

Regular Meeting**THE LEAWOOD CITY COUNCIL**

September 20, 2021

Minutes

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

Staff Present: Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief Dale Finger, Police Dept.	Fire Chief Colin Fitzgerald, Fire Dept.
Dawn Long, Finance Director	David Ley, Public Works Director
Mark Klein, Planning Services Director	Travis Torrez, Bldg/Code Enfrcmnt Dir.
Nic Sanders, HR Director	Chris Claxton, Parks & Rec Director
Ross Kurz, Info. Services Director	Mark Tepesch, Info. Services Specialist
Kelly Varner, City Clerk	Stacie Stromberg, Assistant City Clerk
Police Capt. Troy Osborn	

Staff Present via Zoom: Ashlee Tomasic, Assistant City Attorney

Others Present: Sue Belger, Happy Bottoms; John Petersen, Polsinelli PC; Greg Musil, Rouse Frets White Goss Gentile Rhodes, PC.

Others Present via Zoom: Stephen Harris, Vice President of Development/Washington Prime Group

The meeting was called to order at 7:30 p.m. by Mayor Peggy Dunn.

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

Mayor Dunn pointed out the modifications to the agenda: Item 8 Park Board Meeting minutes were updated; a supplemental packet of citizen emails was added to Item 13B; and the Staff Memo for 15B had been missing from the packet. All documents were made available to the Governing Body at the dais.

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

- 4. 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. A TOTAL OF 30 MINUTES WILL BE ALLOCATED PER MEETING FOR CITIZEN COMMENTS.

5. PROCLAMATIONS

Diaper Need Awareness Week
September 27, 2021 – October 3, 2021

Mayor Dunn read the proclamation into record. Sue Belger, Director of Development for Happy Bottoms, was present to accept the proclamation. Mayor Dunn stated that three members of the Council are members of the Leawood Rotary Club (Sipple, Harrison, and Rawlings) and recently made a \$5,000.00 donation to Happy Bottoms. Councilmembers Sipple and Harrison donated packages of diapers to Ms. Belger. She thanked the Council for their donations and for recognizing Diaper Need Awareness Week.

6. OATH OF OFFICE

Swearing in of Police Chief Dale Finger

Kelly Varner, City Clerk, administered the Oath of Office to Police Chief Dale Finger. Chief Finger thanked the Governing Body. He stated that Capt. Troy Osborn and two others officers were promoted in supervisory positions today, which was the most in Leawood’s history. Capt. Osborn addressed the Governing Body. He stated he has been with Leawood for 21 years and that he is very happy and fortunate to have this opportunity. Capt. Finger stated other promotions were Chris Hargis (Patrol) and Jason Ahring (Patrol) to sergeants, and Senior Officer Matthew Schroeder to Corporal. Mayor Dunn congratulated all the men. Councilmember Sipple asked how many positions are open in the Department. Capt. Finger replied that there are seven officer positions and a couple of civilian positions vacant. He stated that he recently gave a conditional offer to a young woman who is attending the police academy at the University of Central Missouri.

7. SPECIAL BUSINESS - None

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. 2021-36 and 2021-37
- B. Accept minutes of the September 7, 2021 Governing Body meeting
- C. Accept minutes of July 7, 2021 Public Works Committee meeting
- D. Accept minutes of August 12, 2021 Park Board Meeting
- E. Approval of Cereal Malt Beverage License for Trader Joe’s located at 4201 West 119th Street (CC)
- F. Resolution approving and authorizing the Mayor to execute Amendment No. 1 to the Master License Agreement for Attachments to City Facilities dated February 18, 2019 between the City and Verizon Wireless, LLC [VAW], now known as Cellco Partnership, pertaining to attachments to City Facilities (L)
- G. Resolution approving and authorizing the Mayor to execute Amendment No. 1 to the Agreement between the City and Creative Displays of Kansas City, Inc. for an additional amount of \$14,900.58 pertaining to holiday lights at City Hall (PR)
- H. Resolution approving and authorizing the Mayor to execute Amendment No. 1 to the between the City and Continental Consulting Engineers for an additional amount of \$68,000.00 pertaining to the design of the trail extension between Roe Avenue and Tomahawk Creek Parkway (PR)

- I. Resolution approving and authorizing the Mayor to execute an Agreement between the City and the Secretary of Transportation, Kansas Department of Transportation [KDOT], pertaining to the Cost Share Program for the trail extension between Roe Avenue and Tomahawk Creek (PR)
- J. Resolution approving and authorizing the Mayor to execute a Services Agreement between the City and Transcend Services, LLC in the amount of \$106,605.00 per year for 3 years pertaining to Janitorial Services at City Hall and the Justice Center (PW)
- K. Resolution approving and authorizing the Mayor to execute an Interlocal Agreement between the City of Leawood, Kansas and Kansas City, Missouri pertaining to improvements to State Line Road from Carondelet Drive north to Indian Creek Bridge (PW)
- L. Resolution approving a final plan for Leawood Executive Centre – Sign Criteria, located south of College Boulevard and east of Roe Avenue (PC 91-21)
- M. Resolution approving a final plan for a tenant finish for Ranch Mart North – Meat Mitch, located north of 95th Street and east of Mission Road (PC 106-21)
- N. Police Department Monthly Report
- O. Fire Department Monthly Report
- P. Municipal Court Monthly Report

Mayor Dunn pulled Item 8D.

Councilmember Cain pulled Item 8G.

Councilmember Filla pulled Items 8F and 8L.

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

Discussion of Item 8D:

Mayor Dunn pointed out that changes to the Park Board meeting minutes were highlighted in yellow on page 2 of the hard copies that were provided to the Council at the dais.

A motion to approve Item 8D with modifications was made by Councilmember Harrison, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.

Discussion of Item 8F:

Councilmember Filla asked to clarify the term “safe harbor” used in the packet material. Ashlee Tomasic, Assistant City Attorney, addressed the Governing Body via Zoom. She explained that the safe harbor term is a product of the FCC, ordered in 2018, and that it is the presumptive amount that any city can charge for attachments. She stated that it is the fair amount that can be charged and anything above that amount would have to be justified. She stated that the FCC order for the safe harbor amount is \$270.00.

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

Discussion of Item 8G:

Councilmember Cain stated that she is excited to have multi-colored twinkle lights on City Hall this year.

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

Discussion of Item 8L:

Councilmember Filla stated that she could not recall why she pulled this item for discussion.

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

9. MAYOR’S REPORT

- A. Councilmembers Jim Rawlings, Mary Larson and Chuck Sipple joined me at the Art in Public Places Initiative (APPI) of the Leawood Arts Council dedication of Rita Blitt’s sculpture “Inspiration,” located at College Blvd. and Tomahawk Creek Parkway. My sincere appreciation to APPI Chair Kim Hinkle, Arts Council Chair Anne Blessing, Cultural Arts Supervisor Holly York, and Parks and Recreation Director Chris Claxton for organizing a great event that was made grander by Leawood’s YouTube availability. Rita Blitt was able to participate while in California. “Inspiration” donors, Leawood residents Bill and Mary Walker, were also in attendance.
- B. Councilmember Chuck Sipple joined me at the Groundbreaking Ceremony for Barstow Schools IDEA Space KC, which is located at 122nd and State Line Road in Leawood. Kansas City, Missouri, Mayor Quinton Lucas was also in attendance. This facility will explore science, technology, engineering, math and the arts. We look forward to a ribbon cutting in 2022.

10. COUNCILMEMBERS’ REPORT

- A. Councilmember Osman Discussion: Referral to the Public Works Committee for the selection of a Design Engineer on the 83rd St. Reconstruction Project and the 123rd St. M&O Project.

Councilmember Osman stated that these two projects are budgeted for next year and need to come before the Committee so they may determine the consultants. Mayor Dunn asked if there was a date certain. Councilmember Osman said it would be in October.

A motion to approve Item 10A was made by Councilmember Osman, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.

- B. Councilmember Osman Discussion: Review of Posted Speed Limit on 143rd Street (Nall to Kenneth)

Councilmember Osman stated that residents have inquired about the posted speed limit on 143rd St. He stated that speeds on that street are at the 85th percentile, which is 46 mph, and the posted speed limit is 35 mph. He pointed out that the Committee needs to evaluate if the speed limit should be increased or look at other options. Councilmember Harrison asked if this should be handled with a traffic study instead.

David Ley, Public Works Director, addressed the Governing Body. He stated that his department planned to hire a consultant to review this issue and present the report to the Public Works Committee. Councilmember Harrison stated that she and Councilmember Sipple heard years ago that a member of the public wanted traffic calming measures in place for this exact issue. Councilmember Sipple recalled

that the resident was asking for a roundabout or speed tables. Mr. Ley noted that Public Works is reviewing school-zone crossing lights at 143rd and Winsor for next year.

Councilmember Azeltine asked if the design of a road contributes to speeding. Mr. Ley stated that ways to control speed is what they will review. Councilmember Azeltine asked if this issue came from the public. Mr. Ley replied that it did not.

Councilmember Larson suggested that the Committee consider a permanent lighted radar posted sign in that area so that drivers are conscious of their speeds. Mayor Dunn mentioned that the rapid fire beacon seems to slow down drivers in the area of Brookwood and College. Mr. Ley stated that there is also a rapid fire beacon at 143rd and Windsor. Councilmember Sipple pointed out that the beacon is only activated by a push button from a pedestrian.

Mayor Dunn stated that this item will go to the Public Works Committee at either the December 1st or January 5th meeting.

A motion to approve Item 10B was made by Councilmember Osman, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

Councilmember Filla thanked the Public Works Department for collaborating with Kansas City, Missouri in the Interlocal Agreement listed as Item 8K on the consent agenda for the concrete work on State Line Rd. Mayor Dunn explained that State Line Rd. is managed in portions by either Leawood or Kansas City. Councilmember Filla thanked staff for taking the initiative to do the design work to get the project started.

11. CITY ADMINISTRATOR’S REPORT – None

12. STAFF REPORT – None

13. COMMITTEE RECOMMENDATIONS

[From the September 1, 2021 Public Works Committee meeting]

- A. Recommend denying the closing of the median break at 86th Terrace & State Line Rd at this time, and recommend to city council to look at the 2024 budget to move up traffic calming policies including lights and other such activities along that street

Mr. Ley stated that there was a public meeting earlier this month with many residents attending from 85th Terr., 86th St., and 86th Terr. He stated that the residents had concerns with the traffic signal located at 85th Terr. and State Line. He noted there have been 26 accidents over the last 3 years at that intersection. Mr. Ley stated that the recommendations are to move the date of the signal replacement to 2024, to review geometric improvements at the intersections to improve sight distance, and to continue to monitor the cut-through traffic patterns.

Councilmember Osman stated that residents brought up their concerns several months ago. He stated that one of the recommendations from the Committee was to close off the median break. He pointed out that since then, a developer has come before the Council with a preliminary plan of a mixed-use development at 8700 State Line Rd. Councilmember Osman stated that after review of the ingress and egress of the development, the Committee decided that if the street is closed off prior to that development, it may not be prudent. He remarked that the intersection at 85th Terr. and State Line Rd. is dangerous for U-turns and the traffic lights are from the 1980s and not timed.

Mayor Dunn asked if U-turns are illegal at that intersection. Mr. Ley confirmed that they are allowed. He stated that he has observed drivers turning around in residents' driveways. He stated that the City would review widening the west side by approximately 6' for SUVs to make a U-turn.

Councilmember Larson expressed her concern with the number of accidents in that area and is in favor of Councilmember Osman's recommendations. Mayor Dunn concurred.

Councilmember Sipple asked about the cost of the traffic signal. Mr. Ley stated that the budget is for \$400,000.00 per signal including the fiber interlink, and the schedule is to replace two signals each year. Mr. Ley stated that Leawood manages the signals north of I-435, and they will request federal funding for this project. Councilmember Sipple asked if the traffic signals and burying the power lines are two different projects. Mr. Ley stated that they are because of another project with Johnson County Wastewater.

Councilmember Filla asked where the undergrounding of the power lines start and stop. Mr. Ley replied that it is at approximately 81st to 92nd Streets. She asked what geometric improvements mean. Mr. Ley stated that is the widening of the west side of State Line and better sight distance for left turns. She asked if staff would talk to the Ward Parkway Shopping Center owners to discuss a better traffic flow.

Mayor Dunn thanked Councilmember Osman, the Public Works Committee and Mr. Ley for all their work.

A motion to approve the recommendation of denial for Item 13A was made by Councilmember Osman, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

[From the August 24, 2021 Planning Commission meeting]

- B. Ordinance approving a preliminary plan and final plan for Town Center Plaza – Lot 12, (Restaurant), located south of 117th Street and east of Nall Avenue (PC 83-21)

Mayor Dunn pointed out that an addendum packet of emails have been provided to the Council for this item. She stated that after hearing from the applicant, an attorney will have the opportunity to speak on behalf of other members of the public voicing concerns.

John Petersen, Polsinelli PC, speaking on behalf of the owners of Town Center Plaza, addressed the Governing Body. Stephen Harris, Vice President of Development with Washington Prime Group, appeared via Zoom. Mr. Petersen stated that Mr. Harris' primary focus is to keep Town Center Plaza current and vibrant. He explained that the north side of the shopping center has struggled over the years compared to the south side. Mr. Petersen pointed out that the south side has the inline stores, but also separate retail and restaurants near the street that creates interest and activity.

Mr. Petersen presented the site plan of the proposed restaurant. He stated that after staff reviewed the plan, there were a few stipulations to discuss before the Planning Committee meeting. He mentioned that a stipulation in regards to the trash enclosure has been revised by the applicant as requested by staff. He stated that one of the stipulations to discuss is in regards to the decorative screen in front of the building tower. He stated that this restaurant uses an iconic decorative feature of a large chandelier that hangs in the lobbies of their buildings. The grillwork in front of the glass tower would not allow the visual impact they desire, so Mr. Petersen requested to remove the grillwork in front of the upper glass area of the tower.

The third stipulation is in regards to the intersection of Town Center Dr. and 117th St. He stated that staff recommended that the developer pays into escrow 33% of the costs associated with a future signal prior to issuing the temporary certificate of occupancy. He stated that they had a traffic study conducted that showed that no traffic light is warranted with the addition of this restaurant, and that staff agreed with the study. He stated that the applicant requested this stipulation be deleted. He pointed out that when Tortoise (office building) was built at Park Place adjacent to an apartment building, they were responsible for 33% to be paid into escrow, and that they were either not required to contribute or not required to pay it. He stated that it is not clear if and when future development goes on the lot next to Tortoise and the apartment building, that Tortoise would be required to place their 33% in escrow at that time. Mr. Petersen suggested they not be required to pay into escrow until the future development warrants it.

Mr. Petersen stated that Stipulation No. 23 states, “A cross access/parking easement for the entire development shall be maintained with the Johnson County Registrar of Deeds prior to issuance of a building permit. Valet parking shall not restrict parking within the Town Center Plaza development and shall not be located directly east of the proposed restaurant.” He stated that all parking spaces located in Town Center Plaza, whether Mr. Harris’ group owns it or not, are subject to cross access parking with no restrictions. He stated that valet parking is a part of the proposed restaurant’s branding and that they have agreed not to fill up spaces directly to the east with valet parked cars.

Mr. Petersen noted that Mr. Harris is contractually bound not to confirm or deny who the restaurant operator is. He stated this is a land-use hearing and that this is a process with rules and regulations codified by the City that reviews land-use principles. Mr. Petersen stated that land-use hearings do not get into private agreements.

Mr. Petersen pointed out the number of seats at the Hereford House, as stated in a letter from their attorney, is approximately 300 seats, so he questioned if Hereford House is accurate on their numbers. Mr. Petersen stated that 26 years ago Hereford House requested a bigger pad site and made a deal with the former owners of Town Center Plaza to designate a band of 261 parking spaces, although they were still allowed to park anywhere in the field of parking. Mr. Petersen stated that 71 spaces within that band would be focused more for employee and customer parking, yet still non-exclusive. He stated that 71 plus the 54 spaces Hereford House currently has on-site equals 125 for their 250 seat restaurant.

Mr. Petersen stated that the proposed restaurant would take out 41 spaces out of the 261. He pointed out that the restaurant would face west and there is no public entrance at the back of house. He stated that the 71 spaces for Hereford House are still there and are located out from their front entrance. Mr. Petersen stated that they did a site-specific parking study, recommended by the City’s Planning Director that also included Covid and holiday days/times. Mr. Petersen pointed out available parking would be 250-300 ft. from the front entrances with enough parking spaces.

Mr. Petersen summarized their requests for modifications on Stipulations No. 10 and 21 and confirmed that they accept all other stipulations.

Stephen Harris, Washington Prime Group located at 180 E Broad, Columbus, OH, addressed the Governing Body via Zoom. He stated that there was considerable study on how to organize the site, including the orientation of the doors. Mr. Harris stated that they strategically situated the front doors to not face east so that it would not create an issue for Hereford House parking. He pointed out that Washington Prime wants to be a good partner.

Councilmember Harrison asked about the escrow payment for the traffic signal now versus later. Mr. Petersen stated that it is not warranted with their development and if the developers on the adjacent sites were not required to pay into escrow until later, they would like to be treated equally.

Councilmember Sipple asked if the applicant will own the land and building or lease it from Washington Prime. Mr. Petersen replied that the applicant is Washington Prime. Mr. Harris stated that the proposed restaurant will be a ground/lease tenant and are not purchasing the land.

Councilmember Larson agreed that this is a land-use hearing but she is concerned about parking. She asked about the development that the Council approved last year in Town Center Plaza, First Ascent, and why their parking needs have not been factored into this plan. Mr. Petersen replied that the parking and traffic study did factor in First Ascent, under the category Fitness Center in the report and that it showed there is still plenty of parking available. Councilmember Larson expressed concern over the currently available spaces with not many businesses on the northeast side. Mr. Petersen explained that the parking study takes into account future needs.

Councilmember Harrison asked why the proposed pad could not be moved either to the west or east. Mr. Petersen stated that it cannot be moved to the west due to a significant utility easement underground and placing buildings over it is restricted. In addition, to the west is the Macy's owned parking lot, which has ownership restrictions. Councilmember Harrison asked why Macy's controls the parking. Mr. Petersen explained that Macy's owns their building and parking field as agreed upon construction in the 1990s, yet cross parking is allowed.

Councilmember Harrison opined that since Macy's owns both the north and south side of their parking areas that might be part of the problem, but Mr. Petersen stated that Washington Prime is trying to work within the property that they own. He pointed out that moving the restaurant to the east and the depth gets narrower - they do not want to impact Barnes and Noble. He reiterated that the proposed location of the restaurant does not take away any number of parking spaces or any ability for Hereford House to park.

Mr. Harris explained that First Ascent recently came into issues due to Covid in their operation and stated that it is highly unlikely that their project will move forward at Town Center Plaza. He stated that he and Washington Prime are very disappointed.

Councilmember Rawlings concurred with Mr. Petersen that the north side parking is under-utilized, but he expressed concern over valet parking. He stated that he does not believe most people will use it. Mr. Petersen replied that it is the design of the restaurant wanting a grand entrance and a different level of dining.

Councilmember Cain stated that she does not want to deny the restaurant but expressed concern over the location. She agreed that this is a land-use hearing, but that the City should not get involved in private agreements. She suggested that shifting the restaurant away from the Hereford House would make a good neighbor. Councilmember Cain stated that she does not feel that everyone has been heard and that there has not been good communication throughout the process. She stated that since AMC Theaters have decreased their seats there should be room to move the restaurant to the west.

Mr. Petersen stressed that being unable to move the restaurant is not because of choice but building constraints. He stated that there has been communication with the Hereford House and their attorney

regarding the constraints and valet parking. He indicated that the communication they received in letters was directed at limiting the specific type of cuisine. He pointed out that according to the number of seats Hereford House currently has, they are in violation of the City's parking requirements.

Councilmember Sipple stated that he wants both restaurants to thrive but the proposed location compromises the ability of the Hereford House to be successful. He supports moving the location to the west.

Greg Musil, with Rouse Frets Law Firm, 5250 W 116th Place, Leawood, KS, addressed the Governing Body. He stated that the VP of Marketing and owners of Hereford House were also present. He agreed that this is about the vibrancy of the north side of Town Center Plaza, but questioned at who's cost. He stated that the loss of 142 parking spaces would affect the guests of Hereford House and that they are concerned that the parking study reviewed the entire parking field of Town Center Plaza, and is not relevant to Hereford House parking. Mr. Musil pointed out that it is unlikely that a person would buy a book at Barnes and Noble then walk to Hereford House to eat because of many reasons, such as weather, plenty of other parking, or Midwestern habits.

Mr. Musil stated that questions he listed in his letter to City staff were taken directly from the Leawood Development Ordinance (LDO) as the standards in a land use situation for a revised preliminary plan. He stated that it is not about competition. Mr. Musil reiterated that the parking study was conducted during a pandemic, at the slowest time of the year, and it is for the entire Center. He stated that Hereford House was aware they did not have enough spots but that it was a planning item for the City and Town Center Plaza. He stated that they own their lot and are not tenants. He mentioned a proposal that came before staff in 2004 that had been opposed at that time because staff stated it would take away parking from Hereford House.

Mr. Musil acknowledged that there are private agreements but stated that they were generated because of concerns from the City that there was a planning need for parking for Hereford House. He presented a map of a hypothetical parking model that shows parking is available but stressed that Washington Prime is only concerned about their inline tenants and that the City should be concerned with the planning aspect. He pointed out that two of the new restaurant's handicapped parking are located on the east side of their building. Mr. Musil stated that pre-Covid customer counts from December 5-9, 2019 were a total of 1,601 and do not include banquets or receptions of 50-100 people. Mr. Musil pointed out that the Planning Commission stated valet parking is not allowed on the east side of the proposed restaurant. He stated that if valet parking is an option, it will affect other tenants.

Mary Holland, 11408 High Dr., Leawood, KS, owner of Hereford House, addressed the Governing Body. Ms. Holland asked the Council to uphold the high standards and codes that have been set forth. She stated that they are not opposing the restaurant because they are a steakhouse, but are opposing the building itself for the awkward proximately in the parking field and the removal of spaces during the holiday season. Ms. Holland explained that when their friends and family asked how to support them, she told them to email the City instead of showing up in person at the meeting.

Mr. Musil asked the Council to consider the LDO and the questions he listed in his letter, and urged the Council to deny the application.

Jasper J. Mirable, 2349 W. 118th Terr., Leawood, KS, addressed the Governing Body. Mr. Mirable stated that he is speaking as a long-time Leawood resident and not a restaurant owner. He stated he is concerned that a restaurant would be placed in an awkward location at Town Center Plaza, and as a restaurant owner

for over 52 years, he remarked how difficult it can be for a restaurant to lose parking. He stated that a restaurant in front of another restaurant is not typical in Leawood and that it is not good business practice.

Councilmember Sipple stated that the owner of the T-Mobile and American Century building to the east has posted no restaurant parking signs in front of their building.

Mr. Harris replied to some of the Councilmember questions. He stated that it is because of the significant sewer utility easement that prevents the building from being moved to the west. He also pointed out that Washington Prime does not own Macy's property and does not have the right to plan and use it. He stated that there are cross parking easements that allow for parking for the restaurant. Mr. Harris stated that Macy's has a reciprocal access agreement (REA), as much as Hereford House does, and a separate, private one with further restrictions that he is not allowed to discuss in detail.

He summarized that the only location in which to place the restaurant is on their own property. He explained this area is deep enough and has been very carefully considered. He stated that if the Council wished to offer guidance to move the location to the west, it is not possible or an option for them.

Mr. Harris mentioned that restaurants can succeed when located close together and throughout the United States, it is common to place restaurants adjacent to one another. He stated that they do not want to place pressure on Hereford House's parking area. Mr. Harris indicated that it was mentioned tonight that there are restrictions on parking in front of the T-Mobile building, yet there is an REA for all customers to park anywhere. He stated in learning that, it is a violation of the REA because no one has exclusive rights, including the T-Mobile property owner who admitted in his own letter that is what he has done. He stated that although he had not mentioned this violation before, he commented that it is important to know that there are no restrictions allowed on this property.

Mr. Harris stated that the number of spaces for Hereford House to meet code is 71, but stated that they are looking to exceed what they are allowed to have, and if zoning codes were enforced, Hereford House could not have the order of magnitude they are advertising currently. He noted that the proposed restaurant is west of Hereford House's front doors and the most direct lines to their doors are fully available to them. Mr. Harris stated that the parking study demonstrates that with all the restaurants operating well (Hereford House, Bravo, and the proposed restaurant), the parking lot is still not full.

Mr. Harris stated that their hope is that the new restaurant will instill vibrancy for all of Town Center Plaza. He stated they are seeking the Council's support, but asking his team to move the restaurant onto someone else's property is very difficult for them to comply with.

Mr. Harris stated that they reached out to Hereford House on many occasions. He stated that it took weeks to connect and only after the Planning Commission recommendations to meet, but said it was not for a lack of trying on their part. He stated when they met, the attorneys were present and it was more of a business conversation. Mr. Harris stated that when he asked Hereford House what can he offer, there was no orientation to a solution except to move the building or do not do the project at all. He stated that Washington Prime is open and interested in a mutually benefiting agreement. He added that there is usually much more to private agreements than meets the eye or can be discussed in a Council meeting. He stated that they are optimistic that Hereford House will work with them, but so far they have been met with complete opposition.

Mr. Harris summarized that they have thought the project through completely so that everyone operates successfully. He pointed out that this is what Washington Prime does for a living and that there is nothing

to be gained by designing a center that is going to fail. Mr. Harris stated that Mr. Heard, the property owner of the Hereford House has a direct relationship with Washington Prime in the form of agreements, and those are between the property owners. He stated that Hereford House is the tenant. Mr. Harris stated that Mr. Heard offered suggestions to solve the issue, which have not been entertained by Hereford House.

Mayor Dunn asked if the proposed restaurant could be moved to the location where First Ascent would have occupied. Mr. Harris replied that they did consider that option but the tenant did not want to entertain anything other than a 4-sided building in a parking lot scenario. He stated that they have refused that location.

Councilmember Cain stated that she would like a win-win situation and wondered if a continuance would be an answer so that a conversation can continue between Washington Prime and Hereford House.

Councilmember Filla asked where the utility easements are located. Mr. Petersen provided a map to the Governing Body showing the storm, sanitary, and gas lines through the parking lot. Mr. Harris stated that parking can be over these lines, but not a building. She asked how much parking AMC Theater expects with reduced capacity in their theaters, and inquired if Macy's has the ability to talk to the proposed restaurant to purchase or lease the land. Mr. Musil responded that AMC Theaters is reducing their capacity by 50%. Councilmember Filla suggested that Macy's, AMC Theaters, and the proposed restaurant get together and use a charrette approach to a solution. Councilmember Filla asked for staff to respond to this development versus the different application in 2004.

Mark Klein, Director of Planning, addressed the Governing Body. He stated that when staff reviewed the project at first, they saw it is directly across from the Hereford House and initially there were concerns. Mr. Klein stated that staff did not see this project as a public safety issue, and as far as a need for a steakhouse, he stated that it is not staff's position to make that determination. He acknowledged that the activity on the north side of Town Center Plaza is not as much as the south side, and that it has been discussed in the past. He noted that staff thought facing the proposed restaurant to the west was a good plan, and confirmed that consideration was taken to move the building. Mr. Klein agreed that moving it to the east would be too tight and would cause problems with adjacent businesses. He pointed out the restrictions that prohibit moving it to the west.

Mr. Klein noted that he remembers AMC Theater parking being full in the early 2000s but it has not happened in quite a long time and things have changed since then. He pointed out the reduced parking and capacity for the theater and mentioned that he drove the parking lots after work to observe what areas were filling up at that time. He agreed that the photo the applicant offered in the parking study is what he observed as well. Mr. Klein stated that T-Mobile and American Century do have no restaurant parking signs, although there is a cross parking agreement. He stated that he reviewed the easement and read that individual tenants can restrict excess parking if it becomes a problem for their customers, but he noted that did not seem to be a problem and that the bank parking next door was completely empty after work hours.

Mr. Klein stated that staff found retail needs have changed, in that brick and mortar stores are not doing as well as experiential businesses and restaurants are. He indicated that restaurants may have a higher demand for parking now, as opposed to 2004.

Mr. Musil replied that regardless of the change of restaurant and retail since 2004, a non-impactful application was opposed at that time, while a more impactful project has staff's approval.

Mayor Dunn stated that the stipulation regarding the valet parking was added by Planning Commission and she would like to add consideration that all of the proposed restaurant parking be prohibited on the east side of their building, although there is cross access parking. Mayor Dunn suggested this could be done with signage. Mr. Petersen indicated that he is open to continuing the discussion. There was a brief discussion with staff on a date to continue the item. Mr. Petersen stated that because of leases he would request to return by October 18th.

Patty Bennett, City Attorney, stated that some of the Governing Body visited the site of the proposed location. Mayor Dunn stated that she drove through it, saw yellow tape and a lot of cones, and learned from Councilmember Rawlings that the tape indicated the footprint and parking. Councilmember Rawlings stated that he went there and was told by Ms. Holland that the tape represented the building and the cones were the property lines. Councilmember Cain stated that she drove through and got out of her car but did not speak to anyone. Councilmember Sipple stated he did the same thing as Councilmember Rawlings and spoke to Ms. Holland. Councilmembers Larson and Harrison remarked that they did the same as Councilmembers Rawlings and Sipple. Councilmember Osman stated that he was at another store in Town Center Plaza, and drove through but did not get out of his car or talk to anyone.

Mayor Dunn summarized on the continuance that Stipulation No. 1 had a typo, and as noted on page 5 should read "FAR of 0.23"; Stipulation No. 10 was remedied by the applicant; Stipulation No. 21 the Mayor requested that staff review what the City has in place for Tortoise Capital; and Stipulation No. 23 has many aspects to review.

Councilmember Osman stated that he has personally dealt with a cross access easement issue, and he recommends that if the parties can communicate, it is in the best interest of everyone. He is in support of a continuance.

Mr. Petersen requested that if there are any future meetings on site of their proposed building that they are invited to attend to verify if the information is accurate.

Mayor Dunn thanked the applicants, representatives, and others for attending.

A motion to continue Item 13B to the October 18, 2021 Governing Body meeting was made by Councilmember Azeltine, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

- C. Ordinance amending Section 16-4-1.3 of the Leawood Development Ordinance entitled "Permitted Accessory Uses, Buildings and Structures", pertaining to beekeeping and repealing existing Section 16-4-1.3 and other sections in conflict herewith (PC 93-21)

Mr. Klein stated that there are three Leawood Development Ordinances (LDOs) associated with this item. He stated that the first amendment is to allow beekeeping in the City as an accessory use, the second amendment is to address the setbacks, and the third amendment is whether the structures should be required to be attached to the primary structure.

He stated that the first amendment would be to allow beekeeping within the zoning districts of AG, RPA5, R1, and RP1. He stated that the Planning Commission recommended that beekeeping would be allowed in those districts, provided it met certain standards. Mr. Klein stated that the first standard would

be that the bees would be the American Honeybee, and no aggressive species. There would be a maximum of two beehives located on a property in the rear yard, and they must meet certain setbacks as recommended by the Planning Commission. The third standard is that there be a 6' high flyway barrier to the entrance/exit of the hive. Mr. Klein stated that another requirement is that there be signage on the hives indicating who the beekeeper is and their contact information.

Mayor Dunn appreciated the research Mr. Klein did. She stated that in the Planning Commission meeting, it was mentioned that one hive could have up to 50,000 bees. Mayor Dunn expressed her concern for the R1 and RP1 that could potentially have 100,000 bees.

Councilmember Cain stated that she was surprised that there is no permit requirement. Ms. Bennett explained that this item is for the zoning, and that there will be a permit requirement in the City Code section, if this item is passed. Ms. Bennett noted that it would not be a Special Use Permit but an annual administrative permit issued from the City Clerk's office. Councilmember Cain asked if there is a restriction on lot size. Mr. Klein stated that there was some concern with the Planning Commission about the lot size and setback requirements. Councilmember Cain inquired about HOA restrictions on beekeeping and if property owners would need to be notified. Mayor Dunn agreed. She read language from the City Code, as provided by City staff that stated "...City Clerk, with assistance from the Codes Enforcement Division, would attempt to notify all neighboring property owners, residents, business...of a pending application, then neighbors or owners may provide comment with regards to the application to the City Clerk..." Councilmember Cain pointed out the time involved for City staff to find names and contact information in order to mail notices to adjoining neighbors. She stated that the burden should be on the applicant not City staff.

Councilmember Osman agreed about providing notice and suggested adding certified mail fees with the permit application. He asked what the ramifications are if African (killer) bees colonize a hive and how does the City protect the citizens before the permit is up for renewal. Ms. Bennett stated that there is a provision in the Code that explains that the permit can be revoked if the beehive becomes a nuisance, but cautioned who on staff can recognize an African bee versus a non-killer bee.

Councilmember Sipple stated that the Sustainability Advisory Board (SAB) members are very astute and are unanimously in favor of allowing honeybees within the City of Leawood. He stated that the beekeeping community is very environment sensitive and would know right away if something were wrong with their hive. He stated that the City can remedy any problems very quickly.

Councilmember Filla is in favor of anything the City can do to make the land more productive, such as allowing beekeeping. She mentioned that a large number of bees is not a concern, but rather pesticides that kill the bees, and that bees are not interested in humans in their search for pollen and nectar.

Councilmember Cain cautioned that beehives can be knocked over. Mr. Klein stated that in their research they found that flyway barriers were consistent with other municipalities. Mayor Dunn stated her concern with notifying the neighbors of a potential of 100,000 bees next door, yet not allowing the residents to object, especially in an R1 or RP1 zoned area.

Ashlee Tomasic, Assistant City Attorney, appeared via Zoom. She replied that the approval process has a number of factors to be considered by the City Clerk and revocation is an option if the bees violate the health, safety, or welfare of the neighbors. She stated that the Planning Commission increased the setbacks from what the SAB proposed. Ms. Tomasic stated that she reached out to other northeast Johnson County cities that allow bees and was told they had no issues with beekeeping. Mayor Dunn

asked if the other cities allowed beekeeping within a 12,000 sq. ft. lot. Mr. Klein replied that he believed they relied more on their setbacks than lot size. He stated that the accessory uses are limited to certain districts. Councilmember Filla asked which cities were researched. Mr. Klein stated they were Shawnee, Overland Park, Lenexa, Prairie Village, Roeland Park, Olathe, Kansas City, MO, Ft. Collins, CO, and the Northeastern Beekeepers Association.

Councilmember Harrison stated that a smaller lot would be prohibited because of the setbacks. Mr. Klein stated that it would be a challenge for safety's sake. Councilmember Rawlings asked if any beekeepers commented on the number of bees needed to be productive. Mr. Klein replied that he was told 50,000 is the maximum number and they drastically decline in numbers in the winter. He stated that the Beekeepers Association keeps a database of beekeepers in the area to monitor any overpopulation in a certain area.

Councilmember Sipple offered statistics that estimated the number of bees in a hive at 30,000 instead of 50,000. Councilmember Filla mentioned that native plants can attract bees. Councilmember Sipple clarified that beekeeping restrictions in an HOA supersede what is in the LDO.

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

- D. Ordinance amending Section 16-4-1.2 of the Leawood Development Ordinance entitled "Location and Height of Accessory Uses, Buildings and Structures", pertaining to beekeeping and repealing existing Section 16-4-1.2 and other sections in conflict herewith (PC 100-21)

Mr. Klein stated this was discussed earlier when an accessory structure must meet the setbacks.

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

- E. Ordinance amending Section 16-4-1.4 of the Leawood Development Ordinance entitled "Attached Accessory Structure Requirements and Exemptions", pertaining to beekeeping and repealing existing Section 16-4-1.4 and other sections in conflict herewith (PC 101-21)

Mr. Klein stated that this ordinance prohibits the beehives from being connected to the primary structure.

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

14. OLD BUSINESS – None

15. NEW BUSINESS

- A. Ordinance adding a new Article 6 of Chapter 2 of the Code of the City of Leawood, 2000, entitled "Beekeeping" (C)

Mayor Dunn asked if this ordinance is where the notification by certified letter to surrounding property owners and HOA leadership is inserted. Ms. Bennett recommended that the language be for certified and

regular mail. Councilmember Cain asked if language could be added that the applicant be required to provide to the City staff the names and addresses. Ms. Bennett replied it can be added, but that more often the Planning Dept. staff can get more accurate information from the Johnson County AIMS (Automated Information Mapping System) website. Councilmember Cain asked if property owners will be asked to respond to and within a certain amount of time. Ms. Bennett stated that they would have the ability to write back to the Codes Enforcement Officer and City Clerk to be taken into account as one of the factors on whether or not to grant the permit.

Councilmember Sipple asked if an applicant has to be the owner/resident of the property. Ms. Tomasic replied that it does not have to be an owner of the property, but the provision states that permission must be given prior to approval and contact information on a sign must be attached to the hive. Councilmember Sipple suggested limiting the amount of beekeeping in the City that the beekeeper is the owner/resident of the property. Mayor Dunn agreed. Ms. Bennett and Ms. Tomasic agreed that the language can be modified.

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

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

Ms. Bennett pointed out that there is a parallel provision in the LDO section on Item 13C, and clarified that the changes made in Item 15A will also need to apply to Item 13C.

A motion to modify Item 13C to include the modifications from 15A was made by Councilmember Filla, seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 8-0.

- B. Consider possible amendment to the Leawood Development Ordinance pertaining to greenhouses; specifically, whether to allow greenhouses as an accessory use within single family residential districts (C)

Mayor Dunn recommended that Item 15B be continued to a Governing Body meeting next month. Mr. Klein and Councilmember Osman pointed out that there are property owners awaiting a decision from the Council. Mayor Dunn recommended that Leawood should have the same restrictions as Prairie Village and Overland Park. Mr. Klein stated that he has photos showing a wide variety of greenhouses.

Councilmember Osman stated that he brought this before the Council months ago and he is aware there is a resident wishing to order a large greenhouse from the United Kingdom to have installed by next February. Mr. Klein requested input from the Council on direction for staff to keep moving forward, in addition to the timing of the resident buying plane tickets to travel to the U.K.

Travis Torrez, Director of Building and Neighborhood Services, addressed the Governing Body. He stated that the resident in question lives in an R1 zone on a large lot.

Councilmember Azeltine agreed that this only be allowed with a Special Use Permit and that it should be attached because of the strict restrictions on detached structures in the City. He stated that he is not in support of allowing greenhouses, especially in R1 or RP1 zones. He indicated that his HOA may have restrictions against allowing greenhouses in his neighborhood.

Mayor Dunn noted the materials are very important under the consideration of construction.

Scott Lambers, City Administrator, stated that the structures are meant to be detached because of access needed to get in and out of them. He reminded the Council to stay focused on greenhouses, separate and apart from other structures that may be pending. Mr. Lambers stated that he has reservations on the structures.

Councilmember Osman clarified that his purpose in bringing the item forward was to start a dialogue with staff because of the number of residents who inquire about it. Mayor Dunn stated that it is important that staff have guidance. Councilmember Filla read through a list of points to discuss. She stated that she liked the idea of having it fall under a Special Use Permit; she liked the maximum size of an acre or more, and rear yard only. Councilmember Filla asked what setbacks staff preferred. Mr. Klein recommended that an applicant meet the setbacks outlined in their zoning district. Councilmember Filla remarked that greenhouses should be detached because they need sunlight and humidity. She stated that the foundations should be poured concrete or something solid and lighting standards remain unspoken for now or nothing more than a nightlight. Mr. Klein stated that lights should be shielded and no use of grow lights. Councilmember Filla stated that storage should be under tables and look tidy.

Councilmember Azeltine agreed that the ordinances for attached versus detached structures have not been reviewed in some time and is best discussed in the context of all detached or auxiliary structures. Councilmember Osman agreed but noted that staff had difficulty in gathering a comprehensive proposal. Councilmember Azeltine stated that before that conversation happens, the decision on whether or not to allow greenhouse should happen first. Councilmember Osman stated that he and Councilmember Filla have received many phone calls from residents regarding detached structures. Councilmember Azeltine stated that this should be reviewed as a holistic approach.

Councilmember Sipple stated that greenhouses are stand-alone structures and he recommended having a definition of a greenhouse and a percentage of the structure that can be made of transparent material. He noted that the greenhouse should be high quality, glass, and steel or metal frame. Mr. Klein stated that the City has an ordinance on sunrooms, but cautioned that in some of his research he found greenhouses that were not used for plants but for sitting areas or lounges. Mr. Lambers stated that in the definition of greenhouses, the contents of a greenhouse need to be greenhouse materials and not used for storage.

Mayor Dunn suggested that staff draft a proposal based on the Council's comments. Councilmember Larson is not in favor of greenhouses or detached structures in the City, nor believes it is a pressing issue.

A motion to refer to staff to make a recommendation to the Governing Body was made by Councilmember Sipple, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 5-3. Councilmembers Rawlings, Larson, and Azeltine voted nay.

C. Schedule Governing Body meeting for October 4, 2021 at 7:00 P.M.

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

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

- D. Recess into executive session for 30 minutes to discuss the possible acquisition of real property pursuant to the preliminary discussion of the acquisition of real property and consultation with an attorney, which would be deemed privileged in the attorney-client relationship, pursuant to subsections (2) and (6) of K.S.A. 75-4319(b). The open meeting will resume in the main conference room at the conclusion of this thirty minute session.

Ms. Bennett indicated that the Governing Body will need to reconvene after the Executive Session in the Council Chambers instead of the main conference room because action will need to be taken and recorded.

A motion to adjourn into Executive Session for 30 minutes was made by Councilmember Harrison, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

The Governing Body recessed into the Execution Session at 11:30 p.m.

At 12:00 a.m. on Tuesday, September 21, 2021, the Governing Body reconvened into the regular session in the Council Chambers. All members of the Governing Body, Patty Bennett, Scott Lambers, and Ross Kurz were present.

Ms. Bennett asked the Governing Body to approve the City's payment of the appraiser's costs in the pending condemnation case.

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

A motion to adjourn the regular meeting was made by Councilmember Sipple, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

The Governing Body meeting was adjourned at 12:02 a.m.