

Minutes

DVD No. 168

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, July 16, 2007. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: Mike Gill.

Staff present:

Patty Bennett, City Attorney
Major Troy Rettig, Police Department
Joe Johnson, Public Works Director
Brian Anderson, Superintendent of Parks
Jeff Joseph, Senior Planner
Christy Wise, Deputy City Clerk

Kathy Rogers, Finance Director
Chief Ben Florance, Fire Department
Chris Claxton, P&R Director
Mark Klein, Asst. to the Planning Director
Deb Harper, City Clerk
Karl Weinfurter, IS Specialist

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted that revisions and additions to Item Nos. 11A, 11C, and 14A have been placed upon the dais. A motion to approve the agenda was made by Councilmember Bussing; seconded by Councilmember Rasmussen. The motion 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.**

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

- A. Approve City Administrator's recommendation to permit a 40-foot interim height limitation on residential structures on lots two acres or greater; and a 35-foot interim height limitation on residential structures on lots under two acres [See January 16, 2007 Governing Body minutes; [Leawood Development Ordinance § 16-2-5]

A motion to approve the City Administrator's recommendation was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. 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. 1080B, 1081A, 1081B, and 1082A
- B. Accept Minutes of the June 4, 2007 Governing Body Work Session meeting
- C. Accept Minutes of the June 18, 2007 Governing Body meeting
- D. Accept Minutes of the June 18, 2007 Governing Body Work Session meeting
- E. Accept Minutes of the May 16, 2007 Public Works Committee meeting
- F. Accept Minutes of the April 24, 2007 Arts Council meeting
- G. Revised Certification of Cost in the amount of \$450,679.00 pertaining to the 135th Street and Briar Median Cut Project, CIP # 80193
- H. Revised Certification of General Obligation at-large Project Costs [Total Amount \$6,589,321.00] in the amount of \$320,000, pertaining to the Dykes Branch Improvement Project [83106]; \$2,130,000, pertaining to the Nall Avenue [135th – 143rd] Improvement Project [83139]; \$372,237, pertaining to the 92nd Street & State Line Signalization Project [83157]; and \$3,767,085, pertaining to the Residential Street Program Phases II and III [83202]
- I. Resolution No. 2841 accepting a Permanent Sidewalk Easement and Deed of Dedication from Megaplex Nine, Inc., pertaining to the Park Place Development Project
- J. Resolution No. 2842 accepting a Deed of Dedication from Commerce Bank, N.A., pertaining to the Park Place/Town Center Drive Improvements.
- K. Resolution No. 2843 approving and authorizing the Mayor to execute a Construction Agreement between the City and O'Donnell & Sons Construction in the amount of \$886,803.65, pertaining to the 2007 Arterial Mill & Overlay Project
- L. Resolution No. 2844 approving and authorizing the Mayor to execute a First Amendment to that certain Design Build Construction Agreement, dated January 17, 2007, between the City and SM Wilson, LLC, for an amount not to exceed \$865,000, pertaining to the construction of new buildings at Ironwoods Park, located at 14701 Mission Road; for 3 buildings: Park Maintenance Building; Restroom/Showers for the cabins; and restroom adjacent to the playground

- M. Resolution No. 2845 to approve a Final Plat for Reed's Addition, located north of Ironwoods Drive and west of Mission Road
- N. Resolution No. 2846 to approve a revised Final Site Plan for Park Place Building F, located at the northeast corner of 117th Street and Nall Ave
- O. Resolution No. 2847 to approve a Final Plat for I Parkway 133 Second Plat, located at 135th Street and Roe Ave., within the Parkway Plaza development
- P. Resolution No. 2848 to approve a Final Site Plan for a tenant finish for One Nineteen - West Elm, located at the southeast corner of 119th Street and Roe Avenue located within the One Nineteen Development
- Q. Resolution No. 2849 to approve a Final Site Plan for a tenant finish for One Nineteen - Z Gallery, located at the southeast corner of 119th Street and Roe Avenue located within the One Nineteen Development
- R. Fire Department Monthly Report
- S. Municipal Court Monthly Report
- T. Police Department Monthly Report

Councilmember Azeltine requested to pull Item No. 7N.

On motion of Councilmember Rasmussen, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 7-0.

- 7N. Resolution No. 2846 to approve a revised Final Site Plan for Park Place Building F, located at the northeast corner of 117th Street and Nall Ave

Assistant to the Planning Director Mark Klein explained for Councilmember Azeltine the differences between the resolution included as packet material and the revised version, which includes the stipulations approved by the Planning Commission. The correct version was distributed following original agenda packet delivery due to a clerical issue.

A motion to approve Item No. 7N was made by Councilmember Azeltine; seconded by Councilmember Rawlings. The resolution was approved following a unanimous vote of 7-0.

8. MAYOR'S REPORT

- A. Mayor Dunn congratulated Parks & Recreation Director Chris Claxton as well as the Police, Fire, and Public Works Departments for their involvement in the July 4th Celebration at Leawood City Park. Citizens have commented that it may have been the best event to date.
- B. Mayor Dunn discussed the distributed correspondence and photographs from Gezer Regional Manager Shimon Binoun of the Gezer Region in Israel, Leawood's sister city. He informed that the Gezer Region has established a new tradition this year of waving the Leawood and American flags alongside the Gezer Region and Israeli flags every 4th of July. She thanked Mr. Binoun and Mayor Peter Weiss for their acknowledgement of our special relationship.
- C. Attended a Leawood Chamber of Commerce ribbon cutting along with Councilmember Azeltine for Your Best Years Skin Rejuvenation Center in Ironhorse Centre at 151st Street and Nall Avenue.

- D. Attended a 60th Wedding Anniversary celebration for former Leawood Mayor Gene Alt and his lovely wife, Lee. Mayor Dunn congratulated the Alt's for this terrific milestone.
- E. Attended the joint Governing Body/Budget & Finance Committee Budget Sessions, which finished in a record time of only two evenings. Mayor Dunn extended appreciation to Finance Director Kathy Rogers, Budget Coordinator Kathy Byard, City Administrator Scott Lambers, and all of the Department Heads for their work on the budget. She also thanked the City Council and the citizens who served as volunteers on the Budget & Finance Committee. There will be no mill levy increase for 2008.
- F. Attended the All American Celebration sponsored by the Heartstrings Community Foundation. The annual event originated following September 11, 2001, to honor area police, firefighters, and veterans. The organization also serves adults with developmental disabilities by providing jobs and community outreach opportunities. Leawood resident Anne Hull organizes the yearly celebration. Also in attendance were City Administrator Scott Lambers, Police Chief John Meier, Fire Chief Ben Florance, and other members of the Leawood Police and Fire Departments. In recognizing our local heroes, Mayor Dunn thanked all members of the City's public safety departments for all that they do.
- G. Attended funeral services for former Lenexa Mayor Richard Becker, who was a great man and led quite an extensive life of public service. On behalf of the City of Leawood, Mayor Dunn offered condolences to his family.
- H. Announced that employees of the City of Leawood have recently participated in the Harvester's Community Network Food Collection. A total of 560 pounds of food was collected over a one week span, which equates to 431 meals. She thanked Debbi Naster, Human Resources Assistant, for leading the drive and all of the employees who participated.
- I. Mayor Dunn also thanked the Fire and Police Departments as well as all participating employees for their involvement with the Battle for Blood community-wide blood drive. The donations will aid the Community Blood Center in serving hospitals and patients with lifesaving blood and blood components.
- J. Mayor Dunn congratulated Fire Chief Ben Florance for being elected as a new member to the Institution of Fire Engineers. The institution's objective is to promote, encourage, and improve the science and practice of fire extinction, fire prevention, and fire engineering.
- K. Mayor Dunn noted an article by Laura Uhlmansiek in the Blue Valley/Leawood Neighborhood News section of the July 7th edition of *The Kansas City Star*, titled "New Grass Grows at Ironhorse Course." The article provided a wonderful update to the renovations occurring at the golf course.

- L. Reminder that this Thursday, July 19th, is opening night for the Leawood Stage Company's production of "The Music Man." The musical will begin at 8:00 P.M. on July 19-22 and July 26-28. A gala fundraising event will take place prior to the performance on Friday, July 27th, from 6:00 to 7:30 P.M. During the gala, the 2007 Art Advocate of the Year Award will be presented to both Councilmember Lou Rasmussen and Councilmember Gary Bussing for their ten years of Council-liaison service, dedication, and commitment to the Leawood Arts Council. Mayor Dunn thanked both men for their past and future years of service in this area. She encouraged all to attend the performance.

9. COUNCILMEMBERS' REPORT

- A. **Request from Councilmember Rasmussen: Assignment for Public Works Committee**
Design Consultant to be selected for the 143rd Street Improvement Project [between Nall and Windsor]

A motion to assign the Public Works Committee with the task of choosing a design consultant for the 143rd Street Improvement Project was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the June 12, 2007 Planning Commission meeting]

- A. Ordinance No. 2245 approving a Preliminary Site Plan and Final Site Plan for Gezer Park, located on the northeast corner of 133rd Street and Mission Road [Roll Call Vote]

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

Parks & Recreation Director Chris Claxton introduced Dennis Reynolds, design architect, who provided a PowerPoint presentation of features that will be incorporated into the park.

Councilmember Rasmussen reminded that there are to be separable elements of the design for budgetary purposes. Mr. Reynolds affirmed that phasing will be possible. The goal is to have the major elements of the park complete by May 2008 to coincide with the possible visit from a Gezer Region delegation.

Councilmember Bussing clarified that the \$1.1 million budget, as listed in the Capital Improvement Program [C.I.P.], is the amount allotted for the entire park. He also noted that property owners adjacent to the northern boundary of the park have expressed concern related to an opening at the dead-end of Pawnee Lane that leads to the park. The homes are separated by a wrought iron fence, however they have requested the installation of a gate that can be closed and locked every evening in the same fashion that the park restrooms are locked.

If the feature is desired, Ms. Claxton proposed the use of an electronic gate that will open and close automatically. These types of gates are currently installed at City Park and Ironwoods Park. Ms. Claxton confirmed with Brian Anderson, Superintendent of Parks, that such a gate would cost approximately \$20,000-25,000. She informed that fencing is typically installed to establish a property line, which has been done to the northern and eastern boundaries of Gezer Park. The inclusion of an electronic gate in the proposed location would be a different approach as to how property lines are defined, how the park is opened, and would leave the west side of the property open as well. Councilmember Bussing agreed with her suggestion of showing the gate as an alternate.

A friendly amendment to include the installation of an electronic gate at the Pawnee Lane entrance of Gezer Park was made by Councilmember Bussing. As the motion maker, Councilmember Rasmussen accepted the friendly amendment as long as the associated costs stay within the entire \$1.1 million budget.

As the second to the motion, Councilmember Peppes disagreed with the friendly amendment. The issue of a gate was previously discussed during approval of the adjacent Price Chopper development. He stated opposition to expending costs for a gate that is not warranted for a passive park and that will create further maintenance issues. The addition of this feature will be of no real value.

Ms. Claxton described the current layout of the area. There is an opening in the wrought iron fence approximately 10-ft. wide to allow the trail connection to extend from the park onto Pawnee Lane. There are two brick columns on either side of the opening and a ballard has been placed to prevent vehicles from accessing the path.

A formal motion to amend the main motion was made by Councilmember Bussing to include consideration for a gate at the access point of Pawnee Lane into the Waterford subdivision as part of the design for Gezer Park. The motion died for lack of a second.

Councilmember Filla stated she would be open to future discussions regarding the installation of a gate and suggested inviting the Waterford Homes Association to participate in the funding.

Mayor Dunn received no response when she asked if there were any citizens present who would like to comment on the design for Gezer Park.

Councilmember Azeltine recalled that during a Work Session on Gezer Park, Councilmember Gulledge suggested the possibility of raising private funding for naming rights of certain features within the park. Mr. Klein stated this was not brought up at the Planning Commission meeting. Councilmember Azeltine said that he hopes the idea is pursued by the appropriate entity, perhaps the Gezer Sister City Committee.

Mayor Dunn reminded that the recently approved tree donation policy creates the possibility of additional trees being gifted to the park. To Councilmember Azeltine inquiry about whether the interactive stations could be privately funded, Ms. Claxton advised that these features will be included in a gift catalogue that is currently being compiled by the Leawood Foundation.

Mayor Dunn noted that the Leawood Lions Club, who has been very generous throughout the City, has expressed interest in assisting with the park. There may be other individuals or groups who wish to do the same. Any private donations will be in addition to the \$1.1 million funded by the City.

In order to ensure a quality park, Councilmember Gulledge stated he would also like to revisit private funding opportunities should the planned design go beyond the \$1.1 million budget or in order to include additional features.

Having visited Israel, Mayor Dunn complimented Mr. Reynolds on the creative design and thanked him for working on what will be a wonderful addition to the community.

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

[From the June 26, 2007 Planning Commission meeting]

- B. Resolution No. 2850 approving a Revised Final Site Plan for Ironwoods Park, located at 146th Street and Mission Road

A motion to approve the resolution was made by Councilmember Gulledge; seconded by Councilmember Peppes.

John Brown with Hollis & Miller Architects, 220 NW Executive Way, Lee's Summit, MO, reviewed final site plan drawings, elevations, and floor plans for a public restroom, a bathhouse, and a maintenance building to be located within Ironwoods Park.

Mayor Dunn confirmed with Mr. Brown that the A2.2 site plan drawing included as packet information is inaccurate as the bathhouse was moved further back from the walkway following the Planning Commission meeting. He also reported that the initial anticipated need for a wastewater pump was avoided by rerouting the plumbing within the building. The relocation of the structure will require the removal of approximately three trees and the transference of two young trees.

Councilmember Azeltine remarked that the style of the buildings is in keeping with existing park structures. He inquired about the mentioned use of a cement-like material. Mr. Brown stated the material on the existing buildings is made of stainable cedar plank. The Parks & Recreation Department provides a lot of upkeep with maintenance and staining of the wood. A product called Hardy Plank, which is a cementitious board that can be painted and sealed, looks similar to the cedar plank and is more cost effective from a longevity and durability standpoint. The finished product will not be a major departure in appearance when compared to the existing buildings.

Councilmember Bussing stated that he does not recall prior discussions regarding funding for a maintenance building. Ms. Claxton informed that the facility was included in early park plans following the referendum in 1998, but the project has been continually delayed until this time. The structure cannot be funded with the remaining uncommitted \$500,000 from the original bond issue as this funding is earmarked to go towards restrooms/concessions for the amphitheater.

Mr. Brown advised Councilmember Rasmussen that the current estimate for all three buildings, including all engineering and design fees, is \$865,000. Ms. Claxton stated \$705,000 was approved in the C.I.P. with a change order on the Consent Agenda this evening to cover the increased costs. Councilmember Rasmussen recalled an original estimate in the amount of \$400,000 for the facilities. Ms. Claxton stated a 3% inflationary factor was added for each year.

Mayor Dunn determined that discussions regarding the maintenance building occurred approximately 2-3 years ago. She complimented Mr. Brown on the much improved design.

Mr. Klein verified for Mayor Dunn that the Hardy Plank material is frequently used on residential structures within the City. Ms. Claxton reported visiting the site of a new building in Blue Springs, Missouri, to gain a visual perspective of the material. She stated it is very similar to lap siding and believes that the material will be good in terms of duration.

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

- C. Ordinance No. 2246 approving a Special Use Permit [SUP] for an AT&T VRAD cabinet, located at 3601 W. 123rd Street [Roll Call Vote]

Mayor Dunn noted two additions to the packet material: submitted plans by the applicant in response to Stipulation No. 6; and an additional stipulation recommended by Staff, "in the event the allowed use is discontinued for a period of three months or more, the Special Use Permit shall be determined abandoned and the permit shall become null and void." Mr. Klein verified that the additional stipulation is for consistency purposes as the requirement has also been included with other VRAD cabinet applications.

On behalf of AT&T, Chris Carroll, 8900 Indian Creek Parkway, Overland Park, stated the application is a further expansion of the fiber optic network in order to provide higher quality voice and data services, super-fast broadband services, and video programming/entertainment utilizing Internet protocol technology. The application is no different than several other cabinet requests that were recently passed by the Council. The VRAD cabinet will be in addition to two other cabinets in this location. Additional landscaping will encompass both the existing and new boxes. He stated agreement to all proposed stipulations.

Mr. Carroll stated it is planned to replace the existing unsightly metal stairs with approximately ten masonry stairs and railings. As the ground slope leading to the cabinets does not appear to warrant stairs, Mayor Dunn asked if consideration has been given to completely omitting this feature. Mr. Carroll stated they could agree to forego rebuilding the stairs, although they do serve a purpose during inclement weather from a safety standpoint. Technicians visit the site several times a week. The cabinets sit on top of a slope approximately 12-ft. from the curb.

Councilmember Azeltine asked if AT&T has a safety standard that would require the stairs. Mr. Carroll stated safety is taken very seriously by the company. Upon the request of the Planning Commission, an attempt was made to identify the original owner of the metal stairs. It has not been determined at what date or by whom they were installed, but it is assumed they were placed by Southwestern Bell Telephone Company to provide easy access to the existing cabinets.

Mr. Carroll concurred with Councilmember Azeltine's suggestion to omit the stairs at this time and come back with a future site plan application if AT&T deems the stairs necessary.

Mr. Klein reviewed the submitted site plan drawing for the proposed new stairs. An elevation was not provided by the applicant.

Mayor Dunn also agreed with Councilmember Azeltine's suggestion. She recommended that perhaps technicians could obtain easier access to the cabinets by walking 5-ft. further west along 123rd Street, to a point where there is less of an incline.

Mr. Carroll reiterated agreement to go without the stairs on a trial basis and submit another application for them if it is determined internally that they are needed for safety and access reasons. The possible application will include site plan drawings and elevations.

Discussion took place regarding options for amending Stipulation No. 6.

A motion to approve Item No. 11C with the additional stipulation of, "In the event the allowed use is discontinued for a period of three months or more, the Special Use Permit shall be determined abandoned, and this permit shall become null and void," and with the alteration of Stipulation No. 6 such that the words "prior to" are struck and a period is placed at the end of the word "codes" with deletion of the remaining language was made by Councilmember Filla. A second to the motion was made by Councilmember Azeltine.

Mayor Dunn pointed out that the motion will bring the stipulations to a total of eight. Additionally, a supermajority vote will be in order as the changes will be an override to the Planning Commission's recommendations.

City Attorney Patty Bennett stated concern regarding a potential plan for the stairs being brought back strictly through the Governing Body and not through the Planning Commission. As the motion-maker and second, Councilmembers Filla and Azeltine agreed to insert the words "and Planning Commission" following the words "Governing Body" in Stipulation No. 6.

Councilmember Peppes shared that he had an opportunity to attend a portion of the Planning Commission meeting in which there was discussion related to possible limited terms for the now unlimited SUPs. He asked if a limitation was needed for this application for consistency purposes.

Mr. Klein stated the Planning Commission recently approved a batch of SUPs for the VRAD cabinets with the inclusion of a stipulation limiting the term to 25 years. Ms. Bennett added that there may be a request to change this term to a 20 year period, which is the condition placed upon SUPs for Time Warner Cable.

Councilmember Peppes asked why the limited term is not being recommended for the current application. Mr. Klein stated the unlimited term was allowed in order to be consistent with previously approved VRAD SUPs. The next batch of SUPs for AT&T to come before the Governing Body will have a stipulated term.

Councilmember Peppes relayed there was significant argument at the Planning Commission meeting regarding limiting the SUPs to 20-25 years. The term would ensure that equipment at the site is updated along with ever-changing technology upon renewal of the SUP.

Mayor Dunn noted that the Planning Commission approved the current SUP application with the unlimited term.

Mr. Carroll reviewed that the approximate 14 VRAD SUPs previously approved by the Governing Body have all been without a time restriction. The estimated total of 300 cabinets throughout Johnson County each received unlimited terms by various municipalities. He emphasized that the service will increase the bandwidth of speed to the consumer, which has become a great demand. Mr. Carroll cited statistics regarding the astounding growth of Internet traffic since 1996. He is concerned that a successor City Council may choose not to extend the permits if a limited term is associated with the SUP. The company has provided a sizable investment in order to bring the services to the community and does not wish for it to become stranded.

Mayor Dunn confirmed with Mr. Carroll that the VRAD SUPs approved at the last Planning Commission meeting was for 25 years.

Councilmember Gullledge stated with the high demand for service, updated technology may substantially shrink the size of the cabinets. An indefinite term will not require the company to update the equipment. Mr. Carroll stated that size decreases in the cabinets have occurred since year 2000. The company would exchange the equipment if technology allows another size reduction in the future.

Mayor Dunn noted that the added stipulation will require removal of the cabinets if they are no longer being used. She questioned whether another condition should be added to require downsizing of the cabinets in the event of future technology advancements. Mr. Klein stated this can be done, but the City would be reliant upon the applicant to inform of the downsizing ability.

Following Mr. Carroll's confirmation that none of the first generation cabinets have been switched to the smaller second generation cabinets, Councilmember Bussing stated there is no incentive for AT&T to change the equipment if it is operable. To clear up any misunderstanding, Mr. Carroll explained that each distribution area serves between 400-600 customers. Each area is designed with certain cabinets based upon the number of customers in the area. The larger cabinets are needed to serve areas with a higher number of households while smaller cabinets can now be used for less dense developments.

Councilmember Azeltine verified with Mr. Carroll that none of the SUPs obtained by AT&T throughout Johnson County contain sunset provisions. The topic has not been raised by any other city.

Mr. Klein stated a certain Planning Commissioner had concerns related to the unlimited time frames, hence there will be a 25-year term associated with the next set of SUP requests to come before the Governing Body.

Councilmember Azeltine stated placing a time restriction on the presented application would be setting precedent in terms of a sunset provision as well as for circumventing the Planning Commission, who did not ask for the condition in this instance. He would be more comfortable approving the application without the limitation rather than making a spur-of-the-moment decision. There may be a reason why over 300 SUPs have been approved by other governing bodies without a sunset.

Rather than jumping ahead of the process, Councilmember Filla suggested waiting until such restrictions are brought to the Governing Body by the Planning Commission.

Mayor Dunn asked Mr. Carroll if, in his opinion, the added competition that the AT&T VRAD cabinets will bring into the community will result in lower rates for residents. Speaking from personal experience, Mr. Carroll stated this is certainly a possibility. When another company offered services in his community, Time Warner Cable lowered their rates by 28-30%. It has been proven in areas all around the country that when there are multiple provider choices for cable/video services, the incumbent has always lowered their rates. He stated Leawood citizens should expect to see reduced rates. Service quality also improves when competition is involved.

In terms of a level playing field, Councilmember Peppes asked for verification that SUPs for Time Warner Cable, AT&T's competition, are limited to a 20-year term. Mr. Carroll stated he believes the franchise agreement is for 20 years, not the cabinet permits. Ms. Bennett recalled approximately six years ago, there were some other utility boxes that received permits with a 20-year term. It is possible that the company was not Time Warner Cable.

Councilmember Peppes stated he would like to amend the motion by limiting the Special Use Permit to a 20-year period.

Mr. Klein reviewed that the upcoming SUP applications were approved by the Planning Commission with a 25-year term, however there may be an amendment for a 20-year term at the Governing Body meeting.

Mr. Carroll pointed out that the previously approved 20-year termed SUP in question was for a Southwestern Bell DSL cabinet at 12901 Roe Avenue, which is now AT&T. There was much discussion with respect to this cabinet at the City Council meeting in 2002. He restated his belief that the cabinets for Time Warner Cable are for an indefinite period of time, but their franchise agreement may be for 20 years.

Ms. Bennett and Mr. Klein noted that cabinets smaller than 15-sq. ft. and under 55-inches are eligible for Staff approval while cabinets exceeding these measurements require an SUP. It may be possible that Time Warner Cable's boxes are of the smaller caliber.

Councilmember Gulledge requested more information regarding previous time limitations set for other companies in order to exercise consistency. Excluding the DSL cabinet at 129th Street and Roe Avenue, Mr. Klein assured that the Governing Body has approved all utility cabinet SUPs to date with an unlimited time frame and with the additional stipulation regarding discontinuation of use. As stated, the next set of VRAD cabinet SUP requests will include a stipulation by the Planning Commission to limit the term for 25 years. Mr. Klein stated he will need to verify the term agreement for the box at 12901 Roe Avenue. He informed that another VRAD cabinet is being added at this location and will be part of the next SUP requests.

Mayor Dunn stated she would trust Mr. Carroll's memory on the 20-year time limitation for the DSL cabinet on Roe Avenue as he represented Southwestern Bell Telephone Company at that time.

When asked if the future applications will be presented at the August 6th Governing Body meeting, Mr. Klein informed Councilmember Peppes that SUPs require a 14-day protest period between the Planning Commission meeting and when the item is heard by the Council.

Councilmember Peppes stated he would like to be as supportive as possible for Mr. Carroll's efforts, but he does not feel comfortable voting on the issue at this time. He suggested grouping the current application with the next set of SUP requests from AT&T and imposing the same stipulations to all.

Councilmember Azeltine pointed out that a remand would be possible if the current motion fails.

Based upon internal discussions following the Planning Commission meeting, Mr. Carroll stated agreement to a 25-year term if a limitation is deemed necessary. He stated there is grave concern within the company regarding setting precedent with the potential recommendation of 20 years for the seven upcoming applications. He respectfully requested that the current and all future SUPs be approved with an unlimited time period as has been done throughout Johnson County, the Kansas City area, and well beyond the states of Kansas and Missouri up to this point. However, if Council sees a need to require a restriction on the duration of the term, AT&T would agree to a 25-year period.

Councilmember Rasmussen suggested co-dating the term of the SUP to coincide with the expiration date of the franchise agreement. To his knowledge, there is only one perpetual franchise in the entire metropolitan area with all others having a limitation.

Mr. Carroll stated Kansas State Statute 17-1902 allows utilities, such as AT&T, to operate within the right-of-way. The management of the right-of-way is separate and apart from the statutes that govern franchises. He relayed that AT&T does not wish to tie the two separate statutes together. If the City has the right to issue a term for the installation of any piece of equipment on the right-of-way, Councilmember Rasmussen questioned why it couldn't be coterminous with the franchise agreement.

Stating appreciation for her co-Councilmembers' points of view, Councilmember Filla stated her biggest concern is with circumventing the process of the Planning Commission bringing issues to the Governing Body and with Staff being able to provide packet information prior to discussion. She doesn't feel that it is appropriate to change the process this evening. The Planning Commission and Mr. Carroll are owed the courtesy of a vote on the motion that is on the table.

As a supermajority vote is already required and Mr. Carroll has stated agreement with a 25-year term, Mayor Dunn suggested amending the motion to mirror the Planning Commission's current way of thinking with such a limitation. She restated the current motion as:

“To approve Item No. 11C with a modification to Stipulation No. 6 reading, ‘The current metal stairs shall be removed from the public right-of-way. If the applicant requires access to this location, they shall provide a plan to the Planning Commission and the Governing Body for approval of new stairs and landscaping that meet all codes,’ and with the additional stipulation, ‘In the event the allowed use is discontinued for a period of three months or more, the Special Use Permit shall be determined abandoned and this permit shall become null and void.’”

She noted that the stipulations will require renumbering and that the motion is currently for an unlimited time period.

Councilmember Bussing verified with Ms. Bennett that the item can be continued to the meeting at which the next group of applications will be presented. It was determined that there is ample time for the 14-day protest period before the August 6th meeting, thus the applications can be placed upon this agenda.

Mr. Carroll voiced preference with the item being voted upon this evening with the 25-year restriction as AT&T is behind in their build-out process, especially in Leawood. He has been given authority by his superiors to accept a 25-year term. On August 6th, however, he will express grave concerns with the potential 20-year term recommendation.

A friendly amendment to revise Stipulation No. 5 by requiring a 25-year term rather than an unlimited term was made by Councilmember Peppes. The amendment was accepted by Councilmembers Filla and Azeltine.

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

- D. Resolution No. 2851 approving a Final Site Plan for Parkway Plaza Sumo Restaurant, located north of 135th Street and west of Briar

Mayor Dunn noted a typographical error on page 5 of the Staff Report. The reference to Park Place Development in the last bullet point should read Parkway Plaza Development.

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

David Suttle with Suttle Mindlin Architects, St. Louis, MO, reviewed final site plan drawings and elevations for Sumo Restaurant.

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

- E. Ordinance No. 2247 approving a Revised Preliminary Site Plan for Capitol Federal at Nall Valley Shops, at the northeast corner of 151st Street and Nall Avenue, located within the Nall Valley Shops development [Roll Call Vote]

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

Scott Bixler with Wilson Darnell Mann Architects, 105 N. Washington, Wichita, KS, provided a presentation of the revised preliminary site plan.

Councilmember Bussing asked Mr. Bixler to address the requested deviations. Mr. Bixler stated that the Walgreen's building at the east end of the overall development, facing 151st Street, contains all of the parking allowed with the 60/40 rule. There are 11 parking spaces proposed for the Capital Federal building along 151st Street; however, there is a fairly high berm and a 7.5-ft. difference between the street level and the parking lot, which will significantly block the vehicles from view. Additionally, with the aid of Staff, a public element including a pond and possibly some art work will be developed for this area.

The second deviation request relates to two Capital Federal Savings logos that will be on the inside glass line of the bank windows. It is being requested that the logos be integrated as part of the signage. Rather than being just a backlit canopy sign, an art element is in the process of being developed for the logos. The Planning Commission agreed to the integration that will be reviewed upon final site plan presentation.

Councilmember Bussing asked if Staff is comfortable with the deviations. Senior Planner Jeff Joseph stated a decision regarding the signage will be made when final plans are submitted. Staff is comfortable with the 10-ft. parking setback deviation as well as the modification to the 60/40 rule, which will become a ratio of 55/45.

Mayor Dunn noted that both deviations will be addressed by the Planning Commission on final plan approval. The public amenity will be weighed against the 60/40 rule deviation. She stated the size of the logo will be important and will be reviewed closely by Staff. Mr. Bixler explained that the logo is important as it is part of the bank's graphic package.

Councilmember Azeltine pointed out that the drive-thru faces Nall Avenue. He recalled restrictions placed upon other developments in which a drive-thru could not face a main thoroughfare. Mr. Joseph stated the overall development was approved in 2003 with the same lay-out. There is not a specific restriction in the Leawood Development Ordinance [LDO] regarding drive-thrus facing thoroughfares, however the 60/40 rule may prevent this from occurring. The portion of the development facing Nall Avenue is in compliance with the 60/40 rule.

Mr. Bixler verified for Mayor Dunn that the drive-thru will be visible from Nall Avenue, but it will be appropriately buffered with a retaining wall and landscaping. Mr. Joseph added that a 3-ft. berm is required and will also screen the drive-thru.

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

- F. Ordinance No. 2248 approving a Revised Preliminary Site Plan for Plaza Lot 11, at 135th Street and Roe Avenue, located within the Plaza Pointe Development [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Peppes, seconded by Councilmember Gulledge.

Councilmember Rasmussen requested further elaboration to the first Staff Comment on page 6 of the Staff Report, "The approved final plan for the overall Plaza Pointe development showed four buildings facing the interior circular courtyard located at the center of the development. The applicant has changed the location of the building away from the courtyard. Staff would like the Planning Commission to seriously evaluate this change as the Staff has reservations about it." He stated concern that the change will destroy the architectural consistency of the circle.

Mr. Joseph stated Staff is also concerned with the change. According to the applicant, a linear building is needed due to square footage issues.

Applicant John Gaar with Monarch Real Properties, 2020 Baltimore, Kansas City, MO, 64108, stated the building is being developed as a medical office for Monarch Plastic Surgery. Using overall development site plan drawings, he illustrated how Lot 11 relates to the circular courtyard. Given the two access points to the site and the fact that the client is requesting a 16,000 sq. ft. building, a reconfiguration of bringing the building closer to 135th Street was necessary. A decorative wall and trellis will be placed on the corner to anchor an element of height and mass. They are also working with Staff to add trellis elements to the building in order to provide screening. The setback deviation request represents placement of the added trellises. Mr. Gaar stated agreement to all of the proposed stipulations.

Mayor Dunn confirmed with Mr. Gaar that the square footage increase in combination with maintaining access points from the street caused the necessity to move the building. As the overall development is not increasing in size, the deviation is being requested only for the specific lot.

Councilmember Gulledge complimented Mr. Gaar for creating such an attractive design for this location.

Mr. Joseph verified for Councilmember Rasmussen that buildings will face the intersection from the other three parts of the circle while a parking lot will be seen from this project.

Mr. Joseph informed Mayor Dunn that the Planning Commission approved the plan as presented with the trellis feature on the corner. The feature was recommended by Staff in order to give the appearance of a building.

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

12. OLD BUSINESS – None.

13. OTHER BUSINESS

- A. Ordinance No. 2249C amending Sections 14-505 and 14-509 of the Code of the City of Leawood, 2000, specifically “Police Department Tow/Wrecker Rotation List,” and “Wrecker and Tow Service Fees and Charges,” respectively, and repealing existing sections [Roll Call Vote]

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

- B. Schedule a Governing Body Work Session at 6:30 P.M. on Monday, August 6, 2007, to discuss Transportation Development District [TDD] for Park Place Improvement District for property located at 117 & Nall Avenue

A motion to approve the scheduling of the Work Session was made by Councilmember Filla; seconded by Councilmember Gullede. The motion carried following a unanimous vote of 7-0.

Councilmember Rasmussen advised that he will not be present at the Work Session.

- C. Schedule a Governing Body Work Session at 6:30 P.M. on Monday, August 20, 2007, to discuss Transportation Development District [TDD] for 135th Street; underground of electrical utilities and widening of the south side of 135th Street

A motion to approve Item No. 13C was made by Councilmember Azeltine; seconded by Councilmember Gullede. The motion was approved following a unanimous vote of 7-0.

- D. Resolution No. 2839 expressing intent for the issuance of General Obligation Bonds of the City of Leawood, Kansas pursuant to K.S.A. 12-6a.01 et seq. to provide funds to pay the costs of improvements to the intersection of 135th Street and Fontana Street within the City, and for the issuance of Temporary Notes of the City pending the issuance of said Bonds; expressing the intent to reimburse costs of the project so incurred from proceeds of such Temporary Notes and General Obligation Bonds; and authorizing and approving certain related matters and actions [CIP # 80403]

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

Finance Director Kathy Rogers informed Councilmember Azeltine that the total bond cost is \$820,000.

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

- E. Resolution No. 2840 amending Resolution No. 2625, authorizing the improvement of a certain section of Nall Avenue, a main trafficway, between 143rd Street and 159th Street within the City of Leawood. [CIP #80143]

A motion to approve the resolution was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 7-0.

14. NEW BUSINESS

[From the June 26, 2007 Planning Commission meeting]

- A. Ordinance No. 2250 approving a rezoning from SD-CR [Planned General Retail] to SD-O [Planned General Office], Preliminary Site Plan and Preliminary Plat for One Hallbrook Office, located east of Overbrook Road and north of 112th Street [Roll Call Vote]

Mayor Dunn informed that she will be recusing from this item due to the appearance of a conflict of interest. She then left the Council Chambers and Councilmember Rasmussen took over as Presiding Officer.

Brick Owens with Nearing, Staats, Prelogar & Jones Architects, 4634 N. Holly Court, Kansas City, MO, stated agreement to all of the stipulations within the ordinance and offered to answer questions.

Mr. Rasmussen confirmed with Public Works Director Joe Johnson that the submitted water retention plan will cause no change in the flooding of City Park.

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

ADJOURN

Mr. Rasmussen adjourned the meeting at 10:00 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk