

Minutes

DVD No. 164

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, May 7, 2007. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: Gregory Peppes and Gary Bussing.

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Joe Johnson, Public Works Director
Eirene Oliphant, Building Official
Jeff Joseph, Senior Planner
Deb Harper, City Clerk

Patty Bennett, City Attorney
Captain Dale Finger, Police Department
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Mark Klein, Asst. to the Planning Director
Mark Andrasik, IS Director
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Following a brief moment of silence for the residents of Greensburg, Kansas, who were recently devastated by an F-5 tornado, Mayor Dunn reported that two officers from the Leawood Police Department were sent to Greensburg today to help with disaster relief efforts. She also announced that this Thursday, May 10th, Pizza Hut restaurants across the state of Kansas are donating 20% of profits to the United Way Greensburg Disaster Fund. The money will directly benefit those affected by the tornado.

Mayor Dunn stated the agenda will also include a report from Councilmember Gill as Item No. 9A and a report from Councilmember Filla as Item No. 9B. She also noted that Item No. 11C has been continued to the May 21st Governing Body meeting.

A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 6-0.

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.**

Kevin Jeffries, President and CEO of the Leawood Chamber of Commerce, 2919 W. 124th Terrace, bestowed compliments upon the Governing Body and City Staff for doing such a tremendous job in thoughtfully planning the community, which integrates residential and business uses. In thanking the past and present members of the Governing Body, he stated Leawood residents are fortunate to live in such a great community.

Mayor Dunn in turn thanked Mr. Jeffries for his contribution of building relationships and connections within the community.

4. PROCLAMATIONS **National Trails Day, June 2, 2007**

Mayor Dunn read and presented the National Trails Day Proclamation to Lindsay Youle, Special Events and Projects Supervisor. As an avid user of the trails, Mayor Dunn stated she values their appearance and the benefits they reap the community. She also reported that Councilmember Rasmussen recently made a generous donation to enhance wildflowers along the trails.

Building Safety Week, May 6-12, 2007

Mayor Dunn read and presented the Building Safety Week Proclamation to Fire Chief Ben Florance and Building Official Eirene Oliphant. Ms. Oliphant relayed that a building inspector from the Codes Administration Department has also traveled to Greensburg in order to help with disaster relief efforts.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

- A. Approve Staff action to proceed with Change Order No. 1 for an amount not to exceed \$36,000.00 to Dennis Johnson Construction pertaining to the IRONHORSE Golf Course Improvement Project

Paul DeBey, 3705 Ironhorse Court, and Dennis Bryant, 3701 Ironhorse Court, introduced themselves to the Governing Body. Mr. Bryant reviewed that the flood of 2004 caused Negro Creek on IRONHORSE Golf Course to erode the property behind their homes. Subsequently, their private land began sliding into the creek. Engineers have advised that the City-owned property must be repaired before renovations can be made to their backyards.

Engineer and Leawood resident John Kahl with Terra Technologies, 8680 W. 96th Street, Overland Park, Kansas, displayed pictures of the erosion occurring along the creek bank and the resulting slope failure of the residents' property. The proposal is to place rip-rap slope protection in two locations, which is of the same type that is currently being done as part of the IRONHORSE Golf Course renovation work, with excavation on the inside of one of the bends in an effort to relieve erosive pressure around the outside bend on the golf course.

Mr. Bryant stated all of the proposed work will be done on City property. Once the work is complete, he and Mr. DeBey will make repairs to their properties. He emphasized that he is not interested in the City spending money to repair his property. The Corps of Engineers has stated that the creek is trying to naturally regain the length that was shortened when the golf course was originally developed. As the creek has been rip-rapped in several locations, the only vulnerable areas left to erode are behind the private properties, particularly at the horseshoe bend.

Mr. Bryant reported that one-third of the total project cost of \$37,135 will actually be used to repair City-owned land behind two other homes, whose owners are not participating in the cost-sharing. Mr. Bryant and Mr. DeBey are willing to pay for half of the costs to protect their neighbors' homes as well. He furthered that it is not important to place fault for the damage, the important issues is that it must be repaired. They are offering to pay \$18,568 to repair the City property.

Mayor Dunn stated she has been advised that the request should be acted upon this evening as there is no time to refer the issue to a committee given that construction is currently underway at the golf course.

Mr. Kahl confirmed that Terra Technologies has designed the proposed project using many of the same details being applied elsewhere on the golf course.

Councilmember Rasmussen recalled that more ten years ago, the IRONHORSE Advisory Board expressed concerns to the developer regarding the manner in which the residential property was being developed. Unfortunately, cautionary opinions from engineers were not heeded by either the developer or the City in terms of plotting the land. He is now concerned that the shale face, which has drainage pipes coming through, will deteriorate due to sunlight and wetness.

Mr. Kahl verified that he has advised his clients that the proposed work will prevent further sloughing of the shale face in the areas where rip-rap is to be installed in conjunction with the excavation.

Councilmember Rasmussen confirmed with City Attorney Patty Bennett that the City is under no liability to the property owners at this time. If the Governing Body agrees to the proposal, the City will continue to have no obligation even if the project fails to provide a solution.

Councilmember Rasmussen stated taxpayers have already spent \$30,000-\$40,000 to improve the property surrounding Hole No. 8. He then verified with Mr. Bryant that the project cost of \$37,135 includes engineering fees. Mr. Bryant declined Councilmember Rasmussen's offer to supply the total engineering costs of \$5,375 and split the construction costs with the City.

Regarding the tight timeframe associated with the golf course construction currently in progress, Mr. Kahl informed that a Corps of Engineers 404 Permit has been obtained and receipt of the State 401 Water Quality Certification is anticipated within the next 1-2 days.

Mr. Lambers confirmed for Councilmember Rasmussen that if an agreement is made, it may be conditioned upon receipt of payment from the property owners as well as a clear understanding that the City will not be liable for failure of the system. Mr. Bryant assured timely remittance of payment.

Mayor Dunn clarified with Mr. Lambers that the not to exceed \$36,000 amount will be for a change order to Dennis Johnson Construction, who has provided a solid estimate of \$31,000. Payment to the engineer brings the total project amount to \$37,135.

Councilmember Rasmussen voiced displeasure with repeating expenditures for engineering costs that have previously been performed and paid for.

Councilmember Azeltine stated favor with the concept of cost-sharing with private citizens for improvements to City property and thereby leveraging City resources. The fact that the golf course is currently closed for construction is of further benefit. He verified with Staff that there are no other similar situations occurring at IRONHORSE Golf Course.

A motion to approve Staff action to proceed with the change order for an amount not to exceed \$36,000 with indemnification to the City if the intended purpose of the project fails and to equally share the costs with Mr. Dennis Bryant and Mr. Paul DeBey as outlined in their proposal was made by Councilmember Filla. The motion was seconded by Councilmember Azeltine.

Councilmember Rasmussen asked if the City would receive any benefit from this project. Director of Public Works Joe Johnson stated if the proposal is not done, there will always be the possibility of continued erosion impacting work that is being done under the current contract.

Councilmember Rasmussen further stated concerns with expending taxpayer dollars for the benefit of a private property owner. Mr. Johnson agreed that stabilizing this portion of the channel on the golf course will benefit abutting property owners.

Mayor Dunn noted that the issue is not unlike Stormwater Management Advisory Council [SMAC] projects, which are funded 75% by the County and 25% by the City, in that they often benefit private property owners. Councilmember Rasmussen responded that public interest has been involved in all of the SMAC projects. He would support the proposal if only construction costs were involved, but he is opposed to spending more tax dollars for engineering services.

Councilmember Gulledge asked the private property owners why they would agree to split costs to repair property that belongs to the City of Leawood. Mr. DeBey and Mr. Bryant replied they have no choice as they are worried about their property and feel that something needs to be done. They offered to pay for half as opposed to asking the City to fund all of the repairs as prior discussions with the City in this regard were not met with much reception.

Mr. Lambers stated although the property is City-owned, the contention of the City having some liability for what is happening to the creek is a matter for attorneys to resolve. As the citizens will eventually have to access City property in order to improve their own property, the question is whether to do the work now while the golf course is closed. He recommended approving the change order with cost-sharing subject to Council's discretion.

Mr. Lambers informed Councilmember Gulledge that the City is not obligated to make improvements on its property to protect potential issues that may arise with another individual's property unless a substantial deliberate act has occurred to cause damage. The installation of the rip-rap does not elevate itself to this level. There is a similar situation with the channel improvements occurring behind City Hall. The neighboring residents of Edgewood have asked for additional improvements deeper into the subdivision and claim that the City has potential liability. The City has declined to participate. In the golf course situation, the water is viewed as the "common enemy" in that everyone is obligated to deal with the problems as they arise and as they are affected.

Mr. Bryant stated there is a question about who is actually liable for erosion created by the creek; however, they are not interested in legal action, they just want the situation resolved.

Councilmember Azeltine remarked that from his understanding, there probably were some mistakes made in the original design of the golf course. In this situation where the citizen is willing to share in the costs, the City has a certain moral obligation. He voiced his intent to vote in favor of the motion.

Councilmember Gill stated the proposition is equitable to both parties. The City will benefit from helping to preserve the beauty and value of the property adjacent to the golf course. The intrinsic beauty of IRONHORSE includes the surrounding developments. He noted that the City was prepared to pay many times more than the proposed amount of money on another solution that could not get approved by the Corps of Engineers.

A friendly amendment to include a release in the motion was made by Councilmember Gill and accepted by Councilmember Filla.

Councilmember Gill expressed appreciation to Mr. Bryant and Mr. DeBey for their efforts in bringing the proposal forward with a spirit of compromise.

The motion was approved with total vote of 5-2, including a favorable vote from Mayor Dunn. (Nay: Councilmembers Gullledge and Rasmussen).

Councilmember Gullledge stated he voted against the motion as the City should be responsible for funding all of the improvement costs.

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. 1076B, 1077A, and 1077B
- B. Accept Minutes of the April 16, 2007 Governing Body meeting
- C. Accept Minutes of the April 2, 2007 Governing Body Work Session
- D. Accept Minutes of the February 13, 2007 Parks and Recreation Advisory Board
- E. Accept Minutes of the March 28, 2007 Public Works Committee meeting
- F. Approve renewal of Cereal Malt Beverage [CMB] License for Hallbrook Country Club, located at 11200 Overbrook Road
- G. Approve renewal of Retail Liquor License for Wolff's Fine Wines & Spirits located at 11841 Roe Avenue
- H. Mayoral Appointment for Governing Body Presiding Officers from May 2007 through April 2008
- I. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards
- J. Certification of Cost in the amount of \$490,000 pertaining to the 135th Street and Briar median cut Project, CIP # 80193
- K. Approve refund payment in the amount of \$21,754.00 to Kissick Construction Company, pertaining to the Leawood Market Center Project
- L. Approve Change Order No. 3 in the amount of \$4,000.00 to the Larkin Group, pertaining to non-SMAC projects: 86th & Reinhardt; 84th Place & Pawnee; and east of Mission Road between 89th Street and 92nd Street [non-SMAC Project]
- M. Approve Change Order No. 2 in the amount of \$13,500.00 to J.M. Fahey Construction, pertaining to the 2006 Residential Street Mill & Overlay Program
- N. Approve Change Order No. 1, in the amount of \$33,193.70, to Miller Paving & Construction, pertaining to the 2006 Residential Street Reconstruction Project [CIP # 202]

- O. Resolution No. 2789 amending the City's Debt Management Policy, and repealing Resolution No. 2221 [*Continued from the April 16, 2007 Governing Body meeting*]
- P. Approve 6th and Final Payment in the amount of \$1,000.00 to Uhl Engineering, Inc., pertaining to the 2007 Mill & Overlay
- Q. Resolution No. 2790 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$615,282.80 between the City and Miller Paving & Construction pertaining to Phase I, 2007 Storm Drainage Improvement Project [Project Nos. 77001; 77002; and 77003]
- R. Resolution No. 2791 approving and authorizing the Mayor to execute a Professional Engineering Service Agreement in the amount of \$49,500.00, between the City and Brungardt Honomichl & Company, P.A. [BHC] [a/k/a/ BHC Rhodes] pertaining to the 2008 Residential Street Reconstruction Program [80208]
- S. Resolution No. 2792 approving and authorizing the Mayor to execute Amendment No. 3 to that certain Professional Engineering Service Agreement dated June 19, 2006, in the amount of \$2,700.00, between the City and Brungardt Honomichl & Company, P.A. [BHC] [a/k/a/ BHC Rhodes] pertaining to the 2007 Residential Street Reconstruction Program [80206]
- T. Resolution No. 2793 approving and authorizing the Mayor to execute Supplement Agreement No. 4, to that certain Professional Engineering Service Agreement dated October 1, 2001, in the amount of \$10,000.00, between the City and Bucher Willis & Ratliff [BWR] Corporation, pertaining to the reconstruction from Tomahawk Creek Bridge to 135th Street [CIP # 110]
- U. Resolution No. 2794 approving and authorizing the Mayor to execute a Utility Agreement in the amount of \$249,867.00, between the City and Kansas City Power & Light [KCPL] pertaining to the Park Place Benefit District [CIP # 196; CIP # 83196]
- V. Resolution No. 2795 approving and authorizing the Mayor to execute a Professional Engineering Service Agreement in the amount of \$14,125.00, between the City and Uhl Engineering, Inc., pertaining to storm sewer repairs at 8745 High Drive
- W. Resolution No. 2796 accepting Permanent Storm Sewer Easement from Phillip A. and Janel A. Lamonica, for property located at 8745 High Drive [Project Nos. 77001; 77002; and 7003]
- X. Resolution No. 2797 approving and authorizing the Mayor to execute Permanent and Temporary Sanitary Sewer Easements, granting to Johnson County Unified Wastewater District [JCUWD] for Lot 6, located within Ironhorse Center, at 151st Street and Nall Avenue
- Y. Resolution No. 2798 accepting Permanent Storm Sewer Easements from George Crandell Enders and Sally Ling, 8504 Overhill Road; James C. and Barbara W. Fowler, Trustee, 8503 Ensley Place; John T. and Melissa M. Oeffner, 3528 W. 92 Street; Douglas C. and Denise M. Kelley, 8500 Cherokee Lane; Virginia A. Ellis, Trustee of the Harold B. Ellis Trust, 8501 Ensley Place; John G. and Patricia D. Kopmeyer, 3518 W. 92nd Street; and John and Christine Graham, Jr., 3524 W. 92 Street, pertaining to the 2007 Storm Drainage Project, Phase I

- Z. Resolution No. 2799 accepting a Sidewalk and Traffic Signal Easement from Waterway Gas & Wash, for Lot 10, Camelot Court, located at 119th Street and Tomahawk Creek Parkway
- AA. Resolution No. 2800 accepting and approving the Annual Report regarding the Leawood, Kansas Public Art Impact Fee, pursuant to § 12-601 et seq., of the Code of the City of Leawood, 2000
- BB. Resolution No. 2801 accepting and approving the Annual Report regarding the K-150 Highway Corridor [A/k/a/ 135th Street Corridor] Transportation Impact Fee, pursuant to § 13-506 and 13-509 of the Code of the City of Leawood, 2000
- CC. Resolution No. 2802 accepting and approving the Annual Report regarding the Leawood South Transportation Impact Fee, pursuant to § 13-601 et seq., of the Code of the City of Leawood, 2000
- DD. Resolution No. 2803 accepting and approving the Annual Report regarding the Leawood Kansas Park Impact Fee, pursuant to § 12-401 et seq., of the Code of the City of Leawood, 2000
- EE. Resolution No. 2804 to approve a Final Plat for Manors at Mission Farms, located on the southeast corner of 105th Street and Mission Road [*from the April 10, 2007 Planning Commission meeting*]

Mayor Dunn pulled Item No. 7I for discussion. Councilmember Rasmussen requested to pull Item Nos. 7D, 7L, 7Q, and 7Y while Councilmember Azeltine requested to pull Item No. 7O.

On motion of Councilmember Gullede, seconded by Councilmember Filla, the remainder of the Consent Agenda was approved following a unanimous vote of 6-0.

- 7D. Accept Minutes of the February 13, 2007 Parks and Recreation Advisory Board

Councilmember Rasmussen alerted fellow councilmembers that the minutes contain discussion regarding a Feasibility Study for the Community Center. The 2007 Budget contains \$30,000 appropriated for this purpose.

A motion to approve the minutes was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 6-0.

- 7I. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards

Mayor Dunn requested appointees present in the audience to stand. Recognized was Kevin Jeffries, appointee to the Alarm Appeals Committee. She extended appreciation to all of the committee volunteers.

A motion to approve the Mayoral Appointments was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 5-0 (Councilmember Rasmussen not seated for the vote).

- 7L. Approve Change Order No. 3 in the amount of \$4,000.00 to the Larkin Group, pertaining to non-SMAC projects: 86th & Reinhardt; 84th Place & Pawnee; and east of Mission Road between 89th Street and 92nd Street [non-SMAC Project]

Councilmember Rasmussen noted that Agenda Item Nos. 7L, 7Q, and 7Y are all interrelated and consist of a conglomeration of Pay-As-You-Go [PAYGO] Capital Improvement Program [C.I.P.] items in the 2007 stormwater bid. He reported having a prior conversation with Mayor Dunn regarding his concern that some of the items are inappropriate uses of the 1/8-cent sales tax revenue. He has visited each site with Mr. Johnson. There are various easements required for a number of these projects. Mayor Dunn has recommended that he appear before the Stormwater Management Committee to address his concerns, but the next meeting is not scheduled until June.

Regarding Item Nos. 7L, 7Q, and 7Y, Councilmember Rasmussen stated he would like to remove any acceptance of easements associated with the project at 84th Place and Cherokee Lane, which is listed in the C.I.P. with an amount of \$565,000. Characteristic of north Leawood, this project includes a creek within a ditch that has been there for at least 50 years. The project contains no public interest to warrant the expenditure, especially when there is a nearby \$1-million project on Mission Road of City-owned property that needs to be taken care of. The remainder of the listed projects fall under the responsibility of the City and should be approved.

He suggested a review take place to determine if there is public interest before expending City money for this particular location and prior to the acceptance of easements.

A motion to accept only those easements that are unassociated with 84th Place and Cherokee Lane for Agenda Item Nos. 7L, 7Q, and 7Y until the Stormwater Management Committee can determine if there is public interest related to the project was made by Councilmember Rasmussen; seconded by Councilmember Filla.

As a point of order, Mayor Dunn stated the issues need to be addressed separately.

Mr. Johnson stated the change order to The Larkin Group is needed to pay for work that has already been completed. He described the projects associated with the agenda items. Delaying the approval of 7Q, which executes the agreement for the stormwater project, will create a timing issue for the 2007 Residential Street Program. Improvements to Cherokee Lane have been put on hold for the last three years as they should occur in conjunction with the stormwater project. The stormwater project is set to begin in approximately four weeks pending delivery of required materials.

When asked by Councilmember Gullede if he agreed with Councilmember Rasmussen's recommendation, Mr. Lambers replied there is a philosophical difference of opinion. Councilmember Rasmussen strongly believes that the City-owned aspect of stormwater improvements should be in place prior to the acceptance of easements and expenditure of funds. Mr. Lambers stated he has a much broader perspective for what constitutes an urban stormwater system, which may entail water from the system traversing over private property and going back into the system. Clearly, if an improvement is to occur, easements need to be obtained. Once improvements are complete, the City owns and maintains responsibility for the project.

Councilmember Rasmussen stated the people of Leawood voted for the 1/8-cent sales tax to repair dire needs of City-owned property. He has always been concerned about misuse of these funds as the language in the resolution is very loose. He questioned why the City should spend money on this particular project when the owners were aware of physical conditions to the property at the time of purchase.

Mr. Johnson verified for Councilmember Rasmussen that homes and streets are not being flooded in this area of the creek at this time. Although yards of the homeowners may flood, the project does not qualify for SMAC funding as the structures are not affected by the stormwater. The project was one of the first identified for 1/8-cent sales tax funding and has been in the C.I.P. for the last four years.

As residents have dedicated their easements and have been expecting the improvements to occur, Mayor Dunn stated pulling the project would cause problems with public relations.

Councilmember Rasmussen stated citizens voted for the sales tax in an attempt to prevent flooding of public streets. The proposed project will only serve to benefit private property. He is concerned that citizens will view the money as being misused for intended purposes.

Mayor Dunn reminded that the project has been approved by the Governing Body for four consecutive years as part of the C.I.P. She questioned why discussion was not brought forth at a sooner date.

As Chair of the Stormwater Management Committee, Councilmember Rawlings requested direction in terms of the committee's role in this matter. Mr. Johnson stated discussion could involve possibly setting limits on certain types of projects funded with the 1/8-cent sales tax such as including only those related to existing City storm sewer systems. The current project lists can be modified prior to the next C.I.P. based upon the committee's determinations. If there are new projects that fall outside of the parameters, a recommendation from the Stormwater Management Committee to the Governing Body would be required for approval.

Councilmember Rawlings asked if stormwater associated with the three projects could be damaging to private or City property. Mr. Johnson stated the existing storm sewer on Reinhardt Street is inadequate and has created flooding issues on private property. The plan is to install an additional storm sewer system to capture water within the street right-of-way. Councilmember Rawlings stated this project meets the intended criteria of the ordinance.

Mr. Johnson continued that \$100,000 of the project costs will go towards replacing an existing storm sewer system that is failing. Gaps in the pipes have caused water to spew from the ground and create holes in citizens' yards during heavy rain events.

Councilmember Azeltine stated he agrees with Councilmember Rasmussen's point of view; however, he also concurs with Mayor Dunn's remark that it would be impractical to cancel the projects at this point in the process. Additionally, as a member of the Stormwater Management Committee for over one year, he reported that the committee has yet to discuss any projects. The next meeting in June will determine the role of the committee, which he thinks should be to review stormwater projects along with Staff and make recommendations to the Governing Body.

A motion to approve Item No. 7L was made by Councilmember Filla; seconded by Councilmember Azeltine.

Councilmember Rasmussen stated there are tremendous stormwater repairs needed within the City that should take priority over making improvements upon private property.

The motion was approved following a vote of 5-1 (Nay: Councilmember Rasmussen).

- 7O. Resolution No. 2789 amending the City's Debt Management Policy, and repealing Resolution No. 2221 [*Continued from the April 16, 2007 Governing Body meeting*]

Referring to the Transportation Development District Obligation portion of the Debt Management Policy on page 4, Section 10, Councilmember Azeltine confirmed with Mr. Lambers that principal and interest will be paid directly through the City as a conduit rather than to the third party trustee. The trustee will serve to aid in payment administration of the proceeds.

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

Councilmember Gill confirmed with Finance Director Kathy Rogers that she is comfortable with the policy. Mr. Lambers stated the important policy statements within this section of the document includes the third party trustee, private placement, and a clear statement that the City has no obligation for repayment of this type of debt.

The resolution was approved following a unanimous vote of 6-0.

- 7Q. Resolution No. 2790 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$615,282.80 between the City and Miller Paving & Construction pertaining to Phase I, 2007 Storm Drainage Improvement Project [Project Nos. 77001; 77002; and 77003]

Councilmember Rasmussen verified with Mr. Johnson that Project Nos. 77001, 77002, and 77003 refer to the same projects listed in Item No. 7L. The numbers are used in the Finance Department for tracking purposes. Councilmember Rasmussen stated he would like to exclude the project on 84th Place and Cherokee Lane from the vote.

Mr. Johnson clarified for Councilmember Filla that this item relates to a storm sewer project with Miller Paving & Construction rather than a street project, which the contractor has performed in the past. The storm sewer improvements will be performed prior to improvements to Cherokee Lane. Councilmember Filla made note that residents on Cherokee Lane have been waiting many years for the street improvements to occur. She also stated appreciation for Mr. Lambers' comments regarding urban stormwater systems being inclusive of private ownership. As newer areas of development have historically created flooding problems for older sections of the City, the system must be viewed comprehensively.

Councilmember Filla continued that Councilmember Rasmussen's comments are valid in terms of deciding the priority of stormwater projects, yet she does not see the need to distinguish ownership on private property. She also questioned whether all homeowners view the projects as improvements to their property when their backyards are placed in a state of disarray during the process. She stated it would not be fair to change the project system put together by Staff at this juncture. To Councilmember Rawlings' point, the Stormwater Management Committee should be active in creating a comprehensive plan to evaluate the projects.

A motion to approve Item No. 7Q was made by Councilmember Filla; seconded by Councilmember Gulledge. The motion carried following a vote of 5-1 (Nay: Councilmember Rasmussen).

- 7Y. Resolution No. 2798 accepting Permanent Storm Sewer Easements from George Crandell Enders and Sally Ling, 8504 Overhill Road; James C. and Barbara W. Fowler, Trustee, 8503 Ensley Place; John T. and Melissa M. Oeffner, 3528 W. 92 Street; Douglas C. and Denise M. Kelley, 8500 Cherokee Lane; Virginia A. Ellis, Trustee of the Harold B. Ellis Trust, 8501 Ensley Place; John G. and Patricia D. Kopmeyer, 3518 W. 92nd Street; and John and Christine Graham, Jr., 3524 W. 92 Street, pertaining to the 2007 Storm Drainage Project, Phase I

Councilmember Rasmussen stated he pulled this item for reasons that have been previously discussed. He questions whether some of the easements should be accepted.

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Gill. The motion was approved following a vote of 5-1 (Nay: Councilmember Rasmussen).

8. MAYOR'S REPORT

- A. Attended the Art Show and Reception at M&I Bank, which was co-hosted by the Leawood Arts Council and M&I Bank. Councilmember Rasmussen was also in attendance. Mayor Dunn expressed appreciation to the Leawood Arts Council and to Cultural Arts Coordinator April Bishop for their efforts in organizing the event.
- B. Participated in a Community Leaders Breakfast at St. Luke's South. Fire Chief Ben Florance also attended the event along with other members of the Johnson County community in order to learn about the growth of the hospital.
- C. Attended a Council of Mayors meeting in Shawnee at the Sunflower House. Cynthia Smith, President and CEO of the Sunflower House, served as guest speaker. Cindy Kemper, Director of the Johnson County Environmental Department, who is also a Leawood Resident, provided an additional presentation on Johnson County's Solid Waste Management Plan. A new plan is needed immediately as Johnson County is home to the largest landfill in Kansas, which is privately owned and operated by Deffenbaugh Industries. Interesting statistics include the facts that 51% of trash disposed in Kansas goes into the Johnson County landfill with at least 40% of the overall waste coming from Missouri. It is expected that the landfill will be completely full sooner than the 2027 projection. Ms. Kemper stated the Solid Waste Management Committee is in the process of creating a new plan that will be presented to the County Commissioners for consideration and action.
- D. Attended the Inauguration of Kansas City Mayor Mark Funkhouser at Union Station. Mayor Dunn offered congratulations to Mayor Funkhouser.
- E. Attended a ribbon cutting for the new corporate headquarters of Demdaco, located at Parkway Plaza on 134th Street. Councilmember Gullede was also present at the function.
- F. Mayor Dunn noted a full-page advertisement published by the Ward Parkway Center and Developers Diversified Realty in the Sunday edition of *The Kansas City Star*, concerning "the unspeakable sadness and inexplicable events of April 29th." In sharing their immense gratitude to ten different groups, the third group mentioned was the Leawood Police Department. Mayor Dunn thanked Police Chief John Meier and all of the officers involved for their prompt response to the situation on that day.

9. COUNCILMEMBERS' REPORT

- A. Report from Councilmember Gill – Councilmember Gill reported that the effects of the recent Kansas Legislature's override vote of Governor Sebelius' veto to the concealed carry law may potentially eliminate some of the important public safety legislation adopted by the Leawood Governing Body.

A motion to direct the City Attorney to draft an ordinance with input from the Chief of Police regarding the new concealed carry legislation, particularly as it relates to guns in public buildings and on public property, concealed or otherwise, and present the ordinance at the May 21st Governing Body meeting was made by Councilmember Gill; seconded by Councilmember Filla.

Mayor Dunn thanked Councilmember Gill for his advocacy in this area.

The motion carried following a unanimous vote of 6-0.

- B. Report from Councilmember Filla – Councilmember Filla reported receiving letters from citizens regarding the issue of driveway regrades, remodeling, and reconfigurations of land causing flooding problems to adjacent neighbors' properties. She then made a motion to refer the current process related to the issue to the Stormwater Management Committee for review and recommendation. The motion was seconded by Councilmember Gill.

As Chair of the Stormwater Management Committee, Councilmember Rawlings noted and welcomed the suggestion.

The motion was approved following a unanimous vote of 6-0.

- C. Report from Councilmember Rasmussen – As Chair of the Public Works Committee, Councilmember Rasmussen made a motion to refer to the Public Works Committee the request from Kansas City Power & Light [KCPL] to add power lines to the 143rd Street project. The motion was seconded by Councilmember Filla.

Mr. Lambers informed that the request is to install an expansion of overhead lines, which is contrary to City ordinance requiring the burying of power lines. A review and recommendation is needed by the Public Works Committee.

The motion was approved following a unanimous vote of 6-0.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the April 10, 2007 Planning Commission meeting]

- A. Resolution No. 2805 to approve a Final Site Plan for Parkway Plaza, located north of 135th Street and west of Roe Avenue

Applicant David Suttle with Suttle Mindlin of St. Louis, Missouri, pointed out areas of modification on the revised final site plan drawings. The changes pertain to one small area of the development and are a net result of losing a small building and expanding another building. There is an overall reduction in square footage and an addition of fifteen parking spaces.

Ms. Suttle confirmed for Councilmember Gullede that the revisions were made to accommodate a potential client, Sumo Restaurant. He also stated that he is not aware of reports that the restaurant has filed for bankruptcy.

Referring to the Staff Comment on page 10, "Each individual building will be platted as separate tracts at the time of final application," Councilmember Rasmussen verified with Mr. Lambers that there have not been any issues regarding the assumption of liabilities. The only problem experienced has been with the setbacks of the individual property lines, which are ultimately waived. There is no obligation associated with the streets.

Councilmember Azeltine inquired about the status of the landscaping on the north side of 133rd Street. Norm Holst with R.H. Sailors & Company, 4747 W. 135th Street, informed that negotiations with surrounding neighbors are still in progress. A check was just issued to an individual resident so that he could make his own personal tree selections. There have been no complaints regarding the landscaping at this point. Mr. Holst stated the irrigation system is still in the process of being installed and landscaping is anticipated to be complete this summer. He will submit a landscaping schedule to Staff.

Mr. Suttle assured Councilmember Gullede that the revisions will not create problems if Sumo Restaurant is not obtained as a client.

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion was approved following a unanimous vote of 6-0.

- B. Ordinance No. 2229 approving a Preliminary Site Plan for Sumo Restaurant at Parkway Plaza, located north of 135th Street and west of Briar [Roll Call Vote]

Mr. Suttle presented site plan drawings and elevations of the project.

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

Noting a sculpture on the front elevation, Councilmember Azeltine confirmed with Mr. Suttle that the artwork will be funded by the restaurant rather than from the Public Art Impact Fee.

Mayor Dunn asked the location of other Sumo Restaurant establishments throughout the country. Mr. Suttle stated there is only one other location in Wichita, Kansas. The elaborate restaurant will be unlike anything in the Kansas City area and is a special combination of a sushi bar, regular bar, and will feature Asian cuisine that is cooked at the table on smokeless grills.

The ordinance passed with the following unanimous roll call vote of 6-0: Yea: Councilmembers Azeltine, Rasmussen, Gill, Rawlings, Filla, and Gullede. Nay: None. (Councilmembers Bussing and Peppes absent).

[From the February 13, 2007 Planning Commission meeting]

- C. Ordinance amending Section 16-2-10 of the Leawood Development Ordinance [LDO], pertaining to Architecture/Construction Standards [Roll Call Vote]-
[CONTINUED TO THE MAY 21, 2007 GOVERNING BODY MEETING]

12. OLD BUSINESS – None.

13. OTHER BUSINESS – None.

14. NEW BUSINESS

- A. Resolution No. 2806 amending and restating Resolution No. 2410 finding as to the advisability and authorizing the construction of improvements to Nall Avenue, 117th Street, Town Center Drive and Roe Avenue and construction of Storm Water Improvements; and accepting First Amended Petition for Establishment of an Improvement District pursuant to K.S.A. § 12-6a01 et seq., pertaining to the Park Place Benefit District [CIP # 83196]

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

At Councilmember Gill's request, Jeff Alpert with Park Place Developers, LLC, provided an update of the project. The goal is to open the first phase in November.

Mr. Alpert also stated the amended petition is being requested with an extended 15-year term for the bond issue in order to maintain level assessments for the tenants as there has been a significant increase in construction costs since the project began. Mr. Lambers affirmed that the amended petition contains an increase in the amount for the Special Benefit District and a 15-year term rather than a 10-year term.

Councilmember Rawlings complimented the architecture of the parking structures that are currently being constructed. Mr. Alpert stated the structures will include additional detailing upon completion.

Mr. Alpert informed Mayor Dunn that the exposed concrete on the west façade will be covered by a glass curtain wall.

The resolution was approved following a unanimous vote of 6-0.

- B. Resolution No. 2807 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$1,898,708.85 between the City and Miller Paving & Construction pertaining to the Park Place Benefit District [CIP # 83196]

A motion to approve the resolution was made by Councilmember Gill; seconded by Councilmember Gulledge. The motion carried following a unanimous vote of 6-0.

ADJOURN

The Governing Body meeting adjourned at 9:20 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk