

Regular Meeting

THE LEAWOOD CITY COUNCIL

February 22, 2000

Minutes Summary

Audio Tape No. 478

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 22, 2000. Mayor Peggy J. Dunn presided.

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

Staff present: Richard J. Garofano, City Administrator; Julie Hakan, Human Resources Director; Sid Mitchell, Chief of Police; Joe Johnson, Public Works Director; Ben C. Florance, Fire Chief; Sarah Hilton, Administrative Services Manager; Diane Binckley, Planning Services Administrator; Chris Claxton, Director of Parks & Recreation; Martha Heizer, City Clerk; and Patricia A. Bennett, City Attorney.

PLEDGE OF ALLEGIANCE – led by Mayor Dunn.

APPROVAL OF AGENDA. Approved unanimously on motion of Dunn, seconded by Story, after the addition of 2 additional attorney-client privilege matters for the executive session to be scheduled at the end of the meeting, and update on Oxford Schoolhouse under Old Business changed to read update on Leawood Historic Commission.

CITIZEN COMMENTS. None.

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

1. Minutes of the February 7, 2000 Council meeting;
2. Ad hoc Contract Review Committee report (minutes) on their February 9, 2000 meeting;
3. Arts Council report (minutes) on their January 25, 2000 meeting;
4. Parks & Recreation Advisory Board report (minutes) on their January 11, 2000 meeting;
5. Historic Commission report (minutes) on their January 11, 2000 meeting;
6. Departmental reports;
7. Purchase of police patrol cars – 7 2000 Ford Crown Victoria Police Interceptor vehicles totalling \$148,363.65.

PLAN COMMISSION

Resolution No. 1498, attached as part of the record, approving the preliminary site plan and preliminary plat for the Hallbrook maintenance facility located at approximately 111th Terrace & Overbrook. Adopted unanimously on motion of Rasmussen, seconded by Taylor.

MAYOR'S REPORT

Resolution concerning the issue of sales tax on Internet commerce. Mayor Dunn said the League of Kansas Municipalities requested that the Council take a stand on electronic commerce and urge the Advisory Commission on Electronic Commerce to establish and collect legally due sales and use taxes on goods and services sold. She said Council had discussed the matter before and she felt it appropriate to bring the matter before them to get their approval. The League was requesting equal treatment of all sales transactions whether they were done in person, on the telephone, by mail, or on the Internet, so all would realize the same benefit from tax dollars.

Mr. Gill said that over two years ago, similar legislation was brought to Council's attention by the League and he commended the League. However, he was opposed to the resolution. He felt there were a number of issues surrounding this very important national issue, one of which was the issue of privacy dealing with how one was going to know or track sales over the Internet. He wasn't convinced that stores were going to close and quit making retail sales, but, certainly, there would be some impact. He needed a lot more information than he had before he would send a directive to representatives in Congress to impose a tax burden on interstate Internet transactions.

Mayor Dunn said Council had seen some information in the past provided by the City's Director of Information Services about e-commerce and the statistics were alarming. She felt the resolution was an effort to be proactive and it was going to be sent to the Advisory Commission.

Mr. Rasmussen attended a seminar at the recent National League of Cities Conference. He said that the chief financial officer of Walmart was on the panel. Mr. Rasmussen felt that person laid to rest the question of collectability which Mr. Gill had a concern about. He said Walmart, with their computer technology today, was able to compute the sales taxes from the smallest place in Alabama to the largest one in California. He said the mechanics were not a problem. He moved to adopt the resolution, feeling that the City needed the potential additional money to repair roads and stormwater. The motion died for lack of a second.

Mr. Dunn wanted an opportunity to study the matter further before voting on it.

Mr. Rasmussen moved that the matter be continued to the March 6th Council meeting, seconded by Mr. Gill.

Mr. Story said he was in favor of the concept of taxes on Internet sales. He said the resolution raised some of the same concerns expressed by Mr. Gill and that Council would be sending a directive to Congress to enact a tax law to start taxing when Council didn't know what the specifics of the tax were going to be. He thought a better resolution would be one that directed them to study the issue and make some proposals that people could consider and make a decision on. Mayor Dunn said the Advisory Commission was set up to do just that. She said that was what was in place and that was where the resolution would be sent. Mr. Story said the resolution said to start taxing Internet sales.

Mayor Dunn said it might be helpful to go back and retrieve the information from Mark Andrasik. Mr. Rasmussen asked if the NLC handouts (if they were still available), setting out the progress being made by the Advisory Commission, could be made available to the Council. Mr. Garofano said he would check. Motion to continue the matter carried unanimously.

Schedule work session to discuss debt financing and personnel policies. On motion of Taylor, seconded by Dunn, Council voted unanimously to hold the work session on March 27th at 5:30 P.M.

Discussion of agenda for Saturday, March 4th joint Council/Plan Commission meeting. The meeting would be held at the Hereford House restaurant, general discussion to begin at 9:00 a.m. The Mayor said the Plan Commission would develop discussion topics for small group sessions. Lunch would be at noon and at 12:45, there would be an optional bus tour.

Mr. Taylor asked if the general discussion would be addressed by any consultants or just participants from the Plan Commission or City staff. Mrs. Binckley said the consultant, Michael Lauer of Freilich, Leitner & Carlisle, would not be at the meeting to present anything, but to act as a motivator, to help. Mayor Dunn said it was her understanding he would facilitate the small group discussions. Mr. Taylor said he couldn't accept that. He felt the meeting should only have the Plan Commission, Planning staff, and Governing Body in attendance. He felt they had had enough input from a consultant at the December meeting and he objected to that being part of the interfacing.

Mayor Dunn said there was a prior decision to employ the consultant's assistance and Mr. Taylor's views were noted, but it was too late to change. Mr. Garofano believed that was what was planned and that the Plan Commission had had some initial discussion about it, also. From their perspective, Michael Lauer was to be involved in the process, that he was to be there as a resource and provide some information as to what was going on as they went through the process.

Mayor Dunn said the session wouldn't be the same format as the previous work session. Mr. Taylor said his next objection related to the previous work session for which the consultant charged Council \$1,400 for his presentation. Mrs. Binckley told Mr. Taylor that she did review how much they were spending with Mr. Lauer, but Mr. Taylor still voiced his objection.

Mr. Dunn said he agreed with Mr. Taylor's opinion. But Mr. Dunn also said that the work session was organized by the Plan Commission and in order to resolve some of the issues they had had, he thought it would be best to cooperate with the format they had suggested for the work session.

Mr. Gill thought this was an important meeting and it was critical that Council be able to interact with members of the Plan Commission with Mr. Lauer being on the sidelines, to be there to answer questions, but not leading discussions or lecturing. He was pleased that that was the format, whether it was Mr. Lauer or someone else who would be a facilitator. He said Council needed direct one-on-one interaction or group-on-group interaction with the Plan Commission and he foresaw Mr. Lauer's role being very minimal.

Mrs. Binckley said Mr. Lauer would respond if asked to at the meeting as that was the way she had it set up. Mr. Rasmussen said he subscribed to everything that had been said to date. One of the things that bothered him was the Master Plan update process. He asked Mrs. Binckley if that was essentially all they would be discussing. Mrs. Binckley said there would be small groups having discussions on the comprehensive plan priorities, kind of a visioning on that process, where they were trying to go as they looked to the future. She said the second session, or a portion of the second session, would be about the comprehensive plan process and where they were going to go in the next few months. That would then be presented to the Council and Council would give their comments.

Mr. Rasmussen wanted to know when Council would have an opportunity to discuss changes that needed to be made with regard to the planning that came to them. Mrs. Binckley said she wasn't aware that was an issue or part of what they were supposed to be doing. Mr. Garofano said the intent of the work session was to focus on the Master Plan update. It hadn't been updated since 1993. It wasn't just the land use map but also the policies that supported the map. What the Plan Commission was attempting to do was to focus on that particular subject at this point. There would be some discussion about what everyone envisioned happening in certain parts of the City, but more importantly, the process that was going to be established to undertake the update. That would be a multi-month effort, meaning it would be some months before everyone was to some product that they could all take a look at and critique.

Other items. Mayor Dunn reminded Council that the Chinese New Year's Celebration was February 29th in the Oak Room of the Community Center at City Hall at 6:30 p.m. She received a special wish for health and happiness for the new year from Mayor Lu of sister city I-Lan, Taiwan. The City was still planning on their visit to Leawood in the fall.

Mayor Dunn said the fund-raiser for the Leawood Stage Company was on March 5th in the Oak Room of the Community Center, the show to begin at 7:00 p.m.

OLD BUSINESS

Public hearing on Axon Telecom's right to operate facilities in public right-of-way.

There was no public input. Motion from Mr. Rasmussen, seconded by Mr. Story, to close the public hearing. Motion carried unanimously.

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

(See March 6, 2000 Council meeting minutes for repeat of public hearing and final reading of the ordinance.) Mr. Christopher Smith from Axon Telecom was present to answer questions. Mr. Rasmussen asked that in terms of a service provider, would Axon be subject to the franchise agreement as well as the City's right-of-way ordinances? Mr. Smith said yes. Mr. Rasmussen said the service provider didn't necessarily have to provide service in Leawood. If it was a through cable for WorldCom, they would lease it from Axon Telecom and come to the City for a franchise agreement. Mr. Smith said WorldCom would buy it from Axon and come to the Council for a franchise agreement. Mr. Rasmussen asked if there was a through cable, with no tax in Leawood, but they

were still providing service somewhere in Johnson County, they would still be subject to Leawood ordinances. Mr. Smith said they would.

Mr. Gill said Axon would pay a fee of 1 percent of all gross revenues collected on leases or sales in Leawood. He asked how Axon would measure that. Mr. Smith said that physically, when they worked with the Public Works Department, Axon created engineering documents. The technical term for the engineering documents after construction was completed was as-builts. The as-builts showed physically what had been placed in right-of-way, the exact footages of what was being placed within the community. What if the customer's lines were not confined to Leawood, they went through other communities? When a lease was signed with Axon, one pricing option was to give one price from Point A to Point B, passing through whatever communities a company happened to pass through. Mr. Gill asked how Axon allocated what portion of the fee was attributable to Leawood, as opposed to non-Leawood, for calculating the one percent. Mr. Smith said that as a standard, they were sold on a per-foot basis, prorated. Therefore, they would take the per-foot, prorated price quoted to customers. Mr. Gill asked if there was a standard per-foot charge, a formula that said in no event would it be less than whatever the monetary unit was per foot? Mr. Smith said Axon and the Council could agree and the instrument would be up to the Council, maybe an affidavit, but taking the total price times what they had purchased throughout the entire network and prorating it down to what it was within Leawood. Mr. Gill asked their per-foot going rate. Mr. Smith said that was a tough question. Obviously, as a business, they wanted to get as much as possible because that was where their profit margin came in. Mr. Gill asked what the opening bid per foot would be. Mr. Smith said Mr. Gill was looking for what the revenue was forecasted to be for the City of Leawood, and he would say between \$15,000 and \$100,000 from Axon, one-time fee. Mr. Smith said there were no pricing models. Mr. Gill asked if there were any bench marking studies that had been done. Mr. Smith said none that he was aware of. He thought the price was probably between \$160 a foot and \$200 a foot. Mr. Gill asked how many ballpark feet Axon would estimate would be in Leawood. Mr. Smith estimated between 10,000 and 15,000 feet.

Mr. Taylor wanted verification that each of the conduits would be either leased or purchased. Mr. Smith said purchased only. Mr. Smith said Axon didn't want to pigeonhole themselves into an agreement that wouldn't allow them to recoup costs if they weren't able to sell all 16 interducts. Mr. Taylor asked what would happen if Axon sold half and leased half, how was the revenue determined on the leased portion of the 16 interducts to the City. Mr. Smith said probably in the same manner, just on an annual basis. He asked how would the cost per foot on an annual leased basis be determined. They would take the revenue they generated from that lease and prorate it down to the exact footage within the City of Leawood. Attorney Steve Horner said if the interducts were leased, the City would continue to get 1 percent as long as Axon continued to lease them. He said basically, the way it worked out, any money Axon received off the facilities in Leawood, whether selling it, they were only going to get a one-time amount, if leased it would be a continual stream of revenue, the City would receive 1 percent of whatever Axon made within Leawood.

Mayor Dunn said that would be from Axon, but there would be service providers that would be in addition to that. Mr. Horner said they had identified three anchor tenants that were planning to use their conduits and he had within the past week been contacted

by one of the three about seeking a franchise within the City of Leawood. Mr. Taylor asked if the user would seek a franchise within the City of Leawood, they would continue to pay an annual fee? Mr. Horner said that was correct and the particular company that called him said they were seeking to do a telephone service and if they passed through the City, then they would pay the foot fee and if they got to the point they were providing service in the City, then they would pay the gross revenues.

Ms. Bennett said she had one more suggested revision. She referred to paperwork before the Council and said that after speaking with Mr. Rasmussen, there were a few things and they were included in the alternative, underlined version ordinance. They would be on the 4th page of the packet. Page 2 had some clarification regarding the Public Works Director's authority on placement of Axon's lines, as well as the maintenance of Axon's lines in paragraph 3 on that page and the one-time administrative fee. She said after speaking with Mr. Horner, there was one other clarification. If Council was going to proceed with the revised draft, in paragraph 4 the first line said "Axon Telecom shall pay an initial one-time administrative fee of \$1,000 for its new franchise." She said to make it more uniform with the rest of the ordinance, she suggested "Axon Telecom shall pay an initial one-time administrative fee of \$1,000 for the franchise rights and privileges granted hereunder."

Mr. Rasmussen moved to pass the ordinance as modified by suggestions that were made, seconded by Mr. Dunn. Motion carried unanimously on roll call vote.

Authorize Addendum No. 1 to agreement with Overland Park for traffic signal installation at the intersection of 112th and Nall Ave. (contractor's change order to increase the cost of the project to allow for the installation of new technology video equipment in lieu of putting in standard loops in the pavement to activate the signals; an additional \$16,500 for Leawood). On motion of Rasmussen, seconded by Dunn, Council unanimously approved the addendum.

Resolution No. 1499, attached as part of the record, pledging intent of use of .125% sales tax. Adopted unanimously on motion of Rasmussen, seconded by Dunn.

Update on the Leawood Historic Commission. Mr. Story said there were two issues the Commission was working on - the Oxford Schoolhouse and an historic bridge structure located near the Ironhorse golf course. He said the Commission was approached by the City of Overland Park and their Deanna Rose Farmstead to discuss the possibility of a joint venture in moving the schoolhouse to the Farmstead. The Historic Commission met with representatives of the Farmstead and began discussions. The next step would be to have a joint session with Leawood's Parks and Recreation Advisory Board and staff to discuss the South Park option. He said the time line for the Historic Commission making a recommendation to the Governing Body was that they wanted to meet with Parks and Recreation in early April. Together with Parks and Recreation they would analyze the possibility and feasibility of moving the schoolhouse to South Park along with all the costs associated with that move.

At about the same time, they would analyze the possibility of a joint venture with the City of Overland Park. He said Overland Park proposed, at least the representative of Deanna Rose Farmstead proposed, a four-way partnership between the City of

Overland Park, the Friends of the Farmstead group, the City of Leawood and what they mistakenly presumed to be the independent body of the Leawood Historic Commission. They proposed an equal share in the costs to get the project up and running. He said once it was up and running, their assumption was that the City of Overland Park's Parks and Recreation Board would then fund annual maintenance. He said that if there wasn't a commitment of Leawood money to the project, it was his opinion that the Deanna Rose Farmstead was not in a position to move the schoolhouse probably within the next three to four years. It was very low on their priority list if they had to fund the project themselves. Mr. Story said he was told by the Farmstead that the City of Overland Park wouldn't fund the project to get it up and running, they would only fund the maintenance once private money had supported the creation of the schoolhouse at the Farmstead. He said those were the two main options the Commission was looking at. He felt they were realistically looking at probably June or early July before the Commission would be in a position to have fully analyzed both possibilities and be ready to present to Council a realistic study of the costs associated with the options and what, in their opinion, would constitute the best use of the schoolhouse.

Mr. Story said the representatives he met with last week were going to discuss the issue with some members of the Overland Park City Council, and maybe the Friends of the Farmstead group, to get their general opinion and to find out if there was interest and monetary support from their side. Mayor Dunn said she believed the joint meeting would be April 11th between the Parks and Recreation Advisory Board and the Historic Commission, and it was their plan to be in touch maybe 10 days prior to that meeting, so it might be more like the first of April before Council heard back from them.

Mr. Story said the second subject involved an ongoing project for the Historic Commission, identifying and nominating for the Historic Register historical structures within the City of Leawood. One such structure was a stone bridge located on private property very near the Ironhorse Golf Course. The bridge was built in roughly 1865, associated with the Leaky Roof Railroad that ran through the area. The Historic Commission had identified it as a candidate for nomination. Mr. Story said the bridge needed to be moved from the site in order for people to benefit from it because they couldn't get to it to enjoy it. He said the two possible locations that had been mentioned were South Park and the golf course. The important thing the Historic Commission wanted the Governing Body to know was that there were two private lots that shared the structure; one was developed, and the other owned by Mark Simpson or one of his associated groups didn't yet have a house located on it and the easiest route to get to the bridge to remove it for placement somewhere else was across Mr. Simpson's property. He said the City could move the bridge and put it in storage and that wouldn't have any impact on it. Then they could decide where to put it. He said at some point in the near future the Governing Body needed to make a decision on funding if they chose to save the structure and utilize it in some public fashion. Mr. Story said if the Council had any questions he could take them back to the Historic Commission or Mrs. Claxton was a good resource.

Mr. Taylor said that the Parks and Recreation Department had addressed the subject and he pointed out that although the bridge was called a "bridge", it was only 42 inches in span. It was actually a culvert crossing and was composed of stone pylons that had large slaps of stone that spanned from one pylon to another to span the trackage. The

Parks and Recreation Department was very anxious to have it as part of the Ironhorse Golf Course and use it, whether it be a cart path or a footbridge. Parks and Recreation instructed staff to make an evaluation of what it would cost to dismantle the stone work, mark it, store it, or place it in another location to give some idea of what the budget might be for the City Council to address as far as the future expenditure for the relocation.

Mr. Taylor said it had been his experience that when someone moved a structure of that nature, it lost the historic designation. Mayor Dunn stated the bridge hadn't received a designation yet.

Mr. Story said the approach the Commission had taken thus far regarding the schoolhouse was that they wanted to move it to where it should be and then give it historic designation. The Commission decided it wasn't within their purview to decide the best place for the bridge and that would be up to the Parks and Recreation Department. He said the Commission was more than happy to provide some historical expertise in helping move the bridge.

Mr. Rasmussen asked if development started to take place on the one lot, would it be all right with Council to authorize the City Administrator, under that condition, to move it right on to the golf course to store it. Mayor Dunn said there had been an offer to do a pro bono move on the bridge. Mr. Maupin said he was asked by the Historic Commission to meet with the developer to determine exactly whose property the bridge was located on. According to the survey stakes the developer had placed, the bridge wasn't located on any part of the developer's property. It was all on Jessie Fuller's property. Mr. Maupin said the bridge was doing a good job of stabilizing the bank at the back of Mr. Fuller's property. There were going to have to be mechanisms to help restabilize the bank once the bridge was removed, if it was removed. Mr. Maupin said that Mr. Simpson, the developer, had stated if it was on his property, he would move it free of charge, but since it wasn't on his property and there was nothing he could do about it, his offer of moving it free of charge was off the table.

NEW BUSINESS

Approval of Appropriation Ordinance No. 884. On motion of Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

Request by Rib America for an administrative special use permit for an event in the parking lot of Town Center Plaza June 8-11. Mayor Dunn said that the request was denied by staff and an appeal of the denial was before the Council. Larry Hovick, General Manager of Sandstone Amphitheater, an SFX corporation, was present to answer questions. Rib America was also an SFX corporation. Carrie Hartman from Town Center Plaza and Tammy Fruits, the Senior Manager in Kansas City for SFX, were also present. Mr. Hovick said he didn't know the request had been denied. He said he supposed he was present to find out why and answer any questions. He was surprised they had been turned down.

Mr. Taylor asked Mrs. Binckley the reason for denial. Mrs. Binckley said staff had great concern with Rib America expecting potentially 50,000 people over a four-day period in the Town Center Plaza area. It would be over a weekend and they proposed to put the event on the north side of Town Center Plaza where there was already a concern about traffic at the AMC Theatres. They would take up a substantial amount of the

parking with the event and staff was concerned as to where all the extra cars would park. She said there was a noise issue of entertainment until 10:30 at night. She referred to the packets distributed to Council regarding displays showing the large signs 15 to 20 feet in height, billboard type signs.

Mayor Dunn asked Mr. Hovick why Arrowhead Stadium wasn't considered for the event, as the Kansas City Royals was a client of SFX. Mr. Hovick said they pretty much went all around the area looking for a site. He said it was a successful event in Minneapolis and in Indianapolis, so they decided to expand on those two cities and look for a site. He said they looked first downtown because they wanted to find something in the downtown community, but Barney Allis Plaza was too small for the event. Then they went toward the Science City, Hallmark Cards, Crown Center area. They thought about Liberty Memorial, but there wasn't enough drive by traffic and they wouldn't be seen. Mr. Hovick said they didn't think of going to the Royals because they mainly wanted to stay in an area where there were a lot of people going by. They wanted to give it more of a family-type atmosphere and they felt a mall, similar to Town Center Plaza, would attract a family. For that reason they chose Town Center Plaza.

Mr. Dunn wanted clarification from Mr. Hovick that he wasn't present to appeal the staff's decision to City Council. Mr. Hovick said staff was recommending that Council not approve the request so he, in fact, was appealing the recommendation. Mr. Dunn said the request was for a special use permit, something for staff to decide on. He said if there wasn't a request for Rib America to appear before Council to appeal the decision, he didn't know what basis Council had to do anything.

Mr. Garofano said staff was trying to accommodate Rib America's schedule by having them at the Council meeting. He said staff had informed them verbally that they were denying the application. He said under the ordinance, Rib America could appeal the decision to the City Council. Mr. Dunn said he didn't hear Mr. Hovick say that he wanted to appeal it to the City Council. Mr. Hovick said he wanted to appeal the recommendation.

Mr. Hovick told the Council that he didn't want to "shove something down your throats that your staff is not willing to accept." They did understand all the concerns and he said anything they got involved with, they wanted to make it professional. He said they would want to come back every year.

Mr. Gill asked how long Mr. Hovick had done the event in Minneapolis. Mr. Hovick said for more than eight years. Mr. Gill said he attended one of the events in Minneapolis six years ago and was trying to evaluate how it would operate here. Mr. Gill asked what the focus of the event would be - the music, the beer, the ribs or the pig races. Mr. Hovick said there would be 12 people who competed and won nationally in the booths, who moved from city to city.

Tammy Fruits explained that she handled the marketing end of the event. She said the individuals who competed competed nationally but they also competed in other people's programs. She explained there would be a minimal number of people locally who were able to participate. She said possibly Gates Barbecue might be able to participate. Mr. Gill asked how the general public would benefit from the event. She said the event was free to the general public. They underwrote the expense of the event through the actual food purchases and sponsorship. Mr. Gill asked what percentage of their revenue would be for alcohol. Mr. Hovick said 10 to 15 percent. Ms. Fruits said

there would be other booth participation other than ribs, but she thought there would be 20 different competitions where people could go and sample food. She said since this was a new event, they were thinking somewhere between 30,000 to 50,000 people could attend. She said it was a Thursday, Friday, Saturday and Sunday event with a very heavy focus on drawing a lunchtime crowd on Thursday and Friday. Ms. Fruits said she was a big proponent within the organization of bringing the event out south, with Corporate Woods and Sprint.

Mr. Rasmussen asked if the Police Department was consulted with regard to the large number of people. Mrs. Binckley said not from City staff. He asked if the storeowners in Town Center Plaza approved the event, knowing parking was going to be further restricted. Mrs. Binckley said Town Center Plaza was supporting it but she didn't know about the individual storeowners. Mr. Rasmussen said one of the reasons for the event being turned down by staff was traffic problems, as well as parking problems because of the movie theater and that had gone back to the Plan Commission for consideration. He said parking from the movie theatre moved all the way to Jacobson's and moved all the way to Galyans and around the corner on the south side.

Carrie Hartman, Director of Marketing at Town Center Plaza, said they recently had a merchants meeting. She said Galyans and AMC Theatres were in support of the event and those were the two major parking lots that would be affected. The event was going to hire trolleys to bring people coming to the event from an outside parking lot into Town Center so there should be a minimal impact on parking. She said they were looking at the Jewish Community Center, Black and Veatch, and Sprint.

Mayor Dunn asked if Kansas City had offered them the site of the Spirit Festival and if he felt there wasn't enough drive by traffic at that location. Mr. Hovick said yes and said they had done other events there and knew people couldn't see very much going on at Liberty Memorial from Main Street.

Ms. Bennett said as she understood the process, Council could overrule staff's decision and there were no other special items of procedure to be concerned about on the particular type of application for an event.

Motion by Mr. Taylor, seconded by Mr. Rawlings, to uphold staff's denial of the temporary special use permit for Rib America.

Mr. Dunn asked if Council wasn't overruling it, was a vote needed? Mayor Dunn said, according to Mr. Garofano, it was an appeal process and he had said that Rib America was appealing and Council needed to act on it. Mayor Dunn felt for the record there needed to be some definitive action by the Council.

Mr. Gill said he was going to vote with staff. He said Leawood was a small community and Rib America was a major event. He said if it was anything at all like he experienced in Minneapolis, it was a great time but it was way more than the area or Leawood could accommodate. He said the City couldn't, without major opposition from residents who lived immediately adjacent to the event, put on a Rodgers and Hammerstein production, even without amplification, without causing concern. He said it needed more local flavor in terms of participation and scaled down more to the scale which Leawood could accommodate.

Mr. Dunn said staff had gauged the public response fairly well. He said they had been through a number of events so that Council could trust their good judgment. Even

though he liked events like Rib America and it would be fun for the City, he wasn't prepared to overrule their position without a much greater sense of community support.

Mr. Taylor's motion carried unanimously.

Authorize interlocal agreement with Kansas City, Missouri for resurfacing of State Line Rd. from 92nd St. to 103rd St. On motion of Dunn, seconded by Story, Council unanimously approved the agreement. Leawood's share of the cost of construction, approximately \$77,000.

Approve bid/authorize contract for replacement of playground at Tomahawk Park, approximately 119th and Tomahawk Creek Parkway. On motion of Taylor, seconded by Rasmussen, Council unanimously approved a contract with Riggs Recreation in the amount of \$30,325.00.

Ordinance No. 1849 accepting 10 permanent drainage easements for SMAC project DB-04-017 (Overhill Rd., South to 86th St.). On motion of Dunn, seconded by Rasmussen, Council unanimously passed the ordinance on roll call vote.

Ordinance No. 1850 accepting 4 permanent storm sewer easements for the 1999 Street Improvement Program. On motion of Rasmussen, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

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 3 matters of attorney-client privilege and personnel matter.

OTHER BUSINESS. Staff report to Council on various items – City-wide trash collection program, City-wide large item trash pickup, painting address numbers on curbs, hazardous materials trash pickup, painting medians at turning points/ends with reflective paint. Mr. Gill asked Mrs. Hilton if she found a source that would pick up household hazardous trash and she said she couldn't. She said she contacted every vendor that had a license in the City and they all said it was too heavily regulated by the State. Mrs. Hilton said her understanding was because Johnson County offered the service, it was much harder for municipalities and vendors to get the necessary permits and licenses to do it. Mr. Garofano said there was a countywide waste disposal plan to which the City subscribed so there were various parts of that that made them subservient to what the County was going to provide in terms of service.

Regarding the painting of addresses on curbs, Mrs. Hilton said there were 9,359 households at a cost of about \$10 a house. She said she got quotes from a couple of vendors. Mrs. Hilton said in her memo she failed to remove the stenciling of storm drains; she was waiting for Overland Park to get back to her and hopefully would have that information at the next Council meeting.

On motion of Rasmussen, seconded by Gill, Council unanimously accepted Mrs. Hilton's report.

Discussion of City Council minutes. Mayor Dunn directed attention to the various cities' minutes on the second page of Mrs. Hilton's memo and "brief to verbatim" was pretty rare, although Shawnee and Prairie Village were also doing it. Mayor Dunn said she wondered how many Councilmembers truly read verbatim minutes word for word because they were extremely lengthy and she said it was becoming extremely expensive to produce verbatim minutes. She thought it was very important to show how people voted, if it wasn't unanimous. She encouraged Council to look at action minutes with discussion included only upon direction by the Council. She said the report showed that they had various other means of recording, via video and audio.

Mr. Rasmussen felt many on the Council were familiar with the taking of board minutes, where a motion was made, accepted, and that was it. Unfortunately, he said applicants came before the Council who made commitments to the Council, and unless those commitments were made part of the minutes, they were lost. Mayor Dunn said stipulations and conditions were different and Mr. Taylor agreed. He felt if the recorder was able to get the commitments, that was fine, but he could give a lot of examples where in the development process, statements were made, promises made, etc., and then a year or two passed by and Council struggled to try and get them identified.

Ms. Bennett said that was a good point and something they needed to look at whether or not they were verbatim minutes. She felt stipulations and conditions should be written down in total and they would be revised if they were material to the Council's decision. She said in a telecom context, they recently went back and referred to the Plan Commission minutes. She said she and Mrs. Hilton had discussed, as they moved forward with this decision, that it might be important to require certain applicants, and to amend ordinances accordingly, to provide their own court reporter or to contract through the City's and pay the fee so the City did have a verbatim transcript of what was said, particularly in telecom matters.

Mr. Garofano said in the recommendation staff talked about the fact that members of Council could instruct the recorder to include any dialog, reports, etc. should they want more detailed information into the record. He said if there was a commitment made, certainly all it would take was a statement by someone on the Council saying they wanted the record to reflect that someone had committed to do something. Mayor Dunn said the Council would always want any commitments made reflected in the minutes. Mr. Garofano said in their experience, people who wanted to have a verbatim transcription or summary of the meeting, such as attorneys, inevitably went to the videotape or audiotape. He said even citizens who wanted to know something about a particular topic would go to a video or audiotape. He said they didn't have a call for, as far as the general public was concerned, or a demand to read the minutes only because the minutes were somewhat in between, obviously, everything that was said.

Mr. Rasmussen also mentioned, as well as cell tower issues, major zoning issues would need to be recorded. He said it was going to require intense alertness on the part of the Council to make sure they verbalized the statement that certain things needed to be part of the record. Mayor Dunn said discussion could be included when directed by Council. Mr. Garofano said in cases of development, those things were probably more meticulously recorded than anything else because they were done by a resolution of the Council. He said each stipulation was numbered, Council added stipulations as the case proceeded and it was put into a resolution form which was part of the permanent record.

As Ms. Bennett said, staff had had some discussion about going to development agreements which was common among other cities to, again, try to reinforce that type of record keeping.

Mr. Gill didn't have a need to have the record transcribed. He did strongly disagree with a 3-year archival on audio and videotapes. He thought they should be permanent records and not have a destruction policy, but have a maintenance policy. He said Council didn't know when they did something that somebody would need to try to figure out what the Council was thinking about when it did something. He thought the audio and videotapes they kept were both very good complete records, especially when coupled with an accurate form of minutes. He would be very opposed to anything that would result in the intentional destruction of the full recorded minutes. He said hopefully technology would improve and they could preserve them so the City didn't have problems with tape deterioration, etc. He said Council was a legislative body and what they did certainly had life beyond three or five years.

Mr. Rasmussen once again voiced concern regarding restrictions being lost. Mayor Dunn said all stipulation conditions would be written down and recorded. Mayor Dunn said the resolutions and the written hard copy minutes were permanent records. Mrs. Hilton said they got the three years for the audio and video from Lenexa which maintained their tapes for two years. In Kansas they were the leader in records management. She said staff had not destroyed tapes. She said the other issue they had was that the library was quickly filling up with videotapes, so there was a storage problem.

Ms. Bennett said it was really a records management issue and she talked with several people in different departments about the way the City's ordinances read. In-house documents, as long as they weren't planning resolutions, it was up to the department heads to come up with a policy. When she and Mrs. Hilton discussed the City Council and Plan Commission records, obviously not the minutes because they were kept forever, they questioned whether they were to be stored in a fireproof vault, a waterproof vault, and how many did we want to store. Mr. Gill asked if the off-site costs of storing tapes was known. Mr. Garofano said staff was in the process of completely revamping the entire records management system or putting one in place. He said they had a lot of records and if they were going to go beyond what state statutes required, then there was going to be a cost associated with that. What they were trying to do with the records management program was meet the statutory requirements in terms of what they had to maintain for various lengths of time, depending on what they were. He said Kansas law was silent as to the archival of audio and video tapes and state law still didn't recognize anything other than a journal of the proceedings.

Ms. Bennett said the good news was with the ordinances that they had to keep forever, most of them had a number of WHEREAS clauses that were going to give the intent. Mayor Dunn thought the Council would want more information on the question of the length of time to keep audio and videotapes, but staff wanted some direction on the minutes this evening. The recommendation not only covered City Council minutes, but Plan Commission minutes as well.

Mrs. Hilton said they could try a new approach for awhile, possibly three months, and if it didn't work, they could obviously go back to the way it was.

Mr. Rasmussen said Council had found themselves negotiating terms and conditions at a Council meeting. He was sympathetic with staff's desires, but trying to find out what those terms and conditions meant could be a problem. Mayor Dunn said she hoped Ms. Bennett would take action if there was something Council neglected to state and it should be in the minutes.

Mr. Dunn moved to accept staff's recommendation to do action minutes with discussion included when directed by Council/Plan Commission, seconded by Gill. Audio and videotapes would be discussed at a later meeting after research on storage costs, etc. Motion carried unanimously.

9:30 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.

Minutes prepared by court reporter Kay Elder.

Martha Heizer, City Clerk