

Minutes

DVD No. 203

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, November 17, 2008. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
John Meier, Police Department
Chief Ben Florance, Fire Department
Richard Coleman, Comm. Dev. Director
Mark Andrasik, Info. Systems Director
Franki Shearer, Assistant City Attorney

Mark Klein, Asst. to the Planning Dir.
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Lovina Freeman, HR Director
Deb Mansfield, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modifications to the Amended Agenda:

- * Addition of Item No. 9B – Councilmembers Report by Councilmember Rasmussen
- * Item Nos. 11A, B, and C – Planning Commission have been continued to the January 5, 2009, Governing Body meeting.
- * Item Nos. 11F and G have been continued to the December 1, 2008, Governing Body meeting.

A motion to approve the Amended Agenda was made by Councilmember Gill; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

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

4. PROCLAMATIONS – None.

5. **PRESENTATIONS/RECOGNITIONS – None.**

6. **SPECIAL BUSINESS – None.**

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. 1114C and 1115A
- B. Accept Minutes of the October 20, 2008 Governing Body meeting
- C. Accept Minutes of the November 3, 2008 Governing Body meeting
- D. Approve Change Order No. 6 in the reduced amount of \$7,777.50 to Wiedenmann & Godfrey, pertaining to Phase II of the Dykes Branch Channel Improvement Project, [SMAC Project DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road [# 76009]
- E. 19th and Final Payment in the amount of \$10,442.20 to Wiedenmann & Godfrey, pertaining to Phase II of the Dykes Branch Channel Improvement Project, [SMAC Project DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road [# 76009]
- F. **Resolution No. 3122** calling for a public hearing on Monday, December 1, 2008, regarding amendments to the 2008 Fiscal Budget for the City of Leawood
- G. **Resolution No. 3123** approving and authorizing the Mayor to execute a First Amendment to that certain Agreement dated April 21, 2008, in the amount of \$9,894.00 between the City and HNTB Corporation, pertaining to the extension of Roe Avenue between 140th Street and 143rd Street
- H. **Resolution No. 3124** approving the conveyance of real property in connection with the Leawood Public Library addition project through a Quit Claim Deed from the City of Leawood to the Board of Directors of the Johnson County Library, for property located on the northeast corner of Town Center Drive and Roe Avenue
- I. Declaration of Surplus Property; Surplus Vehicles & Equipment [Public Works, Police & Parks & Recreation]
- J. **Resolution No. 3125** approving a Final Site Plan for a tenant finish for Mission Farms - Blanc Burgers & Bottles, located on the southeast corner of 105th Street and Mission Road. (PC Case # 86-08) [*From the October 28, 2008 Planning Commission meeting*]
- K. **Resolution No. 3126** approving a Sign Plan for Ironhorse Centre Lot 8 Menu Board, located on the southeast corner of 151st Street and Nall Avenue (Case 88-08) [*From the October 28, 2008 Planning Commission meeting*]
- L. Police Department Monthly Report
- M. Fire Department Monthly Report
- N. Municipal Court Monthly Report

Mayor Dunn noted Stipulation No. 6 on Item No. 7J needed to be numbered.

Councilmember Filla requested to pull Item Nos. 7F and 7M.

A motion to approve the remaining Consent Agenda items was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

- F. **Resolution No. 3122** calling for a public hearing on Monday, December 1, 2008, regarding amendments to the 2008 Fiscal Budget for the City of Leawood

Councilmember Filla asked if there had been a work session scheduled to discuss this. Mayor Dunn confirmed that this was scheduled under Item 14A on this agenda to approve a work session for discussion on Monday, December 1, 2008.

Ms. Filla was concerned of the requested increase of another \$1.5 Million and noted this would be more than doubling what was originally agreed upon for Gezer Park. Ms. Filla stated she would not be supporting this additional expenditure.

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

City Administrator Scott Lambers stated they had relied upon the professional expertise of an architect who was no longer associated with this project. This architect assured the City Council during a work session that the \$1.1 Million would be a valid amount. It was apparent from bids received that he missed the calculations by close to 90%. Mr. Lambers stated he would provide a proposal for the December 1, 2008, work session for spending the remaining authority and prioritize remaining items for consideration of additional funding, if desired. If there is additional funding desired, having the public hearing in place would allow these changes to be approved and the project could proceed.

Councilmember Rasmussen requested that Mr. Lambers provide Council with specific line items, estimates for cost control and possible alternative funding.

Mr. Lambers stated there were actual bids received to base decisions upon, not estimates. He clarified that the art piece was not included in the \$1.1 Million.

The motion to approved Item No. 7F carried following a unanimous vote of 8-0.

- M. Fire Department Monthly Report

Councilmember Filla expressed appreciation to Fire Chief Ben Florance and the Leawood Fire Department for their prompt work on the fire that took place at the McDonald's located at 95th and Mission Road.

Chief Florance stated the fire was still under investigation and there was no one injured.

A motion to approve Item No. 7M was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

8 MAYOR'S REPORT

- A. Attended the Council of Mayor's meeting, hosted by Prairie Village Mayor Ron Shaffer, held in collaboration with Johnson and Wyandotte County Legislators. Topics included: The Comprehensive Transportation Plan, 2009 State Budget and Impact on Local Governments, Demand Transfers, Transportation Development Districts [TDD], Publication of Legal Notices, and Sustainability Energy and Alternative Energy Source Research. Mayor Dunn noted there was very good dialogue; however, the budget information presented was disheartening at times.
- B. Presented the City of Leawood's growth update to the Kansas City Regional Association of Realtors Kansas Governmental Affairs Committee. Mayor Dunn noted Councilmember Cain was in attendance.
- C. Attended the Kansas City Area Development Council's Annual meeting, along with Councilmember Cain, Community Development Director Richard Coleman, and members of the Leawood Chamber of Commerce. There was a keynote speaker with a theme of "Back to the Future."
- D. Attended Leawood's 60th Anniversary Gala with over 100 people in attendance, including: nearly all Councilmembers, Fire Chief Ben Florance, Police Chief John Meier and Finance Director Kathy Rogers. Mayor Dunn noted special recognition to Alice and Mel Hawk and their 60th Anniversary Committee, Parks and Recreation Director Chris Claxton, who served as staff liaison for the committee, and many other members of the Parks and Recreation Department.
- E. Mayor Dunn expressed appreciation to Leawood Lion Gary Flick and the Leawood Lions Club, who organized Leawood's 60th Anniversary parade with 40 entries and several hundred people in attendance. She thanked the Parks and Recreation, Police, Fire, and Public Works Departments for their coordinated efforts and noted the event concluded at Park Place with ice skating and many other activities.
- F. Attended the Johnson County Community College Foundation's "Some Enchanted Evening" scholarship fundraiser, which honored Leawood resident Fred Logan as the "Johnson Countian of the Year." Mayor Dunn expressed congratulations to Fred Logan on this special honor.
- G. Attended a Veterans Assembly at Leawood Middle School and was joined by Fire Chief Ben Florance and members of the Leawood Fire and Police Departments. Mayor Dunn noted appreciation to Mark Chudick, School Resource Officer, who helped organize the event. They presented a book by Hannelore Snyder Brown, parent, volunteer, daughter of a veteran, and an American Patriot. She conceived a book and letter writing project in honor of servicemen who have risked their lives and made innumerable sacrifices on behalf of all of us.

- H. Attended an Arts Council Exhibit and Reception, along with Councilmember Lou Rasmussen. Featured artists included: Don Dane, Jeanne Davis, Dennis Haugen, and Robert Johnson. Mayor Dunn noted appreciation to Arts Council Chair Mary Tearney, Cultural Arts Coordinator April Bishop, the Leawood Arts Council, and co-sponsor M&I Bank.
- I. Reminder of the Leawood Holiday Lighting Ceremony on Monday, November 24, 2008, at 6:00 P.M., located at City Hall. This will be the finale event for Leawood's 60th Anniversary Celebration and will conclude in a fireworks extravaganza. Mayor Dunn noted there would be several singers, including David Basse singing the 60th Anniversary song, "Leawood Long and Green."

9. COUNCILMEMBERS REPORT

- A. Request to refer to Stormwater Committee for improvement of open channel on Leawood South Golf Course, tying the City's stormsewer system to prevent flooding of adjacent single family homes next to this area of the Golf Course. Funding Source: 1/8 cent sales tax

Councilmember Gill noted there were several property owners living adjacent to the Leawood South Golf Course that had experienced standing water problems due to recent stormwater construction undertaken by the City. This issue is currently being assessed by staff and is proposed that this matter be referred to the Stormwater Committee for further consideration. If this should proceed, the funding source would be the 1/8 cent sales tax.

A motion to refer this issue to the Stormwater Committee was made by Councilmember Gill; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

- B. Report from Councilmember Rasmussen

Councilmember Rasmussen recommended a work session be scheduled for Council to review the proposed plan for the amphitheatre at Ironwoods Park.

A motion to schedule a work session after the first of the year to review the proposed amphitheatre plan was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the September 23, 2008 Planning Commission meeting]

- *A. Resolution approving the Planning Commission's recommendation to deny a Rezoning, Preliminary Site Plan, and Preliminary Plat for Town Center Business Park - Walgreens, located on the northeast corner of 117th Street and Roe Avenue
CONTINUED FROM THE OCTOBER 20, AND NOVEMBER 3, 2008 GOVERNING BODY MEETINGS – CONTINUED TO THE JANUARY 5, 2009 GOVERNING BODY MEETING

- *B. Resolution approving the Planning Commission's recommendation to deny a Special Use Permit for Town Center Business Park - Walgreens, located on the northeast corner of 117th Street and Roe Avenue - ***CONTINUED FROM THE OCTOBER 20, AND NOVEMBER 3, 2008 GOVERNING BODY MEETINGS – CONTINUED TO THE JANUARY 5, 2009 GOVERNING BODY MEETING***

- *C. Resolution approving the Planning Commission's recommendation to deny a Preliminary Site Plan for Town Center Business Park - Discover O, located at the north of 117th Street and east of Roe Avenue - ***CONTINUED FROM THE OCTOBER 20, AND NOVEMBER 3, 2008 GOVERNING BODY MEETINGS – CONTINUED TO THE JANUARY 5, 2009 GOVERNING BODY MEETING***

[From the October 14, 2008 Planning Commission Meeting]

- D. **Ordinance No. 2372** approving a Special Use Permit [SUP] for Leawood South Country Club - Wireless Tower, located at 3801 W. 123rd Street (PC Case # 62-08) [Roll Call Vote]

Curtis Holland, Attorney for Polsinelli Law Firm, stated he was representing Sprint. Mr. Holland stated this application was for Phase II of a Sprint project and noted significant testimony had been submitted, recognizing the need to provide improved in-building coverage within this area of the City of Leawood.

Mr. Holland gave a presentation of the proposed coverage area for 123rd and Mission Road. He noted they had gotten approval from staff to proceed with this application. The proposed location will be on the Leawood South Country Club property located east of Mission Road and south of 123rd Street at the maintenance facility of the golf course.

The Monopine tree will be identical to the other structure that was proposed at the 5th Tee Box location, in terms of height being 75 feet tall. This was the maximum height that the Governing Body had approved. Mr. Holland noted the stipulations require them to work with staff on further design of this facility.

Mr. Holland displayed a picture of the tree at the 5th Tee Box and stated all of the wiring and cabling was placed underground and noted this will be duplicated at the proposed second site.

They had a number of meetings with the neighbors. The nearest adjoining residence is located approximately 154 feet away. Mr. Holland noted there were tall mature trees that are much closer than the ones located at the first site to help with screening.

Mr. Holland presented a picture of the proposed compound brickwork and noted they agreed to use a brick masonry wall that is 8 feet tall to screen the equipment. There will be additional trees and plantings around the base of the facility for further screening; however, most of the equipment will not be seen from the closest residences.

Mr. Holland stated they had received complaints from one of the residents of the visibility of the maintenance yard and noted they agreed to plant some additional trees along the homeowner's property line to help screen the view, especially in the winter. Mr. Holland stated they would continue to work with the City on a landscape plan to help screen the maintenance area.

Mr. Holland stated there were a couple of trees that needed to be removed in order to place their structure in the ground. They would replace them with multiple trees to replace the mass that is lost with the larger trees. He stated they would do their best to keep as many existing trees in place as possible.

Mr. Holland requested Council approve a rezoning of the property from R-1 to REC. He noted they were also seeking companion applications for preliminary and final plat, due to this land never being platted.

Mr. Holland stated they were in agreement with all of the stipulations and looked forward to bringing the facility to construction.

Mayor Dunn noted they would hear questions and discussion regarding both Item Nos. 11D and 11E.

Councilmember Rasmussen confirmed with Mr. Holland they had not previously been before the City Council regarding any Sprint facilities at 123rd and Mission Road. Mr. Rasmussen asked what assurance they had that this tower would solve the problem of coverage. Mr. Holland stated Sprint, with all of their applications, was attempting to solve the problems. They won't build a facility that is unnecessary and noted the problem in Leawood wasn't isolated to this particular location; there are other areas within the City they would like to improve upon with their coverage.

Councilmember Bussing confirmed with staff that the requested zoning change was for the entire property. Mr. Bussing confirmed with Assistant Planning Director Mark Klein that the maintenance facility is legally a non-conforming use. Mr. Klein stated that the maintenance facility would be within the REC zoning, which would fit better with the residential zoning it currently has. Mr. Bussing confirmed with Mr. Klein they would not be making demands on this maintenance facility due to the zoning change.

Mr. Bussing stated Fire Chief Ben Florance confirmed for him that on an annual basis, one of the fire department personnel would verify that the signage on the building was accurate for the present use of the building.

Chief Florance confirmed there should be a sign on the building that identifies what materials are inside.

Mr. Bussing confirmed with Mr. Holland that the tower would be located within 60 feet of the maintenance facility. Mr. Bussing asked if there would be any concern of these two buildings interacting in some way.

Chief Florance confirmed that this would only be a concern if there was something extreme, such as a tornado knocking the tower down and crushing the building causing electrical shortage problems.

Mr. Bussing recalled some concerns from nearby residents of the maintenance facility that they were grinding up trees, dumping chips and doing other inappropriate things. Community Development Director Richard Coleman stated when these issues were brought before the Planning Commission, they sent staff out to speak with the Leawood South Country Club and look at the facility. He noted some of it was in disarray. Mr. Bussing confirmed with Mr. Coleman that the inspection staff was currently addressing these issues.

Mr. Bussing understood this to be Phase II of Sprint's ongoing development and asked how many phases would be addressed in Leawood. Mr. Holland stated the current plan was to provide better coverage to areas south of this location. They had presented a master plan to the Planning Commission and noted they have several additional sites they would like to improve upon with their coverage.

Mr. Holland confirmed they did not have a time frame when they would start the application process for these other sites.

Mr. Bussing noted they have had problems with some of the pine trees that have been previously planted that have died and wanted assurance that when the landscaping was done, they would plant the proper trees. Mr. Holland confirmed they would work with staff on the appropriate landscaping.

Councilmember Cain confirmed with Mr. Holland that the width of the masonry would be 23' 4" x 32' 8". Mr. Holland confirmed for Ms. Cain that the dimensions of the masonry located at the 5th Tee Box was approximately 20' x 20'. The masonry currently proposed would be larger due to the need to surround the tree. This was done in an effort to reduce any additional trees that would need to be removed.

Ms. Cain confirmed with Mr. Holland that the masonry wall would be higher than the building. Mr. Holland confirmed that the wall would not be visible by the neighbors, due to many trees.

Ms. Cain recalled one of the neighbors concerns of the electro magnetic rays going through their daughter's bedroom.

Assistant City Attorney Franki Shearer stated she couldn't speak to the science of this; however, being a local government, they are preempted from making a decision regarding the sighting of any wireless facility based on RF radiation. These guidelines are specifically set by the Federal Communications Commission [FCC]. In the Leawood Development Ordinance [LDO] there is a provision that states, "In order to be approved for a sighting in Leawood, the facility has to comply with FCC regulations". Ms. Cain recalled reading that the applicant's RF radiation was 50 times lower than the FCC guidelines.

Mr. Holland stated the FCC strictly regulates this particular area and have set maximum exposure limits for these types of facilities. He stated they have met the FCC standards and are many times below their guidelines. They were very comfortable in terms of the guidelines and safety of these facilities and noted they reside around them as well. Mr. Holland understood the fear; however, felt it was a misunderstanding regarding technology.

Councilmember Azeltine asked for clarification of footage between the property line of the nearest residence and installation of the tower. Mr. Holland confirmed it was approximately 120 feet from the tower structure to the nearest property line. Mr. Klein confirmed for Mr. Azeltine that the tower that was approved last year was approximately 256 feet from the nearest property line.

Mr. Azeltine stated he was previously at the maintenance facility owned by the Leawood South Country Club and felt it was disgraceful for an area to be in that condition in such close proximity to its neighbors. He felt since the country club will benefit financially from the licensing agreement, they should take better care of the property. Mr. Azeltine asked how the staff had progressed in terms of bringing the country club into compliance. Mr. Coleman stated they were asking them to clean up the site and noted they do; however, have ongoing maintenance at this facility.

Mr. Azeltine suggested that Council add additional stipulations to require them to come into compliance in terms of clean up and have the approval of the application contingent upon this.

Mayor Dunn noted she had a conversation with staff regarding this issue. The structure is a legal non-conforming use. Mayor Dunn noted there is a tract of green space at this facility that currently has nothing planted on it. She requested evergreen trees be planted south of the sidewalk to help block the view of the open garage door area of this maintenance facility.

Mr. Holland noted they were willing to whatever they could to help the situation; however, asked that their permit not be jeopardized because of this.

Councilmember Gill asked if the non-conforming use could be put at risk if the site wasn't better maintained. Mr. Coleman stated they could address the clean up of the site under the existing and proposed zoning.

Mr. Lambers stated they would be limited to the enforcement through issuance of citations in municipal court. It would not jeopardize the legal non-conforming status in terms of them being in violation of City codes. He noted to link conditions on an applicant to someone else's property would not be palatable and stated he could not make that recommendation. This is a separate issue that needs to be handled through enforcement.

Mr. Azeltine asked if Mr. Lambers felt confident that the Codes Enforcement Department would be sufficient in addressing this issue. Mr. Lambers stated this was their only legal recourse, since they cannot put stipulations on a Special Use Permit [SUP] for an applicant on someone else's property. The City can enforce the codes through citations.

Franki Shearer stated the country club is the owner of the property and Sprint will have a lease hold interest on the site for the cell tower. The City cannot make Sprint liable for any misdeeds of the country club property.

Mr. Azeltine confirmed with Mr. Coleman they had visited the site; however, there have currently been no citations issued. Mr. Coleman stated any debris that is stored on the property would be in violation. Mr. Azeltine confirmed with Mr. Coleman that the tree trimmings and piles of dirt would be in violation. Mr. Coleman stated he would check to see if the tractor was also in violation.

Mr. Azeltine asked for a continuance to allow the property owner time to clean it up. He was concerned that nothing would get done if this was approved and when construction begins, it would only get worse.

Sheldon Bernstein, 12209 Mohawk, stated he lives directly across the street from the maintenance facility and has lived there since 1985. Mr. Bernstein stated it had been a mess since they moved in and hadn't seen any improvements. He wasn't present to cause the country club any problems and stated he was more concerned to the 75 foot tower that was going to be disguised as a tree and would be camouflaged by a number of 40 foot trees. Many of these trees will lose their leaves and he felt aesthetically, the tower would be horrible to look at. He stated there were some members of the Planning Commission who also felt this would not be an appropriate place to have this tower. He was concerned that this was already a highly congested area with people coming in and out and felt this would only add to the traffic problems.

Brian Nelson, 12603 Delmar, stated there was a significant need for increased cell coverage in this area. He felt there was concern for safety issues of not being able to connect to the network in some areas.

Allan Todd, 12314 Mohawk Lane, stated he lives behind the expanded maintenance facility and was concerned of the piles of debris, trees, chips, and wood. He noted the City issued them a courtesy citation. Mr. Todd noted in 1977 the property was zoned residential, non-conforming use and has been zoned this way for 30 years. He worked with the golf course and split the cost of trees on the property line to help with screening and noted it wasn't maintained; all of the trees, with the exception of two, have died. He was concerned who would maintain the trees and greenery Sprint was offering to install. He presented pictures to demonstrate the view of the facility from his backyard. Mr. Todd stated he spoke with the Fire Marshall regarding this and understood no one had been out to look at it and thought the only communication was through e-mails. They have three hazmat signs that are out of date. There are pallets stacked high with fertilizer and many chemicals/pesticides for the golf course with the capability of one hundred gallons of fuel storage. He felt this was already a disaster and was concerned of the additional cell tower. The area is not secure and anyone is able to drive back there 24 hours a day. There are people continually dumping trash into their dumpster and kids playing there. Mr. Todd thought there would be another area that is safer and more suitable for the tower.

Chick Damico, 12305 Mohawk Lane, was concerned that the cell towers were located too close to residential housing and they keep getting closer. Mr. Damico felt not only the tower was too close, but the 20 x 30 foot structure would be located within approximately 100 feet of someone's backyard.

Carla Roth, 12308 Mohawk Lane, noted appreciation to the Planning Commission and the City Council for their careful consideration of how these decisions impact their long-term living in Leawood. Ms. Roth noted they have lived in Leawood for 22 years and as homeowners, they have done their best to abide by City regulations and felt this should also be required by the applicant's. Although the City needs to have additional cell towers, if they don't look appropriate, jeopardize property values, or aren't safe for the people living there, the City should reconsider. Ms. Roth stated the pictures of the landscaping Mr. Holland was presenting were taken in the summer and the trees lose their leaves during the winter. The trees they are planning to remove have been there for many years and they will not be able to be replaced through a landscape budget.

Samuel Schissler, 3613 W. 122nd Terrace, concurred with Ms. Roth's comments. He noted appreciation to Councilmember Cain for addressing the radiation issue and noted he was still concerned about it. He understood they could not address it per the City Attorney; however, as a father of four he felt obligated to bring up the issue one more time. The full effects of the radiation are still unknown.

Leslie Yakel, 12312 Mohawk Lane, stated her home backs up to the property and noted she is a Sprint employee. Ms. Yakel was concerned that the 75 foot tree would be located approximately 30 feet from her property line and asked that it be placed in a better location.

Todd Huff, 12208 Mohawk Road, stated they had done a lot of research when choosing Leawood as their City of choice to live and valued the City's focus on zoning and respect for residential areas. His biggest concern was regarding property values. He lives across the street from the Bernstein's and noted he could see the tower from his front porch. Mr. Huff stated he was never contacted by Sprint.

Meg Fishback, 12615 Mohawk Lane, stated she is also a Sprint employee and a Leawood South Country Club member. She asked for support of the tower due to the City having poor cell phone coverage.

Tom Tobler, 12316 Mohawk Lane, noted appreciation to the Council and Planning Commission for taking the time to come out and look at the site. He presented pictures of the existing site located at the 5th Tee Box and noted it was located approximately 300 feet from the nearest home. Most of the trees on the proposed site are predominantly mature trees that are 40 – 50 feet tall. Mr. Tobler noted they were looking at two distinctively different pieces of property and the installation of the Monopine tree on the existing site blended in well with the landscaping currently in place. He was concerned how the proposed site would look once the leaves fall. Mr. Tobler noted the proposed 75 foot tree would be located approximately 84 feet from the Yakel's property line and felt that was too close. He thought that the City of Overland Park required they be a minimum of 200 feet from residential property lines.

He felt the approval of the permit would harm the aesthetic value of the neighborhood and asked that it be turned down. He requested Council change the Leawood Development Ordinance [LDO] so that the setback for the man made trees would provide a decent buffer from existing residential properties.

Councilmember Peppes asked Mr. Holland what area the tower would cover in relation to the existing tower. He wanted to be assured that phase II would provide enough coverage to the citizens to warrant it being in a resident's backyard.

Mr. Holland stated these facilities cost several hundred thousand dollars and they would not build them if they didn't believe they would improve their coverage significantly enough for the investment. He stated they don't have a plan to install another one in or around Leawood South. They do; however, have a plan in the future for facilities elsewhere. One of which, would be located on the east end of this area along State Line Road north of 123rd Street in a commercial area. Another planned location would be north along the Hallbrook area along State Line Road.

Dr. Peppes confirmed with Mr. Holland there was no overlap of coverage between this site and the other existing site.

Dr. Peppes asked if there has been any interest in co-locating on these towers. Mr. Holland stated there was interest expressed by a carrier on this location; however, they have not followed up on this. Dr. Peppes stated they like to see co-location on the towers and felt it could benefit both parties. Mr. Holland noted they would entertain any co-location opportunity.

Dr. Peppes asked if staff was satisfied with the amount and the quality of landscape that was placed at the existing tower. Mr. Coleman stated there have been no complaints and the landscape plan was approved by Council. Dr. Peppes felt it was important to maintain the upkeep of the landscaping. Mr. Coleman noted they periodically inspect the landscaping on projects and will submit reports to Council.

Mayor Dunn asked who would maintain the trees and landscaping. Mr. Holland assumed that any landscaping installed with this application would be their responsibility. There would be vigilance in regard to maintaining the landscaping and required replacement to the extent that any should fail. He stated ultimate obligation would fall upon Sprint.

Mayor Dunn confirmed with Mr. Holland that Sprint was a co-locator; however, not the owner of the tower located in City Park. Mr. Holland thought the owner was AT&T. Mayor Dunn noted someone was currently replacing trees at that location when they die.

Mr. Holland felt the addition of the proposed tower would be an enhancement in the winter due to the lack of leaves since this would still provide greenery on the property.

A motion was made by Councilmember Filla to approve the Special Use Permit [SUP] for the Leawood South Country Club for their wireless tower located at 3801 West 123rd Street; seconded by Councilmember Gill.

Councilmember Gill stated he was in favor of this and was also in favor of the other tower at Leawood South. Mr. Gill felt staff should force the Leawood South Country Club into compliance with codes to the best of their ability. He understood Sprint's agreement was to continue working with the City to develop a final screening plan. This should give staff some leverage with the country club and noted the pictures shown were unacceptable.

Mr. Gill noted he had been in several properties that were for sale in Leawood and could not get service on his cell phone. People in this community expect and are entitled to high-end technology and noted most of the e-mails he had received from people were asking for approval of the application.

Councilmember Azeltine confirmed with Mr. Coleman that the spacing requirement for a non-camouflaged tower was 500 feet.

Councilmember Rasmussen noted concern of the proximity of the tower to the R-1 zoning and asked why the tower wasn't moved further into the golf course. Mr. Coleman thought it was due to the elevation of the land.

Mr. Holland stated the elevation significantly drops off when getting closer to the creek. Mr. Holland stated the tower would need to be much taller if placed further in to achieve the same objective.

Mr. Rasmussen confirmed with Mr. Coleman that all of the property was currently zoned R-1 and they were requesting it be changed to REC. Mr. Coleman stated the golf course was zoned REC. Mr. Rasmussen asked if they would be rezoning more than what needed to be done.

Mayor Dunn clarified that Mr. Rasmussen was suggesting if Council approved the rezoning, should they stipulate it to only the site of the tower, versus the rest of the tract. Mr. Coleman stated Council would have the prerogative to add whatever stipulations they wish to require for the REC zoning. Mr. Rasmussen was concerned that Mr. Todd could be faced with a "junk yard" in his backyard if the change in zoning got approved. Mr. Coleman stated it would still be in violation under the REC zoning. Mr. Rasmussen asked which zoning would make it easier to have a code violation. Mr. Lambers stated since it is a legal non-conforming use, it's permitted to function as is, regardless of the zoning. Mr. Coleman stated Council could have the advantage with the rezoning to REC by requiring stipulations.

Ms. Shearer stated under the current code, the City has recourse to make the country club come into compliance.

Mr. Rasmussen confirmed with Ms. Shearer that under the City's existing codes, if Council decided to rezone the land from R-1 to REC, they could enforce the enclosure of vehicles, dumping of trash, etc., on this property.

Mr. Lambers stated they were unaware of complaints of the country club until this situation came forward. It is a separate matter than the current application in front of Council. It will not affect the City's ability to enforce the ordinances, regardless of zoning.

Mayor Dunn confirmed with Mr. Holland that Stipulation No. 7 should be changed to read "Additional trees shall be required along the east property line abutting residential houses and along the north property line abutting 123rd Street."

A friendly amendment in the motion was made by Councilmember Filla; seconded by Councilmember Gill to reflect the modification regarding Stipulation No. 7.

Councilmember Azeltine asked if there was a setback requirement in the LDO for an alternative tower structure. Mr. Coleman stated it was only a requirement for the zoning districts. Mr. Azeltine confirmed with Mr. Coleman that the tower could be placed within the setback of 15 feet if Council approved it. Mr. Azeltine requested staff to review the cell tower ordinance as it relates to setback distance. Mr. Lambers thought there was a provision in the ordinance that it could not be of a height that would hit a structure.

Mayor Dunn noted it was previously contemplated to be installed on top of an existing structure where people were housed inside. The Mayor felt they had tried to be very creative and camouflaging when it is not in distance of the 500 foot requirement.

Mr. Lambers noted the opinion was to encourage disguising the towers; therefore, allowing them to encroach onto the 500 foot buffer. Mr. Lambers noted they could have a work session to discuss the distance issue further, if needed.

Mayor Dunn referred to the remark by Mr. Todd regarding the Fire Marshall only communicating through e-mails. Mr. Coleman thought the Fire Department actually went out to visit the site and concluded there were no violations.

Mayor Dunn referred to the in-building use of phones in homes and asked if this was inclusive of basement use.

Mike Ault, Representative for Sprint, stated in-building use was generally defined as high probability you can use it inside the home; however, subterranean (basement) usage is more difficult and is determined by the proximity of the tower.

Mayor Dunn confirmed with Mr. Lambers that because of the friendly amendment, it would take six votes to approve.

Ms. Shearer stated she thought there was a protest petition filed in this case.

Mayor Dunn stated she hadn't received that petition.

Mr. Klein stated there was a protest petition regarding a certain percentage of area required (200 feet) around the tower. There was enough area; however, the petition was invalid.

Mayor Dunn asked who determined the petition was invalid. Mr. Klein stated the Planning Department checked to be sure it was within the 200 feet.

Mayor Dunn stated she never received any information in the packet regarding a protest petition.

Mr. Lambers apologized for not following up on this; however, noted Council could proceed and vote; if there are sufficient votes to meet the protest petition requirements, they could disregard it. If there are insufficient votes, they would continue this to the next Governing Body meeting.

Mayor Dunn confirmed with Mr. Lambers that it would require seven votes if there was a valid protest petition.

Mr. Bernstein stated he had filed two protest petitions on behalf of Dennis McBride and the Todd's. They were personally given to the Deputy City Clerk.

Ms. Shearer stated in preparing for the meeting this evening, City Attorney Patty Bennett reminded her there was a protest petition filed; therefore, would require a $\frac{3}{4}$ majority for the vote. Ms. Shearer noted her apology if this information was incorrect.

Councilmember Rasmussen stated he was currently going to vote to deny this and thought if it could be continued to the next meeting his issues could possibly be resolved. He was concerned to the proximity of the tower to the property line. He wanted assurance of what staff intended on doing to enforce the codes at the country club and was also concerned regarding the extent of the rezoning.

Councilmember Azeltine concurred with Mr. Rasmussen and felt there were questions that could not be answered this evening. He asked that the Councilmembers withdraw their motions and continue this to the next meeting.

Councilmember Filla withdrew her motion to approve the ordinance.

Mr. Holland stated if the choice was to deny or continue to the next meeting, he wished to continue.

Mr. Rasmussen reiterated his concern of why the tower couldn't be moved further south. Mr. Holland noted it would be in closer view of Mr. Todd's property. Placing it at the proposed location has the benefit of surrounding trees and is the most dense portion of the property.

Councilmember Gill stated there had been a lot of time and effort put into this and felt continuing would not accomplish anything except delaying it and wanted to resolve this tonight.

Councilmember Filla confirmed with Mr. Lambers that Council could vote on this tonight and if there weren't enough votes to approve it, they could continue it to the next meeting.

Ms. Filla requested to leave her motion to pass the ordinance in place.

Councilmember Azeltine stated her motion had already been withdrawn, which makes the second irrelevant; there is already a new motion to continue on the floor to continue.

Mayor Dunn stated Mr. Azeltine's motion to continue was not recognized.

Councilmember Gill stated he never withdrew his second. Mr. Gill referred to "Robert's Rule's" and asked if the motion maker could withdraw their motion if the person that seconded it did not withdraw.

Mr. Azeltine stated this could be done under "Robert's Rule's."

Ms. Shearer stated she would need to check on this information.

Mr. Gill stated since Councilmembers Azeltine and Rasmussen were requesting a continuance, he would withdraw his second on the original motion to pass the ordinance.

Mayor Dunn noted she would recognize Mr. Azeltine if he wanted to make a motion.

Councilmember Azeltine made a motion to continue this to the December 1, 2008, Governing Body meeting; seconded by Councilmember Rasmussen. The motion to continue failed due to a lack of votes. Yea: Councilmembers Azeltine and Rasmussen. Nay: Councilmembers Filla, Gill, Rawlings, Bussing, Cain, and Peppes.

Councilmember Gill made a motion to pass the ordinance with the modification of Stipulation No. 7 as stated previously; seconded by Councilmember Bussing.

Mayor Dunn noted this would be at a minimum, an override of the Planning Commission's recommendation due to the modification to Stipulation No. 7 and, at a maximum, a ¾ vote is necessary if there is a valid protest petition.

The motion to pass the ordinance with the modification of Stipulation No. 7 carried following a roll call vote of 7-2. Yea: Councilmembers Gill, Bussing, Rawlings, Peppes, Filla, Cain, and Mayor Dunn. Nay: Councilmembers Rasmussen and Azeltine. The Mayor noted she voted in the affirmative in case it was needed in the protest petition.

- E. **Ordinance No. 2373** approving a Rezoning, Preliminary Plat and Preliminary Site Plan for Leawood South Country Club - Wireless Tower, located at 3801 W. 123rd Street (PC Case # 62-08) [Roll Call Vote]

A motion to approve the rezoning was made by Councilmember Bussing; seconded by Councilmember Peppes. The motion carried following a roll call vote of 7-1. Yea: Councilmembers Bussing, Peppes, Gill, Rawlings, Cain, Azeltine, and Filla. Nay: Councilmember Rasmussen.

[From the October 28, 2008 Planning Commission Meeting]

- *F. Ordinance approving a Preliminary Site Plan and Final Site Plan for Parkway Plaza - Little Sunshine Playhouse, located on the northwest corner of 135th Street and Roe Avenue (PC Case 87-08) [Roll Call Vote] – ***CONTINUED TO THE DECEMBER 1, 2008, GOVERNING BODY MEETING***

- *G. Ordinance approving a Special Use Permit [SUP] for Parkway Plaza - Little Sunshine Playhouse, located on the northwest corner of 135th Street and Roe Avenue (PC Case # 87-08) [Roll Call Vote] – ***CONTINUED TO THE DECEMBER 1, 2008, GOVERNING BODY MEETING***
- *H. Resolution approving a Sign Plan for Nall Valley Shops - Capitol Federal Savings Signs, located on the northeast corner of 151st Street and Nall Avenue

Mr. Lambers stated the applicant was not present this evening.

A motion to continue this to the December 1, 2008, Governing Body meeting was made by Councilmember Gill; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

12. OLD BUSINESS – None.

13. OTHER BUSINESS – None.

14 NEW BUSINESS

- A. Schedule a Governing Body Work Session meeting at 6:00 P.M. on Monday, December 1, 2008, to discuss Phase II on Gezer Park, located at 133rd and Mission Road [# 76006]

A motion to approve the work session was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

There being no further business, Mayor Dunn adjourned the meeting at 10:22 P.M.

ADJOURN

Debra Mansfield, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk