

**Minutes**

DVD No. 171

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 Tuesday, September 4, 2007. Mayor Peggy Dunn presided.

**Councilmembers present:** Lou Rasmussen, Gary Bussing, Gregory Peppes, Jim Rawlings, Debra Filla, James Azeltine, and Mike Gill.

**Mayor/Councilmembers absent:** Scott Gulledege.

**Staff present:**

Patty Bennett, City Attorney	Chief Ben Florance, Fire Department
Captain Dale Finger, Police Department	Kathy Rogers, Finance Director
Joe Johnson, Public Works Director	Chris Claxton, P&R Director
Mark Klein, Asst. to the Planning Director	Jeff Joseph, Senior Planner
Deb Harper, City Clerk	Christy Wise, Deputy City Clerk
Mark Andrasik, IS Director	

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted an amended agenda with the relocation of Item No. 6F to Consent Agenda Item No. 7O and changes made to Item No. 7N. Additional information has been placed upon the dais concerning Item Nos. 6A-D and 14A. The agenda will also include a report from Councilmember Rasmussen as Item No. 9A. A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Peppes. 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. Ordinance No. 2260 authorizing the issuance and delivery of \$7,040,000 principal amount of General Obligation Improvement Bonds, Series 2007-A, of the City of Leawood, Kansas; providing for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the Bonds as they become due; and making certain covenants with respect thereto [Roll Call Vote]

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

- B. Resolution No. 2868 prescribing the form and details of and authorizing the delivery of \$7,040,000 principal amount of General Obligation Improvement Bonds, Series 2007-A, of the City of Leawood, Kansas, authorized by Ordinance No. 2260, of the City; providing certain covenants and agreements with respect thereto; and providing for execution of certain agreements in connection therewith

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

- C. Ordinance No. 2261 authorizing and providing for the issuance and delivery of \$29,375,000 principal amount of General Obligation Temporary Notes of the City of Leawood, Kansas, to provide funds to finance the cost of certain public improvement projects within the city; and making certain covenants with respect thereto [Roll Call Vote]

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

- D. Resolution No. 2869 authorizing the issuance and delivery of \$29,375,000 principal amount of General Obligation Temporary Notes of the City of Leawood, Kansas, for the purpose of financing a portion of the costs of certain public improvements in the City; and prescribing the terms and details of said notes and certain covenants and agreements with respect thereto

A motion to approve Item No. 6D was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The resolution was approved following a unanimous vote of 7-0.

- E. Resolution No. 2870 adopting Findings of Fact and Conclusions of Law for 5-year Special Use Permit [SUP] issued to Sprint for the placement of a Sprint Wireless Communication Tower [monopine] located at the Leawood South Country Club, 12700 Overbrook Road, subject to conditions and stipulations in Ordinance No. 2259 approving such tower

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Gill. The resolution was approved following a vote of 5-2 (Nay: Councilmembers Rasmussen and Bussing for reasons previously stated on the evening of discussion.)

City Attorney Patty Bennett confirmed that only a simple-majority vote is needed to adopt the document, which is independent of the decision to grant the SUP.

## 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. 1085A and 1085B
- B. Accept Minutes of the August 20, 2007 Governing Body meeting
- C. Accept Minutes of the August 6, 2007 Governing Body Work Session meeting
- D. Accept Minutes of the July 20, 2007 Stormwater Management Committee meeting
- E. Approve renewal of Retail Liquor Store License for Ranchmart Wine & Spirits, located at 3748 W. 95<sup>th</sup> Street
- F. Appointment of delegates to 2007 League of Kansas Municipalities [LKM] 99<sup>th</sup> Annual Conference in Overland Park, KS, October 6-9, 2007
- G. Approve issuance of Temporary Alcohol Permit to sell/serve alcoholic liquor for 'A Night of Beauty,' to be held at 5000 W. 119<sup>th</sup> Street [Macy's] on October 11, 2007
- H. Approve Change Order No. 2, in the amount of \$14,707.52 to Dennis Johnson Construction, pertaining to the SMAC project # NC-04-001; IRONHORSE Golf Club Stormwater Project [# 73001]
- I. Resolution No. 2871 accepting a Permanent Sidewalk Easement from Hallbrook Office Center, LLC for the purposes of a sidewalk along College Boulevard (west of State Line Road)
- J. Resolution No. 2872 approving the 2008 Human Service Recommendation Report [United Community Services-USC] and the City of Leawood's participation for an amount not to exceed \$9,500.00
- K. Resolution No. 2873 approving the Johnson County Drug and Alcoholism Council [DAC] recommendation for allocations of the 2008 Alcohol Tax Fund for an amount not to exceed \$100,000
- L. Resolution No. 2874 waiving the bidding process, in accordance with Charter Ordinance No. 32, pertaining to the Public Art Piece located at Somerset and Lee Boulevard in Prairie Village and Leawood, Kansas, known as 'Porch Lights'

- M. Resolution No. 2875 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$101,300 between the City and Taylor-Kelly, pertaining to the Public Art Piece located at Somerset and Lee Boulevard in Prairie Village and Leawood, Kansas, known as 'Porch Lights'
- N. Resolution No. 2876 approving and authorizing the Mayor to execute an Architectural Agreement in the amount of \$91,650, between the City and Ball Design, pertaining to the design of Gezer Park located at 133rd and Mission Road
- O. Approval of a 9-month extension to March 6, 2008, for Preliminary Plan and Plat for the northwest corner of 135<sup>th</sup> Street and Mission Road

Mayor Dunn pulled Item No. 7L for discussion and Councilmember Gill requested to pull Item No. 7O. On motion of Councilmember Rasmussen, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 7-0.

- 7L. Resolution No. 2874 waiving the bidding process, in accordance with Charter Ordinance No. 32, pertaining to the Public Art Piece located at Somerset and Lee Boulevard in Prairie Village and Leawood, Kansas, known as 'Porch Lights'

Mayor Dunn requested explanation for the following statement in Section One of the resolution: "it will be in the best interest of the City to waive the bidding process." Parks & Recreation Director Chris Claxton stated the public art piece has been undergoing the design process for over one year. The Art in Public Places Initiative [APPI], subcommittee of the Leawood Arts Council, felt it important that the designer, Dennis Reynolds of Ladco Development, also oversee the construction of the artwork by subsidiary Taylor-Kelly.

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

Dennis Reynolds, 9800 Overbrook Road, informed Mayor Dunn that the project will begin as soon as possible. The goal is to achieve completion by December, weather permitting.

The motion carried following a unanimous vote of 7-0.

- 7O. Approval of a 9-month extension to March 6, 2008, for Preliminary Plan and Plat for the northwest corner of 135<sup>th</sup> Street and Mission Road

Mayor Dunn noted that this item was formerly listed as No. 6F on the pre-amended agenda.

Senior Planner Jeff Joseph verified for Councilmember Gill that approval of the extension pertains to the preliminary plan approved in 2005, which did not include a car dealership on this site.

A motion to approve the extension was made by Councilmember Gill; seconded by Councilmember Peppes.

Ms. Bennett informed Councilmember Azeltine that the item was moved because it was pointed out that the agenda request from City Administrator Scott Lambers specified that the item should be placed upon the Consent Agenda, thus the agenda was amended. Councilmember Azeltine advised against this type of last minute Consent Agenda changes in the future as the practice can cause items to be easily overlooked.

Mr. Joseph stated the packet information consisting of an e-mail dated August 27<sup>th</sup> from Attorney Larry Winn requesting the extension is in error when referring to the year of the approved plan as 2000. The correct year is 2005. Councilmember Azeltine relayed that constituents residing in the vicinity of the preliminary plan were surprised at the short notice given when the extension was placed upon the August 28<sup>th</sup> Planning Commission agenda. He stated it is inappropriate to place such items on the agenda only one day following the developer's request as it is not in line with keeping citizens informed. For future reference, he requested that notice for all agenda items be given at least one week prior to Planning Commission meetings. Mayor Dunn clarified that she is not involved with placing items upon any of the agendas.

Ms. Bennett corrected that this item did not appear on the August 28<sup>th</sup> Planning Commission agenda; however, the case for preliminary plan approval of two office buildings north of 133<sup>rd</sup> Street was heard. Councilmember Azeltine remarked that the two items are related as they are part of the same overall development. He restated that an attempt should be made at better communication efforts.

Mr. Joseph confirmed for Councilmember Azeltine that the approved preliminary plan expired on June 6, 2007. Mayor Dunn advised that it is at the Governing Body's discretion to grant extensions if there has been progress made with the plan. She understands that there is activity on the site. Mr. Joseph informed that the referenced office buildings received approval from the Planning Commission last week.

Councilmember Azeltine questioned the legality of granting an extension for a plan that has already expired. Ms. Bennett stated this depends upon the terms of the original stipulation, which she has not viewed in this case. Based upon this information, Councilmember Azeltine voiced intent to vote against the extension request.

Councilmember Gill withdrew his motion to approve the item and Councilmember Peppes withdrew his second to the motion.

Mayor Dunn restated that the Leawood Development Ordinance allows the applicant to request an extension within the five year timeframe given for final planning with the condition of there being activity upon the overall development site. Approval of the office building is planned to appear on the October 1<sup>st</sup> agenda as well. If approved, the extension will be retroactive to the June 6, 2007, expiration date.

A motion to continue Item No. 70 to the October 1, 2007, Governing Body meeting with an analysis of alternative actions provided was made by Councilmember Gill; seconded by Councilmember Bussing.

To Councilmember Peppes' hypothetical inquiry regarding the consequences of denying the extension request while approving the upcoming preliminary plan for the office building, Mayor Dunn stated it is her opinion that spot-planning will occur. Ms. Bennett stated she would like to research the information before speculating upon the issue.

The motion carried following a vote of 6-1 (Nay: Councilmember Azeltine for reasons pertaining to the expired deadline of the preliminary plan.)

## **8. MAYOR'S REPORT**

- A. Attended the Blue Valley Education Foundation and Shawnee Mission Education Foundation Community Breakfasts, where Dr. Tom Trigg and Dr. Marjorie Kaplan presented State of the District Addresses.
- B. Attended the Police-Fire Open House along with Councilmember Rawlings. Mayor Dunn extended appreciation to Police Chief John Meier and Fire Chief Ben Florance as well as to their respective departments for the wonderful annual event that serves to bring the community together. A special tribute was paid to Police Officer Randy Wiler for organizing the Open House. She also thanked the Parks & Recreation Department for their contribution to the function, which produced several hundred attendees.
- C. Attended the Leawood Chamber of Commerce After Hours Event, which was co-sponsored by AT&T and Commerce Bank. The event was held jointly with the Northeast Johnson County Chamber of Commerce.
- D. Reminder that Ballet in the Park will take place this Thursday, September 6<sup>th</sup>, at 6:00 P.M. at the Ironwoods Amphitheater. There is no admission fee to the performance and everyone is invited to attend.

## **9. COUNCILMEMBERS' REPORT**

- A. Councilmember Lou Rasmussen – Councilmember Rasmussen provided an update on the issue of streetstone island repairs in northern Leawood that was referred to the Public Works Committee at the last Governing Body meeting. A representative from the Leawood Homes Association was in attendance at the committee meeting. Alternatives were reviewed including elimination of the islands, which has already occurred in two cases. There are many more islands in need of repair than the four that were previously presented within the construction proposal. There are at least 10-12 islands in the Leawood Homes Association area.

Councilmember Rasmussen reported that the islands are constructed of various building materials including cut stone, arrangements of rock, and brick. There is no question that maintenance of the island interiors has been the responsibility of the homeowners associations. The edging for all of the islands south of I-435 contain City curbing.

The Public Works Committee concluded that they will recommend that the City be responsible for the repair and maintenance for curbing around the islands but not the contents. It was also determined that the Leawood Estates Homes Association should be given the opportunity to comment on the issue.

The Public Works Committee recommends that Staff inform both the Leawood Homes Association and the Leawood Estates Homes Associations of these preliminary findings in order to allow further input prior to presenting a final conclusion to the Governing Body.

Referring to the amount of the previous proposal to repair only four islands at \$29,360, Councilmember Rasmussen noted that all of the islands in need of improvement will require a significant amount of money over the long-term. The task of planning the individual projects in conjunction with street improvements with proper notification given to the homeowners associations will also be necessary.

Councilmember Filla inquired about the stone islands on Lee Boulevard, which were aesthetically designed as part of the previous street widening project. Councilmember Rasmussen stated the unique structures between Somerset and 103<sup>rd</sup> Street were designed 15-16 years ago with some being very large, up to 100-ft. in length, and consist of stones that would be impossible to match at the present time. Additionally, some of these islands contain no curbing. The issue of interfacing the street with the edging of the islands will need to be resolved.

**10. STAFF REPORT – None.**

**11. OLD BUSINESS – None.**

**12. OTHER BUSINESS – None.**

- A. Request to consider appeal to Alarm Appeals Committee for alarm system at 14702 Sherwood [O'Brien]

A motion to approve the request was made by Councilmember Gill; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 7-0.

**13. NEW BUSINESS – None.**

***COMMITTEE RECOMMENDATIONS***

**14. PLANNING COMMISSION**

***[From the August 14, 2007 Planning Commission meeting]***

- A. Ordinance No. 2262 approving a Special Use Permit [SUP] for an AT&T VRAD cabinet, located at 12806 Roe Ave [Roll Call Vote]

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

AT&T representative Chris Carroll, 8900 Indian Creek Parkway, Overland Park, stated the application is another extension of the fiber-optic network deeper into the community. It is also a perfect example of collaboration between the company and the community in terms of the landscaping design for the facility. Requested modifications obtained at the Interact meetings to include a sidewalk in the design were agreed upon.

Mr. Carroll clarified for Mayor Dunn that the sidewalk will connect the two existing equipment boxes with the proposed VRAD cabinet.

Councilmember Peppes stated appreciation to Mr. Carroll for accommodating requests made by the residents.

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

- B. Resolution No. 2877 approving a Final Site Plan and Final Plat for Market Square, located at the northeast corner of 135th Street and Mission Road

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

Councilmember Bussing recalled that a landscaping inspection performed by Kevin McDaniel, Summer Intern of the Codes Enforcement Department, revealed deficiencies in the development on the northeast corner of 135<sup>th</sup> Street and Mission Road. Mr. Joseph reported that the intern has been working on the issue with Jeff Cantrell, Neighborhood Services Administrator. As the project was approved in 1996 with ongoing noncompliance with landscaping, Councilmember Bussing stated reluctance to vote in the affirmative for additional projects within the development until the original requirements are met. Mr. Joseph stated the proposed plan will bring this portion of the development into compliance and will include even more landscaping than was previously stipulated. Councilmember Bussing stated he will need assurance that the entire development will meet compliance in the very near future for the plan that was agreed upon ten years ago.

Applicant Paul Wade with Copaken, White & Blitt, 1100 Walnut, Kansas City, Missouri, 64106, confirmed that the proposed plan reflects the current landscaping requirement. He noted that the corner of 135<sup>th</sup> Street and Mission Road is the Bank of Blue Valley and is not part of the project. Councilmember Bussing stated he is not exactly sure where the specific gaps were identified; however, the Governing Body has little leverage of enforcing overall compliance other than placing constraints upon further development.

Councilmember Rasmussen stated the issue is not the proposed plan but rather the fact that compliance with past promises has not been met to date. Mr. Wade reported that he is not in possession of the written report submitted by the summer intern listing the deficiencies. He informed Mayor Dunn that he has been the developer for this tract of land for the last 18-months.

Councilmember Gill suggested an approval contingent upon satisfactory implementation of corrective actions. Mr. Wade stated that Copaken, White, & Blitt does not control all of the deficient property. The proposed plan consists of the portion of development from 135<sup>th</sup> Street and Pawnee to the Bank of Blue Valley. Beyond the boundaries of the bank, they are also responsible for landscaping along Mission Road.

Councilmember Azeltine stated that a distinction should be drawn between the planning process and codes enforcement services. During his time served on the Planning Commission and now the City Council, he has never heard of a final plan being held-up because of noncompliance with landscaping.

Ms. Bennett reported that she contacted Mr. Cantrell at home and received confirmation that most of the outstanding landscaping issues have been resolved. Some minor details are still being discussed with the property owners.

Mr. Joseph verified for Councilmember Azeltine that the City can exercise leverage to ensure landscaping compliance within the requested application by withholding the Certificate of Occupancy. Councilmember Azeltine stated it is not fair to the applicant to delay his project due to noncompliance of an adjacent tract of land.

Excluding the bank property, Mr. Wade confirmed agreement for Councilmember Bussing to comply with prior landscaping requirements including the green space on Mission Road.

To Mayor Dunn's question regarding a traffic study, Mr. Joseph relayed that the City Engineer has deemed this unnecessary as a study was performed during preliminary planning. No changes have been made to the plan in this regard since preliminary approval.

Mayor Dunn stated during previous discussion with Staff, Mr. Joseph indicated that it would be appropriate to incorporate the statement regarding utilization of brick pavers listed under the 135<sup>th</sup> Street Design Guideline Requirement on page 6 of, "This has been done across the entrance of each driveway into the main development except for the drive entrance off of 135<sup>th</sup> Street, at major internal intersections, and a few other pedestrian crossings," into Stipulation No. 8. She asked the applicant if this would be agreeable. There was much discussion on the topic at the Planning Commission meeting, where it was decided to use brick pavers as opposed to scored concrete. Mr. Wade stated they are still working with Staff to develop the specific locations in which the pavers will occur.

David Contag, architect with DLR Group, 7290 W. 133<sup>rd</sup> Street, Overland Park, provided a presentation of the proposed pavers. A secondary gateway treatment to the development will be created at 135<sup>th</sup> Street and Pawnee to match the current material at the major gateway treatment on the corner of 135<sup>th</sup> Street and Mission Road. The City standard material of a charcoal/red blend Holland stone will be used on intersection crosswalks as well as the crossings within the development. Additionally, the existing plain scored concrete surrounding the Price Chopper and retail buildings (Buildings D and F) will be improved upon with brick pavers and pedestrian amenities such as benches and planters. The details of this aspect of the development, which will include suggestions from the Planning Commission, will be finalized with Staff.

Mr. Contag described how it is planned to address Stipulation No. 35, "The developer shall provide a pedestrian connection from the corner of Pawnee and the pedestrian plaza located at the corner of building D," and Stipulation No. 7b, "The material and type of all signs must be included in the sign guidelines."

Referring to Stipulation No. 24 regarding the trash enclosure for Building F, Mr. Contag stated it is proposed to construct the facility separate from the building and directly behind the trash enclosure for the Bank of Blue Valley. The same design and materials of decorative metal, brick masonry, and a cast-stone cap will be emulated. The solution will displace two parking spaces to the front of the building, which will help improve tenant visibility. With the layout of the site, it would be difficult to service an attached structure that would also block the end tenant. The Planning Commission concurred with the suggestion.

To Councilmember Rasmussen's question, Mr. Joseph stated the language in Stipulation No. 8 is not sufficient in order for compliance to be measured against the applicant's presentation regarding the pavers. He clarified that referenced improvements to the property north of the Price Chopper building are not included in this application and are not reflected in the stipulation. Mr. Contag stated agreement to the incorporation of such language into Stipulation No. 8. Mr. Joseph said that a detailed plan of the pavers and crosswalks will be obtained from the developer, which can be used when performing inspections.

Mr. Contag further described the proposed detached trash enclosure for Building F with the use of site plan drawings and photographs of the existing bank facility.

A friendly amendment was made by Councilmember Bussing to include additional language to Stipulation No. 10 requiring the developer to work with Staff in resolving as quickly as possible any deficiencies of the originally approved landscaping plan for the overall development as it relates to the property that the developer/property manager of this application controls and with identification of the individual responsible for resolving these issues.

As the motion-maker and second to the motion, Councilmembers Rasmussen and Filla both concurred with the friendly amendment. They also agreed to the requested changes for Stipulation No. 8 pertaining to further description of the brick paver requirements.

Councilmember Filla noted that sweet gum trees are proposed as part of the landscaping plan. She asked that this type of tree not be used in a public place as they produce seed balls that drop upon the ground.

Mayor Dunn reminded that a supermajority vote will be required to override the Planning Commission's recommendations.

As a representative of this ward, Councilmember Bussing stated the area has been a frustrating irritant for some time; however, he is very much appreciative of the work the applicant is doing in trying to reenergize the development with the proposed project a welcome addition. Increased sensitivity is needed on the development's part in addressing some of the issues. He encouraged Mr. Wade to continue his efforts in revitalizing the center.

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

- C. Ordinance No. 2263 approving a Revised Preliminary Site Plan for Village of Seville, located at the northwest corner of 133rd Street and State Line Road [Roll Call Vote]

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

On behalf of the applicant, Danny Potts of Klover Architects, 10955 Lowell, Overland Park, Kansas, 66210, stated agreement with the recommended stipulations with the exception of Stipulation No. 7 as they are requesting the same deviation to the 60/40 rule that was approved in the original preliminary site plan. Mr. Potts then provided a presentation of the revised plan that includes a size reduction of Building OP-1 from 10,000 sq. ft. to 3,000 sq. ft. as the previously planned use of a restaurant has changed to that of a bank with a drive-thru. The only other modification is that the stacking for the drive-thru of Building OP-2 has increased from 9 to 11. The screening for this drive-thru has been embellished with additional landscaping and improvements to the berm so that cars will not be visible. The interior landscaping of the project has been increased by 5,000 square feet. A monument sculpture with a water feature is also proposed for the southeast corner of the site. Currently under construction of the overall development are Buildings R-1, R-2, and OP-5.

Charlie Schwinger, traffic engineer with BWR, 903 E. 104<sup>th</sup> Street, Kansas City, Missouri, stated the applicant requested a review of traffic circulation concerns within the project, particularly with respect to the two pad sites containing drive-thru features. The conclusion revealed that the drive-thrus are far enough apart with satisfactory confined queuing of the vehicles so as to prevent interference with each other. It is also believed that the bank site has sufficient stacking room to accommodate vehicles during the afternoon peak hour with an arrival rate of one vehicle per minute. There will also be adequate room for stacking at the fast-food site if the end of the line is wrapped back towards the east. The applicant has agreed to make this change prior to final plan submittal.

At Mayor Dunn's request, Mr. Schwinger demonstrated the ingress/egress of the two pad sites via site plan drawings. The amount of stacking provided for Building OP-2 is based upon his observations at similar fast-food restaurants, which averages 14-15 vehicles during the lunch hour and includes those waiting between the menu board and the window.

Mr. Schwinger clarified for Councilmember Rasmussen that the same driveway will be used for the ingress and egress of the restaurant; however, the bank site has different driveways for incoming and outgoing vehicles. The parking lot for the restaurant will contain a typical 24-ft. aisle down the middle to separate the lanes. He also informed Councilmember Gill that the distance between the two businesses is approximately one football field in length. Examples were given of other locations in which these two heavy traffic uses are in the same close proximity, which function with no problems from a traffic standpoint.

Mr. Potts added that further details of the traffic study will be reviewed upon final planning when more information in terms of actual use is available. Mayor Dunn stated that design suggestions given by one of the Planning Commissioners would be worthy of review as well.

Councilmember Peppes noted that a double-lane drive-thru is not given as an option for the proposed plan. Due to problems with other popular fast-food restaurants in the City, he asked if the 14-space queue would be adequate in preventing vehicles from stacking up. Mr. Potts explained that the stacking of more than 14 vehicles is not desired by fast-food operators as this will increase customers wait time and impede the quality of the service. The current design will allow stacking to occur within the parking lot and will not block traffic traversing to other locations. It was noted that establishments with two lanes often have problems with getting their food orders out of sequence.

Referring to Stipulation No. 13, Assistant to the Planning Director Mark Klein advised Mayor Dunn that brick pavers will be used to differentiate the pedestrian routes from vehicular pavement, the details of which will be submitted with the final plan application. Mayor Dunn reminded that the Governing Body would be more inclined to approve brick pavers as opposed to stamped concrete. Mr. Klein relayed there has been no argument with the applicant concerning this issue.

Mayor Dunn advised it was the Planning Commission's intent for the Governing Body to consider the 60/40 rule issue associated with Stipulation No. 7. She expressed hope that a resolution will be found upon final plan presentation. Mr. Potts informed that the plan has not changed since the revised plan was approved by the Planning Commission, however they will endeavor to comply as much as possible with the development requirement.

Mr. Potts confirmed for Councilmember Bussing that the only significant change in the revised plan is a reduction in the size of Building OP-1. Mr. Klein displayed overlays of the two plans to demonstrate the changes. There has also been some slight shifting in the location of the buildings.

The Governing Body declined to hear an offered presentation on the bank.

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

- D. Ordinance No. 2264 denying a Special Use Permit [SUP] for off site parking for Molle Toyota, located south of 104th Street and west of State Line Road [Roll Call Vote]

On behalf of Molle Toyota, Curtis Holland with Polsinelli, Shalton, et. al., stated the site has been intermittently used as a car storage lot since 1999 for the dealership location on 103<sup>rd</sup> Street in Kansas City, Missouri. He stated agreement to the stipulations recommended by the Planning Commission with the exception of the wording in Stipulation No. 1, "The Special Use Permit is limited to one year from the date of approval by the Governing Body and shall be the last extension to be granted." He stated it would be inappropriate for his client to waive his legal right to petition the government for an approval and there is also the Kansas law regarding binding future Governing Bodies to consider. Mr. Holland noted there have never been complaints from neighbors about the less than one acre property being used as a car lot. He requested approval of the SUP with the ability to request an extension in one year.

Although he agrees with the point made about the state law, Councilmember Gill stated he is not in favor of the application and will vote against it just as he did approximately eight years ago when the original SUP was requested. He noted that the 1999 application for a temporary SUP has gone way beyond the original intent. As the surface parking lot serves no commercial business in Leawood, it is not in the best interest of the City and is not good planning for this very visible location.

Mr. Joseph verified for Councilmember Rasmussen that the wrought iron fence surrounding the property is in good condition and the landscaping has presently been maintained. Landscaping deficiencies discovered upon inspection by the summer intern have been rectified.

It was noted that the current SUP has expired. Mr. Holland informed that cars are not being parked on the site at this time. They were removed following notification by the City that the SUP had expired and an associated fine was remitted. The owners would like to again use the parking lot for storage in the future. Restating that the site has had no negative impact, he added that there are very little alternative uses for the property. He offered to provide additional screening along State Line Road if so desired by the Governing Body.

Councilmember Filla voiced support for the SUP request as it is the ideal location for this type of use and it also serves as a great buffer for I-435. Upon visiting this area on occasion, she has never noticed the parking lot. She would agree to renew the application for a five-year period with an additional stipulation requiring the planting of more trees.

Mayor Dunn asked who would be responsible for surveillance of the vehicles parked upon the lot. Mr. Holland stated the dealership would be ultimately responsible for maintenance and securing the property. The parking lot is gated and locked with no open access to the public. There has never been any criminal activity in the area to date. If an incident were to occur, Molle Toyota would be responsible for responding and contacting the Police Department if needed. Mr. Holland stated he has no knowledge of there being cameras or motion detectors installed upon the property.

Councilmember Rawlings stated he voted in favor of the original SUP request in 1999 due to the appeal that the dealership needed a place to store excess inventory. He noted that the parking lot is empty more often than not. After visiting the Molle Toyota car dealership in Missouri recently and finding at least 125 empty spaces, he asked why the additional lot is needed at this point and time. Mr. Holland responded that this time of year, all car dealerships tend to be emptier while awaiting the arrival of new models. The extra lot gives the business an opportunity to store excess inventory when needed. Mr. Holland confirmed for Councilmember Rawlings that since the 1999 approval, Molle Toyota has increased their parking capability by purchasing an adjacent car dealership on 103<sup>rd</sup> Street.

Referring to the previous Governing Body meeting in which Mr. Holland represented another case, Councilmember Bussing first offered an apology if he seemed harsh during the related discussion. He then stated concurrence with Councilmember Gill's concerns and voiced intent to oppose the application.

Councilmember Peppes also stated that he is not in favor of renewing the SUP.

A motion to deny Molle Toyota's request for renewal of a Special Use Permit for an existing parking lot for new vehicles, located near 104<sup>th</sup> Street and State Line Road, Case 50-07, was made by Councilmember Bussing; seconded by Councilmember Gill.

Mayor Dunn advised that a supermajority vote will be needed to override the Planning Commission's recommendations.

Discussion took place regarding options for alternative action.

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

- E. Ordinance No. 2265 approving a Revised Preliminary Site Plan, Final Site Plan and Final Plat for Sabates Eye Centers, located south of 112th Street and east of Nall Ave [Roll Call Vote]

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

Gerald Johnson with Shafer, Kline & Warren, 11250 Corporate Avenue, Lenexa, offered to provide a presentation and answer questions. He introduced members of the project team as David Galle, representative of Sabates Eye Center; Guy Gronberg, architect; and David Ross, construction manager.

Councilmember Rasmussen stated favor with the application and complimented the team on designing a building for this area that did not meet opposition by surrounding residents.

Mayor Dunn thanked Mr. Johnson for the willingness to downsize the proposed signage at the request of the Planning Commission. She then confirmed with Mr. Klein that the requested setback deviation for 85% of the standard requirement is similar to other buildings in the area.

Mr. Johnson informed Councilmember Bussing that the building is intended to serve as a surgical eye center and will also house corporate staff.

Mr. Johnson reported that a compromise to decrease the parking by six spaces was reached with the Planning Commission, which is listed as Stipulation No. 8. They are in agreement with all thirty stipulations as provided by the Staff Report. Mayor Dunn noted that the six parking spaces will be landbanked for future use if needed and that removal of an existing tree was avoided with the revision.

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

### **ADJOURN**

Mayor Dunn adjourned the meeting at 9:40 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk