

**Minutes**

DVD No. 218

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, July 20, 2009. Mayor Peggy Dunn presided.

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

**Mayor/Councilmembers absent:** None.

**Staff present:**

Scott Lambers, City Administrator  
Chief John Meier, Police Department  
Mark Andrasik, Info Systems Director  
Richard Coleman, Comm. Dev. Director  
Lovina Freeman, HR Director  
Deb Harper, City Clerk

Patty Bennett, City Attorney  
Joe Johnson, PW Director  
Chris Claxton, P&R Director  
Mark Klein, Assistant Planning Director  
Pam Gregory, Deputy City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted there was an addition to the agenda.

- \* Item No. 5 - Presentations/Recognitions

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

**National Parks & Recreation Month, July 2009**

Mayor Dunn read and presented the proclamation to Parks and Recreation Director Chris Claxton.

**5. PRESENTATIONS/RECOGNITIONS -**

Fire Chief Ben Florance introduced and welcomed Firefighter Jason Parker to the Leawood Fire Department.

**6. SPECIAL BUSINESS**

*[from the June 23, 2009 Planning Commission meeting]*

- A. **Ordinance No. 2399** amending § 16-2-8.2 (Flood Hazard Overlay District) of the Leawood Development Ordinance [LDO], pertaining to the Flood Hazard Overlay District. (PC Case # 35-09) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried following a unanimous roll call vote of 8-0. Yea: Councilmembers Rasmussen, Gill, Peppes, Cain, Rawlings, Azeltine, Filla, and Bussing. Nay: 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. 2009-26 and 2009-27
- B. Accept Minutes of the July 6, 2009 Governing Body meeting
- C. Accept Minutes of the May 28, 2009 Ironhorse Advisory Board meeting
- D. Accept Minutes of the May 12, 2009 Parks and Recreation Advisory Board meeting
- E. Accept Minutes of the May 13, 2009 Historic Commission meeting
- F. Accept Minutes of the April 28, 2009 Leawood Arts Council meeting
- G. Approve purchase in the amount of \$33,600 to Challenger Teamwear, pertaining to soccer uniforms
- H. Approve issuance of Temporary Alcohol Permit to Rose Brooks for a fundraising event at Park Place, to be held on September 10, 2009, in accordance with Code § 3-216
- I. **Resolution No. 3236** calling for a Public Hearing to be held on August 17, 2009, to consider the vacation of a drainage easement, located on Lot 2, The Villaggio at Leawood, [Pawnee Place, LLC] a subdivision of land located in the City of Leawood, common situs address, approximately 137<sup>th</sup> & Roe Avenue
- J. **Resolution No. 3237** approving and authorizing the Mayor to execute a Consent to Assignment for the Maintenance Agreement between the City and Harris Corporation [f/n/a M/A-COM Private Radio Systems, Inc.] for the annual maintenance of police radio equipment
- K. **Resolution No. 3238** approving and authorizing the Mayor to execute a Second Amendment to that certain a Maintenance Agreement dated November 18, 2002, between the City and the City of Overland Park in the amount of \$37,134.34, pertaining to the Intergraph Software System for the Police Department [Intergraph Public Safety, Inc.]

- L. **Resolution No. 3239** accepting a Permanent Access Easement to the City from Lawrence D. and Janet L. Moran, for property located at 5100 W. 153<sup>rd</sup> Street, in connection with Ironhorse Golf Course
- M. **Resolution No. 3240** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the Kansas Department of Transportation [KDOT], pertaining to the 103<sup>rd</sup> Street from State Line to Mission Road Improvement Project; grading surfacing [46N-0449-01; Agreement No. 181-09]
- N. Declaration of surplus property; Kustom Signal Smart Radar Trailer; last 4 VIN/8796
- O. Police Department Monthly Report
- P. Fire Department Monthly Report
- Q. Municipal Court Monthly Report

Mayor Dunn requested to pull Item No. 7O for discussion.

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

7O. Police Department Monthly Report

Mayor Dunn asked Police Chief John Meier to comment on the increase in theft for June, 2009.

Chief Meier stated there had been an increase in shoplifting calls over the last three months. In the past, he thought store personnel would let shoplifters walk rather than hassle with them and thought new management was currently apprehending them. Of the 46 calls in June of 2009, 21 were shoplifting, compared to only two in June, 2008. The thefts are occurring at grocery stores and Town Center Plaza. He assured Council that cars and homes were not being broken into.

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

**8. MAYOR'S REPORT**

- A. Attended the Volunteer Center of Johnson County's 15<sup>th</sup> Annual Celebration, honoring Carol and Fred Logan as the 2009 Volunteers of the Year. Mayor Dunn congratulated them and numerous Leawood residents who have received this honor over the years.
- B. Mayor Dunn was joined by Councilmembers Rasmussen and Azeltine at a ribbon cutting ceremony, co-hosted by the Leawood Chamber of Commerce at the Village of Seville Capital Federal Bank, located at 131<sup>st</sup> and State Line. This is the second Capital Federal opened within Leawood's City limits in the last five months. She wished them much success.
- C. Mayor Dunn was joined by Councilmember Cain for the opening of the Leawood Stage Company's production of "Brigadoon," at Ironwoods Park. Mayor Dunn congratulated Leawood Stage Company Chairman Paul Anderson, Cultural Arts Coordinator April Bishop and the entire cast for a fabulous performance.

There were 60 people cast with 25 in the orchestra and 6,300 volunteer hours spent on this production. Thus far, there have been 7,000 in attendance with remaining shows through July 25<sup>th</sup>.

- D. Congratulated Boy Scout Troop 10 of Leawood on their great job organizing the mini-camp for Troop 12, a special needs scout troop, who are all students or graduates of Delano School, an alternative school for physically disabled and health-impaired kids from Kansas City, Missouri.

**9. COUNCILMEMBERS' REPORT- Councilmember Gill**

Request to refer to the Public Works Committee for consideration of installation of audio pedestrian crossing at 119<sup>th</sup> and Tomahawk Creek Parkway

A motion to refer this to the Public Works Committee for review was made by Councilmember Gill; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 8-0.

Request to refer to the Public Works Committee for discussion of coordinating/improving notices to homeowners when the City will be in their neighborhoods repairing streets and/or curbs.

A motion to refer this to the Public Works Committee for review was made by Councilmember Gill; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 8-0.

**10. STAFF REPORT – None.**

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION**

***[from the June 23, 2009 Planning Commission meeting]***

- A. **Resolution No. 3241** approving a Revised Final Site Plan for a tenant finish for Ranchmart - O'Neill's Restaurant and Bar, located on the northeast corner of 95th Street and Mission Road. (PC Case # 33-09)

Ron Shaffer, Prairie Village Mayor, RLS Architects, stated he was representing O'Neill's Restaurant and Bar and wanted to move the restaurant from Prairie Village to Leawood.

Brian Schorgl, O'Neill's Restaurant and Bar, indicated they plan to open in Leawood by the end of September and the last date at their current location will be on August 22<sup>nd</sup>.

Mayor Dunn welcomed O'Neill's to the City of Leawood and wished them much success.

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

- B. **Ordinance No. 2400** approving a Special Use Permit [SUP] for Leawood South Country Club - Tower-Co., located at 12700 Overbrook Road. (PC Case # 26-09) [Roll Call Vote]

Curtis Holland, Polsinelli Law Firm, represented Tower-Co., and asked Council to approve the transfer of ownership of the tower structure to Tower-Co. and they would operate the facility under a Special Use Permit [SUP] approved by the City. There are no changes proposed with the original user of the facility, Sprint/Nextel, and they will continue to maintain the ownership of the antennas and operate a facility there.

Mr. Holland indicated the original stipulations approved by the Governing Body would remain with the facility; however, asked if a stipulation could be added that any future transfer of ownership would go through the Governing Body for approval; however, waive the requirement of going through the entire process for the SUP. There is currently no plan for any future transfer on this facility.

Mayor Dunn confirmed with Mr. Holland that Tower-Co. was taking over approximately 3,000 Sprint cell towers across the country. Mr. Holland noted it was common for the structures to be owned by a company that wasn't a wireless provider.

Councilmember Azeltine assumed they would need to amend the Leawood Development Ordinance [LDO] to allow them to go directly through the Governing Body for approval. He asked if there would be a disadvantage to doing this for other types of SUP's.

City Attorney Patty Bennett stated the current ordinance allowed them to make it transferrable; however, they would need to refine it by making it contingent upon Governing Body approval. This is a case by case analysis. Councilmember Azeltine confirmed with Ms. Bennett that when the applicant originally applied for the SUP, they could have included a clause of transferability.

Community Development Director Richard Coleman stated the ordinance was written for multiple SUP's and by having them go through the SUP process, staff could address any problems in maintaining the stipulations.

Councilmember Rasmussen confirmed with staff that this SUP would not change for 5 years from the original date. Mr. Coleman clarified that if they add antennas to the tower, they would be required to return to the Governing Body for another SUP.

Mayor Dunn informed Mr. Holland that it had been Leawood's policy to not have the SUP run with the land because it gives another opportunity for the applicant to come before the Governing Body for dialogue and opportunity for citizens to speak. She confirmed with Mr. Holland they wanted to eliminate returning to the Planning Commission and having the interact meeting requirements.

A motion to pass the ordinance approving a SUP for Leawood South Country Club – Tower-Co., with an additional stipulation that any future transfer of ownership and the requirement of the SUP process would be waived, subject to Governing Body approval, was made by Councilmember Gill; seconded by Councilmember Filla.

Councilmember Azeltine confirmed with Mr. Holland that on any future application, they would include this as a stipulation.

Mayor Dunn felt the interact meetings and notice to the public was good to do because cell towers had been sensitive issues in the community. She was concerned that the public would not receive a notice under this new scenario, with exception to reading it in the media.

Mr. Holland indicated once the towers were in place, the public wasn't as interested in the renewal process or transfer of ownership.

Councilmember Peppes confirmed with Mr. Coleman that when the SUP is up for renewal in 5 years, the owner will need to go through the entire process again.

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

- C. **Ordinance No. 2401** approving a Preliminary Site Plan and Final Site Plan for Leawood South Country Club - Tower-Co., located at 12700 Overbrook Road. (PC Case # 26-09) [Roll Call Vote]

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

- D. **Ordinance No. 2402** approving a Special Use Permit [SUP] for Leawood South Country Club – Sprint Nextel, located at 12700 Overbrook Road. (PC Case # 27-09) [Roll Call Vote]

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

Mr. Holland asked that the same additional stipulation as stated in Item No. 11B be added to this ordinance.

Mayor Dunn confirmed this was for the antenna that returns to them every 5 years and included the equipment shelter.

Councilmember Peppes was concerned there could be an issue with the appearance of the tower and felt the Planning Commission could oversee this. Mr. Holland stated the design and type of antenna was a condition of approval and it would only be a change of ownership issue.

Ms. Bennett confirmed Mr. Holland was asking for the transfer of the SUP ownership that runs with each antenna to a new owner and would not create a new antenna for the tower. The same provisions that apply to the tower would apply to this; Council can choose to make it transferrable.

Councilmember Peppes wanted the ability to not accept the transfer to the new owner if the Council wasn't pleased with the way the grounds are kept.

Mr. Holland stated they were obligated to maintain all of the facilities that were subject to the SUP and if not, they would be subject to violation. Upon a transfer, these would be relevant issues and would be taken care of beforehand.

Councilmember Rasmussen asked if staff could indicate in the notice of transfer that this was a non-conforming antenna. He wanted assurance that the City doesn't lose the opportunity to modernize the antenna in the future.

Mr. Coleman stated they would still be subject to the Governing Body with the transfer of ownership and staff wouldn't have the knowledge of this latest technology. Currently, it stipulates "slim-line design only."

Mayor Dunn indicated this was the first time the City ever had a cell tower transfer of ownership and noted the current motion was to pass the ordinance without this added stipulation.

Councilmember Azeltine made a friendly amendment to the motion for an additional stipulation that future applicants would stipulate their desire to have a more seamless transfer of ownership when applying for the SUP's. The motion to pass the ordinance carried following a roll call vote of 7-1. Yea: Councilmembers Rawlings, Bussing, Azeltine, Cain, Gill, Filla, and Peppes. Nay: Councilmember Rasmussen. Mr. Rasmussen felt this solution didn't address his concern.

- E. **Ordinance No. 2403** approving a Preliminary Site Plan and Final Site Plan for Leawood South Country Club - Sprint Nextel, located at 12700 Overbrook Road. (PC Case # 27-09) [Roll Call Vote]

A motion to pass the ordinance with the same additional stipulation as stated in Item No. 11D and 7D was made by Councilmember Gill; seconded by Councilmember Bussing.

City Clerk Deb Harper asked if the same stipulation was applicable to the Preliminary Site and Final Site Plan even though the stipulation prior was referring to SUP's.

Ms. Bennett confirmed that the additional stipulation didn't need to be included in the Preliminary and Final Plan.

Councilmember Gill amended his motion to pass the ordinance without the added stipulation; seconded by Councilmember Bussing. The motion carried following a unanimous roll call vote of 8-0. Yea: Councilmembers Gill, Bussing, Rawlings, Peppes, Cain, Filla, Rasmussen, and Azeltine. Nay: None.

- F. **Resolution No.3242** approving a Final Site Plan for a tenant finish for Park Place - Michael Shae Salon & Day Spa, located at 11520 Ash Street. (PC Case # 15-09)

Jeffrey Alpert, Park Place Village, LLC, indicated this was a full service salon and day spa moving from Overland Park to Leawood.

Justin Bridges, Davidson Brown Architects, stated the materials used on the storefront were primarily made from 23% GFRC, a dense material suited for areas subject to rot and mold, 24% cast stone, 26% glass, and 26.5% stucco.

Mayor Dunn asked for clarification of the GFRC material. Mr. Bridges stated it was a dense material with a colored pigment that could be painted to match other materials used.

Mayor Dunn asked if there were other storefronts in Park Place with this same material. Mr. Bridges thought the majority of the divider spaces between tenants used the GFRC.

Councilmember Rasmussen was concerned that many of the architects in Park Place were ignoring the overall architectural design that was approved by the Governing Body.

Mr. Alpert thought Council was mostly concerned about the amount of stucco. The variety of materials is consistent with other storefronts and they try to maintain the percentages of materials with respect to the Governing Body; however, wanted consideration of the overall design.

Mayor Dunn confirmed with Mr. Bridges that the GFRC would be limited to the vertical pile asters and stucco would be used from the top of the window up, located higher than eight feet.

Councilmember Peppes confirmed with Mr. Bridges that the arch on the windows was made of built-out stucco that was lightweight and would not require reinforcement. The sides and below each window is cast stone.

Mayor Dunn noted that 11 of the storefronts in Park Place have 0% stucco and 3 of these have 50% masonry with a variety of other materials. It has always been Leawood's desire to use stucco as an accent material.

Mr. Alpert stated if they used masonry above the windows it would require steel reinforcement, would be too costly, and wouldn't allow the arched design. The arches will have a molding look and the darker color will create a shadow effect in the stucco.

Councilmember Rasmussen asked staff to express their concerns. Mr. Coleman thought this storefront had a masculine look and was concerned with the visible band of stucco along the top of the windows.

Councilmember Gill confirmed with staff that the full glass windows were approved by the Planning Commission, versus the half glass design reflected in the packet. Mayor Dunn confirmed that the window on the north elevation was 26% glass.

A motion to approve the resolution for a Final Site Plan tenant finish for Park Place – Michael Shae Salon & Day Spa was made by Councilmember Filla; seconded by Councilmember Azeltine.

Councilmember Bussing reiterated the concern of Councilmember Rasmussen wanting Mr. Alpert to adhere to the design of their original plan by using the correct percentages of high quality materials. Councilmember Gill concurred.

Mayor Dunn indicated this was a 4-3 vote of the Planning Commission and confirmed with Mr. Alpert that their desire was to use stucco mainly on the upper levels of Park Place. She reiterated comments of the other Councilmembers to adhere to the original plan.

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

- G. **Resolution No. 3243** approving a Revised Final Site Plan for Madden McFarland Interiors, located at the southwest corner of State Line Road and 135<sup>th</sup> Street. (PC Case # 06-09)

Matt Austin, Polsinneli Law Firm, stated this came before the Governing Body in February, and at that time, the Planning Commission unanimously recommended approval of a brown shingle-style roof. The Council voted that this return to the Planning Commission to review the following issues; the appropriateness of shingle-style compared to slate roofs; whether the stipulations that were part of the 2007 final plan should be part of this request; if the roof should be permanent or temporary; and if this change should effect the 5-year term limit on the final plans. They worked with staff to address these issues and have included all of the stipulations that were part of 2007 in this request and added a stipulation stating this will not restart the 5-year term of the final plan expiring and will expire in 2012. They plan to use slate roofing material and their request has no impact on the current approved plan from 2007, with the exception to changing the color of the slate roof from gray to brown.

In conclusion, Mr. Austin stated they agreed with Stipulation Nos. 1 through 27 and asked for approval of this Revised Final Site Plan.

Mr. Klein stated initially, this was approved for a gray roof; the applicant indicated at the time of their addition they would need to remove the roof and would re-consider their color choice.

Mr. Coleman thought Council would need to stipulate that once the applicant did the expansion, they would need to return to the gray roof.

Mr. Austin clarified that previously; they requested a shingle-style roof and were currently requesting a slate roof.

Councilmember Gill confirmed with staff there was no concern over this color choice.

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

Mayor Dunn confirmed with Mr. Austin they were using the “Tahoe Classic” color, which is a shade of brown.

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

- H. **Ordinance No. 2404** approving a Revised Preliminary Site Plan and Revised Preliminary Plat for Neighborhood Retail Containing a Bank with Drive-thru at 151st Street and Mission Road, located at the southeast corner of 151st Street and Mission Road. (PC Case # 28-09) [Roll Call Vote]

John Petersen, Polsinelli Shugart Law Firm, gave a presentation on behalf of Leawood Land Company. The property consists of approximately 5.46 acres, located on the southeast corner of 151<sup>st</sup> Street and Mission Road. This was previously before the Planning Commission and Governing Body requesting approval for a rezoning and preliminary plan to allow a CVS Pharmacy. This property has been zoned for retail use since 1999. At that time, the appropriate designation for a retail neighborhood center was CP-1. The resolution approved the site plan for up to 45,000 square feet, and the overall zoning ordinance reflected that the R-1 zoning was approved for The Reserve, the golf course, and other components at Ironhorse. There is a section in the same ordinance that zones this property CP-1. They preferred to build the pharmacy with an adjacent 6,000 square foot building for a total of approximately 19,000 square feet. This would have required a higher zoning category due to the drive-up window. The Planning Commission and Governing Body decided to not rezone the property.

The proposed plan does not request a rezoning and CP-1 has currently become SD-NCR, Planned Neighborhood Retail. They agreed to meet every requirement of the City’s code, be in compliance with the zoning ordinance, and received a unanimous recommendation for approval from the Planning staff and Planning Commission.

They plan to maintain most of the existing vegetation. There is a tiered retaining wall with landscaping in between to screen the parking lot from Ironhorse Court and thought with the differences in grade; it would be screened from the second floor of homes as well.

The building consists of approximately 24,000 square feet on the main level, with approximately 13,000 square feet on the second floor. This is not an approval of the architecture and Mr. Petersen agreed that at the final plan, they would apply more residential character. The drive access will be restricted to right-in, right-out only. There are a total of four drive-thru lanes, with one used as an escape lane.

In conclusion, Mr. Petersen stated staff recommended approval of this application with 31 stipulations and reiterated they agreed to all of them.

Councilmember Cain asked for clarification of the detention area and underground detention pond and how the water will be treated. Mr. Petersen stated it’s required by law that when their development is complete, water cannot leave their site at any greater speed or velocity than it does in its current state. The detention facility will remove the water off the site and time it so the downstream impact is 1%.

This design was presented by civil engineers and reviewed by City staff and outside consultants. It will be located under the south parking lot in a vault system and runoff will be directed toward it.

Councilmember Bussing asked how they planned to achieve the more residential look on the building. Mr. Petersen indicated they want a “prairie-style” themed shopping center and would include a pitched roof for additional residential character.

Councilmember Bussing asked the total square footage of the bank. Mayor Dunn clarified that the proposed two-story building is 24,000 square feet and the bank was part of this with the second floor used as office space. Mr. Petersen confirmed that the bank is 8,700 square feet and indicated they currently do not have a tenant.

Councilmember Filla confirmed with Mr. Klein they had previously allowed a deviation from the 10 acres at Mission Bank, located at 135<sup>th</sup> and Chadwick, and the Tomahawk Point office buildings, located at Tomahawk and College.

Councilmember Gill confirmed with staff that this meeting was being recorded on a DVD for future reference.

Mr. Petersen displayed the landscaping that would be visual from some of the homes. There will be a 3’ foot continuous hedge row at the top of the stone wall for further screening. Mr. Gill confirmed with Mr. Petersen they were planning to install this type of quality landscape and it would be maintained in the future.

Councilmember Rawlings confirmed with Mr. Petersen that the height of the stone wall from the street to the finished parking lot was 20’ feet.

Mayor Dunn confirmed with staff that a stipulation was omitted stating this Preliminary Plan has a two-year length of approval with a five-year approval on the final. Ms. Bennett confirmed this was in the ordinance; however, should also be added as a stipulation. Mr. Petersen acknowledged it in the ordinance.

Mayor Dunn concurred with Councilmember Gill’s comments regarding the landscaping.

Dennis Bryant, 3701 Ironhorse Court, stated if the property must be developed, the residents wanted it to reflect the character and integrity of the neighborhood. If developed inappropriately, it will bring their property values down and would lower tax revenue for the City and County. He was concerned of traffic issues and indicated there were no plans to widen 151<sup>st</sup> Street to the east and west or Mission, north of 151<sup>st</sup>. He also felt this development would only exacerbate an already existing stormwater runoff problem.

Alan South, 3709 Ironhorse Court, displayed a photo of his home stating it had flooded because of stormwater issues. He also felt the view of the landscaped wall from his home was unacceptable.

E.J. Hanson, 15438 Ironhorse Circle, stated he's lived there for the past 8 years and was attracted to it because of its residential nature. The traffic study reflects that over the past four months, there has been a 35% increase in traffic during the morning peak period, with a 59% increase during the afternoon peak period. Currently, between Nall and Mission on 151<sup>st</sup> Street it's two lanes; the long-term City plan reflects 151<sup>st</sup> will be upgraded to four lanes. He felt this would exacerbate traffic issues and would ultimately require traffic signals. It will take approximately 40,000 square yards of fill, or 5,000 dump truck loads, to fill in the site. He asked the Governing Body to deny this development and to consider rezoning the property residential, green space, or park ground.

R.E. Bothwell, 4521 Ironhorse Drive, concurred with Mr. Hanson's comments and felt this development was worse than the previously proposed CVS plan. There are several vacant commercial retail properties in Leawood and he felt this would remain vacant as well.

Spencer Kerley, 3109 Ironhorse Court, stated this was the only commercial property in Leawood surrounded by residential property in all four directions. It's an extremely large development on a very small footprint of land. He concurred with Mr. Bothwell's comments regarding vacant commercial retail properties and reiterated comments regarding declining property values. He was concerned with the safety of the neighborhood children regarding increased traffic and the 20' foot retaining wall.

Mari Lynn Garcia, 3105 Ironhorse Court, stated the developer asked the residents to reconsider and support the initial CVS plan. He was hoping to convince the majority of homeowners and would pull the current proposal. She asked that the Governing Body give their concerns serious consideration.

Ms. Garcia moved into The Reserve in June, 1996, and kept the original brochure when visiting the property. The brochure states "The potential of The Reserve, with its heavily wooded tract overlooking Leawood's Ironhorse Golf Course." The last paragraph states "In order to preserve the unique natural wooded beauty of the site; the developers enrolled The Reserve in the Global Relief Program, sponsored by the American Forest Organization, to recognize developers for taking an extraordinary step to maintain existing trees in new developments. All possible measures have been taken, from the innovative utility and street layouts to developer approval of each site plan, always with an eye to maintain the natural resources. This in depth planning will preserve the irreplaceable beauty of the forest while enhancing the value of your home and the uniqueness of The Reserve." She also quoted a memo from the developer; "This is an all cul-de-sac community, with only one-way in and out. This will greatly add to the beauty, privacy and seclusion of this community."

The residents felt what was once important, that 10 acres be required for any non-residential development, was being waived so every foot of land could be built upon. She reiterated concerns of traffic, landfill and water issues, and the impact on surrounding neighbors. As requested by the Planning Commission, the proposal for the stone wall was changed from 20' feet, to two-tiers with a maximum height of 13' feet.

In conclusion, she asked that the Governing Body protect them with appropriate building requirements and restrictions to minimize the decline in property values. She wanted this proposal held until the City had time to conduct appropriate studies and hold another public hearing to make these protections known to all concerned.

Mayor Dunn recognized Linda Thompson, 3201 Ironhorse Court, who relinquished her time.

Bill McKeen, 15141 MoHawk Circle, thought the developers presented a plan that satisfied all the requirements of the City and saved most of the trees on the property. They also addressed the concerns of water drainage. The developer is a resident of The Reserve and has always tried to do what's best. He felt the two-story building would blend with the surrounding properties and the second floor added architectural integrity.

Mr. McKeen thought the Council mistakenly rejected the CVS plan and indicated the developer had spoken with CVS and they were willing to make another presentation if welcomed by the residents. The residents held a meeting with the majority in favor of the multi-store project. He asked that the Governing Body approve the proposed plan of the multi-lane bank, or have CVS return for another presentation.

Mayor Dunn recognized Greg Allen, 15140 Pawnee Circle, who relinquished his time.

Mr. Petersen thought when the residents realized they had met all the design guidelines for this proposed plan, they then realized CVS was only one-third of the size. They don't want to withdraw the proposed plan and present a CVS plan again unless there was clear indication of support from the neighborhood.

Councilmember Gill asked if the neighbors precipitated the CVS issue or if it was precipitated in an e-mail from Mr. Simpson to the neighbors. Mr. Petersen indicated if he stated the neighbors precipitated it, he misstated and meant to say there was discussion among the neighbors.

In terms of traffic and stormwater, Mr. Petersen stated staff set conditions they were required to meet and fully intended to meet them all. In reference to the residents that indicated they didn't know this was going to be a commercial development, the City changed the zoning in 1999 from Agricultural, to Planned Neighborhood Retail, allowing the proposed uses. In reference to the 10 acre minimum, he argued that this ordinance was not applicable to property that was already zoned and was part of the 100's of acres zoned mixed-use. They are using approximately two-thirds of the site and leaving one-third in its natural state. Mr. Petersen also stated they were dedicating the additional right-of-way needed for the future improvement of Mission and 151<sup>st</sup> Street.

Mayor Dunn confirmed with Mr. McKeen that during the residents meeting, the majority favored this proposed plan over the CVS plan. He thought approximately one-third of the neighbors attended the meeting.

Councilmember Gill confirmed with staff that the original plan from 1999 for the 45,000 square foot retail shopping center was currently in place.

He asked if they had completed a recent traffic study. Mr. Gill was also concerned of Mr. South's water problems.

Public Works Director Joe Johnson confirmed that an engineer would provide documentation that Mr. South's existing water problems would not be exacerbated by this development. A traffic study was completed in August, 2008, and revised for this development, indicating an increase in traffic since that time.

Councilmember Rasmussen wanted follow-up regarding stormwater. Mr. Johnson stated they weren't changing the existing pipe system and would control the volume of water coming from this site not to exceed capacity.

Councilmember Filla wanted the developer to guarantee monetary responsibility for flooding that might occur to structures down-site if this got approved. She was also concerned with the deviation for less than 10 acres. The other properties mentioned that had a deviation, had commercial property around them and this is surrounded by residential. Ms. Filla stated she would be voting against it because of the complete re-architecture of the land that would be required. She didn't want the land to dictate how it's developed and thought it was an unfriendly design plan for residents wanting to walk to the retail establishments.

Councilmember Azeltine asked for clarification from staff regarding Mr. Petersen's comment that the 10 acre requirement wasn't applicable because the property was already zoned. Ms. Bennett stated this would be true if this was a Final Plan; however, since it's a Revised Preliminary Plan, under the Leawood Development Ordinance [LDO], it's considered an act of rezoning, subject to the 10 acre rule.

Councilmember Azeltine confirmed with staff that the plan from 1999 was in place before the ordinance was changed to require sunsets. Mr. Klein noted there were still a few of these existing along 135<sup>th</sup> Street; however, some have been developed with new plans. Mr. Azeltine felt this was something the Governing Body should consider in the context of their Master Plan.

A motion to deny this Preliminary Plan was made by Councilmember Filla; seconded by Councilmember Azeltine.

Councilmember Azeltine was confused and expressed his concern that the developer and/or law firm would try to manipulate the system in regard to the CVS and proposed plan. Mr. Petersen stated this was a mischaracterization of the record. Mr. Azeltine thought as it appeared, it was troubling. He concurred with Ms. Filla and felt if the land needed such a substantial amount of fill, it may not be suitable for this type of development.

Councilmember Azeltine referred to the minutes of the Planning Commission meeting and asked why none of the residents spoke at the public hearing. The residents indicated they didn't receive a notice of the meeting or they would have attended.

Mayor Dunn clarified that notice was properly done and notice is only given for the first meeting and is not required for a second meeting.

Mr. Petersen didn't understand comments made by Mr. Azeltine and they purchased this property in anticipation of developing it in accordance with the City's requirements and had submitted two applications in strict compliance. The CVS plan was denied and the proposed plan has an additional 25,000 square feet. This wasn't their first preference and he felt CVS would have been the better plan. Mr. Petersen stated they weren't trying to manipulate any system, other than trying to protect their property rights.

Councilmember Azeltine stated he was voting against the deviation from the 10 acres. Mr. Petersen stated their options would be the original plan of the retail shopping center that would be worse for the neighbors, or to give it away for public use. Mr. Azeltine felt Mr. Petersen's comments proved that the CVS plan was used as an ultimatum.

Councilmember Bussing felt Mr. Petersen laid out an excellent case for the development and had met every issue the City had. The more objective issues expressed by the residents will be addressed with the Final Plan or in the future. The traffic issue will be mitigated once 151<sup>st</sup> Street and Mission Road is widened and signals are installed. Staff relies upon professional engineers for stormwater issues. Any project built on this site will require a retaining wall, and felt the applicant tried to mitigate the view by breaking it up and providing extensive landscaping. Mr. Bussing wasn't trying to minimize the residents concerns; however, the developer had met all of the guidelines and he couldn't deny it.

Councilmember Gill stated he wouldn't support denial of the application; however, wished they could reconsider the property in regard to the millions of dollars in real estate. He felt the existing Preliminary Plan was worse than the proposed one and if their intention was to force a revisiting of CVS, he wouldn't support it. Mr. Gill expected their landscape plan to be as extensive as it was represented.

Councilmember Rasmussen confirmed with staff that traffic signals were partially paid by developers and there was consensus that this intersection would require a traffic signal in the future. Mr. Johnson confirmed they consider the traffic generated by the development and only install signals when warranted.

Mayor Dunn addressed concerns of the residents wanting another public hearing and clarified there are opportunities for citizens to speak at every City Council meeting. She wanted to assure them that if this development got approved, they would have another opportunity to speak in the future.

Councilmember Gill confirmed with staff that all appropriate notices were given.

Mayor Dunn confirmed that the motion on the table recommended denial and, if approved, it would be an override of the Planning Commission's recommendation for approval and would require six votes to pass.

Ms. Bennett confirmed the ordinance didn't require a roll call vote since the motion was recommended for denial.

The motion to deny this Revised Preliminary Plan failed following a vote of 3-5. Yea: Councilmembers Azeltine, Filla, and Cain. Nay: Councilmembers Bussing, Peppes, Rawlings, Gill, and Rasmussen.

A motion to pass the ordinance was made by Councilmember Rawlings with an additional stipulation that the Preliminary Plat will lapse in two years if not acted upon; seconded by Councilmember Bussing. The motion carried following a roll call vote of 6-3. Yea: Councilmembers Rawlings, Bussing, Peppes, Gill, Rasmussen, and Mayor Dunn. Nay: Councilmembers Azeltine, Filla, and Cain.

- I. Ordinance approving the Planning Commission's recommendation for denial of a Revised Final Site Plan for State Line Executive Office Park, located at 8010 and 8014 State Line Road. (PC Case # 31-09) [Roll Call Vote]

Jim Lichty, Archetype Design Group, stated the application comprised of the entirety of State Line Executive Office Park; 8010, 8012, 8014, and 8016. In 2005, the owners decided to replace one of the shake/shingle roofs on each of the four buildings every two years. A permit was issued for Building D in 2005 with a Timberline Shingle Prestique roof, which was on the approved material list. In 2007, a permit was issued for Building B for the same material. In March, 2009, they applied for permits for the remaining two buildings for the exact same roofing material and were denied by the Planning Commission and asked to submit a Revised Final Development Plan. They filed an application with the Board of Zoning Appeals [BZA] and were denied as well and decided to return through the planning process. The Planning Commission denied the application based upon an ordinance adopted on May 26, 2009, outlawing timberline shingles on commercial buildings.

In conclusion, Mr. Lichty asked Council to approve the Revised Development Plan for the entire office park based upon their application being made well in advance of the change in the ordinance. They obtained a petition with signatures from neighboring tenants with support.

Property owner, Willard Snyder, stated the remaining roofs needed replaced. The previous permits were issued in error and he didn't understand how this happened since these were two years apart and the materials were on the approved list. He thought it was a legal issue and wasn't sure if it applied to when they submitted the application, or as the LDO currently stands. The City Attorney informed him that the Kansas Statute states once the permit's issued and there's been substantial completion of the project, then it's the law as it stands at that time. He felt 50% completion should be considered as substantial and wanted the roofing to be consistent in the complex.

Councilmember Filla confirmed with Mr. Snyder that the manufacturer of the Timberline Prestique Shingle roof states they should last approximately 50 years.

Councilmember Bussing concurred that the roofs should be consistent and thought when they were replaced again in the future; the owners would adhere to the City's requirements at that time.

A motion was made by Councilmember Bussing to override the Planning Commission's recommendation for denial and approve the applicants request for a Final Development Plan, located at 8010, 8012, 8014, and 8016 in the State Line Executive Office Park; seconded by Councilmember Filla.

Mayor Dunn confirmed with Ms. Bennett that they could approve something that had been outlawed by the City's ordinance; however, would require a revision to the ordinance to grandfather in pending applications. Ms. Bennett thought they may want to include that any revisions to the plan in the future would require them to come into compliance with the then existing roofing ordinance. Mr. Bussing stated with any application in the future, they would be required to meet the City's requirements.

A motion to extend the Governing Body meeting for a period of 30 minutes was made by Councilmember Bussing; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

Councilmember Gill confirmed with Mr. Lichty they had applied for the permits separately, one in 2005 and 2007, and at that time they were in complete compliance with those permits and hadn't applied for the other building permits.

Mr. Coleman clarified for Council that in 2005 they received a permit for a commercial re-roof, and in 2007, a residential re-roofing permit was issued in error by staff.

Mayor Dunn asked if there was a commercial grade roof that was in compliance with the current ordinance that would look the same as the Timberline Prestique. Mr. Coleman stated there was one that would look similar from a distance, but a closer view would be obviously different.

Councilmember Gill asked if they could achieve this without having to re-write the entire code. Ms. Bennett stated the building official couldn't legally issue a permit because the roof violates the LDO and they would need to re-write the provision.

Mr. Lambers stated if the applicant would have gone through the planning process and submitted building plans and then the ordinance changed, staff would have grandfathered them in because it would have constituted substantial completion; however, they were still in the planning process when this ordinance went into effect and it didn't meet this threshold.

Mayor Dunn thought they should continue this to a future meeting for further review by staff.

Councilmembers Bussing and Filla withdrew their motion to approve the applicants request for a Final Development Plan.

Councilmember Bussing made a motion to continue this to the August 3, 2009, Governing Body meeting for further review by staff; 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 on Monday, October 19, 2009, at 6:00 P.M., to Discuss Informational Signs

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

- B. Schedule a Governing Body Work Session on Monday, August 10, 2009, at 6:30 P.M., to Discuss Transportation Development District [TDD] for One Nineteen Development Project, located at 119<sup>th</sup> and Roe Avenue [Project # 80456]

A motion to approve the Work Session was made by Councilmember Gill; seconded by Councilmember Filla.

Mr. Lambers stated this meeting was tentative upon information contained in the July 25<sup>th</sup> sales tax report staff would receive on July 27<sup>th</sup>.

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

- C. Schedule an Executive Session immediately following the Governing Body meeting to discuss a personnel matter.

A motion to recess into Executive Session at 11:15 P.M. for a period of 15 minutes was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

The Governing Body reconvened into regular session at 11:30 P.M.

A motion to adjourn the regular session at 11:30 P.M. was made by Councilmember Filla; seconded by Councilmember Azeltine.

**ADJOURN**

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Debra Harper, CMC, City Clerk

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Pam Gregory  
Recording Deputy City Clerk