

**Minutes**

DVD No. 124

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 20, 2005. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** None.

**Staff present:**

Scott Lambers, City Administrator  
Chief Ben Florance, Fire Department  
Diane Binckley, P&D Director  
Kathy Rogers, Finance Director  
Jeff Cantrell, Neighborhood Serv. Admin.  
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney  
Chief Sid Mitchell, Police Department  
Chris Claxton, P&R Director  
Joe Johnson, PW Director  
Deb Harper, City Clerk  
Karl Weinfurter, IS Specialist

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Councilmember Bussing requested that item No. 12A immediately follow item No. 10 due to a lengthy wait for discussion at the last Council meeting.

A motion was made by Councilmember Gullede, seconded by Councilmember Peppes, to approve the agenda. The motion carried following a unanimous vote of 7-0 (Councilmember Filla not present).

Councilmember Filla arrived at 7:35 P.M.

**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                      City of Leawood Day, June 9, 2005**

Mayor Dunn displayed a proclamation presented to herself and members of the Leawood Historic Commission by County Chairperson Annabeth Surbaugh on June 9<sup>th</sup> for City of Leawood Day in recognition of the Johnson County Sesquicentennial Celebration. She read the proclamation into the record and acknowledged Councilmember Rasmussen for serving on the Sesquicentennial Advisory Committee. Mayor Dunn also exhibited a Kansas City Chiefs game ball signed by Chiefs Ambassadors, which was presented by County Commissioner David Lindstrom, former Kansas City Chiefs football player, in honor of the City's role in growth and progress of the County.

**5. PRESENTATIONS/RECOGNITIONS      Retirement of Fire Battalion Chief Doug Wolford; 27 years of service  
March 1, 1978 – June 30, 2005**

Fire Chief Ben Florance presented Battalion Chief Doug Wolford with a plaque from the Fire Department in honor of his 27 years of dedicated service to the City of Leawood. Mayor Dunn also presented a plaque from the City of Leawood to represent Battalion Chief Wolford's commitment to the safety of citizenry. Battalion Chief Wolford received a standing ovation and graciously accepted the honors.

**6. SPECIAL BUSINESS**

**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. 1027B, 1028A and 1028B
- B. Accept minutes of the June 6, 2005 Governing Body Work Session meeting
- C. Accept minutes of the May 10, 2005 Historic Commission meeting
- D. Accept minutes of the April 28, 2005 Ironhorse Advisory Board meeting
- E. Accept minutes of the March 22, 2005 Arts Council meeting
- F. Approve renewal of Cereal Malt Beverage [CMB] License for Price Chopper, #500, located at 13351 Mission Road
- G. Renewal of Retail Liquor Store license to Zipz! Spiritz, located at 4821 W. 135<sup>th</sup> Street
- H. Approve purchase in the amount of \$21,272.00, from American Sentry for additional security access system upgrades
- I. Approve Change Order No. 1 in the amount of \$310,466.54, to Miller Paving, pertaining to the 2005 Residential Street Improvement Program
- J. Resolution No. 2419 calling for a Public Hearing on July 18, 2005 to consider the vacation of a utility easement or portion thereof, effecting Lot 119 Wilshire Place, 3<sup>rd</sup> Plat

- K. Resolution No. 2420 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the City of Prairie Village, pertaining to the installation of solar powered school zone flashing beacons with speed limit signs and 'End School Zone' signs for Cure of Arts School, located at 94 & Mission Road
- L. Resolution No. 2421 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$59,890.00, between the City and KLC, Inc., pertaining to drainage for the Lodge and Nature Center located at Ironwoods Park, 14701 Mission Road
- M. Accept donation in the amount of \$10,671.20, from the Leawood Stage Company pertaining to the purchase of lighting equipment for the Amphitheater at Ironwoods Park, 14701 Mission Road
- N. Accept donation in the amount of \$3,000 from the Leawood Woman's Club to the Police Department to assist with the purchase of 2 Automatic External Defibrillators [AED's]
- O. Approve waiving of Rental Fees at Ironwoods Lodge from the Leawood Stage Company, pertaining to the 2005 fundraising gala on July 29, 2005
- P. Resolution No. 2422 calling for a public hearing on Monday, August 1, 2005, to consider the 2006 fiscal budget for the City of Leawood, Kansas
- Q. Resolution No. 2423 approving and authorizing the Mayor to execute a Letter of Engagement Agreement for an amount not to exceed \$29,600, between the City and Cochran, Head & Company, P.C., pertaining to the 2006 audit
- R. Resolution No. 2424 approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$2,500, between the City and Matt DeHaemers pertaining to the Public Art Program
- S. Declaration of surplus property [Parks Maintenance Equipment]
- T. Police Department Monthly Report
- U. Fire Department Monthly Report
- V. Municipal Court Monthly Report

Mayor Dunn pulled item Nos. 7M and 7R. Councilmember Taylor requested to pull item No. 7L and Councilmember Bussing requested to pull item No. 7T.

Councilmember Peppes moved to approve the remainder of the Consent Agenda, seconded by Councilmember Gill. The motion was approved following a unanimous vote of 8-0.

- 7M. Accept donation in the amount of \$10,671.20, from the Leawood Stage Company pertaining to the purchase of lighting equipment for the Amphitheater at Ironwoods Park, 14701 Mission Road

Mike Eggleston, Chairman of the Leawood Stage Company, presented the City with a check in the amount of \$1088.00 for purchase of a dimmer panel. In addition, the Leawood Stage Company will purchase two spotlights and donate to the City. Mayor Dunn stated appreciation for the generosity and commended the idea of purchasing the equipment versus continuing yearly rentals.

Mr. Eggleston and Mary Tearney, member of the Leawood Stage Company, announced that there will be a Gala Fundraiser prior to the production of "South Pacific" on July 29<sup>th</sup> at 6:00 P.M. at Ironwoods Park.

Councilmember Bussing moved to accept the donation, seconded by Councilmember Taylor. The motion was approved following a unanimous vote of 8-0.

Councilmember Bussing bestowed accolades on the Arts Council Committee.

Councilmember Gill temporarily left the Council Chambers.

- 7R. Resolution No. 2424 approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$2,500, between the City and Matt DeHaemers pertaining to the Public Art Program

Mayor Dunn requested to see photographs of the art piece that will be placed in the lobby of City Hall. Parks and Recreation Director Chris Claxton displayed photos from a series of works called "Currents" by the artist and explained that the piece will be similar, however each creation is unique.

The piece to be at City Hall will actually be constructed on site. Ms. Claxton stated she requested that the structure fit into an alcove in order to keep foot traffic open. She stated that the medium will be pinewood and will take approximately ten days to construct.

Councilmember Bussing moved to approve the item, seconded by Councilmember Rawlings.

Councilmember Rasmussen inquired if the pictures were also prototypes to the artwork proposed for the northwest corner of College Boulevard and State Line Road. Ms. Claxton affirmed that they were the same, however would be constructed of metal.

The motion carried following a unanimous vote of 7-0 (Councilmember Gill not seated for the vote).

- 7T. Police Department Monthly Report

Councilmember Bussing complimented Police Chief Sid Mitchell and the Leawood Police Department on the low crime rate statistics. He then moved to approve the item, seconded by Councilmember Gullede. The motion was approved following a unanimous vote of 7-0 (Councilmember Gill not seated for the vote).

- 7L. Resolution No. 2421 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$59,890.00, between the City and KLC, Inc., pertaining to drainage for the Lodge and Nature Center located at Ironwoods Park, 14701 Mission Road

Councilmember Taylor stated that he is not opposed to this item but has some issues with the contract. He stated it is not in the approved format and requested that a future standardized contract be presented for approval relating to contracts below \$100,000. Councilmember Taylor also pointed out an omission in the unit prices on page 16. Ms. Claxton provided copies of an updated Bid Form containing the unit prices.

Councilmember Taylor stated it was uncustomary for rock removal to be measured in linear feet, as identified on the Bid Form. He reported that the construction industry usually prices this service by cubic yard. Councilmember Taylor felt that the Public Works Department should inspect the work rather than the Parks and Recreation Department and, if necessary, bring in consultants for additional inspections.

Councilmember Taylor moved to approve the resolution with the assurance that the Public Works Department inspectors will work in collaboration with the Parks and Recreation Department inspectors and in consultation with Continental Consulting Engineers. Councilmember Rasmussen seconded the motion.

Councilmember Rasmussen recalled previous difficulties with Adhoc contracts, which precipitated the standard form, and felt that preventative action should be taken. Mr. Lambers stated that a secondary standardized contract for projects below a certain financial parameter can be utilized upon review of the Public Works Committee and Council approval. Public Works Director Joe Johnson stated that the standard contract written for major projects is currently revised for smaller projects concerning maintenance of City facilities with inspection agreements as a separate document. He stated that a secondary standard contract can be created to define this type of project, however individual modifications will still have to be made as the scope of work on our own facilities differ from those of public improvements.

The motion carried following a unanimous vote of 7-0 (Councilmember Gill not seated for the vote).

Councilmember Taylor made a second motion to have the Public Works Committee review a standard contract form that would be more appropriate for projects that do not exceed \$100,000. Councilmember Rasmussen seconded the motion. The motion was approved following a unanimous vote of 7-0 (Councilmember Gill not seated for the vote).

**8. MAYOR'S REPORT**

- A. Mayor Dunn extended appreciation to Chairperson Beverly Hurley, April Bishop, and other members of the Leawood Historic Commission, and docents for providing a presentation to the County Commissioners in conjunction with Leawood Day for the Johnson County Sesquicentennial Anniversary Celebration.
- B. Attended "Honoring Caregivers" during National Certified Nursing Assistants' Week at the Leawood Lion's Shelter.
- C. Attended "Taste of Leawood," the annual fundraiser by the Leawood Chamber of Commerce, along with most of the Councilmembers and 600 other attendees including Congressman Dennis Moore and County Chairperson Annabeth Surbaugh. Mayor Dunn thanked Kevin Jeffries and staff of the Chamber of Commerce, City Staff, and volunteers for creating a memorable evening.
- D. Attended the United Way of Johnson County and United Community Services State of Caring luncheon. Guest speaker Congressman Dennis Moore spoke on the federal deficit, federal budget cuts, and the implications for human services.
- E. Attended three nights of Budget and Finance Committee meetings along with Councilmembers and members of the Staff. Mayor Dunn expressed appreciation to Finance Director Kathy Rogers, Budget Coordinator Kathy Byard, City Administrator Scott Lambers, and all those involved for working so hard on the 2006 Budget.
- F. Reminder for the last concert in the "Music Along the Creek" series on Friday, June 24<sup>th</sup>, 11:30 A.M. to 1:00 P.M., in front of the American Academy of Family Physicians. This is a rescheduled event due to a previous rain-out and will feature saxophonist and flutist Kim Park.
- G. Reminder for the 4<sup>th</sup> of July Celebration at Leawood City Park. Councilmembers will receive further information and parking passes.
- H. Reminder for the Leawood Youth Theatre show dates and times: June 23<sup>rd</sup> and 24<sup>th</sup> at 6:30 P.M.; June 25<sup>th</sup> and 26<sup>th</sup> at 2:00 P.M. The location is the Leawood Middle School with tickets available at the door.

**9. COUNCILMEMBERS' REPORT**

- A. Councilmember Peppes' report regarding trail extension.  
Councilmember Peppes informed the Council of a potential area for trail extension.

Councilmember Gill returned to the Council Chambers.

He moved to recommend a Staff review and report within 90 days on the feasibility of a possible trail extension to start at the footbridge of the old Leawood Country Club, continue through the back of the Knight Ridder building, west of Ward Parkway and along the rear of houses on 85<sup>th</sup> Street and State Line Road. Councilmember Taylor seconded the motion.

Councilmember Rasmussen made a friendly amendment for the Staff to investigate the prospect of acquiring easements for possible picnic areas and a dog park in addition to the 10-ft. wide trail. Councilmember Peppes moved to accept the friendly amendment, which was seconded by Councilmember Taylor. The motion carried following a unanimous vote of 8-0.

**10. STAFF REPORT - None**

**12. OLD BUSINESS**

- A. 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 [*Continued from the June 6, 2005 Governing Body meeting*]

**Staff Comment:** The Public Works Director is not in support of this request. The City Administrator recommends this item be forwarded to the Public Works Committee for discussion and consideration

Councilmember Bussing made a motion to authorize payment of half the disputed amount so as to settle the issue. Councilmember Filla seconded the motion.

Mayor Dunn verified the total amount in question to be \$117,000. Mr. Johnson stated that he had not discussed the alternate motion but could convey the proposition to Black & Veatch representatives, who were not present.

Councilmember Bussing felt the matter was very much a “he said, she said” issue and did not wish to waste more time and effort trying to resolve the argument. Mayor Dunn clarified that Black & Veatch’s position is not that we owe them obligated money but that they are losing money on the project and wish to be compensated.

Councilmember Taylor strongly disagreed with the motion and felt that the Public Works Committee should review the material and make a recommendation to the City Council. He stated that allowing a deviation of this nature to a consulting engineer would set precedence for future contracts in that the City would accept a 20% fee. The engineers understood the scope of work at the time of contract and the City should not be in a position to guarantee profits.

Councilmember Rawlings verified with Mr. Lambers that if the motion were approved, preparation of documents would occur and Black and Veatch could either accept or reject the offer. Councilmember Taylor stated that Black and Veatch should be given the opportunity to present and discuss the matter with the Public Works Committee.

Councilmember Gulledge established with Mr. Johnson the total project cost to be \$4.8 million dollars including construction with Black & Veatch's fee at approximately \$1 million dollars. Councilmember Gulledge agreed with Councilmember Bussing's motion to settle the dispute by paying \$58,500.

Mr. Lambers confirmed for Councilmember Gill that this is a fixed fee increase request rather than a matter of contractual obligation. Mr. Lambers stated there is no dispute that the contract extended beyond anticipation, however the engineering firm should have made the proposed increase request before job completion. An estimate fee of \$100,000 has already been paid to Black & Veatch. Mr. Lambers recommended that negotiations go before the Public Works Committee.

The motion failed with a vote of 3-5 (Yea: Councilmembers Bussing, Gulledge, and Filla. Nay: Councilmembers Peppes, Gill, Taylor, Rawlings, and Rasmussen).

Councilmember Rasmussen moved to refer the dispute to the Public Works Committee with a second by Councilmember Peppes. The motion carried with a vote of 6-2 (Yea: Councilmembers Peppes, Gill, Taylor, Rawlings, Rasmussen, and Filla. Nay: Councilmembers Bussing and Gulledge).

## **COMMITTEE RECOMMENDATIONS**

### **11. PLANNING COMMISSION**

*[from the March 22, 2005 Planning Commission meeting]*

- A. Ordinance No. 2110 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, May 2, 2005 and June 6, 2005 Governing Body meetings]*

John Petersen of Polsinelli, Shalton, et al., reviewed the outcome of the last Governing Body meeting, where it was requested that square footage reduction be considered and discussed with the neighbors. He reported that meetings between architect Chuck Peters and the residents took place, however the requested 25% reduction in square footage could not be done. Discussions with consultants revealed that a 15,000 sq. ft. reduction would make no significant impact regarding traffic and stormwater concerns. It was agreed upon by the developer to reduce the structures by 5,000 sq. ft. (8.5%), which will have a \$1 million dollar impact on the project. Mr. Petersen stated that the plan was also modified in order to remove the development further away from the residential area by moving the parking setbacks from 50-feet to 65-feet.

Councilmember Bussing asked to see comparisons of the old and new designs. Mr. Petersen pointed out the differences in that the banked parking areas on the old plan were removed in order to create the additional 15-ft. setback. The primary difference is the minimized internal parking lot design.



**CITIZEN COMMENTS:**

1. Rufus Nye, 11005 Alhambra, President of Longwood Forest Homeowners' Association, stated that his attorney, Rod Richardson, would speak on behalf of himself, Dottie Riley, and other members of the homeowners' association.
2. Myrle Jones, 3904 W. 110<sup>th</sup> Terrace, stated that she did not wish to speak.
3. Martin Mainster, 11013 Buena Vista. Mr. Mainster stated that the members of the Longwood Forest subdivision feel as though there has been a "bait and switch" with zoning. He questioned if the Governing Body felt the professional Staff to be competent as he was puzzled with their decision to go forward with the item following recommendations to deny the project.
4. Dr. Pat Turner, 11013 Buena Vista, spoke of potential ethical problems associated with the project. She stated that Mr. Petersen mentioned that he is a cousin to the traffic consultant. Secondly, she stated that Mr. Peters' ownership interest of the development has changed from 0-50%. Thirdly, she felt that Councilmember Peppes should recuse himself from this issue as the architect for his new dental office is Mr. Peters. She felt that full disclosure should take place without conflicts of interest. Dr. Turner also stated traffic concerns and that the project would diminish the quality of life for Longwood Forest residents who depend upon College Boulevard.
5. Kenene Dorian, 11017 Buena Vista, spoke in opposition to the development as it would cause the homeowners to suffer a loss in property value.
6. Rod Richardson of Wallace, Saunders, et al., spoke on behalf of Rufus Nye, Dottie Riley, and other members of the Longwood Forest Homeowners' Association. He stated that his clients' objections focus on the principle issue of the SD-O development code establishing a minimum size of 10 acres, which has now been reduced to 5 acres. Mr. Richardson cited §16.3-8 and §16.3-9 of the Leawood Development Ordinance [LDO]. He stated that in order to grant a deviation, requirements must be satisfied in accordance with the code. His clients do not believe that the development is appropriate for this site. However, they will compromise with the requested 45,000 square feet. They would like a 75-foot parking setback, a heavily landscaped buffer with a 6-foot wrought-iron fence, and a maintenance agreement for the landscaping. In addition, Mr. Richardson requested a covenant running with the land. He stated that if these desires are met, his clients would concede the density issue.

Copies of a letter to Mr. Peters from Rufus Nye were distributed to the Council.

Councilmember Taylor confirmed with Mr. Richardson that his clients would accept a 55,000 sq. ft. project upon assurance that their requested conditions will be met. Mr. Nye acknowledged agreement.

Councilmember Peppes commented that after consultation with City Attorney Patty Bennett and Mr. Lambers, he was advised there was no conflict of interest in this matter.

Mr. Petersen stated that he is not related to Tom Peterson of Peterson Transportation Solutions. He apologized for a prior jest which led to this assumption. He also stated that Mr. Peters has no current ownership in the property but if he were to acquire future ownership, it would be an irrelevant fact.

Mr. Petersen clarified that analysis of the traffic and stormwater studies did meet with City Staff approval. He cited the Supreme Court ruling Golden vs. Overland Park which specifies that the Comprehensive Plan is not the sole determinant factor for governing bodies to consider when reviewing an application. Mr. Petersen reiterated that the Planning Commission granted a deviation from the 10 acre minimum as the project met all of the subjective guidelines.

Mr. Petersen stated that adding another 10-ft. to the parking setback would kill the project. He offered to keep the setback at 65-ft. and work with the landscaping requests.

Councilmember Rasmussen referred to the letter from Mr. Nye and confirmed with Planning and Development Director Diane Binckley that the residents would be accommodated by restricting the project to 55,000 sq. ft. between two buildings, which is reflected in the current site plan. Regarding the requested landscaped buffer, Ms. Binckley suggested additional wording to Stipulation No. 6 to include the area west of the parking lot.

Councilmember Rasmussen conferred with Ms. Binckley regarding an additional stipulation to include the wrought iron fence. Concerning a covenant running with the land, Mr. Lambers stated that zoning codes and requirements would provide protection to the residents, however preclusion of future applicants cannot occur. He added that maintenance of the landscaping will be enforced.

Councilmember Taylor verified with Ms. Binckley that another project on 128<sup>th</sup> and State Line required a similar fencing stipulation.

Councilmember Taylor confirmed with Mr. Petersen that by increasing the parking setback to 75-ft., the parking ratio would be reduced to 3.0. Mr. Petersen agreed to the wrought-iron fence and landscaping conditions.

Councilmember Filla reported that the minutes from the Planning Commission meeting of March 22, 2005, reflects Staff's opinion that office use in this location would have a negative impact on the neighbors. She read a section of the minutes which stated that the Commission was not in favor of the plan being on less than 10 acres as the City had only once waived size requirements, which was for Chadwick Place who had dedicated a lot of their property as a right-of-way. It was stated that the 10-acre threshold for Tomahawk Point was not further discussed as Staff was recommending denial.

Ms. Binckley elaborated that the minutes also contain discussion of the Staff being supportive of the development as it is a land-locked piece of property. She stated it is not the City's position to prevent people who have less than 10 acres from developing their land when the entire surrounding area has already been developed. Upon research, Ms. Binckley reported discovering that the original property consisted of more than 10 acres, however the property owner also dedicated substantial amounts of right-of-way on the north, east, and south sides of the property.

Councilmember Gill addressed a prior citizen comment by stating that he highly valued the competence of the professional Staff. He verified with Mr. Johnson that there were no flooding or traffic concerns associated with this proposal. Councilmember Gill felt that the plan was cohesive to the adjacent commercial development.

Mayor Dunn noted that the revised drawings did not contain the water fountain feature shown on the previous plan. Mr. Peters stated that as there was no stipulation requiring a fountain, it has been omitted from the new plan. He voiced that by reducing square footage of the project, amenities were reduced in conjunction.

Councilmember Taylor verified with Mr. Petersen that the water fountain feature would be restored by final plan approval.

Councilmember Rasmussen moved to approve the request for rezoning subject to the following revisions:

1. Stipulation No. 1 shall limit the project to 55,000 square feet between two buildings.
2. Stipulation No. 6 shall include the sentence, "Applicant and Staff will work with the adjoining property owners with regards to design and installation of wrought-iron fencing along the western edge of the property." In addition, the last sentence of the stipulation shall also require compliance to additional landscaping requested by Staff due to the unique situation of this development. The landscaping shall include a water fountain on the northwest corner of College Boulevard and Mission Road.
3. Stipulation No. 16 shall include the addition of a deceleration/acceleration lane on Mission Road at the developer's expense when and if it is determined necessary by the City Staff.

Councilmember Taylor seconded the motion.

To prevent the topic from arising in the future, Councilmember Bussing disclosed that his wife happens to be an attorney at the same law firm as Mr. Adams, who represents the current landowners; however, she has no knowledge of the subject.

Councilmember Rawlings expressed his support for the motion as he felt it was the best plan for this site. He complimented the applicants and homeowners for their compromising efforts.

Councilmember Gulledge stated that the current plan is acceptable, however felt the quality had been compromised due to the density reduction.

Mayor Dunn reminded the Council that this is a preliminary site plan with outstanding questions to be satisfied at final plan approval.

The ordinance passed with the following roll call vote of 7-1: Yea: Councilmembers Taylor, Gill, Bussing, Rasmussen, Peppes, Rawlings, and Gulledge. Nay: Councilmember Filla.

Councilmember Filla stated that she was not comfortable with circumventing the Planning Commission from the process.

Mayor Dunn thanked the residents for their input. She also thanked the applicant and owners for making compromises and bringing a quality project to Leawood.

*[from the May 24, 2005 Planning Commission meeting]*

- B. Ordinance No. 2111 approving a special use permit and preliminary site plan for Walgreen's at Nall Valley Shops located north of 151st Street and east of Nall Avenue [Roll Call Vote]

Councilmember Taylor moved for approval, seconded by Councilmember Rasmussen.

Councilmember Bussing confirmed with Ms. Binckley that compliance of the sign ordinance has been sufficiently ensured. Councilmember Bussing stated disappointment with past retail signage and will be checking to make sure this establishment stays within regulations.

Councilmember Rasmussen supported Councilmember Bussing's concerns. He confirmed with Mr. Lambers that the Planning & Development intern will perform tracking on the stipulations.

The motion carried with the following unanimous roll call vote of 8-0: Yea: Councilmembers Rawlings, Bussing, Taylor, Filla, Rasmussen, Gill, Peppes, and Gulledge.

- C. Ordinance No. 2112 approving a rezoning from RP-4 (old zoning) to RP-2, Planned Cluster Detached Residential, Preliminary Site Plan and Preliminary Plat for Villas of Whitehorse 3<sup>rd</sup> Plat, located north of 151<sup>st</sup> Street and east of Nall Avenue [**Companion Ordinance**] [Roll Call Vote]

Councilmember Taylor moved for approval, seconded by Councilmember Gill.

Councilmember Bussing inquired if there had been any violations with the 1<sup>st</sup> or 2<sup>nd</sup> Plat. Ms. Binckley reported no violations.

The motion carried with the following unanimous roll call vote of 8-0: Yea: Councilmembers Taylor, Gill, Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gulledge.

- D. Ordinance No. 2113 rezoning from RP-4 (old zoning) to RP-2, Planned Cluster Detached Residential, for Villas of Whitehorse 1<sup>st</sup> Plat and 2<sup>nd</sup> Plat, located north of 151st Street and east of Nall Avenue [Roll Call Vote]

Councilmember Taylor moved for approval, seconded by Councilmember Filla. The motion carried with the following unanimous roll call vote of 8-0: Yea: Councilmembers Rawlings, Filla, Peppes, Gill, Bussing, Gulledge, Taylor, and Rasmussen.

### **13. NEW BUSINESS**

- A. Resolution No. 2425 declaring it necessary to appropriate private property for the use of the City of Leawood, Kansas for the construction of city facilities, including a Justice Center, located on the southwest corner of 117<sup>th</sup> Street and Tomahawk Creek Parkway, in the City of Leawood, Kansas

Mr. Lambers reviewed the packet information for this item.

Charles Miller of Lewis, Rice, et al., stated that he is representing Tom Morgan and Sherman Dreiseszun of 95 West Company, owners of the private property. Mr. Miller asked the Council to delay consideration of the resolution in order to continue negotiations.

Mr. Miller reviewed that negotiations for 5 acres have been in progress for over one year. An original price was agreed upon, however positions changed and Mr. Lambers offered to buy the whole 11.5 acre tract of land. Mr. Miller stated that his clients do not wish to sell the entire property. He reported that they received a condemnation notice 7-10 days ago.

Mr. Miller stressed that his clients are willing to continue negotiations. He asked the Council to consider the best use of the property, as this is a prime retail location, and to reevaluate how much of the land the City will actually need.

Regarding cost, an original price of \$13 per sq. ft. had been agreed upon. Mr. Miller stated that the price for frontage retail property should be sold for at least \$20 per sq. ft., which will increase the selling price by \$5 million dollars in addition to road improvements. He suggested working together to make the project of benefit to both sides.

Councilmember Rasmussen confirmed with Mr. Miller that a 30-day extension would give opportunity for further negotiations.

Councilmember Taylor stated that the site has topographical conditions and felt that \$20 per sq. ft. was an overestimate considering the raw state of the grounds. He expressed support for Mr. Lambers' decision to obtain the entire 11.5 acres.

Councilmember Gill moved to recess into Executive Session for a period of 15 minutes in order to discuss the land acquisition, seconded by Councilmember Gullede. The motion carried with a vote of 7-0 (Councilmember Bussing not seated for the vote).

The Governing Body recessed into Executive Session at 10:15 P.M. The regular meeting reconvened at 10:30 P.M.

Councilmember Taylor moved to accept the City Administrator's recommendations to proceed with the necessary purchases of the property on 117<sup>th</sup> Street and Tomahawk Parkway. Councilmember Filla seconded the motion.

Councilmember Gill stated that Mr. Miller's comments were encouraging. He expressed optimism in that both parties will come to an agreement upon further discussions.

The motion carried following a unanimous vote of 8-0.

- B. Resolution No. 2426 authorizing the City Administrator to offer for sale real property owned by the City of Leawood, Kansas, located along the Tomahawk Creek Parkway at approximately 114<sup>th</sup> Street, subject to any rights of refusal on the land that may exist

Councilmember Bussing moved for approval, seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

- C. Resolution No. 2427 approving and authorizing the Mayor to execute an Easement and Maintenance Agreement between the City and Pawnee Place, LLC, regarding certain improvements located with the Villaggio Development

Councilmember Taylor stated that he would be recusing from item Nos. 13C, 13D, and 13E. He then left the Council Chambers.

Ms. Bennett stated that Staff has not thoroughly reviewed item Nos. 13D or 13E. She stated that the amounts listed are at their highest level and may be decreased upon revision.

Councilmember Rasmussen moved for approval, seconded by Councilmember Gill.

Mr. Lambers clarified for Councilmember Gullede that some of the items listed on the contract are not eligible for Special Benefit District [SBD] financing and most likely will be extracted from the total amount.

The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- D. Resolution No. 2428 finding as to the advisability and authorizing the construction of improvements to the south side of 135<sup>th</sup> Street between Roe Avenue and Mission Road, 137<sup>th</sup> Street between Roe Avenue and Mission Road, the east portion of Roe Avenue between 135<sup>th</sup> Street and 137<sup>th</sup> Street, and Mission Road between 135<sup>th</sup> Street and 137<sup>th</sup> Street, located within the City of Leawood, Kansas; and accepting Petition for an Improvement District, pursuant to K.S.A. § 12-16a01 Et Seq. [Villaggio Development] [CIP # 197]

Councilmember Bussing moved for approval, seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- E. Resolution No. 2429 finding as to the advisability and authorizing the construction of Stormwater Detention and improvements to that parcel of land bounded by Mission Road and Roe Avenue, and 135<sup>th</sup> Street and 137<sup>th</sup> Street, also known as the Villaggio Development, located within the City of Leawood, Kansas; and accepting Petition for Establishment of an Improvement District, pursuant to K.S.A. § 12-16a01 Et Seq. [Villaggio Development] [CIP # 198]

Councilmember Gill moved for approval, seconded by Councilmember Bussing. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

#### **14. OTHER BUSINESS**

Mr. Lambers suggested cancellation of the July 5<sup>th</sup> Governing Body meeting due to a lack of agenda items.

Councilmember Gullede moved to approve the cancellation, seconded by Councilmember Peppes. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor not present).

#### **ADJOURN**

The Governing Body meeting adjourned at 10:40 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk