

Minutes

DVD No. 194

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, July 21, 2008. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Jim Rawlings, Julie Cain, James Azeltine, Mike Gill, and Lou Rasmussen

Mayor/Councilmembers absent: Debra Filla and Dr. Gregory Peppes

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Jack Reece, Internet/WAN Specialist
Deb Mansfield, City Clerk
Pam Gregory, Deputy City Clerk

Franki Shearer, Assistant City Attorney
Joe Johnson, Public Works Director
Chris Claxton, P&R Director
Mark Klein, Asst. to the Planning Director
Jeff Joseph, Senior Planner

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted Item No. 11B was continued to the August 4, 2008 Governing Body meeting.

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

3. CITIZEN COMMENTS

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

4. PROCLAMATIONS – None

5. PRESENTATIONS/RECOGNITIONS – Recognition of ‘Live Healthy’ Leawood Youth Participants

Special Project and Events Supervisor Lindsay Youle stated there are three separate sessions for the program and there were 77 participants for the first session. The program began in May and ends in October. The goal for the program is for children ages 5-13 to participate in an activity or exercise at least one hour per day, four days a week. If they are able to complete the requirements, prizes are awarded. Ms. Youle stated the first session was a huge success and hoped they would continue to receive more participants.

6. SPECIAL BUSINESS

A. Report from Dennis Reynolds on progress of Gezer Park design and construction.

Dennis Reynolds, 4343 Chamberlain Drive, Des Moines, Iowa, gave an update on the design of Gezer Park, located at 133rd and Mission Road.

He noted they were running behind schedule due to the complexity of the project; however, were down to the final stages of design. In addition, they brought in some additional consultants to help and were confident to meet the proposed revised schedule before Council.

Mayor Dunn confirmed with City Administrator Scott Lambers that if Council was in agreement with the revised schedule, this would be incorporated into an addendum to the existing contract and approved at a future meeting. Mayor Dunn noted the contractor should proceed and submit for utility permits, and thought this had already been done. Mr. Reynolds stated some of the approvals were in progress.

Mayor Dunn confirmed with Mr. Reynolds that on September 8, schematic and construction documents would be completed. She also confirmed that the delay from July 28, through October 6 was considered a standard length of time to have utility permits approved.

Mayor Dunn was concerned with some of the work scheduled for January/February due to the weather, and wanted to have the grading, stone work, and pavement sub-grades moved up to November/December. Mr. Reynolds noted they had discussed this with the construction company and they had similar concerns. Their recommendation was to anticipate the schedule proposed before Council; however, do the final grading and pond liner in February, the pavement sub-grades in March, and the final asphalt work in April. He noted the construction company had expressed concern of getting the final grading done and pond liner in before winter begins.

Mr. Lambers stated the items in January should be completed by December 19th. This is the Friday before the Christmas weekend. He noted all construction shuts down at this time, and then winter begins. He was willing to be flexible on the pavement installation, weather permitting, subject to recommendation by the Public Works Director. Mr. Lambers spoke with Mr. Johnson regarding the price of asphalt approaching that of concrete, and noted they were considering using concrete. It is more durable and can be installed well into winter, provided adequate protection is used.

Mr. Reynolds thought the schedule could be adjusted to this; however, his biggest concern was the pond liner, since the art piece and its foundation needed to be installed before the final grading. It is critical to speak with the contractor during the bidding process, so they can be ready upon approval by Council.

Mayor Dunn confirmed with Mr. Reynolds that the schedule noted shipping the stone tablet from Israel in August. This will take approximately two months. Mr. Reynolds noted the structural engineer would like to have it here for measurements and be able to see the exact type of stone.

Councilmember Rawlings asked where the stone was going to be shipped. Mr. Lambers stated it would be delivered to the new Public Works facility inside a bay for protection. Mr. Rawlings confirmed with Mr. Lambers they were six months behind schedule on this project.

Mayor Dunn noted it was supposed to be substantially complete by May, 2008, since this was the anticipated visit from the Gezer Region delegation. She wanted to have the project completed by March, 2009, because they are planning a visit here in May, 2009. Mr. Reynolds stated he was aware of this and noted the shelter and play areas would be completed, as well.

Councilmember Rasmussen confirmed with Mr. Lambers and Assistant City Attorney Franki Shearer that the contract with the architect was signed on September 4, 2007. Mr. Rasmussen asked if the permit process was accomplished during this period of time. Mr. Lambers noted the preliminary plan approval and preliminary design work was achieved. Mr. Rasmussen was referring to water permits, etc., and noted concern of accomplishing the revised schedule when very little had been done. Mr. Lambers believed there had been some work performed pursuant to the contract and felt the City was best served to proceed with the guideline timetable he had set forth by December 19, 2008. The pavement, planting, and seeding would remain scheduled for March. This would allow a 30-45 day time window in case of weather issues before the delegation would arrive in May, 2009.

Councilmember Rasmussen asked why the City couldn't begin with a new architect for the project. Mr. Lambers stated the process would take approximately 60-75 days and could present more delays.

Mr. Reynolds referred to their accomplishments on the project since they had begun and noted they had met with City staff on multiple occasions. They had done substantial completion on the construction documents, and noted they had approximately 10% or less of the documents remaining.

Councilmember Azeltine asked Mr. Reynolds if he was comfortable with the revised schedule set forth by Mr. Lambers and if he could get the art installed by December 19, 2008. Mr. Reynolds felt he would be more comfortable speaking with the construction crews regarding the time frame.

He was told it would take approximately one week to erect the piece and they needed to do some mass grading for the pond. The sculpture foundation needs to be built and then allow a certain amount of time to cure. This is why he hadn't shown this to be in the December time frame. If this could all be done in a timely matter concurrent with some of the other activity, then it could possibly be done; however his construction team suggested they follow the schedule currently before Council.

Councilmember Azeltine referred to Mr. Reynolds' professional opinion as an architect, and asked why they were so far behind at this point. He noted it had been a challenging, unique type of project and wanted to deliver the best they could. He stated he would take personal responsibility, due to his relocation to Des Moines, Iowa, and noted it had been somewhat of a distraction for him due to a new position with additional responsibilities.

Councilmember Azeltine asked what type of action staff was recommending. Mr. Lambers noted Council would need to express consensus to agree to the timetable set forth by him and staff would have an addendum to the contract at the next Council meeting. If Council wished to terminate the contract, he would need direction provided accordingly.

Roger Cassidy, Phelps Engineering, stated they have sanitary sewer and public main extension permits. The site plans have been reviewed by the Public Works Department. They still need a service connection permit from Water One and Johnson County Wastewater.

Mayor Dunn asked if Mr. Cassidy would be involved in the final grading process. He noted they had prepared the grading plans, and felt the pond liner and the grading could be done before December 19; however, building the causeway to set the art piece would need to be left open until the foundations were poured.

Councilmember Rawlings asked if there was anything the City could do to move some of the schedule up before bad weather begins. Mr. Lambers noted one of the items slowing down the process was the wastewater. No plans can be approved by any developer until they have signed off for construction to begin. Some of the other items may be able to be accelerated; however, it would be a hurry-up and wait type of scenario until wastewater gives their approval. They take projects on a first come first served basis.

Mr. Cassidy stated they could do some of the rough grading without the sanitary sewer connection permit while they wait.

Mayor Dunn asked who was in charge of the "critical path" scheduling for the project. Mr. Reynolds stated in terms of construction, it would be the contractor. He noted they could outline in the bid documents the anticipated schedule they would like them to meet; however, ultimately they will have their own schedule stating the order which things needed to proceed. Mayor Dunn confirmed with Mr. Reynolds they would be working with the contractor continuously to prevent them from having to come before Council to discuss the schedule.

Councilmember Azeltine asked why it takes two months to ship the tablet. Mr. Lambers stated they are attempting to minimize their cost.

It is very heavy and would be transferred from boats, to trains, and then trucks. Staff was informed that it would be a two month time frame. Mayor Dunn noted the shipping company was ready and waiting for staff give the approval to ship. She was hoping to move it once and put it in place; however, didn't realize the contractor needed measurements.

Councilmember Rasmussen noted he was getting e-mails from young adults representing Gezer wanting to contribute to the park, and asked if anyone has had an opportunity to get back with them on this issue. Mr. Lambers noted he was going to respond to this tomorrow.

A motion to direct staff to provide an amendment to the existing contract was made by Councilmember Gill; seconded by Councilmember Rasmussen. Mayor Dunn noted this would include having as much done as possible by December 19, 2008, with the help of Mr. Cassidy. The motion carried following a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

Mayor Dunn asked the estimated time frame for the porch lights, and noted the stone had been reordered. Mr. Reynolds noted it had arrived this week and they had spoke with the supplier to cut the stone and this had been delayed repeatedly. They have made plans to have another company cut the stone. This should allow the porch lights process to move forward, and the stone work should be in place no later than four weeks. He noted they would like to take care of the plantings in mid-September. The project should be 100% complete no later than the end of September.

- B. **PUBLIC HEARING** Consider the partial easement vacation affecting Lot 1, Willow Creek

As no one was present to speak on this issue, Councilmember Rasmussen made a motion to close the public hearing; seconded by Councilmember Azeltine. The motion carried with a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

- C. **Ordinance No. 2329** vacating a partial easement located within Lot 1, Willow Creek, commonly known as 4006 W. 140th Street, Leawood, Johnson County, Kansas [Roll Call Vote]

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

- D. **PUBLIC HEARING** Proposed revised assessments for construction of 133rd Street between Roe Avenue and the western city limit, Briar from 133rd Street south to 135th Street, 135th Street from the western city limit east to Roe Avenue and Roe Avenue between 133rd Street and 135th Street and other amenity features, located within the City of Leawood, Kansas, and ratifying action by the City Clerk in publishing notice thereof and providing written notice to owners of property of such assessments [Parkway Plaza] [CIP # 83195]

Staff Comment: *The costs have been reduced, due to savings on bond issuance costs.*

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

- E. **Ordinance No. 2328** levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for the construction of 133rd Street between Roe Avenue and the western city limit, Briar from 133rd Street south to 135th Street, 135th Street from the western city limit east to Roe Avenue and Roe Avenue between 133rd Street and 135th Street and other amenity features, located within the City of Leawood, Kansas, [Parkway Plaza] [CIP # 83195]

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

Councilmember Azeltine asked if there was anything out of the ordinary, in terms of deeds or restrictions and the way that the potential costs were disclosed to the people affected.

Mr. Lambers stated they were required, as part of any purchase, to let people know there were specials pending, and the estimates should have been identified since this project had been under way for several years and construction costs were generally known.

The motion carried following a unanimous roll call vote of 6-0. Yea: Councilmembers Bussing, Gill, Rawlings, Azeltine, Rasmussen, and Cain. (Councilmembers Filla and Peppes 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. 1107B and 1108A
- B. Accept Minutes of the June 16, 2008 Governing Body Work Session meeting
- C. Accept Minutes of the July 7, 2008 Governing Body meeting
- D. Accept Minutes of the April 4, 2008 Public Works Committee Meeting
- E. Accept Minutes of the June 10, 2008 Parks and Recreation Advisory Board meeting
- F. Approve Mayor Appointment of Doug Stevens to Park & Recreation Advisory Board
- G. Re-certification of Special Assessment Project Cost in the amount of \$109,768 for Ironhorse Easements Improvement Project [CIP # 80172]
- H. Re-certification of General Obligation at-Large Project in the amount of \$1,570,232, for 2007 Residential Streets Improvement Project [CIP # 80206]

- I. Approve 4th & final payment in the amount of \$7,000 to O'Donnell & Sons Construction, pertaining to the 2007 Arterial Mill & Overlay Project
- J. **Resolution No. 3079** accepting the Arts Council's Tomahawk Creek Parkway Sculpture Garden and Future Master Plan
- K. **Resolution No. 3080** approving revised Guidelines for Art in Public Places Initiative [APPI] [Public Art]
- L. **Resolution No. 3081** revising a fee, not specifically provided for in the Code of the City of Leawood, 2000, specifically for the IRONHORSE Golf Course, in accordance with Section 1-701 of the Code of the City of Leawood, 2000
- M. **Resolution No. 3082** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$225,672.00 between the City and McCorkendale Construction, pertaining to the 2008 Storm Sewer Improvement Project [8308 Meadow Lane & 9737 Overbrook Road]
- N. **Resolution No. 3083** granting Utility Easements to Kansas City Power and Light Company [KCPL] pertaining to improvements at Ironwoods Park, 14701 Mission Road
- O. Police Department Monthly Report
- P. Fire Department Monthly Report
- Q. Municipal Court Monthly Report

Mayor Dunn requested to pull Item No. 7K. Councilmember Rasmussen requested to pull Item No. 7C. Councilmember Bussing requested to pull Item Nos. 7J, 7O, and 7P.

A motion to approve the remainder of the Consent Agenda was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

- C. Accept Minutes of the July 7, 2008 Governing Body meeting

Councilmember Rasmussen referred to the last paragraph on page 9 and noted the City Council has approved criteria for evaluation of stormwater projects and this had been done for many years and should be available to the Stormwater Committee.

A motion to approve the July 7, 2008 Governing Body minutes was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried following a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

- J. **Resolution No. 3079** accepting the Arts Council's Tomahawk Creek Parkway Sculpture Garden and Future Master Plan

Councilmember Bussing wanted to take the opportunity to thank Chair Mary Tearney, Dr. Ann Kenney, and other members of the Arts Council for their great work, and noted the document was well done and laid out the plan for future art in the City.

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

Mayor Dunn concurred with the comments made by Councilmember Bussing and recognized all members of the Leawood Arts Council in attendance.

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

- K. **Resolution No. 3080** approving revised Guidelines for Art in Public Places Initiative [APPI] [Public Art]

Mayor Dunn noted she had pulled Item No. 7K to recognize the Leawood Arts Council and the Art in Public Places Initiative, along with Councilmembers Rasmussen and Bussing. There were months of work involved and wanted to thank all of them.

Dr. Ann Kenney, Leawood Arts Council, noted Mayor Dunn noticed an omission on page 5, section VII-C. Dr. Kenney stated it should read: "Public Works, Parks and Recreation Board, and Planning Commission."

Councilmember Rasmussen addressed the legal staff regarding the format of the resolution. He stated this resolution replaces and supersedes any prior ones and any comments made. Mr. Rasmussen suggested legal staff make a record in the right hand corner that reads: "This was originally adopted by the Governing Body on 9/28/1998 revised on 4/3/2000, revised on 5/7/2001" to have a record of this. Also, under the definition of public art, there should be a reference after the word commemoration to read: "See Code 1-601 Code of Leawood 5/21/2007." Also noted was page 6, under No. 2, Public Art Impact Fee (Ord 2232C). Mr. Rasmussen suggested it read: "See Section 12-601 of the Code of Leawood 5/21/2007." This would allow these items to be cross-referenced.

Councilmember Rasmussen referred to page 3, Item No. A.1d. and asked if a City Councilmember would be part of this group. Dr. Kenney stated the standard in art selection, is that City Councilmembers do not serve as voting members on a selection committee because they vote when it comes before them, so they would be voting twice. Dr. Kenney stated they were always happy to have them as an Advisory Committee. Mr. Rasmussen noted it didn't state this information.

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

Mayor Dunn stated this policy would be reviewed, updated and presented on an annual basis. Mayor Dunn confirmed with Councilmember Azeltine that his motion included Mr. Rasmussen's recommendations of cross-referencing. The motion carried following a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

- O. Police Department Monthly Report
- P. Fire Department Monthly Report

Councilmember Bussing expressed his appreciation to Police Chief John Meier, Fire Chief Ben Florance and staff for their work.

A motion to approve Item Nos. 7O and 7P was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

8. MAYOR'S REPORT

- A. Attended the Grand Re-Opening Celebration for a fun day of golf at the Ironhorse Golf Course, along with Councilmembers Bussing, Rawlings, a number of other elected officials, and loyal supporters of the course. Mayor Dunn congratulated Ironhorse Advisory Board Chair Dick Fuller, Parks and Recreation Director Chris Claxton, Golf Superintendent Pete Spratlin, General Manager Shane Gardner, and many others who helped with the celebration. She expressed appreciation for all of their hard work on the golf course and stormwater improvement projects while the course was closed over the last 18 months.
- B. Attended a Mayor's Reception at the Nelson Atkins Museum of Art, hosted by Mayor Mark Funkhouser for the Sister Cities International Annual Conference, held in Kansas City, Missouri, on July 16 – 19, 2008.
- C. Attended the Leawood Chamber of Commerce ribbon cutting ceremony, along with Councilmember Azeltine on Friday, July 18, for the opening of the Willis Chiropractic and Acupuncture office located at 130th and State Line Road. Dr. Willis and Dr. Lee are the proprietors there. Mayor Dunn wished them much success.
- D. Attended the Volunteer Center of Johnson County's 14th Annual Awards Dinner, which honored Leawood residents Bill and Beth Zollars for the Volunteer of the Year award. Mayor Dunn noted they have provided great service for the community and congratulated them for this well deserved honor.
- E. Attended the 10th Anniversary Celebration Gala of the Leawood Stage Company, sponsored by the generosity of M&I Bank. Leawood Stage Company Chairman Bill Ellwood was recognized with the Volunteer of the Year award. Leawood Arts Council Chairwoman Mary Tearney received the Art Advocate of the Year award.
- F. Mayor Dunn expressed appreciation to the Arts Council and Leawood Stage Company for the terrific production of "Annie Get Your Gun." There were over 100 volunteers each night that helped out. The production will run for three more nights, July 24, 25, and 26. Mayor Dunn also thanked the Parks and Recreation Department and Director Chris Claxton, Cultural Arts Coordinator April Bishop, and other members of staff for their assistance.

Mary Tearney, 3308 W. 127th Street, Leawood Arts Council Chairman, stated she was thrilled with the orchestra, cast, and volunteers. They held a cast party Saturday evening after the show with approximately 150 people in attendance.

Councilmember Rasmussen asked if 28 would be the maximum number of orchestra members the facility could accommodate. Ms. Tearney stated a professional should answer that question. Mr. Rasmussen noted a professional had mentioned that was an amazing number due to technology used today. He confirmed with Ms. Tearney that 28 was the maximum number they have had over the years.

Ms. Tearney noted they have worked very hard so people will want to come and be a part of their shows. She expressed appreciation to many departments and staff of the City for their help and support.

- G. Mayor Dunn noted an article in the Neighborhood News section of the Kansas City Star, titled "Leawood South Continues Its Streak of Club Titles." The Country Club Swim Association of Kansas City championship had their 51st Annual Event. Leawood South won the Club Title for the 22nd straight time. Mayor Dunn expressed congratulations for this outstanding swim team program.
- H. Mayor Dunn noted City Hall held a Harvesters Food Campaign for City staff. She noted the barrels were overflowing and there were cash donations totaling \$310.00, which will offer 1,550 meals. She expressed appreciation to Human Resources Assistant Debbie Naster for coordinating the event and everyone involved throughout the City for their participation.

9. COUNCILMEMBERS REPORT - None

10. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the June 24, 2008 Planning Commission Meeting]

- A. **Resolution No. 3084** approving a Final Site Plan for California Pizza Kitchen - Landscape Plan, located on the northeast corner of 117th Street and Roe Avenue

STAFF COMMENT: *Staff is recommending denial.*

Nina Raey, Fancher Development, stated in July, 2006, the Planning Commission approved the site plan with the landscape plan proposed. In August, 2006, they received final City Council approval. Between August, 2006 thru January, 2007, they submitted the plans for review and revisions were made at this time. A landscape architect had responded to the comments received. This was submitted to the Building/Codes Department on March 5, 2008.

All approvals were obtained and they constructed what was approved as part of the building plan. During the final certificate of occupancy, they were told the landscape plans on their drawings were not approved and they needed to get site plan approval.

Councilmember Gill confirmed with Mr. Lambers that there was originally a planter planned in the current location of the pots. Mr. Lambers stated the applicant chose to remove the planter and submitted plans that didn't have it. They requested a certificate of occupancy that was denied.

Subsequently, both parties agreed to a temporary certificate of occupancy [TCO] to allow time to install the planter and the landscape materials pursuant to the landscape plan. They requested a continuance to pursue changing the plan. Staff does not support this request because planting pots do not equate to a planting area, and are typically let-go during the course of the seasons. This is a prime entrance into this development of the City. If Council agrees with the applicant to keep the pots, a landscape plan for all four seasons, including all pots, would need to be submitted for approval and maintained and monitored by the City. Mr. Lambers noted staff also recommended a small water feature and lighting for the plantings be used, as well.

Clint Coleman, Senior Vice President of Development, California Pizza Kitchen, stated the plans changed before they submitted them for review. Discussion took place between their architects and the City and he noted they had received no comments that this was declined from the City; therefore, they proceeded. In regards to changing the planter bed to pots, they felt the pots would better interact with everything around the building. If they do a 516 foot planting bed with a 6 inch curb, it would be looking right up against a rock wall. The pots give it a little more elevation. This change was made prior to submitting the plans for a permit review in January, 2007.

Councilmember Gill referred to the four seasons of green and asked what they were considering on this. Mr. Coleman stated this was his suggestion in the Planning Commission meeting, and was willing to change the planting pots to something that would stay green and look appropriate during the winter months. He suggested a summer and a winter planting, whether they used boxwoods or something heartier that would look attractive during the winter.

Councilmember Gill asked what they would have planted in the bed year around. Mr. Coleman noted the original plans called for a species of boxwoods that are hearty year around. Mr. Lambers noted they were 35 Yews, along with seasonal color.

Councilmember Rasmussen stated he was voting to deny this, due to wanting to uphold the original overall planning of the development.

Councilmember Cain asked if the pots were included as part of the original plan along with the planter boxes. Mr. Coleman noted by the front door to the right, there were four pots on the original agreed upon plan from the Planning Commission. Further to the right there was a planter bed. When they submitted their plans on January 1, 2007, the changes were in that set of documents given to the City. On February 8, 2007, they received comments back from Plan Reviewer Rolland Grigsby, listing Building/Codes Department and Planning Department questions. Those questions were answered on March 5, 2007, to Mr. Grigsby and no further questions or comments were made on the City's part. The next communication to them was a permit issued for construction with exactly what has been constructed on the premises.

Councilmember Cain asked who was responsible for the planting around the Park Place Development. Mr. Coleman stated they worked in conjunction with the developer's landscape architect, which are Young & Dring. Ms. Cain noted she liked the pots; however, felt they weren't near the caliber of the hanging baskets on Ash Street in the development.

Mr. Coleman stated they would be more than happy to return to Young & Dring to create a planting system to exchange out four times per year, if necessary, and would be planted to Council's satisfaction.

Mr. Coleman stated from a tenant's perspective, he felt they followed all of the rules. They submitted and answered requests to identify any changes and were issued a building permit. He noted by changing to the planter box at this point would be a very costly item.

Mr. Lambers noted the conversations between the applicant and the City was that they had removed the planter with the understanding that it was going to be replaced. Maybe the City didn't make it clear enough to them. They had arbitrarily removed the planting area. When the first TCO was issued, it was with the understanding that this planter would be installed.

Mayor Dunn noted they were the first to open in Park Place and the City knew they were on a timeline to open, and stated the City wants them to be successful. The fact that a building permit was issued and the building plans have been changed, the City didn't have a stop work order placed upon them and this was why there was a TCO to open with the pots. Mayor Dunn wanted to clarify this for the record.

Councilmember Bussing asked if the dumpster issue he had spoken with Mr. Lambers about had been resolved. Mr. Lambers stated they were monitoring it and noted it was outside on Sunday. The trash is intended to be moved in and out of the enclosure to be disposed into a truck; however, is not allowed to be left outside. Mayor Dunn confirmed with Mr. Coleman that the dumpster had been left out every Sunday morning. He stated he would make sure it wouldn't happen again.

Councilmember Azeltine asked if the City issued TCO permits for such an extended period of time very often. Mr. Lambers noted they had done it in the past for landscaping purposes, training for staff, and other minor instances on a short term basis. Mr. Azeltine asked what the effect would be if this was denied and asked if it would be better to remand or amend it. Mr. Lambers stated if was denied, the applicant would be required to construct the planter as been approved, or they could propose a different planter and remand it through the process again. The City would still allow them to occupy the building and engage in business. Mr. Azeltine confirmed with Mr. Lambers that the document before Council was a revised site plan.

Mayor Dunn noted in the Planning Commission minutes that Mr. Coleman stated the cost differential between the pots and the planter was a wash. She preferred the original approved plan, and noted she was disappointed of what was in the pots. Mayor Dunn stated Young & Dring were two of the most talented landscape architects she knew and noted the restaurant was losing an opportunity to make a bold statement when looking at the pots. Mr. Coleman concurred with Mayor Dunn.

Mayor Dunn stated the mechanical units mounted on the east wall should be painted the same color as the wall, and noted they were currently gray and stood out.

Councilmember Rasmussen noted many of the amenities that were laid out in this development resulted in the developer having a higher density; therefore, he felt the City had a responsibility to the people who initially opposed this development, then later were in favor of it, to uphold them.

Councilmember Rasmussen stated it was important that the Intern authorized to be hired would review the stipulations to be assured they are adhered to. Mr. Rasmussen was concerned if the City allowed this change to proceed; their credibility, in terms of granting higher densities for amenities, would be challenged.

Councilmember Bussing confirmed with Mr. Lambers that TCO permits were usually issued for six-month periods. The intention would be for planting purposes. Mr. Lambers noted he would be willing to grant an extension of the applicant's TCO to allow them to demonstrate what they believe would be appropriate in the pots. It could then come before Council to make a decision.

Councilmember Bussing concurred with Councilmember Gill's comments and noted appreciation to Mr. Coleman and Ms. Raey for traveling here from California.

Councilmember Cain noted there were many boxwood plants already on Ash Street. This is the gateway into the development and wanted to see more creativity.

Councilmember Rawlings concurred with Councilmember Bussing's comments. He had also looked at the pots and noted definition would be fine. He noted the common area and the park-like setting on the corner of the development with the fountains and noted the plantings were beautiful. Mr. Rawlings asked about the water feature. Mr. Lambers noted a small water feature for visual, as well as sound effect, would be a nice feature. Mr. Rawlings noted in the Planning Commission minutes that Park Place Developer Jeffrey Alpert liked the concept of the pots and was planning to place them throughout the development.

Mayor Dunn stated she had listened to the DVD of the Planning Commission meeting and noted Mr. Alpert implied he was concurring that if Council approved to keep the pots, he would be fine with that.

Councilmember Bussing made a motion for approval of a revised final site plan with the following stipulations: electrical equipment mentioned earlier be camouflaged or screened and the applicant return to staff with a landscape plan detailing four seasonal plantings in the planters currently in place, with the addition of some type of water feature; seconded by Councilmember Rawlings.

Councilmember Azeltine asked if this would be in keeping with the process and he felt it should be approved, denied, or remanded to the Planning Commission. Mayor Dunn stated they would be revising the Planning Commission's recommendation and it would take an override. Mr. Azeltine noted the changes would have to be approved by the City Administrator and asked if it would be appropriate for the Governing Body to do this in the planning process.

Assistant City Attorney Franki Shearer, stated according to the Leawood Development Ordinance [LDO], the City Administrator has certain executive and administrative approval privileges and it would be a question if this could be applied within this provision. Mr. Lambers noted it had been done before for landscaping and for the patio area around the Plaza III Restaurant, behind the Bonefish Grill.

Mayor Dunn stated it would require six votes of approval for the motion. Councilmember Bussing noted the Planning Commission approved this and it was staff that was recommending denial. Mr. Lambers stated Council was changing a stipulation to require the four season planting and for him to approve it, which is not part of their recommendation.

Councilmember Gill requested the extension of the permit for the applicant so they could be given a chance to demonstrate some “spectacular” plantings, and asked if this was what Mr. Lambers was referring to. Mr. Lambers stated he could extend their TCO for one year from today’s date, and then return before Council. If this stipulation is not included, once the plan is approved, the only action the City would have against them is to fulfill the plan requirements; however, it would not present the opportunity for Council to request the original approved plan of the planting bed area, as opposed to the pots.

Councilmember Bussing noted he was trying to express the comment that was referred by Mr. Lambers and Councilmember Gill when he made his motion. Mr. Bussing withdrew his motion; however, still wanted to include that the electrical equipment be screened. Mr. Coleman noted Council could stipulate screening/camouflaging the equipment however they chose and he would have it painted immediately.

Councilmember Bussing made a motion to direct staff to issue a TCO to the applicant to allow them to demonstrate their good faith in making these planters look the way the City would like them to look, address the mechanical boxes, discuss with staff the addition of a water feature, and extend the TCO for 12 months.

Mayor Dunn noted they had a revised final site plan recommendation from the Planning Commission that they were not acting upon with this motion. Mr. Bussing noted the applicant didn’t need to bring it before Council again after the pots are re-done; however, they needed to plant them in a manner that would be appealing. Mr. Lambers stated that assuming they were successful in creating the presentation requested, one year from now he would request the authority to issue a certificate of occupancy.

Councilmember Rasmussen referred to the front page on Item No. 11A and noted the last sentence that “a landscape plan for all four seasons is provided along with lighting and an additional amenity, such as a water feature, is provided at this location.” Mayor Dunn confirmed with Mr. Bussing this was the meaning of his motion, along with the mention of the mechanical equipment.

Ms. Shearer clarified that the motion was to approve the revised final site plan with the additional stipulations as provided by Mr. Bussing.

Mr. Coleman noted the Planning Commission set the stipulations and that staff added the water feature after they had made their recommendation. He asked if this was the typical sequence of events. Mayor Dunn noted the Planning Commission was making recommendations and Council could make changes and override.

Councilmember Rasmussen confirmed with Mr. Lambers that the motion included the seasonal concept, lighting system, and an additional amenity, such as a water feature. Mr. Rasmussen noted he could support this.

Councilmember Azeltine asked to have the motion re-read.

City Clerk Deb Mansfield confirmed that the motion included the lighting.

Mr. Coleman stated that if they were to have a water feature engineered and drained, it could cost thousands of dollars. He could understand if they were doing this at the onset of construction. He felt this had become an add-on design build, and the lighting and water feature was never discussed until staff received the Planning Commission report. He stated it would be less expensive to construct the original planting bed, than it would be to add a water feature and a lighting system. Mr. Coleman referred to the Planning Commission minutes and stated they felt the pots look better than the planting bed.

Mr. Lambers stated the reason for staff recommendation was to give options, the first was for the planting bed to be installed; however, since the Planning Commission was in favor of the pots, then they should reflect the same quality and type that is in front of California Pizza Kitchen. The lighting was intended to reflect a small amount to break up the plantings. Mr. Lambers noted staff wanted a quality entrance to the project and it would benefit the applicant to explore the costs.

Mr. Coleman stated the water feature on the central court was not inexpensive. He felt there would be some serious costs associated with this. This would completely change what was approved in the planning phases in 2006 and the permit issuance in 2007. He noted they would like to re-plant the existing pots to Council and staff's satisfaction without any additional water features or lights. There were no lights or water feature in the original planter bed.

Councilmember Rasmussen noted his impression was that the change from the original plan was based on reducing the cost. Mr. Coleman stated in initial construction, the cost was a wash between the pots and the planting bed; however, to go back and saw-cut concrete, re-do the irrigation system, add a lighting system and water feature, it would be a cost issue. He noted this was not an excuse; however, he was being pragmatic about it. Mr. Coleman felt like they did what was expected and wasn't sure if it was a possible miscommunication issue.

Councilmember Azeltine referred to Mr. Lambers comments and asked if Mr. Coleman would rather have this motion on the floor with the stipulations, revert to the original final, or remand to the Planning Commission. Mr. Coleman noted the water feature and lighting could be a wide-range in cost.

Mr. Azeltine felt he was hearing Mr. Coleman say he wasn't going to follow through if the motion passed. Mr. Coleman stated he wasn't trying to be argumentative and say he wasn't going to do it; however he wanted the corner to presentable at a reasonable cost. He requested this be remanded to the Planning Commission.

Mr. Lambers felt it was in the applicant's best interest to try the request presented and if it doesn't work out, the request could be withdrawn and the planter bed could be installed. He noted staff would work with Mr. Coleman to try to present something that would incorporate everyone's interest.

Mayor Dunn clarified if there was a remand to the Planning Commission, it would still come before Council for the final decision.

Councilmember Cain confirmed with Mr. Coleman that the pots were currently irrigated and noted the applicant could possibly change the taller pot into a fountain with lights and have the four seasonal plantings. This could possibly satisfy everyone involved. She noted staff wasn't implying they needed to install a huge water feature. Mayor Dunn confirmed with Mr. Coleman that Young & Dring would be involved with ideas on this.

Councilmember Gill stated he liked the pots; however didn't like what was currently planted in them. He felt the money should be spent to make the pots "sparkle" and not be as concerned with a water feature. Mr. Gill noted there was plenty of lighting around the building and thought there may be something economical to shine a small amount of light on the pots.

Mayor Dunn confirmed that Councilmember Gill understood this wasn't the motion. Mr. Gill noted, in fairness to the applicant, he was also confused as to the magnitude of the lighting and the water feature, and wasn't sure if it would cost \$5,000 or \$50,000. Mr. Coleman noted with all of the discussion that had taken place, he would be happy to explore ideas with the Planning Department and come back before Council. He noted the cost would be somewhere between the \$5,000 and \$50,000 range. Mr. Coleman stated he wanted the landscaping to look right.

Councilmember Bussing stated the intent of his motion was for the landscape to look good and incorporate the financial perspective of the applicant. Staff has the City's best interest at heart and represents the Council in an administrative capacity. He wanted the best effort put forth from both sides and it wasn't his intent to have a \$50,000 water feature installed. Mr. Bussing concurred with Ms. Cain's ideas. Mr. Coleman stated he felt her points and her outline narrowed this field down and asked how Council and the Planning Commission felt toward it.

Mayor Dunn stated with no disrespect to Ms. Cain, she wanted the professional landscape architects on the project to be involved and review in this thought. Mr. Coleman stated they would definitely consult with Young & Dring.

Councilmember Gill confirmed with Mr. Lambers that the motion was understood to mean: give the applicant one year to work with staff to develop a plan using the landscape architects and if staff agrees with the plan, it moves forward; however, if not, the plan would come before Council again.

Mayor Dunn confirmed with Mr. Coleman that he would have Young & Dring look at all of the pots located around the building and they would cycle consistently.

Ms. Mansfield clarified with Mayor Dunn that the motion for approval was to direct staff to issue a 12-month TCO that included a landscaping plan with the four seasonal plantings, a water feature and lighting. At the end of the 12-month period, Mr. Lambers would evaluate the landscape and let Council know if staff accepted the new design.

Mr. Coleman confirmed with Mayor Dunn that before they begin working on this, they would be working with staff along the way to be assured they were all in agreement of what was expected. Mr. Coleman clarified that at the end of the 12 months the evaluation would be on the plantings, not the water feature or lighting.

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

[From the May 27, 2008 Planning Commission meeting]

- B. Ordinance approving a Preliminary Site Plan and Final Site Plan for Park Place - Building G, located on the northeast corner of 117th Street and Nall Avenue [Roll Call Vote] – *Continued from the June 16, 2008 Governing Body meeting– CONTINUED TO THE AUGUST 4, 2008 GOVERNING BODY MEETING*

[From the June 24, 2008 Planning Commission meeting]

- C. **Ordinance No. 2330** amending Article 9 of the Leawood Development Ordinance, pertaining to Definitions [PC Case #51a-08] [Roll Call Vote]

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

- D. **Ordinance No. 2331** amending Section 16-4-1 of the Leawood Development Ordinance, pertaining to Accessory Uses [PC Case #51b-08] [Roll Call Vote]

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

- E. **Resolution No. 3085** approving a Final Site Plan and Final Plat for Glen Abbey of Leawood, located north of 143rd Street and east of Nall Avenue [PC Case #52-08]

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

Mayor Dunn confirmed with the applicant, Jay Oltjen, 14163 Juniper Street, the understanding that Stipulation No. 2 would go before the Board of Zoning Appeals. The motion carried following a unanimous vote of 6-0. (Councilmembers Filla and Peppes absent).

12. OLD BUSINESS

13. OTHER BUSINESS

14. NEW BUSINESS

ADJOURN

Mayor Dunn adjourned the meeting at 9:35 P.M.

Debra Mansfield, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk