

Minutes

DVD No. 154

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, November 20, 2006. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Captain Dale Finger, Police Department
Chris Claxton, P&R Director
Jeff Cantrell, Neighborhood. Serv. Admin.
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney
Major John Meier, Police Department
Joe Johnson, Public Works Director
Mark Klein, Senior Planner
Deb Harper, City Clerk
Mark Andrasik, IS Director

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn advised that Item No. 14B will be continued to the December 4th Governing Body meeting. She also noted that additional material related to Item Nos. 7E and 7F had been placed upon the dais. A motion to approve the agenda was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The agenda was approved following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

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

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS Recognition of M&I Bank for Sponsorship of Cultural Arts Programs and Events

Parks & Recreation Director Chris Claxton stated over the years, M&I Bank has provided the opportunity for more programs within the department through their sponsorship and involvement in the community.

Leawood Arts Council Chair Mary Tearney stated she has worked with Mike Best and Kathryn McDermott of M&I Bank since the bank began sponsoring the art exhibits in 1996. They have also sponsored the Leawood Stage Company Gala for the last three years. These activities would not be possible without the major community support of M&I Bank. She extended appreciation to the corporation for the contributions.

On behalf of M&I Bank, Mike Best stated they have enjoyed and look forward to continuing their partnership with the City of Leawood for many years to come.

Mayor Dunn stated it was a relief to have M&I Bank resume the philanthropic endeavors following their acquisition of Gold Bank. She thanked them for hosting the studio art tours at their beautiful venue and for their generosity.

Ms. Tearney reported that attendance to the art exhibits over the last 11 years has increased from 75 to 475 individuals. Mayor Dunn also thanked and applauded Ms. Tearney for adding to the quality of life in Leawood.

6. SPECIAL BUSINESS

[from the October 10, 2006 Planning Commission Meeting]

- A. Ordinance No. 2191 approving a Preliminary Site Plan and Preliminary Plat for Madden McFarland Interiors, located on the southwest corner of 135th Street and State Line Road [Roll Call Vote]

Staff Comment: *Due to an error on the part of the City Administrator, there were an insufficient number of votes cast in favor of this application. This matter is back before you to correct this mistake.*

Mayor Dunn noted a presentation will be waived as the project was discussed extensively at the November 6th Governing Body meeting. The objective this evening is to reaffirm and add an additional vote to the passage of the ordinance.

A motion to pass the ordinance was made by Councilmember Gill; seconded by Councilmember Filla. The ordinance passed with the following roll call vote of 6-2-1: Yea: Councilmembers Peppes, Filla, Gill, Azeltine, and Rasmussen. Nay: Councilmembers Rawlings and Bussing. Abstain: Councilmember Gullede stated he would abstain from the vote as he was not present for the original discussion. Mayor Dunn also voted in favor of the ordinance.

- B. Resolution No. 2684 directing and ordering a public hearing on the advisability of an improvement, specifically acquisition of easements for purposes of Stormwater and Erosion Control Project along west side of Ironhorse Golf Course, located at 15400 Mission Road

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Gullede. 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. 1063A and 1063B
- B. Accept Minutes of the November 6, 2006 Governing Body meeting
- C. Accept Minutes of the September 28, 2006 IRONHORSE Advisory Board meeting
- D. Approve renewal of Retail Liquor License for Stoll Liquor Store, 3731 W. 133rd Street
- E. Approve Change Order No. 11 in the amount of \$1,359.75, to APAC Kansas Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110]
- F. Approve Change Order No. 12 in the amount of \$122,107.48, to APAC Kansas Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110]
- G. Resolution No. 2685 approving the Johnson County Drug and Alcoholism Council [DAC] recommendation for allocations of the 2007 Alcohol Tax Fund for an amount not to exceed \$50,000
- H. Resolution No. 2686 accepting Temporary Construction Easements from Riffe Home Building Company, for Tract M of the Villas of Whitehorse, 3rd Plat, and Tract L of Villas of Whitehorse, 3rd Plat, pertaining to Nall Avenue Improvement Project 143rd to 159th Street [CIP 80143]
- I. Resolution No. 2687 accepting a Sidewalk Easement from Riffe Home Building Company, Tract L of Villas of Whitehorse, 3rd Plat, pertaining to Nall Avenue Improvement Project 143rd to 159th Street [CIP 80143]
- J. Resolution No. 2688 approving a Final Plat for Mission Farms 4th Plat, located on the southeast corner of 105th Street and Mission Road [*from the November 7, 2006 Planning Commission meeting*]
- K. Fire Department Monthly Report
- L. Municipal Court Monthly Report
- M. Police Department Monthly Report

Mayor Dunn pulled Item Nos. 7C and 7G for discussion. On motion of Councilmember Peppes, seconded by Councilmember Azeltine, the remainder of the Consent Agenda was approved following a unanimous vote of 8-0.

- 7C. Accept Minutes of the September 28, 2006 IRONHORSE Advisory Board meeting

Mayor Dunn verified with City Administrator Scott Lambers that the minutes were previously approved at the November 6th Governing Body meeting and could be eliminated from the agenda.

- 7G. Resolution No. 2685 approving the Johnson County Drug and Alcoholism Council [DAC] recommendation for allocations of the 2007 Alcohol Tax Fund for an amount not to exceed \$50,000

Mayor Dunn stated she pulled this item in anticipation that a representative from the DAC would be present. As a representative was not in attendance, a motion to approve Item No. 7G was made by Councilmember Gulledge; seconded by Councilmember Peppes. Mayor Dunn complimented the organization for their good work. The motion carried following a unanimous vote of 8-0.

Mayor Dunn advised the agenda will also include a Councilmembers' Report from Councilmember Filla as well as a Staff Report from Mr. Lambers.

8. MAYOR'S REPORT

- A. Announced that United Way exceeded their \$38-million goal by raising \$38.5-million this year. The campaign was led by Leawood resident Bill Downey of Kansas City Power & Light. Mayor Dunn congratulated and thanked the City of Leawood employees for achieving a 35% increase in contributions and a 213% increase in participation over last year. The employee campaign was led by Human Resources Director Colleen Browne.
- B. Participated in a check presentation from the Leawood Rotary Club's Bids 4 Kids Auction to two recipients of the philanthropic endeavor, Horizon Academy and Community Living Opportunities. The National Bank of Kansas City, major sponsor for the event, made an announcement at the breakfast that they would also provide sponsorship in 2007. Mayor Dunn expressed gratitude towards the business for their generosity.
- C. Participated in the Johnson County Community College Foundation's "Some Enchanted Evening" scholarship benefit, which honored Leawood residents Norman and Elaine Polsky as Johnson Countians of the Year. Councilmember Gill also attended the event.
- D. Attended Marillac Center's Enchanted Evening honoring the Rasmussen Family for their decades of service and generosity to the organization. Councilmember Gulledge was also present as a board member of Marillac. Mayor Dunn congratulated Councilmember Rasmussen and his family.
- E. Attended the Kansas City Area Development Council's annual meeting and presentation. Mayor Dunn congratulated City Administrator Scott Lambers on becoming a newly elected board member to the group.

- F. Participated in the 2nd Annual Table of Faiths Celebration, sponsored by the Greater Kansas City Interfaith Council. Councilmembers Rasmussen, Rawlings, and Azeltine were in attendance along with Mr. Lambers.
- G. Attended the Leawood Chamber of Commerce ribbon cutting for the Plaza III restaurant in the Cornerstone Shopping Center. Councilmember Azeltine also attended the grand opening.
- H. The Leawood Arts Council hosted a studio tour and reception in the home of Leawood resident and artist Waltraud von Schwarzbek. Ms. Schwarzbek has a home gallery and is an internationally recognized oil painter whose work can be seen across the country and throughout the world. She began her career in her native land of Bavaria.
- I. Mayor Dunn congratulated the Leawood Firefighter Combat Challenge Team for their efforts in upholding the standards of the Fire Department, the City, and American firefighting at the World Championship Competition in Henderson, Nevada. Participants on the team were A.J. Venable, Eric Peterson, Russ Walker, and Deputy Chief Randy Hill.
- J. Noted and shared an article from the November 9th edition of the *Johnson County Sun* profiling retiring Police Chief Sid Mitchell and his 31-year career.
- K. Noted the passage of the Leawood sales tax increase initiative from the November 7th General Election. Mayor Dunn passed an article from *The Kansas City Star* regarding the favorable 60/40 vote and illustrating other sales tax rates in Johnson County.
- L. Reminder for Councilmembers to RSVP to City Clerk Deb Harper for the December 12th Council of Mayors Social.
- M. Announced the date for the Holiday Lighting Ceremony at City Hall as Tuesday, November 28th, at 6:00 P.M. There will be many schools participating in the celebration.
- N. Mayor Dunn wished a Happy Thanksgiving to everyone.

9. COUNCILMEMBERS' REPORT

Report from Councilmember Filla – Councilmember Filla distributed pictures of residential sites in various stages of demolition. She requested that the Public Works Committee review the process for demolitions and advise of incentives and disincentives that are given to encourage decreased time spans between demolitions in their totality and actual construction. She stated the partial demolitions burden the Staff from a safety inspection and monitoring standpoint as well as presents hazards to children playing in nearby neighborhoods.

A motion to refer the review of the demolition process to the Public Works Committee was made by Councilmember Filla; seconded by Councilmember Peppes.

Mr. Lambers advised there is a specified timeframe given for construction completion upon building permit issuance, however there is not a requirement linking a demolition permit to the application of a construction permit.

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

10. STAFF REPORT

Report from City Administrator, Scott Lambers – Regarding the status of the Leawood Development Ordinance [LDO] amendment pertaining to architectural reviews of single-family structures, Mr. Lambers stated the issue has gone before the Planning Commission. The Staff recommendation was to delete all reference to architectural review of single-family structures, to which the Planning Commission agreed. The commission has also recently approved a memorandum for presentation to the Governing Body stating they do not wish the approval to preclude the opportunity to review other requirements that may be appropriate for the northern part of the City.

The amendment will be discussed again by the Planning Commission in February with Governing Body presentation in either February or March. The commission will also request permission to perform further research on the issue related to height and massing as well as architectural issues. Mr. Lambers recommended that the next scope of review be confined to height and massing only with a timeframe of 4-6 months before presenting to Council for consideration.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the October 24, 2006 Planning Commission meeting]

- A. Resolution No. 2689 approving a Revised Final Site Plan for Mission Farms Mixed Use Development, located on the southeast corner of 105th Street and Mission Road

Developer Doug Weltner, 4520 Main Street, reviewed revisions related to building F, which is a mixed-use building containing retail and office.

Mayor Dunn requested to view the site plan drawings illustrating the detached trash enclosures that were approved by the Planning Commission. Tim Homburg with NSPJ Architects pointed out the location of the proposed trash enclosure as the southern end of the parking lot between buildings E and F. The alternative of placing the trash enclosures in the alley between the two buildings would be awkward and unfriendly to pedestrians.

Referring to the recommendation under Staff Comments, “all trash enclosures must be screened from public view with a 6-foot solid masonry structure to match the materials used in the buildings and shall be architecturally attached to the individual buildings and accented with appropriate landscaping,” Councilmember Gill asked the applicant how much of this could be achieved. Mr. Weltner requested the definition of “architecturally attached.”

Mr. Lambers stated it has been a past policy of the Council for trash enclosures to share a common wall with the building; however, recent approvals have allowed attachments to architectural features with the appearance of the enclosures being part of the building. Allowing the proposed detached structure in a parking lot has not been a common practice. If approved as presented, other requirements regarding matching materials, landscaping, and doors will have to be met. Mr. Weltner confirmed agreement to the remaining conditions. The trash enclosures will be fully screened from both Mission Road and I-435.

Mr. Lambers stated Council has not had specific dialogue regarding the detachment of trash enclosures. As there is no consistent position, the preference order used by Staff during the review process has been for the structures to be attached to the building, architecturally attached, and then detached upon variance request by the developer.

Regarding Stipulation No. 24, Mayor Dunn confirmed understanding with Mr. Weltner and Mr. Homburg that materials used for the trash enclosures will match those of the building. Mr. Weltner reported they will also work with Staff to make the area more pedestrian friendly.

Councilmember Azeltine verified with Mr. Lambers that the practice of requiring attached structures is not specifically mentioned in the LDO. The addition of such language is not necessary at this point in order to allow flexibility on a case-by-case basis.

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

Councilmember Bussing inquired about the location of the trash enclosures for buildings A and B. Mr. Weltner stated the structures are within the buildings as trash chutes are required for the residential units above the first-floor retail. The trash enclosure for building E will be shared with building F and will be enlarged at that time. The issue has not been addressed for buildings C and D at this time.

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

- B. Resolution No. 2690 approving a Revised Final Site Plan for Mission Farms Town Villas, located on the southeast corner of 105th Street and Mission Road

Mayor Dunn noted a variance of sidewalk widths with some being 4-ft. wide and some being 5-ft. wide. Mr. Lambers stated the LDO provides for 5-ft. sidewalks and Public Works has a 4-ft. minimum requirement, which allows for flexibility depending upon the circumstances of the project. The 4-ft. width is ample space for wheelchair accessibility.

Mr. Lambers confirmed that Staff has disallowed the use of E.I.F.S. and stucco as accent material due to durability concerns.

Mayor Dunn opened the floor for citizen comments.

Bob Green, 10416 Howe Lane, stated concerns regarding the revised setbacks of the villas, which will allow occupants to overlook the swimming pool of his neighborhood. Additionally, the layout of the streets requires traffic exiting the villas to empty onto 105th Street or turn north on Mission Road. A south turn on Mission Road is not available. This will cause increased traffic congestion and safety concerns for his subdivision, which has several small children. Mayor Dunn confirmed with Mr. Green that his neighborhood consists of public streets.

Randy Boatman, 10414 Mohawk, stated he is a future resident of the subdivision neighboring the development and has three small children. He was not aware of the possibility that the streets could become high traffic and asked that other options be explored.

Mary MacNaughton, 10411 Mohawk, stated the road will empty directly between her home and the pool house. The current street layout for the new town homes and businesses will dramatically increase the traffic in her neighborhood.

Patty Keane, 10421 Howe, also speaking on behalf of her husband, Paul Keane, opposed the construction of the proposed road as it will directly impact their home. She stated concerns related to increased traffic in a neighborhood with small children, loss of privacy, and the security risk the commercial development will pose. She stated commercial areas should be kept separate from residential areas.

Greg O'Brien, 10408 Howe Lane, echoed concerns expressed by his neighbors.

Mr. Lambers stated the street configuration was approved in 2003, prior to the construction of the now neighboring homes. The developer proposed installing a gate on the south end of the development, but the City no longer permits gated streets. A gate would not resolve the issue of traffic from the subdivision as residents would still traverse to the northern and western streets in order to turn south onto Mission Road. Regarding commercial traffic concerns, a detour into the neighboring subdivision would be quite a meandering path and is not expected to increase traffic. The proposed configuration is consistent with the final plan approved in 2003.

Councilmember Gill inquired about projected traffic counts at the Mission Road exit and through the residential streets at peak hours. Public Works Director Joe Johnson stated he would review the traffic report prepared in 2003.

Applicant Doug Weltner stated from the developer's point of view, gates on both ends of the project are preferred for some of the same concerns expressed by neighbors. He stated the traffic study was done at preliminary plan approval; however it was not anticipated that commercial patrons would exit through the residential streets. At this time, there is not a protected left-hand turn from the site onto Mission Road. Mr. Lambers stated signalization will most likely be warranted upon development of the property across the street.

Responding to Councilmember Gill's question regarding increased bonus points, Mr. Lambers informed this portion of the development has decreased in density since original final plan approval. Mr. Weltner explained the points were given due to the addition of lofts to the third-floor residential units, which increased square footage but not overall density.

Mr. Weltner stated the gate feature would eliminate traffic concerns created by a commercial district street connecting to a single-family neighborhood. He asked the Governing Body to consider a gate component to the town home portion of the project.

Councilmember Gullede asked if a cul-de-sac could be placed at the end of the residential street. Brick Owens, Director of Land Planning for HNTB, 715 Kirk Drive, Kansas City, Missouri, stated the Planning Commission has given approval to place a "No Thru Traffic" sign at the entrances to the villas and mentioned there would possibly be an opportunity to request the gates at a later date if it is proven that cross-traffic is occurring. There is not enough room to place a cul-de-sac at the south entrance area without removing some of the commercial parking as it would require 72-ft. in diameter.

Mr. Lambers added the Fire Marshall would object to a cul-de-sac at the northern entrance as this would require traffic to and from the development to traverse through the commercial parking lot. The Planning Commission felt if there were to be a gate, it should have an automatic detector and be installed on the south entrance to allow occupants of the subdivision to travel from the private street into the shopping center.

Confirming with Mr. Lambers that the residential street is a private drive of which the developer initially proposed a gate at both ends, Councilmember Rasmussen reminded there is a cul-de-sac north of the villas on the renamed 105th Street with a private drive that leads to the gated back entrance of Brookwood Elementary School on 103rd Terrace. He stated he does not understand the objection to a south gate for this project in order to prevent commercial traffic from entering the private street.

Councilmember Bussing stated a significant amount of time was spent on planning this development in 2003. He commented that making substantial changes now is counter-productive to the planning process.

Mayor Dunn agreed with Councilmember Bussing's comments and added it would not be prudent to add gates to the project and change the traffic patterns without further research. She noted the memorandum from City Engineer David Ley regarding the addition of a gate entrance on 105th Street. She suggested taking action on the revised final site plan with a decision regarding the gates made in the future.

Mr. Johnson reported the traffic study was not updated as the plan was presented as originally proposed in 2003. Mr. Lambers compared drawings from the final plan and revised final plan. The only changes are that the villas were originally attached but are now detached units.

Mayor Dunn noted there are now residents next to the development who were not there at the time of final plan approval. She reiterated that the gate issue will require further discussion following review of the traffic study.

Mr. Lambers informed the Planning Commission does not believe there will be a significant amount of traffic from the shopping center through the private drive, especially following the placement of a signal on Mission Road when warranted. If the traffic count far exceeds what would normally be generated from the residential units based upon traffic engineering calculations, the Planning Commission stated the applicant should be able to request consideration for gate placement at the southern entrance.

Councilmember Filla agreed with allowing the developer to move forward with a future review of the gate situation added as a stipulation.

Concerning the traffic signalization warrant, Councilmember Gill noted development to the south on Tomahawk Creek Parkway would also increase traffic along Mission Road. Mr. Lambers stated installation of the traffic light would most likely be triggered by development in Overland Park on the west side of Mission Road, which will continue the mixed-use concept and create a variety of traffic demands during the course of the day. If required warrants are met before the development is complete, the signal could be installed at an earlier date.

Councilmember Filla suggested converting the private drive into a one-way road with the entrance on 105th Street in order to discourage commercial traffic from traversing through the area. Mayor Dunn stated this option would greatly inconvenience the residents of the town homes.

Mr. Lambers stated the traffic signal on Mission Road will ultimately eliminate traffic concerns, although there may be an interim problem. If it is decided upon to allow a gate, it could be approved with the condition that reevaluation take place once signalization is installed.

Councilmember Azeltine stated the gate is a matter of public safety and should be dealt with before moving forward on the issue. Mayor Dunn remarked the intention of going forward is not to leave a date uncertain for addressing the issue; however construction of the villas may be time-sensitive to the developer.

Chase Simmons of Polsinelli, Shalton, et al., representing the proposed purchaser of this section of the development, confirmed there is a timing issue related to the project. He also expressed interest in resolving the traffic issues by installing gates at the entrance sites to the town homes.

Mr. Weltner informed Councilmember Rawlings that construction of the Overland Park development to the west will follow completion of a new street and bridge leading to Roe Avenue, which is estimated to begin in one year. Mr. Weltner stated the developer is not opposed to installing the traffic signal at this time; however the cities do not wish to proceed in this manner. The developer also feels the gates will be necessary even with the addition of a traffic signal due to the proximity of the parking lots.

Mayor Dunn asked Mr. Weltner to provide a traffic study assessing whether the lack of connectivity created by a gate would require signalization at the intersection sooner than if there are no gates.

A motion to approve the revised final site plan for Mission Farms Town Villas, located on the southeast corner of 105th Street and Mission Road, including the installation of a gate at the south end of the private drive, was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Bussing expressed favor with the motion but asked fellow councilmembers to reflect upon a past discussion regarding the Price Chopper at 135th Street and Mission Road. He reviewed there was much concern about the direct access traffic from the shopping center would have to the northern residential areas, thus access points were shut-off. Today, the Price Chopper development struggles because it is disconnected from the neighborhoods. The concept of mixed-use is to combine the residential and commercial components. Councilmember Bussing reminded it was felt that the original model for Mission Farms provided great interconnectivity. Closing the access points at this time will only serve to isolate the commercial development and make it difficult for the businesses to thrive.

Demonstrating his point on the site plan drawing, Councilmember Rasmussen stated the private drive would not add to the pedestrian access of the commercial development even if it remains non-gated. There are pedestrian walkways surrounding the residential area that lead to the commercial district.

Following further discussion regarding gating the entrances, Mayor Dunn restated a decision regarding this issue should be delayed until further traffic studies are available.

Councilmember Gullede voiced favor with the placement of two gates within the development.

Councilmember Filla stated two gates are not warranted as this would create an isolated feeling in the neighborhood. Installing one self-regulating gate at the south entrance will address residents concerns of traffic utilizing the private drive as an alternative egress from the shopping center.

Councilmember Gullede confirmed with Mr. Owens that the developer prefers two gates.

A motion to amend the main motion to include a second gate at the north entrance of the project was made by Councilmember Gullede; seconded by Councilmember Rasmussen.

Councilmember Gullede stated his motion is due to requests from both the developer and residents to have the gates. Councilmember Azeltine requested to verify the desires of the residents. Mayor Dunn agreed to reopen citizen comments for those desiring to speak.

Patty Keane, 10421 Howe Lane, stated the two gate approach would be pleasing to the residents. She expressed interest in knowing the specifics of the proposed gates such as will they be permanently locked, permanently open, or accessible to only town home residents. Mayor Dunn clarified for Ms. Keane that a cul-de-sac could not be included due to an inappropriate fire engine turn radius. Mr. Lambers informed that other than emergency vehicles, only residents of the villas will have access through the permanently closed gates.

Bob Green, 10416 Howe Lane, stated at the time the original final plan was approved in 2003, there were no residents who owned the property. He questioned why a cul-de-sac could not be added to the north end of the private drive. Mayor Dunn stated this would require removal of some of the town homes. As a cul-de-sac is not possible, he stated favor with having one gate at the north end.

Councilmember Rasmussen clarified that the cul-de-sac on 105th Street, north of the villas, has a private drive that leads to 103rd Street and provides fire access for the north end of Mission Farms.

The amendment to the motion to include a second gate failed with the following vote of 3-4: Yea: Councilmembers Gullede, Rasmussen, and Azeltine. Nay: Councilmembers Peppes, Bussing, Rawlings, and Filla. (Councilmember Gill not seated for the vote).

Regarding placement of a gate to the south end only, Mr. Lambers advised that gate access coming from the north will have to be activated by the presence of a vehicle rather than by owner activation unless the applicant wishes to alter the plan to provide an adequate turn-around area for vehicles that may become trapped. The south side of the gate will preclude non-owner traffic and will require an opener for access. Mr. Owens agreed that only access from the south will require owner activation. Mayor Dunn commented the scenario is more palatable from a connectivity standpoint.

The motion to approve the resolution with the addition of a gate at the south end of the private drive carried following a vote of 7-1 (Nay: Councilmember Gill stated he is philosophically opposed to gated private streets. He stated a protected left-hand movement would be a better solution than the installation of gates).

- C. Resolution No. 2692 approving a Final Site Plan for Mission Farms - Van Brocks, located on the southeast corner of 105th Street and Mission Road

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Applicant Brent Van-Landingham thanked the Governing Body for their consideration. The resolution was approved following a unanimous vote of 8-0.

12. OLD BUSINESS – None.

13. NEW BUSINESS

- A. Ordinance No. 2192 levying a four-tenths of one percent [.4%] City Retailers' Sales Tax, in addition to the one and one-eighth percent [1.125%] currently levied, within the City of Leawood, Johnson County, Kansas, for a period of 5 years to begin April 1, 2007 and ending on March 31, 2012, and to use the revenue from the additional tax to provide funding for construction of public safety improvements, including a Justice Center, and all other necessary and related improvements, including infrastructure related thereto; such additional tax to take effect on April 1, 2007 and end March 31, 2012, or at the end of such calendar quarter prior thereto as the City shall have collected tax revenues from such additional tax in the amount of Ten Million Dollars [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Gill.

Mayor Dunn reminded the tax increase was approved by the public at the most recent election with 60% in favor and 40% opposed.

Including the increase, Councilmember Bussing confirmed with Mr. Lambers that Leawood holds the second highest sales tax rate in Johnson County at 7.925% with the City of DeSoto having the highest rate.

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

- B. Ordinance No. 2193C amending Sections 11-101 through 11-106 of the Code of the City of Leawood, 2000, pertaining to regulating public offenses within the corporate limits of the City of Leawood, Kansas; incorporating by reference the "Uniform Public Offense Code for Kansas Cities" 2006 Edition, [UPOC] with certain amendments and omissions, such incorporation being authorized by K.S.A. §12-3009 through 12-3012, and K.S.A. § 12-3301 and 12-3302, and repealing existing sections § 11-101 through 11-106, and other sections in conflict herewith [Roll Call Vote]

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

Regarding the requirement that drivers use headlights at anytime windshield wipers are in continuous use, City Attorney Patty Bennett informed the Kansas State Statute went into effect on July 1, 2006, with the City ordinance going into effect upon publication. At this time, Legislature has authorized police officers to issue warning tickets only for offenses against this requirement. She also reported that three copies of the UPOC and STO are kept in the Office of the City Clerk for public review. New changes in the codes from the previous year are listed in the backs of the books.

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

- C. Ordinance No. 2194C amending Sections 14-101 through 14-105 of the Code of the City of Leawood, Kansas, 2000, pertaining to regulating traffic within the corporate limits of the City of Leawood, Kansas; incorporating by reference the "Standard Traffic Ordinance for Kansas Cities, 2006 Edition," [STO] with certain amendments, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, and K.S.A. § 12-3301 and 12-3302; repealing existing sections 14-101 through 14-105; and other sections in conflict herewith [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Azeltine; seconded by Councilmember Gullledge. The ordinance passed with the following roll call vote of 8-0: Yea: Councilmembers Azeltine, Gill, Rawlings, Gullledge, Peppes, Filla, Rasmussen, and Bussing.

- D. Ordinance No. 2195C amending Chapter X1, Article 9 of the Code of the City of Leawood, Kansas, 2000, pertaining to Smoking, and repealing existing Chapter XI, Article 9 [Roll Call Vote]

Staff Comment: *This ordinance is before you for your consideration. The options available to the Governing Body are to consider adoption, schedule a public hearing or a work session. It is the City Administrator's recommendation that this ordinance represents a satisfactory compromise with regards to this issue and there have been ample number of public hearings on this subject throughout the metro area that the Governing Body should consider its adoption as presented.*

Mayor Dunn advised the ordinance is essentially the same as the one recently passed by the City of Overland Park and is a compromise between the Kansas Restaurant & Hospitality Association [KRHA] and Clean Air Kansas City. The proposed ordinance reflects the "Take It Outside Campaign," which allows smoking in outdoor dining areas of restaurants.

Councilmember Peppes inquired about the lengthy wait of the January 8, 2008, effective date. Mr. Lambers stated the date mirrors the Overland Park ordinance with the objective of creating a fair playing field between area businesses. Mayor Dunn added the date was agreed upon by the KRHA and Clean Air Kansas City in order to allow restaurants time to prepare for the change. Mr. Lambers stated the date also gives notification to restaurants in the planning process to allow for an outdoor seating area should they wish to accommodate smoking.

Councilmember Rasmussen and Ms. Bennett discussed the penalty cost differences between an individual and persons having control of a public place or place of employment. The fine is higher for a business owner in order to encourage compliance within the business.

A motion to pass the ordinance as written was made by Councilmember Gill; seconded by Councilmember Rawlings.

CITIZEN COMMENTS:

1. Jean Daugherty, 10328 Mohawk Lane, commended the City Council for addressing this important matter. She stated appreciation to Councilmember Peppes for raising issue with the extended effective date and encouraged the Council to consider an earlier timeframe for the Leawood ordinance.
2. John Neuberger, 10922 W. 101st Street, Overland Park, stated the January 2, 2008, effective date is too long of a time period to allow continued exposure to tobacco smoke. As Olathe has already implemented a smoking ban, he does not understand the proposed 14-month wait. Mr. Neuberger also stated the requirement of no smoking within 10-ft. of public entrances should be increased to 15-ft. or 20-ft. and include windows and air intake systems. The American Society for Heating and Refrigeration Engineers reported that toxins can be drawn into the systems from 30-ft.

3. Barbara Mitchell, 10004 Oakridge Drive, Overland Park, representing the Director of the Johnson County Health Department, who could not attend this evening's meeting, voicing his support for this ordinance.
4. Joe Bolduc, 7901 W. 59 Terrace, Merriam, representing the Kansas Business Men's Association, distributed information to the Councilmembers. Mr. Bolduc stated a good deal of the information regarding the damage that cigarette smoke causes is not valid. For instance, one statement has claimed that cigarettes have over 4,000 harmful chemicals. Mr. Bolduc stated you would not be able to even lift a cigarette if it contained that many chemicals. Other claims have no supporting evidence, and he asked the Council not to rush to judgment and pass this ordinance tonight before hearing the other side.
5. Debbie Doud, 3006 W. 83 Street, Prairie Village, commended the City and staff members for advancing a non-smoking ordinance.
6. Jace Smith, 1208 N. 132 Street, Kansas City, KS, speaking on behalf of the Clean Air Kansas City Coalition, representing more than 58 agencies and hundreds of residents, encouraged the Council to adopt the ordinance.
7. Dr. William H. McEachen, 3515 W. 100 Terrace, Leawood, stated he has a negative reaction to smoke; is concerned about children's health as it relates to being exposed to smoke, and is in favor of passing a non-smoking ordinance.
8. Mary Jane Hellebust, Topeka, Faculty Free Cancer Coalition, voiced her support for the smoking ordinance.
9. Herbert Young, 10313 Cherokee Lane, directed the Governing Body's attention to a letter from the American Academy of Family Physicians, supporting this ordinance. He also quoted the Surgeon General's statement regarding second-hand smoke, '...Today, massive and conclusive scientific evidence documents adverse effects of involuntary smoking on children and adults,' and urged the Council to take action on this ordinance.
10. Kevin Harker, 13213 El Monte, Executive Vice-President of American Heart Association, extended his appreciation to the Governing Body for addressing this issue. Further adding, second-hand smoke is a serious health hazard.
11. Former Leawood City Councilmember James Taylor, 12505 Sherwood, stated he encouraged the City Council to move forward in passing a non-smoking ordinance when he left office in April, 2006, and complimented the Council in moving forward on this issue.
12. Dr. Steven Roeder, Lawrence, Kansas, stated when non-smoking ordinances were discussed, there was a fear that restaurants and bars in Lawrence would go out of business if smoking was prohibited. Data is now available that reflects that there was no decrease in tobacco excise tax; and a large increase in sales tax collection occurred in the bar and restaurant business.

Mayor Dunn stated after reading articles in the Kansas City Star and the Johnson County Sun, it is her understanding that the smoking ordinance passed by Olathe is less restrictive than the proposed ordinance as the Olathe ordinance allows smoking in private clubs.

Councilmember Gullledge asked to make a friendly amendment to the motion to revise the effective date to April 1, 2007 instead of January 1, 2008. The friendly amendment was seconded by Councilmember Peppes.

Councilmember Rawlings asked if moving the effective date would place the business owners at a disadvantage by not allowing them to get prepared. He is in favor of this ordinance, but not at the expense of the business owners in Leawood.

Mayor Dunn stated that Kevin Jeffries, President of Leawood Chamber of Commerce, had advised that the Chamber Board of Directors had previously approved a resolution expressing their concern and a desire for a level playing field. Their cause for concern was diminished knowing that this ordinance would become effective at the same time as Overland Park's. Accelerating the effective date to April of 2007 would cause them concern. If the majority of the Council concurred with this accelerated date, she would recommend a public hearing to hear from the restaurant owners in Leawood.

Councilmembers Azeltine, Filla and Rasmussen echoed Councilmember Rawlings' concern. Councilmember Azeltine further stated maintaining a major playing field is of major concern. He voiced intent to vote against the friendly amendment as he agrees with Mayor Dunn in that any significant change to the proposed ordinance would require a public hearing.

Mayor Dunn then called for the vote on the amendment to the motion, to accelerate the effective date to April 1, 2007. The amendment failed by a 3-5 vote [Yea: Councilmembers Gill, Peppes, and Gulledge; Nay: Councilmembers Filla, Azeltine, Rasmussen, Rawlings, and Bussing.

The original motion, with an effective date of January 2008 was approved by the following 7-1 roll call vote. Yea: Councilmembers Peppes, Rasmussen, Rawlings, Gulledge, Gill, Azeltine, Filla; Nay: Councilmember Bussing.

Councilmember Bussing stated he supports efforts to enhance public safety and believes smoking is a health hazard; however feels this is an inappropriate use of the City's regulatory power. The 'market' mechanism is working throughout the County, and he opposes the application of City regulations in an attempt to regulate behavior.

14. OTHER BUSINESS

A. Discussion of restoration of Non-conforming Land Uses

Staff Comment: *The City staff has been approached with a request for the City to change its policy with regards to legal non-conforming land uses. The City has been requested to establish a procedure whereby if a structure holding a legal non-conforming land use status is lost or destroyed by more than 50%, that it could be restored to its original condition. The existing policy of the City is that if 50% or more of the structure is lost or destroyed then its legal status is automatically removed and any reconstruction must adhere to the City's current zoning ordinance.*

Scott Lambers stated the current City policy states that if there is a legal non-conforming land use and should 51% be lost or destroyed, then it loses its status and has to conform to the City's zoning ordinances.

Currently, if a person purchases a structure that is a legal non-conforming use and something happens to that structure, they would not be able to reconstruct the building. The question to the Council is whether they want to entertain a process by which individual(s) could make a request prior to the purchase and obtain approval to build to current footprint and still conform to the City's Code. Most of the issues in question would be setback requirements that would not be able to be met. Typically, cities attempt to not encourage non-conforming uses. Further stating, he suggested a work session be conducted to discuss and clarify the Council's direction on this matter.

Mr. Lambers stated he has had previous conversations with Mr. Peshoff, and he was advised his specific application is not on the table tonight. The City is looking for a city-wide policy and this policy should not be based upon a single application.

Mr. Bruce Peshoff, 2401 W. 123rd Terrace, principal in land use planning firm, Planning Works. Mr. Peshoff stated he felt the information on this specific agenda item is not correct and felt he needed to clarify. They currently have property in Leawood and have made an offer to purchase a structure located at 8000 Lee Boulevard, immediately south of a large commercial building, directly next to the commercial center at 79th Street and Somerset. As they were doing due diligence, they realized there was a problem with the property, dealing with non-conforming issues. The property is a non legal non-conforming structure. He said there is an important distinction to be made between a legal non-conforming use and a non-conforming structure. The use for this property is consistent. It is zoned for office uses, and is consistent with the comprehensive plan. There is no non-conforming use issue on this property.

Councilmember Gill stated this issue is not on the agenda, and made a motion that Staff prepare a recommendation for consideration on a later date, or perhaps at a work session, if needed. The motion was seconded by Councilmember Bussing.

Scott Lambers stated this would require a work session, as this could be a significant change in the policy and the process would need to be defined.

Mr. Peshoff confirmed with Councilmember Bussing that this issue is time sensitive. He is uncertain what the Council's position is on regarding the possibility of whether or not a commercial structure can be rebuilt, if destroyed. Currently, the LDO provides non-discretionary authority for a structure that is non-conforming to be rebuilt.

Councilmember Rasmussen stated non-conforming uses is an important issue for the City to consider. Adding further, he opined to allow non-conforming uses to be restored after being destroyed by fire would be a poor policy.

After further discussion, it was determined to schedule a Work Session on December 18, 2006, regarding this matter. The motion carried following a unanimous 8-0 vote.

- B. Schedule a Governing Body Executive Session immediately following the Governing Body meeting to discuss matters related to the attorney-client privilege
–CONTINUED TO THE DECEMBER 4, 2006 GOVERNING BODY MEETING

ADJOURN

The Governing Body meeting adjourned at 10:25 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk