

**Minutes**

Audio Tape Nos. 564 & 565

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., on Monday, November 18, 2002. Mayor Peggy J. Dunn presided.

**Councilmembers present:** Scott E. Gullede, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Mike Gill, and James E. Taylor, Sr.

**Councilmembers absent:** Louis Rasmussen

**Staff present:**

Scott M. Lambers, City Administrator  
Kathy Rogers, Finance Director  
Ben C. Florance, Fire Chief  
Chris Claxton, Dir. of Parks & Recreation  
Jeff Cantrell, Neighborhood Services Admin.  
Joe Johnson, Public Works Director

Patricia A. Bennett, City Attorney  
Sid Mitchell, Police Chief  
Diane Binckley, Dir. of Planning & Dev.  
Mark Andrasik, IS Director  
Colleen Browne, Human Resources Dir.  
Deb Harper, City Clerk

175    **1.     PLEDGE OF ALLEGIANCE**

266    **2.     APPROVAL OF AGENDA**

Agenda Item # 12A was moved to the Consent Agenda. A request to schedule a Work Session at 6:30 P.M., on Monday, December 2, 2002, was added as Item # 15A under New Business. A motion was entered by Councilmember Dunn, seconded by Councilmember Story to approve the agenda as amended. The motion was carried by a unanimous vote.

**3.     CITIZEN COMMENTS – None.**

**4.     PROCLAMATIONS - None**

**5.     PRESENTATIONS/RECOGNITIONS- None**

**6.     SPECIAL BUSINESS - None**

380 **7. CONSENT AGENDA**

A motion was made by Councilmember Taylor, seconded by Councilmember Rawlings to approve the consent agenda, as amended by including Agenda Item # 12A for approval. The motion carried by a unanimous vote.

- A. Approval of Appropriation Ordinance No. 959
- B. Minutes of the November 4, 2002, Governing Body meeting
- C. Minutes of the October 30, 2002, Public Works Committee meeting
- D. Minutes of the October 8, 2002, Parks & Recreation Advisory Board meeting
- E. Resolution No. 1837, approving and authorizing the Mayor to execute an amendment to an Engineering Agreement between the City and Olsson Associates in the amount of \$6,649.48, for bank stabilization of Indian Creek at State Line [SMAC Project IC-04-039]
- F. Approve 1<sup>st</sup> and final payment in the amount of \$6,649.48, to Olsson Associates, pertaining to the bank stabilization of Indian Creek at State Line [SMAC Project IC-04-039]
- G. Resolution No. 1838, accepting a Deed of Dedication of Right-of-Way [ROW] from City Wide Development Co., Inc., pertaining to the construction of Pawnee Lane, between 135<sup>th</sup> Street and 137<sup>th</sup> Street, located within the Tuscany Reserve subdivision
- H. Resolution No. 1839, accepting a Permanent Drainage Easement from JEM's III, L.L.C., pertaining to the construction of a storm sewer on 137<sup>th</sup> Street between Pawnee Lane and Chadwick, located within the Tuscany Reserve subdivision
- I. Resolution No. 1840, approving and authorizing the Mayor to execute a supplemental agreement between the City and the Kansas Secretary of Transportation, and the attached "Resolution Relating to Benefits Obtainable by Cities Under Program for Federal Aid on Highway Construction," pertaining to the 119<sup>th</sup> & Mission Road Intersection Improvement Project [CIP # 159]
- J. Declaration of surplus property; old computer equipment to be auctioned by Nationwide Auctions
- K. Police Department Monthly Report
- L. Fire Department Monthly Report
- M. Municipal Court Monthly Report

On motion of Councilmember Taylor, seconded by Councilmember Rawlings, the Consent Agenda was unanimously approved.

413 **8. MAYOR'S REPORT**

- A. Attended the Mayor's International Tourism 2002 Summit at UMKC
- B. Attended Kansas City's Development Council 26<sup>th</sup> Annual Meeting
- C. Attended Council of Mayor's meeting with legislators from both Wyandotte and Johnson Counties
- D. Reminder of the Johnson & Wyandotte Counties Council of Mayors Dinner on December 10, 2002

- E. Attended the Employees Appreciation luncheon, on November 15, 2002, with Councilmember Rasmussen. Deputy Chief Randy Hill was named Employee of the Year

**9. COUNCILMEMBERS' REPORTS - None**

**10. STAFF REPORT – None**

***COMMITTEE RECOMMENDATIONS***

661 **11. PARK & RECREATION BOARD**

*[from November 12, 2002, Park & Recreation Advisory Board Committee Meeting]*

- A. Approve bid in the amount of \$6,364.00, to Mac's Fence Company, pertaining to the installation of a fence located at Fire Station No. 3, 14801 Mission Road [CIP# 151] *[Continued from the October 21, 2002, Governing Body meeting]*

A motion was entered by Councilmember Gill, seconded by Councilmember Gullede to approve the recommendation. The motion carried by a unanimous vote.

- 704 B. Approve Change Order No. 5 with Vanum Construction in an amount not to exceed \$58,237.00, pertaining to the construction of I-Lan Park located at 12601 Nall Avenue [CIP# 111] *[Continued from the October 21, 2002, Governing Body Meeting]*

A motion was made by Councilmember Taylor, seconded by Councilmember Gill to approve Change Order No. 5, with the staff recommendation that Item # 1 be deleted from the Change Order, and that Item # 1 be continued to the December 2, 2002, Governing Body meeting.

Councilmember Taylor asked Mr. Dave Richardson, PSI, if the borings were specifically located on both locations and questioned the difference in the cost estimates. The boring report indicated there were no problems with the soil and inquired why there was a problem now, and asked if the City was responsible for this cost.

Mr. Richardson stated when the site was drilled there was no problem, however, the drawing that was used at the time had not been developed and they were eyeballing the landmarks that were there at that time. The borings could possibly have been shifted 10-15 feet that could have been pulled out of that zone.

Councilmember Taylor stated in his opinion the City had been given a report that did not justify the service that was received.

Mayor Dunn had questions regarding the timing of this project. PJ Novak, Theis Doolittle, stated both park projects have to be completed by July 28, 2003. The projects are currently on schedule and continuing Item # 1 on Change Order No. 5, would not jeopardize the timing of this project.

The motion was carried by a unanimous vote.

**12. PLANNING COMMISSION**

*[from September 24, 2002, Planning Commission meeting]*

- A. Resolution approving a preliminary site plan for the City of Leawood's Fire Station No. 2, located at 12701 Mission Road [continued from the October 21, 2002, and November 4, 2002, Governing Body meetings]**

[This item was placed under the Consent Agenda]

1186

*[from October 29, 2002, Planning Commission meeting]*

- B. Ordinance No. 1966C**, amending Article 2 of Chapter 16 of the Code of the City of Leawood, Kansas, 2000, pertaining to zoning regulations within the City and incorporating by reference the "Leawood Development Ordinance, 2002 Edition," and repealing existing Article 2 of Chapter 16 [Roll Call Vote]

***Staff comment: The LDO includes the procedural gate ordinance referred by the Governing Body to the Planning Commission on August 19, 2002.***

A motion was made by Councilmember Gill, to pass the ordinance with one revision, in that, all matters decided by the Planning Commission, would be subject to review and approval by the Governing Body to eliminate potential confusion as to what items need governing body approval and items that only require approval by the Planning Commission. The motion was seconded by Councilmember Bussing.

Mayor Dunn pointed out an additional memo, dated November 1, 2002, from Ms. Binckley referencing a request that amendments be made to allow the Governing Body more discretion with proposed developments using the Mixed Use Zoning District, specifically Article 3-9(A) (5) and Article 3-9 (A) (B). Mr. Gill stated he would support the amendments to the height requirements, but would not support the setback override.

Ms. Binckley, stated the Planning Commission was also supportive of the height amendments, but had concerns regarding the setback amendment, and would not be in favor of allowing any more deviations of the setback requirements that what is currently allowed.

Mr. Gill stated he would like to include that in his motion, that only amendments regarding the height requirements be amended under Article 3-9 (A) (5). Mr. Bussing also concurred with the amendment to the motion.

- 1457 Mr. Bussing asked if Ms. Bennett would explain how special use permits are attached to the land, and stated Ms. Bennett had requested a modification to that. Ms. Bennett stated currently the LDO requires all Special Use Permits [SUP] be non-transferable. The amendment would allow a SUP to be transferable, if stipulated in the SUP conditions upon approval. If the SUP was transferable, it would run with the land and it would be transferable to the next owner.

Mr. Gill asked that his motion be further revised to include this amendment. Mr. Bussing concurred with this amendment to the motion.

Mr. Taylor asked if the gates provisions were included in this ordinance. Ms. Binckley stated the procedural portions of the gates policy are included in this ordinance, specifically Section 16-1-7. The actual gate policy will be addressed following this item. Mr. Taylor asked if this section of the gate policy should be included within this adoption of the LDO.

Councilmember Gill stated to clarify the issue, he amended his motion to exclude Section 16-1-7 from this approval. Mr. Bussing concurred with the amendment to the motion.

The motion, as amended, carried by a unanimous roll call vote.

- 1925 \*\*\* C. Resolution No. 1842, approving preliminary plat and preliminary site plan for Cornerstone of Leawood, located at the southeast corner of 135<sup>th</sup> and Nall [companion ordinance]

***Staff Comment:** The City Administrator is recommending that this item be continued to the December 2, 2002, Governing Body meeting in order to provide the applicant time to resolve the conflict regarding the alignment of Briar Street. [See Attached Memo]*

Councilmember Taylor recused himself from this agenda item.

Steve Eginore, 12512 Sherwood, representative of the ownership of Cornerstone, made a presentation. Mr. Eginore stated Cornerstone's main objective is to ensure their development compliments the master plan of the Church of the Resurrection.

Dan Lowe, RED Development, 8721 Alhambra, made comments and a presentation of RED development projects that had similar demographics as that of Leawood. Their company feels the main focus to a project like this is co-tenants, architecture and landscaping. The pad sites are subject to a design criteria, which would be recorded against the property.

Rick Klover, Klover Architects, made comments and a presentation. The project currently has 6 pad sites. The first pad is anticipated to be a drug store with a drive-thru; second pad will be retail. Pads Nos. 3-5 are anticipated to be a drive-thru bank, possible retail, and a restaurant. Pad # 6 is a possible drive-thru fast food. The main center is comprised of 3 tenants. One end is anchored by 3 potential retail restaurant tenants. The rear of the project is retail on the first level; office located on the second and third levels on building # 11. The preliminary concept depicts a pedestrian path around the entire perimeter of the project and seating nodes on either side of the water feature and prominent points around the project, with heavy landscaping.

Councilmember Gill stated the project is a very well designed plan, but questioned the alignment of Briar Street as it relates to the north property owner. When the Church of the Resurrection Project was approved, the single most important issue was the traffic. The traffic models assume that the intersection of 135<sup>th</sup> & Briar was to be signaled. The Master Plan reflects one-quarter mile signalization instead of one-half mile signalization. The proposed alignment does not parallel the master plan proposed location nor the preliminary zoning of the property to the north of this project, which the property owners are objecting to the realigning of this road on their property. If this plan is approved as presented, it would not align with the Master Plan, and would differ from the assumptions of the traffic planners of the COR project, and leaves unresolved issues relating to the 135<sup>th</sup> Corridor, which is how to align Briar so that the intersection can be signalized. There are multiple land owners with an interest to this area and this would impact them significantly. Mr. Gill suggested this problem be resolved among these property owners, instead of the City getting involved in solving this problem.

Mr. Doug Patterson, stated this area, totaling approximately 900,000 square feet, was zoned in 1993, for office retail. The '93 plan is not the development of today, and a revised preliminary site plan of the Jameson Tract will be submitted. He believes this matter was resolved by the Planning Commission. The Jameson and the Stein tracts are subject to a contract with a purchaser and they have been dealing with the purchaser. The purchase has not received approval from the Planning Commission, and therefore, cannot commit to change the location of the 4-block road. The property owners have the same problem. They cannot commit to a change because they are unsure if their purchaser will accept the change, and have advised they will move the road wherever Cornerstone wants it, as long as it makes sense from a planning perspective, and compensation is paid to them.

Mr. Gill asked how the roads would be aligned if the parties don't agree or the pending sale don't occur.

Mr. Patterson stated the roads would be aligned in accordance with the plan that was approved by the Planning Commission.

Mr. Gill stated however, that requires a change of property that is not owned by Cornerstone.

Mr. Patterson stated this can be accomplished by the Council requiring donation of right-of-way [ROW]. Mr. Patterson said the alignment of Briar, south to north, as it approaches 135<sup>th</sup> Street, still hits the section line and was still aligned, and no property owner lost ROW or lost a building. Mr. Gill stated one drawing takes property from the Jameson's which is east of the section line; and the second option takes property from the Stein property, which is located west of the section line. Either option eliminates property that is not under the control of Cornerstone. These land owners have advised the City they are not agreeable to this proposal.

Mr. Patterson again stated, these property owners could be required, as Cornerstone was, to dedicate additional ROW.

Mr. Gill asked if this issue was close to being settled with the other adjacent property owners. Mr. Patterson stated one owner is asking for a large amount of compensation. He further stated that Briar must be a continuous flow from north to south through 135<sup>th</sup> Street.

Mr. Steve Garvey, Olsson & Associates, 8301 State Line Road, Suite # 100, Kansas City, Missouri, Project Traffic Engineer, stated if the two roadways don't align up correctly, a serious traffic offset issue would be created.

Mr. Gill stated his concern is that the applicant can't commit the property owners on the other side of 135<sup>th</sup> Street to align with the new proposed location of Briar Street. They are willing to stay with the existing preliminary zoning plan and the Master Plan for the applicant's property. If these property owners could be convinced to line it up with the applicant's property, the issue would be resolved, but this commitment cannot be made by the applicant.

Mr. Patterson stated they could not, but the City could, by requiring them to dedicate ROW to the City, just as Cornerstone was required to donate ROW. Cornerstone is being required to donate ROW along Briar as a customary and normal condition of the planning process, which is a requirement of every development submitted to the City. As part of the Stein tract and final approval of the Jameson tract, this can be accomplished.

Ms. Binckley stated she understood Mr. Patterson to suggest, as currently with the City's Comprehensive Plan, Briar is identified as going right down the Section line. On this property, since the property is owned on both sides of the Section line, therefore, they are being required to put in the entire ROW of Briar. That alignment has been left to the property owner to align it on their property with whatever works best for them. On the north side, it is aligned also down the Section line, and this property is owned by different property owners. For the City to fix this problem, the Comprehensive Plan could be adjusted to show Briar moved over onto the property of one of the property owners. The planning tool is to amend our Comprehensive Plan. The City's concern is that there is a valid preliminary site plan for the Jameson property that identified Briar on the section line, as depicted on the Comp. Plan.

Ms. Bennett concurred with Ms. Binckley's statement. Requiring dedication of ROW is a planning tool that is used on a regular basis, however, generally it is half of the ROW, or in this case, if the property is owned by the same owner on either side of the street, the owner may be required to dedicate the entire tract. The City has received letters from Mr. Hubbard and Mr. Stein, and neither one of the letters reflect any signs of them voluntarily dedicating ROW for the alignment of Briar, that will either take a large portion of a corner location or completely take away a corner section from them. If the owners don't dedicate, and the City does not plat or plan, it would become a court issue.

Mr. Dunn stated if the City asked the owners to dedicate ROW without a plat or plan being submitted, it would then become a condemnation issue. However, Mr. Patterson is suggesting to wait until they submit their revised plan and then advise them that the City would require additional dedication of ROW as a condition of their approval. Mr. Dunn asked if the owners object to the realignment, would the City be facing potential legal and financial expenses. Ms. Bennett stated that potential exists. Mr. Dunn asked if the City does nothing until they submit a revised plan, is it possible under that scenario that the City could accomplish this without incurring those expenses for purchasing ROW and/or condemnation. Mr. Bennett stated that could be possible.

Mr. Lowe stated a proposed plan was submitted that depicts the Briar alignment on the Section line, however, the Section line was only included in the ROW. It was offset so that the section line was to the east side of the ROW, but it was on the Section line, and would not impact either of the property owners. It had a 30-40 feet offset, from the center line. Both property owners, Jameson and Stein, would have access to Briar with that alignment. This was a plan that was proposed at one time, but both parties disagreed with this because Cornerstone was not going to compensate the property owners.

Mr. Lowe stated he wanted to clarify that they are willing to move forward with an alignment that is on the Section line, so long as it is not centered on the section line, but offset a bit.

Mayor Dunn asked if the City has assisted in any way with the negotiations with these property owners.

Scott Lambers, City Administrator, advised the City Staff has not been involved in any negotiations of any kind between these parties.

Mr. Lowe stated a meeting was conducted with Staff, the applicant, and Mr. Sailors, and at that time the alignment was not acceptable to Mr. Sailors.

Councilmember Dunn made a motion to recess into Execution Session for attorney-client privilege, for a 20-minute period. The motion was seconded by Councilmember Gill and was approved unanimously.

The regular session of the Governing Boyd meeting was recessed at 8:40 P.M. and reconvened at 9:00 P.M.

Mr. Dunn entered a motion to continue this item to the December 2, 2002, Governing Body meeting, to give the parties the opportunity to resolve this issue with the other landowners with the understanding that he would not be in favor of this plan unless the alignment of Briar Street remains as depicted on the Master Plan. The motion was seconded by Councilmember Bussing.

Mr. Gill asked that the motion be amended to read only that this item be continued to December 2, 2002, and omit the remaining comments. Mr. Dunn agreed. Councilmember Bussing agreed to the amendment to the motion.

Mr. Dan Lowe stated this item originated from the Planning Commission and this recommendation included a stipulation that the alignment be worked out prior to coming back to the Planning Commission. To the extent the Council would be willing for the applicant to move forward with that stipulation in place, that time would be used to work out the alignment and it would be their preference that that stipulation remain in place rather than being held back, because they have tenants expecting to have space for them next year. If construction is not commenced immediately, this schedule will be diverted. Mayor Dunn asked that Mr. Lowe clarify his statement.

Mr. Lowe stated the stipulation is that the alignment of Briar shall be resolved following negotiations between City Staff, the property owners to the north and all other interested parties prior to final plan submission.

Mr. Gill asked if all traffic matters associated with the Church of the Resurrections [COR] would be coming back before the Governing Body and not just Planning Commission. Ms. Bennett stated that is correct.

Mr. Lowe stated he is requesting the Council move forward under the stipulation that was approved by the Planning Commission. He stated he desires the Council to approve the Planning Commission's recommendation with the stipulation that this issue be resolved before this is presented to the Planning Commission.

Councilmember Dunn stated he understood the presentation to reflect that Briar would be located at a different location than what is currently on the Master Plan. Mr. Dunn asked Mr. Lowe if they are now advising that this application is different than that. Mr. Lowe stated that this plan was approved with a stipulation that Briar may need to be realigned based upon the discussions with the property owner to the north.

Councilmember Dunn stated the stipulation specifically states that the applicant be responsible for the construction of Briar, the location of which shall be determined in negotiations between City Staff, the property owners to the north and all other interested parties, prior to final plan submission.

Councilmember Dunn stated the only way he would feel comfortable in moving forward with this stipulation, would be in the event that the negotiations ended up with the property being relocated and there was a cost involved with the property owners to the north, and that the cost would be borne by the applicant rather than the City. The motion was seconded by Councilmember Bussing.

Mr. Lowe stated he would be willing to state that if the alignment cannot be worked out, the applicant would abide by the alignment of Briar on the Section line.

Councilmember Dunn clarified that this statement would be an extension of Stipulation No. 6, in that, if an agreement is not reached between the parties, that the applicant will proceed with the alignment that is currently shown on the Master Plan.

Mr. Lowe stated in the affirmative.

Councilmember Dunn then stated he would withdraw his original motion to continue this item and move to approve the application with the aforesaid amendment. The motion was seconded by Councilmember Bussing.

Councilmember Gill wanted to clarify that the Final Plan for this project would be submitted to the Governing Body for approval. Councilmember Dunn stated he would like to amend his motion to reflect this stipulation. Councilmember Bussing concurred with the amendment.

Mr. Lambers requested that under Stipulation No. 6, that language referencing City Staff be deleted. Negotiations should be between the property owners and not the City, and further adding that whatever is negotiated between the parties would be consistent with City policy in terms of intersection development.

Councilmember Dunn asked that this amendment also be added to his motion. Councilmember Bussing concurred.

Mr. Patterson stated the Jameson's preliminary site development plan does in fact offset the proposed construction of Briar west of the center line of that Section line, and will give the applicant time to develop and confirm that.

Mayor Dunn stated Stipulation No. 26, may change if indeed it does become necessary to have Briar as shown on the Master Plan. Number 26 is very specific as to what is to go on each pad site, and asked Ms. Bennett if this needs to be revised.

Mr. Lowe agreed, stating they would need to have the flexibility to change the uses on those pads should the original alignment be adopted.

Mr. Lowe also asked that 'Staff' not be deleted from Stipulation No. 6. He feels it is imperative that Staff be involved in these discussions, due to the fact Briar is a public street.

Mr. Lambers disagreed and stated he felt this was a private matter and that the applicant will have to make the alignment consistent with city standards.

Mr. Lowe stated he doesn't feel it would be prudent for negotiations to be entertained without staff involvement, because negotiations may be made and then subsequently find out that it is not acceptable to the City.

Councilmember Gill wanted to reiterate that the motion be approved with the stipulation that if the property owners, including the property owners north of 135<sup>th</sup> Street cannot come to an agreement on the location of Briar, that Briar would then be located on the Section Line, as depicted in the Master Plan; that the final plan will be brought before the Governing Body for approval; and that the pad uses currently shown may change if the location of Briar Street is revised.

The applicant agreed to those conditions.

Councilmember Bussing asked that the applicant work with the Planning Department to illustrate how any development placed in the 135<sup>th</sup> Street Corridor area complies with the 1999 corridor guidelines.

Mayor Dunn stated this item would require all Governing Body members present to vote in favor of the motion to approve the resolution, due to one councilmember being absent, one abstention and a super majority vote needed to override the Planning Commission recommendation. The motion was approved by a unanimous vote.

- \*\*\* D. Ordinance approving rezoning from AG, Agriculture, to SD(CR), Special Development District (Commercial-Retail) for real property located at the southeast corner of 135<sup>th</sup> and Nall [Roll Call Vote]

*Staff Comment: The City Administrator is recommending that this item be continued to the December 2, 2002, Governing Body meeting in order to provide the applicant time to resolve the conflict regarding the alignment of Briar Street. [See Attached Memo]*

Councilmember Bussing asked if it was proper for the Council to take action on this rezoning ordinance in light of the stipulations being placed on the previous agenda item. Mayor Dunn stated the applicant would not be able to move forward without the zoning. Ms. Bennett stated this is normally done upon approval of the preliminary plan. However, Ms. Bennett stated under the current Annexation Agreement with this applicant, the City would not publish the ordinance until after November 29, 2002.

A motion was made by Councilmember Gullledge, seconded by Councilmember Dunn, to pass the ordinance.

Councilmember Gill asked for clarification regarding the zoning map. It should be stated that the amendment to the zoning map would be in accordance with the revised stipulations. If the realignment of Briar does not occur, the zoning map would still depict Briar Street on the Section line. Ms. Bennett confirmed this would be correct.

The ordinance was unanimously passed following a roll call vote.

- 6310 E. Ordinance approving a special use permit to allow the sale of packaged liquor located at 3731 W. 133<sup>rd</sup> Street, Stoll Retail Liquor Store [Market Square Development] [Roll Call Vote]

A motion was made by Councilmember Gill, seconded by Councilmember Story to pass the ordinance.

Mr. Bolling, representative for Market Square Center, made a presentation of the site plan of the shopping center, showing the existing Price Chopper supermarket, the retail shops that have been constructed along the north and eastern edges. They presently have a tenant that will occupy 3,000 square feet and are requesting a Special Use Permit [SUP] to accomplish this.

The motion was unanimously passed following a roll call vote.

- 6577 **13. OLD BUSINESS**  
A. Ordinance amending § 13-337, of the Code of the City of Leawood 2000, pertaining to the placement of gates on public streets [Roll Call Vote] *[Continued from the July 1, 2002, Governing Body Work Session; August 19, 2002, and November 4, 2002, Governing Body meetings]* [companion ordinance]

Councilmember Taylor asked for a point of order that Agenda Item 13.B. be heard before 13.A. Item 13.B., has been continued since February 18, 2002. The residents involved in this issue were told a decision would be made regarding this issue and the proposed ordinance does not address their request and questioned if their request would be grand fathered in.

Ms. Bennett stated their request would be subject to the new ordinance.

Mayor Dunn stated the whole reason behind having this ordinance was, in fact, to address this issue because the City did not have a clear and concise gate policy to address this request. This was the clear direction of the majority of the Council from the previous work sessions regarding a gate policy.

Councilmember Taylor stated he felt it was unfair to the residents for this issue not to be acted upon and they would not be grand fathered in and would have to abide by the ordinance.

Mayor Dunn stated this request would be forwarded to the City Administrator for his review.

Councilmember Taylor entered a motion that Agenda Item # 13.B. be heard before Item # 13.A.

Ms. Bennett stated since the Agenda had already been approved, possibly the ordinance could be amended to allow for any pending requests not to be governed by the terms of the ordinance.

Councilmember Gullede stated he believed both parties were saying essentially the same thing, but just going about in a different manner.

Councilmember Gullede seconded Councilmember Taylor's motion.

Councilmember Gullede suggested based upon the ordinance that will possibly be passed, the Ironhorse Estates gate request would not be subject to approval and the ordinance could be amended to not subject this item to the terms of the ordinance.

Councilmember Gill stated the reason behind this was to have a more clear policy in which to work with for these types of requests and feels it would benefit the Council to have a better articulation and understanding of what the guidelines are, and would not be in favor of repositioning the agenda items.

Councilmember Dunn concurred with the Mayor and Mr. Gill. The reason behind creating this gate policy was a result of this request because no standards were in place in order to properly review, however, he would be in favor of a request from the applicant for a continuance, if the ordinance would be passed, to give them an opportunity to resubmit their request in accordance with the ordinance.

The motion failed by the following vote: Yea: Councilmembers Taylor and Gullede; Nay: Councilmembers Bussing, Rawlings, Dunn, Story, and Gill.

Councilmember Gill made a motion to approve the ordinance, with the stipulation that Section 16-1-7.3, of the Leawood Development Ordinance [LDO] be placed in this ordinance. The motion was seconded by Councilmember Bussing.

Councilmember Taylor stated he is against the motion, under Section (C) 1-5, the applicant should have a traffic study conducted and believes this was discussed in the previous work sessions.

Mayor Dunn asked Mr. Patterson confine his comments to the ordinance and not the Ironhorse Estates gate request.

Mr. Patterson stated a number of the factors that the City Administrator would consider to determine if a gate would not be permitted and trigger an appeal are the same policy issues that the Governing Body would consider on the appeal and made comments regarding the 5 criteria set forth under Section 13-337(c) 1-5. The portion of Hampton Place subdivision located in Overland Park has 481 lots. Currently there are only two [2] access points along Nall and 158<sup>th</sup> Street. The other access point, Linden Street, carries a substantial amount of traffic from Hampton Place, which would cause congestion on 158<sup>th</sup> Street. Ironhorse Estates has a total of 87 lots. This condition warrants a gate to thwart a possibly dangerous situation. When a significant conflict is anticipated, it would seem more appropriate instead of asking the street be built before the gate is considered, to ask the applicant for a traffic study, before the street is constructed, to determine exactly the burden that would be placed on Ironhorse Drive to ascertain what the impact of allowing Linden Place to access Ironhorse Drive would be; or in any other application where the preventive measure is given before the street is constructed. He feels the best option would be since the street and the conflict does not exist, it would be reasonable for the applicant to have a traffic study conducted to determine the burden and whether a gate would be warranted, rather than allow Linden Street to be constructed. Some of the lots could be cul-de-sac.

Further adding, under No. 3, in this situation there are not 2 access points, only one; Ironhorse Drive to Mission, which was constructed to serve only Ironhorse Estates, not potentially one-third of the traffic from another subdivision. He felt it should read that a gate could be warranted when there are difficult situations such as only one access point.

082 Beginning of Tape No. 565

If there is congestion on Nall or 158<sup>th</sup> Street, Hampton Place residents will use Ironhorse Drive. Under Item # 5, if you have a highly dense apartment complex this would be a condition where a gate would be warranted. Additional criteria should not just be the density or the size of the lots, but the total mass of traffic that for instance would be funneled through Linden Street up Ironhorse Drive.

Councilmember Gullede understands Mr. Patterson's concerns and feels confident this is a good policy, however after hearing some of Mr. Patterson's issues, there may be some points that were missed and could be included in the policy. The mass of the multiple developments is important, as well as only having one access point and additionally Ironhorse Estates will be absorbing traffic from Hampton Place. Based upon Mr. Patterson comments, he believes there are other points that should be considered.

Councilmember Story stated the Council's intent was clear to draft a policy that would limit the number of applications that were approved by the City Administrator and to then conduct a traffic study and submit it before the City Council. It should be a very strict test to make an application to the City Administrator and have the request approved. It should not be the Council's intent to innumerate every possible factor that the Council could consider on appeal after it is denied by the City Administrator. Mr. Gill has pointed out that the Council can only

consider the 5 factors, and perhaps the ordinance should be revised. However, after reading the policy, one should be left with the impression that the Council is not in favor of installing gates. Mr. Patterson has raised some concerns and should have an opportunity to be heard and would like the policy to allow that procedure to occur. Further stating, he is not in favor of modifying the 5 factors that the City Administrator considers before he makes a decision, however wants a policy that allows for an applicant to voice their concerns to the Governing Body.

The motion to pass the ordinance was successful following a roll call vote: Yea: Mayor Dunn; and Councilmembers Rawlings, Dunn, Gill, Bussing, Story; Nay: Councilmember Taylor and Gulledge. [Since this action required a super majority, Mayor Dunn participated in the vote and voted in the affirmative.]

Councilmember Gulledge stated basically the policy is very good, however, he believes comments from Mr. Patterson should be looked at. He is not attempting to compromise public safety by the installation of a gate, however, he does understand the Ironhorse Estates residents' concerns and the traffic impact this will be placed upon them.

- B. Request for installation of gate to restrict traffic on Ironhorse Drive/Circle located within the Estates of Iron Horse Subdivision located at approximately 157<sup>th</sup> Street east of Nall *[Continued from the May 20, 2002, Governing Body meeting, and the November 4, 2002, Governing Body meeting]*

880 Mayor Dunn clarified with the adoption of the previous ordinance, this request would be subject to the conditions of that ordinance, and this request would be referred to the City Administrator.

Mr. Patterson asked if the applicant did not meet all 5 criteria, could the applicant appeal to the Council and could the Council consider additional factors.

Ms. Bennett stated that is not how the ordinance was written.

Councilmember Gill stated that the Council should be able to listen to all relevant factors concerning a gate request. Clarifications should be made to the policy that would allow an appeal based upon more than the 5 factors outlined in the ordinance.

Councilmember Gulledge stated he is confused, in that, an ordinance was just passed and now a suggestion has been made to revise the appeal process. The current reading of the ordinance does not allow for that to occur.

Councilmember Story stated he feels the ordinance does allow for an appeal, however the policy may have to be modified to allow for additional factors to be considered.

Ms. Bennett stated the ordinance could be revised and submitted to Council for approval in the near future that would broaden the Council's authority or discretion.

Councilmember Gill feels this point is covered in the current policy, stating on part:

“...[t]he applicant may then seek appeal to the Governing Body as a whole and the matter shall be scheduled on the next available agenda for hearing.”

There are no restrictions on the Governing Body as to what they would want to do on a request, and the Council would be allowed to consider all factors.

Councilmember Dunn moved that this item be removed from the Agenda for administrative process. The motion was seconded by Councilmember Story and approved by the following vote: Yea: Councilmembers Gulledge, Bussing, Rawlings, Dunn, Gill, and Story. Nay: Councilmember Taylor.

**14. NEW BUSINESS**

- A. Approve Retail Liquor Store License to Stoll Retail Liquor Store, located at 3731 W. 133<sup>rd</sup> Street [companion SUP Ordinance]

A motion was made by Councilmember Gill, seconded by Councilmember Story to approve the license. The motion carried by a unanimous vote.

**15. OTHER BUSINESS**

- \*\*\* A. Schedule Governing Work Session on December 2, 2002, at 6:30 P.M., to discuss an Integrated Software System for the Finance & Human Resources Departments

A motion was made by Councilmember Dunn, seconded by Councilmember Rawlings to schedule the Work Session. The motion carried by a unanimous vote.

There being no further business, the meeting was adjourned at 10:11 P.M.

---

Debra Harper, City Clerk