

Regular Meeting

THE LEAWOOD CITY COUNCIL

January 17, 2000

Minutes Summary

Audio Tape No. 476

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 17, 2000. 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; 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 A. Bennett, City Attorney.

PLEDGE OF ALLEGIANCE – led by Boy Scout Troop 282.

APPROVAL OF AGENDA

The agenda was approved unanimously on motion of Bussing, seconded by Rawlings, after the addition of 1) 2 more topics, land acquisition and litigation, for the executive session to be scheduled at the end of the meeting, 2) the scheduling of a work session to discuss stormwater projects, and 3) a discussion of the final plat for The Woods Villas at 114th & Roe Ave.

CITIZEN COMMENTS. Gordon Thomas, 10516 Mohawk Lane, said it seemed to him that the general public never knew when City property or equipment declared as surplus by the Council would be auctioned, or exactly what the equipment was. He was told by Mr. Rawlings that the equipment on the consent agenda was equipment from the Public Works Department. Mr. Taylor said that surplus property was published in newspapers and other documents that would give the public an opportunity to bid on the items. Mayor Dunn said that Mr. Thomas had been before the Council in the past regarding surplus property and told him if he wanted to be noticed when there was surplus property, he could fill out the proper paperwork at City Hall.

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

1. Minutes of the December 20, 1999 Council meeting;
2. Ad hoc Contract Review Committee report (minutes) on their January 5, 2000

- meeting;
3. Historic Commission report (minutes) on their December 14, 1999 meeting;
 4. Departmental reports;
 5. Purchase of capital equipment approved for the 2000 budget for the Fire Department totalling \$47,360.00;
 6. Assignments to the Public Works Committee – 1) to review agreements between the Water District and the City and the Wastewater District and the City due to the City's new right-of-way ordinance, and 2) to select a consultant for the design of stormwater project IC-04-39, Indian Creek Bank Stabilization;
 7. Resolution No. 1496, attached as part of the record, to permit the serving of alcoholic liquor on the main floor of City Hall on February 5th during intermission of the Kansas City Brass performance sponsored by the Arts Council.

Purchase of exercise equipment for the Police Department. Mr. Taylor pointed out that Parks and Recreation had opened an exercise room at City Hall and Public Works had free weights available, and an exercise area was proposed for the new Public Works facility. He said there was an exercise room at the Police Department, and at each of the two fire stations.

Julie Hakan explained that employees at City Hall hadn't had access to fitness equipment before, although the Police and Fire Departments had made their's available to them.

Mr. Taylor agreed with the need for the Police and Fire Departments to have exercise rooms. He asked if there was a policy that gave employees that perk. Mrs. Hakan said the equipment was donated for employee use at City Hall and it was after the donation of that equipment that they put together a statement, basically a hold harmless for employees to sign. She said they never had a policy or equipment before now available to City employees.

Mr. Taylor inquired about the times employees could use the exercise equipment. She said during non-working hours. Mr. Taylor asked if the exercise rooms were being used by the majority and she said it was hard to assess because it had only been a month since the equipment had been available at City Hall. Mr. Taylor asked Mrs. Hakan for a human resources perspective as to what the benefits of having the equipment were. She felt that anytime they could help employees get into better shape, it could, down the road, have a positive impact on health care costs and other things. As to the value of having it housed at City Hall, those decisions were made by several people who thought that benefit was appropriate.

Mr. Taylor asked if it would be appropriate, because they had three and possibly four exercise areas at City facilities, other than Police and Fire, to look into whether or not the City should make some program in the private sector available for employees. Mrs. Hakan said in prior years they had talked with organizations such as Health Plus and Bally's and tried to negotiate opportunities for employees to join and have memberships at reduced costs, but the numbers

weren't there and those organizations didn't show an interest in doing any kind of business with the City.

Mr. Taylor said he wanted to see an evaluation of what the City was talking about spending for not only the space of City property, but also the equipment and what benefits the City was providing for the employees as a perk, excluding Police and Fire. Mrs. Hakan said there was only one location, excluding Police and Fire, where there was exercise equipment, per se, and that was in the Community Center at City Hall.

Mayor Dunn suggested this be brought up when they talked about programming for the proposed Public Works facility. Mr. Taylor agreed. Mrs. Hakan said she would be happy to do an analysis for City Hall, although it might take some time to determine the benefits derived.

Mr. Dunn pointed out this was one Councilmember's opinion and there had not been a work session or a budgetary discussion and he wanted Mrs. Hakan to understand she was not being directed by Council to do anything specific.

Mr. Taylor said he wasn't questioning the budget of the expenditure on this particular agenda. He was expressing his interest in finding out why the City was doing this in other departments.

Mr. Dunn said it would be more appropriate to see if the Council as a whole wanted the matter looked into rather than directing that individually at this meeting.

On motion of Taylor, seconded by Story, Council unanimously approved the purchase of exercise equipment for the Police Department - a commercial quality treadmill, an elliptical trainer, recumbent bike, totalling \$11,290.

Declaration of surplus property no longer needed by the Public Works Department. Mr. Taylor asked Mr. Johnson what he was going to purchase to replace the 1989 Chevrolet 2500 pickup truck with 101,000 miles on it. Mr. Johnson said he would have to look at this year's capital improvement budget, but probably a one-ton truck, costing approximately \$20,000. It would be a flatbed truck with a salt spreader on the back and equipped for a snow blade. Mr. Taylor said the City had a complete service shop and asked if 101,000 miles was considered to be that much mileage, regardless of the age of the truck. Mr. Johnson said one of the things they looked at during the budget session for 2000 was the criteria that their fleet maintenance supervisor went through - how long to keep a vehicle, how many miles you should have on a vehicle and at what point did it become economical to trade it off. With the exception of police cars and dump trucks, once vehicles spent more time in the shop for repairs than not, generally 10 years or 100,000 miles, you could still get a decent auction price for the vehicle. On motion of Taylor, seconded by Story, Council unanimously approved the declaration of surplus property - 1 1989 Chevrolet 2500 pickup truck (VIN 7140), 1 tire machine, 1 wheel balancer.

Authorize agreement for training services. Mr. Taylor asked Mrs. Hakan if it was an in-house training program. She said it was and would involve all management, supervisors and department heads, with a total of 69 employees

participating. She said it was designed by her and Georgia Nesselrode from the Mid-America Regional Council Government Training Institute. Mrs. Hakan said she approached MARC, wanting to develop an in-house management supervisory program performance series, and that was how it evolved. She said it was really important for all supervisors to constantly be updated with regard to training, as there were specific things they needed to do when dealing with employees, whether it be performance appraisals, compliance with Federal and State mandates and laws, how to handle employee situations, whether it be family medical leave or how to resolve conflicts and how to deal with behavioral issues. The program was designed to help provide tools for all supervisors to help them be the best managers they could be.

Mr. Taylor asked her to expand on "difficult employees." She said that could mean an employee who had an absentee problem to an employee who was insubordinate or belligerent, to an employee who might not appropriately deal with his/her peers, causing a hostile work environment. She said it could be an employee who wasn't a good performer and the more you counseled that employee, he/she didn't respond. Mr. Taylor asked if the program would alert supervisors to make recommendations to Human Resources when employees weren't responding, perhaps causing termination. Mrs. Hakan said it would enhance their ability to recognize that and, hopefully, deal with those employees much more effectively and more quickly than they had in the past. On motion of Taylor, seconded by Dunn, Council unanimously approved the agreement with MARC in the amount of \$13,590.

MAYOR'S REPORT. Mayor Dunn attended a focus group for Johnson County Mayors sponsored by the Arts and Humanity Association of Johnson County to examine the sustainability of cultural arts activities and programs throughout the metro area. She left there realizing that the Leawood Arts Council was highly respected, not just in Johnson County, but throughout the metro area. Their fund-raising skills were well recognized and envied.

Last Friday, Mrs. Dunn attended the Leawood Stage Company's fund-raiser in anticipation of their production of "Over the Rainbow" that would take place July 13 through July 16.

Mayor Dunn congratulated and thanked the Leawood police officers who received the Silver Award for Valor from KMBC-TV Channel 9, and the Metropolitan Chiefs and Sheriffs Association. The award was presented to Corporal Doug Heaton and Officers Kirk Yoder, Kevin Cauley and Steven Humphrey for pulling a youth from a burning car that had crashed.

OLD BUSINESS

Recommendation from the Public Works Committee regarding programming for the proposed Public Works facility. Mr. Dunn, Chairman of the Public Works Committee, said the Committee was happy to recommend to the City Council a program for the development of the new Public Works facility. Attached to staff's memo was an outline of the specific square footage figures of the various items included within the facility. Mr. Dunn pointed out that it reduced the square footage that was originally

included by more than 8,000 square feet, which should reduce the cost significantly. They also had a plan in place that included some fairly significant changes in the site preparation costs, a reduction in those costs, as well. Mr. Dunn said, realistically, what they were looking at was a total reduction in the cost somewhere in the range of \$1.5 million to possibly \$2 million. Motion by Mr. Dunn to approve the Committee's recommendation to adopt the program for building the Public Works facility, seconded by Mr. Rawlings.

Mr. Gill was confused by the motion versus the materials in the Council packet. In staff's memo, the action the Council was requested to take was to proceed with the design-build process, initiating RFQ and RFP to design-build firms. He said the memo requested that staff prepare an RFQ, which was a request for qualifications, which was a preliminary step to actually approving the Public Works facility. He said the memo just requested that Council start the process of getting a request for proposal and a request for qualifications, but that wouldn't commit them to a Public Works facility until they saw the responses to the request for proposal and could evaluate. He asked what the intent was.

Mr. Dunn said one of the ways they hoped to save money on the Public Works facility was by proceeding on the design-build basis. As he understood the process, they had to have the square footage in place before the construction manager could put together the bid package for the request for proposal from design-build contractors, which was the program for the facility he moved that Council adopt.

Mr. Gill asked if Council was approving a set of specs, not actually approving going forward with the construction. Mr. Dunn said Council was approving a set of specs that would be utilized in the process of hiring a construction manager and, ultimately, a design-build contractor, but before any final contract was approved, it would come before the Council for consideration.

Mr. Gill said he was familiar with design-build contracts and he typically associated them with projects where time was really of the essence. In other words, we'd design it and build it as we went along, as opposed to a design bid contract where we got specs and design and put that design out for a bid. Mayor Dunn said he was thinking of fast track construction.

Mr. Taylor said the RFQ would qualify four or five qualified design builders and each would then be given an RFP which was a proposal. Their proposal would include a preliminary design and a cost - a lump sum amount for that design. Public Works would recommend to the City Council a project design and cost. Mayor Dunn asked if the construction manager part of it was an optional part or was it part of the design-build contract. Mr. Taylor said it was part of the design-build. The particular design-build procedure required some expertise the City didn't necessarily have on staff. The proposal was to select an individual or firm to work with staff to develop a unit that would proceed with developing a design package, site plan and outline specification, that would follow the square footage criteria outlined, and that would be the proposal sent out to the contractors to which they would respond in a design-build proposal. During the construction period, the individual or firm would report to the Public Works Committee any actions or change orders, payment requests, etc., that would eventually go to the City Council.

Mr. Dunn said the reason they were approaching the design-build that way was that it had been the experience of a number of municipalities and other governmental entities that they could achieve significant savings in design by going design-build. Those projects tended to be real dollar heavy in the design aspect, and if the builder of the project was also responsible for the design, then they tended to keep the cost down. He said that was where they hoped to achieve significant savings, as well.

Motion to approve the recommendation from the Public Works Committee regarding the program and proceeding with the design-build process initiating the RFQ and RFP to design-build firms and a construction manager carried unanimously.

Ordinance No. 1845C amending Articles 1, 1A, and 2 of Chapter 13 of the Leawood City Code relating to streets and sidewalks. Motion by Taylor, seconded by Dunn to pass the ordinance. Mr. Gill had questions about four of the sections. Regarding 13-105, cutting, excavating or tunneling of public right-of-way, he asked if the public right-of-way included the distance between the sidewalk and the street. Mr. Johnson said generally sidewalks sat one foot inside of that right-of-way. Mr. Gill said the grassy area between the sidewalk and curb was public right-of-way and Mr. Johnson agreed. Mr. Gill asked if lawn sprinklers were permitted under 13-105. Mr. Johnson said for installation of a new irrigation system you would have to have a permit. For repairs of an existing irrigation system, a permit wouldn't be required. In the case of new systems, staff was trying to make sure the main lines were not installed along the back of the curbs. The main line should be run 2-3 feet off the curb. Mr. Johnson said they spent \$10,000 a year of their maintenance budget making repairs to irrigation systems for private property owners. He said you had to get a permit to do work in a right-of-way. Mr. Gill asked if those permits would be freely given so people could keep that part of their lawn near to the curb green. Mr. Johnson said yes.

Regarding 13-107, commercial use of public right-of-way, Mr. Gill asked if the strip of grass between the sidewalk and curb precluded garage sale signs. Mr. Johnson said what Mr. Gill was reading was already part of the street ordinance. They deleted items specific to the right-of-way ordinance as far as excavation within the right-of-way and renumbered sections. Mr. Johnson said those ordinances that had to deal specifically with construction standards, excavation within public right-of-way, were modified or deleted, but the ordinance Mr. Gill was referring to was a current street ordinance. Mr. Garofano said there was another ordinance that referred to signs which prohibited any kind of signs from the public right-of-way, five feet back from the curb. Mr. Garofano also said the Planning Department would grant those types of permits. Mr. Gill said it seemed to him that while it was appropriate to come to the Governing Body and ask for permission, he thought an additional approval mechanism to accommodate other requests might be in order.

Regarding 13-108, dangerous objects in public right-of-way, Mr. Gill asked about recycling containers filled with glass put at the curb. Mr. Johnson said 13-107 to 13-110 had been renumbered; they used to be 13-217 to 13-220.

Regarding 13-109, harmful products in public right-of-way, Mr. Gill asked about fertilizer a lawn service placed on grass between the sidewalk and street and if that was in violation of the ordinance. Mr. Johnson said the EPA regulated that and he didn't think

lawn services were allowed to use products detrimental to the environment. He said staff didn't change anything, this was current in the City ordinance and street ordinance.

Mr. Gill asked if the sections really made sense as worded or should staff invest additional time and effort to say what they really meant. Mr. Johnson said they needed to approve the ordinance under consideration because it was for the right-of-way ordinance that had already been passed. If the Council wanted to go back and make changes to specific things, those changes could be brought back before them, but even if the changes weren't approved, what was before the Council was already the City ordinance. Mr. Johnson said the ordinance under consideration was to clean up the street ordinance and incorporate the right-of-way ordinance.

Mr. Taylor asked if it was imperative that Council approve the ordinance tonight. Mr. Johnson said that the right-of-way ordinance went into effect January 1, 2000. He said any work done in the right-of-way, construction projects all the way to utilities, would be affected by the ordinance under consideration.

Mr. Taylor amended his motion to approve the incorporation of the right-of-way ordinance, but at the same time, instruct staff to refine some of the language as addressed by Mr. Gill. He also requested that staff report back within the next 30 days. Mayor Dunn asked Mr. Dunn if that was agreeable to him, since he had seconded the main motion; he said it was not. The amended motion died for lack of a second.

The ordinance was passed unanimously on roll call vote.

Change Order No. 1 to the contract with L.G. Barcus and Sons for “pedestrian bridges over Tomahawk Creek” project - \$44,000 to remove a low water bridge near Mission Rd. and construction of revised pathways. Mr. Dunn asked Mr. Johnson if the change order was for work not included in the original contract. Mr. Johnson said yes and that it was to remove the last low water bridge in the park system. Mr. Dunn asked if staff just didn't intend to remove the bridge when the contract was originally done. Mr. Johnson said the bridge wasn't addressed in the original contract. Mr. Dunn moved for approval, seconded by Mr. Bussing.

Mr. Taylor asked if there were two bridges and Mr. Johnson said no. He said it was the bridge over Indian Creek, just west of the bridge underneath I-435 and just south of Lee Boulevard into the City Park. Mr. Taylor said there was over a 30% increase in cost in a change order. Mr. Johnson said as far as percentage of cost compared to the original project cost, yes. Mr. Taylor said a site plan, a survey of existing conditions, could have recognized the situation so staff would have had a correct proposal, \$40,000 closer than now. Mr. Johnson said when staff did the original bid to replace the two low water crossings, one north of 119th and one south of College, there was no anticipation of removing the one under consideration. It wasn't until they had a contractor and it was in the 2000 budget to remove a third low water crossing and replace it with a bridge in the City Park, that staff decided to make the change. He said due to the improvements that were done on the bike trail underneath the bridge on Indian Creek, it gave them the opportunity to eliminate this last low water crossing.

Mayor Dunn said the removal was anticipated for a future date and this was an expanded scope of the former project. Mr. Johnson said they didn't feel it was necessary to hire a consultant to come in and do a set of plans and specs to remove the bridge and asphalt and to pave and tie it into the sidewalk system along Mission Road.

Mr. Johnson said when staff first put out the bid for the two low water crossings at 119th and College, there wasn't a thought from Public Works or Parks and Recreation to remove the third low water crossing. It wasn't until they got into the project and with funding from other than the general fund to replace the low water crossing in City Park with a bridge, that they realized this was the last low water crossing within the City. They thought it was prudent to do a change order with L.G. Barcus to remove the bridge.

Mayor Dunn asked Mr. Johnson if he thought he was saving dollars tacking it onto the current contract. Mr. Johnson said yes. Mr. Johnson said if they had to go out and do a design and bid it out, the City would spend \$4,000 to \$5,000 to get a set of plans and specs put together for removal of a structure. He said they talked with Overland Park and another contractor to get an idea of cost and they felt Barcus' bid was at or less than if they went out for a public bid. Mayor Dunn said she was very pleased that the low water crossings were being eliminated as they were unsightly and trapped bottles and trash. Mr. Johnson said one thing they looked at last year was that over 500 man-hours were spent on two low water crossings and they spent \$5,000 (just labor costs, not including materials). In 1993 they spent 1800 man-hours in cleaning the low water crossings.

Mr. Dunn's motion to approve the change order carried unanimously.

NEW BUSINESS

Approval of Appropriation Ordinances No. 880A. On motion of Gill, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

Approval of Appropriation Ordinance No. 881. On motion of Gill, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

Direct preparation of an ordinance calling a referendum for a 1/8-cent sales tax.

Mr. Dunn moved to direct staff to prepare an ordinance, seconded by Rawlings. The Council would consider the ordinance at the February 7th Council meeting. Mr. Gill said he would support the ordinance, but there were several things he wanted available at the time Council considered it: 1) an outline of the needs to which the funds would be applied, 2) an analysis of existing revenue and projected new revenue that the tax would generate so they could look at what the City's needs were, how the City was currently paying for them, and what the new sources would be and how the City would use them, and 3) an analysis of comparable sales tax rates in neighboring communities, in particular Overland Park and Kansas City. To the extent they were patterning the ballot issue language that Overland Park had used, he noted that the Overland Park ballot was totally silent on stormwater expenditures and spoke only to street expenditures and it would be his intent that if the Council went forward with such a sales tax, that it would be utilized for both street and non-SMAC stormwater projects.

Mr. Bold thought this was an important step forward. He said the Council, over the last several budget sessions, had discovered an increase and a large need for infrastructure repair and maintenance and they had actually been able to save taxpayers money by spending a small amount of money now in order to prevent large repairs down the road. It was his hope they could get the sales tax into place to do more of those kinds of things.

Mayor Dunn asked if Mr. Dunn and Mr. Rawlings would incorporate the directive for the additional information requested by Mr. Gill into the motion. Both agreed.

Mr. Dunn felt it was important that everyone understood that the Governing Body and staff had done a wonderful job over the most recent budgets in allocating a lot more resources toward maintenance of streets and stormwater. He said for the first time, the City had a program in place that put money in the budget on a yearly basis to deal with non-SMAC stormwater projects. He said the City was doing what it could but was still getting behind and that was the reason that the 1/8-cent sales tax was being proposed. It was another source of revenue that would help deal with very immediate infrastructure costs.

Mayor Dunn said Council had discussed this at their goal setting sessions on many occasions. At the end of a goal setting, when Council kept talking about acceleration of street rehabilitation and stormwater solutions, the topic came up then and it was quite timely. As a group they decided to bring it to a public session for discussion for possible direction of the drafting of an ordinance. She thought the timing couldn't have been better for it to be clearer in their minds about the need for possible additional revenue for some of the problems.

Council unanimously passed the motion for preparation of an ordinance calling a referendum for a 1/8-cent sales tax with Mr. Gill's request for additional information.

Ordinance granting Axon Telecom the right to operate facilities – 1st reading.

Christopher Smith, a representative for Axon Telecom, said Axon proposed to build an underground conduit system for the joint use of competitive telecommunications providers. The providers were fiber optic based providers and would be providing a local telephone service to the community, as well as other communities in the Kansas City area. Mr. Smith said the benefits of the project were those inherent with increased competition, specifically, in telecommunications, those being a lower cost for telephone service, as well as an increase in technology and the number of service offerings to the community. He said what they had adopted to do was to build an economy as a scale project that encouraged multi-competitive telecommunications providers to come into the area, as well as the other areas in Kansas City. They were proposing, within less than two miles of a community building, an underground system through the public rights-of-way.

Bill Ludwig said he looked forward to providing a service to the community that, hopefully, would bring additional telecom people to the community to provide services that couldn't normally be brought here through economy as a scale. He gave a presentation with exhibit. Axon's service would help the community manage the right-of-way. He said it was vital to new development of communications to go with an infrastructure that would house more than one company and Axon's mechanism would allow up to 16 competitive access providers to come in and provide service to the community.

Mr. Bold said when Council had talked about rights-of-way before, one of the issues that the Public Works Department faced was if a car hit a pole at 119th and Roe and the City had to call the cable company and the telephone company and all the different providers. He wanted to know if the City could just call Axon and they would call the people inside their conduit. Mr. Ludwig said they wouldn't be calling them. He

said people who bought the service would legally be authorized to do business in the community. The Public Works Director would have the names to contact. He said after the interducts were sold, they wouldn't be a part of the contract for company A, B or C; they would be responsible for their own interducts. Mr. Bold said it would be an added convenience to the City if Axon could do so. Mr. Ludwig said if you had a 432 count fiber in one of the conduits, that company didn't want him being responsible for their facilities.

Mr. Smith said this was a development project and they built the asset and sold off the pieces of the asset. At the end of the day, they shouldn't hold ownership of the asset. Each of the telephone companies would own the assets individually. It would be in one package and, fortunately, or unfortunately, if it was disrupted in some way, the companies were going to want to be contacted individually. Mr. Bold asked if they were leasing or selling and Mr. Smith said selling.

Mr. Dunn said that what Axon was saying was that if the City didn't approve Axon's service, we'd have 16 different individual companies coming to the City, wanting to put their own conduits in and they might not do it in as pristine a manner as Axon would. So, this guaranteed the City had a conduit for at least 16 different fiber optic companies underground. Mr. Ludwig said they would anticipate a company buying more than one. Mr. Dunn asked how many companies could this possibly serve and Mr. Smith said they had targeted at this phase of the project more than four, potentially six, and as the project developed and construction started, historically, they actually came out of the woodwork. The cost incentives drove some of the smaller customers who wouldn't be able to get into the business like this, to come forward and pick up one of the interducts rather than build a structure themselves.

Mr. Gill said it was very exciting having lots of options in businesses and homes. He said right now Southwestern Bell had a franchise and paid a fee for having cable in City right-of-way and that fee was a 3-tiered structure. There was a minimum fee of X dollars, a linear foot fee of something per linear foot, and then there was a third fee which was a percentage of business transacted over the lines and, invariably, the third fee subsumed the first two. Mr. Gill said Council had a request from another provider who wanted to run lines through the City but not actually connect any businesses in Leawood at the time. It was difficult to determine which level, one, two or three, should be assessed to that company because they weren't doing any business in Leawood. Assuming Leawood subjected the company to the same fee structure the incumbent was subjected to, and whatever structure the City had needed to be uniformly applied, he asked them how they would differentiate themselves from the situation of the pass-through company that was going through the City via the rights-of-way but not hooking anybody up. Mr. Smith said the distinction they wanted to stress was the fact that they were not the telephone company actually providing the service or going through the community to provide services on either end to someone else. In fact, they were building the capital asset that would allow those companies to provide service within Leawood or to go through Leawood from which the City would, in turn, collect revenue. Mr. Gill wanted to make sure this was consistent with the City's franchise agreement so the City didn't find itself in the position of having to reprice existing franchise agreements based on parity pricing provisions in agreements which said "you can't charge me anymore than you are charging the best priced person that we have."

Mr. Gill asked when Council was trying to compute the third fee, which was based upon utilization in Leawood, how did they track what that utilization was? Mr. Garofano said that had to do with the franchise granted to each company that had a fiber through the conduit. Obviously, the product Axon would be providing was not an end product; it was literally a conduit to allow another communications company to put their infrastructure in. Mr. Gill asked how the City would know when someone was pulling their fiber through the conduit. Mr. Ludwig said there was a paragraph in the proposed ordinance that said Axon couldn't transfer deed or title to the interducts to a second or third company until they were properly authorized to do business in the City. Mayor Dunn said they had to come to the City in order to be granted that ability so they would pay the fee at that time and the City would know about it.

Mr. Bold related a situation where a cellular company came and said they wanted to build a cell tower. One of 16 advantages of letting them build the tower was that they had room to co-locate three other providers on the tower. The City Council thought that was a great idea and by building the one tower, the City was going to reduce its need for other towers, as there would be co-location. Along came telecom provider #2 and he said he wanted to locate on the tower but, unfortunately, telecom company #1, who erected the tower, said "we have the only tower in Leawood and nobody else can get one built, so we are going to charge you this large amount of money to locate on our tower." The second company then wanted to build another tower because it was cheaper for them to build another tower than pay the exorbitant fee. Mr. Bold asked if that situation could happen in this case. Mr. Ludwig said the situation Mr. Bold set up with the tower people would happen as they were in the business of using the tower. Axon's system was a conduit system and their motivation to not sell this would only be if they had fiber in there and were providing service to customers. He said if they didn't sell this, they wouldn't have any revenue coming in to repay the debt. So they were motivated to sell because there wouldn't be any way to generate revenue off their own investment unless they sold it. He said in the tower situation, they had their own transmitters and receivers and were motivated to keep other people out. He said Axon was motivated to bring people in because they didn't actually provide the telecommunication service to the end customer.

Mr. Bold said Axon wouldn't have to sell all 16 to be profitable, so there would come a point where they had covered their costs. He said there were a limited number of wires that could run through that area. He asked if the City was protected in any way from Axon charging exorbitant rates and the City ending up having to run other wires. Mr. Smith said what they were selling to their customers was the fact they were building it ahead of them and pricing at a low enough rate that they had an incentive to come into it. He said the weak point of their business model was that potential customers did have other options. They could choose a different street to go down, they could choose a different form of right-of-way and they could acquire someone else. Based on those other options, Axon had to be price competitive in order to compete with the other options.

Mayor Dunn asked if the City had this in place, could the Governing Body not allow someone wanting to put something overhead, if there was the ability to go underground, to do so; if there was this option, could they not require that? Ms. Bennett said she had discussed that with Mr. Horner and she would rather have him come to the

next meeting and talk to Council about it. She felt it was an option that might carry other considerations with it. Ms. Bennett said Mr. Gill's comments summarized Mr. Rasmussen's comments. Mr. Rasmussen let her know he was concerned about the 1% fee that was in the ordinance under consideration because of some previous ordinances where they had the \$1,000 a month flat fee plus the \$250 per square foot, or the greater of \$250 per square foot, or the percentage of revenues. She said they discussed the fact that this was a little bit different, as Axon wasn't actually a telecommunications provider; they were providing a service to the telecommunications company and in some ways were actually doing the City a favor by tearing up the right-of-way once instead of six times. Axon might have some information about what they thought the 1% fee would generate as far as proposed revenues. They didn't have that information when Mr. Garofano and Mr. Horner met with them a couple of weeks ago, but they thought they might be able to bring something tonight. There certainly was a justification for treating these types of entities differently because they were a conduit-type of company.

Mr. Dunn said the reason this was an attractive option for people was, basically, other than the cost of the materials, it cost about the same to install all of these at once as it did to install one because you'd have to use that same piece of equipment that did the routing underground. Any individual provider that wanted to come in and do this would be looking at basically the same cost Axon incurred to put in the trunk line. He said Axon was going to be able to charge them a portion of what they paid to install this to put their lines in there. Mr. Ludwig said there was quite a bit of savings in multiple and that would allow some of the interducts to be sold to companies that could never afford to provide direct service. He said there was going to be a lot of upside for the City and corporate businesses within the City to have secure networks.

Mr. Dunn said the point was they could afford to offer this to individual carriers at significantly less than it would cost them to install it and still make money and that was why they would buy it from Axon. Mr. Ludwig said he didn't have figures, that there would be a negotiation between them and the parties. He said it could range year one from \$15,000 to \$100,000 in revenue to the City. Mr. Gill asked if Axon was a publicly traded company. He was told it was not. Mr. Ludwig said they had a Web page. He also said they did the same network very similar in Dallas and they would be entering a couple other large cities and they didn't have a problem issuing financial statements to the Council. They left Dallas and sold out to another company, Metro Media Fiber Network, out of White Plains, NY.

Mr. Smith said the project was continuous in that it was a 53-mile network throughout 13 municipalities in the Kansas City area. Nothing was constructed just yet, as they were at the bid stage. They would be bidding out to local contractors and construction was scheduled to start for the 53 miles, including the two miles through Leawood, sometime in March. Leawood was the last city they had appeared in front of, not last on their list, but just because of timing. Mr. Ludwig said their engineering staff had visited the City on several occasions with Mr. Johnson and the City's legal staff. Mayor Dunn asked if the ordinance had been passed by any cities. Mr. Ludwig said not this identical ordinance. Mr. Garofano said staff was taking a different approach than other cities had taken. Attorney Steve Horner had been in touch with Overland Park and Lenexa, and Leawood probably wasn't in agreement with the way they were going about

it; Mr. Horner felt it needed to come under the franchise statutes, so that was why staff was approaching it this way.

Mr. Dunn asked if Mr. Horner would be in attendance at the next meeting and was told he would be. Mr. Gill said he would be interested in knowing how the Dallas experience worked out and asked how Dallas dealt with the situation. Mr. Ludwig said Dallas gave them a right-of-way permit and there was no franchise issued in Dallas. They constructed it and sold off 16 interducts to different people and then sold the whole operation.

Ordinance No. 1846 conveying a deed, permanent drainage easement and temporary construction easement required for improvements to 151st St., Metcalf to Nall. Easements along the east side of Nall Ave. adjacent to Ironhorse golf course hole #14 to allow for the extension of the box culvert under Nall, the regrading and landscaping of the area adjacent to hole #14, and the widening of Nall. On motion of Bold, seconded by Taylor, Council unanimously passed the ordinance on roll call vote. Mr. Dunn was not seated for the vote.

Schedule executive session. On motion of Bold, 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, litigation, and land acquisition. Mr. Dunn was not seated for the vote.

Mr. Dunn returned to his seat.

Schedule work session to discuss stormwater projects. Mayor Dunn said another work session was needed regarding SMAC stormwater projects, increased costs. Motion by Taylor, seconded by Gill, to meet Tuesday, February 22nd, 5:30 P.M. Mayor Dunn said Mr. Johnson wanted to have someone from the County and someone from the projects themselves at the meeting. Mr. Johnson said there were two issues - one was to have Joel Riggs from the County or a written response from Mr. Riggs that would indicate how the County would want to proceed or what options the County had as far as their ability to fund \$3 million to \$4 million, which would be 75% of their share of the projects. Another issue would be to look at the issues of these types of projects that were several million dollars, and as a city, how we would want to go about funding the projects, save money up for a couple of years through the County and then do the projects, or bond the projects and enter into an agreement with the County that would pay us back a certain dollar amount over a number of years. The City had DB-18 that it gave back to the County in 1996 after it was estimated it would cost \$4 million to make the appropriate improvements.

Another issue would be DB-14 and DB-24 - which project would the City want to do first. Deciding how to fund the projects might lend some light on which project to do first. Mr. Johnson said he would have a consultant from each firm available to discuss each project and the cost options and the benefits and what was looked at to give a better idea of what was trying to be done on each of these stormwater projects.

Mr. Dunn said before the work session he wanted to see some kind of memorandum outlining what the Council's options were without asking for a

recommendation on the options. Mr. Dunn said the projects were running way over budget and the City didn't have money budgeted for its share and the County didn't have money budgeted for their share. Mr. Dunn wanted to have some outline they had for proceeding. Mr. Garofano said they could look at some historical data where they had outlined various options.

Mr. Taylor's motion carried unanimously.

OTHER BUSINESS. Discussion of the final plat for The Woods Villas, 114th & Roe Ave. Mr. Taylor said he became aware of the Plan Commission's actions last Tuesday regarding what he called private streets and, as he went through the highlighted summary of the minutes of both the Council and Plan Commission, they were indicated as private auto courts or driveways. Mrs. Binckley agreed. He noted that was done in December 1997. Mr. Taylor was concerned about Resolution 1401, stipulation #5, that said "all streets within the subdivision will be public; auto courts are not to be considered as private streets but private driveways." He had a problem understanding private driveways - were these streets or driveways being constructed as street systems, did they have curbs, did they have drainage patterns, or drop inlets? Was it part of the requirement that the developer provide that in those driveways? Mrs. Binckley said that was correct. In the December 1997 minutes, it was stated by Mr. Bold that they should be constructed to City standards and that was how they were constructed. Mr. Taylor said it was still a private street. Mr. Bold said it was not a private street, but a driveway. Mr. Taylor said a driveway didn't have curbs or drainage patterns, nor did it have drop inlets, that it wasn't a driveway. He said they used the term "driveway" as a driveway to a residence and this was far from being that.

Mr. Bussing said information on the matter wasn't in Council packets; why were they talking about it. He recognized Mr. Taylor's expertise in this area, but he had no idea what Mr. Taylor was talking about. Mayor Dunn said the matter wouldn't be on any future Council agenda. There was a memo in the Council packet explaining that for procedural reasons, final plats were only required to go to the Governing Body if they dedicated right-of-way, and since this plat didn't include right-of-way, it was only before the Plan Commission, which approved it last Tuesday. She said Mr. Taylor added it to the agenda and he was referring to minutes and information that Council didn't have in front of them.

Mayor Dunn said Council did approve the private drives or auto courts. Mr. Taylor felt they had dropped the ball on what the consensus of the Council was - to not have private streets. In his opinion, this was a private street and Council was going to find themselves in the same situation they had in other parts of the City regarding maintenance and other conditions that wouldn't be upheld by the homes associations. He brought this to Council's attention and if Council wanted to discuss it further, they could.

Mayor Dunn said that when Council approved the second phase of Hallbrook Villas, those private streets, they did that after they had determined they would never again have private streets. There was money escrowed into an account for future maintenance of those private streets and she assumed there would be some provisions with the builders and others to have some sort of mechanism so we wouldn't be faced with angry homeowners in the future.

Mr. Taylor said they also had the same situation occur when developer John Moffit used private drives as a designation for driveways and he felt there should be a definite definition of what private drives were, what private streets were, and what public streets were as part of Council's guidelines for approval processes. Mayor Dunn said there was a description of tree loss that would be imminent with the right-of-way dedication that a private street would have warranted and she didn't think of it as a street. Mr. Taylor said they had to think of it as a street in its conveyance of curbs, drainage systems or drop inlets. Mayor Dunn said it was being built to public standard. Mr. Taylor said it was still draining into public sewer system or stormwater so it was part of our design standards.

Mr. Taylor made a motion to ask staff to present to the Plan Commission and then to the Council definitions of private streets, private driveways and public streets within 60 days, seconded by Gill. Mr. Taylor's motion failed; Taylor, Gill and Story in favor; Bold, Dunn, Bussing and Rawlings opposed.

Mr. Dunn said the only reason he voted no was because he didn't understand what Council was doing and he would talk more about it with Mr. Taylor.

9:30 P.M. Council convened in executive session and returned to regular session at 10:15 P.M. No action was taken. There being no further business before the Council, the meeting was adjourned.

Minutes prepared by court reporter Kay Elder.

Martha Heizer, City Clerk