

Minutes

DVD No. 161

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, March 5, 2007. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Lou Rasmussen, Scott Gulledge, Gregory Peppes, Jim Rawlings, James Azeltine, and Debra Filla.

Councilmembers absent: Mike Gill.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Mark Klein, Asst. to the Planning Director
Deb Harper, City Clerk
Scott Smith, Internet/WAN Specialist

Patty Bennett, City Attorney
Chief John Meier, Police Department
Joe Johnson, Public Works Director
Jeff Cantrell, Neighborhood Serv. Admin.
Jeff Joseph, Senior Planner
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

The Leawood Fire Department Color Guard conducted a presentation and with the aid of a Boy Scout led the Governing Body meeting in the Pledge of Allegiance.

Fire Chief Ben Florance stated it was a pleasure for him to have the Color Guard perform their first presentation before the City Council and citizens of Leawood. Members of the Color Guard introduced themselves as Master Firefighter Jeff Cox, Master Firefighter Steve Miller, Master Firefighter Darren Riley, Master Firefighter Michael Pemberton, and Battalion Chief Wayne Harder. Star Scout Mark Nichols also provided an introduction.

Mayor Dunn stated appreciation to the Fire Department members for their efforts to keep the community safe in addition to participating in the presentation.

2. APPROVAL OF AGENDA

A motion to approve the agenda provided that Item Nos. 13C and 13D, ordinance amendments regarding the Leawood Arts Council [LAC] and Art in Public Places Initiative [APPI], are tabled to a date uncertain was made by Councilmember Bussing; seconded by Councilmember Gulledge.

Councilmember Rasmussen informed that the committees spent a significant amount of time preparing the amendments in order for the ordinances to reflect changes within the Leawood Arts Council [LAC]. He added that copies of the revisions were submitted to the City Administrator and Mayor Dunn in a timely manner to allow for review.

To Councilmember Rasmussen's inquiry as to why the items should be postponed, Councilmember Bussing stated he would like to have additional discussion with the LAC regarding the proposed amendments and related issues within other documents that are currently under review.

City Administrator Scott Lambers stated the ordinances are in need of clarification regarding the boundaries by which the amendments would apply to the LAC as it relates to planning projects within the City. Councilmember Rasmussen requested that concerns be submitted in writing prior to the next LAC meeting.

The motion to approve the agenda as amended carried following a unanimous vote of 7-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to 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.**

1. James Richardson, 8736 High Drive, spoke of concerns related to the proposed ordinance for signage on vehicles. He and his wife supplement their retirement income through an upholstery business that is advertised on the side of their van. As a portion of their business is obtained from the signage, removal of such would decrease their livelihood. He stated the ordinance is discriminatory against those who earn a living through these types of vehicles.

Mayor Dunn noted that Mr. Richardson's concerns relate to Item No. 11H. She stated he will be recognized again when this portion of the agenda is reached.

2. Mary Tearney, 3308 W. 127th Street, expressed appreciation to Public Works Director Joe Johnson and members of the street maintenance crew for doing a wonderful job plowing the City streets during this past winter.

4. PROCLAMATIONS

Autism Awareness Month; March, 2007

Mayor Dunn declared the month of March, 2007, as Autism Awareness Month and stated the proclamation will be mailed.

**5. PRESENTATIONS/RECOGNITIONS Presentation by the Fire Department
Color Guard**

See Item No. 1.

6. SPECIAL BUSINESS

A. Public Hearing to consider 2008-2012 Capital Improvement Program [C.I.P.]

Mayor Dunn opened the public hearing for comment. Given there were no individuals present to speak on the issue, a motion to close the public hearing was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion was approved following a unanimous vote of 7-0.

B. Public Hearing to consider a Permanent Storm Sewer Easement Vacation located at 2544 W. 132 Terrace, Lot 134, [Gregory D. and Katherine E. Pope] located within the Wilshire Place Subdivision, Leawood, Kansas

Mayor Dunn declared the public hearing open for comment. As there were no individuals who wished to speak, a motion to close the public hearing was made by Councilmember Filla; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 7-0.

C. Ordinance No. 2218 vacating a Permanent Storm Sewer Easement located at 2544 W. 132 Terrace, Lot 134, [Gregory D. and Katherine E. Pope] located within the Wilshire Place Subdivision, Leawood, Kansas [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Filla. The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Filla, Azeltine, Peppes, Bussing, Gullede, Rawlings, and Rasmussen. Nay: None. (Councilmember Gill absent).

D. Resolution No. 2753 accepting a Permanent Storm Sewer Easement from Gregory D. and Katherine E. Pope located at 2544 W. 132 Terrace, Lot 134, located within the Wilshire Place Subdivision, Leawood, Kansas

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The resolution was approved following a unanimous vote of 7-0.

E. Resolution No. 2754 approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood, Kansas and the City of Prairie Village, Kansas, pertaining to the use of land located at Somerset and Lee Boulevard in Prairie Village and Leawood, Kansas, for the installation and maintenance of the Public Art Piece known as 'Porch Lights'

Dr. Ann Kenney, Chair of the Arts in Public Places Initiative [APPI], noted that APPI and the LAC are requesting the addition of a stipulation to the agreement that will extend the contract term from 50 years to 99 years.

A motion to approve the resolution with the addition of a stipulation to extend the contract term to 99 years was made by Councilmember Bussing; seconded by Councilmember Peppes.

Dr. Kenney informed Councilmember Azeltine that as the City of Prairie Village has approved only the 50-year lease, a stipulated agreement will go back before their Governing Body for presentation. Proposals to annex rather than lease the property as well as to cost-share the project were refused by the City of Prairie Village.

Noting that the agreement specifies that Leawood will maintain liability insurance coverage on the project and name Prairie Village as an insured party, Councilmember Azeltine verified with Mr. Lambers that this is a standard policy.

Referring to the development timeline provided in the packet, Councilmember Azeltine inquired about meetings that took place between the artist, APPI, and a Prairie Village art representative in June and July 2006. Dr. Kenney explained that Prairie Village felt the project was unilateral and emphasized the approach from Leawood, thus modifications were made to ensure equal attractiveness from the Prairie Village viewpoint.

Councilmember Azeltine stated although he is in favor of the agreement, he wished to express extreme displeasure with the northern neighboring city. Other than providing a lease for the land, Prairie Village has demonstrated a lack of support in facilitating the project. He opined that this does not promote goodwill between the two cities. Dr. Kenney commented that both cities will gain from the artwork.

Councilmember Filla stated she is in favor of approving the agreement with the 50-year lease and ten year incremental renewals as proposed by the City of Prairie Village. A cost analysis of the island with irrigation over 50 years reveals a yearly expenditure of only \$1,300 while \$2,000 is spent per year on temporary art. The project will have been well-served with the assumption that the art will no longer be viable after 50 years.

A motion to amend the main motion to approve the agreement as presented by the City of Prairie Village was made by Councilmember Filla. The motion died for lack of a second.

Councilmember Azeltine asked the rationale behind requesting a 99-year lease. Dr. Kenney stated it was felt to be a wiser decision as it is always a goal of APPI and the LAC to be responsible stewards of public funds. She reiterated that the City of Prairie Village has not yet agreed to this term.

Dr. Kenney advised Mayor Dunn that signage for the art piece is planned to read, "Provided by the Arts in Public Places Initiative of the Leawood Arts Council in cooperation with Prairie Village," however Prairie Village also desires a more mutual inscription. If desired, the final signage plan can be presented to the Leawood Governing Body.

A motion to call for the question was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion carried following a vote of 6-1 (Nay: Councilmember Filla).

The main motion to approve the agreement with the recommendation from APPI and LAC to change the 50-year proposal to a 99-year term was approved following a vote of 6-1 (Nay: Councilmember Filla).

Mayor Dunn thanked the members of APPI and the LAC for performing the work involved with this project, which will be a gift to both communities. She also relayed that the Mayor of Prairie Village has expressed his desire to see the project go forward.

Councilmember Gulledge confirmed with Mayor Dunn that if the Prairie Village City Council does not approve the 99-year contract term, the 50-year term agreement may be re-presented to the Leawood City Council.

F. Request to create a Special Benefit District located at 135th Street and Fontana

Staff Comment: Please find attached a letter from 3 property owners requesting the creation of a Special Benefit District at 135th Street and Fontana. The property owner located on the northwest corner does not desire to participate. Therefore, if the District is created, one property owner, constituting 25% of the District would be included involuntarily. Given the fact that the unwilling property owner has an approved preliminary plan on record, the City Administrator supports the creation of this District and would recommend the City Council authorize the proceedings to be initiated.

A motion to authorize the initiation of proceedings as recommended by the City Administrator was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Mr. Lambers advised Councilmember Azeltine that it is not known why the property owner on the northwest corner does not wish to participate in the Special Benefit District [SBD] as direct communication has not taken place at this time. The fact that some of the developments within the district have received final plan approval while others are still in the preliminary stage has no impact on the SBD.

The motion was approved following a unanimous vote of 7-0.

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 1072B and 1073A
- B. Accept Minutes of the February 19, 2007 Governing Body meeting
- C. Accept Minutes of the January 9, 2007 Parks and Recreation Advisory Board meeting
- D. Accept Minutes of the September 26, 2006 Arts Council meeting
- E. Accept Minutes of the November 28, 2006 Arts Council meeting

- F. Accept Minutes of the January 23, 2007 Arts Council meeting
- G. Approve Cereal Malt Beverage [CMB] License for ZIPZ! Located at 4821 W. 135th Street
- H. Approve Purchase in the amount of \$22,089.00, from Kansas City Deck Supply pertaining to decking material for the sun deck at the Aquatic Center
- I. Approve Purchase in the amount of \$100,000, from Central Salt Company for the purchase of road salt
- J. Approve Purchase in the amount of \$18,196.95 to Blue Valley Public Safety, Inc., for the purchase of a storm warning siren
- K. Approve Change Order No. 4 in the amount of \$148,551.75, to Continental Construction [Sailors] pertaining to the Parkway Plaza Project [CIP # 195]
- L. Approve Change Order No. 2 in the reduced amount of \$2,234.50 to Pyramid Excavation & Construction pertaining to the 2006 1/8 Cent Sales Tax Storm Sewer Project
- M. Approve Third and Final Pay Request in the amount of \$1,000.00 to Pyramid Excavation & Construction pertaining to the 2006 1/8 Cent Sales Tax Storm Sewer Project
- N. Resolution No. 2755 amending the City of Leawood's Investment Policy, and repealing Resolution No. 2640
- O. Resolution No. 2756 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$200,000.00 [\$1.28/square yard] between the City and Musselman & Hall Contractors pertaining to the 2007 Slurry Seal Program
- P. Resolution No. 2757 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$4,429,488.00 between the City and Dennis Johnson Construction, pertaining to the IRONHORSE Golf Course Improvement Project
- Q. Resolution No. 2758 approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood and the City of Overland Park, pertaining to the 2007 Microsurfacing Program, Part I, [on 95th Street from Mission Road to 100 feet west of Wenonga Road
- R. Resolution No. 2759 accepting a Permanent Drainage Easement and Temporary Construction Easement from Erin K. Reed and Jason Reed, Lot 724, Leawood Estates; commonly known as 9729 Cherokee Lane, Leawood, Kansas, pertaining to the 2006 1/8 Cent Sales Tax Storm Sewer Project
- S. Resolution No. 2760 accepting Permanent Drainage Easement and Temporary Construction Easement located at 14910 Birch, [Louis and Kerry Christifano] pertaining to the Nall Avenue Improvement Project from 143rd to 159th Street [CIP # 80143]
- T. Resolution No. 2761 approving and authorizing the Mayor to execute an Amendment to that certain Service and Funding Agreement dated February 27, 2006, between the City and the Leawood Chamber of Commerce to provide funding for certain community and economic development services
- U. Resolution No. 2762 approving Final Plat, 3rd Plat, for Plaza Pointe located at 135th & Roe Avenue

Mayor Dunn pulled Item No. 7Q for discussion. On motion of Councilmember Rasmussen, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 7-0.

- 7Q. Resolution No. 2758 approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood and the City of Overland Park, pertaining to the 2007 Micro-surfacing Program, Part I, [on 95th Street from Mission Road to 100 feet west of Wenonga Road

Mayor Dunn requested a description of micro-surfacing. Public Works Director Joe Johnson explained it is similar to a slurry seal but is thicker and will last for a longer duration. This method of street maintenance has been done south of 119th Street on Nall Avenue and to Town Center Drive. Micro-surfacing is more conducive to higher volume roads and will postpone the need for a mill & overlay for 5-6 years. The cost is slightly more expensive than a slurry seal.

A motion to approve Item No. 7Q was made by Councilmember Rawlings; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 7-0.

8. MAYOR'S REPORT

- A. Attended a breakfast hosted by the Community Foundation of Johnson County regarding the Johnson County Education & Research Triangle, which is an initiative promoting higher education and research in the county. Going forward with the initiative would require enabling legislation prior to possibly coming before the voters for a future tax increase that could include sales tax, property tax, or some sort of combination. Councilmember Azeltine also attended the breakfast.
- B. Attended a successful Lunar New Year dinner celebration to ring in the Year of the Pig along with Councilmembers Peppes, Filla, Rawlings, Rasmussen, and Azeltine. Mayor Dunn thanked Jim Rochel, Chair of the I-Lan Sister City Committee, as well as other members of the committee for coordinating a very lovely celebration. Director-General Jack Chen of the Taipei Economic and Cultural Office in Kansas City presented greetings with a very kind message from I-Lan Mayor Huang regarding our relationship and wishing us the best in the coming new year.
- C. Attended a meeting with City Administrator Scott Lambers, Finance Director Kathy Rogers, and Johnson County Appraiser Paul Welcome, where a review took place of the 2007 changes in appraised and assessed valuation in Leawood. Ms. Rogers has provided a synopsis of the information to the City Council. The average change for both new and existing single-family homes, including condominiums and town homes, was 6.74%. The number increases to 7.81% with the inclusion of commercial property. The economic forecast for Leawood is still very bright.

- D. Participated in Read Across America at Prairie Star Elementary in honor of Dr. Seuss' 100th birthday. The program is sponsored by the National Education Association to highlight the importance of reading. Mayor Dunn noted that Fire Chief Ben Florance, as well as other Staff members, also participate in the event every year.
- E. Congratulated Leawood resident Sam Turner, President and Chief Executive Officer of the Shawnee Mission Medical Center, for being named the National Healthcare Volunteer of the Year by the American Heart Association.
- F. Announced that Leawood residents Dick and Barbara Shull will be honored in November as Johnson Countians of the Year by the Johnson County Community College Foundation during the Some Enchanted Evening scholarship benefit event. Mayor Dunn also congratulated the Shull's for receiving this honor.

9. COUNCILMEMBERS' REPORT – Councilmember Filla's report

Councilmember Filla announced that Mayor Dunn was listed in an article of the *KC Business Magazine* entitled, "KCB's 50+1 Influential Women." There will be a reception for these women of leadership on Wednesday, March 7th, at the Webster House from 5:30 P.M. to 8:00 P.M.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the January 23, 2007 Planning Commission meeting]

- A. Resolution No. 2763 approving a Final Site Plan for Oberweis Ice Cream and Dairy, located south of 135th Street and east of Nall Avenue – ***Continued From The February 19, 2007 Governing Body Meeting***

Joe Fahee with Oberweis Ice Cream and Dairy apologized to the Governing Body for requesting a continuance on the previous agenda. He reported working with Staff on two stipulations in order to meet required criteria.

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Referring to a memorandum placed upon the dais from Senior Planner Jeff Joseph, Mayor Dunn confirmed with Mr. Fahee that he is aware of the revision to Stipulation No. 7 regarding the use of real stone and brick. The use of these materials was felt more appropriate in high wear-and-tear areas versus the use of cultured stone.

Mayor Dunn confirmed with Councilmember Rasmussen that his motion to approve the project included the revision to Stipulation No. 7.

Councilmember Bussing noted that page 7 of the Staff Report provides a list of responsibilities for a developer of Cornerstone including, "The water feature to be provided at the corner of 135th and Nall Avenue shall be constructed within two years of the Governing Body approval for the Cornerstone of Leawood's overall final site plan." He then clarified with Mr. Lambers that the overall site plan was approved approximately 2½ years ago, however delays have caused this portion of the project to unsuccessfully meet the time schedule. Mr. Lambers assured that the list will be enforced.

The resolution was approved following a unanimous vote of 7-0.

[From the February 13, 2007 Planning Commission meeting]

- B. Ordinance No. 2219 approving a Special Use Permit [SUP] for Wireless Telecommunications Tower, located at 5200 W. 135th Street [Roll Call Vote]

Applicant Greg Czaplewski with Planning Works, representing Global Signal, stated there are no changes proposed to the tower other than increasing the amount of landscaping surrounding the compound. He stated agreement to the stipulations imposed by Staff.

Calling attention to the elevation in the packet, Mayor Dunn confirmed with Mr. Czaplewski that the ability to create a more monopole appearance with the co-locaters does not exist at this time. The appearance and installation of the equipment is controlled by each individual provider.

Mayor Dunn commented there is a monopole within Leawood City Park. Councilmember Rasmussen recalled that the original approval of this site stipulated renewal of the SUP every five years. At the time of renewal, the applicant must convince the Governing Body that slim-line technology is not available. Councilmember Rasmussen offered that such stipulations be at the discretion of the affected ward representatives.

Councilmember Azeltine reported receiving no complaints from constituents on this topic and then moved to pass the ordinance; seconded by Councilmember Rawlings.

To Councilmember Rasmussen's point and on behalf of absent Councilmember Gill, who is familiar with matters related to the Telecommunications Act of the Federal Communications Commission [FCC], Councilmember Bussing expressed interest in verifying with each wireless provider that the unsightly structures are at a current state of technology and should not be replaced.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Peppes, Filla, Rawlings, Rasmussen, Gullede, Azeltine, and Bussing. Nay: None. (Councilmember Gill absent).

- C. Ordinance No. 2220 approving a Special Use Permit [SUP] for T-Mobile - Wireless Antennae, located at 5200 W. 135th Street [Roll Call Vote]

Clifford Turner with Selective Site Consultants, 8500 110th Street, Suite 300, Overland Park, Kansas, representing T-Mobile, requested approval of the SUP renewal. Regarding slim-line technology, Mr. Turner educated that this specific type of tower is designed for platforms to be shared by different carriers using flush mount technology. Newer models do not provide for flush mount technology and cannot be used on this type of tower. He described the appearance and function of a flush mount antenna.

Mayor Dunn stated she anticipates the same questions being asked each time an antenna comes before the Governing Body for renewal of an SUP.

Mr. Turner added that providers, including his clients, research changes within the industry regarding various antennae and how they can limit their number upon a structure as this allows for greater co-location possibilities.

A motion to approve the SUP renewal for T-Mobile was made by Councilmember Gullede; seconded by Councilmember Peppes.

Mr. Lambers informed Councilmember Bussing that the Telecommunications Act does not provide a specific timeframe that must be used for SUP renewals. These timeframes differ throughout cities with Leawood having a duration of five years within the ordinance. Based on information presented tonight, Mr. Lambers stated research will be done regarding the fact that shared platforms may preclude technology advancements.

Councilmember Bussing noted there is little incentive for the applicant to invest in new technology to improve the appearance of equipment when they are obtaining desired coverage. He suggested a shorter SUP renewal period in order to review the cases on a more frequent basis. Mr. Lambers recommended a three year extension if Council decides to decrease the timeframe.

Mr. Turner added that wireless communication technology is driven by populous. Antenna technology upgrades must take place in order for a carrier to maintain required coverage as populations grow. Due to other advances in the technology market such as downloading video and data, a new generation of antennae will automatically replace outdated models.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Gullede, Peppes, Rasmussen, Filla, Azeltine, Rawlings, and Bussing. Nay: None. (Councilmember Gill absent).

- D. Ordinance No. 2221 approving a Special Use Permit [SUP] for Cingular Wireless - Wireless Antennae, located at 5200 W. 135th Street [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Gulledge; seconded by Councilmember Rawlings.

Matt Austin with Polsinelli, Shalton, et al., 6201 College Boulevard, Suite 500, offered to answer questions on behalf of the applicant.

The ordinance to approve the renewal of the SUP for Cingular Wireless passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Gulledge, Rawlings, Bussing, Filla, Azeltine, Rasmussen, and Peppes. Nay: None. (Councilmember Gill absent).

- E. Ordinance No. 2222 approving a Special Use Permit [SUP] for Cricket Communications - Wireless Antennae, at located 5200 W. 135th Street.

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

On behalf of Cricket Communications, Caroline Boyd with Telecom Realty Consultants, offered to answer questions. She informed that the City's emergency antennae are sharing a platform with Verizon Wireless at the 135th Street and Nall Avenue location.

Police Chief John Meier stated this antennae covers area south of I-435 with another in Prairie Village covering north Leawood. Police officers have the capability to toggle between the antennae based upon their location within the City.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Gulledge, Filla, Peppes, Rasmussen, Rawlings, Bussing, and Azeltine. Nay: None. (Councilmember Gill absent).

- F. Ordinance No. 2223 approving a Special Use Permit [SUP] for Verizon - Wireless Antennae, located at 5200 W. 135th Street [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Gulledge; seconded by Councilmember Azeltine.

Clifford Turner with Selective Site Consultants also offered to answer questions on behalf of Verizon Wireless.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Gulledge, Azeltine, Peppes, Bussing, Filla, Rasmussen, and Rawlings. Nay: None. (Councilmember Gill absent).

- G. Ordinance No. 2224 amending Section 16-4-8.3 of the Leawood Development Ordinance [LDO], pertaining to Reconstruction of Certain Lawful Nonconforming Structures [Roll Call Vote]

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

Mayor Dunn confirmed with Mr. Lambers that although the proposed ordinance provides that requests may be made to the Board of Zoning Appeals [BZA] within six months of destruction, the certain individual contemplating the purchase of such property intends to immediately go before the Board of Zoning Appeals [BZA] for action.

Councilmember Bussing verified that the ordinance relates only to non-conforming structures. There have been no changes made to the non-conforming use policy.

Councilmember Azeltine clarified with Mayor Dunn that the individual interested in the north Leawood property intends to go before the BZA prior to purchase and in advance of destruction by natural occurrence.

The ordinance passed with the following roll call vote of 6-1: Yea: Councilmembers Filla, Peppes, Azeltine, Bussing, Rawlings, and Gullede. Nay: Councilmember Rasmussen. (Councilmember Gill absent).

- H. Ordinance amending Section 16-4-10.1 of the Leawood Development Ordinance [LDO], pertaining to Home Occupations - General Provisions [Roll Call Vote]

Neighborhood Services Administrator Jeff Cantrell stated the ordinance amendment has been sought by numerous residents and several Homeowners Associations [HOAs]. The propensity for successful businesses based at the residential level to expand has increased the number of domiciled commercial vehicles. The revision will allow one car per household to have no more than 3.5 sq. ft. of signage although compliance may be achieved for vehicles over this amount if they are garaged overnight.

Mr. Cantrell informed Councilmember Bussing that 3.5 sq. ft. would roughly equate to the size of the side window in most vehicles. He also clarified for Councilmember Filla there would be no action against vehicles that are routinely stored in the garage overnight. The ordinance would relate to vehicles that are parked in the driveway or on the street.

Councilmember Rawlings noted there are several such vans in his neighborhood belonging to plumbers, electricians, etc., who leave during the day and park in the driveway at night. Mr. Cantrell confirmed there would be potential for these individuals to be cited once the frequency of occurrence is established following a complaint. The 3.5 sq. ft. size limitation was decided upon following analysis of the commercial signage market. It was felt the smaller signs were reasonable and more in harmony with the residential keeping of the neighborhoods.

Councilmember Bussing expressed appreciation to Mr. Cantrell for the quickness in which his department responds to neighborhood issues and complaints. He agreed that vinyl wrapped vehicles are inappropriate; however, based upon the number of paneled vans in his area with signage exceeding 3.5 sq. ft., he stated the size limitation may be too restrictive.

Mr. Cantrell advised Councilmember Azeltine that the initial complaint related to this issue pertained to an excessive numbers of cars with signage at one residence while the more common complaint has been that the signs are not in character with the neighborhood. The proposed ordinance will mitigate the complaints.

Noting that the Planning Commission minutes state that Commissioner Conrad asked, "if any consideration was given to trailers or towed, non-powered machines," and that Mr. Cantrell responded, "it was not the specific intent of this ordinance," Councilmember Azeltine asked if this could become an issue. Mr. Cantrell stated the existing sign ordinance contains a provision addressing these types of vehicles.

Mayor Dunn expressed regret for overlooking the name of resident Sara Copeland, who had signed-in to speak on Item No. 11G. As Ms. Copeland was no longer present, Mayor Dunn stated she will personally call her to apologize.

James Richardson, 8736 High Drive, restated his concerns related to the proposed ordinance. He suggested grandfathering existing vehicles from the ordinance. Mr. Richardson confirmed for Mayor Dunn that he owns only one vehicle with signage, which could possibly be parked in the garage. He noted, however, that many of the other vehicles with signage in Leawood could not be garaged due to their size and attached equipment. Mr. Richardson stated although his signs are detachable, he is afraid they would not reattach if removed as they have been on the vehicle for many years. He also informed Councilmember Rawlings that his signage would exceed the proposed 3.5 sq. ft. limitation.

Virgil Ledbetter, 8742 High Drive, spoke against the ordinance amendment. He is employed by a refrigeration company and is on 24-hour call. The vehicle must be kept at his residence as it is necessary for him to dispatch from home. He stated it is not possible to fit the van into a regular garage due to the height created by ladder racks.

Mayor Dunn questioned as to whether some of the described vehicles are of the magnitude in which the recreational vehicle [RV] ordinance should apply.

Mr. Cantrell verified for Councilmember Rawlings that the current ordinance allows for overnight parking of commercial vehicles and does not address the square footage of the signs. He also stated, in his opinion, Mr. Ledbetter's van qualifies as a passenger vehicle rather than commercial vehicle.

John Farkas, 10419 High Drive, spoke against the ordinance amendment as he is an electrician employed by Shaw Electric Company and is also constantly on-call. The one-ton van with ladder racks will not fit into his garage. A condition of his employment is to drive this vehicle. The signage is at the discretion of his employer. He stated if the ordinance passes, he will be forced to move out of Leawood.

Councilmember Rasmussen stated the last two speakers should not be classified as having a home occupation as they are using the vehicles as employees rather than for their own businesses. He discerned that employers are changing their business locations from commercially or industrially zoned areas by relocating their vehicles to residential areas in order to avoid taxation. Mr. Lambers informed Councilmember Rasmussen that business taxes are not collected unless the business is domiciled in the City of Leawood.

Councilmember Rasmussen stated understanding with complaints received from citizens as he has also witnessed such vehicles in his ward. The ordinance is reasonable in trying to revert back to the original intent of limiting the use of a home for business occupational purposes.

Councilmember Filla expressed appreciation to Mr. Cantrell for taking the initiative to solve the problem. She suggested a grace period to allow owners a certain amount of time to change their existing vehicles.

Mr. Lambers confirmed for Mayor Dunn that the proposed ordinance does not contain a grace period. The intent is to first issue warnings rather than citations based upon complaints in order to educate people of the ordinance. Discussion this evening has shed light on the issue of attached equipment preventing certain vehicles from entering a garage.

Councilmember Bussing voiced discomfort with ordinances of this type in which the City mandates what residents are allowed to do with their personal property. If passed, this ordinance will create an enforcement nightmare especially if there is a grandfather clause. He stated preference with having the Neighborhood Services Department pursue issues related to the enforcement of ordinances regarding new construction rather than the proposed ordinance. Although the amendment may be well-intentioned, it is completely off the mark in terms of the type of environment that should be established in the City of Leawood. Councilmember Bussing stated he would vote against the ordinance.

A motion to approve the ordinance with the addition of a 3-year grace period for one vehicle was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Mr. Lambers suggested including a 6-month grace period for second and third vehicles to allow opportunity to inform vehicle owners of the ordinance. The City will contact HOAs, who in turn can notify residents of the requirements. This will prevent the need to track individual vehicles as the notification process will be documented through the HOA. He added that he does not disagree with Councilmember Bussing's point of view; however, the objective of the home occupation ordinance is to provide the opportunity for this type of business to occur but not to create a commercial atmosphere at the residence. There is a delicate balance between the two and there are many gray areas.

Referring to the citizens who drive commercial vehicles for their employers and have no control over the signage, Councilmember Peppes clarified with Mr. Lambers that the motion would place them in violation after three years if the signage exceeds 3.5 sq. ft. and the vehicles are not garaged.

Councilmember Bussing stated there are dozens of residents in Leawood who are required by their employers to house a commercial vehicle at their residence. Passage of this ordinance will leave them no option but to move out of town and will create unimaginable complications. He disagreed with Councilmember Rasmussen's statement that businesses located elsewhere should be taxed.

Councilmember Rawlings concurred with Councilmember Bussing but stated favor for controlling outlandish signage on vehicles in some fashion. The ordinance should be sent back in order to review and address original complaints directed towards the magnetic signage and vinyl wraps. He also voiced intent to vote against the amendment as currently proposed.

Councilmember Filla stated she did not view an employer having to redesign their commercial vehicles as a hardship. Councilmember Rawlings pointed out that companies pay a lot of money for their logos and advertising. She stated the question is how much commercial advertising to allow in residential neighborhoods.

Mr. Farkas readdressed the Governing Body and suggested a permitting process for commercial vehicles if the issue is monetary.

Councilmember Azeltine confirmed with Mr. Ledbetter that he has never received any personal complaints regarding his vehicle. Although he agrees that eyesores should be controlled, Councilmember Azeltine stated he could not support the ordinance due to the manner in which it originated. A better ordinance can be achieved if information is filtered through the Governing Body by way of constituent complaints rather than from complaints made solely to Staff.

Mr. Lambers stated the motion will need six votes for approval in order to override the Planning Commissions' recommendation of passing the ordinance as written.

Reminding that a year's worth of work was put into the RV ordinance, Mayor Dunn restated concern that some of the vehicles may be large enough to require screening. She stated understanding for both sides of the issue and assured that the ordinance is not monetarily driven but related to aesthetics and quality of life within residential neighborhoods.

Mr. Ledbetter added that commercial signage is necessary in his situation as it prevents his vehicle from being towed while parked in certain areas at various job sites.

Mayor Dunn stated many of the issues could be resolved if the 3.5 sq. ft. restriction is increased. A remand to the Planning Commission may be in order.

Councilmember Rasmussen described the slow process of neighborhood deterioration and expressed concern with the fact that many areas of the City have undergone incremental encroachments upon the residential character.

The motion failed with the following roll call vote of 2-5: Yea: Councilmembers Rasmussen and Filla. Nay: Councilmembers Peppes, Azeltine, Rawlings, Bussing, and Gullledge. (Councilmember Gill absent).

A motion to remand the ordinance back to the Planning Commission in order to address the inadequacy of the proposed signage restriction was made by Councilmember Bussing; seconded by Councilmember Peppes.

Councilmember Bussing also requested to review documentation of received complaints upon re-presentation to the Governing Body.

Councilmember Rasmussen asked if Councilmember Bussing's request would conflict with the confidentiality ordinance that prevents Staff from revealing the identity of complainants. Mr. Lambers stated only the nature of the complaint would be revealed devoid of information related to the source.

Mr. Lambers reviewed there are two issues associated with the ordinance: the size of signage permitted on vehicles and the fact that some vehicles exceeding the limitation cannot be garaged. As suggested by Mayor Dunn, a process could be set in place to mirror the RV ordinance screening requirements as an alternative to individuals moving out of Leawood.

Mayor Dunn confirmed with Mr. Lambers that the RV ordinance contained a 3-year grace period before requiring full compliance. She stated this type of discussion should be held at the Planning Commission level during the remand process.

Councilmember Azeltine noted from the Planning Commission minutes that no one attended the public hearing on the amendment. He encouraged interested parties to express concerns at the Planning Commission meetings as well as the Governing Body meetings.

Mayor Dunn requested a reopening of the public hearing when the item is heard by the Planning Commission.

Mr. Richardson asked how the public can receive information regarding meetings and agendas. Mayor Dunn stated "The Neighborhood News" section of *The Kansas City Star* contains an enormous amount of information as does the City website at www.leawood.org.

The motion to remand the item back to the Planning Commission was approved following a vote of 6-1 (Nay: Councilmember Rasmussen).

12. OLD BUSINESS – None.

13. NEW BUSINESS

- A. Resolution No. 2764 declaring it necessary to appropriate private property for the use of the City of Leawood for the Nall Avenue Improvements, specifically for property located at 5416 W. 153 Street [Paul and Laura Baker], in accordance with K.S.A. § 26-501

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 6-0 (Councilmember Gill absent and Councilmember Filla not seated for the vote).

- B. Ordinance No. 2225 authorizing and providing for the acquisition of lands or interests therein by condemnation for property located at 5416 W. 153 Street [Paul and Laura Baker], in accordance with K.S.A. § 26-501

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Peppes. The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Bussing, Peppes, Filla, Azeltine, Rasmussen, Rawlings, and Gullledge. Nay: None. (Councilmember Gill absent).

- C. Ordinance amending Chapter 1, Article 6 of the Code of the City of Leawood, Kansas 2000, pertaining to the Leawood Arts Council [Roll Call Vote] - **TABLED**

- D. Ordinance amending Chapter 12, Article 6 of the Code of the City of Leawood, Kansas 2000, pertaining to the Public Art Impact Fee [Roll Call Vote] - **TABLED**

14. OTHER BUSINESS – None.

ADJOURN

The Governing Body meeting was adjourned at 9:25 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk