

Minutes

DVD No. 111

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:00 P.M., on Monday, November 1, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Mike Gill, Louis Rasmussen, Scott Gullede, James E. Taylor, Sr., Gregory Peppes, Gary Bussing and Debra Filla.

Councilmembers absent: None

Staff present:

Scott Lambers, City Administrator	Patty Bennett, City Attorney
Joe Johnson, Public Works Director	Sid Mitchell, Chief, Police Department
Diane Binckley, Planning & Develop. Director	Mark Andrasik, Info. Systems Specialist
Chris Claxton, Park & Recreation Director	Deb Harper, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted that Councilmember Bussing would have a report under Agenda No. 9; Councilmember's Report. A motion was made by Councilmember Rawlings, seconded by Councilmember Gullede to approve the agenda. The motion carried following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

Mayor Dunn confirmed with Marla Cope, Sara Armer and Trish Smith that they had inadvertently signed on the wrong Citizen Sign-In sheet and that they desired to speak on Agenda Item No. 11. Mayor Dunn advised the audience that all persons wanting to address the Council regarding Agenda No. 11 [Leawood Country Club] would need to sign the sign-in sheet.

4. PROCLAMATIONS Community & Regional Planning Day, November 8, 2004
Mayor Dunn presented the Community & Regional Planning Day Proclamation to Diane Binckley, Planning & Development Director.

5. PRESENTATIONS/RECOGNITIONS None

6. SPECIAL BUSINESS - None

7. 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. 1012
- B. Accept minutes of the October 18, 2004, Governing Body meeting
- C. Accept Minutes of September 14, 2004 Parks and Recreation Advisory Board meeting
- D. Renewal of Cereal Malt Beverage [CMB] License for Hy-Vee Food Store, located at 12200 State Line Road
- E. Mayoral Appointment of Citizen Committee Member, Mike Frank, to Gezer Region Sister City Committee
- F. Approve 14th and Final Pay Request in the total amount of \$24,194.39 to Walton Construction Company pertaining to the Cornerstone Project [CIP # 190 \$4,542.79] [CIP # 191 \$19,169.58] [CIP # 192 \$482.02]
- G. Approve purchase in the amount of \$18,264.00, to Overhead Door for the purchase of garage doors for the Park and Recreation Maintenance Building
- H. Resolution No. 2314, approving Leawood Lots 687 & 687A Final Plat located at 2802 West 93rd Street [*from the October 12, 2004, Planning Commission meeting*]
- I. Resolution No. 2315, approving a Final Site Plan for Valley View Bank sign located at 11813 Roe Avenue [*from the October 12, 2004, Planning Commission meeting*]
- J. Resolution No. 2316, approving a Final Site Plan and Final Plat for Doctor's Specialty Hospital located at 5001 College Boulevard [*from the October 26, 2004, Planning Commission meeting*]
- K. Resolution No. 2317, approving a Final Plat for Village of Camden Woods 70th plat located south of 143rd Street and west of Kenneth Road [*from the October 26, 2004, Planning Commission meeting*]
- L. Resolution No. 2318, approving a Final Plat for Village of Camden Woods 71st plat located south of 143rd Street and west of Kenneth Road [*from the October 26, 2004, Planning Commission meeting*]
- M. Resolution No. 2319, approving a Final Plat for Village of Camden Woods 72nd plat located south of 143rd Street and west of Kenneth Road [*from the October 26, 2004, Planning Commission meeting*]
- N. Declaration of Surplus Property [Information Systems]

Councilmember Taylor stated he would recuse himself from Agenda Item 7F and asked that it be pulled from the Consent Agenda. A motion was made by Councilmember Bussing, seconded by Councilmember Gullledge to approve the remainder of the Consent Agenda. The motion carried by a unanimous vote of 8-0.

- F. Approve 14th and Final Pay Request in the total amount of \$24,194.39 to Walton Construction Company pertaining to the Cornerstone Project [CIP # 190 \$4,542.79] [CIP # 191 \$19,169.58] [CIP # 192 \$482.02]

A motion was made by Councilmember Rasmussen, seconded by Councilmember Bussing to approve this Final Pay Request. Councilmember Gill noted his philosophical disagreement in how this project was done. The motion carried by a vote of 7-0-1, with Councilmember Taylor recusing.

8. MAYOR'S REPORT

- A. Participated in a ribbon cutting ceremony and reception at the new Leawood Vein Center, located within Leawood Commons
- B. Attended a Greater Kansas City Community Foundation function featuring Mayor Kay Barnes and Carol Marinovich speaking on quality education
- C. The Leawood Lions Pancake Days, conducted last week was once again, a successful fundraiser
- D. Attended a dinner and breakfast that hosted 5 Russian Judges visiting from the Moscow and St. Petersburg areas this past week
- E. Attended a 3rd Congressional District Debate between Incumbent Congressman Dennis Moore and challenger Kris Kobach
- F. Reminded all citizens to vote tomorrow

9. COUNCILMEMBERS' REPORT

Councilmember Bussing commenting on the Roe Avenue Improvement Project, stated that one lane of Roe Avenue is scheduled to be open for north and southbound traffic from Tomahawk Creek to 127th Street along with the intersection of 127th & Roe itself open, on November 15th, weather permitting. The intersection will have 4-way stop signs until a signal can be installed possibly in December. Mayor Dunn asked if Mr. Bussing could provide another updated report at the Monday, November 15, 2004, Governing Body meeting.

10. STAFF REPORT – None

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the September 14, 2004, Planning Commission meeting]

Ordinance approving rezoning request from REC to RP-2, Planned Cluster Detached Residential, Preliminary Plat and Preliminary Site Plan for Estates of Old Leawood, located at 8901 Sagamore [Leawood Country Club] [Roll Call Vote]

Mayor Dunn read into the record the procedures with time limitations on the above referenced issue. [See below]

Application Presentation	30 minutes
Governing Body Questions to Applicant	No Time Limit
Citizen Comments	90 Minutes
Each speaker will be limited dependant upon the number of people wishing to address the Governing Body. Anyone wishing to speak must sign in with the City Clerk prior to the start of the application being heard. The transferring of minutes from one speaker to another is not permitted.	
Applicant Rebuttal	15 Minutes
Governing Body Questions to Applicant	No Time Limit
Recess	10 Minutes
Governing Body Deliberation and Possible Action	

Ms. Dunn stated since 90 minutes had been allocated for citizens to make comments and with 36 citizens requesting to speak; each citizen would have 2.5 minutes to comment.

With the arrival of boy scouts from Troop 10, Mayor Dunn asked them to come forward and to lead us in the Pledge of Allegiance for a second time.

Mayor Dunn asked Patty Bennett, City Attorney, to comment regarding the voting requirements for this agenda item. Ms. Bennett stated normally, a recommendation from the Planning Commission requires a simple majority vote on items to be either passed or denied, however, since a valid protest petition was filed on this item against the rezoning, a 3/4 majority or 7 out of 9 votes would be required if the Governing Body desires to override the Planning Commission's recommendation.

Application Presentation 30 minutes

Doug Patterson, Leawood Partners, LLC, gave a brief presentation followed by land planner and architect, Mr. Phil Owen, Studio Owen. Mr. Owen recognized the strong emotional ties of this project to the community as it relates to the loss of the country club that has been in the neighborhood for many years. However, this property has never been a park area, nor has the Johnson County Park and Recreation Department offered to purchase the property for parkland use. Mr. Owen offered some historical facts surrounding the history of this property, stating when the City began zoning City property in the early 1950's, this property was classified as recreational, simply because that was the current use of the land at that time. Since that time, this piece of property has never been zoned recreational, but was simply an overlaying, due to the Master Plan, and was 'defacto' zoned recreational. The property was purchased by Leawood

Partners following a foreclosure of the Country Club. In 2002, the City adopted the new FEMA standards to the ultimate flood plain mapping system, along with the APWA new streamway standards. Much of the country club is located in the ultimate flood plain, and ultimately, could not be reopened under the new FEMA and APWA standards. This design is described as 'donut' zoning, which has RP-2 in the middle of the 'donut'. At no point does the RP-2 zoning touch any of the residential area except for one lot, which is on the dead end of Sagamore. Lots 26 and 27 do touch that lot, however they are separated by a landscaping easement. The green space surrounding the residential lots is used as a buffer zone. The proposed plan has more green space than what is currently there, with a total of 9.46 acres of open green space. This area will be maintained by the 27 home owners. There is also a green buffer space on the north side. A pool, cabana and tennis court has been added to this plan. There will be architectural retaining walls [limestone faced] that divide the upper homeowner area from the lower park area. The minimum price for these homes will begin at \$750,000.

Mr. Patterson stated they have attempted to address every concern the surrounding homeowners have expressed. The City's planning staff has recommended approval of this plan following consideration of the Golden Factors. The previously submitted plan had no recreational zoning with 20 residential lots. This proposed plan has been subsequently modified that has retained 58% of the area as recreational zoning, while increasing the density from 20 residential homes to 27. The former plan had no open space reserved for public use. The current plan has 9.5 acres reserved for recreation, including a pool a cabana, tennis courts and walking trails.

Maintaining this property as a recreational facility is not feasible or financially viable. No viable plan has been submitted in the 2.5 years of trying to develop this property. Johnson County Park and Recreation Department has not contacted the current owners for possibly developing this area as a park. The 9.5 acres of recreational area will be open to public access, without any barriers, provided this area is not abused.

There being no questions by the Governing Body, Mayor Dunn stated we would move to the citizen comment portion of the meeting. Ms. Harper advised that an additional person had signed in, bringing the total number of people to 37. Mr. Lambers suggested that each person still be allowed to speak for 2.5 minutes.

Citizen Comments

90 Minutes

Each speaker will be limited dependant upon the number of people wishing to address the Governing Body. Anyone wishing to speak must sign in with the City Clerk prior to the start of the application being heard. The transferring of minutes from one speaker to another is not permitted.

1. Gordon Henke, 8901 High Drive, speaking in opposition to the plan, gave a brief history of the City and of the area. He believed this 16-acre area was intended to remain recreational, and this plan is out of character for the neighborhood.

2. James Kirkland, 8940 Sagamore, speaking in opposition to the plan, stated the Golden Factors are the guiding standards and is concerned about the plan having a negative impact on the character of the neighborhood and is not in favor of having villas in the neighborhood.
3. Justin Apprill, 2200 W. 85th Terrace, speaking in opposition to the plan, commented on the Golden Factors regarding the suitability of the property and the effect of the rezoning on nearby property. He feels this property is viable if remained zoned as recreational.
4. Emme Griffith, 8930 Sagamore, speaking in opposition to the plan, lives within 200 feet of the property and has not seen the current plans as presented. Ms. Griffith spoke to the Golden Factor regarding length of time the property has remained vacant. Further stating the property wasn't vacant until the current owners purchased the property, and has been allowed to deteriorate.
5. Debbie Korpi, 3601 W. 87th Street, speaking in opposition to the plan, commented on the Golden Factor relating to the relative gain to the public health and welfare, stated this plan would result in no gain to the neighborhood, and will leave the northern part of the City with no recreational facilities.
6. Mark Curfman, 2812 W 90th Street, stated the proposed plan does not measure up to the standards of the planning criteria. Further stating, this plan is not compatible with the existing neighborhood, as most of the existing lots are 24,000 square feet; 3 times the size of the proposed residential lots.
7. Paula Kartus, 9117 Lee Boulevard, stated the northeast end of her property abuts the proposed plan and is opposed to this plan and explained the Old Leawood Preservation Association's vision to maintain this area zoned as recreational.
8. Bill Moran, 8927 Sagamore, speaking in opposition to the plan, advised his property abuts up to the proposed development. He has initiated a fund raising project to form a private-public partnership to raise money for a park, if this property would be for sale.
9. Stuart Stein- not present.
10. Steve Johnston, 2032 W. 96th Street, speaking in opposition to the plan, stated he believes a country club would be viable in this area and that the developers bought the property just to subdivide the property.
11. Patty Shaff, 8927 High Drive, speaking in opposition to the plan, stated the importance of maintaining the recreational zoning in this area is fundamental to Leawood's quality of life.
12. Connie Cardell, 8915 High Drive, speaking in opposition to the plan, feels the owners have not been good neighbors, in not keeping the property in good condition and have not been forthright with the community.

13. Ron Reussner, 2516 W. 88th Street, speaking in opposition to the plan, stated the recreational portion of the developer's plan does not meet park and recreation standards. Mr. Reussner lives 3 blocks away and it will not be convenient for him to use the recreational facilities, as most of the neighborhood will not be able to use this recreational space either.
14. Martha Weber Conradt, 8625 Overhill Road, speaking in opposition to the plan, specifically moved into the area 4 years ago because of the availability of the Country Club. The other City parks are located too far away from her residence.
15. Sharon Grevet, 10201 Mohawk, speaking in opposition to the plan, stated the developers have not been honest with the community or the City and feels the owners of this property are not entitled to the highest and best economic use of the property, and is willing to continue to have this property remain zoned recreational.
16. Elaine Reussner, 2516 W 88th Street, speaking in opposition to the plan, stated this neighborhood has a distinctive ambiance and this rezoning will have a negative impact on the property values.
17. Steve Stechschulte, 9026 High Drive, opposing the plan, stated this proposed plan has more density than the previous submitted plan, the geological studies are inadequate; more than 200 feet of the walking path are in the creek bed, and feels the only reason to rezone this property is to the advantage of the developer, not the existing residential property owners.
18. William Hobbs, 13005 Windsor Circle, speaking in favor of the plan, stated the debate over the future of this property have been going on for 2 years, and feels it is time to move on and develop this site into a positive usage. There is not sufficient support in the neighborhood to sustain a private funded facility.
19. Susan Ronnekamp, 8720 Meadow Lane, opposing the plan, stated the recreational portion of this plan is not sufficient and will not provide the 'park' needs of the neighborhood.
20. Cullen Keough, 8715 Meadow Lane, opposing the plan, stated he likes crossing the footbridge and hopes the opportunity to use the bridge will continue.
21. Jean Grevet, 10201 Mohawk Lane, -Did not desire to speak.
22. Pat Dolliver, 8840 Fairway, stated they moved into the area over 40 years ago specifically because of the location of the Leawood Country Club, and is opposed to this plan and the rezoning.

23. Dr. William Evans, 8741 High Drive, former member of the Leawood City Council, opposed to the plan, commended all involved for the many hours devoted to this issue. Adding, additional housing to this area would increase this area's population to approximately 81 and would have an adverse effect on the water pressure and wastewater system in this area. Additionally, this will increase the traffic flow in the area and possibly cause traffic signalization at some point to be installed at 89 & Sagamore.
24. Mary Franklin, 8425 Meadow Lane, spoke on behalf of the Leawood Homes Association, as President. Ms. Franklin commented on the results of a survey that was conducted on how this plan would impact the neighborhood and the community. The survey reflected the majority of the homes association members were opposed to the rezoning of this property.
25. Bernard Geis, 8011 Sagamore, stated he feels this plan is fair. Even though there is not an ample amount of green space or parks in this area, there are alternatives to this plan; a senior center; a park or some type of recreational facility. Mr. Geis stated if these were not privately owned, the City would be required to develop and maintain the property, and questioned whether the City could afford to maintain this property.
26. Meg Gilmore, 9010 High Drive, stated the current homes and the proposed plans have a number of similarities. The green space will serve a beneficial role as a buffer zone between R-1 and the commercial zoned property along State Line.
27. David Gilmore, 9010 High Drive, stated the proposed homes would blend with the current homes and feels too much time has been wasted on delaying the development of this site. Mr. Gilmore read a letter dated November 1, 2004, from David Costello, ReMax Realtor owner, expressing his view that construction of upper bracket single family homes is needed in the area north of I-435 in Leawood.
28. Douglas Carter, 2512 W. 88th Street, opposing the plan, stated there are other viable options for this property. The country club went bankrupt due to a bad loan. He stated a proposal to put a private club development together has been offered by Mr. Kessler, an indoor court developer.
29. Tom Mayer, 8935 Sagamore, lives within 200 feet of the proposed property. Most of the area homeowners bought homes in this area because of the recreational zoned country club and asked the Council to deny this rezoning plan. The proposed density of building 27 homes on 6 acres is not consistent with the Master Plan.
30. Pam Zanders, 2012 W. 98th Street, - Did not desire to speak.
31. Mark Erickson, 9030 High Drive, stated this recreational zoned area helps form the identity of the neighborhood and is opposed to the rezoning request.

32. Trish Smith, 9415 Lee Boulevard, stated her family attempted to build a tennis court on their property approximately 10 years ago, however, was denied because the City advised her it would alter the integrity of the neighborhood, and feels the City should deny this proposal, because it will also alter the integrity of the neighborhood.
33. G. Gordon Thomas, 10516 Mohawk Lane, urged the Council to not rezone this property and not provide the developers the opportunity to change this neighborhood with this proposed plan.
34. Bill Brandmeyer, 2915 W. 94th Street – Not present
35. Marla Cope, 9300 Lee Court, enjoyed being a member of the Leawood Country Club, which provided opportunities on a variety of different levels in life and encouraged the Council to not rezone this property.
36. Sarah Armer, 2304 W. 103rd Terrace, stated property in Leawood is largely sought after in the community, and is due to the present zoning practices of the City and urged the Council to allow this property to remain recreational to preserve the integrity of the area.
37. Mitch DiCarlo, 9127 Lee Boulevard, stated although a change to this area is hard to accept, asked that the Council give consideration to the developer. The developer has made compromises in an attempt to accommodate the neighborhood and feels this development will have a positive impact on the neighborhood and the community.

Applicant Rebuttal

15 Minutes

Mr. Owen stated this specific site has never been zoned recreational. There have never been any discussion whatsoever with the Johnson County Park and Recreation Department to purchase and use this property as parkland. The current property improvements are not usable and cannot be occupied. Mr. Owen wanted to clarify that the setbacks on Mr. Moran's property are the same setbacks that are in the proposed plan. Mr. Owen stated this is the best possible project for the developer and the neighbors. The 9.5-acre park can be used by the neighbors with no cost to them or the City.

Mr. Patterson stated the plan before the Council is a zoning issue, not the viability of the Country Club. Previous Planning Commission and Council meetings have been reviewed along with the Councilmembers' comments and concerns. Councilmember Rasmussen's comments from the September 15, 2003, meeting reflect that he was interested in seeing a 50/50 plan, a mix of residential and recreational development, with more open green space, even though it may necessitate more density. Mayor Dunn also encouraged the developer to include more green space. This plan has been reconstructed and now offers a 50/50 plan, including a pool, cabana, a walking path, bridge and tennis courts. Mr. Gill previously commented that there was an alternative plan out there that encompasses a 50/50 plan and encouraged the developers to create a plan that was more conducive to the neighborhood that had more green space. Mr. Gulledge had previously stated he felt there was a better plan that could be developed than the one that was presented. Councilmembers Story, Dunn and Rawlings previously stated the viability of the country club was not the issue before the Council.

Mr. Patterson stated the current plan offers 6 ½ acres of residential property; and 9 ½ of recreational property that is open space. This plan has 58% of park space. Area neighbors would be invited to use the pool cabana and tennis court area. This plan is in compliance with the APWA standards. There has been no alternative viable plan presented to the developers in over 2 years.

In terms of the Golden criteria, this plan is a transition of STO to a REC area to RP-2 to more recreation for buffering and then transitioning to R-1. I-Lan Park and City Park are available to area residents that are within driving distance of this community. This plan offers RP-2, which retains 58% in usable recreational area.

Governing Body Questions to Applicant No Time Limit

Mr. Rasmussen commented on Stipulation No. 12, regarding the existing pedestrian bridge. This bridge is an impediment to the water flow along the creek, and should be removed and questioned why the bridge should be replaced.

Mr. Patterson stated that would be at the discretion of the Council as to whether the bridge should be replaced, however, the community is in favor of having the bridge replaced.

Mr. Rasmussen asked if the City would be required to maintain the bridge and felt it would be more appropriate for the Homes Association to be responsible for maintenance.

Mr. Rasmussen then asked about Stipulation No. 20, regarding a funding mechanism to replace the common area and common area improvements, but not limited to landscaping and the storm water system. He said one of the most difficult things to determine is whether a storm water project is privately owned or owned by the City. Mr. Rasmussen confirmed with Mr. Patterson that the stipulation states that the homes association would be responsible for the maintenance of this storm water system.

Mr. Rasmussen confirmed with Mr. Patterson the language 'storm water system' in Stipulation No. 20 should be removed.

Mr. Rawlings stated the main concern of the area citizens was the lack of green space. This plan now offers a 50/50 plan; with over 50% of the area being devoted to green space and asked the applicant how the green space was going to be laid out conceptually. Mr. Owen stated the lower park, which is 7.59 acres is depressed down below the housing area. The entire park area will be completely around the perimeter, and there will be a natural reparin stream with trees all the way down the east property line down to the southeast corner. On the west and to the south there will be architectural retaining walls that form these curving walls and open large verandas, walking trails and tennis courts. Specific design details have not been finalized, however it will be a very beautiful and natural looking area.

Councilmember Gill clarified with Mr. Owen that no homes would be placed in the flood plain. Mr. Owen stated the APWA standards require a 100' set back on the north side of the property for new builds from the top point of the creek flood point. However, if there's an existing structure, you can go to the edge of the structure, but confirmed that no residential portion will be in the flood plain.

Mr. Gill asked about the water pressure and the possible negative impact on the sanitary sewer system. Mr. Mike Shirk, Project Civil Engineer, stated they weren't notified that this was an issue with the area residents; however, the water system would be looped throughout the system, which would increase the water pressure. Mr. Patterson confirmed with Mr. Gill that they would agree to a stipulation that allowed for no degradation of the water pressure system. Mr. Gill asked about the impact on the sanitary sewer system. Mr. Shirk stated approximately 5 different sewer systems criss-cross the site. They will ensure that all the sewer lines are compatible with the development, along with working with the Johnson County Unified Wastewater Department [JCUWD]. Mr. Gill confirmed with the applicant that they would support any additional assessment necessary for this wastewater system not to be negatively impacted.

Mr. Gill asked Mr. Patterson to respond after the recess as to the availability of the pool, tennis courts, cabana and pedestrian walking paths to the area residents.

Ms. Filla asked what the changes were concerning the flood plain and APWA standards. Mr. Owen stated when the first plan was presented; it was not subject to the APWA standards, because the City adopted those standards subsequent to the first submitted plan. Ms. Filla then asked what the acreage difference was in order to be in compliant. Mr. Owen stated this plan was designed not from the basis of APWA, but was started with the 50/50 idea that was suggested, to increase the open space and control the density factor. Subsequent to the City adopting the APWA standards, further modifications were made which were minor.

Ms. Filla asked if Tract A, where the walks are located, located in the expanded flood plain could be rezoned due to the flood plains. The only tract in the future would be the 1.7 acres at the top. Additionally, she asked what would prevent this area from being rezoned in the future. Mr. Owen stated both tracts need to be included in the rezoning request, because the 16.2 acres have never been properly zoned.

Mr. Skirk clarified that the previous submitted plan did comply with the standards, however, since that time, the City has adopted new standards and regulations, which are applicable now. The first plan was to preserve the trees and had an approximate 80-foot buffer zone. However the new standards required a 100-foot buffer zone.

Ms. Filla asked the applicant to expand on the core drillings at the 15-foot level and fill land versus bedrock. Mr. Shirk stated a geotechnical firm was involved with the core drillings, but believed they did a scattering of drillings on the site. All of the homes will be built on a fill material, which is normal throughout this area. The compaction rate can be controlled to make the fill as good as native soils. Mr. Shirk stated the amount of fill would range from 15 feet to zero as you move towards the west. Ms. Filla confirmed with Diane Binckley that other areas in the City that have had fill engineering would be individual homes located in the Tomahawk

Creek area, Hallbrook, Hazelwood. Ms. Binckley stated individual lots have been built up, however, she is not familiar with an entire subdivision having fill.

Ms. Filla asked what would prevent the 1.7 acres from being rezoned residential. Mr. Patterson assured Ms. Filla that the developer does not want to come back and go through this rezoning process again, and this area would be preserved as recreational zoning. A self-imposed 'no build' will be provided. Mayor Dunn confirmed with Mr. Patterson that additional building would be prohibited in this area. Mr. Lambers reiterated there is protection in place that a rezoning request would require Council approval.

Ms. Filla confirmed with Mr. Patterson that the developer would be the builder on this project. Mr. Patterson also stated they would agree to a special inspection procedure on the fill engineering, if desired.

Ms. Filla asked what the developer's experience was in building. Mr. Bill Whitaker, corrected the information on the builders. Stating further Mr. Owen will conduct the primary architectural work, in addition to having 3-4 area builders. They will interview and select the top 3-4 builders in the metro area to construct this project. The homeowners will be able to select the homebuilder they desire from this selection.

Ms. Filla stated Staff had an earlier concern regarding building the retaining wall over the sewer lines and asked what the outcome was regarding this issue. Mr. Shirk stated he had discussed this issue with the Public Works Department, and have received clarification from the JCUWD that walls built over sewer lines is a common occurrence and they would not object to this being done. There would be special provisions and easements for this to occur.

Ms. Filla asked if there was a cost estimate for the rebuilding of the bridge. Mr. Whitaker stated the future of the bridge has not been determined. The Public Works Department would prefer the structure in the creek be removed to allow the flow of the water and this structure will be removed. The cost estimate is approximately \$100,000. A number of neighbors have expressed an interest in keeping the bridge. However, Mr. Whitaker feels it is a security risk, but the developer will rebuild the bridge if the Council wants it done.

Ms. Filla asked the impact of the loss of the trees on the project. Ms. Binckley stated she believed the amount was 74-76 out of 422 that would need to be removed.

Ms. Filla confirmed with Mr. Lambers that because this property was privately owned and the pending rezoning application, that the City could not engage in any conversations with the Johnson County Parks and Recreation Department regarding this property.

Mr. Taylor asked Mr. Skirk that because of the new flood control regulations adopted by the City, and due to the 100 foot set back, that the present Country Club would not be able to be used as this type of facility. Mr. Shirk stated the flood plain criteria hasn't changed, however, the City has adopted the riparian habitat zone, which requires a 100-foot buffer zone.

Mr. Taylor then asked about the Corp of Engineers requirements of abandonment of a structure for 12-month period. Mr. Owen stated the ultimate flood plain line goes through the existing building. Secondly, because the building has been abandoned for over a period of 12 months, it would not be allowed to be open.

Councilmember Peppes asked who would be responsible for repairing the retaining wall if the sewer lines below it had to be repaired. Mr. Lambers stated if the City possessed an easement, any construction or obstruction along that easement is done at the risk of installing it. The City is not obligated to restore or reassemble it; this would be the responsibility of the owner of the property. The easement would only provide the City with unlimited access; it does not transfer ownership rights of any kind. Generally, only temporary structures, not permanent structures are allowed in the easement area.

Councilmember Peppes then asked the applicant what the impact of the recreational area with a swimming pool used by kids would have on potential homebuyers that would be 'empty-nesters.' Mr. Patterson stated the situation of usage by the area homeowners would be addressed, however reminded the Council that the size of the proposed pool would be considerably smaller in size than the one the Country Club had.

Mayor Dunn stated, there being no further questions at this point, a 10-minute recess will be taken.

Recess

10 Minutes

**Governing Body Deliberation and
Possible Action**

The Council reconvened at 10:31 PM.

Mayor Dunn asked Mr. Patterson to respond to Councilmember Gill's earlier concerns. Mr. Patterson stated the pool, cabana and courts will be open for membership to the 27 homeowners in the development, and the homes contiguous to the south of the development and homes on either side of Sagamore to the south, High Drive to the north all the way to Lee Boulevard. This would be on a membership due paying basis. Membership for homeowners outside this described area would be offered also, however subject to dues paid.

Mr. Lambers asked if the membership would be of equal standing. Mr. Whitaker stated there would be a one-time fee, with equal standing, and the membership would run with the land. The assessment would be a pro ratio share for the maintenance on the tennis courts and the pool. The 27 homeowners and the selected other surrounding homeowners would have a separate annual assessment.

Mr. Patterson stated the trails will be owned and maintained by the Homes Association and they will be open to the public. However, the use of the trails and the area to the east will be subject to common sense rules and regulations, to ensure no vandalism, criminal activity, etc., occurs.

Mr. Gill stated he was anticipating some type of easement in favor of the Leawood Homes Association or some other body besides the 27 homeowners, in regards to the usage of the trails and green space. Mr. Patterson stated if the Council desires assurances that this area will be open to the public by means of a non-exclusive easement to the 2 contiguous homes association, they would offer that for assurance.

Mr. Gill confirmed with Mr. Patterson that usage of the tennis courts, pool and cabana could be under similar circumstances and to have the opportunity of membership available to the 2 contiguous homes associations. Mr. Patterson stated they would be willing to have this as an added stipulation to the plan, provided that there would be limits placed upon the usage, according to availability and capacity levels.

Councilmember Filla stated the Planning Commission minutes reflected the developers' estimate of 50-60 homes along with the 27 homeowners, which she feels is a small percentage of homeowners in the area that could take advantage of using the recreation area.

Councilmember Rawlings clarified with Councilmember Gill if he was requesting this be made a part of a stipulation, as he is concerned that the Leawood Homes Association and the Leawood Estates have approximately 1500 members each, for a total of 3,000 and having this number of people use this pool, cabana and tennis court area places an unfair burden on the developer.

Mr. Gill stated he feels a pool and tennis court could support more than 80 homeowners, however certainly couldn't support 500. Mr. Gill stated he is suggesting an easement or some type of legal document that could be enforced.

Councilmember Filla asked Diane Binckley if the property met the Golden Factor pertaining to the suitability of the property for its use because the property is engineered. Ms. Binckley stated a portion of the single-family area has been raised up and out of the flood plain, which makes this land more usable in this location.

Councilmember Gill made a motion to approve the proposed plan with the following stipulations:

1. No degradation of the water pressure and no negative impact placed upon sanitary sewers, working with the authorities if a problem develops regarding structures placed in the sewer easement [retaining wall, etc.]
2. Easements or other legal enforcement rights to all of the trails and green space, as well as the pool cabana and tennis courts area. With respect to the pool, cabana & tennis areas, some clarity on the eligibility for membership dues, maintenance and parity, including establishing rules and regulations for usage.
3. In regard to modifying Stipulation No. 12 and 20, as earlier discussed by Councilmember Rasmussen, and that any change whatsoever to this plan would require approval by the Governing Body.

Mayor Dunn asked that changes to Stipulation No. 12 be clarified. Mr. Lambers stated the maintenance responsibility of the bridge would not run with the City, but would be privately maintained. The existing bridge would be replaced, a pedestrian bridge would be installed, and the maintenance of the bridge would be the responsibility of the homes association.

The motion was seconded by Councilmember Rawlings.

Councilmember Rasmussen stated a decision should be made as to whether the bridge should be replaced. Mr. Rasmussen made an amendment to the motion that the bridge be torn down, but should not be replaced. The motion was seconded by Councilmember Taylor.

Mr. Rasmussen wanted to clarify Councilmember Gill's motion regarding Stipulation No. 20, that the language 'storm water system' should be deleted, and replaced by 'all other private improvements to Tract A and Tract B.'

Councilmember Rawlings asked how much the bridge is used by citizens.

Mayor Dunn stated due to the time being 11:00 P.M., a motion was needed to extend the meeting for an additional 30 minutes. A motion was so made by Councilmember Peppes, seconded by Mr. Gullede. The motion was approved unanimously by an 8-0 vote.

Mr. Lambers stated the City does not have any estimated numbers on the usage of the bridge, however, due to the state of the bridge and the country club being closed, the traffic is somewhat minimal. However, if a pedestrian bridge was to be constructed and this development was built, there would be an increase in the usage of the bridge.

Ms. Filla stated there are no sidewalks on 85th Terrace or other alternative footpath, and pedestrians and bike riders are now using 85th Terrace between Lee Boulevard and State Line and this needs to be considered when discussing not replacing the bridge.

The motion that the bridge be removed, but not replaced, failed by the following vote: Yea: Councilmembers Rasmussen and Gullede: Nay: Councilmembers Gill, Taylor, Filla, Peppes, Bussing and Rawlings [2-6].

Mayor Dunn clarified that due to this motion failing, the previous stipulation of building the pedestrian bridge with the Homes Association responsible for maintenance instead of the City, would remain as one of the stipulations.

Councilmember Gill asked if the applicant would confirm that they would be in favor of the above additional and modified stipulations.

Mayor Dunn clarified that there are presently 25 stipulations; the above stipulations would modify 2 of those stipulations; and adding the stipulation regarding the water pressure and sanitary sewer system would meet all requirements and specifications with no degradation; and enforcement rights for the recreation area, including the pool, cabana and tennis courts and clarity regarding eligibility and parity and rules and regulation, running in favor of the other bodies, and homes association; along with modifications to Stipulation No. 12 and 20. The 3rd stipulation would be to ensure any modifications whatsoever to the plan would require Governing Body approval at Final Plan. Mr. Patterson agreed in the affirmative to all of the changes and additions to the stipulations.

Councilmember Bussing wanted to clarify that due to the large number of residents from the 2 existing homes associations that will have access to the pool, cabana and tennis courts, that the Council was only considering the rezoning issue, not the potential increase in traffic in the neighborhood or sufficient parking spaces, etc. Mr. Lambers stated those types of details will be provided at the time the Final Plan is submitted to the Council for approval. Mr. Bussing feels the pool usage is a nuisance and is uncomfortable with the stipulation added by Mr. Gill. Mr. Bussing stated normally, any 'material change' is brought before the Council at Final Plan, however, Mr. Gill is requesting that 'any change' be included in the Final Plan approval process. Stating further, it is his hope that the applicant can meet with the Planning & Development and Parks and Recreation Departments and the Council, and that a reasonable decision can be made by reasonable people as to whom will have access to this pool.

Councilmember Gulledge stated he echoes Mr. Bussing's concerns and questioned whether the Council is setting a precedent of mandating what one association should include and make available for another homes association when the Council is considering developments like this application. Mr. Gulledge stated the reason he voted against building the pedestrian bridge is due to a security issue that will extrapolate into a bigger security issue and wishes there was an alternative.

Ms. Filla asked about the parking. Ms. Binckley stated the current plan doesn't reflect the parking area, because the homes are situated within walking distance to the facilities, however based upon an amendment, this would be reevaluated. Ms. Filla doesn't feel this is the plan the neighbors were anticipating, in that it doesn't provide the recreational gathering spot they desire. Ms. Filla stated her biggest concern of this plan concerns the engineering land filling of bringing in 15 feet of land, and that a large portion of the development will be located in the flood area. Even though the developers have stipulated to maintaining this area, she questions their commitment and feels the City eventually would have to share in this responsibility in the future.

Mr. Owen stated virtually every project in Johnson County, having the poorest sub grade soil, today is over dug, treated with fly ash and built back up to a foundation level, where the soil is brought in and engineered fill. This is the standard procedure that is used today in Johnson County for almost every project.

Councilmmember Filla stated she is concerned about the density issue. Mr. Lowe stated at the Planning Commission that his lot alone could be redeveloped in 7 lots with the same density and is concerned about the possible precedent that is being set.

Councilmember Peppes stated the Governing Body's duty here tonight is to make a decision on the rezoning of this property. Stating further, that he will support the Planning Commission's recommendation and vote in the negative on this plan: the nonconformance of the Master Plan for over 50 years used as recreation; and the incompatibility of the character of the neighborhood that he desires to preserve this area.

Mayor Dunn clarified with Councilmember Bussing that a vote in favor of the motion would be a vote to approve the rezoning request, including the 25 stipulations along with the 3 stipulations that were added by the Council. The plan was approved by the following roll call vote: Yea: Councilmembers Rawlings, Gullledge, Bussing, Taylor, Rasmussen and Gill. Nay; Councilmembers Filla and Peppes. Mayor Dunn stated she votes in the affirmative, making the total vote 7-2.

Mayor Dunn stated there has been compromises made by both sides and the citizens should be applauded for their commitment to the planning process. This plan is a good compromise and appreciated everyone's involvement in this 2-year process. Change is never easy, however, change is sometimes the law of life. Although there were a small number of people speaking tonight in favor of this plan, Mayor Dunn stated she had received a large number of e-mails that supported this plan.

Golden Factors

Mr. Gill commented on the Golden criteria as it relates to this project. This project has been considerably improved since the first plan was submitted. The status quo of this property is not acceptable. The recreational opportunities go beyond a quiet little tennis court and pool area. The housing plan is well done. Villas are in very high demand. Villas have been placed in and around Ironhorse and Hallbrook which have villas mixed with other uses and has been successful.

Clearly, villas work and have ample precedent located in Ironhorse and Hallbrook and other areas of the City. This is a transition area. There is a significant commercial body of property adjacent and villas have quite often been used in transitional zoning.

Presently, this is restricted as a residential use, however, as stated in Mr. Kessler's letter, he was working for a public-private partnership, which is another word for subsidy. This is not a subsidy issue; this is a private zoning matter.

Since this property has been vacant since September, 2002, this factor should not be considered. It is a neutral factor because it was under the control of the applicant. As far as the relative gain to health safety and welfare, the one thing that was not acceptable was the status quo of the property. If a comprehensive recreational plan would have been presented, it possibly would have worked. However, the plan presented is a comprehensive combination of recreational and residential that will work. The staff did recommend approval of this plan with stipulations, even though the Master Plan did not support this plan. Looking collectively at the Golden Factors the overall assessment is that the City is doing the right thing in approving this plan.

12. OLD BUSINESS

13. NEW BUSINESS

14. OTHER BUSINESS

ADJOURN

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

Debra Harper, CMC, City Clerk