

Minutes

Audio Tape No. 591

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, June 16, 2003. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

Staff present:

Scott Lambers, City Administrator
Randy Hill, Deputy Chief, Fire Dept.
Joe Johnson, Public Works Director
Kathy Rogers, Finance Director
Jeff Cantrell, Neighborhood Serv. Admin.
Shannon Marcano, Assistant City Attorney
Diane Binckley, Dir., Planning & Develop.

Patricia A. Bennett, City Attorney
Scott Barton, Captain, Police Dept.
Chris Claxton, Parks & Rec. Dir.
Karl Weinfurter, Info. Systems Specialist
Deb Harper, City Clerk
Emily Gleasure, Deputy City Clerk

148 **1. PLEDGE OF ALLEGIANCE**

163 **2. APPROVAL OF AGENDA**

Mayor Dunn asked that Item 13 be moved to Special Business, Item 7A. The current Item 7A would then be renumbered to 7B; 7B to 7C; and 7C to 7D. Councilmember Gill made the motion to approve the agenda, seconded by Councilmember Story. The motion passed 7-0-0, with Councilmember Taylor not in attendance at the time of the vote.

189 **3. CITIZEN COMMENTS -**

Bob Sjolín, 3217 W. 82nd Terrace, questioned the reasoning behind the way items were placed upon the agenda, and also asked for street light illumination for the Leawood Homes Association.

Gloria Danner, 9239 Lee Boulevard, referencing the LDO 4-1-3.3, asked for a variance to repair her barn.

G. Gordon Thomas, 10516 Mohawk Lane, spoke against the sales of alcohol on Sundays and holidays, and also on the types of housing planned for the Park Place development.

524 **4. PROCLAMATIONS**
Mayor Dunn proclaimed **National Small Cities and Towns Day, June 22, 2003**, in Leawood.

537 **5. PRESENTATIONS/RECOGNITIONS - None**

540 **6. PUBLIC HEARING**

A. Proposed Assessments for the Roe Avenue Improvement Project, [135th Street to 137th Street] [CIP # 174]

There being no discussion, Councilmember Dunn made a motion to close the public hearing, seconded by Councilmember Story. The motion passed 7-0-0, with Councilmember Taylor not in attendance at the time of the vote.

B. Proposed Assessments for the 133rd Street [between State Line and Mission Road] Improvement Project, [CIP # 178]

Robin Keeble, 13104 High Drive, owner of Tract B in Wilshire Place, asked to be excluded from the special assessment. His lot measures 150 feet in length, and 60 feet in width on the east end and 20 feet in width on the west. It has no value and contains only a concrete ditch and a sidewalk.

Councilmember Gill questioned the assessment on Mr. Keeble's property, stating he understood that there had been an agreement reached between the developer and the homeowners. City attorney Patty Bennett stated she believed the agreement had been between the developer and the Ashners, who owned the land at the time of the signing. City Administrator Scott Lambers stated the validity of the assessment on this property would be researched, prior to the adoption of the assessments on July 7, 2003.

Councilmember Gulledge made a motion to close the public hearing, seconded by Councilmember Dunn. The motion passed 7-0-0, with Councilmember Taylor not in attendance at the time of the vote.

763 **7. PUBLIC HEARING**
SPECIAL BUSINESS

A. Resolution No. 1984 declaring a Sister City Relationship between the City of Leawood, Kansas, and The Gezer Region of Israel

Mayor Dunn acknowledged the email from Shimon Binoun, from the Gezer Region in Israel, stating that on this day their Council had approved the Sister City Relationship with the City of Leawood.

There being no discussion, Councilmember Bussing made a motion to close the public hearing, seconded by Councilmember Story. The motion passed 7-0-0, with Councilmember Taylor not in attendance at the time of the vote.

Mr. Lambers stated that that a quorum was not necessary for the signing of the document to be prepared by Mr. Lambers and the city manager of the Gezer Region for the teleconferenced adoption of the Sister City Relationship, should the resolution pass.

Mayor Dunn publicly thanked the Jewish Federation and the Jewish Community Relations Bureau for their help during the process of initiating the Sister City Relationship with the Gezer Region.

Councilmember Dunn made the motion to approve, seconded by Councilmember Rasmussen. The motion was approved 7-0-0, with Councilmember Taylor not in attendance at the time of the vote.

B. Charter Ordinance No. 36 exempting the City of Leawood, Kansas, from the provisions of K.S.A. § 47-712; prohibiting alcoholic liquor sales on Sunday and certain holidays [Roll Call Vote]

There being no discussion, Councilmember Rasmussen made a motion to close the public hearing, seconded by Councilmember Bussing. The motion passed 7-0-0, with Councilmember Taylor not in attendance at the time of the vote.

Councilmember Rasmussen confirmed with Deb Harper that the effective date of the new ordinance would be September 1, 2003, giving retail sellers the option of selling on Labor Day if approved.

There being no further discussion, Councilmember Rasmussen made a motion to adopt the charter ordinance, seconded by Councilmember Gill. The motion passed 6-1-0, with the following vote: Yea: Councilmembers Gill, Dunn, Bussing, Rasmussen, Story, and Rawlings. Nay: Councilmember Gulledge. Councilmember Gulledge's reasons were as previously stated. Councilmember Taylor was not in attendance at the time of the vote.

1020

C. Ordinance No. 1994 amending Code § 3-204, of the Code of the City of Leawood, 2000, pertaining to retail sales of alcoholic liquor, entitled Hours of Operation for Retail [Roll Call Vote]

Councilmember Taylor arrived at 8:00 P.M.

There being no discussion, Councilmember Dunn made a motion to approve, seconded by Councilmember Rawlings. The motion passed 6-1-1, with the following vote: Yea: Councilmembers Gill, Dunn, Bussing, Rasmussen, Story, and Rawlings. Nay: Councilmember Gulledge. Councilmember Gulledge's reasons were as previously stated. Councilmember Taylor stated his abstention was due to his arriving late for the discussion and vote on the ordinance.

D. Ordinance No. 1995 granting to and authorizing to Xpedius Communications, LLC, a Franchise Agreement authorizing the right to construct, operate, and maintain a telecommunications system using the rights-of-way in the City [Roll Call Vote]

Councilmember Gill questioned the amount of damage a company could do to a right-of-way, and was the City and/or the company financially covered should any damage occur. Ms. Bennett replied any damage would be covered under the Public Works Right-of-Way Ordinance requiring permits that included insurance coverage before the company could proceed.

Mayor Dunn confirmed with Ms. Bennett that this system was in a different location than the Axon conduit.

Councilmember Gill made a motion to approve, seconded by Councilmember Dunn. The motion passed 8-0-0, with the following vote: Yea: Councilmembers Gill, Dunn, Bussing, Rasmussen, Story, Taylor, Gullledge and Rawlings.

1111 **8. CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Approval of Appropriation Ordinance No. 975
- B. Minutes of the June 2, 2003, Governing Body meeting
- C. Minutes of the May 13, 2003, Park and Recreational Advisory Board meeting
- D. Minutes of the April 3, 2003, IRONHORSE Golf Course Committee meeting
- E. Renewal of Cereal Malt Beverage [CMB] License for Paddy O'Quigley, located at 11851 Roe Avenue
- F. Renewal of Cereal Malt Beverage [CMB] License for Price Chopper # 500, located at 13351 Mission Road
- G. Renewal of Retail Liquor Store License for Zipz! Spiritz, located at 4821 West 135th Street
- H. Acceptance of monetary gift donation in the amount of \$6,480, from the Leawood Woman's Club to the Leawood Fire and Police Departments
- I. Approve Purchase of General Liability in the amount of \$2,709.63, pertaining to Insurance for Ironwoods Challenge Course from Evanston Insurance Company, \$500,000 per occurrence/\$2,000,000 aggregate
- J. Approve purchase in the amount of \$9,322.60, from Lyon Emergency Equipment Company for the purchase of firefighter bunker gear
- K. Approve quote for an amount not to exceed \$15,000, from American Micro Company, pertaining to the scanning of Public Work documents
- L. Approve renewal of Microsoft Licensing coverage in the amount of \$31,218.10, between the City and Microsoft Corporation via Software Spectrum pertaining to the yearly license renewal [*This item was approved by the Governing Body in the budget process*]

- M. Approve payment in the amount of \$6,227.98, to Southwestern Bell Company [SBC] pertaining to the relocation of utilities related to the SMAC Project JB-04-008, from Lee Boulevard to State Line between 103rd Street and I-435
- N. Approve Change Order No. 1 in the amount of \$20,687.00, to Zimmerman Construction Company, Inc., pertaining to the Fire Station No. 2 Remodeling Project, located at 12701 Mission Road [CIP # 150]
- O. Resolution No. 1978 approving and authorizing the execution of a Construction Agreement in the amount of \$1,938,085.00, [with a 10% contingency totaling \$2,131,900.00] between the City and Miles Excavating, pertaining to the, SMAC Project JB-04-008, from Lee Boulevard to State Line between 103rd Street and I-435
- P. Resolution No. 1979 approving and authorizing the execution of a Construction Agreement in the amount of \$24,900, between the City and Benchmark Corporation, pertaining to the City Park Lake, 10601 Lee Boulevard
- Q. Resolution No. 1980 approving and authorizing the execution of an Independent Contractor Agreement in the amount of \$2,029.50, between the City and Ameriguard Inc., pertaining to the Leawood Stage Company production, on June 26-29, 2003
- R. Resolution No. 1981 approving a Final Site Plan and Final Plat for Mission Reserve, 3rd Plat, located on the southwest corner of 151st Street & Mission Road ***[from the May 27, 2003, Planning Commission meeting]***
- S. Resolution No. 1982 approving a Final Site Plan for 8700 Building, located at 8700 State Line Road [new entrance & mechanical equipment] ***[from the June 10, 2003, Planning Commission meeting]***
- T. Fire Department Monthly Report
- U. Municipal Court Monthly Report
*****Due to a Police Department computer conversion- the Monthly Police Reports will not be available for 3-5 months***

Councilmember Rasmussen asked to pull Item 80 from the Consent Agenda. Councilmember Rasmussen made a motion to approve the remaining items, seconded by Councilmember Gullledge. The motion was approved unanimously.

Councilmember Rasmussen asked that the cost of the levy be included in the SMAC project. Councilmember Rasmussen made the motion to approve the change, seconded by Councilmember Rawlings. The motion was approved unanimously.

1203 **9. MAYOR'S REPORT**

- A. Attended the State of Caring luncheon, where the Committee for Navigating the Future for Johnson County unveiled its plan. United Community Services of Johnson County sponsored the event.
- B. Attended the Wyandotte/Johnson Counties Council Mayors meeting in Mission, KS. Legislators from Johnson and Wyandotte Counties were also in attendance. It was stated that municipalities should not expect any money from the State for the 2004 Budget year. Former Lenexa Mayor, Joan Bowman was the recipient of a Distinguished Public Service award.

- C. Attended a Planning luncheon with Kevin Jeffries regarding two symposiums this fall focusing on the need for arts in the county.
- D. Announced the Leawood Stage Company's "Celebrate Broadway" June 26-29, 2003; and community nights of June 26 sponsored by the Leawood Lions; June 27 sponsored by Costco; June 28 sponsored by Leawood Kiwanis; and June 29 sponsored by Chamber of Commerce.
- E. Announced the July 4th celebration in Leawood, starting with the Lion's fountain dedication at 2:00 PM. The fireworks display will begin at 9:30 PM.

1387 **10. COUNCILMEMBERS' REPORT - None**

1388 **11. STAFF REPORT – None**

COMMITTEE RECOMMENDATION

1390 **12. PLANNING COMMISSION**

[from April 8, 2003, Planning Commission meeting]

- A. **Ordinance No. 1988, approving preliminary site plan and preliminary plat and rezoning from SD(O) [formerly known as CP(O)] Planned Office to MXD Mixed Use District, for Park Place, located on the northeast corner of 117th Street and Nall Avenue [Roll Call Vote] [Continued from the June 2, 2003, Governing Body meeting]**

Point of Order was raised by George Bock, 5309 W. 116th Street, concerning the vote taken on this plan at the last Governing Body meeting. Mr. Bock stated following the public hearing, a vote was taken on this ordinance and it was defeated. He stated there was nothing for the Governing Body to decide tonight. The only alternative for the developers would be to go back to the Planning Commission with a new plan. Ms. Bennett stated the Ordinance did not pass on the motion that was offered by the required number of votes; it was not defeated. To be defeated the motion would have needed the 2/3 simple majority required by the Kansas Statute, and that vote was not taken. The action pending was continued.

The applicant was represented by John Petersen, Esq. He stated the developers spent two weeks re-evaluating the project. The plan now included the elimination of Stipulations #5 and 17, and modified in part Stipulation #6 (the NW office building was now limited to seven stories instead of eight). Mayor Dunn added that Stipulations #7 and 25 would also be modified as per discussions at the June 2nd Governing Body meeting, and Mr. Petersen concurred with this.

Councilmember Rasmussen asked for clarification from Mr. Petersen on the residential condominiums to being stepped back and were reflected on the site plan.

Councilmember Taylor questioned Diane Binckley as to the height of the twelve-story hotel. Ms. Binckley replied the limitation was 113 feet, which included the parapet. Councilmember Rasmussen said the applicant had stated there would be no construction over 100 feet. Councilmember Taylor stated the present zoning allows for structures up to 113 feet.

Councilmember Rasmussen stated that he, Diane Binckley, Joe Johnson, the president of the Edgewood Homes Association and Mr. Kaul of TerraTechnologies, had walked the total drainage area of the site, assuring everyone present at the walk-through knew the facts and concerns of everyone involved.

1737 Mayor Dunn called on citizens who had signed in to speak. Judy Butler, 11504 Cedar, stated she was not against “appropriate” development for the site, but did not feel the current plan was appropriate.

Don Osborne, 5144 W. 115th Terrace, stated he was against the proposal. He was concerned about the stormwater problem, and felt the developer was more concerned with creating property value for the seller than for the concerns of existing residents.

George Bock, 5309 W. 116th Street, opposed the PDP5 map of the proposed project. He stated Phase I included the “L” and condominiums. He asked when would the green area between these two areas be phased in.

Dara Bock, 5309 W. 116th Street, opposed the development plan. She asked if there were other partners in the Park Place development group, or would the development group sell to another developer later after approval?

Sharon Cohen, 5213 W. 116th Street, opposed the development plan.

Dr. Morton Jacobs, 11509 Rosewood, questioned the ownership of Town Center Drive. He asked if the developers could assure that the stormwater problem would be addressed adequately.

2389 Harold Treaster, 5260 W. 116th Terrace, asked to read a letter from President Al Cinelli of Edgewood Homes Association. Mayor Dunn interjected that all of the Councilmembers had received the letter and it would not be necessary to read it. An unidentified citizen asked for a Point of Order, declaring he had not read the letter. A copy was given to the citizen.

Myron Schultz, 5217 W. 116th Street, requested the developer secure a Performance Bond.

Patricia Scott, 5304 W. 116th Street, asked for the Governing Body’s vote against the plan.

Arthur Scott, 5304 W. 116th Street, stated that the responsibility of the Governing Body on its vote on the Park Place plan was great and should be weighed carefully.

James Eddy, 11507 Cedar, stated the Park Place site as proposed was urban, not suburban.

Don Smith, 5209 W. 116th Terrace, stated that 65% of the Edgewood residents had spoken before the Governing Body on Park Place. He asked that the Governing Body lower the proposed FAR to 5 or 6.

Mayor Dunn asked Mr. Petersen to comment on the phasing of the green space as questioned by Mr. Bock. Mr. Petersen stated the five-acre park area referenced by Mr. Bock would be included in Phase I of the plan. Jeff Alpert further explained that the park area would be completed in two stages during Phase I to accommodate the building of the condominiums and the "L".

Mayor Dunn asked Ms. Bennett to comment on the eminent domain issue brought up in Mr. Cinelli's letter to the Governing Body. Ms. Bennett replied that the title of the tract that included Town Center Drive had never been conveyed to the City and remained in the Marned-Douthat ownership. Despite creating Town Center Drive, the tract had never been taken by eminent domain, and it did not infer ownership by the City. The tract needed to be on the plan so that it could be dedicated over to the City and properly made a part of the City's right-of-way.

Mayor Dunn asked Ms. Binckley to explain the MXD zoning process and how it was initiated. Ms. Binckley stated the Planning Commission made the revisions to the LDO [Leawood Development Ordinance] approximately a year and a half ago. The Comprehensive Plan that had been implemented the year before, along with citizen comments taken at that time for more pedestrian use areas, was used to create the MXD zoning category. During the formulation of the MXD zoning plan, several public hearings were conducted, and citizen observations were evaluated and included in the development of the new category. Mr. Lambers added that the entire LDO was evaluated at that time, and not just the MXD zoning section.

Mr. Petersen addressed the questions made by Mrs. Bock concerning development partners. He stated there were no other partners in the Park Place Development other than Mr. Alpert and Melanie Mann. The issue of the developers selling to another developer had already been mentioned, regarding having a hotel developer buy the hotel site. As far as selling any other part of Park Place, new owners would be held to the same stipulations, rules, regulations and commitments made during this process, guaranteeing the same level of quality and financial commitment that the current developers had put in place. A change in ownership would not change the project.

Councilmembers Rasmussen and Taylor, Ms. Bennett, and Mayor Dunn discussed the number of votes needed to approve, deny, or remand the Park Place project. Mr. Lambers explained the 7-vote requirement was a self-imposed requirement that the Governing Body had adopted as part of the LDO. The 6-vote requirement was mandated by state law. Councilmember Taylor asked what had been changed in his motion at the last Governing Body session that had only required six votes. Mr. Lambers replied his motion required seven votes. The motion had received five votes; the Mayor had indicated that if given the opportunity, she would have voted in the affirmative; however, in order for her to vote, there had to have been six affirmative votes by Council.

Councilmember Gill asked Mr. Lambers about the escrowing of funds for stormwater damages should the plan in place not work (referring to Mr. Osborne's comments). Mr. Lambers stated the applicant would be required to put in the necessary improvements and submit them to the Governing Body as part of the Final Plan. Should the improvements not be sufficient to deal with the problem, the applicant would be required to come back and submit plans to the City to alleviate those problems. Mr. Petersen concurred it would be the developer's ongoing responsibility to remedy any problems.

3370 Councilmember Rasmussen read into the record the stipulations he discussed in the memo included in the Council packet. He asked for more capacity to the culverts under Town Center Drive at the applicants' expense as an alternative to stormwater retention on the site plan; any additional improvements that would be deemed necessary would be approved by the City's Public Works department staff. Mr. Petersen said, for the record, that whatever laws and standards were in place at the time of the approval of the Final Plan for any and all phases, the applicant would adhere to them, and all costs and expense associated with the adherence would be borne by the applicant. Councilmember Rasmussen asked that the trail on the north side of Town Center from Roe be completed as part of the stormwater project by the applicant. Mr. Petersen stated the applicant would be responsible for erosion control, including the extension of the City-owned pipe; and for constructing and designing the trail, short of applying the asphalt, which would be at the City's expense.

4150 Councilmember Taylor continued the discussion on Mr. Osborne's suggestion, asking if a bond put up by the developer would satisfy the request for escrow coverage should an unforeseen engineering failure to the stormwater plan occur in the future. Mr. Petersen stated the problem with that approach would be determining the amount of the bond and the duration of it. He stated at Final Plan, both the developer and city's engineers would review all of the calculations. In addition, the contract calls for no flooding over Town Center Drive as a condition to the MXD zoning; thus the zoning approval for this property as developed would be conditional, with the responsibility running with the developers or a third party that owned and operated a building there. It was in essence a lien against the property when developed, as that was the only time the property would be generating stormwater raising the issue. Councilmember Taylor asked Ms. Bennett if the City had any recourse on a piece of property that had a first lien on it. Ms. Bennett replied the City could pull the certificate of occupancy. Mr. Lambers stated that option would not be a good process for the City to rely upon; he recommended that a stipulation be included that asked for a Performance Bond or letter of credit for storm drainage improvement for a set time [i.e. five years] before the final phase of development be approved by the Governing Body. Mr. Petersen stated the developer would agree to that stipulation being added.

4450 Councilmember Dunn suggested that a stipulation be made for the Park Place stormwater management issue to be reviewed by the Stormwater Committee.

Councilmember Rawlings addressed Mr. Cinelli's letter, referring to the residents' concerns of a \$7 million reduction on property values. He mentioned that at the June 2, 2003, Governing Body meeting Whitney Kerr had stated that Edgewood property would increase in value because of the Park Place development. Mr. Bock spoke on behalf of Mr. Cinelli, saying Mr. Kerr had openly stated he had large financial interests in the Park Place project and Mr. Bock thought Mr. Kerr might not be an impartial expert. He stated that putting a project like Park Place into a declining urban area would ultimately increase the value of the surrounding area. The distinction here was putting the project in an area where there were some of the highest property values and adding an increase to the increased population and traffic. A prospective buyer's view of an \$800,000 home in Edgewood would be different in this environment than what was referenced by Mr. Kerr. Mr. Bock stated the Edgewood neighborhood was already having problems with selling homes because of the potential of the Park Place project. Mr. Petersen replied that facts supported the increase in value of single-family homes near projects of this type. From his and the developer's experience, Park Place would not have an adverse impact on the land values in Edgewood.

4898 Mr. Alpert commented further that Park Place was providing a usable amenity for the Edgewood residents, just as it was for other surrounding neighborhoods in Leawood. As the developer, he felt the compatibility of the project would be an enhancement to the Edgewood property values as opposed to a detriment.

4954 Ken Bush, 5187 W. 114th Place, asked if developers from other projects in Leawood had been held accountable financially by zoning laws, as this project would be for stormwater problems, in which the City was unable to recover money from them. If there were no other changes in zoning, why was the City unable to collect and what guarantee would there be that this project would be like the others in this respect. Mayor Dunn replied that the stipulation that Mr. Lambers recommended had never been requested in previous plans.

Councilmember Bussing asked what alternative use could be expected should a hotel not be placed in the proposed site. Mr. Petersen replied that a compatible use of the land would be incorporated, which would comprise of office and/or retail usage. However, if the hotel structure would be approved, only a hotel could occupy the area unless the developer came back to the Planning Commission. The developer would have no automatic right to place something in an area that had been approved for another specific use.

5115 Councilmember Bussing stated that in the past two weeks, he had taken the opportunity to study the proposal in more depth and the appropriateness of the development at the proposed location. He acknowledged that he had met with four members of the architectural and land planning faculty at Kansas University, where the plan was reviewed. He conceded that economically the land site could only be developed in the proposed way, and not in single-family homes on big lots as was customary in the past. The KU faculty pointed out the appropriateness of the project in relation to the Sprint campus, to Town Center and to Camelot Court. In conclusion, he felt this project was suitable and represented the way suburban cities were developing around the country today.

5292 Councilmember Taylor made the motion for approval of Park Place with the stipulations from Councilmember Rasmussen's memo with the exception of the paving of the trail, the stipulations he proposed at the June 2, 2003 Governing Body meeting, and the stipulation proposed tonight by Mr. Lambers regarding the Performance Bond at the final phase. The motion was seconded by Councilmember Gill. Mr. Petersen questioned the elimination of Stipulation #6 from Councilmember Rasmussen's memo; Mr. Lambers stated #6 should read as is, stating only the hotel would have the height deviation. Mr. Petersen stated, with that understanding, the applicant would agree to all stipulations included in the motion. He also agreed to the construction of the trail, without any bridge structure. A roll call vote was taken: Yea: Councilmembers Dunn, Gill, Taylor, Bussing, Rasmussen, Story, Rawlings, and Gulledge. Nay: None. The ordinance was passed unanimously.

[from May 27, 2003, Planning Commission meeting]

B. Ordinance No. 1996 approving a preliminary site plan for an office building within Plaza Pointe, Lot 2, located south of 135th Street and west of Roe Avenue [Roll Call Vote]

5555 Ms. Bennett asked that ordinance be amended by adding Stipulation 16, which granted easements to allow Cornerstone and its contractors to connect the private access road to their development from Plaza Pointe. Councilmember Taylor recused himself from the vote, following the addition of the Cornerstone stipulation.

Scott Slaggie, of Jantsch Slaggie Architects, 208 Delaware, presented the project and discussed the stipulations that they and the developers had agreed to.

Councilmember Bussing confirmed with Mr. Slaggie the detention pond had already been constructed.

Councilmember Rasmussen made the motion to approve, seconded by Councilmember Gulledge. A roll call vote was taken and the ordinance approved 7-0-1, with the following vote: Yea: Councilmembers Gulledge, Bussing, Gill, Dunn, Rasmussen, Rawlings, and Story. Nay: None. Recuse: Councilmember Taylor.

C. Resolution No. 1983 approving a Final Site Plan for Dermatology and Skin Cancer Center located southeast of 115th & Roe Avenue.

5927

Ron Davido, of ACI Boland, asked for a variance to allow three signs on their building, one each on the north, south and east sides. He stated a sign with a logo needed to be placed on the east side of the building to direct patients coming from the I-435 and Roe area at night. The applicant was also questioning the lighting curfew for the sign. Ms. Binckley stated the curfew was implemented at the Reece-Nichols building after the building of Edgewood to restrict lighting into the residences. Mr. Davido replied the Cancer Center building was further south from Reece-Nichols and could not be seen from the Edgewood residences. Mayor Dunn stated a super majority vote would be needed from the Governing Body to override the Planning Commission's ruling on two signs, neither with a logo.

Councilmember Gullede left the meeting at 10:30 PM.

Councilmember Gill questioned the claim of emergency surgery at the center at night that would necessitate a lighted sign. Glenn Goldstein, the Center's physician, stated that while most surgeries took place during the day, there was an occasional occurrence of post-surgery bleeding. Patients would come back to the clinic as opposed to going to an area hospital because of insurance restrictions which would cause them to have to pay emergency room co-payments should they choose to have their sutures treated there instead of returning to the clinic. Councilmember Rasmussen confirmed with Ms. Binckley that the applicant could use architectural lighting on his signs instead of internally lit signs and be able to keep them lit 24 hours a day. Councilmember Gill questioned the use of monument signs; Ms. Binckley stated the developer had put a restriction on them. She also stated that should a monument sign be used, one of the two allowed wall signs would have to be removed.

Mr. Lambers commented that the illumination of the building from architectural lighting would be greater than that from the illuminated sign. He stated that if the building were open past 11:00 PM for medical purposes, he would suggest asking for the sign to be illuminated for a period of time to be determined (six to nine months) which would automatically expire unless authorized by the Governing Body. If any complaints had been received, they could be documented and discussed later. Within the time frame granted, it would be easily determined if the illuminated signs were a problem.

Dr. Goldstein explained to Councilmember Taylor that patients would be encouraged to enter from 115th Street instead of Granada because of the traffic light that was available for safer travel. He stated patients coming up 115th Street or down Roe Avenue around the building would not know which building the clinic was in until they passed it, and would have to circle the block again. Mr. Lambers commented that if the traffic was to be redirected to 115th Street, the most appropriate location for the signage would be on the west and east sides, with the benefit of the south side being extremely limited.

Dr. Goldstein questioned Ms. Binckley as to why the sign logo was not approved. She stated that the Planning Commission historically had not approved logos on signs, especially on office-type buildings as opposed to retail. Dr. Goldstein stated he felt the signs on the west and south were the most beneficial to the project. He asked that those two signs be internally illuminated with a 6-month review on the western sign (no restriction on the southern sign). Councilmember Bussing asked for an exception for allowing the logo for Dr. Goldstein's business.

Councilmember Taylor asked for a motion to approve the signs on the west and south sides, with the west sign containing the logo depicted in the packet subject to the ordinance allowing such logo to be granted; also that lighting would be granted on the west side for a six-month period of time and then reviewed. The motion was seconded by Councilmember Bussing. The motion was approved 7-0-0, with Councilmember Gullledge not in attendance at the time of the vote.

14. NEW BUSINESS

7165

A. Ordinance No. 1997 amending Code Sections 2-102 and 2-110, of the Code of the City of Leawood, 2000, pertaining to the Definition of Dangerous Animals, and Keeping of a Dangerous and/or Wild Animal, respectively, specifically including pit bulls [Roll Call Vote]

Officer Paul Atzenweiler stated he felt the current ordinance was adequate, defining a "vicious animal," and not being breed-specific. In talking with other animal control agencies, he stated they relied upon that definition as opposed to breed-specific ordinances in order to enforce laws protecting citizens. Northeast Animal Control and Shawnee Animal Control currently had bans on pit bulls. They contended it was hard to enforce because veterinarians allow "pit bulls" into their jurisdictions by listing them as similar breeds to bypass the ordinance. However, if the animal had behavioral problems, it was easier to enforce the ordinance based on that alone.

Councilmember Gill confirmed with Ms. Bennett that the proposed ordinance would still define "vicious animals" and the procedure to follow should such an animal be within the city limits. Councilmember Gill noted the pit bull's propensity to "fight". Officer Atzenweiler commented that pit bulls do not fight solely because they were a specific breed, but that the fighting was a learned behavior that any breed could be conditioned to exhibit. He stated that currently there are no "pit bulls" licensed with the City, but that it could be a misnomer because of the way veterinarians describe dogs.

Councilmember Gill asked if it would be easier for an officer to enforce an ordinance banning pit bulls, than to wait for a situation to occur. Officer Atzenweiler stated to ban all pit bulls would eliminate good-natured domestic dogs from the city unnecessarily.

7585

Mayor Dunn asked for a motion to extend the Governing Body meeting for fifteen minutes until 11:15 PM. Councilmember Gill made the motion, seconded by Councilmember Bussing. The motion was approved 7-0-0, with Councilmember Gullledge not in attendance at the time of the vote.

Councilmember Gill stated there were citizens in Ward 3 that were scared of a pair of pit bulls currently "visiting" the City, and would like the police department to have a mechanism in place to prohibit them.

Councilmember Bussing stated he would be in favor of supporting special handling by owners of pit bulls, but that he didn't agree with breed-specific ordinances that approved a total ban.

Councilmember Dunn stated that he felt the ordinance should be approved, with the option to revise it as other breeds become recognized as a significant safety issue in the community. He stated that because the pit bull breed can cause significant injuries with just one bite, he felt pit bulls had no place in a city setting.

Mayor Dunn asked how many of the listed breeds purported to be pit bulls were currently licensed in the city. Mr. Lambers replied veterinarians provide the description of the pet that the City relies upon; should the description have the predominant characteristics of a pit bull, it would be banned.

Councilmember Bussing requested a consideration from Councilmember Gill for a continuance on this matter to the next meeting to allow staff time to research the Overland Park ordinance's restrictions to see if they were suitable for Leawood. Councilmember Gill denied the request. Councilmember Rawlings asked for a two-week continuance to enable staff to look into what other breeds were banned in other cities before a vote was taken. Councilmember Bussing asked if a vote could be taken on the ordinance tonight, with it being brought back at a later date if other information was presented. Mayor Dunn stated it would be easier to have a continuance. Councilmember Gill advised he had constituents who were very afraid of certain dogs in their neighborhood, and he wanted to get the ordinance in place immediately, revising it at a later time.

A roll call vote was taken with the following vote: Yea: Councilmembers Rawlings, Rasmussen, Taylor, Dunn, Gill, Story. Nay: Councilmember Bussing. The ordinance passed 6-1-0, with Councilmember Gulledge not in attendance at the time of the vote.

B. Discussion pertaining to proposed revisions to the Ward Boundary Ordinance

8327

Mayor Dunn asked for a motion to extend the meeting ten minutes until 11:25 PM. Councilmember Taylor made the motion, seconded by Councilmember Rawlings. The motion passed 6-1-0, with Councilmember Dunn opposing the extension and Councilmember Gulledge not in attendance at the time of the vote.

The motion to approve the proposed boundary revisions to become effective January 1, 2004, was made by Councilmember Rasmussen, seconded by Councilmember Taylor. The motion was approved 7-0-0, with Councilmember Gulledge not in attendance at the time of the vote.

C. Schedule Joint Governing Body/Budget & Finance Committee Work Session on Monday, June 23, 2003 at 6:00 P.M.

Councilmember Gill made the motion, seconded by Councilmember Story. The motion was approved 7-0-0, with Councilmember Gullledge not in attendance at the time of the vote.

D. Schedule Joint Governing Body/Budget & Finance Committee Work Session on Tuesday, June 24, 2003 at 5:30 P.M.

Councilmember Story made the motion, seconded by Councilmember Dunn. The motion was approved 7-0-0, with Councilmember Gullledge not in attendance at the time of the vote.

E. Schedule Joint Governing Body/Budget & Finance Committee Work Session on Wednesday, June 25, 2003 at 5:30 P.M.

Councilmember Rawlings made the motion, seconded by Councilmember Dunn. The motion was approved 7-0-0, with Councilmember Gullledge not in attendance at the time of the vote.

F. Schedule Joint Governing Body/Budget & Finance Committee Work Session on Monday, June 30, 2003 at 5:30 P.M., if needed.

Councilmember Dunn made the motion, seconded by Councilmember Rawlings. The motion was approved 7-0-0, with Councilmember Gullledge not in attendance at the time of the vote.

14. OTHER BUSINESS - None

8542 **15. ADJOURN**

There being no further business, the meeting was adjourned at 11:30 P.M.

Debra Harper, City Clerk

Emily Gleasure, Recording Deputy City Clerk