

Minutes

DVD No. 123

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 6, 2005. Mayor Peggy Dunn presided.

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

Councilmembers absent: Mike Gill partially present via telecommunications.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Diane Binckley, P&D Director
Kathy Rogers, Finance Director
Deb Harper, City Clerk
Mark Andrasik, IS Director

Patty Bennett, City Attorney
Chief Sid Mitchell, Police Department
Chris Claxton, P&R Director
Joe Johnson, PW Director
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted an additional item of discussion to take place under Other Business at the request of City Administrator Scott Lambers regarding the budget calendar.

A motion was made by Councilmember Rawlings, seconded by Councilmember Taylor, 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.**

4. PROCLAMATIONS **National Nursing Assistants' Week, June 9-16, 2005**

Cheryl Smith of Kansas City Homecare was present for the reading of the proclamation. Mayor Dunn read the proclamation and stated that it would be presented during her attendance of the National Nursing Assistants' Week Celebration on June 9th.

5. PRESENTATIONS/RECOGNITIONS - None

6. SPECIAL BUSINESS

A. PUBLIC HEARING: Proposed Assessments for the Roe/Nall & 137th Street Improvement Project [CIP # 190]

Mayor Dunn opened the public hearing for comments. There being no comments, a motion to close the public hearing was made by Councilmember Bussing, seconded by Councilmember Peppes. The motion was approved following a unanimous vote of 6-0 (Councilmember Rasmussen not seated for vote and Councilmember Gill absent).

B. Ordinance No. 2103, levying assessments on lots, pieces and parcels of property located in the City of Leawood, Kansas, for the purpose of paying for the cost for the Roe Avenue, Nall Avenue and 137th Street Improvement Project [CIP # 190] [Roll Call Vote]

Councilmember Bussing moved to pass the ordinance, seconded by Councilmember Gullede. Councilmember Taylor verified the location of the improvements and stated that he would recuse himself from this item as well as items 6C through 6F due to a conflict of interest. Councilmember Taylor left the Council Chambers. The ordinance passed with the following 6-0 roll call vote: Yea: Councilmembers Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gullede (Councilmember Taylor recusing and Councilmember Gill absent).

C. PUBLIC HEARING: Proposed Assessments for the 137th Street and Briar Improvement Project [CIP # 191]

Mayor Dunn opened the public hearing for comments. There being no comments, a motion to close the public hearing was made by Councilmember Bussing, seconded by Councilmember Gullede. The motion was approved following a unanimous vote of 6-0 (Councilmember Taylor recusing and Councilmember Gill absent).

- D. **Ordinance No. 2104**, levying assessments on lots, pieces and parcels of property located in the City of Leawood, Kansas, for the purpose of paying for the cost for construction of Briar Street between 135th Street and 137th Street, construction of improvements to 135th Street from immediately east of Briar Street to Nall Avenue and construction of improvements to 137th Street between Briar Street and Nall Avenue Improvement Project [CIP # 191] [Roll Call Vote]

Councilmember Bussing moved to pass the ordinance, seconded by Councilmember Rawlings. The ordinance passed with the following 6-0 roll call vote: Yea: Councilmembers Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gullede (Councilmember Taylor recusing and Councilmember Gill absent).

- E. **PUBLIC HEARING:** Proposed Assessments for the 135th Street and Roe Avenue Improvement Project [CIP # 194]

Mayor Dunn opened the public hearing for comments. There being no comments, Councilmember Gullede moved to close the public hearing, seconded by Councilmember Bussing. The motion was approved following a unanimous vote of 6-0 (Councilmember Taylor recusing and Councilmember Gill absent).

- F. **Ordinance No. 2105**, levying assessments on lots, pieces and parcels of property located in the City of Leawood, Kansas, for the purpose of paying for the cost for the 135th Street and Roe Avenue Improvement Project [CIP # 194] [Roll Call Vote]

Councilmember Filla moved to pass the ordinance, seconded by Councilmember Bussing. The ordinance passed with the following 6-0 roll call vote: Yea: Councilmembers Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gullede (Councilmember Taylor recusing and Councilmember Gill absent).

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. Accept Appropriation Ordinance Nos. 1026B & 1027A
- B. Accept minutes of the May 16, 2005 Governing Body meeting
- C. Accept minutes of the May 16, 2005 Governing Body Work Session meeting
- D. Accept minutes of the May 2, 2005 Governing Body Work Session meeting
- E. Accept minutes of the April 29, 2005 Public Works Committee
- F. Accept minutes of the March 8, 2005 Parks and Recreation Advisory Board
- G. Approve bid request in the amount of \$40,260.12, from Turf Technology, pertaining to the purchase of Park and Recreation maintenance equipment

- H. Approve bid request in the amount of \$10,605.00 from Commercial Turf & Tractor, pertaining to the purchase of Park and Recreation maintenance equipment
- I. Declaration of Surplus Property [PW Vehicles]
- J. Resolution No. 2411 approving and authorizing the Mayor to execute a Service Agreement between the City and Town & Country Building Services, in the amount of \$98,934.00, pertaining to city-wide janitorial services
- K. Resolution No. 2412 approving a Final Site Plan for Leawood Fountain Plaza – Building 3 located at 11100 Ash Street *[from the May 24, 2005 Planning Commission meeting]*
- L. Resolution No. 2413 approving a Final Site Plan for Nall Valley Shops – Buildings A and G located at the northeast corner of 151st Street and Nall Avenue *[from the May 24, 2005 Planning Commission meeting]*
- M. Resolution No. 2414 approving a Final Site Plan for 10308 State Line Road – Medical Office *[from the May 24, 2005 Planning Commission meeting]*
- N. Resolution No. 2415 approving a Final Site Plan for Plaza III located at the southwest corner of 135th Street and Briar within the Cornerstone of Leawood development *[from the May 24, 2005 Planning Commission meeting]*
- O. Resolution No. 2416 approving a Final Site Plan for Winstead's located at the southeast corner of 135th Street and Brian within the Cornerstone of Leawood development *[from the May 24, 2005 Planning Commission meeting]*
- P. Acceptance of donated funds to the Leawood Fire Department from the Leawood Woman's Club [\$3000.00 annual philanthropic donation and \$3000.00 donation for the purchase of the Leawood Fire Department 1949 fire truck]

Councilmember Taylor returned to the Council Chambers.

Councilmember Rasmussen requested to pull item Nos. 7K, 7N, and 7O. Councilmember Bussing also requested to pull item No. 7O. Councilmember Taylor requested to pull item No. 7M and stated that he would be recusing from item Nos. 7N and 7O.

Councilmember Peppes moved to approve the remainder of the Consent Agenda, seconded by Councilmember Taylor. The motion was approved following a unanimous vote of 7-0.

- 7K. Resolution No. 2412 approving a Final Site Plan for Leawood Fountain Plaza – Building 3 located at 11100 Ash Street *[from the May 24, 2005 Planning Commission meeting]*

Councilmember Rasmussen expressed concern regarding the removal of numerous existing trees. He moved to revise Stipulation No. 2 to the following: Additional landscape amenities and plaza areas, including but not limited to benches, landscaping, shade structures, and decorative pavers, shall be provided by the applicant and approved by Staff prior to building permit. The intent of the stipulation is to ensure that the existing landscaping and amenities are replaced with equivalent landscaping and amenities. Councilmember Bussing seconded the motion.

Councilmember Gullede requested to hear comments from the applicant. Chuck Peters of Peters & Associates, Inc, agreed to the stipulation revision.

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

- M. Resolution No. 2414 approving a Final Site Plan for 10308 State Line Road – Medical Office *[from the May 24, 2005 Planning Commission meeting]*

Councilmember Taylor confirmed with Planning and Development Director Diane Binckley that the hemlock green color of the new roof is an approved color. Councilmember Taylor moved to approve the item, seconded by Councilmember Filla. The motion was approved following a unanimous vote of 7-0.

- N. Resolution No. 2415 approving a Final Site Plan for Plaza III located at the southwest corner of 135th Street and Briar within the Cornerstone of Leawood development *[from the May 24, 2005 Planning Commission meeting]*

Councilmember Taylor stated that he would recuse from item Nos. 7N and 7O and left the Council Chambers.

Councilmember Rasmussen verified with Ms. Binckley that the site plan is applicable only to building A and does not include building J. Councilmember Rasmussen moved to approve the resolution, seconded by Councilmember Gullede. The motion was approved following a unanimous vote of 6-0 (Councilmember Taylor recusing and Councilmember Gill absent).

- O. Resolution No. 2416 approving a Final Site Plan for Winstead's located at the southeast corner of 135th Street and Brian within the Cornerstone of Leawood development *[from the May 24, 2005 Planning Commission meeting]*

Councilmember Rasmussen and Councilmember Bussing both stated that they wished to vote in the negative on this item as it does not conform to the 135th Street Corridor Plan. Councilmember Peppes moved to approve the item, seconded by Councilmember Filla. The motion was approved by the following vote: Yea: Councilmembers Peppes, Gullede, Rawlings, and Filla; and Mayor Dunn. Nay: Councilmembers Rasmussen and Bussing (Councilmember Taylor recusing and Councilmember Gill absent).

Councilmember Taylor returned to the Council Chambers.

8. MAYOR'S REPORT

- A. Mayor Dunn recognized the passing of Mark Paul Medved, age 81, former Leawood councilmember and past president/longtime member of the Leawood Lion's Club. Mr. Medved spearheaded fundraising for the Lion's Fountain Dedication Project at Leawood City Park. She extended sympathy to his wife, Penny, former president and current member of the Leawood Woman's Club, and remaining family. She asked that we pause for a moment of silence in his memory.

- B. Attended the Annual Recognition Luncheon hosted by the Johnson County Volunteer Center for the Retired and Senior Volunteer Program with other Johnson County Mayors and County Commissioners. The 800 members provided 106,884 hours of community service in 2004, the equivalent of \$1.2 million dollars.
- C. Attended groundbreaking for Country Club Bank at 135th Street and Briar. This will be their second Leawood location.
- D. Attended the Curé of Ars Elementary School DARE Graduation with Police Chief Sid Mitchell. DARE Officer Randy Wiler did a wonderful job. Shared conversation following the ceremony with Principal Marlene Rowe and Chief Mitchell concerning the outstanding public relations provided by the DARE officers. Principal Rowe stressed that the relationships built between the DARE officers and students are a crucially needed and valued component of the program.
- E. Congratulations to DARE Officer Randy Wiler, who will be featured in the September issue of *Boys Life* magazine due to his efforts in conducting the Bullying Program. Officer Wiler has given nationwide presentations on this topic.
- F. Congratulations to DARE Officer Brett Leathers regarding the I-SAFE Program, which is the pilot program for the State of Kansas on Internet safety. The program, which began at Prairie Star Elementary School, has expanded to other schools and is a collaboration between the Leawood Police Department and the Federal Bureau of Investigations.
- G. Mayor Dunn extended gratitude to the members of the Leawood Woman's Club for their generous donations of \$3,000 each to the Fire Department, Police Department, and Safe Home in addition to the purchase of the fire pumper. These donations were presented at their May luncheon.
- H. Attended Spotlight KC Initiative which was sponsored by the Greater Kansas City Chamber of Commerce at the Johnson County Community College. The Delegation of Congressional Staff Members from both Kansas and Missouri discussed the topic "Higher Education in Training that Works, Regional Community College, and Workforce Training Issues." There were also presentations by the President of the Kansas City Kansas Community College, the Chancellor designee for the Metropolitan Community College of Kansas City, and Dr. Carlson on behalf of Johnson County Community College. Dr. Carlson spoke about the fact that JCCC attendance has increased at a rate of 2-4% per year. It is now the largest in the 19 community college system in Kansas with 37,000 students. It is supported with 60% taxes, 17% tuition, and 17% State aid.
- I. Attended Council of Mayors meeting in Mission, Kansas with State Legislators. Presentations were made on K-12 education and the new monies that went to at-risk students and school districts across the State. Other topics included gun control, 2005 and 2006 budgets, the Kansas Open Meetings Act reauthorization, historic site funding, and the County ¼-cent sales tax for economic development. May revenue was up \$73 million dollars over projections; however, the 2007 and 2008 debts are estimated to be in excess of \$250 million dollars.

County Commissioner Annabeth Surbaugh talked about the fact that the last ¼-cent sales tax for Johnson County had been given to the schools and will be ending on December 31, 2005. They have not taken a position at this time but would like to have it back.

- J. Attended the Northeast Johnson County Republican Woman's Club Brunch. A presentation was given by the Honorable Terrie Huntington, State Representative of the 25th District, who felt that the monies needed by July 1st based upon the Supreme Court decision would be taken from the remaining contingency funds of \$350 million dollars.
- K. The National Trails Day Walk was cancelled due to rain. Mayor Dunn thanked the Parks and Recreation Department for their efforts.

9. COUNCILMEMBERS' REPORT - None

10. STAFF REPORT – None

COMMITTEE REPORTS

11. PLANNING COMMISSION

[from the March 22, 2005 Planning Commission meeting]

- A. Ordinance approving a rezoning request from AG [Agriculture] to SD-O [Planned Office], Preliminary Site Plan and Preliminary Plat for Tomahawk Point located on the northwest corner of College Boulevard and Mission Road [Roll Call Vote] – *[Continued from the April 18, 2005 and May 2, 2005 Governing Body meetings]*

Mayor Dunn reviewed that this issue had previously been continued in order for the applicant and residents to reach a compromise.

John Petersen of Polsinelli, Shalton, et al., requested that the ultimate vote be delayed until there is presence of a full Council due to the existing protest petition, which will require a supermajority vote for approval. Mayor Dunn confirmed with Mr. Lambers that Councilmember Gill plans to be present for the issue via speaker phone. It was agreed upon to update the Council with resolutions that have been reached between the applicant and neighbors, hear citizen comments, have discussion as planned, and possibly continue the item to the next Governing Body meeting in the event that Councilmember Gill is not reached.

Councilmember Rasmussen clarified with City Attorney Patty Bennett that stipulation revisions by the Council can occur without a remand back to the Planning Commission as long as there is a supermajority vote.

Councilmember Filla confirmed with Mayor Dunn that 5 votes would be needed for a remand; however, if rezoning is approved, the item will not go back to the Planning Commission.

Councilmember Gill arrived via telecommunications at 8:20 P.M.

Chuck Peters, Peters & Associates, Inc, reported on the meetings held with the residents of Longwood Forest. He stated that compromises were reached by changing the design from four buildings to two buildings. Mr. Peters stated that Rufus Nye, President of the Longwood Forest Homeowners' Association, was very supportive of the new plan. Using revised site plan drawings, Mr. Peters detailed the alterations which include moving the Mission Road driveway 40-ft. to the northwest, additional landscaping to provide screening for residents, the addition of pedestrian walkways throughout the plan, increasing the west parking lot setback from 25-ft. to 35-ft., and eliminated retaining walls. Following the revisions, Mr. Peters reported that resident Dottie Riley still had issues concerning the parking area location.

Discussions with resident Stewart Stein brought about enhancements to the landscaping, a waterfall/fountain feature, and relocation of some existing trees. Mr. Peters stated that the plan includes 55% landscaping and 33% paved areas.

Mr. Peters displayed renderings of the buildings to illustrate compatibility with the Merrill Lynch building. He also presented drawings of the buildings in comparison with Ms. Riley's home, which revealed 262-ft between the structures and only a 10-ft. difference in height.

CITIZEN COMMENTS:

1. Rod Richardson of Wallace, Saunders, et al., spoke on behalf of Longwood Forest residents Rufus Nye and Dottie Riley. In accordance with due process, he requested a longer time allotment to present his case. Mayor Dunn granted Mr. Richardson 10-12 minutes for his comments.

Mr. Richardson expressed that his clients were still quite opposed to the plan. He stated concern with procedure as the plan would require a deviation from the City Code. He cited §16.3-7a of the Leawood Development Ordinance as, "A preliminary development plan shall be approved by ordinance subject to the same procedures and requirements of initiation, Planning Commission review and recommendations, and Governing Body approval as set forth in Article 5." He stated that the code requires the preliminary plan to go back to the Planning Commission for consideration.

He also quoted §16.3-7c, "Prior to the approval of any planned zoning district or development plan, the Governing Body shall find that such zoning or development plan is in general conformity with the provisions of the Comprehensive Plan." He stated that a required finding must be made in order to approve the ordinance.

Mr. Richardson argued that a code deviation would be required prior to approval as there is a 10 acre minimum for a project of this size according to §16.3-8 and §16.3-9 of the LDO.

He reviewed that the Planning Commission unanimously rejected the rezoning request. He stated that the project was inconsistent with the Comprehensive Plan, Staff recommendations, and SD-O requirements. Mr. Richardson asked the Governing Body to deny the application.

2. Dorothea Riley, 11013 Alhambra, spoke in opposition to the plan on behalf of the Longwood Forest Homeowners Association. She reported that Mr. Peters was very helpful in providing information to the residents, however most of their requests were met with resistance. Upon requesting that square footage be reduced, they were told that it could not be done. She stated that they are still willing to work with the developer if reducing the density is an option.
3. Dr. Pat Turner, 11013 Buena Vista, spoke in opposition to the project. She stated that the current traffic plan is flawed according to the traffic study which states that by the year 2020, all traffic heading out on College Boulevard from Tomahawk Pointe will have to turn west. This will create problems for the residents of Longwood Forest who are trying to turn left. Dr. Turner pointed out that the study also revealed a future need for the City to construct three additional turn lanes, one of which will be a reconstruction and widening of the Mission Road bridge.

Mr. Petersen addressed the issues and concerns of Mr. Richardson and the adjoining property owners. He reviewed Mr. Lambers' past comments that Master Plan designations do not preclude applications for other uses. He also stated that a deviation to the 10 acre requirement for this type of development was approved by the Planning Commission. Mr. Petersen conveyed that the Public Works Staff analyzed and agreed with the professional traffic consultants report that the traffic system would work well with no impact on intersections upon modifications at the cost of the developer.

Mr. Petersen compared the past and present site plan drawings. He stated that successful efforts have been made by the developer to address specific concerns of the residents. Mr. Petersen stated that a 20% reduction in density would be of no significance to the neighbors, however would be devastating to the developer. He expressed willingness for further interaction with the neighbors.

Mr. Peters clarified that Stewart Stein's participation took place outside of interactive meetings with other residents. He mentioned lighting as another aspect to which Mr. Stein contributed. He stated that foot candles will be placed in the interior parking areas only with zero impact to neighbors. Mr. Peters stressed that it was not his position to discontinue communication with the residents.

Councilmember Rasmussen stated that City Engineer David Ley's comments from the Public Works Memorandum regarding the stormwater study preclude any development of a residential nature. In the event of flooding, he stated that the north entrance would be inaccessible which would pose a safety issue to a residential area or assisted living facility. Councilmember Rasmussen felt that the project should be remanded back to the Planning Commission as a result of the Indian Creek Water Study. He confirmed with Harold Phelps of Phelps Engineering that the north and west ends of the site were left unfilled in order to accommodate the adjacent neighbors by allowing more green space as a separation from the commercial development. Mr. Phelps and Public Works Director Joe Johnson verified for Councilmember Rasmussen that the water flow design will not cause a change in the flooding pattern.

Regarding the traffic study, Councilmember Rasmussen confirmed with Mr. Peters that the minor changes recommended by Peterson Transportation Solutions [PTS] were included as stipulations.

Councilmember Rasmussen established with Mr. Lambers that Stipulation No. 4, requiring underground placement of power/utility lines, does not include transformer boxes. Councilmember Rasmussen suggested adding a stipulation to place the utility boxes as far west of the intersection as practical. Mr. Lambers stated that the boxes need to be within the right-of-way and recommended imposing screening requirements. Mr. Peters offered to meet with the power and telephone companies to request that the boxes be moved to the west.

Mr. Peters verified for Councilmember Rasmussen that if any existing trees in the right-of-way areas are damaged, the developer will replace them with equivalent trees.

Councilmember Rasmussen inquired if the circular corner feature mentioned on Page 3 of the Staff Report would be the aforementioned water fountain. Mr. Peters displayed a rendering of a water fountain and stated that Tomahawk Pointe will have an enhanced version.

Mr. Peters confirmed for Councilmember Rasmussen that the top window levels of the proposed office structures are approximately 5-6 ft. higher than the second story windows of Ms. Riley's home.

Councilmember Rasmussen asked if the projected intersection delay reported in the traffic study would be a result of the new development. Mr. Peters agreed that the traffic report was correct in that the project would cause a minimal delay during peak hours.

Mr. Peters explained for Councilmember Rasmussen that the term "banked parking spaces" refers to areas that are currently landscaped but could be converted to parking spaces if needed.

Mayor Dunn inquired if there would be an ingress/egress lane in the curb-cut on Mission Road. Mr. Peters stated that the ingress/egress extends 180-ft. beyond the entrance, but the traffic report did not require the addition of deceleration lanes. Mayor Dunn confirmed with Mr. Petersen that they would be agreeable to a stipulation requiring the developer to pay for future improvements when needed.

Councilmember Taylor asked Ms. Riley if subsurface parking was ever considered. She replied the only option given by developers for moving the parking areas further away was to remove landscaping from the interior of the parking lots. Councilmember Taylor suggested trading off density for green space by way of a subsurface parking structure. Ms. Riley felt that adding to the density would further compound the residents' concerns. Mr. Richardson stated that he was reluctant to speak for his clients without first discussing the issue with them.

Councilmember Taylor reported receiving a phone call from a resident who wanted to know why the applicant would be allowed to have a drive onto Mission Road when he was denied a request for the same. Ms. Binckley stated that she was not familiar with the request, however multiple access points are not allowed for residential drives on main arterial streets. Mayor Dunn stated that she also spoke with the resident whose primary objection to the project was because he was not allowed access to Mission Road himself. Councilmember Filla also reported speaking to a resident whose curb-cut request was denied based on flooding considerations.

Rod Linder, 3905 W. 110th Terrace, identified himself as the resident who was denied the request. He felt that he should be given the same consideration as the development regarding his driveway request.

Councilmember Filla asked if a single building proposal had been considered in order to lessen the parking needs. Mr. Petersen responded that cutting the design down to one building was not financially feasible.

Councilmember Rawlings inquired if a single four-story building with the same square footage as the current two building design had been contemplated. Mr. Peters stated that a four-story building next to Merrill Lynch would be disproportionate and neighbors did not want a building higher than two stories, therefore it was not discussed.

Councilmember Rawlings asked for clarification regarding the procedural issues brought up by Mr. Richardson and Mr. Petersen. Mr. Lambers stated that alterations in the plan, going from four to two buildings with the same amount of square footage, did not constitute a substantial change to warrant going back to the Planning Commission. He stated that the Governing Body has the option to remand, however it is not required based upon the changes that were made.

Mayor Dunn confirmed with Ms. Binckley that the Merrill Lynch building is 45,260 square feet on 3.97 acres. She recalled that the square footage issue was to be on the table for discussion with the neighbors and was surprised to hear Ms. Riley report that there was no negotiation. Mr. Peters stated that neither the residents nor their representatives brought up the subject of square footage reduction. He compared the landscaping, paved areas, open space areas, and F.A.R. percentages to the Merrill Lynch building and stated that the proposed project far exceeds the ratios for any development in this area.

Mr. Petersen stated that size reduction had been explored, however the ramifications of reducing the square footage would cause a decrease in the ability to create a first-class office project.

Councilmember Gulledge motioned to approve the project with incorporation of all traffic study recommendations as well as a stipulation requiring the developer to provide an ingress/egress on Mission Road. Councilmember Peppes seconded the motion.

Councilmember Gill asked for clarification of whether square footage was made nonnegotiable. Ms. Riley stated that size reduction was a specific request, however they were told that it would not be done. Mr. Peters reported being open to all compromises except for shrinking the density, as it did not make good business sense.

Councilmember Gill wanted to know if size would be negotiable in the event of a remand. Mr. Petersen responded that they would like to hear a specific request for the reduction.

James O'Keefe, owner of the proposed property, spoke about the escalating costs of the project and stated that a decision needed to be made.

Councilmember Gill confirmed with Ms. Binckley that the traffic report identified a future necessity to widen the bridge on College Boulevard based upon increased traffic requiring an additional turn lane. However, she stated the needed enhancement would not be a result of the Tomahawk Pointe development but due to improvements in Missouri.

Mr. Johnson verified for Councilmember Gill that he was comfortable with the revised plan relating to stormwater as flooding will be consistent with Indian Creek regardless of what is on the site.

Councilmember Rasmussen motioned a friendly amendment to revise Stipulation No. 1 by limiting the project to 45,000 square feet with a maximum of two buildings. He stated this would reduce parking and minimize the timing increase between intersections. Councilmember Taylor seconded the motion. Mr. Petersen stated that 45,000 square feet would not be acceptable.

Councilmember Gill commented that he would rather see a remand with consideration of size, stormwater, traffic, and the Mission Road issues. Mayor Dunn suggested a continuance versus a remand to allow the developer to discuss size reduction with residents. Mr. Petersen requested a 5 minute recess in order to consult with his client.

Mayor Dunn stated that a 5 minute recess would be taken.

Recess 5 Minutes

The Council reconvened at 10:20 P.M.

After discussion with Mr. Petersen during the recess, Mr. Lambers recommended that Staff request a two week continuance in order to clearly define the available flexibility regarding the project. Mayor Dunn confirmed with Mr. Petersen a desire to continue working with the residents.

Councilmember Rasmussen removed his motion for amendment with the second removed by Councilmember Taylor.

Councilmember Gulledge removed his motion to approve the item with the second removed by Councilmember Peppes.

Councilmember Taylor motioned to continue the issue to the June 20, 2005, Governing Body meeting, seconded by Councilmember Peppes. The motion was approved with a unanimous vote of 8-0.

[from the April 12, 2005 Planning Commission meeting]

- B. Resolution No. 2417 approving a Final Site Plan and Final Plat for Villaggio of Leawood - West located south of 135th Street and east of Roe Avenue –
Continued from the May 16, 2005 Governing Body meeting

Councilmember Taylor stated that he would be recusing from this item and left the Council Chambers.

Mayor Dunn emphasized this as a preliminary to the final plan and is to gain approval only for areas that will be tied to Special Benefit District [SBD] financing. A second final plan will be submitted at a later date which will address detailed issues associated with the project as a whole. Deviation requests are not to be considered at this time.

Mr. Lambers recommended approval as all was in order pertaining to the SBD. He reiterated that a full final development plan will come before the Council at a later date, however documents must be prepared for bond market at this time. He added that the SBD policy will be amended in order to avoid future incremental approvals.

Councilmember Rasmussen moved to approve the resolution, seconded by Councilmember Peppes. The motion was approved following a unanimous vote of 7-0 (Councilmember Taylor recusing).

[from the April 26, 2005 Planning Commission meeting]

- C. Ordinance No. 2106 approving a rezoning for a portion of the property from SD-CR [Planned General Retail] to SD-O [Planned Office], Preliminary Site Plan and Preliminary Plat for the 135th and Mission development located on the northwest corner of 135th Street and Mission Road [Roll Call Vote] -***Continued from the May 16, 2005 Governing Body meeting***

Councilmember Taylor returned to the Council Chambers.

Chuck Peters of Peters and Associates presented the preliminary plan and pointed out the deviation request. He also indicated the intended location for the “Pastoral Dreamer” sculpture.

Councilmember Rasmussen moved for approval, seconded by Councilmember Filla.

Regarding Stipulation No. 15, Mayor Dunn confirmed with Ms. Binckley that there would be improvements to the planter boxes of the corner features. Ms. Binckley added that they will be working closely with Market Square development to ensure compatibility. She stated that fountain features are also intended for the corners.

Ms. Binckley confirmed for Councilmember Taylor that item No. 1.g. of the Public Works Memorandum recommends that the developer construct the entire intersection of 135th and Fontana, including signalization. Mr. Lambers verified with Mr. Peters that inclusion of the traffic signal was understood.

Councilmember Gill inquired about stormwater alternatives other than a detention basin. Mr. Peters stated that an underground retention area would require more area and alleviation of trees. Mr. Peters stated that the location was ruled out as not applicable for an underground basin as they are not typically placed in areas where there is good drainage and receptors.

Councilmember Gill expressed concern with having an open body of water in close proximity to an elementary school. Mr. Peters reemphasized that an underground retention area was not feasible in this location. Councilmember Gill asked if there were options other than an underground structure. Mr. Peters suggested planting some type of thorny vegetation around the pond, possibly wild roses, to act as a natural barrier. He demonstrated on the map the proposed location for the detention pond, which is on the north side of the development across 133rd Street. Mr. Lambers described the pond as a 6-8 ft. deep dry-bottom detention basin.

Regarding concerns of citizen Alec Weinberg, Councilmember Gullede confirmed with Mr. Peters that the office buildings are to be only one story in height. He also verified with Mr. Peters that the developer will provide improvements and maintenance to the south side of a 75-ft. landscaped easement.

Councilmember Gullede confirmed with Mr. Johnson that the lighting on Fontana Street will be consistent with Mission Road. He also verified with Mr. Peters that drive-thru retail is not planned for this development.

Mr. Peters clarified for Councilmember Taylor that the western portion of the site will also have open stormwater detention.

Mayor Dunn verified with Mr. Peters that a berm and residential homes exist to the north of the proposed detention pond. The location of the elementary school is to the east with office buildings and parking as a buffer.

Alec Weinberg, 13252 Delmar Court, spoke on behalf of the Wilshire Homes Association. He stated that they were not concerned with the overall development plan, but had an issue with the fact that traffic exiting the shopping center from the east will conflict with school traffic from the west. He was concerned about improvements and maintenance of the 75-ft. landscaped easement on Wilshire Boulevard as well as the detention basin becoming an eyesore.

Mayor Dunn confirmed with Ms. Binckley that Stipulation No. 10, which requires detailed landscaping that meets the requirements of the Leawood Development Ordinance, will ensure proper buffering between the office project and residential area.

Councilmember Gill voiced his intent to vote against the project based on the applicant's unwillingness to consider an alternative for the detention basin that will be adjacent to an elementary school. Mayor Dunn clarified that the school was not adjacent to the detention pond as there will be two office buildings and parking lots between them.

Rick Rhyner, 13257 Delmar Court, spoke in opposition to the detention basin. He stated that the detention pond would be located directly behind his neighborhood, which includes several children under the age of 10. He had safety concerns and was also worried about the area becoming unattractive.

Mayor Dunn suggested fencing the detention area. Brick Owens, Director of Land Planning for HNTB, stated that a berm and landscaping would be preferable to a fence. Mayor Dunn confirmed with Mr. Owens that dense vegetation could be added to act as a barrier around the pond.

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 Bussing, seconded by Councilmember Gullede. The motion was approved unanimously with an 8-0 vote.

Councilmember Taylor inquired if a stormwater study had been taken into account when designing the detention pond. Sterling Cramer with Olsson Associates stated that a preliminary storm study was submitted, which was approved by City Staff. Mr. Cramer stated that in the event of a 100-year storm, there would be 7-ft. of water in the basin which would drain out within 24 hours.

Councilmember Bussing stated that he shared Councilmember Gill's concerns regarding the detention facility. He voiced disappointment with the overall project and his intent to vote against approval.

Councilmember Gullede clarified with Councilmember Bussing that his denial is based upon the plan as a whole and not just the detention pond issue. Councilmember Gill stated that the plan had merit, however he had safety concerns regarding the detention basin.

Mr. Peters proposed to reduce the depth of the pond to 3-3½ feet with underground piping in the surrounding area, which would allow preservation of the trees. Mr. Lambers stressed that tree preservation was not the ultimate decision making point as landscaping can be replaced in the event that removals are necessary for an underground facility. He also felt that vegetative screening would not be an effective barricade as maintenance workers would need access to the pond. Mr. Lambers stated that the basin should be 100% underground or be approved as it is requested.

Councilmember Gulledge stated that he was in favor of the plan if the detention area issue could be resolved. Mayor Dunn suggested stipulating a compromise concerning the detention basin into the motion for approval. Councilmember Gill commented that there could be no compromise regarding the safety of children. He voiced that as money and trees were a nonissue, there was no reason not to have underground detention.

Councilmember Filla suggested modifying the stipulation such that the detention plan is acceptable to the neighbors. She pointed out that Old Leawood contains various creeks and parental responsibility plays a role in ensuring the safety of children during a flooding event.

Councilmember Rasmussen confirmed with Mr. Peters that they are proposing a change in the depth of the detention pond from 8-ft. to 3-ft. with the remainder built underground. Councilmember Rasmussen then amended his original motion by stipulating that the capacity of the detention area be divided between open and underground with a maximum of 3 feet in the open area. Councilmember Filla seconded the amendment.

Councilmember Bussing stated that he appreciated Mr. Peter's willingness to compromise, however agreed with Councilmember Gill in that the detention pond should be 100% underground in this location.

Mr. Peters reasserted readiness to work diligently with engineers and Staff on the issue.

Councilmember Filla stated that Corinth Elementary school has nearby stormwater, proving that water can safely be around children.

The ordinance was passed with the following roll call vote: Yea: Councilmembers Filla, Rasmussen, Peppes, Rawlings, and Gulledge. Nay: Councilmembers Gill, Taylor, and Bussing. Mayor Dunn voted in the affirmative, making the final vote 6-3.

[from the May 10, 2005 Planning Commission meeting]

D. Ordinance No. 2107 approving a rezoning from RP-4 (old zoning) to RP-2, Preliminary Site Plan and Preliminary Plat for Villas at Highlands Ranch located north of 138th Street and east of Chadwick [Roll Call Vote]

Don Donahoo of Highlands Group requested approval of the rezoning. Councilmember Taylor confirmed with Mr. Donahoo that the 10-15 acres recently condemned by the Water Department was not the property in question.

Councilmember Bussing moved to approve the rezoning request, seconded by Councilmember Gill. The motion carried with the following roll call vote of 7-0: Yea: Councilmembers Taylor, Gill, Filla, Bussing, Rasmussen, Rawlings, and Gulledge (Councilmember Peppes not seated for the vote).

[from the May 10, 2005 Planning Commission meeting]

- E. Ordinance No. 2108 amending Section 16-5-2.1 of the Leawood Development Ordinance pertaining to the Planning Commission Review [Roll Call Vote]

Councilmember Gill moved to pass the ordinance, seconded by Councilmember Taylor. The motion was approved with the following unanimous roll call vote of 8-0: Yea: Councilmembers Taylor, Gill, Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gulledge.

12. OLD BUSINESS

- A. Resolution No. 2418 supporting the multi-jurisdictional effort for the planning and construction of a new Southern Highway

Councilmember Bussing moved for approval, seconded by Councilmember Rawlings. The motion carried following a vote of 7-0 (Councilmember Gullede not seated for the vote).

13. NEW BUSINESS

- A. Appointment of Councilmember Lou Rasmussen to be the City Representative for Johnson County's Task Force, Transit and Transportation Future-Focused Forum

Councilmember Gill disconnected from the meeting.

Councilmember Bussing moved for approval, seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0 (Councilmember Gullede not seated for the vote and Councilmember Gill absent).

Mayor Dunn thanked Councilmember Rasmussen for his generous donation of time.

- B. Request from Black and Veatch Consulting Engineers to execute Amendment No. 5, to that certain Consulting Engineering Agreement, dated April 26, 2001, for additional funds pertaining to the Dykes Branch Channel Improvement SMAC DB-04-024 Project, between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Staff Comment: The Public Works Director is not in support of this request.

Mr. Johnson reviewed the addendum request from Black and Veatch as well as his position to deny the request. He stated that the money paid should have been adequate to complete the design.

Mayor Dunn confirmed with Mr. Johnson that the project was out for an RFQ. Mr. Johnson stated that three firms were considered with Black and Veatch being selected by the Public Works Committee.

Mayor Dunn stated due to the time being 11:30 P.M., a motion was needed to extend the meeting an additional 30 minutes. A motion was so made by Councilmember Taylor, seconded by Councilmember Gullledge. The motion was approved unanimously with a vote of 7-0.

Councilmember Taylor verified with Mr. Johnson that the percentage fee stood at 20% with the original contract and the addendums for stormwater. Mr. Johnson affirmed that Black and Veatch expressed understanding of the scope of work involved during the interview process.

Les Lampe, Vice President of Black and Veatch, distributed a memorandum to the Council and reviewed the reasoning behind the amendment request.

Due to the significance of the issue, Councilmember Taylor suggested continuing the item to allow further review of the information. Mr. Lambers agreed with Councilmember Taylor.

Councilmember Taylor moved to continue the item to the June 20th Governing Body meeting with a second from Councilmember Filla. The motion was approved following a unanimous vote of 7-0.

- C. Ordinance No. 2109 adding a new Section 12-210A of Article 2 of Chapter XII of the Code of the City of Leawood, 2000, entitled 'Commercial Use of Parks' [Roll Call Vote]

Councilmember Bussing moved to pass the ordinance, seconded by Councilmember Taylor. The motion carried with the following 7-0 roll call vote: Yea: Councilmembers Taylor, Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gullledge (Councilmember Gill absent).

- D. Schedule an Executive Session immediately following the regular meeting to discuss acquisition of real property

Councilmember Bussing moved to approve the scheduling of the Executive Session for a period of 5 minutes, seconded by Councilmember Gullledge. The motion was approved following a unanimous vote of 7-0.

14. OTHER BUSINESS

- A. Discussion regarding possibly revising the Joint Governing Body/Budget & Finance Committee Work Sessions scheduled for June 13-15, 2005.

Mr. Lambers reported that the Legislative Session will soon reconvene in order to deal with the inadequate funding provided for schools. It is possible that the legislature will not consider a tax increase or expanded revenue opportunities from gaming. It is likely that they will procure money from local jurisdictions, leaving counties and cities vulnerable.

Mr. Lambers suggested the possibility of deferring the Budget Sessions to the last week of June in order to gain information as to what the State is planning for city budgets. It was agreed to postpone, if necessary, the budget meetings until June 27-29, 2005. Mr. Lambers stated he would advise the Council more definitively by Thursday.

The Governing Body recessed into Executive Session at 11:55 P.M. The regular meeting reconvened at 12:00 A.M.

ADJOURN

A motion to adjourn the regular meeting was made by Councilmember Gullledge, seconded by Councilmember Rawlings. The motion was approved following a unanimous vote of 7-0. The meeting adjourned at 12:00 A.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk