

Minutes

DVD No. 241

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 Tuesday, September 7, 2010. Mayor Peggy Dunn presided.

Councilmembers present: Julie Cain, Andrew Osman, Gary Bussing, Lou Rasmussen, James Azeltine, Debra Filla, and Jim Rawlings

Mayor/Councilmembers absent: None

Staff present: Patty Bennett, City Attorney	Joe Johnson, PW Director
Chief Ben Florance, Fire Department	Chris Claxton, P&R Director
Captain Dale Finger, Police Department	Lovina Freeman, HR Director
Richard Coleman, Comm. Dev. Director	Deb Harper, City Clerk
Mark Klein, Assistant Planning Director	Pam Gregory, Assistant City Clerk
Scott Smith, Web Master	

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modification to the agenda:

- Staff Comment – Item No. 12A
- Addition of Item No. 9C – Report from Councilmember Gary Bussing

A motion to approve the amended agenda was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 7-0.

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 3 MINUTES.

4. PROCLAMATIONS

Constitution Week, September 17-23, 2010

Mayor Dunn proclaimed the week of September 17-23, 2010, as Constitution Week in the City of Leawood, and asked the citizens to reaffirm the ideals the Framers of the Constitution had in 1787.

5. PRESENTATIONS/RECOGNITIONS – None

6. SPECIAL BUSINESS

- A. Mayoral Appointment of Councilmember Julie Cain for replacement of Presiding Officer position for the period from August, 2010, through October, 2010, due to the resignation of Councilmember Mike Gill, effective August 31, 2010

A motion to approve the Mayoral Appointment of Councilmember Julie Cain for replacement of Presiding Officer position from August, 2010, through October, 2010, due to the resignation of Councilmember Mike Gill was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0.

- B. Mayoral Appointment of Councilmember James Azeltine as Public Works Committee Chairman, due to the resignation of Councilmember Mike Gill, effective August 31, 2010

A motion to approve the Mayoral Appointment of Councilmember James Azeltine as Public Works Committee Chairman, due to the resignation of Councilmember Mike Gill was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 7-0.

- C. Approve form for RFP/RFQ for Architectural/Engineering Services for the Justice Center to be located at 117th & Tomahawk Creek Parkway; to include a member of the Governing Body on the selection panel

A motion to approve the form for RFP/RFQ for Architectural/Engineering Services for the Justice Center was made by Councilmember Rasmussen; seconded by Councilmember Bussing.

Councilmember Rasmussen noted he had spoken with City Attorney Patty Bennett regarding coordinating the architectural services with the Arts Council. Ms. Bennett stated this would not change the RFP/RFQ according to City Administrator Scott Lambers interpretation of this policy. This is an architect to be retained for the art project, as opposed to a construction project. The policy discusses a member of an Artist Selection Committee for a project. If the City has retained a specific architect/designer for this project, that architect/designer will sit on the selection committee. The architect/designer will work with City staff and will include a representative of the Arts Council.

Mayor Dunn confirmed with Ms. Bennett that the art piece would be placed on the site; however, if the design of the building were to encompass an art display component as well, the architect/designer could work with the staff liaison of the Arts Council to ensure it fits their needs.

Councilmember Azeltine felt with the magnitude of this project, a Governing Body member should be chosen by the Mayor and included on the selection panel.

Mayor Dunn preferred that the entire Governing Body act as the Board of Directors and stated they would receive ongoing progress reports. She preferred to keep the same selection process that was used for the selection of the Owner's Representative.

Mayor Dunn thought as a whole, they could serve in a better capacity by staying in the judicial legislative role as the Governing Body, than if being lobbied in the community, as the lobbying had already begun.

Councilmember Azeltine suggested they include a Governing Body member to ensure they are intricately involved because of the importance of the project.

Mayor Dunn confirmed with Mr. Lovetere and City staff that they would ensure excellent lines of communication to the Governing Body throughout the duration of the project. Mr. Lovetere noted if they include a member from the Governing Body, there would be a time commitment involved that could include several meetings.

Councilmember Filla concurred with Mayor Dunn to let the City staff and professionals do their job.

Councilmember Osman concurred with Councilmember Azeltine and stated critical decisions will be made on a major project and it shouldn't be taken lightly.

Councilmember Rasmussen asked how the panel planned to "rate" the architectural firms that are interviewed. Mr. Lovetere stated their purpose was to help guide the panel in the selection process and for this particular project, they need a top ranked firm. They will have ideas on what to look for; however, this was intentionally left vague so the firm being interviewed could explain their approach to the project.

Ms. Bennett clarified that the RFP/RFQ would be placed on the City's website and they would also publish a notice.

Councilmember Rawlings concurred with Mayor Dunn and felt they didn't need to micro-manage the project.

Mayor Dunn stated this selection process had been done twice for this project and the outcome was outstanding. She preferred to continue this process and had complete confidence in the professionals.

Mr. Lovetere reiterated they would make monthly financial and physical progress reports to the Governing Body and could provide additional reports as needed.

Mayor Dunn stated if the majority of the Council felt they should include a Governing Body member on the architect selection panel, it could be added as part of the motion.

Councilmember Azeltine amended the motion to include a member of the Governing Body on the architect selection panel to be appointed by the Mayor and confirmed by the City Council; seconded by Councilmember Osman. The motion carried following a vote of 4-3. Yea: Councilmembers Azeltine, Osman, Rasmussen, and Cain. Nay: Councilmembers Bussing, Rawlings, and Filla.

The motion to approve the form for RFP/RFQ for Architectural/Engineering Services for the Justice Center carried following a unanimous vote of 7-0.

Mayor Dunn confirmed with Ms. Bennett it would not delay the process by waiting to appoint a Governing Body member at the September 20, 2010, meeting.

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 2010-31, 2010-32, and 2010-33
- B. Accept minutes of the August 16, 2010 Governing Body meeting
- C. Accept minutes of the August 16, 2010 Governing Body Work Session
- D. Accept minutes of the August 2, 2010 Governing Body Work Session
- E. Accept minutes of the July 27, 2010 Arts Council meeting
- F. Accept minutes of the July 22, 2010 Ironhorse Advisory Board meeting
- G. Accept minutes of the July 13, 2010 Historic Commission meeting
- H. Accept minutes of the July 13, 2010 Parks and Recreation Advisory Board meeting
- I. Accept minutes of the July 8, 2010 Sustainability Advisory Board meeting
- J. Accept minutes of the July 7, 2010 Bicycle Friendly Committee meeting
- K. Accept minutes of the June 28, 2010 Joint Governing Body/Budget Committee meeting
- L. Approve renewal of Retail Liquor Store License for Ranchmart Wine & Spirits, located at 3748 W. 95th Street
- M. Approve 7th and Final Payment in the amount of \$15,700 to Amino Brothers Construction, pertaining to the Roe Avenue Improvement Project between 135th & 143rd Streets [Project # 80189]
- N. Approve Change Order No. 2 in the amount of \$73,000 to O'Donnell & Sons Construction, pertaining to the 2010 Residential Mill & Overlay Project [Project # 70008]
- O. Approve Change Order No. 1 in the amount of \$35,600 to Linaweaver Construction pertaining to the 2010 Residential Reconstruction Project [Project # 80210]
- P. Approve Change Order No. 1 in the amount of \$6,945 to Miles Excavating pertaining to the 103rd Street Mill & Overlay Project between Mission Road and State Line Road
- Q. Approve co-op bid in the amount of \$22,706.00 from Shawnee Mission Ford for purchase of Parks & Recreation vehicle [flood replacement- Unit # 601]

- R. Approve co-op bid in the amount of \$24,773.00 from Olathe Ford for purchase of Parks and Recreation vehicle [flood replacement-Unit # 604]
- S. **Resolution No. 3454** accepting a Permanent Storm Sewer Easement from Mary Gorman, 9702 State Line, [Leawood Estates, Lot 371] pertaining to the 97th Street Storm Sewer Project
- T. Declaration of Surplus Property; 1996 Roadbuilder Trailer, last 4 VIN/7016
- U. **Resolution No. 3455** approving a Final Site Plan for a Tenant Finish for Town Center Plaza – Clarks, located at 5000 W. 119th Street, Suite 400. (Planning Commission Case # 75-10) [*from the August 24, 2010 Planning Commission meeting*]
- V. **Resolution No. 3456** approving a Revised Final Sign Plan for Market Square Center – China King, located at 3634 W. 135th Street (Planning Commission Case # 74-10) [*from the August 24, 2010 Planning Commission meeting*]
- W. **Resolution No. 3457** approving a Final Sign Plan for Parkway Plaza – Sazzy's, located at 4800 W. 135th Street (Planning Commission Case # 76-10) [*from the August 24, 2010 Planning Commission meeting*]
- X. **Resolution No. 3458** approving a Final Site Plan for Plaza Pointe – Crossfirst Bank Leawood, located at the southwest corner of Roe Avenue and 135th Street (Planning Commission Case # 78-10) [*from the August 24, 2010 Planning Commission meeting*]
- Y. **Resolution No. 3459** approving a Final Sign Plan for Parkway Plaza Offices – Laser Sharp Fitness, located at 13420 Briar (Planning Commission Case # 79-10) [*from the August 24, 2010 Planning Commission meeting*]
- Z. **Resolution No. 3460** approving a Final Plat for Bi-State/Centennial Park – Leawood Highlands Business Center 2nd Plat, located north of 141st Terrace and east of Overbrook Road (Planning Commission Case # 80-10) [*from the August 24, 2010 Planning Commission meeting*]
- AA. **Resolution No. 3461** approving a Final Sign Plan for Somerset Shops – Dog Pawz, located at 7960 Lee Boulevard (Planning Commission Case # 82-10) [*from the August 24, 2010 Planning Commission meeting*]

Mayor Dunn requested to pull Item No. 7E and Councilmember Bussing pulled Item No. 7F for discussion.

A motion to approve the remaining Consent Agenda items was made by Councilmember Rasmussen; seconded by Councilmember Osman. The motion carried following a unanimous vote of 7-0.

- 7E. Accept minutes of the July 27, 2010, Arts Council meeting

Mayor Dunn noted that the M & I Bank show originally scheduled for September 17, 2010, had been changed to October 1, 2010.

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

- 7F. Accept minutes of the July 22, 2010, Ironhorse Advisory Board meeting

Councilmember Bussing stated there was several misrepresentations regarding statements attributed to him and requested to continue this item so he could investigate the source of those statements.

A motion to continue Item No. 7F to the September 20, 2010, Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0.

8. MAYOR'S REPORT

- A. Councilmember James Azeltine stood in for Mayor Dunn at a celebration event when Wachovia had their roll-out of their name change to Wells Fargo. A number of philanthropic donations were given to some non-profit organizations in the Greater Kansas City area, including The American Red Cross, Heartland Habitat for Humanity, Big Brothers Big Sisters and Junior Achievement of Middle America. Mayor Dunn congratulated Wells Fargo and thanked Councilmember Azeltine for filling in.
- B. Councilmember Lou Rasmussen stood in for Mayor Dunn at a ribbon cutting ceremony for Wild Birds Unlimited, located in Camelot Court, sponsored by the Leawood Chamber of Commerce. Mayor Dunn welcomed them to Leawood and thanked Councilmember Rasmussen for filling in.
- C. Attended a Council of Mayors meeting in De Soto, Kansas, hosted by De Soto Mayor David Anderson. Mayor Dunn passed the gavel as the outgoing Chairman of the Council of Mayors for Johnson & Wyandotte Counties to Mayor Anderson. Updates from the lobbyist of Overland Park reported income tax receipts and sales tax revenues were ahead of forecast for the State of Kansas.
- D. Reminder of the Council of Mayors December Social on December 8, 2010. The location was chosen by Mayor and CEO Joe Reardon of Kansas City, Kansas, and Wyandotte County, and will be held at the Reardon Center.
- E. Mayor Dunn, along with hundreds of other friends, attended the funeral services of a great man and Leawood resident, Norman Polsky, who passed away on September 2, 2010. He and his wife Elaine were former Johnson Countians of the Year. Mayor Dunn offered sincere sympathies to his family.
- F. The City of Leawood employees participated in a "Socks in September" program, organized by Karry Rood of the Finance Department and the Employee Activities Committee. Final totals included \$115 in cash donations and 310 pairs of socks. In the past, these have gone to groups such as TLC for Children and Families, Cross-lines, Della Lamb, Hope House and the Center of Grace Clothing Closet. Mayor Dunn expressed appreciation to all who participated.
- G. There was an article in the August 28, 2010, Johnson County edition of the Kansas City Star regarding the Leawood Fire Department and Leawood's first fire engine, which was made into a Hallmark Keepsake Ornament for 2010, and will be sold around the world. Mayor Dunn expressed appreciation to Hallmark, Fire Chief Ben Florance and the Fire Department for all of their work.

- H. Mayor Dunn congratulated Police Chief John Meier and the Leawood Police Department on their recognition in a terrific feature article in the 435 South magazine.
- I. There was a delegation to the Gezer Region of Israel for their 60th Anniversary celebration in May, 2010. Photos were contributed from Mayor Dunn and Councilmembers Azeltine and Bussing. Marica Putman of the Leawood Parks and Recreation Department assembled two photo albums, one of which was sent to the Gezer Region and the other will remain for the City. Mayor Dunn expressed appreciation to Ms. Putman and to those who contributed.

9. COUNCILMEMBERS' REPORT

- A. Councilmember Filla - Recommendation of referral to Stormwater Management Committee pertaining to issue on 81st Terrace

Councilmember Filla reported easements had been discussed regarding stormwater issues on 81st Terrace; however, there was no interest to pursue this by the residents at that time. Many of the homes have since changed ownership and they wanted to have this issue revisited to determine their options.

A motion to refer this issue to the Stormwater Management Committee was made by Councilmember Filla; seconded by Councilmember Osman.

Councilmember Rawlings noted the Stormwater Committee could include this on their agenda for the September 29, 2010, meeting.

The motion carried following a unanimous vote of 7-0.

- B. Councilmember Azeltine - Traffic signalization at 133rd & Roe Avenue

Councilmember Azeltine reported as part of the Capital Improvement Project [C.I.P.], they approved the installation of a traffic signal to be located at 133rd and Roe Avenue next year. After discussions with staff, they wanted to proceed because of several accidents at this intersection. He was concerned accidents could become more frequent as traffic increases.

A motion to authorize City staff to move forward on the traffic signalization project, located at 133rd and Roe Avenue was made by Councilmember Azeltine; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0.

- C. Councilmember Bussing - Recommendation of referral to Stormwater Management Committee pertaining to issue at 12600 Overbrook [Kerrigan residence]

Councilmember Bussing reported that he received information from Leawood resident Ed Kerrigan, 12600 Overbrook, regarding longstanding stormwater issues.

A motion to refer this issue to the Stormwater Management Committee and to notify Mr. Kerrigan so he could attend the meeting was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0.

Councilmember Osman noted Ingram's Magazine had presented its annual "Best of the Best" issue and reported Mayor Dunn was awarded the "Gold Medal" as "Best Mayor."

Mayor Dunn thanked Councilmember Osman for the recognition and noted Ironwoods Lodge had also received the "Silver Award" under "Best Corporate Retreat Venues."

10. STAFF REPORT - None.

COMMITTEE RECOMMENDATIONS

11. ARTS COUNCIL

[from the July 27, 2010 Arts Council/APPI meeting]

Accept recommendation for placement of temporary art, 'Introspection' by Larry Young, to be placed to the west of the Leawood City Hall, 4800 Town Center Drive

Dr. Ann Kenney, Leawood Arts Council, stated Mr. Lambers had agreed to prepare this site and would include lighting and irrigation.

A motion to approve the Arts Council's recommendation for placement of temporary art was made by Councilmember Bussing; seconded by Councilmember Filla.

Dr. Kenney confirmed that the artist would be responsible for removing the art piece at the end of the term.

Councilmember Azeltine asked if there would be an installation cost to the City. Mayor Dunn thought the concrete slab was approximately \$500. Dr. Kenney thought the cost for irrigation would come from the Parks and Recreation Department Budget.

Mayor Dunn confirmed with Dr. Kenney that this would be a permanent location for future art on loan pieces.

Councilmember Rawlings was concerned of vandalism and confirmed with Dr. Kenney that the art piece is insured.

The motion carried following a unanimous vote of 7-0.

12. PLANNING COMMISSION

[from the July 27, 2010 Planning Commission meeting]

- A. **Ordinance No. 2459** approving a Revised Preliminary Site Plan, Revised Final Site Plan and Revised Final Plat for Mission Farms – First Replat, located at 10342 Mohawk Road (PC Case # 46-10) [Roll Call Vote] – ***CONTINUED FROM THE AUGUST 16, 2010 GOVERNING BODY MEETING***

***Staff Comment:** *The City Clerk's Office has received a Protest Petition. While the area shown in the petition is adequate, one of the required signatures is not included on the petition. The petition has been determined to be invalid.*

Councilmember Osman requested recusal from this discussion.

City Attorney Patty Bennett stated staff had originally thought the protest petition was valid; however, upon reviewing the title records, one lot was owned in the name of a trust and the person who signed had signed in their individual capacity. Therefore, there was not enough lot owners represented in the petition to make it valid. They will need a simple majority vote of five to pass the Planning Commission's recommendation and six to override.

Korb Maxwell, Polsinelli-Shughart Law Firm, represented property owners Brian and Barbara King, located at 10342 Mohawk Road. This lot is approximately 4.5 acres and is located on the northeast corner of the Mission Farms Development. Mr. Maxwell requested that the following be approved by the Governing Body:

1. Vacate fire access easement on plat and plan [running from 103rd Terrace onto Mohawk Road through their property]

When the Mission Farms Development was approved in 1999, it was a requirement to have a fire access easement on this lot. This easement would run from the end of 103rd Terrace in Leawood Estates to Mohawk Road and through their property. This was a compromise made in the approval of this project due to the Fire Department originally wanting 103rd Terrace to go through. A gate was placed at this access road that would act as a secondary means of fire ingress and egress into Mission Farms. Moving forward, they understood this compromise was unnecessary and the fire access easement serves no purpose. This route is not and would not be used by the Fire Department and has been made clear by the Fire Marshal in his written comments and comments to the Planning Commission. The department is trained to keep the trucks on arterial roads. Drive-time studies were completed by the Fire Marshal, which determined if they take the trucks off the arterial road; response time would take longer. If the easement has no benefit to the City or its citizens, his clients request to have it removed. They have a beautiful lot with a public access easement running through the middle of it, which forces them to design their driveway and home in an inefficient manner.

2. Adjust southern lot boundary on plat and plan [to include half-acre lot]

During their time of lot ownership, his clients purchased an additional half-acre lot to the south. Since they are currently going through the re-platting process to remove the access easement, they wanted to include this half-acre lot in the re-plat as well. This will not affect the conforming standards of either lot.

3. Approve exception to this lot to allow less lot frontage than what is required under City Code.

When this was platted and approved, there was an ordinance requiring at least 45' feet of lot frontage on a cul-de-sac. Despite the ordinance, this lot was approved with only 30.53' feet of frontage. His clients received the deed to the 4.5 acre-lot with nothing on the title report to indicate there would be any issues. This error wasn't discovered until they began to review the issue of the fire access easement. If certain standards are met, the Leawood Development Ordinance [LDO] allows exception by a majority vote of the Council after a 3/4 approval vote of the Planning Commission. He asked that this exception be approved by the Governing Body and noted they have support from the Planning Commission as well.

Neighboring property owners have expressed concerns of drainage issues from this lot. His clients were notified of these issues on June 1, 2010. They thought the drainage was primarily caused from the Brookwood School property; however, have since corrected the issues on June 16, 2010.

Councilmember Rasmussen asked why his clients purchased the additional half-acre lot. Mr. Maxwell stated the 4.5 acre lot was oddly shaped and they wanted to improve the layout to increase their options for placing a house on the site. Once the re-plat is approved to remove the access easement and include the additional half-acre; there is no contemplation of bringing further requests before the City.

Mayor Dunn noted several concerns from residents regarding the appearance of the "No Trespassing" sign on the gate. She too, thought the sign was very unsightly and understood their complaints. Mr. Maxwell confirmed if the ordinance is approved; they planned to replace the gate with a split-rail fence.

Councilmember Cain was concerned a split-rail fence would be inadequate for visibility due to this being a dead-end street. Community Development Director Richard Coleman confirmed they could install a split-rail fence; however, they would still be required to meet the Public Works Department requirements for signage recognizing this as a dead-end street.

Fire Marshal Gene Hunter stated he had driven several routes to compare response times. He confirmed the 103rd Terrace route (access road route) was much slower.

Councilmember Rasmussen clarified that the fence would not be a conventional split-rail fence and would have a wire meshing on it.

Mr. Maxwell confirmed his clients would do whatever is required in order to comply with Leawood's standards.

Jean Daugherty, 10328 Mohawk Lane, stated she was one of the 20 residents that had signed the protest petition and had filed the petition with the City one month ago. She had just learned today, as well as the Council, it was invalid. The residents had no concerns with the mistake on the original plat regarding the lot frontage.

They thought it was unnecessary to increase the lot by a half-acre unless at some point the property owners would return with a request to split the lot. It is currently for sale; however, they understood it had been purchased and were confused as to why the property owners were now requesting to have the boundary line moved. The residents understood the concerns of the Fire Department regarding the unviable access road; however, the stipulations for proper road maintenance were never completed. Planning Commissioner Pateidl had given consideration if there was an accident at 103rd and Mission Road or if Tomahawk Creek Parkway was blocked due to flooding, there would be a critical need for access from the east through 103rd Terrace. In the memo from the Fire Marshal, he had recalled that the emergency access way had been negotiated from an automatic gate and paved roadway, to a manual gate and gravel drive. Ms. Daugherty was concerned if this compromise was indeed true because as citizens, they are required to follow specific guidelines without negotiation. In conclusion, she asked the Governing Body to deny their request and require the developer to install the appropriate road that would allow critical access to the east.

Robert Oliver, 10328 Mohawk Lane, stated his residence borders the Mission Farms Development on the northeast corner and is directly adjacent to the property in question. With his background training in fire prevention and fire protection, he was deeply concerned of resident safety with the proposed elimination of the fire access road, which is the only entrance on the east side of Mission Road. If a fire occurs on the west side of the Mission Farms boundary, it would expose several neighboring homes to the north and east, all of which have wood roofs. The east entrance would provide protection to the residents and should reduce the response time. The north entrance of Mission Road adds 1.2 miles of travel time through traffic lights and busy intersections, plus maneuvering through the Brookwood Elementary School crossing zone. The memo from Fire Chief Ben Florance dated August 12, 1999, states "In regards to emergency access for the proposed Mission Farms Development, it would be preferable from a public safety standpoint to have a through street off of 103rd Terrace into the development. The proposed homes in the northeast corner of this development are isolated from direct access. Certainly at a minimum, an emergency access road would need to be present and preferable from the standpoint of appropriate response times and access for multiple pieces of responding apparatus, both from the east and west." The developer has never been held accountable for fulfilling their obligations to provide a permanent, acceptable emergency road off of 103rd Terrace. The original stipulation in 1999 required an attractive automatic remote control gate at the entrance, which was also to be made available exclusively for the use of the lot owner as a secondary entrance to their home. Mr. Oliver expressed concern if this ordinance passes for the benefit of one landowner, the Governing Body would be ignoring the safety concerns of at least 20 neighbors. They were not requesting for this to be a public through street; however, were asking that the original emergency response road approved in 1999, be enforced.

Fire Chief Ben Florance clarified since 1999; there have been vast improvements on Mission Road and in Mission Farms, which includes better response times. The Fire Department has no desire now or in the future to use this access road.

Councilmember Bussing admired their public safety concerns; however, if homes were at risk, he thought it would be the homes in Mission Farms and would not affect the homes of Mr. Oliver or Ms. Daugherty.

Public safety expert Chief Florance had stated there were no public safety issues. Mr. Oliver thought the size of the home would be substantial and felt if it caught fire and there were high winds, six to eight adjacent homes could be exposed.

Councilmember Cain confirmed with Mr. Maxwell that the half-acre lot was purchased by his clients from the adjoining lot owner several years ago. This will become one single platted lot and they have no intention to split this into two lots.

Councilmember Rasmussen confirmed with Ms. Bennett that based upon today's records, the City Council could not condemn this property for use of an easement for emergency access if the City did not find it necessary. Mayor Dunn noted new information had been made available from the Fire Department in 2010 that they did not have in 1999.

A motion to pass the ordinance as approved by the Planning Commission with an additional stipulation to remove the gate and install a split-rail fence was made by Councilmember Filla; seconded by Councilmember Bussing.

Councilmember Filla asked if additional landscape could be included to ensure everyone would understand that the road ended.

Mr. Maxwell clarified his clients would do whatever is necessary within their power to be done under City Code; however, some of the responsibility could be that of the City or the homes association, who owns the fence.

Councilmember Bussing preferred to remove the split-rail fence requirement from the motion and leave the fence installation to the correct responsible party.

Councilmember Cain confirmed with Mr. Coleman they could add a stipulation to require that the gate be removed upon filing the plat. Mr. Maxwell confirmed once the plat is recorded to include the half-acre lot and remove the access easement they would remove the gate.

Mayor Dunn clarified the motion was to pass the ordinance as approved by the Planning Commission with an additional stipulation to remove the gate once the plat is recorded.

Councilmember Bussing wasn't casting blame to anyone; however, he noted it was disappointing when neighbors, in good faith, submit a protest petition and are not informed it is invalid in a timely manner. He encouraged City staff to follow the proper protocol to ensure that homeowners file early.

Ms. Bennett stated City staff tries not to advise residents and their position is to represent the City. The City Clerk and Planning staff have sample petitions available for reference; however, residents are encouraged to seek their own counsel. It was unfortunate they did not determine that this protest petition was insufficient until today. Mayor Dunn clarified she too, was unaware of this until this afternoon.

Councilmember Rasmussen stated in 1999 he voted against a stipulation to require an emergency access gate and 30' foot access easement through Lot 13 because the residents in that area were very concerned of 103rd Terrace being extended west through the easement.

The motion to pass the ordinance carried following a roll call vote of 6-0. Nay: None. (Councilmember Osman recused).

Councilmember Osman rejoined the meeting.

- B. Resolution approving the Planning Commission's recommendation to deny a request for a Rezoning, Preliminary Site Plan, and Preliminary Plat for Reed's Addition, located at 146th Terrace and Mission Road (PC Case #70-10) [*Continued from the August 16, 2010 Governing Body meeting*] -**CONTINUED TO THE SEPTEMBER 20, 2010 GOVERNING BODY MEETING**

13. OLD BUSINESS – None.

14. OTHER BUSINESS – None.

15. NEW BUSINESS

- A. Schedule a Governing Body Work Session at 6:00 PM on Monday, September 20, 2010, for review of commercial sign approval process

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Osman. The motion carried following a unanimous vote of 7-0.

- B. Schedule a Governing Body Work Session at 6:00 PM on Monday, December 6, 2010, to discuss Transportation Development District [TDD] Financing for One Nineteen Development

A motion to approve the Work Session was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0.

ADJOURN

There being no further business, the meeting was adjourned at 9:40 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk