

Minutes

DVD No. 400

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, October 2, 2017. Mayor Peggy Dunn presided.

**Councilmembers Present:** Jim Rawlings, Chuck Sipple, Debra Filla, Julie Cain, Lisa Harrison and James Azeltine

**Councilmembers Absent:** Andrew Osman

<b>Staff Present:</b> Patty Bennett, City Attorney	Chief Troy Rettig, Police Department
Chris Claxton, Parks & Recreation Director	Ross Kurz, Info. Services Director
Mark Tepesch, Info. Services Specialist III	Brian Anderson, Parks Superintendent
David Ley, Interim Public Works Director	Debra Harper, City Clerk
and City Engineer	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**

**2. APPROVAL OF AGENDA**

Mayor Dunn stated the agenda had been amended to reflect a revised purchase amount for Consent Agenda Item 7.O., the addition of a Topeka update by the City Administrator and the addition of a report by Councilmember Filla as Agenda Item 9.B. and renumber Councilmember Azeltine's report from Item 9. to Agenda Item 9.A.

**A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Sipple. The motion was approved with a unanimous vote of 6-0.**

**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.**

Mayor Dunn stated citizens who had signed in to speak on Agenda Item 12. would be called upon when the item was discussed.

#### 4. PROCLAMATIONS

Double Ten Day, October 10, 2017

Mayor Dunn stated the proclamation honors Leawood's Sister City relationship with I-Lan, Taiwan, and she read the proclamation into the record. The proclamation had been provided to Director General Jerry Chang from the Taipei Economic and Cultural Office in Denver during his recent visit to Leawood.

#### 5. PRESENTATIONS/RECOGNITIONS – None

#### 6. SPECIAL BUSINESS – None

#### 7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted 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. 2017-37 and 2017-38
- B. Accept minutes of the September 18, 2017 Governing Body meeting
- C. Accept minutes of the September 18, 2017 Governing Body Work Session
- D. Accept minutes of the August 17, 2017 Leawood Foundation meeting
- E. Accept minutes of the July 5, 2017 Bike/Walk Leawood meeting
- F. Accept minutes of the May 3, 2017 Bicycle Friendly Committee meeting
- G. Accept minutes of the July 13, 2017 Sustainability Advisory Board meeting
- H. Accept minutes of the June 8, 2017 Sustainability Advisory Board meeting
- I. Approve 4<sup>th</sup> and Final Pay Request in the amount of \$24,348.11, between the City and Mega Industries Corporation, pertaining to the Tomahawk Park to Roe Avenue Trail Rehabilitation Project [Project # 71024]
- J. Approve purchase in the amount of \$56,249.00 from KC Bobcat for the purchase of Parks Maintenance equipment
- K. Approve purchase in the amount of \$17,996.00 from Kubota Tractor Corporation for the purchase of Parks Maintenance equipment
- L. Approve purchase in the amount of \$17,743.50 from Vermeer, Great Plains for the purchase of Parks Maintenance equipment
- M. Approve purchase in the amount of \$60,676.52 from Foley Equipment Co., for the purchase of Parks Maintenance equipment
- N. Approve purchase in the amount of \$53,817.59 from Deere & Co., for the purchase of Parks Maintenance equipment
- O. Approve purchase in the amount of \$35,778.73 from Modern Business Interiors, pertaining to replacement tables and carts for The Lodge, located at Ironwoods Park, 14701 Mission Road
- P. Approve purchase in the amount of \$11,706.34 from Gail's Harley Davidson for the purchase of a 2018 Harley Davidson Police Motorcycle
- Q. Resolution No. 4843, authorizing the acceptance of a gift from the Leawood Foundation of the All-Inclusive Playground Equipment located at City Park, 10601 Lee Boulevard

Mayor Dunn requested Consent Agenda Item 7.Q be pulled for discussion, as well as Consent Agenda Item Items 7.J, 7.K., 7.L. and 7.M. for clarification comments by Ms. Bennett.

Councilmembers Azeltine and Sipple requested Consent Agenda Item 7.A. be pulled.  
Councilmember Harrison requested Consent Agenda Item 7.F. be pulled.  
Councilmember Filla requested Consent Agenda Item 7.I. be pulled.

**A motion to approve the remainder of the Consent Agenda was made by Councilmember Rawlings; seconded by Councilmember Cain. The motion as approved with a unanimous vote of 6-0.**

A. Accept Appropriation Ordinance Nos. 2017-37 and 2017-38

Councilmember Azeltine asked for additional information in regard to Check Number 91837, payable to Certifresh Cigar with description “Cigars” on Appropriation Ordinance 2017-37. Mr. Lambers stated the cigars would be for golfers at the Ironhorse Golf Course. Councilmember Azeltine requested Appropriation Ordinance descriptions be more specific. Mr. Lambers stated descriptions often cover multiple purchases and description space is limited by the computer software.

Ms. Bennett confirmed to Councilmember Sipple that Check Number 91866, payable to HazMat Response Inc. with description “Hazmat cleanup 2008 W. 104<sup>th</sup> Building” on Appropriation Ordinance 2017-37 was issued for cleanup of materials such as stored fertilizer and fuel after flooding at the Parks & Recreation Maintenance Facility.

Councilmember Sipple questioned Check Number 91961, payable to BSN Sport Supply Group with description “Replace Soccer Goal/Nets-Flood-Soccer Equipment” on Appropriation Ordinance 2017-38, stating his belief that items were stored in units above flood level at City Park. Ms. Claxton stated the plastic pipe and net goals are always kept at parks due to lack of storage space. These goals were not at City Park, but were from Fields 20 and 21 at Tomahawk Creek Park.

**A motion to approve Consent Agenda Item 7.A. was made by Councilmember Sipple; seconded by Councilmember Rawlings. The motion was approved with a unanimous vote of 6-0.**

F. Accept minutes of the May 3, 2017 Bicycle Friendly Committee meeting

Councilmember Harrison noted the committee meeting was held five months ago and suggested the minute reporting process be more timely, with minutes received by the Governing Body within two or three months. Mr. Lambers stated committee minutes must be approved at a committee meeting prior to submission review by the Council, and some committees do not meet regularly due scheduling.

**A motion to approve Consent Agenda Item 7.F. was made by Councilmember Harrison; seconded by Councilmember Filla. The motion was approved with unanimous vote of 6-0.**

I. Approve 4<sup>th</sup> and Final Pay Request in the amount of \$24,348.11, between the City and Mega Industries Corporation, pertaining to the Tomahawk Park to Roe Avenue Trail Rehabilitation Project [Project # 71024]

Councilmember Filla congratulated City Staff for another project completed under budget and with a great contractor evaluation review. She questioned if the three contractor performance evaluation criteria given an average final score of “0.00” were criteria that were not applicable for the project; Ms. Claxton confirmed.

Mayor Dunn congratulated Ms. Claxton, Mr. Anderson and Mr. Ley on the new trail, stating she had received many compliments about the width of the new concrete and the overall fabulous appearance.

**A motion to approve Consent Agenda Item 7.I. was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 6-0.**

- J. Approve purchase in the amount of \$56,249.00 from KC Bobcat for the purchase of Parks Maintenance equipment
- K. Approve purchase in the amount of \$17,996.00 from Kubota Tractor Corporation for the purchase of Parks Maintenance equipment
- L. Approve purchase in the amount of \$17,743.50 from Vermeer, Great Plains for the purchase of Parks Maintenance equipment
- M. Approve purchase in the amount of \$60,676.52 from Foley Equipment Co., for the purchase of Parks Maintenance equipment

Ms. Bennett stated she is in the process of working with Travelers Insurance on equipment and vehicle flood loss occurring July 27, 2017, in conjunction with Parks Superintendent Brian Anderson and Horticulture/Forest Supervisor Dustin Branick. At this time, seventeen vehicles have been totaled and for which the City will receive depreciated value. The City has received advanced payment of approximately \$400,000 for equipment. Work continues to determine actual cash value.

Councilmember Azeltine inquired if the State had declared an emergency for that day. Mayor Dunn stated Johnson County had declared a disaster area. Ms. Bennett stated she was not aware if the State had declared an emergency and that Fire Chief Dave Williams, who was not present, was tracking. The County declaration would be a step that would help going to the next level. The numerous hurricanes have been a Federal priority.

- Q. **Resolution No. 4843**, authorizing the acceptance of a gift from the Leawood Foundation of the All-Inclusive Playground Equipment located at City Park, 10601 Lee Boulevard

Mayor Dunn asked Leawood Foundation Chair Alice Hawk and any Foundation members present to approach the dais. Mayor Dunn gave personal accolades for the Foundation's hard work fundraising private dollars, nearly \$500,000. She stated Ms. Hawk and the Foundation Board had done an exemplary job. Mayor Dunn read a Certificate of Heartfelt Appreciation into the record, which she presented to Ms. Hawk that was followed by a standing ovation.

Ms. Hawk thanked the Council and City Staff for their support, stating the project would not have come to fruition without cooperative effort. She stated Ms. Claxton and Mr. Anderson are amazing. Mayor Dunn stated the playground is very much appreciated by residents and the broad community, and the project took a leader to be at the helm.

**A motion to approve Consent Agenda Item 7.Q. was made by Councilmember Cain; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 6-0.**

## 8. MAYOR'S REPORT

- A. Moment of silence for victims in tragic shootings this past weekend in both Las Vegas and Lawrence, and in appreciation for first responders who put their lives on the line to assist.
- B. Privilege of meeting with Director General Jerry Chang from the Taipei Economic and Cultural Office in Denver when he visited Leawood a week ago. He was most interested in learning more about Leawood's Sister City relationship with I-Lan, Taiwan, and enjoyed viewing the many gifts we have received over the nearly 30-year history.
- C. Reminders for two upcoming events sponsored by Parks & Recreation. "Into the Night Fall Festival" is scheduled for Friday, October 6, from 5:30 P.M. to 9:00 P.M. in Ironwoods Park. The festival will include hayrides, a petting zoo, crafts, games, activities, face painting, a balloon artist, fortune telling, and refreshments, as well as performances by Mr. Stinky Feet, Mad Science, Vida Dance Company and Brian Wendling's Juggling. Admission fee is \$10 per carload. The Leawood Stage Company will present Agatha Christie's murder mystery classic "The Mousetrap" on October 12, 13 and 14 at 7:30 P.M. and October 15 at 2:00 P.M. in the Oak Room of Leawood's Community Center. Tickets are \$10, sold in advance on-line.

## 9. COUNCILMEMBERS' REPORT

- A. **Councilmember Azeltine** – Referral to Stormwater Management Committee regarding discussion of flood issues

Councilmember Azeltine stated the Governing Body had recently approved a request for referral to the Stormwater Management Committee to discuss flood issues raised by area residents [Governing Body meeting September 18, 2017] at the Public Works Committee meeting [September 5, 2017] when the monument was discussed.

Councilmember Azeltine noted the City has not been granted needed easements for the stormwater project. The project will likely not be undertaken this year due to the delay, but in 2018 after re-application to the Johnson County Stormwater Management Advisory Council [SMAC]. Mr. Lambers stated Mr. Ley has had discussions about the possibility of undertaking this project, rather than another SMAC funded project, in 2018. Hopefully, a decision from SMAC will be available for discussion by the next Stormwater Management Committee at their next meeting scheduled for October 25, 2017 at 7:30 A.M. In the past, the City has not been this far in a project without having all easements in place, raising the need to revise a project timeline.

Mr. Lambers stated he and Mr. Ley have been reviewing the project to determine if the project could be scaled-back where easements are not available, and if not at least bring back before the Governing Body the list of easements that were not received and decide how to proceed. He stated the City may need to revisit its policy regarding the expectation of obtaining easements for projects funded with public dollars without property owner expense. Easements are being granted by owners of property that floods, and easements are not being granted by owners of property that does not flood. This practice would be another topic for discussion at the Stormwater Management Committee meeting. He stated Consulting Engineer needs to move forward with completion of the project, regardless of the timeline since a majority of the work has been completed. If the project cannot move forward, it would be ready. This would be another topic of discussion at the Stormwater Management Committee meeting.

Councilmember Sipple noted the project cost estimate is \$1.8 Million, with SMAC funding 75% of cost and the City funding 25% of cost, about \$450,000.

Councilmember Cain asked for details regarding easements and notifications. Mr. Lambers stated the easements needed are temporary construction easements and most residents had a face-to-face meeting with City Staff. The City has not had the need to have any further process than what has been done. If the City needs to pursue easements the situation becomes complex because property owners that voluntarily grant easement would not be compensated, while property owners that did not voluntarily grant easements would be compensated. In his past experience, Overland Park residents would participate in a project by paying a share of the cost. Easements were obtained by condemnation, the cost added to the project, and property owners were advised of how they would be remunerated. Equitable assessments were placed on the properties, after the cost was equalized according to square footage. Leawood's process of assessment of cost per property square footage used in Benefit Districts does not lend itself to this situation. Mr. Lambers confirmed to Councilmember Azeltine that this topic would be discussed at the Stormwater Management Committee meeting on October 25.

In regard to easements, Councilmember Filla pointed out that property values of homes would not rise if nearby homes have issues with flooding. With a nod to the idiom "The rising tide lifts all the boats," she suggested it would be in everyone's best interest for all temporary construction easements to be signed.

Mr. Ley stated City Staff had met with every property owner and that another signed easement was received this week. All easements have been received from property owners in Patrician Woods for the main trunk line. Permanent drainage and a few temporary construction easements from property owners in Aintree Manor and the HOA for a box culvert are the issue. The existing stormwater pipe stops at Patrician Woods and the project would extend the pipe south to 127<sup>th</sup> Street, which crosses the Aintree Manor pool and tennis court. This would keep the system enclosed and provide for more efficient flow.

Councilmember Azeltine asked about the possibility of excluding the outstanding easements and still obtain SMAC funding. Mr. Ley stated this could be a possibility, but pulling back the location of the box culvert would need to be reviewed. There are many trees in the area and a fallen tree would likely block and clog the box culvert, exacerbating the issue.

Mr. Lambers stated due to the limited time left in the construction season, the City would be unable to move forward with the stormwater project this year even if all easements were received. He and Mr. Ley will continue to review the project to see if portions of the project could be omitted. Mr. Ley estimated if the project could be bid at the end of this month, the earliest construction start would be February 2018.

**A motion to approve the referral to the Stormwater Management Committee meeting to be held on October 25, 2017 was made by Councilmember Azeltine; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 6-0.**

**B. Councilmember Filla – Highlight article on Mayor Dunn’s service for over 20 years in the Leawood Chamber of Commerce Fall 2017 magazine publication**

Councilmember Filla displayed a copy of the Fall edition of the “Look to Leawood” magazine published by the Leawood Chamber of Commerce which features Mayor Dunn on the cover and contains an article on her mayoral service of over 20 years. Councilmember Filla thanked Mr. Jeffries and Mayor Dunn for their outstanding representation of Leawood. The feature was well done and a nice reflection on the great City of Leawood.

Mayor Dunn thanked Councilmember Filla for sharing, pointing out the magazine is published twice a year by the Leawood Chamber of Commerce.

**10. CITY ADMINISTRATOR REPORT**

Update on Kansas Supreme Court ruling on school funding

Mr. Lambers stated the Kansas Supreme Court had ruled the State’s school funding unconstitutional and gave the legislature until May 22, 2018 to correct. Perhaps with this amount of notice, the legislature can develop a plan to pass muster of the Kansas Supreme Court.

Mr. Lambers gave the opinion the State’s balance budget is “sleight of hand,” as each year the legislature passes a Certificate of Indebtedness [CIO] for an increasing amount. In May 2017, the CIO amount jumped up to \$900 Million and despite this CIO, the budget will have a shortfall even without the probable hundreds of millions that are needed to satisfy the Court. The Court has been vague on the amount needed for schools, but a starting point could be where the funding was ruled acceptable and then adjusted for benefits and cost of living. Mayor Dunn stated the Court has been very deliberate in not stating the amount needed.

Mr. Lambers stated it was likely that the legislature will not accomplish until the last day of the legislative session, although there is the option to go into special committee. These issues will be a challenge for the new governor and an issue for the election year. Mayor Dunn stated the assumption is Governor Brownback’s Federal appointment will be confirmed.

**11. STAFF REPORT – None**

## **COMMITTEE RECOMMENDATIONS**

### **12. STORMWATER MANAGEMENT COMMITTEE**

**[from the September 6, 2017 Public Works Committee meeting]**

Stone monument in an island near 12600 Delmar is being removed during construction of SMAC project TM-04-006. The monument is located with right-of-way and on top of the City's storm sewer system.

**Recommendation: City replace island during Stormwater SMAC Project construction, including appropriate landscaping. Future monument/décor on island will be HOA responsibility**

Mayor Dunn asked Councilmember Rawlings, who had facilitated the Public Works Committee meeting on behalf of Chair and Councilmember Osman when resident concern about the monument was initially raised, to provide comment.

Councilmember Rawlings stated much discussion had occurred at the meeting regarding both the stormwater issue referral now scheduled for discussion at the Stormwater Management Committee meeting on October 25, and the stormwater pipe that needs repair which runs under the street island stone monument. The discussion included engineering studies and challenges to pipe size and angles. Per Mr. Ley, the City does not want a 15 degree angled piping due to stormwater flow. In regard to the stone monument and based on discussion, the City's position was to replace the island and landscaping, but not to replace the monument due to future potential stormwater access City's right-of-way. A colored photograph of the island was displayed.

Mr. Ley stated the City had signed a project design contract with Affinis about 1.5 years ago. After survey, Affinis and City Staff walked the site, issue with the stone monument was noted, and Affinis was asked to research options. Mr. Ley displayed a black and white aerial map of the project, depicting a green line of piping located on the north side of the street island, an orange line for current stormwater piping and a red line for the location of the sanitary sewer. An alternate route that would have crossed the sanitary sewer piping was ruled out because of the conflict. The potential relocation of stormwater piping to the north of the street island would require two additional 80 degree bends which would restrict flow. Each bend would cost an additional \$5,000 plus an additional \$5,000 to encase the sanitary sewer line and \$30,000 to pressure route to ensure there would be no voids under the line, totaling \$40,000 to \$50,000. Size of the reroute pipe was not reviewed for flow and a larger box size could be needed, and additional costs incurred. Mr. Ley displayed a Google view map of the stone monument looking from the south. The monument is a large circle with connecting half circles. The monument has cracks and mortar is pulling away as seen from the north side. The City's stone mason advised the monument would need major work in five to 10 years.

Mr. Ley confirmed to Mayor Dunn the project had been designed and sized for a 100-year flood and this would be discussed at the Stormwater Management Committee meeting on October 25.

Mr. Ley confirmed to Councilmember Sipple that stormwater engineering practice is to enlarge the size of piping where there is a bend and if a larger pipe is used, the larger pipe is used from the pinch-point onward. Mr. Ley stated larger cement pipes have not been factored into project cost. A minimum of 500 ft. of larger piping on the downstream end on the east side of the cul-de-sac would be needed at a cost of approximately \$50 to \$100 a linear foot.

Councilmember Filla pointed out that additional cost for engineering would be also incurred to reroute the piping. Mr. Ley added the reroute would require a 1,200 sq. ft. drainage easement on private property at the location of the second bend and this has not been factored into cost.

Councilmember Sipple noted the reroute would be a six-figure addition to the project cost.

Mayor Dunn called for citizens to speak, in order of sign-in. She asked citizens to keep each of their comments to five minutes or less, and to begin by stating their name and address for the minutes.

Mr. Frank Loeffler, 12609 Delmar, stated he would make brief comments and then defer to neighbor and Structural Engineer Mr. Thomas Heausler. Mr. Loeffler stated on July 31, 2013, this Council and Mayor Dunn had directed the City Administrator and Public Works Director Joe Johnson to get started immediately because of the floods. Though called a 100-year flood, in the 21 years in his home, seven times flood water has entered his house even though the lowest point of the foundation is 11 ft. higher than the culvert. During the last flood, water rose to a center depth of 4 ft. over an area 21 ft. wide. One year later on July 31, 2014, he received a letter from an engineering firm stating the City was considering a project. There are a host of other issues that are not for this meeting.

Mr. Brian Nelson, 12603 Delmar, conceded his time to address the Governing Body.

Mr. Tom Messenger, Patrician Woods Home Owners Association [HOA] President, 12515 Delmar, stated he would speak after Mr. Thomas Heausler.

Mr. Thomas Heausler, 4301 W. 126<sup>th</sup> Terrace, stated he and his wife own a home that faces the stone monument. He has 35 years of experience as a Civil Engineer and is licensed in 23 states. A colored picture of the monument island that had been edited to show the street light without monument and mature tree.

Mr. Heausler read his letter dated October 1, 2017, which had been provided in advance to the Governing Body. The letter that gave a calculation property devaluation and loss of City property tax revenue, provided details of two “best solution” options, and encouraged the City to hire an Independent Civil Engineer to perform a Peer Review; highlights follow.

The stone wall monument has an approximate value \$35,000 and the established tree would be difficult to replace at any cost. The seven homes that face the monument have an average value of \$500,000. Replacement of the monument with concrete slab and dirt would devalue these properties, a loss of 10% a year for the seven homes is \$350,000. Each property owner pays a property tax of \$7,000 annually and the devaluation of 10% over 20 years would reduce City revenue by \$98,000. The total impact of destroying the monument is thus \$483,000.

The best solution is to allow the monument to remain in place or otherwise replace with identical stonework and tree.

Option 1 – Allow Monument and Old Growth Tree to Remain. Reroute the new culvert to the side to preserve the monument and its aesthetics. The current project routes the culvert directly under the island regardless of monument, tree, private easement encroachment and light pole. Best practice and City standards dictate drainage structures should remain in street easements because placing under trees or monuments is problematic for sustainability, maintenance and repair. Sharp culvert angles reduce flow, but for this project the angles would be less than 15 degrees, thus reduction of flow is insignificant or can be accommodated by a very small increase in culvert size.

Option 2 – Remove and Replace Monument. Dismantle the stone monument, reserved it during construction and re-install. A new tree could be added, but would not be the same as the current large 25-year-old tree.

It would be prudent to hire an Independent Civil Engineer to perform a Peer Review of the project. The cost of the Peer Review would likely be less than 10% of money already paid for civil engineering and may pay for itself through discovery of value engineering and cost savings. An additional benefit of Peer Review would be ensure home owner concerns that flood design is adequate, with consideration there may be evidence to the contrary. A win-win for all stakeholders.

Patrician Woods subdivision is emblematic of Leawood's charm. There are seven monuments in the subdivision. It would be a travesty to be assaulted with a flat slab of concrete. The simple recommendations will prevent embarrassment and the community will experience a net cost savings. Do not destroy the monument, tree or all the tangible benefits.

Mr. Messenger stated he was elected Patrician Woods HOA President effective yesterday. He stated the physician who lives on the property of the private easement needed at the second bend in the stormwater piping reroute had experienced three floods in the two years since moving into the house. Flood water runs across the street, over walls and washes out the air conditioning unit. The physician would be happy to provide easement. At the first bend in the stormwater piping reroute, the property owner's home floods every time it rains, and this owner will gladly provide any easements. There have been three 100-year floods this Summer. He became involved in regard to notification, which he questions. Easements were brought to him because is his an attorney. No one came out to meet with residents; a notice was mailed with a request to sign an easement and return to the City in an envelope that required postage be applied by the property owner. Several neighbors did not receive personal notice. The initial issue was saying the City never approved the project. The City accepted the cul-de-sac and island which were there when the City accepted the plat in 1984. The City now disowns their acceptance of the project and states they have no record. HOA wants this taken care of and the City has an obligation to a neighborhood that has been part of the City for a long time. It is great that the project can go on the 2018 agenda. There are two larger culverts that come together into one smaller culvert. He assumes the culvert that runs under the street was installed by the developer when the streets were constructed. We have created a natural dam. The creek goes under Roe Boulevard, and the backyard of Mr. Martin who has lived there since 1987, floods up to 7 ft. deep next to his house foundation because the existing culvert is too small.

Councilmember Azeltine reminded the monument is the agenda topic. Mr. Messenger stated the residents want the City to be aware of the impact of the entire. He stated the City's technician acknowledged they had not looked downstream and this situation will be brought up by residents at the Stormwater Management Committee meeting on October 25. There is going to have to be follow-up to ensure the project does not make it worse for others. Mayor Dunn expressed her belief the goal is to make it better for everyone.

Mr. Michal Maier, 4303 W. 126<sup>th</sup> Street, declined to speak.

Mayor Dunn pointed out many topics and comments would be discussed at the meeting of the Stormwater Management Committee on October 25, 2017. Councilmember Azeltine stated many comments had already been discussed at the Public Works Committee meeting.

Councilmember Filla stated appreciation for the City's technical support and all citizen involvement, in discussion that started in a Public Works Committee meeting and appropriately referred for further discussion to a meeting of the Stormwater Management Committee. She stated she does not like to lose a mature beautiful tree and as Vice Chair of the Sustainability Advisory Board Committee has championed the creation of eco-friendly and educational materials, including Emerald Ash Borer [EAB] disease brochure. City Staff recommended landscaping would include a tree, so the island would not be just a concrete slab. She suggested the island could also include a water feature, grasses or something that could be more easily moved if needed in the future.

Mr. Ley confirmed to Councilmember Azeltine that the pipe under the street island was built in early 1984 and the pipe had only been accessed at the ends since that time.

Councilmember Azeltine stated he had a much better understanding of the issues after spending two hours walking the site with neighbors. He stated agreement with all of Mr. Heausler's comments.

Councilmember Azeltine stated the neighborhood was built 33 years ago. The City has grown rapidly since 1984, when Leawood's population was one-third of what it is today. During the period of rapid growth, houses were built in flood plains and the streets of entire neighborhoods were not built to code so developers could squeeze in additional houses. As a Governing Body member for the past 13 years, he has witnessed the impact of neglect, and lack of oversight and enforcement that occurred in the 1980s and 1990s from inferior systems and procedures that were far less than we have in place today. Mayor Dunn and Mr. Lambers are complimented for their effort. Developers typically erect advertising signage at the entrance to inform the public as to the type of development. This is relevant because the Patrician Woods HOA has provided a 1984 plat that confirms the City's acceptance of the plat which does not show the many monuments, including the massive dual monuments and elaborate median located at 126<sup>th</sup> Street and Roe Boulevard. He has provided photographs of the monuments and plat to the Governing Body. The entrance monuments and seven other monuments were either installed all at the same time before the construction of houses for advertising or they were constructed as houses were built. Assuming the City issued building permits and conducted inspections on houses, it is inconceivable the monuments throughout the development were overlooked by the City.

Councilmember Azeltine stated although he typically takes a fairly legalistic view on enforcement of City code based on facts, he also tries to be empathetic and look at concerns brought forth by residents from their viewpoint. He has heard the sad and traumatic stories of the residents in regard to flooding. He stated his believe there are mitigating circumstances in this instance that compel just and fair action even if the City is not required to do so, based on presumed missing documentation from 33 years ago. He expressed concern the City may encounter similar situations during replacement of stormwater pipe throughout the City in the next few years, and the outcome of the current issue would set precedent.

Councilmember Azeltine stated the City should either run the new stormwater pipe around the cul-de-sac island at an estimated additional cost of 5% of the project, \$100,000, or sufficiently compensate the property owners for what could be construed as a “taking” of the \$35,000 monument. He noted the City has encountered change orders of 5% on other projects. He stated his believe the physician who owned the property at the second bend of the reroute would not oppose granting easement. If the development had been constructed only five or 10 years ago he would not favor such remedy, but based on circumstances, the City should bend. He suggested the City obtain another opinion in regard to additional costs to reroute.

Mayor Dunn asked Councilmember Azeltine if he suggested action be taken before the Stormwater Management Committee meeting on October 25. Councilmember Azeltine stated the City should reroute the stormwater pipe or compensate the HOA for the monument, with possibility for second opinion on the project. He stated there are several ways to ensure fair treatment of the property owner.

Councilmember Sipple asked Mr. Ley if other private property trees would be impacted if the City accepted Mr. Heausler’s Option 1 – Allow Monument and Old Growth Tree to Remain by rerouting the pipe, and if the City had engaged independent engineering consultants for second opinions in the past. If the City had sought second opinions, how was the experience and did it impact the final design. Mr. Ley stated the City had not sought second opinions, but if this had been done, review would need to ensure City standards are met. He did not believe the private trees would be impacted by a reroute.

Councilmember Sipple asked how long the project would be delayed if the engineering design was revised and if SMAC would contribute 75% of the additional cost. Mr. Ley stated the current design could move forward in March 2018, assuming Aintree Manor easements are received and there no issues after engineering review. A reroute design would add a few months to this schedule. SMAC would not contribute 75% of any additional costs; their share is based on the fixed project cost of \$1.8 Million.

Councilmember Sipple asked for the number of easements that had been granted and the number outstanding. Mr. Ley stated belief the project required 13 easements and that all easements from Patrician Woods had been obtained, with one or two property owners indicating verbal agreement to sign. The City has not received four easements in Aintree Manor. This part of the project could be pulled and street flooding could still be alleviated.

Mr. Ley clarified to Councilmember Filla that Olsson Associates rather than Affinis was used for engineering. He stated Olsson have completed a large amount of Federal Emergency Management Agency [FEMA] mapping projects in Johnson County and are well-versed in this regard.

Councilmember Filla asked for a cost estimate to engage an independent engineering consultant. Mr. Ley estimated cost to be \$10,000 to \$20,000.

Councilmember Filla shared there had been murkiness in the past over who owns the monuments and pays for their repair in Old Leawood, and she was empathetic. It is hard to lose any tree, but the cost to save the monument island tree would be unprecedented. In Old Leawood, a developer removed five 60-year-old mature trees, two of which were street trees which are required. Trees have yet to be replanted and there is no legal status. The City's inventory of trees is 25% Ash trees. She stated great confidence and professionalism of City Staff and in contractor work, and recognized the HOA may want to pay for a second opinion. She pointed out the project requires specialized stormwater engineering. Councilmember Filla stated it would be unreasonable to ask fellow citizens to spend \$100,000 to \$120,000 to save a monument, and offered that situation would be better over time.

Councilmember Cain if the mature island tree would likely sustain damage during the project. Mr. Ley stated the tree would be exposed to equipment exhaust, but the stormwater box will run under the roadway outside of the tree's drip line. Mr. Anderson, Parks Superintendent and a Certified Arborist, stated although not familiar with the plan, the tree's root system likely extends throughout the area. He suggested keeping as much distance from the island and construction as possible, and to not use the island to pile soil or park cars nearby.

Councilmember Cain stated her preference in consideration of all citizens would be to move forward with the original design without hiring additional experts to review which could cost as much as island replacement, to not incur the additional six-figure dollar amount, replace the island and rebuild the monument with existing stone and to do the best to preserve the tree. The design would take the stormwater system from a 10-year to a 100-year capacity pipe. She attended the Public Works Committee meeting in this regard, where some citizens expressed the increased capacity pipe was inadequate.

Councilmember Harrison stated her opinion the monument was better defined as a retaining wall, since monuments are typically placed at the development entrance and retaining walls contain landscaping such as trees. She has many retaining walls at her home and it was not a good idea for the builder to plant six trees in one wall, as the trees are pushing out the wall which requires maintenance. The 30-year old retaining wall needs a face-lift, and is probably containing and binding the tree's root ball. She could not support the calculation for devalued property stated in Mr. Heausler's letter to the Governing Body. The Waterford HOA has lost 15 trees to EAB and property values did not drop immediately. She stated the City makes a best effort to restore areas to their initial condition after a project and she has been impressed with the City's efforts to do this when other cities do not. A new retaining wall would increase property values and the HOA would not have to tuck-point the deteriorating wall for the next 20 years. Stormwater is a different issue and her focus is on the retaining wall. She stated the HOA has some liability as well and splitting the cost should be considered. The Waterford HOA has not asked the City for assistance with similar maintenance.

Councilmember Azeltine inquired if Waterford had a monument removed. Councilmember Harrison stated some curb work done in the development had impacted trees and the HOA has had to deal with the EAB. She stated trees come with never-ending maintenance costs.

Councilmember Azeltine asked if the Patrician Woods HOA would encounter any permitting issues if the HOA would replace the monument/retaining wall as it is currently. Mr. Lambers stated if the City performs the work on the island a permit would not be required. The HOA would need a right-of-way permit for work in the island because of roadway traffic. Mr. Lambers stated a right-of-way permit had not been previously obtained by the HOA, which has been the issue. The permit regulates street traffic.

Mayor Dunn stated that if the HOA desired to make changes to the island, a permit would be required, and an easement from the HOA to the City would also be needed. Mr. Lambers agreed, adding agreement would also be required that states the City is not responsible for restoring the island should the decorative island be impacted by future City work and the City would not be responsible for maintenance. Mr. Lambers suggested to make best use of time and facilitate discussion of the Stormwater Management Committee at the October 25 meeting, the Governing Body should determine the project design would be to run the pipe straight under the cul-de-sac. Spending \$100,000 for reroute and Peer Review is unjustified. The Governing Body should determine project design. After the Stormwater Management Meeting, it could be determined if the island would be replaced and cost sharing.

Mr. Messenger asked to address the Governing Body to provide clarifications. He stated Option 2 – Remove and Replace Monument in Mr. Heausler’s letter mentioned a new tree could be added, and he requested a 4-inch caliper tree be planted since the island is not irrigated. The HOA is aware the monument requires maintenance and the HOA is making preparations to fund maintenance of all monuments, including the entrance monuments, which need re-pointing. The HOA is not asking the City for this work, which is to be done this year. If the City decides to go underneath the island, the City should spend \$25,000 to \$35,000 to replace the monument using the same stone. The HOA would replant the plants for less than cost would be for the City. In regard to easements referred to by Mayor Dunn, the 1984 plat already has all the easements. If easements are not valid no progress has been made. All Patrician Wood easements have been signed and returned to the City. The City cannot have their cake and eat it too. Mayor Dunn stated the City Attorney may have a differing opinion. Mr. Messenger stated he would be happy to meet with Ms. Bennett to discuss.

**A motion was made by Councilmember Azeltine to approve the recommendation of the Public Works Committee and in addition compensate the HOA \$35,000 for structure. The motion died for lack of a second.**

Councilmember Cain asked Mr. Messenger if the HOA would prefer to receive payment for the monument, providing an opportunity for the company that will do other monument work. Mr. Messenger stated a \$35,000 check to the HOA would be best. The work could probably be completed quicker and for less in this way. HOA would find a place to store the stone during the process. The stones would need to be cleaned and mortar removed before the stones could be reset. He stated the most important issue is the flooding and the project is needed. This may seem like setting a precedent, but do not delay further. Councilmember Cain pointed out progress is being made and the City’s processes are working.

Mr. Lambers pointed out a valuation has been given that has not been valued for the City’s auditor. If the HOA is proposing the City provide construction for rocks and retaining wall based on current configuration, the City would need to obtain a landscape expert’s estimate for documentation, which would be presented to the Governing Body for review, and if approved, a check issued. If the HOA provides the landscaping, this may provide the opportunity to split the cost.

Councilmember Sipple stated his perception that the City is paying a penalty to improve the stormwater situation in Patrician Woods for \$2 Million cost. He stated the HOA is a stakeholder and he proposed a cost sharing of 75% to 25% of cost to remedy the issue, as determined by Mr. Lambers.

Mayor Dunn noted Mr. Messenger's comment about setting a precedent for all HOAs, which was of personal concern.

Ms. Bennett stated the City had previously passed a resolution regarding maintenance or replacement of items in the public right-of-way stating the City would not pay. She stated revision of this resolution may be needed depending on the direction approved by the Governing Body. Mr. Lambers stated we now have language that after City work, the HOA has to replace. The resolution would need revision to ensure the City can perform work as needed. Mayor Dunn stated her belief it would not be in the City's best to alter the resolution, but rather some language that could be inserted to make this situation unique.

Mr. Heausler read three options from a portion of Section Five of Resolution No. 3008 approved April 21, 2008 which states "replace the facilities with like materials, or install curbs for island and reconstruct and replace the facilities inside the new curb with like materials, or remove the island entirely for the street reconstruction." The City is not reconstructing the street except outside the island. Councilmember Sipple stated the assumption would be the island was part of the accepted plat. Mr. Heausler stated the monument has been there for 30 years, and the City is taking and devaluing homes. Mr. Lambers stated the plat accepted by the City does not contain the island, and this has been previously discussed.

Councilmember Filla stated the resolution had been sponsored by former Councilmember Lou Rasmussen. The City had been maintaining the stonework of a large number of monuments. Monuments were repaired and turned over to the HOA by agreement. Islands without curbs were addressed by the three options of Section Five of Resolution 3008. The resolution was related to maintenance of the islands, rather than removal of an entire island, and it did not provide for cost sharing.

Ms. Bennett stated when a development grants the City a right-of-way it is like granting property ownership to the City and no work is allowed in the area without the City's permission. City Staff has not located any documentation that the islands were constructed with permission.

Councilmember Azeltine asked if there were any precedents for the City spending money on an island. Mayor Dunn stated common practice today is handling through granted easements and permitting.

**A motion was made by Councilmember Azeltine to accept the recommendation of the Public Works Committee and have the City replace the island curb, dirt and landscaping after stormwater construction in a cost-share arrangement whereby the City pays 75% and the HOA pays 25% for the island work with a total maximum cost of \$35,000. The motion died for lack of a second.**

**A motion was made by Councilmember Filla to accept the Public Works recommendation to use the current SMAC project design, to have the City obtain estimates for replacement of the retaining wall and landscaping, and to have further discussion of the City and HOA to each provide 50% of the cost of determined replacement plan; seconded by Councilmember Rawlings.**

**A friendly amendment was made by Councilmember Rawlings and accepted by Councilmember Filla to remove the provision for 50%-50% cost sharing.**

Mayor Dunn confirmed with Councilmember Rawlings that the cost estimate would serve as a basis for further discussion.

Councilmember Azeltine suggested this may be an opportune time if it is an intermediate goal of the City to implement criteria that would determine stormwater cost sharing. He asked if the estimates would be available before the Stormwater Management Committee meeting on October 25. Mayor Dunn pointed out replacement with existing stone would be more costly. Mr. Lambers stated two estimates for monument replacement would be obtained as soon as possible, one with maximum use of existing stone and one with materials of similar appearance.

Mr. Lambers confirmed to Councilmember Cain that the City must obtain the estimates, rather than the HOA, because of the potential reimbursement by the City.

**The amended motion was approved with a unanimous vote of 6-0.**

Mayor Dunn thanked residents for their attendance, noting they would probably plan to attend the Stormwater Management Committee meeting on October 25.

**13. PLANNING COMMISSION – None**

**14. OLD BUSINESS – None**

**15. OTHER BUSINESS – None**

**16. NEW BUSINESS – None**

## **ADJOURN**

There being no further business, the meeting was adjourned at 9:29 P.M.

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Debra Harper, CMC, City Clerk

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Cindy Jacobus, Assistant City Clerk