

Minutes

DVD No. 140

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, April 3, 2006. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Sid Mitchell, Police Department
Major John Meier, Police Department
Joe Johnson, Public Works Director
Chris Claxton, P&R Director
Mark Klein, Senior Planner
Deb Harper, City Clerk
Jack Reece, IS Specialist

Patty Bennett, City Attorney
Chief Ben Florance, Fire Department
Captain Dale Finger, Police Department
Kathy Rogers, Finance Director
Eirene Oliphant, Building Official
Jeff Joseph, Planner
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn informed the agenda will also include a report from Councilmember Taylor under Item No. 9, Councilmembers' Report. A motion to approve the agenda was made by Councilmember Peppes; seconded by Councilmember Bussing. The agenda was approved following a unanimous vote of 7-0.

Councilmember Gill joined the meeting via teleconference.

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. Debbie Doud, 10311 Howe Drive, spoke on the dangers of second-hand cigarette smoke and encouraged the Governing Body to strengthen restrictions on smoking in public places. She stated results of a County-wide survey initiated by Commissioner Furtado should be released this month.
2. John Neuberger, 10922 W. 101st Street, Overland Park, Kansas, spoke in favor of a smoking ordinance. He informed that the CDC [Centers for Disease Control] has reported no negative economic harm from such ordinances. As a restaurant owner in Fairway, Kansas, which recently passed a smoking ban in public places, he has not suffered a negative impact from the ordinance. He suggested adopting the MARC [Mid-America Regional Council] model smoking ordinance in Leawood for restaurants and bars as soon as possible.

4. PROCLAMATIONS

Excellence In Our Library Day, April 6, 2006

Fair Housing Month, April, 2006

Mayor Dunn proclaimed April 6, 2006 as Excellence In Our Library Day and urged citizens to recognize the valuable contributions of libraries in the Leawood community.

Mayor Dunn recognized April 2006 as Fair Housing Month in the City of Leawood and expressed hope the observance will promote fair housing practices throughout the City.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

- A. Request to approve extension for preliminary plan, preliminary plat, for property located at 137th & Mission Road, Pine Lakes

Staff Recommendation: Staff is in support of the request for extension to September 30, 2006.

A motion to approve the request for extension was made by Councilmember Rawlings; seconded by Councilmember Rasmussen.

City Administrator Scott Lambers stated the five-year time period for this older preliminary plan expired yesterday. However, a request for extension by the client's attorney was filed prior to the expiration date. The Staff recommendation is based upon the need to complete the Mission Corner application project as it will have a direct bearing as to the advancement of the Pine Lakes project.

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

- B. Public Hearing on amendments to 2006 Fiscal Budget

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

- C. Resolution No. 2567 adopting amendments to the 2006 Fiscal Budget for the City of Leawood, Kansas

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Bussing. The resolution was approved following a unanimous vote of 8-0.

- D. Public Hearing on proposed assessments for the burying of power lines located within the Resurrection Transportation Development District [TDD] immediately east of Nall Avenue between 137th and 139th Streets and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [CIP # 190] [Roe/Nall & 137th Street] [CHURCH OF THE RESURRECTION]

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

- E. Ordinance No. 2158 levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of burying of power lines along Nall Avenue within the Resurrection Transportation Development District and other related appurtenances as are required pursuant to the Final Plans approved by the City of Leawood, Kansas [Resurrection] [CIP # 190] [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Rasmussen. The ordinance passed following a unanimous roll call vote of 8-0: Yea: Councilmembers Bussing, Gullledge, Gill, Peppes, Rasmussen, Taylor, Rawlings, and Filla. Nay: None.

- F. Public Hearing proposed assessments for the for the burying of power lines located within the Cornerstone Transportation Development District [TDD], between Briar Street and Nall Avenue and 135th and 137th Streets, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [CIP # 191] [137th & Briar] [CORNERSTONE]

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

- G. Ordinance No. 2159 levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of assessments for the burying of power lines along 135th Street and Nall Avenue within the Cornerstone Transportation Development District, between Briar Street and Nall Avenue and 135th and 137th streets [CIP # 191] [Cornerstone] [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Filla. The ordinance passed following a unanimous roll call vote of 8-0: Yea: Councilmembers Gill, Rawlings, Gulledge, Filla, Taylor, Rasmussen, Peppes, and Bussing. Nay: None.

- H. House Bill 2689 - The City Administrator is requesting that the City Council amend its position on this Bill as follows: The City of Leawood does not support the proposed allocation formula contained in the Bill and will remain opposed until the allocation formula includes a portion of the sales tax proceeds going to the cities of Johnson County and that such formula is established by state statute.

A motion to amend the City's position on House Bill 2689 to include the additional language stated in Item No. 6H was made by Councilmember Taylor; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 8-0.

7. **CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 1048A and 1048B
- B. Accept Minutes of the March 20, 2006 Governing Body meeting
- C. Accept Minutes of the February 14, 2006 Historic Commission meeting
- D. Accept Minutes of the February 21, 2006 Park and Recreation Advisory Board meeting
- E. Accept Minutes of the February 23, 2006 IRONHORSE Advisory Board meeting
- F. Approve Massage Establishment License for Victoria Cipra/Chiro Sage Clinic, located at 8014 State Line Rd, Suite # 200, Room # 2
- G. Approve Change Order No. 2 in the amount of \$13,463.00 to Continental Construction Company, LLC, pertaining to the Parkway Plaza Benefit District Project [CIP # 195]
- H. Approve Change Order No. 9 in the amount of \$35,707.47 to APAC-Kansas, Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110]
- I. Approve 3rd and Final Payment in the amount of \$28,684.31, to Seal-O-Matic Paving Company, pertaining to the emergency repairs to Overbrook Road, north of 103rd Street

- J. Resolution No. 2568 calling for a pre-budget hearing to be held on Monday, April 17, 2006 at 7:30 P.M., or as soon thereafter as may be heard regarding the 2007 Fiscal Budget for the City of Leawood, Kansas
- K. Resolution No. 2569 accepting a Permanent Utility Easement and Temporary Construction Easement from Pawnee Place, LLC to the City, for property located on the southeast corner of 135th Street and Roe Avenue, pertaining to the Villaggio Development Improvement Project [CIP # 197 & 198]
- L. Resolution No. 2570 approving and authorizing the Mayor to execute a Right-of-Way Maintenance Agreement in the amount of \$54,565.92 between the City and S&F Mowing and R&R Mowing, pertaining to right-of-way and median maintenance
- M. Resolution No. 2571 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$253,773.00 between the City and Pyramid Contractors pertaining to the Leawood Bridge north of College Boulevard at the north end of El Monte [CIP # 112]
- N. Resolution No. 2572 amending the disbursement amounts of Special Alcohol Funds for the purpose of supporting the efforts of the various schools in providing a safe environment for Leawood students for after-prom and after-graduation events, and repealing Resolution No. 1254
- O. Resolution No. 2573 approving Leawood Middle School for a Revised Final Site Plan located at 2410 W. 123rd Street [*from the February 28, 2006 Planning Commission meeting*]

Mayor Dunn pulled Item No. 70 for presentation and discussion at the request of Blue Valley School District Superintendent Dr. Tom Trigg. Councilmember Taylor requested to pull Item No. 7K. On motion of Councilmember Bussing, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 8-0.

- 7K. Resolution No. 2569 accepting a Permanent Utility Easement and Temporary Construction Easement from Pawnee Place, LLC to the City, for property located on the southeast corner of 135th Street and Roe Avenue, pertaining to the Villaggio Development Improvement Project [CIP # 197 & 198]

Councilmember Taylor recused himself from action on this item due to a conflict of interest. A motion to approve Item No. 7K was made by Councilmember Gulledge; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 7O. Resolution No. 2573 approving Leawood Middle School for a Revised Final Site Plan located at 2410 W. 123rd Street [*from the February 28, 2006 Planning Commission meeting*]

John Fuller, Board member of the Blue Valley Board of Education, reviewed circumstances surrounding the request to defer screening requirements of rooftop HVAC units until the end of year 2010. The school is now undergoing renovations with HVAC system replacement scheduled in 2010.

In order to comply with the requirement, it will cost taxpayers approximately \$400,000 to install the screening now and then have it removed in three years when system replacement occurs. It is possible the new system will be a central plan and not require rooftop units. Mr. Fuller formally requested an extension to meet the screening requirement until 2010 for any rooftop units that remain. He also informed the roof penetrations necessary to install screening would void the warranty of the roof.

Discussion took place regarding various methods of ensuring compliance from the school board in 2010.

A motion was made by Councilmember Taylor to approve the revised final site plan and defer the screening requirement until year 2010, at which time compliance will take place for any remaining rooftop units; seconded by Councilmember Gullede.

Mr. Fuller confirmed for Councilmember Filla that Leawood Middle School has been operating without rooftop screening since construction in 1981. There have been no complaints from citizens surrounding the school. Mayor Dunn confirmed with Senior Planner Mark Klein the requirement did not go into effect until adoption of the new Leawood Development Ordinance [LDO] in year 2000.

Councilmember Bussing voiced concern with the possibility of the 2010 school budget not allowing for compliance to be met. He stated he would be more comfortable with a performance bond to ensure compliance regardless of the budget outcome.

Councilmember Rasmussen moved to amend the motion to include there be cooperation between the school board and the City in finding a method to assure occurrence of the screening in 2010; seconded by Councilmember Filla.

Councilmember Gill stated full support for the school district and felt their word would be sufficient in terms of securing future compliance.

The amendment failed following a tie vote of 4-4 (Nay: Councilmembers Taylor, Peppes, Gill and Gullede) with Mayor Dunn also voting in the negative to bring the total vote to 4-5.

Councilmember Gullede moved to amend the motion to include the stipulation of ordinance compliance in 2010 for any new or existing rooftop units; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

Mayor Dunn stated the main motion will require a 2/3 vote as it is an override of recommendations from the Planning Commission. The main motion was approved following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended the 10th Anniversary Celebration for the Leawood Chamber of Commerce along with Staff members and Councilmembers Taylor, Bussing, and Rawlings. Keynote speaker was Senior Pastor Adam Hamilton of Church of the Resurrection. Mayor Dunn congratulated President Kevin Jeffries on ten outstanding years of "building community, building relationships."
- B. Participated in Johnson County's Mayors for Meals, which is a delivery day for Meals on Wheels. There are Leawood residents who qualify for the meals as well as others in the Overland Park area and throughout Johnson County. The program provides 600 meals per day in Johnson County that are delivered by approximately 57 volunteers. Mayor Dunn encouraged those who wish to spend their time on something rewarding and worthwhile to volunteer for the program.
- C. Performed ribbon-cutting for The Living Well Chiropractic Office at Ironhorse Centre on 151st and Nall Avenue.
- D. Performed ribbon-cutting for Seville Home at Cornerstone on 135th Street and Nall Avenue. The business has relocated from Overland Park.
- E. Attended open-house for Stillwater National Bank on Tomahawk Creek Parkway at 113th Street. This is the most recent Leawood location for the bank, which is headquartered in Stillwater, Oklahoma.
- F. Attended the Harmony NCCJ Luncheon along with City Administrator Scott Lambers and Councilmember Rawlings. Reporter, poet, and activist Felipe Luciano spoke on issues effecting growing markets, the Latino community, coalition building, diversity, and multiculturalism.
- G. Attended studio tour hosted by the Leawood Arts Council at Gold Bank featuring artists Gil Rumsey, Julie Johnson, Ellen Sweeney and Judy Thompson. Councilmembers Rawlings, Bussing, and Filla also attended the event along with a crowd of approximately 200 people. Due to artist Gil Rumsey's recent gallery fire, this was the largest art show turnout to date. The artwork will be on display for a period of three weeks.
- H. Participated in the Tomahawk Creek Parkway Trail Clean-Up hosted by the Parks and Recreation Department. Mayor Dunn thanked her husband, Terry Dunn, for contributing to the effort along with 30 other volunteers. The trails were in better shape than years past.
- I. Attended dedication ceremony for the Beth Shalom Lamar Campus at 142nd Street and Lamar. Overland Park Mayor Carl Gerlach announced that Leawood and Overland Park share the congregation as they have the facility although the members live in Leawood. Mayor Dunn congratulated and welcomed the facility.
- J. Participated on a panel at Johnson County Community College for the Polsky Practical Personal Enrichment Series with Dr. Charles Carlsen and Robert Regnier of Bank of Blue Valley.
- K. Attended the County Leadership Summit with Mr. Lambers and Councilmember Rasmussen which identified key issues facing our community. Mayor Dunn stated councilmembers will receive notes on the discussions and outcomes of agreements made by consensus. A revisit of the topics will take place midyear with another possibly shorter summit taking place one year from now. Approximately 115 people attended the event.

- L. Mayor Dunn congratulated Vickie Strings on being named Leawood Rotary Volunteer of the Year for extraordinary service to the community.
- M. Mayor Dunn expressed appreciation to Councilmember Taylor for attending the St. Michael The Arch Angel DARE Graduation on her behalf.
- N. Reminder that tomorrow, April 4th, is Election Day. Mayor Dunn encouraged everyone to vote as it is a duty and privilege.

9. COUNCILMEMBERS' REPORT – Councilmember Taylor's report regarding a smoking ordinance

As a past cigarette smoker, Councilmember Taylor expressed concern for the right people have to smoke if they so desire. However, he felt it was time for Leawood to step-up as a city of the first class and begin the process of implementing a citywide ban on smoking in public places.

Councilmember Taylor requested Council support for his intent to instruct the City Administrator to draft a nonsmoking ordinance for all public facilities in the City of Leawood including office buildings, restaurants, and bars within 30 days. Councilmember Taylor suggested a review of the ordinance in 30 days with the opportunity for a public hearing and Work Session on the issue within the next 60 days before ultimate passage of an ordinance.

Councilmember Taylor stated concern for the impact this type of ordinance may have upon restaurant and bar owners, prompting his own research of the matter. He reported business operators' desire to have a nonsmoking ordinance as they feel the volume of customers who want to be in a nonsmoking atmosphere outweigh those who desire a smoking environment. He urged Mr. Lambers to include in the draft a message to exclude smoking in all outdoor as well as indoor public areas.

A motion was made by Councilmember Taylor to instruct the City Administrator to draft such an ordinance in 30 days followed by the above stated public hearings and Work Sessions within the next 60 days; seconded by Councilmember Rasmussen.

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

Johnson County Director of Public Health Leon Vinci distributed reference material to the Governing Body and stated his office would be available to assist with additional resources if needed.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. IRONHORSE ADVISORY BOARD

[from the February 23, 2006 Ironhorse Advisory Board meeting]

Recommendation for the reconstruction of greens at IRONHORSE Golf Course

Mr. Lambers clarified for Councilmember Bussing that no action will be taken on the issue this evening. The intent is to allow presentation of a report with consideration scheduled for a future City Council meeting following a Work Session.

Parks & Recreation Director Chris Claxton stated additional information regarding the condition of the greens will be provided including a short PowerPoint presentation.

Dick Fuller, Chair of the IRONHORSE Advisory Board, 10309 Sagamore Road, stated there have always been problems with the greens at IRONHORSE. If the golf course is to take an economic hit while closed for the creek bank stabilization and SMAC projects, corrective measures should be simultaneously taken for the greens. Tests have occurred over the last year to identify exact causes of the problem. Mr. Fuller recognized members of the IRONHORSE Advisory Board and golf course patrons who were in attendance. He urged the Governing Body to make a timely decision in order to coordinate efforts with the other scheduled projects.

Pete Spratlin, Golf Course Superintendent, displayed samples of the current greens.

Dave Doherty, founder and owner of ISTRC [International Sports Turf Research Center], explained his company specializes in monitoring the aging process of golf greens. He presented a PowerPoint presentation comparing the properties of healthy golf greens to the condition of the greens at IRONHORSE Golf Course. The following problems were identified:

1. Gases from the drainage system are occupying the air pore spaces which should hold oxygen, thus leaving the grass roots in a weakened condition and causing loss of turf.
2. The greens were not constructed according to USGA [United States Golf Association] Green Specifications. The choker and gravel layer which should lie between the greens mix and clay were omitted which has caused improper filtration and encasement of the drains.

Mr. Doherty concluded the current greens to be California-style greens, which were popular 10-15 years ago. This style works well with a porous material underneath, however this area of Kansas has Johnson County clay which does not allow proper water irrigation. He stated the greens material could be reused in reconstruction.

Mayor Dunn and Mr. Doherty discussed filtration options.

Mr. Spratlin expressed concern with the condition of the greens. The upcoming summer heat combined with the greens holding water will make it difficult to keep the grass alive.

Councilmember Taylor confirmed with Mr. Spratlin that all 20 greens are in need of complete reconstruction. All three cost estimates obtained came in roughly at \$1-million with 10% contingencies. Mr. Doherty stated the figure was fair using the industry estimate of \$50,000 per green. Mr. Spratlin stated in order to perform the necessary improvements and reopen for play in Spring 2008, the golf course will need to close on July 1, 2007.

Mr. Doherty explained for Councilmember Bussing how clay is kept from infiltrating the drains in an USGA style green. The clay will never come in contact with water as the drain tiles extend from the gravel layer. Mr. Doherty offered to explain the differences in green construction to the City Council during the Work Session.

Councilmember Rasmussen verified with Mr. Spratlin that construction equipment will be staged prior to the July 1, 2007 closure date. Contract terms and conditions should be ready by January 2007 in order to obtain bids. Councilmember Rasmussen stressed the importance of immediately scheduling further discussions of the topic in order to meet the needed timelines.

Mr. Lambers stated Council should determine if there is sufficient data to go forward with total reconstruction at the future Work Session. He advised partial reconstruction is not an option as it would force another closure in a few years. The Work Session could be scheduled for May 15th.

Mr. Spratlin stated six-inch drain vents were completely installed by January although have not been very effective. Findings that occurred while installing the drains prompted Mr. Doherty's involvement with extensive testing for each green. He verified for Mayor Dunn that recommendations of "Opening the tile after it exits the green should provide invaluable information. It is a process that should be repeated for every green," described on Page 6 of the February 21st report, were completed prior to January as well.

Councilmember Bussing stated Mr. Doherty's report clearly indicates the need for reconstruction. The Work Session discussion should focus on how to fix the problem rather than on additional data. He voiced favor of having the Work Session sooner than May 15th. It was decided to tentatively schedule a Work Session for April 17th.

CITIZEN COMMENTS:

1. Skip Talley, 13801 Alhambra, complimented the professionalism of the golf course and spoke in favor of the greens reconstruction on behalf of the IRONHORSE Golf Course Men's Association.
2. Jerry Horan, 12805 Cedar, member of IRONHORSE Golf Course, spoke in favor of the greens reconstruction. He stated it was better to pay for the improvements now before the problem escalates and becomes more costly.
3. Ken Smith, 12904 King Lane, Overland Park, KS, member of the IRONHORSE Golf Course, spoke in favor of the greens reconstruction.

A motion was made by Councilmember Bussing to accept recommendations outlined in the report submitted by Staff and schedule a Work Session on April 17th at 5:45 P.M., or as soon thereafter as possible, in order to develop a course of action.

Councilmember Rasmussen confirmed with Mr. Lambers that action regarding the golf course will be placed on the agenda for the April 17th Governing Body meeting.

A second to the motion was made by Councilmember Peppes. The motion was approved following a unanimous vote of 8-0.

12. PLANNING COMMISSION

[from the February 28, 2006 Planning Commission meeting]

- A. Ordinance No. 2160 approving Preliminary Site Plan, Preliminary Plat and rezoning from SD-NCR [Planned Neighborhood Retail] and SD-O [Planned Office] to RP-3 [Planned Cluster Attached], for Tuscan Reserve Village located north of 137th Street and east of Pawnee [ROLL CALL VOTE]

Chase Simmons, Esq., with Polsinelli, Shalton, et al., appearing for the applicant, stated the rezoning request is being made in order to add piazza-style condominiums to the development. He also distributed pictures of a nonfunctional detention pond for the Lord of Life Lutheran Church that is to be relocated to the corner of 137th Street and Chadwick. The pond relocation is aesthetically more in keeping with the development and will provide homes and offices in the area protection from stormwater problems.

Marjorie Kennamore, developer and marketing agent, displayed renderings and reviewed the concept of the piazza-style homes. The structures will provide a transition between the smaller villas and commercial development. She described materials used for the exterior design of the two-story condominiums.

Mayor Dunn noted the proposed 37-foot height bulk regulation is required to appear before the Board of Zoning Appeals [BZA]. Ms. Kennamore verified the location of the height variation as part of the roof due to high ceilings created on the interior of the homes.

Mr. Klein confirmed the proposed 20-foot build line is to be from the edge of the curb of all private drives.

Ms. Kennamore stated the proposed 5-foot wall/fence will surround the piazza-home portion of the development and provide ventilation and privacy. The current design involves a 3-foot stucco wall attached to a 2-foot wrought iron wall. The wall will be arched reminiscent of an Italian bridge and include lanterns along the length.

Mr. Simmons indicated the location of the existing detention pond for Councilmember Filla. Mr. Kennamore stated the new detention pond will include a lighted fountain.

Mr. Simmons clarified for Councilmember Rasmussen that although the developer currently runs a homeowners association, he will be turning over his authority. He also clarified that detention requirements for the Tuscan Reserve Village are met by a large lake in the southern portion of the overall development. The relocated pond will meet detention requirements for the Lord of Life Lutheran Church, however is viewed as an amenity and will be maintained by the homeowners association.

Mr. Simmons stated the pond will be engineered for low maintenance with a maintenance reserve fund set in place. The church has no future obligation to the pond and will not contribute to the maintenance reserve fund.

Councilmember Bussing felt the wall/fence would preclude recommendations from the Planning Commission to create a stronger connection between the condominiums and future commercial development. Mr. Simmons stated there will be openings in the fence with the planned pedestrian walkway going through the entire development also providing integration. Landscaping and amenities such as benches will additionally provide a closer connection. Mr. Klein stated integration concerning the wall could be stronger with the proper design. He suggested gateways within the fence with the arrangement of adjacent open space. Councilmember Bussing encouraged the applicant to appropriately modify the fence. Mayor Dunn noted the concern is addressed by Stipulation No. 8.

Engineer Harold Phelps, 1270 N. Winchester, Olathe, KS, confirmed for Councilmember Taylor the lake was designed to serve as a detention basin for the entire Tuscany Reserve development, including retail properties. The proposed pond will serve the church property only.

Mr. Simmons read Stipulation No. 1b of the Public Works memo into the record:

“Provide a storm sewer line to connect the future Tuscany Reserve commercial to the proposed main storm sewer line through Tuscany Reserve Village.”

The memo was amended by City Engineer David Ley and distributed at the Planning Commission meeting. The new stipulation reads:

“The developer shall provide an easement for a future storm sewer line to connect to the Tuscany Reserve Commercial storm sewers to the proposed main storm sewer line through Tuscany Reserve Village or provide bio-engineering improvements to the existing creek on the Lord of Life’s property in accordance with APWA Standards.”

Mr. Simmons stated an agreement will be made with the church before closure on the property occurs and before final approval is requested. Mr. Klein stated the amended stipulation was approved by the Planning Commission, however was not included in Council packets.

A motion to approve the rezoning request was made by Councilmember Gullede; seconded by Councilmember Taylor. The ordinance passed with the following unanimous roll call vote of 8-0: Yea: Councilmembers Gill, Taylor, Rasmussen, Peppes, Filla, Rawlings, Bussing, and Gullede. Nay: None.

B. Resolution No. 2574 approving the First Phase for Final Site Plan for Parkway Plaza - Demdaco located on the northwest corner of 135th Street and Roe Ave

A motion to approve the resolution was made by Councilmember Taylor; seconded by Councilmember Gullede.

Applicant Kevin Wilkerson with Trammell Crow Company, 7400 College Boulevard, confirmed for Mayor Dunn there were minor changes in the use of brick with the addition of stone in order to integrate with the County Club Bank building. Mr. Lambers advised as the changes are with approved materials, a supermajority vote will not be required.

Councilmember Gullede commented he liked the changes in roof shingles.

Mr. Wilkerson noted the use of spandrel glass on the rendering. The glass is being used to block any light that would penetrate between the dropped ceiling and the finished floor elevation of the second and third floors.

Ron Shallwacker with Finkle Williams Architecture, 9900 W. 109th Street, Suite 350, Overland Park, KS, displayed a material sample palette and confirmed the use of limestone brick for Councilmember Taylor.

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

- C. Resolution No. 2575 approving a Final Plat for Mission Reserve Annex, 2nd Plat, located at 15310 Sherwood Street

A motion to approve the resolution was made by Councilmember Taylor; seconded by Councilmember Bussing.

Mr. Klein verified for Mayor Dunn the encroachment will be reduced from 25-feet to 22-feet for a distance of 15-feet along the property line to accommodate an existing sport court.

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

13. OLD BUSINESS – None.

14. NEW BUSINESS

- A. Ordinance amending § 4-121 of the Code of the City of Leawood, Kansas, 2000, entitled 'Building and Construction Permits,' and repealing existing § 4-121 [ROLL CALL VOTE]

Given the lateness of the hour and based upon written comments expressing questions and suggestions from members of both the Home Builders Association [HBA] and homeowners associations [HOAs], Councilmember Filla proposed to continue the item and create a working committee in order to discuss and improve upon the existing ordinance provided by Staff.

A motion to continue the item for a period of 90 days and instigate a task force to work with builders and interested parties of homeowners associations was made by Councilmember Filla; seconded by Councilmember Gullede.

Councilmember Rasmussen stated he was impressed by a letter distributed to the Council from Leawood citizen Jake Schloegel concerning the issue and suggested that Mr. Schloegel be part of the committee.

CITIZEN COMMENTS:

1. Dennis Younger, 12904 Alhambra, representing the Cherry Creek Homeowners Association, relayed a remodel situation in which a single-family home was interiorly modified into a multi-family home, which is a zoning violation. He requested the language of the proposed amendment be expanded to allow HOAs the opportunity to review permits of interior modifications which change the character and use of the home in addition to permits increasing home square footages by 25%.
2. Ginny Moore, 9006 High Drive, Vice President of Leawood Estates Homeowners Association, spoke in favor of deferring action on the proposed amendment and creating a task force as there are concerns that should be addressed.
3. Meg Gilmore, 9010 High Drive, requested to forfeit her opportunity to speak in order to allow comments from a member of the National Association of Remodeling Industry [NARI].
4. Dan Thorman, 3212 W. 81st Street, Prairie Village, Kansas, Governing Affairs Committee Chair, spoke on behalf of the Kansas City Branch of NARI. He stated the proposed amendment is an inappropriate way to address concerns of homeowners associations. The process put in place by the amendment would open the door for unqualified interpretation of city codes and undue burden for homeowners. If a review is deemed essential from a third party, he suggested meeting the need for conformity to local standards and maintaining architectural integrity of home exteriors with a mayoral appointed Architectural Review Board [ARB]. The board could review applications on a biweekly basis. Mr. Thorman stated the City of Mission Hills currently has such a board.
5. Jim Scoville, 2911 W. 68th Street, Mission Hills, Kansas. As Chair of the Mission Hills ARB, Mr. Scoville described the process by which applications are reviewed in Mission Hills. He spoke in opposition of the proposed code amendment and encouraged the creation of a task force.
6. David Conderman, 3204 W. 81st Terrace, spoke in opposition of the proposed amendment. As a realtor, he has always been impressed with and considers the permit process in Leawood to be the best. Review of HOAs covenants and restrictions should not be the duty of the City to enforce. He stated concern that passage of the ordinance would have a negative impact on home values in the area. The 30 day review period could possibly increase remodeling costs by thousands of dollars. If passage of the ordinance occurs, Mr. Conderman suggested a grandfather clause in fairness to property owners depending upon the current permitting process.
7. Mac Colt, 21225 W. 96th Terrace, Lenexa, KS, spoke in opposition to the proposed amendment. Deed restriction violations should be enforced by homeowners associations without involvement of the City. He stated the ordinance would create unwarranted bureaucracy and argued against formation of a committee. Mr. Colt also advocated the need for a grandfather clause upon passage of the ordinance.

8. Bill Brockman, 12812 Oakland, Grandview, MO, spoke in opposition of the proposed amendment on behalf of three Leawood residents. Through his experience as a contractor, his clients have viewed their homeowners associations as cumbersome entities. Mr. Brockman stated the Codes Administrator Department does a very good job of enforcing the current codes regarding home footprints and does not need to take on restrictions put in place by HOAs, especially those regarding home interiors.
9. Mary Durham, 8915 Pawnee Lane, spoke in favor of the proposed amendment and development of a task force. She is concerned with various remodels occurring in her neighborhood.

Councilmember Gullledge withdrew his second to the motion based upon citizen comments. A second to the motion was provided by Councilmember Taylor. The motion was approved following a vote of 7-1 (Nay: Councilmember Gullledge).

Mayor Dunn stated she would begin working on the task force within the next week. Intentions of the task force will become clear with involvement of the City Attorney and other members of the Staff. The purpose of the task force will be to simply make recommendations to the Governing Body for future action. The group will be composed of no more than ten members and will include representatives from both homebuilders and interested members of HOAs.

15. OTHER BUSINESS – None.

ADJOURN

There being no further business, the Governing Body meeting adjourned at 10:30 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk