

Minutes

DVD No. 278

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, April 16, 2012. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: Councilmember Lou Rasmussen

Staff present: Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief John Meier, Police Dept	Chris Claxton, P&R Director
Interim Chief Steve Duncan, Fire Dept	Joe Johnson, PW Director
Karl Weinfurter, Info Systems Specialist	Lovina Freeman, HR Director
Richard Coleman, Comm. Dev Director	Deb Harper, City Clerk
Dawn Long, Finance Director	Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

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

3. CITIZEN COMMENTS

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

4. PROCLAMATIONS

National Volunteer Week, April 15-21, 2012

Mayor Dunn read the proclamation into the record and commented Leawood was very fortunate to have approximately 300 volunteers serving the community.

National Arbor Day, April 27, 2012

Mayor Dunn read the proclamation into the record and thanked Parks and Recreation Director Chris Claxton, Parks Superintendent Brian Anderson and the Parks Department for all of their efforts to beautify the City's parks.

5. PRESENTATIONS/RECOGNITIONS - None

6. **OATHS OF OFFICE ADMINISTERED TO COUNCILMEMBERS-ELECT GARY BUSSING, DEBRA FILLA, JULIE CAIN [TERMS EXPIRE 2016] AND CARRIE REZAC [TERM EXPIRES 2014]**
7. **ROLL CALL OF NEW COUNCILMEMBERS**
8. **SPECIAL BUSINESS**
 - A. **Public Hearing: Pre-Budget Public Hearing for 2013 Fiscal Budget for the City of Leawood, Kansas**

Seeing no one present to speak, a motion to close the public hearing was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- B. **Resolution No. 3783**, accepting proposed assessments for construction of certain public and private road and parking lot related improvements and other such transportation related improvements approved by the City, located within One Nineteen Development District, within the City of Leawood, Kansas; and authorizing and directing the City Clerk to give notice thereof to the owners of properties within the District by publishing Notice thereof and providing written notice to owners of property of such proposed assessments [One Nineteen Transportation Development District] [TDD] [Project # 80456]

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Osman. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- C. **Resolution No. 3784**, accepting proposed assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for construction of improvements to Nall Avenue, 117th Street, Town Center Drive and Roe Avenue and construction of storm water improvements within the City of Leawood, Kansas; and authorizing and directing the City Clerk to give notice thereof to the owners of properties within the District by publishing notice thereof and providing written notice to owners of property of such proposed assessments [Park Place Development] [Project # 83196]

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- D. Approve selection of Titan Built Construction as the General Contractor for the Leawood Justice Center to be located at Town Center Drive & Tomahawk Creek Parkway [Project # 76008]

City Administrator Scott Lambers stated the scheduled completion date is based upon work days. As the project progresses there will be days work will not be able to occur. Staff will monitor this and keep the Council apprised. If the General Contractor [GC] is approved this evening, the intent is to return with a contract at the May 7, 2012, Governing Body meeting.

A motion to approve the selection of Titan Built Construction as the GC for the Leawood Justice Center was made by Councilmember Azeltine; seconded by Councilmember Rawlings.

Mr. Lambers confirmed the City is carrying a \$1 Million contingency.

Dave Walter, McRealty Group, confirmed this GC has previously worked with 5 other municipalities.

Councilmember Osman asked what kind of measures were in place to ensure the contract amounts are correct and frequent change orders do not occur. Mr. Walter replied he was confident in their complete scope of work. If there are unforeseen conditions, a change order would be passed on to the City. This is common in construction. After reviewing the bids, they determined most of the \$800,000 difference was in union and non-union labor costs.

The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

9. 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. 2012-13
- B. Accept minutes of the April 2, 2012 Governing Body meeting
- C. Accept minutes of the April 2, 2012 Governing Body Work Session
- D. Accept minutes of the January 26, 2012 Leawood Foundation meeting
- E. Accept minutes of the November 21, 2011 Leawood Arts Council meeting
- F. Approve bid in the amount of \$12,970.00 to Victor L. Phillips, for the purchase of Asphalt Planer Attachment
- G. Approve 3rd and Final Pay Request in the amount of \$8,955.00 to Premier Contractors pertaining to the roof replacement located at Ironwood Park, 14701 Mission Road [Project # 74045]
- H. Approve Change Order No. 2 in the amount of \$9,653.04, to C.V. Anderson, Inc., pertaining to repairs to city facilities [Project # 74045]
- I. **Resolution No. 3785** approving and authorizing the Mayor to execute an extension of services for the purchase of office supplies with National Joint Powers Alliance [NJPA] [f/n/a National Intergovernmental Purchasing Alliance Company [NIPA] with Staples Advantage [f/n/a Corporate Express]
- J. **Resolution No. 3786** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$1,598,554.90, between the City and Miles Excavating, Inc., pertaining to the 2012 Residential Street Reconstruction Project [Project # 80212 & 73003]

- K. **Resolution No. 3787** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of County Commissioners of Johnson County [BOCC], pertaining to Dykes Branch 82nd and Wenonga Stormwater Improvement Project [DB-04-026] Stormwater Management Advisory County [SMAC] Project [Project # 73003]
- L. **Resolution No. 3788** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$594,830.36 between the City and Hayes Brothers Construction, for the improvements to North Lake and Trail located adjacent to Tomahawk Creek Parkway [Project # 71006]
- M. **Resolution No. 3789** approving and authorizing the Mayor to execute Amendment No. 1 to that certain Professional Engineering Service Agreement, dated November 7, 2011, in the amount of \$15,500.00, between the City and Continental Consulting Engineers, Inc., pertaining to the improvements to North Lake and Trail located adjacent to Tomahawk Creek Parkway [Project # 71006]
- N. **Resolution No. 3790** requesting participation from Johnson County, Kansas, in the City of Leawood's 5-year Capital Improvement Program through the 2013-2017 County Assistance Road System [CARS]
- O. **Resolution No. 3791** approving a Final Plan for a tenant finish for One Nineteen – Orvis, located south of 119th Street and east of Roe Avenue (PC Case # 17-12) [from the March 27, 2012 Planning Commission meeting]
- P. Fire Department Monthly Report
- Q. Police Department Monthly Report
- R. Municipal Court Monthly Report
- S. Declaration of Surplus Property; 2007 Ford Crown Vic last 4 VIN/4047; [1] drill [1] plate compactor; office chairs

Councilmember Rezac requested to pull Item No. 9L and Councilmember Cain pulled Item No. 9M for discussion.

A motion to approve the remainder of the Consent Agenda was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- 9L. **Resolution No. 3788** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$594,830.36 between the City and Hayes Brothers Construction, for the improvements to North Lake and Trail located adjacent to Tomahawk Creek Parkway [Project # 71006]

Ms. Claxton stated staff was recommending two alternates for an additional \$62,200, which is included in the \$594,830 total, for lining the sides and/or bottom of the lake with Bentonite and rebuilding the spillway on the north side. The base bid of \$532,630 includes relocating the trail and improvements to the north lake. This project will start as soon as they can begin mobilizing. A section of the trail from the parking lot to the bridge across College Boulevard will be closed for approximately 60 days.

A motion to approve Item No. 9L was made by Councilmember Rezac; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- 9M. **Resolution No. 3789** approving and authorizing the Mayor to execute Amendment No. 1 to that certain Professional Engineering Service Agreement, dated November 7, 2011, in the amount of \$15,500.00, between the City and Continental Consulting Engineers, Inc., pertaining to the improvements to North Lake and Trail located adjacent to Tomahawk Creek Parkway [Project # 71006]

Councilmember Cain applauded Ms. Claxton and her department for rebidding this project, which lowered the bid \$100,000 by shifting the trail to the west as opposed to rebuilding the sides.

A motion to approve Item No. 9M was made by Councilmember Cain; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

10. MAYOR'S REPORT

- A. Congratulations to Councilmembers Debra Filla, Lou Rasmussen, Gary Bussing, Carrie Rezac and Julie Cain on their election and re-election to the Leawood City Council.
- B. The Council of Mayors meeting was hosted by Mayor Joe Reardon of the Unified Government of Kansas City, Kansas, at the new Hollywood Casino at the Kansas Speedway. There were presentations at that meeting by Lobbyists Dick Carter and Mike Taylor regarding lack of resolution during this year's legislative session that has pushed most decisions to the omnibus session. This is expected to be the most lengthy wrap-up session in history.
- C. Attended a ceremony at Fire Station #2 with City Administrator Scott Lambers, in which 19-Year active Leawood Firefighter Joe Sullivan received a very nice gift in celebration of the Gahagan-Eddy Roofing Company's 10 years of service. This awarded and recognized Firefighter Sullivan with a new roof and new gutters for his home. He was nominated by Fire Department Administrative Assistant Becky Craig. Interim Fire Chief Steve Duncan did a wonderful job orchestrating the ceremony. Mayor Dunn extended appreciation to Gahagan-Eddy Roofing Company for honoring him.
- D. Police Chief John Meier along with other members of the Leawood Police Department attended the Church of the Nativity School D.A.R.E. Graduation. The program was conducted by Officer Mark Chudik who does an excellent job with the students.
- E. Attended the Leawood Stage Company's concert style production of "Titanic the Musical" with Councilmember Azeltine honoring the 100th Anniversary of the sinking of the Titanic. The production was held at the Ironwoods Park Lodge on Friday, April 13th, Saturday April 14th and Sunday, April 15th. Congratulations to Leawood Stage Company Chairman Paul Anderson and all of those involved on this outstanding production with incredible talent.

- F. AMC Corporate Headquarters will be having their groundbreaking ceremony on April 18th at 4:00 P.M. Governor Sam Brownback will attend and provide remarks.
- G. Reminder of a joint Governing Body and Planning Commission meeting that will be held on May 1st at the Hereford House at 6:00 P.M.
- H. The April issue of Leawood Lifestyle Magazine had 3 great articles – The first on the Sister City relationships with I-Lan, Taiwan, and the Gezer Region of Israel; the second was on honors and recognition of Master Patrol Officer Shawn Farris and his dedication and fundraising for the Special Olympics; the third showcased the home and art of Leawood Arts Council member Dan Throckmorton and Leawood Foundation Board Member Debby Throckmorton.

11. COUNCILMEMBERS' REPORT

- A. Councilmember Filla - Referral to Stormwater Committee for discussion of Cost-Share Program regarding installation of stormwater treatment structures

A motion to refer discussion of a Cost-Share Program to the Stormwater Committee was made by Councilmember Filla; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- B. Councilmember Bussing - Request staff initiate meeting between Arts Council, Justice Center architects, and staff regarding potential art placements at future Justice Center, to be located at 117th & Tomahawk Creek Parkway [Project # 76008]

A motion to request that staff initiate a meeting between the Arts Council and Justice Center architect regarding potential art placements at the future Justice Center was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

12. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

13. STORMWATER COMMITTEE

[From the February 29, 2012 Stormwater Committee]

Recommendation regarding Leawood Heritage storm drainage study as potential SMAC project [from the August 16, 2010 Governing Body meeting]

Councilmember Rawlings reported this is located below Somerset Lake off of 89th and Mission Road. Cherokee Lane and Ensley Lane have been identified in the 100-year floodplain and have been under discussion with the Stormwater Committee for several years. The 3 options presented by Phelps Engineering to provide flood protection for the public roads and homes along the channel are as follows:

- 1) A buyout of the eight homes that flood, increase the size of the culvert and minor channel improvements to keep water from flooding the street: Cost \$7,594,400.

- 2) Improve the open channel to increase capacity, increase the culvert sizes and purchase a single property: Cost \$2,847,700.
- 3) Replace the existing culverts and enclose the open channel through the entire reach: Cost \$5,217,500.

Public Works Director Joe Johnson stated their report was submitted to the Johnson County SMAC Program, in which they approved Option 2 with 75% of the funds from the County (approximately \$2 Million) and 25% City (approximately \$800,000). The Stormwater Committee recommended the City Council approve Option 2. The City is on the County's list for funding, which would be available in 2013 and will be good through 2014. It would allow time to program this into their Capital Improvement Program [CIP]. It has been the City's policy with SMAC funding to have the easements dedicated at no cost. In the event they are unable to get all of the easements, they would look into condemnation and pay for all the easements and create a Special Benefit District [SBD]. The easement costs would be assessed back to the property owners. He confirmed they may require easements on more than the 8 homes referenced in the staff report. A public meeting was held; however, specific conversations did not take place regarding easements. The exact locations of the easements are unknown at this time. Option 2 includes the purchase of a residential property, in which the homeowner has been made aware.

A motion to approve the Stormwater Committee's recommendation to proceed with Option 2 and direct City Administrator Scott Lambers to investigate when this could be incorporated into the CIP was made by Councilmember Bussing; seconded by Councilmember Azeltine.

Councilmember Filla supported this to be programmed into the CIP; however, noted her reservation on whether they would want to move forward on the easements once they receive their final analysis.

The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

14. PLANNING COMMISSION

[From the February 28, 2012 Planning Commission meeting]

- A. **Resolution No. 3792** approving a Revised Final Plan for Park Place – Building F Expansion Roof Screen, located at the northeast corner of 117th Street and Nall Avenue (PC Case # 30-12) *Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings*

Gary Schuberth, OPUS Design Build, requested approval of the revised elevations for the roof screening to be located on the west side of the building, rather than being more centralized along the east. The exact configuration of the screening would be determined upon submittal of the construction documents. The intent of the screen design is to be asymmetrical to reinforce the design of the building façade. The screening will not be viewed from the front of the building and is half the size of what was originally planned. Some portions will be visible from Town Center Drive.

Councilmember Cain confirmed with Mr. Schuberth that one HVAC unit would be sufficient, which will be 60' x 30' and 11' tall. Staff had suggested they double the length of the unit to 120' for aesthetics.

Community Development Director Richard Coleman confirmed the applicant was back before them because the building was approved in its original configuration.

Mr. Schuberth stated the crown molding still needed to be completed. The additional 60' of screening would cost \$20,000-\$25,000. They were willing to extend it; however, felt less screening was better. The height of the HVAC unit has not changed from the original submittal.

Councilmember Bussing concurred with some of the Planning Commissioners comments regarding concern of items being constructed before they are approved. Although this hasn't been common practice of Park Place, he felt it had happened too often and asked that they remain aware. Councilmember Rezac concurred; however, would support their request because she felt the final location and size of the screening was not a significant element to the overall aesthetics. Councilmember Azeltine stated he would support this; however, asked that they be mindful of the City's approval process.

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Osman. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

[From the February 28, 2012 Planning Commission meeting]

- B. **Ordinance No. 2527** approving a 2-year extension of a Special Use Permit [SUP] for STC Five, L.L.C., for the continued use of a wireless communication tower and associated equipment located north of 135th Street and west of Briar, Leawood, Johnson County Kansas (PC Case # 18-12) *Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]*

Curtis Holland, Esq., Polsinelli Schughart, represented the cell tower owner requesting Special Use Permit [SUP] renewals for this and the following 6 applications for 2 years to continue operation of the wireless facility at 135th and Nall. All of the carriers in the area have antennas on this facility. These applications were made upon the adoption of an ordinance in November, 2011, that would allow for this facility to remain as is for a 2-year period to allow time to explore alternatives for wireless coverage for all of the carriers. They have submitted all of the requested material and were in agreement with all stipulations.

Mayor Dunn noted the Planning Commission had approved a 1-year SUP extension; however, the Governing Body had passed an ordinance approving 2 years. She asked that they remain in contact with City staff to prevent this same situation. Mr. Holland confirmed they needed the full 2 years to allow time for the evaluation and then undergo the approval process. They did not expect to make this same request in 2 years and would have answers well in advance of this timeframe.

Mr. Coleman confirmed the cell tower owner had completed the improvements to the facility and staff was satisfied with the results. Mr. Holland stated additional trees would be planted to provide further screening.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- C. **Ordinance No. 2528** approving a 2-year extension of a Special Use Permit [SUP] for Verizon Wireless [VAW] LLC, d/b/a Verizon Wireless [Verizon Wireless] for the continued use of wireless communication antennae and associated equipment located north of 135th Street and West of Briar, Leawood, Johnson County, Kansas (PC Case #19-12) ***Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]***

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- D. **Ordinance No. 2529** approving a 2-year extension of a Special Use Permit [SUP] for New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility [AT&T Mobility] for the continued use of wireless communication antennae and associated equipment located north of 135th Street and west of Briar, Leawood, Johnson County, Kansas (PC Case #20-12) ***Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]***

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Bussing. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- E. **Ordinance No. 2530** approving a 2-year extension of a Special Use Permit [SUP] for Cricket Communications, Inc., [Cricket] for the continued use of wireless communication antennae and associated equipment located north of 135th Street and west of Briar, Leawood, Johnson County, Kansas (PC Case #21-12) ***Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]***

A motion to pass the ordinance was made by Councilmember Rezac; seconded by Councilmember Azeltine. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- F. **Ordinance No. 2531** approving a 2-year extension of a Special Use Permit [SUP] for Sprint Nextel Corporation [Sprint Nextel] for the continued use of wireless communication antennae and associated equipment located north of 135th Street and west of Briar, Leawood, Johnson County, Kansas (PC Case #22-12) ***Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]***

A motion to pass the ordinance was made by Councilmember Azeltine; seconded by Councilmember Bussing. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- G. **Ordinance No. 2532** approving a 2-year extension of a Special Use Permit [SUP] for T-Mobile Central LLC [T-Mobile] for the continued use of wireless communication antennae and associated equipment located north of 135th Street and west of Briar, Leawood, Johnson County, Kansas (PC Case #23-12) *Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]*

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Rezac. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- H. **Ordinance No. 2533** approving a 2-year extension of a Special Use Permit [SUP] for Clear Wireless LLC [Clearwire] for the continued use of wireless communication antennae and associated equipment located north of 135th Street and west of Briar, Leawood, Johnson County, Kansas (PC Case #24-12) *Continued from the March 19, 2012 & April 2, 2012 Governing Body meetings [Roll Call Vote]*

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous roll call vote of 7-0. (Councilmember Rasmussen absent).

[From the February 22, 2011 Planning Commission meeting]

- I. Resolution approving a Final Sign Plan for Ranchmart – U.S. Bank, located north of 95th Street and east of Mission Road (PC Case #18-11) *Continued From The March 21, 2011, March 5, 2012, March 19, 2012, and April 2, 2012 Governing Body Meetings [CONTINUED TO THE MAY 7, 2012 GOVERNING BODY MEETING]*

[From the March 27, 2012 Planning Commission meeting]

- J. **Resolution No. 3793** approving the Planning Commission's recommendation of denial of a Special Use Permit for Parkway Plaza – Retirement Homes, located at the northwest corner of 135th Street and Roe Avenue (PC Case # 92-11) **[PROTEST PETITION RECEIVED]**

Mr. Coleman confirmed the protest petition had been validated with over 20% of property owner signatures within the development. City Attorney Patty Bennett confirmed this would require 7 affirmative votes if the Council wanted to override the Planning Commission's recommendation of denial.

Stanley Armbruster, 4801 W. 133rd Street, President of Parkway 133 Condominiums Association, stated all of the owners of Parkway 133 were opposed to the Retirement Home Project and have signed the petition that was presented to the City Clerk. Condominium sales have increased over the past year and they were concerned this project would stall or halt sales. On behalf of the owners, he requested they deny this application.

Phil Acuff, 4901 W. 133rd Street, stated Leawood is beautiful and almost completely developed and felt it would be a mistake to approve this project.

Richard Hawk, 4801 W. 133rd Street, stated he had invested a lot financially in his residence at Parkway 133 and as owner of the Gaslight Grill, and did so in full recognition of the tradition of the Leawood City Council protecting the integrity of the City. He respectfully urged them to continue that tradition by approving the Planning Commission's recommendation of denying this project.

John Groebe, 10705 W. 115th Street, Managing Partner of Capital Development Partners for Parkway 133, stated they have worked hard to maintain the integrity of the community and protect the investments of their homeowners. One of the reasons they built at this location was because of the long and very prestigious history of Leawood. The developers and homeowners have made tremendous financial commitments. He requested they deny this application.

Mr. Coleman confirmed the applicant was not present this evening.

Councilmember Azeltine thought this application was inconsistent with their thoughts when they created this mixed use development. He was in favor of denial because he felt the developer should have come before them to present their case.

A motion to approve the Planning Commission's recommendation for denial of a SUP for Parkway Plaza Retirement Homes was made by Councilmember Azeltine; seconded by Councilmember Rawlings.

Councilmember Osman felt it was disrespectful that the developer was not present to propose their own project. Mayor Dunn concurred and further stated this was extensive material they all reviewed and they always come to the table willing to hear both sides. Mr. Osman commented it is not known whether the City Council will approve or deny a recommendation and is the responsibility of both parties to be present.

The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

[From the March 27, 2012 Planning Commission meeting]

K. **Resolution No. 3794** approving the Planning Commission's recommendation of denial of a Preliminary Plan and Preliminary Plat for Parkway Plaza – Retirement Homes, located at the northwest corner of 135th Street and Roe Avenue (PC Case # 92-11) [**PROTEST PETITION RECEIVED**]

A motion to approve the Planning Commission's recommendation for denial of a Preliminary Plan and Preliminary Plat for Parkway Plaza Retirement Homes was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

L. **Ordinance No. 2534** amending Article 9, Section 16-9-257, of the Leawood Development Ordinance [LDO], entitled 'Signs' pertaining to signage within drive-thrus and menus (PC Case # 49-12) [**Roll Call Vote**]

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

Councilmember Osman asked if they could amend this to include electronic television screens for drive-thru menu boards for the upcoming future trend. Mr. Coleman replied currently this is an illuminated sign. He preferred they wait and review this before approving and confirmed staff would be addressing it in the near future.

The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

M. **Ordinance No. 2535** amending Section 16-4-6 of the Leawood Development Ordinance [LDO], Sign Regulations, pertaining to signage within drive-thrus and menus (PC Case # 50-12) **[Roll Call Vote]**

A motion to pass the ordinance was made by Councilmember Cain; seconded by Councilmember Bussing. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

N. **Ordinance No. 2536** approving a Special Use Permit for Camelot Court – McDonalds, located north of 119th Street and east of Roe Avenue (PC Case #126-11) **[Roll Call Vote]**

Curtis Holland, Esq., Polsinelli Schughart, stated the McDonald's Corporation is updating their facilities to a new prototype across the country. This particular location has traffic constraints of moving customers through the site quickly as well as through Camelot Court. They were proposing to add a second drive-thru lane, which requires approval of a SUP. They are planning significant exterior modifications to the building and have been working with City staff in regards to signage, lighting, and materials. Mr. Holland confirmed they were in agreement with all stipulations and in compliance with the City's signage requirements with exception to the monument sign, which will remain in place as is. This particular facility will not include playground equipment. A north bound right turn lane will be constructed on Roe into Camelot Court. This construction will coincide with the facility updates, which will begin as soon as possible and take several weeks to complete. Signage will include directional entrance and exit signs, menu boards and speakers on the left side of the drive-thrus, a height clearance sign, monument sign, and an "M" sign on the side of the building. There will not be any reduction in parking spaces.

Harold Phelps, Phelps Engineering, confirmed there would be 20' of green space between the turn lane on Roe and the parking. The sidewalk will be 5' wide and will be shifted over to accommodate the turn lane.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Osman. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

O. **Ordinance No. 2537** approving a Preliminary Plan and Final Plan for Camelot Court – McDonalds, located north of 119th Street and east of Roe Avenue (PC Case #126-11) **[Roll Call Vote]**

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- P. **Ordinance No. 2538** approving a Preliminary Plan for Christ Community Evangelical Free Church – Phase III, located north of 143rd Street and west of Kenneth Road. (PC Case # 34-12) **[Roll Call Vote]**

Richard Kniss, Architect with Gould Evans Associates, stated construction would include a two-story building addition, relocation of the playground, and additional parking. They are in agreement with all of the stipulations, with exception to Stipulation No. 6, which pertains to the concrete masonry on the exterior of the building. He was proposing to match the adjacent building, which was constructed in 2002. The ordinance was amended in 2004 and no longer permits this masonry.

Mayor Dunn commented their current building also has brick and stucco, which are approved materials in the LDO. She was concerned with the efflorescence on their masonry and thought this was one of the reasons it was no longer allowed. Stipulation No. 6 reads as: “At the time of Final Plan application, the applicant shall provide building elevations which propose building material that is permitted by the LDO in lieu of the proposed buff colored masonry unit unless the LDO is amended to allow the concrete masonry unit as proposed, prior to the filing for building permits.” The LDO would not be amended this evening. If they override the Planning Commission it will require a super majority vote. Mr. Kniss replied they were in support of the Planning Commission; however, requested that the LDO be amended in the future. Mayor Dunn was not in favor of amending the LDO to allow this masonry.

Mr. Coleman confirmed they could request a variance in the ordinance pertaining to the building material from the Board of Zoning Appeals [BZA].

Mr. Kniss stated they would continue to look into other materials; however, preferred to match the pattern of the current masonry.

Mr. Lambers clarified the Council needed to consider either reverting back to the original staff recommendation or the Planning Commission’s recommendation. The option of amending the LDO is not on the table this evening.

Mr. Kniss confirmed that unless the LDO was amended to allow the concrete masonry as proposed, they would not move forward with the addition. Mayor Dunn stated they can approve this Preliminary Plan; however, it will lapse in 2 years if they have not diligently pursued construction.

Mr. Coleman clarified some of the Planning Commissioners had discussed the possibility of amending the LDO to allow concrete masonry back on their approved list of materials. They can approve this plan; however, the Final Plan application will need to include approved materials, whether the LDO is amended or not. Mr. Kniss stated they would be amenable to this.

Mr. Coleman confirmed staff had concerns regarding the proximity of the playground overlooking the residents' backyards. Mr. Kniss replied the playground was proposed for this location to be close to the preschool. A row of trees will be planted along the residential side of the playground for additional screening. They went through the interact process and received no feedback regarding the proximity to the neighbors.

Councilmember Bussing stated the landscaping submitted at Final Plan will be crucial.

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

15. **OLD BUSINESS** - None

16. **OTHER BUSINESS** - None

17. **NEW BUSINESS**

- A. **Ordinance No. 2539C** amending § 1-602 of the Code of the City of Leawood, 2000, pertaining to Leawood Arts Council Membership Terms and Qualifications [**Roll Call Vote**]

Mayor Dunn noted an error in the ordinance language resulted in this amendment to bring them into compliance with their practice of 3-year membership terms.

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a roll call vote of 7-0. Nay: None. (Councilmember Rasmussen absent).

- B. Schedule a Joint Governing Body/Planning Commission Work Session at 6:00 P.M., on Tuesday, May 1, 2012, to discuss future planning issues

A motion to approve the work session was made by Councilmember Rezac; seconded by Councilmember Cain.

Mr. Coleman stated the work session topic would be regarding mixed use development along the 135th Street corridor.

The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

ADJOURN

There being no further business, the meeting was adjourned at 9:58 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk