

Minutes

DVD No. 149

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 Tuesday, September 5, 2006. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Jeff Joseph, Senior Planner
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney
Chief Sid Mitchell, Police Department
Joe Johnson, Public Works Director
Mark Klein, Senior Planner
Deb Harper, City Clerk
Scott Smith, Internet/WAN Specialist

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn advised a report from Councilmember Gullledge will be added to the agenda under Item No. 9, Councilmembers' Report. A motion to approve the agenda was made by Councilmember Peppes; seconded by Councilmember Filla. 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.**

Roxanne Wu-Rebein, 3519 W. 100th Street, raised issue with a plan for a 17,000 sq. ft. warehouse and distribution center proposed by Village Presbyterian Church at 99th Street and Mission Road. The project is in Overland Park but will directly affect Leawood residents east of the site.

She stated the project is contrary to the Leawood goal of, "throughout our history, enhancing our fine quality of life has remained a primary focus of the Leawood Governing Body as we strive to grow with distinction." Concerns in the following areas have been raised by Leawood residents: neighborhood compatibility, funding, traffic and safety, and precedent. Ms. Rebein stated the \$11-million development is ill-suited for the residential character of the area. To date, church leaders have been unwilling to engage in public discussion with residents regarding the issue, which has created the need for governmental oversight. An informational packet regarding the project was distributed to the Governing Body. Ms. Rebein requested Council to acknowledge the situation and become informed with the history, use, proposals, and involved parties related to the property.

Dr. Tim Hardin, 9801 Mohawk Lane, spoke in opposition to the development proposed by Village Presbyterian Church as the design and appearance of Phase I are incompatible with surrounding ranch and split-level homes with traditional architectural features. He described futuristic elements of the design including loading docks with overhead metal doors, floor-to-ceiling glass curtain walls, pop-up skylights extending 6-ft. beyond the roofline, synthetic stucco, and metal window frames.

Marianne Damon, 9905 Buena Vista, Overland Park, Kansas, expressed concern with the precedent approval of the project may set for the neighborhood and greater metropolitan area. Homeowners may be subject to decreased property values and quality of life with the establishment of inappropriate nonresidential uses in residential zones.

Gail Miskew, 3516 W. 101st Terrace, voiced objections related to lack of funding for the two-phased project. The estimated cost for the entire project is \$11-million with only \$3.5-million-\$3.8-million secured for Phase I. There is no indication when additional funds will be available to complete the development. She also stated there are no limits in place as to how large the project will become with the church indicating the site may house 3-4 buildings upon final completion.

Sue Haynes, 3518 W. 100th Street, stated the warehouse/distribution center will create increased traffic and safety concerns on an already busy Mission Road. Semi-trucks needed to supply the food pantry will cause chaos and confusion within the residential areas.

Chris Wally, 4501 W. 143rd Street, spoke on an unrelated item pertaining to current zoning ordinances. He reported disturbances stemming from the use of dirt bikes and all terrain vehicles [ATVs] on the property adjacent to his home, which at times creates noise decibel readings of 95-100. Mr. Wally provided a brief videotape demonstrating his situation. He requested the Governing Body modify the current zoning ordinances in order to disallow this type of behavior in residential areas.

Councilmember Gill assured Mr. Wally there is awareness of the problem with Staff currently reviewing the ordinance structure. He thanked Mr. Wally for sharing the video clip.

Ms. Rebein informed Councilmember Gill it is her understanding that the warehouse/distribution center will be used as the collection, storage, and distribution facility for a food bank as well as for clothing, remanufactured computers, and medical supplies.

Councilmember Rasmussen asked if it were true that the attorney for the Overland Park Planning Commission stated there should be no discussion, interrogation, or investigation regarding the special use permit that was issued by the City of Overland Park approximately 30-40 years ago. Ms. Rebein reported that prior to the July 24, 2006, Overland Park Planning Commission meeting, Bart Budetti, Assistant City Attorney for Overland Park, announced the application would no longer be considered a special use permit but rather nonresidential use in a residential area. An appeal of this administrative decision is pending with the City of Overland Park. She also shared a history of ownership and warranty deeds associated with this parcel of land.

Ms. Rebein restated her request for the Governing Body to acknowledge the affect this project will have upon Leawood residents. She encouraged members of the Council to read the provided informational packet and noted it contains a link for an area of the law called RLUPA [Religious Land Use and Institutionalized Persons Act]. It is questionable whether this law is applicable to the project proposed by Village Presbyterian Church.

Mayor Dunn commended Ms. Rebein for performing such extensive research on the issue and stated she would read the provided information.

A motion was made by Councilmember Rasmussen to direct Mayor Dunn to relay an acknowledgement of concern from the Leawood City Council to Overland Park Mayor Carl Gerlach regarding the use of property at 99th Street and Mission Road in Overland Park, Kansas. The motion was seconded by Councilmember Filla. The motion was approved following a unanimous vote of 8-0.

Councilmember Bussing requested a future report from Staff regarding progression of the issue through Overland Park's planning process.

As acting Planning Director, City Administrator Scott Lambers stated he would present Council with a confidential memo containing information gathered from Overland Park Planning Director Roger Peterson on the status of the project as well as the legal opinion of City Attorney Patty Bennett regarding the limitations of the referenced religious act.

Ms. Rebein offered to submit a brief regarding RLUPA to the Governing Body and City Administrator. Mayor Dunn accepted the offer and suggested that Overland Park officials receive the information as well.

4. PROCLAMATIONS

Payroll Week; September 3-9, 2006

Mayor Dunn read and presented the Payroll Week Proclamation to Finance Director Kathy Rogers and Karry Rood, Accountant II.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

- A. Accept Recommendation from the Leawood Arts Council/APPI for the “Porch Lights’ Art Piece to be located at the intersection of Somerset and Lee Boulevard

Ann Kenney, Chair of Arts in Public Places Initiative [APPI], 9814 Overbrook Court, stated the art piece differs from past recommendations in that it contains several segments of landscaped architecture. Artist Dennis Reynolds, 9800 Overbrook Road, presented site plan drawings, renderings, and a virtual model of the design.

Mayor Dunn confirmed with Mr. Reynolds that the stone wall on the island of the intersection is 4-ft. at the highest point and tapers down to 18-inches. Mr. Reynolds displayed samples of molten glass inserts that will be incorporated into the wall and illuminated. He reported the Public Works Department has verified compliance with site line safety requirements.

Mr. Reynolds informed Councilmember Rasmussen that discussion will take place with the property owners of the commercial buildings regarding landscaping for the southwest corner of the intersection. The plants for this section of the design are approximately 24-inches tall and will not block the view of the buildings but will screen a portion of the parking area. Mr. Reynolds also stated details surrounding the electric service pedestal needed to provide the lighting aspect have not been finalized; however, it may be possible to tap into the existing traffic signal meter.

A motion to accept recommendations from the Leawood Arts Council/APPI for the “Porch Lights” art piece at the intersection of Somerset and Lee Boulevard was made by Councilmember Bussing; seconded by Councilmember Filla.

Mr. Reynolds verified for Councilmember Azeltine that the cobblestone glass features, which were a cause of concern at a previous Planning Commission meeting, have been removed from the project.

Councilmember Rawlings confirmed with Mr. Reynolds that traffic studies have been performed and there are no concerns with vehicles colliding into the stone wall. Installation of the art piece may actually improve understanding of the confusing intersection.

Parks & Recreation Director Chris Claxton clarified for Councilmember Rasmussen that the recommendation is solely for location of the art work. She stated legal documents regarding installation and negotiations with Prairie Village will be presented to the Governing Body for approval at a later date. Councilmember Rasmussen suggested obtaining a fee simple title.

Mayor Dunn confirmed with Mr. Lambers it is not necessary for the Planning Commission to review the legal documentation as their involvement will be limited to placement of the art piece.

Mr. Reynolds reported the design changes requested by Prairie Village increased the overall project cost by an estimated \$7,000-\$10,000.

Mary Tearney, Chair of the Leawood Arts Council, 3308 W. 127th Street, stated it was stressed during meetings with Prairie Village that the public art piece would not be installed until legal steps were taken by both cities to assure a long-term lease or easement. She relayed that Prairie Village is thankful for the opportunity to enhance the property.

After requesting advice from Ms. Bennett, Councilmember Azeltine stated he would abstain from voting on the motion due to previously approving the public art site while a member of the Planning Commission.

Mayor Dunn complimented Mr. Reynolds on the design.

The motion carried following a vote of 7-0-1 (Councilmember Azeltine abstaining).

- B. Request to approve 2nd extension to September 30, 2007, for Preliminary Plan and Preliminary Plat, for property located at 137th & Mission Road, Pine Lakes

Staff Recommendation: Staff is in support of the request for a 6-month extension to March 31, 2007.

Mr. Lambers stated this is the second extension request for the existing preliminary plan, which would have otherwise expired. A new application from the property owner will be placed on the Planning Commission agenda either later this month or in October. The recommendation of a 6-month extension, rather than the requested one year, will allow sufficient time to process the new application.

Larry Winn, 6201 College Boulevard, representative of the Oddo Family, property owners, stated the Governing Body has the authority to extend the time for plan approval based upon good cause shown by the applicant. The most obvious consideration is the fact that 137th Street has not been constructed and is the only street by which to access the project. Mr. Winn quoted from an e-mail he received from Mr. Lambers in April 2006 as, "I am recommending that Pine Lakes be continued until September 30, 2006, so as to provide enough time for final approval of Mission Corners." He stated it is his understanding that Mission Corners submitted a final development proposal only one week ago. Mr. Lambers clarified the proposal is a partial application with submission of a full application to follow.

Additionally, Mr. Winn reported the Oddo Family has filed a pending revised preliminary plan with minor project changes reflective of requests from neighbors. He suggested extending the expiration of the current preliminary plan to the earlier of one year from final approval of Mission Corners or within 60 days from approval of a revised preliminary plan for Pine Lakes.

Mr. Winn confirmed for Councilmember Azeltine that another extension request will be necessary at the end of the 6-month timeframe recommended by Staff.

Mr. Lambers requested a 10-minute Executive Session for attorney-client privilege.

A motion was made by Councilmember Bussing to recess into Executive Session for a period of 10-minutes in order to discuss matters subject to the attorney-client privilege; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

The Governing Body recessed into Executive Session at 8:45 P.M.

The regular Governing Body meeting reconvened at 8:55 P.M.

A motion to support the Staff recommendation of a 6-month extension to March 21, 2007, for the preliminary plan and preliminary plat for the Pine Lakes development was made by Councilmember Rasmussen; seconded by Councilmember Bussing.

Councilmember Azeltine stated he would vote in favor of the motion, however did not see the harm in granting the one year extension requested by the property owner.

The motion was approved 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. 1058A, and 1058B
- B. Accept Minutes of the August 21, 2006 Governing Body meeting
- C. Accept Minutes of the June 6, 2006 Parks and Recreation Advisory Board meeting
- D. Accept Minutes of the July 27, 2006 IRONHORSE Advisory Board meeting
- E. Approve renewal of Retail Liquor License for Ranchmart Wine & Spirit Shoppe, located at 3748 W. 95th Street
- F. Approve issuance of Temporary Alcohol Permit to sell/serve alcoholic liquor for the Fundraiser for DeLaSalle Education Center, to be held at 11701 Nall [AMC Movie Theatre] on November 28, 2006
- G. Approve retainer letter from Tim Orrick for representation in the Condemnation Appeal pertaining to the Dykes Branch Channel Improvement Project, [SMAC Project DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

- H. Approve purchase in the amount of \$23,000 from Ka-Communication for the replacement of light bars on police units
- I. Resolution No. 2648 approving and authorizing the Mayor to execute a Master Lease Agreement between the City and Ricoh Customer Finance Corporation for a 5-year lease for various copy machines
- J. Resolution No. 2649 approving and authorizing the Mayor to execute a Master Maintenance Agreement between the City and Foto Office Systems for a 5-year maintenance agreement for various copy machines
- K. Resolution No. 2650 approving and authorizing the Mayor to execute an Amendment No. 1 to that certain Professional Engineering Services Agreement, dated May 16, 2006, between the City and George Butler Associates, in the amount of \$1,500, to conduct structural inventory and appraisals on bridges
- L. Resolution No. 2651 approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood and the City of Overland Park, pertaining to the Nall Improvement Project between 143rd Street and 159th Street
- M. Resolution No. 2652 approving and authorizing the Mayor to execute a Professional Architectural Design Service Agreement in the amount of \$45,000 between the City and Clark Enterprises, LLC, for architectural services at IRONHORSE Golf Course
- N. Resolution No. 2653 approving a Final Site Plan and Final Plat for Tuscan Reserve Village, located north of 137th Street and west of Chadwick *[from the August 22, 2006 Planning Commission meeting]*
- O. Resolution No. 2654 approving a Final Site Plan and Final Plat for LeaBrooke 8th Plat, located south of 143rd Street and west of Kenneth Road *[from the August 22, 2006 Planning Commission meeting]*
- P. Resolution No. 2655 approving a Final Site Plan for I-Lan Park, located approximately 127th Street and Nall Ave *[from the August 22, 2006 Planning Commission meeting]*

Councilmember Azeltine requested to pull Item Nos. 7D and 7G. On motion of Councilmember Rasmussen, seconded by Councilmember Rawlings, the remainder of the Consent Agenda was approved following a unanimous vote of 8-0.

7D. Accept Minutes of the July 27, 2006 IRONHORSE Advisory Board meeting

Councilmember Azeltine noted the minutes are dated 11 days prior to the August 7th Governing Body meeting in which Council approved a motion to pursue a contract with Orion Management Solutions. He felt troubled with the fact that minutes containing committee input were not available to councilmembers before acting upon the issue. He implored Staff to include such information in future Council packets when a reasonable amount of time transpires between meetings. Mr. Lambers informed standard procedure was followed, which is for committees to approve minutes before they are presented to Council. The IRONHORSE Advisory Board did not approve the July 27th minutes until their August meeting. Councilmember Azeltine suggested providing Council with a draft copy of such minutes when Council is to take action directly affecting the corresponding committee.

A motion to accept Item No. 7D was made by Councilmember Azeltine; seconded by Councilmember Filla.

Mayor Dunn noted Council liaisons are appointed to committees in order to inform other Governing Body members of pertinent meeting issues, which was done by Councilmember Bussing as liaison to the IRONHORSE Advisory Board.

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

Referring to discussion within the minutes regarding consideration of a protective fence for the driving range along Bell Drive, Mr. Lambers reported the IRONHORSE Advisory Board deemed the measure unnecessary. Following a review of the situation by himself, Ms. Bennett, and the City's insurance carrier, it was felt the City should have some sort of protective device placed. Options concerning the matter will be taken before the committee for further consideration and hopeful recommendation.

Councilmember Azeltine clarified his point of concern relates to committee recommendations in the minutes pertaining to whether to keep elements of the golf course open during the construction period, which were not known to the Governing Body prior to voting.

- 7G. Approve retainer letter from Tim Orrick for representation in the Condemnation Appeal pertaining to the Dykes Branch Channel Improvement Project, [SMAC Project DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Ms. Bennett confirmed for Councilmember Azeltine there is no legal conflict related to Leawood Municipal Judge Renee Gurney being "Of Counsel" to the law firm of Foth & Orrick as she will not receive direct benefit from the contract. Per ordinance, if an employee or employee/spouse receives benefit through a contract, it must be called to the Council's attention for approval. In this case, Ms. Gurney is paid by the law firm on an "Of Counsel" basis and will not participate in the condemnation appeal.

A motion to approve Item No. 7G was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Announced another successful Police-Fire Open House with over 600 attendees. Appreciation was given to Police Chief Mitchell, Fire Chief Florance, and members of both departments for hosting such a great public relations occasion with special recognition to Officer Randy Wiler for organizing the affair. The event was sponsored by the Police Community Partnership. The theme of this year's Open House was, "Welcome to CSI Part II," which allowed children to explore mock crime scenes as well as interact with police and fire personnel.

- B. Attended the Shawnee Mission Educational Foundation's 14th Annual Fall Breakfast. The State of the District Address was given by Dr. Marjorie Kaplan, who stated the district may actually grow in student attendance this year after many years of shrinking. She also expressed funding concerns for future years.
- C. Attended ribbon cutting for the United Studios of Self Defense at 121st Street and State Line Road. The new facility does great work with youth, women, and men of all ages.
- D. Attended the Studio Art Tour at M&I Bank along with Councilmembers Rawlings, Rasmussen, and Bussing. The Leawood Arts Council hosted the exhibit and reception.
- E. Reminder for the 3rd annual Kansas City Ballet performance at Ironwoods Park Amphitheater on September 14th at 6:00 P.M.
- F. Announced the Historic Commission in conjunction with the Parks & Recreation Department will be hosting a presentation by Bert Wetherill of the Kansas City Archaeological Society at the Oxford Schoolhouse on September 21st at 7:00 P.M.
- G. Reminder that the regular meeting scheduled for September 18th has been canceled; however, there is a Special Call Governing Body meeting to be approved on this evening's agenda for September 25th at 7:00 P.M. The Special Call meeting will deal only with the One-Nineteen development issue.

9. COUNCILMEMBERS' REPORT – Councilmember Gullede

Councilmember Gullede reported there was a recent traffic accident at the intersection of Roe Avenue and 126th Street. He then moved to direct the Public Works Committee to review the incident to determine if this is a legitimate hazard area or if the accident was a fluke situation.

Councilmember Gill requested the intersection of 133rd Street and Roe Avenue also be assessed for a warrant analysis due to site distance concerns. Councilmember Gullede included Councilmember Gill's request into the motion. Mr. Lambers informed there is a traffic signal planned for this intersection with development of the property to the east. A second to the motion was provided by Councilmember Azeltine.

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

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the August 8, 2006 Planning Commission meeting]

- A. Ordinance No. 2182 approving a Preliminary Site Plan for Gardens of Villaggio located north of 137th Street and east of Roe Avenue [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Gullede.

Attorney Doug Patterson, 12712 El Monte, informed the application is the first subdevelopment within the Villaggio project and consists of 1.81 acres north of 137th Street, between Fontana Street and Roe Avenue. As codeveloper of the subdevelopment, Mr. Patterson stated the site will contain approximately 21,500 sq. ft. within three buildings. Changes in the site plan from the approved preliminary plan of the total development includes removal of 19 parking spaces from under the 10,352 sq. ft. building to the west [Building "Q"] and a reduction in square footage to the northeast building from 10,000 sq. ft. to 5,033 sq. ft. [Building "R"]. The facilities will function as AA office grade buildings with Mr. Patterson's law practice housed in the southeast building [Building "S"].

Mr. Patterson stated this portion of Villaggio was to be the area containing the amenity packages to justify warranted bonus programs for the SD-O portion of the development, which is approximately 10 acres. The shift in parking and reduction of square footage provides consistency with the original preliminary plan. Modifications to the bonus program will be discussed with Mr. Lambers and Senior Planner Mark Klein prior to final plan approval. Mr. Patterson stated he is in agreement with all Staff recommendations.

Mayor Dunn asked if bonus points were lost for removal of the 19 underground parking spaces. Following review of the preliminary plan, Mr. Klein advised bonus points for this site are related to another office building with larger structured parking.

Councilmember Gill requested explanation for the Floor Area Ratio [F.A.R.] deficiencies referenced in Stipulation No. 5 and for the basis of which the 20% density deviation request is being granted. As Villaggio is a piecemeal project with bonus areas, Mr. Lambers stated the reduced bonus points of this application must be restored upon submission of the next site plan application either in existing bonus areas, a new bonus area, or via a reduction of square footage elsewhere in the project. The F.A.R. is tracked throughout the entire development and applicants are put on notice when it will be necessary for the next submittal to compensate for lost bonus points. Councilmember Gill expressed concern the integrity of the comprehensive plan will be affected if the standalone project does not meet specific ordinances.

Mr. Lambers pointed out a plaza area on the overall site plan drawing that will contain expanded green space and amenities to support the 20% F.A.R. deviation for this application. He also noted locations of existing bonus areas in which the next applicant will be given the choice of expanding upon. The calculated details of needed bonus points will not be available until final plan application.

Referring to Stipulation No. 8, Councilmember Gill confirmed with Mr. Lambers the added third lane will be present along the entirety of 135th Street. The outside lane will not disappear and force traffic to merge into another lane, as is a traffic pattern seen in areas of Overland Park. Mr. Patterson noted widening on the south side of 135th Street from Roe Avenue to Mission Road is subject to Transportation Development District [TDD] financing.

Councilmember Bussing questioned why the overall project developer is not held responsible for informing the City where lost bonus points will be compensated for rather than the next parcel applicant. He commented the process tends to reward early subdevelopers by allowing them to push bonus features onto later developers. Mr. Lambers responded that Stipulation No. 5 is a proactive measure to ensure adherence of green space for the entire development. He reviewed that upon final plan approval for this site plan, when a total calculation of lost bonus points can be made, the overall developer will be placed on notice that it will be necessary for the next parcel applicant to restore the bonus points. There is nothing in the current ordinance requiring the developer to account for lost points during final plan approval, hence the stipulation. An ordinance amendment would be necessary in order to change the process.

Mayor Dunn stated the Governing Body will have the opportunity to see the project again during final site plan approval. She also noted significant discussion at the Planning Commission level regarding architecture of the buildings and confirmed with Mr. Patterson that the issue will be addressed in a serious manner. Mr. Patterson stated he is committed to maintaining the approved guidelines of Villaggio, which includes a Tuscan theme. He felt there was confusion by some planning commissioners in applying the architectural style to professional office buildings versus retail structures. There was suggestion that the windows of the office buildings should be arched and curved. He stated the corner features and entry-ways of the pad site will include this design, however guidelines for office buildings within Villaggio maintain rectangular-shaped windows. Mr. Patterson stated an office structure should not look like a retail building. Issues regarding Stipulation No. 10 will be presented to the Planning Commission upon requesting final plan approval with the hope of convincing committee members that office building features, such as windows, should not resemble those of a retail building.

Additionally, Mr. Patterson informed there would not be trash enclosures within the buildings or to the rear of the buildings. Trash containers and enclosures will be hidden within corner features of the 5,000 sq. ft. buildings.

Mayor Dunn asked Mr. Patterson to clarify whether he concurred with Stipulation No. 10, which was added by Planning Commissioner Len Williams, during preliminary plan approval by the Planning Commission. Mr. Patterson affirmed there was agreement to the stipulation but would prefer not to have a professional office that looks like it should house retail. Mayor Dunn stated she is not familiar with the features of a Tuscan-themed office building but would remind Mr. Patterson of his acceptance to the Planning Commission's condition of approval prior to presenting the committee with a final plan. Mr. Patterson stated there would be much discussion regarding the issue at the Planning Commission meeting.

Referring to the Plaza Pointe development, Councilmember Azeltine recalled the method of granting deviations to separate parcels and deferring bonus points onto others did not bring good results for the last few pad sites. He stated not accounting for shelved bonus points during the preliminary phase is an unsound practice. Mr. Lambers discussed the difference in procedure for this development in that any lost bonus points will be reestablished with the next consecutive application for Villaggio rather than with later parcel developments.

Councilmember Gill stated he would not hold the project hostage to an ill-conceived notion and would vote favorably. He remarked the comprehensive view of the plan should be maintained and suggested the process require the overall project developer to inform the Governing Body of a plan to relocate amenities prior to granting deviations for separate parcels.

Mr. Lambers and Councilmember Gill discussed an unrelated upcoming project in which an applicant is proposing a pad site on an area designated as green space.

Mr. Lambers verified for Councilmember Azeltine that amenities are typically part of the final plan application.

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

Mr. Lambers clarified there will be two more reviews of the project as final plan approval will be followed by a request for a final building plan, which will address issues related to the Tuscan-themed architecture.

Mayor Dunn welcomed Mr. Patterson's law practice to Leawood.

- B. Ordinance No. 2183 amending § 16-2-5.6 of the Leawood Development Ordinance entitled RP-3 [Planned Cluster Attached Residential District - 6,000 sq.ft. Per Dwelling] [Roll Call Vote]

Mr. Lambers stated the ordinance change was initiated and is supported by Staff. Mr. Klein informed the amendment will clarify how building height is measured as it is not specific in the current ordinance of whether the measurement should be taken from the front or back of structures. The proposal is to measure height from the front of the building and extend the maximum height limit from 35-ft. to 40-ft. Increasing the limit by 5-ft. will allow architectural features such as steeper roof pitches and undulations to the facade.

Councilmember Azeltine asked how current height measurements are calculated. Mr. Klein stated as the ordinance does not specify where on grade to take the measurement (front, back, lowest, or highest), the practice has been to use the lowest grade. He quoted the current requirement from § 16-9-139 of the Leawood Development Ordinance [LDO]:

“Height, Building – The vertical distance to the highest point of the roof for flat, gable, hip, gambrel, or mansard roofs, measured from the curb level if the building is not more than 10 feet from the front lot line or from the grade in all other cases.”

Mr. Klein noted there are many areas in Leawood where homes on sloped lots with walk-out basements would not meet the 35-ft. height limitation from the backside.

Councilmember Gullledge left the meeting at 9:45 P.M.

A motion to approve Case 56-06 of the Planning Commission was made by Councilmember Bussing; seconded by Councilmember Gill.

Mayor Dunn applauded Mr. Klein's guidance concerning allowance of the steeper roof pitches, which are more attractive.

Councilmember Filla noted the amendment received negative votes from two Planning Commissioners. She asked that their concerns of potential excessive rear heights be addressed. Mr. Lambers stated the commissioners wanted to take the measurement from the lowest point of the structure; however, the remainder of the committee felt this was unrealistic as a structure with a walk-out basement, two-stories, and high-pitched roof would not meet the requirement. The balance of the Planning Commission, excluding the two negative voters, placed importance on the perspective from the street rather than the backyard view. The proposed amendment will provide height consistency in the streetscape.

Councilmember Azeltine voiced opposition to increasing the height limitation due to concerns with increased mass on the backside of buildings. Mr. Lambers reviewed measurements are currently taken from the lowest grade, however it has been discovered that many existing homes exceed the 35-ft. limitation when assessed from the back. The objecting Planning Commissioners suggested placing a limitation on the rear of homes. Other committee members stated this could not be done as some terrains necessitate placement of basements and felt the City should not become involved with the micromanagement of home designs. Measuring from the front vista was seen as a reasonable way to address the issue by most members of the Planning Commission.

Mr. Lambers verified for Councilmember Azeltine that the ordinance will affect residential clusters such as apartments and condominiums.

The following vote of 4-3 was taken by roll call: Yea: Councilmembers Peppes, Rawlings, Bussing, and Gill. Nay: Councilmembers Rasmussen, Filla, and Azeltine. (Councilmember Gullledge absent). The ordinance passed as Mayor Dunn stated she would vote in the affirmative, bringing the total vote to 5-3.

As a point of order, Councilmember Gill noted that Councilmember Bussing's motion referencing Case 56-06 does not synchronize with Item No. 11B, which is Case 52-06; however, the discussion and vote did in fact pertain to the subject identified as Item No. 11B.

For clarification purposes, Ms. Bennett recommended a revote be taken on Case 52-06.

As another point of order, Councilmember Azeltine noted the Planning Commission meeting minutes reflect that Cases 52-06 and 55-06 were passed before the Chair of the Planning Commission realized the public hearing had not been opened and closed. He questioned the validity of the ordinances' passage by the Planning Commission. Mayor Dunn stated a motion to close the hearing was made immediately thereafter as there was no one present to speak.

Following Councilmember Azeltine's request for a legal opinion, Ms. Bennett advised the opening and closing of a public hearing is in the nature of a parliamentary rule and is not a statutory mandate. Statute requires a public hearing be held for ordinance amendments, which was done, but does not reference the formal opening and closing of such during a meeting. When asked by Councilmember Azeltine if there were any rules in the LDO requiring the formal opening and closing of a public hearing prior to voting, Ms. Bennett stated she was uncertain if this was written in the bylaws or if it is a rule of the Planning Commission Chair. Mayor Dunn stated the point is moot given there were no individuals present who wished to speak unless Councilmember Azeltine is suggesting a remand back to the Planning Commission to ensure opening and closing of the public hearing, which would be a waste of time.

A motion to approve the ordinance amending § 16-2-5.6 of the Leawood Development Ordinance entitled RP-3, [Planned Cluster Attached Residential District - 6,000 sq. ft. Per Dwelling], Planning Commission Case 52-06, was made by Councilmember Gill; seconded by Councilmember Rawlings.

Councilmember Azeltine noted passage of the ordinance will allow the granting of future height deviation requests from 40-ft. rather than 35-ft.

On revote, roll call was taken with the following results of 4-3: Yea: Councilmembers Peppes, Rawlings, Bussing, and Gill. Nay: Councilmembers Rasmussen, Filla, and Azeltine. (Councilmember Gulledge absent). Mayor Dunn stated she would cast a vote in the affirmative, bringing the final tally to 5-3 and passing the ordinance.

- C. Ordinance amending § 16-2-5.7 of the Leawood Development Ordinance entitled RP-4 [Planned Apartment Residential District - 4,000 sq.ft. Per Dwelling] [Roll Call Vote]

A motion to approve the ordinance was made by Councilmember Gill; seconded by Councilmember Bussing.

Councilmember Filla asked how the possibility of overly massive building backsides could be dealt with so that no more than a walk-out basement would be permitted. Mr. Lambers stated the amendment does not address this issue, which should not be as concerning with individual unit apartment buildings as it would be with single-family homes.

Councilmember Gill withdrew his motion for approval. Due to confusion surrounding the numbering of the amendments, he intended the motion to be for a different item on the agenda.

A motion to approve ordinance amending § 16-2-5.7 of the Leawood Development Ordinance entitled RP-4 [Planned Apartment Residential District - 4,000 sq. ft. Per Dwelling] was made by Councilmember Bussing; seconded by Councilmember Peppes.

Mr. Lambers confirmed for Councilmember Azeltine that none of the six ordinance amendments on the agenda relate to high rise condominiums such as those to be built within the Mission Corner development. The amendments are simply to increase the height limitation of RP units from 35-ft. to 40-ft. and to provide clarification of where height measurements are taken in residential districts. A condominium tower would fall under another zoning category with a height limitation of 90-ft. Changing the height limitation in this zoning category would require a supermajority vote. The highest structure approved to date is 105-ft.

Councilmember Azeltine stated the possibility of a structure having 55-ft.-60-ft. on the backside is not in keeping with Leawood's heritage as a bedroom community. He voiced disfavor with the trend of increased density proposed by the amendments.

It was reviewed that all of the ordinance amendments on the agenda are to clarify where height measurements are taken with the 5-ft. height extension proposed only for agenda Item Nos. 11B and 11C. The height limitation of 35-ft. will remain the same for agenda Item Nos. 11D through 11G.

Mr. Lambers agreed with Councilmember Bussing that the extra 5-ft. would permit enhancement to architectural designs in terms of roof pitches but would not be enough additional height to create another story. The typical height of a story is 9-ft.-11-ft., thus the ordinance would not be increasing building density.

Councilmember Gill posed the scenario of the extra 5-ft. allowing another story to the back of an apartment building when combined with a deep enough slope, which would add density. Mr. Lambers stated an apartment building would not be allowed to have this type of basement level unit as it would not meet fire code access requirements. Councilmember Gill said this could still be achieved if residents accessed the building from a backdoor. He also noted that Wards 3 and 4 have significant terrain changes, which is where new apartment complexes are likely to be developed.

Mr. Lambers stated an absolute height limitation from the lowest point could be added to the ordinance in order to deal with sloped properties; however, the language addition would be an override of the Planning Commission and would require six affirmative votes. He informed Councilmember Gill that residential structures would require 8-ft.-9-ft. for an additional story with 11-ft. needed for a basement.

Mayor Dunn recognized the concern over the ordinance is related to the fact it is for a Planned Apartment Residential District, which there are not many of in the City at this time since Tomahawk Creek Apartments turned into condominiums. Mr. Lambers stated the Oddo Family's project is the only upcoming apartment complex and does not have sloped terrain. The Pine Lakes subdivision, however, is anticipating a height of 46-ft. and will require approval from the Board of Zoning Appeals [BZA]. Mr. Lambers stated the proposed ordinance amendment is to provide the extra 5-ft. for aesthetic reasons without having to go through the BZA. The BZA would not be able to rule in favor of a 5-ft. extension as the request would not meet statutory requirements.

The motion failed with the following roll call vote of 3-4: Yea: Councilmembers Peppes, Rawlings, and Bussing. Nay: Councilmembers Gill, Filla, Azeltine, and Rasmussen. (Councilmember Gullledge absent).

Councilmember Filla inquired if a motion could be made amending the proposed ordinance change to address the backside measurement. Mr. Lambers recommended imposing a limitation of 51-ft. from the lowest point, which would allow one additional story to the backside, with the 40-ft. limitation on the front. The current ordinance of 35-ft. is considered two stories and a roof.

Discussion took place regarding building mass. Mayor Dunn reminded an apartment complex would not abut an area zoned single-family residential without a significant buffer.

A motion to approve Item No. 11C with a 40-ft. height limitation for the front and back of the structure was made by Councilmember Filla; seconded by Councilmember Gill.

After further consideration, Councilmember Gill stated the Governing Body should not act hastily on this matter and withdrew his second to the motion.

Mr. Lambers requested continuing Item Nos. 11C through 11G due the Executive Session scheduled to follow the meeting, which involves discussion of a timely matter. Councilmember Filla withdrew her motion.

A motion to continue Item Nos. 11C through 11G to the October 2nd meeting was made by Councilmember Gill; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0.

Councilmember Azeltine inquired as to the specific matter prompting the ordinance amendments. Mr. Lambers responded Item No. 11B was prompted by the Tuscan Reserve development with a height of 38-ft., which would not receive approval from the BZA. The other amendments are solely for clarification purposes of where height measurements are to be taken. When the LDO was approved in 2002, many of ordinances were theoretical and are now unclear to specific application.

Councilmember Azeltine stated the current discussion reinforces the need for a comprehensive review of the LDO, which he has suggested on a number of occasions. Mr. Lambers informed reviewing the entire LDO would be an 18-month process with private consultant costs of \$50,000-\$75,000. He stated the ordinance amendments proposed this evening do not justify an extensive review of what was created only a few years ago. Mayor Dunn recalled the consultant was paid a six-figure fee when the LDO was revised in 2002. Councilmember Azeltine commented he was not knowledgeable of the need for a consultant and suggested forming a commission of qualified individuals within the community to perform the review. Mayor Dunn informed a citizen commission worked with the consultant during the previous review.

- D. Ordinance amending § 16-2-5.2 of the Leawood Development Ordinance entitled RP-A5 [Planned Rural Residential District - 5 Acres Per Dwelling] [Roll Call Vote] – **Continued to the October 2, 2006, Governing Body meeting**
- E. Ordinance amending § 16-2-5.3 of the Leawood Development Ordinance entitled R-1 [Planned Single Family Low Density Residential District - 15,000 sq.ft. Per Dwelling] [Roll Call Vote] – **Continued to the October 2, 2006, Governing Body meeting**
- F. Ordinance amending § 16-2-5.4 of the Leawood Development Ordinance entitled RP-1 [Planned Single Family Residential District - 12,000 sq.ft. Per Dwelling] [Roll Call Vote] – **Continued to the October 2, 2006, Governing Body meeting**
- G. Ordinance amending § 16-2-5.5 of the Leawood Development Ordinance entitled RP-2 [Planned Cluster Detached Residential District - 6,000 sq.ft. Per Dwelling] [Roll Call Vote] – **Continued to the October 2, 2006, Governing Body meeting**

12. OLD BUSINESS – None.

13. NEW BUSINESS

- A. Schedule a Special Call Governing Body meeting at 5:30 P.M. on Monday, September 25, 2006, to discuss personnel matter of non-elected personnel

A motion to approve Item No. 13A was made by Councilmember Rawlings; seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0.

- B. Schedule a Special Call Governing Body meeting at 7:00 P.M. on Monday, September 25, 2006, pertaining to an Ordinance approving a Preliminary Site Plan for One Nineteen Development, located on the southeast corner of 119th and Roe Avenue

A motion to approve Item No. 13B was made by Councilmember Azeltine; seconded by Councilmember Gill.

Mr. Lambers confirmed for Councilmember Rawlings that Council will receive copies of the preliminary site plan on either Thursday or Friday prior to the meeting.

The motion was approved following a unanimous vote of 7-0.

- C. Schedule a Governing Body Executive Session immediately following the regular meeting on Tuesday, September 5, 2006, to discuss matters related to the attorney-client privilege

A motion to approve the scheduling of the Executive Session was made by Councilmember Gill; seconded by Councilmember Azeltine. The motion was approved following a unanimous vote of 7-0.

- D. Ordinance No. 2180, authorizing the issuance and delivery of \$6,050,000, principal amount of General Obligation Improvement Bonds, Series 2006-A, of the City of Leawood, Kansas providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the Bonds as they become due; and making certain covenants with respect thereto [Roll Call Vote]

Mayor Dunn congratulated Finance Director Kathy Rogers on reaffirmation of the City's AA-1 bond rating.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Rasmussen. The ordinance passed with the following roll call vote of 7-0: Yea: Councilmembers Azeltine, Rasmussen, Gill, Peppes, Filla, Rawlings, and Bussing. Nay: None. (Councilmember Gullledge absent).

- E. Resolution No. 2646, prescribing the form and details of and authorizing the delivery of \$6,050,000 principal amount of General Obligation Improvement Bonds Series 2006-A, of the City of Leawood, Kansas, authorized by Ordinance No. 2180, of the City; providing certain covenants and agreements with respect thereto; and providing for execution of certain agreements in connection therewith

A motion to approve the resolution was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 7-0.

- F. Ordinance No. 2181, authorizing and providing for the issuance and delivery of \$26,625,000 in tax exempt General Obligation Temporary Notes, and \$6,300,000 in taxable General Obligation Temporary Notes, for a total of \$32,925,000 principal amount of General Obligation Temporary Notes, Series 2006-A, of the City of Leawood, Kansas, to provide funds to finance the cost of certain public improvement projects within the City; and making certain covenants with respect thereto [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Gill. The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Bussing, Rasmussen, Peppes, Rawlings, Gill, Filla, and Azeltine. Nay: None. (Councilmember Gullledge absent).

- G. Resolution No. 2647, authorizing the issuance and delivery of \$26,625,000 in tax exempt General Obligation Temporary Notes, and \$6,300,000 in taxable General Obligation Temporary Notes, for a total of \$32,925,000 principal amount of General Obligation Temporary Notes, Series 2006-A, of the City of Leawood, Kansas, for the purpose of financing a portion of the costs of certain public improvements in the City; and prescribing the terms and details of said notes and certain covenants and agreements with respect thereto

A motion to approve Item No. 13G was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. The resolution was approved following a unanimous vote of 7-0.

14. OTHER BUSINESS – None.

ADJOURN

The Governing Body meeting adjourned into Executive Session at 10:30 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk