

Minutes

DVD No. 251

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 21, 2011. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None

Staff present: City Administrator Scott Lambers	Patty Bennett, City Attorney
Chief John Meier, Police Department	Joe Johnson, Public Works Director
Chief Ben Florance, Fire Department	Chris Claxton, P&R Director
Richard Coleman, Comm. Dev. Director	Deb Harper, City Clerk
Jack Reece, Info. Systems Specialist	Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

A motion to approve the agenda was made by Councilmember Bussing; seconded by Councilmember Rezac. 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.**

Jeff Nessel, 12012 Ensley Lane, expressed concerns of potential accidents at the intersection of 121st Terrace and Wenonga. Currently, there is a 4-way stop sign located on 121st Street; however, there is only a yield sign on 121st Terrace going east and west. He asked the Council to consider replacing the yield sign with a stop sign.

A motion to refer Mr. Nessel's concerns to the Public Works Committee was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

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. 2011-4, and 2011-5
- B. Accept minutes of the January 18, 2011 Governing Body Work Session
- C. Accept minutes of the February 7, 2011 Governing Body meeting
- D. Approve Mayoral Appointment of Brian Neilson to Bicycle Friendly Committee, term ending 2012
- E. Approve Retail Liquor License Renewal for FPFKC Liquors, LLC [d/b/a ZIPZ Spiritz], located at 4821 W. 135th Street
- F. Approve payment in the amount of \$89,000.00 to Leawood Chamber of Commerce for the 2011 operations budget
- G. Approve purchase in the amount of \$22,035.00 from Turn-Key Mobile, Inc., for five [5] Panasonic mobile data terminals for fire service operations
- H. Approve co-op bid in the amount of \$310,459.00 from Shawnee Mission Ford; \$26,640.00 from Dick Smith Ford; \$18,754.00 from American Equipment; and \$15,530.00 from Drake Scruggs, for a total amount of \$371,383.00 for the purchase of vehicles
- I. **Resolution No. 3548** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$161,574.80 between the City and Total Electric Company, pertaining to the installation of traffic signals at 133rd Street and Roe Avenue [Project # 72040]
- J. **Resolution No. 3549** a Final Plan for a Tenant Finish for Town Center Plaza – Anthropologie, located at 5000 W. 119th Street [PC Case # 03-11] [*from the January 25, 2011 Planning Commission meeting*]
- K. Fire Department Monthly Report
- L. Police Department Monthly Report
- M. Municipal Court Monthly Report

Councilmember Cain requested to pull Item Nos. 7I and 7J for discussion.

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

- 7I. **Resolution No. 3548** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$161,574.80 between the City and Total Electric Company, pertaining to the installation of traffic signals at 133rd Street and Roe Avenue [Project # 72040]

Councilmember Cain applauded the Public Works Department for saving the City \$60,000 on the bid for this.

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

- 7J. **Resolution No. 3549** a Final Plan for a Tenant Finish for Town Center Plaza – Anthropologie, located at 5000 W. 119th Street [PC Case # 03-11] [*from the January 25, 2011 Planning Commission meeting*]

Councilmember Cain thanked the representatives of Anthropologie for coming to Leawood and thought this would be a great addition to the City.

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

8. MAYOR'S REPORT

- A. The Academy Awards Gala, scheduled for Sunday, February 27th, hosted by the Leawood Stage Company and Amphitheatre Expansion Steering Committee, has been cancelled.

9. COUNCILMEMBERS' REPORT – None.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the January 25, 2011 Planning Commission meeting]

- A. **Ordinance No. 2480** approving a Special Use Permit [SUP] to allow packaged liquor sales under new ownership for Camelot Court Wine and Spirits, located at 11841 Roe Avenue (PC Case # 110-10) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Bussing. The motion carried following a unanimous roll call vote of 8-0. Nay: None.

- B. **Resolution No. 3550** approving a Final Plan for Camelot Court Wine and Spirits, located at 11841 Roe Avenue. (PC Case #110-10)

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

- C. Resolution approving the Planning Commission's recommendation for denial of a Final Sign Plan for Town Center Plaza – AMC 20 IMAX, located at 11701 Nall Avenue (PC Case # 01-11)

Vonja Maxfield, Infinity Sign Systems, asked the Governing Body to reconsider approval over the Planning Commission's recommendation for denial of a Final Sign Plan. The IMAX Theatre was added to AMC Theatres after it was originally constructed. This is a joint venture between AMC and IMAX. Planning Commissioners James Pateidl, Ken Roberson and Len Williams were all in favor of the sign; however, due to the restraints of the City Code, they had to recommend denial. Staff was also in favor of the sign; however, the ordinance would not allow them to approve it. One of the arguments made at the Planning Commission meeting was that the signage had to consist of the company's legal name. The CVS Pharmacy building was one example given. Their legal name is CVS Care Taker, Inc.; however, their sign reads CVS Pharmacy. Another example was Starbucks Coffee, which is descriptive of the service to the community. IMAX would be a service to the community as well and would be located on one sign on one side of the building, which would allow the community knowledge that it exists.

Kevin, Jeffries, President of the Leawood Chamber of Commerce, commented that the AMC Town Center 20 Theatre has been a charter member in good standing of the Leawood Chamber of Commerce for over 15 years. They are an important part of the Leawood business community by providing several jobs and generating substantial sales tax revenue. Some of the signage throughout the City that advertises a product was permitted before this ordinance went into effect. He understood Leawood wants to avoid sign clutter; however, all of the grocery stores in Leawood advertise multiple entities within these stores, as well as multiple products. There are also several instances in Leawood that advertise multiple businesses on the same surface of the building. He strongly urged the Governing Body to consider favorable action on behalf of the applicant. They have been a truly valued corporate citizen in the City of Leawood for many years.

Community Development Director Richard Coleman stated the current signage on AMC pre-dates the City's 2002 ordinance. The addition of IMAX would be considered a violation to the ordinance, which prohibits anything other than a tenant's legal corporate name and also prohibits product names. IMAX is leased to AMC Theatre and AMC employees are running the operations.

Councilmember Filla commented that "coffee" is a descriptor of Starbucks and recognized that AMC has such name recognition that it only has to read AMC 20, not AMC Theatres. She supported the addition of IMAX since it is a distinctive trade name and offers a unique service. It would be a valuable service for citizens to know it exists and admitted she was unaware herself that IMAX had been there for a year.

Mayor Dunn clarified the City Council was not in a position to approve this. It would require an amendment to the Leawood Development Ordinance [LDO]. This would open the door for future signage requests.

City Administrator Scott Lambers stated the ordinance is very specific and was established in 2002 because the City Council at that time wanted to make a clear distinction of the allowed signage. Over the years, they have moved further and further away from this by allowing additional signage, including two signs identifying different tenants, logos on the front and back of buildings, etc. If the Council wants to consider allowing trailers, be assured there will be an onslot of signage change requests. The LDO will need to be amended and staff will need direction on restrictions, if any.

Councilmember Filla thought there could be an exception with this application since the percentage of signage compared to the square footage of the building would make it uniquely qualified. Mr. Lambers replied that the ordinance was not drafted for one building and is enforced City-wide. Ms. Filla thought their intention was to enforce the signage to be in good taste, not cluttering. This sign will not add clutter.

Mr. Coleman clarified one of the signs at AMC reads AMC Theatres.

Councilmember Azeltine thought the whole purpose of signage was to direct the community to locate the products they need and want. He asked why a formal deviation was not requested on this. Mr. Lambers clarified they cannot request a deviation for something that isn't permitted. Mr. Azeltine clarified that AMC's corporate name is AMC Entertainment, which would be a much larger sign. He felt staff could help revise the ordinance in such a way to prevent an onslot of new applications and still allow instances such as this with a joint venture, but separate corporate entity.

Mr. Lambers stated the outdoor sign on a building is not the only source of advertisement. He recalled that AMC advertises regularly in newspapers and online to identify their different types of theatre productions.

Mr. Azeltine agreed that the intent of the ordinance was to avoid clutter and commented this is definitely not cluttering. Mr. Lambers argued that the intent was to be very restrictive.

Councilmember Osman noted he was also unaware IMAX was located in AMC. He asked if a tenant subleased to another business venture, if it would allow them to install their own signage on the building. Mr. Lambers replied there is a maximum of two different signs allowed. IMAX would need to be operating the theatre and collecting money by their employees. Mr. Osman agreed they should work with staff to review the ordinance for possible revisions.

Councilmember Rawlings confirmed with Ms. Maxfield there is one IMAX Theatre located in AMC and is advertised as such in newspapers and online.

Councilmember Rezac confirmed with Mr. Coleman that the CVS Pharmacy signage was approved prior to the 2002 ordinance. Mr. Lambers clarified there are currently signs that are descriptive of products and services; however, new signage is required to adhere to the 2002 ordinance. Ms. Rezac was in favor of the Planning Commission's recommendation for denial of this application because she wanted to prevent the possibility of several new requests. She did recommend; however, that staff review the ordinance.

Mayor Dunn commented their consistency of approvals over the years has been important and this ordinance has served the City extremely well.

A motion to approve the Planning Commission's recommendation for denial of a Final Sign Plan for Town Center Plaza – AMC 20 IMAX was made by Councilmember Rasmussen; seconded by Councilmember Rezac.

Councilmember Bussing asked if they could amend the ordinance to include some type of exception process. Mr. Lambers indicated this was possible; however, they would need to state what type of limits, if any, would be placed on the grant of the exception. If the Council wants to review the ordinance, staff could draft a report and schedule a work session for discussion. Mr. Bussing thought since the ordinance was 9 years old and they continue to have questions regarding signage, it should be reviewed to consider language revisions that would allow exceptions for these types of issues. The Council doesn't have the opportunity but should be able to exercise common sense and good judgment to help Leawood businesses where appropriate. Mr. Lambers replied that the Council could direct staff to draft an analysis report. In the interim, they could amend the LDO to provide for either an exception or deviation. This would be a 60-day process and would permit these types of issues to come before the Council.

Councilmember Osman referred to the Planning Commission meeting comments made by Mr. Winter, a representative of AMC, and viewed his statements to mean this is a sub-lease. He thought they could vote to approve the IMAX sign and then they could review the ordinance. The difference between a lease and a sub-lease is that one is the landlord and the other is the tenant. Mr. Lambers respectfully disagreed with his position and to do this would be in violation of the ordinance.

City Attorney Patty Bennett clarified the way the City had traditionally interpreted a sub-lease had nothing to do with the landlord tenant relationship and has to do with the tenancy within the building. IMAX would be a space and service provided to the theatre and would not be a tenancy.

Mr. Lambers reiterated staff could review amending the ordinance to allow an exception or deviation, and return to the Council at a later date. The first available work session for discussion would be July 5th. If the Council then wants to proceed with an LDO amendment, it would take another 60 days.

The motion to approve the Planning Commission's recommendation for denial failed with a vote of 3-5. Yea: Councilmembers Rasmussen, Rezac and Rawlings. Nay: Councilmembers Osman, Azeltine, Filla, Cain and Bussing.

Mayor Dunn confirmed with Ms. Maxfield they would be in favor of continuing this for 6 months.

A motion to continue this item for a period of 6 months was made by Councilmember Bussing; seconded by Councilmember Osman. The motion carried following a unanimous vote of 8-0.

A motion to direct staff to review the LDO sign ordinance consistent with this discussion and hold a subsequent work session was made by Councilmember Bussing; seconded by Councilmember Osman.

Councilmember Azeltine suggested when staff reviews the LDO, to consider making a distinction between signs that display adjectives that describe a business, versus having a separate corporate entity involved. He wanted consideration given that IMAX not be required to have staff on the premises.

Mayor Dunn commented these types of signs that were denied in the past have been products, not adjectives. Although she was sympathetic to their request, she reiterated that the sign ordinance has served the City very well.

The motion to direct staff to review the LDO sign ordinance carried following a unanimous vote of 8-0.

- D. **Resolution No. 3551** approving a Final Site Plan for an outdoor dining area for Town Center Plaza – Bristol, located at 5400 W. 119th Street (PC Case # 06-11)

Kurt Thuenemann, Houlihans Restaurants, agreed to all of the stipulations, including the installation of a connecting sidewalk using brick pavers or concrete from 119th Street to the parking lot to define the pedestrian walkway. This was inadvertently left off of the original building plan. The patio will be located on the southwest corner of the existing building for operational purposes. There is an existing door that will be expanded to serve as the patron and employee access to the patio. The patio is approximately 1,000 square feet and is split into a dining and casual area. The casual area features a large double sided fireplace and wood cedar pergola. There are 34 dining seats and 10 casual seats. Additional features include umbrellas for shading, table lighting, fans, electric heaters, and two 46-inch televisions. The landscaping will be replaced to compliment the patio and tie into the existing landscape around the building.

Councilmember Cain confirmed with staff that other restaurants in Leawood have outdoor patios with televisions. Mr. Thuenemann confirmed the televisions would be on at all times during their hours of operation. The sidewalk connection will be located directly outside the front doors.

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

- E. **Ordinance No. 2481** approving a Preliminary Plat, Preliminary Plan, Final Plat and Final Plan for Reed's Addition, located at 146th Terrace and Mission Road (PC Case # 11-11) [Roll Call Vote]

Brick Owens, NSPJ Architects, stated this 20-acre tract of land consists of 4 lots. He proposed dividing the 20 acres into two 10-acre north/south residential lots. Jeff Myers currently owns the northern 10-acre tract. Dr. Reed has retained ownership of the southern 10-acre tract. They had previously proposed that the property be divided into more lots to better distribute the fees and excise taxes. The Planning Commission felt no more than 2-4 lots would be appropriate for the scale of the neighborhood. The Reed's existing home straddled the dividing line of the property; therefore, they had to create a tract that would jog around their garage. In order to split the property, they are required to re-plat, which will incur all of the development fees, excise taxes, street fees, etc. They agreed to all of the Planning Commission Stipulations, with exception to Stipulation No. 4; street fees of \$311.00 per lineal foot of frontage along Mission Road, estimated to be \$220,000.00. This is not a development; it is two single-family lots. He asked that the street fees be reconsidered.

Mayor Dunn confirmed with Mr. Owens they were requesting an exception to the ordinance.

Mr. Lambers clarified the ordinance is specific; there is no waiver, exception or deviation. The ordinance has been in effect for an extended period of time and requires that the abutting property owners pay for one lane of travel. The second lane, in anticipation of a four-lane road, is then picked up by the City-at-large. This policy has been fair and effective. Developments along Mission Road have placed money into accounts with the City, which are earning a tenth of 1%, until Mission Road is expanded. He argued that this is a development, which is why they are encountering the requirements that are being imposed. He also felt 10 acres is more than a single-family lot, even though there is only one single-family home being proposed for each 10-acre tract. Since the fee is set by resolution, there is no way around it this evening. If the Council wants to give consideration to this, the applicant would not be able to take any action until other action is implemented by ordinance or resolution. They would not be able to submit their documents to the City without the money being in place.

Ms. Bennett stated this is a Public Works street fee and is passed every year by the City Council and increases as the cost of street construction increases.

Councilmember Rasmussen asked the reason for re-platting. Mr. Lambers clarified that Dr. Reed had acquired additional property and the existing property lines remained. When Dr. Reed wanted to rebuild his home, he wanted to relocate it; which caused problems meeting the setback requirements. Dr. Reed has sold the property and the re-platting has not been recorded.

Mr. Coleman confirmed they require re-platting to correctly identify property lines and to secure dedication of the right-of-way on Mission Road. It is important to plat to ensure legal conforming lots.

Mr. Lambers confirmed a letter of credit [LOC] would be an acceptable guarantee of payment.

Dr. Reed stated he had owned the property since 1986. Their home burned in 2006 and have moved to Hallbrook for the time being. They are in the process of decreasing the density and have complied with every assessment. They wouldn't have minded the street assessment when a 10-12 house development was being considered, as opposed to one home on each 10-acre tract. The two homes will not impose any increase in traffic on Mission Road. He felt to be assessed to this degree was unfair, considering there are no improvements planned for Mission Road for at least the next decade and they were not increasing the density.

Mayor Dunn confirmed with Mr. Lambers that the developments along Mission Road, south of 135th Street, have participated in this street fee.

Mr. Owens commented that many of their neighboring properties have been grandfathered-in and were not assessed. Mr. Lambers replied it was not uncommon as cities grow out, for the people that develop first to receive the benefit of a road improvement and are not assessed for it. In instances where they cannot collect a fee, the City-at-large pays for it. There would be areas where both south bound lanes along Mission Road would be covered by the public, not the property owner abutting it.

Mayor Dunn stated there are a multitude of developments that have single-ownership and are being assessed for the future widening of Mission Road.

Mr. Lambers commented that the current ordinance, which is not in the LDO, does not allow for anything other than the requirement that the City receive payment or a LOC in order for the plat to move forward and be recorded with the county. If the Council wants to consider something different, staff would need to research it. Dr. Reed could submit a LOC in the amount of the future improvements and then if the Council approves an alternative option for the requirement, he would be eligible for that. In order to proceed, the City would need some type of security.

Councilmember Bussing noted one advantage for doing this now would lock in the current rate since the fee is adjusted annually with road construction costs.

Councilmember Rasmussen asked what terms and conditions of the LOC would be acceptable to the City. Mr. Lambers replied due to the current economic situation, long-term LOC's are not viable; therefore, a 3-5 year LOC would be acceptable with a renewable provision that the City be notified. If the LOC is not renewed, the City would have the opportunity to collect on it before it expires. This has been a standard practice with all of the City's LOC's.

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

Mayor Dunn confirmed with Mr. Lambers that a LOC was not required to be stipulated in the motion.

The motion carried following a unanimous roll call vote of 8-0. Nay: None.

- F. Resolution approving a Final Site Plan for Town Center Plaza – Lot 9 – Walgreens, located at 4701 Town Center Drive (PC Case #04-11)

Nick Telowitz, Nova Group Architects, gave a presentation of the Final Site Plan of the Walgreens store. The entrances are located on the north and west sides. The south elevation displays the drive-thru and service area, with the east side facing Roe. The architecture detail of the building, landscape plan, site walkways and amenities, have been approved with the Planning Commission.

Mr. Coleman confirmed for Mayor Dunn that the approved brick was similar in color to Town Center Plaza.

Seth Reece, Olsson Associates, confirmed for Mayor Dunn that the displayed landscape design was the revised version.

Councilmember Cain commented that after careful consideration, reviewing the initial application and speaking with people throughout the community, she had mistakenly approved this building. With respect to Walgreens and everyone involved, she intended to not support this case. She felt the size and proportion of the building was too large for that corner.

Mr. Telowitz confirmed that all of the windows have an insulated aluminum frame. The tinted clear glass is energy efficient and insulated. The windows located in the stock room, restrooms, mechanical spaces and store office will have blinds that will remain permanently closed. The light fixtures will have vertical metal baffles below the lamps, which will restrict the view of the lamps from the street. He assured the Council that the lamps would not be visible through the windows inside the store at night.

Mr. Telowitz stated the elevations had been modified significantly since the initial presentation to the City Council. They worked to design a building similar in color and design to Town Center Plaza with a lower profile single-story appearance and cement tile roof.

Mayor Dunn confirmed with Mr. Telowitz that the building height was 24 feet and the tower elements were 34 feet.

Mr. Coleman thought the highest portion of the existing Yahooz building was 28-30 feet.

Councilmember Rawlings recalled at the time the initial application was approved, the Planning Commission had four members in attendance with a 3-1 vote. He too, reconsidered his initial vote due to the size of the building for that corner.

Councilmember Filla thought the height of the building was massive and did not fit in with Town Center Plaza. She asked staff if they could get measurements of the Barnes and Noble store for height comparison. Mr. Telowitz stated from the bottom of the light fixtures the height is 12 foot 6 inches in their general sales area. There is duct work and fire sprinklers above this. The structural joists and roof system includes an additional 2 foot. The LDO requires that any rooftop mechanical equipment be screened by true elevations of the building. A typical Walgreens store is approximately 22 feet high.

Mayor Dunn noted at the Preliminary Plan approval, staff had indicated this site is smaller than the typical Walgreens sites. Mr. Coleman confirmed this site is 50% smaller. Mr. Reece noted this Walgreens is smaller than their typical store, with the building footprint being 11,808 square feet with a 2,000 square foot basement.

Councilmember Cain requested a streetscape view to visualize the scale of the building. Mr. Telowitz replied that the quantity and size of the trees that will be planted on Roe and Town Center Drive would significantly impact the view of the building from the street. Mr. Reece confirmed there would be much more landscaping installed than what is currently in place and they are exceeding the landscape requirements. The planted heights of the trees will be approximately 15 feet tall with a maturity height of at least 30 feet.

Mr. Telowitz displayed pictures of the Barnes and Noble store and other buildings located throughout Town Center Plaza and felt Walgreens was in context with the scale of these buildings.

Mayor Dunn confirmed with Mr. Telowitz that the brick on the bottom of the building will closely match Town Center Plaza. The lighter brick will be an accent color, which is also similar to Town Center.

Councilmember Cain noted that the two towers are the most massive points on the building, one of which would be located directly on the corner of Town Center and Roe. Mr. Reece confirmed the tower would be located 30 feet from the right-of-way along Town Center Drive, which is the same distance as the current Yahooz building, and it would be located 40 feet from the right-of-way along Roe. The width of the towers will be 20 x 20 feet. It will be difficult to see the peak of the tower at Roe and Town Center. The peaked towers are common throughout Town Center. Councilmember Cain replied none of them are located so close to the street. Mr. Telowitz thought the peak of Barnes and Noble was 40 feet tall. Councilmember Rawlings commented that Barnes and Noble was set further back from Roe because of the parking lot and retail shops below.

Councilmember Rezac wasn't as concerned with the size of the project as much as her concerns with the articulation on all four sides of the building. Mr. Telowitz confirmed that the depth of the pilasters were approximately $\frac{3}{4}$ of an inch in front of the brick above and below the windows and at the entrances. Ms. Rezac felt the building elevations seemed flat and were not at the same level of articulation as not only Town Center, but other nearby buildings as well. Mr. Telowitz noted several locations throughout the building that had articulation with depth and shadowing. With no disrespect intended, Ms. Rezac thought the north elevation looked similar to that of a warehouse.

Councilmember Rasmussen confirmed with Mr. Reece that the landscaping would eventually conceal the north and east sides of the building. When the landscaping is installed, it will be equal to the number of trees and shrubbery illustrated on their plan.

Councilmember Cain asked if there were further discussions with staff regarding traffic management throughout the site. Mr. Reece stated the Public Works Department submitted a report approving the circulation throughout the site and their improvements to extend some of the turn lanes. At this time, there are no concerns with the drive-thru circulation. The Special Use Permit [SUP] has a stipulation that if the circulation doesn't function as anticipated, it can be brought back before the Council for discussion.

Councilmember Filla had ongoing concerns of massing because of the building placement on the hill. Mr. Reece confirmed the distance from the sidewalk to the base of the building was 7 vertical feet. When including the 24 foot height of the building, it would be 31 feet.

Councilmember Bussing remained concerned of being able to see through the windows. He asked if the applicant was willing to work with the Council and staff to address their comments regarding articulation, pilasters, the variety in the elevations, and the visuals through the windows. Mr. Telowitz replied that the bottom window sills are 7 feet above ground level. The merchandise will only be visible when approaching the entrance doors. Given the constraints of everything they've had to consider, Mr. Telowitz felt they had worked on this project to the best of their ability. He thought with the difference in brick texture and color of the materials, the shadow lines and concrete roof tile, this building would have an elegant appearance on the corner.

Councilmember Cain clarified with Mr. Telowitz that the distance from the sidewalk to the base of the building was 7 feet with the peak of the tower 34 feet. This part of the façade is ornamental in keeping with Town Center and is not functional. Mr. Telowitz replied that a wall sign would be located on that tower, which would make it functional.

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion failed for lack of a majority with a vote of 4-4. Yea: Councilmembers Rasmussen, Bussing, Azeltine, and Osman. Nay: Councilmembers Cain, Rawlings, Filla, and Rezac.

Doug Henzlik, Manor Road Partners and developer for Walgreens, stated after the last Council meeting, they worked with the staff to lower the building and completely re-design the elevations to be in conjunction with Town Center Plaza. In an effort to move forward, he was willing to work with the City Council on minor changes if it would improve the building.

Mayor Dunn stated a split vote does not approve this application and it would require a super-majority vote to override the Planning Commission's recommendation.

Ms. Bennett confirmed if they incorporate any changes as stipulations, it would be an override, requiring a super-majority; however, if the Council decides to continue this to work with staff on the items discussed, it would require a simple-majority vote.

Mayor Dunn recommended a continuance.

Councilmember Cain suggested this be remanded to the Planning Commission for review since attendance was down when the initial application was approved. Mr. Henzlik was not in favor of a remand since they were currently discussing a Final Development Plan, not site plan issues that were previously voted on.

A motion to continue this item to the March 7th Governing Body meeting and include a stipulation that the applicant work with staff on material articulation and the corner tower elevation was made by Councilmember Rezac; seconded by Councilmember Azeltine.

Given the division of the City Council, Mr. Lambers recommended they remand this to the Planning Commission to gain the advantage of a simple-majority vote when it returns. If this is continued and remains a split vote when they return, it would then need to be remanded to the Planning Commission anyway. If remanded, the Planning Commission could meet on March 8th and it could return before the Council on March 21st.

Mayor Dunn clarified for Mr. Henzlik that it was typical to remand to the Planning Commission if the City Council wants to make changes in the appearance of a plan.

Councilmember Azeltine confirmed if this is remanded, it would lower the voting threshold from a super-majority to a simple-majority when it returns.

Councilmembers Rezac and Azeltine withdrew their motions to continue.

A motion to remand this to the Planning Commission for review of possible changes to the building on material articulation and the corner tower elevation was made by Councilmember Rezac; seconded by Councilmember Azeltine. The motion carried following a vote of 7-1. Nay: Councilmember Cain for reasons stated earlier.

12. **OLD BUSINESS** – None.
13. **OTHER BUSINESS** – None.
14. **NEW BUSINESS** – None.

ADJOURN

There being no further business, the meeting was adjourned at 10:30 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk