

Minutes

DVD No. 208

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, February 16, 2009. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Patty Bennett, City Attorney
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Jack Reece, Info. Systems Specialist
Joe Johnson, Public Works Director
Deb Mansfield, City Clerk

Mark Klein, Asst. to the Planning Dir.
Richard Coleman, Comm. Dev. Director
Chris Claxton, P&R Director
Lovina Freeman, HR Director
Pam Gregory, Deputy City Clerk

1. **PLEDGE OF ALLEGIANCE**
2. **APPROVAL OF AGENDA**

Mayor Dunn noted the following modifications to the Amended Agenda:

- Addition of Item No. 7P
- Addition of Councilmembers Report - Councilmembers Rasmussen and Filla
- Item No. 14C – Continued to the March 2, 2009, Governing Body meeting

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

3. **CITIZEN COMMENTS**

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

4. **PROCLAMATIONS** – None.
5. **PRESENTATIONS/RECOGNITIONS** – None.
6. **SPECIAL BUSINESS** – 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. 2009-4, 2009-5, and 1120C
- B. Accept February 2, 2009 Governing Body minutes
- C. Accept January 15, 2009 Green Initiative Citizens Task Force Committee minutes
- D. Accept January 13, 2009 Parks and Recreation Advisory Board minutes
- E. Approve purchase in the amount of \$17,554.00 from Simmons Gun Specialists, Inc., for the purchase of ammunition for police firearms training
- F. Approval of 2009 Governing Body Goals & Objectives
- G. **Resolution No. 3161** approving and authorizing the Mayor to execute a Professional Service Agreement between the City and Phelps Engineering, Inc., in the amount of \$34,800, pertaining to the 2010 Street Reconstruction Survey Project
- H. **Resolution No. 3162** approving and authorizing the Mayor to execute a Professional Service Agreement between the City and Uhl Engineering, Inc., in the amount of \$29,990.00 pertaining to the 2009 Residential Street Mill & Overlay Project
- I. **Resolution No. 3163** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of County Commissioners of Johnson County, pertaining to the County Assistance Road Program [CARS] 2010-2014 Five Year Program
- J. **Resolution No. 3164** revising the fee schedule, not specifically provided for in the Code of the City of Leawood, 2000, specifically for the IRONHORSE Golf Course fees, in accordance with Section 1-701 of the Code of the City of Leawood, 2000
- K. **Resolution No. 3165** approving and authorizing the Mayor to execute a Professional Service Agreement between the City and Xtreme Turf and Landscape, for an amount not to exceed \$20,000, pertaining to the installation of a tee-line at Ironhorse Golf Course
- L. **Resolution No. 3166** approving a Final Site Plan for a tenant finish for Mission Farms - Vico's, located on the northeast corner of Mission Road and I-435 (PC Case # 05-09) [*From the January 27, 2009 Planning Commission meeting*]
- M. Police Department Monthly Report
- N. Fire Department Monthly Report
- O. Municipal Court Monthly Report

- *P. Approval of reallocation of funds in the amount of \$40,000 from landscaping to pond construction, pertaining to the contract between the City and Mega Industries, Inc., for the Gezer Park Improvement Project, located at 133rd and Mission Road [# 76006]**

Mayor Dunn requested to pull Item No. 7F and Councilmember Peppes pulled Item No. 7J for discussion.

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

- 7F. Approval of 2009 Governing Body Goals & Objectives

Mayor Dunn noted that Short-Term Goal No. 9 and Near-Term Goal No. 6 were duplicates. In discussion with City Administrator Scott Lambers, he recalled this was to be a Short-Term Goal; therefore, disregard Near-Term Goal No. 6.

Mayor Dunn confirmed with Ms. Filla that "Education surrounding stormwater management issues and the education of citizens" needed to be added as Near-Term Goal No. 11.

A motion to approve Item No. 7F with the modifications as stated was made by Councilmember Azeltine; seconded by Councilmember Gill.

Ms. Filla clarified that the evaluation of re-use was in regard to police activity in the building on Short-Term Goal No. 12 and Near-Term Goal No. 10 was for evaluating the entirety of the grounds after deciding the specifics of the police department.

The motion carried following a unanimous vote of 8-0.

- 7J. **Resolution No. 3164** revising the fee schedule, not specifically provided for in the Code of the City of Leawood, 2000, specifically for the IRONHORSE Golf Course fees, in accordance with Section 1-701 of the Code of the City of Leawood, 2000

Councilmember Peppes confirmed with Parks and Recreation Director Chris Claxton that the second paragraph of the memo should read 2009 Triple Crown instead of 2008. Ms. Claxton clarified that 2008 Triple Crown members would pay a fee of \$2,700 in 2009 and non-2008 member fees would be \$2,750.

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

8. MAYOR'S REPORT

- A. Attended the Council of Mayors' meeting, hosted by DeSoto Mayor Dave Anderson. The topic was state budget cuts and their impact on local units of government. A letter of appreciation was sent on behalf of the Mayors to the Johnson and Wyandotte Counties delegation members regarding their work on the 2009 budget. There will be more communication in the near future regarding the 2010 budget. Mayor Dunn noted the Legislative Report dated February 10, 2009, with budget updates from Leawood Representative Pat Colloton.
- B. Mayor Dunn noted the "Synthesis of Community Conversations" forwarded from Dr. Terry Calaway regarding the Johnson County Community College Community Forum that she and City Administrator Scott Lambers attended in the fall as participants.
- C. Attended the 4th Annual Governors' Summit on Regional Economic Development. Featured speakers included Kansas Governor Kathleen Sebelius and Missouri Governor Jay Nixon. There were key economic challenges addressed by President Tom Hoenig of the Federal Reserve Bank of Kansas City. The event was organized by the Greater Kansas City Chamber of Commerce with approximately 300 in attendance. The mood of the summit was "cautious optimism" for the end of this calendar year.
- D. In connection with the 200th birthday of Abraham Lincoln and the Union Station Exhibit - "The Tsar and the President, Alexander II and Abraham Lincoln," Mayor Dunn attended a luncheon with the Ambassador of the Russian Federation to the United States, Sergey Kislyak. The exhibit will be on display until April 19, 2009. President Lincoln, who freed the slaves in the United States, is compared to Tzar Alexander II, who freed the peasants in Russia.

9. COUNCILMEMBERS REPORT

- A. Councilmember Rasmussen

Councilmember Rasmussen addressed the area on the east side of State Line from 103rd Street south to I-435 and made a motion to request Council to authorize staff to consider revising the business park zoning category as it relates to the property located on State Line Road to expand the list of permitted uses to be eligible for a Special Use Permit [SUP], specifically, the Pride Cleaners location for the use of rental car leasing; seconded by Councilmember Filla.

Mr. Rasmussen noted the property was too narrow to accommodate the new uses and asked staff to review this and consider possibilities to improve the property and overall area by permitting this use with appropriate stipulations.

Mayor Dunn noted Long-Term Goal No. 4 under Item No. 7F that was just approved; "Perform a comprehensive corridor evaluation of State Line Road vis-à-vis 135th Street Corridor study from the north city limits to I-435."

Mayor Dunn felt Mr. Rasmussen's motion was too narrow for adoption and noted if Council was in consensus, they could vote on the motion to expand the use to rental car leasing.

Mr. Rasmussen stated he wasn't asking Council to approve this use; however, was requesting staff return with a report of whether or not this use would be appropriate.

Mr. Rasmussen read the motion again: A motion to request Council to authorize staff to consider revising the business park zoning category as it relates to the property located on State Line Road to expand the list of permitted uses to be eligible for a SUP; specifically, the Pride Cleaners location.

Mayor Dunn noted Mr. Rasmussen had a request for SUP for rental car leasing in his first motion and had taken it out of this motion.

Mayor Dunn confirmed with Mr. Rasmussen he was requesting that staff review this particular property and return with information to see if it would be possible to be redeveloped; specifically, for rental car leasing.

Councilmember Filla noted she had the opportunity to meet with the future tenants interested in re-occupying the Pride Cleaner location. There are limitations with the City's current codes for these buildings. For instance, there isn't sufficient parking. The building is 2,400 square feet and she felt with the City's current ordinances, it would remain vacant. They have a unique use that requires a small space and noted they wouldn't keep many vehicles there. Ms. Filla asked if the future tenants could improve the property enough for the City's satisfaction and be viable as an entity in that space and stated unless flexibility was shown by the City, they wouldn't be able to utilize it.

Mr. Rasmussen noted the language in his motion was what was recommended by staff.

Community Development Director Richard Coleman noted he had met with Mr. Rasmussen and the request for the study needed to be directed from Council.

Mayor Dunn confirmed with Mr. Rasmussen that this would not be given a "green light" for its use before it comes before Council as a plan and clarified they would not be rezoning it at the present time.

Councilmember Gill asked how many locations in the City had business park zoning. Mr. Coleman stated there were two locations; one at 103rd and State Line and the other at the Bi-State Centennial Park.

Mr. Gill stated he would vote in the affirmative on this; however, was concerned to having additional car lots at this location.

The motion to authorize staff to review the business park zoning category as it relates to the property on State Line Road and return before Council within 60 days carried following a unanimous vote of 8-0.

B. Councilmember Filla

Councilmember Filla reported that she had received a letter from a citizen and had previously discussed with parents of young children that there aren't any parks located in Old Leawood. They had requested that Council consider a small park with some playground equipment and a park bench be installed at Brook Beatty Park.

Ms. Filla made a motion to request the Parks and Recreation Department review this and return before Council with their recommendation, keeping in mind that the developer of Old Leawood Estates had agreed that when they installed the playground in the trails area, they would also solicit citizen input; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the January 27, 2009 Planning Commission meeting]

- A. **Ordinance No. 2383** approving a Special Use Permit [SUP] for an AT&T VRAD Cabinet, located at 10342 Lee Boulevard (PC Case # 92-08) [Roll Call Vote]

Chris Carroll, 8900 Indian Creek Parkway, Overland Park, stated the application before Council was a request for AT&T to place a utility cabinet on the north side of 104th Street, west of Lee Boulevard between Cherokee and Lee as they expand to serve the Leawood Estates Subdivision with higher speed broadband and video services. The cabinet has a lower profile and sits approximately 48" high.

Mr. Carroll stated they concurred with all of the staff recommendations and stipulations.

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

Mayor Dunn noted Stipulation No. 7 and asked if it implied it would be removed at the expense of AT&T if it is abandoned.

Mr. Carroll stated they had an understanding with staff and thought it was part of the ordinance that if it's considered abandoned; it must be removed after a certain period of time.

Mayor Dunn noted the applicant had an easement and agreement with the property owner located on Lot 982 to plant landscaping on their property and confirmed with Mr. Carroll they would be maintaining it. He noted if this were to take place, they would get it in writing from the property owner and give it to staff so it would be on file with the City.

Councilmember Gill confirmed with Assistant Planning Director Mark Klein that the landscaping of the other AT&T VRAD Cabinet locations was currently being maintained.

The motion to pass the ordinance carried following a roll call vote of 8-0. Yea: Councilmembers Rawlings, Rasmussen, Filla, Cain, Peppes, Gill, Azeltine, and Bussing. Nay: None.

- B. Resolution approving a Revised Final Site Plan for Madden McFarland Interiors, located on the southwest corner of State Line Road and 135th Street. (PC Case # 06-09)

Bruce Wendlandt, Wendlandt and Stallbaumer Architects, gave a presentation of the proposed roofing material to be used for Madden McFarland Interiors.

He indicated they appeared before the Planning Commission on January 27, 2009. There were plans submitted earlier for a major remodel addition and that plan will remain as is. The only request this evening is to exchange the roof material.

Mr. Wendlandt indicated Mr. Madden wanted to use the DaVinci simulated product. The color is "Tahoe" with shingle style material and is not a simulated slate look. He noted a "Brownstone" slate material by DaVinci had previously been approved by the City. They were interested in keeping with the shingle style to better coordinate with the Madden McFarland Structure.

Councilmember Cain confirmed with Mr. Wendlandt that the lifespan on the roof was for 50 plus years.

Councilmember Peppes asked if this was an approved roofing material for the City of Leawood.

Mr. Coleman confirmed that the DaVinci is an approved material and they needed to come before Council for approval because they were changing the roof on a commercial building.

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

Mayor Dunn asked if they wanted to install the roof on the existing building and not on the full remodel expansion that was approved in February, 2007. She recalled discussion of this expansion and noted it was a "residential in appearance" home/building that is actually a commercial development located in the City's commercially zoned 135th Street Corridor.

At that time, a synthetic slate roofing material was approved with a "Castlegray Blend" color. She understood they wanted the color to currently be "Brownstone Classic."

Mr. Wendlandt wasn't sure how the "Brownstone Classic" came to be; however, it is on the Leawood approved list. The shingle style is not on the "officially" approved list. When and if the comprehensive plan that was done two years ago takes place, it will bring a more formal high-end look.

Mayor Dunn confirmed with Mr. Coleman that the final plan approval in February, 2007, has five years from the date of which it was approved.

She recalled the corner feature that was to be done if this plan continued with the expansion and that they would try to incorporate as many of the Leawood Development Ordinances [LDO] as possible; however, in a more residential looking building.

Mayor Dunn noted her surprise that the Planning Commission had approved unanimously to change the roof to a shake shingle, which was not recommended by staff for that commercial corridor. She noted they currently came before Council proposing the "Brownstone Classic" simulated slate. The Mayor felt the Planning Commission didn't have the benefit of the history of the case.

Mr. Wendlandt noted discussion on January 27, 2009, with the Planning Commission about Mr. Madden's desire for the shingle style look and wanted them to consider how the structure has historically looked. It is a residential structure and Mr. Madden has always displayed the best image and is fastidious regarding maintaining his property. Mr. Wendlandt felt the shingle style roof gives the best comprehensive look to unify the entire structure.

Mayor Dunn felt it is residential in appearance; however, thought it indicates with the signage that it is a commercial building.

Councilmember Gill asked what type of roof they were planning to install in the future when and if they do the expansion. Mr. Wendlandt stated the roof originally submitted before Council would be removed and the slate roof would be installed. When this is done, they would also be changing many other features other than only the roof to make it a more formal look.

Mr. Gill confirmed with Mr. Wendlandt that it would still maintain a residential look.

Councilmember Cain confirmed with Mr. Wendlandt that the current vertical siding was made of shingles.

Councilmember Filla didn't understand why they would want to currently install the shingle roof and then remove it within three years when it has a 50 year lifespan. Ms. Filla felt if they could install the slate roof now, it would be keeping with the more formal plan later.

Mr. Wendlandt noted this is a financial risk Mr. Madden is taking and doesn't know what the future holds.

Councilmember Peppes referred to the expansion approved in February, 2007, and thought Council had required something be installed on the corner as the entrance into Leawood.

Mayor Dunn noted there were a number of things Council did to bring this more into compliance with the LDO:

1. The building sprinkled
2. Brick veneer extended around the perimeter of the building on the first floor level in an effort to have the four-sided architecture the City currently requires on all commercial buildings
3. A porch added to the east side for symmetry
4. A landscape easement for a future corner feature
5. Synthetic slate roofing
6. Additional parking spaces
7. Concern regarding setbacks not being met
8. Concern of sufficient lot area to accommodate the building addition

The plan was approved and compromised on all of these issues on February 5, 2007, with the understanding that it had been there for a long time and the City had grandfathered as many things as possible.

Dr. Peppes stated none of the items Council requested the applicant do at that time had been accomplished; therefore, he didn't feel they should grant them the new roof. Dr. Peppes felt their commercial building was not up to the standards that the City requires every other business owner comply.

Bernie Madden, 7301 Falmouth, Prairie Village, stated they were never going to look like a typical commercial building and were currently only requesting a new roof. Mr. Madden stated the statue he had agreed to install on the corner would not be installed until the development across the street was completed.

Mr. Madden felt there were many roofs along 135th Street that were not appealing and stated they wanted their building to look as pleasing as possible. He also noted their landscaping was as nice as any property in Leawood.

Mr. Madden stated if Council didn't approve the shingle style roof, they would install the slate roof and if Council doesn't approve either, they would leave the remaining roof alone. He noted in 1975, the City wasn't sure how to "label" their building and the City Attorney labeled it as a SUP for as long as they continued to operate in that building. The City then decided to change it to commercial.

Mayor Dunn noted they wanted to approve a roof; however, the question was what type of material would be used.

Dr. Peppes stated he would support a slate roof because it was part of the plan approved two years ago; however, couldn't support the shingle style roof.

Councilmember Gill concurred with Dr. Peppes and asked if there was a commercial grade shingle roof in the DaVinci line. Mr. Klein noted the DaVinci material was the same whether it was shingle or slate.

Mayor Dunn noted if the slate roof was approved this evening and Mr. Madden moved forward with the expansion over the next three years, only the new addition would need the slate roof. She felt the building would then have a more commercial look.

Councilmember Azeltine noted that the Planning Commission approved the shake shingle roof and asked if it would constitute an override if Council changed the proposed roofing material to slate.

Mayor Dunn confirmed it would take a super majority with six votes.

The motion to approve the shake shingle roof carried following a vote of 5-3. Yea: Councilmembers Rasmussen, Filla, Rawlings, Cain, and Azeltine. Nay: Councilmembers Peppes, Gill, and Bussing.

City Attorney Patty Bennett stated the way this was presented before Council was that it would change the final site plan in order for them to keep this roof indefinitely. Ms. Bennett stated they could change the stipulations; however, it would require the six vote super majority.

Mayor Dunn noted Council didn't understand they were doing this.

Councilmember Rasmussen noted they were not changing the plan that was before them.

Ms. Bennett stated the plan currently before Council was a revised final site plan, which is revising the final that was previously approved by Council and would have a new five-year time period. These items were brought forward by the Planning Commission. Ms. Bennett stated this could be changed by Council; however, it would require one more vote to meet the super majority.

Mr. Rasmussen recalled that Mr. Madden had stated if and when they did the expansion, they would replace the roof with slate.

Mr. Madden confirmed they would have to do this because the shake shingle roof would not exist by that time.

Mayor Dunn confirmed with Ms. Bennett that Council's prior action should be rescinded and discussed further and noted the way the approval should read is to override the Planning Commission and making the approval for this roof a temporary measure, not revising the final plan nor revising the five-year lifespan on the final plan.

Mayor Dunn didn't recall any discussion from the Planning Commission meeting regarding revision of the final site plan that occurred two years ago.

Ms. Bennett wasn't sure if it was discussed; however, it was proposed as a revised final with these stipulations. She stated they needed to add one more stipulation that this will not change the underlying revised final roof requirement.

A motion to rescind the previous motion for approval was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

Ms. Bennett clarified that Council needed to make a motion to approve with a change in stipulations by adding one stipulation; this would be a temporary approval and would not permanently change the final plan approval, nor would it permanently change the sunset provision timing on the final plan as it exists.

Mayor Dunn confirmed Ms. Bennett that this would be changing what was done, requiring simulated slate and would add an additional two years to the sunset by the way it is posed.

Mayor Dunn thought the Planning Commission didn't realize they were adding the extra sunset provision and the changing of the final site plan since this was not mentioned at the Planning Commission meeting.

Ms. Bennett thought it came before the Planning Commission and Council in the staff report as a revised final, which means a permanent revision to the final plan with five-years running on the date of passage on the sunset. To clarify for the record Council would need two changes to the stipulations; one would be that this is a temporary approval of a roof not to override the existing approval on the existing site plan and the other would be that this would not restart the clock on the sunset provision.

A motion for approval was made by Councilmember Filla as stated above by Ms. Bennett with the two stipulations added. The motion died for lack of a second.

Councilmember Gill asked what Mr. Madden would like on the two points addressed.

Mr. Madden stated he would like the approval of the shake shingle roof in the "Tahoe" color and when and if he constructs the major renovation, they will install a slate roof, which is what they had been approved for.

Mr. Gill clarified when they had their approval two years ago; it had a five-year life and noted at the end of the five years, if they don't do the renovation, the approval sunsets.

Mr. Gill confirmed with Mr. Madden that they would like to add two years to the three remaining in order to start the five-year process over again.

Mayor Dunn noted that at a minimum, Council would be overriding the Planning Commission because they didn't say the shake shingle roof they approved would be temporary.

Mr. Madden indicated the shake shingle roof could be permanent and thought it shouldn't be an issue.

Mayor Dunn indicated it was an issue because what was originally approved was the simulated slate.

Councilmember Azeltine understood the new motion on the floor would be a change in the original application; therefore, would require six votes. The first motion only received five votes and was concerned of someone needing to change their vote in order for this to be approved.

Mr. Azeltine thought when this was discussed two years ago; there was consensus from Council that this was different than almost any other commercial property located in the City and had been established here since 1959. He regretted withdrawing his vote on the first motion and felt if this didn't pass it would be unfair to the applicant.

Mr. Wendlandt stated he was confused and indicated they were not asking to change anything on the proposal that was approved in 2007, should that project move forward.

Councilmember Peppes stated the City had compromised on many safety issues because Mr. Madden had been at that location for a long time and indicated he couldn't support the new roof.

Mr. Wendlandt stated Mr. Madden has a demonstrated history in the City of Leawood and intended on doing everything in the best possible way to move forward in a positive direction.

Mayor Dunn asked if Council approved the "Brownstone Classic" simulated slate roof, if it would be in keeping with what was approved two years ago, with exception that the sunset would differ.

Ms. Bennett stated it would change the roof type that was approved on the final.

Mr. Coleman stated there would be a change in the color since the applicant is asking for the "Brownstone Classic" and they were approved for "Castlegray Blend."

Mayor Dunn confirmed with Mr. Coleman that staff was in agreement to let the applicant use the "Brownstone Classic."

Mayor Dunn recommended Council approve the "Brownstone Classic" slate roof this evening, if possible.

A motion to approve the "Brownstone Classic" slate roof and to grant the applicant's request for the additional two years on the sunset was made by Councilmember Gill; seconded by Councilmember Azeltine.

Mayor Dunn noted if there weren't six votes, the motion would fail and other action could be put forth.

Ms. Bennett stated anytime there is any change to the Planning Commission recommendation, it requires a super majority vote.

Councilmember Filla didn't understand why Council wouldn't let the applicant use the shake shingle roof until if and when they do the expansion.

Mayor Dunn noted Ms. Filla had put that motion forth; however, it died for lack of a second.

Councilmember Azeltine concurred with Ms. Filla; however, stated the reason he seconded the motion for the approval of the slate roof was because they only received five votes for the shake shingle and felt they deserved a new roof.

Councilmember Rasmussen requested staff return to Council with specific language that indicates what the applicant is requesting.

Mayor Dunn noted there was a motion on the table and the applicant was present for questions from Council.

Councilmember Rasmussen confirmed with Mr. Coleman that because it is a revision that the term limit is extended by two years.

Mayor Dunn clarified that the motion maker extended the term an additional two years as part of the motion.

Councilmember Bussing referred to the plan approval two years ago and confirmed with Ms. Bennett that the City still did not have a landscape easement nor has Mr. Madden made a contribution for a statue on the corner of the 135th Street Corridor.

Mr. Bussing felt that Council could request the landscape easement and a contribution that is necessary for that corner in exchange for the change to the plan.

Mr. Madden indicated there was not a time element stated for the statue noted in the minutes and there was not a fee established, they had stated it would be approximately \$25,000 because they weren't sure what they were planning to install. Mr. Madden stated he was reluctant to write a check for something he was unsure of.

Mayor Dunn recalled discussion regarding the property on the north side because the corner features simulate each other and noted the timing would need to be in sync with that. She noted the City is requiring corner features from all of their commercial developers.

Mr. Bussing concurred with Dr. Peppes comments and felt the City could lose its leverage when the new roof is approved.

Dr. Peppes requested staff to prepare a summary sheet of the requests that were made by Council two years ago.

Mr. Wendlandt stated all they were requesting was to bring something good to Leawood. He was concerned Mr. Madden would decide to maintain the current roof and not replace it.

Councilmember Gill clarified there was a plan that had been approved and was willing to extend it an additional two years because of the hard economic times.

Mr. Gill stated this was a major commercial corridor in Leawood and noted this would be the only shake shingle style roof on the corridor. Mr. Gill felt Council had been consistent in trying to bring a high level of standards and apply them uniformly to Leawood.

Mr. Wendlandt agreed with the quality of Leawood; however, felt the Madden McFarland property was unique.

Councilmember Azeltine thought Mr. Madden had stated he would leave the current roof in place.

Mr. Wendlandt stated Mr. Madden didn't say that; however, noted they could end up doing that if they couldn't get a roof approved.

Mr. Madden stated he was reluctant to do so; however, was willing to install the slate roof in dark brown. If Council doesn't agree, the roof will remain as is.

Mr. Azeltine clarified that if they did not receive six votes, the present roof would remain. He felt this could be remanded to the Planning Commission for further review of the plan two years ago, rather than hold it "hostage" to receive elements that were discussed at that time.

Mayor Dunn noted that could be an option if the current motion wasn't approved.

Mr. Madden felt he shouldn't need to address other issues that didn't pertain to the request this evening.

Mayor Dunn clarified for Mr. Rasmussen that the motion on the floor was to give the additional two year extension and to approve the simulated slate roof in the "Brownstone Classic." Mayor Dunn noted if the motion failed, she would recommend a remand to the Planning Commission.

Mr. Wendlandt asked if Council could withdraw the motion and change the language in the direction he had hoped they were headed.

Mayor Dunn noted there wasn't interest in doing this; however, a different motion could be put forth if this one failed.

City Clerk Deb Mansfield reread the motion on the floor: A motion to approve the "Brownstone Classic" slate roof and to grant the applicant's request for the additional two years on the sunset was made by Councilmember Gill; seconded by Councilmember Azeltine. The motion failed following a vote of 4-4. Yea: Councilmembers Cain, Rawlings, Gill and Azeltine. Nay: Peppes, Bussing, Rasmussen, and Filla.

A motion to remand this to the Planning Commission was made by Councilmember Gill; seconded by Councilmember Rawlings.

Mr. Gill requested the Planning Commission review the following:

1. Precedent of the shake shingle roof on the 135th Street Corridor and the implications it has for the remaining corridor.
2. Whether it should be a permanent or interim approval.
3. Extending the sunset so that the applicant has five full years to fulfill the hopes of the expansion.

Councilmember Peppes requested that the Planning Commission also review some of the issues that were made by him and Councilmember Bussing regarding the approval of the plan from February, 2007.

The motion to remand carried following a unanimous vote of 8-0.

[From the January 13, 2009 Planning Commission meeting]

- C. **Resolution No. 3167** approving a Revised Final Plan for Mission Farms Trash Enclosure, located approximately at 105th Street and Mission Road (PC Case # 85-08) – *[Continued from the February 2, 2009, Governing Body meeting]*

Doug Weltner, Saddle Properties, stated he was the developer of Mission Farms located at 105th and Mission Road. He gave a presentation with the reasons they were choosing the dumpster location.

There are two buildings with 30 residential condominium units on top of each building for a total of 60. This was originally designed with the City's input to have trash compactors located in each building. A trash shoot was designed that went up to the second and third floor of the buildings and there is also a trash room located in each hallway of each corridor on each residential floor. When restaurants use compactors, it is required in almost every shopping center that they dump the trash every day. No matter how much deodorizing is done, the compactors have an odor from the trash. There was a connection to the second and third floor corridor via the shoot. They had tried many things to eliminate the smell of the compactor.

Staff allowed them to place some dumpsters on the outside edge of the north parking lot. The proposal this evening is to allow this to become the permanent location. Staff would like the dumpsters to remain in one location against the highway, which is quite a distance from these two buildings.

The Planning Commission stipulated that they add some landscaping and Mr. Weltner stated they were willing to do that. The containers that sit inside the dumpster enclosures are 6 foot high, the gates will be 8 foot and the walls will be 8 foot-6 inches high. To alleviate any smell, they planned to operate these with daily service, which was also a stipulation by the Planning Commission. He stated there were three developers on site and they have all agreed that this is the best proposed location for the dumpsters.

Mr. Weltner stated the reason they did not agree with staff was because they wanted to have two locations. It makes it easier and more practical to manage several different restaurants. He indicated he had more restaurants in these two buildings than any other location of the project.

If they put the dumpster against the highway, employees of the restaurants will need to walk 670 feet to dump the trash, which is equivalent to two football fields. This would run directly through their main street. If they are allowed to keep them on the outer edge of the north parking lot, it is only 170 feet from the back door.

Mr. Weltner noted they had received negative comments of the potential smells and visuals and stated they had told everyone they were a mixed-use district with restaurants that are open past 9:00 P.M. The people that choose to live in this location are fully aware of this.

He indicated the only item they didn't agree on with the Planning Commission was the trellis. They don't look appropriate and trucks and gates tend to hit them. With the height of 8 foot, a person on the second or third floor cannot see the dumpster inside the unit. He indicated he was willing to install the trellis if Council felt it was needed.

Mayor Dunn indicated that removing the trellis would be an override of the Planning Commission and would require a super majority vote.

Councilmember Gill confirmed with Mr. Weltner that some of the units were approved for 1 ½ stories.

Councilmember Filla asked if they had considered recycling and if the former shoots would be able to accommodate any recycling materials.

Mr. Weltner stated they weren't concerned with the trash from the residences and the trash locations for them would remain inside. He indicated they currently have recycling programs on site.

Councilmember Peppes asked if Mr. Weltner wanted multiple locations for the dumpsters. Mr. Weltner indicated he already had a dumpster for the "Zest Restaurant" located on the southeast corner of the building next to the highway and didn't want anyone coming through the central location with trash.

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

Mayor Dunn clarified that this motion would include installing the trellis.

Councilmember Cain agreed to the location Mr. Weltner was proposing; however, noted she would like for them to consider an enclosed unit with venting on top.

Mayor Dunn asked if the trellis was preferred over the roof type structure Ms. Cain was referring to.

Mr. Weltner indicated if they added a roof, it would only draw attention to it and would lock in odors.

The motion carried following a unanimous vote of 8-0.

12. **OLD BUSINESS** – None.

13. **OTHER BUSINESS** – None.

14. **NEW BUSINESS**

- A. **Ordinance No. 2384** authorizing and providing for the acquisition of lands or interests therein by condemnation for the Roe Avenue Improvement Project, between 140th and 143rd Street [CIP # 80189] [Roll Call Vote]

Perry Puccetti, 14244 Granada Court, felt the City had other things that were considered a higher priority to spend over \$1 Million. He heard there was a speeding and cut-through problem and that the City needed this extension on Roe in order to receive a better emergency response time. He spoke with the Fire Chief, as well as the Police Chief, and was told there is not a speeding or cut-through problem. The Fire Chief had indicated that their standard response time should be less than 5:00 minutes and noted it had been 4 minutes and 38 seconds at this location. He hadn't heard from anyone that their lives had been put in jeopardy to justify spending over \$1 Million for a road that basically goes nowhere.

The road improvement will decrease property values in the Worthington Subdivision and will increase cut-through problems. There is not a traffic guard at the intersection of 143rd and Mission Road and traffic is very heavy; he was concerned for kids that go to school in this area.

Mr. Puccetti didn't feel it was appropriate for his neighbor that has been a Leewood resident for 20 years to have his property taken by eminent domain. The neighborhood will be destroyed and 100 year old trees will be removed.

Mr. Puccetti stated that at the present time, this Country has an incredible amount of debt that hasn't been seen in history and was concerned how the City would be able to pay-off the proposed project. He indicated he had sent e-mails and had gotten no response.

He didn't understand the driving force for this project and felt 143rd Street was a much higher priority. He asked Council to spend the money elsewhere or not at all.

Paul Florack, 14820 Juniper, stated he owned a vacant property in the Worthington Subdivision. Mr. Florack concurred with Mr. Pucetti's comments and wanted to address the timing issue. He didn't feel it was necessary to extend Roe to 143rd Street and indicated it is currently a two-lane road with no shoulder with a 30 m.p.h. residential speed limit.

Mr. Puccetti stated they had asked for a traffic study and have been informed there wasn't one. He requested a traffic study be done for the safety of their children.

Public Works Director Joe Johnson stated Roe Avenue was placed on the City's Capital Improvement Program [CIP] in late 2006. This was a goal of the City Council and was placed in the CIP through 2009. The majority of the project is financed by cash.

When the east half of the Worthington Subdivision was platted, they paid an excise fee for half of the construction cost. Currently, there is approximately \$1.1 Million in impact fees that would be put toward any debt on this project. Currently, the City has spent approximately \$160,000 in design fees. Construction has been estimated at approximately \$982,000.

The prices were estimated toward the end of last year when prices were higher. Depending upon the bidding, their schedule is to advertise in approximately four weeks. He indicated they had been informed it is a good time for contractors to place bids. There may currently be enough money in cash to fund the construction. There is approximately \$220,000 in the CIP that would be paid by debt or by other general revenue sources, depending upon what they can negotiate with Mr. O'Brien in obtaining the easements.

Mr. Johnson asked for approval from Council to move forward with the process for condemnation; however, indicated they were currently working with the property owner to come to an agreement and obtain the easements without cost to the City. They would obtain a future agreement for whatever the value of the easements and would be discounted to whatever the current street fee would be and then applied to his property. When the property is developed in the future, the outstanding balance would be paid to the City.

Mayor Dunn confirmed with Mr. Johnson that there was only one property owner that had not dedicated easements.

Mr. Johnson indicated the road is being constructed vertically to maintain the berm and the existing landscaping on the east side.

Councilmember Bussing asked when the widening for 143rd Street was scheduled. Mr. Johnson stated it had been pushed back to 2015. Mr. Bussing asked if there was a traffic study done other than the one done when the Church of the Resurrection did their expansion. Mr. Johnson stated generally, on these types of projects, traffic studies are not done. These roads are meant to be four-lane, especially to 143rd and 151st Street. They are described by ordinance as four-lane arterials. When Worthington was developed, it was decided not to extend it at that time and wait until the City felt the need or until the property on the west side was developed.

Mr. Bussing asked if Mr. Johnson recalled several discussions Council had with Church of the Resurrection regarding traffic and the necessity of the completion of Roe to 143rd Street. Mr. Johnson recalled the concern and addressed issues to minimize cut-through traffic through Timbers Edge in Overland Park and Worthington. At that time, the church requested the City consider extending Roe to 143rd Street.

Councilmember Rasmussen referred to the 143rd Street project and thought the only reason it was postponed until 2015 was because part of the money was coming from federal aide. Mr. Johnson indicated they were finishing the engineering and would be done in July or August with the design and would have plans ready to present to the Kansas Department of Revenue [KDOT]. He noted they would be applying for federal aide again.

Councilmember Azeltine confirmed with Mr. Johnson that Mr. O'Brien has the only property remaining that the City needed to get easements and right-of-way from. Mr. Azeltine asked what the appraised value was for all of the properties located there. Mr. Johnson estimated approximately \$4.50 per square foot for Mr. O'Brien and based on the easements approximately \$262,000. Mr. Azeltine confirmed with Mr. Johnson that if the City did the easements and right-of-ways on all sides, the estimated value would be approximately \$500,000.

Mr. Azeltine confirmed with Mr. Johnson that the project would be a total of approximately \$1.3 Million with the potential for another quarter of a Million in property costs for acquisition. Mr. Johnson stated the right-of-way and easements are only needed on the west side and were dedicated on the east side when Worthington was platted.

Mr. Azeltine referred to the next resolution with potential for a Special Benefit District [SBD] and asked about cost to the property owners. Mr. Johnson stated it was the City Administrator's recommendation that if they had to go through condemnation to obtain the easements, a SBD would be created and the cost of condemnation would be assessed back to the property owner over a 10-15 year period.

Councilmember Gill asked when they needed to have the road completed and why. Mr. Johnson thought it began when Church of the Resurrection made its major improvement and created a sanctuary to accommodate 7,000 people.

Mr. Gill stated he agreed with the need for the extension; however, addressed the timing issue. Mr. Johnson stated he had spoken with the police department and indicated people have driven off the end of Roe not realizing the road ends. There are red-diamond barriers that indicate the road is closed; however, they get knocked down and need to be replaced on a regular basis.

Mayor Dunn confirmed with Mr. Johnson that the City had already expended \$160,000 in design.

Mr. Gill confirmed with Mr. Johnson that this was the procedural step in the acquisition of rights; however, not the decision of when to construct the road.

Mr. Azeltine asked how many times people had driven off the road into the barriers. Mr. Johnson noted several times a year they have to replace the barricades.

Police Chief John Meier wasn't sure how many times this had occurred; however, there had been one incident since the beginning of the year.

Mr. Azeltine stated the City Council passed a resolution at the last meeting declaring it necessary to appropriate property for this project and noted he supported that because eventually this will become necessary; however, not now. Mr. Azeltine referred to Mr. Puccetti's comments and concurred that construction wasn't an urgent need. He felt the project on 143rd Street – Nall to Mission Road was a higher priority for the City and noted he would be voting against these resolutions.

Mayor Dunn noted the 143rd Street improvement project is approximately \$23 Million and it was recommended by the City Administrator to push it back due to the economic downturn.

Councilmember Bussing noted the purpose of the action this evening is to acquire the property and doesn't commit the City to move forward with construction. He felt it was prudent to acquire the land at this time since property values are depressed and they could get discounted prices.

Before a decision is made to construct the road, he thought they needed to review the notes on the development of the Church of the Resurrection and the assumptions that pressure would be put on Roe, Nall, 135th Street, and 143rd Street.

Mr. Puccetti noted this may have not been a typical situation for a traffic study to be done; however, felt this was a more complex traffic situation than normal. He also stated the volume of traffic on 143rd Street had increased significantly and was concerned about people using their neighborhood as a cut-through. He still didn't understand the benefit of extending Roe and felt 143rd Street was a much larger issue. He requested Council to involve the community for their input.

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

- B. **Resolution No. 3168** authorizing the improvement of a certain section of Roe Avenue, a Main Trafficway, between 140th Street and 143rd Street within the City of Leawood; providing for issuance of General Obligation Improvement Bonds of the City to pay the costs thereof and for the issuance of Temporary Notes of the City pending the issuance of said Bonds; and expressing the intent to reimburse costs of the project so incurred from proceeds of General Obligation Bonds; and authorizing and improving certain related matters and actions

Ms. Bennett noted Finance Director Kathy Rogers had given her the amounts for the two blanks in the ordinance. Under section two, the amount should be \$1,575,422 and under section three, it is \$460,000. This resolution allows the City to reimburse themselves from benefit district debt, should this be the avenue chosen to finance the condemnation of the right-of-way and easements that are necessary.

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

Mayor Dunn confirmed with Mr. Johnson that although they were authorizing it, there was a possibility they would not need to bond the construction costs.

The motion carried following a vote of 7-1. Nay: Councilmember Azeltine.

- C. Schedule a Governing Body Executive Session on Monday, February 16, 2009, immediately following the regular Governing Body meeting to discuss matters related to the acquisition of real property – ***CONTINUED TO THE MARCH 2, 2009, GOVERNING BODY MEETING***

There being no further business, the meeting was adjourned at 10:25 P.M.

ADJOURN

Debra Mansfield, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk