

Minutes

DVD No. 112

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, November 15, 2004. Mayor Peggy Dunn presided.

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

Councilmembers absent: Councilmember Mike Gill.

Staff present:

Scott Lambers, City Administrator	Patty Bennett, City Attorney
Joe Johnson, Public Works Director	Kathy Rogers, Finance Director
Diane Binckley, Planning & Develop. Director	Mark Andrasik, Info. Systems Specialist
Ben Florance, Fire Chief	Major Craig Hill, Police Department
Chris Claxton, Park & Recreation Director	Colleen Browne, Human Resources Director
Karl Weinfurter, Information Systems Specialist	Deb Harper, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted that Agenda Item 7U is continued to the December 6, 2004 meeting; Item 13A is continued to the December 20, 2004 meeting; and Item 13D has been withdrawn at the request of the applicant. Councilmembers Rawlings, Filla and Bussing will have reports under Agenda Item No. 9; Councilmembers' Reports. A motion was made by Councilmember Peppes, seconded by Councilmember Rasmussen to approve the agenda. The motion carried following a unanimous vote of 7-0.

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 the other citizens that signed in desired to speak on other agenda items and would comment at that time.

A motion was made by Councilmember Rasmussen, seconded by Councilmember Taylor to approve the Resolution. The motion was approved by a unanimous vote of 7-0.

- E. Ordinance No. 2090, granting to Xspedius Management Company of Kansas City, LLC, c/b/a Xspedius Communications, a contract franchise to construct, operate and maintain a telecommunications system in the City of Leawood, and prescribing the terms of said contract franchise [Roll Call Vote]

A motion was made by Councilmember Bussing, seconded by Councilmember Rasmussen to pass the ordinance. The motion passed following a unanimous roll call vote of 7-0.

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. 1013
- B. Accept minutes of the October 19, 2004 Park & Recreation Advisory Board meeting
- C. Accept minutes of the September 23, 2004, IRONHORSE Advisory Board meeting
- D. Accept minutes of the September 14, 2004, Historic Commission meeting
- E. Mayoral Appointment of Citizen Committee Members, Dr. John and Dr. Ann Kenney to I-Lan Sister City Committee
- F. Renewal of Retail Liquor Store License for Stoll Liquor Store, located at 3731 West 133rd Street
- G. Acceptance of Dental Insurance Benefits renewal for City Employees
- H. Acknowledgement of condition of residential structure at 11600 Manor Road
- I. Approval for payment of the Appraisers' Award in the amount of \$69,840, to property owners pertaining to the storm water drainage improvements to the Dykes Branch [SMAC Project DB-04-024-01] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road
- J. Resolution No. 2322, authorizing the City's continued participation in the Municipal Investment Pool [MIP] and revising the authorized Officers
- K. Resolution No. 2323, calling for a public hearing on Monday December 6, 2004, regarding amendments to the 2004 Fiscal Budget for the City of Leawood, Kansas
- L. Resolution No. 2324, adopting an Investment Policy for the City of Leawood, Kansas
- M. Resolution No. 2325, approving and authorizing the Mayor to execute a Financial Services Agreement between the City and Gold Bank, to provide certain banking service needs to the City of Leawood
- N. Resolution No. 2326, designating holidays for the year 2005, in accordance with the Personnel Rules & Regulations of the City of Leawood, Kansas

- O. Approve Change Order No. 4, in the amount of \$36,835.67, to APAC-Kansas, Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] CIP # 110]
- P. Resolution No. 2327, approving the Johnson County Drug and Alcoholism Council [DAC] recommendation for allocations of the 2005 Alcohol Tax Fund for an amount not to exceed \$46,000
- Q. Resolution No. 2328, approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$3,619,000.00, between the City and Wiedenmann & Godfrey Construction, Inc., pertaining to the Dykes Branch Channel Improvement [Phase I] SMAC DB-04-024 Project
- R. Resolution No. 2329, approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of County Commissioners of Johnson County [BOCC] pertaining to the College Boulevard [between State Line Road and Roe Avenue] Improvement Project [2005 CARS Program]
- S. Resolution No. 2330, approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of County Commissioners of Johnson County [BOCC] pertaining to the Roe Avenue [between College Boulevard and 119th Street] Improvement Project [2005 CARS Program]
- T. Resolution No. 2331, approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of County Commissioners of Johnson County [BOCC] pertaining to the SMAC Project; 83 Street & Wenonga south to 86 & Cherokee; Dykes Branch DB-04-024-01
- U. Resolution approving the first phase of Parkway Plaza development located north of 135th and west of Roe Avenue [*from the October 26, 2004, Planning Commission meeting*]-***Continued to the December 6, 2004 Governing Body meeting***
- V. Resolution No. 2332, approving a Final Site Plan for Dick's Sporting Goods Signs located at 11801 Nall Avenue within the Town Center Plaza Development [*from the October 26, 2004, Planning Commission meeting*]
- W. Resolution No. 2333, approving a Final Site Plan for Mission Farms fencing located along Mission Road north of 105th Street [*from the October 26, 2004, Planning Commission meeting*]
- X. Police Department Monthly Report
- Y. Fire Department Monthly Report
- Z. Municipal Court Monthly Report

Councilmember Rasmussen asked that Item No. 7I be pulled for an individual vote. Councilmember Peppes asked that Item No. 7G be pulled from the Consent Agenda; and Mayor Dunn pulled Item No. 7P, since a representative from the County was present. A motion was then made by Councilmember Rasmussen, seconded by Councilmember Gullede to approve the remainder of the Consent Agenda. The motion was approved following a unanimous vote of 7-0.

- 7G. Acceptance of Dental Insurance Benefits renewal for City Employees

Councilmember Peppes stated he would be recusing himself from this item. A motion was made by Councilmember Bussing, seconded by Councilmember Rasmussen to approve this item. The motion was approved with a vote of 6-0-1.

- I. Approval for payment of the Appraisers' Award in the amount of \$69,840, to property owners pertaining to the storm water drainage improvements to the Dykes Branch [SMAC Project DB-04-024-01] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Councilmember Rasmussen stated he is opposed to this and would not be voting for approval. A motion was made by Councilmember Taylor, seconded by Councilmember Gullede to approve this item. The motion was approved with the following vote of 6-1. Councilmember Rasmussen stated this type of award reinforces the City's position that all easements should be obtained prior to starting a project. Councilmember Rasmussen stated he is opposed to paying residents for easements when their property is being improved.

- P. Resolution No. 2327, approving the Johnson County Drug and Alcoholism Council [DAC] recommendation for allocations of the 2005 Alcohol Tax Fund for an amount not to exceed \$46,000

Mayor Dunn acknowledged Debbie Doud, Director for Community Initiatives with USC of Johnson County, for all of her work and dedication. Ms. Doud stated she would answer any questions the Governing Body had regarding this agenda item. A motion was made by Councilmember Rasmussen, seconded by Councilmember Taylor to approve this Resolution. The motion was approved following a unanimous vote of 7-0.

8. MAYOR'S REPORT

- A. Mayor Dunn recognized Major Craig Hill with applause and a standing ovation for the commitment, tireless effort and dedication involved in solving the Ali Kemp murder. Mayor Dunn asked Major Hill to also extend the City's gratitude to the 4 detectives involved in the case: Detectives Sgt. Scott Hansen, Joe Langer, John Dickey and Ron Hulsey.
- B. Attended a Johnson & Wyandotte Counties Council of Mayors meeting with the legislators and discussed the excise tax, annexation and eminent domain [condemnation]. The 230 exceptions to the Kansas Open Records Act [KORA] and Kansas Open Meetings Act [KOMA] will be up for discussion in July, 2005. There was also discussion on the Dram Shop Act regarding liability issues on the sale of liquor to intoxicated person(s).
- C. Advised the Council of the upcoming Johnson & Wyandotte Counties Council of Mayors annual social dinner on Tuesday, December 14, 2004.
- D. Attended the City's Annual Have a Heart-Help a Child breakfast held last week. Councilmembers Rasmussen and Taylor also attended.
- E. Attended the Some Enchanted Evening fundraiser at JCCC, in which Leawood resident, Bob Regnier was the recipient of the Johnson Countian of the Year Award.

- F. Acknowledged the dedication of a water fountain that occurred on Sunday on the Tomahawk Creek Trail [approximately ½ mile north of 119th Street] on behalf of Bruce Montrose, a runner, who died in 1991 while hiking in Oregon, after being struck by falling rocks during a storm the day following his participation in the 'Hood to Coast Relay Race.'
- G. Recognized a flagpole donation by the Kiwanis Club for the cabin area at Ironwoods Park
- H. Attended the Jones' Store Charity Day on Monday, November 8th

9. COUNCILMEMBERS' REPORT

Councilmember Rawlings stated he represented the City on behalf of Mayor Dunn at the Jones' Store grand opening ribbon cutting ceremony on Wednesday, November 10th. Councilmembers Bussing, Taylor and Peppes were also in attendance. Mr. Rawlings encouraged all to visit and shop at the beautiful new store.

Councilmember Filla extended her thanks to the staff in getting the area Homes Associations information on the City's website. This information will be updated at the beginning of the year and then again at mid-year.

Councilmember Bussing stated that 2 lanes of Roe Avenue would be open to 135th Street on Thursday, November 18, 2004.

10. STAFF REPORT – None

COMMITTEE REPORTS

[from the November 3, 2004, Public Works Committee meeting]

- 11. Assignment to review reimbursement request from Leawood Forest Estates

Councilmember Bussing, Public Works Chair, stated the Public Works Committee has recommended that the City compensate Leawood Forest Estates in the amount of \$5,400.00, for the use of their private streets by residents of Patrician Woods during the time Roe Avenue was under construction. The cost of \$5,400 was equal to the cost of providing a temporary access road for residents had one been installed. A motion was then made by Councilmember Bussing to approve this reimbursement request. The motion was seconded by Councilmember Taylor.

Robert Kopp, 5000 W. 126th Street, Leawood Forest Estates President, stated he had authored the letter that was submitted to the Public Works Committee asking for this reimbursement.

The motion was approved unanimously by a 7-0 vote.

[from the September 28, 2004, Arts Council Committee meeting]

- 12. Approve recommendation to proceed with the purchase in the amount of \$76,500.00, of 'Pastoral Dreamer' from David Phelps

Chris Claxton, Parks & Recreation Director, stated the preliminary site plan for this project was approved last week by the Planning Commission for this art piece to be located on 133rd Street at Fontana [Ward 4]. This piece will be located on the north side of the property, currently owned by Mr. Peters.

Dr. Ann Kenney, Chair of the Art in Public Places Initiative Committee, stated this a monumental bronze piece by Artist, David Phelps. This is the 3rd edition of 6. The initial price was \$85,000, however, the price was negotiated to \$76,500, which includes shipping and installation costs. The piece is 14 feet long and 4 feet in height, which will allow for people to touch it, sit on it and interact with the art piece.

A motion was made by Councilmember Bussing, seconded by Councilmember Rasmussen to approve the recommendation.

Councilmember Gulledge stated he would like to extend his appreciation for Mr. Peters' assistance in obtaining this art piece.

Councilmember Filla confirmed with Dr. Kenney that this purchase is part of the City's Master Art Plan and that the funding comes from the \$5.00 per citizen Public Art Fund [Cultural Art budget line item] in addition to \$.10 per square foot for commercial development that is received. The remainder of this money is used for the purchase of public art.

The motion was approved following a unanimous vote of 7-0.

13. PLANNING COMMISSION

[from the August 24, 2004, Planning Commission meeting]

- A. Ordinance approving a Special Use Permit, [SUP] Preliminary Site Plan and Preliminary Plat for Sunrise Senior Living located south of 115th Street and east of Roe Avenue [Roll Call Vote] – *[Continued from the September 20, 2004, Governing Body meeting]* - **CONTINUED TO THE DECEMBER 20, 2004, GOVERNING BODY MEETING**

[from the September 28, 2004, Planning Commission meeting]

- B. Ordinance approving a rezoning from AG [Agriculture] to SD-CR [Planned General Retail], SD-O [Planned Office] and RP-3 [Planned Cluster Attached Residential District], Preliminary Plat and Preliminary Site Plan for Villaggio West located south of 135th Street and east of Roe Avenue [Roll Call Vote] – **CONTINUED FROM THE OCTOBER 18, 2004 GOVERNING BODY MEETING**

Councilmember Taylor stated he would be recusing himself from these two agenda items and left the Chambers at 8:14 P.M.

Doug Patterson, representing the applicant, stated this project began approximately 8 years ago. Several interact meetings have been conducted with area homes associations and area residents. This plan has been revised several times over that time period.

Mr. Estel Hipp, Project Manager, 12601 Cedar, distributed a marketing packet of information to the Council on the retail portion of the rezoning request. This rezoning is approximately an 80-acre tract. It has an Italian, Tuscany appearance. The overall project is a mixed-use project, with construction scheduled in the spring of 2005. This rezoning request has been divided into 2 parcels; Villaggio West [Agenda Item # 13A] and Villaggio East [Agenda Item # 13B]. Both rezoning applications will be presented as a package for tonight's presentation.

Mr. Jeff DeGasperi, DeGasperi & Associates Architecture, made a presentation, and discussed the usage and characteristics of both the West and East sites. The site is divided by Fontana, with the reverse frontage Road of 137th Street on the southern portion of the site. The infrastructure will be the initial phase of construction, along with the turn lanes and additional lanes on 135th Street, the improvements to the intersection of 135th Street and Roe, 135th Street Mission and the construction of 137th Street and Fontana, including berms and screening on the other portions. This will also include the burying of the power lines and signalization. In conjunction with the 135th Street Corridor plans, there will also be public trails and bike paths that will be interconnected along the south side of 137th Street. There will be several 'pause' places along the trails that will have benches. The interior walkways and paths will be connected with vistas or courtyards that will bring you to the exterior portions of the site. There are also courtyards, fountains and sculpture plaza placed throughout the development. A small 2 ½ acre park will be placed at 137 & Fontana, which will act as a buffer with a berm along the southern portion using the existing trees along with additional landscaping. There will also be a trail that will be a connected walkway, that was a stipulation of the Planning Commission. Phase I for Villaggio West, scheduled for 2005, will consist of the retail district that will be on 135th Street along Roe and 137th Street. Phase II is an office district planned for 2005, approximately 6 acres, that includes a funeral home. Phase III scheduled for 2004, will be the office district, containing one 3-story large office building. Phase IV, scheduled for 2005, is the southern portion and is a buffer zone of the institutional use, [RP-3] with 2 buildings; one independent living facility with 80 units and an assisted care facility with 90 units. These buildings will be 2-story buildings with one-story wings, located on the southern portion of the property. The retail area and the institutional area are under the density maximums. The open space area is above the minimums of the ordinance, as well as a parking garage as part of it. The interior courtyards are outside of the setbacks of the public roads, which can be used by the office personnel and other public. The three courtyards have been reviewed by the Planning Staff and meet the bonus requirement to bring the total points to 3.0. The buffer zone along the south includes a 75-foot setback dedicated by Leawood Meadows, along with a berm with retaining the trees and adding additional evergreen trees on top of the berm. The parking lot between the independent living facility and the assisted care facility will have a 6-foot retaining wall that will aide in screening the vehicle headlights with additional berm on top of that which will provide a dense buffer. Basically, this plan has been revised and this proposed plan reflects less density and more green space.

Mr. DeGasperi went on to describe the Villaggio East portion of the proposed plan. Phase I is located in the northeastern corner, scheduled in 2008, will be a retail district, with 8.6 acres. This will be a mix office and retail use. Phase II, scheduled for 2009, is also a mix of office and retail use. Phase III will contain the planned cluster condominiums with 96 units in 8 buildings on 11 acres. There will be a water feature located in the buffer zone, along with a small clubhouse and pool in the district. Phase IV will be the 96,000 square foot office area, scheduled in 2008. There will be a boulevard that bisects the 2 halves of the eastern portion. The open areas are above the required minimums, which are mainly situated in the public areas outside of the setbacks, along with the gateways and courtyards that will be used by pedestrians. The landscape greens along the southern portion have a 75-foot dedicated setback for buildings along with berms and screening using the existing and additional landscaping. A waterscape feature for stormwater detention that will be an open pond would be located in the condominium area. This will assist with the stormwater runoff and will be a buffer area between this area and the neighbors. The existing trees located on the northern side will be utilized as much as possible. Again, this plan has been revised and reflects less density with more open space.

Mr. Phil Gibbs, Continental Consulting Engineers, discussed the existing watershed patterns on the project. An engineering study was approved, following review by the City Engineer. There are basically 6 areas of drainage, a ridge almost to 135th Street that goes through the project, with 70% of the water traveling towards Leawood Meadows. Ten [10] areas that the water actually enters from the property are to the north to the south. The water from the ridge will travel underneath to some existing culverts. There will be an underground storage system, in which water will be stored and released at a slower rate than what it is today. Mr. Gibbs described details of the underground stormwater storage system. The pipes will be 60 inches in diameter. A wet-bottom lake 3-4 foot deep will be located on the southeast corner of the project. There will be water in it at all times, and will be able to retain additional water when it rains. There will be some aeration fountains also.

Mr. Patterson stated the concerns of the neighbors located to the north of this project were exclusively stormwater issues. The plans have been revised and subsequently, Leawood Meadows has formally withdrawn their objections. A protest petition was filed on this application. The neighbors do have concerns with the trail that runs from 137th street south to the existing neighborhood. This trail was created at the request of the Staff, however, the applicant is open for suggestions from the Council.

Mayor Dunn stated she had listened to the audio tapes from all of the Planning Commission meeting regarding this application and states the plans have been modified several times and feels the plans have been improved. She extended appreciation to the residents for working with the developers.

Councilmember Rasmussen confirmed with Mr. DeGasperi and Diane Binckley that the public trail will be a 10' foot wide hike/bike concrete trail that will run parallel to 137th Street and follow the reverse frontage road which extends into Overland Park and over to the City's eastern city limits after the road is constructed. It will be maintained by the City.

Councilmember Rasmussen also confirmed that the access trail leading from Leawood Meadows into the new development would be of similar width and would be an access point from the subdivision to the hike/bike trail.

Councilmember Rasmussen confirmed with Mr. Gibbs that they will have an internal underground retention system and once the final design is completed there will be stormwater easements and the developer will maintain and operate the entire stormwater system, except for the stormwater facility pipes that are on public property, located on Mission Road, 137th Street and on Fontana. Mayor Dunn stated Stipulation No. 38 speaks to this issue.

Councilmember Peppes confirmed with Mr. Gibbs that the underground retention will be located below the parking lot areas. Mr. Patterson confirmed that the green space south of Fontana would be maintained by the developer or ultimately by the association. Mayor Dunn pointed out that Stipulation No. 38 also speaks to this issue.

Councilmember Bussing stated he understood that the retail use would be the in the first phase and asked about the 260,000 office space which is 25-30 % of the total area. Mr. Hipp stated the plan is to do the mix of office and retail; the market will develop over time for significantly more office space that what is currently available along 137th Street, however retail will be the driving force which will cause the office space to increase. Mr. Bussing confirmed with Mr. Hipp that approximately 17% of the 25 million square foot of available office space located in Johnson County is currently vacant. Mr. Bussing stated there is a significant amount of office space planned for the development to the west and office space across 135th Street to the north. The majority of the office space is vacant around Price Chopper and is concerned if the office space development for this plan does not develop. Mr. Hipp stated that possibility has been considered and that is the reason for the phasing of the project and for the construction in 2008 of the 60,000 square foot larger office building on the west side. The smaller pieces have been phased in for the 2005 and 2006 time frame, because the demand is higher for this size of office, due to the location and the current money market.

Councilmember Bussing asked about the requested deviations on Villaggio West. Mr. DeGasperi stated the deviations occur between the SD-CR and the SD-O the setbacks between the buildings is less than the 40 feet. Mr. Bussing stated approving these types of deviations sometimes give the appearance of clutter; more green space that is not useful and more buildings clustered together. Ms. Binckley stated since this zoning is subdivided and the retail and office is separated, the setback requirements are there. The setbacks are being met outside of the property, adjacent to the public right-of-way. These are only interior setbacks, similar to Plaza Point; when the office and retail are separated, the setbacks would be deviated. Mr. Lambers stated it is an artificial creation because of the zoning category that it is triggering.

Councilmember Rawlings stated he shares Mr. Bussing's concerns with the vacancy rate and asked about the necessity of having a 3-story office building in Phase III. Mr. DeGasperi stated they wanted some diversity from the small office to the larger office buildings and wanted a larger footprint available to offer.

Ernest Ballweg, attorney for Leawood Meadows, 9200 Indian Creek Parkway, stated they had reached an agreement with the developer based upon 9 concerns of the Leawood Meadows Association. Seven of those conditions have been incorporated in the stipulations in the ordinance. The initial plan for a hotel to be developed has been removed and the homes association would strongly object if development of a hotel were to be raised again. The Homes Association does not oppose this development, however, they strongly object to the proposed sidewalk link from the trails into the Meadows. This would require a significant cut into the proposed berm and will destroy the screening and buffering at that location. The sidewalk empties out onto a cul-de-sac and would essentially go nowhere. Other access points to the trail are available on Roe and Nall.

Councilmember Gulledge confirmed with Mr. Ballweg that the primary objections to the development would be if a hotel were to be reintroduced to the plan and the sidewalk link.

Karen Staley, 13704 Fontana, stated she is not opposed to the plan, however she is concerned with the density and the vacant office space in the area. At the time when the Leawood Meadows agreed with the developers to not oppose this development, the sidewalk link was not displayed on the plans and is surprised that it is now in the proposed plan. This link was not initiated by the developer, but by City Staff and asks that it be removed from the plan. Additionally, this link would open up public access to the neighborhood and feels this is a safety issue. A protest petition was submitted, however the correct signatures were not submitted on the petition.

Mr. Joe Higday, 13709 Fontana, is concerned with a potential increase in crime with this link and would serve as an escape route. Additionally, this sidewalk link, which would be a break in the berm, would serve as a levy during heavy rains and would cause a great deal of damage.

Ms. Mary Watson, 13716 Fontana, is concerned with the break in the berm also. The sidewalk link could increase criminal activity and will create an easy public access way into their residential area. This sidewalk would stop on Fontana, which is a dead-end street.

Councilmember Gulledge confirmed with Mr. Patterson that the developer does not have a position on this sidewalk link and will agree with whatever the Council decides. Ms. Binckley stated that these type of connections have been identified as a priority in the 135th Street Corridor Guidelines, which is the reason for the trails along the reverse frontage road and the green space. It has also been a commitment from the City for all development to provide for connections that allows for residents to be able to access a trail to go over to Mission Road to Mission Trails or to a park, and feels it is important to maintain a pedestrian connection.

Councilmember Gulledge asked what impact this link would have on the stormwater issue. Mr. Joe Johnson, Public Works Director, stated most of the detention has been addressed. However, in low spots, you have to allow for the water to go somewhere. Without the break in the berm, it will cause water to pool in the streets. Mr. Gibbs stated the detention space would be sufficient to allow for 66% of the water to flow into the system. If the Council decides to remove this sidewalk link from the plans, this water issue can be worked out in the Final Plan stages; they can either go to the east or to the west.

Mayor Dunn stated if a some type of path or link isn't made, pedestrians will make a path for themselves, however she would prefer to see an alternate plan to handle the water issue.

Mayor Dunn stated the City currently has a rocked-rimmed pond in the City Park, which has a neat appearance, however is more expensive. One half of the City Park Pond was rimmed and the other half was rimmed when funds became available, due to constant problems and maintenance. After the other half was rimmed, it made a significant improvement in appearance.

Councilmember Bussing asked about the large structure in the middle of the Villaggio West plan, with approximately 62,000 square feet, and the relation to the 135th Street Corridor guidelines on big boxes. Ms. Binckley stated she believed the guidelines were 40,000 for one tenant. This project was evaluated for multiple tenants. Mr. Bussing asked about the parking allocation for the funeral home area. Mr. DeGasperi stated the funeral home would be 10,000 square feet, with a small chapel for visitation and service, with no crematorium or vault system. Additionally, in response to Mr. Bussing's earlier comment, there are no plans to place a big box in this development.

Councilmember Bussing, in response to an earlier comment from a citizen, confirmed after thoroughly reviewing this plan, that the density level is well under the required City guidelines.

Councilmember Filla confirmed with citizen, Karen Staley, that approximately 70% of the residents of Leawood Meadows are opposed to having this link into their neighborhood and have no interest in utilizing the connection. Ms. Filla stated she appreciates the Staff concerns about providing the connecting link, however, it appears the neighborhood community will not appreciate this link and their position should be considered.

Councilmember Rasmussen made a motion to approve the plan, with a stipulation to delete Stipulation No. 17, *'A pedestrian connection shall be provided between Fontana within the Leawood Meadows subdivision and the required 10' hike/bike trail on the south side of 137th Street.'* The motion was seconded by Councilmember Gullledge.

Mr. Lambers stated possibly in the future, this link will be desired by future Leawood Meadows residents and suggested that the final plan reflect an easement that would provide construction of a connecting link, if desired by the City at some point in the future, so this opportunity would not be lost.

Mayor Dunn stated Mr. Gibbs had been given some direction to look into the stormwater issue connected with this link and asked Councilmember Rasmussen if he wanted to amend his motion. Mr. Rasmussen stated he did not desire to amend the motion regarding the stormwater issue or allowing for a future easement. Mr. Rasmussen stated the comments regarding the cut in the berm are accurate and would have a negative impact on the Meadows residents, by allowing for the water to come through this cut. Mayor Dunn suggested that Mr. Gibbs still conduct due diligence on the stormwater issue, notwithstanding it not being made a part of the motion.

Mayor Dunn clarified that this motion would be overriding the Planning Commission recommendation, and a vote to approve the rezoning application will require 6 affirmative votes.

Councilmember Rawlings confirmed with Mr. Lambers that the engineer has stated that the proposed detention system will significantly reduce the existing water run-off, however, if we have a storm that exceeds that system's capacity, there is nowhere for the water to go and if there is no break in the berm, the water will back up into the street, causing damage to the street. If the sidewalk link were to be removed, and the berm is continuous, Mr. Gibbs will have to ascertain what type of relieve mechanism could be allowed for that water to go south. The easement will merely leave the option open to the Council that should a link be desired in the future, the City would not have to initiate eminent domain proceedings to create the link.

Councilmember Filla stated there is approximately 2.5 acres of green space that will be able to absorb some water. Mr. Lambers stated after the ground is saturated the run-off would be 100%.

Councilmember Rawlings stated Mr. Lambers brings up a good point regarding a future need for this easement and asked Councilmember Rasmussen if he wanted to modify his motion.

Councilmember Rasmussen reiterated he did not desire to modify his motion. Mayor Dunn suggested that if the residents want a sidewalk in the future, perhaps they could dedicate the property, instead of the City initiating condemnation proceedings.

Councilmember Bussing stated he concurs with Mr. Rasmussen's position, and doesn't see the value of the placement of this sidewalk link and only opens up potential expensive stormwater issues for the City in the future.

Mayor Dunn confirmed with Mr. Gibbs that the details and the elevation will need to be looked at in order to solve this problem and feels confident that her concerns along with the Council's regarding the area's stormwater capabilities will be resolved.

The motion to approve the ordinance for the rezoning application, with the removal of Stipulation No. 17, was approved 6-0 by the following roll call vote: Yea: Councilmembers Rasmussen, Rawlings, Gulledge, Peppes, Filla, and Bussing: Nay: None.

- C. Ordinance approving a rezoning from AG [Agriculture] to SD-NCR [Planned Neighborhood Retail], SD-O [Planned Office] and RP-4 [Planned Apartment Residential District], Preliminary Plat and Preliminary Site Plan for Villaggio East located south of 135th Street and west of Mission Road [Roll Call Vote] - ***CONTINUED FROM THE OCTOBER 18, 2004 GOVERNING BODY MEETING***

A motion was made by Councilmember Rawlings seconded by Councilmember Bussing to approve the rezoning ordinance.

Councilmember Bussing confirmed that this motion included the same stipulation to delete Stipulation No. 17. The ordinance was passed following a 6-0 roll call vote: Yea: Councilmembers Rasmussen, Rawlings, Gulledge, Peppes, Filla, and Bussing: Nay: None.

[from the October 26, 2004, Planning Commission meeting]

D. Ordinance approving a rezoning from AG (Agriculture) to SD-O (Planned Office), preliminary plat and preliminary site plan for Tomahawk Pointe located at College Boulevard and Mission Road [Roll Call Vote] -**WITHDRAWN BY APPLICANT**

14. OLD BUSINESS

15. NEW BUSINESS

16. OTHER BUSINESS

ADJOURN

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

Debra Harper, CMC, City Clerk