

Minutes

DVD No. 263

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, August 15, 2011. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None

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

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following amendments to the agenda:

- Addition of Item Nos. 6G and 6H – Special Business
- Remove Item No. 9A – Report from Councilmember Rasmussen

A motion to approve the amended agenda was made by Councilmember Bussing; seconded by Councilmember Rawlings. 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

**Shawnee Mission Medical Center ASK-A-NURSE
Day August 19, 2011**

Mayor Dunn declared August 19, 2011, as Shawnee Mission Medical Center ASK-A-NURSE day.

5. **PRESENTATIONS/RECOGNITIONS** - None

6. **SPECIAL BUSINESS**

- A. **PUBLIC HEARING** Consider the 2012 Fiscal Budget for the City of Leawood

Seeing no one present to speak, a motion to close the Public Hearing was made by Councilmember Azeltine; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 8-0.

- B. **Resolution No. 3634**, adopting the Fiscal Year 2012 Annual Budget for the City of Leawood, Kansas

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

Mayor Dunn noted the City of Leawood is recommending no mill levy increase for the 2012 Budget year.

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

- C. **Ordinance No. 2504**, authorizing and providing for the issuance and delivery of \$2,055,000 principal amount of General Obligation Temporary Notes of the City of Leawood, Kansas, to provide funds to finance the cost of certain public improvement projects within the City; and making certain covenants with respect thereto

Mayor Dunn requested to be recused due to a conflict of interest. Councilmember Gary Bussing was Presiding Officer.

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Osman. The motion carried following a unanimous roll vote of 8-0. Nay: None. (Mayor Dunn recused).

- D. **Resolution No. 3635**, authorizing the issuance and delivery of \$2,055,000 principal amount of General Obligation Temporary Notes of the City of Leawood, Kansas, for the purpose of financing a portion of the costs of certain public improvements in the City; and prescribing the terms and details of said notes and certain covenants and agreements with respect thereto

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Osman. The motion carried following a unanimous vote of 8-0. (Mayor Dunn recused).

- E. **Ordinance No. 2505**, authorizing the issuance and delivery of \$5,155,000 principal amount of Taxable General Obligation Improvement Bonds, Series 2011-A of the City of Leawood, Kansas; providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the bonds as they become due; and making certain covenants with respect thereto

A motion to pass the ordinance was made by Councilmember Osman; seconded by Councilmember Filla.

David Arteberry, George K. Baum & Company, confirmed the bonds must be issued as taxable bonds because this project is backed by special assessments and the special assessments are being shared by the property within the district. Under the Tax Code, this method of allocation does not make it eligible for tax exempt financing. The net interest cost on the one-year tax exempt temporary note was .51%. The bonds are a 15-year taxable note at 3.13%.

City Administrator Scott Lambers clarified this was not the first time a commercial property has assumed the responsibility for all of the stormwater improvement costs and other properties have benefited.

The motion carried following a unanimous roll call vote of 8-0. Nay: None. (Mayor Dunn recused).

- F. **Resolution No. 3636**, prescribing the form and details of and authorizing the delivery of \$5,155,000 principal amount of Taxable General Obligation Improvement Bonds, Series 2011-A, of the City of Leawood, Kansas, authorized by Ordinance No. 2505 of the City; providing certain covenants and agreements with respect thereto; and providing for execution of certain agreements in connection therewith

A motion to approve the resolution was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0. (Mayor Dunn recused).

Mayor Dunn rejoined the meeting.

- ** G. **Resolution No. 3637** approving and authorizing the Mayor to execute a Second Amendment to that certain Development Agreement, dated October 15, 2007, between the City and Park Place Partners, LLC, for property located at 117th and Nall Avenue, pertaining to the Park Place Improvement Project [Project # 83196]

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

Councilmember Rasmussen confirmed with Mr. Lambers there is a 22-year term limitation beginning with the first payment. There has been no expansion of the potential purchases of this agreement beyond those that were in the original development agreement. Other than approval, there has been no City Council involvement.

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

- ** H. **Resolution No. 3638** approving and authorizing the Mayor to execute a First Amendment to that certain Development Agreement, dated October 15, 2007, between the City and Park Place Developers, LLC, for use of Transient Guest Tax for the construction of hotel garage improvements located within the Park Place Development, located at 117th and Nall Avenue, pertaining to the Park Place Improvement Project [CIP # 83196]

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

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. 2011-29 and 2011-30
- B. Accept minutes of the June 27, 2011 Budget & Finance Committee Work Session
- C. Accept minutes of the July 18, 2011 Governing Body meeting
- D. Accept minutes of the July 18, 2011 Governing Body Work Session
- E. Accept minutes of the August 1, 2011 Governing Body meeting
- F. Accept minutes of the June 14, 2011 Parks and Recreation Advisory Board meeting
- G. Accept minutes of the June 9, 2011 Sustainability Advisory Board *meeting*
- H. Accept minutes of the May 10, 2011 Historic Commission meeting
- I. Accept minutes of the May 19, 2011 Ironhorse Advisory Board meeting
- J. Approve Cereal Malt Beverage [CMB] license for Gordon Biersch Brewery Restaurant, located at 11642 Ash Place
- K. Approve Retail Liquor License for ZSpiritz Pointe, located at 4821 W. 135th Street
- L. Fifth and Final Pay Request in the amount of \$7,761.92 to Total Electric Company, pertaining to the installation of traffic signals at 133rd Street and Roe Avenue [Project # 72040]
- M. **Resolution No. 3633** approving acceptance of the traffic signals located at the intersection of 133rd Street and Roe Avenue as Public Infrastructure Improvements, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets
- N. **Resolution No. 3639** approving and authorizing the Mayor to execute a Community Service Agreement between the City and Blue Valley Unified School District No. 229, pertaining to the assignment of School Resource Officers [SRO]
- O. **Resolution No. 3640** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$469,784.73 between the City and Miles Excavating, Inc., pertaining to the 2011 Storm Sewer Rehabilitation Project [Project # 77111]

- P. **Resolution No. 3641** approving and authorizing the Mayor to execute a Professional Services Agreement in the amount of \$40,000 between the City and RTI Consultants in connection with consultation, bidding, design and oversight of roofing repair/replacement at various Leawood facilities [Project #74043]
- Q. **Resolution No. 3642** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$23,800.00 between the City and McAnany Construction, pertaining to the Tomahawk Park Baseball/Soccer Field Renovation Project [Project # 71010]
- R. **Resolution No. 3643** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Fire District No. 2, pertaining to fire services
- S. **Resolution No. 3644** approving a Revised Final Sign Plan for Ironhorse Centre - Revised Sign Criteria, located at the southeast corner of 151st Street and Nall Avenue (PC Case 79-11) [*from the July 26, 2011 Planning Commission meeting*]
- T. **Resolution No. 3645** approving a Final Sign Plan for Ironhorse Centre – Paddy O’Quigley’s, located at 5317 West 151st Street (PC Case 53-11) [*from the July 26, 2011 Planning Commission meeting*]
- U. Fire Department Monthly Report
- V. Police Department Monthly Report
- W. Municipal Court Monthly Report

Councilmember Osman requested to pull Item Nos. 7D and 7Q, and Councilmember Cain pulled Item No. 7P for discussion.

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

7D. Accept minutes of the July 18, 2011 Governing Body Work Session

Councilmember Osman referred to this work session discussion regarding the Leawood Development Ordinance [LDO] revisions on sign regulations. He distributed a timeline of signage applicants from 2010 and 2011 that had come before the Planning Commission [PC] and City Council. He felt that only in extreme circumstances should a sign application come before the City Council. A total of 37 applicants came before them over the year with 6 of these applicants on the PC and City Council agendas. Planning Official Mark Klein confirmed there is only 1 development that does not have sign criteria on file with the City. If a request meets both the LDO and sign criteria for the development, it is placed on the Consent Agenda for approval. Mr. Osman stated the average timeframe for an application to go from City staff and then come before the City Council is 50.5 days. Once an application is approved, it takes 2-3 weeks to manufacture their sign. A tenant could have a temporary sign in place for over 2 months. He wanted to streamline the process by allowing administrative approval of the applications that fall within City and development guidelines. He thought staff could send an email to the Council informing them an application has been approved and provide information on that business coming in. Information from this report can be used in conjunction with the Governing Body goal that was discussed in a work session earlier this evening.

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

- 7P. **Resolution No. 3641** approving and authorizing the Mayor to execute a Professional Services Agreement in the amount of \$40,000 between the City and RTI Consultants in connection with consultation, bidding, design and oversight of roofing repair/replacement at various Leawood facilities [Project #74043]

City Attorney Patty Bennett confirmed for Councilmember Cain that City-wide damages totaled more than \$700,000. The City has received the first portion of an insurance settlement. They hold a portion until all items are repaired. Public Works Director Joe Johnson confirmed with approval of this, the specs can be placed up for bid in the next 30 days. Some of the projects may be done before the end of the year; however, most will be done next year. All of this damage was from one event.

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

- 7Q. **Resolution No. 3642** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$23,800.00 between the City and McAnany Construction, pertaining to the Tomahawk Park Baseball/Soccer Field Renovation Project [Project # 71010]

Councilmember Osman was concerned with the large price difference between the bids. Parks and Recreation Superintendent Brian Anderson confirmed the scope of work was detailed enough for all of the vendors to estimate. Staff also held a pre-bid meeting on site to review everything with the contractors.

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

Mr. Anderson confirmed this renovation only includes the Tomahawk Park Baseball/Soccer Fields, which has not been re-graded for at least 12 years.

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

8. MAYOR'S REPORT

- A. Mayor Dunn had the privilege of participating in a roundtable discussion hosted by the Greater Kansas City Chamber of Commerce to narrow the "big 20" ideas down to the "big 5." Their recommendation will go on to the Chambers Executive Committee and then on to the Board of Directors for final adoption. There will be more to come thru the media in the coming weeks.

- B. Congratulations to Leawood Representative Pat Colloton on becoming the Chairwoman of the Council of State Governments Justice Center Board of Directors. This is a bipartisan group of a 25-member board. She played a large role in changing State justice systems since 2006. She is also the Chairwoman of the Kansas House Corrections and Juvenile Justice Committee and a member of the Johnson County Criminal Justice Advisory Council. The policy changes she has worked on have cut returns for technical violations in half and reduced new crimes by parolees by one-third. From 2007 to 2009, the State's prison population declined 7%. Kansas has become a national model.
- C. The Leawood Lifestyle magazine had three great feature articles:
 - 1) "Leawood Gets in Gear" - Board Hopes to Make the City a "Bicycle Friendly Community."
 - 2) "Blue Valley Students Receive Scholarships" thanks to the Cocherl family of Leawood. These scholarships are for students seeking post-secondary educational opportunities at a college, university, trade school, vocational training facility or working environment. This year's scholarships total \$27,000. This is the fourth year of awarding the Cocherl Family Scholarships.
 - 3) "Couple's Volunteer Spirit Shines," featuring Councilmember Gary Bussing and his wife, Kathy.
- D. Reminder to celebrate the arts at the Ironwoods Park Amphitheatre. The Sundays in the Park Jazz Series began on August 14th, featuring the Steve Miller KC Band. Other concerts include: Candace Evans on August 21st, Grand Marquis on August 28th and David Basse & OJT on September 4th. In case of rain or extreme heat, the concerts will be held inside the Ironwoods Lodge. Friday, August 19th is Footloose Movie Night at 8:30 P.M. (rainout date August 20th). There will be a Back to School Event at the Historic Oxford Schoolhouse on Saturday, August 27th from 10:00 A.M. – 2:00 P.M. The Wings of Love Bird Show will be held on Sunday, September 11th at 3:00 P.M. inside the Lodge.
- E. Reminder that the next Governing Body meeting will be held on Tuesday, September 6th due to Labor Day on Monday, September 5th.

Councilmember Bussing added Abby Hannifan, a Leawood resident, graduate of St. Thomas Aquinas High School and Senior at Vanderbilt University, received The Rotary Ambassadorial Scholarship that was sponsored by the Leawood Rotary Club and offered through Rotary International. Ms. Hannifan is an amazing young woman and hopes to study in London for one year after completing her studies at Vanderbilt.

9. COUNCILMEMBERS' REPORT – Councilmember Rasmussen

Approve referral request to the Parks and Recreation Advisory Board

A motion to direct the Parks and Recreation Advisory Board to explore the possibility of allowing dogs to swim in the greenway area at City Park and Ironwoods Park and review the fee schedule for same and procedure for enforcement was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Rasmussen commented during extreme heat conditions, citizens had been allowing their dogs to swim in the lakes. According to leash requirements this is illegal; however, he thought it could be permitted if they came up with an applicable fee to cover the costs of signage. He wanted the board to review whether including an incremental fee along with the City dog license fee would be feasible to allow dogs to swim in the lakes.

Councilmember Bussing requested that the Parks and Recreation Advisory Board also investigate the safety of the water quality for the dogs.

The motion carried following a vote of 7-1. Nay: Councilmember Rawlings. Mr. Rawlings felt City staff could make better use of their time.

10. STAFF REPORT

Request to assign to Stormwater Management Committee selection of Design Consultant for replacement of box culvert under Mission Road at 87th Street [Stormwater Project # 77011]

Mr. Johnson stated this project will begin this year with construction in 2012. The request is to have the Stormwater Management Committee review the proposals for selection of a design engineer.

A motion to request that the Stormwater Management Committee review the selection of a design consultant for replacement of the box culvert under Mission Road at 87th Street and review the highlights of the presentation from the two speakers regarding the stormwater sustainability projects was made by Councilmember Filla; seconded by Councilmember Osman.

Mr. Johnson stated the proposals will be submitted in time for the September Stormwater Management Committee meeting and confirmed the City's existing stormwater ordinances are in compliance with the Environmental Protection Agency [EPA]. Staff references the Mid-America Regional Council [MARC] manual on best management practices developed for this region.

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

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the January 25, 2011 Planning Commission meeting]

- A. **Resolution No. 3649** 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)—***CONTINUED FROM THE FEBRUARY 21, 2011 GOVERNING BODY MEETING***

Staff Comment: Staff is recommending this item be continued to the February 20, 2012 Governing Body meeting

Mayor Dunn noted, subsequently, they held a work session regarding the sign ordinance. An LDO amendment is being prepared to provide a deviation process on a case-by-case basis.

A motion to continue this to the February 20, 2012, Governing Body meeting was made by Councilmember Azeltine; seconded by Councilmember Rezac.

Councilmember Osman felt continuing this to February 20, 2012, was an excessively long time considering the applicant came before them in February, 2011, in hopes of a resolution. Community Development Director Richard Coleman thought staff could amend the language in the LDO and return before the Council within 60-90 days. Mr. Lambers confirmed this could be moved up to the December 5, 2011, Governing Body meeting with the understanding that it could be pushed back.

Councilmember Azeltine made a friendly amendment to his motion to continue this to the December 5, 2011, Governing Body meeting; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 8-0.

[from the July 26, 2011 Planning Commission meeting]

- B. **Ordinance No. 2506** approving a Special Use Permit for a wireless antenna and associated equipment on an existing tower for Cingular Wireless d.b.a. AT&T Mobility, located north of 135th Street and west of Briar (PC Case # 61-11) [Roll Call Vote]

Curtis Holland, Esq., Polsinelli Shughart, represented Cingular Wireless requesting a Special Use Permit [SUP] to place additional antennas on the tower structure, located at 135th and Nall. There have been initiatives by various carriers to construct and deploy 4G networks, also known as high speed data services. As per the application, they will flush mount the antennas to the pole.

Councilmember Rasmussen expressed concern with the lack of maintenance around the tower. Mr. Holland responded the landscaping around the perimeter is not on the same property as the tower. That property is now bank-owned, which also owns the development. He agreed there are clearly issues maintaining the facility; however, the landscaping at one time met all of the requirements for the tower. Some of the trees were removed when the development was constructed. The tower property itself is a separate ownership. Crown Castle [CC], the management company for the tower, has been trying to get permission from the bank to clean up the property and plant additional trees. Mr. Holland confirmed for Mayor Dunn he sent pictures of the maintenance issues to CC and they have been working toward a resolution. CC will fund the cleanup and landscaping. A trash enclosure is planned to be placed at the front of the structure on the east side, which should screen half of the facility. He had also informed them the rust on the doors to the compound needed to be fixed.

Councilmember Bussing made a motion to pass the ordinance and include an additional stipulation that the exterior maintenance of the facility must meet the City's requirements from the original landscape plan by March 13, 2012. If this has not been met by that time, the SUP would expire; seconded by Councilmember Rasmussen. An SUP renewal would be contingent upon them complying with this additional stipulation.

Mayor Dunn was concerned that if they comply, this language would make it look as though the Governing Body was already giving their consent to renew the SUP on March 13, 2012. Ms. Bennett concurred. She felt Mr. Holland understood the Council's concerns with the appearance and could relay this information to the other carriers and tower owner.

Mayor Dunn noted there were several things beyond the landscaping that don't meet the Cell Tower Ordinance. Mr. Holland stated unless the ordinance is amended the tower will be removed. He was concerned with the amount of time this could take and wanted it moved up in order to be addressed immediately. Mr. Coleman confirmed they had been working very diligently with Mr. Holland and have requested potential other sites for other towers. Mr. Holland confirmed he would be representing most, if not all of the other carriers on this issue.

Mr. Coleman stated a notice was sent to the property owner on the maintenance issues. He clarified for Councilmember Filla that under the Cell Tower Ordinance, this is a legal non-confirming tower and as previously stated the SUP will expire next March. By that time, the ordinance would either need to be modified to allow the tower to remain, or be lowered to come into compliance. Mayor Dunn clarified the Cell Tower Ordinance was adopted after the original approval of this tower. Mr. Coleman stated the property owner has until this Thursday to respond to the notice or they may be cited and taken to court. If they respond intending to correct the issues but need to wait until the weather improves to complete the landscaping, staff will work with them toward a resolution.

Mr. Holland stated although the tower is non-conforming as it relates to the existing regulations; it currently has a valid SUP, which makes it conforming until March. By that time, they would be required to bring the facility into compliance; however, Mr. Holland stated they were not planning to do this; however, was planning to request that the City amend the ordinance to allow the non-conformity to continue. He thought they may lose the tower since it not only doesn't conform in height, but also its proximity to residential and other non-conforming issues. There is no way to make it conform unless the Council amends the ordinance. Mayor Dunn confirmed with Mr. Holland that he would continue to work with staff on resolutions. He was requesting that this be installed for six months, knowing they are risking not having a plan after March.

Councilmember Bussing withdrew the additional stipulation to his motion; seconded by Councilmember Rasmussen.

The motion to pass the ordinance approving a Special Use Permit for a wireless antenna and associated equipment on the existing tower carried following a unanimous roll call vote of 8-0. Nay: None.

[from the June 28, 2011 Planning Commission meeting]

- C. **Resolution No. 3646** approving a Final Site Plan for a Tenant Finish for Park Place – Park Place Office, located at the southeast corner of Town Center Drive and Nall Avenue. (PC Case 70-11) – **CONTINUED FROM THE AUGUST 1, 2011 GOVERNING BODY MEETING**

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

- D. **Resolution No. 3647** approving a Revised Final Plan for a Tenant Finish for Cornerstone – Talk of the Town Grill & Bar, located at 5201 W. 135th Street (PC Case 75-11)

Henry Klover, Klover Architects, requested approval for modifications to the previous Ted's Montana Grill building. The basic building shape and materials will remain the same; however, an enhanced patio will be added to the east side of the building. The patio will have a plank concrete floor with materials matching the building and will be partially covered with a canopy designed to match the existing canopy. The sign bands and new signage will be painted a dark bronze to match what currently exists. A new door will be added to the west canopy. The existing wood storefronts will be painted a darker color to change the image. They are currently located at 119th and Quivira in Overland Park and are expanding to this second location.

Councilmember Cain confirmed with Mr. Klover there will be 3 televisions on the patio. Mr. Klover stated if noise becomes a concern, they may need to plant additional landscaping.

Mayor Dunn confirmed with Mr. Klover they intend to have a minimum of 60% plant landscape, rather than the majority being mulch beds. Mr. Klein confirmed staff is trying to include this stipulation on all future applications.

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

- E. **Resolution No. 3649** approving a Revised Final Plan for One Nineteen – Fo Thai Restaurant, located at the southeast corner of 119th Street and Roe Avenue (PC Case # 77-11)

Staff Comment: The City Administrator recommends denial of the Revised Final Plan for the reasons expressed by Planning Commissioner Elkins which led him and Planning Commissioner Neff-Brain to vote against the Revised Final Plan

Councilmember Osman requested to be recused due to a conflict of interest.

Tim Bowman, Compass Resources, stated he is the general contractor for Fo Thai Restaurant.

Councilmember Bussing stated the Governing Body had an approved plan the applicant chose to ignore. He recommended they remand this to the PC to have them begin the process again.

Mayor Dunn confirmed with staff this is a Revised Final Plan, which has already been remanded to the PC. The original plan was approved and they returned with some modifications. Now they have returned for the third time to approve additional changes that have already been constructed. Councilmember Bussing stated the City requires that applicants seek their approval before construction. Councilmember Rasmussen concurred and was in favor of the City Administrator's recommendation to deny the plan.

Mr. Lambers stated they have a process by which an applicant can request an at-risk permit to construct something that may or may not be approved and then go through the planning process. Various reasons could be due to the weather, a timing issue, etc. This must be requested prior to construction; however, this applicant did not do so. He agreed they should remand this to the PC for reconsideration.

Mr. Bowman confirmed for Mayor Dunn the tenant space is not yet completed. They were anticipating a Temporary Certificate of Occupancy [TCO] for a soft opening at the end of this month. Mr. Coleman confirmed if this is remanded they will not get a TCO to open.

Ms. Rezac confirmed with Mr. Coleman that the changes to this project were brought to their attention by City field inspectors.

Mr. Coleman clarified the Council's options are to approve this application, go back to what was originally approved and get their occupancy permit, or remand to the PC.

Mr. Bowman gave a presentation regarding the changes that were made. He thought there was concern with the brick and stated they could replace it if necessary. The copper has been put through an accelerated aging process and will continue to age over time. It has been wrapped around the corner to keep from breaking up the materials. This was a masonry wall before the copper was installed. The split-log transom was removed and replaced with a transom that resembles the doors beneath. The overhead door with multiple panes of glass is currently installed. Mr. Coleman confirmed the original approved door was a bi-fold door. The applicant re-submitted and got approval for something different than what was actually installed. Planning Commissioner Elkins felt the installed door looked more like a garage door.

Councilmember Filla confirmed with Mr. Bowman that the restaurant owners were local. She found it odd they were not present for the meeting.

Mr. Bowman stated the outside brick will carry throughout the restaurant. The menu will be placed in the small square glass window in the brick.

Mr. Klein stated the changes to the plan included the overhead door, the wrapped copper, the transom, and the glass window. Staff confirmed Red Development knew of these changes and was in agreement with them.

Mayor Dunn stated the PC approved this with a vote of 3-2; however, there was disappointment by all of the commissioners regarding the inappropriate process. Their main concerns were with the garage door, and the process. This will take a super majority vote of 6 to override the PC approval.

Mr. Bowman confirmed for Councilmember Cain they could replace the overhead door; however, it would be very costly and time consuming.

Councilmember Azeltine thought the project team had a breakdown of miscommunication and although he was sympathetic, he felt it wasn't their problem. He thought if they approved this they would be compromising their process and setting a bad precedent. If they remand it, he wasn't sure what they would be asking the PC to do. If they deny it, the applicant can go back to the plan that was approved.

Councilmember Filla understood the Council's concerns regarding the applicant not following the correct procedure; however, she didn't feel they should be "punished" for going about it incorrectly if, in the end, they are comfortable with the changes. She had no objections to the overhead door and felt the copper was a stunning upgrade. Mayor Dunn concurred; however, that didn't mean she was at all pleased with the way they went about it. She stated this would not be setting a precedent and is most unusual.

Councilmember Rezac was concerned that it wasn't just one change, but several changes. After coming back a second time to request changes, she felt the project team had to of known the City's process. She was suspect and disappointed that they made more changes without the thought of coming back again and supported the recommendation for denial.

A motion to deny the Revised Final Plan was made by Councilmember Rasmussen; seconded by Councilmember Rezac.

Mayor Dunn stated if the motion to deny is approved, everything that was changed would need to be removed. Councilmember Rasmussen was adamant that their procedure be followed. Mr. Coleman confirmed with this denial they could come back and request these changes.

Councilmember Bussing stated he likes most of the changes; however, it puts him in a position to compromise one of his principals by approving it. His main concern was the overhead door. He was not in favor of denial because he thought it would be too punishing to the applicant. Mr. Bowman stated the La Bodega Restaurant just down from their location has the same overhead door, located on the front and side of their facility. He apologized for them failing to follow the City's process, but wanted the Council to consider the superior look of this project. When the front doors are finished they will be very similar to what was approved. Mr. Coleman replied the overhead door on this application is different than those on La Bodega; this one has a transom window added.

Mr. Bowman clarified for Councilmember Rawlings they invited 3 companies to participate in a bid process for the overhead door. Their project team liked the doors on La Bodega and measured them to continue that look. Mr. Bowman stated he never saw the plan with the approved bi-fold overhead door. It could take 8-10 weeks to replace the existing overhead door. Councilmember Filla thought the multiple glass panel door was more aesthetically pleasing because it matched the symmetry of the windows above it and the One Nineteen Development. She wanted to allow them to open on time, rather than spend additional time remanding it to the PC. Mayor Dunn concurred.

Councilmember Rawlings asked if they could temporarily approve the already installed overhead door to allow the restaurant to open, but include a stipulation that they return to the PC to reconsider the originally approved door.

Mr. Lambers replied rather than the applicant restart the process, they could remand this to the PC's next meeting to reconsider the overhead door and then return to the September 6th Council meeting for a final decision. If the Council decides they want the originally approved door installed, they can issue a TCO for 90 days to allow time for installation.

The motion to deny the Revised Final Plan failed with a vote of 2-5. Yay: Councilmembers Rasmussen and Rezac. Nay: Councilmembers Filla, Rawlings, Bussing, Cain and Azeltine. (Councilmember Osman Recused).

A motion to remand this to the Planning Commission was made by Councilmember Filla; seconded by Councilmember Bussing.

Councilmember Filla removed her motion from the table. Councilmember Bussing removed his second.

A motion to approve the Revised Final Plan was made by Councilmember Filla; seconded by Councilmember Cain.

Councilmember Azeltine reiterated he was not in favor of approval because it would be compromising their process and he, too, did not like the overhead door.

Councilmember Cain was also disappointed in their failing to follow the process; however, she was in favor of the plan because she thought the changes were improvements. She was disappointed that a representative from Red Development or the restaurant owners were not in attendance this evening.

The motion to approve the Revised Final Plan failed with a vote of 2-5. Yay: Councilmembers Filla and Cain. Nay: Councilmembers Rezac, Rasmussen, Bussing, Rawlings and Azeltine. (Councilmember Osman recused).

A motion to remand this to the PC to consider possible alternatives for the overhead door with the expedited timeframe discussed by Mr. Lambers to return before them at the September 6, 2011, Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Azeltine.

Mayor Dunn noted the PC may find that the currently installed door is the most appropriate.

Mr. Lambers confirmed if this remand is approved they would not be able to open by the end of this month. The earliest they could get a TCO would be September 7, 2011. Mr. Bowman responded the restaurant has already hired 300 employees in anticipation of opening. Mayor Dunn understood remanding this would make a tremendous impact on the applicant.

Mr. Lambers clarified by denying this application and having the currently approved plan stand, the Council can request that the applicant replace the overhead door. If they commit to replacing the door, he can issue a TCO.

Mr. Bowman felt comfortable having the authority to state if their only option is to replace the door, he would do so. He asked the Council to consider comparing the door to those of La Bodega before they are forced to spend close to \$30,000.

Mr. Bussing stated his motion to remand this to the PC stands. Councilmember Azeltine withdrew his second. Councilmember Rawlings seconded the motion. The motion to remand failed with a vote of 3-4. Yay: Councilmembers Bussing, Rawlings and Rezac. Nay: Councilmembers Azeltine, Filla, Rasmussen and Cain. (Councilmember Osman recused).

Councilmember Rezac stated her denial of this case was not based on any of the architectural changes and thought they were actually an improvement.

Mr. Lambers stated they need to capture what the Council likes and dislikes and still allow the applicant to be able to open. If the Council denies this plan, the applicant can submit another application and go through the process incorporating their recommended changes with further review of the overhead door. If the applicant makes a good faith effort to agree to the changes, a TCO can be issued allowing them to open by the end of this month and time to comply. Ultimately, if everything remains the same and there are no changes, a Certificate of Occupancy [CO] will be issued.

A motion to deny the Revised Final Plan and request that the applicant submit a new application with their recommended changes with further review of the overhead door was made by Councilmember Rasmussen; seconded by Councilmember Bussing. Mr. Bowman stated he supports this decision and was 100% committed to submitting a new application and going through the process.

Mayor Dunn noted this will take a super majority vote of 6 to override the PC approval.

The motion carried following a unanimous vote of 7-0. (Councilmember Osman recused).

Councilmember Osman rejoined the meeting.

12. OLD BUSINESS

- A. Schedule a Governing Body Work Session at 6:00 P.M., on November 21, 2011, to discuss potential financing source(s) for Curb Repair & Replacement Project – ***CONTINUED FROM THE JULY 18, 2011 GOVERNING BODY MEETING - WITHDRAWN***

Staff Comment: Staff recommends that no work session be conducted on November 21st, due to the Scheduled Lighting Ceremony at 6:00 P.M., and is requesting this topic be rescheduled at 6:00 P.M., on December 5, 2011

- B. Schedule a Governing Body Work Session at 6:00 P.M., on December 5, 2011, to discuss potential financing source(s) for Curb Repair & Replacement Project

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

13. OTHER BUSINESS - None

14. NEW BUSINESS

Resolution No. 3648 waiving the bidding process, in accordance with Charter Ordinance No. 32, pertaining to the construction of the Leawood Justice Center to be located at 117th & Tomahawk Creek Parkway

Staff Comment: This item is a request to modify the bidding process for the Justice Center. Staff desires to modify the process in which a contractor is selected to construct the Justice Center. Due to the type of construction required on the Justice Center, staff wants to develop a short list of contractors that will only be allowed to bid on the project.

Councilmember Rasmussen was not in favor of waiving the bidding process and pre-selecting contractors for the Justice Center. He felt with the magnitude of this project and its bonding requirements; it would only permit quality contractors to apply. Mr. Lambers clarified with the significance of this project it is not uncommon to have contractors go through a pre-qualification process to determine their bonding capacity and any other issues with qualifications.

Dave Walter, Owner's Representative for MC Realty Group, explained the rationale for their request. Often times in bidding they see better results from a smaller list of contractors because there is less competition. In a time of recession, like today, it is important to look at a contractor's financial health very closely. The amount of work they've done over the last 3 years will tell them a lot about their mindset and financial health. Selecting a low bidder doesn't always mean they will reach their goals and could actually cost them more money. They need to be careful selecting contractor's that, financially, may be to a point they are getting into a new realm of bidding they normally wouldn't get into. They may lowball the bid in hopes of coming back with change orders, which would compromise the building's quality. Pre-qualifying contractors will deliver the best quality product at the best price. He anticipated the short list would amount to 5-7 contractors; however, they don't want to eliminate contractors that are well-qualified and will likely submit a good pre-qualification proposal. They intend to invite the public to submit their qualifications over the City's website and will also notify contractors they feel are qualified to ensure they know about the Request for Qualifications [RFQ]. From here, they will determine the short list and request bids. Mayor Dunn stated JE Dunn Construction Company will not be one of the contractors to be considered for this project. Mr. Walter confirmed they could receive RFQ's from contractors outside the metro-area if they are monitoring the City's website or are aware of the project. Many general contractors in this area are traveling great distances to find work. Their short list could grow if they receive several qualified contractors. Mr. Lambers stated early in the process they identified the significant possibility that contractors from outside areas such as Dallas, Chicago, Minneapolis, Des Moines, etc., may be interested in this project. They would not preclude them from being considered. The decision regarding a contractor's qualifications will consist of key City staff members and the same team that selected the architect.

Councilmember Rasmussen recommended that a City Council member be included in the selection process of the short list of contractors. Mr. Lambers confirmed the Council would approve that list before they request bid proposals. Councilmember Rawlings stated he was a part of the architect selection team and was willing to be a part of the RFQ team.

A motion to approve the resolution with the addition of Councilmember Rawlings to serve on the RFQ team was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

Mr. Lambers referred to their earlier discussion regarding Mr. Holland's intention to request that the City amend its Cell Tower Ordinance and stated this would not be for just the one tower; it would be City-wide. If the Council wants to consider amending the ordinance, he needed to know as soon as possible to schedule a work session for discussion since the SUP expires in March. Mayor Dunn reminded the Council that they currently have a cell tower provider that is in close proximity to residential. There is a provision in the ordinance that allows this; however, the tower is camouflaged.

ADJOURN

There being no further business, the meeting was adjourned at 11:00 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk