote back to a citizen with citizen rights given to you and hit the reply to "all" button, you sent it to the remainder of Council and ultimately could be discussing the business of the City with a majority of a quorum. That would violate the open meetings act..

Mr. Bussing stated if he responded to a letter from a citizen and copied every Councilmember, that wouldn't violate the act because there wasn't an interactive component.

Ms. Bennett said the key to that was interactive. It was the interactive nature of e-mail itself - it was the reply and the basic instant communication you could have. Ms. Bennett volunteered to write an attorney-client privilege memo to clarify the open meetings act and how that would apply.

Mr. Bold's motion passed unanimously.

6175

Discussion of proposed massage therapy ordinance. Mr. Rasmussen said he had come to the conclusion that Council was talking about basic changes in zoning ordinances, i.e., home occupation, whether massage could be in the house or as a business operating outward. Mr. Rasmussen said the Plan Commission had not reviewed the matter.

Mr. Bussing completely agreed with Mr. Rasmussen that the project had grown as Council had become more educated about the occupation of massage therapy. This was an outgrowth of the adult use ordinance where Council inadvertently included massage as adult use and thereby prohibited massage therapy. He felt Council probably needed to fold it back into the regular ordinance approval process.

Former City Attorney Dick Wetzler said he had talked to attorney Steve Horner and it was Mr. Horner's intention to bring the matter back to the Council for discussion and get directive. Mr. Wetzler said the idea would be to get everything into one package that the Council felt comfortable with and send it to the Plan Commission, and then, regardless of what they did, ultimately it would come back to the Council for final action.

Mr. Dunn said he agreed with Mr. Rasmussen. He felt Council had grown beyond the process and needed to be careful and make sure any aspect that fell within the Plan Commission's jurisdiction be reviewed by them. He didn't see any harm in deciding what Council wanted to do first and sending it back to them.

Jeff Cantrell, Neighborhood Services Administrator, said Steve Horner had the changes made at the last meeting. He was working on the application form and was going to be present December 6th to present it to the Council and entertain any questions. Mr. Cantrell thought it would be a good to save any questions and direct them to him.

6515

Contract for road – golf course easement. Discussed earlier in the meeting. Mr. Rasmussen read the following without any editorial comments: "KCP&L has agreed to replace our current transformer with a larger transformer (50% higher) that should provide a larger margin for pump motors to operate. The transformer that will be installed should be ready for delivery by the week of the 29th of November. An emergency agreement is being made with Wastewater for access to east of the course and to the pump station for KCP&L. The pump system, each of which weigh three tons, has had its annual maintenance checkup by the regional flowtronic technician. One motor is losing a bearing and one pump shaft is rapidly losing a bearing, causing vibration that is only getting worse. A specialist on this hardware was brought over to confirm this. It is being recommended that both pumps and shafts be removed up out of the wells and taking them off site for repairs. This work could take up to a month to accomplish. Documentation of what are the areas of concern in the motors and shafts and a rough cost estimate will accompany this original removal. Until the shafts are removed by cranes there is no way of telling the seriousness of their condition. It would not be responsible action to rely on these pumps and motors until next summer." Mr. Rasmussen said that the golf course wouldn't have water available for the greens, fairways or rough. You'd have to get a flatbed truck in there with a derrick and possibly a crane and it was in a floodplain. If there was snow or heavy rains, there'd be a problem. If no water, it would cost the City \$500,000 and fairways would be lost again.

Mr. Rasmussen asked the Council to get the easement and get the road that was promised so vehicles could get in there and get the work done. The City was relying on a construction company who was lending the golf course the equipment needed to make the access drivable. Timing of the preparation of the access depended on the availability of the equipment and they were doing it for nothing. It was a critical situation.

Mr. Story asked who was holding up the rest of the easement since the City had part of it and still had to get the rest of it before Mr. Simpson could build the road.

The City Administrator felt Council should probably go into executive session for an update.

Mr. Rasmussen asked to at least get the contract to build the road. The City Administrator said staff had a letter from Mr. Simpson saying that as soon as the City had the land under control, he would build the road. Right now the Wastewater District was in control as to when the City could have access to the property.

6841

10:45 P.M. Council convened in executive session and returned to regular session at 12:30 A.M. There being no further business before the Council, the meeting was adjourned.

Prepared by court reporter Kay Elder.


Martha Heizer, City Clerk



Regular Meeting

THE LEAWOOD CITY COUNCIL

December 6, 1999

Minutes Summary

Audio Tape No. 471

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 6, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, 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; Sarah Hilton, Administrative Services Manager; Sid Mitchell, Chief of Police; Ben C. Florance, Fire Chief; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation Director; Martha Heizer, City Clerk; and Patricia Bennett, City Attorney.

PLEDGE OF ALLEGIANCE – led by Boy Scout Troop #10.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Mr. Rawlings, seconded by Mr. Taylor, after the addition of 1) a discussion about reactivating the ad hoc Contract Review Committee, 2) Mr. Gill's request for a consensus from the Council regarding several issues prior to requesting information from City staff, 3) the scheduling of an hour executive session to discuss personnel matters and land acquisition, as well as litigation.

RECOGNITION OF 1999 EMPLOYEE OF THE YEAR. The Mayor presented a plaque to Annette Kirkwood in recognition of her outstanding accomplishments relating to her work with the Fire Department, as well as to the City.

CITIZEN COMMENTS. None.

320

CONSENT AGENDA. Three items were removed for further discussion. The following were approved unanimously on motion of Mr. Bold, seconded by Mr. Gill:

1. Parks & Recreation Advisory Board report (minutes) on their November 9, 1999 meeting;
2. Public Works Committee report (minutes) on their November 10, 1999 meeting;

3. Resolution No. 1485, attached as part of the record, designating holidays for the year 2000;
4. Resolution No. 1486, attached as part of the record, declaring the boundaries of the City of Leawood;
5. Resolution No. 1487, attached as part of the record, approving the final plat of Steeplechase, 3rd plat;
6. Resolution No. 1488, attached as part of the record, approving the final plat of Steeplechase, 4th plat;
7. Contract (alternative #2) with Epic Landscape Products, L.L.C., in the amount of \$13,682.81, for City Hall fountain lighting.

Golf Course Committee report (minutes) on their November 15, 1999 meeting.

Mayor Dunn requested a correction at the top of the third page of the minutes where Mr. Rasmussen said, "that priorities in choosing projects funded by Wastewater's approximately \$7 million a year are 1) safety 2) erosion." Mayor Dunn assumed that was the county's stormwater management. She was right and wanted to make that correction. She assumed with approval of the minutes that Mr. Rasmussen's recommendation for the creek bank stabilization proposal he took up with the Committee was going to go to SMAC. Mr. Rasmussen stated it was the Committee's recommendation that the City Council have the Director of Public Works work with the Golf Course Committee on the possibility of establishing a SMAC project for the creek bank problems at Ironhorse. Mayor Dunn said it was appropriate to make the motion with that emphasis along with the Council's approval of the minutes. Motion made by Mr. Rasmussen, seconded by Mr. Gill, to approve the minutes with the correction and to direct the City Administrator and Public Works Director to look at the feasibility of the proposal for the creek bank. Motion carried unanimously.

Approval of employee benefits renewal for the 2000 plan year. Mr. Bussing asked if the current Anthem contract was a fully insured contract and Mrs. Hakan said it was. He asked if she had looked at minimum funding and she said that about three years ago, a committee was formed to look at that. It was decided then that based on the group size and experience of the municipal industry, that fully insured was the best way to go. He asked if the employer share for the Humana HMO was equivalent to the employer share paid for the Anthem program. She said that for individual coverage the City paid a little bit more per month but less than what they paid for family coverage. For people who carried family coverage, they paid the identical amount. For a person who carried family coverage, regardless of which plan they chose, they bought up and paid the remainder of the premium themselves. Mrs. Hakan stated the City currently paid \$177.61 per month for the HMO for individual coverage. The City paid for the two Anthem plans, individuals only, \$144.28 for Anthem Open Access Plan and \$150.45 for the PPO Program. For family coverage the City paid \$287.68 per month, per family, regardless of which plan was chosen; if they bought up, they paid 100% of the difference themselves. Mr. Bussing asked if the City had a consultant who worked with her in putting bids together. Mrs. Hakan answered in

the affirmative and confirmed a January 1, 2000 renewal date. On motion of Mr. Bussing, seconded by Mr. Gill, Council unanimously approved the renewal.

Authorize Contract with Fortune and Company for the calendar year 2000 for insurance/risk management consulting services (complete services within a maximum of 60 hours for a \$5,000 fee, payable monthly at \$417 per month, plus clerical fees and expenses as incurred). Mr. Bussing inquired about legal requests for accidents occurring over the past 10 years. He asked if those types of requests were common and where they came from. Ms. Bennett said they came in the course of discovery through the City's insurance defense council. Mr. Bussing asked if Ms. Bennett was comfortable, short of a legal requirement, telling people no, the City wouldn't do that, or would charge them for the effort. He was concerned that the City was wasting time on things. Mrs. Rogers confirmed that staff would say no to things not required of them or not easily accessible. On motion of Mr. Bussing, seconded by Mr. Rasmussen, Council unanimously authorized the contract.

PLAN COMMISSION

615 **Ordinance No. 1833 amending Section 6-3 of the Leawood Development Ordinance relating to notice and public hearing requirements.** Mr. Rasmussen moved to pass the ordinance as recommended, seconded by Mr. Gill. Mayor Dunn asked Ms. Bennett if it had been determined to use "report" or "recommendation" in the ordinance. She noted the word "recommendation" was in the copy before them for consideration. Ms. Bennett said that was discussed at the Plan Commission meeting; she asked Mrs. Binckley if the language had been changed and thought it was to be verbatim from state statute. Mrs. Binckley said the language was from statute and the word used should be "recommendation."

Mayor Dunn said that if it was state statute language, she noted that statute used "comprehensive plan" and the City used "master plan." She asked if it would be a good idea to designate "master (comprehensive)" for clarification. Ms. Bennett replied that it wouldn't hurt to have it in there, but wouldn't be necessary. She said the master plan was the comprehensive plan of the City. Mayor Dunn recommended that the change be designated. The ordinance was passed unanimously on roll call vote.

MAYOR'S REPORT

Mayor Dunn attended the Taiwan earthquake relief fund-raiser sponsored by Elizabeth Chu, Director General of the Taipei Economic and Cultural Office in Kansas City. Mr. Rasmussen and Mrs. Hakan were there, as well as just about everybody from the sister city committee.

The holiday lighting ceremony took place last week in front of City Hall. There were a number of schools performing, along with the Leawood Singers. It was requested that this be an annual tradition. Mayor Dunn thanked Alan Marstall and the Parks and Recreation Department for the work they did in organizing the ceremony.

The "Have a Heart, Help a Child" annual employee luncheon took place at City Hall on December 3rd. Annette Kirkwood of the Fire Department was recognized as the employee of the year; Cindy Pitts of Human Resources was runner-up. There were three charities City employees were helping - Safe Home, Children's Mercy Hospital and Temporary Lodging for Children.

Mayor Dunn asked Mr. Rasmussen to give the Council his report as a delegate to the National League of Cities conference first of December. He said the meetings he attended could be summarized in a few words - a search for money. He attended the Transportation Infrastructure and Services meeting. He also attended the Energy Environment and National Resources meeting and one reason for attending that meeting was that the words "stormwater utility fees" were mentioned on the agenda. He referred to an informational sheet distributed in Council packets listing potential costs associated with the NPDES regulations associated with EPA. He reminded the Council that he had alerted them that those costs were going to be expensive. The estimate for a city of Leawood's size for the permitting alone was \$750,000. Mr. Rasmussen questioned whether or not the estimates were nothing more than ballpark.

The City's proposed stormwater ordinance tried to develop not only the infrastructure requirements - the hardware associated with stormwater - but also addressed the issue that the EPA was after - stormwater "quality." He visited with a representative from the City of Los Angeles that had a very comprehensive stormwater quality program, and he hoped a copy of their program would be sent to him on a timely basis.

Mr. Rasmussen talked with FEMA representatives about the age-old problem in Johnson County of what exactly were the 100-year flood level maps. He felt they were worthless at this time. FEMA was funded for emergencies, and he felt they did a very good job with that. He said funding to provide cities, states and counties with meaningful maps for flood was very small and was not being improved. Mr. Rasmussen was afraid that every day the County and City were allowing buildings to be built in floodplains that would probably have to be bought out. He said it was a very good meeting but it didn't look good for Leawood in terms of how the City was going to fund mandates.

Mr. Rasmussen said the worst unfunded mandate any city in the nation had ever experienced was the so-called taxation of goods and services purchased over the Internet. He said the spin doctors had converted that discussion to one about taxing the Internet when in reality it was nothing more than a continuation of the discussion that had been going on for decades as to how a city collected sales tax on goods that came into its area and didn't get a dime. He said the bottom line was if this method of purchasing goods and services continued, the City would have to substitute some other revenue sources to make up for the shortfall to take care of the other unfunded mandates. Mr. Rasmussen said he was going to actively be out doing what he could to encourage the legislature to take another look at how the City could get the sales tax collected (across the street) applicable to the same goods purchased on the Internet and delivered into Leawood. Mayor Dunn thanked Mr. Rasmussen and stated that the Council of Mayors was taking a very strong stand on the topic, as well.

OLD BUSINESS

1040

Reaffirmation of denial of Nextel Communications' application for additional antennae on cell tower at approximately Lee Blvd. & Mission Rd. Mayor Dunn noted that Ms. Bennett recommended a continuation to the December 20th Council meeting. On motion of Mr. Gill, seconded by Mr. Bussing, Council voted to continue the matter to the December 20th Council meeting; Mr. Rasmussen opposed, all others in favor.

Acceptance of petition for public improvement of streets in Normandy Place subdivision. Motion to accept by Mr. Taylor, seconded by Mr. Rasmussen. Mayor Dunn asked if the motion included the recommendation to absorb the loss of interest on the construction funds that would be utilized per Mrs. Rogers' memo on fiscal impact. She was told that it was included. Motion carried unanimously.

Resolution No. 1489, attached as part of the record, finding as to the advisability and authorizing the improvement of roads and stormwater drainage within Normandy Place subdivision. Adopted unanimously on motion by Mr. Taylor, seconded by Mr. Bold.

Resolution No. 1490, attached as part of the record, providing for the issuance of general obligation bonds to pay the costs of improvements within Normandy Place subdivision. Motion to adopt by Mr. Taylor, seconded by Mr. Bold. Mayor Dunn stated that perhaps the suggestion of absorbing the interest would be more appropriate with this resolution. Motion carried unanimously.

1140

Request for exemption from smoking ordinance – AMF Bowling Lanes at Ranchmart Shopping Center. Mayor Dunn said there was a recommendation that the matter be continued to the December 20th Council meeting. On motion by Mr. Bold, seconded by Mr. Dunn, Council voted to continue the matter to the December 20th Council meeting; Mr. Rasmussen opposed, all others in favor.

1177

Ordinance relating to message therapy. Mayor Dunn asked attorney Steve Horner if he was asking for discussion and input from Council on the ordinance, or asking for a motion to send it to the Plan Commission. Mr. Horner said the latter was his intent. Motion by Mr. Bussing to send the proposed ordinance to the Plan Commission for their review, seconded by Mr. Gill.

Mayor Dunn requested review of each bullet point on the first page of Mr. Horner's memo to the Governing Body. On the first point, Mr. Horner said staff recommended that massage establishments not be allowed in residences. He said it was difficult to regulate that type of occupation in residences. He said the City could run into possible problems with searches in case it needed to do some sort of inspection, as well as home occupancy requirements. Mayor Dunn said staff had worked diligently with some of the massage therapists who had been at Council meetings and she knew staff felt very comfortable with those particular therapists and their practices. She asked if there was any way to grandfather the people who were currently doing massage and those that staff was confident about and yet have future elimination. Mr. Horner said that would go against public policy and would be discriminatory.

Mr. Gill appreciated the efforts put forth by staff but was interested in having the Plan Commission fully examine the issue as to whether or not the City should have home businesses of that sort. Mr. Horner said that currently that type of business in a residence fell under the adult use ordinance. Mr. Gill stated that before the adult use ordinance, he detected some concern that massage therapy would not have been one of the permitted residential use activities. Mr. Horner said technically, it would be okay, but there could be a conflict and that was discussed in his memo. Mr. Horner said staff did have concerns.

Mr. Dunn said that prior to the adult use ordinance massage therapy was not precluded as a home occupation, so by the terms of the home occupation statute, it was allowed since it was not a specific occupation that was precluded. Mr. Horner said if it met the other requirements in the first sections, yes.

Mayor Dunn asked if Mr. Horner was looking for other input from the Council to take to the Plan Commission. Mr. Horner said no, that staff had tried to meet Council's requests and the ordinance had been drafted with the changes that staff believed the Council had asked for. He said if the Council was comfortable with that, they should go ahead and recommend it be sent to the Plan Commission.

Mayor Dunn stated she was not real comfortable with the second bullet, and not at all comfortable with the third bullet in Mr. Horner's memo.

Mr. Bussing felt that the City would end up debating the matter twice, when it went to the Plan Commission and when it returned to the Council. He wanted the Plan Commission to sort it out based on the information from Mr. Horner and staff.

Mayor Dunn said she agreed with not debating it twice, but felt that since the ordinance was drafted in accordance with Council's direction and if Council was uncomfortable with it, should they be sending it to the Plan Commission? Commission in that form? *mb*

Mr. Rasmussen reminded Mayor Dunn that he had expressed the same concerns some time ago. He wanted to make it clear that all he was voting on was an attempt to get procedures back on track, which was to let the Plan Commission make a recommendation and Council vote it up or down. He said he was afraid that what Mayor Dunn was eluding to might be misinterpreted by the Plan Commission, that it was the unanimous opinion of the City Council that the ordinance had their approval.

Mayor Dunn said she hoped the remarks would be taken to the Plan Commission because she felt many Councilmembers wanted to see modifications and she didn't want the Plan Commission to feel that the Council had blessed the ordinance. They needed to feel free to redraft and the Council needed to feel free to do the same when the ordinance came back to them.

Mr. Bussing said he felt obligated to make sure the Plan Commission, under direction of the City Council, ensured that the ordinance provided for adequate public safety and adequate City regulations. He said the adult use ordinance was never intended to prohibit legitimate businesses in the City. Also a request for consideration by the Plan Commission - that the issue was a multi-faceted problem they needed to address; the City needed to keep the business community in mind, as well as public safety requirements as addressed through City ordinances.

Mr. Dunn said a number of people were very interested in the ordinance (they had appeared at public hearings), and he wanted to know if they were going to be given notice of the Plan Commission hearing. If not, Mr. Dunn wanted to make sure that they had an opportunity to voice their concerns. He said basically what he heard and what they all heard was if the ordinance didn't come back permitting residential business, then certain massage therapists were out of business. Mayor Dunn asked Jeff Cantrell of the Planning Department to take care of letting them know.

Mr. Bussing's motion carried unanimously.

1520

Ordinance No. 1834C to confirm November 1st amendments to right-of-way Ordinance No. 1821C passed by Council on October 18th. Mayor Dunn asked Mr. Johnson for a brief update on the changes. Mr. Johnson said Southwestern Bell Telephone and Overland Park had agreed to three minor changes and those were brought back to the Council on November 1st, and the new ordinance with those changes was now before the Council. The first change was in Section 13-310, "Use of right-of-way," paragraph (g) - added to the end of it was "subject to the appeal process contained in Section 13-328, as amended." The second change, Section 13-311, paragraph (a), the word "sole" was deleted; it used to say sole expense, changed to read ROW-user's expense, fourth line down. The last change was in Section 13-312, paragraph (c); this section did have the word "downtime" but it was deleted since the other instances covered it. Motion to pass the ordinance by Mr. Dunn, seconded by Mr. Taylor.

Mr. Rasmussen asked Mr. Johnson if any changes made would adversely affect the City. The answer was no. Mr. Taylor asked what established the damages, how were they calculated. Mr. Johnson said it could be change orders requested by the contractor for delays caused by utilities, maybe the expense of having to modify the plans that were more expensive because of utilities not being relocated or conflicts with utilities as far as construction within the right-of-way. Mr. Taylor stated the City didn't really have a formula other than a change order and the change order was determined by the contractors. Mr. Johnson said it would include any direct expense outside the original scope of the contract. Mr. Taylor asked if it was up to the professional engineers or contractors to establish what they were going to claim as a change order and the City would accept that without any review. Mr. Johnson said staff would review it and ask for appropriate reimbursement for that expense. Mr. Johnson assured Mr. Taylor that he was scrutinizing the change orders.

Mayor Dunn told Mr. Johnson that the Council had approved the right-of-way ordinance once before but asked if he wanted a new ordinance passed with the additional changes. He said in talking with Mr. Horner and Mr. Wetzler, they thought because there was a change in the original ordinance that was adopted by the Council that an ordinance needed to be returned to Council for approval of the changes. Mayor Dunn asked Ms. Bennett if Council needed to rescind a previous action in order to approve the changes. Ms. Bennett said the new ordinance repealed the previous ordinance and that nothing had become effective unless it had been published and the only thing that had been published was the original Ordinance No. 1821C.

Council unanimously passed the new ordinance on roll call vote.

NEW BUSINESS

Approval of Appropriation Ordinance No. 876. On motion of Mr. Bold, seconded by Mr. Taylor, Council unanimously passed the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 877. On motion of Bold, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

1983

Request for exemption from smoking ordinance – Paddy O’Quigley’s restaurant.

Tom Intfen, owner of Paddy O’Quigley’s, said that the basis of his request stemmed from an estimate of \$185,448 from a construction company, a conservative estimate based on visual and preliminary discussions about the ordinance requirements, done without added expense or assistance of architectural or engineering designs. Also, he had a preliminary estimate of \$22,760 from a heating and cooling company just to get an estimate on the additional HVAC included in the construction company’s estimate. He said the estimates didn’t reflect the amount of downtime he would endure during construction. He felt he would lose many employees during that downtime. If required, Mr. Intfen said he would be willing to present documentation from his accounting firm showing that he was doing a break-even business and without a substantial increase in revenue, he couldn’t sustain an additional responsibility of such a magnitude. He said he had always been happy with his choice of Leawood and had proudly grown with the community. He felt the retro-activated ordinance seemed unjust to an existing business. He said 10 years ago when he designed the restaurant with open seating areas, he complied with and to all City and County code requirements. If the Council granted the exemption, Mr. Intfen said Paddy O’Quigley’s would place a sign in front of the entry stating that it was a smoking establishment, making their customers and employees completely aware of the fact.

Mayor Dunn stated that in Mr. Intfen’s explanation he commented on the age of his current HVAC system and that he anticipated the replacement of that system in the near future. She asked if there would be any fresh air economizers and air purification systems installed. He said if and when the HVAC units needed to be replaced, they would be brought up to higher specs and he would add new air filtration systems.

Mr. Bold asked Mr. Cantrell of the Planning Department that if the Council gave Mr. Intfen the exemption and he subsequently sold the restaurant to someone else and they remodeled the restaurant to suit their needs, would they still carry the exemption or would they have to reapply and meet requirements. Mr. Cantrell said if the new owners were to do substantial remodeling, they would have to come into conformance with the requirements of the City at that time.

Mr. Bold asked that if the Council granted Mr. Intfen the exemption, were they doing it for the configuration of Mr. Intfen’s restaurant. Mr. Cantrell recommended Council stipulate it as such. The exemption didn’t last throughout the lifetime of the property; it would be contingent on whatever stipulations or regulations Council chose to put on it. Mr. Bold asked Ms. Bennett if it would be legal for the Council to stipulate that if there was a change in ownership, that would have to be reviewed by the Council. Ms. Bennett said that the way the ordinance exemption provisions read, she believed Council could put whatever stipulations on it that they chose to. So if Council was to vote to exempt Paddy O’Quigley’s from the ordinance on the consideration that the exemption attached only to Mr. Intfen, any new owners would have to seek their own exemption.

Mr. Bold felt that was exactly the type of exemption the ordinance was designed to give. He had repeatedly said that he felt the City was selective as to who it allowed into the City, but once a business was in the City, he felt the City should do everything it could to enable that business to succeed and to be as profitable as possible.

Mr. Gill asked Mr. Intfen if he could possibly have a segregated area in the restaurant where there were non-smoking tables. Mr. Intfen said they presently had designated areas. Mr. Gill asked if Mr. Intfen would have an objection to working with staff to come up with a formalized non-smoking area consistent with usage in his restaurant and with some time flexibility. Mr. Intfen said he would do so.

Mr. Bold moved to grant the exemption with stipulations that a change in ownership or a major remodel would trigger a re-evaluation by the Council and that any modifications or improvements to the HVAC system would be reviewed and approved by staff. Also, Mr. Intfen was to work with staff on a formalized non-smoking area for non-smokers. Motion seconded by Rasmussen.

Mr. Taylor said that actually Mr. Intfen was not the owner of the building, but a tenant. He felt the owner was going to have to be responsible for the updating. He said Mr. Intfen didn't own the equipment as a tenant. Mr. Taylor felt the City needed to look at the ownership of the property and not necessarily the tenant and how to tie the owner into the responsibility. Mr. Taylor wasn't asking to change the motion, but said that legally, the City needed to address that.

Mr. Bold said that if Mr. Intfen sold Paddy O'Quigley's to someone, the new owner would have to bring it up to the City's current standards.

Mr. Bussing wanted to be sure that with a substantial remodel, a new HVAC system, or change of ownership, the intent was that it be brought up to the standards of the code.

2684

Mr. Story said the exemption would be granted to Paddy O'Quigley's, not to the owner of the building, that whatever happened to the building wouldn't affect the exemption; what happened to Paddy O'Quigley's was what affected the exemption. He said Mr. Intfen was the owner of Paddy O'Quigley's who was the applicant for the exemption and he would receive the exemption as owner of Paddy O'Quigley's as long as he owned it - Paddy O'Quigley's would have the exemption. If he chose to sell Paddy O'Quigley's, the new owner would have to return to the Council and get another exemption. If he chose to close the doors and leave the premises, then Paddy O'Quigley's ceased to exist, as did the exemption granted. He said whomever decided to go into that building and open a business would either have to get up to code or seek an exemption. The exemption wouldn't follow to the building itself.

Mr. Intfen said that the restaurant was a family-owned business, owned by PDOQ, Inc., and all shareholders were family members.

2766

Mr. Bold moved to call for the question, seconded by Rasmussen, and carried unanimously. Mayor Dunn stated that the motion as it stood was to grant an exemption to Paddy O'Quigley's under the current ownership of PDOQ, Inc., with a review if the ownership changed, with a review if it was ever remodeled, to have staff work with the current owner if the HVAC was changed to bring that as close to compliance as possible, and to also have staff work on a formalized non-smoking area for the non-smokers.

2810

Chug Tuttle, 5109 W. 111th Terrace, said with the preponderance of evidence regarding the hazards of smoking, it was mind-boggling to him that the Council was

spending so much time talking about an exemption. He gave statistics regarding cancer death from smoking. He didn't think smoking should be allowed in public places or even close to a public place. He said the City supposedly stood for public health and that smoking was a public health problem.

Mr. Bold's motion to grant an exemption with stipulations carried unanimously.

3010

Request for placement of a fence on City property along College Boulevard. Jerry Madden, 11020 Buena Vista, on the corner of College Boulevard and Buena Vista, said that 12 years ago College Boulevard stopped in front of his house. Based on the traffic count in the last two years, traffic had increased over 43%. He proposed to build a six-foot fence on City property, a stone fence, parallel to College Boulevard, which would look nice for the City, as well as his residence. If the fence was put on his property, he would lose a Maple tree, seven Pine trees and maybe a Pin Oak.

Mr. Cantrell of the Planning Department stated that if the Council approved the location of the fence, it would still have to go back to the Board of Zoning Appeals for the fence height exception.

Mr. Rasmussen moved to approve the placement of a fence on City property along College Boulevard (proposed Method A) subject to the normal terms and conditions that related to responsibility for maintenance, removal, etc. Seconded by Mr. Taylor.

Mayor Dunn said that Mrs. Powell, Mr. Madden's neighbor who already had a stone fence, had signed an agreement that if work ever needed to be done or the fence had to be removed, it would be done at her expense. Mayor Dunn asked Mr. Johnson about any utility concerns. He said Southwestern Bell had their facilities located behind the sidewalk and when Mrs. Powell constructed her fence, those were easily moved to accommodate the construction. He said the construction of Mr. Madden's fence wouldn't impact his ability to maintain the sidewalk or the street.

Mr. Gill asked what would happen if others were in the same situation and the Council made a logical extension; was Mr. Madden's house uniquely situated or would adjoining neighbors want the same consideration. Mr. Cantrell said Mr. Madden's house was located on a corner lot. The Council wasn't aware that choosing Method A would wipe out the trees Mr. Madden previously mentioned located on his property and would be 18" from the property line. Method B, the method Mr. Madden preferred, wouldn't wipe out the trees and would be 18" from the sidewalk.

Motion and second were withdrawn. Mr. Rasmussen restated his motion to move to approve the placement of a fence on City property along College Boulevard using proposed Method B, subject to the normal terms and conditions related to responsibility for maintenance, removal, etc., seconded by Mr. Taylor. Motion carried unanimously.

3445

Resolution establishing a supplemental retirement plan for City employees. Motion for approval from Mr. Rasmussen, seconded by Mr. Bold. Mr. Taylor asked why the City was doing a supplemental retirement plan. Mrs. Hakan said staff had made a proposal to the Budget Finance Committee that explained that back in 1983 when they moved certified police officers and fire fighters from the KPERS retirement system over to the Kansas Police and Fire Retirement System, they spent quite a bit of money at the time for a buy-in, as well as the fact they amortized the cost of that buy-in over a 20 year

period of time. She said it cost the City several millions of dollars for that buy-in and benefits and for the employees covered under KP&F vs. KPERS, the City paid in a higher percentage on their behalf every year. She said they were told that the percentage rate of pay-in, as well as their benefits, were much more comprehensive. They were allowed to retire at an earlier age with fewer years of service. She said staff request to the Council was for purposes of marketing, retention and fairness and to implement a supplemental retirement plan for those employees covered under KPERS to equalize the benefits of those who were carried by KP&F. Mr. Taylor wanted to know if it would cost taxpayers more. She said it would cost about \$75,000 for the year 2000 for the City to participate or match employee contributions for those who chose to participate. But it cost taxpayers an additional amount for people who belonged to KP&F. Mr. Taylor asked about the year 2001. She said it could increase because it was a percentage of payroll. She said what the Council authorized was 50 cents for every dollar the employee contributed, up to 5% of their gross annual earnings.

Mr. Bold said that he and Mr. Rawlings met with Mrs. Hakan and representatives of the company that was going to provide the service to the City and, based on his experience in the industry, the range of investment choices available to employees was excellent, as well as the service to employees for access to their accounts. He said fees were below market.

Mr. Rasmussen thought the Council had approved the plan and it would be a routine resolution. Mayor Dunn said they approved the budget which funded the plan and it was now before the Council. She said that actually what the Council had before it was not what they needed to consider. The copy in Council packets needed to be replaced with a fax regarding 2 resolutions for a money purchase retirement fund and profit sharing.

Mr. Gill, Mr. Bold and Mr. Rasmussen expressed a desire to learn more about the resolutions and to delay to the December 20th Council meeting. Mr. Rasmussen withdrew his motion and Mr. Bold withdrew his second. Mr. Bold made a motion to continue the matter to the December 20th Council meeting so everyone could review the materials, seconded by Mr. Bussing; Mr. Dunn opposed, all others in favor.

Authorize right-of-way maintenance agreement for Steeplechase, 2nd Plat – to permit the developer to construct landscaping, underdrain and sprinkler system within islands in public right-of-way, and to provide for maintenance of the amenities. On motion of Bold, seconded by Rasmussen, Council unanimously approved the agreement.

Schedule executive session. On motion of Bussing, seconded by Taylor, Council voted unanimously to convene in executive session for a period of 1 hour at the end of the meeting to discuss land acquisition, litigation and personnel matters.

OTHER BUSINESS

3852

Reactivation of ad hoc Contract Review Committee. Mr. Taylor asked Council and the Mayor to reactivate the ad hoc committee that dealt with the contracts with consultants and general contractors, as well as contractors. The reason for his request was that staff was working with the Public Works Committee to establish a new public

works facility and they were looking at the possibility of using a design/build type of contract and they didn't have such a form that had been approved by the ad hoc committee. Motion for approval by Mr. Taylor, seconded by Mr. Dunn, to reactivate the ad hoc Contract Review Committee.

Mr. Rasmussen was willing to serve on the committee. He requested that consideration be given to asking Bobby Davidson and Paul Barber to serve. Mr. Rasmussen would be the Chairperson. Mayor Dunn said she would call Mr. Barber and Mr. Davidson and ask their assistance. The Council unanimously approved the reactivation.

4016

Request for a consensus from the Council on several issues prior to requesting basic data from City staff. Mr. Gill requested input from Council, but stated that getting input didn't signal Council's support of or Mr. Gill's support of any of the issues.

1. What it would cost to paint address numbers on curbs in residential areas.
2. What it would cost to do a city-wide, one-time-per-year, household hazardous trash pickup. It would have to be with a company that provided full indemnity. Assuming the cost was reasonable, it was a responsible environmental thing to do.

3. What it would cost for a one-time-per-year city-wide pickup of over-sized trash items.

4. What it would cost on an average unit basis for a city-wide trash program. Now Leawood didn't engage in that. What Mr. Gill had in mind was a total out-sourcing of the pickup, if it was reasonable. Now residents paid homes association dues which were used to pay for trash pickup. They received no tax deduction for that. Even if the City could not economize on scale, which Mr. Gill believed it could because it would have more bargaining clout than individual homes associations, and even if the unit cost of trash pickup remained the same and the homes association dues were offset by an increase in property tax because the City would have to fund it some way, residents would at least get a tax deduction for it. The after-tax costs from an individual residence standpoint might be less.

5. Mr. Gill said that a few weeks ago there was a television program, either on 20/20 or 60 Minutes, that looked into the possible cause and effect between the use of cell phones and brain tumors. Mr. Gill wanted to request that staff try to get a tape or transcript of that program. He said the Governing Body who faced the cell tower regulation safety issue, had an interest in knowing what was being reported about the situation. He also asked staff to get literature on the subject.

6. Mr. Rasmussen added a request to the list. He said there were a number of islands in the City that needed to be painted or marked with reflective paint at the turning points so they wouldn't be hit, especially at night. He wanted to know the cost of that project.

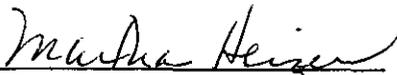
Mr. Bold supported the idea of painting curb signs and a city-wide household hazardous trash pickup but felt the homes associations did a good job of managing the trash pickup cost-wise. He also said if the cost of painting curb signs became prohibitive, Council could pass an ordinance requiring it; he felt it was a fire safety issue, too.

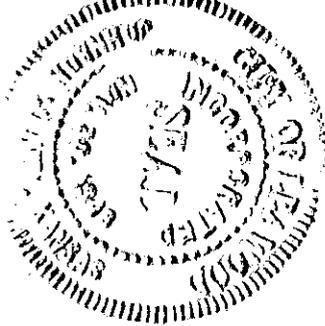
Mr. Gill moved to request that staff provide basic data on the questions, with Mr. Rasmussen's add-on, seconded by Mr. Dunn.

7. Mr. Taylor hoped the investigation would also show whether or not residences on private streets were going to be part of the program or not part of the program. Mayor Dunn asked if there was a date certain for the information and Mr. Rasmussen suggested 90 days. Council unanimously passed the motion.

4442 9:55 P.M. Council convened in executive session, and returned to regular session at 11:15 P.M. There being no further business before the Council, the meeting was adjourned.

Prepared by court reporter Kay Elder.


Martha Heizer, City Clerk



Regular Meeting

THE LEAWOOD CITY COUNCIL

December 20, 1999

Minutes Summary

Audio Tape No. 472

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 20, 1999. Mayor Peggy J. Dunn presided.

Councilmembers present: * Adam Bold (left the meeting at 9:45 p.m.), Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Mike Gill, Louis Rasmussen, and James E. Taylor, Sr.

Staff present: Richard J. Garofano, City Administrator; Julie Hakan, Director of Human Resources; Sid Mitchell, Chief of Police; Sarah Hilton, Administrative Services Manager; Ben C. Florance, Fire Chief; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation Director; Martha Heizer, City Clerk; and Patricia A. Bennett, City Attorney.

PLEDGE OF ALLEGIANCE – led by Mayor Dunn.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Dunn, seconded by Taylor, after the addition of 1) a discussion regarding the reactivated Contract Review Committee, 2) (under Consent Agenda) approval of City funding of additional \$10,000 for the Leawood Chamber of Commerce in 2000, and 3) the scheduling of an executive session at the end of the meeting for a period of 15 minutes to discuss a matter under attorney-client privilege and a personnel matter (added to the agenda by the Mayor when she gave her Mayor's report).

PRESENTATION OF EXECUTIVE FIRE OFFICER CERTIFICATE TO BATTALION CHIEF STEVEN BLANN. The Mayor read and presented the Certificate (plaque) to Chief Blann in recognition of his successful completion of the Executive Fire Officer (EFO) Program for Fire Service Professionals.

RECOGNITION OF PUBLIC WORKS EMPLOYEES WHO PARTICIPATED IN THE ANNUAL AMERICAN PUBLIC WORKS ASSOCIATION (APWA) SNOWPLOW RODEO. Mechanics' competition was a one-day event with all participants taking a written test and performing a series of hands-on diagnosis and component identification. There were 18 entries from local and state government

agencies in the metropolitan area. Leawood technician Guy Lapinski finished 7th and for the second year in a row, technician Norm Cass finished 2nd, significant accomplishments based on the complexity of the types of systems on which technicians were tested.

PRESENTATION OF CHECK FROM IRONHORSE GOLF COURSE TO THE CITY. Parks & Recreation Director Claxton presented a check in the amount of \$60,000 from Ironhorse Golf Course to Finance Director Rogers, as repayment of funds advanced by the City as a whole to the golf course.

480 **CITIZEN COMMENTS.** Albert Cinelli, 11509 Juniper, Edgewood subdivision, spoke about the request for a temporary special use permit for New Year's Eve fireworks at Town Center Plaza. He had concerns in the past when fireworks were discharged, as red hot embers had landed on some of the houses in Edgewood and a good number of the roofs were cedar. He explained that the Fire Department had come by afterwards and checked all the roofs. He asked that the City Council consider his concerns regarding safety from possible fire from the fireworks.

CONSENT AGENDA. The following were approved unanimously on motion of Rasmussen, seconded by Taylor:

1. Minutes of the November 15, 1999 Council meeting;
2. Historic Commission report (minutes) on their November 9, 1999 meeting;
3. Public Works Committee report (minutes) on their December 1, 1999 meeting;
4. Departmental reports;
5. Resolution No. 1491, attached as part of the record, approving the final plat for Hallbrook Office Building #1, approximately 111th and Overbrook;
6. Pay Request No. 25 (FINAL) by Wiedenmann & Godfrey Construction Co. in the amount of \$15,431.57 for sanitary sewer rehabilitation project;
7. Acceptance of CO Equipment Grant for the Fire Department in the amount of \$350.00 from the Kansas Gas Service Co. and State Fire Marshal;
8. Application (renewal) for Cereal Malt Beverage License – Cosentino's Price Chopper at Ranchmart Shopping Center, 95th & Mission Rd.;
9. Application (renewal) for Cereal Malt Beverage License – Osco Drug Store, Camelot Court Shopping Center, 119th & Roe Ave.;
10. Letters of Understanding for Johnson County Home Repair Program (funding level not to exceed \$1,500) and Utility Assistance Program (funding level not to exceed \$1,250) for 2000;
11. Funding for golf course repairs (10 bunkers on 4 holes, 8 tee boxes to be replaced and nursery greens) from golf course contingency funds;
12. Purchase of 1) State of Kansas BSE software program in the amount of \$25,000 to allow police to go directly on line with the State for reporting purposes, and 2) 1 ProLaser III w/battery/charger radar device for motorcycle officers in the amount of \$3,675.00 from Kustom Signals;
13. City funding of additional \$10,000 for the Leawood Chamber of Commerce in 2000 for the promotion of their programs for the betterment of the City of Leawood.

PLAN COMMISSION

Resolution No. 1492, attached as part of the record, relating to a request for rezoning from AG to CP-1 and CP-2, and preliminary site plan and preliminary plat approval, for Giblin Commerce Center, northwest corner of 143rd and Kenneth Road. Adopted unanimously on motion of Taylor, seconded by Rasmussen.

Ordinance No. 1835 rezoning from AG to CP-1 and CP-2 – Giblin Commerce Center. On motion of Taylor, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

745

Resolution relating to a request for a resubmission of a preliminary site plan for Fire Station No. 3, approximately 148th and Mission Road. Attorney Dick Wetzler requested that the Council reconsider the previous application made by the City for approval of Fire Station No. 3. He said in October 1999, the matter was set aside by District Court Judge Sheppard. The Council approved the application prior to that time. Mr. Wetzler said that in the resubmission, the Council wasn't "casting out" the prior proceedings. In his decision, Judge Sheppard indicated that the procedure the City had followed didn't comply with certain statutory provisions; Mr. Wetzler said there was nothing in the Judge's decision that said the City couldn't correct the deficiency. He was asking the Council to consider the resubmission of Fire Station No. 3 for the limited purpose of determining whether the application complied with a couple of statutory provisions pertaining to whether the plan, as presented, complied with the City's master development plan and the Council was specifically requested to consider whether the plan, as presented, complied with the capital improvements program as approved by the Council. The matter was previously presented to the Plan Commission and they recommended approval. Mr. Wetzler said the City needed the fire station; staff wanted to move ahead with the project. He pointed out that the essence of the decision of the court was that the Council, when it originally approved the project, was powerless to act because the master development plan of the City at that time didn't show the fire station located at the proposed site. Subsequent to the Council's approval, the master development plan was amended showing Fire Station No. 3 at 148th and Mission Road, so it was that master plan he was asking the Council to consider.

900

Robert McQuain, 14901 Mission Road, opposed the project and filed a lawsuit last October. He requested the Council read at least the first page of his report submitted to them. Mr. Gill told Mr. McQuain that the situation was very confusing procedurally for him and asked Mr. McQuain if there were things procedurally, opposed to merit issues, that the Council should do or not do or do differently. Mr. McQuain said he didn't believe Leawood had held private developers to the same standards as public developers. He also said that the Council should have conducted an environmental impact study and shouldn't have passed Ordinance No. 1704 in January 1998 authorizing the construction of the facility at 148th and Mission. He said they should have had public hearings before passing that ordinance. He said public hearings were held four months after the ordinance was passed. He said the ordinance authorized the City to construct Fire Station No. 3 at 148th and Mission Road at a cost of about 3.1 million dollars. Since

the City already had a law on the books to build the station, what was the purpose of the public hearings?

Mr. McQuain said the City passed Ordinance No. 1704 in January 1998 which authorized the construction of the fire station at the site at a price that was part of the public hearings later on. The first public hearing was held in April 1998. He said there were hearings after that and ultimately a resolution was passed in November 1998 authorizing the construction of the fire station. He said that back in January 1998, the ordinance should have been a resolution. It was his opinion that when Council finally approved the project, it should have been by ordinance. Mr. McQuain's concern, as well as the Judge's, was that his opinions and concerns were heard as to the resolution, not the ordinance. Mr. Gill told Mr. McQuain that that process was an incredibly important part of what the City Council did and he wanted to do everything he could to comply with it, so he requested a list of issues Mr. McQuain could identify and an opportunity to visit with staff to make sure they were doing procedurally what they needed to do.

Regarding the environmental impact study, Mr. Gill said that he had voted on a lot of matters and the City didn't, as a matter of routine, require private developers to get an environmental impact study every time they wanted to do a project. Mrs. Binckley reiterated that the City had never required a developer to provide an environmental impact study. Mr. McQuain said that staff had deemed it unnecessary to do a traffic study for the concept of the vehicles to properly operate from the site. He said they didn't test or study the impact on the neighborhood of such a complex, high-use facility in a developing residential area. He also felt that staff needed input from surrounding property owners prior to designing and spending money on the project.

Project architect Mike Christianer of Shaughnessy, Fickel and Scott said there was a neighborhood meeting with the Fire Department and his firm to go over the plans. Mr. McQuain said he wasn't invited to that meeting.

1650

Michael Gossman, 4041 W. 147th Terrace, said that maybe the Council wasn't fully informed when it made those earlier decisions and all that information should be considered tonight. It was his opinion that the only study ever conducted was the CDFM2 study, and it showed the best location for the then proposed 9,000 plus square foot station was at 143rd and Mission. He didn't see any study supporting 148th & Mission for the type of structure proposed. He didn't believe the City would ever allow a private developer to put that type of structure in a residential location. He felt the City was attempting to hold itself above the same criteria everyone else was forced to comply with and that concerned him. If the structure proposed to be built included a training tower, offices and a police annex, it appeared to him that a location on 135th Street, the land the City owned in the industrial park on Kenneth, or at last option, 151st Street, were the only viable options for the type of structure. He said that 100% of the residents who were permitted to protest the site had done so, and he asked the Council not to make a mistake that the residents of the City would have to live with for the next 50 plus years.

1750

Donald Gossman, 4100 W. 150th St., said he brought a speech to the meeting and a copy of 24 signatures from homeowners in the Pavilions, as well as Whitehorse, protesting the application. He had lived in the Pavilions for six months, and prior to that in Greenbriar of Leawood for nine years, the last two years of which he served as president of the homes association. He felt that the proposed site suffered from serious obsolescence. The cost to make the site buildable exceeded the value of the land; if it

cost more than \$200,000 to make the site buildable, the site wasn't free. According to the testimony of the Fire Chief, due to the layout of the station, response time for Station No. 3 would be up to seven times longer for access to the street than Station No. 2. Due to the hill to the south, there was limited sight distance. Fire trucks pulling out of the station would be forced to cross all lanes of traffic to enter the roadway. The proposed improvements were too large for the site and were being forced to fit the site versus the site variance that was given to fit the station. The grade of the driveway was almost 8% which would make it dangerous for firefighters, City employees and residents in inclement weather. Mr. Gossman also said the external obsolescence resulting from the approval of the location would reduce property values for surrounding property owners. In order to access Nall, the route for the fire trucks would be through two residential neighborhoods, the Pavilions and Whitehorse. There would be disruption of the residential feel of the neighborhood. He said the site was selected six years ago and the station that was initially approved was a 1900 square foot building with 16 parking spots. The proposal now was for a 15,000 square foot fire station that included offices for fire and police personnel, a three-story training tower and 30 parking spaces. He felt approval of the location of Fire Station No. 3 was not in the best interest of the City or the homeowners. He proposed construction of new Station No. 2 on 135th Street which would contain the proper equipment necessary to cover areas both north and south of 135th Street. He proposed converting Station No. 2 to offices for fire and police departments and moving fire equipment to the 135th Street location.

1895 Bob Simon, 4101 W. 150th, said he moved into the Pavilions mainly because there were over 100 children living in the area. He felt it was incredible that the Council would even consider the plan for the fire station due to the number of children. He said he didn't understand why the particular site was so appealing.

Nabil Halawani, 14900 Delmar, said he imagined on an icy night a fire truck pulling out of the station and slipping off the road into his home. He opposed the project. He said the street was full of children in the summertime and he didn't understand how the road could be a high traffic area.

2045 Frank Spiezio, 4004 W. 150th, was before the Council not only as a homeowner, but as an informed citizen with an advanced degree in urban planning and 20 years of experience planning, designing and constructing industrial facilities for the U.S. Navy. He said his interest as a homeowner could be served if the Mayor and Council based their decision on sound planning principles. He said there was serious question and doubt in his mind, based on his education and years of experience, that sound planning principles were being served.

2152 Mayor Dunn requested that Chief Florance comment on the concerns expressed about 148th Street. Chief Florance believed there was a misconception that the Fire Department chose certain streets to respond to calls. He said they didn't exclude any streets in the City to respond to emergency calls; they took the shortest route, so regardless of where the proposed fire station was located in the City, if they needed to go onto 148th Street when someone was having a heart attack or a house was on fire, that was the street they would go down if it was the shortest route. He reminded the Council that they currently had Prairie Star, Leawood Elementary, Leawood Middle School and Somerset Elementary school zones that they went through. He said children were throughout the entire city, that they were the basis of fire prevention efforts, and they

were precious to the Fire Department. He said they had never hit a pedestrian with a fire vehicle in the City and didn't plan on starting with the proposed fire station.

2215

Mr. Taylor wanted to clarify what was expected of the Council. Mr. Wetzler said Council had previously approved a master plan that included a fire station at the proposed location; there was an amendment to the master plan that made that specific change, approved by the Council. The Council also annually approved a capital improvements program, and in that program, the proposed fire station was shown as being located at 148th and Mission Road. Mr. Wetzler was asking the Council to find that the plan as presented complied with the master plan and also complied with the capital improvements program. He said that per Judge Sheppard, one of the things the Council didn't specifically consider when the matter was presented to them before was whether or not there was a specific compliance with the master plan and capital improvements program. He said all he was asking Council to do was to make those two specific findings. Another thing he wanted to add - there was a protest filed originally in the matter and City staff had determined that that protest was valid and they were still operating under that same protest procedure. He said if the Council determined to approve, it would require a total of seven votes and the Mayor could cast the seventh vote. Another point he wanted to make was Mr. Gill's discussion with Mr. McQuain regarding the City's previous approval of the project by ordinance. He said what Mr. McQuain was talking about was when Council dealt with capital projects like a fire station or a city hall or any kind of public building, they acted in two capacities - as the developer and the approving body. The ordinance that Mr. McQuain said was the ordinance whereby the Council preapproved the project was nothing more than a financing ordinance. The City, in order to go out and hire an architect and to expend funds for the project, had to have an ordinance on the books, but still had to go through the other procedure. That ordinance had been used against the City, so to speak, and Mr. Wetzler had repeatedly said that it was nothing more than a funding ordinance. It was something also required by statute. Then the City went through the separate procedure required under its own ordinances to establish the facility. Mr. Wetzler said it was very painful for him to see Council agonizing over its decision and to see residents complaining that the City wasn't treating itself as it would a developer. The only thing he could say to the Council was that they had to make the decision as to what the needs of the City were. He said if the Council believed the facility was going to be operated in some way that would endanger the residents, then they should reject it. Chief Florance had said the station was a necessary facility and had been very carefully designed:

2465

Mr. Dunn asked if rezoning was required to allow a fire station to be built on the property. Mr. Wetzler said the City had an ordinance, as part of its zoning code, that exempted the City's facilities from all zoning regulations. In this case it was argued that the building that was proposed to be constructed was more in the nature of an industrial building, so there were probably arguments that would be made by the opponents that would say the City was treating itself differently.

Mr. Dunn asked if the City was a private developer, would it be required to go through a rezoning request; Mr. Wetzler said yes. Mr. Wetzler said if Judge Sheppard determined that cities were bound by the same standards as developers, the City couldn't meet those standards. He said cities were different. He said statutes were what they were because the legislature had recognized that cities had to fulfill functions that were not

necessarily based upon the same types of planning procedures that would necessarily apply to a developer. They were based on the needs of the cities to serve citizens. He said the City operated two facilities right now, both in residential areas, and had never heard any complaints about the operations; he felt the City operated its facilities in a very responsible fashion.

Mr. Dunn asked Mr. Wetzler - assuming the Council did what they were being asked to do tonight, would they have the Judge's decision on whether he believed the Council needed to comply with those same standards prior to the time they started construction. If the Judge disagreed on a major point that was going to cause the City to look for another site, he didn't want to be in the middle of construction. Mr. Wetzler said he told Judge Sheppard the City was in the process, that it was trying to make the proceedings comply with the two areas he was concerned about. Beyond that, Mr. Wetzler couldn't answer the question. Mr. Wetzler said the issue Judge Sheppard had yet to decide was the reasonableness of the decision and whether the City had violated some constitutional premise. He said it wouldn't be his advice to start construction until the Court had given its ruling. Mr. Dunn asked if that factor should be included in any action taken tonight. Mr. Wetzler said he knew the Council and staff, all responsible enough that they weren't going to proceed with this until the last question had been eliminated. He said Council couldn't spend the public's monies without that kind of assurance.

2775

Mr. Story asked about the lease agreement for the land requiring entrance to the park and if the City would be in breach of that lease agreement by the current plan. Mr. Wetzler said there was a lease and it did provide that the City had to preserve access. It was his opinion that approval didn't prevent that access. He took the position that that provision really wasn't applicable except in the event the City would be compelled to surrender the leased property back to the property owner. That was the reason that provision was there and he didn't think there was any intention of that happening. Mr. Rasmussen said unless the City gave up the park and Mr. Wetzler agreed. Mr. Story asked if that happened, could the City provide the access. Mr. Wetzler said there was space along the southern parameter; it would require a revision of the plan.

Mr. Taylor asked if it was correct that the owner of the property, the Parson's Trust, participated in opposition to the fire station. Mr. Wetzler agreed and said he had talked with them, but preferred to discuss the matter in executive session. Mr. Taylor asked if there was a violation of the lease; Mr. Wetzler said no.

3090

Mr. Bold asked what the rush was in getting the matter approved tonight since they couldn't build until they received the Judge's decision. Mr. Wetzler said he didn't know there was a rush. Mr. Bold said even if the Judge said tomorrow it was fine, there were other issues that the Council had to resolve before construction could start. Mr. Wetzler disagreed. He felt it was important to be able to represent to the Court at some point that the Council had made the findings that the Court said were lacking in the earlier proceedings. Mayor Dunn said that was, as she understood it, the reason, but she didn't call it a rush.

3145

Mr. Gill said that conformity to the master plan and inclusion in the CIP were factual issues. Every night he worried about fire protection in the City. He felt it was a very critical and important matter and he didn't want to delay one second that determination. Given the holidays and the complexity of the issues, he would personally be more comfortable to have a two-week period of time for review and possibly Judge

Sheppard would have time to issue an opinion. Whether he did or not, Mr. Gill said they needed to do it right and he wanted to be mindful of Mr. McQuain's rights and the interests of all citizens who cared a great deal about the matter.

Mr. Story asked Mr. Wetzler if it was his plan to take the matter back through the Plan Commission and the Council in an effort to show the Judge the results. He asked if there was a legitimate need for the Council to act tonight to allow him to pass the information back to the Court. Mr. Wetzler had asked the Court to remand the matter back to the City to make a determination and it would be back before the Court again with all the pieces in place; Judge Sheppard didn't choose to go that route. He didn't say there was anything to keep the City from taking the measures discussed, and in his view the Council had to do certain things in order to proceed. Mr. Wetzler said what had always motivated the Council in the matter was the concern of the Fire Chief that it was critically important that the matter proceed with all due haste.

3300

Mr. Taylor said the urgency to proceed was still subject to the Judge's ruling and no construction could proceed until that ruling occurred, that continuance of the matter shouldn't make that much difference over the next two weeks. Mr. Taylor asked if the contract documents to be put out for bids were ready to go. Mr. Wetzler said yes. Mr. Taylor said Council wasn't holding up the process of construction bidding as far as the professionals were concerned, but was holding it up because it wasn't clear that the Judge was going to rule in the City's favor. Mr. Wetzler said that if the Council decided to approve the resolution, that would start a new time for appeal running. Mr. Taylor pointed out that the Council didn't unanimously approve the CIP as well as the master plan. Mayor Dunn pointed out that the Council did vote unanimously at the last Council meeting on that, but Mr. Taylor was absent. Mr. Taylor said he wasn't in support of the fire station at the proposed location.

Mr. Rasmussen asked to hear from co-counsel specifically as to what the purpose of the continuance was. Mr. Gill said Mr. Wetzler wanted the Council to adopt a finding of fact that the plan, which was previously approved, was in conformity with the master plan and CIP and he could and would vote for those this evening. However, he said the language in the resolution they had before them didn't say that. He said the resolution approved a resubmitted plan and they picked up findings of fact made by the Plan Commission which similarly approved a plan and recommended a plan with 10 stipulations which went beyond what he understood the Council was being asked to do. He was confused about what it was they needed to do and if Mr. Wetzler was comfortable by a finding of fact that the plan conformed to the master plan and the CIP. He remained genuinely interested in getting a fire station somewhere in the City as soon as possible, and if this wasn't going to accomplish that purpose, then he wasn't sure why they were doing it.

3545

Mr. Bold said he was confident with all the legal minds in the room that ultimately, procedurally, they could get "all their ducks in a row." He said if Mr. McQuain's lawsuit had done nothing else, it had succeeded in raising questions in the minds of several Councilmembers as to whether or not the site was the right place and the structure the right kind of facility to build for Fire Station No. 3. He felt whether this was approved tonight or not, the reality was that before he would feel comfortable building the proposed fire station, more discussion was needed because of issues that had been raised that were different than the issues raised the first time. He said if Council wanted

to proceed as expeditiously as possible, they might need a work session to invite the public, the architects, the staff or start the process all over again and have hearings again. He didn't know procedurally what the best thing to do would be, but he knew he wouldn't approve the fire station until the discussion took place. He felt there should be a delay of the vote tonight and a work session or hearing scheduled to work through the issues that were keeping the Council from approval.

Mr. Bold said that sometimes the Council had to do things that weren't popular because it was best for the City as a whole, and he wasn't above making a decision that would be unpopular with the neighbors. What he wasn't willing to do was make that decision not being 100% confident with it. There were enough issues on the table that they needed to work through before they could absolutely say this was the right plan.

3700 Mr. Gill requested the City Attorney take a look at the wording of the resolution before the Council. Mr. Gill moved to continue the matter to the January 3rd Council meeting, seconded by Bussing.

Mr. Story moved to amend Mr. Gill's motion with a substitution to state the matter be postponed until the second meeting in January (January 17th) to allow time for the work session or hearing to accommodate Mr. Bold's concerns. Seconded by Mr. Taylor.

Mr. Dunn asked if the work session was to consider locations and designs they had considered before; Mr. Bold said yes.

Mayor Dunn said since they had an item before them for which they were asked for some technical approval, on a case already approved by the Council, to take any action subsequent to the work session that might change everything, would that not need a motion to rescind previous action by the Council. Ms. Bennett said perhaps, depending on what motions would come out of that, whether a new plan or a rescission of the previous plan. She felt there should be an executive session and attorney/client advice before doing anything considering the items in pending litigation. Mr. Wetzler agreed.

Mr. Taylor wanted clarification again that what was before the Council tonight would take a super majority, seven of nine votes, to pass. Mr. Wetzler said yes.

Mr. Story's motion to amend carried; Dunn, Rasmussen opposed; all others in favor. The amendment overrode Mr. Gill's main motion since the main motion was to continue the matter to the next meeting. Mr. Gill withdrew his motion and Mr. Bussing withdrew the second. The amendment became the main motion which carried. Mr. Wetzler stated the matter had been continued for a work session but also to a date certain, the second Council meeting in January. Mayor Dunn asked if residents needed to be noticed by certified mail. She said the notice would be put in the paper and that the K.C. Star reporter was present tonight. Mr. Wetzler didn't want to create a misunderstanding that the City was going to publish an official notice. He asked if she was assuming the Star would cover it or did she want the City staff to publish a notice. She wanted a notice in the paper stating there would be a work session and that it was open to the public, but that didn't mean the public would be able to make comments.

4030

MAYOR'S REPORT Mayor Dunn congratulated City staff on their annual "Have a Heart, Help a Child" program during the holiday season. City employees helped Temporary Lodging for Children, Safe Home and Children's Mercy Hospital, and it was noted that employees went way beyond what they had done in the past.

The Sister City Committee recently met and they planned to have a joint Chinese New Year Celebration/fund-raiser for earthquake victims in Taiwan on Tuesday, February 29th, in the Community Center at City Hall.

OLD BUSINESS

4190

Resolution No. 1493 and Resolution No. 1494, attached as part of the record, relating to a supplemental retirement plan for City KPERS employees. Mr. Bold said the item was on the last Council meeting agenda but there were questions as to why the City was setting up two separate retirement plans when the Council thought they had approved only one. Mr. Bold had talked with Mrs. Hakan, Human Resources Director, and a representative of the company that was going to provide the plan, and he supported the plan which he briefly described. He said there would be no additional expense to the City for having the two plans.

On motion of Bold, seconded by Rawlings, Resolution No. 1493 relating to the money purchase retirement plan was unanimously adopted.

On motion of Rawlings, seconded by Bold, Resolution No. 1494 relating to the profit sharing retirement plan was unanimously adopted.

* 9:45 P.M. Mr. Bold left the meeting.

4350

Reaffirmation of denial of Nextel Communications' application for additional antennae on cell tower at approximately Lee Blvd. & Mission Rd. Mayor Dunn said the engineering report came in late this afternoon, and consequently, wasn't in the Council packets. Mr. Gill had talked with Mr. Beeler who assured him that Nextel, his client, did everything possible to get the information for the packets. Mr. Gill had told Mr. Beeler that provided he would continue the same stipulation that was in place, he (Mr. Gill) had no objection to continuing the matter until the report came out. Subsequent to that conversation, the report came out. If other Councilmembers felt likewise, Mr. Gill would support a continuance.

4425

Mr. Rasmussen said he had read the report and all it said was that Mr. Beeler felt there wasn't enough capacity if Council held its line in terms of the size of the antennae. Mr. Rasmussen said the record was closed in the matter and the public hearing had been held. In reading the information, it didn't change anything that had to do with Council's feelings in terms of how the tower should look. Mr. Rasmussen moved to reaffirm the denial of Nextel Communications' application, seconded by Mr. Taylor.

Mr. Gill concurred with Mr. Rasmussen as to the status of the record. On the first page of the report it said, "the existing layout and design and the availability of other antennae sites in the area is beyond the scope of this report." Mr. Gill wanted to confirm that the report didn't undertake to determine if other sites were available or to contradict some findings that were made.

Mr. Beeler, counsel representing Nextel, thought it was fair to say that the report itself didn't deal with availability of other sites. He said that wasn't a finding of the Council in a negative way; the application was turned down over the slim line antennae usage of the pole and whether that was an acceptable, functional use of the tower for Nextel with its technology. That was the purpose of Nextel's offer to pay for the report. He told Mr. Rasmussen that the report said a great deal more than he indicated it did. Mr.

Rasmussen asked if the purpose of the hearing tonight was to open the record, because if it was, then he was fully prepared to challenge any statement Mr. Beeler made concerning the availability of other sites. Mr. Beeler felt this would probably be continued. Given the fact the Council desired a slim line antennae, they proffered to have an independent engineer look at that technology for Nextel in the competitive market to see if it was functional. That was the purpose of the report. The finding, as Mr. Beeler read it, was that Nextel would be placed in a significant competitive disadvantage to be forced to use that technology. He said if the Council desired to reopen the record on a motion for reconsideration, they would welcome that opportunity. That was why they proposed the report to the Council, to give them an opportunity for the engineering information.

Mr. Rasmussen felt the public had been put in the position of not knowing exactly what was happening because if the record was going to be reopened, there should be a public hearing all over again. Mayor Dunn said if the Governing Body wanted to reopen the case, that was their right, that before the Council tonight was something they hadn't had an opportunity to review.

4670

Mr. Dunn told Mr. Rasmussen if anyone wanted to reopen the record to reconsider the matter, there would be a motion to reopen it for reconsideration and it would be set for a later date for a hearing.

Mr. Gill said it was his understanding that Nextel had a feature that other cellular providers didn't and its feature was a non-cellular feature. Mr. Beeler agreed. Mr. Gill asked if that alternative would require the different antennae. He asked if the non-cellular feature was covered by the Telecommunications Act of 1996. Mr. Beeler said when saying non-cellular, it was Telecommunications Act and the cellular capacity of that technology all in one package. It wasn't a separate phone or separate component. It was the technology by which the phone worked. He said Nextel was covered under the Telecommunications Act, its non-cellular frequency band was under the jurisdiction of the Act. Mr. Beeler said all of its functions were operating in the same band.

Mr. Bussing shared Mayor Dunn's concern; he hadn't had an opportunity to review the report and would appreciate the opportunity to do that before he was forced to vote on it.

Ms. Bennett said when Council did reaffirm the denial in the packet, there were formal findings that would have to be made by Council. Mayor Dunn said that included a restatement of all the original reasonings given for the motion.

Mr. Beeler had asked for a copy of the packet that included the formal proposed findings. Mayor Dunn told Mr. Rasmussen if there was going to be a reopening of the case, they would make certain the public was notified.

Mr. Story asked Ms. Bennett the impact of a no-vote on Mr. Rasmussen's motion to reaffirm the denial. She suggested a motion to amend, to continue or move to table, and vote on the underlying amendment before voting on the actual motion.

Mr. Story moved to amend to continue the reaffirmation of denial to the January 3rd Council meeting, seconded by Bussing. Mr. Rasmussen questioned the legality of the amendment. Mayor Dunn said Mr. Story was moving to amend to a date certain so Council had time to digest the material. His amendment was to continue the reaffirmation of denial. It was not to open the record.

Mr. Gill said Council had a running stipulation from the applicant that by continuing the decision on the formal adoption, Council wouldn't be put in a position of having delayed whatever rights Nextel had if it chose to go further. To support Mr. Story's motion he would want that same stipulation continued. Mr. Beeler had given Mr. Gill his word and stipulation and he would continue it this evening. Mayor Dunn said Mr. Beeler needed to make proper application for the information he had requested.

Mr. Story's motion to amend to continue the reaffirmation of denial to the January 3rd Council meeting carried; Taylor, Rasmussen opposed; all others in favor.

The main motion as amended which included the continuance to January 3rd carried; Taylor, Rasmussen opposed; all others in favor.

5345

Request for exemption from smoking ordinance – AMF Lanes at Ranchmart Shopping Center. Jeff Cantrell of the Planning Department said he hadn't received any additional information, exhibits, or anything whatsoever that would lend to additional consideration on the matter. He had issued a citation to appear in Municipal Court. He asked that the Council deny the applicant's request. Mr. Rasmussen felt the matter should have been removed from the agenda as there was nothing before the Council to deny. Mr. Dunn asked if the applicant had made a formal request to be placed on the agenda. Mr. Cantrell said they were given the option of Municipal Court or filing for an exemption before the Council. They elected to come before the Council and he recommended certain information be provided so Council could make a sound decision on the matter.

Motion by Dunn to deny the request based on failure to provide any information in support of the request, seconded by Mr. Rasmussen.

Chug Tuttle, 5109 W. 111th Terrace, had studied the smoking ordinance. He said cigarettes and secondhand smoke not only caused lung cancer, but also other respiratory problems such as emphysema. He hoped the City Council would reconsider the smoking ordinance and ban smoking in all restaurants.

Motion to deny applicant's request carried unanimously.

5627

Review of AMC Theatres' request to modify show scheduling to 11:00 p.m. approved by Council for 6 months in June 1999. Jason Cole asked that the temporary extension to allow the theatres to start shows up to 11:00 p.m. be made permanent. They had not used the extension to add on additional shows. He said there were 20 theatres in the building and the most shows they would have after 9:00 p.m. was 20.

Mr. Taylor asked about the movie The Green Mile. Mr. Cole said typically the film studios required a certain number of shows that would be full price. The Green Mile was in excess of three hours and 15 minutes and so they had been able to get an exemption from the studios. They received four prints of the movie so were able to have the required number of show times. For the theatres to maximize seating and bring people in to get food, it behooved them to have as early a show time as possible.

Mr. Taylor said the test period of six months was also to weigh the driveway in front of the entrance, moving the traffic away from going in a north/south direction. Mr. Cole said there had been confusion with contacts as AMC had undergone a reorganization recently so there had been a transition that had caused a problem with finalizing the site plan.

Mrs. Binckley said staff had had difficulties contacting AMC representatives in California. She said that the Police Department believed congestion was not as bad as it was before. She received comments from several Plan Commissioners that they were concerned about the temporary closing of the area in front of AMC, so staff would be working with AMC on trying to resolve that.

Mr. Taylor noticed the last time he was there that parking was moving toward Galyans and moving to the east, besides the designated parking. He wondered if there were concerns as far as the number of parking places provided for the total number of shoppers, as well as the movie theatre. Mrs. Binckley said the Plan Commission was aware of the matter.

In response to Mr. Rasmussen, Mrs. Binckley said she didn't have the information and had made several phone calls to AMC representatives and finally spoke to someone last Thursday. Mr. Rasmussen stated the Council didn't have in front of them what they hoped would be a redesign of the traffic flow in and out of the area. He said the purpose of the 15 minutes was to permit a review of the traffic flow as a result of the timing of the show times and the Council didn't have that information.

Mr. Rasmussen moved to continue the review of AMC's request to modify scheduling to the February 7th Council meeting, seconded by Mr. Gill.

Mr. Cole stated that when he was before the Council six months ago, the 15 minutes was to give greater stability to operations for flow in and out of the building and actually the traffic congestion. He said there wouldn't be a magical solution that solved the traffic problem.

Motion to continue carried unanimously.

6105

Discussion of Johnson County Wastewater District's proposal (stipulations) for an access easement for golf course maintenance purposes. A memo from Parks & Recreation Director Claxton stated that the Golf Course Committee was in favor of obtaining the easement as proposed, but didn't feel the golf course should incur the cost of the fencing and recommended that the City be responsible for absorbing that cost. Mr. Gill moved for closure on the matter per Mrs. Claxton's memo, seconded by Taylor. Motion carried unanimously.

NEW BUSINESS

6210

Approval of Appropriation Ordinance No. 878. On motion of Taylor, seconded by Bussing, Council unanimously approved the ordinance on roll call vote, except for Mr. Gill who was not seated for the vote.

Mr. Gill returned to his seat.

6234

Request for exemption from smoking ordinance – Bogey's Bar & Grill. Steve Schieszer, proprietor of Bogey's Bar & Grill, said he had complied with everything except the barrier between the restrooms and public telephones. He had two separate entrances for the dining room and lounge, had upgraded smoke eaters, and put two separate ventilation systems in. He said it was financially impossible to do anything about the barriers. His lowest estimate was \$57,000 and it would take two months to

complete. The highest bid he received was \$70,000, also taking two months to complete. The loss of revenue would come close to \$200,000.

Mr. Dunn asked Jeff Cantrell of the Planning Department if just the restrooms wouldn't be in compliance, that the dining and kitchen areas would be alright. Mr. Cantrell said there was a walk-through corridor near the restrooms, as well that went through the kitchen.

Motion from Mr. Gill, seconded by Mr. Rawlings, to grant the exemption with the stipulation that when further renovations occurred, efforts to achieve compliance would be made at that time, and Mr. Gill mentioned upgrades of HVAC and also points of compliance that Mr. Schieszer's letter indicated they had taken, that they be continued. The same stipulations for Paddy O'Quigley's exemption granted by Council on December 6, 1999, applied. Motion carried unanimously.

Requests (2) for short-term special use permits for fireworks displays on New Year's Eve – one for Yahooz on the 30-acre site north of Town Center Plaza and the other for a group of neighbors in the area of 3508 W. 89th St. Mayor Dunn explained that the requests were before the Council with a recommendation from staff to deny. However, the applicants had a right to appeal to the Governing Body. Staff denied both requests on the basis of a section of the Leawood Development Ordinance that stated that events should not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise, smoke, odor, glare, litter or visual pollution. Staff had experienced strong protests from residents in the past and were concerned that any additional celebrations might exacerbate potential emergencies arising from a Y2K situation.

Fire Marshal Gene Hunter asked Tom Greenburg of Wald Co. Fireworks to explain what he proposed to do. Mr. Hunter wanted the two requests considered separately.

Mr. Greenburg said he received a request to do midnight displays for Mr. Walter Thomas at 3508 W. 89th St. The display would be small in scale, lasting approximately 2-3 minutes, using small items, nothing over 2 1/2", projected at an angle over the lake off Mission Road at 89th St. Kevin Doyle, president of the area homes association, had canvassed the 21 people around the lake. Eighteen were in favor of the display; he was unable to contact the other three. Mr. Greenburg believed the display could be done safely with barrier tape at proper safety distances, according to National Fire Protection Code #1123. Fire Marshal Hunter said the Fire Department's position was that they had met all the uniform fire code and local ordinance requirements to receive the permit. He believed the display could be done safely. He said the question was whether or not the timing was inappropriate given concerns about Y2K disaster scenarios. Also, there were concerns about preserving the tranquility of the neighborhood.

Mr. Gill said the report indicated it was possible to attain required separation distance between fireworks launch area and the neighboring houses, so he assumed that that was the fire safety issue being addressed. He also asked about Y2K problems. Mr. Hunter said his concerns about Y2K were pretty broad. He didn't know what to expect, the worst case scenario being power outage and street lights out or traffic problems along Mission Road. Mr. Gill asked if the congestion would be any worse than it was at City Park on the 4th of July and Mr. Hunter said he couldn't imagine it would be. Mr. Gill

assumed if there was a Nordic wind, as Fire Marshal, Mr. Hunter would have the ability to pull the plug because of weather conditions presenting a danger. Mr. Greenburg said he would, also. Mr. Hunter said the permit would be issued with stipulations.

Mayor Dunn said she had received a number of irate calls and complaints from citizens when the City had its 50th Anniversary Celebration and had fireworks in early December. Citizens were not expecting them and people as far away as 89th Street heard them. Some thought they were being bombed. She said fire trucks were sent through Edgewood to check on the houses. Mr. Greenburg said his contingency plan for the fireworks display on 89th was to angle into the wind. Mayor Dunn voiced concern that even though approved by the homes association, the display would be heard throughout the area. She said the Council didn't even consider having a fireworks display for the holiday lighting ceremony at City Hall because of complaints they had received a year ago.

Mr. Hunter said the state did open up sales of fireworks for the occasion, which was unprecedented.

Mr. Dunn wanted to hear from Mr. Doyle, president of the homes association. Mr. Doyle said he contacted 18 of the 21 residents and all 18 were in favor. There was only one request that they clean up. Mr. Dunn asked if all 21 residents had been notified of the display and Mr. Doyle said they hadn't notified the three residents they couldn't reach.

Mayor Dunn asked Ms. Bennett if the Council had any liability as a Governing Body if they approved the request and a house burned down. Ms. Bennett had never looked into this. Mayor Dunn asked if there was a document that should be drafted, holding the City harmless. Ms. Bennett said they could draft one as part of the administrative special use permit or ask for an express stipulation from the sponsor and the person conducting the fireworks display. Mayor Dunn was told the ordinance already addressed that and it indicated Mr. Greenburg was required to have two million dollars of liability insurance issued for the particular event and he had shown proof of this insurance. Mr. Doyle said the display was not sponsored by the homes association, but by a private individual who was a member of the homes association, Mr. Thomas.

Mr. Gill moved for approval with one request - that the reporters in the audience take time to mention the fireworks displays going on in Leawood - seconded by Mr. Taylor. Motion carried unanimously.

Mr. Greenburg said the second display would take place December 31, 1999, in the field at Town Center Plaza owned by Marned Corporation and the sponsors would be Yahooz and Hereford House. Paul Khoury, owner of PB&J Restaurants (Yahooz), was present to answer questions. The display would have up to 6" shells fired from the center of the field, depending on which direction the wind was coming from. Mr. Greenburg referred to the embers that blew north last December and some debris did land in the area. Mr. Hunter said there was debris of larger size than they normally experienced and they needed to address that when the permit was issued. Mr. Greenburg said he decreased the size of the shells from 8" to 6". It would last around 7-8 minutes. Mayor Dunn asked if residents of Edgewood had been consulted. She was told that Mrs. Binckley would provide them notification so they could attend the Council meeting.

Mr. Rasmussen moved for denial of the permit for the area south of Town Center Drive, seconded by Mr. Rawlings.

Mrs. Binckley did talk with Don Smith, Vice President of Edgewood Homes Association, and he contacted the president of Edgewood, Albert Cinelli, who spoke earlier in the meeting under Citizen Comments. Mr. Gill said he would not be in favor of repeating what happened last December. From a safety standpoint, he said before he would vote for the specific site, he would want some assurance that debris of whatever shape or form was not going to find its way where it shouldn't. He asked Mr. Greenburg if he was personally going to be at the site; Mr. Greenburg said he wouldn't be, but the person conducting the display had done it for 20 years. Mr. Hunter said he would be on duty that night, but was unsure at which location. Mr. Hunter said normally they would station a pumper in Edgewood and one around 89th Street, but it was difficult to say what might be going on that night and whether they would have the personnel and equipment available. That was at the core of staff's recommendation to deny, that they couldn't be sure they could be freed up to deal with what might occur.

Mayor Dunn asked the difference in size between the fireworks and what Council approved for 89th St. Mr. Greenburg said shells were rated in diameters and what they proposed to use at Mr. Thomas', the maximum diameter was 2 1/2", getting to an altitude of 200 feet before bursting. What they proposed to use for Yahooz and Hereford House displays were 6" shells, which got up to about 600 feet in altitude. Mayor Dunn was told a year ago when there was an outcry from enraged citizens, that without the foliage on the trees like there was on the 4th of July, sound carried much further and was much louder. Mr. Greenburg said a cold day in winter with the pressure density the speed of sound was faster and air density didn't have a lot to do with the distance sound carried. He said they could go to 5" which he guaranteed wouldn't go out of the area. The smaller the shell, the less sound the explosion made, the less height it went to, the less distance debris traveled.

Mr. Story didn't feel it made much sense to approve fireworks on 89th Street and not approve them at Town Center. He felt it was important to address the neighborhood concerns they had already experienced. He said they needed to come up with a solution that addressed their concerns, maybe a reduced shell, specific stipulations regarding the weather and the ability of the Fire Marshal to cancel the event. Mr. Greenburg said there were going to be quite a few salutes in the show. They could substitute and just use color and not use any of the loud boom salutes. He could decrease the shell size from 6" to 5" which required a safety radius of 350 feet, instead of 420 feet required for 6". He could make sure a positive angle was on the mortars into the wind, whichever direction that was, to make sure the debris field ended up at the mortar firing area, which would eliminate any falling debris into the housing development. He would have the shooter discontinue if any debris headed in that direction or into the streets.

Mayor Dunn questioned if Mr. Greenburg would be aware of it happening if the device went up 500 feet. He said the debris was small but could be seen and one could see burning embers.

Mr. Bussing wanted to add to the list of stipulations that the City notify Edgewood residents that the display was going to occur, if it was approved.

Mr. Rasmussen's motion to deny the permit failed; Rasmussen, Rawlings in favor; all others opposed.

Motion by Mr. Taylor to approve the display at Town Center with stipulations that Mr. Greenburg had indicated as far as the size of the shells and the protection methods that the Fire Department indicated they could assist with, seconded by Mr. Gill.

Mr. Dunn asked Mr. Khoury if the stipulations were acceptable to him. Mr. Khoury said it was New Year's Eve and there were going to be lots of fireworks displayed. He said he was paying a lot of money for the display and wanted it nice, and he didn't want 2" shells. He thought people would understand since it was New Year's Eve. Customers were spending a lot of money at \$175 a person at the Hereford House and \$250 a person at Yahooz and he wanted a good fireworks display. He said he would prefer the 6" shells, but would use the 5" shells if required to.

Mr. Rasmussen asked the Fire Marshal if there was a fee for pumper trucks being at the location; Mr. Hunter said no, as it was generally considered a public service they provided.

Mr. Taylor's motion to approve (with 5' shells and all additional stipulations of record) carried; Rasmussen opposed, all others in favor.

11:10 P.M. On motion of Mr. Gill, seconded by Bussing, Council voted unanimously to extend the regular meeting 30 minutes.

7982 **Authorize interlocal agreement with Overland Park for traffic signal installation at 112th and Nall.** Estimated cost for each city including design and construction was \$20,177, not including easement costs. On motion of Rasmussen, seconded by Gill, Council unanimously approved the agreement.

8026 **Authorize interlocal agreement with Overland Park for the public improvement of Nall Ave., College Blvd. to 119th St. – widening of Nall from 4 to 6 lanes.** Leawood's total estimated share for the project, \$880,187.00. Motion by Mr. Rasmussen to approve the agreement, seconded by Mr. Taylor. Mayor Dunn asked Public Works Director Johnson about the \$90,000 for easements and if it was anticipated the City would need money for easements. Mr. Johnson said there were temporary easements at the drive entrances along the east side of Nall Avenue. He would try to work with property owners to donate the easements to the City. There was a much larger easement at the corner of College and Nall. There would be a retaining wall because of the six lanes. There was a possibility the City might have to pay for some.

Mr. Rasmussen's motion carried; Gill opposed, all others in favor. Mr. Gill felt Leawood was being asked to pay a disproportionate share of the cost considering the source of the need.

8160 **Authorize interlocal agreement with Johnson County and Overland Park for the public improvement of Nall Ave. from I-435 to 119th St. (for C.A.R.S. funding).** The County to provide funding in the amount of \$1,800,000.00 in 2000. On motion by Rasmussen, seconded by Taylor, Council unanimously approved the agreement.

8185 **Resolution No. 1495, attached as part of the record, establishing 2000 fee schedule for fees not specifically provided for in the Leawood City Code.** Motion by Mr. Rasmussen to adopt the resolution, seconded by Taylor. Mayor Dunn asked Chief

Mitchell about the tremendous increase in fees for false alarms. He said that Leawood was at mid-range in the area and was fair about it, being less than some and higher than others. False alarm calls were almost 25% of dispatch calls and two officers were sent to every alarm for officer safety reasons.

Building Official Sam Maupin wanted to modify some fees relating to land disturbance permits. There were time limits placed on land disturbance permit fees. After talking with the City Attorney, Director of Public Works and City Administrator, the time references should be deleted and there should be a fee for each type of land disturbance permit. Mr. Rasmussen said the time frame was a unanimous recommendation of the Stormwater Committee. Mr. Maupin said that once a project was developed, the City would get the necessary permit fees for the disturbed land and there would be a \$50 charge for each additional lot developed. There were other requirements. He said there were provisions in the proposed stormwater ordinance, and if a builder/developer disturbed the ground and didn't do his job, the permit could be revoked.

The resolution was unanimously adopted.

Ordinance No. 1836C repealing Section 9-118 of the Code of the City of Leawood relating to a municipal court fee. On motion by Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

8657

Ordinance No. 1837C amending Section I-208 of the Code of the City of Leawood relating to compensation for the Governing Body. Mr. Gill moved for denial, seconded by Bussing. Mr. Gill said there appeared to be an increase of \$200 a year over the current level. He said the Council had been looking for ways to conserve City revenues, and while \$200 times eight was not a significant sum of money, he thought the statement that they were looking for ways to conserve resources should start at home.

Mr. Dunn said that the increase was not to increase compensation, but was to allow Councilmembers to be able to participate in KPERS retirement. Obviously an increase of \$16 a month was not for the purpose of increasing compensation. He thought they were all in agreement during the budget process. Mr. Rasmussen agreed with Mr. Dunn.

Mr. Gill said he understood those who voted in favor of it, as it was a legitimate reason. While he wouldn't vote for a motion to increase compensation, he would withdraw his motion to deny. Mr. Bussing withdrew his second.

On motion by Dunn, seconded by Rasmussen, Council passed the ordinance on roll call vote; Gill, Bussing opposed; all others (5) in favor.

8968

Ordinance No. 1838 accepting a permanent storm sewer easement for Ambassador Corporate Manor project. Motion to pass the ordinance by Mr. Rasmussen, seconded by Taylor. Mr. Johnson said the easement was dedicated by the property owner for the construction of a public storm sewer system to be maintained by the City. Ordinance passed unanimously on roll call vote.

Schedule work session in January for goal setting. Mayor Dunn said the work session would be scheduled at the January 3rd Council meeting.

9136 **OTHER BUSINESS.** Discussion regarding the reactivated Contract Review Committee. Mr. Rasmussen referred to a staff memo distributed to Councilmembers. As the designated chairperson, he asked for Council's approval of or changes to the information in the memo about the Committee, including the mission statement and objective of the Committee. Mr. Dunn would be an ex officio member; Mr. Taylor would be vice chairman. Mayor Dunn said she understood the Committee would draft a generic design/build contract for the City and then examine it for possible application for the proposed public works facility,

9280 **END OF TAPE**

Tape No. 473

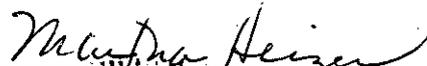
to study pros and cons of the concept for the facility, as well as an understanding of administering the process. Mr. Rasmussen reviewed preparation for the Committee's first meeting which was outlined in staff's memo. He said the first meeting would be January 5th. Motion by Mr. Dunn to approve the information in staff memo with explanations, seconded by Mr. Taylor. Motion carried unanimously.

EXECUTIVE SESSION. On motion of Taylor, seconded by Rawlings, Council voted unanimously to convene in executive session for a period not to exceed 15 minutes to discuss a personnel matter and a matter under attorney/client privilege.

11:40 P.M. Council convened in executive session, same members present, and returned to regular session at 12:20 A.M., same members present. Councilmember Dunn moved that the current employee agreement for the City Administrator would terminate on December 31, 1999, and Council would begin immediate negotiations to draft a new employee agreement. Motion seconded by Taylor and carried unanimously.

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

Minutes prepared by court reporter Kay Elder.


Martha Heizer, City Clerk

