

Minutes

DVD No. 387

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, 7:30 P.M. on Monday, March 20, 2017. Mayor Peggy Dunn presided.

Councilmembers Present: Jim Rawlings, Andrew Osman, Debra Filla, Chuck Sipple, Julie Cain, Lisa Harrison, James Azeltine and Dr. Steven Kaster

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator	Mark Tepesch, Info. Serv. Specialist III
Patty Bennett, City Attorney	Chief Troy Rettig, Police Department
Chris Claxton, Parks & Recreation Director	Deputy Chief Wayne Harder, Fire Dept.
Andrew Hall, Assistant City Attorney	Brian Anderson, Parks Superintendent
Mark Klein, Planning Official	Nic Sanders, Human Resources Director
Dawn Long, Finance Director	Joe Johnson, Public Works Director
Richard Coleman, Comm. Dev. Director	Deputy Chief Kevin Cauley, Police Dept.
Debra Harper, City Clerk	Cindy Jacobus, Assistant City Clerk

Others Present: Kevin Jeffries, President. Chief Executive Officer and Director of Economic Development, Leawood Chamber of Commerce

1. **PLEDGE OF ALLEGIANCE** – Lead by Boy Scouts from Troop 10
2. **APPROVAL OF AGENDA**

A motion to approve the agenda was made by Councilmember Sipple; seconded by Councilmember Azeltine. The motion was approved with 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 use profanity or 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** – None
5. **PRESENTATIONS/RECOGNITIONS** – None

6. SPECIAL BUSINESS

- A. **Ordinance No. 2826C**, amending Code § 15-542 of the Code of the City of Leawood, Kansas, 2000, entitled, ‘Grading, Erosion and Sediment Control Site Plan Requirements,’ and repealing existing § 15-542 and other sections in conflict herewith [ROLL CALL VOTE]

Mr. Johnson stated the amendment would update documentation to current practice and provide compliance with the National Pollutant Discharge Elimination System [NPDES] permit.

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion was approved with a unanimous roll call vote of 8-0.

- B. **Ordinance No. 2827C**, amending Code Sections 15-302 and 15-303 of the Code of the City of Leawood, Kansas, 2000, entitled, ‘Incorporating Division V-Section 5600 Design Criteria for Storm Drainage Systems and Facilities,’ and ‘Incorporating Division V-Design Criteria-Division 5100 Erosion and Sediment Control,’ respectively, and repealing existing § 15-302 and 15-303 and other sections in conflict herewith [ROLL CALL VOTE]

Mr. Johnson confirmed to Councilmember Azeltine the amendments were required since the City ascribes to international/national standards.

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Sipple. The motion was approved with a unanimous roll call vote of 8-0.

COMMITTEE RECOMMENDATION

7. PUBLIC WORKS COMMITTEE

[from the January 11, 2017 and March 1, 2017 Public Work Committee meetings]

[from the November 7, 2016 Governing Body meeting]

- A. **Recommendation:** Engineering study be conducted for a sidewalk located on the east side of Mission Road from 92nd Street to 95th Street [near Cure of Ars Church, 9401 Mission Road] for an approximate cost of \$22,245.00

Mr. Johnson stated existing sidewalk sits along the back of the curb. The Public Works Committee had considered what might be done to provide an offset and widen the sidewalk. Easements are limited. The consultant would determine easements, cost and options such as sideway placement or narrowing the road. The consultant’s findings would be reviewed by the Public Works Committee and the project could be placed in the Capital Improvement Program in the future. Although the Public Works Department has a budget line item for “Professional Services,” cost would be covered through funds from other available accounts.

Councilmember Osman, Chair of the Public Works Committee, stated area residents, not just those traveling to Cure of Ars Church, experience difficulties traveling the sidewalk due to utility poles, light fixtures and narrow sidewalks. The consultant would assist in determining right-of-way and options, and their review would go all the way to 95th Street, in hopes of future improvements at Ranch Mart that could utilize this resource.

A motion to approve Agenda Item 7.A. was made by Councilmember Filla; seconded by Councilmember Harrison. The motion was approved with a unanimous vote of 8-0.

[from the March 1, 2017 Public Work Committee meeting]

[from the November 21, 2016 Governing Body meeting]

- B. **Recommendation:** No action be taken regarding request from Verona Gardens Homes Association for assistance with sidewalk repairs

Mr. Johnson stated Verona Gardens Home Owners Association [HOA] has been working on a sidewalk repair program, which is about two-thirds complete. The HOA had used a contractor the City uses to “shave” height trip hazards and now needs to remove/replace some entire panels. The Public Works Committee reviewed the request for assistance and determined it would be best if the HOA pays for the repairs on their own through HOA dues or to petition the City for a Special Benefit District. Per City process, the City has a list of repair locations. The HOA can continue to address on their own or the City could address when possible.

Councilmember Cain thanked the HOA for being proactive and working on repair. Since the property owner owns the sidewalks, this is not something the City can do. She noted in Kansas curbs are maintained by the City and the sidewalks by the home owner, while in Missouri the home owner maintains both sidewalks and curbs.

A motion to approve Agenda Item 7.B. was made by Councilmember Cain; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.

Mayor Dunn thanked Councilmember Osman for the deliberations of the Public Works Committee on these two requests.

8. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted upon 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. 2017-9 and 2017-10
- B. Accept minutes of the March 6, 2017 Governing Body meeting
- C. Accept minutes of the January 19, 2017 Leawood Foundation meeting
- D. Accept minutes of the January 11, 2017 Public Works Committee meeting
- E. Accept minutes of the January 12, 2017 Sustainability Advisory Board meeting
- F. Accept minutes of the November 10, 2016 Sustainability Advisory Board meeting
- G. Accept minutes of the November 2, 2016 Bicycle Friendly Committee meeting
- H. Approve Change Order No. 4 in the amount of \$688,000.00 to Phoenix Concrete & Underground, LLC, pertaining to the 2016 Curb Rehabilitation and Mill & Overlay Program [Project # 80253]
- I. Approve purchase in the amount of \$333,046.57, from KA-Comm, Inc., for the purchase of [81] Harris portable 2-way police radios; and [10] Harris mobile 2-way police radios
- J. **Resolution No. 4746**, calling for a Pre-Budget Public Hearing to be heard on Monday, April 17, 2017, at 7:30 P.M., or as soon thereafter as may be heard on the 2018 Fiscal Budget for the City of Leawood, Kansas
- K. **Resolution No. 4747**, approving and authorizing the Mayor to execute the City of Leawood, Kansas’ Supplemental Retirement Plan [401(a)]
- L. **Resolution No. 4748**, approving and authorizing the Mayor to execute the City of Leawood, Kansas’ Deferred Compensation Plan [457(b)]

- M. **Resolution No. 4749**, approving and authorizing the Mayor to execute an Administrative Services Agreement between the City of Leawood, Kansas and ICMA Retirement Corporation, pertaining to the City's 457(b) and 401(a) Plans
- N. **Resolution No. 4750**, approving and authorizing the Mayor to execute a 401(a) non-ERISA Custody Agreement between the City of Leawood, Kansas and VOYA, pertaining to the City's 401(a) Plan
- O. **Resolution No. 4751**, approving and authorizing the Mayor to execute a 457 Custody Agreement between the City of Leawood, Kansas and VOYA, pertaining to the City's 457(b) Plan
- P. **Resolution No. 4752**, approving and authorizing the Mayor to execute an Independent Contractor Agreement for an annual amount not to exceed \$25,000.00, between the City and Western Enterprises, Inc., for a 3-year term, providing for fireworks displays for the City's Fourth of July Celebrations
- Q. **Resolution No. 4753**, approving and authorizing the Mayor to execute an Escrow Agreement between the City and Bank of Blue Valley and the Perry M. Sharp Trust C ['Owner'], pertaining to the Stormwater Improvement SBD # 2779, in the amount of \$58,875.00 [Project # 198 Storm, Parcel B-2 North]
- R. **Resolution No. 4754**, approving and authorizing the Mayor to execute an Escrow Agreement between the City and Bank of Blue Valley and CBC Brightspace Leawood, LLC ['Owner'], pertaining to the Stormwater Improvement SBD # 2779, in the amount of \$31,413.00 [Project # 198 Storm, Parcel B-2 South]
- S. **Resolution No. 4755**, approving a Final Plan for Parkway Plaza – Hunter Family Vision, located north of 135th Street and west of Roe Avenue (PC Case 05-17) [*From the February 28, 2017 Planning Commission meeting*]
- T. **Resolution No. 4756**, approving a Final Sign Plan for Manildra Group USA (International Agribusiness Company) – Wall Sign, located south of College Boulevard and east of Roe Avenue (PC Case 09-17) [*From the February 28, 2017 Planning Commission meeting*]
- U. **Resolution No. 4757**, approving a Revised Final Plan for Camelot Court – Hen House Generator, located north of 119th Street and east of Roe Avenue (PC Case 10-17) [*From the February 28, 2017 Planning Commission meeting*]
- V. **Resolution No. 4758**, approving a Revised Final Plan for a change to the facade of a storefront for Town Center Plaza – J. Jill (Women's Apparel), located north of 119th Street and west of Roe Avenue (PC Case 12-17) [*From the February 28, 2017 Planning Commission meeting*]
- W. **Resolution No. 4759**, approving a Revised Final Plat for Longwood Forest - Lot 5, located south of 110th Street and west of Delmar Street (PC Case 14-17) [*From the February 28, 2017 Planning Commission meeting*]
- X. **Resolution No. 4760**, approving a Final Plan for Leawood Plaza – Dalmark Management Group (Property Management Company), located north of 123rd Street and west of State Line Road (PC Case 15-17) [*From the February 28, 2017 Planning Commission meeting*]
- Y. Fire Department Monthly Report
- Z. Municipal Court Monthly Report
- AA. Police Department Monthly Report

Councilmember Filla requested Consent Agenda Items 8.I. and 8.K. be pulled.
 Councilmember Osman requested Consent Agenda Items 8.P. and 8.X. be pulled.
 Mayor Dunn requested Consent Agenda Item 8.AA. be pulled.

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

- I. Approve purchase in the amount of \$333,046.57, from KA-Comm, Inc., for the purchase of [81] Harris portable 2-way police radios; and [10] Harris mobile 2-way police radios

Councilmember Filla thanked Chief Rettig for obtaining bids and significant \$56,000 savings; she questioned budget impact. Mr. Lambers stated this was just a matter of cash flow, since the purchase had been scheduled for 2018.

Councilmember Harrison inquired if the current radios would be sold and Councilmember Sipple inquired if there were any dead radio reception spots in the City. Chief Rettig stated the radios would be traded-in and there are no dead radio reception spots in the City. Deputy Chief Cauley stated there are no performance issues with current radios purchased in 2012, but the current radios are no longer being manufactured or serviced. The new radios would have some new features. The useful life expectancy of a radio is eight to 10 years.

A motion to approve Consent Agenda Item 8.I. was made by Councilmember Filla; seconded by Councilmember Osman. The motion was approved with a unanimous vote of 8-0.

- K. **Resolution No. 4747**, approving and authorizing the Mayor to execute the City of Leawood, Kansas' Supplemental Retirement Plan [401(a)]

Mr. Sanders advised employee benefit plans were reviewed to ensure they provided flexibility, selection and value, and had the lowest administrative fees following the additional of Roth IRAs last year and a Council request. Bids were obtained for a 401(a) and 457(b) plan provider in addition to the current plans of ICMA-RC. Two bids were received and VOYA was selected. Improved customer service level is perceived with the addition of VOYA and adding VOYA creates competition with the other vendor. There is no budgetary impact to the City. To better manage future possibilities, he worked with Legal Pension Council to bring plans back in-house; fiduciary responsibility is key.

A motion to approve Consent Agenda Item 8.K. was made by Councilmember Filla; seconded by Councilmember Harrison. The motion was approved with a unanimous vote of 8-0.

- P. **Resolution No. 4752**, approving and authorizing the Mayor to execute an Independent Contractor Agreement for an annual amount not to exceed \$25,000.00, between the City and Western Enterprises, Inc., for a 3-year term, providing for fireworks displays for the City's Fourth of July Celebrations

Councilmember Osman questioned the same expenditure amount year-after-after and if the quality of the display had likely diminished due to rising costs. He inquired if a larger budget was needed to compete against other municipalities for this showcase event. Ms. Claxton stated the cost had remained the same for the past 10 years except for 2008, when \$30,000 was spent because of the City's 60th anniversary. The City seeks bids for the display each year. Displays cost about \$1,000 per minute, so a larger budget would result in a longer show.

Mayor Dunn noted when the 25-minute display ends it is late. The display starts after dark and time needed for guests to disburse and leave the park when the display ends. She stated appreciation for Councilmember Osman's enthusiasm.

Mr. Lambers stated if the budget were to be increased, which he would support, it would probably be used to have an expanded grand finale rather than extend the duration of the display. He stated the City's display is very nice compared to those he has seen in other cities.

A motion to approve Consent Agenda Item 8.P. was made by Councilmember Osman; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 8-0.

- X. **Resolution No. 4760**, approving a Final Plan for Leawood Plaza – Dalmark Management Group (Property Management Company), located north of 123rd Street and west of State Line Road (PC Case 15-17) [*From the February 28, 2017 Planning Commission meeting*]

Councilmember Osman stated he was thrilled to a new occupant for the bank space in the former Hy-Vee Shopping Center. He inquired if there had been any conversations with or applications from other property owners in the area. Mr. Lambers asked Mr. Jeffries to provide an update of information that could be publicly disclosed.

Mr. Kevin Jeffries, 13451 Briar Drive, Leawood Chamber of Commerce, stated a recent contract on the building had expired, but additional groups are looking at properties and negotiations are ongoing. Individual buildings are listed for sale by current owners, except for the UPS Store location. CoreFirst Bank owns a piece separately.

Mayor Dunn asked if a representative from Dalmark was present and would like to address the Governing Body.

Mr. Brian Garvey, 2100 Central Street, Kansas City, Missouri, SFS Architecture, stated he represented applicant Mr. Zachary Nichols of Dalmark. Both the first floor and basement of the bank building would be developed, but the data center in the basement would remain and the space leased. The data center is a disaster recovery center for CoreFirst Bank.

Mayor Dunn commented on the plan and landscaping, and wished the project success.

A motion to approve Consent Agenda Item 8.X. was made by Councilmember Filla; seconded by Councilmember Sipple. The motion was approved with a unanimous vote of 8-0.

AA. Police Department Monthly Report

Mayor Dunn pulled the item to publicly acknowledge the "Monthly Highlights" section of the report detailing another honor of the Police Department. Leawood has been ranked fourth in Kansas' Safest Cities by the National Council for Home Safety and Security. Leawood was selected based on Federal Bureau of Investigation [FBI] Uniform Crime Reports. The population of 35,047 has a low violent crime rate of 0.68 per 1,000 residents and a property crime rate of 12.04 per 1,000 residents. She offered congratulations to Chief Rettig and his great department.

A motion to approve Consent Agenda Item 8.AA. was made by Councilmember Kaster; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 8-0.

9. MAYOR’S REPORT

- A. Condolences and concern for victims of the horrific fire that occurred this afternoon around College and Switzer in Overland Park and may be ongoing at this time. The Leawood Fire Department has several crews assisting.

Deputy Fire Chief Wayne Harder stated three Leawood crews are actively fighting house fires at this time. There was a false report the fires were under control. Food will be provided for the crews while they are actively engaged in fire suppression activities. A total of 10 jurisdictions are involved: Lawrence; Kansas City, Missouri; Kansas City, Kansas; and the seven jurisdictions of Johnson County. He recalled the only other fire in the Kansas City metro area with this number of jurisdictions involved was the Missouri bottoms fire. The City continues to be well covered by the department. He will extend the Mayor’s condolences and appreciation to those involved.

- B. Participated in the groundbreaking ceremony organized by the Kansas City Orthopaedic Institute for their expansion project which is now underway.
- C. City Administrator Scott Lambers, Finance Director Dawn Long and Budget Manager Kathy Byard and I met with Johnson County Appraiser Paul Welcome to hear good news regarding the continuous increases in appraised values of Leawood’s residential and commercial markets. All sectors are now in or approaching the expansion mode. Ms. Byard has prepared a synopsis of the report for your reference.
- D. I presented a very abbreviated State of the City address to the Leawood Lions Club who are celebrating their 63rd anniversary this month. Congratulations to Big Lion Vania Castro and all of the Lions on their many years of service.
- E. Our Employee Activity Committee has adopted Veterans’ assistance as their number one priority for 2017. I was delighted to attend a check presentation ceremony with Kevin Jamison, who is leading the Veterans Community Project which plans a Veterans Village of tiny houses at 89th and Troost in Kansas City, Missouri.
- F. At the invitation of Kansas Secretary of Commerce Antonio Soave, I attended a reception and meeting with Ambassador Eitan Levon, Israeli Consul General to the Southwest United States. He is based in Houston and is responsible for both Missouri and Kansas as two of the states he oversees.
- G. The Hispanic Contractors Association of Greater Kansas City held their annual lunch meeting at The Venue in Leawood’s Parkway Plaza. I was asked to give brief City updates as was Kansas City, Missouri Mayor Pro Tem Scott Wagner.
- H. I attended the Kansas State Affairs Committee legislative update meeting sponsored by the Greater Kansas City Chamber of Commerce. Presentations were made by Shawnee Mission School District Superintendent Dr. Jim Hinson and Kansas City, Kansas School District Chief of Public Affairs David Smith. A legislative report as of March 17 is provided for your information.
- I. Reminder that the Leawood Stage Company will present the Kansas City Premier of the Broadway Musical “Bonnie and Clyde” on March 23, 24 and 25 at 7:30 P.M. and March 26 at 2:00 P.M. All performances are at the Lodge in Ironwoods Park. Tickets are sold in advance through the Parks & Recreation Department.

10. COUNCILMEMBERS’ REPORT – None

11. STAFF REPORT – None

COMMITTEE RECOMMENDATION

12. PLANNING COMMISSION

[from the February 28, 2017 Planning Commission meeting]

- A. Ordinance approving the renewal of a Special Use Permit [SUP] for a wireless communication facility including cellular tower, associated equipment and screening for Saddle and Sirloin Cellular Tower, located south of I-435 and east of Mission Road (PC Case 01-17) [ROLL CALL VOTE]

Mr. Klein stated the compound of the facility is 75 ft. long, 75 ft. wide and 8 ft. in height. Equipment extends above the 8 ft. screening wall. Staff recommends, and per the Leawood Development Ordinance [LDO], all equipment is to be screened. Staff recommends an additional stipulation be included to extend the wall height by 2 ft. or at least high enough to cover the equipment shed, as detailed in the last paragraph of the Staff Memo dated March 1, 2017.

Mr. Curtis Holland, Polsinelli PC, 6201 College Boulevard, Suite 500, Overland Park, stated he had only recently heard about the additional wall height extension stipulation last week. The facility was constructed according to plan in 1999/2000 and the 8 ft. full perimeter, light tan, concrete block screening wall and landscaping were deemed appropriate as part of the original approved SUP. The facility with original buildings has been in the same state and configuration since original approval and complies with the LDO and approved SUP. The LDO does not state screening is required to cover the compound interior, but states screened with a full-perimeter wall when deemed necessary in the SUP process. Raising wall height 2 ft. would be a significant cost of \$30,000 to \$40,000. The facility has been before the Governing Body four or five times for renewal and for multiple antennae attachments, and screening had not been an issue. Box cabinets have been in place for many years, with boxes for T-Mobile and Verizon the latest to join AT&T and Sprint; some cabinets are now smaller. With the current wall and placement of trees, there are very few spots where the compound is visible. He asked for consideration that for 18 years, screening was appropriate and of the nominal cost-benefit of additional screening. He was aware of no complaints.

Mr. Holland displayed “Google Earth Street View” photographs of elevations, the first looking from Interstate 435. Effectively screening from this view would be difficult as Interstate 435 is about 20 ft. higher. He pointed out Staff recommended an additional 2 ft. of screening around the entire wall and not 5 ft. or 6 ft. of additional wall height on the north. Highway traffic should rarely see the facility when focused on highway driving at 70 miles per hour. From the south on Lee Boulevard looking north, about 1 ft. of building/tops are visible. This is the most visible part of the facility and well screened. From the east heading west on Lee Boulevard there is a slight curve in the road when approaching the facility and the trees do a very good job of screening the facility. From the west on Lee Boulevard, numerous trees and landscaping are visible. When on-site, equipment is not noticeable or, if seen, is not bothersome.

Mayor Dunn stated the City’s cell tower ordinance was effective approximately one year after the original SUP was approved, so for 19 years the facility had remained unchanged as approved with equipment above the screening wall. She is in the area every weekend; the equipment is noticeable, some poles extend above the wall and the wall should be painted. She noted her assurance Mr. Klein had taken into consideration some metal poles now extend beyond the current wall height.

Mr. Klein stated Article 4.H.1 of the LDO states “full screen” which means full height screening. The plan of 1998 shows the equipment height was to be below wall height; additional equipment has been added. The SUP has expired and Staff has been speaking with the applicant/owner for a number of months. The proposed SUP renewal is the time to ensure compliance with the current ordinance before issuance of another 20-year SUP. To his knowledge, there were no other towers/monopines that have not been screened in accordance with the City’s cell tower ordinance and none would be out of compliance when their SUPs expire. He stated no complaints had been received. The closest residence is in Longwood Forest Estates.

Mr. Lambers stated that previous interim approvals were for antennae, not the tower itself, and screening relates to the tower; antennae SUPs are separate. Mr. Holland disagreed, stating the tower was renewed in 2011. Mayor Dunn suggested the addition of box cabinets for new service providers might have been a reason why the screening was not previously addressed.

Councilmembers Filla, Osman and Rawlings agreed wall height was not the main issue, but the negative visual impact of an expanse of wall and lack of landscaping. Additional landscaping, trees and shrubs, especially on the south view, would be a better way to screen rather than adding wall height. Mr. Holland indicated additional landscaping could be added.

Councilmember Cain questioned if the equipment and wall color could be more harmonious. Mr. Holland stated the color of equipment and wall are similar in color, but the “Google Earth Street View” photograph quality depicts a white-looking wall.

Ms. Bennett confirmed for Councilmember Azeltine that recent Federal Communications Commission [FCC] exemptions regarding cell towers would not need to be considered. The FCC has new laws that allow special benefits on pre-existing lawful towers, but the SUP has lapsed and this private-property pre-existing tower is not lawful. Had the SUP not lapsed, perhaps the tower could have been grandfathered as originally approved. Mayor Dunn stated this was not a recommendation to deny the SUP. Leawood, similar to ordinances of neighboring cities, has jurisdiction over screening and aesthetics. If the facility was not brought into compliance with the ordinance, the ordinance would be required to change. Mr. Lambers stated the City can impose stipulations on aesthetics. There is not much case history on FCC exemptions. He noted this is a pre-existing tower, not new construction.

Mayor Dunn stated she would not be comfortable approving the SUP until the addition of a significant amount of landscaping and wall color was addressed, and potential impact of applicant not complying with ordinance was determined. She stated there is dead vegetation at the site and encouraged Councilmembers to drive-by. Ms. Bennett pointed out the LDO states “when deemed necessary in the SUP process” and a “6 ft. minimum height.” There is enough discretion in the LDO to use landscaping screening rather than concrete. Mr. Lambers stated since the SUP had lapsed and the City has allowed, it would be acceptable to continue the agenda item as the applicant has propose additional landscaping.

A motion was made by Councilmember Filla to continue to the April 17, 2017 Governing Body meeting to determine an appropriate screening plan; seconded by Councilmember Osman. The motion passed with a unanimous vote of 8-0.

- B. **Ordinance No. 2828**, approving a Special Use Permit [SUP] for packaged liquor sales for Market Square Center – Lancaster Liquor, located south of 133rd Street and east of Mission Road (PC Case 17-17) [ROLL CALL VOTE]

Mr. Mark Broderick, 13005 Pawnee Lane, stated he was looking to purchase the existing business.

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with a unanimous roll call vote of 7-0; Councilmember Osman was not present for vote.

- C. **Ordinance No. 2829**, amending Section 16-2-6.4 of the Leawood Development Ordinance [LDO] entitled ‘MXD [Mixed Use Development District]’ and repealing existing section 16-2-6.4 and other sections in conflict herewith (PC Case 37-17) [ROLL CALL VOTE]

Mr. Klein stated the LDO amendment was proposed to encourage hotel development in MXD. At the applicant’s discretion, 50% of hotel square footage could to be used towards the residential use percentage requirement of MXD. MXD requires a minimum of 20% residential use, 20% office use and 10% retail use. The amendment also exempts hotels from the minimum residential unit size requirement of 750 sq. ft.

Councilmember Sipple inquired what prompted the proposed amendment and if other cities in the area handle in this manner. Mr. Lambers stated he had requested and that he was not aware of other cities in the area that do this. It would be a tool that could be used by the applicant and could be an incentive to hotel development, which is lacking in the City. Mayor Dunn noted this was very well received by the Planning Commission.

Mr. Klein confirmed to Councilmember Kaster that MXD use percentages are for the overall development, not individual parcels within the development.

Mr. Lambers confirmed to Councilmember Azeltine hotels are taxed at a 25% commercial property tax rate, not at the residential property tax rate.

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Osman. The motion was approved with a unanimous roll call vote of 8-0.

- D. **Ordinance No. 2830**, amending Section 16-9-219 of the Leawood Development Ordinance [LDO] entitled ‘Public Utility Facilities’ and repealing existing Section 16-9-219 and other sections in conflict herewith (PC Case 38-17) [ROLL CALL VOTE]

Mr. Klein stated the proposed amendment also relates to Agenda Item 12.E. The amendment was prompted by the upcoming Johnson County Wastewater Treatment Plant expansion project that would be coming before the Planning Commission. They have some equipment that exceeds the 35 ft. height maximum in an Agricultural District. The amendment would add “wastewater treatment facility” to clarify and eliminate definition assumptions.

A motion to pass the ordinance was made by Councilmember Azeltine; seconded by Councilmember Rawlings. The motion was approved with a unanimous roll call vote of 8-0.

- E. **Ordinance No. 2831**, amending Section 16-2-4.7 of the Leawood Development Ordinance [LDO] entitled ‘Structures Permitted Above the Height Limits’ and repealing existing Section 16-2-4.7 and other sections in conflict herewith (PC Case 39-17) [ROLL CALL VOTE]

Mr. Klein stated the ordinance pertains to allowing buildings and structures for public and government uses, or public utility buildings to exceed the height limit in any zoning district. The amendment would replace “public facilities” with “public utility facilities” to ensure a clear definition. An additional foot of setback for each foot that the structure exceeds the height limitation of the district is required. Under no circumstance can the height exceed 75 ft. without approval of the Governing Body as part of an approved Development Plan.

Mr. Coleman stated the Johnson County Wastewater Treatment Plant project does not have any structures that exceed 75 ft., and that he would convey Councilmember Cain’s request to consider a facility color harmonious with nature rather than the yellow of the current facility, which stands out especially during the winter. Mr. Coleman stated the County plans to add red brick and terra cotta to the yellow building, similar to the water pumping facility. The yellow building would remain and more yellow bricks added.

Councilmember Rawlings remarked on his visit to Denver’s treatment facilities along with Public Works Director Joe Johnson and Johnson County engineers and architects, and pointed out that such facilities are difficult to make appealing.

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion was approved with a unanimous roll call vote of 8-0.

[from the January 10, 2017 Planning Commission meeting]

- F. Ordinance approving Planning Commission’s recommendation of denial of requests for Rezoning from REC (Planned Recreation) to RP-2 (Planned Cluster Detached Residential District), Preliminary Plan, Final Plan and Final Plat, for Village of Leawood [f/k/a Estates of Old Leawood] located north of 91st Street and east of High Drive (PC Case 113-16) [ROLL CALL VOTE] - CONTINUED FROM THE FEBRUARY 20, 2017 GOVERNING BODY MEETING

Staff Comment: It is the position of the City Administrator that the property west of Sagamore that is being proposed to be zoned RP-2 with four [4] lots be zoned R-1 with three [3] lots.

It is also the position of the City Administrator that the property planned for open space east of the residential development be private open space and improved as contained in the application with the ownership, maintenance and liability being assumed by the future residents, as proposed by the applicant.

Mayor Dunn read the “Staff Comment” of the City Administrator. She stated the Governing Body had heard the case one month ago and had continued the case for analysis of whether the Governing Body should accept the developer’s offer of land east of the cul-de-sacs and what the Parks & Recreation Advisory Board would like to see if the land was accepted. Minutes of the March 14, 2017 Parks & Recreation Advisory Board, February 20, 2017 Governing Body and January 10, 2017 Planning Commission meetings are included in the packet. The City has received numerous correspondence from residents. The process for discussion would be applicant presentation, Governing Body deliberation, followed by citizens. As agreed in advance, citizens should bring forth only new information.

Mr. Coleman stated that per calculation, a variance for lot depth and size area would not be required for the three R-1 lots mentioned in the “Staff Comment.” There would be no procedural issue with “down zoning” from RP-2 zoning to lesser R-1 zoning.

Ms. Bennett stated after applicant and residents speak, it would be up to the Governing Body to discuss the application, then discuss if there was any interest in the developer’s horseshoe-shaped land offer and whether the City would be interested in a stipulation regarding rezoning RP-2 to R-1 west of Sagamore, then add staff stipulations, and approve or deny.

Mr. John Petersen, Polsinelli PC, 6201 College Boulevard, Overland Park, stated he was pleased to be back before the Governing Body, and the request to citizens that information is not repeated, and he would attempt to do the same.

Due to the valid protest petition, seven votes are needed to over-ride the Planning Commission’s denial. The plan before the Governing Body is exactly the same as the one presented February 20, 2017. The plan consists of 24 single-family lots in RP-2 zoning, and meets all requirements. The acceptability of Lot 21 pursuant to code calculation, was proven at the last meeting. The plan is for four lots and a pocket pocket park west of Sagamore. Staff generates and reviews plans, but they do not build homes. Builders Mr. Saul Ellis and Mr. Mark Simpson build quality homes and nicer homes with RP-2 zoning. Appropriate setbacks and extensive landscaping will increase the value of the site and surrounding properties. Lots 21, 22, 23 and 24 were designed with a lower grade for unobtrusive impact on the five existing neighborhood homes. A walk of the area shows numerous “Larsen” homes which the City has allowed to be built, that inject value and energy to north Leawood. He asked why the proposed development should be treated any differently. Despite being developers, resident comments were heard. The green space offered to the City is not part of the application, but the deed would be signed for public use with conditions of no vertical improvements, as the Parks & Recreation Advisory Board discussion as documented in the meeting minutes seems to agree. Stipulation 1 states 23 single-family lots; and the plan is for 24 lots. The applicant believes a reasonable case, as defined by the Kansas Supreme Court, has been made. Rely on the “Golden Criteria” set forth by staff in support of the application.

Mayor Dunn asked Mr. Brick Owens, landscape architect, to review what plantings are planned for the site. Mr. Petersen pointed out the plan as submitted states the land east of the cul-de-sacs would be a private area for the development’s residents, subject to the off-plan offer of the dedication of the park.

Mr. Brick Owens, C BrickOwens LLC, 6101 Woodson, Mission, stated the area would be a grassy meadow below hardwood trees. The existing riparian tree line of Cottonwood, London Plain, Sycamore and beginning Siberian Elms and the cover beneath the trees would be retained. The existing ground cover would be kept and additional shrubs and foliage for wildlife and River Birch trees would be planted in the corners of the stream, to replace the honeysuckle invasion that is there. White, Red and Pin Oaks would be planted in groups. To more easily establish by relying on rain for water, 86 small tree whips would be planted. Area under the trees would be planted with tall fescue. The fescue would typically require mowing twice a year, June and October. The plantings would provide a 50-year jump-start on a hardwood forest.

Mr. Petersen confirmed to Councilmember Filla that approximately nine out of the 24 homes would have street-facing garages, noting most owners would have the option of a three car garages on the custom-built homes. Some owners may not desire three car garages. Councilmember Filla stated the 2,200 sq. ft. homes with three car garages presenting as 40% of the home from the curb are out of character with the existing neighborhood and would not have been approved by the 1,500 HOA having mostly one or two car garages. If approved, she would appreciate if the developer would reduce the number of garages facing the curb.

At Councilmember Rawling's request, Mr. Coleman reviewed lot size, shape and setbacks. He stated the LDO provides for layout of a subdivision, and one criteria is lot lines roughly perpendicular to the street and lot roughly rectangular. This brand new plat does not comply with the LDO criteria in creating lots.

Councilmember Rawlings noted that Lots 482 and 483 of existing homes on High Drive have an irregular shape. The area of the plan needs to be developed and he expressed support of the lots to be approved as submitted. He stated the desire to see all parties be winners and to move on by approving 24 lots, a win for the developer; deed over of the offered park land, a win for residents wanting green space; and approval of the plan, a win for the City by having another upscale development.

Mr. Petersen stated after the initial calculation of Lot 21, lot lines were modified to meet the LDO's 120 ft. lot line depth, and a public pocket park was created with the remaining area of the lot. Those using public sidewalks in the area, whether a member of the community or not, could use the pocket park as a rest stop. The HOA would own and maintain.

Councilmember Azeltine stated a request for Staff documentation on lot size calculation and shape interpretation had been made at the February 20, 2017 Governing Body meeting. He did not see the requested documentation in the tonight's meeting packet. As Staff did not comply with the request, he would be amenable to the elements of Councilmember Rawlings' win-win-win scenario. Mr. Coleman stated Section 16-8-3.7, Lots, B, addresses side lot lines radial to street lines. The side lot lines of Lot 21 do not meet the requirement of side lot lines perpendicular to the radial. He stated that if the Governing Body wishes four lots rather than three lots west of Sagamore, a deviation for average lot depth and side lot line would be needed.

Mr. Petersen expressed frustration that the topic of discussion had changed to irregular lot shape as that had previously been proven; fighting over Lot 21 is detrimental. He stated the developer wishes to bring 24 beautiful homes to the City. The spirit or intent of in-fill development is not being violated. North Leawood has many front-facing garages. The developer is building a 10 ft. wide Americans with Disabilities Act [ADA] sidewalk from north to the bridge and would dedicate this to the City; people cannot be walking dogs behind homes on the cul-de-sacs. Six and one-half acres would be dedicated to the City with an all-weather trail, which neighbors can access. All setbacks have been met and power lines are buried. No one can have it all. He thanked Councilmember Rawlings for his win-win-win position.

Mayor Dunn asked Mr. Coleman if Lot 21 was built on, could the entire tract of lots be zoned R-1. She noted that residents do not wish any homes on this tract and three homes, similar to existing homes, might be more easily accepted. Mr. Coleman stated footage would still be needed for Lot 21 to be zoned R-1. Mr. Petersen pointed out that both R-1 and R-2 have the same 20 ft. setbacks and both would be single-family homes.

Councilmember Cain noted that the developer adjacent to Gezer Park had deeded the land to the City, installed berms and a wrought-iron fence, and provided \$132,000 for improvements. She inquired if the offer to deed 6.5 acres of land included the improvements before deed. Mr. Petersen stated the offer made at the February 20, 2017 Governing Body meeting had not included landscaping, but in an effort to find a balance now, if 24 lots were allowed for approximately \$800,000 single-family homes the 6.5 acres would be landscaped according to Mr. Owens' original HOA plan and include an all-weather trail following the creek to cover the publically worn walking path on the property. The sidewalk connection to the bridge is included in the plan as Stipulation 19, which is agreeable.

Councilmember Cain stated an asphalt or an all-weather trail is not desirable to City staff. These would be harder to maintain with limited clearance for trucks and because of flooding. She inquired if vertical improvements would be defined as a birdhouse or a bench Mr. Petersen stated the definition of vertical improvements would be in the deed. Mayor Dunn stated that since the acreage is in the flood plain, items would need to be anchored, since the land can be covered with 14 ft. of flood water.

Councilmember Cain stated the citizens do not want a loop trail. Councilmember Filla stated there had been a request from citizens to have an egress on the southern cul-de-sac as shown on the original plan and asked if that was a possibility; Mr. Petersen declined.

Councilmember Azeltine stated that one month ago staff was asked to look at the land offer and give a recommendation on whether the City should accept or not. Minutes and the memo regarding flood plain in the meeting documentation packet only addresses what to do with the land should the City accept. Mr. Petersen stated his agreement in this regard, as well. Councilmember Azeltine noted the City Administrator's "Staff Comment" is for the land to be private open space. He asked Mr. Lambers to provide the reasoning for his comment. Mr. Lambers stated he did not believe it was in the best long-term interest of the City as the acreage is a liability, which the developer does not want. If improved, the trail would need to be a concrete for liability. The property floods north to south, which State Line Road cannot take and which would require a concrete trail. Mr. Petersen stated the characterization was unfair and the developer would keep the acreage if the City does not want and would stand on the original application. Single-family home owners not responsible for creating park space. Mayor Dunn noted that the Governing Body does rely upon the City Administrator's opinion, but there had not yet been time for the Governing Body to deliberate.

Mr. Petersen confirmed to Councilmember Sipple an all-weather trail would consist of concrete fines, a very fine gravel, and with natural flues under the trail, so water from a normal rain event would flow under the trail.

Councilmember Sipple asked how people would be prevented from walking on the property if the City declined the offered land and the land remained private. Mr. Petersen stated that would be a decision for the HOA, but suggested the Police could be called for trespass. Councilmember Sipple noted the HOA might not want various potential liabilities of the land.

At Councilmember Osman's suggestion, Mayor Dunn called for comments from citizens who had signed in to speak. She asked that only new information be brought forth and each presentation be under five minutes.

Mr. William Moran, 8927 Sagamore Road, stated his property was adjacent to the proposed development on the south side. Looking out his front door to left would be existing R-1 homes and to the right would be new development; three neighbors adjacent to his property. This would be a dense development compared to existing development. The character of the neighborhood would be changed. He advised that Ms. Martha Conradt's letter in support of park land that he distributed to the Governing Body on Sunday, March 19, 2017, now has 180 signatures per Ms. Conradt, rather than 116 signatures. He submitted the update he had brought to the City Clerk. He does not agree with the City Administrator that the land should be private. It is in the long-term best interest of the City and future generations to accept the offer as there is no park land in the north. Overland Park and Prairie Village are purchasing park land and the City should grab this offer, which the developer will now improve before giving to the City. Why give up the green space buffer to build four houses? Ward Parkway and Lee Boulevard are so beautiful because of lower density. Park land is the most important factor and the land had been recreational for 50 years. We should grab the land.

Mr. Tom Mayer, 8935 Sagamore Road, stated he lived two houses from Mr. Moran on the south side of Sagamore. He was here in 2004, when recreational space was whittled from 16 acres to 9 acres, with 7.3 acres for bottom land and 1-1/3 acres for tennis courts, pool and cabana, and agreements were made. He attended the February 20, 2017 Governing Body meeting and the Parks & Recreation Advisory Board meeting held last week. Recent comments and the position of the City Administrator brought him to this meeting. It is not acceptable for a proforma rezone for either four or three houses because doing either loses the 1-1/3 acre of green space. A 10 ft. path and bridge is a minimal improvement by the City. As agreed in 2004, start building on the cul-de-sacs tomorrow; the developer will build wonderful houses where intended to be built. At the February 20, 2017 Governing Body meeting, land in the flood plain was offered to the City and the City need to discuss and evaluate whether the offer was genuine or a "red herring." The owner cannot build on the flood plain. The flood plain should be a public park area. The real elephant in the room is the 1-1/3 acres of green space. If homes are constructed on the 1-1/3 acre, you cut off enjoyment of green space and the land should not be rezoned. It is in interest of future home owners and those that follow to retain all the green space we can. My daughter and son-in-law are expecting a child, my first grandchild, and how nice it would be for all grandparents to have a green space within walking distance with a swing to enjoy with children. He thanked the Governing Body for the opportunity to present. Mayor Dunn wished him good luck with grand parenting.

Mr. Steve Johnston, 2032 W. 96th Street, stated he lived in “Old Leawood” and had been part of the concerned citizens of 2002, 2003 and 2004, still being tired from that. Recreation ground in north Leawood is all but lost and remains a mistake. The developer and City are moving towards saving or returning what is left of recreational ground available without having to travel outside of the neighborhood, but the City Administrator’s comment is for the private ownership with no access to residents outside the proposed development. Overall, the City Administrator has done a very good job of shepherding the City for many years. The City Administrator objects because 1) if the City accepts, the City Administrator’s workload rises, 2) the City Administrator may not think we need a park because he resides in south Leawood just four blocks for a full-service park, and 3) the City Administrator was heavily involved in 2004 legal settlement that granted park space to residents, including reimbursement to residents of \$10,000 in legal expenses. Please give us back a sliver of the recreational space we had.

Mr. Nick Evan, 8915 High Drive, stated he lives directly adjacent to Lots 21 through 24. He comes without prior history since his family moved to the area in 2014. They love the City. He appreciates the developer’s offer and hopes the City accepts. He would speak about the impact of the proposed development of the 1-1/3 acres on his property. When he moved in, he was aware of the recreational zoning and swimming pool, and his family had counted on that. What is proposed is a more dense development. Being an engineer focused on numbers, he had prepared a graphical presentation of utilization, using Johnson County data for average lot size and square footage from assessments. Blue dots on his graph present data of existing homes and orange triangles present the data of the new homes. The orange triangles depict more dense utilization. When he looks out over his back yard, he will see four houses. His home would become a buffer between R-1 and RP-2, which would negatively influence his property value. He would like to see a compromise to have the recreational buffer area remain, as zoned when he purchased his home. He appreciates support of this and helping to protect what is important and valuable to his property.

Mr. Mark McGrory, 9006 High Drive, stated he lives on the south side shared boundary. His “substance and procedure” comments would address the lower area and whether the City should accept the land. Do not take land away that has been in de-facto public use for 50 years. A compromised was reached 12 years ago, but was not locked down. Neighbors mow and maintain the property. Do not look a gift horse in the mouth. Prairie Village spent \$1 Million for property one-half the size and without the cost to teardown a church, to purchase park land. He has reviewed the flood mathematics. He has lived in his home since 1999, 15 ft. above Dykes Branch tributary. He was walked the property twice a day. Floodwater will not reach 12 ft. to 15 ft., but 1 ft. A berm was built when the Country Club was torn down which helps during flooding. He does not want the offer to be declined because it is viewed as too expensive to maintain and wants to “not get fooled again,” a reference to a 1970s Pete Townsend song. In May 2005, he recalled that Mr. Whitacre jumped up and said proposed trails were part of deal and rezoning, and that no more than five building permits would be pulled before putting in the trail. Citizen comments had been closed and Mr. McGrory was not able to say it would never be done. If the City accepts the offered land, please lock down the deal the right way, including how it looks. The deed is here tonight and perhaps Mr. Petersen would sign tonight. As a lawyer, he has knowledge that lawyers will take what they can on a day and when they get what they want, there is no remaining leverage. In closing, on behalf of residents that have worked on this for 15 years, preserve both access and green space because north Leawood does not have it. Invest in this obviously valued piece of land. Save this opportunity.

Mr. Gordon Henke, 8901 High Drive, stated in 1968 he purchased his lot from the night editor of the KC Times, when the newspaper was published twice a day. The prior owner was Dr. Gray-Eyes, a Wyandotte Indian Chief through U.S. Treaty. The historic property was substantiated by a public ceremony attended by the Mayor a few years back. Utilities installed on 89th and the north side of his home messed up his lot, rutting is quite visible. His wife said at the time to relax, we are getting a pool and underground utilities for adjoining neighbors. Fast forward, no pool and no underground utilities. To use the recreational space to the east for four homes by rezoning leaves Kansas City Power & Light with precious little space to take care of power lines because of Mother Nature. Construction of these homes would also be a loss of valuable space for the new residents of the cul-de-sacs. Losses are evident and limited plusses are seen. Build on the cul-de-sacs and leave the rest alone as in the original plan. He and his wife have been in an economic lawsuit in this regard, and have been through a lot with blessing that they are still on our feet. As is said, thank you, but no thanks.

Ms. Grace DiFranco, 9018 High Drive, had not signed in, but wished to address the Governing Body. She requested clarification about the western tract. She stated Mr. Petersen said the four RP-2 houses would have the same setbacks of R-1, 20 ft. front and back. Then it had been asked if you can fit four R-1 homes in the same lots and the answer was no. The answers seem to contradict.

Mr. Coleman stated R-1 zoning has 15 ft. side yard setbacks and setbacks of 35 ft. for front yard and 30 ft. for rear yard. RP-2 zoning has 10 ft. side yard setbacks and developer has proposed 7.5 ft. side yard setback deviation, with setbacks of 25 ft. for front yard and 20 ft. for rear yard.

Mayor Dunn thanked the citizens for their presentation of new information. She asked Mr. Petersen to address Mr. Henke's comments about underground utilities.

Mr. Petersen stated utility conduits are in place and ready to be accessed by homes to west, but residents must facilitate metering to their homes. A few residences that need to tie into boxes. Money has been escrowed with Kansas City Power & Light [KCPL] to remove utility poles. Cost to underground conduits was \$350,000 to \$400,000. Cost for residential connection is unknown. Councilmember Filla inquired about number of homes that need to tie into underground electric; she was aware that five existing homes adjacent to the buffer have not done so. Mr. Petersen said residents were given the opportunity for underground service, but they are responsible for their private property.

In response to Mr. McGrory's comment about the tactics of lawyers, Mr. Petersen stated the landscape plan is part of the submittal and building permits could not be pulled until the landscaping plan was complete or assurances in place. Money for trees best planted in the fall would be escrowed and details worked out with City staff. The City Attorney had advised previously that a stipulation could not be done to dedicate the park according to deed, but the applicant would be willing to take that as a stipulation. For the two trails, a stipulation could be added for an all-weather trail and the concrete trail is Stipulation 19. Mr. Lambers stated he would be best to tie completion to the certificate of occupancy.

Mr. Petersen discussed the development of the four lots, which is an economic decision to move forward. It has been consistently said the land for the proposed four lots was open green space. It was never green space to be left unused; it was there for a swimming pool for membership outside the community, with lights and parking lot. It has been mischaracterized as a tranquil area behind homes. The existing homes sit 40 ft. off the property line and new homes on the four lots would sit 20 ft. from the property line. The side yard difference between R-1 and RP-2 is 5 ft., which is the only difference. Finished floors of the new homes will sit 8 to 11 ft. lower. The Golden Criteria and the balance of hardship weigh in favor of approving this plan, and that is without consideration of the deed offer of 6.5 acres of land for the City to manage and the public to use.

Ms. Bennett confirmed to Councilmember Azeltine the offered park land dedication could be a stipulation, but she had asked Mr. Petersen not to change the plan presented to the Planning Commission, but to make offer.

Councilmember Cain invited Mr. Brian Anderson, Parks Superintendent to provide comment.

Mr. Anderson stated gravel trails in a flood area, however long they take to dry out, would be prone to rutting, requiring labor and maintenance to be kept smooth. In a severe flood, soft gravel concrete fines may be washed away similar to baseball fields near State Line. Access to the area is limited and any required gravel would need to be brought in by truck. A trail defines the area for walkability and an all-weather trail would increase liability and safety, having multiple long-term issues. The City has a standard level of care for safety and maintenance. A more permanent concrete trail would best.

Councilmember Cain inquired if the lower trail would need to ADA compliant as it does not reach a destination. Ms. Bennett advised that would be a determination by the City's Building Official, Mr. Torrez, but the City has always strived for facilities to be ADA compliant. Some grading of the land and materials such as gravel might be ADA complaint. Mayor Dunn stated her belief that pea gravel would not be compliant and she inquired about minimum sidewalk width. Mr. Anderson stated for two-way passing bicycle traffic sidewalk, width would be 8 ft., and for a walking traffic sidewalk, width would be 5 ft. or 6 ft. Mayor Dunn pointed out the concrete costs presented in Mr. Johnson's memo for a 10 ft. sidewalk and noted sidewalk cost could be reduced if the sidewalk width was narrowed.

Mr. Petersen stated the cost for the developer to install a 5 ft. all weather trail would be \$15,000, and he inquired if the City would rather receive a contribution share of \$15,000 for City use, in lieu of the proposed all-weather trail. The developer would prefer the trail width be limited to 5 ft. and trail location would need to be coordinated to avoid potential tear-out of landscaping.

Mr. Johnson confirmed to Councilmember Rawlings that typical flooding was not rushing water. Most of the flooding occurs because water cannot get under State Line. The water backs-up and floods south to north as volume increases. The floodwater drains quickly, in one to two hours, similar to when Tomahawk Creek or Indian Creeks exceed the banks.

Councilmember Filla expressed thanks for all the concessions, citizen comments and Governing Body discussion. The number of houses is a moot point because the land should be kept recreational. The zoning was originally recreational and not agricultural. Development would have detrimental effects on nearby property and so 58% of the site had been zoned recreational to offset. The number of homes is not the issue, but the location of homes. There has been a \$500,000 savings because the developer does not have to build a pool and cabana, originally conceived by a Woodside partner based on need.

The development size has decreased from over 16 acres, to 9 acres, to 6.7 acres and another 0.5 acres removed for the cul-de-sac donuts. Make a profit on 27 RP-2 homes, but if the applicant is not willing to do that, other developers are willing to try. A 5 ft. trail would be more than sufficient as a pedestrian footpath is currently being utilized, even in bad weather. She stated a large amount of time had been spent trying to reach a compromise. Stipulations are not a part of rezoning, but it is very clear the Golden Criteria still apply today and the land used de-facto. It is a huge loss to the neighborhood to lose the Country Club as a community center and for-hire event space, green space the residents' desire for pool and cabana they have given up. The reason the property has remained vacant so long was market turndown and lack of development expertise, and not owner expertise, otherwise, a plan would be been presented four years ago. The neighbors should not have to pay for lack of business skill and acumen. The point is green space and access, not impervious surface. Mr. Petersen stated he had not heard citizens want a pool and cabana, but these had caused the property to remain vacant so long. He stated he could not intellectually disagree with Councilmember Filla's statements about expertise, based on his 30 years of development experience.

Mr. Petersen stated a "taking" had been described and the City could not hold the property for perpetuity, which is why the Kansas Supreme Court says a balance of hardship, Golden Criteria A. Councilmember Filla stated the Golden Criteria of 2003/2004 are still relevant. The 58% open space should not be debated or reduced. She strongly urged fellow Councilmembers to support what was fairly compromised previously and the Planning Commission denial.

Councilmember Osman stated in the February 20, 2017 Governing Body meeting there were hypothetical items that have come to conclusion tonight. As a Councilmember he has the fiduciary responsibility to his Ward and to entire City. He is not a lawyer, but in commercial real estate, so this was an excellent opportunity to review *Golden V. City of Overland Park* case regarding property at 87th and Metcalf, which had several different tenants and was hard to lease. In this opinion, the Golden Criteria can be interpreted in several ways. Accurate statements have been made by staff, legal and residents. The 1960s-1970s case says "whenever, however the focus shifts from the entire City to a specific tract of land for which a zoning change is urged, the function becomes quasi-legislative." If there are legal proceedings by either side for the proposed plan, the decision is taken out of City hands and a judge may say "do not look a gift horse in the mouth." There is an opportunity to have something done with the property after 15 years. He did not vote for the zoning change from recreational to residential 15 years ago. In the City Code, recreational is recreational/private for horseback riding, athletic field, batting cage and commercial uses. To walk or use private property is trespass, and he has done this on the property. Green space is planned for 97th and Lee Boulevard. The City must determine how best to obtain small portions of space in north Leawood and how best to salvage in regard to the proposed development. He would love to have no lots, but if a developer would operate a private batting case near homes, there would be noise and lights. He stated he was not comfortable with this plan and suggested that if the 1-1/3 acre of 56,000 square ft. could be used for three lots of 12,000 to 15,000 sq. ft. each rather than four lots, this would open up 20,000 sq. ft. of space.

Mayor Dunn noted the time of 11:03 P.M. and asked for a motion to extend the meeting for 30 minutes.

A motion to extend the meeting for 30 minutes was made by Councilmember Azeltine; seconded by Councilmember Kaster. The motion was approved with a unanimous vote of 8-0.

Mayor Dunn noted the estimated cost for a 10 ft. wide trail made of concrete with a rock base was \$193,000 per Mr. Johnson's memo, and she asked for a cost estimate of a concrete sidewalk only 5 ft. in width without extensive looping. Mr. Johnson stated the sidewalk described by Mayor Dunn would cost about \$50,000.

Mayor Dunn suggested the developer consider providing the landscaping per Mr. Owens' plan for the 6.5 acres offered and the \$50,000 concrete trail. Mr. Petersen declined, stating \$15,000 could be provided for City in lieu of the all-weather trail. A concrete pour would require removal of some trees, which the developer does not wish to lose. He stated this was not a game; the developer is gaining costs and losing lots. Mayor Dunn stated his argument was now over \$35,000 and the path of the trail could be steered to avoid tree loss. Mr. Petersen stated \$30,000 and the 6.5 acres without landscaping could be given. Mayor Dunn stated the landscaping was a must. Mr. Petersen said the developer keeps losing while compromising. He asked for a five minute recess; Mayor Dunn agreed.

At 11:16 P.M., Mayor Dunn called to order and the meeting reconvened in public session.

Mr. Petersen expressed appreciation for the opportunity for consultation; it is not standard to negotiate at a podium. Proposal would be for 24 lots as planned with four lots west of Sagamore, dedication of 6.5 landscaped-to-plan acres to the City prior to occupancy of the first home, a 5 ft. wide, 1,000 ft. long concrete path through the 6.5 acres, working with Parks & Recreation on how best to configure the layout before dedication to the City.

Mr. Petersen clarified to Councilmember Cain that a \$3,000 landscaping allowance, worked into the landscaping plan, had been offered to the five home owners with property that abuts the upper tract. Councilmember Cain and Mayor Dunn suggested these property owners could use the money to tie into underground utilities. Mr. Petersen noted the developer had just agreed to a \$50,000 concrete path in a City park and may not have support of four lots west of Sagamore. The money was offered to enhance landscaping and for residential support of the four lots west of Sagamore before plan denial by the Planning Commission and protest petition. It had been rejected by one Commissioner and no further details were discussed.

Mr. Petersen confirmed to Councilmember Osman that three lots instead of four lots had not been proposed at the February 20, 2017 Governing Body meeting.

Councilmember Azeltine inquired if the preliminary plan complied with the LDO. Mr. Coleman stated the plan would, if the Governing Body approved four lots west of Sagamore and Lot 21 with rule exceptions. Councilmember Azeltine pointed out that if a compromise could not be made tonight, a judge would decide. In his opinion, a judge's first question would be to inquire if the proposed plan was compliant. The property was rezoned 14 years ago and something needs to get done. He favored acceptance of the 6.5 acres as park land is scarce and precious.

Councilmember Sipple stated based on comments by the residents and Mr. Petersen, the residents have substantial interest in the availability of public park space rather than R-1 over RP-2 zoning and spacing of homes on the lots west of Sagamore. He agrees that park land is important and with Mr. Petersen's gracious gesture of landscaping and sidewalk.

Councilmember Cain stated in the spirit of compromise and consideration, it would be in the City's best interest to accept the landscaped park land. The maintenance provided \$800,000 to \$1.2 Million villas would be spectacular. It is atypical for north Leawood to have such homes, but not in the rest of the City, for example, Hallbrook. What is unique is the value of these homes would be far greater than many existing maintenance-provided homes next to single-family homes. She would support the development with 24 lots as proposed, if the offer to the City of a complete landscaped 6.5 acres, concrete trail and stipend to five abutting home owners previously proposed, was honored. In this manner, the public gets 6.5 acres, the developer gets four lots west of Sagamore, the City gets a concrete trail and the five abutting property owners receive a stipend they could use to tie into underground utilities.

Mayor Dunn asked for a motion to extend the meeting for another 30 minutes.

A motion to extend the meeting for 30 minutes was made by Councilmember Filla; seconded by Councilmember Kaster. The motion was approved with a unanimous vote of 8-0.

Councilmember Filla stated Mr. Whitacre had invested \$5 Million in infrastructure. Trees in the landscaping plan are whiplings. Mr. Anderson stated this would be a one-half inch caliper tree, about 5 or 6 ft. tall; a size not typically planted in the City. Councilmember Filla stated profitability could be maintained by adjustments to the number of lots, the size of lots and their price. She does not favor negotiating on the Golden Criteria.

Mr. Petersen stated three larger caliper trees per lot had been planned for five abutting lots costing a total of \$15,000. The trees would not be installed and instead a \$2,000 landscape buffer payment would be made to each of the five abutting property owners to use at their discretion, another \$10,000 compromise by the developer. The funds were to be provided prior to completion of the landscaping plan. Mayor Dunn stated removal of the utility poles would enhance the look of the area.

A motion was made by Councilmember Azeltine, guided by Ms. Bennett, to override the Planning Commission denial with:

- 1. Stipulations 1 through 30, with modification of Stipulation 1 to revise from 23 single-family lots to 24 single-family lots.**
- 2. Add Stipulation 31 for the developer to dedicate portion of Tract A east of Sagamore to the City with a 10 ft. concrete trail on the north side of cul-de-sacs in accordance with Stipulation 19 and a 5 ft. concrete trail on the south side of the cul-de-sacs, as approved by staff. Dedication will be accepted by the Governing Body before issuance of occupancy certificate within the development.**
- 3. Applicant will provide a landscaper buffer/allotment allowance of \$2,000 each to owners of five adjoining tracts prior to completion of landscaping.**
- 4. Modification of Stipulation 7 for Lot 21 with deviation for inclusion of rule as accepted for other lots.**
- 5. Stipulation 2 would be mathematically revised from \$6,900 to \$7,200.**

The motion was seconded by Councilmember Rawlings.

Mr. Petersen stated agreement to all stipulations.

Mayor Dunn reminded a valid petition had been received; an override would therefore require seven affirmative votes rather than the typical six votes.

Ordinance No. 2832 to override the Planning Commission denial was passed with a roll call vote of 7-2, with Affirmative vote from Mayor Dunn due to the number of concessions made this evening and Nay votes from Councilmember Filla for reasons previously stated, Councilmember Osman who favored a compromise to have three lots rather than four lots west of Sagamore.

Mayor Dunn stated the green space would be owned by the City, connecting north and south and eliminating the issue of trespass. The addition of park space would be for current and future generations. She expressed appreciation for resident involvement; the City values their opinion. She wished the developer success at this most desirable “golden triangle” location as named by the Johnson County Appraiser.

13. OLD BUSINESS – None

14. OTHER BUSINESS – None

15. NEW BUSINESS – None

ADJOURN

There being no further business, the meeting was adjourned at 11:45 P.M.

Debra Harper, CMC, City Clerk

Cindy Jacobus, Assistant City Clerk