

Minutes

DVD No. 104

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 19, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Debra Filla, Louis Rasmussen, Jim Rawlings, Scott E. Gullledge, Gregory Peppes, Gary Bussing and James E. Taylor, Sr. Mike Gill was present via audio conferencing.

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Ben Florance, Chief, Fire Dept.
Scott Barton, Captain, Police Dept.
Mark Andrasik, Info Systems Director
Jeff Cantrell, Neighborhood Serv. Admin.
Diane Binckley, Planning Director
Deb Harper, City Clerk

Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Chris Claxton, Parks & Rec Director
Colleen Browne, Human Resources Dir.
Kathy Rogers, Finance Director
Emily Gleasure, Deputy City Clerk

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1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Councilmember Rasmussen made a motion to approve the Agenda. Councilmember Rawlings seconded the motion, and the motion was approved, 7-0-1. Councilmember Gill had not joined the meeting to begin his audio conference call.

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 personal 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.**

G. Gordon Thomas, 10516 Mohawk Lane, spoke on conflicts of interest, in regards to money and those controlling that money.

Councilmember Gill called in for the meeting at 7:37 P.M.

107 4. **PROCLAMATIONS - None**

5. **PRESENTATIONS/RECOGNITIONS - None**

6. **SPECIAL BUSINESS - None**

120 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. Approval of Appropriation Ordinance No. 1003
- B. Accept Minutes of the June 30, 2004, Governing Body meeting
- C. Accept Minutes of the June 28, 2004, Joint Governing Body/Budget & Finance Work Session
- D. Accept Minutes of the June 29, 2004, Joint Governing Body/Budget & Finance Work Session
- E. Accept Minutes of the June 8, 2004, Parks and Recreation Advisory Board meeting
- F. Mayoral Appointment of Citizen Committee Member to Gezer Region Sister City Committee
- G. Renewal of Retail Liquor Store License for Ranchmart Wine & Spirit Shoppe, located at 3748 West 95th Street
- H. Approve purchase in the amount of \$46,680.44, from CDW-G, pertaining to the purchase of laptop computers in conjunction with the with the acceptance of the Federal Police Byrne Grant on July 15, 2002
- I. Approve renewal of Microsoft Licensing coverage in the amount of \$31,233.90, between the City and Microsoft Corporation via Software House International pertaining to the yearly license renewal [*This item was approved by the Governing Body in the budget process*]
- J. **Resolution No. 2253** approving an increase in the transfer of funds in the amount of \$147,200 from the General Fund to the IRONHORSE Golf Course
- K. **Resolution No. 2254** approving and authorizing the Mayor to execute an Amendment to the Lease Agreement between the City and IKON Office Solutions, pertaining to the lease of Canon 5000 copy machine
- L. **Resolution No. 2255** approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$22,810.50, between the City and D Fence Gate, Rail & Fence Company, pertaining to the installation of a perimeter fence at IRONHORSE Golf Club
- M. **Resolution No. 2256** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$1,752,574.15, between the City and O'Donnell & Sons Construction, pertaining to the Parkway Plaza Project, located at 135th & Roe [CIP # 195]

- N. **Resolution No. 2257** approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood and surrounding area cities pertaining to a 9-1-1 Wireless Cooperation Agreement
- O. **Resolution No. 2258** consenting to the enlargement of Consolidated Main Sewer District of Johnson County, Kansas, [JCUWD] by the Board of County Commissioners of Johnson County, Kansas [BOCC], pursuant to Johnson County Charter Resolution No. 29-92, for property located in the vicinity of 146th & Aberdeen
- P. **Resolution No. 2259** accepting Temporary Construction Easement located on Tracts 40, 41, and 42, 135th Street and Roe Avenue, from Chapel Green Land Company, Inc., pertaining to the Nall Avenue Improvement Project [between 135th Street and 143rd Street] CIP # 139]
- Q. **Resolution No. 2260** accepting Temporary Construction Easement located on Tract 39, 135th Street and Roe Avenue, from The Roman Catholic Archdiocese of Kansas City in Kansas, pertaining to the Nall Avenue Improvement Project [between 135th Street and 143rd Street] CIP # 139]
- R. **Resolution No. 2261** accepting a Deed of Dedication, Permanent Utility Easement, and Temporary Construction Easement located on Tract 26, from the Baptist Foundation of Kansas City, pertaining to the Nall Avenue Improvement Project between 135th Street and 143rd Street] [CIP # 139]
- S. **Resolution No. 2262** accepting Temporary Construction Easement located on Tract 27, from Grace Gardens Assisted living Facility of Leawood, Inc., pertaining to the Nall Avenue Improvement Project between 135th Street and 143rd Street] [CIP # 139]
- T. Police Department Monthly Report
- U. Fire Department Monthly Report
- V. Municipal Court Monthly Report

Mayor Dunn requested that Don Roberson's name be removed from the minutes of the Budget and Finance Committee work sessions [Items "7C" and "7D"] held June 28 – 29, 2004. Mayor Dunn noted that Mr. Roberson had previously withdrawn from the Committee and had therefore not been "absent." Councilmember Taylor confirmed with Patty Bennett that Items "7R" and "7S" did not directly involve the Cornerstone project, and he therefore did not need to recuse himself from the discussion and vote. Councilmember Filla stated that Joe Johnson had clarified for her that on page 2 of the June 29, 2004 Budget and Finance Committee work session minutes [Item "7D;" *That hiring cut into the Budget by \$3.0-4.0 million.*], he intended to say "Eight to nine percent."

Councilmember Rasmussen made a motion to approve the Consent Agenda with the changes stated. Councilmember Gullledge seconded the motion, and the motion was approved unanimously, 8-0-0.

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8. MAYOR'S REPORT

- A. Annual Report: American Revolution Tercentennial CD Fund. Mayor Dunn noted that every year during the Governing Body meeting nearest to July 4th, the current amount in the American Revolution Tercentennial fund was to be announced. This fund would be maintained until July 4, 2076. As of July 9, 2004, the fund contained \$6,959.00.
- B. National Conference for Community & Justice [NCCJ] "Walk As One" 5K Walk Event, October 3, 2004. Mayor Dunn noted that the cities of Leawood; Kansas City, MO; and Gladstone would be the co-sponsors of the event, with former Councilmember Pat Dunn organizing Leawood's team.
- C. The dedication of the Oxford Schoolhouse will take place at 10:00 A.M. on Saturday, July 24th at Ironwoods Park. On Sunday, July 25th, the Parks and Recreation Department will host an Ice Cream Social at 2:00 P.M. at the park. Later that day, a concert featuring Roseanna Vitro will be held at 6:30 P.M.
- D. Mayor Dunn remarked on the exceptional presentation given by Leawood Stage Company Youth Players in their production of "Annie Jr."
- E. Members of the Gezer Region of Israel called Mayor Dunn on July 4th to wish her and the City of Leawood happiness and "Shalom!" during our country's Independence Day celebration.
- F. Mayor Dunn thanked the various departments responsible for their contribution to Leawood's Fourth of July Celebration.

Mayor Dunn noted that the remainder of her Mayor's Report would be on file at City Hall.

9. COUNCILMEMBERS' REPORT - None

10. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

1010

11. STORMWATER MANAGEMENT COMMITTEE

[from the July 9, 2004, Stormwater Management Committee meeting]

- A. **Approve Committee's selection of a design consultant for three [3] non-SMAC Stormwater Projects**

Councilmember Taylor made a motion to approve the selection of a design consultant. Councilmember Rawlings seconded the motion, and the motion was approved unanimously, 8-0-0.

12. PLANNING COMMISSION

[from the June 22, 2004, Planning Commission meeting]

- A. **Ordinance No. 2069 approving a Preliminary Site Plan and Preliminary Plat for the Cosmetic Dentistry building, located within Town Center Business Park, south of 115th Street and East of Roe [Roll Call Vote]**

Councilmember Peppes recused himself from the discussion and voting, and left the Council Chambers at 7:45 P.M.

Charles Peters, Peters & Associates, Inc., 9990 College Blvd., Overland Park, opened the discussion on the proposed building at 115th Street and Granada. Councilmember Gullede commented on the how attractive the building was in its design.

Councilmember Taylor confirmed with Mr. Peters that the second story would be occupied with a cosmetic dentistry practice. The first floor was not currently leased but was available for a medical use practice. The parking ratio was confirmed as being within Leawood's guidelines.

Councilmember Rasmussen suggested that that in lieu of paying the Public Art Impact Fee, Mr. Peters supply a piece of artwork similar to the one he provided for Indian Creek Parkway. Mr. Peters advised he did not own the building, but would impart the suggestion to the owner [Dr. Peppes].

Councilmember Gullede made a motion to pass the Ordinance. Councilmember Taylor seconded the motion, and the motion passed 7-0-1, with Councilmember Peppes recusing due to a conflict in interest.

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B. Ordinance No. 2070 rezoning a portion of property from SD-CR [Planned General Retail] to RP-2 [Planned Cluster Detached Residential], approval of Preliminary Plat and Preliminary Plan for Village of Seville, located on the northwest corner of 133rd Street and State Line Road, [Roll Call Vote]

Henry Klover, Klover Architects, 10955 Lowell, Overland Park, presented a request for rezoning of the property located at the northwest corner of 133rd Street and State Line Road.

Councilmember Peppes returned to the Council Chambers at 7:55 P.M.

Mr. Klover stated that the Planning Commission had asked that buildings R-1 and R-2, or, R-2 and R-3, be built. The problem the developer had encountered was that building R-2 did not have a letter of intent to lease; therefore, he was asking for different language to be included into the Ordinance to allow the developer to build either R-1 or R-3, or a percentage thereof, postponing the building of R-2. Mr. Klover advised the north/south berm would be built across the back of the property, and the detention facility would be located in the northwest corner. Improvements would be added to protect the residents to the north and west of the property. Mr. Klover discussed the project's elevation and building materials. He also advised that in Stipulation 20, mention was made of a "no cut" zone [*The applicant/owner shall preserve the existing trees along the north and west property lines of the development by placing them within a no cut tree preservation easement.*] He stated some trees had already been removed, and others needed to be pruned.

Councilmember Rawlings confirmed with Mr. Klover that the hedgerow of trees would be cleaned out, with additional trees being planted and shown on the Final Plan. Councilmember Bussing advised that the neighbors were very concerned about the tree line. He asked that a tree survey be done with Staff to determine which trees would stay and which would be cut, and what would be planted to replace them. Councilmember Bussing confirmed with Mr. Klover that the berm he had mentioned running north/south would be between 12 and 18 feet in height, fully landscaped and irrigated, being built prior to the retail portion of the development being occupied.

Councilmember Bussing discussed the density of the residential units with Diane Binckley. He confirmed with Mr. Klover that the detention pond had been required with the development of the retail portion of the project. They discussed the safety issue concerning the location of the pond and its accessibility to young children in surrounding residential areas.

Councilmember Bussing confirmed with Patty Bennett that the sunset clause in Stipulation No. 34 [*This preliminary plan approval shall lapse in two years, if construction on the project has not begun or if such construction is not being diligently pursued; provided, however, that the developer may request a hearing before the City Council to request an extension of this time period. The City Council may grant such an extension for a definite period of time for good cause shown by the developer*] applied only to the Preliminary Plan, and not to the zoning change.

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Councilmember Taylor confirmed with Mr. Klover that building OP-5 would be a multi-tenant building. The parking ratio for the lot surrounding the retail buildings was 3.9 overall. Mr. Klover advised Councilmember Taylor that the berm would be 10' high. The setbacks for the assisted living building would be 30' on the west side, 40' on the north side, and 75' for the upper level of the building. Ms. Binckley added that the upper level of the assisted living facility was to be pulled back away from the single-family units to lessen the impact the building would make on the neighbors. A discussion ensued on the setbacks required by the Planning Commission and the variances of the setbacks due to prior Ordinances.

Councilmember Filla confirmed with Ms. Binckley that it had not yet been determined if the neighbors were satisfied with the 75' second story setback requirement on the assisted living facility. Councilmember Filla discussed the grading of the project with Joe Johnson, voicing concern about floodwater run-off into adjoining residential lots.

4850 Councilmember Bussing questioned the construction of the detention pond, and how excessive water would be contained without the possibility of overflow. Mr. Klover stated that while it was a civil engineering question, the principle behind the water bank construction would be concrete weirs that would route the excess water for runoff in a planned direction away from residential housing. Councilmember Bussing and Mr. Klover discussed the flow of truck traffic into the retail and assisted living properties.

Councilmember Taylor and Mr. Klover discussed the grade elevation of the berm. Councilmember Taylor confirmed with Ms. Binckley that the setback of 30' was required for the residential units on the west side [with the units conceivably being three stories: a two-story unit with a walk-out basement] while the two-story assisted living facility was required to be set back 40'.

5339 Councilmember Gill asked for the names of the LLC principles to be identified by Mr. Klover. He stated they included Dennis Eskie and David Block. Councilmember Gill stated he would be looking closely at the detention pond at Final Site Plan. He questioned Ms. Binckley about the variances for the setbacks at the assisted living facility on the west side. Ms. Binckley also advised that the trash enclosure would be located at OP-4 on the Preliminary Site Plan. Mayor Dunn confirmed with Ms. Binckley that the deviation for the trash enclosure was outlined in Stipulation No. 10 [*The commercial portion of the development shall meet the required building setback of 125' from all property that is used, planned or proposed to be used for residential*].

5957 Mayor Dunn called on the citizens who had requested to speak on this issue. Brian Jones, 13013 Pembroke Lane, discussed how tree trimming and cleaning along the western edge of the property had already affected the density of the landscape. He asked that the 10' berm be put into place as soon as possible during the commercial construction. He expressed concern over the closeness of the assisted living facility to the neighbors to the west. Councilmember Taylor confirmed with Mr. Jones that he had been aware when he moved into his home five years ago that the property in question had at that time been zoned commercially, and was now proposed to be less dense than it had been previously.

Mark Lindsey, 2301 W. 131st Street, discussed the detention pond. He stated that in the seven-home area at the end of the cul-de-sac just to the west of Village of Seville, 14 children resided who were under the age of 12. He asked that consideration be given to a wrought iron fence surrounding the pond. He also voiced concern over the density of the tree line between the homes and Village of Seville. Councilmember Taylor advised Mr. Lindsey that the developer could place either a wet or dry detention pond on the property. If the pond was only used for detention of run-off water, 90% of the time the safety issue would abate when the water drained off. Mr. Lindsey advised he was satisfied with that.

Grant Arends, 13017 Pembroke, advised he was more concerned about the height than the width of the dividing tree line. He stated that when the trees were removed and replaced with smaller trees, it did nothing to block his view of the development occurring behind his home as he could see over the new treetops. He also expressed concern over the two-story assisted living facility that he felt should be classified as commercial rather than residential. Councilmember Taylor questioned Mr. Arends as to why he would object to a two-story facility when single-family homes directly behind him could be as much as three-stories high. Mr. Arends stated in theory he did not object, but that he would like to see the plans.

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Mr. Klover advised that to place a no-cut provision [referring to the trees] on a property was an unreasonable expectation for a development that needed to clean up its property. It had not been their intention to cut down all of the trees, they were aware of Stipulation No. 20, and that they were willing to work with Staff on this issue. Mr. Klover advised Councilmember Filla that it would not be appropriate to replant trees at the present time, as it was more important to curb possible erosion until later in the project.

Councilmember Bussing stated he would recommend maintaining Stipulation No. 20, with additional language to suggest it was a no-cut zone until the developer and Staff had agreed to a plan for trimming, allowing for neighbor input and agreement. Councilmember Bussing stated "rampant destruction" of trees had taken place on the property that had been unnecessary and had possibly diminished the value of the property to the current owners.

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Councilmember Bussing asked Mr. Klover to state what he was asking specifically concerning the building of the project. Mr. Klover advised a solution would be to be allowed to build a percentage of the project or be allowed to go back to the Planning Commission to work out what would be built on the site. At the present time, the Planning Commission was requiring him to build R-1 and R-2 or R-2 and R-3, and it was not possible to build R-2 at the present time. Ms. Binckley advised the reasoning behind the Stipulation was to have clarification as to how much of the main center would be constructed. She advised the Governing Body would need to amend or clarify any changes agreed upon tonight. Mr. Lambers concurred that the Governing Body would need to stipulate what the new desired requirements would be for the construction. He suggested removing R-2 from Stipulation No. 28 [*No building permit for any construction on pad sites or out lots shall be issued until either buildings R-1 and R-2 or buildings R-2 and R-3, within the principal shopping center, have been approved and construction started...*].

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Councilmember Taylor stated he was still concerned about the setbacks not conforming to the zoning ordinances. He recommended remanding the Preliminary Site Plan back to the Planning Commission.

Councilmember Taylor made a motion to remand the Preliminary Site Plan back to the Planning Commission to address the issues of 1) the detention pond; 2) the 75' setback on the second story of buildings on the west side of the site; 3) the removal of R-2 from Stipulation No. 28; and 4) to suggest a no-cut zone of the trees until the developer and Staff had agreed to a plan for the trimming, allowing for neighbor input and agreement. Councilmember Rasmussen confirmed with Mr. Klover that the developer did not desire a remand to the Planning Commission. Mr. Klover stated the Governing Body's dispute was with the Planning Commission; the developer had agreed to all of the Stipulations requested by the Planning Commission. Councilmember Rasmussen seconded the motion. A vote was taken. Yea: Councilmembers Taylor and Rasmussen. Nay: Councilmembers Bussing, Gullledge, Gill, Rawlings, Filla and Peppes. The motion failed, 2-6-0.

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Councilmember Bussing made a motion to approve the Ordinance with 1) a clarification on Stipulation No. 20 that a plan be made for the trimming of the trees, allowing for neighbor input and agreement; 2) further explanation on Stipulation No. 30 [*The detention pond at the southwest corner of the development shall be owned and maintained in perpetuity by the retail portion of the development.*] at Final Site Plan by the developer as to what the water feature would be and how the safety issue would be addressed; and 3) a language change on Stipulation No. 28, referencing the removal of construction of R-2 and limiting it to either R-1 or R-3. Councilmember Rawlings seconded the motion. A Roll Call vote was taken. The motion was passed unanimously, 8-0-0.

13. OLD BUSINESS - None

12544

14. NEW BUSINESS

- A. Resolution No. 2263 amending Resolution No. 1968, finding as to the advisability and authorizing the construction of improvements to Roe Avenue, Nall Avenue and 137th Street in the vicinity of Briar Street, 137th and 139th Street, located within the City of Leawood, Kansas, pursuant to K.S.A. § 12-16a01 et seq., and accepting a First Amended Benefit District Petition [CIP # 190]**

Councilmember Taylor stated he would recuse due to conflict of interest on Item "14A." Councilmember Rasmussen made a motion to approve the Resolution. Councilmember Bussing seconded the motion, and the motion was approved, 7-0-1, with Councilmember Taylor recusing for reasons stated.

B. Approve Change Order No. 10, in the amount of \$61,999.90, to Walton Construction Company, pertaining to the Cornerstone & Church of the Resurrection Public Improvement Project [CIP # 190]

Councilmember Taylor stated he would recuse due to a conflict of interest on Item "14B," and left the Council Chambers at 9:03 P.M. Councilmember Rasmussen made a motion to approve the Change Order. Councilmember Gullede seconded the motion. Councilmember Gill advised he would vote in favor of the motion, but remained concerned about the process of selecting the developer, of which he had spoken of in previous Council meetings. Councilmember Bussing stated he shared Councilmember Gill's concerns. The motion was approved with a vote of 7-0-1, with Councilmember Taylor recusing for reasons stated.

C. Resolution No. 2264 authorizing the rebuilding and improvement of a certain pedestrian bridge located approximately at College Boulevard and El Monte; providing for issuance of General Obligation Improvement Bonds of the City to pay the costs thereof pursuant to Charter Ordinance No. 33 of the City and for the issuance of Temporary Notes of the City pending the issuance of said Bonds; and expressing the intent to reimburse costs of the project so incurred from proceeds of General Obligation Bonds; and authorizing and improving certain related matters and actions [CIP # 112]

Councilmember Rawlings made a motion to approve the Resolution. Councilmember Bussing seconded the motion.

Councilmember Rasmussen discussed the reasons for replacing the bridge at this time with Mr. Johnson. Mr. Johnson stated the steel bridge had been built in the 1940s and had been maintained until approximately 20 years ago when it was converted from a road bridge to a pedestrian bridge. He advised the cost to maintain it in its present state exceeded the cost to replace it.

The motion was approved, 7-0-1, with Councilmember Taylor absent from the Council Chambers at the time of the vote.

15. OTHER BUSINESS - None

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ADJOURN

There being no further business, the meeting was adjourned at 9:10 P.M.

Debra Harper, City Clerk

Emily Gleasure
Recording Deputy City Clerk

July 19, 2004
City Council Meeting

Mayor's Report:

1. Announced that the Leawood American Revolution Bicentennial Committee CD that was presented in the amount of \$1,000. on July 6, 1976, now has a balance of \$6,959. This gift will be kept on deposit until the year 2076.
2. Attended Grand Opening of the 135th & State Line Commerce Bank.
3. Attended the Leawood Stage Company's production of Annie, jr., presented by the Youth Performance Players.
4. Budget & Finance Committee, along with City Administrator and all Department Heads, spent four consecutive evenings completing work on the 2005 Budget to be approved in August, 2004.
5. Attended retirement party for Training Chief Gary Bottoms recognizing 28 years of service to the Leawood Fire Department.
6. Participated in the National Signature Event, "Heart of America: A Journey Fourth," at Case Park in Kansas City, Missouri, where the Riverfront Heritage Trail and The Corps of Discovery Statue meet. This was the sixth national Lewis & Clark Bicentennial Signature Event in the "Heart of America" along with the dedication of the bi-state Riverfront Heritage Trail.
7. Attended the formal dedication of the newly-finished Leawood Lions Memorial at Leawood City Park. The event included a re-dedication of the bench to Iva Groebe recognizing her as the first woman Lion in Kansas. A Lions Time Capsule was also buried containing memorabilia, pins, awards, a key to the City, etc., in honor of their 50th Anniversary.
8. Received a phone message with special greetings and congratulatory remarks regarding our July 4th holiday from our fiends in the Gezer Region of Israel, Atzmon Yaniv, Council Chairman; Shimon Binoun, Council Manager; and David Leichman, Executive Director of Pinat Shorashim.
9. Enjoyed another fabulous 4th of July celebration sponsored by the Leawood Parks & Recreation Department with the assistance of the Leawood Police, Fire and Public Works Departments.
10. Attended a luncheon sponsored by the Chambers of Commerce in Johnson County's Third Congressional District. Featured speakers included Kris Kobach, Patricia Lightner and Adam Taff...all candidates for the Third District seat.

11. Participated in the “Walk As One” Community Leaders Breakfast announcing the sponsorship partnership of the cities of Kansas City Missouri, and Gladstone, Missouri, along with the Leawood Foundation. The walk will take place on October 3, 2004, and is a fundraiser for the National Conference for Community and Justice. This organization was founded in 1927 and is dedicated to fighting bias, bigotry and racism in America. NCCJ promotes understanding and respect among all races, religions and cultures through advocacy, conflict resolution and education. Former Councilman Pat Dunn was in attendance and plans to sponsor a Leawood team.
12. Met with the new Superintendent of the Blue Valley School District, Tom Trigg.
13. Reminded everyone of the Oxford School Dedication on July 24, 2004; the Parks & Recreation Department ice cream social at Ironwoods Park on the afternoon of July 25; and the Roseanna Vitro concert at Ironwoods Park the evening of July 25.