

**Minutes**

DVD No. 176

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 19, 2007. Mayor Peggy Dunn presided.

**Councilmembers present:** Lou Rasmussen, Gary Bussing, Jim Rawlings, Gregory Peppes, Debra Filla, and James Azeltine.

**Mayor/Councilmembers absent:** Mike Gill and Scott Gulledge.

**Staff present:**

Scott Lambers, City Administrator  
Chief Ben Florance, Fire Department  
Kathy Rogers, Finance Director  
Chris Claxton, P&R Director  
Jeff Joseph, Senior Planner  
Mark Andrasik, IS Director

Patty Bennett, City Attorney  
Chief John Meier, Police Department  
Joe Johnson, Public Works Director  
Mark Klein, Asst. to the Planning Director  
Deb Harper, City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted that additional material for Item No. 7H has been placed upon the dais. The agenda will also contain reports from Councilmembers Rasmussen and Rawlings as Item Nos. 9A and 9B.

A motion to approve the agenda was made by Councilmember Peppes; seconded by Councilmember Bussing. 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.**

**4. PROCLAMATIONS – None.**

**5. PRESENTATIONS/RECOGNITIONS County Commissioner Ed Peterson,  
County Update**

Commissioner Peterson distributed charts related to the 2007 Johnson County Budget and a Summary of the Fiscal Year 2008 Proposed Budget. The total budget for 2008 came in at \$736 million with \$637 million in expenditures and \$99 million in reserves. Expenditures have increased by \$26 million over the 2007 Budget while the total budget is down by \$15 million. The reason for the difference is the plan to spend the reserve figure down \$40 million in 2008 in order to accommodate the construction and operations of the new County Jail. Completion of the facility is slated for late 2008 or early 2009.

Commissioner Peterson reviewed charts of property tax distribution for the 2007 Budget and County sales tax revenues. He noted that the one-quarter cent sales tax that is shared between the County and the schools is set to expire at the end of 2008. The upcoming August ballot will include a measure to indefinitely renew the tax with the 2/3 portion now going to the schools to be set aside and used by the County for public safety purposes such as funding the jail and juvenile services. This will generate approximately \$19 million per year for the County with the annual cost of operating the jail being \$16 million. The renovation of the juvenile justice facility will absorb the balance of this revenue.

There are several items on the County's 5-year Capital Improvement Program [C.I.P.] that are without funding sources. If all of the items were financed in one year through a mill levy, the total mill increase would equal 68 mills. Obviously, debt financing will have to occur to meet these needs. The sales tax issue, if passed, will also be used to pay down the debt service and the annual operating costs for these projects; however, this will still leave an equivalent of 8 mills that will require additional revenue. These problems will be addressed by the County over the next few years. The State has promised Local Ad Valorem Tax Reduction [LAVTR] relief if proposed gaming takes place.

Commissioner Peterson stated if the sales tax ballot measure moves forward in August, he is confident that the cities will be asked what they plan to do with their 1/3 share. More scrutiny will be placed upon the provided answers than has been in the past as the schools will no longer be receiving a portion of this revenue. It would be ideal if the revenue is used for a common goal such as public safety.

Mayor Dunn noted that the City of Leawood has always maintained that revenue from the Economic Development Sales Tax is to be used for a Justice Center. Mr. Lambers pointed out that the new tax authority would be in perpetuity, which would make it difficult to plan for its use beyond initial intentions.

Commissioner Peterson verified for Mayor Dunn that capital improvements to the Leawood Pioneer Library are funded for next year. To her question of whether there has been discussion of increasing County Assistance Road System [CARS] funding to municipalities, Commissioner Peterson reported that a recent Work Session on the topic revealed a clear majority of County Commissioners in favor of such an increase. Staff has been directed to research alternative revenue sources for this effort.

Councilmember Rasmussen recalled that the City Council previously unanimously voted to support the efforts of the County Commissioners to build a new east-west road south of I-435 because of the horrendous traffic situation going through Leawood. He asked why the creation of this route across the southern portion of Johnson County has been postponed. Commissioner Peterson replied that an ongoing study has taken place over the last year to determine a route roughly between 175<sup>th</sup> Street and 199<sup>th</sup> Street, of which three possibilities have been identified. Discussions regarding what type of road this should be have been inconclusive up to this point and the Federal Government is now requiring a full Environmental Impact Statement on the study. As a result of citizen input, there is now an effort to consult with the State regarding a road between south of 199<sup>th</sup> Street and northern Miami County, which will probably be in addition to the thoroughfare beginning in the vicinity of 175<sup>th</sup> Street. With the involvement of the State, it is hoped that the second road will be along the lines of a freeway while the first route will be a 2-3 lane road or a parkway type of concept.

Councilmember Rasmussen and Commissioner Peterson further discussed complications associated with the proposed east-west connector.

Referring to the list of unfunded C.I.P. projects, Commissioner Peterson informed Councilmember Bussing that the projects are not listed in any significant order. He also stated that the budget reserve target range is 12-25% depending upon the individual volatility and size of the 40 departments within the County. An update to the Sunflower Ordinance Plan was also provided.

Mayor Dunn expressed appreciation to Commissioner Peterson for the informational report. He encouraged the Governing Body to contribute input on the CARS funding issue.

**6. SPECIAL BUSINESS**

- A. Ordinance No. 2275 authorizing the issuance and delivery of \$835,000 principal amount of Transportation Development District Special Assessment Bonds, Series 2007 [the Villaggio Project], of the City of Leawood, Kansas; authorizing execution and delivery of a Trust Indenture in connection therewith; providing for the levy and collection of Special Assessments for the purpose of paying the principal of and interest on the Bonds as they become due; and making certain covenants with respect thereto [Roll Call Vote] – ***CONTINUED FROM THE OCTOBER 15, 2007 AND NOVEMBER 5, 2007 GOVERNING BODY MEETINGS***

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

Finance Director Kathy Rogers advised Councilmember Azeltine that the bond amount of \$835,000 is actually lower than the figure approved in the C.I.P. The entire issuance will be sold to only one buyer.

Councilmember Azeltine asked for explanation of the language appearing on page 20 of the ordinance, “that if such default cannot be fully remedied within such 60-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an event of default if the City shall immediately upon receipt of such notice commence the curing of such default.” Ms. Rogers stated that the agreement also names United Missouri Bank [UMB] as the trustee. In the event of unforeseen reasons that funding was not available to make the next payment, UMB would contact the owner of the bonds on the City’s behalf and notify them of such. The City and trustee are acting as a conduit for the principal and interest payments.

David Arteberry with George K. Baum & Company, financial advisor to the City, added that in terms of curing, the only obligation that the City has is to make sure that the special assessments have been correctly assigned to each property and monitor the collections. There is no obligation to take action against the property owner for nonpayment. Similar language on page 34 is also not of liability to the City.

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

**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. 1089C and 1090A  
B. Accept minutes of the November 5, 2007 Governing Body meeting  
C. Accept minutes of the October 12, 2007, Stormwater Management Committee  
D. Accept minutes of the September 18, 2007 Ironhorse Advisory Board meeting

- E. Renewal of Retail Liquor Store License for Stoll Liquor, located at 3731 W. 133<sup>rd</sup> Street
- F. Renewal of Cereal Malt Beverage [CMB] for Hy-Vee Foods, located at 12200 State Line Road
- G. Approve Change Order No. 2 in the amount of \$50,898.53 to Miller Paving & Construction, LLC, pertaining to the 2006 Residential Street Reconstruction Program
- H. Approve 7<sup>th</sup> and Final Pay Request in the amount of \$122,060.27 to Miller Paving & Construction, LLC, pertaining to the 2006 Residential Street Reconstruction Program
- I. Approve 1<sup>st</sup> and Final payment in the amount of \$59,920.00, to Quality Pools, Inc., pertaining to the painting of the Aquatic Center Pool
- J. Approve Change Order No. 5 in the amount of \$455,867.00 to Continental Construction Company, pertaining to Parkway Plaza Improvement Project [CIP # 80195]- ***CONTINUED FROM THE NOVEMBER 5, 2007 GOVERNING BODY MEETING***
- K. Resolution No. 2908 designating holidays for the year 2008, in accordance with the personnel rules and regulations of the City of Leawood, Kansas
- L. Resolution No. 2909 approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2008 Alcohol Tax Fund for an amount not to exceed \$100,000
- M. Resolution No. 2910 approving and authorizing the Mayor to execute an Engineering Service Agreement in the amount of \$945,003.50, between the City and Burns & McDonnell pertaining to the design of 143<sup>rd</sup> Street from Nall to east of Mission Road [# 80162]
- N. Resolution No. 2911 to approve a Final Site Plan for a tenant finish for West Elm, located at the southeast corner of 119th Street and Roe Ave., within the One Nineteen development [*From the November 13, 2007 Planning Commission meeting*]
- O. Fire Department Monthly Report
- P. Police Department Monthly Report

Mayor Dunn pulled Item No. 7N for discussion and Councilmember Azeltine requested to pull Item No. 7J.

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

- 7J. Approve Change Order No. 5 in the amount of \$455,867.00 to Continental Construction Company, pertaining to Parkway Plaza Improvement Project [CIP # 80195] - ***CONTINUED FROM THE NOVEMBER 5, 2007 GOVERNING BODY MEETING***

Mr. Lambers stated the change order is due to the construction of additional amenities that were not included in the original plan. The bonus feature will not include artwork but will be a fountain located next to a tower.

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

- 7N. Resolution No. 2911 to approve a Final Site Plan for a tenant finish for West Elm, located at the southeast corner of 119th Street and Roe Ave., within the One Nineteen development [*From the November 13, 2007 Planning Commission meeting*]

Mr. Lambers explained that the additional material associated with this item is an e-mail from Planning Commissioner Len Williams, who disagrees with the recommendations of the Planning Commission to preclude the placement of logos in the windows. Commissioner Williams identified several stores throughout Leawood that have such signage and is encouraging the City Council to consider directing Staff to draft a policy regarding the matter.

The majority of the Planning Commission denied the requested logos as they were concerned that it would lead to a proliferation of signage by other businesses. The applicant was willing to allow the City to consider such a policy as the logos are simply decals that can be installed at a later date. An amendment to the Leawood Development Ordinance [LDO] will be required if a policy is desired. The quickest solution is the option of identifying design guidelines for each individual commercial development, which will allow the developer to decide upon and describe the conditions to be imposed for all tenants.

The second issue regarding the furniture store deals with the applicant's request to have permanent signs placed on parking spaces at the back of the building indicating that they are for customer pick-up purposes. A split decision occurred at the Planning Commission meeting and the request was denied by one vote. They recommended that the issue be reviewed by the City Council. Mr. Lambers stated that Staff is in support of the signage request and designation of the four parking spaces.

Mayor Dunn pointed out that an override to the Planning Commission will be required to approve the applicant's request.

A motion to approve the resolution with the addition of four parking spaces located at the back of the building designated for furniture pick-up was made by Councilmember Rawlings; seconded by Councilmember Rasmussen.

Mr. Lambers informed Councilmember Filla that the matter of the logos can be handled separately at a later date. He will present a request in the future to either address the issue through development guidelines or through an LDO amendment.

Regarding the Staff Comment on the proposed changes to the entry, Mr. Lambers advised Councilmember Bussing that the revision was significant enough to warrant consideration by the Planning Commission. The elevation modification met with agreement of the commission and Staff as did a change in material from wood to metal.

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

Referring to the e-mail from Commissioner Williams, Councilmember Bussing expressed preference that forwarding communications to the Governing Body in this manner not become a common practice. Mr. Lambers stated he distributed the concerns out of respect for Commissioner Williams. He does not feel that it is warranted to devote a Work Session on the signage issue but will schedule discussion on the matter when there is a light agenda.

## **8. MAYOR'S REPORT**

- A. Attended the Third Annual Table of Faith Celebration along with City Administrator Scott Lambers. The event was sponsored by the Greater Kansas City Interfaith Council. Award recipients were the Honorable Alvin Brooks and *The Kansas City Star*.
- B. Attended the Council of Mayors Meeting in Prairie Village with the Johnson & Wyandotte Counties Legislative Delegation. Major topics that will be discussed during the upcoming 2008 Legislative Session will include immigration, deferred maintenance (prisons, bridges, and roads), Demand Transfers and the fact that Fiscal Year 2009 may produce a return due to the gaming legislation, the ability of cities to pass through service fees for debit and credit card payments to the customer, proposed legislation from homebuilders on property taxes for new residential construction, possible brief discussion on a statewide smoking ban, and healthcare. Also attending the meeting was Karen Wulfsuhle, Executive Director of United Community Services, who provided a presentation on the Children and Youth Trends Report.
- C. Reminder for the upcoming Council of Mayors December Social on December 5<sup>th</sup> at the Overland Park Sheraton Hotel. Mayor Dunn thanked all Councilmembers for their prompt RSVPs to City Clerk Deb Harper as all but one has been received.
- D. Attended the Greater Kansas City Chamber of Commerce Energy Symposium, which included a panel discussion with government officials. Presentations were given by Johnson County Commissioner Ed Peterson, officials from both Missouri and Kansas, and leaders from the Midwest Research Institute, Kansas City Power & Light, Black & Veatch, and Burns & McDonnell. All participants are working in collaboration on energy solutions with discussion consisting of how enormously challenging the issue is and the fact that research and scientific studies are key.
- E. Attended the Kansas City Area Development Council's Annual Luncheon with Councilmembers Filla and Azeltine, Mr. Lambers, and other representatives from the Leawood Chamber of Commerce. Keynote speaker was Andrew Winston, author of "Green to Gold." Sustainability was the theme of the luncheon.
- F. Attended two Leawood Chamber of Commerce ribbon cuttings: Leawood Chiropractic at 135<sup>th</sup> Street and Roe Avenue in the Plaza Point Shopping Center; and Boudreaux's Cajun Restaurant in the Mission Farms Development at 105<sup>th</sup> Street and Mission Road.

- G. Attended the Art Exhibit & Reception, cosponsored by the Leawood Arts Council and M&I Bank, along with Councilmembers Rawlings, Bussing, and Azeltine. Mayor Dunn shared a follow-up article regarding the event that appeared in *The Johnson County Sun* newspaper.
- H. Attended the Leawood Chamber of Commerce Breakfast at Leawood South Country Club. Kansas City Mayor Mark Funkhouser served as guest speaker and received a warm welcome by the huge crowd.
- I. Reminder that the Holiday Lighting Ceremony will take place on Monday, November 26<sup>th</sup> at 6:00 P.M. The event will also kick-off a yearlong celebration of Leawood's 60<sup>th</sup> Anniversary with a fireworks display. Alice and Mel Hawk are co-chairing the celebration with a series of events to take place over the coming year and culminating next November. Mayor Dunn encouraged everyone to attend the ceremony.
- J. Mayor Dunn wished one and all a happy and safe Thanksgiving holiday.

## 9. COUNCILMEMBERS' REPORT

- A. Councilmember Rasmussen – As Council-Liaison to the recently formed Amphitheater Expansion Steering Committee, Councilmember Rasmussen reported that he met with Bill Ellwood, Chair of the Leawood Stage Company, and Parks & Recreation Director Chris Claxton to review what will be expected of the committee.

From a historical perspective, Ironwoods Park was acquired in 1995 with funding, including an amphitheater, approved by a vote of the people in 1998. The initial construction of infrastructure began in 2001 but was severely limited due to inflation of costs from what was originally contemplated in the bond issue. The grading, sidewalks, and electrical facilities were accomplished in this year. Construction of the facilities within the Capital Improvement Program [C.I.P.] was put under the direct responsibility of the Parks & Recreation Department while operating funding remained under the direction of the Leawood Arts Council. In August 2005, a report was obtained setting the parameters of the proposed amphitheater design. The remaining phases of the park are estimated to cost \$2 million, of which \$595,000 was approved in the 2007 budget.

The first task of the Amphitheater Expansion Steering Committee is to select and recommend a consultant to the City Council. There are three proposals under consideration. Another issue is that there may be associated costs for reconstructing the neighboring lake. The consultant will also provide architectural and landscaping support in this area.

Mr. Lambers informed Mayor Dunn that funding for reconstruction of the lake has not yet been budgeted. The Corps of Engineers has advised that as the lake is a natural wetland area, it must be returned to its originally planned position. Simply allowing it to silt over is unacceptable to them. The problem must be dealt with prior to beginning construction of the amphitheater. An estimated \$500,000 will be needed to drain, dredge, and redesign the lake.

- B. Councilmember Rawlings – The Stormwater Management Committee met last week to address concerns from Andy Apathy, the last of three citizens who experienced land disturbance upon their properties caused by the SMAC project DB-04-024. To Mr. Apathy's request of replanting trees, the committee agreed to replace one that is within the right-of-way. Should other certain trees die within the next five years as a result of root disturbance from the project, the committee also recommended to promise replacing them with 4-inch caliber trees. Councilmember Rawlings informed that Mr. Apathy did grant an easement to the City prior to the stormwater project. The request concerning matching his driveway material will be addressed per the City standard of replacing the first 10-ft. of right-of-way. He was encouraged to make arrangements with the contractor to complete the remainder of his drive-way, as has been done by many citizens in the past. The committee also unanimously agreed to recommend increasing the amount allotted for landscaping upon his property to \$5,000 with the work performed by the landscaping company under contract with the City.

A motion to accept the recommendations of the Stormwater Management Committee concerning property at 8211 Wenonga Road was made by Councilmember Rasmussen; seconded by Councilmember Filla.

It was clarified for Councilmember Bussing that the committee did not commit the City to the additional expenses, they are only recommendations to be approved by the Governing Body.

Public Works Director Joe Johnson stated that Mr. Apathy was given contact information for the drive-way contractor should he decide to extend the work.

Councilmember Filla shared that Staff provided the Stormwater Management Committee with a list of all the homeowners affected by the project and previously received compensation for loss of land. There was thoughtful consideration as to how to fairly and equitably handle the requests in the context of other payments that were made.

Mr. Lambers informed Councilmember Bussing that funding to improve the properties of all three citizens will be contingency expenditures from the project reserves. In the four years since the project began, Mr. Johnson stated the overall budget of \$5.7 million has only been exceeded by \$150,000.

Councilmember Bussing stated he is uncomfortable with managing the City's finances with this unordinary process. Mr. Lambers noted that decisions regarding the recommendations were guided by how much the City would have offered the citizen to obtain the easements were they not granted in tandem with the magnitude of individual land disturbance. As is done with change orders, Councilmember Bussing stated he would prefer written documentation in the future specifying the expenditures, the agreements, the funding, and the relationship to the overall project budget.

Upon her review, Mayor Dunn stated the recommendation process was succinct in terms of proper utilization of and steps taken by the committee. Hopefully, there will not be more requests of this type.

Councilmember Rawlings commented that the amount awarded to the three citizens were within the City Administrator's authority to endorse. He concurred with Councilmember Bussing's request to provide future written documentation.

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

**10. STAFF REPORT – None.**

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION**

***[From the October 23, 2007 Planning Commission meeting]***

- A. Ordinance No. 2276 to approve a Special Use Permit for an VRAD cabinet for AT&T Lightspeed, located at 14300 Kenneth Road [Roll Call Vote]

Chris Carroll with AT&T, 8900 Indian Creek Parkway, Overland Park, stated the continued construction of network upgrades throughout Leawood will bring citizens faster broadband speeds, higher bandwidth, greater quality voice and data services, and choice in video services through a product marketed as U-Verse. As always, they have worked closely with Staff and with the nearby property owners on a landscaping plan. All of the proposed stipulations meet with the agreement of AT&T.

Referring to discussion from the Planning Commission minutes, Mayor Dunn asked if consideration has been given to changing the color of the cabinets from the proposed beige to a preferred baked-on green. Mr. Carroll stated that the standard beige is the only color available from the manufacturer that is used for all of the cabinets nationwide. They will do their best to shield the cabinets with landscaping.

Councilmember Rasmussen remarked that most corporations take camouflaging into consideration and make the best decision in terms of choosing a color.

Mr. Carroll reported that one community offered to paint the cabinets at their expense; however, upon research by AT&T, it was discovered that the manufacturer would discontinue the warranty if the units were altered in any way. He explained that the term "re-skinning" is used internally and refers to replacing the shell of existing Surface Area Interface [SAI] boxes, which is necessary in order to increase the capacity and allow interface with the VRAD cabinets. All but one of the SAI boxes in Leawood will be retrofitted.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Peppes. The ordinance passed with the following unanimous roll call vote of 6-0: Yea: Councilmembers Bussing, Filla, Peppes, Azeltine, Rasmussen, and Rawlings. Nay: None. (Councilmembers Gill and Gulledge absent).

- B. Ordinance No. 2277 to approve a Special Use Permit for an VRAD cabinet for AT&T Lightspeed, located at 2715 W. 83rd Street [Roll Call Vote]

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

Councilmember Peppes inquired as to the reasoning behind the two oppositional votes from the Planning Commission. Mayor Dunn stated that one nay vote was from a commissioner who consistently opposes the VRAD applications and the other was due to a desire to relocate the cabinet in order to accommodate a resident. There is a general feeling by two commissioners that despite the surrounding landscaping, the cabinets are creating visual pollution by the sheer numbers of them in the City.

Mr. Carroll affirmed that such comments have been received. The site of the application in question does not have existing landscaping; however, when complete, the diminished visibility to residents will be much improved. Councilmember Filla commented that the proposed landscaping for this site is a step in the right direction.

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

- C. Ordinance No. 2278 to approve a Special Use Permit for an VRAD cabinet for AT&T Lightspeed, located at 12718 Overbrook Road [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Azeltine; seconded by Councilmember Bussing. The ordinance passed with the following unanimous roll call vote of 6-0: Yea: Councilmembers Bussing, Rawlings, Peppes, Azeltine, Rasmussen, and Filla. Nay: None. (Councilmembers Gill and Gullede absent).

- D. Ordinance No. 2279 to approve a Special Use Permit for an VRAD cabinet for AT&T Lightspeed, located at 3900 W. 142nd Street [Roll Call Vote]

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

Mayor Dunn pointed out that the Staff Comments make reference to Stipulation No. 5 in that the future relocation of the cabinet upon the widening of Mission Road will be at the expense of the applicant. Councilmember Rasmussen added that the Public Works Committee wished to ensure that taxpayers do not have to pay for this expense. It is not known at this time if the relocation will be necessary as the actual construction design has not yet been submitted to the City by the consulting engineer. The engineering firm has been directed to contact the applicable utilities to determine the affect of the reconstruction.

To concerns expressed by Mr. Carroll regarding whether a continuance would be a better option, Mr. Lambers recommended completing the approval process this evening and changing the request at a later date, if necessary, following evaluation by staff members at AT&T.

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

- E. Ordinance No. 2280 to approve a Special Use Permit for an VRAD cabinet for AT&T Lightspeed, located at 3800 W. 143rd Street [Roll Call Vote]

Mayor Dunn noted that Stipulation No. 6 contains the same language regarding relocating the cabinet with the widening of 143<sup>rd</sup> Street. Mr. Carroll affirmed that he would like to move forward with the application.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Peppes. The ordinance passed with the following unanimous roll call vote of 6-0: Yea: Councilmembers Bussing, Filla, Peppes, Azeltine, Rasmussen, and Rawlings. Nay: None. (Councilmembers Gill and Gullledge absent).

- F. Ordinance No. 2281 to approve a Special Use Permit for a cellular antennae for T-Mobile, located at 9617 Lee Blvd [Roll Call Vote]

On behalf of T-Mobile, Ed Mickells with Selective Site Consultants, 8500 W. 110<sup>th</sup> Street, Overland Park, stated agreement to all stipulations imposed by the Planning Commission including retrofitting the antenna with a flush-mount or slim-line array in order to comply with the City ordinance. He respectfully asked for approval of the application and offered to answer questions.

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

Mr. Lambers informed that all of the other antennae placed upon the tower will be required to utilize slim-line models upon renewal of their SUPs.

Referring to the cell tower at the Leawood South Country Club that is camouflaged as a tree, Councilmember Filla asked if the same technology could be used at this site. Mr. Mickells stated that this particular tower is owned by the City rather than by the applicant, therefore the issue would not be a decision made by T-Mobile. Mayor Dunn commented that a 97-ft. tree in this area would be more obtrusive to surrounding residents than the current tower. Flush-mounting all of the antennae in the future would be a better solution.

Mr. Lambers verified for Councilmember Rasmussen that the SUPs are for five-year terms. He also informed Councilmember Rawlings that it is possible that the tower may be removed when the Police Department relocates upon completion of the Justice Center. Discussion will take place with Prairie Village at that time to determine if the facility should be left as back-up. If the tower is deemed no longer necessary, the remaining time of the SUPs for the host antennae will be honored prior to removal.

Councilmember Rasmussen stated he was not aware that another cell tower would be erected at 117<sup>th</sup> Street and Tomahawk Creek Parkway when the Justice Center becomes operational. It was his understanding that the current tower on Lee Boulevard would remain. Mr. Lambers stated as the communications system will be moved to the new location, it will be necessary to have a tower adjacent to the facility. An assessment will take place regarding the redundancy of the current tower when the new structure is put in place. Councilmember Rasmussen reiterated his surprise in learning that another tower is planned for the second ward.

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

- G. Ordinance No. 2282 to approve a Preliminary Site Plan and Final Site Plan for Residences at Park Place, located south of Town Center Drive and east of Nall Avenue within the Park Place Development [Roll Call Vote]

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

Mr. Lambers noted a clerical error in that the ordinance for this item was inadvertently not included in the packet information. He recommended allowing the presentation this evening while continuing the item to the December 3<sup>rd</sup> meeting as approval cannot take place without Governing Body review of the ordinance.

The motion and second were withdrawn by Councilmembers Rasmussen and Azeltine.

Jeff Alpert with Park Place Partners, LLC, informed that due to the current housing market, the height of the building has been lowered from the originally contemplated 5-story structure presented on the overall development plan. The adjacent 8-story tower has also been removed. Located in the center of Park Place, the Axis Lofts will be a 4-story wood-framed building constructed over one level of underground parking. There will be 26 units ranging in size from 1,000 to 1,500 square feet. The parking garage will contain 38 spaces and there are 14 surface spaces surrounding the building. Mr. Alpert reviewed site plan drawings, elevations, and renderings.

Noting that the Planning Commission expressed concerns regarding the rear elevation, Mayor Dunn asked if additional brick was considered for this side of the building. Mr. Alpert reported that a significant amount of brick was added since the original elevation was presented to the Planning Commission. The configuration of the building prevents the ability to utilize more glass to equal the appearance of the front elevation as stairwells, storage areas, and electrical closets are along the rear wall. Mark Klein, Assistant to the Planning Director, confirmed that the initial elevation was provided in the packet material and does not illustrate the improvements made by the applicant.

Mr. Alpert informed Councilmember Bussing that other products are being reviewed to replace the originally approved 8-story structure on the overall development plan. Town homes and a 5-story condominium building are being considered. A conscious decision was made to not include any residential components over retail within the development.

Mr. Lambers verified for Councilmember Peppes that the rear elevation presented by Mr. Alpert containing the additional brick was approved by the Planning Commission following a continuance.

As a point of clarification, it was determined that citizen comments regarding this item will be entertained this evening as well as at the December 3<sup>rd</sup> Governing Body meeting.

Mayor Dunn noted that Stipulation No. 36 refers to developing the park sooner than anticipated and acquiesces to concerns expressed by citizens. She thanked Mr. Alpert for his willingness to accommodate the surrounding residents. Mr. Alpert demonstrated how phases of the park will be constructed in conjunction with the surrounding buildings.

George Bock, 5309 W. 116<sup>th</sup> Street, stated that residents of the nearby Edgewood Homes Association appeared before the Planning Commission on both occasions that the project was presented to express their concerns associated with the park. He complimented the City for improvements made to the project site, the streets, and the creek as they are all of benefit to the subdivision. Mr. Bock wished to ensure that Stipulation No. 36 remains within the ordinance as it will provide an important connection between the development and the surrounding community.

Councilmember Azeltine complimented Mr. Alpert for the nicely formatted minutes of the Interact Meeting and stated they should be held as an example.

As no changes are being made to the ordinance and the stipulations will appear exactly as seen in the Staff Report, City Attorney Patty Bennett advised Mayor Dunn that it would be allowable to take action on the project this evening.

A motion to pass the ordinance with Stipulation Nos. 1 through 37 as listed in the Staff Report was made by Councilmember Azeltine; seconded by Councilmember Rawlings. The ordinance passed with the following unanimous roll call vote of 6-0: Yea: Councilmembers Rasmussen, Azeltine, Filla, Peppes, Bussing, and Rawlings. Nay: None. (Councilmembers Gill and Gullledge absent).

**12. OLD BUSINESS – None.**

**13. OTHER BUSINESS – None.**

**14. NEW BUSINESS**

- A. Schedule a Governing Body Executive Session immediately following the regular meeting on Monday, November 19, 2007 to discuss matters subject to the attorney-client privilege

A motion to approve the Executive Session for a time period of ten minutes was made by Councilmember Peppes; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 6-0.

The Governing Body recessed into Executive Session at 9:35 P.M.

The Governing Body reconvened into regular session at 9:45 P.M.

A motion to adjourn the regular meeting was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 6-0.

### **ADJOURN**

Mayor Dunn adjourned the meeting at 9:45 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk