

Minutes

DVD No. 170

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, August 20, 2007. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Chief John Meier, Police Department
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Mark Klein, Asst. to the Planning Director
Jeff Cantrell, Neighborhood Serv. Admin.
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney
Deputy Chief Randy Hill, Fire Department
Captain Dale Finger, Police Department
Colleen Browne, Human Resources Director
Chris Claxton, P&R Director
Jeff Joseph, Senior Planner
Deb Harper, City Clerk
Jack Reece, IS Specialist

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn stated the agenda will also include a report from Councilmember Rasmussen as Item No. 9A. She also noted that additional material relating to Item No. 11A has been placed upon the dais and includes a cover memo indicating a typographical error in the previously distributed Staff Report. A motion to approve the agenda was made by Councilmember Peppes; seconded by Councilmember Azeltine. The motion carried 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 – None.

6. SPECIAL BUSINESS

- A. Resolution No. 2863 providing for the offering for sale by the City of Leawood, Kansas of Taxable Transportation Development District [TDD] Special Obligation Bonds, Series 2007 [The Villaggio Project] in the approximate amount of \$835,000, to provide funds to finance the Villaggio Transportation Development District Project of the City; authorizing the placement agent to offer the Bonds for sale by private placement; and authorizing certain related matters and actions

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried 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. 1084A and 1084B
- B. Accept Minutes of the July 16, 2007 Governing Body meeting
- C. Accept Minutes of the July 9, 2007 Governing Body Work Session meeting
- D. Accept Minutes of the June 12, 2007 Park and Recreation Advisory Board meeting
- E. Accept Minutes of the June 26, 2007 Arts Council meeting
- F. Accept Minutes of the May 9, 2007 Leawood Foundation meeting
- G. Approve purchase in the amount of \$25,625 from Challenger Team Wear for soccer uniforms for the Parks and Recreation Soccer League
- H. Resolution No. 2864 adopting the Fiscal Year 2008 Budget for the City of Leawood
- I. Resolution No. 2865 adopting the 2008-2012 Capital Improvement Program [C.I.P.] for the City of Leawood
- J. Resolution No. 2866 approving and authorizing the Mayor to execute a Community Service Agreement between the City and Blue Valley Unified School District No., 229, pertaining to the assignment of School Resource Officers [SRO]
- K. Resolution No. 2867 approving the acceptance of a Deed of Dedication from Oddo Development Company, Inc., to the City of Leawood for the purposes of right-of-way near 137th Street, east of Mission Road
- L. Resolution approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$29,360.00, between the City and Becerra Masonry pertaining to repair of streetstone islands in northern Leawood
- M. Fire Department Monthly Report
- N. Municipal Court Monthly Report
- O. Police Department Monthly Report

Councilmember Rasmussen requested to pull Item Nos. 7H and 7L for discussion. On motion of Councilmember Gullede, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 8-0.

7H. Resolution No. 2864 adopting the Fiscal Year 2008 Budget for the City of Leawood

As discussed during the 2008 Budget Sessions, Councilmember Rasmussen stated that reserves as a percent of expenditures of all operating funds for the City of Leawood when projected through years 2011 are three times what is needed per policy. In consideration of the 2007 actual results to date, he stated that the taxpayers deserve a reduction as it seems that all City needs have been funded.

A motion to reduce the recommended budget mill levy for 2008 by one mill was made by Councilmember Rasmussen. The motion died for lack of a second.

A motion to approve Item No. 7H was made by Councilmember Bussing; seconded by Councilmember Peppes.

Mayor Dunn noted that extensive discussion regarding the budget took place by the Budget & Finance Committee during the Budget Sessions. The resolution was approved following a vote of 7-1 (Nay: Councilmember Rasmussen).

City Clerk Deb Harper advised that signatures from Governing Body members who participated in approval of the Budget are required on a certificate from Johnson County. She distributed the document and requested that it be returned to her upon completion.

7L. Resolution approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$29,360.00, between the City and Becerra Masonry pertaining to repair of streetstone islands in northern Leawood

As Chair of the Public Works Committee, Councilmember Rasmussen reported that there are many islands in northern Leawood, as well as the south part of the City, that have been in existence for over 50 years. Some of the islands are owned and maintained by homeowner associations [HOAs]. A number of the structures have been damaged by large trucks and are beginning to fail. In some cases, the HOAs have asked the City to provide repairs. As the repairs are a function of the requirements of the particular HOA, discussion with Staff determined it suitable to ask the Governing Body to refer the issue to the Public Works Committee.

A motion to refer the issue of streetstone island maintenance to the Public Works Committee for review and recommendation was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Councilmember Rasmussen stated the intent is to place the item on the next Public Works Committee meeting agenda, scheduled for next week. Both he and Public Works Director Joe Johnson noted Councilmember Filla's request to quickly notify the HOAs of the referral.

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

Councilmember Rasmussen further reported that the next Public Works Committee meeting will also include discussion pertaining to hiring engineers for the design of 143rd Street. According to the Leawood Development Ordinance [LDO], the decision to place primary feeders underground when a street is widened or rehabilitated is at the discretion of the City Council. The south side of 143rd Street consists primarily of rock. It is his opinion that the \$700,000 budgeted in the Capital Improvement Program [CIP] for this project is an underestimate. The Governing Body must make a decision as to whether or not to have the engineers consider relocating the existing temporary overhead facilities from the north side of 143rd Street to the south side and place them underground in rock as part of the design.

Mr. Johnson informed that the consultant doing the design for 143rd Street will not take part in relocating the power lines. An Inter-local Agreement will be made with Kansas City Power & Light [KCPL] for this aspect of the project. However, the design contract will include the requirement of borings in order to determine exactly where the rock is located. The information will be provided to KCP&L for cost estimation purposes of relocating the facilities. The Inter-local Agreement will come before the Governing Body in early 2009 with work to be completed by year's end. The bidding process for construction of the street will take place in 2010.

Mayor Dunn stated that no action is needed on the matter this evening as costs cannot be determined until the borings take place. Mr. Johnson stated the financial information of undergrounding the facilities will be brought back to the Governing Body at a later time for referral to the Public Works Committee if needed.

8. MAYOR'S REPORT

- A. Recognition of Deputy Fire Chief Randy Hill as Chief Fire Officer [CFO] by the Center for Public Safety Excellence. Mayor Dunn reported that the Commission on Professional Credentialing met on July 11, 2007, to officially confer the designation upon Deputy Chief Hill. He is one of only 525 CFOs worldwide who have demonstrated excellence in seven measured components including: Experience, Education, Professional Development, Professional Contributions, Association Membership, Community Involvement, and Technical Competencies. Mayor Dunn congratulated and thanked Deputy Chief Hill for his additional efforts at self-improvement and for improving the City of Leawood concurrently. Following a standing ovation, Deputy Chief Hill thanked the Governing Body for their support in continued training and education throughout his 26 years with the Leawood Fire Department. The fact that he and Fire Chief Ben Florance are two of the less than 600 CFOs in the entire world speaks volumes about the quality of the department. He also thanked Chief Florance for his leadership.

- B. Recognition of Human Resources Director Colleen Browne for receiving the International Public Management Association Certified Professional designation [IPMA-CP] from the International Public Management Association for HR. Mayor Dunn stated that Ms. Browne achieved the designation by meeting professional standards set by the Public Human Resource Certification Council [PHRCC] to recognize excellence in public sector Human Resources. She has demonstrated her commitment to such by undertaking a rigorous review of technical experience and understanding of the importance of behavioral competencies in the role of HR professionals. In addition to congratulating and presenting Ms. Browne with a plaque recognizing the Certified Professional designation, Mayor Dunn thanked her for the continued efforts of additional education and training. Ms. Browne also received a standing ovation.
- C. Mayor Dunn also congratulated Firefighters Russ Walker and A.J. Venable for placing first in the Tandem Team event at the Firefighter Combat Challenge, Central U.S. Regional Championship this past weekend in Omaha, Nebraska.
- D. Attended the dedication of “Seasons,” a sculpture by Tom Corbin that has been placed in Ironhorse Centre at 151st Street and Nall Avenue. The beautiful artwork is yet another addition to the Corbin sculpture garden throughout the development. Mayor Dunn extended appreciation to Fred and Candy Merrill for their continued contributions of public artwork on private property in addition to the Public Art Impact Fee.
- E. Mayor Dunn congratulated the Leawood South Country Club on the Swim and Dive Championships at the Country Club Swim Association of Kansas City. The club has won the title for 21 consecutive years.
- F. Mayor Dunn congratulated Leawood resident Mike Eggleston for being honored as Volunteer of the Year by the Leawood Stage Company at the gala prior to a production of “The Music Man,” which was sponsored by M&I Bank. The recognition was very well deserved for Mr. Eggleston’s leadership in Leawood theater productions over the years.
- G. Announced the beginning of Sundays in the Park, the 2007 Jazz Concert Series sponsored by the Leawood Arts Council and Town & Country Bank. Held at Ironwoods Amphitheater, the next concert on August 26th will feature the OJT Band with Bukeka Shoals. David Basse will perform on September 2nd.
- H. Announced the upcoming Art Exhibit and Reception at M&I Bank, which is another collaboration between the bank and the Leawood Arts Council. The art show will feature artists Sun Bauer, Connie Griffith, Kevin Sink, and Kwan Wu. The event is this Friday, August 24th from 5:30 P.M. to 7:30 P.M.
- I. Announced the Annual Police-Fire Open House to take place this Wednesday, August 22nd from 5:00 P.M. to 8:00 P.M. at the Leawood Police Department and Fire Station No. 1. She encouraged everyone to attend the family-friendly function.

9. COUNCILMEMBERS’ REPORT

- A. Councilmember Lou Rasmussen – see discussion under Item No. 7L.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the July 24, 2007, Planning Commission meeting]

- A. Ordinance No. 2259 approving a Special Use Permit [SUP] for the placement of a Sprint Wireless Communication Tower at Leawood South Country Club, located at 12700 Overbrook Road [Roll Call Vote]

Mayor Dunn outlined the procedure to be followed this evening for all attendees:

1. Opening remarks by the City of Leawood Staff.
2. Presentation by the applicant.
3. Governing Body questions to the applicant and Staff.
4. Citizen comments.
5. Applicant response to citizen comments.
6. Governing Body discussion and possible action.

Councilmember Rawlings disclosed that he became a member of the Leawood South Country Club in January 2007 and had no knowledge of this issue at that time. He has been advised by the City Attorney that he may entertain the matter and participate in voting. For a matter of public record, he also stated that he is not a Sprint customer.

Councilmember Bussing also revealed that he has been a member of Leawood South Country Club for approximately 12-13 years. He is not an officer, is not on the Board, and has no financial interest in the club. He voiced his intent to vote on the matter as he has also been advised by the City Attorney that there is no existing conflict of interest.

Councilmember Gulledge additionally disclosed his membership to the Leawood South Country Club, to which he is not an officer or board member. He announced that he is a Sprint customer.

OPENING REMARKS BY CITY STAFF:

City Attorney Patty Bennett stated that members of the City Council have received substantial communications regarding the cell tower, some of which pertained to the perception of potential health effects. The Telecommunications Act of 1996 prohibits the City from taking potential health effects into consideration on a cell tower application such as this. The City can take other items into account including property values and aesthetics. The act also requires that decisions regarding cell towers be written. Thus, should the Governing Body take action on the application this evening, Staff will submit a written document for review and approval at the next meeting.

City Administrator Scott Lambers reported that he visited the manufacturing company in California of the monopine device. Upon touring the plant, he was very impressed with the quality of the produced materials and deems them adequate in camouflaging the facility. However, it is his opinion that the proposed 95-ft. height of the tower diminishes the camouflage capability of the attached material. Staff is recommending a height of 65-ft. so that the structure will blend naturally with the immediate foliage in the area.

APPLICANT PRESENTATION:

On behalf of the applicant, Curtis Holland with Polsinelli, Shalton, et al., 6201 College Boulevard, Suite 500, Overland Park, introduced members of the design team as: Mike Reed, Senior Site Development Manager for the Central Plains Region with Sprint, who is responsible for the site and construction of network facilities; Mike Alt, Director of Regional Planning and Logistics for Sprint, who is a radio frequency engineer; Paul Wrablica with Telecom Realty, who is the site acquisition consultant obtained by Sprint; and Ray Trott with Trott Communications, who has participated in a variety of aspects of this application including verifying compliance with the Federal Communications Commission [FCC] standards and regulations regarding electromagnetic field [EMF] emissions, of which a report has been submitted to the City. Mr. Trott also confirmed the need for the facility based upon data provided by Sprint determining existing coverage in this area of the City.

Regarding the facility height, it has been proven that the tower must be above 65-ft. in order for the radio waves to propagate properly. Following much discussion at the Planning Commission meeting, the requested 95-ft. height was ultimately approved. Sprint further evaluated the matter by recently performing a Carrier Wave Test comparing the two heights, which affirmed the testimony that a 95-ft. tower is needed.

Mr. Holland thanked the Governing Body and City Staff for all of the hard work that has gone into the extensive application that has garnered much community interest. He noted that there is also a pending application for a facility to be placed at the Fire Station on 127th Street and Mission Road to aid in coverage. Due to evolving technology, the need for reliable wireless service has increased significantly and has caused a public outcry for improved coverage. From Sprint's network standpoint, Leawood is the poorest covered location in the metropolitan area. He then conducted a PowerPoint presentation illustrating a radiofrequency propagation map of the existing coverage in the proposed area of south Leawood and a search ring analysis indicating a geographic area in which a signal is trying to be located. He stated there are no existing structures in this highly residential area to co-locate an antenna upon; therefore, nonresidential properties containing a large amount of green space for buffering such as parks, churches, water towers, or golf courses were evaluated for placement of a facility.

After deciding upon the proposed location, lease negotiations took place with the Leawood South Country Club Board. The Board struggled with the facility, yet an agreement was reached based upon Sprint meeting certain criteria. The site within the golf course was chosen as it would allow the facility to be placed as far away as possible from residential properties and would not interfere with golf course operations. An aerial view of the golf course was displayed pinpointing the proposed location at Tee-box No. 5, which provides the width of three fairways. The closest homes to the structure will be 265-ft. to the north, which is owned by the Nelson's; 388-ft. to the east, 560-ft. to the south, and 1,280-ft. to the west. The location is also next to a lake with an existing pump house. If approved, Sprint intends to extend this structure to utilize as storage for all ground based equipment in order to provide 100% screening for the surrounding residential properties. Other necessary wiring will be placed underground so that only the monopine structure will be seen.

Mr. Holland stated that Sprint performed a Tree Survey of all existing trees within 250-ft. of the proposed cell tower. Most of the trees in the area are in excess of 60-ft. with the closest tree being approximately 70-ft. tall. As some trees in the area are as tall as 79-ft. and it is necessary to raise the antenna above the tree canopy, the Staff recommendation to reduce the facility to 65-ft. is of issue for Sprint. He pointed out that the proposed height will benefit the City in allowing co-locations with other providers.

The Leawood South Country Club Board agreed that the monopine structure would mitigate the appearance of the cell tower to the adjoining residential uses. A sample board of the material provided by Preserved TreeScapes International was passed along the dais for Governing Body review. Pictures of various monopine structures were also displayed on the PowerPoint presentation.

Mr. Holland then explained that the Carrier Wave Test was performed by elevating an antenna by way of a 104-ft. Boom truck near the proposed site. A 7-ft. grade elevation difference of the testing site and the actual proposed location was taken into account when evaluating the differences between the signal strength of a 65-ft. tower versus a 95-ft. tower. He noted that pictures of the truck on the site demonstrate the height of the tower in relationship to existing trees.

Regarding questions by the public as to whether the facility will be used by other carriers, Mr. Holland reported that other providers do not have a problem with coverage in this area. However, Sprint is willing to entertain co-location opportunities on the facility for any other carriers who would need an additional antenna in this location. If this would occur, the country club would benefit from additional ground lease revenues. In response to Sprint's inquiries of co-location interest from other carriers, letters of intent were received by both AT&T and T-Mobile with the condition of the tower being approved at the 95-ft. level. A reduced tower height of 65-ft. would not serve their needs. Mr. Holland submitted copies of the letters for the record.

Mike Alt, Director of Regional Planning and Logistics for Sprint, introduced himself to the Governing Body and continued the PowerPoint presentation. As a radiofrequency engineer, he provided technical details of the application based upon gathered data. The factual analysis in combination with significant trouble tickets received in the area (customer complaints regarding lack of coverage), demonstrates a significant gap in this location. The installation of a 95-ft. cell tower on the golf course site would allow coverage for approximately 790 homes while a 65-ft. structure would only propagate to 520 homes.

GOVERNING BODY QUESTIONS:

Councilmember Rasmussen verified with Mr. Holland that Sprint intends to fully comply with Stipulation No. 2 regarding the installation of additional landscaping around the perimeter of the tower. Councilmember Rasmussen speculated that perhaps better propagation could be received by Sprint if an antenna other than the slim line model were used.

Mr. Holland confirmed that the Staff Report contains a typographical error in reporting that the diameter of the tower base is 38-ft. wide as the actual width is 37-inches. He also informed Councilmember Rasmussen that the lease with the Leawood South Country Club expressly states that Sprint will maintain the landscaping and the pump house.

Referring to previously approved repeaters to be placed upon existing power structures at roughly 128th Street and Mission Road, Councilmember Rasmussen asked why it is now perceived that this equipment will not provide adequate coverage for the area. Mr. Alt reported that a repeater right-of-way test was performed and revealed insufficient height for proper propagation to residential areas.

Councilmember Rasmussen questioned whether the 95-ft. height would be necessary if the propagation map included the effects of the pending application for an antenna at the Fire Station and the repeaters. Mr. Alt informed that the Fire Station site will cover areas west of the coverage gap while the monopine will serve the eastern portion. As the two sites are independent of each other in terms of coverage, placement of the Fire Station facility will not alleviate the need for the 95-ft. height at the golf course. The trial of the repeaters within the Kansas City metropolitan area determined ineffective coverage and was canceled.

Mr. Alt expressed disagreement with a comment in the packet information stating that Sprint's existing technology is already obsolete and that if it were updated, there would be no need for the proposed tower.

In terms of the facility location, Mr. Lambers informed Councilmember Rasmussen that the camouflage aspect of the tower allowed the application to meet the alternative facility definition; therefore, the restriction that a cell tower cannot be within 500-ft. of a residential home was removed. If the argument is made that the tower does not meet compliance with the term "camouflage," the restriction would apply and it would not be permissible on the proposed site. From Staff's perspective, this location on the golf course is the most feasible as it relates to the proximity of residential properties.

Mr. Alt informed Councilmember Azeltine that, to his knowledge, an analysis was not performed with the hypothesis of a 65-ft. tower in combination with coverage from the Fire Station and repeaters. The Staff recommended height of 65-ft. would definitely spawn the need for additional towers. Mr. Alt stated that Sprint has no plans to install the repeaters regardless of whether or not the monopine and the Fire Station applications are approved.

Councilmember Azeltine confirmed with Mr. Holland that the appearance of the monopine will be customized to appear more realistic than the submitted photographs. The expansion of the pump house will include a refurbishment of the existing building.

Ms. Bennett informed Councilmember Azeltine that the aforementioned written decision based upon the record of approval for the cell tower is a federal requirement. The document will be an additional resolution reiterating the decision and justification of the associated reasons.

Referring to Stipulation No. 10, "The applicant shall work with Staff in selecting the size (diameter) of the monopine that is compatible with other pine trees in the area," Mr. Lambers advised Councilmember Azeltine that the diameter will be adjusted depending upon the height of the structure. He also explained that Staff's recommendation to reduce the height to 65-ft. relies upon the fact that the tower will exceed the existing trees by 20-25 feet. It is his opinion that the term "camouflage" refers to the facility as well as to the ability to blend in with the environment. As Kansas does not have 95-ft. pine trees, the camouflage effect is being rendered moot.

Ms. Bennett advised Councilmember Azeltine that if the height of the structure is lowered per Staff's recommendation, a supermajority vote will be required to override the Planning Commission.

Mr. Alt verified for Councilmember Gill that the ground elevation of the tower is 977. The top elevation for a 65-ft. structure would be 1,042. The submitted Tree Survey illustrates the number and proximity of surrounding trees exceeding this height. There are two aspects related to the need for a tower taller than 65-ft.: to prevent interference of the signal caused by the foliage and the ability to emit the radiofrequency waves on a broader basis.

If the tower is approved at 95-ft., the antenna proposed for the Fire Station will provide an overlap in needed coverage; however, an overlap will not occur with a 65-ft. facility. Although the Fire Station site will provide only minimal coverage at 35-ft., Mr. Alt stated it is an important factor in a multiple site solution for the significant existing service gap in the south Leawood area.

Councilmember Gill asked why some of the soon-to-be developed commercial areas in south Leawood weren't considered as tower locations. Mr. Alt stated an alternative location analysis was performed that included the commercial districts with the golf course area being the best location for providing needed coverage. Councilmember Gill stated he is interested in knowing the percentage of the problem target area that will be impacted by a 65-ft. tower, a 95-ft. tower, and the addition of the Fire Station antenna.

Mr. Alt informed that if the project is approved this evening, the tower would be ready to provide service by January 1, 2008. He voiced agreement to Councilmember Gill's suggestion of a sunset provision that would declare the SUP null and void if the structure is not installed by a certain date. In terms of the previously approved repeaters, Mr. Alt stated that the company intended to pull the SUP permits following the determination that the trial was a failure; however, City Staff advised Sprint to leave them in place.

Noting that the December 5, 2005, Governing Body minutes concerning approval of a booster signal on 129th Street and Mission Road revealed testimony from Sprint representative Alicia Martin as, "Sprint is planning to install a total of 5 booster signals in Leawood with each site selection based on optimal areas for service improvement," Mayor Dunn requested a future answer to the question of how much service the boosters in combination with a 65-ft. tower and an antennae at the Fire Station would provide.

Mr. Lambers reconfirmed for Councilmember Rasmussen that the term "camouflage" deems the application permissible in terms of zoning. The basis for allowing the proposed project to go forward without adhering to the 500-ft. distance between residential property requirement pertains to the wording of the ordinance for alternative structures.

Councilmember Filla and Mr. Holland discussed the economics of installing one 95-ft. monopine structure versus multiple towers that are lower in height. If a 65-ft. structure is installed, Mr. Alt stated that the potential location of another monopine would be determined based upon a future analysis of gaps in service. Another structure would most likely be needed north of the golf course location. He also confirmed that better service is obtained during winter months when trees are devoid of foliage.

Councilmember Rawlings asked the outcome of service with a 65-ft. monopine and a structure at the Fire Station higher than the planned 35-ft. Mr. Lambers stated as they are two separate applications, this scenario has not been examined.

To Councilmember Rawlings question regarding the design of the monopine, Mr. Alt informed that the density of the branches will not impede the signal as, unlike leaves, the material does not contain water. Based upon Sprint's 30% market share in the Kansas City area, a 65-ft. tower would translate to coverage for approximately 100 households in the proposed location of the facility.

Mr. Holland relayed to Councilmember Gullede that the monopine structure was chosen based upon a joint decision by the Leawood South Country Club and Sprint in an effort to mitigate the appearance. Consideration was given to the alternative of a flag pole, which would require internal antennae and would not provide as much coverage as the flush mount devices used on the monopine.

Councilmember Azeltine expressed disappointment that a more comprehensive analysis illustrating the combined coverage of the various structures was not provided. Although the trial of the repeaters was considered a failure, he questioned whether a study should have been performed in tandem with the proposed tower and Fire Station application. Mr. Alt stated there will be some overlap in signalization between the golf course and Fire Station facilities, which is necessary in order to maintain a system connection. The distance between the two sites is 5,000 feet.

Mr. Alt stated although there is no minimum height requirement for co-location, there must be 10-ft. of separation between the center-line of each carrier's antenna. Sprint's center-line will be at the 88-ft. mark of the monopine. Mr. Lambers noted that antennae placed below the treeline level may not be desirable.

Councilmember Azeltine stated he is bothered by the fact that it is unknown whether a shorter cell tower would achieve the same coverage results with the use of repeaters. It is his opinion that a remand may be in order to assess this possibility.

It was determined for Councilmember Filla that the top elevations of a 65-ft. tower and 95-ft. tower would be 1,042 and 1,072, respectively. Mr. Holland stated that mature oak trees in this region reach a height of 80-ft. with the tallest on the proposed site being roughly 78-ft. tall. Pine trees in the area grow to an estimated measurement of 40-50 feet. Lowering the height of the cell tower would compromise co-location opportunities and necessitate placement of additional structures.

Councilmember Gill posed three questions:

1. What is the minimum height needed to raise Sprint's antenna above the treeline?
2. Given there are still service gaps with a 95-ft. structure, what would Sprint do to further enhance residential coverage? He suggested the possibility of in-home repeaters that could be purchased by individual customers.
3. Would Sprint entertain a package solution for Leawood customers to include a combination of better towers and in-home service that is not at the subscribers' expense?

CITIZEN COMMENTS:

1. Jeff Cantrell, 12709 Pembroke Lane, President of the Leawood South Homeowners Association, member of the Leawood South Country Club, and Sprint customer relayed that members of the HOA have concerns with the excessive height of the proposed tower. They are not in support of a structure higher than 65-ft. as they believe that Sprint's request is economic based. According to his own engineering research, he stated it is much more difficult to get economic return from the small repeater stations versus a cell tower. Placement of the repeaters would likely solve some of the coverage issues. Mr. Cantrell also stated that the HOA would not be opposed to the golf course trimming the trees to below 65-ft. in order to reduce the height of the apparatus while allowing proper functioning of the signal.
2. Jeffrey Nelson, 12801 Pembroke Circle, stated his residence is the closest to the proposed tower location. He offered an apology to the City Administrator for previous miscommunications regarding Staff's recommendations for the tower. Although he and his wife are not opposed to cell service, they are opposed to this particular SUP request for aesthetic reasons given the abysmal appearance of Sprint-owned monopines in California. He petitioned denial of the application so that Sprint may research alternative locations for a facility or, if approved, a reduced height of 65-ft.
3. Dale Pearson, 12728 Overbrook Road, spoke in opposition to the cell tower. He stated the City should not be put in the position of solving private business marketing problems. If approved, however, he urged the City Council to pre-approve the design of the camouflaged device.
4. Tom DeCoursey, 12807 Pembroke Circle, voiced opposition to the SUP. He stated the anecdotal scenarios expressed at the Planning Commission meeting regarding the need for additional coverage for emergency situations were very remote and not based upon fact. Additionally, the camouflage appearance of the tower is offensive in that it will exceed existing trees by nearly 50%. The pine tree variety that grows to 95-ft. does not exist in this part of the United States. He suggested that a realistic definition be given to the term "camouflage" within the ordinance. The Carrier Wave Test to determine coverage capability should also be performed in other locations. On behalf of himself and surrounding neighbors, Mr. DeCoursey respectfully requested that the Governing Body reject the application.
5. Joy DeCoursey, 12807 Pembroke Circle, spoke against approval of the application. She suggested that Sprint customers who reside in inadequate coverage areas switch to another carrier. While the site selected on the golf course is the widest and the furthest away from residential properties, it will impact the most homes as there are houses on all four sides of the fairways. She requested the exploration of alternative sites for the cell tower.

6. Kevin Jeffries, President of the Leawood Chamber of Commerce, 4707 W. 135th Street, Suite 270, who resides at 2919 W. 124th Terrace, spoke in favor of the cell tower. As seen in the packet information, the Leawood Chamber of Commerce Board of Directors adopted a resolution on July 23rd urging the City of Leawood to not place undue restrictions upon the installation of wireless telecommunications facilities. The Board would like to emphasize that these services are vital to public safety, first responders, business, and commerce within the City. It should also be taken into consideration that 5-10% of Leawood residents are Sprint employees. From a personal standpoint, he stated that he has never received good signal reception and would like to see an improvement as it is a huge public safety concern for his family as well as for the community.
7. Virgil Stites, 15445 Ironhorse Circle, stated favor with the application as a Leawood resident and Sprint employee. He supports the requested 95-ft. height in order to provide one location for multiple providers, which would be in the best interest of the community and the carriers from a cost perspective. From an emergency aspect, the coverage issue is becoming more important with the increasing trend of households becoming totally wireless.
8. Darlene Drummond, 12845 Sagamore, stated her home will be 375-ft. from the proposed tower and she is opposed to the application. She informed that the existing pine trees to surround the tower are very old and unhealthy with likely removal required in a matter of time. Ms. Drummond stated she is disheartened by the fact that cell phone coverage is being considered over the preservation of this lovely residential area.
9. Elaine O’Gorman, 12800 Pembroke Circle, spoke in opposition to the application and distributed photographs of various tower facilities. She stated concerns with aesthetics and suggested the installation of an alternative camouflaged device, such as a flagpole, in another location of the golf course. Ms. O’Gorman verified for Councilmember Azeltine that the residents are willing to reach a compromise with Sprint concerning an appropriate appearance in the proposed location.
10. Ken Schifman, 4800 W. 150th Street, Leawood resident and Sprint employee, stated support for the 95-ft. monopole. He said that Sprint has addressed many of the issues raised by residents this evening. The proposed height of the tower is a necessity in providing maximum coverage. As a Board member of the Leawood Chamber of Commerce, Mr. Schifman reported that the issue was discussed extensively with adamant support for improved cell phone coverage. Denial of the application would place Leawood in danger of losing business and commerce if today’s commonplace technology cannot be utilized.

RESPONSE BY THE APPLICANT:

Mr. Holland emphasized that an overwhelming majority of correspondence received from Leawood residents regarding the SUP has been in support of the application. There will always be some opposition in cases such as these; however, the community at large is in favor of the ability to increase telecommunication usage. He asked the Governing Body to keep in mind that the positives of the proposal far outweigh the negatives. Sprint has put forth their best efforts in answering questions, assessing other locations, and providing information to the City. In conclusion, the only way to provide coverage for this particular area is with the proposed facility. Mr. Holland voiced commitment to work with City Staff on a design for the facility and landscaping issues if the application is approved.

GOVERNING BODY DISCUSSION AND ACTION:

Councilmember Gill stated he is in support of the application at either height. From a public health and safety standpoint, the significance of cell phones in peoples' lives has gone way beyond anecdotal and it is important to receive adequate coverage within the community. In terms of property values, inadequate coverage is a negative impact as many individuals will not even consider purchasing a home that does not receive wireless phone service.

Councilmember Azeltine agreed that better coverage is needed in the City. The question is determining the best solution to fix the problem. Referring to the Tree Survey, Mr. Holland informed there is 16-ft. height difference between the existing trees and the monopine when adjusted for elevation. The negotiations between Sprint and the Leawood South Country Club did not include discussion related to topping the existing trees in order to provide better camouflaging efforts with a cell tower of reduced height. Mr. Holland stated that the definition of camouflage is a subjective matter.

A motion to pass the ordinance with a reduction in the height of monopole to 75-ft. was made by Councilmember Filla; seconded by Councilmember Azeltine.

Councilmember Bussing also acknowledged the fact that there is a problem with cell phone coverage within Leawood; however, he is not convinced that it is the City's responsibility to sacrifice principles within §16.9.276 of the LDO to help Sprint cover the gap. He stated he could not support the application due to concerns with the camouflage issue as a 95-ft. pine tree in this location does not meet the reasonable definition of "to conceal."

Mr. Holland confirmed for Councilmember Rasmussen that the 75-ft. height will include a lightening arrester at the top of the tower.

Mayor Dunn remarked that she does not feel a comprehensive review has been presented this evening in light of the unanswered questions regarding the possible impact the five repeaters and two proposed towers would have in terms of providing needed coverage. She furthered that the recommendation for a 65-ft. structure is a huge compromise on the City's part as it would also not be 100% camouflaged. Although there is a need for additional cellular service in Leawood, any decision made this evening will be precedent setting for future facilities.

Mr. Holland informed Councilmember Gulledge that a 75-ft. structure will be a compromise for Sprint as it will translate into a loss of homes reached within the needed coverage area. He is not prepared to state that the structure will be built as Sprint's ultimate decision to do so will be based upon weighing the financial commitment against the loss of diminished returns.

A motion to extend the meeting for a period of 30 minutes was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

Councilmember Gullledge confirmed with Mr. Holland that the two carriers who submitted letters of intent to co-locate upon the tower, AT&T and T-Mobile, may decline to do so upon a 75-ft. tower.

Councilmember Gill requested commitment from Mr. Holland that the structure will be built if the current motion is approved. The Governing Body is entitled to know if Sprint does not intend to follow through with the submitted plan. To another inquiry, Mr. Holland stated he did not intend to infer that the economics of the cell tower are driven by T-Mobile's or AT&T's requirements. Sprint's decision will be independent of any other carrier and will be based upon the loss of diminished returns.

Councilmember Azeltine stated he is stunned that a multimillion dollar company such as Sprint has not analyzed the threshold point of diminishing returns in which they would decline to install a facility. Discussion took place regarding the failed trial of the repeaters and whether or not they would have had an impact upon this application.

To Councilmember Gill's previous question, Mr. Holland stated that Sprint will agree to build a 75-ft. structure and reevaluate how to address coverage in other areas of the City.

Councilmember Peppes made a friendly amendment to place a one year date certain upon the installation of the monopine. The motion-maker and second to the motion both agreed.

Mr. Holland informed Councilmember Gullledge that there is not a minimum height requirement that would preclude the need for additional site locations.

Mayor Dunn clarified that the SUP is limited to a five-year term. If installation requires a full year, the tower will be operable for only four years prior to required renewal of the application. She also reminded that six votes will be needed to approve the motion as it is an override to the Planning Commission's recommendations.

As an evaluation for additional coverage must take place with a 75-ft. tower, Councilmember Rawlings asked if there was opportunity to further lower the tower to 65-ft. Mr. Holland reminded that at 65-ft., the tree canopy would not allow proper propagation of the signal. He specified that an evaluation for other locations will impact the pending Fire Station application.

The motion to approve the Special Use Permit for a Sprint wireless communication tower at a height of 75-ft. to be located on the Leawood South Country Club Golf Course with installation to occur within one year was approved with the following roll call vote of 6-2: Yea: Councilmembers Filla, Azeltine, Gill, Peppes, Rawlings, and Gullledge. Nay: Councilmembers Bussing and Rasmussen.

Councilmember Gill stated that a comprehensive study will be expected for the pending Fire Station application, especially alternative coverage solutions for areas along and south of 135th Street.

12. OLD BUSINESS – None.

13. OTHER BUSINESS – None.

14. NEW BUSINESS

- A. Schedule a Governing Body Work Session at 5:45 P.M., on Tuesday, September 4, 2007, to discuss Transportation Development District [TDD] for Park Place Improvement [#80453]

A motion to approve the scheduling of the Work Session was made by Councilmember Peppes; seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0 (Councilmember Rasmussen not seated for the vote).

- B. Resolution approving and authorizing the Mayor to execute an Amendment to that certain Development Agreement dated October 17, 2005, between the City and Park Place Developers, LLC., for use of transient guest tax for construction of a third garage located within the Park Place Development [# 80453] - ***CONTINUED TO THE OCTOBER 1, 2007 GOVERNING BODY MEETING [Continued from the June 18, 2007 and August 6, 2007 Governing Body meetings]***

ADJOURN

Mayor Dunn adjourned the meeting at 11:20 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk