

**Minutes**

DVD No. 125

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, July 18, 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  
David Ley, City Engineer  
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney  
Chief Sid Mitchell, Police Department  
Chris Claxton, P&R Director  
Jeff Cantrell, Neighborhood Serv. Admin.  
Deb Harper, City Clerk  
Mark Andrasik, IS Director

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

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

**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**

**Healthy Kids Week in Leawood, August 15-19, 2005**

**National Recreation & Parks Month, July, 2005**

Mayor Dunn read and presented the proclamation to Parks & Recreation Director Chris Claxton.

Councilmember Filla arrived at 7:35 P.M.

**5. PRESENTATIONS/RECOGNITIONS**

- **Sergeant Scott Hansen – 20 years of service**
- **Officer Rick Clodfelter – 20 years of service**

Chief of Police Sid Mitchell thanked Sergeant Scott Hansen and Officer Rick Clodfelter for their leadership and dedication to the Leawood Police Department. Mayor Dunn presented each with a commemorative plaque in honor of their 20 years of service.

- **Gift from I-lan, Taiwan Library**

I-Lan Taiwan, Sister-City to Leawood, sent photographs of the Leawood Bridge as gifts to each councilmember as well as a large poster of the bridge to Mayor Dunn. Councilmember Rasmussen expressed interest in donating children's books for the I-Lan book drive. Mayor Dunn noted that a typhoon occurred in Taiwan today, however there is no update on information at this time.

**6. SPECIAL BUSINESS**

A. Public Hearing to consider the vacation of a Utility Easement or portion thereof effecting Lot 119 Wilshire Place, 3<sup>rd</sup> Plat

Mayor Dunn opened the public hearing for comments. There being no comments, a motion to close the public hearing was made by Councilmember Rasmussen, seconded by Councilmember Gill. The motion was approved following a unanimous vote of 8-0.

B. Ordinance No. 2114, vacating a Utility Easement effecting Lot 119 Wilshire Place, 3<sup>rd</sup> Plat [Roll Call Vote]

Councilmember Rasmussen moved to pass the ordinance, seconded by Councilmember Rawlings. The motion carried following a unanimous roll call vote of 8-0.

- C. Resolution No. 2433, accepting a Permanent Utility Easement from Jeffrey E. Ashner, Member of Wilshire Place, LLC, effecting Lot 119 Wilshire Place, 3<sup>rd</sup> Plat

Councilmember Rasmussen moved to approve the resolution, seconded by Councilmember Gill. The resolution was approved following a unanimous vote of 8-0.

- D. Certification of Revised Costs for improvements to Roe Avenue, Nall Avenue and 137<sup>th</sup> Street [Church of the Resurrection] [CIP # 190]

Councilmember Taylor stated recusal from item Nos. 6D through 6M due to conflicts of interest. Councilmember Rasmussen moved for approval with a second by Councilmember Filla. The motion carried with a unanimous vote of 7-0 (Councilmember Taylor recusing).

- E. Certification of Revised Costs for construction of Briar Street between 135<sup>th</sup> Street and 137<sup>th</sup> Street, construction of improvements to 135<sup>th</sup> Street from immediately east of Briar Street to Nall Avenue and construction of improvements to 137<sup>th</sup> Street between Briar Street and Nall Avenue [Church of the Resurrection] [CIP # 191]

Councilmember Rasmussen moved for approval with a second by Councilmember Gill. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- F. Certification of Revised Costs for improvements to the intersection of 135<sup>th</sup> Street and Roe Avenue, [CIP # 194]

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

- G. Certification of Revised Costs for 119th Street & Mission Road Intersection Improvement Project [CIP # 159]

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

- H. Resolution No. 2430, ordering a Public Hearing to be held on proposed assessments for the cost of improvements to Roe Avenue, Nall Avenue and 137<sup>th</sup> Street in the vicinity of Briar Street, 137<sup>th</sup> Street and 139<sup>th</sup> Street; and ratifying action by the City Clerk in publishing notice thereof and providing written notice to owners of property of such assessments [CIP# 190] [Roe/Nall & 137<sup>th</sup> Street]

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

Mayor Dunn opened the public hearing for comments. There being no comments, a motion to close the public hearing was made by Councilmember Rasmussen with a second by Councilmember Gill. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- I. Ordinance No. 2115, levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for the cost of improvements to Roe Avenue, Nall Avenue and 137<sup>th</sup> Street in the vicinity of Briar Street, 137<sup>th</sup> Street and 139<sup>th</sup> Street, and repealing Ordinance No. 2103 [CIP # 190] [Roe/Nall & 137<sup>th</sup> Street]

City Attorney Patty Bennett affirmed for Councilmember Gill that adequate notice under the legal requirements had been given in order to adopt the ordinance. Councilmember Rawlings moved to pass the ordinance, seconded by Councilmember Gill. The motion was approved following a unanimous roll call vote of 7-0 (Councilmember Taylor recusing).

- J. Resolution No. 2431, ordering a Public Hearing to be held on proposed assessments for construction of Briar Street between 135<sup>th</sup> Street and 137<sup>th</sup> Street, construction of improvements to 135<sup>th</sup> Street from immediately East of Briar Street to Nall Avenue and construction of improvements to 137<sup>th</sup> Street between Briar Street and Nall Avenue; and ratifying action by the City Clerk in publishing notice thereof and providing written notice to owners of property of such assessments [CIP # 191] [137<sup>th</sup> Street and Briar]

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

Mayor Dunn opened the public hearing for comments. There being no comments, a motion to close the public hearing was made by Councilmember Rasmussen with a second by Councilmember Gill. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- K. Ordinance No. 2116, levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for the cost of construction of Briar Street between 135<sup>th</sup> Street and 137<sup>th</sup> Street, construction of improvements to 135<sup>th</sup> Street from immediately East of Briar Street to Nall Avenue and construction of improvements to 137<sup>th</sup> Street between Briar Street and Nall Avenue, and repealing Ordinance No. 2105 [CIP # 191] [137<sup>th</sup> Street and Briar]

Councilmember Gill moved to pass the ordinance, seconded by Councilmember Rawlings. The ordinance was passed following a unanimous roll call vote of 7-0 (Councilmember Taylor recusing).

- L. Resolution No. 2432, ordering a Public Hearing to be held on proposed assessments for the 135<sup>th</sup> Street and Roe Avenue Improvement Project; and ratifying action by the City Clerk in publishing notice thereof and providing written notice to owners of property of such assessments [CIP # 194] [135<sup>th</sup> & Roe]

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

Mayor Dunn opened the public hearing for comments. There being no comments, Councilmember Rasmussen moved to close the public hearing with a second by Councilmember Gill. The motion carried with a unanimous vote of 7-0 (Councilmember Taylor recusing).

- M. Ordinance No. 2117, levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for the cost of improvements to 135<sup>th</sup> Street and Roe and repealing Ordinance No. 2104 [CIP # 194]

Councilmember Gill moved to approve the item, seconded by Councilmember Rawlings. The ordinance passed following a unanimous roll call vote of 7-0 (Councilmember Taylor recusing).

## 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. 1029A, 1029B, 1029C and 1030A  
B. Accept minutes of the June 20, 2005 Governing Body meeting

- C. Accept minutes of the June 13, 2005 Joint Governing Body/Budget & Finance Work Session
- D. Accept minutes of the June 22, 2005 Public Works Committee meeting
- E. Accept minutes of the June 21, 2005 Parks and Recreation Advisory Board meeting
- F. Renewal of Cereal Malt Beverage [CMB] License for Zipz! Convenience Store, located at 4821 West 135<sup>th</sup> Street
- G. Approve Change Order No. 7, in the amount of \$13,026.10, to APAC-Kansas, Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] CIP # 110]
- H. Approve Purchase of Uniforms, in the amount of \$38,600, from Challenger Team Wear pertaining to the Youth Soccer League
- I. Resolution No. 2434, approving and authorizing the Mayor to execute an Engineering Service Agreement in the amount of \$70,862.00, between the City and Terra Technologies, 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 [CIP # 106]
- J. Resolution No. 2435, approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$730,363.90, between the City and O'Donnell & Sons, pertaining to the 2005 Arterial Street Improvement Project
- K. Resolution No. 2436, approving and authorizing the Mayor to execute a Design Engineering Contract in the amount of \$295,000 between the City and Phelps Engineering, Inc., pertaining to the Park Place Improvement Project [CIP # 196]
- L. Resolution No. 2437, approving and authorizing the Mayor to execute a Design Engineering Contract in the amount of \$30,000 between the City and George Butler Associates, pertaining to the Leawood Bridge over Indian Creek
- M. Resolution No. 2438, approving and authorizing the Mayor to execute a Design Engineering Contract in the amount of \$490,000 between the City and Continental Engineers, pertaining to the Villagio Development [CIP # 197]
- N. Resolution No. 2439, consenting to the enlargement of Consolidated Main Sewer District of Johnson County, Kansas, [JCUWD] by the Board of County Commissioners of Johnson County, Kansas [BOCC], pursuant to Johnson County Charter Resolution No. 29-92, for property located at 3909 W 140<sup>th</sup> Drive, Part of Lot 6, Merry Lea Farms
- O. Resolution No. 2440, approving Village of Camden Woods 80<sup>th</sup> Plat for a final plat located south of 143rd Street and west of Kenneth Road [*from the June 26, 2005 Planning Commission meeting*]
- P. Resolution No. 2441, approving Village of Camden Woods 81<sup>st</sup> Plat for a Final Plat located south of 143rd Street and west of Kenneth Road [*from the June 26, 2005 Planning Commission meeting*]
- Q. Resolution No. 2442, approving Town Center Plaza - Panera Bread for a Final Site Plan to allow an addition located east of Nall Avenue and south of 117th Street [*from the June 26, 2005 Planning Commission meeting*]

- R. Resolution No. 2443, approving Highlands Creek - 5<sup>th</sup> Plat for a Final Site Plan and Final Plat located south of 143rd Street and east of Nall Avenue *[from the June 26, 2005 Planning Commission meeting]*
- S. Resolution No. 2444, approving Bukaty Companies for a Final Site Plan for signage located at 11221 Roe Avenue *[from the June 26, 2005 Planning Commission meeting]*
- T. Police Department Monthly Report
- U. Fire Department Monthly Report
- V. Municipal Court Monthly Report

Councilmember Taylor requested to pull item No. 7M in order to recuse from the vote. Councilmember Rasmussen requested to pull item No. 7G and Councilmember Filla requested to pull item No. 7Q.

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

- 7G. Approve Change Order No. 7, in the amount of \$13,026.10, to APAC-Kansas, Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] CIP # 110]

Councilmember Rasmussen stated his concern with the City paying 50% of the funds to cover a manhole on this project as the total cost should be paid for by Johnson County Unified Wastewater District [JCUWD].

Councilmember Rasmussen moved to approve the item, seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

As a second motion, Councilmember Rasmussen moved to refer payment issues of rebuilding sanitary sewer manholes to the Public Works Committee for the purpose of determining a policy regarding reimbursement by JCUWD for such work. Councilmember Filla seconded the motion.

Councilmember Taylor inquired about the policy connected to the improvements on Lee Boulevard south of 103<sup>rd</sup> Street and extending to Leawood City Park. City Engineer David Ley responded that the City has never requested reimbursement from Johnson County for relocation of sanitary sewers. He confirmed that the City paid for all of the sewer extensions and raising of manhole covers.

Councilmember Rasmussen pointed out that at the time of the Lee Boulevard improvements, the City owned the sanitary sewer district in North Leawood. As the Leawood Sanitary Sewer District was conveyed to the Johnson County Wastewater District, it should fall under the same guidelines of other utility companies. Councilmember Rasmussen disagreed with using tax dollars to pay for utility company improvements

Mayor Dunn clarified that the waste water lines were city-owned at the time of improvements north of 103<sup>rd</sup>, however JCUWD owned the sewer lines during construction on south Lee Boulevard. She stated that the transfer took place in 1997.

Mr. Lambers advised of the distinction between investor-owned and publicly-owned utility companies. Publicly-owned companies also pay for improvements with tax dollars, so there is a sense of the money coming out of the same pocket.

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

- 7M. Resolution No. 2438, approving and authorizing the Mayor to execute a Design Engineering Contract in the amount of \$490,000 between the City and Continental Engineers, pertaining to the Villagio Development [CIP # 197]

Councilmember Taylor stated that he would recuse himself from this item. Councilmember Gulledge moved to approve the resolution, seconded by Councilmember Gill. The motion was approved following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 7Q. Resolution No. 2442, approving Town Center Plaza - Panera Bread for a Final Site Plan to allow an addition located east of Nall Avenue and south of 117th Street [from the June 26, 2005 Planning Commission meeting]

Councilmember Filla confirmed with Planning & Development Director Diane Binckley that the sidewalk will be widened with narrowing of the roadway. Councilmember Filla moved for approval, seconded by Councilmember Rasmussen. The resolution was approved following a unanimous vote of 8-0.

## **8. MAYOR'S REPORT**

- A. Annual Report: American Revolution Tercentennial CD Fund. Mayor Dunn noted that every year during the Governing Body meeting nearest to July 4<sup>th</sup>, the current amount in the American Revolution Tercentennial fund is to be announced. The fund is to be maintained until July 4, 2076. As of July 9, 2005, the fund contained \$7,106.29.
- B. Attended the All American Celebration, a flag and honor ceremony for local heroes including firemen, policemen, and veterans. The event was sponsored by the Heartstrings Community Foundation. Fire Chief Ben Florance, members of the Leawood Police Department, and City Administrator Scott Lambers were also in attendance.
- C. Attended retirement celebration for Battalion Chief Doug Wolford in recognition of 27 years of service to the Leawood Fire Department. Kansas State Fire Marshall Jack Alexander attended the event.
- D. Attended Leawood's 4<sup>th</sup> of July Celebration. Mayor Dunn stated that it was the best celebration to date and thanked the Parks & Recreation Department, the Parks & Recreation Advisory Board, and various other departments for contributing to the event. Over 10,000 people were in attendance.

- E. Attended the State Line Mayors Luncheon (State Link Mayors), hosted by Kansas City, Missouri Mayor Kay Barnes. Presentations were given on all activities within communities by each mayor present.
- F. Attended Leawood Lion's Club Installation Night Dinner and Ceremony. International Director Ernie Young and District Governor Bernard Lee were present. Mayor Dunn congratulated Neighborhood Services Administrator Jeff Cantrell for being installed as treasurer of the Lion's Club.
- G. Noted new art piece by artist Matt DeHaemers in the lobby of City Hall. The wood sculpture is entitled "Embrace" and will be on loan for one year.
- H. Announced Art Show at Gold Bank showcasing artists Chu Wang and Richard Fanolio. The art will be on display for two weeks. Mayor Dunn shared two articles written by C.J. Jackson, Kansas City Star reporter, regarding the artists' work.
- I. Reminder for the Leawood Stage Company's production of "South Pacific," which begins July 21<sup>st</sup> and will run through July 30<sup>th</sup>. The Champaign Gala will take place on Friday, July 29<sup>th</sup>. Mayor Dunn distributed another article by C.J. Jackson regarding the production.
- J. Mayor Dunn noted references regarding the Leawood Aquatic Center in *Kansas Recreation Park Association* magazine. Parks & Recreation Director Chris Claxton serves as editor of the publication.
- K. Councilmember Taylor congratulated Mayor Dunn and her husband, Terry Dunn, for being selected as Volunteers of the Year by the Volunteer Center of Johnson County. Several councilmembers attended an awards dinner given in their honor.
- L. Mayor Dunn announced the resignation of State Legislature Representative Dean Newton, who has taken a position with Delta Dental. She stated appreciation for his representation of Leawood in Topeka and wished him well in his future career opportunity.

**9. COUNCILMEMBERS' REPORT**

A. Councilmember Rasmussen

Councilmember Rasmussen informed the Council of a state initiative to prohibit municipalities from installing wireless internet systems. He intends to meet with Mr. Lambers and Mayor Dunn to discuss the possibility of sending a letter to our State Representatives in order to address the issue.

Councilmember Bussing inquired about a past request for analysis on this topic. Mr. Lambers explained that there are two competing bills in Congress at this time; one to allow city-owned systems and one to disallow them. When Legislature reconvenes, more information will be known and a two-tract report will be prepared for the Council.

**10. STAFF REPORT - None**

**COMMITTEE RECOMMENDATIONS**

**11. PUBLIC WORKS COMMITTEE**

*[from the June 22, 2005 Public Works Committee meeting]*

A. Parking situation at I-Lan Park, located at 12701 Nall

Councilmember Taylor, Chairman of the Public Works Committee, reported that the parking situation was reviewed by the PW Committee with recommendations from the Parks & Recreation Advisory Board. Staff recommends the addition of 14 parking stalls.

Councilmember Gill moved to approve the recommendation, seconded by Councilmember Peppes.

Councilmember Taylor confirmed for Councilmember Filla that pavers had been considered rather than asphalt, however this type of material is not allowed under City Ordinance for a paved area. Councilmember Taylor felt that a possible change in the ordinance should be reviewed. Mr. Lambers stated that pavers are not viable for extensive parking areas as ruts are created in the unpaved areas.

Councilmember Rasmussen stated that 14 stalls would not be sufficient to remedy the problem of vehicles parking on the grass. He confirmed with Mr. Lambers that parking regulations will be enforced. In addition, landscaping will be installed along the edge of paved surfaces to discourage parking on the green space.

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

B. Approval of Committee recommendation of payment of additional funds in the amount of \$40,000 to Black & Veatch, pertaining to that certain Consulting Engineering Agreement, dated April 26, 2001, for the Dykes Branch Channel Improvement SMAC DB-04-024 Project, between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Councilmember Taylor advised that the Public Works Committee is recommending a reimbursement to Black & Veatch for a total amount of \$40,000, of which \$16,000 is being contributed by JCUWD. The \$24,000 being paid by the City is considered a good faith gesture to Black & Veatch. The Black & Veatch representative declined to make comments.

Councilmember Taylor moved to accept the Public Works Committee's recommendations. Councilmember Rasmussen seconded the motion.

Councilmember Gill confirmed with Mr. Lambers that the action will totally resolve all issues with Black & Veatch. The motion carried following a unanimous vote of 8-0.

C. Channel re-alignment regarding the IRONHORSE Golf Club Stormwater Project

Councilmember Taylor stated this matter was thoroughly discussed by the Public Works Committee with additional recommendations from Phil Gibbs, project engineer. The channel relocation will provide flood and erosion control. The PW Committee recommended that the \$207,000 expenditure be brought to the City Council, which includes the cost of refilling and shaping the creek-bed to be assessed to the adjacent property owners.

Councilmember Taylor clarified with Mr. Lambers that \$60,000 is associated with stabilizing the creek, of which personal property owners are being asked to contribute 50% (\$30,000).

Mayor Dunn clarified that there are four property owners who will benefit from the improvements. Mr. Lambers stated the method of cost sharing has not yet been determined but efforts will be made with the property owners in terms of fair distribution.

Regarding an e-mail from an individual who was unsure of his inclusion to the project, Councilmember Bussing confirmed with Mr. Lambers that this specific landowner is one of the four property owners whose land is threatened by the condition should it remain unchanged.

Councilmember Gill stated this was not a simple issue and listed four potential complications:

1. Surrendering a portion of a rough in order to move the creek.
2. Approvals must be obtained from other jurisdictions that have authority over the waterways, which could affect the time factor.
3. Resistant participation from property owner's who do not view the improvements as a benefit.
4. Alternatives to relocation of the channel such as rock stabilization.

Councilmember Gill understood that the primary purpose of the project was to protect flood control rather than erosion control. The current proposal does not really mitigate the flooding issue.

Mayor Dunn verified with Mr. Lambers that Corp of Engineers has reviewed the project and indicated no potential problems with obtaining permits.

Councilmember Rasmussen recalled that an IRONHORSE subcommittee and the developer met ten years ago and determined that the four lots in question should not be developed due to flooding and erosion issues. Rather than paying 50%, the property owners should pay 100% of the realignment costs. Councilmember Rasmussen noted that recommendations from the IRONHORSE Advisory Board to move the channel 25-30 yards north were not included as packet information. He voiced that the lots should have never been developed and did not agree with gifting taxpayers money to subsidize the value of personal property. Councilmember Rasmussen stated he was not in favor of the expenditures and would not support the recommendation.

Mayor Dunn reminded that the issue is a matter of cost sharing rather than the alignment of the channel.

Councilmember Bussing corroborated Councilmember Rasmussen's statement that the IRONHORSE Advisory Board would like the rechanneling to take place as far north as possible to minimize the impact on the fairway and rough. He felt that the benefits obtained from the project outweighed any disadvantages in terms of impacting the playability of Hole #8. Obtaining approvals for the rechanneling should not adversely effect the time element as there is already a series of approvals to be obtained for other course improvements. Preliminary discussions with the EPA did not reveal any issues with the proposal. Councilmember Bussing stated that in addition to the fairway, improvements will occur to the east where there are exposed T-boxes on Hole #8. Regarding alternatives, the construction of a retaining wall was considered; however, Phil Gibbs, project engineer, advised that it was not a viable solution. Public safety is the main issue given the eminent danger the homes are in due to sloughing of the ridge. Councilmember Bussing relayed Mr. Gibbs' assessment that foundation exposure could occur within 10-15 years. He stated the improvements should be made during closure of the Golf Course.

Mayor Dunn confirmed with Councilmember Taylor that the project was unanimously approved by the Public Works Committee.

Councilmember Rasmussen further voiced his objection to "enhancing private property" with taxpayer dollars. He noted a past City policy which directed property owners to pay 90% of improvements regarding creek bank erosion.

Councilmember Gill moved to continue the item to the August 1<sup>st</sup> meeting with inclusion of a full briefing packet on the issue. Councilmember Bussing seconded the motion.

Councilmember Filla relayed that two of the homeowners felt unduly pinpointed by comments that they "should have known" as they were not apprised of the situation by the developer. She stated that she was not in support of the Public Works Committee's recommendations. She pointed out that the Golf Course is a subsidy to every home in proximity in terms of property value. Councilmember Filla suggested obtaining a consultant to assess the overall land condition.

Dick Fuller, 10309 Sagamore, Chairman of the IRONHORSE Advisory Board, reviewed the history of the creek bank stabilization project. He stated that the Board never approved an actual change in the creek channel; however, if this were to happen, he recommended preserving the maximum amount of area north or the fairway as possible.

Mr. Lambers stated that the realignment would not cause a significant disruption to the course. He offered to accompany councilmembers to the project site in order to physically view the land in need of improvements. This proposal will eliminate the need further erosion control on this section of the creek.

Councilmember Bussing encouraged fellow councilmembers to take the City Administrator's advice and view the site by the time of the next meeting. He stressed that time is of the essence regarding the approval process. Upon viewing the site, Councilmember Rasmussen asked the Council to keep in mind the request of the Golf Course designers to move the channel 20-30 yards north. Mayor Dunn shared that actually viewing the area in question was illuminating and also encouraged the Council to go onsite.

Councilmember Gill stated that he would like to know the standpoint of the 4 residents who are being asked to contribute to the project.

Councilmember Rasmussen requested that it be made clear that the City is not guaranteeing that future sloughing will not occur. Mr. Lambers stated that a resident asked for such a guarantee and was advised that it would not be forthcoming; however, the existing erosion rate will be reduced.

The motion to continue the item to the August 1<sup>st</sup> Governing Body meeting with sufficient information provided was approved following a unanimous vote of 8-0.

## **12. PLANNING COMMISSION**

### ***[From the June 26, 2005 Planning Commission meeting]***

- A. Ordinance No. 2118, approving Highlands Creek - 6<sup>th</sup> Plat for a rezoning from RP-2 [Planned Cluster Detached Residential District] to RP-1 [Planned Single Family Residential District], Preliminary Site Plan, Preliminary Plat, Final Site Plan and Final Plat, located south of 143rd Street and east of Nall Avenue [Roll Call Vote]

Applicant Don Donahoo of Highlands Group gave a brief presentation and described the zoning history of the land. Councilmember Gullede moved for approval, seconded by Councilmember Rasmussen. The ordinance was passed with a unanimous roll call vote of 8-0.

- B. Resolution No. 2445, approving Leawood Market Center for a Revised Final Site Plan located south of 135th Street and east of State Line Road

Henry Klover of Klover Architects Inc., requested approval of the final site plan and advised that Stipulation No. 43 has been amended. The original time lines have been changed to allow Lot 1 to be developed first, followed by Lot 4, and finally the rest of the development.

Mayor Dunn asked why Stipulation No. 43 did not mirror the timing provided under Staff Comments. Ms. Binckley explained that the timing was left off of the stipulation with the hopes that the main building will be developed first.

Councilmember Gill and Mr. Klover discussed the types of tenants envisioned for Lot 4. Mr. Klover explained for Councilmember Taylor that the original plan was developed by Missouri Valley Engineers and DLR Group, which was given to Klover Architects for phase drawing and submittal.

Developer Doug Henzlik of Henzlik-Oliver confirmed for Councilmember Taylor that negotiations have taken place with both discount oriented and upscale tenants, however no deals have been set in place. He stated that the lead tenant would dictate the rest of the tenant mix. Mr. Henzlik stated that once the bank is approved and complete (item No. 12C), most of the infrastructure for the development will be in place. With site plan drawings, Mr. Henzlik explained the phasing of the development. The bank building reflects the overall architectural theme.

Mayor Dunn confirmed with Ms. Binckley that 12B and 12C are clearly two separate cases and approving 12B would not preclude changes to 12C if necessary.

Ms. Binckley explained for Councilmember Gill that the purpose of the resolution is to merely change the phasing plan for lot development. The site plan, which has already been approved, has remained unchanged. Mr. Lambers stated that approval is needed in order to begin construction on the bank building. Mayor Dunn noted that the Planning Commission had considerable discussion regarding the decision not to develop the main building first. The outcome was driven by the fact that Intrust Bank is ready to begin development.

Councilmember Gulledge moved for approval, seconded by Councilmember Filla. The motion was approved with the following vote of 5-3 (Nay: Councilmembers Taylor, Rasmussen, and Gill).

- C. Ordinance approving Intrust Bank and Retail Center for a Preliminary Site Plan located south of 135th Street and east of Kenneth Road within the Leawood Market Center [Roll Call Vote]

Ron Shaffer of Bucher, Willis, and Ratliff Corp., presented the project to the Governing Body. He stated agreement to the Planning Commission's stipulations.

Mr. Lambers advised that Staff requested the area between the two buildings not be provided for vehicle access but be split in the middle for service activities on the south end and a pedestrian area on the north end. The Planning Commission did not agree with this recommendation. Mr. Lambers stated that the plan had merit and would allow Ms. Binckley to present the plan. Ms. Binckley explained that the suggested requirement is an attempt to continue with pedestrian developments in Leawood and reduce vehicular activity around the two buildings.

Ms. Binckley confirmed for Mayor Dunn that the second bullet under Staff Comments contains the exact language of the proposed stipulation regarding the service and pedestrian areas.

Mr. Shaffer remarked that it was agreed upon at the Planning Commission meeting to reduce the size of the retail building by 200 sq. ft. in order to increase the area between the two buildings. In making this revision, the drive aisle would be allowed to remain. The developer feels that access between the two buildings is very important.

Councilmember Peppes and Ms. Binckley discussed entrance access points. Coming off of 135<sup>th</sup> Street, there is direct access to the banking site; however, the entrance on Kenneth Road is a right-in/right-out only and would not provide access for southbound vehicles. Traveling south on Kenneth Road, a vehicle must enter the development on Kenneth Parkway and travel through the market center in order to reach the bank. Without drive access between the two buildings, the customer must also drive around the retail building on Lot 1.

Councilmember Taylor confirmed with Ms. Binckley that a westbound vehicle on 135<sup>th</sup> Street would also have to turn onto Kenneth Road and travel to the Kenneth Parkway entrance. Mr. Lambers added that a westbound vehicle could also turn onto Kenneth Parkway for easier access to the development. At this time, there is no cut in the median on Kenneth Road.

Mr. Shaffer verified for Councilmember Taylor that his client will own both buildings on Lot 1. Councilmember Taylor was concerned that having drive access between the two buildings would cause a safety problem. He also suggested having green space and a pedestrian area with seating in this space. Mr. Shaffer pointed out that the owner has agreed to truncate the northwest corner of the retail building to provide such features. Mr. Shaffer stated he was uncertain if the owner would proceed with the project without having the driveway between the two buildings.

Mayor Dunn pointed out that the final master plan was approved with the two buildings connected. She confirmed with Ms. Binckley that trash enclosures will remain on each side of the building if the area is left open as a drive aisle.

Councilmember Rawlings inquired about the projected traffic count for the drive-up lanes at the bank. Mr. Shaffer estimated 20-30 cars per hour. Mayor Dunn confirmed with Mr. Shaffer that four drive-thru lanes were approved, however it was agreed upon to omit one of the lanes.

Councilmember Taylor asked why the master plan depicted connected buildings. Mr. Shaffer explained that Intrust Bank was not involved in the plan at the time. He stated that Intrust prefers their buildings to be separate from any other structure.

Councilmember Gill asked the compelling reason why Intrust feels that it needs the drive aisle. Mr. Shaffer responded that without the drive aisle, customers would have to circle the entirety of the retail building in order to access the drive-thru lanes. He stated that this also poses safety issues which overrides those associated with use of the drive aisle. Mr. Shaffer confirmed for Councilmember Gill that the drive aisle would be two-way with left and right turns available at both ends.

Mayor Dunn and Ms. Binckley discussed other pedestrian areas planned for the overall development. Mayor Dunn felt that the project would set the precedence for the rest of the development as it will be the first site completed. She advised that a supermajority vote would be needed to override the Planning Commission's recommendations.

Councilmember Taylor moved to approve the project with a stipulation to eliminate the drive aisle and replace with a pedestrian plaza. Councilmember Rasmussen seconded the motion.

Councilmember Peppes confirmed with Mr. Shaffer that the offer to remove 200 sq. ft. from the retail building would not be included as part of this motion.

Councilmember Gill discussed with Mr. Shaffer and Mr. Henzlik the fact that the owner may not agree to omit the drive aisle.

Steven Hiatt, project designer, stated that the motion would force public space into an unnecessary area as it is not typical for people to socialize in front of banks. He stated that a pedestrian area in front of the retail area would be more utilitarian.

Mr. Lambers advised that placement of the drive-thru lanes have changed since preliminary approval. Originally they were to be placed south of the bank, however concession was given for a western location.

The motion failed with the following roll call vote of 4-4: Yea: Councilmembers Taylor, Gill, Rasmussen, and Rawlings. Nay: Councilmembers Filla, Bussing, Peppes, and Gulledge.

Councilmember Taylor then moved to approve the project as recommended by the Planning Commission with a change in square footage of 7,000 sq. ft. to the retail building and a stipulation for a pedestrian area in the northwest quadrant of the retail building. The motion was seconded by Councilmember Filla. The motion also failed with the following roll call vote of 4-4: Yea: Councilmembers Taylor, Filla, Peppes, and Gulledge. Nay: Councilmembers Gill, Bussing, Rasmussen, and Rawlings.

Councilmember Gill moved to remand the item back to the Planning Commission for further consideration of traffic circulation, seconded by Councilmember Rasmussen.

Mr. Lambers interjected that the application is time sensitive and a remand could be a lengthy process. He advised that a continuance may be more appropriate in order to give the owner an opportunity to accept or refuse elimination of the drive aisle, assuming there would be a supermajority vote.

Councilmember Gill withdrew his motion for a remand with the second removed by Councilmember Rasmussen.

Mayor Dunn stated that it may be helpful to hear the reasoning of the negative votes.

Councilmember Gill stated that he voted in the negative for keeping the drive aisle due to traffic concerns as well as the fact that this area is the gateway to Leawood from Missouri and should be held to higher expectations.

Councilmember Bussing, who voted in the negative to both motions, stated reluctance to redesign the plans of professionals. He stated that the plan has substantially changed since preliminary approval and is not in favor of the current design.

Councilmember Peppes stated that his nay vote to the first motion was based upon Mr. Hiatt's comments that a pedestrian area in front of a bank would be a forced amenity. In the event of a continuance, he advised that he would not support recommendations for additional green space.

Councilmember Rasmussen stated that he voted in the negative to keeping the drive aisle as it went against the 135<sup>th</sup> Street corridor plan. He echoed Councilmember Bussing's and Councilmember Gill's concerns regarding the need for a better design and stated that he would prefer a remand.

Mayor Dunn reviewed with Ms. Binckley that the issue could not be discussed at the Planning Commission until the August 9<sup>th</sup> meeting if a remand were to take place.

Councilmember Filla stated that she also voted in the negative for the first motion in support of Mr. Hiatt's comments that green space is unnecessary at a bank.

Mayor Dunn informed that there was considerable discussion at the Planning Commission meeting concerning the appearance of the bank. Stipulation No. 8 requires the applicant to work with Staff prior to final approval on conformance of the architectural style. She confirmed with Ms. Binckley that a small corner feature is required.

Mr. Lambers advised a continuance if the councilmembers who voted nay for the first motion would be swayed with the owner's acceptance of a pedestrian walkway. If this fact will not affect the nay votes, a remand would be in order with specific direction to the Planning Commission.

Councilmember Gulledge asked if the applicant would be interested in the continuance process. Mr. Shaffer responded that he would know by tomorrow if the applicant was interested in a shortened drive aisle. Councilmember Gulledge voiced that a green area would serve no purpose other than to collect trash. He was also in opposition to redesigning the plan.

Councilmember Filla moved to approve the project as recommended by the Planning Commission. Councilmember Gulledge seconded the motion.

Councilmember Gill encouraged the Council to vote against the motion as it would be a vote of expediency. Given the importance of the project, he stated that more time is needed in order to improve the design.

The motion failed with the following roll call vote of 2-6: Yea: Councilmembers Filla and Gulledge. Nay: Councilmembers Taylor, Gill, Bussing, Rasmussen, Peppes, and Rawlings.

Councilmember Gill moved to continue the item to the August 1, 2005 Governing Body meeting, seconded by Councilmember Taylor. The motion carried following a vote of 7-1 (Nay: Councilmember Bussing). Councilmember Bussing stated that he would prefer a remand.

***[From the July 12, 2005 Planning Commission meeting]***

- \*D. Ordinance No. 2119, amending § 16-4-1.3 and 16-4-1.4 of the Leawood Development Ordinance [LDO] entitled Permitted Accessory Uses, Buildings and Structures and Attached Accessory Structures Requirements and Exemptions, and repealing existing sections [Roll Call Vote]

Councilmember Bussing moved to pass the ordinance, seconded by Councilmember Rawlings. The motion carried following a unanimous roll call vote of 8-0.

Mayor Dunn stated appreciation to the Staff for bringing the LDO amendments to the Governing Body's attention.

- \*E. Ordinance No. 2120, amending § 16-4-2 of the Leawood Development Ordinance [LDO] entitled Prohibited Uses, and repealing existing sections [Roll Call Vote]

Councilmember Bussing moved for approval, seconded by Councilmember Filla. The ordinance passed with a unanimous roll call vote of 8-0.

**13. OLD BUSINESS - None**

**14. NEW BUSINESS**

- A. Schedule an Executive Session at 6:30 P.M., on Monday, August 1, 2005, to discuss land acquisition and consult with attorney regarding matters subject to the attorney-client privilege

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

**15. OTHER BUSINESS - None**

**ADJOURN**

The Governing Body meeting adjourned at 10:50 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk