

Minutes

Audio Tape No. 601

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, September 15, 2003. Mayor Peggy Dunn presided.

Councilmembers present: James E. Taylor, Sr., Scott E. Gullede, Jim Rawlings, Mike Gill, Gary Bussing, Patrick Dunn, Shelby Story, and Louis Rasmussen.

Councilmembers absent: None

Staff present:

Scott Lambers, City Administrator
Ben Florance, Fire Chief
Joe Johnson, Public Works Director
Kathy Rogers, Finance Director
Diane Binckley, Planning & Develop. Dir.
Karl Weinfurter, Info Systems Specialist
Shannon Marcano, Asst. City Attorney

Patricia A. Bennett, City Attorney
Sid Mitchell, Chief, Police Dept.
Chris Claxton, Parks & Rec. Dir.
Jeff Cantrell, Neighborhood Serv. Admin.
Deb Harper, City Clerk
Emily Gleasure, Deputy City Clerk

- 120 **1. PLEDGE OF ALLEGIANCE**
- 171 **2. APPROVAL OF AGENDA**
Councilmember Taylor made a motion to approve the Agenda. Councilmember Gull seconded the motion, and the motion passed unanimously, 8-0-0.
- 187 **3. CITIZEN COMMENTS**
John D. Woods, 15040 Sherwood, requested a traffic study be done in the area south of 135th Street and Mission Road due to the increase in traffic from the new facilities at Ironwoods Park. Councilmember Gullede addressed Mr. Woods' concerns, stating he and Councilmember Taylor had attended the Pavilions Homes Association meeting where three suggestions for improvements had been made. Those suggestions were 1) the scheduled programming at the Park should be placed on the City's website so area homeowners would know of upcoming events; 2) crosswalks should be installed from the Pavilions to the Park; and 3) also sidewalks should be installed south of 143rd Street. Councilmember Gullede stated he had been in contact with the Pavilion's president, Ken Mellard, as to the proper channels to use to set these plans in motion.

- 398 **4. PROCLAMATIONS**
Mayor Dunn proclaimed the **Opening of the Consulate of the Czech Republic**, welcoming Ambassador Palous to the Greater Kansas City Metropolitan area; **Heart Truth Week, September 14-21, 2003**; and **Constitution Week, September 17-23, 2003**, in the City of Leawood.
- 429 **5. PRESENTATIONS/RECOGNITIONS – None**
- 432 **6. SPECIAL BUSINESS – None**
- 433 **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. 982
 - B. Accept Minutes of the August 12, 2003, Parks & Recreation Advisory Board meeting
 - C. Accept Minutes of the July 24, 2003 IRONHORSE Golf Course Committee meeting
 - D. Mayoral Appointment of Patricia Hattaway to I-Lan Sister City Committee
 - E. Approve issuance of Temporary Alcohol Permit to sell/serve alcoholic liquor for the Fundraiser for Durwood Educational Scholarship Fund, to be held at 11701 Nall [AMC Movie Theatre] on October 9, 2003
 - F. Approve 23rd and Final Payment in the amount of \$8,893.00, to Shafer Kline & Warren, Inc., pertaining to the 133rd Street Benefit District [Roe Avenue to Mission Road] [Project # 179]
 - G. Approve payment in the amount of \$6,359.65, to Water One, pertaining to utility relocation at I-Lan Park, pertaining to the I-Lan Park Improvement Project, 12601 Nall Avenue [CIP # 111]
 - H. Approve purchase in the amount of \$55,550 from Ball Power Equipment for the purchase of a mulch blower for the Parks & Recreation Department
 - I. **Resolution No. 2087** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$463,415.75, between the City and J. M. Fahey Construction, pertaining to the 2003 Arterial Street Rehabilitation Program
 - J. **Resolution No. 2088** approving and authorizing the Mayor to execute a User Agreement between the City and Board of Police Commissioners of Kansas City, Missouri, pertaining to the use by Municipal Court of the Automated Law Enforcement Response Team [ALERT] System
 - K. **Resolution No. 2089** approving and authorizing the Mayor to execute a Licensing Agreement between the City and American Society of Composers, Authors and Publishers, [ASCAP], for an annual fee of \$255.00, pertaining to the performance of certain musical compositions

- L. **Resolution No. 2090.** approving and authorizing the Mayor to execute Amendment No. 1, to that certain Independent Contractor Agreement dated April 7, 2003, between the City and Greencard, pertaining to a concert date for the Parks & Recreation Department
- M. **Resolution No. 2091** approving and authorizing the Mayor to execute an Extension of Facilities Agreement in the amount of \$17,738.55, between the City and Kansas Gas Service pertaining to the Ironwoods Park Improvement Project, 14701 Mission Road [CIP # 116]
- N. **Resolution No. 2092** approving and authorizing the Mayor to execute an Independent Contractor Agreement for an amount not to exceed \$20,000, between the City and Julia Brickman, d/b/a/ Polka Dot Designs, pertaining to graphic work for the Parks and Recreation Department
- O. **Resolution No. 2093** accepting a Temporary Construction Easement located at 4644 W. 127th Terrace, from John P. & Amy L. Sokoloff, pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110]
- P. **Resolution No. 2094** accepting a Temporary Construction Easement located at 13010 Granada, from John C. Proctor & Venus E. Hauser, pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110]
- Q. **Resolution No. 2095** accepting a Temporary Construction Easement from James R. & Kimberly A. Essington located at 4741 W. 132nd Terrace, pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110]
- R. **Resolution No. 2096** certifying to the State of Kansas, that all necessary rights-of-way and easements have been acquired for the Roe Avenue Improvement Project [between 124th & 135th Street] [CIP # 110]
- S. **Resolution No. 2097** approving a Final Site Plan and Final Plat for Madden McFarland Interiors, located south of 127th Street and west of State Line Road [from the August 26, 2003, Planning Commission meeting]
- T. **Resolution No. 2098** calling for a public hearing to be held on November 3, 2003, to show cause why the residential structure located at 2316 W. 127th Street should not be condemned and ordered demolished, and repealing Resolution No. 2071
- U. Schedule Governing Body Work Session to be held at 5:30 P.M., on Monday, October 6, 2003, regarding Discussion on establishing a Transportation Development District [TDD] Policy
- V. Schedule Governing Body Work Session to be held at 5:30 P.M., on Monday, October 20, 2003, regarding Discussion on establishing a Transportation Development District [TDD] Policy
- W. Fire Department Monthly Report
- X. Municipal Court Monthly Report
*****Due to a Police Department computer conversion- the Monthly Police Reports will not be available for 3-5 months***

Mayor Dunn asked that it be noted that the public hearing on the residential structure located at 2316 W. 127th Street, Item "7T," was scheduled for November 3, 2003.

Councilmember Bussing asked that Item "7R" be pulled from the Consent Agenda. Councilmember Bussing made a motion to approve the remainder of the Consent Agenda, with Councilmember Dunn seconding the motion. The motion was approved unanimously, 8-0-0.

Councilmember Bussing, in discussing Item "7R," confirmed with Joe Johnson that all necessary right-of-ways had been obtained from 59 tracts for the Roe Avenue Improvement Project [CIP #110]. Councilmember Bussing expressed his gratitude to Mr. Johnson and Bucher Willis & Ratliff for their hard work in securing the ROWs in a timely manner. Mayor Dunn added her appreciation.

Councilmember Bussing made a motion to approve Item "7R". Councilmember Gullledge seconded the motion, and it was approved unanimously, 8-0-0.

496 **8. MAYOR'S REPORT**

A. Special Call Governing Body meeting to be held on Tuesday, September 16, 2003, at 9:30 A.M., at the Stinson, Morrison, Hecker LLP Law Firm located in Corporate Woods, 9200 Indian Creek Parkway, Building 9, Suite 450

Mayor Dunn explained the Special Call meeting was to facilitate a videoconferenced ceremonial signing of the Sister City Agreement with Regional Council Gezer, Israel. Mayor Dunn expressed her appreciation to Councilmember Gill for securing the site for the conference and obtaining the equipment necessary to complete the videoconference.

Councilmember Dunn made a motion to approve the Special Call meeting. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 8-0-0.

- B.** Attended the Metro Mayor's Breakfast that kicked off the National Leukemia, Lymphoma, and Myeloma Awareness Month
- C.** Moody's, the City's bond rating agency, visited the City last week. They reaffirmed Leawood's 'AA' bond rating. Mayor Dunn extended her appreciation to Scott Lambers and Kathy Rogers for their outstanding work on the City's behalf.
- D.** Attended a reception with Mr. Lambers for Yoel Lavi of Ramla, Israel. Ramla is one of the Sister Cities of Kansas City, Missouri.
- E.** Participated in a Mayors Panel for the Johnson County Senior Leadership Program, and learned of volunteer opportunities in the surrounding cities
- F.** Stated the United Way Campaign for the City would be run concurrently with the Metro-wide Campaign. The metro-wide goal this year is \$38 million.
- G.** Expressed appreciation to Councilmember Bussing for representing Leawood at the County 911 ceremony
- H.** Expressed appreciation to Councilmember Rasmussen for representing Leawood at Patriotism Day held at Brookridge School on September 11th

- I. Congratulated Councilmember Dunn and his son, Dan, for successfully completing the MS150

682 9. COUNCILMEMBERS' REPORT - None

685 10. STAFF REPORT – None

COMMITTEE RECOMMENDATION

688 11. PUBLIC WORKS COMMITTEE

[from the September 10, 2003, Public Works Committee meeting]

Approve Committee's selection of Bucher Willis & Ratliff [BWR] as the Inspection Consultant pertaining to the Roe Avenue Improvement Project [between 124th & 135th Street] [CIP # 110]

There being no discussion, Councilmember Taylor made a motion to approve the Committee's recommendation, seconded by Councilmember Gulledge. The motion was approved unanimously, 8-0-0.

1338 12. PLANNING COMMISSION

[from the July 22, 2003, Planning Commission meeting]

A. **Ordinance No. 2020** approving Special Use Permit [SUP] for property located at 8845 Mission Road, to allow for sport court lighting [Roll Call Vote]

The applicant, Mark Ledom, 8845 Mission Road, stated that although he was unhappy with the landscaping requirements, he was willing to adhere to the Planning Commission's recommendation.

Councilmember Gill inquired as to what types of comments Mr. Ledom had received from neighbors. Mr. Ledom replied he had held a neighborhood interactive meeting in which no one attended. He also sent out certified letters to neighbors, from which he received no negative feedback. Additionally, Diane Binckley advised Staff had not received any negative feedback. Councilmember Gill confirmed with Mr. Ledom that 23 residences, including some in Prairie Village, had been contacted concerning the lighting issue.

Councilmember Taylor made a motion to approve the Ordinance. Councilmember Gill seconded the motion, and it was passed unanimously with an 8-0-0 Roll Call vote.

[from the August 12, 2003, Planning Commission meeting]

- 786 B. **Ordinance approving rezoning from REC [Planned Recreation] to R-1 [Planned Single Family-Low Density Residential], Preliminary Site Plan and Preliminary Plat for Estates of Old Leawood, located at 8901 Sagamore [Leawood Country Club] - [Continued from the September 2, 2003, Governing Body meeting] [Roll Call Vote]**

Mayor Dunn outlined the procedure for the discussion of this issue. The applicant would be given fifteen minutes to give their presentation. Comments would then be heard from those citizens who had signed in, for a maximum of four minutes each. The applicant would then have ten minutes to give a closing statement. A ten-minute recess would follow and upon reconvening, the Governing Body would discuss the issue. A vote, if applicable, would follow that discussion.

Mayor Dunn asked City Attorney Patty Bennett to make opening comments. Ms. Bennett relayed a message from the mediator, Tom Baker, who had advised that all parties had been sincere and thoughtful in the mediation attempt, but he had been unable to develop a consensus opinion about a plan for the LCC tract. Mr. Baker reiterated that the applicant was the sole owner of the parcel; it remains private property and there are no public easements or dedications on it. To the extent that the property was open to the public in the past, it was not by deed, dedication or other legal fiats, but by permission of the previous owners. The previous use was as a private club, not a public club.

- 890 Mr. Doug Patterson, attorney for the applicants, stated the current plan calls for 20 upper scale homes on 16 acres of land. Additionally, 6.2 of the acres were proposed to be open space on the eastern side of the property. The property was purchased from the bank in early 2002 and discussions as to how to best utilize the property began. It was recognized from the beginning that renovating the club was not an option due to prohibitive cost and lack of a market for this type of business. In the fall of 2002, the applicant filed a rezoning request with the City to change the tract from REC [Planned Recreation] to R-1 [Planned Single Family-Low Density Residential]. When the club was initially built in 1954, there were no recreational facilities in, what was then, southern Johnson County. Since 1970, private country clubs have taken a backseat to city parks and public recreational facilities. Currently, there are 423 acres of parkland in Leawood which is 50% above the National Recreation Park Association's standard of ten acres per thousand.

Concerning the density of the project, Mr. Patterson stated that the current plan would be compatible, looking essentially the same as surrounding neighborhoods with the same setbacks and side yards. The difference would be in the length of the properties, described as "bowling alley" lots that were developed by the Kroh Brothers years ago that are no longer allowed. Instead, the back portions of the properties are now used for park tracts.

Under the new Leawood Developing Ordinance [LDO], the tract as zoned could remain a country club, or it could be developed into a riding club, an athletic field, a driving range, batting cages, a skating rink, or a commercial club. These alternatives were dismissed because the neighbors resisted the ideas. During the mediation, it was stated that any special use permitted by the LDO and requested by the applicant would be fought even more vigorously than the R-1 zoning application.

Mr. Patterson addressed the issue of the expectation of the tract remaining a community recreational area. He stated there were no expectations of such an area as there were no easements and no access to the property except by way of a 300-car parking lot off of 89th Street.

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Mayor Dunn then took comments from the following citizens:

Mark McGrory, 9006 High Drive, commented on the 20' wall running through the property and the addition of fill dirt to adequately support new development. He questioned the suitability to build houses on this flood plain property when it was unsuitable to maintain a country club. He asked the Governing Body not to approve the site plan.

David Gilmore, 9134 High Drive (currently; moving to 9010 High Drive on September 24th), asked that neighbors, previous members and the applicant work towards creating a plan that would work for everyone. He felt the mediation failed because no one was willing to give an inch, and the condition of the property now adversely affects the value of everyone's property.

Gordon Henke, 8901 High Drive, questioned the "construct-ability" of the tract, stating there were buried cable lines on the property that would need to be removed. He also stated it was necessary to look at the "sale-ability" of the proposed homes, mentioning that the homes in the Saddle and Sirloin subdivision were selling slowly as they were not affordable for the average citizen.

W. Robert Leigh, 8728 High Drive, felt the issue was the rezoning of the property, and saw the current plan as inappropriate. He stated it was likely that the Kroh Brothers didn't develop the property as residential because of its location on solid bedrock. Mr. Leigh was concerned about the blasting and increased traffic needed for construction of the homes. He stated he was opposed to the rezoning and the current plan.

Connie Cardell, 8915 High Drive, felt the property would best be suited as open space for the benefit of the entire community. The buffer the tract gave the current neighboring houses from commercial property would be lost if it was developed. There would be a transfer of wealth of nearly \$1 million from the surrounding homeowners to the four applicants. She asked the Governing Body to reject the plan, as the applicant had not addressed the issues and concerns as had been requested. Ms. Cardell presented the Governing Body with a copy of a petition signed by approximately 1,000 people opposing the rezoning.

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Deb Filla, 8505 Belinder, spoke on the lack of available green space in north Leawood for recreational purposes. Ms. Filla stated that the applicant had a copy of Ms. Cardell's petition showing great opposition to rezoning before they closed on the property. She felt the mediation clearly showed the developers did not want to negotiate.

Mary Franklin, 8425 Meadow Lane, asked the Governing Body to act on the Planning Commission's recommendation and not approve the rezoning. She stated the proposed houses were more applicable to south Leawood construction, and not in the style of north Leawood homes.

Rick N. Johnson, 8427 High Drive, stated he felt the Governing Body was justified in denying the REC rezoning, and that he opposed the site plan.

William "Bill" Lowe, 9107 Lee Boulevard, discussed the geology of the tract area. Mr. Lowe stated that the construction of the homes in the current plan relied upon the digging 5-6' deep into unknown stratum. Mr. Lowe presented photos he had taken over Labor Day weekend during which time the Johnson County area had experienced large rains. The photos showed sanitary sewer manhole covers in the floodplain area of the tract erupting and overflowing with water and sewage.

Mark Curfman, 2812 W. 90th Street, stated the issue of rezoning from REC to R-1 was a matter for the Governing Body to decide upon for the good of the City, based upon the Comprehensive Plan. He stated the rezoning was a "once-in-a-lifetime" opportunity to either preserve or abandon important green space.

Marc Erickson, 9030 High Drive, stated he was opposed to the rezoning request. He felt the tract was unique to the area, and questioned the desirability of creating more R-1 in a sea of R-1 zoning.

Dick Wetzler, 3000 W. 121st Street, represented several of the former members of the LCC. Mr. Wetzler stated that in addition to the comments tonight, the records of previous meetings and other documents collected represented “pieces of the puzzle” which had been intentionally put together for the Governing Body from which to base their decision on the rezoning issue. He asked the Governing Body not to bail out speculative investors who may have failed to look into all of the issues before their purchase, but to support the wishes of the residents in the area.

2684

G. Gordon Thomas, 10516 Mohawk Lane, stated it was his opinion that the LCC was a part of the City’s heritage and therefore possessed value to families and neighbors of the club.

Steve Stechschulte, 9026 High Drive, stated he felt the plan was flawed, citing it was unsafe due to the detention basin and the potential blasting. He said the plan’s small lot sizes were unwanted, and pointed out the loss of green space. He asked the Governing Body to deny the rezoning.

Steve Corey, 9718 Belinder, stated the LCC was pivotal to the Kroh Brothers’ development plan for the area. He questioned the changing of the original planned community concept, and the rewarding of the developer’s strategy to get the property rezoned which he felt had not been above-board.

Patricia Schaaf, 8927 High Drive, stated she disapproved of the zoning request and the site plan, specifically the retaining wall and the retention basin. Additionally, Ms. Schaaf stated she was against blasting on the property.

Hannah Vargas, 9026 High Drive, stated she was opposed to the rezoning.

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Mayor Dunn asked the applicant to give his closing remarks.

Mr. Patterson stated that the Kroh deed for the LCC property stipulated no commercial use for a period of 25 years. While it was to remain a club for a set time, Mr. Kroh realized that eventually the property would be used in another manner. Mr. Patterson also dispelled questions on the size of the retaining wall and the possible blasting on the property.

Mr. Patterson dismissed the notion that the applicant had abandoned the club. Instead, he pointed out that the members had abandoned it, by not maintaining their memberships, failing to maintain an adequate fee structure to cover costs, and not using the club facilities.

During the mediation, Mr. Patterson stated that while the applicant had offered to use 50% of the land for green space and develop the other 50% into a residential area, it was the neighbors who indicated to the mediator that they did not want “one stick of lumber” to be placed on the property. By so stating, no other special use permit authorized by the LDO would be allowed.

Mr. Patterson said Ms. Cardell stated she wished to keep the land behind her residence vacant. He acknowledged that no one in the area had a home that overlooked a vacant lot, but that everyone had someone’s backyard that they looked into.

Mr. Patterson asked the Governing Body to review all of the materials they had received. He stated that voting to approve the rezoning would set in motion the ability to develop twenty upper-bracket homes, remove a blighting influence in this portion of the City, create 6.2 acres of public green space which did not currently exist, and also allow for the fine-tuning of the project. A vote against the rezoning would not create green space, a country club for former members, improve the impervious surface, or provide the neighbors with any recreational expectations.

3508 Mayor Dunn called a ten-minute recess at 9:30 P.M.

3524 Mayor Dunn reconvened the meeting at 9:42 P.M., asking for questions and comments from the Governing Body on Item “12B.”

Councilmember Rawlings confirmed with the applicant that the model of the proposed site plan was a 1/32 scale model. Mike Shirk, 22810 W. 244th Street, the civil engineer of the design, stated the site had been graded so that water would drain to the creek with no detention basin on the property. He said there would be no stagnant water except during flood conditions. When water flowed into the culvert at State Line Road, it would run off the property. There would be a 1% slope at the base of the wall towards the creek, with the highest point of the base being 3’ higher than the creek. The wall design could be fine-tuned, but not drastically changed; additionally, it would not look imposing. Mr. Shirk indicated that the Larkin Study conducted last year showed the flood zone to have risen thirteen feet from what it was two years ago, identifying the 100-year elevation as higher than in the past. He stated the culvert under State Line Road was undersized and inadequate for the area, which caused flooding to occur during large rainstorms. There was no foreseeable cure to the problem as it would be a major expense to replace it. Mr. Shirk added the culvert was not a part of their project and they had no input into its design.

Councilmember Rawlings discussed the sanitary sewer manholes with Mr. Shirk. Mr. Shirk indicated that the manholes along a creek were required to be above the 100-year flood elevation. When the manholes in question were designed, they were most likely above the flood elevation; however, with the new elevation study, the manholes were now below the proper elevation, and that was why they flooded. In the new plan, the sanitary sewers would be raised.

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Councilmember Rawlings questioned the need for blasting. Mr. Shirk stated he had spoken with George Kroh on this issue. Mr. Kroh had stated sewer lines had been buried on the site 50 years ago. Today, excavation could be done by drilling holes into the rock, filling the rock with chemicals, and allowing the chemicals to expand and crack the rock for easy removal. Blasting with dynamite would not be necessary.

Councilmember Taylor asked if there had been any discussions with Johnson County Parks & Recreation regarding the purchase of this property. Mr. Lambers stated the City was prohibited from having any discussions or negotiations because of the active and pending rezoning request before the City. Mr. Lambers further stated that the City had the funds to buy the property if it were offered at market value; however these funds were not currently budgeted for that purpose. He stated the City had spent \$12 million dollars on three Leawood parks for either redevelopment or new construction purposes.

Councilmember Taylor discussed the boundaries of population areas in Leawood with Diane Binckley. Ms. Binckley stated that the Comprehensive Plan set out three districts, including the "Maturing North" from I-435 northward. This area was served by City Park for its recreational purposes. Councilmember Taylor summarized his opinion on the LCC by stating that in the present economic times, other local country clubs had had a difficult time maintaining memberships. Given the financial history of the LCC, what rationale was there that this club could survive? He stated that he would be in favor of voting to change the zoning.

4096

Mayor Dunn asked Mr. Lowe to speak on the geology of the LCC area as a professional geologist. He gave his professional credentials and named various projects he had been associated with in the metro area. Mr. Lowe stated that under the LCC a limestone stratum existed that would require some sort of extraordinary method for excavation. He agreed that there were chemical means for doing this, but that they were quite expensive and required much drilling. His apprehension concerning the rezoning was that when the applicant began to build, the cost of a chemical application for the excavation would prove too costly, and the applicant would resort to the more inexpensive means of blasting.

Councilmember Gill questioned Mr. Lowe on the ability to build on the existing soil. Mr. Lowe stated the present soil was known as "fat clay" which would need to be excavated, with other clays then brought in to replace it, to support the structures' foundations. Councilmember Gill asked if the building hazards associated with a subdivision near Deer Creek, where a new housing development slid down a hill of fill dirt, could be repeated should the new LCC housing development be built on fill dirt. Mr. Lowe replied it was his belief that construction could be completed safely on this site, or anywhere, if the proper engineering and construction techniques were used.

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Councilmember Rasmussen confirmed with Mr. Lowe that the limestone under the LCC was not the same stratum that was under Hallbrook, but probably had similar characteristics. Mr. Lowe admitted that had he been told blasting had occurred at Hallbrook without any serious consequences, that he would believe such a statement.

Councilmember Dunn stated for the benefit of the Council to remember that this piece of property was unique. It was his opinion that at some time in the future it might become apparent that the only use for this property would be residential; however, he felt now was not the time to change the zoning, as the effort to try to use the property as recreational had not been thoroughly investigated. He asked the members of the Governing Body to review the comments of the Planning Commission on each of the nine issues brought before them from which they based their decision. He felt there was no reason to reject the Planning Commission's decision at this point.

Councilmember Story concurred with Councilmember Dunn's comments. He stated that while the applicant made a significant effort to assert that the land was private and not public, he felt green space was important to an environment. He said he would not support the rezoning, as it was not the right time to make that decision.

Councilmember Gill questioned Ms. Filla on the Johnson County 20/20 Plan. Ms. Filla explained that this plan suggested that when appropriate land such as a country club became available for purchase, that such action should be taken to ensure the property was reverted back to parkland.

4642

Councilmember Rasmussen asked for clarification from Ms. Binckley on the reasons behind the Planning Commission's decision. Ms. Binckley stated that prior to the LDO's revision, the applicant could have been granted a number of recreational uses. Under the current LDO, the applicant could still be granted a number of recreational uses after obtaining a special use permit. The recreational uses included: private clubs, horseback riding academies, athletic fields, batting cages, skating rinks (roller and ice; indoor and outdoor), and commercial or club facilities for tennis, handball, racquetball, swimming, and similar facilities.

Councilmember Rasmussen questioned the significance of the applicant stating they came in under the old LDO. Ms. Binckley stated the applicant's plan was being reviewed under the old LDO. However, should they come back with a new use under recreational zoning, it would be reviewed under the new LDO.

4895 Mr. Patterson verified with Councilmember Rawlings that the applicant had seriously reviewed all possible recreational uses for the property. The Highest and Best Use Study indicated to them that other uses would be inappropriate. Mr. Patterson commented that during the mediation, the applicant had proposed developing 50% of the property, leaving the remaining 50% recreational, but that the other party had rejected it.

Mayor Dunn asked Mr. Patterson to expound on the 50-50 Plan. If the applicant had been allowed to pursue this plan, what changes would be made from the plan currently being reviewed? Mr. Patterson replied that the two acres containing Lots 1-4 would remain open green space, along with the 6+ acres on the east side. The remaining land would be developed as mixed R-1, containing a planned-unit development concept with villas and appropriate landscaping. Councilmember Gill confirmed with Mr. Patterson that this plan was still an option. The housing would be a denser mix similar to The Woods, and include a wall. Mr. Patterson confirmed with Councilmember Gill that the applicant had authorized the mediator to suggest this plan, but that he had come back saying the residents refused to accept any type of building on the property.

5249 Councilmember Gullledge questioned Mr. Shirk about the number of mature trees on the two-acre parcel of land that had been suggested by Mr. Patterson to leave vacant. Mr. Shirk stated that there were over 400 trees on the entire 16-acre site, and by leaving the two acres green, 1-2 dozen more mature trees could be preserved.

Councilmember Rasmussen confirmed with Ms. Binckley that the zoning and site plan they were being asked to deny was a preliminary site plan that could be modified. Prior to coming back for final approval, the site plan would need to be in substantial compliance to the LDO. The new 50-50 Plan that the applicant had suggested would be a substantial change because the villa project would not meet the R-1 standard.

Councilmember Gill discussed with Mr. Patterson the reasoning for not submitting the new 50-50 Plan. Mr. Patterson stated he was unsure if a plan of mixed uses would be met with approval, but he was willing to go back to the applicants and revise their plan. Councilmember Gill stated he believed the LDO allowed mix-use areas, and he would be supportive of a plan that would retain 50% accessible open space, with the remaining 50% developed into compatible residential area. Ms. Binckley stated by using RP-1 or RP-2 zoning, the phasing of larger to smaller lots could be achieved.

5670 Councilmember Gulledge stated he had been ready to vote for the plan, but in light of the 50-50 Plan, he felt there was now an alternative idea that should be examined.

Councilmember Dunn made a motion to accept the Planning Commission's recommendation to deny the rezoning request. Councilmember Story seconded the motion. Mr. Lambers asked that the Governing Body vote on the issue at hand, and should they decided to waive the time constraints for the applicant to refile, a second motion would be in order. He also asked the Staff to look at the zoning categories appropriate for any new plan that the applicant submitted so Staff would not dismiss a plan for what appeared to be spot zoning.

5955 The result of the Roll Call vote to deny the request was as follows: Yea: Councilmembers Gulledge, Story, Rasmussen, Gill and Dunn. Nay: Councilmembers Rawlings, Taylor and Bussing. With the majority of the Council voting for the motion, 5-3-0, the motion carried, and the rezoning request was denied.

Councilmember Dunn stated his reason for approving the motion was because of the recommendations, Nos. 1 through 9, set forth by the Planning Commission. He also considered the Golden Criteria.

Councilmember Story, agreeing with Councilmember Dunn, stated after review of the information offered by the applicant, neighbors and the Planning Commission, he agreed with the Planning Commission's analysis.

Councilmember Gulledge stated he voted for the motion because, while he felt the applicant's plan met the requirements, he believed it could be improved. He added that he did not agree with the comment that the homes in the area would decrease in value by the new development.

Councilmember Gill stated he felt the plan did not meet the Golden Criteria. He was opposed to losing the open space in north Leawood, that was important for community gatherings.

Councilmember Rasmussen voted for the motion based upon the applicant's statement, that they could come back with a better plan.

5372 Councilmember Gill confirmed with Mr. Patterson that there was an interest in refileing and that the applicant would advise the City of their intentions before the next Governing Body meeting on October 6th. Councilmember Dunn stated the issue had been pending for 14 months and he did not feel the applicant needed six months to refile. Councilmember Taylor made a motion to waive the six-month refileing requirement. Councilmember Rawlings seconded the motion. The motion passed 6-2-0, with Councilmembers Dunn and Story opposed.

6701 At 11:00 P.M., Mayor Dunn asked for a motion to extend the Governing Body meeting for 30 minutes. A motion was made by Councilmember Gullledge and seconded by Councilmember Rawlings. The motion passed 7-1-0, with Councilmember Dunn opposed.

Mayor Dunn thanked all of the residents for their participation in the rezoning process.

6735 **13. OLD BUSINESS – None**

6737 **14. NEW BUSINESS**

A. **Resolution No. 2099 declaring it necessary to appropriate private property for the use of the City of Leawood, Kansas, for the JB-04-008 Stormwater Management Advisory Council Project [SMAC] from Lee Boulevard to State Line between 103rd Street and I-435**

Councilmember Rasmussen stated he would vote against the Resolution because he felt that the beneficiaries of the SMAC project should not be additionally compensated by requesting the taxpayers to pay for the project. He added that it was inappropriate for the City to condemn property so that a property owner could improve the value of his property. He felt it was an abomination for one property owner to require that public funds be used to hire appraisers to evaluate the cost of taking the easement.

Councilmember Dunn confirmed with Mr. Lambers that the cost of this appraisal could be charged back to the one property owner if the Governing Body wished to pursue it. Mayor Dunn voiced her support of looking into this possibility.

Councilmember Gill confirmed with Mr. Lambers that the property in question belonged to Edward L. and Anne M. LeCluyse of 2204 W. 104th Street, Lot 826, Leawood Estates Subdivision. Councilmember Rawlings stated that this owner had refused to sign an easement to put in a catch basin behind the home of neighbor who's basement continually flooded because of runoff from the LeCluyse property that sits 3' higher. He said Mr. LeCluyse refused to execute an easement to allow the installation of a drainage pipe that would take care of this problem; in the meantime, the neighbor's basement had flooded three times and now she could not obtain homeowners insurance. Councilmember Rawlings confirmed that Mr. LeCluyse had stated he did not have flooding problems at his residence.

Councilmember Dunn clarified with Mr. Lambers that a vote for this Resolution would be with the understanding that the Council would look at the possibility of charging the costs back with a Special Benefit District.

Councilmember Bussing made a motion to approve the Resolution, seconded by Councilmember Rawlings. The motion passed 7-1-0, with Councilmember Rasmussen opposed for reasons stated.

- 7129 B. **Ordinance No. 2021 authorizing and providing for the acquisition of lands or interests therein by condemnation for the JB-04-008 Stormwater Management Advisory Council Project [SMAC] from Lee Boulevard to State Line between 103rd Street and I-435 [Roll Call Vote]**
Councilmember Dunn made a motion to approve with the same understanding as with Item "14A". Councilmember Gill seconded the motion. A roll call vote was taken: Yea: Councilmembers Taylor, Gill, Rawlings, Story, Gull, Bussing and Dunn. Nay: Councilmember Rasmussen. The motion passed 7-1-0.
- 7161 C. **Ordinance No. 2018, authorizing the issuance and delivery of *\$5,105,000, principal amount of General Obligation Improvement Bonds, Series 2003-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]**
Kathy Rogers indicated that the revised amount was *\$5,060,000, as there had been one prepayment made on September 12th.

Councilmember Gulledge made a motion to approve. Councilmember Gill seconded the motion, and it was passed unanimously with an 8-0-0 Roll Call vote.
- 7285 D. **Resolution No. 2085, prescribing the form and details of and authorizing the delivery of *\$5,105,000, principal amount of General Obligation Improvement Bonds, Series 2003-A, of the City of Leawood, Kansas, authorized by Ordinance No. 2018, of the City; providing certain covenants and agreements with respect thereto; and providing for execution of certain agreements in connection therewith**
Mayor Dunn corrected the principal amount to read *\$5,060,000. Councilmember Dunn made a motion to approve the Resolution. Councilmember Gill seconded the motion and it was approved unanimously, 8-0-0.
- E. **Ordinance No. 2019, authorizing and providing for the issuance and delivery of \$12,600,000, principal amount of General Obligation Temporary Notes, Series 2003-2, 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]**
Councilmember Gulledge made a motion to approve the Ordinance. Councilmember Rawlings seconded the motion, and it was passed unanimously with a Roll Call vote, 8-0-0.

- F. **Resolution No. 2086**, authorizing the issuance and delivery of \$12,600,000 principal amount of General Obligation Temporary Notes, Series 2003-2, 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

Councilmember Dunn made a motion to approve the Resolution. Councilmember Rawlings seconded the motion, and the motion was approved unanimously, 8-0-0.

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- G. **Ordinance No. 2022** amending Sections 14-101 through 14-104, of the Code of the City of Leawood, Kansas, 2000, pertaining to regulating traffic within the corporate limits of the City of Leawood, Kansas; incorporating by reference the 'Standard Traffic Ordinance for Kansas Cities, 2003 edition,' with certain amendments, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, and K.S.A. § 12-3301 and 12-3302; repealing existing Sections 14-101 through 14-104; and other sections in conflict herewith.

Councilmember Gill made a motion to approve the Ordinance. Councilmember Gullede seconded the motion, and it was passed unanimously by a Roll Call vote, 8-0-0.

- H. **Ordinance No. 2023** amending Sections 11-101, through 11-106, of the Code of the City of Leawood, 2000, pertaining to regulating public offenses within the corporate limits of the City of Leawood, Kansas; incorporating by reference the 'Uniform Public Offense Code for Kansas Cities,' 2003 edition, with certain amendments and omissions, such incorporation being authorized by K.S.A. §12-3009 through 12-3012, and K.S.A. § 12-3301 and 12-3302, and repealing existing Sections 11-101 through 11-106, and other sections in conflict herewith.

Councilmember Gill made a motion to approve the Ordinance. Councilmember Dunn seconded the motion, and it was passed unanimously with a Roll Call vote, 8-0-0

- I. **Approve Change Order No. 17, in the amount of \$59,070.00, to Vanum Construction, Inc., for relocation of domestic and fire water lines, pertaining to the Ironwoods Park Project [CIP # 116]**

Councilmember Dunn made a motion to approve the Change Order. Councilmember Rawlings seconded the motion. It was approved 7-1-0, with Councilmember Taylor opposed; stating he did not feel it represented the amount the City should be paying.

7578 15. OTHER BUSINESS – None

- 7580 **16. ADJOURN**
There being no further business, the meeting was adjourned at 11:22 P.M.

Debra Harper, City Clerk

Emily Gleasure, Recording Deputy City Clerk