

Minutes

DVD No. 150

The City Council of the City of Leawood, Kansas, met for a Special Call meeting in the Council Chambers, 4800 Town Center Drive, at 7:00 P.M., on Monday, September 25, 2006. Mayor Peggy Dunn presided.

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

Councilmembers absent: Debra Filla.

Staff present:

Scott Lambers, City Administrator
Major John Meier, Police Department
Mark Klein, Senior Planner
Deb Harper, City Clerk
Mark Andrasik, IS Director

Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Jeff Joseph, Senior Planner
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn stated the agenda will include the addition of an announcement under Other Business, Item No. 6. A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Peppes. The agenda was approved following a unanimous vote of 7-0.

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.**

4. PROCLAMATIONS

Constitution Week, September 17-23, 2006

Mayor Dunn recognized the week of September 17-23, 2006, as Constitution Week.

5. SPECIAL BUSINESS

- A. Resolution approving and authorizing the Mayor to execute a construction agreement between the City and J.M. Fahey Construction Company in the amount of \$905,692.50, pertaining to the Tomahawk Creek Parkway Project [2006 Mill & Overlay Program]

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

Councilmember Gill commented on the importance of timely project completion given the significance of Tomahawk Creek Parkway. City Administrator Scott Lambers noted his concern.

Public Works Director Joe Johnson informed the improvements will take 30-40 days to complete with the first week of October as the estimated start date. The road will remain open to thru traffic in both directions with only one lane closed at a time.

David Toolan, representative of APAC Kansas, Inc., 900 Ashwood Parkway, Suite 700, Atlanta, Georgia, 30338, stated public entities such as the City have developed policies that require the awarding of construction contracts to the lowest responsible bidder in order to prevent favoritism, unfair dealing, and bribery. He reported APAC Kansas, Inc., was the lowest responsible bidder for the proposed project. Resolution No. 1390, enacted March 23, 1998, is incorporated into the current contract between the City and APAC for improvements to Roe Avenue. In addition to the policy of awarding contracts to the lowest bidder, the resolution also establishes procedure for evaluating contractors upon project completion. Section 5 of the resolution states the Public Works Director shall consider final evaluations only in connection with the solicitation of bid proposals and shall not request proposals from any contractors who have received unsatisfactory final evaluations for a period of one year. Mr. Toolan pointed out that APAC has never received an unsatisfactory final evaluation from the City and was the lowest bidder for the Tomahawk Creek Parkway project. He also noted that the City requested a bid proposal from APAC for this project as well as another project in February 2006.

Following the September 14th bid opening at which APAC submitted the lowest bid, they were contacted by the City and informed they were not the lowest responsible bidder. Mr. Toolan stated the Public Works Director based his decision to recommend the second lowest bidder on undocumented interim evaluations for the Roe Avenue project, which were not provided to APAC. In over 40 years of doing business with the City of Leawood, APAC has never had an unsatisfactory evaluation. Section 5 of Resolution No. 1390 also requires the director to prepare interim evaluations and provide copies to the contractors. Interim evaluations cannot be used to determine that the contractor is not a responsible bidder. Section 4 of the resolution requires the Public Works Director to prepare a final evaluation upon completion of the contractor's work and entitles the contractor to appeal the final evaluation with a fair review by the Governing Body, which is consistent with the requirements of due process. The final evaluation may be modified in accordance with the findings of the Governing Body.

Mr. Toolan reported the City has incorporated liquidated damages and performance bond provisions into contracts as a way to ensure fulfillment of work in a timely manner. APAC is satisfied with the conditions set forth in the instructions to bidders and as the lowest responsible bidder, will incur substantial damages if the contract is not awarded to them.

As the ultimate source of the quoted due process, Councilmember Gill stated during public meetings he and other members of the Governing Body have been highly critical of the delays associated with the Roe Avenue project performed by APAC, have unequivocally stated the work is unsatisfactory, and have clearly stated that money is not an adequate remedy. The only resolve was to get the road open so that citizens could traverse on a major thoroughfare. He stated businesses have suffered due to the traffic problems created by the project delay. The Governing Body made it very well known that a liquidated damage penalty was not adequate.

According to the contract and Kansas State Law, Mr. Toolan stated liquidated damages cannot be a penalty. They are specifically incorporated into a contract to compensate the owner for delays on a project. He requested that Resolution No. 1390 be followed with specific findings in writing provided to APAC and a chance for an appeal prior to denial of a contract.

Councilmember Gill commented he would strongly oppose a contract recommendation with APAC at this time as they are not a responsible bidder given their recent performance. He stated safety, public access, and business access were of higher concern than liquidated damages and were areas in which APAC failed.

Mr. Toolan stated the resolution will provide APAC the opportunity to address such issues in the appeal process once the final evaluation has been completed. He viewed the disregard of the low-bid system as problematic.

Mayor Dunn informed the final evaluation of the Roe Avenue project has not been distributed to the Governing Body because the work is yet to be finished. She inquired why a Request for Proposal [RFP] for the Tomahawk Creek Parkway project was sent to APAC. City Administrator Scott Lambers stated the RFP was sent in error. An apology and offer to reimburse the cost of preparing the bid document has been extended to APAC. Upon final evaluation of Roe Avenue, which will not be one of satisfaction, Staff will ask for Governing Body direction regarding disallowing the company to place further bids and for how long the suspension should occur.

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

- B. Mayoral Appointment of Ken Roberson, to the Planning Commission as successor to fill the remainder of former Commissioner Cy Perkins unexpired term to 2009

Mayor Dunn recognized Mr. Roberson and thanked him for his willingness to serve the City in such as important capacity.

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

- C. Ordinance approving a Preliminary Site Plan for One Nineteen Development, located on the southeast corner of 119th and Roe Avenue [Roll Call Vote] *[from the August 15, 2006 Planning Commission meeting]*

Mayor Dunn noted a memo concerning this issue from Leawood Chamber of Commerce President Kevin Jeffries has been placed upon the dais. She outlined the procedure to be followed this evening for all attendees:

1. Opening remarks by the City Administrator.
2. Presentation by the applicant.
3. Council questions to the applicant.
4. Citizen comments.
5. Applicant response to citizen comments.
6. Break for a period of 10 minutes.
7. Council discussion and possible action.

OPENING REMARKS:

Mr. Lambers provided a brief history of the project. During the time the original application consisting of the Crate & Barrel building and retail development was approved, the developers indicated they were in the preliminary process of evaluating the possible addition of a residential component to the project. The project site has been zoned as planned general retail for the last 2-3 years. The applicant is now requesting the inclusion of a 4-story, 56-unit condominium. The originally approved preliminary plan contained additional square footage for which traffic counts were calculated. The proposed increase in traffic counts for the project presented this evening is less than 40 trips per day. Stormwater requirements for the site have not changed as a result of the condominiums as there will be improvements to Tomahawk Creek Parkway regardless of application approval. The height of the proposed building is 76.5-ft. with an estimated 12-ft. to 16-ft. of screened rooftop equipment.

The application proposed this evening differs from plans presented to the Planning Commission in terms of height and presentation of the architecture. Mr. Lambers advised that approval of the application will require a supermajority vote to override the Planning Commission's recommendation of denial. Concerns from the planning commissioners did not relate to the rezoning request but rather to the plan itself; however, per ordinance, the City does not allow rezoning without approval of a plan. Issues identified with the plan were height, massing, integration of architecture, and green space. The currently revised plan addresses some of these concerns. Mr. Lambers reported the Planning Commission declined his request to provide clear direction as to what would be acceptable in terms of height and building mass as part of their recommendation of denial.

Mr. Lambers stated the green space is identical to what was presented to the Planning Commission; however, Staff has added a stipulation to upgrade and include a water feature to the main green space entryway of the project.

Mayor Dunn confirmed and clarified with Mr. Lambers that the condominium building will house 56 units rather than the 80 units described in the Staff Report.

APPLICANT PRESENTATION:

Phil Crisara with Nelson Architects reviewed the design elements of the preliminary approved retail portion of the project and stated the residential component will further improve the development. The 4-story condominiums will integrate with the easterly portion of the sweeping row of retail shops. The addition of the residential component will not impact parking along the site as residents will have secured parking within an enlarged underground parking structure.

Via site plan elevations, Mr. Crisara highlighted changes that have been made to the plan in order to address issues brought up by the Planning Commission. The height of the mixed-use area has been reduced from six stories to five stories with a current measurement of 76.5-ft. Additionally, from a design standpoint, the condominium building was moved further north to allow for better integration with the retail structures. The material palate has been fine-tuned so that identical materials and color schemes are being used for both residential and retail areas. Massing concerns have been improved by incorporating depth into the residential building versus the previous scheme of a continuous straight surface. Mr. Crisara noted the addition of a second lobby in the storefront area, which will provide residents friendlier access to the retail shops.

Mr. Crisara clarified that the underground structured parking below the residential units will house 246 vehicles. The majority of the parking spaces will be secured and designated for residential use although some will be used for retail.

The current design meets MXD zoning criteria in terms of height, however a Floor Area Ratio [F.A.R.] increase will be necessary. Mr. Crisara affirmed support for all of the Staff recommendations seen in the report.

Chris Shears, architect for the residential component, reiterated that adjustments to the plan were made based upon concerns by the Planning Commission including the reduction in height and material changes. Although steps have been taken to integrate the uses, there has also been the addition of a covered entryway and lobby to the east side of the condominium building in order to separate the identity for residents. He commented the project has become better with each alteration made in response to adjacent neighbors and the Planning Commission.

QUESTIONS FROM THE GOVERNING BODY:

Mayor Dunn confirmed with Mr. Shears that the underground parking structure will undergo adjustments parallel to the reduction in condominium units. The parking structure will contain two spaces per unit and 90-100 spaces for the retail development including some restaurant valet parking.

Councilmember Azeltine reported there is a giant hole on the development site and asked if it is the precursor for the underground parking. Civil engineer Skip Johnson with BHC Rhodes confirmed the hole is the general footprint of the underground parking structure. He explained a massive amount of fill was brought in for the site but was omitted from this area while awaiting Council's decision.

As the plan has been modified since presentation to the Planning Commission, Councilmember Gill asked if it were possible to affirm the plan seen by the Planning Commission [Plan A] and remand the new plan [Plan B] devoid of fees, waiting periods, and implications of eliminating the rights of the Planning Commission's recommendations associated with a remand. City Attorney Patty Bennett advised a vote to affirm the Planning Commission will deny Plan A and require the developer to submit a new application for Plan B. The usual 6-month waiting period from the time of denial to submittal of a new application may be waived; however, the complete process of filing an application, Interact meetings, and public notices must start over at the Planning Commission level. She stated if Plan B is remanded, the statutory voting requirement will be attached; however, the remand may include a notation that Council agreed with the Planning Commission's determination of Plan A.

Discussion took place regarding proper protocol for the different plans. Mr. Lambers stated any action other than the Planning Commissions' recommendation for denial will require a vote of six. Regarding Councilmember Gill's concern, there is no way to bypass the simple-majority vote requirement to approve or amend the plan following a remand.

Mayor Dunn noted this situation has occurred in the past and has been dealt with in various ways. Some plans were approved while others were remanded for review by the Planning Commission. She stated a remand would be valuable in this case as changes were made with suggestions from the committee and citizens taken into account.

Councilmember Azeltine noted there have been contradictory remarks concerning adequate direction given by the Planning Commission and responsiveness of the applicant. He then voiced concern with the practice of altering plans midstream, between presentations given to the Planning Commission and the Governing Body, as it sends a message to the applicant that the Planning Commission has no authority. The process of remanding a plan because changes have been made lowers the voting threshold and is greatly stacked in favor of the developer and against the residents. Councilmember Azeltine stated rather than a remand, the Governing Body should simply vote in favor of or in opposition to the plan presented this evening.

Referring to drawing PHI, Councilmember Rasmussen confirmed with Jeff McMahon of RED Development, 4717 Central, Kansas City, Missouri, that the proposal is to erect the condominiums and northeast commercial building during the last phase of construction, Phase 3.

Councilmember Rasmussen then inquired why the property does not contain a stormwater detention area. Given the close proximity to Tomahawk Creek, Skip Johnson stated the site is in a watershed area, also known as a flood-wave, that starts in the upper tributary areas. Drainage will flow off the site into Tomahawk Creek before it is affected by the flood-wave. Flooding to the site and surrounding areas will increase if stormwater is detained. Mr. Johnson also verified that the proposed storm sewer extension seen on drawing PE1 will connect to an existing storm sewer at the center of Tomahawk Creek Parkway. Modifications will be necessary as there are existing pipes and an inlet. Due to the method of diverting the stormwater, the original 48-inch pipes have excess capacity and will be connected with 24-inch pipes. The pipe modifications have been approved by the City Engineer.

Noting that the underground parking entrance was shifted to avoid the 100-year floodplain, Councilmember Rasmussen questioned whether the new location is any safer than the original entrance given the historical changes in the floodplain delineation. Mr. Johnson stated the originally approved plan includes a creek benching plan, which will widen part of Tomahawk Creek and cause no rise upstream to the boundaries of Overland Park. There will be a slight reduction in rise through the area of the proposed development. A letter of map revision has been filed with the Federal Emergency Management Agency [FEMA] and is in the process of approval. Mr. Johnson informed further details regarding the parking entrance will be finalized with Staff as it is only in the concept phase at this point. He pointed out there is another entrance to the garage strictly for residential usage, which is above the floodplain and will be accessible to others in the parking structure. The installation of pumps or drains to the lower level is being considered.

Ms. Bennett advised Councilmember Gullede that the timeframe concerning a remand will depend upon how quickly the project can be placed on a Planning Commission meeting agenda. There will be no requirement for a protest period or a supermajority vote on the Council level if the Planning Commission's recommendations are not followed. Expressing concern with the circumvention of the Planning Commission, Councilmember Gullede stated favor with a remand to allow the committee opportunity to review and make recommendations on the revised project.

Mr. Lambers recalled the Tomahawk Pointe office development also met with significant citizen opposition and was denied by the Planning Commission in terms of the plan and rezoning request. Through a continuance, the Governing Body directed the developer to compromise with the residents and kept the project at the Council level. The Planning Commission agrees with the rezoning request in this case. If a remand occurs this evening, it would be appropriate to allow public comments this evening as a courtesy to the audience.

Councilmember Gulledge noted citizen comments made this evening may be irrelevant if there are plan revisions following the Planning Commission meeting. Mayor Dunn recommended allowing citizens who have signed in to speak the opportunity to pass or state their concerns.

A motion was made by Councilmember Gulledge to remand the preliminary site plan for the One Nineteen Development, located on the southeast corner of 119th and Roe Avenue, Case 30-06, back to the Planning Commission for review; seconded by Councilmember Peppes.

Councilmember Azeltine opposed the motion. He stated the 30 pages of minutes containing discussion from past Planning Commission meetings reveal that the developer has already been given three successive chances to adjust the plans but has not made any substantial changes. Remanding the project will simply lower the voting threshold and disregard concerns expressed by the Planning Commissioners. Councilmember Azeltine encouraged fellow councilmembers to vote against the remand and listen to citizen comments before making a decision. He then requested that the motion be withdrawn.

Councilmember Gulledge reminded it was decided upon to listen to comments prior to acting upon the motion.

Mayor Dunn clarified the case was heard at two Planning Commission meetings rather than three. Councilmember Azeltine added the process confuses citizens and makes them feel disenfranchised.

Mayor Dunn asked the applicant why changes were made at this point. Mr. McMahon stated they have gone to great lengths to modify the plan. The height of the building has been changed several times with an original starting point of 120-ft. to the present 76.5-ft. He stated the Planning Commission did not give clear direction during the last meeting. The current revisions to height, architecture, and massing were made based upon suggestions gleaned from various commissioners.

Referring to the memorandum from City Engineer David Ley, Councilmember Rasmussen stated, in his judgment, the following comments have no relevance to the safety of the revised plan regarding the underground parking structure:

- 2) Storm Water Study
 - a) The stormwater study was approved for the original final site plan. The proposed condominiums do not impact the floodplain.
 - b) The developer has obtained the permits for the creek benching within the park. These improvements were required as part of the original final development plan.

Additionally, Councilmember Rasmussen asked for explanation regarding the next statement:

- 3) The drive access to the parking garage shall be moved to the west side of the low point on Tomahawk Creek Parkway, outside of the floodplain. The current location is between two (2) flood areas.

Public Works Director Joe Johnson stated the two flood areas are road dips on Tomahawk Creek Parkway. The stipulation to relocate the drive access to a high point on Tomahawk Creek Parkway will prevent motorists from driving through standing water when traveling to Roe Avenue. Mr. Johnson stated he did not know the exact elevation difference between the two locations. He confirmed the City Engineer considered the possibility of flooding to the underground garage. The entrance is above the 100-year flood plain, yet the original location would require vehicles to travel through the flood areas after leaving the garage. The recommendations were made based upon the current stormwater study by BHC Rhodes.

Skip Johnson reported the elevation change is approximately 2½-ft. between the low and high points of Tomahawk Creek Parkway. The existing 48-inch pipes and inlets will capture the water from the roadway and divert it away from the garage entrance. He confirmed for Councilmember Rasmussen that the structures are called-out in the stormwater drawings that were approved for the storm sewer construction.

Councilmember Gill stated although more time should be devoted to this important project in order to resolve specific issues, it should not be done at the expense of rights given by law to opponents of zoning projects. He suggested requiring the developer to submit the plan as a new application while waiving the waiting period and fees, which would place prejudice upon the developer in terms of a slight delay rather than upon citizens' rights. He stated the incremental changes that have occurred in the plan have been bothersome, however he believes in the mixed-use theory and the ability of the developers to create something great for this property. Facilitated meetings at City Hall between the developers and residents may be necessary.

Mayor Dunn said remands are not approved without significant direction. She encouraged citizens to aid in the process by expressing their specific concerns.

Mr. Lambers informed the preliminary plans do not contain many of the specific issues raised this evening. Details regarding stormwater issues, parking structures, materials, rooflines, and windows will not be seen until the final development plan. Following this, final building plans will be submitted for approval. He advised approval of a preliminary plan does not bind the Council to approve the final plan if it is not acceptable. Specifications regarding F.A.R. bonuses are included in the final development plan application.

Regarding F.A.R. bonuses, Councilmember Gill stated he would like to see merits of the criteria being put forth to justify increased density deviations. Mr. Lambers responded the underground parking has been identified as bonus criteria, however it is not known at this time how many spaces the garage will entail. It is at Council's discretion whether to allow bonuses for upgrades to green space and amenities. The Planning Commission struggled with the F.A.R. proposal; however, except for a motion to regulate the height by Commissioner Munson that died for lack of a second, they did not give direction other than individual comments.

Commenting on Councilmember Gill's concern regarding the voting requirement following a remand, Mr. Lambers stated the only option is to obtain applicant agreement with a stipulation maintaining the voting requirement that exists this evening as part of the remand back to the Planning Commission on a one-time basis. If the project is remanded again, statutory requirements will come back into play.

Councilmember Azeltine stated he did not feel that safety issues relating to the stormwater study and garage had been resolved, which could spell potential disaster. He voiced favor with the mixed-use concept, however it seems the application was simply changed to this category by adding 67% more density to the original plan. A more acceptable concept should have been created from the drawing board. Councilmember Azeltine felt adequate direction was given by the Planning Commission. Additionally, the large hole on the site is presumptuous of the plan gaining approval and does not give a good impression to citizens.

Councilmember Bussing pointed out the current process provides ample safeguards to protect the interests of both the property owner and citizens in that following a remand with a simple-majority vote requirement, the final development plan must also go before the Planning Commission. During this phase of the process, a supermajority vote will again be required for the Governing Body to amend or override the committee's recommendations. He stated the process is open, public, and should be allowed to continue. Attaching a voting requirement stipulation to a remand will only serve to enhance cynicism.

Mr. Lambers stated there is another protective element within the planning process in that if the developer comes back with a final plan that is significantly different from the approved preliminary plan, Staff will request denial and the filing of a revised final plan. The applicant is allowed to present changes to the final plan within a 5% guideline.

Councilmember Peppes stated he relies very heavily on advice from the Planning Commission regarding what is best for the City of Leawood. He also supports the mixed-use concept but feels the current plan does not fit the needed and wanted persona for this area in terms of structuring and architecture.

Responding to Councilmember Bussing's comments, Councilmember Azeltine stated he agreed with most of the primary elements of the development process. The problem is that many times the process is gamed with changes occurring between presentations to the Planning Commission and Governing Body. The practice of granting last minute continuances to requesting developers is another point of frustration for residents who attend meetings. He stated the system could be applied in a friendlier manner.

Councilmember Gulledge stated the intent of his motion to remand the project is to obtain needed data and information prior to making a decision.

CITIZEN COMMENTS:

Mayor Dunn recognized a citizen desiring to speak on a non-agenda item, which was not indicated on the sign-in sheet.

1. Dr. Tim Hardin, 9801 Mohawk Lane, representing the Leawood Estates Homes Association, thanked the Governing Body for taking the time to hear concerns expressed by a group of residents at a prior meeting regarding the proposed project at 99th Street and Mission Road in Overland Park, Kansas. He provided an update regarding the development process of the opposed project and suggested that councilmembers visit the site. He also requested that Mayor Dunn and Mr. Lambers address a list of questions during their scheduled meeting with the Village Presbyterian Church Building Committee and report the answers at the October 2nd Governing Body meeting. He read the list of questions into the record. He thanked Mayor Dunn for discussing the issue with Overland Park Mayor Carl Gerlach.
2. Steve Garver, 12108 Catalina, spoke in opposition to the One Nineteen development. He made a presentation via PowerPoint outlining the history of the project and illustrating concerns shared by surrounding neighbors.
3. Rick Stanley, 12104 Catalina, opposed the project. He continued the PowerPoint presentation focusing on the negative impact the development will have upon residential property values. He urged the Governing Body to vote against the remand unless a stipulation is attached to maintain the original supermajority vote requirement.
4. Kevin Jeffries, 2919 W. 124th Terrace, President/CEO of the Leawood Chamber of Commerce at 11300 Tomahawk Creek Parkway, Suite 240, and Marcia Monica, 12913 Canterbury, also representing the Leawood Chamber of Commerce, provided testimony supporting the mixed-use development concept. Mr. Jeffries stated projects such as One Nineteen, Mission Farms, Villaggio, Park Place, and Parkway Plaza hold great promise for the future of Leawood as they will offer citizens wishing to downsize a place to move when they no longer need a large home. Ms. Monica also stated the community will benefit from mixed-use projects.

5. Joel Kesler, 4308 W. 125th Street, spoke in opposition to the project. He stated the One Nineteen development does not qualify as mixed zoning. It does not have the “campus feel” evident with the Park Place project and the green space is miniscule. He predicted there will be problems with selling the expensive housing, which will make it necessary to convert the units into rental property. Mr. Kesler stated the architecture of the Crate & Barrel building was unappealing and commented that the developers are “gaming the system” with the constant plan revisions.
6. Charlene Gordon, 12301 Catalina, passed on the opportunity to speak.
7. Bob Croft, 12409 Delmar Street, spoke against the proposed condominiums. He stated the Planning Commission has worked very hard on this project and he agreed with their determination that the project does not meet mixed-use requirements. Mr. Croft requested the Governing Body act upon the commission’s recommendations and deny the plan. He stated whatever construction takes place on the property will become part of Leawood’s heritage.
8. Mark Henke, 12408 Catalina, spoke in opposition to the height of the proposed plan. He suggested the developer work with the citizenry in order to resolve issues associated with the project.
9. Jennifer Baeley, 12300 Alhambra, President of the Berkshire Homes Association, shared concerns relayed to her from surrounding neighbors including the building mass, short setbacks, and the project’s intrusion on the park.
10. Trent Green, 12109 Alhambra, quarterback for the Kansas City Chiefs, stated he and his wife carefully chose Leawood from other metropolitan areas as the place in which they wanted to raise their family. The schools, community, commerce, and friends they have made in the area are valuable reasons they are planning to stay in the City following his retirement. He stated concerns related to decreased property values and the loss of privacy the high-rise building will create. Mr. Green requested the Governing Body deny the project with consideration given to accepting only the commercial development originally approved.
11. Jim Sheridan, 12100 Catalina, distributed information to the Governing Body regarding the existing hole on the development site, elevations obtained from BHC revealing site-line perspectives, and the incorrect elevations within the packets. He noted several inconsistencies in the material given to councilmembers and stated the developers should be held responsible for presenting what is submitted as packet information. Mr. Sheridan spoke against the requested deviations and noted discrepancies with photographs taken of the site from neighboring homes. He asked the Council to consider the negative impact the condominiums will have upon his personal property.

12. Scott Barksdale, 12020 Mission Road, opposed the project. He stated the structures will considerably block the view from his home and listed multiple issues associated with the project including building mass and configuration, small tract size, and setting precedence for towers on every strip mall. Mr. Barksdale reminded that the developer previously admitted the towers were not important to the financial viability of the project. He stated this is simply the wrong project in the wrong place.
13. Dale Tilton, 9713 High Drive, spoke in opposition to the development. He stressed the importance of listening to the homeowners associations and citizenry.
14. Janet McLaughlin, 4500 W. 125th Street, spoke against the project. She does not object to mixed-use development but agreed with statements that this is the wrong project for this area. She suggested the developers be content with the commercial development and omit the residential aspect. Ms. McLaughlin also expressed concerns related to flooding and the location of the garage door. She reported there has been conflicting information regarding the relocation of the door. Lastly, she voiced disapproval with the exterior design of the Crate & Barrel building and stated it would be a mistake to make the rest of the development similar in architecture.
15. Daniel Keleti, 12216 Alhambra, opposed the project. He stated his family loves the community in Leawood. He warned against the long-term backlash a shortsighted development can create. He requested the Governing Body deny the project.

APPLICANT'S RESPONSE TO CITIZEN COMMENTS:

Mr. Crisara clarified that the rest of the development will not be constructed with the same materials seen on the Crate & Barrel building. Brick, stone, stucco, and glass will be utilized for building exteriors with a level of detailing different than the neighboring store.

Mr. Crisara stated the height of the building was measured with the aid of Staff and by the City's definition from the initial finished floor to the roof structure of the building excluding the screening.

There is no intention to offset the reduced floor by increasing the number of units. The packet information is in error with the correct number of units being 55-60.

Mr. Crisara listed the three major objectives listed for mixed-use developments in the Leawood Comprehensive Plan:

1. Encouraging pedestrian-friendly environments within mixed-use developments.
2. Developing a human-scale village or "main street-style" mixed-use development.
3. Creating a mixed-use development providing a unique sense of place.

The One Nineteen development project is on track for these objectives although comments heard tonight seem to prove the opposite. He suggested that all parties review the Comprehensive Plan in order to refresh memories as to the guidelines.

Mr. McMahon addressed the issue of the existing hole on the site. He stated 250,000 yards of dirt must be brought in to fill the hole. The void was left to prevent having to dig it back out if the Governing Body approves the project at some point. If the project is not approved, the hole will be filled. He stated he wished to dispel the implication that there is presumption of approval. Mr. McMahon concluded by stated whatever decision is made, the One Nineteen development will be a great project.

There was Council consensus to waive the 10-minute break.

COUNCIL DISCUSSION AND POSSIBLE ACTION:

Mayor Dunn confirmed with Senior Planner Mark Klein that Mr. Sheridan is correct in that the packet information is inaccurate and contains only one updated elevation. The developer did not supply the revised elevations.

Councilmember Bussing noted the information given by Mr. Garver and Mr. Stanley indicates the tract of land as being zoned commercial; however, the Master Plan map from 2000 reveals a zoning of mixed-use, residential, and office. Mr. Lambers verified the Master Plan as correct but the property was rezoned to commercial upon approval of the shopping center.

Councilmember Bussing discussed the slides illustrating paired sales and decreased property values due to commercial views from homes with Mr. Stanley.

Councilmember Rawlings reviewed the approval history of the development, noting there was excitement with the opportunity to have the reputable Crate & Barrel in Leawood knowing the business owners chose this location over any other in the United States. Council approved the plan for the store with the understanding that the developer would come back with another request for more retail and possibly residential development on the site. Councilmember Rawlings stated he has visited stores in St. Louis and New York, which have the same signature look of modern architecture. An outline of other signature retail stores was presented at the time of approval for the original preliminary site plan. He asked the developer what type of residential component was envisioned at this time.

Mr. McMahon stated one of the issues associated with the parcel is the substantial grade change from the northwest to southeast corners. Throughout the course of the design, there was suggestion to utilize the grade change from the south. At the time the Crate & Barrel building was approved, there were preliminary discussions with Staff regarding the process of rezoning to MXD. The residential component was not definite until further analysis took place.

Councilmember Rawlings asked if there was validity to the citizen comment of the project being viable without the residential addition. Mr. McMahon confirmed this was a true statement.

Mayor Dunn stated she joined members of the Council and Fire Chief Florance in a demonstration at the project site prior to the meeting. The bucket of a fire truck was extended to various heights with Councilmember Rawlings volunteering to go up in the bucket for visual effect. At 78-ft, there was one area of visibility in the tree line when looking from Mission Road. She inquired if it would be economically possible to reduce the residential component by another floor.

George Burke with Consolidated Housing Partners, 523 Walnut, Kansas City, Missouri, stated the economics of the current 50-60 units is very balanced when compared to costs. It would be hard to determine at this time if reducing the unit count would be feasible. He stated this location will provide the recreational aspect of Tomahawk Creek and an abundance of retail opportunity to the marketed buyers of the units, who typically wish to lead a "lock-and-leave" lifestyle. The residents will support the services of the retail component as well as nearby shopping developments.

Councilmember Gill confirmed with Mr. Lambers that the originally approved plan contained 163,000 square feet of commercial and the current plans contains 175,000 square feet of commercial and 98,000 square feet of residential. He acknowledged the developers have stated there is a contractual commitment to Crate & Barrel to maintain a certain level of commercial development. Due to issues such as height, massing, and lack of green space the square footage increase has caused on the small 15-acre tract of land, he asked if consideration had been given to rethinking the plan in terms of reduced density.

Mr. Lambers stated reducing the commercial aspect on the west side of the development would be the only workable alternative in achieving this suggestion. This type of modification would eliminate the need for a number of deviation requests with the exception of a necessary set-back deviation due to the addition of turning lane on 119th Street.

Councilmember Bussing agreed that MXD would be a good use for the property, yet the current plan does not meet mixed-use criteria. He expressed favor with a remand to the Planning Commission with the understanding that the modification process be a collaborative effort between the developer, Staff, and residents in moving towards meeting certain criteria: a mixed-use project on this corner should develop a sense of place and community more specifically than the proposed plan; there should be more blending of the variety of uses to develop a better village concept; and serious reconsideration should be given to the clustering and orientation of structures on the site to facilitate better pedestrian flow.

Councilmember Bussing stated if a final plan were to come back following approval of a remand, he would look for more evidence of collaboration and cooperation. He warned that he does not want to see a final plan that is different in any material way from what is reviewed by the neighbors and Staff, nor does he want to see a plan that has not been presented to the Planning Commission. In addition to direction given for height, mass, materials, and architectural style, the project should include more creativity with regard to the lay-out of the challenging tract, improved vehicular circulation, and inclusive amenities that enhance the mixed-use residential component. He concluded the process will maintain the safeguards of a supermajority vote when the plan returns for final approval.

Councilmember Azeltine suggested promoting a sense of cooperation by opposing the motion to remand the project. He reiterated a remand will send the message that it is possible to undermine direction given from the Planning Commission by making revisions between meetings. Additionally, he agreed with the letter from the Leawood Chamber of Commerce supporting the mixed-use concept but not when it is used as an excuse to add density onto a project. Regarding the increase of projects containing condominiums with the rationale that baby boomers will want to downsize, Councilmember Azeltine reported his own market data research from other metro areas has revealed this to be a false assumption. Given the trailing real estate market, he warned against creating a situation where there are excess condominiums in Leawood that cannot be sold and are converted into rental properties.

Councilmember Azeltine continued that a mixed-use development must begin and end with the vision of such use in order to be effective. He agreed with Mr. Sheridan's comment of making the developer accountable for what is in the plan and stated he is still bothered by the hole on the development site.

Mr. Lambers requested direction for a specific height limitation. Councilmember Bussing stated he could not give a specific limitation as he relies upon the developers and architects to adjust the height in order to accommodate concerns. He suggested possibly moving the building downgrade, thus reducing the height in relationship to the current level while maintaining the same number of stories. Mr. Lambers stated he will advise the applicant to reduce the building by another story, which will bring the height measurement to 66-feet and place the condominiums 3-4 feet below the top of Crate & Barrel. Councilmember Bussing stated this is a reasonable suggestion.

Mayor Dunn also promoted collaboration and cooperation between Staff, the developer, and neighbors as this method has worked very effectively in improving past projects. Mr. Lambers informed he has requested that Mr. Garver identify individuals from the various homes associations who are concerned about the project and appoint 1-2 representatives from each in order to assemble a group that will work towards compromises with the developer. Mr. Garver has indicated his willingness to do so. It was suggested that Jennifer Baeley, President of Berkshire Homes Association, be a point person to help organize the group.

Councilmember Rasmussen stated he could not support a remand. He stated the project should be turned down as there is no overall comprehensive design or plan for a mixed-use development. Even if the floors are reduced following a remand, the project will still not be integrated with the wanted characteristics of a mixed-use development. He voiced further concerns related to stormwater and the underground parking. The developer should be required to come back with a total new design using the mixed-use concept as a guideline.

Councilmember Azeltine concurred with Councilmember Rasmussen's remarks. Considering the large number of opposing residents and the fact the developer has admitted viability of the project without the tower, he has no other choice but to vote against the plan.

Councilmember Gill stated he would not support a remand unless the developer agrees to a stipulation of no prejudice to the supermajority vote. The remand should also include instructions outlined by Councilmember Bussing. He relayed concerns with excess mass, density, and deviation requests. The project should contain more internal features of the village concept such as green space and pedestrian pathways. He stated he would like a concept of the amenities that will justify the bonuses prior to final plan approval. He also stressed that he could not support a plan with a parking garage in the floodplain.

Mr. McMahon agreed to a stipulation requiring no prejudice to the supermajority vote. The motion maker and second to the motion also agreed to the stipulation.

Councilmember Gulledge reminded the purpose of his motion to remand is to make improvements within the project. If a solution cannot be reached, the project can go back to the original commercial development.

Mr. Lambers clarified for Councilmember Rawlings that the proposal is for the existing plan to be remanded to the Planning Commission with requested changes noted by the Council made in a collaborative effort by the Staff, applicant, and neighbors. The plan will include a residential component but with a reduction in density and massing and increase in green space and pedestrian access. He acknowledged that some of the requests may not be possible without requiring F.A.R. deviations similar to the Mission Corner development. A denial will be more time consuming than a remand.

Councilmember Gulledge noted the building materials should also match the village concept. Mr. Lambers noted the village concept typically implies storefronts on both sides of the street with pedestrian areas and may be difficult to achieve in conjunction with a reduction of square footage.

Councilmember Azeltine stated direction given by the Council tonight was also given by the Planning Commission. He stated the plan should be denied for reasons previously stated.

Mayor Dunn stated none of the Planning Commissioners felt that mixed-use was inappropriate for this area. The direction is to further develop a mixed-use plan for this site. The plan may or not be approved by the Council or the Planning Commission.

Mayor Dunn confirmed with Mr. Kesler, board member of the Berkshire Homes Association, that members of the subdivision would be willing to negotiate with the developer.

The motion to remand the preliminary site plan for One Nineteen Development with the stipulation of no prejudice to the supermajority vote and with direction given by the Council was approved following a vote of 5-2. (Nay: Councilmembers Azeltine and Rasmussen).

6. OTHER BUSINESS

Mayor Dunn announced the United Way Kick-Off luncheon will be held at the Ironwoods Lodge on Wednesday at 12:00 P.M. Heart of United Way President Tom Dugard will be present at the event.

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