

**Minutes**

DVD No. 186

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 April 21, 2008. Mayor Peggy Dunn presided.

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

**Mayor/Councilmembers absent:** Mike Gill and James Azeltine.

**Staff present:**

Scott Lambers, City Administrator  
Chief John Meier, Police Department  
Chief Ben Florence, Fire Department  
Patty Bennett, City Attorney  
Kathy Rogers, Finance Director  
Jack Reece, Information Systems Specialist  
Eirene Oliphant, Building Official

Chris Claxton P&R Director  
Mark Klein, Asst. to the Planning Director  
Jeff Joseph, Senior Planner  
Joe Johnson, Public Works Director  
Deb Harper, City Clerk  
Pam Gregory, Deputy City Clerk  
Kathy Byard, Budget Coordinator

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted Item No. 6F under Special Business would be heard first.

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

Mary McCoy, 4901 West 133<sup>rd</sup> Street, and Christy Vopat, 4952 West 129<sup>th</sup> Terrace, noted they had signed in; however, did not intend to speak.

**4. PROCLAMATIONS – Arbor Day Proclamation, April 25, 2008**

Mayor Dunn read and presented the Arbor Day Proclamation to Chris Claxton, Parks and Recreation Director.

**National Volunteer Week, April 27 -  
May 3, 2008**

Mayor Dunn read the proclamation into the record and asked volunteers that were present to stand to be recognized.

**Building Safety Week, May 5-11, 2008**

Mayor Dunn read and presented the Building Safety Week Proclamation to Building Official Eirene Oliphant and Fire Chief Ben Florence.

**5. PRESENTATIONS/RECOGNITIONS – Distinguished Budget Presentation  
Awards Program**

Mayor Dunn presented the Distinguished Budget Presentation Award to Finance Director Kathy Rogers and Budget Coordinator Kathy Byard.

**6. SPECIAL BUSINESS**

- F. Ordinance amending § 2-104, of the Code of the City of Leawood, Kansas, 2000, entitled Trapping, allowing for the limited and restricted use of snaring and trapping devices for the intended purposes of controlling the population of coyotes [Roll Call Vote] – *Continued to May 19, 2008 Governing Body meeting.*

City Administrator Scott Lambers stated staff had reported to Council, information regarding pets being attacked by coyotes. The City's current ordinance does not allow any type of trapping, other than a live cage using bait. As a result of research performed by Police Chief John Meier and himself, they found these types of traps to be ineffective when used for coyotes. The methods used to capture them are a type of leg trap or snaring device. Mr. Lambers expressed concern to Council using these devices; however, did not indicate what type of devices would be appropriate. He had suggested the staff provide an amendment to the ordinance allowing citizens to come before the City to present methods of preference to trap the coyotes. He stated he had spoken with a contractor in the area that specializes in trapping coyotes. The contractor indicated there is a snaring device with a block on it, so if a coyote becomes snared, it would hold the animal and not strangle it; however, this type of device may allow the animal to escape. The contractor advised he is licensed with the State Wildlife Agency and is required to check all traps set within a 24 hour period. He indicated the type of snares that do not have a blocking device will suffocate the animal within two to three minutes. Mr. Lambers stated that the ordinance would provide the opportunity for homes associations to decide whether to contract with professionals, what type of method intended on using, and where they plan to place them.

He noted with the authority contained in the ordinance, he would approve proposed action if comfortable doing so, and if not, it would be brought before Council for consideration.

Councilmember Rawlings questioned the success rate with the contractor. Mr. Lambers stated that the contractor had been contracted with private property owners for approximately one year using the snaring devices to trap coyotes in various area locations. The contractor indicated his process was to put the snares under fence areas. Since May he had captured and euthanized approximately 50 coyotes in the Johnson County area. He noted other predators, such as owls, are also known to attack small dogs and cats.

Councilmember Rasmussen noted the damage and fatalities deer inflict. He questioned why there wasn't a broader ordinance to permit the homes associations to contract with professionals for the deer population. Mr. Lambers agreed to the deer incidents; however, noted the ordinance change is in direct response to coyotes.

Councilmember Filla questioned the natural predator to the coyote and asked what would happen to the species below them if there were too many disposed of. Mr. Lambers stated the predator to the coyote is man and, since the coyote controls the population of mice, rabbits, and squirrels, this population would increase. Mayor Dunn noted she had read that coyotes also control Canadian geese. Police Chief John Meier stated they prey on geese, though at times they are hard to catch; therefore, they prey on what is easiest.

Councilmember Filla questioned the options given to the homeowners associations. Mr. Lambers stated although coyotes are an issue, they are not confined only in the City of Leawood and noted a measured response would be appropriate. By allowing the homes associations the opportunity, it would allow them to place traps on private property. They would need to notify their membership association the location and time they would be set. The trails coyotes use typically follow creeks and streams of out-lying areas of the homes associations. Homeowners close to those areas would be put on notice, should they have pets that would need to be brought indoors while the trapping was proceeding. Ms. Filla noted staff could have a difficult time undertaking the type of communication and coordination needed, due to the multitude of homes associations. Mr. Lambers noted the homes association board would need to communicate with their membership to provide an opportunity for input before a decision was made, so everyone could be notified. He noted the possibility of coyotes killing themselves on snares that are intended to be non-lethal.

Councilmember Gulledge questioned if the recommendation was for the associations to take action among themselves to trap the coyotes. Mr. Lambers stated it would be appropriate to do so. Mr. Gulledge stated in order to get control of the situation, it would need to be unified; otherwise, if they were trapped and moved to another location, it would just relocate the problem. Mr. Lambers stated when the coyotes were captured; they would be killed and not relocated.

Councilmember Rawlings questioned if the coyotes were territorial and if the City knew the approximate number of coyotes in the area. Mr. Lambers stated they are wide-ranging in their activities and their territories could be very large.

Councilmember Gulledge questioned if the issue would be a temporary problem until the southern area of Johnson County would become more developed. Mr. Lambers stated the population of coyotes should decrease as development pursues south; however, it could be an extended period of time before enough development would take place to see a noticeable difference.

Richard Lyons, 5304 West 153<sup>rd</sup> Street, stated there have been coyotes in his backyard on several occasions. He noted the human population was the reason they were being driven out of their natural habitat. Mr. Lyons asked Council to consider a humane method of trapping and to relocate them to out-lying wildlife areas south of the City, if possible.

Linda Voran, 13113 Cedar Street, stated she had been in her backyard with her dogs and had seen numerous coyotes appear in pairs. She noted a coyote had appeared on her front sidewalk and her dog could not intimidate it. She was concerned they are becoming aggressive. She stated this should be handled by the City of Leawood and not the homeowners associations, due to the fact that the coyotes have been in all subdivisions.

Keith Seymour, 5081 West 150<sup>th</sup> Place, stated he had hunted many coyotes and by tracking them, you come to respect them. He noted they are very smart and can be aggressive. Mr. Seymour questioned why the Wildlife Association has not gone out to search for their dens to remove the pups. When this is done, the coyotes will scatter and their hunger source would diminish. He stated they need to be killed due to the population in the area. Mr. Seymour stated that unless all developments would do this at once, the process would fail. He noted the coyotes would return as long as they have a habitat and a place to raise their pups.

Janet McLoughlin, 4500 West 125<sup>th</sup> Street, felt it should be handled by animal control and the City of Leawood. Ms. McLoughlin stated the City informed her they license 3000 pets per year and; therefore, believed the City holds a certain obligation to residents. She stated the effort needed to be unified, or it would be a waste of time, and hoped the City was not attempting to dodge the issue.

Robin Harwood, 12400 Fontana, stated she concurred with Ms. McLoughlin and noted it would be a more effective operation if it were managed by the City. She stated concern about elderly neighbors walking their dogs in the evening. Ms. Harwood expressed the coyotes could become agitated by trapping attempts and possibly more aggressive. She stated she would like Council to consider appointing a Wildlife Management Committee, due to other wildlife issues.

Jane Ross, 4004 West 137<sup>th</sup> Terrace, stated there had been articles in the paper recently regarding her neighbors losing pets to coyotes. She expressed hope there would be the possibility of co-existing with the coyotes. If trapping was considered, she requested an alternative to euthanizing.

Tony Ross, 4004 West 137<sup>th</sup> Terrace, stated he hiked around the City at night and had watched their hunting practices to be of mice. He noted the trapping could be a waste of time and preferred not to see pictures of injured coyotes on the internet. The residential development along the 135<sup>th</sup> Street corridor has circled the commercial development, which has not yet developed; therefore, has left the coyotes in this area. Once the area completes development over the next couple of years, the coyotes should locate further south.

Mayor Dunn recognized John Irwin, 12721 El Monte, and noted he had left the meeting.

Linda Medoff, 2312 West 105<sup>th</sup> Street, stated her family was happy to be a part of Leawood. Ms. Medoff stated the coyotes are beautiful and requested that Council be humane when it comes to resolving the issue.

Craig Christie, 12613 Mohawk Lane, stated many people are concerned with the coyotes; however, noted his pets deserve a safe environment to live. Mr. Christie stated he respects the coyotes; however, felt it was an issue of development disturbing their habitat and asked Council to act on the matter.

Mary Prewitt, The Humane Society of the United States, stated the matter was brought to their attention by a resident of Leawood. Ms. Prewitt complimented the City on the approach they had taken in the past on wildlife nuisance control. She noted the only guaranteed humane method of trapping that exists is a live cage. She noted the City's willingness to educate the public by posting information regarding coyotes on the City's website. She expressed her condolences to the residents who had lost pets. Ms. Prewitt expressed concern of the language in the proposed ordinance, noting it is not limited to coyotes and is very vague. She stated the language did not address the following:

1. When or under what circumstances the decision should be brought to the Governing Body, rather than being left to the City Administrator.
2. What types of traps and other methods could be used to capture the animals.
3. Whether the methods would be humane.
4. Whether those who had been approved had any training or supervision, to what standards, and by whom.
5. What type of circumstance would justify the use of another method of trapping, or make it necessary to protect the public health, safety, and welfare.
6. What would constitute a limited amount of time.

Ms. Prewitt stated the shortcomings by the proposal could put the City in a more serious position than the problems intended to address. For example; the phrase "*other traps and methods*" literally encompasses any other type of wildlife trap, including body slamming types, leg holds, and neck snare traps. All of these methods of trapping could involve cruel and painful injury to trapped animals, and noted the animal caught may not be the intended target. Research has indicated the "Collarum" trap is intended to be the alternative trap of choice. The claim of this type of trap is only 70% free of serious injury. All of these traps were canine specific; however, not specific to coyotes.

In conclusion, the proposal may put domestic animals in as much risk as the coyotes. Experienced trappers could catch coyotes with live traps by pre-baiting or by using established blind sets. Coyotes are territorial animals and research has demonstrated when one territory is clear; others will move in and take over the same territory. Ms. Prewitt indicated that as their territories continue to become more developed, the coyotes are adapting. Ohio State University Professor Stanley Gurt had trapped and tracked over 250 coyotes in Cook County, Illinois. His research indicated people and coyotes co-exist on a daily basis, and coyotes play a role in controlling the deer and Canadian geese population. His recommendations discourage, as ineffective, attempts to control entire coyote populations. Successful management must include public education designed to prevent individual animals from becoming habituated.

Ms. Prewitt reiterated her position. She encouraged Council to refine methods currently in use, and to use live trapping. She noted the coyotes were here to stay, and would always be here. Without a public education program, the problems would continue to exist.

Councilmember Filla questioned if there were reports of coyotes being aggressive toward humans. Mr. Lambers stated he had conversations with citizens where the coyotes did not display any fear; however, he could not say they had displayed aggression. Ms. Filla questioned if research had been done to determine if the pups could be moved from their dens. Mr. Lambers stated this could be part of a comprehensive program; however not a sole solution. Ms. Filla questioned if there had been reports north of I-435 where neighborhoods were established. Mr. Lambers stated he had not received reports on coyotes, only deer and fox.

Mayor Dunn questioned if Ms. Prewitt's suggestions were considered, or if the ordinance was purposely left vague. City Attorney Patty Bennett, stated the language could be changed to add more specific standards. Mr. Lambers stated the contractor had informed him there are state laws they must adhere to in order to maintain their license for commercial activities. He noted the contractors must be licensed in Kansas, and that the State Wildlife Agency would provide the expertise and training. They have to comply with state law requirements. The traps are required to be inspected every 24 hours, and the state would make spot checks to confirm they were being inspected in that time frame.

Mayor Dunn asked Ms. Prewitt if she had a model ordinance from the Humane Society speaking on her suggestions that could be left for staff to review. Ms. Prewitt noted she would be willing to work with staff and could reference ordinances from other cities.

Councilmember Rawlings questioned what the contractor was proposing and what the City's resources would be, if any, to address the issue. Mr. Lambers stated the City does not have any expertise with wild animals and contracts with professionals. Mr. Lambers noted the contractor would set the snares, perform an assessment, and look for trails to determine the patterns of the coyotes. This could cost the contractor \$200 to \$400. There would also be a bounty fee of approximately \$75 to \$150 per animal. Mr. Lambers stated people want to let their pets in their backyards, and noted if Council wanted to try to resolve the issue, the City needed to make an aggressive effort to eliminate the number of coyotes. The City could then re-evaluate the situation to determine if other measures need to be taken.

Research has indicated that live cages have not been successful in the consistent capturing of coyotes. The two effective methods are snares (leg traps are not used) and high powered rifles, which are not allowed in an urban area.

Mayor Dunn stated she believed there needed to be additional language added to the ordinance for clarity and deliberation with possible assistance from The Humane Society in working with staff. Mayor Dunn expressed her condolences to the residents who had lost pets. She expressed appreciation to staff for involving the homes associations. The Homes Association's Board of Directors would play an important role with serious deliberation in determining whether or not to use the traps, due to the chance of someone's pet getting caught. This would be a better alternative than the City sending contractors onto citizen's private properties. Mayor Dunn noted that, unfortunately, whatever the City chose to do, someone would be unhappy.

Councilmember Filla stated her position would be to let nature take its natural course; however, was concerned for children and small pets. Ms. Filla questioned the difference in the approach of habituated coyotes versus the more random ones. Mr. Lambers stated there was not a known way of determining that through trapping.

Councilmember Bussing stated he was not opposed to additional definitional language; however, was concerned that writing detailed descriptions of how it should be handled could become a long ordinance to what, otherwise, could be a relatively simple matter. He expressed the benefit of having Council provide broad guidelines of intent to how any animal in the City of Leawood was approached and treated. This would allow staff to determine on a case-by-case basis how individual circumstances are handled. It would be difficult to define all of the potential circumstances that would need to be defined. He stated the ordinance speaks of the desire to treat any animal humanely, and is comfortable with Mr. Lambers approach. He has consistently spoke about only using humane methods of dealing with the issue.

Councilmember Peppes made a motion for staff to return with a revised ordinance with more specific language. Mr. Lambers stated even though the language did not specifically state coyotes, the directive from Council was that they are what the City was targeting. Mr. Peppes noted his preference would be to make it specific for the coyote, so other animals would not be an issue. Mr. Lambers noted preference to keep a procedure in place. The ordinance would give the authority to designate that, rather than amend the ordinance each time a specific animal was mentioned. This would still require Council approval; however, not require an amended ordinance be done.

Councilmember Peppes made a motion for staff to return with a revised ordinance to allow additional stipulations to a date certain of May 19, 2008; seconded by Councilmember Gulledge.

Mr. Lambers confirmed with Council that the ordinance returning would allow for trapping of the coyotes; however, be more defined as to some of the specifics previously stated.

Councilmember Rawlings noted appreciation to the citizens as they had related to their losses, as well as to people that spoke on behalf of the coyotes; including Ms. Prewitt. Mr. Rawlings stated a lot of information had been brought forward for consideration.

The motion was approved following a simple majority vote of 4-2. Yea: Councilmembers Rasmussen, Rawlings, Peppes, and Gulledge. Nay: Councilmember Bussing stated he was comfortable with the language as written with Mr. Lambers responding to specific directives from the City Council. Councilmember Filla stated to take no action, and let the course of development and changing territories take care of the situation. Ms. Filla suggested that if this was to move forward, to add "licensed only contractors" in the language. (Councilmembers Azeltine and Gill absent).

A. Pre-Budget Public Hearing on 2009 Fiscal Budget for the City of Leawood, Kansas

As no one was present to speak on the 2009 Fiscal Budget, Councilmember Bussing made a motion to close the public hearing; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

B. Presentation of 2007 Annual Audit

Finance Director Kathy Rogers stated that in absence of Dave Cochran, Cochran Head Vick & Company, Senior Audit Manager Michael Keenan would make the presentation.

Mr. Keenan presented the Comprehensive Annual Report, along with the required communications and management letter placed upon the dais. He stated the financial and compliance audit addressed three basic questions:

1. Were the financial statements free of material and misstatement.
2. Were internal controls in place, and were they designed and operating effectively.
3. Did the City of Leawood comply, in all material respects, with finance-related laws and regulations.

He stated the audit was performed in accordance with auditing standards generally accepted of the United States, as well as government auditing standards. The objective was to provide reasonable; however, not absolute assurance that the financial statements are free of material misstatement, and to also report on internal controls. The scope of the audit was a comprehensive annual financial report, and was presented to the Government Finance Office Association [GFOA] for awards. He noted the City of Leawood had received that award for 10 consecutive years. Mr. Keenan stated they believed the 2007 report would also receive the award.

The Auditing Standards Board of the American Institute of Certified Public Accountants recommended they communicate this to the Governing Body. No illegal acts were noted as a result of the procedures. He noted a change in accounting policies the City implemented; Government Accounting Standards Board [GASB] 45 - accounting and financial reporting by employers for post-employment benefits other than pension. He stated there were no disagreements with management, and they were given full access to all books and records. The financial audit report was unqualified; also known as a clean opinion. There were no significant deficiencies identified, or material weaknesses reported in internal controls. The management letter contained suggestions for possible improvements that were noted during the course of the audit.

Mr. Keenan expressed appreciation to the City from Cochran Head Vick & Company, for allowing them to serve as the City of Leawood's independent auditors. He also thanked Kathy Rogers and the Finance Department, as well as other department heads, for their assistance and cooperation with the audit. Mayor Dunn noted she was very pleased with the report.

Councilmember Rasmussen made a motion to accept the presentation of the 2007 Annual Audit; seconded by Councilmember Gullede. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- C. **Resolution No. 2996** accepting the 2007 Comprehensive Annual Financial Report [Audit] for the City of Leawood, Kansas

Mayor Dunn noted the top of page 5 should read *Mission Farms* instead of *Parkway Plaza*.

Councilmember Bussing questioned the specific recommendations stated in the letter from Cochran Head Vick & Company. Finance Director Kathy Rogers stated after reviewing with City Administrator Scott Lambers, they felt that an annual review of policies, such as the code of conduct and conflict of interest, should include a sign-off sheet to make sure everyone was aware of changes to City policies and procedures. Ms. Rogers stated they had met with Orion and Crescent Software Company last week and went through internal controls, and they were revising them to get everyone updated for the opening of the golf course. She stated the health care premium payments were a transitioning process with the Human Resource and Finance Departments, and they were working together to accomplish the recommendations. Ms. Rogers stated they had been in contact with Mid-America Regional Council [MARC] with the City considering the use of fixed price contracts through cooperative agreements to minimize the financial impact of fuel purchases. She noted the other two recommendations were prior year comments and would be something they would like to follow up on; however, they haven't had the opportunity due to transitioning of employees and cross training. She noted part of the Finance and Audit Committee comments they could move forward on, and other comments that concern size and staffing to maintain the degree recommended.

- D. **Resolution No. 2997** approving and authorizing the Mayor to execute a Lease Agreement between the City and Orion Management Systems, Inc., for the purpose of the sale of alcoholic beverages at Ironhorse Golf Club, located at 15400 Mission Road – **[Continued from the April 7, 2008 Governing Body meeting]**

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried by a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- E. **Resolution No. 2998** approving and authorizing the Mayor to execute a Third Amendment to that certain agreement, dated October 16, 2006, between the City of Leawood, Kansas and Orion Management Solutions, Inc., for the management of the IRONHORSE Golf Course [2007-2009]

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried by a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

Parks and Recreation Director Chris Claxton stated Shane Gardner, Orion, had notified her and apologized he was not able to attend the meeting.

## 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. 1101A, and 1101B
- B. Accept Minutes of the April 7, 2008 Governing Body meeting
- C. Accept Minutes of the March 31, 2008 Special Call Governing Body meeting
- D. Accept Minutes of January 31, 2008 IRONHORSE Golf Advisory Board
- E. Accept Minutes of the January 18, 2008, Public Works Committee Meeting
- F. Certification of General Obligation at-large Project Cost in the amount of \$1,600,000, for 2007 Residential Streets Improvement Project [CIP # 80206]
- G. Certification of General Obligation at-large Project Cost in the amount of \$1,530,000, for Creek Bank Stabilization Improvement Project [CIP # 80171]
- H. Certification of Special Assessment Project Cost in the amount of \$130,000, for Storm drainage improvements Ironhorse Golf Course, in accordance with SMAC project # NC-04-001; IRONHORSE Golf Club Stormwater Project [CIP # 80172-Easements]
- I. Certification of Special Assessment Project Cost in the amount of \$505,000, for Cornerstone - Water Feature [CIP # 83192]
- J. Certification of Special Assessment Project Cost in the amount of \$5,585,000, for Parkway Plaza Improvement Project [CIP # 83195]

- K. Certification of Special Assessment Project Cost in the amount of \$2,700,000, for Villaggio Development Improvement Project [CIP # 83198]
- L. Approve Change Order No. 4, in the amount of \$41,144.00, to Miller Paving & Construction, pertaining to the Park Place Improvement Project, Phase III [CIP # 83196]
- M. Fourteenth [14<sup>th</sup>] and Final Pay Request in the amount of \$495,057.79 to Continental Construction Company, pertaining to the Parkway Plaza Project [Project # 80195]
- N. Approve purchase in the amount of \$20,390.00, from M&M Golf Cars, LLC, Turf Utility Vehicles, pertaining to equipment for the Parks and Recreation Department
- O. **Resolution No. 2999** approving and authorizing the Mayor to execute Amendment No. 3, to that certain Master Lease Agreement dated September 5, 2006, between the City and Lanier Corporation for a 5-year Lease for a copy/fax machine for Fire Station No. 1, located at 9609 Lee Boulevard
- P. **Resolution No. 3000** approving and authorizing the Mayor to execute Amendment No. 3 to that certain Master Maintenance Agreement dated September 5, 2006, between the City and Foto Office Systems for a 5-year Maintenance Agreement for a copy machine for Public Works Maintenance Department
- Q. **Resolution No. 3001** approving and authorizing the Mayor to execute Construction Agreement in the amount of \$1,995,000.00 between the City and J.M. Fahey Construction Company, pertaining to the 2008 Residential Street Reconstruction Project [Project # 80208]
- R. **Resolution No. 3002** approving and authorizing the Mayor to execute Construction Agreement in the amount of \$1,195,076.91 between the City and J.M. Fahey Construction Company, pertaining to the 2008 Residential Mill & Overlay Reconstruction Project [Project # 70004 & 77008]
- S. **Resolution No. 3003** approving and authorizing the Mayor to execute an Easement and Maintenance Agreement, between the City, Parkway Plaza, LLC, and Parkway Plaza Retail/Office Owners Association, Inc., pertaining to the property located on Lot 2, 133rd Street and Briar [Project # 80195]
- T. Declaration of surplus property; leaf collector trailer [serial # 1174] and Bike Racks and other miscellaneous Parks equipment
- U. **Resolution No. 3004** approving a Final Plat for Park Place Third Plat, located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue [*from the March 25, 2008 Planning Commission meeting*]
- V. **Resolution No. 3005** approving a Final Plat for Hazelwood 5th Plat, located at 11701 Pawnee Lane [*from the March 25, 2008 Planning Commission meeting*]
- W. **Resolution No. 3006** approving a Final Site Plan for One Nineteen - Mitzy London's, located at the southeast corner of 119<sup>th</sup> Street and Roe Avenue [*from the March 25, 2008 Planning Commission meeting*]
- X. **Resolution No. 3007** approving a Final Site Plan for Monarch Real Properties - Plaza Pointe Lot 11, located at 135th Street and Roe Avenue [*from the March 25, 2008 Planning Commission meeting*]
- Y. Fire Department March Monthly Report

- Z. Municipal Court March Monthly Report
- AA. Police Department March Monthly Report

Councilmember Bussing requested to pull Item No. 7AA for discussion.

On motion of Councilmember Gullede; seconded by Councilmember Rasmussen, the remainder of the Consent Agenda was approved following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

Councilmember Bussing noted congratulations on the superior work of Police Chief John Meier and his staff for the reduction in the crime rate of 50% in the City of Leawood. Mayor Dunn expressed her appreciation, as well.

A motion to approve Item No. 7AA was made by Councilmember Bussing; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill Absent).

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

- A. Attended a community celebration breakfast hosted by the Johnson County United Way's local operating Board of Directors.
- B. Attended the State of the County Address and luncheon, hosted by Chairman Surbaugh and was joined by City Administrator Scott Lambers, Councilmembers Azeltine, Rasmussen, Councilmember-Elect Julie Cain, and members of the Chamber of Commerce. Chairman Surbaugh focused on Johnson County being a community of choice since 1855.
- C. Attended the 33<sup>rd</sup> annual Overland Park Mayor's Prayer Breakfast, hosted by the Christian Businessmens' Committee. Mayor Dunn acknowledged guest speaker Brian Bannister of the Kansas City Royals.
- D. Attended the Drug Abuse Resistance Education [D.A.R.E.] graduation at the Nativity Elementary School, hosted by Officer Mark Chudik.
- E. Attended the Jewish Federation's 75<sup>th</sup> Anniversary gala concert celebration held at Yardley Hall featuring The Kansas City Symphony, conducted by Michael Stern. Mayor Dunn stated it was an outstanding performance and congratulated CEO Todd Stetner and their Board of Directors for their great work.
- F. Mayor Dunn stated she had the pleasure of introducing Governor Kathleen Sebelius as the keynote speaker for the Committee for Economic Development at a business luncheon forum focusing on the importance of investing in high quality early education for long-term economic growth.
- G. Attended the former and current elected officials' reception hosted by the Leawood Woman's Club held in honor of Leawood's 60<sup>th</sup> Anniversary Celebration. Mayor Dunn thanked President Jean Wise, and their Board of Directors for the refreshments; the Leawood Singers for the entertainment, and David Basse, writer of the City's 60<sup>th</sup> Anniversary song, "Leawood, Long and Lean." She also noted appreciation to Alice and Mel Hawk, 60<sup>th</sup> Anniversary Coordinators.

- H. Mayor Dunn stated that City Administrator Scott Lambers shared with her that the League of Kansas Municipalities recently released their report on City tax rates for 2008. The City of Leawood ranked 3<sup>rd</sup> lowest statewide among twenty-five cities of the first class and 2<sup>nd</sup> lowest among the six Johnson County cities of the first class. She noted this is seldom recognized and something to be proud of.

**9. COUNCILMEMBERS' REPORT**

**10. STAFF REPORT**

***COMMITTEE RECOMMENDATIONS***

**11. PUBLIC WORKS COMMITTEE**

*[from the April 4, 2008 Public Works Committee meeting]*

- A. Recommendation to Council regarding North Leawood street island issue

***Staff Comment:*** *City ordinance assigns maintenance of islands on public streets to the respective Homeowners Association. The current ordinance is silent with regards to the street/island interface. This resolution will establish City policy with this regard without changing current City policy on the interior maintenance obligation of the Homeowners Association*

Councilmember Rasmussen stated historically, the obligation to maintain the islands have been with the homes associations. There are approximately 40 islands in this particular homes association in various stages of maintenance. Mr. Rasmussen distributed pictures to Council. Noting the pictures, he stated the sub-committee wanted to protect the facing or the interfacing between the pavement and the islands. The homes association did not want to install curbing and would like to maintain the interface. The homes association claimed that, in the past, the City had repaired them and noted he had not been aware of this; however, if City trucks destroyed the islands, the City would have repaired them. Mr. Rasmussen noted the problem with the City repairing them, was it could allow other homes associations to follow suit. He noted the wording in the proposed resolution; *Section Two* – “That the islands may be either eliminated or maintained so as not to pose a hazard to motorists, pedestrians or public safety.” Mr. Rasmussen stated that North Leawood was developed many years ago and some of the City vehicles are unable to get around the islands, due to their size. He noted two options to consider:

1. Should the taxpayers of Leawood pay for the repair of the islands in the specific locations noted below:
  - A. 81<sup>st</sup> Street and Lee – east side
  - B. 81<sup>st</sup> Street and Lee – west side
  - C. 83<sup>rd</sup> Terrace & Lee
  - D. 84<sup>th</sup> Street & Lee – east side
  - E. 84<sup>th</sup> Terrace & Lee – west side
  - F. 8008 Meadow Lane
2. Should it be part of the 2009 financial year.

The committee is recommending approval. The homes association is planning to work on and repair the remaining islands to bring to current standards. He noted island "F"; the committee is recommending to put in curbing to protect the brick and stone work. With the limited amount of right-of-way available, sometimes it is not possible to install the curbing, due to it requiring up to 2 ½ feet. Some of the islands in North Leawood have been eliminated. As noted in the resolution, the City would inform the homes association when the streets were to be redone.

A motion to approve the recommendation from the Public Works Committee to repair the specific islands, not to exceed \$37,000 was made by Councilmember Rasmussen; seconded by Councilmember Peppes.

Mayor Dunn questioned how these specific islands were chosen for repair. Councilmember Rasmussen stated they were the original islands presented to Council by the Public Works staff that were removed from the agenda. Mr. Rasmussen stated the homes association has not kept up with the repairs; therefore, the City is faced with the issue. He noted the islands were the homes associations' responsibility and if not maintained, the City could remove them.

Councilmember Rasmussen stated the City would pay for the repair of these specific islands, not to exceed \$37,000, with no specific contract.

Councilmember Rawlings questioned if the homes association currently had a budget for island repair. Mr. Rasmussen stated they were faced with approximately \$150,000 of repairs and were asking for \$37,000 in assistance. Mr. Rawlings stated he is a current member of his homes association and they have a 5-year plan budget for island repair and maintenance, and questioned the priority of the homes association's budget, unless the City was at fault. Mr. Rasmussen stated the City was not at fault.

Councilmember Peppes stated he was on the committee with Councilmember Rasmussen, and noted that the homes association does have a 5-year master plan and budget. The budget; however, does not have enough funds to handle \$150,000 of repairs. He noted the resolution states that once the islands have been redone, the homes association would maintain them from that day forward. Lee Boulevard would not be under construction for a total rehab, only a mill and overlay; therefore, it could be years before the islands are addressed and they need attention as soon as possible.

Mary Tearney, 3308 West 127<sup>th</sup> Street, stated she had moved to North Leawood in 1964. Mrs. Tearney stated the responsibility of maintaining the islands had always been the homes associations'.

Joe Arri, 8125 Meadow Lane, spoke on behalf of the Leawood Homes Association. He stated the association recently approved a 5-year plan at the annual meeting in November for \$150,000. This would be used for landscaping and maintenance of the stone in the 13 islands that have stone borders. He noted the islands had not been maintained as needed; therefore, the homes association had agreed to have a plan in place for the future.

Mr. Arri concurred with Mr. Rasmussen that the City had not maintained the islands and found no evidence that the homes associations were maintaining them either. The associations' point of view would be to partner with the City to take care of ongoing maintenance, including the stone. In exchange, assurance that the City would replace the border with stone, should the City have the need to remove a stone island. Mr. Arri noted concern from the homes association that some of the language in the resolution may be vague, in order to have mutual goals met. He recommended it be remanded to the Public Works Committee for review and clarification, specifically for sections five and six.

Mayor Dunn asked Mr. Arri to specify what was not clear in sections five and six. Mr. Arri noted if Item B were removed, there would be no objection to the resolution in section five.

Councilmember Rasmussen stated there could be occasions when the City reconstructs the streets on Lee Boulevard. There would be installation of curbs and to reconstruct/replace the facilities inside the new curb with like materials.

Joe Johnson, Public Works Director, stated the intent was to have three options the City could work with the homes associations on during the design of the project:

- Section Five A. Replace the facilities with like materials.
- B. Install curbs for the island; reconstruct/replace the facilities inside the new curb with like materials.
- C. Remove the island entirely for street reconstruction.

Councilmember Filla confirmed that Mr. Arri was stating the homes association did not want to have curbs with stone. Mr. Johnson confirmed it would be an option. Ms. Filla stated it would change the character of the islands dramatically if they installed the stone on top of the curbs.

Mayor Dunn asked if the staff were to add "or" to Section five - Item A, and if that would give clarification needed. Mr. Arri noted the homes association did not understand that Item A meant to replace the stone after it was removed. Mayor Dunn noted it states "like materials", so if it was originally stone, it would be replaced with stone if that were their choice; however, from there forward it would be the homes associations' responsibility. Councilmember Rasmussen stated the homes association wanted the stones replaced by the same stones; however, they would not be possible to replicate, due to the fact they were installed many years ago. They would be replaced with "like" materials.

Mr. Johnson confirmed section six addressed that the City would use the current construction standards and would not be reconstructed to their original state.

Councilmember Bussing questioned the number of homes in the association. Mr. Arri confirmed approximately 1,200 homes. Mr. Bussing asked if there had been a dues increase at the last association meeting. Mr. Arri stated it did not include a dues increase; it was re-allocation of existing funds and use of the reserve.

Councilmember Rawlings questioned why the islands were not included in their 5-year, \$150,000 plan. Mr. Arri stated the homes association believed the City had provided major reconstruction on the stone islands when required. The bid was presented at a previous meeting and sent to the Public Works Committee. Mr. Arri noted they understood the City's need to have boundaries. They are asking the City to reconstruct the islands as they would have done, had they not exceeded the limits of the contract as allowed by City law. He stated that going forward, the homes association would provide the maintenance. Mr. Rawlings questioned his meaning of the "City contract exceeded." Mr. Arri noted when the bid was originally submitted for funding for stone repair; it exceeded a threshold and needed to come before Council. It was turned down, due to not having been done for anyone else. Councilmember Filla stated another issue that had not been addressed in the \$150,000 budget was a master plan to reconstruct the landscaping. Ms. Filla stated there was a time the City had been maintaining the islands. She noted the Public Works Committee brought forward a compromise with planned maintenance on the islands previously stated and; thereafter, it would become part of the homes associations 5-year plan to do the landscaping, as well as the maintenance on the brick/stone.

Councilmember Filla questioned if the islands were installed when Lee Boulevard was reconstructed and if they had always been made from stone. Mr. Arri stated they were stone from the original plat of the property in 1948. Mr. Rasmussen noted the islands were all part of the original subdivision.

Councilmember Filla questioned if the City had ever done general maintenance on the stone islands. Mr. Johnson stated the City had not; however, if stones became loose, the City would re-mortar them in place. He noted the stone on the islands in the contract were beginning to disintegrate.

Councilmember Gullede made a motion to call for a question. The motion was approved with a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

The motion to approve the recommendation from the Public Works Committee carried with a vote of 4-2. Mayor Dunn stated the motion was for expenditure not to exceed \$37,000. Yea: Councilmembers Filla, Rasmussen, Gullede, and Peppes. Nay: Councilmember Rawlings as previously stated, and Councilmember Bussing stated the homes association showed a lack of commitment to raise their own dues to help fund the repair of the islands. Councilmembers Azeltine and Gill absent).

- B. **Resolution No. 3008** regarding maintenance or replacement of stone or brick islands in public right of way in the City of Leawood.

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Peppes.

Mayor Dunn expressed hope that Mr. Arri and the homes association would look into a plan of repairing and maintaining other islands. Mr. Arri stated their intent was to keep the islands pleasing and safe. Mayor Dunn confirmed to Mr. Arri the homes associations' responsibility henceforth to provide the continued maintenance on the islands.

Councilmember Peppes confirmed that the "or" statements were to be included.

The motion carried with a vote of 5-1. Yea: Councilmembers Filla, Rasmussen, Peppes, Gulledge, and Bussing. Nay: Councilmember Rawlings as previously stated. (Councilmembers Azeltine and Gill absent).

Mayor Dunn noted appreciation to Mr. Arri and the homes association for their involvement. She also thanked Councilmember Rasmussen for his hard work as Chairman of the Public Works Committee.

## **12. PLANNING COMMISSION**

*[From the February 26, 2008 Planning Commission meeting]*

- A. Ordinance approving the Planning Commission's Recommendation to deny a Special Use Permit, Preliminary Site Plan and Final Site Plan for One Nineteen - Building A - Green Earth Cleaners, located at the southeast corner of 119th Street and Roe Avenue [Roll Call Vote] – ***Remanded to Planning Commission.***

Bob Carlson, DLR Group, noted on behalf of Red Development, this be remanded to Planning Commission to present a new design.

Councilmember Filla made a motion to remand the ordinance to the Planning Commission; seconded by Councilmember Rawlings.

City Administrator Scott Lambers, noted the application would receive preference over applications that are not currently in the queue.

Councilmember Rasmussen stated he is against remanding due to it being a unanimous recommendation from the Planning Commission and the traffic problem on Tomahawk Creek Parkway and 119<sup>th</sup> Street. He stated use of this was not compatible with the overall planning in that area.

Councilmember Peppes stated he concurs with Mr. Rasmussen on the traffic problem and stated he relied on staff for recommendations and they felt it was not the right use for the area.

Mayor Dunn questioned if the drive-thru plan would be discontinued. Mr. Carlson stated the drive-thru would be present; however, relocated to improve circulation through the site.

Councilmember Rawlings noted he agreed to remand to Planning Commission on the issue of the traffic problems only, since the applicant had come forward with possible solutions; however, not on the issue of compatibility with the overall planning as stated by Councilmembers Peppes and Rasmussen.

Mayor Dunn stated when a remand is voted back to the Planning Commission, then returns to Council, it eliminates the necessity for a super majority vote. If Council overrides; however, with consent, the super majority could remain in place. Mayor Dunn questioned City Attorney Patty Bennett if this had been done in the past. Ms. Bennett stated it had been done by stipulation and with consent from the developer. Mr. Carlson questioned if it were to return to Council would it take super majority to override Planning Commission. Mayor Dunn stated if Planning Commission would deny again, for Council to approve, it would be considered an override. The super majority would remain in place and it would take the super majority to approve it. Mr. Carlson stated that would be acceptable.

Councilmember Filla made a motion with stipulation to consent of the developer, the ordinance be remanded to Planning Commission; seconded by Councilmember Rawlings. The ordinance was remanded to Planning Commission with a vote of 5-2. Yea: Mayor Dunn, Councilmembers Bussing, Gulledge, Filla, and Rawlings. Nay: Councilmembers Rasmussen and Peppes. (Councilmembers Azeltine and Gill absent).

***[From the March 25, 2008 Planning Commission meeting]***

- B. Ordinance approving a rezoning from AG [Agriculture] and RP-1 [Planned Single-family Residential] to R-1 [Planned Single-family low density Residential]; Preliminary Site Plan; and Preliminary Plat, for the Church of the Nativity, located north of the intersection of 119<sup>th</sup> Street and Mission Road [Roll Call Vote] –*Continued to May 5, 2008 Governing Body meeting.*

Mayor Dunn recused herself due to the appearance of a conflict. Councilmember Peppes presided over the meeting in his capacity as Presiding Officer.

James Taylor, Church of the Nativity and The Archdioces of Kansas City, Kansas noted they were asking for approval for a preliminary and final plan for an expansion program. The Planning Commission had recommended approval for the project. The Church of the Nativity has been in Leawood for approximately 20 years, and noted they serve 2,100 families in the parish.

David Livingood, Treanor Architectural Group, gave a presentation and stated the goal was to take the existing parish into the next 20 years. The key componates currently being added are an addition to the northwest corner of the church for expansion of offices. He stated to the north will be a small adoration chapel, and to the south, a bell tower, which was approved under a previous site plan submission. The southeast corner will be an outdoor gazebo used for cooking purposes. The church is not looking at increasing the population of the school; however, they want to utilize all space. The west side of the school will be a three story addition. The top two

floors will be used for classrooms and the lower floor would serve as storage. There are minor changes to the parking, as a result of the school.

Mr. Taylor stated they concur with the Planning Commission recommendations, with the exception to stipulation No. 19. It states the requirement that the overhead power lines be buried along the 119<sup>th</sup> Street corridor. This would be on the west property line of the church to approximately 1,500 feet to the east. This states, "All power lines, utility lines, etc. (both existing and proposed) are required to be placed underground, and must be done prior to building occupancy of any building within the project." The church is asking Council to waive this stipulation. He stated that part of the City's ordinance for new development requires developers to do that, and then pass the expense on to buyers of the property. He noted another 1,000 feet of property on the east side; Hazelwood development, and to the south along Mission Road to 135<sup>th</sup> Street, are overhead lines. The older neighborhoods would not be faced with this and newer neighborhoods would have to absorb this cost. Mr. Taylor stated the interpretation of the ordinance would be; if power lines that are above ground in established neighborhoods were to ever come down, they would need to be replaced underground.

Councilmember Rasmussen stated he recommended eliminating stipulation No. 19. He noted that in the Leawood Development Ordinance [LDO] it states the requirement to bury power lines. The City took the position that the power lines going into subdivisions from that date on would be put underground. This particular location is not a new development, it is established; so to state a three phase power line would need to come down, would not be feasible. The intent of the ordinance was to have the planned areas go underground and not go back into existing areas and tear them out. He stated the applicant was correct in asking this be removed.

Councilmember Rawlings asked why the stipulation was added.

City Attorney Patty Bennett stated that the LDO states, "in the case of a new or amended preliminary or final plans or plats, the developer shall place all utilities underground at such time mandated by the approved plan or plat". It does not allow for a waiver. Mr. Taylor stated their facility was planned and developed approximately 20 years ago. When they come in for a planned amendment, they would have to abide by the new LDO.

Councilmember Bussing questioned if it was discussed at the Planning Commission. City Administrator Scott Lambers stated it was not subject to Planning Commission jurisdiction, it was a decision to be made by the Governing Body.

Mr. Bussing asked if the height of the gazebo had been resolved. Councilmember Peppes stated the Planning Commission previously approved this to 23 feet.

Councilmember Gullede made a motion to approve the rezoning of the ordinance, omitting stipulation No. 19.

Councilmember Filla questioned in terms of waiving the stipulation, how it would fit in with the overall plan of 119<sup>th</sup> Street and the feasibility of going underground. Mr. Lambers stated if the City would choose to underground them, the church would not have that obligation. It would be a large cost to the City. Ms. Filla noted she was not familiar with the area of 119<sup>th</sup> and State Line Road and asked Mr. Lambers to explain the layout. Mr. Lambers stated it would be the west property line of Hallbrook (noting Hallbrook lines are underground) to the entrance of Hazelwood and Tomahawk Creek Estates. Mr. Taylor noted Mission Road and 119<sup>th</sup> Street to the south are all overhead lines. Ms. Filla questioned if there was expectation that the area between the church and Hazelwood be addressed. Mr. Lambers stated the City's requirement for undergrounding came into effect after those subdivisions were approved. He stated his forecast would be; if the City would require the church to underground the power lines in the future, the City would pick up the portion of Hazelwood to complete the project. Ms. Filla questioned the benefits of the City to having utilities underground. Mr. Lambers stated greater reliability and improvements.

Councilmember Bussing questioned when the undergrounding requirements were first in the ordinances, and if the original plat for the Church of the Nativity required the lines be underground and if it was waived until a later date. Mr. Taylor stated the ordinance was presented five years ago. Mr. Rasmussen stated the ordinance came into effect after the present City Administrator. Mr. Bussing confirmed there had been no discussion with the church that at some point they may have to underground their power lines. Mr. Lambers stated those types of conversations take place at the time a development application is presented. Mr. Taylor stated there had been no discussion about this with the church.

Mr. Bussing confirmed with Mr. Lambers that the Planning Commission discussed and approved the gazebo at 23 feet, due to the ordinance stating 15 feet.

Councilmember Rawlings questioned if there would be plans in the future to bury power lines along 119<sup>th</sup> Street between Hallbrook and the church property, due to the cost involved. Mr. Lambers stated in the future, the City would engage in an underground program for electric utilities. He stated it should be placed on private developments and the balance would be paid by the City. He stated this would not likely take place in the next 5-10 years, but the possibility was there. Mr. Rawlings questioned if the property owners along Mission Road from 119<sup>th</sup> to 135<sup>th</sup> Street would be assessed undergrounding. Mr. Lambers stated that was unlikely. Mission Road should be expanded, and as part of the expansion, the cost for undergrounding the power lines would be included, as similar to 143<sup>rd</sup> Street, 151<sup>st</sup> Street, and Kenneth Road. He noted the City would pick up those costs, unless a development was along the streets and it were stipulated they would pay their portion.

Mr. Taylor stated there was a similar situation with the Roe Avenue improvements from 125<sup>th</sup> Street south to 135<sup>th</sup> Street. This improvement did not include the burying of the overhead lines. Mr. Taylor stated he would question the validity of where it would be an obligation to the City on Mission Road.

Councilmember Filla questioned if the wording could be changed to defer it be done in another phase, and if there were any funding options that would be available. Mr. Lambers stated as part of the development of 135<sup>th</sup> Street, the City required Lord of Life Church to install their power lines underground and gave them a certain amount of time to comply. In the case of a deferral, unspecified that at some point in the future, the City would require that the undergrounding take place. In fairness to the applicant, the City would provide adequate notice of a minimum of one-two years, and agree that the requirement would not take place in the next three-four years. Mr. Lambers stated the City contracts with Kansas City Power and Light [KCP&L]; they bill the City and the City forwards it to the developer for reimbursement. Ms. Filla questioned the possibility of using Special Benefit District [SBD] funding. Mr. Lambers stated SBD could not be used because it is owned by KCP&L. Transportation District Development [TDD] funding could be part of a comprehensive program and this would allow for financing to not be a general obligation to the City. The best option would be a long-term debt structure, and the TDD would allow up to 22 years.

The motion failed with the following roll call vote of 5-1. Yea: Councilmembers Rasmussen, Gullede, Bussing, Peppes, and Rawlings. Nay: Councilmember Filla. (Councilmembers Azeltine and Gill absent).

Councilmember Filla made a motion to add clarified language to allow a deferral of undergrounding the power lines to a provision in the future with adequate notice, and that the City could work with the church for long-term financing. The motion died for lack of a second.

Councilmember Bussing made a motion to continue the discussion of the ordinance to the May 5, 2008 Governing Body meeting; seconded by Councilmember Gullede. The motion to continue carried with a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- C. Resolution approving a Final Site Plan and Final Plat for Church of the Nativity, located north of the intersection of 119<sup>th</sup> Street and Mission Road – ***Continued to May 5, 2008 Governing Body meeting.***

A motion to continue the resolution to the May 5, 2008 Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Gullede. The motion to continue carried unanimously with a vote of 6-0. (Councilmembers Azeltine and Gill absent).

- D. Ordinance approving a Special Use Permit for the Church of the Nativity, located north of the intersection of 119<sup>th</sup> Street and Mission Road [Roll Call Vote] – ***Continued to May 5, 2008 Governing Body meeting.***

A motion to continue the ordinance to the May 5, 2008 Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Gullede. The motion to continue carried unanimously with a vote of 6-0. (Councilmembers Azeltine and Gill absent).

Mayor Dunn rejoined the meeting.

- E. **Resolution No. 3009** approving a Final Site Plan for Chadwick Place, located at the southeast corner of 135th Street and Chadwick Place

Larry Winn, 6201 College Boulevard, stated the application was for a logo on the Mission Bank building at Chadwick Place.

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried with a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- F. **Resolution No. 3010** approving a Final Site Plan for Bi-State/Centennial Park - Design Guidelines, located at 143rd Street and Kenneth Road

Mayor Dunn noted appreciation to the Planning Commission and staff for their time dedicated to the proposed resolution.

Greg Mussil, 9225 Indian Creek Parkway, Overland Park, stated this was recommended by the Planning Commission with a vote of 8-0.

Councilmember Rasmussen noted page 2 under Staff Comments; Item No. 3, and asked if the applicant was still requesting to remove "has limited contact with the general public" from the statement. Mr. Mussil stated they had discussed it with the Planning Commission and they had agreed to remove the language from the design guidelines. Mr. Rasmussen noted previous illustrations of applicants requesting "exceptions" of basement areas claiming it would only be used as storage. The additional language was added to read "the incidental on-site use for sales." The City did not object to this because when the applicant was present, the City could ensure the parking and traffic was correct. He felt the language should remain in the guidelines, or reworded to read "incidental use."

Councilmember Rasmussen also noted Item No. 9, and asked if there had been problems with the materials noted. Mr. Lambers stated it was a design issue and is why they are limited within the flex transition zone. Mr. Rasmussen questioned what was to be voted on. Mr. Lambers stated the vote was on the design guidelines to be approved and the buildings presented have to meet the guidelines, or they would need to request a deviation be approved on each of the applications. Mr. Rasmussen asked if the applicant was requesting that requirement be eliminated. Mr. Lambers stated they were requesting those items be allowed so when brought before Council, it would not be rejected, since it would be permitted material. Council would still have the right to review the building on an individual basis and make decisions about it. Mr. Rasmussen questioned the staff's position. Mr. Lambers stated staff is in support of what the applicant had requested. Mr. Rasmussen stated his only concern would be the language of the "limited contact with the general public." Mr. Lambers stated upon lengthy discussion of this guideline, it was determined the issue was how it would be enforced. He stated the Planning Commission felt comfortable with stipulation No. 5; by limiting the retail percentage of each building, they would achieve the goal of not having the business park become a retail center.

Mayor Dunn noted it was the vagueness of stipulation No. 3, and stated this was verbatim minutes. Mr. Mussil stated concern as to how the City would enforce that. He stated there was a specific limitation to the amount of space that can be used for retail sales, and this would limit the amount of concern. This would not be a general advertising place to the public. Mayor Dunn noted the big box ordinance would be in place to limit the square footage.

Councilmember Bussing questioned any discussion about the guidelines with other tenants, such as, Mr. Cocherl, Cocherl Group, Inc. Mr. Mussil stated he owned his own lots and would not be subject to the guidelines.

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- G. **Ordinance No. 2315** approving a Special Use Permit [SUP] for Bi-State/Centennial Park - Kiddie Academy, located south of 141<sup>st</sup> Terrace and east of Overbrook [Roll Call Vote]

Greg Mussil, 9225 Indian Creek Parkway, Overland Park, noted this was located on lot 25 within Centennial Park. The Special Use Permit [SUP] in the ordinance specifically calls for a child facility as one of the types of facilities that can be located in the park that would serve the other uses in the park. The Kiddie Academy would provide a high level of child care for pre-school, and before and after school care for school aged children.

Mayor Dunn stated there were previous concerns of the pond and the Kiddie Academy being in close proximity and to the safety of the children. Mr. Mussil stated the facility is entirely fenced with 4 ft. tall fencing, and the fenced area around the playground is 6 ft., so the children would not be able to escape the playground area. Mr. Mussil stated the Kansas Department of Health and Environment have numerous regulations designed to ensure child safety. Mr. Mussil stated the fence was rod iron.

Councilmember Bussing confirmed that staff was comfortable with the request for deviation.

Mayor Dunn asked Staff Comments include that this is for a 20-year SUP. It would not change any stipulations; however, would be for follow up and review for the future.

Patricia Wilson, Carlson Kort Law Firm, stated they represent Highlife Sales Company, which operates under the name of Central States Beverage Company. Ms. Wilson noted the company employs over 160 full time employees at the facility located in the City of Leawood. This is located adjacent to the subject property. It is a beer distributorship subject to regulations of Kansas, and noted their concerns in a letter from Central States addressed to the Planning Commission expressing reasons why. One concern would be of the regulations under which they operate, and the other would be the issue of the pond that had been previously addressed. The pond is located on the subject property and property owned by Central States Beverage.

She noted the pond is fairly deep and is not fenced. This would allow easy access to the public. The primary issue is in regard to Kansas Administrative Regulations, which control the issuance of licenses to beer distributorships. They provide that licensed premises cannot be within 200 feet of any public or parochial school, college, or church, unless the premises were licensed at the time the school, college, or church was established. Ms. Wilson stated there were a number of concerns that may be subject to this regulation:

1. Any additional license that Central States seeks may be subject to this regulation.
2. Any expansion of the building.
3. Any change in the corporate ownership that would require them to re-license their facility.
4. A possible sale of the business.

These could all be situations where the existence of the facility and granting of the SUP would prohibit them from being able to have that facility licensed, if the authority took the position that this was a school within the meaning of the regulation. As a result of the concern, a request was made at the Planning Commission meeting and the City Attorney sent a letter to the Attorney General's office requesting an opinion on the meaning of this regulation. The Leawood ordinance requires that special uses may be approved at a particular location through the receipt of a SUP, if the impact of these uses would not inappropriately affect or impair the use or enjoyment of neighboring property. The Central States property has been used as a beer distributorship for over 20 years, and if the SUP is granted, it has the potential to severely impact the use and enjoyment of their property. The Leawood Code requires that the applicant have burden to show the use would be operated in a manner compatible with surrounding uses. It is our position that the applicant has not met that burden of proof. This is not an appropriate location for granting a SUP for the use of a Kiddie Academy; therefore, ask the permit be denied. If Council thought it appropriate other than their concern for the school and the impact it would have on Central States, they would ask this be continued to a later date to receive an answer from the AG's office for Council to take into consideration.

Councilmember Filla questioned if there was a timing issue needed to approve, pending the official statement from the AG. Mr. Lambers stated if Council were to recommend denial for reasons other than the legal issue, the issue would become moot. Mr. Lambers suggested it go forward while pursuing the AG's opinion, so Council can make the preliminary decision. It would be prudent on the applicant to wait until they prepare their final plans for the AG's opinion. Based upon that, the City could meet with the applicant and the attorney for the distributorship to work on a process to proceed. If Council decided to continue this, then the understanding would be to re-visit it, pending the AG's opinion.

Mr. Mussil stated his position is that the statute states "public or parochial school, college, or church." He stated they are a private child care facility and did not believe there was a legal issue. He stated they are not opposed of the process Mr. Lambers had described; however, would like to proceed to consider the plan, pending the opinion of the AG. He stated he was confident the opinion is going to be they are not a school.

Mayor Dunn noted discussion at the Planning Commission meeting to the possibility of relocating this within the business park. Mr. Mussil stated there was discussion of it, and noted David Suttle, Suttle Midland Architects, spoke at the Planning Commission meeting and stated The Kiddie Academy franchisee believed this was the appropriate lot and location, stating the convenience of dropping off and picking up the children. They would prefer to have it located at the edge of the park, rather than in one of the cul-de-sacs. The trucks from Central States would enter from the east side, so there would be no traffic issue in that respect.

Councilmember Bussing questioned if an affirmative response from the AG's office would give Central States open reign from there forward. City Attorney Patty Bennett stated the law can change and the AG's opinion could be taken into account; however, would not make law. Mr. Bussing confirmed that the opinion would help; although, not resolve the issues being addressed by Ms. Wilson.

Councilmember Rasmussen questioned if the motion was for approving a preliminary site plan for Bi-State/Centennial Park – Kiddie Academy, subject to a favorable ruling by the AG. Mr. Lambers stated both sides understood Council could change their position based upon that ruling. He stated his recommendation was that the applicant withhold incurring the expenses of preparing the final plan documents until the ruling. The plan to consider would be absent that issue. Mr. Rasmussen questioned if it would be modifying the Planning Commissions viewpoint if he made a motion, subject to a ruling by the AG. Mayor Dunn stated it was not stipulated; however, it was clearly stated in the minutes “are you going to get an opinion from the Attorney General?” Mr. Lambers stated, “It is my intention to have the City Attorney request one.” Mr. Rasmussen questioned the language to permit the applicant to proceed, knowing the City Council does not have all necessary information. Mr. Lambers stated both the applicant and distributorship have a clear understanding of what has transpired.

Councilmember Rasmussen made a motion to approve the ordinance providing a Special Use Permit for Bi-State/Centennial Park – Kiddee Academy; seconded by Councilmember Filla.

Councilmember Peppes questioned the response time of the AG. Ms. Bennett stated 60-90 days; however, they are in the middle of legislative session and noted it could be longer.

Councilmember Bussing noted he liked Mr. Mussils plan; however, stated that an adverse opinion from the AG's office would affect his decision, and would not be willing to put Central States at risk, since they have been a long-standing good company in the City of Leawood.

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

- H. **Ordinance No. 2316** approving a Preliminary Site Plan for Bi-State/Centennial Park - Kiddie Academy, located south of 141<sup>st</sup> Terrace and east of Overbrook [Roll Call Vote]

A motion to pass the ordinance with the same items on record stated in Item 12G was made by Councilmember Rasmussen; seconded by Councilmember Filla. The ordinance passed with the following unanimous roll call vote of 6-0. Yea: Councilmembers Rawlings, Bussing, Filla, Rasmussen, Peppes, and Gulledge. Nay: None. (Councilmembers Azeltine and Gill absent).

- I. **Ordinance No. 2317** approving a Preliminary Site Plan for Bi-State/Centennial Park - PARS Engineering Building, located north of 141<sup>st</sup> Terrace and east of Cambridge [Roll Call Vote]

Mayor Dunn noted on the last page of the minutes; the motion was made without the second, and noted it was a 5-4 vote as indicated on the first page. Mr. Lambers stated the concern of the Planning Commission was the site may not provide adequate parking for expansion needs, as growth had been indicated. Staffs position is to deal with the present and if they would require additional parking, they would need to relocate. There was concern the basement could be converted as Councilmember Rasmussen had indicated, the City does annual inspections and if the City were to discover the space was used improperly, their occupational license would be suspended and would need to return to the planning process until this was resolved.

A motion to extend the meeting for 30 minutes was made by Councilmember Bussing; seconded by Councilmember Peppes. The motion carried with a unanimous vote of 6-0. Councilmembers Azeltine and Gill absent).

Mayor Dunn questioned what the FAR ratio would be if the basement was not included in the calculation. Mr. Lambers stated it would be .18.

The applicant, Rafie Hamidpour, stated they agreed with staff recommendations, and noted a typing error; there are 17 parking spaces, not 14, which would be a ratio of 3.3, not 2.6 parking spaces per 1,000 square feet. He also noted another typing error with the kitchen area 13 offices, not 14.

Mayor Dunn confirmed that the ratio of 3.3 is within the City's requirement of 3.0 – 4.0. Councilmember Rasmussen questioned if this was the only issue. Mr. Lambers stated this is a very small tract of land and is approximately 5,100 square feet, going from a .18 to a .36. Normally, when you are dealing with a .25 FAR, this would be a very intense development. This is in relationship to the small site constructing a building.

Mayor Dunn noted concern with the Planning Commission about this being occupied, and questioned an annual review. Mr. Lambers stated there would be annual inspections done and the applicant understood what the uses are limited to.

Councilmember Bussing made a motion to pass the ordinance; seconded by Councilmember Filla.

Mayor Dunn asked if staff determined additional parking would be necessary, how it would be handled. Mr. Lambers stated parking would not be allowed on the street and they would be ticketed or towed. Working with the parking available would also be handled by staff.

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

**13. OLD BUSINESS**

- A. **Resolution No. 3011** approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$82,000 between the City and Jorge Blanco, pertaining to the placement of 2 sculptured art pieces to be located in City Park, 10601 Lee Boulevard

Dr. Ann Kenney, 9814 Overbrook Court, addressed Mr. Rasmussen's concern with the contract. It states that upon completion, the sculpture would become the property of the City. He wanted to add that the City would have title to the pieces and could be sold at any time. Dr. Kenney stated she had spoken with them; they understood this stipulation could be added and they would sign it.

A motion to approve the resolution with the added stipulation was made by Councilmember Peppes; seconded by Councilmember Rawlings.

Mayor Dunn questioned the time frame of placing the sculptures. Dr. Kenney stated they would like them to be completed by the fall.

The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

**14. RESOLUTION NO. 3014 OF RECOGNITION TO COUNCILMEMBER SCOTT GULLEDGE**

Mayor Dunn read the resolution into the record. A motion to approve the resolution was made by Councilmember Peppes; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

Mayor Dunn presented Councilmember Scott Gullede with the "Outstanding Service Award" in recognition of his dedicated service to the community as a member of the Leawood City Council from 2000 – 2008. Mayor Dunn noted he had become a good friend and that it had been a pleasure working with him. She thanked him for dedicating 8 years of service to the position. Mayor Dunn presented Mr. Gullede a "Key to the City."

Councilmember Scott Gullede stated he would like to return at a later time to express some words of appreciation. Mayor Dunn noted Council would like to have a reception for him at his convenience. Mr. Gullede expressed appreciation to Mayor Dunn and the Council for being not only colleagues, but good friends, as well. Mayor Dunn noted appreciation to Mr. Gullede's wife for sharing him with the City for the last 8 years.

**15. OATHS OF OFFICE ADMINISTERED TO COUNCILMEMBERS-ELECT  
[RASMUSSEN, BUSSING, FILLA, AND CAIN]**

City Clerk Deb Harper read the Oath of Office into the record to Councilmembers Rasmussen, Bussing, Filla, and Cain. Mayor Dunn congratulated the Councilmembers and welcomed new Councilmember, Julie Cain. Ms. Cain introduced her husband of 27 years, John Cain, and noted she has 3 children.

**16. ROLL CALL OF NEW COUNCIL**

**17. NEW BUSINESS**

- A. **Resolution No. 2991** amending Resolution No. 1684 authorizing the improvement of a certain section of 143rd Street, a Main Trafficway, between Mission Road and Nall Avenue within the City of Leawood; providing for issuance of General Obligation Improvement Bonds of the City to pay the costs thereof pursuant to K.S.A. § 12-689 and for the issuance of temporary notes of the City pending the issuance of said Bonds; and expressing the intent to reimburse costs of the project so incurred from proceeds of General Obligation Bonds; and authorizing and improving certain related matters and actions [Project # 80162] [\$13,500,000]

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- B. **Resolution No. 2992** amending Resolution No. 2625, as heretofore amended authorizing the improvement of a certain section of Nall Avenue, a Main Trafficway, between 143<sup>rd</sup> Street and 159<sup>th</sup> Street within the City of Leawood. [Project #80143] [\$5,300,000]

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- C. **Resolution No. 2993** authorizing the improvement of a certain section of Roe Avenue, a Main Trafficway, between 140<sup>th</sup> Street and 143rd Street within the City of Leawood; providing for issuance of General Obligation Improvement Bonds of the City to pay the costs thereof pursuant to K.S.A. §12-689 and for the issuance of Temporary Notes of the City pending the issuance of said Bonds; and expressing the intent to reimburse costs of the project so incurred from proceeds of General Obligation Bonds; and authorizing and improving certain related matters and actions [Project # 80189 ] [\$1,300,000]

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- D. **Resolution No. 2994** determining it necessary and advisable and ordering the resurfacing and repair of certain residential streets or portions thereof within the City of Leawood, Kansas pursuant to K.S.A. § 12-614 et seq. [Project # 80209] [\$1,500,000]

A motion to approve the resolution was made by Councilmember Peppes; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- E. **Resolution No. 2995** authorizing the acquisition, construction and installation of improvements to existing City Parks within the City of Leawood, Kansas; providing for the issuance of General Obligation Bonds of the City pursuant to K.S.A. § 12-1302 to provide funds to pay the costs thereof, and for the issuance of Temporary Notes of the City pending the issuance of said Bonds; expressing the intent to reimburse costs of the project so incurred from proceeds of such Temporary Notes and General Obligation Bonds; and authorizing and approving certain related matters and actions [Project # 80118] [\$600,000]

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- F. **Resolution No. 3012** approving and authorizing the Mayor to execute a Professional Engineering Agreement in the amount of \$170,123.00, between the City and Howard, Needles, Tammen & Bergendoff, [HNTB] pertaining to the design of the Roe Avenue Improvement Project between 140<sup>th</sup> and 143<sup>rd</sup> Street [Project # 80189 ]

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- G. **Ordinance No. 2314** calling for an election to be held on August 5, 2008, for the purpose of voting on a proposition to re-authorize the City of Leawood, Kansas, to levy a one-eighth of one percent (.125%) City Retailers' Sales Tax, in addition to the One Percent (1.4%) currently levied, within the City of Leawood, Kansas, and to use the revenue from the additional tax to fund an Accelerated Residential and Thoroughfare Street Improvement Program and to make necessary Stormwater Improvements when such improvements are not otherwise eligible for funds from other governmental entities; such additional tax to take effect on July 1, 2010, and to end June 30, 2015 [Roll Call Vote]

Mayor Dunn noted this was for a renewal and that the tax was currently in place.

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

City Clerk Deb Harper stated that on the ordinance pursuant to the revisions by City Attorney Patty Bennett, it should read in addition to the 1.4% currently levied. Mayor Dunn noted that the .4 was for five years or \$10 million, whichever comes first. This would be in addition to the 1.4.

The motion carried with the following roll call vote of 5-1. Yea: Councilmembers Bussing, Rawlings, Filla, Peppes, and Cain. Nay: Councilmember Rasmussen. (Councilmembers Azeltine and Gill absent). Mayor Dunn stated that Mr. Rasmussen's reasons for not approving this resolution are stated on record in the work session.

- H. **Resolution No. 3013** expressing the City of Leawood, Kansas' Governing Body support of the renewal and continuation of the one-fourth [1/4] cent countywide sales tax in Johnson County, now set to expire on December 31, 2008, and endorsing use of the County's revenue from that tax for capital and operating costs related to public safety programs of the County and the administration of justice

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Bussing. The motion carried with a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

- I. Discussion of County's request for the City to identify the city's use of the ¼ cent County sales tax

City Administrator Scott Lambers stated Johnson County had requested that the various cities in the County designate how the money is going to be spent. He stated the sales tax monies are that of general fund monies and are subject to annual appropriation by future governing bodies through perpetuity. They can be used for any purpose on an annual basis; however, the Council can provide an expression of intent, which relates to the issue of sales tax revenues and how the legislature envisions cities using them, which is not to support ongoing operational expenses; however, to be used for infrastructure improvements

Their intent would be to use these funds through pay-as-you-go or bond and interest payments for any and all departments of the City. The City has been saving the revenue received from this tax into a capital expenditure fund to pay for the justice center on a cash basis, and would continue to do that. Once enough funds have been received, staff would get recommendation from Council as to how those funds would be appropriated. He noted other projects of interest may include the amphitheatre or community center.

Councilmember Bussing made a motion to extend the meeting for 10 minutes; seconded by Councilmember Cain. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

Mayor Dunn stated in regard to 2009 and 2010 usage of the sales tax money, it was the intent that it be used for construction of the justice center in hopes to avoid bonding. She asked if it was fair to state the sales tax money would be spent on the justice center over the next couple of years. Mr. Lambers confirmed that would be a fair statement and beyond that, it would be an intention. The County is promoting that as a public safety tax, and they have the same ability at any point in the future. Mayor Dunn noted she was abiding by Chairwoman Surbaugh's request by giving some indication because they plan to advocate the passage of this tax, and would like to demonstrate how other cities are going to be using it. She noted other cities are planning many different ways of allocating the funds; however, there weren't any cities planning on the construction of a justice center, and noted one city is planning the funds always be used for public safety; another for general infrastructure.

Councilmember Filla questioned if the Drug Abuse Resistance Education [D.A.R.E.] program could be funded with that money. Mayor Dunn noted the D.A.R.E. program is funded with alcohol tax.

Councilmember Rasmussen concurred with Mr. Lambers and stated that the intent of City Council has always been to use these funds for the justice center.

Mayor Dunn noted that Chairwoman Surbaugh would like this issue be put into motion.

Councilmember Rasmussen made a motion that the use of the sales tax money be used for the intent of construction of the justice center until fully funded, as the City has used this money historically; seconded by Councilmember Bussing.

Councilmember Rawlings asked if staff could add that it be a public safety building. Mayor Dunn noted that the present wording should define that, and Chairwoman Surbaugh was looking for definition. Mayor Dunn stated there had been some editorials written by a member of the Kansas City Star's Editorial Review Board that had been critical of cities for not delineating the City's usage; however, noted she had not heard a member of the public criticize it.

The motion to use the sales tax money for the intent of construction of the justice center until fully funded passed with a unanimous vote of 6-0. (Councilmembers Azeltine and Gill absent).

**18. OTHER BUSINESS – None.**

**ADJOURN**

Mayor Dunn adjourned the meeting at 11:40 P.M.

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Debra Harper, CMC, City Clerk

Pam Gregory  
Recording Deputy City Clerk