

Minutes

DVD No. 141

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 17, 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.

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Joe Johnson, Public Works Director
Shelley Sawyer, Court Administrator
Eirene Oliphant, Building Official
Jeff Joseph, Planner
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney
Chief Sid Mitchell, Police Department
Chris Claxton, P&R Director
Shannon Marcano, Assistant City Attorney
Mark Klein, Senior Planner
Deb Harper, City Clerk
Scott Smith, Internet/WAN Specialist

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted an amended agenda with the addition of Item No. 8W to the Consent Agenda. Other additions will include a Legislative update from State Representative Pat Colloton under Item No. 5 and scheduling of an Executive Session under Other Business as Item No. 18A. A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Peppes. The agenda 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.**

Mary Tearney, 3308 W. 127th Street, expressed appreciation to Mayor Dunn and Councilmember Rawlings for agreeing to serve another four years as Mayor and Ward 2 Councilmember, respectively. She also thanked Councilmember Taylor for providing nine years of service to the City Council.

Mayor Dunn also extended gratitude to Councilmembers Peppes and Gill for agreeing to carry out another term and, in turn, thanked Ms. Tearney for her efforts on the Leawood Arts Council.

4. PROCLAMATIONS National Volunteer Week, April 23-29, 2006

Mayor Dunn read the National Volunteer Week Proclamation into the record. She announced there will be a Volunteer Appreciation Recognition Reception on April 24th from 4:00 to 6:00 P.M. at Ironwoods Lodge. A round of applause was given for all volunteers in the City of Leawood.

Crime Victims' Rights Week, April 23-29, 2006

Mayor Dunn proclaimed the week of April 23-29, 2006 as Crime Victims' Rights Week.

Arbor Day, April 28, 2006

Mayor Dunn read and presented the Arbor Day Proclamation to Parks & Recreation Director Chris Claxton.

5. PRESENTATIONS/RECOGNITIONS State Representative Patricia Colloton; Legislative Update

Rep. Colloton summarized the following issues from the main Legislative session that may affect the City:

1. School Finance: The House has passed a Bill which will provide Johnson County with local control options for school funding at the level voters will approve. Revenue estimates to fund the plan are \$290 Million above the November 2005 figures, leaving no concern for a tax increase next year or possibly the following year.
2. Eminent Domain: The version passed by both the House and Senate allows taking of property for economic development subject to State approval. However, obtaining approval will be hindered as Legislature is only in session three months a year.
3. General Sales Tax Authority of Cities: There has been concern that non-uniform sales taxes throughout the State would cause violation of the National Streamlined Sales Tax Provision. The Department of Revenue is advocating a provision to allow cities to raise sales tax by 2-cents over time. This will be given as an authority and take away the individual authority of cities to raise sales tax. This issue will probably go before Legislature in the final session.
4. Scruffy's Law: This will make animal abuse a felony. Violators will be sent for counseling.
5. Booster Seats: In 2008, Booster seats will be required for children ages 4-7. Following a one year grace period, the \$60 fine will be waived for first-time violators and second-time violators may purchase a booster seat in lieu of the fine.

6. County and City Sales Tax: Representative Colloton expressed confidence that a compromise will be reached between the County and cities in order to present Legislature with a bill for Johnson County.

Rep. Colloton informed Mayor Dunn the anticipated length of the Veto Session is 10-12 business days.

Councilmember Bussing thanked Rep. Colloton for the update and for her service in Topeka. He inquired if the state budget included a provision allowing excess revenue to replenish the depleted state reserve fund balance. Rep. Colloton stated there should be a 7% balance at the state level with the proposed budget projecting a reserve of 4.5%. Revenue will likely be taken up with healthcare measures, school funding, and machinery and equipment sales tax exemption.

Councilmember Gill asked for the Senate's position regarding the school financing issue. Rep. Colloton stated the House Bill is getting favorable input from the Senate. She felt optimistic that funding needs will be met for poor urban centers as well as allow Johnson County and other areas to have local control. There are 14 favorable votes at this time. Rep. Colloton stated Senators Kay O'Connor, Dennis Wilson, Karin Brownlee, and Nick Jordan are undecided on the issue.

Mayor Dunn echoed Councilmember Bussing's gratitude to Rep. Colloton for her superb service. Rep. Colloton encouraged councilmembers to contact her office regarding any legislative concerns.

6. SPECIAL BUSINESS

House Bill No. 2689 – City Administrator Scott Lambers informed the Governing Body of two meetings he attended today regarding this issue. The first meeting occurred between various city managers/administrators in preparation for a later scheduled meeting with the County. County representatives Michael Press and Hannes Zacharias were in attendance. The cities of Olathe, Roeland Park, Fairway, Mission Hills, Overland Park, Lenexa, Merriam, Mission, and Shawnee were also participants.

The following proposal was developed:

1. The county will request up to a 0.3% sales tax authority.
2. Any and all revenue will be used for county and city infrastructure.
3. Revenue will be allocated by State Statute as 75% to the county and 25% to the city.

It is the intent of County Manager Michael Press to present the proposal to the County on Thursday and for various managers/administrators to advise their governing bodies accordingly.

Mr. Lambers requested endorsement of the compromised proposal.

Councilmember Rasmussen confirmed with Mr. Lambers that a time limit on the sales tax increase will not be identified by State Statute, however the County may include such terms on the ballot question. The authority is for in perpetuity.

Councilmember Gill reviewed the proposal terms with Mr. Lambers.

A motion was made by Councilmember Rasmussen to endorse the City Administrator's recommendations regarding House Bill 2689; seconded by Councilmember Bussing.

Mayor Dunn noted the 75/25 split to be against the formula (2/3 county and 1/3 city) agreed upon by the task force assigned by the Johnson County Council of Mayors. Mr. Lambers stated the County made it clear at the beginning of the meeting they would not accept the formula. The 75/25 split is a compromise between the task force recommendations and the County's unacceptable offer of 17% to cities. The County was also made aware the 0.5% sales tax authority request was too high, hence the lower 0.3% proposal.

During the meeting, Mr. Press stated he interpreted an understanding from a majority of the County Commissioners that an allocation formula would be established by State Statute, although this has not yet been formally indicated.

Calculations for the proposed formula estimates \$36 Million of revenue will be generated with \$27.9 Million going to the County. Mr. Lambers stated this is an equitable compromise to resolve this issue.

Councilmember Gill verified with Mr. Lambers that infrastructure is not defined by State Statute. The intention is that it will include structures, roads, storm sewer improvements, jails, and courthouses. The cities will have the option to construct the same. The definition has not yet been agreed upon.

Mr. Lambers informed Councilmember Gill the County representative did not say he would recommend endorsement of the proposal to the County Commission, he only agreed to make a presentation on Thursday. Councilmember Gill stated it is important for the County to respect and act upon the recommendations in the same good faith manner the cities are prepared to do.

Mayor Dunn noted it was the commissioners who requested the meeting between County Manager Mike Press and the city managers/administrators in order to take the issue out of the political arena. She concurred with Councilmember Gill's remark.

Mr. Lambers relayed the issue of good faith negotiating was discussed at the meeting. Another meeting will not occur until the Veto Session convenes. He noted the situation of administrators negotiating on behalf of governing bodies is unprecedented.

Mayor Dunn clarified with Mr. Lambers there was not a consensus among all the municipal representatives present at the meeting regarding the proposal. The agreement was to present the proposal for consideration to individual governing bodies.

Mayor Dunn relayed receiving information that park improvements could not be part of infrastructure dollars. Based on information from both the Senate and House tax committees, Rep. Colloton affirmed the interpretation at the legislative level does not include park improvements. Councilmember Rasmussen speculated this could be due to specific statutes related to parks. Rep. Colloton stated boundaries were discussed with legislative tax advisors, who agreed the revenue could be used for services such as design and architecture as long as it relates to public infrastructure.

Mayor Dunn confirmed with Rep. Colloton the typical sales tax statute throughout Kansas allows 73% to cities and 27% to counties. The one exception is the 0.5% sales tax for counties which is traditionally limited to identified public infrastructure and requires a vote. Johnson County has had two specific sales tax authorities in the statutes: a special sales tax authority of 0.25% for economic development with a split of 2/3 to cities and 1/3 to the county; and, a 0.10% sales tax used for sewage and water issues following the great flood on the Plaza in the 1970s.

Another unique element to Johnson County's position for House Bill No. 2689 is the in perpetuity while other counties have a Sunset Provision. Rep. Colloton stated the in perpetuity is an unusual feature for this authority and is not sure if this element will remain in the final bill.

Mayor Dunn clarified the motion with Councilmembers Rasmussen and Bussing.

Councilmember Rasmussen expressed concerned with the in perpetuity feature. Mr. Lambers stated if the County decides to debt service construction of major projects over a 20-year timeframe, the Sunset Provision would be rendered meaningless. By reducing the authority cap, the in perpetuity should not cause much angst for voters.

Councilmember Peppes requested Mayor Dunn's opinion of the proposal. She stated the formula created by the Council of Mayors task force would have been fair for Leawood and good for the County due to the in perpetuity. The current proposal is outstanding for the County. She stated if the County turns the proposal down in any way, reverting back to the 1/3 minimum will be discussed.

Mayor Dunn reported County Attorney Don Jarrett made it abundantly clear that if the county received the originally requested 100% authority, only county infrastructure needs could be met by way of county buildings and improvements in unincorporated areas. None of the revenue could be used for city needs. She noted Leawood will need continuous reinvestment following complete build-out in order to keep a premiere community status, which will require extensive funding. She stated the motion was very generous to the County.

The motion to endorse the City Administrator's recommendations regarding House Bill No. 2689 was approved following a unanimous vote of 8-0.

7. PRE-BUDGET PUBLIC HEARING 2007 Fiscal Budget

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

8. 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 No. 1048C
- B. Accept Minutes of the April 3, 2006 Governing Body meeting
- C. Accept Minutes of the March 27, 2006 Special Call Governing Body meeting
- D. Accept Minutes of the March 7, 2006 Parks and Recreation Advisory Board meeting
- E. Accept Minutes of the March 21, 2006 Historic Commission meeting
- F. Accept Minutes of the March 29, 2006 Public Works Committee meeting
- G. Accept Minutes of the January 24, 2006 Arts Council Meeting
- H. Approve request for services for an amount not to exceed \$56,093 to American Micro Company pertaining to the Court Systems Scanning Project
- I. Resolution accepting and approving the Annual Report regarding the Leawood Public Art Impact Fee and providing for no change to such impact fee, pursuant to Code § 12-601 et seq – ***Continued from the February 20, 2006 Governing Body meeting*** – **CONTINUED TO THE JUNE 5, 2006 GOVERNING BODY MEETING**
- J. Approve Bids in the amount of \$\$41,768.00, from American Equipment Company; \$39,960.00, from Key Equipment Company; \$59,499.88, from KC Bobcat Company; \$ 9,034.00, from PMSI; \$9,700.00, from Spaulding Manufacturing; \$ 4,293.59 from Hertz Equipment Company; \$49,730.00 from KCR International Truck Company, pertaining to the purchase of certain Parks and Recreation and Public Works Equipment
- K. Resolution No. 2577 authorizing the Mayor to execute Amendment No. 1 to that certain User Agreement in the amount of \$71,317.44 between the City of Leawood and the City of Overland Park, dated November 18, 2002, pertaining to the software license and integration of the Intergraph Public Safety, Inc., computer software program for the Leawood Police Department
- L. Resolution No. 2578 accepting a Temporary Construction Easement and Permanent Storm Sewer Easement located at 2805 W. 83rd Street, from Matthew I. And Kristen L. Germann for Storm Water Drainage Improvements to the Dykes Branch [SMAC PROJECT DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

- M. Resolution No. 2579 approving and authorizing the Mayor to execute Amendment No. 1 to that certain Consulting Engineer Agreement dated July 18, 2005, between the City and Continental Consulting Engineers pertaining to the Villaggio Development [CIP # 197; \$80,000] and [CIP # 198; \$18,000]
- N. Resolution No. 2580 approving and authorizing the Mayor to execute a Service Contract in the amount of \$22,330.00 between the City and Regents Flooring Co., Inc., pertaining to the floor replacement for the Oak Room in the Community Center
- O. Resolution No. 2581 approving and authorizing the Mayor to execute an Engineering Service Agreement between the City and Design Sense, Inc., in the amount of \$18,865.00, to provide design engineering services for the City, pertaining to the new facilities at Ironwoods Park, located at 14701 Mission Road
- P. Resolution No. 2582 accepting the conveyance of a Storm Sewer Easement from Water District No. 1 of Johnson County to the City of Leawood, for property located in the Highlands Creek, 6th Plat subdivision
- Q. Resolution No. 2583 approving Mission Farms Mixed Use Development for a Revised Final Site Plan located on the southeast corner of 105th Street and Mission Road [*from the March 28, 2006 Planning Commission meeting*]
- R. Resolution No. 2584 approving Ironhorse Centre Phase III for a Revised Final Site Plan located on the southeast corner of 151st Street and Nall Ave [*from the March 28, 2006 Planning Commission meeting*]
- S. Resolution No. 2585 approving a Final Site Plan for Parkway Plaza Retail Building #1 located on the northwest corner of 135th Street and Roe Ave [*from the March 28, 2006 Planning Commission meeting*]
- T. Fire Department Monthly Report
- U. Municipal Court Monthly Report
- V. Police Department Monthly Report
- W. Mayoral Appointment of Building Permit Task Force

Councilmember Taylor requested to pull Item Nos. 8F and 8M. Councilmember Rasmussen requested to pull Item No. 8L. Councilmember Bussing requested to pull Item No. 8W. On motion of Councilmember Gullede, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 8-0.

- 8F. Accept Minutes of the March 29, 2006 Public Works Committee meeting

As Chairman of the Public Works Committee, Councilmember Taylor extended appreciation to neighbors in attendance for expressing interest in the improvements on Nall Avenue between 151st Street and 154th Street. He stated the Public Works Committee is making recommendations to omit the median strips from the project, which has been part of Overland Park's design for this particular section of the street. Engineering representatives of Overland Park will make recommendations to the Overland Park Public Works Committee to grant our request with the exclusion of the intersection at Nall Avenue and 153rd Terrace. Councilmember Taylor stated this would be a reasonable compromise for the neighborhood and would allow full turning access to all subdivisions east of Nall without requiring a U-turn. The excluded intersection at 153rd Terrace can be easily accessed via 152nd and 154th streets.

Public Works Director Joe Johnson displayed an aerial view of Nall Avenue and explained the proposed improvements. Based upon the volume of southbound left turning movements, Overland Park has agreed to shorten existing medians at 152nd Terrace to allow full access. Northbound left turns at 153rd Terrace are at a level to require a 15-20 car storage area, hence the need for a median at this intersection.

Citizen Jon Gilchrist, 5441 W. 153rd Terrace, spoke in favor of having full access at 153rd Terrace. He suggested having a similar turning lane schematic as 152nd Terrace on 153rd Terrace, which would decrease U-turns and increase safety for students traveling to and from the elementary school on 158th Street and Roe Avenue.

Councilmember Taylor restated the Public Works Committee recommendation is to eliminate all median strips, however it is up to the Overland Park City Council to make a determination. A compromise of the recommendations can be entertained if agreeable with the affected residents.

Mr. Lambers informed Mayor Dunn that Leawood's authority over the Overland Park administered project rests with the right-of-way boundary line between the two cities. If they chose to do so, Overland Park could put a median on their side. Mr. Lambers stated the left turning lane length is predicated upon a traffic estimate. The prudent course of action would be to assume the traffic analysis is correct and install the lane now at the proposed length so as to avoid stacking into the travel lane. Leawood can propose breaking the median at a later date and at our expense if it becomes evident the stacking lane is too large.

Mr. Johnson suggested delaying action on the Public Works Committee recommendations so as to continue negotiations with Overland Park. Councilmember Rasmussen stated a delay would infer concurrence with the median at 153rd Terrace and he would prefer a vote to demonstrate favor of no medians.

A motion was made by Councilmember Rasmussen to accept the Public Works Committee meeting minutes; seconded by Councilmember Filla. The motion carried with a unanimous vote of 8-0.

Another motion was made by Councilmember Rasmussen to accept recommendations from the Public Works Committee to omit all medians; seconded by Councilmember Taylor.

Mr. Johnson informed Councilmember Gullede it is his opinion, as well as that of Overland Park, that having medians provides the best safety on a 45 mph roadway. Minimizing the number of turning movements will minimize accident levels. Overland Park proposed shortening the storage area to allow full access at 152nd Terrace as a compromise. This will also maintain separation between north and southbound lanes. Mr. Johnson believes it is necessary to separate the traffic on this road.

Councilmember Taylor stated the report from Overland Park's traffic engineer opposed the report from Bucher, Willis & Ratliff. A reduction of speed limit from 45 to 35 mph would make turning maneuvers safe, which has been done in various areas of the City.

In the interest of safety, Councilmember Gullede voiced favor for keeping the medians. Reducing the speed limit does not ensure that people will abide with a lower rate of travel. Councilmember Taylor noted there is signalization at the intersection of 151st Street, which would prevent vehicles from traveling the full 45 mph. Mr. Johnson stated the road will be designed for 50 mph with Overland Park posting southbound lanes at 45 mph, however Leawood could choose to post northbound lanes at a lower rate.

Councilmember Rasmussen reminded the intent is to negotiate with Overland Park's Public Works committee with the focus being to change the configuration of the median at 153rd Terrace. He pointed out Overland Park most recently increased the speed limit on 103rd Street to 45 mph with no medians. The design they are proposing for Nall Avenue seems to place an undue burden upon Leawood citizens. He requested support for the motion in hopes that a satisfactory solution will be reached. Residents attending the meeting applauded Councilmember Rasmussen's statement.

Councilmember Filla acknowledged the fact the citizens who are at greatest risk are requesting to not have the inconvenience of the medians. She agreed there are many undivided four-lane roadways around the City.

Councilmember Bussing stated he preferred to rely upon recommendations of the experts and allow Mr. Johnson to continue the negotiation process. To completely strip the medians and knowingly create a less safe environment would be a less prudent course of action.

Councilmember Gullede expressed concern for motorists not familiar with the terrain and voiced opposition to the motion. He agreed with changing the median configuration at 153rd Terrace but was not ready to omit all medians at this point.

Mayor Dunn verified with Mr. Johnson that negotiations with Overland Park are still ongoing. He stated he will update the Governing Body with solution suggestions for 153rd Terrace as well as recommendations from Overland Park's City Council.

Councilmember Rawlings confirmed with Mr. Johnson that even if Leawood posts the northbound lanes at 35 mph, the road will still be designed for 50 mph on both sides. However, this would create confusion unless Overland Park also posts the southbound lanes at 35 mph.

The motion to omit all medians from this section of Nall Avenue failed with a vote of 2-6 (Yea: Councilmembers Rasmussen and Taylor. Nay: Councilmembers Peppes, Gullede, Bussing, Rawlings, Gill, and Filla).

Mayor Dunn stated negotiations will continue to provide a solution that is both convenient and safe.

- 8L. Resolution No. 2578 accepting a Temporary Construction Easement and Permanent Storm Sewer Easement located at 2805 W. 83rd Street, from Matthew I. And Kristen L. Germann for Storm Water Drainage Improvements to the Dykes Branch [SMAC PROJECT DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Councilmember Rasmussen stated it has been a policy for easements associated with SMAC projects to be provided without cost. He objected to payment for the easement and wished to vote against the resolution.

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Gulledge. The motion was approved with a vote of 6-2 (Nay: Councilmembers Rasmussen and Taylor). Councilmember Taylor echoed Councilmember Rasmussen's reasoning for the nay vote.

- 8M. Resolution No. 2579 approving and authorizing the Mayor to execute Amendment No. 1 to that certain Consulting Engineer Agreement dated July 18, 2005, between the City and Continental Consulting Engineers pertaining to the Villaggio Development [CIP # 197; \$80,000] and [CIP # 198; \$18,000]

Councilmember Taylor recused from this item due to a conflict of interest. A motion for approval was made by Councilmember Gulledge; seconded by Councilmember Bussing. The resolution was approved following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 8W. Mayoral Appointment of Building Permit Task Force

Councilmember Bussing asked if an objective had been defined for the task force. As Chair of the Building Permit Task Force, Councilmember Rawlings stated a mission will be formulated during the committee's first meeting, which will be called shortly. Referring to her memo, Mayor Dunn stated the 90-day timeframe given for the task force to complete their work will not begin until the first meeting is held. She expressed confidence in the group and thanked all participants.

Councilmember Bussing encouraged Mayor Dunn and Councilmember Rawlings to create a scope and objectives document for the group before they undertake their mission due to the broad range of focus associated with the issue. Councilmember Rawlings noted and appreciated the comment.

A motion to approve the mayoral appointment was made by Councilmember Bussing; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

9. MAYOR'S REPORT

- A. Participated along with City Administrator Scott Lambers on the Johnson County Economic Development Roundtable Discussion for *Ingram's Magazine* at Johnson County Community College. The event was co-chaired by Dr. Charles Carlsen and Johnson County Commission Chairwoman Annabeth Surbaugh.

- B. Attended the Council of Mayors meeting in Gardner, Kansas. President of the Johnson County Arts Council Larry Meeker presented a plan which will be proposed to the Johnson County Commissioners. The plan will include three points of consideration:
1. Allocate 1% of construction costs for county projects to public art.
 2. Allocate 1% of costs for all roads and bridges to public art.
 3. Mandate all TIF projects to contribute 1% of costs to public art.
- The proposal was met with a variety of reactions from members of the Council of Mayors. The presentation illustrated Leawood as a community in the metropolitan region who contributes a great deal to public art in terms of policies and public art impact fees. Additionally, the topic of the county sales tax was discussed with County Chairwoman Surbaugh and a wide array of county representatives. The decision to have a group of mayors meet one week ago produced the one-third/two-thirds compromise.
- C. In recognition of the month of April being Child Abuse Prevention month, attended a mini-conference co-sponsored by Children's Mercy Hospital and the Ewing Marion Kauffman Foundation with other legislators and elected officials from Kansas and Missouri. Dr. Vincent Felitti presented the implications of adverse childhood experiences on adult physical and mental health problems.
- D. Participated in a ribbon-cutting for Ko's Black Belt Academy at 142rd Street and Kenneth Road in Camden Woods. The academy presented Mayor Dunn with an honorary black belt. She shared the belt and a block of wood broken with the palm of her hand after instruction by Master Ko. This is the third location for the business and Mayor Dunn wished them much success.
- E. Attended the State of the County Address given by Commission Chairman Annabeth Surbaugh at the Ritz Charles Hotel. Councilmember Taylor along with many members of the professional staff and Leawood Chamber of Commerce were among the 900 attendees. The speech focused on the successes of Johnson County as well as the opportunities and challenges.
- F. Attended the Leawood Lion's Club Dinner. Keynote speaker Kansas District Governor Bernard Lee reported on the strengths of the Lions and their service to the community.
- G. Announced the Volunteer Appreciation Recognition Reception to take place at Ironwoods Lodge on April 24th from 4:00 P.M. to 6:00 P.M. Mayor Dunn encouraged those planning to attend to submit an RSVP.

Councilmember Bussing congratulated Mayor Dunn on receiving the first ever 3C Award from the Mid-Continent Council of Girl Scouts. The 3Cs stand for courage, character and confidence. Mayor Dunn thanked Councilmember Bussing for attending the event.

10. COUNCILMEMBERS' REPORT – None.

11. STAFF REPORT

- A. Discussion regarding revisions to Code § 4-304 of the City of Leawood, Kansas 2000 [Eirene Oliphant, Building Official]

Building Official Eirene Oliphant requested changing the language of Code § 4-304 to allow the use of aluminum conductors in certain applications.

Councilmember Rasmussen stated he would like to limit a decision on this issue. Referring to Ms. Oliphant's memo, he suggested allowing the insertion of the words "and feeders" after branch circuits in the current language. However, action on the request to permit the use of aluminum for service entrance conductors in residential dwellings should be postponed to allow further discussions with Staff, including the Fire Chief.

A motion was made by Councilmember Rasmussen to insert the words "and feeders" after branch circuits in Code § 4-304; seconded by Councilmember Gill.

Councilmember Filla confirmed with Ms. Oliphant the current City Code amended the 1999 National Electrical Code by limiting the use of aluminum conductors.

Mayor Dunn verified with City Clerk Deb Harper that a code revision will require an ordinance. Interested contractors may be informed of the future code change, however it will not go into effect until publication occurs of an adopted ordinance. An ordinance can be presented for a roll call vote at the May 1st Governing Body meeting.

Mayor Dunn confirmed with Ms. Oliphant the two issues associated with this item should be discussed separately.

The motion to amend the current language of Code § 4-304 was approved following a unanimous vote of 8-0.

COMMITTEE RECOMMENDATIONS

12. PLANNING COMMISSION

[From the March 28, 2006 Planning Commission meeting]

- A. Resolution No. 2586 approving a Final Site Plan for Lord of Life Pre-school Canopy located at 3105 W. 135th Street

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

Applicant Grant Sams, 11110 W. 117th Street, Overland Park, Kansas, proposed building a freestanding canopy over the walkway to the entrance of the Lord of Life Pre-school as part of his Eagle Scout project. He listed the advantages of having a canopy on this site and stated the project will take place on May 13th.

Mayor Dunn confirmed with Mr. Sams the project was approved by the Boy Scouts of America. Mr. Sams belongs to Troup No. 201. He is planning to have the entire project, including report, complete by June 1st with the Eagle Court of Honor occurring in August.

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

- B. Resolution approving a Final Site Plan for 2020 W. 89th Street Parking Lot located at 2020 W. 89th Street

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

On behalf of the applicant, Wells Real Estate, Curtis Holland, Esq., Polsinelli, Shalton et al., distributed additional photographs and information regarding the proposed parking lot expansion. The building located on the property is currently empty. Potential tenants have consistently complained of the building being under-parked. The current parking ratio of 2.6 will increase to 4.0 with the expansion of 143 parking spaces, which is within requirements of the Leawood Development Ordinance [LDO].

Councilmember Rasmussen expressed concern the parking lot extension would interfere with plans to extend the pedestrian walking trail. Mr. Holland stated the trail was discussed with Staff and is proposed in Stipulation No. 5. The stipulation requires the applicant to grant a 60' easement along the west and north property lines and construct a pedestrian trail.

Mr. Holland stated there is difficulty associated with constructing a trail on the west side of the parking lot due to locations of the main drive aisle off of 89th Street, the creek bank, and the tree line adjacent to the parking lot. He displayed various views of the parking lot to demonstrate the proximity of the structures. Mr. Holland listed three options to install a pedestrian trail in this area:

1. Remove the trees and place a trail immediately west of the curb line with guard rails to keep pedestrians from falling off the trail and a retaining wall for the creek bank. This is the most expensive option. Residents of the Leawood subdivision may not appreciate this method as they rely on the trees for screening.
2. Saw-cut 5' of pavement from the drive aisle and reinstall the curb and gutter. The trees would have to be removed, however this method will be less costly without need for a retaining wall.
3. Do nothing to the tree line and simply paint a trail onto the parking lot. This would require the relocation of 14 parking spaces.

Another concern of the client is when the trail is to be built. The stipulation requires the project to occur at the time the City obtains an access easement on the property to the north. Mr. Holland stated his client could not agree to the third option because of the potential liability for injury to a pedestrian by a vehicle. Per conversations with Staff, the City will not indemnify his client for any risks.

Councilmember Gill confirmed with Mr. Holland that his client is not willing to perform any of the listed options because of liability issues, placement difficulty, construction timeframe uncertainty, and inability to obtain insurance from the City. Legality is also an issue. Mr. Holland stated it is questionable whether the City can demand any property owner to gift an easement and pay for pedestrian amenities. An estimate obtained by Shaffer, Kline, and Warren to paint a trail on the west edge and add an asphalt trail to the north section came in at \$71,000.

Councilmember Gill verified with Mr. Holland that phase II of the development plan, approved in 1991, included an expansion of the existing building. The total square footage of the three proposed phases would have been 135,000; however, expansion cannot occur as parking requirements cannot be satisfied for the current building size.

Councilmember Gill stated current building codes have been designed to mitigate the impact of fields of asphalt. Eliminating the easement issue from consideration, he would have a hard time justifying a 56% increase of asphalt without willingness to provide amenities or discuss structured parking.

Mr. Holland stated the expanded parking lot was approved in the 1991 preliminary plan. He stated the requested final plan is in complete conformance with regulations relative to parking ratios, lighting, and landscaping. The current parking ratio is below the LDO requirement of 3.0. Councilmember Gill stated he did not see the plan as an improvement to the quality of the development and would like to see amenities to abate the impact. Mr. Holland responded increasing the parking area would bring a tenant to the building, which has not been possible with the current configuration.

Councilmember Taylor confirmed with Mr. Lambers that the Planning Commission recommended the improvements at the applicant's expense. A supermajority vote would be needed to override this recommendation. If option No. 2 were considered, the standard 10' trail could be lessened in order to avoid encroachment of the creek bank. Mr. Holland stated this solution was not acceptable due to safety issues.

Councilmember Taylor verified with Mr. Holland that his client would not meet the requirement and is asking for removal of the stipulation. Mr. Holland noted a Supreme Court case, Dolan vs. the City of Tigard, which deemed taking of property in this manner an unconstitutional condition.

Mayor Dunn requested City Attorney Patty Bennett and Mr. Lambers to advise regarding the possibility of option No. 2. Ms. Bennett stated under the Cash Basis Law, the City cannot legally promise to indemnify an entity as we cannot budget for this expense. Additional insurance is typically not provided for easements. Even if the City offered to build this section of the trail, which would be at the highest level of safety standards, the applicant does not agree to grant the easement.

Regarding Dolan vs. the City of Tigard, Ms. Bennett stated this case did not include a mathematical equation related to increased traffic. The 56% increase in parking spaces would clearly create more traffic. Mr. Holland noted other differences in the case as the property owner was not required to pay for the amenity and the comprehensive plan required dedication of the pedestrian trail. The City of Leawood does not have a code requiring easement dedications.

Councilmember Taylor stated he did not think the Council would provide Mr. Holland's client with the needed supermajority vote to override the Planning Commission's recommendations.

Noting Mr. Holland's unwillingness to accept Stipulation No. 5, Councilmember Peppes withdrew his motion to approve the application. Councilmember Gullledge withdrew his second to the motion.

A new motion was made by Councilmember Peppes to continue the item to the May 1st Governing Body meeting; seconded by Councilmember Gullledge.

Councilmember Filla suggested moving the west sidewalk closer to the building to allow a wider drive aisle for option No. 2 and possibly preserve existing foliage. Having walked this area frequently, Councilmember Filla informed there is a permanent mud hole caused by seepage of groundwater on the existing northeast parking lot. She asked Mr. Holland to address this issue with Staff. Additionally, she stated a pedestrian path would also be an amenity for employees who will be walking from the parking area to the building.

Councilmember Rasmussen inquired about plans for the area west-northwest of the parking lot. Mr. Holland stated there is a 50-foot setback buffer between the development and the adjoining property to the north. The existing silt fence is temporary as an erosion control measure while construction occurs. Councilmember Rasmussen stated support for a plan to utilize this area.

Mr. Holland stated another option, which has not been discussed with Staff, is to put the trail west of the creek where more ground is available. This would require relocation of the pedestrian bridge. He requested a remand in order for the Planning Commission to assess other options. Mr. Lambers stated disagreement with the applicant's opinion that it is impractical to build a trail. Option No. 2 would be a very viable solution.

Councilmember Peppes declined to change his motion.

Mayor Dunn stated Leawood has many corporate citizens who readily and cheerfully add quality of life amenities to improve and benefit the community. She encouraged resolution of the issue.

The motion to continue the item to the May 1st meeting was approved following a unanimous vote of 8-0.

13. OLD BUSINESS

A. Approval of action on recommendation of greens at IRONHORSE Golf Course

Councilmember Rasmussen made a motion to approve the IRONHORSE Golf Course Advisory Board's recommendations to reconstruct the existing greens at IRONHORSE Golf Course with the following specifications:

1. Reconstruct existing greens to USGA [United States Golf Association] standards.
2. Contract with Continental Engineering as Construction Manager to oversee all four improvements projects and employ a design architect for four of the greens with the City retaining approval rights for all contracts.
3. Contract with Orion Management for "Clerk of the Works" functions plus inspection of the greens construction.
4. All projects contemplated will be done during the same "shut-down" period.
5. The timeframe for shutting down the course will be determined by the City Administrator.

A second to the motion was made by Councilmember Taylor.

Councilmember Filla voiced intent to vote against the motion. She stated when citizens passed the bond for the golf course, they were under the impression it would be self-sustaining. Due to the fact the course cannot pay for itself, the 2006 budget contains a .83 mill levy increase which will continue throughout the remainder of the golf course debt. The remaining debt total at the end of 2005 was \$4.1 Million. Replacing the greens is another \$1 Million expenditure, bringing total improvement costs to \$4.3 Million.

Mayor Dunn noted \$1.8 Million of the improvements costs will be contributed by the County through SMAC funding.

The motion was approved following a vote of 7-1 (Nay: Councilmember Filla).

14. RESOLUTION NO. 2576 OF APPRECIATION TO COUNCILMEMBER JAMES E. TAYLOR, SR.

Mayor Dunn read Resolution No. 2576 in its entirety and presented a framed copy to Councilmember Taylor.

A motion to approve the resolution was made by Councilmember Gulledge; seconded by Councilmember Rawlings. The motion to approve the Resolution of Appreciation was approved following a unanimous vote of 7-0.

Mayor Dunn thanked Councilmember Taylor for the dedication, friendship, and expertise he has contributed to the Governing Body and the City of Leawood. She also presented Councilmember Taylor with a plaque for Outstanding Service and a key to the City of Leawood.

Councilmember Taylor encouraged fellow councilmembers to follow through with the smoking ordinance, which he introduced at the April 3rd meeting. He also asked the council to continue the pursuit of land annexations in order to even out the irregular city borders. He sincerely thanked the Governing Body for allowing him to be a part of their group.

Councilmember Taylor received a standing ovation.

15. OATHS OF OFFICE ADMINISTERED TO MAYOR-ELECT AND COUNCILMEMBERS-ELECT

Ms. Harper gave the Oaths of Office to Mayor Dunn and Councilmembers Greg Peppes, Jim Rawlings, Mike Gill, and James Azeltine.

16. ROLL CALL OF NEW COUNCILMEMBERS

Ms. Harper read the Roll Call of the New Councilmembers.

17. NEW BUSINESS

- A. Ordinance No. 2161 authorizing and providing for the acquisition of lands or interests therein by condemnation for the improvement of Dykes Branch Channel Improvement Project, [SMAC Project DB-04-024] from 83rd Street and Wenonga, south to 86th Street and Overhill Road, in the City of Leawood, Johnson County, Kansas [CIP # 106] [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Gill; seconded by Councilmember Bussing. The motion was approved with the following roll call vote of 7-1: Yea: Councilmembers Gill, Peppes, Filla, Azeltine, Rawlings, Bussing, and Gulledge. Nay: Councilmember Rasmussen, for reasons stated earlier.

- B. Ordinance No. 2162 granting to Everest Midwest Licensee, LLC, a contract franchise to construct, operate and maintain a telecommunications system in the City of Leawood, Kansas and prescribing the terms of said contract franchise, and repealing Ordinance No. 1970 [Roll Call Vote]

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

- C. Resolution No. 2587 approving and authorizing the Mayor to enter into a Public Land Use Agreement between the City of Leawood and Everest Midwest Licensee, L.L.C, pertaining to the installation and maintenance of communications facilities within existing conduit

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

18. OTHER BUSINESS

- A. Schedule an Executive Session immediately following the Governing Body meeting for a period of ten minutes in order to discuss a personnel matter

A motion to recess into Executive Session was made by Councilmember Bussing; seconded by Councilmember Peppes. The motion was approved following a unanimous vote of 8-0.

The Governing Body recessed into Executive Session at 10:40 P.M.

The Governing Body reconvened into regular session at 10:50 P.M.

A motion to adjourn the regular session was made by Councilmember Bussing; seconded by Councilmember Rawlings.

ADJOURN

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

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk