

Regular Meeting**THE LEAWOOD CITY COUNCIL**

November 16, 2020

Minutes

Councilmembers Present: Lisa Harrison, Julie Cain, Debra Filla, James Azeltine, Chuck Sipple and Mary Larson

Councilmembers Present via Zoom: Andrew Osman and Jim Rawlings

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator	Patty Bennett, City Attorney
Dawn Long, Finance Director	Nic Sanders, HR Director
Chief Troy Rettig, Police Department	Chief Colin Fitzgerald, Fire Department
Chris Claxton, Parks and Rec Director	Ross Kurz, Info. Services Director
David Ley, Public Works Director	Kelly Varner, City Clerk
Mark Tepesch, Info. Services Specialist III	Stacie Stromberg, Assistant City Clerk

Staff Present via Zoom: Richard Coleman, Community Development Director and Mark Klein, Planning Official

Others Present via Zoom: John Petersen, Polsinelli PC; Mark Simpson, Fontana Land Group; Ben Thompson, GilmoreBell; Stephen Harris, Washington Prime Group; Matthew Siegrist, JPRA; and Curt Petersen, Polsinelli PC; Marty Arling, Kaw Valley Engineering; and Jeff Kloch, Hufft Architects

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF AGENDA**

Mayor Dunn stated there are amendments to the agenda: a topic was added under the Councilmembers' Report and updated material was added for Item 13F.

A motion to approve an amended agenda was made by Councilmember Sipple, seconded by Councilmember Harrison. Motion was approved with a unanimous roll-call vote of 8-0.

4. CITY CLERK STATEMENT

To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Governing Body is being conducted remotely using the Zoom media format and some of the members of the Governing Body are appearing remotely. The meeting is being livestreamed on YouTube and the public can access the livestream by going to www.leawood.org/.

Public comments on non-agenda items will not be accepted during this meeting. Public comment on agenda items not requiring a public hearing may not be accepted. As always, public comment on any agenda item can be submitted in advance. Written public comments received at least 24

hours prior to the meeting have been distributed to members of the Governing Body prior to the meeting. Public comments should be directed to LeawoodPublicCommentGB@leawood.org.

5. PROCLAMATIONS - None

6. PRESENTATIONS/RECOGNITIONS - None

7. SPECIAL BUSINESS

A. Public Hearing - Amendments to 2020 Fiscal Budget

Mayor Dunn stated the public hearing is regarding raising amounts in three funds: the Special Parks & Recreation Fund, the 1/8th Cent Sales Tax Fund, and the Park Impact Fee Fund. Mayor Dunn declared the public hearing open and asked if there were any written comments or any comments via Zoom. Kelly Varner, City Clerk, stated that there were none.

A motion to close the public hearing was made by Councilmember Azeltine, seconded by Councilmember Filla. Motion was approved with a unanimous roll-call vote of 8-0.

B. Resolution adopting amendments to the 2020 Fiscal Budget for the City of Leawood, Kansas

Dawn Long, Finance Director, addressed the Governing Body. She stated the funds that are being amended are all projects that were budgeted in 2019 that were not completed, so the funds will need to be rolled into the 2020 budget in order to finish them this year. Councilmember Sipple asked if the Special Parks & Recreation Fund comes from alcohol taxes. Ms. Long replied that it is from the Alcohol Tax Fund and when the City increases the budget in 2020, that money comes from the leftover funds from 2019.

A motion to approve Item 7B was made by Councilmember Larson, seconded by Councilmember Sipple. Motion was approved with a unanimous roll-call vote of 8-0.

C. Resolution approving the Planning Commission's recommendation of denial of a Final Plan and Final Plat for Villa de Fontana, located south of 135th Street and east of Roe Avenue (PC 81-20) [*Continued from the November 9, 2020 Special Call Governing Body Meeting*]

Alternative Resolution: Resolution overriding the Planning Commission's recommendation of denial and approving a Final Plan and Final Plat for Villa de Fontana, located south of 135th Street and east of Roe Avenue (PC 81-20)

John Petersen, Polsinelli PC on behalf of Fontana Land Group, addressed the Governing Body via Zoom. He stated that at the last Council meeting, they were made aware of deficiencies in their final plan in terms of the documents that had been filed. He thanked Mark Klein for working with them last week on all the details. Due to COVID-19 on their design team, there were some delays with the preliminary and final plans. Mr. Petersen stated that Richard Coleman, Community Development Director, made the request that all the fountains and urns in the project be new. Mr. Petersen explained these items are antiquities and much effort was taken to source them into the final plan. He stated they are resisting this request made by staff. Mayor Dunn asked if the Developer will bring forth new urn information for Council review at a later time, since the Council has nothing before them tonight. Mr. Petersen stated the antiquated urn photos were submitted in the original preliminary and final plans, but explained they

have not researched new urns due to the fact their team only received an email about it shortly before this meeting.

Mr. Coleman addressed the Governing Body via Zoom. He stated that staff thought the photos of the urns in the original plans were showing what the items would be similar to, not that they were used urns and fountains. He stated the fountains are likely at the end of their life and would not last long due to their age and material. Staff had concerns that the homeowners would be responsible for the maintenance and replacement costs. Mayor Dunn asked for a cost differential. Mr. Petersen stated they will provide one.

Mayor Dunn asked if a continuance until the December 7, 2020 Governing Body meeting is adequate time, in which Mr. Petersen replied yes.

A motion to continue Item 7C was made by Councilmember Azeltine, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.

- D. Resolution approving and authorizing the Mayor to execute a Development Agreement, pertaining to creation of a Special Benefit District for the Villas de Fontana Development *[Continued from the November 9, 2020 Special Call Governing Body Meeting]*

Mayor Dunn stated there is no Development Agreement (DA) in front of the Council tonight. Patty Bennett, City Attorney, stated the City's Bond Counsel worked with Mr. Petersen on the DA, but there are still differences of opinions. Ben Thompson, GilmoreBell, addressed the Governing Body via Zoom. He stated the Council has been provided a term sheet that lays out the timeline of the plan.

Mr. Petersen presented a simple action sheet to show the City Action and Developer Action steps. He explained the first City Action Step would be that the City signs the DA, as well as the Developer, and as a result the Developer will buy the land, buy the outstanding Transportation Development District (TDD) Bonds, reimburse the City for delinquent Special Benefit District (SBD) assessments, pay the delinquent property taxes, and make the December payment for the outstanding bond. He stated the next step in the process would be that the Developer submits a petition for a new SBD. Mr. Petersen pointed out that once the Council approves an SBD, then the Developers would put the money into escrow which is necessary to cover the existing SBD until the new bonds for the new SBD were issued. He stated the escrow could only be used for one of two things: to defease the existing bonds so new assessments could be put in place; or if time goes past the next payment date, the money would be used to make that next payment in 2021. He explained that at that point, if the City issues the bonds as late as 4th quarter 2021, the Developer would release the escrow to defease the bonds and the fund reserve of 35% cash would be put up for the SBD issuance.

Mr. Petersen suggested that moving down the timing issues of the "Escrow Released to Defease Existing Bonds" Action Step and the "Funds Reserve Account for New SBD Issuance" Action Step, that there will be no increased risk to the City. Mayor Dunn asked Mr. Thompson if the Bond Counsel has any concerns. Mr. Thompson stated the 35% escrow of a financial guarantee is a concern because the City's policy states the 35% be funded before the SBD is approved. Mr. Thompson stated that in working with Ms. Bennett, they would allow a 15-day period, but the Developer wanted it in conjunction with the issuance of the bonds.

Councilmember Azeltine asked if the money in escrow is secured. Mr. Thompson stated that the policy states that the 35% escrow is funded prior to the SBD petition being approved by the City Council. He

indicated it could be in December 2020/January 2021 and the bonds would not be issued until December 2021. He explained that the Developer is requesting that the escrow be funded in December 2021 in conjunction with the issuance of the bonds. Councilmember Azeltine asked if the escrow funds can be released simultaneously with the establishment of the SBD. Mr. Thompson stated there are several escrows. He explained that one is the escrow currently on hand and is on the old SBD, and that money will be contributed to pay down the past due and delinquent SBD assessments, if the DA goes through. Councilmember Azeltine referred to the escrow in Mr. Petersen's Action Steps to be in conjunction with the approval of the SBD. Mr. Thompson stated that is different than the 35% financial guarantee. He explained that there are currently three different SBDs on the project property, and that today until the end of those assessment periods they equal approximately \$1.6M. He stated that the City proposes, upon approval of the new SBD, that \$1.46M be paid by the Developer, less the \$174,660.00 that is due in December. Councilmember Azeltine stated his concern regarding exposure to the City if done in the manner that Mr. Petersen proposes.

Scott Lambers, City Administrator, stated the reason the funds be placed in escrow before the bonds are issued is because if for some reason the Developer does not make the payments on the bonds, then the City's General Obligation debt is out there. Mr. Lambers stated there is no guarantee that the Developer will put the money in escrow. Mr. Petersen stated that if the City issues bonds, they want to know before the bonds are issued, that there is a Fund Reserve Account representing 35% of the cost, that will be addressed by the SBD and that is exactly what he is proposing. He stated before the City issues any new bonds, the City will have the money in an escrow that was paid at the time the other bonds were defeased.

Mr. Petersen stated the City's policy would be fully implemented and that the Developer is asking for consideration (before the creation of the SBD) that they have already addressed the \$3M to reimburse public money that is currently delinquent. He stated if the City decided not to issue the bonds, the Developer will continue to pay the assessments. He pointed out that it is a timing issue. He iterated that they are not taking away any of the City's policy safeguards, but are asking to put the safeguards in place closer to when the City issues the bonds, not just when the SBD is created.

Mayor Dunn stated the Action Steps he presented appear to look like a timeline and is confusing.

Councilmember Azeltine asked if the \$174,000.00 payment for the month of December was part of the original deal or if it is new. Mr. Petersen stated it is new but driven by timing and their commitment to the City to defease the bonds.

Councilmember Sipple asked the Bond Counsel if Mr. Petersen's proposal is in keeping with other cities' policies. Mr. Thompson stated he is not as familiar with other local municipalities. Ms. Bennett stated she is not familiar with other cities' policies. Councilmember Sipple asked if the Council will be voting on accepting the proposal tonight. Mayor Dunn stated the Council will be voting on whether or not to direct staff to return with a DA. Ms. Bennett clarified that the \$174,000.00 is half of next year's payment, so it was included in the original proposal.

Councilmember Filla stated she is not comfortable with the Developer doing all the infrastructure and acknowledges this will change the numbers on the DA. She commented that she does not like having the Council in the position of negotiating bond deals, it is inappropriate and should be left to the City staff, Bond Counsel, and Legal Department. Councilmember Azeltine replied that the City staff has drawn up the DA in compliance with the City's SBD policy, but this is a complex situation.

Mayor Dunn requested more discussion regarding street lights. She stated that the line item jumped from \$52,500 to \$150,000. David Ley, Public Works Director, explained that he has not yet seen the Developer's final plan, but the figure came from his estimate for what would be owned by the City. Mayor Dunn asked if the Council directed staff to draw up a DA to abide by the City's policy, she would like to know what other concerns the staff may have. Ms. Bennett stated that the staff is concerned about when the 35% will be deposited. She stated she was hopeful that the City could cash in the previous escrow to help with some relief on the past due levies, and that the \$1.4M prepayment was offered in the beginning. If the Governing Body does not feel that it is an incentive in which to enter into the agreement, the idea was to defease the assessments going forward, so there will not be any more assessments placed on the property.

Mayor Dunn asked if the Action Steps were agreeable with the City's Legal staff, would the "Fund Reserve Account for New SBD Issuance" step be with the guarantee that would be with the issuance. Ms. Bennett confirmed yes, and that the escrow to defease would be within 30 days of signing the agreement. Mayor Dunn indicated the Developer would construct the streets with their own construction financing. The City will inspect and verify all the invoices and has 90 days in which to issue bonds.

Councilmember Sipple asked when in December the bonds need to be paid. Ms. Bennett stated she would need to defer to the City's Finance Department. Ms. Long replied that the City makes the interest and penalty payments on March 1st and September 1st. She explained that property owners can pay half of their property tax payments to the County in December and half in April.

Councilmember Cain agreed that this process is exhausting and that she is not an expert in bonds, so she looks to the City's Bond Counsel and staff for guidance.

Mayor Dunn asked if there is a consensus to direct City staff to return to the Council with a Development Agreement that meets all City policies. Ms. Bennett added that it should include the prepayment of defeasing at the commencement of the approval of the SBD with the timelines that were suggested, and that it all be contingent upon the approval of the final plan, as required by policy.

Councilmember Filla reiterated that she wants the City to own the lead in terms of the construction of the infrastructure. Mayor Dunn stated that would be part of the DA and she can vote on it when it comes back to the Council. Councilmember Azeltine mentioned he hopes no new issues come back to the Council.

Mr. Simpson addressed the Governing Body via Zoom. He explained his level of commitment on the project from the beginning and the millions of dollars invested in it. He clarified that he does not want to change City policy. Councilmember Filla expressed her frustration with the Developer's wants versus the City's policy.

A motion to direct staff to create a Development Agreement that complies with City policy for the Governing Body meeting on December 7, 2020, was made by Councilmember Sipple, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.

Ms. Bennett clarified that the prepayment amount is not addressed in the City policy. She explained that it will either be part of the past due assessment or part of the prepay amount, depending on the timing. She stated the Bond Counsel's recommendation is that it be paid at the time of the approval of the SBD.

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. 2020-42 and 2020-43
- B. Accept minutes of the November 20, 2019 Stormwater Management Committee Meeting
- C. Accept minutes of the October 15, 2020 Parks & Recreation Advisory Board Meeting
- D. Approve Mayoral Appointment of the Artist Selection Panel
- E. Approve renewal of Cereal Malt Beverage (CMB) License for Trader Joe's, located at 4201 W. 119th Street (CC)
- F. Resolution approving and authorizing the Mayor to execute a Letter of Engagement between the City and RubinBrown, LLP, for an amount not to exceed \$36,350.00 pertaining to 2020 audit services (F)
- G. Resolution approving and authorizing the Mayor to execute an agreement between the City and Rand Construction Company in an amount not to exceed \$32,516 pertaining to purchase and installation of touchless plumbing fixtures (PW)
- H. Resolution accepting new GASB-34 Public Infrastructure in accordance with GASB-34 Guidelines of reporting Inventory of Assets for property located at Sagamore and 89th Street pertaining to the New Development "Village of Leawood" (PW)
- I. Resolution accepting new GASB-34 Public Infrastructure in accordance with GASB-34 Guidelines of reporting Inventory of Assets for property located on the Mission Road Improvements, 119th to 127th Street (PW)
- J. Resolution accepting a Temporary Construction Easement from Grantors Mark H. Holland and Merry Grace Holland as Trustees of the Holland Trust for property located at 12714 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)
- K. Resolution accepting a Temporary Construction Easement from Grantors Mark H. Holland and Merry Grace Holland as Trustees of the Holland Trust for property located at 12714 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)
- L. Resolution accepting a Temporary Construction Easement from Grantors Samuel R. Rabicoff and Bonnie R. Rabicoff for property located at 12700 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)
- M. Resolution accepting a Permanent Drainage Easement from Grantors Samuel R. Rabicoff and Bonnie R. Rabicoff for property located at 12700 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)
- N. Resolution accepting a Temporary Construction Easement from Grantors Samuel R. Rabicoff and Bonnie R. Rabicoff for property located at 12700 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)
- O. Resolution accepting a Permanent Drainage Easement from Grantors Samuel R. Rabicoff and Bonnie R. Rabicoff for property located at 12700 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)
- P. Resolution accepting a Temporary Construction Easement from Grantors Joy A. Self, Trustee of the Joy A. Self-Revocable Trust for property located at 12604 Wenonga Lane, pertaining to the Leawood South Stormwater Project [Project #80256] (PW)

- Q. Request to approve 15th and Final Payment in the amount of \$70,276.77 to J.M. Fahey Construction pertaining to Mission Road Improvements, 119th to 127th Street [Project #72065] (PW)
- R. Approve an expenditure in the amount of \$90,265.91 to Dell for the purchase of laptops, to Fortinet for firewalls and Verizon for iPads (IT)
- S. Approve an expenditure in the amount of \$19,272.34 to RJ Kool for an Extractor and to The Fire Store for a Gear Drying Rack (FD)
- T. Police Department Monthly Report
- U. Fire Department Monthly Report
- V. Municipal Court Monthly Report

Mayor Dunn pulled Item 8R and 8S.

Councilmember Filla pulled 8H.

Mayor Dunn thanked Councilmember Larson for serving on the Artist Selection Panel.

A motion to approve the remainder of the consent agenda was made by Councilmember Sipple, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.

Discussion of Item 8H:

Councilmember Filla mentioned that copper wiring may have been stolen from this location and she asked if this public infrastructure was ready to be accepted. Mr. Ley stated the theft took place at a different location over the past few weeks, and it is not on this project. Mr. Ley explained that on this project the last item staff was waiting for was the FEMA designation of the remapping of the flood plain.

A motion to approve Item 8H was made by Councilmember Filla, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.

Discussion of Item 8R:

Mayor Dunn expressed her appreciation to the Director of Information Services, Ross Kurz, for his insight to use CARES Act funding for this equipment.

A motion to approve Item 8R was made by Councilmember Cain, seconded by Councilmember Azeltine. Motion was approved with a unanimous roll-call vote of 8-0.

Discussion of Item 8S:

Mayor Dunn stated this item is similar to 8R, in that she thanked Fire Chief Colin Fitzgerald for the use of CARES Act money for these items.

A motion to approve Item 8S was made by Councilmember Filla, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.

Councilmember Sipple asked when the equipment will be installed and if it will be at all the fire stations in the City. Chief Fitzgerald addressed the Governing Body and replied that there currently is an extractor at Fire Station #3. He stated it is common to have at all the stations, but until now the firefighters have to bag up their items and send them over to Fire Station #3 to be disinfected. He explained they are waiting for City maintenance staff to finish the plumbing and electrical pre-work. Chief Fitzgerald stated the equipment should arrive in approximately 2 weeks.

9. MAYOR’S REPORT

- A. Our November Johnson and Wyandotte Counties Council of Mayors (COM) meeting was hosted by De Soto Mayor Rick Walker. Mid-American Regional Council (MARC) Executive Director David Warm and associate Tom Jacobs provided an update on the Regional Climate Action Plan by MARC. The COM December social for all elected officials has been cancelled due to COVID-19.
- B. Johnson County Sheriff Calvin Hayden, Leawood Police Chief Troy Rettig and I participated on a panel discussion hosted by the Northeast Johnson County Republicans. The topic was regarding how Johnson County and Johnson County municipalities work together to prevent and solve crime in our communities.
- C. Councilmembers Filla, Larson, Harrison and Azeltine joined me at the 25th anniversary celebration for Town Center Plaza on Saturday evening. Congratulations to Town Center Plaza General Manager Jacqueline Shrum and the Washington Prime Group for this milestone anniversary. It also happened to coincide with our Leawood Chamber’s 25th anniversary. CEO Kevin Jeffries and his team assisted in organizing the event. My thanks to Parks & Rec Director Chris Claxton and Public Works Director David Ley for arranging the simultaneous holiday lighting of City Hall in conjunction with the lighting of Town Center Plaza.
- D. Congratulations to all those who were newly elected on November 3rd. The City of Leawood’s reauthorization of a 1/8 cent sales tax for infrastructure, specifically streets and stormwater repairs, was also approved by over 60% of the vote.

10. COUNCILMEMBERS’ REPORT

Councilmember Debra Filla – Discussion: Community Garden Task Force extension

Councilmember Filla stated that because the Community Garden pilot has been extended a year, she is requesting that the Task Force also be extended one year. She stated that last November the Task Force had looked at places for the garden, but staff eventually found a site at Ironwoods Park that has water and restrooms nearby. She stated there is work to be done for ADA accessibility, but they would like to continue the work over the next year, especially with registration and enrollment. She stated they would like to start working on donations and budgets, separate from the Parks and Rec funds.

A motion to extend the partnership for one year was made by Councilmember Filla, seconded by Councilmember Harrison. Motion was approved with a unanimous roll-call vote of 8-0.

11. CITY ADMINISTRATOR REPORT - None

12. STAFF REPORT - None

13. COMMITTEE RECOMMENDATIONS

PLANNING COMMISSION

[from the October 13, 2020 Planning Commission meeting]

- A. Resolution approving a Revised Final Plan for Town Center Crossing – Revised Design Guidelines, located south of 119th Street and east of Roe Avenue (Case 66-20) [ROLL CALL] ***[Continued from the November 2, 2020 Governing Body meeting]***

Mayor Dunn stated this came to the Council with a recommendation of approval from the Planning Commission, but there have been some changes since their meeting. Mark Klein, City Planner, addressed the Governing Body via Zoom. He stated in the Planning Commission stipulation there was language that stated the landlord of Town Center Plaza and Town Center Crossing had sole authority to approve certain things. The Planning Commission asked City staff to work with the applicant to remove that language and also regarding the City's overview of applications going forward. He explained the idea is that staff has administrative approvals when reviewing applications against the sign criteria.

Mr. Klein stated the concern staff has is that the design guidelines strip out much of the design elements, although it does allow the ability to change certain areas on the façade. Staff is concerned because there is not much design criteria for the staff to base it on, what is allowed for the pad sites and out buildings, and the ability to change an entire façade. Mr. Klein stated that staff is looking for guidelines from the Council to allow them to bring applications before the Planning Commission or City Council.

Mayor Dunn asked how staff envisions a resolution. Richard Coleman, Community Development Director, addressed the Governing Body via Zoom. He stated City staff has attempted to get design guidelines for Town Center Plaza for approximately 15 years and have been unsuccessful getting the Developers to take it on. He explained that Town Center Crossing does have design guidelines that the Developer submitted and received approval. Mr. Coleman stated the new design guidelines are limited. He stated staff is uncomfortable trying to determine what meets the criteria, since the guidelines currently states that it needs approval by the landlord. Mr. Coleman stated the guidelines entail entire buildings, so there could be dramatic changes without the Governing Body having the ability to review or decide on the changes. Mr. Coleman expressed his concern that this places staff in a difficult position because there is no criteria in which to base the design. He stated he understands about the timeliness in which the applicant has expressed concern.

John Petersen, representing Washington Prime Group, addressed the Governing Body via Zoom. He introduced Stephen Harris of Washington Prime Group and Matthew Siegrist, Architect with JPRA, who were also present via Zoom. Mr. Petersen expressed his disagreement with the City Staff's explanation of the issue. He stated the Developer wants to be able to work with the City but also have some flexibility.

Mr. Petersen stated the two applications on this agenda were the impetus for the administrative change. He stated the Developer came to the City asking to advance the Leawood Development Ordinance (LDO) amendment. He read out loud the changes that were recommended by the Planning Commission and approved by the City Council in Section 16-3-3(e) that are "changes to the exterior tenant façade of a development, provided an authorized representative of the development has acknowledged in writing it (1) has reviewed the application, (2) approves the changes, (3) the changes meet the design guidelines set forth by the development." Mr. Petersen stated the style of the application is a Revised Final Plan for Town Center Crossing because the design guidelines are part of the final plan. They would like to work within the guidelines with staff without the need to come back each time to do a full Revised Final Plan.

Mr. Petersen stated the last item in the LDO amendment is the idea that if the landlord approves the project, then the City has to issue the permit, but that is not how they modified the LDO. He stated Section E in the LDO sets forth the criteria that "if a party is aggrieved by a denial or conditions imposed on an administrative approval, the case shall be referred to the Planning Commission." He stated that if it takes a Revised Final Plan every time they want a modification to the "Trade Dress Zones," then the Developers cannot stay active in the market.

The City staff proposed that the LDO amendment timeline process would take approximately 16 weeks, but under the applicant's proposed timeline, it would take approximately 4 weeks. Mr. Petersen stated the applicant is requesting to have the ability to make changes to the Zones with an administrative process. He stated they are not requesting a full and complete architectural change of the character of the shopping center, but rather to have the ability in the Trade Dress Zones to use an administrative process, working within the guidelines. He explained it is impossible to list every possible design in writing in the LDO and that City staff still has the ability to deny the application.

Stephen Harris, Washington Prime Group, Columbus, Ohio, addressed the Governing Body via Zoom. He commented on the adage that "time kills all deals," and how it can be especially true if retailers have to wait for a relatively, straightforward approval. He stated the criteria is meant to be a more global approach as a solution. He affirmed that the building's architecture is as important to the owner as it is to the City. Mr. Harris explained that within the Trade Dress Zones, it would allow their tenants the freedom of their own branding within the contents of a high-class shopping center. He stated he respects the process of the City, and expects the staff to do a review of the applications, but they are looking for a way to expedite an approval.

Mayor Dunn stated she believes Stipulation #3 was added to the Planning Commission recommendations in order that "there is no language that has sole responsibility designation that could exclude the City's rights..." Mr. Petersen stated that the Planning Commission spent time listening to staff's concern to have control in the design guidelines. He mentioned the Planning Commission had four conditions. He stated in Stipulation #3 that they countered with additional language some of which states, "...if the City of Leawood, within its review determines that the proposed changes do not conform, the City shall not approve the changes and will notify the applicant of the reasons for denial in writing. If the landlord and City staff are not able to come to a mutually agreed solution, the proposed changes shall be subject to review through the Administrative Review..." He stated they are looking for flexibility and trust in the owner that the Trade Dress Zones are compatible with the current architecture of the building. Mr. Petersen stated the objection they have with the language that staff presented is that if there is a denial, the applicant must go back "through the Final Development Plan process per the Leawood Development Ordinance." He stated it is at this point that it can take approximately 16 weeks. Mr. Petersen stated there are requirements that are still under the control of the City, and if it does not meet the needs administratively, the City still has the opportunity to let the Planning Commission and Governing Body make the ultimate decision.

Mr. Coleman stated the design criteria that was submitted for the next case on the agenda, Town Center Plaza, was for entire buildings to be administratively approved. He stated he would feel more comfortable if it only dealt with the window areas or the store fronts. He stated this would be a major change that the Governing Body would not have the opportunity to weigh in on. Mayor Dunn pointed out it could be referred to the Governing Body by the City staff. Mr. Coleman stated under this criteria staff would have the authority to approve entire buildings, unless it went back to the Planning Commission and City Council. Mayor Dunn stated she understood that staff has the authority, but only if they are comfortable with it.

Mr. Petersen stated that modifications have to be approved by the City of Leawood. He read the design guideline that state the modifications "should not modify the overall architectural vocabulary of the Center; however, changes will be encouraged and supported by the landlord if those modifications suggest quality, craftsmanship, elegance, innovation, creativity, and general compatibility with the Center."

Mr. Coleman reiterated that the City has had a process in place for years that has served them well. He stated that the applicant's proposed changes put the onus on the staff. Mr. Petersen stated that the Director of Community Development and staff currently make the recommendation that normally takes up to 16 weeks, so they are asking the staff and Director to opine a recommendation against design criteria guidelines. He stated they would like to avoid getting stuck in a long process.

Councilmember Filla asked if there could be some compromise in terms of a percentage of modification, such as having a different process if there is an entire building change versus a store front.

Councilmember Osman explained the importance of signage and unique branding, and commented that in today's climate, if a retailer has to wait long, they will likely look elsewhere. He mentioned that unless there is language in the LDO that prohibits control for the City, this makes sense to him in scope and reason.

Councilmember Harrison reiterated that the City has a very competent staff and that the Governing Body has given them power in which to make decisions that will be supported. She stated there is conflicting information regarding signage, especially temporary signage. She stated she has seen signage that has been up for a year for businesses that are open, but does not remember seeing those come through Planning Commission or City Council. She also stated she feels the Council is getting mixed messages about the Trade Dress Zones.

Mr. Harris replied that he and the architects chose their approach on the architecture of the building's Trade Dress Zones on purpose to make it more interesting, but that those are in the minority. He pointed out that most of the time they are muted on the general store fronts. He explained that it has been found that architecturally different types of façades are more natural and less boring. Mr. Harris indicated that a percentage basis would allow things to be all over the map and they wanted to be more precise. He stated that he wants balance with the architecture. The stand-alone buildings, he stated, are one large Trade Dress Zone but that they still must adhere to the LDO, but with some freedom of their own architectural style.

Mr. Petersen pointed out that the proposed design criteria in their presentation has been designed for each individual store front. He commented in reference to Councilmember Harrison's signage comment that the signage is separate from this proposal and a completely different process.

Mayor Dunn stated that on November 2nd, the City Council passed an amendment to the LDO. She stated she does understand the concern of the City staff based on the application and the staff memo. Mr. Petersen asked for clarification of the staff memo. Mr. Coleman stated the staff memo describes that there were design guidelines in place for Town Center Crossing and that the new design guidelines removed 95% of the design criteria, and is basically left up to the landlord. He stated there is very little for the staff to review. Mr. Coleman stated that much of the guidelines were removed for Trade Dress Zone guidelines.

Mayor Dunn asked if that was the intention of the applicant. Mr. Petersen stated the original guidelines dealt with a lot of interior space that the City does not deal with, so in dealing with the Trade Dress Zones they have not removed pages and pages of the design criteria. Mr. Coleman stated the new criteria entails entire buildings, such as Crate & Barrel and Trader Joe's. He stated there is very little criteria in which staff can review.

Councilmember Filla asked if the Council is able to vote tonight on the 4-week process, removing the staff approval criteria, then discuss the administrative approval at a later time. Mayor Dunn suggested that these items be brought back with design guidelines that deal with the exterior so an administrative approval can go forward.

Councilmember Sipple agreed with Mayor Dunn and stated the discussion should be limited and that the administrative approvals are just for the façades.

Councilmember Azeltine agreed with the Mayor Dunn regarding the design guidelines. He asked about Stipulation #3 and if the language is sufficient for staff. Mr. Coleman stated the language is fine.

Mr. Petersen expressed concern and disapproval of removing all the design elements from the design guidelines. He stated what they have proposed is in a focused area that will be the landlord's decision first, then they would ask the Director of Community Development to make a decision for an approval. He stated they do not wish to come back to the Council with concrete design elements that are very objective which is exactly what they are trying to avoid.

Mr. Harris stated the entire concept of the design review is specific to allow flexibility because they cannot anticipate every option a tenant will want. He stated that Washington Prime Group puts tenants through an extensive review process before it ever gets to the City, and makes sure it fits within the design criteria of the City so they can prepare the tenant to stay within the “guardrails” and in general conformance of the City Code. Mr. Harris stated that they work with tenants to incorporate their brand and be attractive.

Councilmember Cain stated she has no problem with the guideline proposals. She stated that it is imperative that the City help business owners stay viable, especially now, and work together. She encouraged the Council to move forward on all four of the design guidelines listed on the agenda.

Councilmember Osman mentioned that 4 weeks could become longer if a Planning Commission meeting is missed due to a holiday, COVID, etc. He stated he would like to streamline the process to be less than 16 weeks. Councilmember Osman stated years ago designs could be compartmentalized, but today's signage packages are voluminous because there are many different materials, new products, and technology available. He stated that he trusts staff that if an application is not deemed appropriate, that it goes through the proper chain of command.

Councilmember Larson agreed with Councilmember Cain and stated she understands about flexibility and the changing nature of retail. She stated that she supports all the proposals.

Mayor Dunn stated that it is important that the Planning Administrator be swift with any rejection so it can be directed to the Planning Commission and Governing Body.

A motion to approve Item 13A was made by Councilmember Azeltine, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.

- B. Resolution approving a Revised Final Plan for Town Center Plaza – Revised Design Guidelines, located north of 119th Street and west of Roe Avenue (Case 67-20) [ROLL CALL] *[Continued from the November 2, 2020 Governing Body meeting]*

Mayor Dunn asked if there is anything different with this item or if it has the same concerns as the previous item. Mr. Coleman stated it is basically the same although the Trade Dress Zones are a little different and there are different outbuildings.

A motion to approve Item 13B was made by Councilmember Rawlings, seconded by Councilmember Azeltine. Motion was approved with a unanimous roll-call vote of 8-0.

- C. Resolution approving a Revised Final Plan for Town Center Plaza – Revised Sign Guidelines, located north of 119th Street and west of Roe Avenue (Case 82-20) [ROLL CALL] [*Continued from the November 2, 2020 Governing Body meeting*]

Mr. Klein stated the applicant reduced the number of signs from 5 to 2 for the inline tenants, and on the pad sites they reduced it from 4 to 3. Staff listed in the stipulations to have it limited to 2. He stated staff wishes to have façade signs and awning signs considered primary signage, and a tenant could have one or the other. Staff also wished to allow a secondary sign, which could be either a blade sign or a transom sign. The maximum would be 2 signs per each side. Mr. Klein stated the applicant has indicated they would like to have an awning sign and a façade sign as well as a transom and blade signs. He stated the applicant would like to have for a pad site, a monument sign in addition to the 2 signs recommended by staff.

Mayor Dunn indicated that she believed this had been agreed upon by the applicant at the Planning Commission meeting. Mr. Petersen stated the Planning Commission did support the staff's recommendation, so they are seeking modifications. He stated this is very similar to the final plan of a design criteria. He explained the LDO for signs is more flexible than the design criteria and the process works very well. He stated they are requesting deviations for the two Centers (Plaza and Crossing) to be built into the sign criteria. He outlined the stipulations. Mr. Petersen stated that the applicant requests the following and presented photographs of current examples:

- Stipulation #2 – Delete. They do not have the legal ability to impose it.
- Stipulation #5(a) – each tenant within the main center shall be limited to the following:
 - One façade sign and one canopy sign on a maximum of 2 façades.
 - One transom sign and one blade sign on a maximum of 2 façades.
- Stipulation #5(b) – for Type 12 building, staff recommend the following:
 - One façade sign and one tower sign on a maximum of 2 façades.
 - One transom sign and one blade sign on a maximum of 2 façades.
- Stipulation #5(c) – each outparcel shall be limited to the following:
 - One façade sign and one awning sign on a maximum of 3 façades, in addition to a monument sign.
 - One transom sign and one blade sign on a maximum of 3 façades.
- Short Term Tenant Signage
 - These sign letters are described as
 - Printed letters on a plastic panel
 - Not channel letter
 - Non-illuminated.

Mr. Petersen stated there is a difference between short-term signs and temporary signs. He stated there are opportunities for pop-up retail stores, so they would offer short-term tenant signage for a lease that is 12 months or less. Mr. Harris stated they have some short-term tenants that are defined as having leases from 3 -12 months, some are pop-ups and some are concepts that need time to incubate. He explained the cost of installing a permanent sign is not cost-effective in these situations. He stated after 12 months, the tenant will be asked to make a decision on whether or not they are staying. Mr. Harris

stated this option currently does not exist in the City of Leawood, and he is asking the Council for help on keeping the Center at a full occupancy.

Mayor Dunn asked about the transom signs. Mr. Harris stated the purpose of the transom sign is to provide tenant identification so a customer walking near the stores does not have to look up or go out to see the canopy.

Councilmember Harrison asked if every outbuilding requested a monument sign. Mr. Petersen replied that there is a center monument sign for Town Center, but he is not objecting to a smaller one for each pad site. Mr. Harris stated that there is no tenant sign for all tenants at the mall entrance by requirement, so they want to help identify them and give them the option for an individual monument sign. Mr. Petersen stated that their proposal would give a tenant a wall sign on 3 sides and a monument sign.

Councilmember Cain stated that the Council has always tried to avoid a massive amount of signage. She agreed about the blade signs as Mr. Harris explained it. She stated she feels this proposal triples the amount of signage in an area that already has plenty of visibility.

Mr. Petersen stated that after hearing the comments of the Council, they will withdraw the request of the monument signs on Stipulation #5(c). Mayor Dunn asked if all the tenants have a blade sign. Mr. Harris stated they are allowed, but not required to have one. Councilmember Larson commented that she likes seeing all the signage and sees the need for each type. She stated she understands why the applicant's proposal cannot legally be held to other property owners. Patty Bennett, City Attorney, explained that the approved proposal would act as the standard, and that the remaining owners could either benefit from it or bring an application before the Planning Commission and Council for an exception.

Councilmember Sipple stated they want the merchants to stay in business and be successful. He stated his support for the proposal and not wanting to create roadblocks in a business' success.

Mr. Klein stated that the short-term stipulation was added after the Planning Commission meeting. He stated at the time the applicant went before the Planning Commission they did not have the verbiage for short-term signage broken out, but grouped together as temporary signage. Staff had written a stipulation that they would have to meet all the temporary sign standards, then discovered the applicant was looping two different signs together, both the ones that were staked out as well as the ones that were being used for short-term tenants. Mr. Petersen agreed with Mr. Klein and explained this would be a little bit different of a sign and only up for a year. Mayor Dunn confirmed that since the applicant is calling it a short-term tenant versus a temporary sign there will need to be a new stipulation.

Mayor Dunn stated all of this will be an override since the Planning Commission has not seen it. She re-read all the applicant's stipulation requests. She pointed out that Mr. Klein will need to add all the language for the new stipulation.

A motion to extend the City Council meeting by 30 minutes was made by Councilmember Azeltine, seconded by Councilmember Sipple. Motion was approved with a unanimous roll call vote of 8-0.

Councilmember Cain asked about the outbuilding signs going from 2 to 6, although these buildings have more visibility. Councilmember Sipple states it is up to 6 for the maximum. Mayor Dunn stated she prefers less is more when it comes to the number of signs and likes a more pristine look. She reminded the Council that a supermajority is needed for approval.

Councilmember Azeltine asked to clarify the additional stipulation. Mayor Dunn explained it is for the short-term tenant signage, which will conform to the permanent tenant sign size but will be limited to a one-year term. She stated this is different than a temporary sign.

A motion to approve Item 13C as modified was made by Councilmember Filla and seconded by Councilmember Larson. Motion was approved with a roll call vote of 7-1. Councilmember Cain voted NAY.

Ms. Bennett reviewed the modifications and stated she will work with staff on the language. Mr. Klein commented that the language that the applicant provided in regards to the size of the signs is in a redline version that was provided in the Council packet. Councilmember Azeltine asked if sign permits can be renewed. Mr. Klein stated that currently the City's sign permits do not have a limitation and temporary signs do not get permits, but they do have to meet the criteria. Councilmember Azeltine asked if language should be added that permits are not renewable. Mr. Klein stated that can be added. Mayor Dunn suggested that extension requests come before the Council and that short-term tenant signs be required to have a permit. Mr. Petersen stated they would agree to that. Mr. Harris requested to have restrictions from the City to limit it to 12 months, non-renewable.

- D. Resolution approving a Revised Final Plan for Town Center Crossing – Revised Sign Guidelines, located south of 119th Street and east of Roe Avenue (Case 83-20) [ROLL CALL] *[Continued from the November 2, 2020 Governing Body meeting]*

Mr. Petersen stated this item is the exact same as the previous item, except for stipulations listed as 5(a)(b)(c), they are 4(a)(b), and the short-term tenant sign stipulation as previously discussed is added. He stated they are also removing the monument sign request under 4(b)(1).

A motion to approve Item 13D as modified was made by Councilmember Azeltine and seconded by Councilmember Filla. Motion was approved with a roll call vote of 7-1. Councilmember Cain voted NAY.

Mayor Dunn reminded the Council this is an override from the Planning Commission's recommendation.

[from the October 27, 2020 Planning Commission meeting]

- E. Ordinance approving a Rezoning from AG (Agricultural) to R-1 (Planned Single Family Low Density Residential), Preliminary Plan, Preliminary Plat, Final Plan and Final Plat for Cocherl Estates, located south of 141st Street and east of Canterbury Street. (PC 87-20) [ROLL CALL]

Curt Petersen with Polsinelli PC, on behalf of Cocherl Family LLC, addressed the Governing Body via Zoom. He stated the subject property is a total of 3 lots currently owned by one family. He stated there are 3 residences (one on each lot), and one of which the family would like to sell (lot 2.) The eastern boundary of lot 2 was adjusted due to a well that serves lot 3, and will remain with the family. Mr. Petersen explained that parts of the area in lot 3 are zoned agriculture and unplatted, so they are requesting approval to attach all the pieces of lots together for rezoning.

Councilmember Cain asked if the number of residences will change. Mr. Petersen stated that there are no plans to develop lot 3 and that it was clarified at a neighborhood meeting. Councilmember Sipple asked if the well is used for irrigation and not drinking water. Mr. Petersen stated he understands it is

only used for irrigation. Councilmember Harrison mentioned there is a house on part of the agricultural zone piece of lot 3, and Mr. Petersen confirmed the request is to rezone all of lot 3 for residential.

A motion to approve Item 13E was made by Councilmember Rawlings and seconded by Councilmember Filla. Motion was approved with a unanimous with a roll call vote of 8-0.

- F. Ordinance approving a Preliminary Plan and Final Plan for Parkway Plaza – Umstatted Medical Office, located north of 135th Street and east of Briar Street. (PC 90-20) [ROLL CALL]

Mr. Klein stated three stipulations were addressed by the applicant prior to the City Council meeting. He stated the first stipulation referred to the 10 foot requirement in front of the building which has been met. Stipulation #5 referred to the reflectivity of the glass. The applicant provided a sample of the glass immediately after the Planning Commission meeting. Mr. Klein stated the applicant requested to add a film to the glass due to the fact that this is a medical office building needing privacy into the patient rooms from the outside. Mr. Klein stated the final stipulation referred to parking spaces. He stated that staff recommended that stop signs be added in 3 locations in the parking lot because the spaces are head-in parking, but the owners of the property indicated they are not supportive the signs. Mr. Klein stated staff felt the signs were a benefit but not an issue in which to deny the application.

Mark Arling, Kaw Valley Engineering, addressed the Governing Body via Zoom. He stated they planned the head-in parking as handicap accessible stalls and patient loading/unloading areas, so they will have limited use.

A motion to extend the City Council meeting by 30 minutes was made by Councilmember Filla, seconded by Councilmember Azeltine. Motion was approved with a unanimous roll call vote of 8-0.

Jeff Kloch, Hufft Architects, addressed the Governing Body via Zoom. He stated the design guidelines do allow for tinted glass as an acceptable material, so the product they provided is a tint that darkens the glass and provides a low reflectivity of 13%.

Mayor Dunn thanked staff for working on the stipulations after the Planning Commission meeting, and reminded the Council a vote would be an override of their recommendation. Councilmember Sipple thanked Dr. Umstatted for choosing Leawood for her office location.

A motion to approve Item 13F was made by Councilmember Filla, seconded by Councilmember Azeltine. Motion was approved with a unanimous roll call vote of 8-0.

STORMWATER MANAGEMENT COMMITTEE

[from the October 28, 2020 Stormwater Management Committee meeting]

- G. Public Works recommends approval of the Committee’s recommendation and proceed with a Phase 2 Study for solutions with the affected properties along with Lee Boulevard Improvements [ROLL CALL]

Councilmember Azeltine, Chairman of the Stormwater Management Committee, reported that the group met on October 28, 2020, to review the Lee Court Drainage Study, along Lee Blvd to 95th St. He stated that they heard from residents and BHC Rhodes Engineering, who presented several solutions. The Committee made the recommendation to go forward with options to extend the storm sewer at an

estimated cost of approximately \$54,000.00. They would also add backyard swells and remove some landscaping and obstructions at a cost that will come before the Council at a later time. He stated it is dependent on residents' donations and willingness to have those features.

Councilmember Azeltine stated that staff will bring a contract with BHC Rhodes for the Phase 2 Study to the Council at a later time. Staff will also work with property owners to incorporate some of the elements and gain necessary easements.

A motion to approve Item 13G was made by Councilmember Azeltine, seconded by Councilmember Larson. Motion was approved with a unanimous roll call vote of 8-0.

Mayor Dunn asked if the residents were agreeable to this recommendation. Councilmember Azeltine confirmed yes. Councilmember Sipple asked if this was a condition that has been around for years, or is it a result from any improvements that were made along 95th St. or Lee Blvd.

David Ley, Public Works Director, addressed the Governing Body. He stated this area had been an issue before and a study was done in the 1990s regarding the flooding. Mr. Ley stated with the road project along 95th St. and Lee Blvd., staff is looking to make improvements with the storm drains. Councilmember Filla commended Mr. Ley and Brian (Scovill) for their inclusivity with the residents.

14. OLD BUSINESS - None

15. NEW BUSINESS

- A. Resolution declaring the City's intent to reimburse certain costs of acquiring a fire truck and appurtenant equipment from proceeds of a lease purchase agreement (FD)

Councilmember Sipple asked at which fire station the new truck will be assigned. Fire Chief Colin Fitzgerald replied that it will be assigned to Station #2, and the current Station #2 engine will be moved to the reserve status unit at Station #3. Councilmember Sipple asked which station is the busiest. Chief Fitzgerald stated it is Station #2. Councilmember Azeltine commented that he is happy to see this come in \$160,000.00 below budget.

A motion to approve Item 15A was made by Councilmember Harrison, seconded by Councilmember Filla. Motion was approved with a unanimous roll call vote of 8-0.

- B. Ordinance amending Sections 5-510 and 5-518 of the Code of the City of Leawood, 2000, pertaining to Massage Establishments and Massage Therapists and repealing existing Sections 5-510 and 5-518, and other sections in conflict herewith (CC)

Kelly Varner, City Clerk, addressed the Governing Body. She explained since the City Clerk's office took over the massage therapy licensing in March, it was found that some procedures need to be updated. She pointed out that the language in the ordinance needs clarifying in regards to what is deemed a complete application. Ms. Varner stated that the background check and fingerprint reports from the KBI and FBI can take longer than a local background check, so language was added to the ordinance allowing for staff to issue a temporary license until the reports are returned and the application is completed.

Councilmember Azeltine asked if this is a clean-up of the language and no content change. Ms. Varner confirmed yes. Councilmember Sipple asked if the background check and fingerprinting is done for the

business owner, the manager, and the entire staff. Ms. Varner stated it is done for every massage therapist and owner (in the case of an establishment license.)

A motion to approve Item 15B was made by Councilmember Filla, seconded by Councilmember Larson. Motion was approved with a unanimous roll call vote of 8-0.

C. Schedule Work Session for Monday, December 7, 2020 at 6:00 P.M.

This item was withdrawn by Ms. Bennett, per Scott Lambers, City Administrator.

D. Schedule Governing Body meeting Monday, December 7, 2020 at 7:30 P.M.

Ms. Bennett pointed out that the start time of the Governing Body meeting will move to 7:00 P.M. due to the cancellation of the Work Session on December 7th.

A motion to approve Item 15D as amended was made by Councilmember Filla, seconded by Councilmember Azeltine. Motion was approved with a unanimous roll call vote of 8-0.

Meeting was adjourned at 11:48 P.M.