

Minutes

DVD No. 127

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, August 15, 2005. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Gary Bussing, Lou Rasmussen, Mike Gill, Scott Gullledge, James E. Taylor, Sr., Gregory Peppes, and Debra Filla.

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Diane Binckley, P&D Director
Joe Johnson, Public Works Director
Deb Harper, City Clerk
Karl Weinfurter, IS Specialist

Patty Bennett, City Attorney
Major Craig Hill, Police Department
Chris Claxton, P&R Director
Jim Haynes, Interim Building Official
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn advised that Councilmember Rasmussen will be giving a report under Item No. 9, Councilmember's Report. A motion to approve the agenda was made by Councilmember Peppes, seconded by Councilmember Gill. The agenda was approved with a unanimous vote of 8-0.

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.**

Mary Tearney, 3308 W. 127th Street, Chair of the Leawood Arts Council and advisor to the Leawood Stage Company, extended her gratitude to all who assisted in the recent production of "South Pacific." Mayor Dunn congratulated and led a round of applause for Ms. Tearney and other committee members for the highly successful production.

4. PROCLAMATIONS - None

5. PRESENTATIONS/RECOGNITIONS – None

6. SPECIAL BUSINESS

- A. Ordinance amending the Leawood Building Code, Chapter 4, Article 2, of the Code of the City of Leawood 2000, by adding a new Section 4-217, entitled Storm Protection Area Required [Roll Call Vote]

Public Works Director Joe Johnson explained that as this part of the country is in "tornado alley," Staff felt it appropriate to modify the ordinance to allow for a safe room within structures that do not have basements or storm facilities. Mayor Dunn commented that passage of the ordinance should not be construed as discouragement to include basements within developments as they are the ultimate safeguard in storm protection.

Councilmember Gill asked why the ordinance was confined only to buildings with sleeping facilities as commercial developments are also vulnerable to tornados. City Administrator Scott Lambers recommended consideration for residential properties as a priority as occupants would not have the opportunity to seek alternative shelter during evening tornado events whereas during the day, people are aware of storm conditions and can arrange for protection.

Councilmember Rawlings confirmed with Mr. Johnson that the definition of a safe room per the Federal Emergency Management Agency is a specific reinforced room in the home built to withstand winds of certain strength. There are several materials that can be used in construction of the rooms.

Mayor Dunn inquired about pricing of the proposed structures. Mr. Lambers estimated a cost between \$5,000 to \$7,500 depending on materials and size of the room. He stated that the walls, ceiling, and door will be reinforced.

Councilmember Taylor stated that he was opposed to restricting the modification to residential structures and suggested expanding the requirement to include commercial buildings.

Mr. Lambers suggested future expansion of the ordinance would include commercial structures. He stated that commercial developments may face complications concerning size and location of the rooms and will need to be addressed on a case-by-case basis. He recommended passage for the residential portion of the ordinance and, if Council so desires, preparation of commercial requirements within 60 days.

Councilmember Peppes asked if other communities were posing the same requirements for new developments. Mr. Johnson advised that Lawrence, Kansas has adopted the ordinance and Overland Park is going through the research process. Councilmember Peppes was concerned about how the revision would effect developments already in the planning process. He also inquired if there was a Federal mandate driving the sudden modification request as it is customary to have more background information before making such a change.

Mr. Lambers stated that Item No. 11C on tonight's agenda precipitated the request. With the proposed slab on grade project, inquiries were made as to whether the City had requirements in place for safe rooms. It was revealed that a code exists but has never been adopted. Mr. Lambers explained that passage of ordinances concerning building codes does not affect projects with existing building permits; however, if a permit has not been obtained, then the new code will apply. Mr. Lambers clarified for Councilmember Peppes that if the ordinance passes, Item No. 11C, Cottages of Lakeshyre, will be required to install a safe room or basement in each unit.

Councilmember Gulledge stated that he was ready to make a motion on the matter but would first like to hear citizen comments. Councilmember Rasmussen asked if there had been any input from the Home Builders Association [HBA]]. Mr. Johnson responded that copies of the proposed ordinance had been distributed. There has been no opposition although a few builders have expressed concerns related to the increased costs associated with the requirement.

Councilmember Taylor voiced that more general information is needed before making a decision.

Councilmember Filla clarified with Mr. Lambers that the revision would not affect existing homes built on slab. The ordinance would not be retroactive.

Larry Winn, 6201 College, representative of the Cottages of Lakeshyre, stated concerns related to the proposed ordinance. He questioned if the short notice given was in good public policy, stating that it was uncharacteristic for the City of Leawood. He relayed discussions with the Planning Commission dealing with presenting a safe room design upon final approval, however leave it as an optional feature to the buyer.

Mr. Winn explained that basements were excluded in the homes as they are being marketed to “empty nesters,” who typically have trouble climbing stairs. His communications with homebuilders revealed that they do wish to provide input regarding the matter. He encouraged the Council to gather additional information before making a rushed decision.

Mayor Dunn stated that she has listened to audiotapes of the Planning Commission meetings and acknowledged that Mr. Winn did offer to build rooms. She noted that although it was a new issue for the Council, he has had self-knowledge of the matter for some time. Mr. Winn stated that his client was taken aback by the fact that in a matter of ten days, the safe rooms have gone from “advisable,” as written in the Fire Marshal’s memo, to the ordinance level.

Councilmember Taylor asked if it would be possible to continue the project for 30 days in order for Council to review additional information. Mr. Winn responded that time constraints would prevent the developer from such an agreement.

Councilmember Rasmussen stated he was intrigued with the proposal of offering the safe rooms as an optional feature and asked what specific directions the Council should offer in order to monitor construction. Mr. Winn stated that a uniform design could be submitted after receiving the proper requirements from Staff.

Councilmember Filla inquired about the overall cost of the cottages. Mr. Winn quoted a price range of approximately \$240,000, increasing with additional features.

Councilmember Bussing stated that he appreciated Mr. Winn’s comments, but was not comfortable gambling with public safety issues. Mr. Winn restated that he simply questioned whether the Council had adequate information to make a decision at this time.

Councilmember Gullede moved to approve the ordinance requiring storm protection areas in residential homes without basements. Councilmember Filla seconded the motion.

Councilmember Filla asked if having a common shelter in areas devoid of residential basements would be a feasible alternative to constructing individual safe rooms. Mayor Dunn stated reserve for this suggestion and exemplified a recent tornado in Wyoming that leveled a town with only a five minute warning. Mr. Lambers noted mobile home parks to have this type of requirement.

Councilmember Bussing expressed support for the general concept, however could not support the motion until provided with further information. He voiced his intent to stipulate that future action on the subject be retroactive for the related project. Mayor Dunn reminded the Council that a stipulation would not be necessary at this time as it is only the preliminary site plan and plat.

Councilmember Gill articulated his appreciation to Mr. Lambers for bringing this important issue to light. He was not aware of this hole in the ordinance. He agreed with Mr. Winn that it is a public policy issue and would like to be more informed before making a determination. Councilmember Gill also stated that the commercial component should be added as mass catastrophes can occur and it is the Council's duty to provide safety. He said it would be premature to adopt such an ill-defined ordinance and intended to vote in the negative.

Mayor Dunn stated that Staff would review adding commercial developments to the ordinance. She confirmed with City Attorney Patty Bennett that the non-zoning ordinance will take five affirmative votes to approve.

The motion failed with the following 2-6 roll call vote: Yea: Councilmembers Gullede and Filla. Nay: Councilmembers Peppes, Rawlings, Rasmussen, Taylor, Gill, and Bussing.

Councilmember Bussing moved to extend a decision on the ordinance until September 19th in order to have further research, evaluation, and consideration of the revision with the inclusion of commercial development.

Councilmember Rasmussen stated the ordinance should be consistent in terms of where the safe room should be located and suggested obtaining recommendations from the Homebuilders Association.

The motion carried with a unanimous vote of 8-0.

- B. Resolution No. 2451 approving requests for Special Meetings regarding bidding on pieces of Public Art at auction

Mr. Lambers stated the resolution was requested by the Leawood Arts Council. He explained that if notification is received through an auction on artwork that the City may wish to acquire, the Arts Council will meet with the Planning Commission and identify a site for the piece. Authorization for a certain range of funds will then be requested from the Council. He informed that the resolution is applicable for auctions only and will not supplant the typical call for artist's process currently in place.

Councilmember Rasmussen confirmed with Mr. Lambers that depictions of the desired items will be available at the time of Council approval. Council will also have control of the maximum amount being offered at auction.

Councilmember Bussing, Council liaison to the Arts Council, commented that buying from auction would not be a routine activity but a rare occurrence. He commended Mr. Lambers for creating a process within the requested guidelines which also provides the required checks and balances.

Ms. Tearney stated that a selection panel will continue to be part of the process. She corroborated Councilmember Bussing's statement that bidding requests will be infrequent.

Councilmember Rasmussen moved for approval, seconded by Councilmember Bussing. The motion carried with a unanimous vote of 8-0.

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. 1031B, 1032A
- B. Accept minutes of the August 1, 2005 Governing Body meeting
- C. Accept minutes of the June 23, 2005 IRONHORSE Advisory Board meeting
- D. Resolution No. 2452 adopting the Fiscal Year 2006 Budget for the City of Leawood
- E. Certification of 2nd Revised Costs for improvements to the intersection of 135th Street and Roe Avenue, [CIP # 194]

- F. Certification of 2nd Revised Costs for 119th Street & Mission Road Intersection Improvement Project [CIP # 159]
- G. Approve Change Order No. 2 in the amount of \$15,334.95 to O'Donnell & Sons Construction pertaining to the 135th & Briar Public Improvement Project [CIP # 193]
- H. Approve Change Order No 3 in the amount of \$7,747.95 to O'Donnell & Sons Construction pertaining to the Roe Avenue Improvement Project [between 135th & 137th Street] [CIP # 194]
- I. Approve Change Order No. 2 in the amount of \$25,831.92 to O'Donnell & Sons Construction pertaining to the Parkway Plaza Benefit District Project, located at 135th & Roe [CIP # 195]
- J. Approve Change Order No. 1 in the amount of \$6,519.00 to the City of Overland Park, pertaining to the 119th Street Improvement Project [between Nall and Roe] [2004 CARS Program]
- K. Resolution No. 2453 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the Board of Johnson County Commissioners pertaining to the Type II Basic Life Support Program [Med-Act]
- L. Police Department Monthly Report
- M. Fire Department Monthly Report
- N. Municipal Court Monthly Report

Mayor Dunn noted that minor technical corrections had been made to item No. 7B. Councilmember Taylor requested to pull item Nos. 7E, 7G, and 7H in order to recuse. Councilmember Bussing pulled item Nos. 7K and 7L for discussion.

Councilmember Bussing moved to approve the remainder of the Consent Agenda, seconded by Councilmember Gulledge. The motion carried following a unanimous vote of 8-0.

- 7E. Certification of 2nd Revised Costs for improvements to the intersection of 135th Street and Roe Avenue, [CIP # 194]

Councilmember Gulledge moved for approval, seconded by Councilmember Peppes. The motion carried with a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 7G. Approve Change Order No. 2 in the amount of \$15,334.95 to O'Donnell & Sons Construction pertaining to the 135th & Briar Public Improvement Project [CIP # 193]

Councilmember Gulledge moved for approval, seconded by Councilmember Bussing. The motion was approved following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 7H. Approve Change Order No 3 in the amount of \$7,747.95 to O'Donnell & Sons Construction pertaining to the Roe Avenue Improvement Project [between 135th & 137th Street] [CIP # 194]

Councilmember Rawlings moved for approval, seconded by Councilmember Bussing. The motion carried following a unanimous vote of 7-0 (Councilmember Taylor recusing).

- 7K. Resolution No. 2453 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the Board of Johnson County Commissioners pertaining to the Type II Basic Life Support Program [Med-Act]

Councilmember Bussing expressed appreciation to Chief Florance and Staff for working on the proposal as it will be a great improvement for the City. Councilmember Bussing moved for approval, seconded by Councilmember Taylor. Mayor Dunn noted that this change will alleviate the current response time delay for the ALS unit and also provide BLT Type II transport capability. The motion was approved with a unanimous vote of 8-0.

- 7L. Police Department Monthly Report

Councilmember Bussing extended congratulations to Major Hill and members of the Police Department for another great monthly report with the only increase being the apprehension of individuals driving under the influence and in possession of drugs. He then moved to approve the item with a second by Councilmember Gullede. The motion carried with a unanimous vote of 8-0.

City Clerk Deb Harper informed the Council of a document related to Item 7D, a certificate from the County, requiring their signatures as they were participants in the Budget preparation. She requested that it be signed and returned this evening.

8. MAYOR'S REPORT

- A. Announced the arrival of a new grandson for Councilmember Rawlings. Reece Taylor Rawlings was born on August 10th, 2005. The baby weighed 6 lbs., 12 oz. and measured 18 ½ inches long.
- B. Reminder for the Police Department's Annual Open House in conjunction with the Police Community Partnership on Wednesday, August 24th, from 5:00 P.M. to 8:00 P.M.
- C. Reminder that the next City Council meeting will take place on Tuesday, September 6th, due to the Labor Day Holiday.
- D. Reminder for the Kansas City Ballet performance at Ironwoods Park Amphitheater on Thursday, September 8th, at 6:00 P.M. There will be no admission charge for the event.

9. COUNCILMEMBERS' REPORT

A. Councilmember Rasmussen – Councilmember Rasmussen provided an update on efforts to reduce noise levels on I-435. He listed the following as potential solutions:

1. Change the existing sound barriers. It is possible that current noise levels exceed Federal limitations and should be reevaluated by the State.
2. Add sound barriers to the south side of I-435.
3. Change the pavement on I-435 to include Astro-turfing, which is a type of concrete surfacing used in northern states to reduce noise levels.

Councilmember Rasmussen informed that the Kansas Department of Transportation [KDOT] has a policy in which they will not consider highway improvements, such as the three mentioned, until reconstruction takes place. This issue may need to be discussed with our legislators. Councilmember Rasmussen moved to refer these issues to the Public Works Committee for review, evaluation, and recommendation back to the Governing Body. Councilmember Filla provided a second for the motion. The motion was approved following a unanimous vote of 8-0.

Mayor Dunn noted that KDOT is in the process of installing new sound barriers in Overland Park and is \$1,000,000 over-budget and nine months behind schedule.

10. STAFF REPORT – None

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the July 12, 2005 Planning Commission meeting]

A. Ordinance No. 2123 approving a rezoning from AG, Agriculture, to SD-NCR, Planned Neighborhood Retail, Preliminary Site Plan and Preliminary Plat for Mission Corner located south of 135th Street and east of Mission Road [Roll Call Vote]

Henry Klover of Klover Architects presented site plan designs and elevations for the Mission Corner development.

Councilmember Rawlings confirmed with Mr. Klover that the office structures were originally planned as three stories but have now been reduced to two stories.

Councilmember Rasmussen moved to approve the rezoning request, seconded by Councilmember Filla.

Councilmember Bussing noted that the 135th Street Corridor Plan requires developments to be pedestrian friendly. He stated that the design did not appear to meet this requirement. Mr. Klover responded that traffic from the major arterials prevents the development from being designed as a typical urban downtown street. He stated that the plan is sensitive to pedestrians and has met with Staff approval.

Councilmember Bussing stated further disagreement on the issue. He asked if consideration was given to massing the structures rather than having numerous pad sites in order to be more compliant with bulk control guidelines. Mr. Klover said that the site was determined too small for this type of design as other guidelines would then be violated.

Councilmember Bussing confirmed with Planning and Development Director Diane Binckley that there is a signed agreement from the applicant regarding the 135th Street Development Plan. He voiced concern with the numerous deviation requests associated with the project.

Councilmember Gill stated that the project was interesting, however announced disappointment with Klover Architects as the design was of lesser quality than their previous works. He said the retail buildings had a sub-mediocre, garden variety, pad site look. The interesting aspect is the office building portion of the development. He suggested a remand in order for Staff to review the 135th Street Development Plan guidelines and refocus energy into the retail building designs. Councilmember Gill posed several other questions related to the theme of the development, intentions for fast-food restaurants, and the water retention area.

Mr. Winn, representative of the applicant, addressed Councilmember Gill's concerns. He assured that the retail and restaurant structures were substantial buildings with square footages of between 7,000 and 19,000 rather than the typical fast-food type of pad site. The development will be unique for the 135th Street area in terms of architectural quality. He stated that the plan has been discussed in detail with the Planning Commission and traffic related improvements are being discussed with Staff.

Referencing another plan which had significant changes from preliminary to final approval, Mayor Dunn asked if the design would be altered when tenants were obtained. Mr. Winn confirmed that building A would be a signature restaurant. He stated only a few occupants were known at this time and pointed out that Mission Corner is in competition with developments to the west and northwest, including Councilmember Taylor's project. He predicted high-end tenants due to pricing and costs of construction. Mr. Winn stated that if the final development plan varied materially from preliminary, the need for a revised preliminary plan would be anticipated.

Councilmember Taylor confirmed with Ms. Binckley that a trail will continue on the south side of 137th Street. Ms. Binckley verified the center of 137th Street to be the existing property line for Rick Oddo's development to the south. Councilmember Taylor asked if traffic improvements were conditioned to surrounding developments in the event that the proposed project does not go forward in a timely manner. Mr. Johnson answered there are no conditions at this time.

Councilmember Taylor asked Mr. Klover to describe the features of the detention pond. Mr. Klover stated it is designed to be a sloped basin with a total area of 33,000 square feet. A rock retaining wall is being considered for the east and west edges to allow for seating areas. Rectangular and organic shapes have both been recommended for the pond.

Mr. Klover stated that he has designed shopping centers all over the United States and in the District of Columbia. He offered to show the Council site plans and renderings from other locations as suggestions for this project. Mr. Klover informed that most of the designs could not be done in Leawood, however, as the strict building ordinances tend to stifle creativity.

Councilmember Taylor verified with Ms. Binckley that a parking variance is not being requested. There are 720 parking spaces provided for the entire site with a required range of 554 to 723 spaces.

Mr. Winn reminded the Council that improvements will be made upon final planning with direction from Staff and when tenants are known. He requested approval of the proposed preliminary plan.

Mayor Dunn noted that Stipulation Nos. 16, 17, and 18 provide for pedestrian amenities.

Mr. Lambers advised that Council expects substantial compliance when approving a preliminary plan. Significant desired changes such as those expressed by Councilmembers Gill and Bussing concerning pedestrian areas will not occur unless remanded with specific directives. The applicant should understand that buildings shown on preliminary should not possess major modifications at final approval.

Councilmember Bussing stated that he could not support the motion and read the following portion of the 135th Street Corridor Guidelines regarding the definition of Market Square into the record: "The neighborhood mixed use district will be developed to prevent strip commercial land uses. Secondly, such a district can create an amenity for the surrounding residential neighborhoods. The district will be composed of small scale retail, office, and institutional uses. Retail stores will be limited to 30% of the developments total square footage and integrated into the same structure along with office uses to ensure that the neighborhood mixed uses are not dominated by retail land uses. The district will be a highly pedestrian environment and will tie into the pedestrian circulation system established along the north and south edges of the corridor. The consumer market for the neighborhood district will be provided by surrounding neighborhood residents, office workers along the corridor, and residents of the continuing care retirement community."

Councilmember Bussing stated he would not support the proposed plan as it did not meet these guidelines.

Councilmember Gill expressed interest in Mr. Klover's offer to view site plans from other locations. He also stated that he would not support the motion to approve the current plan. Mayor Dunn voiced concern with allowing Mr. Klover to be more creative by disregarding the rules and regulations for this site as the same would have to be done for future sites. Councilmember Gill stated that he merely wished to see how constraints hindered the design capabilities for this site. Mr. Lambers relayed that Mr. Klover's intentions were not to change the rules but rather to request the appropriate deviations for concepts that the Council would like to see in keeping with the 135th Street Corridor Guidelines. The issue would be to allow creativity with the understanding that deviations will be required.

Regarding the pond, Mr. Lambers stated that both he and Ms. Binckley preferred the meandering approach rather than a rectangular shape. Given the fact that the office buildings were clearly rectangular, a meandering design would soften the look of the development.

Councilmember Bussing clarified for Mayor Dunn that he was not opposed to deviation requests, however felt the current design was inconsistent with the 135th Street Corridor Guidelines. He applauded Mr. Klover for offering to bring something different to the table.

Councilmember Rawlings requested to hear a brief description of Mr. Klover's ideas. Mr. Winn suggested voting on the current motion before going into this type of discussion. He also stated that if a remand occurs, clear and careful direction should to be given in order for the applicant to meet Council's expectations.

Councilmember Gill made clear that his position runs parallel with Councilmember Bussing's devotion to stay within the written guidelines for the K-150 Corridor Study. He stated that his primary objection was the proliferation of pad sites.

Mayor Dunn inquired if changing the detention basin to a shape other than rectangular would be considered an override of the Planning Commission's recommendations. Mr. Lambers advised that a supermajority vote is needed excluding the pond issue due to traffic concerns identified at the Planning Commission level that have since been worked out at the Staff level, per City Engineer David Ley's memorandum. Mr. Winn disagreed with the need for a supermajority vote as it was agreed upon at the Planning Commission meeting to amend the recommendations according to additional information provided by Mr. Ley.

Mayor Dunn pointed out a gray area concerning traffic on page 7 of the Staff Report which states, "The applicant has submitted a traffic study by Olsson Associates that is currently under review by the Public Works Department consultant." She confirmed with Mr. Winn that the new recommended stipulation is to retain the ingress/egress on Mission Road.

City Attorney Patty Bennett advised that if the memorandum was not a material item in the Planning Commission's stipulations, a supermajority is not needed. Regarding reshaping the pond, Mayor Dunn reported wording from Stipulation No. 25 to include, "prior to final site plan application, the applicant shall redesign the retention pond." Mr. Winn recalled that it was agreed upon to change this feature as a majority of Planning Commission members did not want the rectangular shape. Ms. Bennett concurred that only a simple-majority vote would be necessary as the stipulation broadly covered redesigning the pond.

The ordinance passed with the following roll call vote: Yea: Councilmembers Filla, Peppes, Rasmussen, and Rawlings. Nay: Councilmembers Gulledge, Gill, and Bussing. Abstain: Councilmember Taylor. Mayor Dunn stated she votes in the affirmative, making the total vote 5-3-1.

Mr. Klover reoffered to present design concepts to the Council at their discretion.

Mayor Dunn asked Councilmember Taylor to state justification for his abstention. Councilmember Taylor stated that prior comments from Mr. Winn regarding his involvement with the development to the west of Mission Corner prompted the decision to abstain. He did not feel it was appropriate to make a judgment call on the proposed project. Mr. Winn stated appreciation for Councilmember Taylor's decision.

Councilmember Gulledge stated that recusals should be made prior to discussion not after questioning the applicant and coming to the vote. Councilmember Taylor responded that he would not have taken this action if it were not for Mr. Winn's specific comment; however, as a councilmember, he felt it necessary to state his input.

[from the July 26, 2005 Planning Commission meeting]

- B. Ordinance No. 2124 approving a Special Use Permit for LeaBrooke - Temporary Sales Office/Parking area located on the southeast corner of 145th Street and Norwood [Roll Call Vote]

Councilmember Gill moved for approval, seconded by Councilmember Rawlings. The ordinance was passed with the following roll call vote of 8-0: Yea: Councilmembers Peppes, Rasmussen, Taylor, Gulledge, Filla, Gill, Rawlings, and Bussing. Nay: None.

- C. Ordinance No. 2125 approving a Preliminary Site Plan and Preliminary Plat for Cottages of Lakeshyre [Reveda of Leawood] located north of 133rd Street and west of State Line Road [Roll Call Vote]

Councilmember Rasmussen moved for approval, seconded by Councilmember Taylor.

Larry Winn, representative, introduced applicant Richard Eisner. Mr. Eisner gave a brief presentation of the project. He stated the detached homes were painstakingly designed to meet the needs of “empty-nesters” with no steps, open accessibility, and lawn maintenance provided. Most of the garages are side entry with only a few facing the street. Mr. Winn added that the primary item discussed at the Planning Commission meeting was the need to increase the water height of the retention basin in order to make it visible to passersby. This has been redesigned to bring the water level up by two feet.

Mayor Dunn inquired the reasoning of having a pull-down attic for storage when it was revealed during the safe room discussion that basements were omitted in order to eliminate stairs. She asked how much more it would cost to build basements in the homes. Mr. Eisner explained that the homes have enormous amounts of storage space excluding the attic. He admitted there would be a cost issue associated with adding basements, however the targeted market does not have a need for this amenity.

Councilmember Bussing commended Mr. Eisner for envisioning an empty-nester village for Leawood. He confirmed with Mr. Eisner that a fountain will be placed in the retention pond. Councilmember Bussing recognized that the project density is within the guidelines of the Leawood Development Ordinance [LDO], however suggested reducing the 36 units to 32 units in order to allow more spacing and make the side yard setback deviation request unnecessary.

Councilmember Bussing also stated concern with the basement issue as he has had personal experience with tornados in which a basement was a lifesaving structure. With respect to Mr. Eisner’s market research, he was skeptical that adding basements would ruin the market place and felt it prudent to include them as a public safety issue.

Mr. Winn reported that the project falls within the mid-range of density levels of 4.8 units per acre with upper levels at 7 units per acre. He stated that if Council requires safe rooms to be mandated, the developer will comply even though they were not happy with the way the request was handled. Mr. Lambers responded that the issue came up during plan review and it is his obligation to bring public safety matters to the attention of the Governing Body. He stated the option of requesting a continuance would be unfair to the developer. Mr. Winn restated agreement to comply with the new code if it is present at the time of building permit.

Councilmember Gill confirmed with Mr. Eisner that the estimated cost to include a basement is \$25,000 per unit. In addition, there are no discovered subsoil issues that would dictate something other than a basement. Ms. Binckley informed Councilmember Gill that potential soil contamination rumors are associated with an area used for oil storage on the southern end of the 80 acres.

Councilmember Gill confirmed with Ms. Binckley that the retention basin is adjacent to existing residential property. This tract is owned by another developer and was previously approved as part of a commercial site. Through an agreement with Mr. Eisner and the commercial property owner, the pond will retain the water of and be maintained by the commercial development. Ms. Binckley verified that topography determined placement of the retention basin as it is the lowest point on the property. She stated that she has not received any phone calls from the adjacent residents, who were notified as part of the Interact meetings.

Councilmember Gill stated that he did not recall ever reviewing a past request for residential property without basements. He inquired as to how the existing stock of surrounding neighborhoods would be affected by building less expensive forms of structure. He stated there is an obligation to protect the property value of surrounding residents. Councilmember Gill also entertained the scenario of young families moving into the village as generations pass in order to afford their children attending the excellent school system in Leawood, even though it is not currently targeted for this use. He requested to hear input from other councilmembers.

Leawood resident Joanne Farris, 12894 Cambridge Court, requested to speak on the matter. She stated that her home abuts the proposed development and she has attended all of the meetings associated with the project. She claimed this design to be the best versus several other failed projects for this location and is in favor of the plan.

Mr. Winn described the surrounding land uses to The Cottages of Lakeshyre as town homes to the north, retail to the east, and potential retail to the south. He stated this is not a classic R-1 site but rather a transition area. The current project has decreased in density compared to other proposed plans for the site.

Councilmember Gulledge confirmed agreement to the proposed storm protection area concept with Mr. Winn. Mr. Winn expressed hope that the safe room design be a collaborative effort between the Council, Staff, applicant, and homebuilders. Councilmember Gulledge verified with Mr. Eisner that the homes ranged from 1,560 to 2,300 square feet. The estimated basement cost of \$25,000 seemed high to Councilmember Gulledge, who stated that basements for a footprint of 1,500 square feet were recently priced at \$10,000 to \$13,000. This indicates a very little cost differential between a basement and a safe room. Councilmember Gulledge stated that the target market may not materialize and other buyers may desire a basement. With the unknown market and low cost differential, he voiced that it would be better from a safety standpoint to build the basements.

Mr. Winn advised that the applicant could not commit to the basement feature at this time. He reported there were two developments in Leawood with slab on grade structures. Ms. Binckley confirmed this to be true and cited locations and dates of development.

Councilmember Gill asked how the residential stock in these areas compared to the rest of the City, however Ms. Binckley did not have this information. She stated these developments were also based on a retirement community concept.

Mr. Winn discussed the current changes in housing stock. He stated there is a tremendous new demand for town homes, condominiums, and villas which should be recognized.

Councilmember Filla confirmed with Mr. Eisner that the cottages will be handicap accessible. She appreciated the fact that the project will provide diversity to the community's housing stock. The fact that there are no basements will make the homes affordable for the empty-nesters. She complimented the design of the shared driveways with side entry garages. Councilmember Filla suggested a connecting underground path to a shared shelter as a point of consideration.

Councilmember Taylor confirmed with Ms. Binckley that the Council has seen this site before as it is a revised preliminary plan for a nursing home facility. Councilmember Taylor recalled that the nursing home was to house 100 beds.

Councilmember Rawlings agreed with Mr. Winn's comments that housing demands are changing. To limit costs, he suggested including a half-basement to double as utility storage and a storm protection area. Mr. Winn responded that costs would have to be weighed before determining the best course of action. He requested to defer the discussion until the final planning phase.

Mayor Dunn and Mr. Winn discussed the pros and cons of including basements in the homes.

Councilmember Filla commented that as the homes are being built as handicap accessible, stairs leading to a basement are not going to be preferred over a safe room for someone in a wheelchair. She stated that flexibility should be provided for the tenant.

Mr. Lambers confirmed for Mayor Dunn and agreed with Councilmember Rasmussen that there is no need for the motion to address the safe room issue as action on the code modification will most likely take place prior to the issuance of a building permit. Mr. Winn assured Mayor Dunn that cost analysis for basements, half-basements, and safe rooms will take place following approval of the preliminary plan.

The ordinance was passed with the following roll call vote of 7-1: Yea: Councilmembers Taylor, Gill, Filla, Rasmussen, Peppes, Rawlings, and Gullede. Nay: Councilmember Bussing.

Councilmember Bussing stated his negative vote related to concerns with the basement issue, however he did agree with Ms. Farris that this is the best project seen for this tract of land.

Councilmember Gill warned that the project will face his scrutiny if the decision is made not to include basements. He informed of his intention to request a full economic analysis for future projects lacking basements.

- D. Ordinance No. 2126 approving a Preliminary Site Plan for Bi-State - Speculative Office/Storage Building located south of 143rd Street and west of Overbrook Road, within Bi-State Business Park [Roll Call Vote]

David DeHaemers, property owner, and Brian Dostal, architect, presented the project to the Governing Body. Mayor Dunn complimented Mr. DeHaemers' artist brother, Matt DeHaemers, on the art piece, "Embrace," which adorns the lobby of City Hall.

Mr. Dostal explained that the presence of a high pressure gas line along the west side of the site precipitated the need for a 60-foot setback. This setback has dictated landscaping, utility line placement, and parking area placement. Elevations and renderings of the proposed building were displayed.

Councilmember Gill complimented Mr. Dostal on his work. He confirmed with Mr. DeHaemers that tenants for the building are speculative at this time.

Councilmember Gullede moved for approval, seconded by Councilmember Rawlings.

Referencing a section of Stipulation No. 4, Councilmember Rasmussen confirmed with Mr. Lambers that the applicant could either place a three phase power line underground with terminal poles at each end of the property, "or pay the estimated amount determined by KCP&L in an escrow account." Councilmember Rasmussen asked for clarification of what the estimate would be based on and how long the escrow amount would remain with the City.

Mr. Lambers stated that escrow accounts are created with reasonable expectation that improvements will be done. Acceptance of the escrow account will be made only if there is a comfortable sense that improvements will be needed within 15-20 years. Mr. Lambers stated that he would be uneasy with anything beyond 20 years. For this specific project, the escrow account would be more cost effective to the applicant. Mr. Lambers said it is his understanding that the underground improvements on Kenneth Road will occur with estimates provided by KCP&L.

Mr. DeHaemers reported that KCP&L is not enthusiastic about placing 180 feet of underground lines for the project as there are numerous overhead lines in the surrounding area. They have given an estimate of \$130 per linear foot. Mr. DeHaemers stated the escrow option was more suitable than being responsible for placement of the lines. Mr. Lambers reiterated that assurance of the improvement occurring within 15-20 years will be received before accepting the escrow.

The motion was approved with the following unanimous roll call vote of 8-0: Yea: Councilmembers Rasmussen, Peppes, Rawlings, Gullede, Bussing, Filla, Gill, and Taylor. Nay: None.

12. OLD BUSINESS – None

13. NEW BUSINESS

- A. Schedule a Governing Body Executive Session at 6:30 P.M., on Tuesday, September 6, 2005, to discuss a personnel matter; City Administrator's 6-month review

Councilmember Rawlings moved for approval, seconded by Councilmember Bussing. The motion carried following a unanimous vote of 8-0.

- B. **Resolution No. 2454** finding as to the advisability and authorizing the construction of improvements to the south side of 135th Street between Roe Avenue and Fontana Street, construction of 137th Street between Roe Avenue and Mission Road, construction of Fontana between 135th and 137th Streets and construction of improvements to the east side of Roe Avenue between 135th Street and 137th Street, within the City of Leawood, Kansas, and accepting a First Amended Petition for Improvement District pursuant to K.S.A. § 12-6a01 et seq., and repealing Resolution No. 2428. [Villaggio Development] [CIP # 197]

Councilmember Taylor stated that he would be recusing from this item and left the Council Chambers. Councilmember Bussing moved for approval, seconded by Councilmember Gullledge. The resolution was approved following a unanimous vote of 7-0 (Councilmember Taylor recusing).

14. OTHER BUSINESS - None

ADJOURN

The Governing Body meeting adjourned at 10:15 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk