

**Minutes**

DVD No. 133

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, November 21, 2005. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** None.

**Staff present:**

Scott Lambers, City Administrator  
Chief Sid Mitchell, Police Department  
Kathy Rogers, Finance Director  
Chris Claxton, P & R Director  
Mark Klein, Senior Planner  
Shannon Marcano, Assistant City Attorney  
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney  
Chief Ben Florance, Fire Department  
Joe Johnson, Public Works Director  
Eirene Oliphant, Building Official  
Jeff Joseph, Planner  
Deb Harper, City Clerk  
Jack Reece, IS Specialist

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn advised that item No. 7B will be continued to the December 5<sup>th</sup> Governing Body meeting for clarification purposes. The agenda will also include a Staff Report from City Administrator Scott Lambers under Item No. 10.

Councilmember Rawlings moved to approve the agenda, seconded by Councilmember Peppes. The motion was approved following a unanimous vote of 8-0.

**3. CITIZEN COMMENTS**

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

1. Rick Thompson, 9929 High Drive, expressed concerns with a home in his neighborhood that has been undergoing construction for an extended period of time.

The house is located at 9935 High Drive, directly south of his residence. Mr. Thompson pointed out that five other neighbors were in attendance to support the issue. He stated that a fairly large addition to the home has been going on for 2½ years and is not close to completion. The owners do not reside in the home at this time. Tyvek home-wrap has been around the house for ten months. The added double garage has plastic covering the opening, which is rather disturbing on windy days. Mr. Thompson distributed photos of the home to the Governing Body. Mr. Thompson also questioned whether the 36-foot long and two-story high addition met the City Code for protective covenants. He stated that the architecture has changed from a Leawood country home to a contemporary style. He reported that after expiration of the most recent building permit, the City served notice to have the addition complete by November 14<sup>th</sup> or pay a \$100 a day fine. Mr. Thompson asked if the fine had been imposed. He requested that the City provide updates regarding the status of the issue. In addition, he is concerned that the changes to the architectural style and large size of the remodeled home will cause the neighborhood to lose integrity. He suggested that future home expansions adhere to the general style of existing homes in Leawood.

Mayor Dunn thanked Mr. Thompson and invited him to contact Mr. Lambers for direct answers to his questions.

2. Sarah Pendergast, 9947 High Drive, passed on the opportunity to speak.
3. Dick Thompson, 9934 High Drive, stated that he lives across the street from the house in question. He reported that he contacted Neighborhood Services and registered a complaint. Mr. Thompson asked why it was necessary for the City to release his name to the offending homeowner as it has caused hostility. He conveyed that he has received physical abuse and lewd hand gestures from the other party.

Councilmember Rasmussen stated that procedures instruct City employees not to release the names of complainers. He suggested that Mr. Lambers look into the matter. Mr. Lambers he would investigate why the complainant's name was released.

**4. PROCLAMATIONS – None.**

**5. PRESENTATIONS/RECOGNITIONS a. Recognition of Police Officer Jim Herman**

Police Chief Sid Mitchell presented the first Purple Heart Award to Officer Herman, who was struck by a drunk driver while responding to an accident. Officer Herman received a standing ovation. Mayor Dunn told Officer Herman she was grateful that he was not more seriously injured and stated how proud she was of the work provided by the Police Department.

**b. Presentation by Mary Tearney and Marga Spangler, regarding the 2006 Kansas City Symphony Performance**

Leawood Arts Council Chair Mary Tearney stated that it has been a goal for the last ten years to bring the Kansas City Symphony to Leawood. With the perseverance of Music Chair Loretta Allebach and the now deceased Tom Leathers, this endeavor has come to fruition. An agreement has been made for the symphony to perform at the Church of the Resurrection on April 28, 2006. Ms. Tearney recognized Ms. Allebach for her hard work over the last six months. Country Club Bank has offered to sponsor the event and will donate \$15,000 of the \$20,000 needed. Mike Werning, Regional Johnson County President of Country Club Bank, stated they were pleased to underwrite the event.

Mayor Dunn disclosed being a board member of Country Club Bank and thanked them for their generosity. She also relayed that Frank Byrne, Executive Director of the Kansas City Symphony, is very excited about performing at the Church of the Resurrection and hopes there will be future performances as well. Ms. Tearney stated that another goal is to possibly arrange for annual performances.

**6. SPECIAL BUSINESS**

**A. Public Hearing on amendments to 2005 Fiscal Budget**

Mayor Dunn opened the public hearing for comments. There being no comments, Councilmember Bussing moved to close the public hearing with a second from Councilmember Filla. The motion carried with a unanimous vote of 8-0.

**B. Resolution No. 2500 adopting amendments to the 2005 Fiscal Budget for the City of Leawood, Kansas**

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

**C. Ordinance No. 2141 amending the Leawood Building Code, Chapter 4, Article 9, of the Code of the City of Leawood 2000, by adding a new Section 4-920, entitled Basement Required [Roll Call Vote] – *Continued from the August 15, 2005, September 19, 2005, October 3, 2005 and November 7, 2005 Governing Body meetings***

Councilmember Bussing moved for approval with a second provided by Councilmember Gullede.

Councilmember Rawlings reviewed that a preliminary approved project may be subjected to unfairness upon passage of the ordinance. He requested discussion of the issue.

Mr. Lambers reminded that the ordinance would be an amendment to the Building Code and would apply to any projects that have not obtained a building permit. A specific exception must be made in order to exclude the project from the requirement. A concern would be the fact that there is nothing in place to require the safe-room feature at this time other than what is noted in the proposed basement ordinance.

Councilmember Bussing shared Councilmember Rawlings' concerns, however stated that the applicant was forewarned during the approval process that changes could occur. The addition of basements to this project will enhance the development in terms of marketability and public safety. He voiced support of the ordinance.

Councilmember Taylor stated he would find it difficult to support the ordinance based on matters related to the affected project. He also said the safe-room requirement should include other types of residential structures, such as dormitories, in addition to single-family developments. Councilmember Taylor pointed out that the FEMA required sheet metal ceiling would not be suitable for the interior of a bathroom where there is constant moisture. He also noted previously built slab-on-grade developments in Leawood that are structurally sound and have no problems related to storage or excess parking on the streets. Councilmember Taylor voiced his intent to vote against the ordinance.

Mayor Dunn confirmed understanding with Councilmember Taylor that the ordinance would not apply to structures built to date. He viewed the safe-rooms as unnecessary design criteria that should not be imposed upon developers. He stated the marketplace should dictate what is acceptable in Leawood.

Councilmember Filla clarified with Mr. Lambers that a motion to exclude Cottages of Lakeshyre from the requirement will be needed either at this time or during final plan approval. She agreed that the market is the best determinant for what the housing stock should be. She stated that Mr. Winn's request to exclude the project from the ordinance should be considered.

Councilmember Gill verified with Mr. Lambers that in order for the builder to request exemption at final plan approval, the motion to pass the ordinance this evening must include a provision allowing Council to consider such an exception. The three options would be to provide no exception, permit an exception, or allow consideration of an exception at the time of final planning.

Councilmember Gill stated the ordinance was right for the City. He said the two issues of passing the ordinance and whether to consider an exception should be segregated as one could get in the way of the other.

Councilmember Gill recalled a past issue from the Board of Zoning Appeals [BZA] that came before the Governing Body regarding gutter materials. He asked if this course of action would be available to the developer. Mr. Lambers advised that Leawood Development Ordinance [LDO] issues are heard by the BZA. They are not presented to the Governing Body as they are planning items.

Councilmember Gill added that in situations of conflicting interests such as this, a rule to abide by is to resolve the higher issue. The broader issue is doing what is best for the community versus the specific project. He voiced intent to vote in favor of the ordinance.

Councilmember Filla suggested a friendly amendment to grant an exception to the Cottages of Lakeshyre so that it is not subject to the basement requirement but is subject to the safe-room provision.

Mr. Lambers advised the ordinance does not provide for the safe-room requirement as this project is not impracticable to the written provisions. If the friendly amendment were approved, another ordinance would have to be drafted providing for safe-rooms.

Councilmember Rawlings confirmed with Mr. Lambers that the third option mentioned would allow the applicant to ask for an exception at final approval if set forth in the motion.

Councilmember Bussing modified his motion for approval to allow the developer of the Cottages of Lakeshyre the opportunity to approach the Governing Body during final plan approval and request an exception to the ordinance.

Mayor Dunn asked if the Council would be able to require the safe-rooms if the exception request were granted at final plan approval. Mr. Lambers stated an ordinance requiring safe-rooms would be drafted if the exception is deemed appropriate. Timing will not be an issue as the new ordinance can be voted on before the development applies for a building permit.

Mayor Dunn confirmed with Councilmember Gullede that his second met with approval of the amendment.

Councilmember Rasmussen stated concern that the modification would indicate such an opportunity for future developers. Mr. Lambers clarified that the modification would be applicable only to the developers of Cottages of Lakeshyre with all future applicants subject to provisions of the ordinance.

Councilmember Rasmussen reminded that a moratorium had been placed on slab-on-grade projects, at which time the developer's representative agreed to comply with the building code at the time of permit. Mr. Lambers relayed that research revealed the agreement to be in reference to incorporation of the safe-room structures only. Assuming that the motion passes, the moratorium will be lifted and the project will proceed with final planning.

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

Councilmember Taylor stated his negative vote was due to limiting the ordinance to single-family residences while structural systems for multi-family residences are identical.

Mr. Lambers reviewed that Cottages of Lakeshyre served as the catalyst for this ordinance. He stated if similar issues arise with future development requests, the project will be placed on hold until the matter can be discussed in order to avoid questions of unfairness.

Mayor Dunn complimented Staff for their work on the ordinance.

## 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. 1038A & 1038B
- B. Accept minutes of the November 7, 2005 Governing Body meeting
- C. Accept minutes of the October 11, 2005 Historic Commission meeting
- D. Accept minutes of the September 22, 2005 IRONHORSE Advisory Board meeting
- E. Accept minutes of the October 11, 2005 Park and Recreation Advisory Board meeting
- F. Approve renewal of retail liquor store license for Stoll Liquor Store, located at 3731 W. 133<sup>rd</sup> Street
- G. Approve Change Order No. 1 in the amount of \$21,622.00, to Seal-O-Matic Paving Company, pertaining to the emergency repairs to Overbrook Road, north of 103<sup>rd</sup> Street
- H. Approve Change Order No. 1, in the amount of \$40,246.74, to Seal-O-Matic Paving Company, pertaining to the 2004 Residential Reconstruction Project
- I. Approve 7<sup>th</sup> and Final Payment in the amount of \$42,035.07, to Seal-O-Matic Paving Company, pertaining to the 2004 Residential Reconstruction Project
- J. Approve 12<sup>th</sup> and Final Payment in the amount of \$2,210.00, to 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
- K. Resolution No. 2501 approving the Johnson County Drug and Alcoholism Council [DAC] recommendation for allocations of the 2006 Alcohol Tax Fund for an amount not to exceed \$48,000
- L. Resolution No. 2502 designating holidays for the year 2006, in accordance with the personnel rules and regulations of the City of Leawood, Kansas
- M. Resolution No. 2503 accepting Public Infrastructure Improvements and Final Acceptance of construction work for property located within Leabrooke 1<sup>st</sup> Plat, 145<sup>th</sup> & Kenneth Road and Leabrooke 2<sup>nd</sup> Plat, 146<sup>th</sup> Street and Norwood, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets

- N. Resolution No. 2504 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 in the vicinity of 137<sup>th</sup> Street between Roe and Mission Road [The Villaggio at Leawood]
- O. Resolution No. 2505 approving a Final Plat for Village at Camden Woods 86<sup>th</sup> Plat, located south of 143<sup>rd</sup> Street and west of Kenneth Road [*from the November 8, 2005 Planning Commission meeting*]
- P. Resolution No. 2506 approving and authorizing the Mayor to execute a Service Agreement in the amount of \$20,000 between the City and the Kansas City Symphony, pertaining to performance in 2006- ***Continued from the October 17, 2005 and November 7, 2005 Governing Body meetings***
- Q. Resolution No. 2507 approving and authorizing the Mayor to execute a Service Agreement between the City and the United Methodist Church of the Resurrection for the rental of space pertaining to the 2006 performance of the Kansas City Symphony - ***Continued from the October 17, 2005 and November 7, 2005 Governing Body meetings***
- R. Resolution No. 2508 calling for a Public Hearing to be heard on Monday, December 5, 2005 regarding amendments to the 2005 Fiscal Budget for the City of Leawood, Kansas
- S. Resolution No. 2509 approving an increase in the transfer of funds in the amount of \$190,000 from the General Fund to Ironhorse Golf Course
- T. Police Department Monthly Report
- U. Fire Department Monthly Report
- V. Municipal Court Monthly Report

Councilmember Taylor requested to pull Item Nos. 7N and 7S. Councilmember Rasmussen moved to approve the remainder of the Consent Agenda, seconded by Councilmember Gill. The motion was approved following a unanimous vote of 8-0.

- 7N. Resolution No. 2504 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 in the vicinity of 137<sup>th</sup> Street between Roe and Mission Road [The Villaggio at Leawood]

Councilmember Taylor stated that he intended to recuse from this item. Councilmember Gullede moved for approval with a second from Councilmember Rasmussen. The item was approved following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 7S. Resolution No. 2509 approving an increase in the transfer of funds in the amount of \$190,000 from the General Fund to Ironhorse Golf Course

Councilmember Taylor confirmed with Mr. Lambers that the \$190,000 was not anticipated during the last budget review. Mr. Lambers reviewed that a mill levy increase to be placed in the Bond & Interest Fund was brought up for consideration during the budget meetings. The 0.83 mills will then be transferred to the Golf Course Enterprise Fund to cover debt service costs of approximately \$600,000 per year. This recommendation will be included in the 2007 Budget Model and indicates that the golf course cannot cover debt service, only operational costs. If the mill levy is favorably considered, it will remain in place until the debt service is paid off in 2015.

Councilmember Taylor moved for approval. Councilmember Gill seconded the motion.

Councilmember Filla verified with Mr. Lambers that the transfer will bring the total Golf Course Fund to approximately \$580,000. Mr. Lambers affirmed that revenue should cover expenses during a regular operational year if the debt service costs are covered.

The resolution was approved following a unanimous vote of 8-0.

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

- A. Attended the Johnson County Community College [JCCC] Foundation Scholarship Benefit. On behalf of the City of Leawood, Mayor Dunn congratulated former Overland Park Mayor Ed Eilert for being honored as the 2005 Johnson Countian of the Year.
- B. Attended the Have-A-Heart Breakfast, which was conducted by Staff at City Hall. Safehome has been chosen as the beneficiary for this year's gift-drive. Mayor Dunn advised Councilmembers to contact City Clerk Deb Harper if they would like to participate.
- C. Announced the successful completion of the United Way Campaign, which raised \$38.5 million. Funds will be distributed to 150 nonprofit agencies and aid 350 programs. Mayor Dunn expressed appreciation to those who contributed to the fundraiser.
- D. Mayor Dunn shared several recent articles associated with Leawood. Leawood Police Officer Randy Wiler was recognized in an article for being named Vice President of the newly formed International Bullying Prevention Association. Leawood Chamber of Commerce President Kevin Jeffries was interviewed in *435 South Magazine* regarding ten years of the Chamber's existence. The magazine also featured former Major Craig Hill in an article titled "Raising the Bar," which highlights his new role with the National Center for Missing & Exploited Children. A story in the *Kansas City Star* listed Leawood as No. 2 out of 40 for best suburb in the greater metropolitan region. Reporter Jeffrey Spivak tabulated various items for a number of months before determining the results. Leawood came in under South Overland Park by two points.
- E. Reminder for the Holiday Lighting Ceremony at City Hall on Tuesday, November 29<sup>th</sup>, at 6:00 p.m. Performances will be given by the Church of the Resurrection Jubilation Ringers, the Corinth Singing Stars, the Leawood Singers, and the Curé of Ars Youth Choir.
- F. Mayor Dunn wished a Happy Thanksgiving to all.

**9. COUNCILMEMBERS' REPORT – None.**

**10. STAFF REPORT – Report from City Administrator Scott Lambers regarding regulations imposed by other cities in association with All Terrain Vehicles [ATVs]**

Mr. Lambers reported that most cities in the Kansas area do not have these types of regulations due to a State statute which prohibits the use of ATVs in all cities of the First Class.

Councilmember Filla mentioned that the article naming Leawood the second best suburb also pays tribute to Chief Sid Mitchell and members of the Police Department by focusing on the low crime rate.

**COMMITTEE RECOMMENDATIONS**

**11. IRONHORSE ADVISORY BOARD**

*[from the June 23, 2005 Ironhorse Advisory Board meeting]*

- A. Accept recommendation for that certain Professional Service Agreement dated September 2, 2003, between the City and Orion Management Solutions, to provide for the management of the IRONHORSE Golf Facility be extended for a two-year period, ending December 31, 2008 *[Continued from the September 19, 2005 and November 7, 2005 Governing Body meetings ]*

*Staff Comment: It is the position of the City Administrator that the course closure for construction in the fall of 2006 and spring of 2007 provides an opportunity to solicit bids for a long-term [4-5 year] management contract because if there is a change in management companies, then a 'seamless' transition could occur prior to the resumption of golfing activities in May, 2007.*

Mr. Lambers reported that this item has undergone several months of continuation due to the status of the greens. It is a possibility that the greens may need to be entirely replaced, which will necessitate a midyear closure of the golf course. In order to make a comfortable decision with sufficient information, Mr. Lambers recommended exploring the issue further. An outside consultant will be obtained to thoroughly examine the greens and provide an independent analysis. The lengthy process of obtaining the consultation will preclude the possible green replacements from occurring in tandem with the SMAC and creek bank stabilization projects. For this reason, Mr. Lambers recommended deferring the projects for one year and extending Orion's contract for one year, through 2007.

Mr. Lambers also recommended that the City go out for management contract proposals of 4-5 years during 2007. The selection process will be finished concurrent with completion of the improvements. A recommendation regarding the greens, estimated to cost \$800,000, will be part of the C.I.P. process in March.

Councilmember Bussing moved to accept the City Administrator's recommendation to defer the SMAC project, creek bank stabilization, and potential greens replacement until 2007-2008 as well as extend the contract with Orion Management Solutions for a period of one year while soliciting bids for a new management company.

Mayor Dunn confirmed with Councilmember Bussing that the motion intends to extend the management contract through December 31, 2007. She conferred with City Attorney Patty Bennett and concluded that two separate motions may be in order for clarity purposes.

Councilmember Bussing agreed to divide the motion. He then moved to accept the City Administrator's recommendation to defer the SMAC project, creek bank stabilization, and potential greens replacement until 2007-2008. Councilmember Rawlings seconded the motion.

Councilmember Filla commended Mr. Lambers for the course of action taken in deferring the projects. She suggested broadening the evaluation to include overall recommendations of the course such as playability, maintainability, and marketability. Mr. Lambers advised that an extended consultation such as this would not be complete by the March C.I.P. meeting. Time restraints will allow for a narrow evaluation of the greens only. The design of the greens has created a problem where the surface cannot be supported due to improper drainage. Mr. Lambers stated that only four greens have been tested with 3-5 more needing to be examined before a conclusion is reached.

Mayor Dunn verified with Councilmember Bussing that his motion included obtaining a consultant for the greens.

Councilmember Peppes asked if the 2006 SMAC funds could be used for another stormwater project if golf course improvements are deferred until 2007. Mr. Lambers stated the project will simply be exchanged with the project of another city scheduled for 2007. The City's portion of funding will sit for another year.

Mayor Dunn relayed that Public Works Director Joe Johnson has confirmed agreement to the delay with the Johnson County SMAC Program.

Councilmember Bussing noted that Orion should be advised of the deferred closure in order to book tournaments and calendar other events for the next year. Mr. Lambers stated the motion will allow the golf course to remain open for the entirety of 2006.

The motion was approved with a unanimous vote of 8-0.

Councilmember Bussing then moved to accept the City Administrator's recommendations to extend the contract with Orion Management Solutions for a period of one year, terminating on December 31, 2007, and solicit bids for a new management company in 2007 with the understanding that the 2007 contract will reflect a closure of the golf course. Councilmember Rawlings provided a second to the motion.

Councilmember Rasmussen voiced concern as close coordination with the golf course operators in terms of proper seeding will be crucial during the construction period. He stated that he could not support the motion and felt the contract should be extended through the end of construction, which would be December 2008.

Councilmember Bussing stated the basis of his motion includes the fact that the perfect opportunity to evaluate alternatives would be while the course is idle for play. He expressed hope that Orion Management Solutions would seek to bid on the project and perhaps be awarded the contract based upon their performance, however felt it was prudent to put the contract out for bid at this time. The subsequent management team could be in place upon reopening with new plans and procedures.

Councilmember Peppes agreed with Councilmember Rasmussen. He stated it would be risky to change management teams during midstream of the improvements as it could create an unsatisfactory outcome.

Mayor Dunn and Mr. Lambers discussed that negotiations will take place regarding payment terms for Orion while the golf course is closed.

Councilmember Taylor verified with Mr. Lambers that closure will take place in June-July 2007. The greens will have to be rebuilt by August 15<sup>th</sup> in order to seed for new growth. If Orion's contract expires at the end of 2007, Councilmember Taylor questioned who would take care of the seeding through March. Parks & Recreation Director Chris Claxton stated that an outside contractor will be hired to do the seeding during reconstruction rather than Orion. However, Golf Course Superintendent Pete Spratlin will be available to oversee the seeding.

Councilmember Gulledge requested that Councilmember Rasmussen restate his position. Councilmember Rasmussen stated that from previous experience it is not advisable to change operators halfway through a construction project. It is not worth the risk of losing the grass by not extending Orion's contract to 2008.

Mayor Dunn pointed out that the Ironhorse Advisory Board recommends that a new contract be designed in order to extend the current agreement. Councilmember Rasmussen recalled a term of the present contract which states that payment is a function of revenue. With no revenue possible during closure, new terms will have to be spelled out. Councilmember Rasmussen suggested sitting down with Orion to extend the present contract with specific definitions of what will be expected during construction. In 2008, Council can approve going out for new bids for a fully operational course.

Councilmember Taylor confirmed with Mr. Lambers that seeding of the greens will be outsourced but overseen by Mr. Spratlin. The management company will not be involved with the seeding at all.

Councilmember Peppes confirmed with Mayor Dunn that continuity was the argument from the IRONHORSE Advisory Board to extend the contract for two more years.

Councilmember Gill outlined the issues as:

1. Putting the contract up for bid when it comes up for renewal.
2. Having a contract that fits the unique circumstance of the course being closed with a potential major rebuild project.
3. The extent of involvement from the greens-keeper.

He stated the current motion addresses No. 1 and asked when the other issues would be discussed. Mayor Dunn stated there would be time for discussion once the consultation has been complete.

Councilmember Gill stated he did not think the one-year extension would address the three issues. Mr. Lambers said the decision to inform Orion of the 2006 project deferment had been addressed. He reviewed options of the contract extension with the Council and reminded that restructuring of the contract cannot occur until a decision is made regarding the greens. Mr. Lambers restated his recommendation to go out for proposals while the golf course is closed for construction and have a seamless transition upon reopening.

Councilmember Rasmussen asked if Staff had received the report concerning the creek bank stabilization from Corps or Engineers. Ms. Claxton informed that a report had just been received from engineer Phil Gibbs, which will be discussed with Mr. Lambers first thing in the morning. Councilmember Rasmussen noted the report may cause significant changes.

Councilmember Gill voiced intent to vote against the motion as the scope of negotiations are unknown at this time. He agreed with Councilmembers Taylor and Rasmussen in that continuity is needed throughout the project and the contract should extend through 2008.

The motion failed with a vote of 3-5 (Nay: Councilmembers Peppes, Gullede, Gill, Rasmussen, and Taylor).

Councilmember Rasmussen moved that the City Administrator begin negotiations for a new contract with Orion Management Solutions to cover the construction period of IRONHORSE Golf Course for two years, from December 31, 2006, through December 31, 2008. Councilmember Taylor seconded the motion.

Councilmember Gullede asked if the greens issue would be resolved during this time period. Mr. Lambers advised there will be uncertainty regarding the greens until March. He advised that Council can defer taking action until this time.

Mayor Dunn noted that Orion is waiting for assurance of employment beyond December 21, 2006.

Councilmember Filla stated that a one-year extension would be a good compromise. Mayor Dunn and Councilmember Gill discussed the fact that the failed motion was for negotiating a new one year contract rather than extending the current contract. Councilmember Gill stated it would be difficult to negotiate specificity when the conditions are unknown. Mayor Dunn noted that negotiations do not have to begin immediately and it would behoove Staff to wait until status of the greens is known. However, knowing the length of the contract extension will give Orion a comfort level.

Councilmember Taylor informed the IRONHOSE Advisory Board has received reports from the United States Golf Association [USGA] confirming that the greens will require replacement.

City Clerk Deb Harper confirmed with Councilmember Rasmussen that the motion is to negotiate a two-year contract rather than extend the current contract. Councilmember Rasmussen stated he was convinced of the need to replace the greens. Combined with the stormwater project, \$3.5-million will be expended.

The motion carried with a vote of 7-1 (Nay: Councilmember Filla).

## **12. PLANNING COMMISSION**

*[from the October 25, 2005 Planning Commission meeting]*

- A. Ordinance No. 2142 approving a Special Use Permit [SUP] for a temporary building at United Methodist Church of the Resurrection [COR], located on the southwest corner of 137<sup>th</sup> Street and Roe Avenue [Roll Call Vote]

Councilmember Gullede moved for approval, seconded by Councilmember Gill.

Reverend Adam Hamilton, Senior Pastor of Church of the Resurrection, 13720 Roe, stated he would be grateful for any grace shown to the church. He remarked how proud he is of the City of Leawood, stating those present in the Council Chambers this evening were responsible for the No. 2 spot on the best suburb list. He asked for approval of the item. Mayor Dunn returned Rev. Hamilton's compliments and stated the citizens and professional Staff also helped Leawood achieve this rating.

The ordinance was passed with the following unanimous roll call vote of 8-0: Yea: Councilmembers Gill, Peppes, Rawlings, Bussing, Taylor, Filla, Gullede, and Rasmussen. Nay: None.

- B. Ordinance approving to a Special Use Permit [SUP] for Sprint Wireless Antennae located at 129<sup>th</sup> Street and Mission Road [Roll Call Vote]

Councilmember Taylor moved to pass the ordinance with a second from Councilmember Filla.

Councilmember Filla verified with Planner Jeff Joseph that citizens are aware of the antennae and will not be surprised by the installation. Mayor Dunn informed there has been two Planning Commission meetings as well as a public hearing on the matter.

Councilmember Gill noted the packet contained letters from members of two homes associations in opposition to having the structure on this site. This particular site was an issue of debate a number of years ago, which spawned the adoption of an ordinance. He acknowledged the need for an additional cell tower in the area; however, as a member of one of the affected subdivisions, was not aware of the issue until recently receiving packet information. He stated that the Waterford Homes Association Board of Directors have raised concerns. Councilmember Gill requested that some of his own questions be answered.

Referencing the performance standards on page 2, item Nos. 4, 5, and 6, Councilmember Gill stated that it strains credibility to argue that a wooden phone pole is a structure. This interpretation would mean that every single light standard throughout residential areas is a structure, hence capable of carrying a cell server and being an exception to the 500-ft. radius. He disagreed with item No. 6, which states that inventory is not required. The purpose of the inventory is to find whether or not there are alternatives and should not be ignored, especially when placing cell towers in close proximities to residential areas. Councilmember Gill requested to hear alternatives and view pictures of the antennae before making a decision.

Representative of Sprint, Alicia Martin, 721 N. Poplar Street, Gardner, Kansas, displayed photos of the proposed antennae and equipment box.

Councilmember Gullede inquired how far back the equipment box would be from the street. Ms. Martin stated she was not sure of the distance but the box would be 10-feet perpendicular to the pole in the right-of-way, parallel to the street.

Ms. Martin confirmed for Councilmember Rasmussen that the pole will be in a public right-of-way. She explained the antennae would be a two-pole solution and displayed illustrations of the vertical and square transmitters that will be used. The connecting wire will be buried in the right-of-way.

Mayor Dunn asked at what height the square antenna would be placed on the pole. Ms. Martin responded that federal law governs a minimum height of 15-feet.

Councilmember Filla verified with Ms. Martin that Stipulation No. 3 requires the box to be covered by landscaping.

Councilmember Rasmussen asked why slim-lined antennas were not being used. Ms. Martin stated it was a functionality issue in order to boost the signals. She added that both of the antennas were extremely flat with dimensions being 2 x 1 feet for the vertical antenna and 2 x 2 feet for the square antenna. Both structures are only a couple of inches wide.

Mayor Dunn asked if the same type of antenna was used in the Mission Road and 95<sup>th</sup> Street area. Ms. Martin stated it is possible there is one on a transmission pole, however there are no antennas on distribution poles in the Kansas City metro area as of yet.

Councilmember Gill asked what type of structures had been used up to this point. Ms. Martin stated that towers are used to perform the same function, however one proposed for 127<sup>th</sup> and Mission was not approved. The proposed antennas will be used to fill coverage deficiencies not reached by towers and are of a different technology than tower antennas. The tower transmitters are considerably larger and generate signals while the pole antennas only boost existing signals.

Councilmember Gill asked if the 135<sup>th</sup> Street Corridor area was considered as a site rather than the residential location. Ms. Martin stated there were several locations in Leawood of which coverage issues need to be addressed. The 129<sup>th</sup> and Mission location was of concern as there are numerous dropped calls in this area. She relayed the radiofrequency department ascertained this location to be the best for extending coverage.

Councilmember Gill questioned the potential health issues associated with being in near proximity to constant radiation. He asked if residences 120-feet from the pole were within safe measures. Ms. Martin quoted the maximum allowing exposure as 1.0 mW/cm<sup>2</sup>. She illustrated that someone would receive 5% of the maximum limit if they were standing 5½-feet directly in front of the vertical transmitter. The homes are 120-feet away from the pole.

Per drawings C3 and C4, Councilmember Taylor confirmed with Ms. Martin the antenna is planned to be 27-feet in height with 15-feet being the minimum height allowed. She stated that height can change per site based upon topography. Ms. Martin added that Sprint's radiofrequency department as well as the equipment manufacturer has assured nominal exposure to the homes 120-feet away.

Councilmember Gulledge asked if there was a transmission tower at the fire station on 127<sup>th</sup> and Mission Road. Mr. Joseph stated it was not actually a tower but antennae on top of the building. As this seems to be the signal dead zone, Councilmember Gulledge suggested mounting the proposed booster on the structure already existing at the fire station. Ms. Martin was unsure if this would be feasible.

Fire Chief Ben Florance informed that fire station #2 was not equipped with a tower. The structure at the south end of the station is an emergency preparedness storm warning siren pole. Councilmember Gulledge stated that attaching the antenna at this location would address the issues of the homes associations. Ms. Martin agreed to check with the radiofrequency department as to whether this is a viable option.

Mr. Joseph verified for Mayor Dunn that Cellular One placed the antenna on a KCP&L pole at 119<sup>th</sup> and Aberdeen, which is hardly noticeable. Mayor Dunn asked Ms. Martin if this type of equipment was available to Sprint. Ms. Martin stated there were all types of configurations from different vendors, however the radiofrequency department has chosen the proposed antennas based upon which would provide the most benefit.

Ms. Martin confirmed for Councilmember Gulledge willingness to assess the possible placement of the transmitters at the fire station location. Mayor Dunn requested that Ms. Martin check into the commercial location of the 135<sup>th</sup> Street Corridor as well.

Councilmember Taylor withdrew his original motion with the second withdrawn by Councilmember Filla.

Councilmember Taylor then moved to continue the item to the December 5<sup>th</sup> meeting in order to allow representatives of Sprint to research other possible locations as well as present different antenna options. The motion was seconded by Councilmember Gill.

Councilmember Rasmussen asked how the process reached this level without complying with ordinance requirements of researching alternatives. Mr. Lambers stated that Staff interpreted the installation of the antenna on a pole rather than a tower as not applicable to the ordinance as written. The effort is to install discreet repeaters to correct dead zones opposed to cell towers.

Councilmember Gill stated that he understood the need for the signal booster and appreciated the introduction of new technology to improve service to citizens. He also expressed concern with the interpretation of the ordinance by classifying a pole as a structure. Mr. Lambers stated that he will address the matter of what can be defined as a structure.

The motion to continue the item was approved with a unanimous vote of 8-0.

Councilmember Taylor announced that he would recuse himself from item Nos. 12C and 12D and the left the Council Chambers.

***[from the November 8, 2005 Planning Commission meeting]***

- C. Resolution No. 2510 approving a Final Site Plan and Final Plat for Villaggio West, located on the southeast corner of 135<sup>th</sup> Street and Roe Avenue

Councilmember Rasmussen moved for approval, seconded by Councilmember Gill.

Councilmember Bussing requested a review of the changes from preliminary plan approval as they seemed to be fairly significant. Applicant Jeff DeGasperi with DeGasperi & Associates Architecture, 6240 W. 135<sup>th</sup> Street, explained that since last approval there have been some refinements to the final development plan.

There have been some stipulations remedied upon working with Staff including reducing the number of curb cuts on the loop road through the commercial district, eliminating dead-end parking lots, creating a more efficient parking layout, providing screening to service areas, and alignment of pedestrian pathways. The funeral home has moved from the Fontana Street location over to Roe Avenue, which will improve traffic flow. In addition, a median cut on Fontana Street has been inserted. There have been refinements to the landscaping and pallet to meet Staff approval.

Mr. DeGasperi confirmed for Councilmember Bussing that no changes have occurred in the square footage or number of buildings. He also explained that the parking lay-out was realigned in order to achieve a more convenient design for customers.

In response to Councilmember Bussing's question of what makes the development unique, Mr. DeGasperi responded it offers a mix of uses in an upscale setting. The landscaping and exterior features are beyond average.

Mayor Dunn verified with Senior Planner Mark Klein that the 54-foot height bulk regulation for SD-CR and the 36-foot proposed height maximum for RP-3 are deviations that received approval during preliminary and have remained consistent throughout the planning process. Mayor Dunn asked if the parking reconfiguration addressed concerns reported in Fire Marshal Gene Hunter's memo. Mr. Klein stated the memo was written regarding the new design; however, as professional Staff, the new parking layout significantly improves traffic circulation.

Mayor Dunn suggested adding language to Stipulation No. 27 to include "The pallet shall allow the use of cultured stones *as reviewed by Staff*," in order to reflect the Planning Commission's recommendations.

Mayor Dunn stated she liked the use of underground parking and pedestrian amenities in the plan.

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

- D. Ordinance No. 2143 approving a Preliminary Site Plan for Villaggio East, located on the southeast corner of 135<sup>th</sup> Street and Mission Road [Roll Call Vote]

Councilmember Rasmussen moved to pass the ordinance, seconded by Councilmember Filla.

Councilmember Gill, Mr. Klein, and Mr. Lambers discussed the reason behind eliminating Stipulation No. 2A from the Public Works memo, which required the addition of a westbound lane on 135<sup>th</sup> Street between Roe Avenue and Mission Road. There has been an adjacent development approved which will provide the third through lane. The applicant would like this stipulation removed and replaced with a requirement to provide an eastbound turning lane on 135<sup>th</sup> Street onto Mission Road. In the happenstance that the other project does not reach fruition, the turning lane alone will alleviate congestion of the intersection based on results of a traffic study.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Gill, Filla, Bussing, Rasmussen, Peppes, Rawlings, and Gullede. Nay: None (Councilmember Taylor recusing).

**13. OLD BUSINESS – None.**

**14. NEW BUSINESS**

- A. Ordinance No. 2144 granting to Sprint Communications Company, L.P., a Contract Franchise to construct, operate, and maintain a telecommunications system in the City of Leawood, Kansas [Roll Call Vote]

Councilmember Rasmussen moved for approval, seconded by Councilmember Gill.

Councilmember Taylor returned to the Council Chambers.

The ordinance was passed by an unanimous roll call vote of 8-0.

- B. Resolution No. 2511 approving and authorizing the Mayor to enter into a Public Land Use Agreement between the City of Leawood, Kansas and Sprint Communications Company, L.P., pertaining to the installation and maintenance of communications facilities within existing conduit

Councilmember Rasmussen moved for approval with a second provided by Councilmember Gill. The motion was approved following a unanimous vote of 8-0.

- C. Resolution No. 2512 approving and authorizing the Mayor to execute an Agreement between the City and Sprint Communications Company, L.P., pertaining to the payment of past fees due under the Telecommunications Franchise and Public Lands Use Agreement

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

**15. OTHER BUSINESS – None.**

**ADJOURN**

The Governing Body meeting adjourned at 10:20 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk