

DVD No. 332

Minutes

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, 2014. Mayor Peggy Dunn presided.

**Councilmembers Present:** Jim Rawlings, Julie Cain, Lou Rasmussen, Debra Filla, Carrie Rezac, Andrew Osman, and James Azeltine

**Councilmembers Absent:** None

<b>Staff Present:</b>	Scott Lambers, City Administrator	Patty Bennett, City Attorney
	Richard Coleman, Comm. Dev. Director	Nic Sanders, HR Director
	Mark Klein, Planning Official	Dawn Long, Finance Director
	Chief John Meier, Police Dept.	Chief Dave Williams, Fire Dept.
	Chris Claxton, Parks & Rec. Director	Joe Johnson, PW Director
	Karl Weinfurter, IS Systems Specialist II	Deb Harper, City Clerk
	April Bishop, Cultural Arts Coordinator	Cindy Jacobus, Asst. City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted the following amendment to the agenda:

- A. Item No. 7.K., resolution approving the distribution of alcohol taxes has been continued to the December 1, 2014 Governing Body meeting.

**A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Cain. The motion was approved with 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.**

Mayor Dunn stated since all citizens who signed in were for Agenda Item 11.C., the ordinance approving a rezoning for Kansas City Orthopedic Institute, the citizens would have the opportunity to speak during the discussion of that item.

**4. PROCLAMATIONS**

**Constitution Week, September 17-23, 2014**

Mayor Dunn proclaimed the week of September 17-23, 2014 as Constitution Week in the City of Leawood and asked citizens to reaffirm the ideals the framers of the Constitution of the United States of America held in 1787.

**5. PRESENTATIONS/RECOGNITIONS Report from I-Lan, Taiwan**

I-Lan Sister City Committee Member Diana Sun appeared before the Governing Body. Taipei Economic and Cultural Office [TECO] Director General Jack Yang and Consular Officer Amber Wang, other I-Lan Sister City Committee Members and Staff Liaison Julie Berger, were also present.

Ms. Sun presented a photo slide show of her recent trip to I-Lan, which included a visit with I-Lan Mayor Huang. The presentation included photos of the “Leawood Bridge” in I-Lan, constructed several years ago at a cost of \$22 Million and photos of “Snow Mountain Tunnel” which was built to improve transportation. The tunnel shortens the trip between I-Lan and Taipei, from four hours to one hour. At the peak of Snow Mountain there is a windmill and you can see “Turtle Island” in the distance. During her visit Ms. Sun toured I-Lan City Hall, where past gifts from the City of Leawood are on display, and she returned from her trip with additional gifts from I-Lan to the City of Leawood.

Mayor Dunn displayed the recent gifts and passed them to Councilmembers. The gifts included a book of fables in Mandarin and a book of I-Lan food, a publication which includes photos of Mayor Huang, and a lovely ornament. Ms. Sun provided a gift of her slide show.

TECO Director General Jack Yang appeared and expressed his privilege and honor to join the meeting. He stated that it has been about 30 years since his last visit to I-Lan, which is one of the three largest cities in Taiwan and a major tourist destination. Mayor Dunn extended special congratulations on the upcoming Taiwan National Day, October 10<sup>th</sup>, and thanked Ms. Sun and the Sister City Committee Members.

**6. SPECIAL BUSINESS - None**

**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. 2014-33 and 2014-34
- B. Accept minutes of the September 2, 2014 Governing Body meeting

- C. Accept minutes of the August 12, 2014 Parks and Recreation Advisory Board meeting
- D. Accept minutes of the July 8, 2014 Parks and Recreation Advisory Board meeting
- E. Accept minutes of the June 24, 2014 Arts Council meeting
- F. Accept minutes of the May 13, 2014 Historic Commission meeting
- G. Approve 2016 Budget Finance Calendar
- H. Approve renewal of Retail Liquor Store license to Camelot Court Wines & Spirits, located at 11841 Roe Avenue
- I. Approve renewal of Retail Liquor Store license to Lancaster Liquor [f/k/a/ Stoll Liquor] located at 3731 W. 133<sup>rd</sup> Street
- J. Approve payment in the amount of \$17,646.00 to Creative Displays of Kansas City, Inc., pertaining to the 2014 Holiday Lighting located at City Hall, 4800 Town Center Drive
- K. Resolution approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2015 alcohol tax fund for an amount not to exceed \$250,000- *[Continued to the December 1, 2014 Governing Body meeting]*
- L. **Resolution No. 4317**, approving and authorizing the Mayor to execute an Inter-local Agreement by and between the Board of County Commissioners of Johnson County [BOCC], the City of Prairie Village and the City of Leawood, pertaining to the Arterial Mill & Overlay Improvement Project of Somerset Drive from Belinder to State Line Road; and Cambridge Street from Somerset Drive to 660' north [Project #72036]
- O. Fire Department Monthly Report – August, 2014
- P. Police Department Monthly Report – August, 2014
- Q. Municipal Court Monthly Report – August, 2014

Councilmember Rezac requested Consent Agenda Item No. 7.M. to be pulled and Councilmember Azeltine requested Consent Agenda Item No. 7.N. to be pulled.

**A motion to approve the remaining items on the Consent Agenda was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 7-0.**

- M. **Resolution No. 4318**, approving and authorizing the Mayor to execute Amendment No. 2 to that certain Professional Engineering Agreement dated November 19, 2007, between the City and Burns & McDonnell, pertaining to the 143<sup>rd</sup> Street Improvement Project between Nall Avenue to east of Mission Road [Project # 80162]

Councilmember Rezac asked Mr. Johnson about the increased project cost. Mr. Johnson replied the scope of the project had been modified, but there was much more work than anticipated for easement negotiations. Also, there is an increase for relocation of utilities.

Councilmember Azeltine asked if the utility relocation was within the amount allocated. Mr. Johnson replied that it was and the areas where private easements are located caused an increase.

**A motion to approve Resolution No 4318 was made by Councilmember Azeltine; seconded by Councilmember Rezac. The motion was approved with a unanimous vote of 7-0.**

- N. **Resolution No. 4319** approving and authorizing the Mayor to execute a Relocation Agreement between the City and Kansas Gas Service Company, for the relocation of gas lines for an amount not to exceed \$175,000, pertaining to the 143<sup>rd</sup> Street Improvement Project between Nall Avenue to east of Mission Road [Project # 80162]

**A motion to approve Resolution No. 4319 was made by Councilmember Filla; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 7-0.**

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

- A. Sincere sympathies are extended to all victims of the recent tragic shootings in south Kansas City; in particular, to the families of Leawood resident Darrel Hurst and Susan Choucroun, whose husband is a long-time retailer in Leawood.
- B. Attended the Johnson & Wyandotte Counties Council of Mayors meeting, hosted by Overland Park Mayor Carl Gerlach at Pinstripes in Prairiefire. Kansas Senator Jerry Moran was also in attendance and provided updates regarding national news.
- C. Joined by Councilmembers Rawlings and Azeltine at the Blue Valley Educational Foundation Community Breakfast. Dr. Tom Trigg provided many reasons to celebrate our students' tremendous successes.
- D. Joined by Councilmembers Rawlings, Rasmussen, Filla and Osman at the pre-opening of IKEA's Swedish Smörgåsbord, where we toured and sampled their signature cuisine. IKEA is a great new addition to our region.
- E. Joined by City Administrator Scott Lambers and all City Department Heads at the United Way of Greater Kansas City Campaign Kickoff Lunch held at Arrowhead Stadium. Please mark your calendars for a breakfast starting at 8:00 A.M. on October 7, 2014, to be held in the City Hall Oak Room for Leawood's United Way Campaign Kickoff.
- F. Many thanks to Police Chief John Meier and Fire Chief Dave Williams for a fabulous community Open House held at our new Justice Center. Councilmembers Rawlings and Cain were in attendance, along with hundreds of others. Police Officer Randy Wiler organized the event with assistance from all Department Heads and numerous Police and Fire personnel. A wonderful time was had by all!
- G. Participated in the Awards Ceremony for World Atrial Fibrillation Awareness Day held at Town Center Plaza and organized by Leawood resident physicians from Kansas University Hospital.
- H. Congratulations in order for two newsworthy items:
1. Safe Choice Security News comparison of 300 cities in Kansas with populations of 5,000 or more, ranked Leawood as the third safest city in the state.

2. Parks & Recreation Magazine, a national publication, has published a feature article on Leawood's community-level, sustainability and environmental stewardship actions, with focus on Ironhorse Golf Club's systematic sustainability management practices. The article included quote by Parks & Recreation Director Chris Claxton.

## 9. COUNCILMEMBERS' REPORT

**Councilmember Rezac**

**Recommendation of referral to Public Works Committee for Street Fees**

Councilmember Rezac stated that staff requested the Public Works Committee review the fee schedule regarding development of new arterial streets and whether or not the developer should pay the fee if an arterial street is already improved per City Code. Mr. Johnson clarified the question is whether to charge the street fee of \$311 per foot to the developments that are platted after the street is approved or whether the fee only applies to developments if they plat before the street is improved. The recommendation will include modified language, if necessary. Mayor Dunn asked Mr. Johnson about historic practice. Mr. Johnson replied the City had not imposed the fee on developers if the street had already been developed and improved to City standards.

The issue will be discussed at the Public Works Committee meeting the first week of October.

**A motion to refer the issue to the Public Works Committee was made by Councilmember Rezac; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 7-0.**

## 10. STAFF REPORT - None

### **COMMITTEE RECOMMENDATIONS**

#### 11. PLANNING COMMISSION

*[From the August 26, 2014 Planning Commission meeting]*

- A. **Ordinance No. 2686**, approving a Special Use Permit for a wireless communication facility for Leawood South Golf Course – Sprint Wireless Antennas and Associated Equipment, located north of Sagamore Road and west of Pembroke Circle (PC Case 73-14) [Roll Call Vote]

Mayor Dunn inquired if the Applicant was present and said that all documentation stated name of the location as "Leawood South Golf Course", but the new name is "Country Club of Leawood".

Ms. Sherri Edwards, SBA Network Services, 12431 Cambridge Circle, Leawood, Kansas, appeared on behalf of Sprint and requested approval of a Special Use Permit for a wireless communication facility at Leawood South Golf Course. Ms. Edwards stated branches from the tree will be removed, shipped to California, and the tree needles refurbished to maintain the previous appearance. Even with the addition of UV protection, the branches will only last about 7 to 10 years. Refurbishment will leave the tree without branches for a minimum of 8 weeks and during this time antennas will be mounted closer to the pole.

Councilmember Cain asked if it was more expensive to refurbish the branches than to replace them and if they would last longer with replacement. Ms. Edwards replied they would not last longer, and the cost will be very similar with an aesthetic improvement. Once all permits are in place, the project would commence the end of November or early December and complete by early March, with construction occurring Monday through Thursday to avoid golf course activity. The schedule allows for weather disruptions.

**A motion to pass Ordinance No. 2686 was made by Councilmember Filla; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 7-0.**

- B. **Ordinance No. 2687**, approving a Special Use Permit for a wireless communication facility for Leawood South Country Club Maintenance Facility Site – Sprint Monopine, Wireless Antennas and Associated Equipment, located south of W. 123<sup>rd</sup> and east of Mission Road (PC Case 114-14) [Roll Call Vote]

**A motion to pass Ordinance No. 2687 was made by Councilmember Filla; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 7-0.**

- C. **Ordinance No. 2688**, approving a Rezoning (From AG, Agricultural, to SD-O, Planned Office), Preliminary Plan, Preliminary Plat, Final Plan and Final Plat for Tomahawk Creek Office Park – Kansas City Orthopedic Institute (KCOI), located south of College Boulevard and west of Tomahawk Creek Parkway (PC Case 102-14) [Roll Call Vote]

Mr. Greg Musil, Esq., Polsinelli Law Firm, 6201 College Boulevard, Suite 500, Overland Park, Kansas, appeared for KCOI. He introduced Dr. Charles Rhoades of KCOI; Mr. Ken Kuse, Manager of KCOI Facilities; Mr. Sam Beckman and Mr. Bob Bosley of ACI Boland Architects; and Mr. Brian Kubicki with Acoustical Design Kubicki, L.L.C. Mr. Musil made a detailed presentation regarding the case, including efforts to address neighbors' concerns, beginning with an overview and concluding with several key points of the development plan.

Mr. Musil stated in 1998 the Council approved the overall facility. Phase II is for 21,000 sq. ft. of the original 78,000 sq. ft. facility, which was approved but not zoned. The estimated cost for Phase II is \$11 Million. An Interact Meeting was held August 13, 2014, and KCOI was pleased to receive a unanimous staff recommendation. Key points of the development plan are as follows:

1. Overall, about 100 sq. ft. smaller than approved in 1998.
2. Phase II uses same architectural features.
3. Traffic and stormwater studies were conducted as required.
4. New phase will allow traffic/patients to enter on east vs. south, away from the neighbors to the west.
5. Reduced number of parking stalls still meets City requirements.
6. Twenty-three porous concrete parking stalls for freeze-thaw sustainability.
7. Bicycle racks.

8. Parking lot lights will be lowered by 3 ft., will become LED and directionally targeted.
9. Landscaping plan exceeds City requirements; 58 trees vs. 35 and 57 shrubs vs. 44.

Mr. Musil displayed the “Site Plan” depicting the current building in white and the planned Phase II in blue. He stated in 1998 the property was rezoned to RP-4. The original building had a 40 ft. set-back from residential neighbors to the west, allowing tuck back into the hill. The current City code requires a 75 ft. set-back from residential. Phase II set-back is over 100 ft. from the property line.

Additional revisions and information include:

1. Trash compactor will be relocated, attached to the building and 75 ft. away from neighbors. (Stipulation No. 29).
2. Submitted additional retaining wall details.
3. Submitted additional information on parking and pedestrian crossing.
4. Revised landscape plan to have six more evergreens on southwest property line (Stipulation No. 15).
5. No opposition to underground power lines (Stipulation No. 4).

Mr. Musil stated his focus tonight is continuing the concept approved previously, building in complete compliance with City Code, and the time and resources spent responding to residents.

He continued by stating specific noise concerns raised by neighbors and methods used to address:

1. Trash collection – Three dumpsters located in southwest parking lot, on west property line, within 40 ft. from residence, are filled by 20 to 30 trips per day of rolling trash carts across 150 ft. parking lot. Dumpsters were emptied five days a week. In response to noise concerns, quieter trash cart wheels and seals to lessening banging upon overhead dumpster drop-out were installed.

In the current design, a trash compactor in a 10 ft. high brick/concrete enclosure attached to building will be utilized. Facility staff will step out a door, and place trash in a hopper, which will be run when full. KCOI is agreeable to limiting hydraulic compaction to certain hours of the day (Stipulation No. 28). There will be one Saturday trash pick-up with just three overhead dumpster drop-outs. The trash compactor operates like that at AMC in Park Place, and will meet City Code.

2. Emergency generator – Federally required and runs in compliance with regulations.
3. HVAC rooftop units and chiller on ground for MRI machine – Current five HVAC units to increase to total of eight units with Phase II, with one of the existing five HVAC units to be replaced. Any units on Phase II will be double the distance from neighbors as the initial building.

With upfront design specifications, and improvements in noise-reduction technology and materials, opportunities exist to improve sound attenuation. The parapet wall on Phase II is planned to be 8'8" high and the existing parapet wall that runs along the west side will be brought to that height and its horizontal gap filled. KCOI has never been alleged to be out of compliance with 60 decibels.

4. City Staff added Stipulation No. 27, which requires the Applicant shall provide the funds for the City to perform an independent sound study demonstrating the new rooftop HVAC units meet City Code prior to the issuance of a Certificate of Occupancy. Although this test requirement may be unprecedented, KCOI accepts.

Mr. Musil stated Mr. Kubicki has been in front of Council in the past on sound attenuation, and at the request of KCOI, has performed sound testing and prepared a report.

Mayor Dunn asked about the trash compactor hours and if they were different than Stipulation No. 28, which says 8:00 A.M. through 9:00 P.M. Mr. Musil replied that he accepts the stipulation.

Councilmember Rasmussen asked about the rooftop utility units and the sound they emit. He stated that Mr. Musil talked about building the parapet wall and inquired if Stipulation No. 27 language should have the word "new" stricken to be just "rooftop units". Mr. Musil agreed to the clarification.

Councilmember Rasmussen stated part of the current trash situation was that was trash missed or left in the area during pickup and asked if the problem would be eliminated by the trash compactor. Mr. Musil replied this would be difficult to eliminate completely, but it should be minimized and contained inside the 10 ft. trash compactor enclosure.

Councilmember Rawlings expressed appreciation for the efforts to mitigate the noise issues. He asked if the entire length of the building would have an 8'8" wall with sound-deadening abilities. Mr. Musil replied an understanding of the entire western wall including a parapet wall at least 8'8" with no horizontal gap. Councilmember Rawlings asked if the sound decibel level would be tested before or after the wall was built, and expressed concern about the possibility of not meeting City Code requirements. Mr. Musil replied the decibel level would be tested after the parapet wall is complete and the plan is to err on the side of the parapet wall being too tall and too thick. He stated the Applicant has confidence in their design team's efforts to mitigate sound.

In regard to Stipulation No. 4 and Mr. Klein's memo dated September 15, 2014, Councilmember Rasmussen asked Mr. Klein about burying utility lines on College Boulevard, in particular the decision to permit a delay until there is a Benefit District. He asked if this may be discriminatory, because the City Council enforced this requirement on developers along Nall. Mr. Klein replied the standard requirement is underground utilities, but this project included another development along College Boulevard with an agreement that lines would all be buried at one time.

Councilmember Rasmussen asked what the incentive there would be for a Benefit District. Mr. Coleman replied a Benefit District would be established when the City decides to bury the utility lines along College. Ms. Bennett confirmed the City can require that as long as applicants have agreed to the stipulation. Mayor Dunn questioned the opposing language. Mr. Klein stated an understanding that the City could propose a Benefit District, and the stipulation would require the Applicant to comply.

Mayor Dunn asked what developments have overhead utility lines. Mr. Klein replied Merrill Lynch, KCOI and quite a few older buildings along College Boulevard. Mayor Dunn asked why Merrill Lynch was not required to have buried lines and Mr. Coleman replied when built, it was apparently not required. Mayor Dunn commented this is what happened with 135<sup>th</sup> Street as well. Mr. Coleman stated that Council suggested the language be changed to a Transportation Development District [TDD] instead of Benefit District, because it would be more flexible when working with the public utility easements. Mayor Dunn pointed out that Benefit Districts are funded with City Bonds, while TDDs are overlapping debt, and she desires this language going forward.

Mr. Musil stated this was not a requirement in 1998 when KCOI built and cost would be far less if all lines are buried at one time.

Mr. Musil stated the southwest corner of the doctor's parking lot which had created concerns for citizens has additional landscaping and a 36" retaining wall. The parking lot will be used most heavily during the daytime, which will mitigate lights.

He continued by stating the construction schedule is 12 to 15 months for Phase II interior and exterior work, and renovation of the existing building. Mr. Musil pointed out that Stipulation No. 22 states no construction shall be allowed between the hours of 9:00 P.M. and 7:00 A.M. Monday through Saturday, and no construction on Sunday. This project requires interior construction for renovation of the existing building at odd hours and weekends, so patient care is not disrupted. He asked for an exception to allow interior construction of the existing building at other hours, as long as sound requirements are met.

Councilmember Rasmussen questioned if Stipulation No. 22 language could be revised from “No construction” to “No exterior construction”. Mr. Musil agreed, but indicated City Staff has not interpreted the ordinance in this manner. Mr. Coleman stated the City does not have control of construction procedures, which could include the potential of exterior equipment being used to support interior work. Interior work may also involve the use of lights and generate sound. City Staff’s position is the ordinance allows construction from 7:00 A.M. to 9:00 P.M. Monday through Saturday, and is sufficient. City Staff are not available to monitor after business hours or Sundays. The only exceptions made to this were to allow for an early construction start in July due to excessive heat. Mr. Musil stated willingness to agree to a stipulation that no loading, trucks, deliveries or other exterior activity would occur, if interior work could be allowed.

Dr. Charles Rhoades, 3651 College Boulevard, Leawood, Kansas, Orthopedic Surgeon and an owner of KCOI, stated gratitude to the volunteers serving on the Council and appreciation for their time and effort. Dr. Rhoades stated he would like to frame his thoughts in three areas:

1. In 1998, when came to Leawood, the plan was approved. He is proud and delighted to be in Leawood; originally planned to be in Overland Park. KCOI has brought 200 jobs, is at the top of state and national metrics and their infection rate is 1/10<sup>th</sup> of the national average. He is proud of the product they provide.
2. KCOI has been and wish to be a good neighbor, and has worked hard to listen and respond to their requests. Some requests resulted in changes that pleased many. They currently have the opportunity to proactively design to ordinance, aesthetics and personal desires.
3. He works in the building, loves the area and the land, and is pleased to proceed with Phase II.

Mayor Dunn expressed appreciation for his attendance and for his position in the community, as well as gratitude that KCOI has worked to address neighbors’ concerns.

**Citizen Comments:**

Mr. Bob Maher, 4152 W. 111th Terrace, Leawood, Kansas, The Woods Homes Association President, expressed pride in his neighborhood, which abuts KCOI, and appreciates that KCOI is one of Leawood’s “jewels”. He wants to ensure that everything is given the greatest possible consideration, with sound attenuation the highest goal, and pointed out discussion has been ongoing for two to three years. As a result many individuals, such as Mr. Agron, have incurred out-of-pocket costs for research. Mr. Maher stated that noise cure is the hardest because of subjectivity, but does not want to impede the Phase II addition.

Ms. Janet Agron, 11105 Alhambra, offered compliments on the recent Open House hosted by City at the Justice Center on September 12<sup>th</sup>. Ms. Agron asked if The Woods Homeowners Association would be a part of the Benefit District. Ms. Bennett replied that would depend on where the district was going and which lines were being buried. Councilmember Rasmussen stated with confidence his opinion that because of association entryway, it would be included. Ms. Agron expressed her main concern is the five noisy units on roof and the ground chiller and condenser, some of which run 24/7, 40 to 70 feet from her property line. A proposed additional roof-top unit would be directly across from her bedroom window. She asked for a lower decibel requirement for this building.

Mr. Jim Robinson, Avant Acoustics, Manager of Acoustical Services, 8500 Marty, Overland Park, Kansas, stated he reported to KCOI that it was exceeding the 60 decibel noise level, despite the KCOI's statement that no one has made a claim that the measurements have been any higher. He stated that measurement from ladder at 20 ft. above ground level on the property line was 62 decibels.

This measurement was taken the same day that Brian Kubicki of Acoustical Design Kubicki, L.L.C. also happened to be on site. He has seen Mr. Kubicki's report on noise level. Mr. Robinson continued by stating he felt the noise level at that time seemed lower than previous visits and pointed out it was uncertain if the equipment, which can be turned off and on, was running at full load. He made the argument that individual noise source is not a concern, but rather the noise level from all the units in total. With the addition of more units and their exhaust fans, the noise level will increase, and KCOI is exceeding the City Code noise level now.

Councilmember Cain asked if the reading of 62 decibels was a combination of all running equipment. Mr. Robinson thought the chiller, condenser and air handling units were all running. Councilmember Cain asked how the ordinance addresses sum versus individual. Mr. Coleman replied the ordinance states the maximum noise level is 60 decibels at the property line, with no differentiation for sum or individual unit.

Councilmember Rasmussen stated the ordinance addresses the total at any one time, which is what City Staff confirmed. Mr. Robinson stated KCOI's last report concluded that individual units did not measure over 60 decibels and therefore does not count.

Councilmember Rezac asked for confirmation that the measurements were taken without the parapet wall and that the wall would be up when the project is complete. Mr. Johnson agreed and pointed out the performance of the wall will be determined of the type of construction and the height. He also stated that additional rooftop units will be added.

Mr. Allen Agron, 11105 Alhambra, Leawood, Kansas, stated his contention that this is a unique situation in Leawood and that KCOI is not cooperating or communicating because various proposals for sound mitigation were submitted. He pointed out that equipment noise 24/7, 365 days per year at 60 decibels on a continual basis interferes with his enjoyment of his home. His letter, delivered to City Hall that detailed the history and problems, stated the generator was not on the original plan, and that KCOI was granted an addition of 5 decibels and also additional set-back.

He pointed out that Mr. Robinson's report explained that a parapet wall will not block the noise in and of itself. Currently none of the existing five units has sound attenuation and the plan is to add a 6<sup>th</sup> unit. He stated that Mr. Robinson proposed ideas for sound mitigation, but he was told the sound level was appropriate at the property line. The wall needs to be of sufficient height and appropriate material. Based on the existing units, the height would be 10'6" in height with acoustical backing material to reduce noise.

Mr. Agron also pointed out the ground-level noise; chiller specifications are 72 decibels and it is coming in at 78 decibels. A hood was added without knowing the height of the generator enclosure, so sound comes out of the hood and hits the generator enclosure; sound absorbing panels have been suggested to further reduce sound. Mr. Agron stated a desire to work with KCOI and that citizens desire a grant in asking for a reduced decibel requirement, like grants KCOI was given.

Mr. Musil stated even with the best intentions and communication, all parties are not going to be satisfied to the fullest extent. He pointed out several examples of addressing neighbors' concerns such as window film, trash cart wheels and dumpster seals. He also quoted the ordinance, which begins, "No use shall create . . ." and clarified that Mr. Kubicki measured 61 decibels at the property line, which included all the ambient background noise as well as all the equipment running at 100%.

Mr. Brian Kubicki, 6351 Locust, Shawnee, Kansas, President of Acoustical Design Kubicki, L.L.C, stated he authored report on trash compactor noise, took measurements at AMC Support Center and also generated the report for noise measurements last week. His measurement equipment is PC-based, while Mr. Robinson used a hand-held device. Mr. Kubicki stated his equipment was calibrated before and after the measurements, and the measurements were taken while on aluminum ladder at height of 27' from ground in a tree on the property line. His first measurement of 55 to 60 decibels was recorded with all KCOI equipment off and was from local traffic, I-435 in distance and nature. KCOI equipment generates in total to 61 decibels. He stated Mr. Robinson measured 62 decibels; discrepancy of 1 decibel might be attributed to noise from his movement on the aluminum ladder. Mr. Kubicki continued by stating the noise levels coming from KCOI do not fluctuate and it is mathematically impossible for KCOI equipment to be generating over 60 decibels, when measure at the elevated west property line. He stated his commitment to ensuring design will not exceed 60 decibels.

Mayor Dunn referred to Stipulation No. 27, the requirement for an independent sound study after construction, and inquired who will conduct the study. Mr. Coleman stated that he did not know which firm it would be, but he will contact several firms and procure estimates. Mayor Dunn stressed the importance of mitigating the noise level and asked Mr. Kubicki if he felt confident it would occur. Mr. Kubicki replied he felt confident it would.

Further in regard to Stipulation No. 27, Councilmember Rawlings asked what be the result of a measurement of 61 decibels. Mr. Coleman stated that at that level, no Occupancy Permit would be issued. Mayor Dunn stated there would be several ways to address.

Councilmember Azeltine asked if the City has a way to verify all the equipment is functioning properly when the noise level is tested. Mr. Coleman replied the independent firm will request KCOI turn on all the equipment.

Councilmember Azeltine asked if the 60 decibel level includes the ambient sound. Mr. Coleman replied that an analyzer will fluctuate depending on other factors. The steady sound level will be measured and analyzed at multiple points along the property line and at multiple heights.

Mayor Dunn stated that Stipulation No. 4 would be modified as well as Stipulation No. 7.

Mayor Dunn asked for an agreement on Stipulation No. 22, construction. Mr. Musil suggested, “No exterior construction or exterior construction activities”. This would prohibit trash pickup, supply deliveries and other such activity, with basically just the entrance and exit of construction staff. In regard to Sunday construction, Mr. Coleman stated he would only be comfortable with hours of 7:00 A.M. to 9:00 P.M., to preclude all-night construction with lights and noise. Mr. Coleman added that no City staff would be available to monitor and verify times, and the City would receive complaints after the transgression had occurred. Mr. Musil pointed out that if a stipulation were to be violated, KCOI would have to answer. He added that construction staff could enter and exit the east side of the building and perhaps lighting on the west side of the building turned off.

Councilmember Rezac asked if the interior renovations would only occur at the existing building. Mr. Musil replied that would be the case. Councilmember Rezac speculated the duration of the interior renovations would be a much shorter than the duration of the entire project. Mr. Musil stated he could not estimate the duration at this time, but project work would be sequential and would be much shorter if construction could occur on evenings and weekends, at hours when patients are not seen.

Councilmember Filla asked if Mr. Maher, on behalf of The Woods Homes Association, wanted to comment on construction stipulation. Mr. Maher stated with considerations, this should be fine with no objections. His concern is noise.

**A motion to pass Ordinance No. 2688 with the following modifications was made by Councilmember Filla; seconded by Councilmember Azeltine:**

- 1. Stipulation No. 27: Strike the word “new”.**
- 2. Stipulation No. 4: To specify the additional change from “Benefit District” to “Transportation Development District [TDD]”.**
- 3. Stipulation No. 22: Add suggested wording “Interior construction shall be allowed 24/7, but no exterior construction or exterior construction activities, and no lights located on the west side of the building shall occur beyond allowable construction hours of 9:00 P.M. to 7:00 A.M.”.**
- 4. Stipulations Nos. 1-3: As requested by Ms. Bennett, correct square footage and associated impact fees.**

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

- D. **Ordinance No. 2689**, approving a Special Use Permit for St. Paul’s School of Theology, located east of Nall Avenue and south of W. 137<sup>th</sup> Street, within Church of the Resurrection (PC Case 111-14) [Roll Call Vote]

Ms. Laura Snow, St. Paul School of Theology, 4370 W. 109<sup>th</sup> Street, Overland Park, Kansas, requested a Special Use Permit for St. Paul’s School of Theology to conduct classes at the Church of the Resurrection at 13720 Roe Avenue.

Councilmember Azeltine asked why a Special Use Permit was necessary and an established institution. Mr. Klein replied the use itself in this zoning district was not addressed in the Leawood Development Ordinance [LDO], and the LDO was recently amended to allow Colleges and Universities to function with a Special Use Permit as in other district. Mayor Dunn added this is a 20-year permit.

**A motion to pass Ordinance No. 2689 was made by Councilmember Filla; seconded by Councilmember Rezac. The motion was approved with a unanimous roll call vote of 7-0.**

- E. **Resolution No. 4320**, approving a Revised Final Plan for Tomahawk Creek Parkway – Public Art – “Variance” and Revised Master Art Plan, located north of 115<sup>th</sup> Street along Tomahawk Creek Parkway (PC Case 69-14)

*Staff Comment:* It is the position of the City Administrator that placement of this piece of art in the median on Tomahawk Creek Parkway is a mistake.

Ms. April Bishop, Cultural Arts Coordinator, 13200 Fontana, Leawood, Kansas, presented a change of site from that of the Master Art Plan for this piece which arose after engineers evaluated the installation expense, and asked to add a stipulation that a sidewalk will be constructed to increase visibility.

Mayor Dunn asked about the “Site Plan” comment on Page 3 of the Staff Report that refers to sidewalk south of the sculpture. She stated she thought it would be part of the location costs to the Arts Council and sidewalk is just needed in the median; sidewalk is already present to the west. Ms. Bishop replied that while it was discussed, nothing was decided. Ms. Bishop stated the main goal is to get the piece installed because it needs to be moved from New York City. Mayor Dunn pointed out that trail connection is part of a future plan.

Councilmember Cain stated the connectivity with the sidewalk was one of the reasons for the currently proposed site. She also asked if Parks & Recreation had funds to connect the trail. Ms. Claxton replied annual trail funds could be committed to make the connection across the street in the future.

Councilmember Filla agreed with Mayor Dunn and Councilmember Cain, and stated the area was only meant to be disturbed one time for sidewalk connectivity and asked if it could be added. Ms. Bishop said she agrees with this stipulation.

Councilmember Azeletine pointed out two issues: the sidewalk and the funding for the sidewalk. Councilmember Rasmussen stated in the recent work session on this art piece, it was decided the median sidewalk would be part of the installation of the piece; cost was estimated to be \$7,000 or less, and would come from the Arts Council budget. Mayor Dunn pointed out a \$30,000 savings by moving it to the currently proposed spot. Councilmember Azeltine stated some of the costs could be absorbed by the Parks Department. Ms. Bishop clarified that those funds would be for the area from the sidewalk to the trail.

Ms. Bennett stated the stipulation could read, “The sidewalk shown as proposed on the plan shall be constructed at the time of installation”, and that cost is usually not part of a planning stipulation, but will show in the minutes as far as the budget paying for the installation.

Ms. Mary Tearney, Chair of the Leawood Arts Council, stated this was suggested and discussed at a work session, but without approval vote, which is needed. Mayor Dunn stated a consensus was reached at the work session, and generally when that happens, that consensus is in the proposal that is presented to the Council. Mrs. Tearney stated the expense portion of the proposal came from Haren Laughlin, who was not advised to include the sidewalk cost. Councilmember Filla stated the stipulation could be added before the vote.

Mayor Dunn noted a discrepancy on the Master Plan Map and asked if the language for call-out “10 Variance” needed to be changed to “Site retracted due to costly installation” to match the other areas in the plan. Councilmember Filla agreed and stated the wording could be, “Site retracted due to costly installation of the Paley piece”.

Councilmember Azeltine asked if the approval would be for the art piece, the sidewalk and the amended stipulation. Ms. Claxton pointed out the intention of the Planning Department was to keep the documentation together to show retracted Site 10 and the identification of Site 11, which was not on the original Master Plan.

Mayor Dunn pointed out that Site 10 was a nice site. Ms. Bishop stated that a piece placed on that site would need to be small and on a pedestal due to the flood plain. Councilmember Filla commented that Site 10 might work well for a temporary piece or an art piece on a pole.

Councilmember Rezac asked if a concrete pedestal would be required for the currently proposed site. Ms. Bishop clarified that it will be a footing, and much of the concrete will be covered by a 4 ft. grade of soil. Mr. Justin Milburn, Continental Consulting Engineering, 9000 State Line Road, Shawnee Mission, Kansas, stated the footing would be 4 ft. tall with gentle grading of a 5:1 slope, so the footing concrete will not be visible.

Ms. Bishop stated with an approval, the pedestal construction by Haren Laughlin could start the following day; concrete pedestal will need to cure for about 7 days. “Variance” would ship in about 4 days.

Councilmember Azeltine objected to using art funds for anything except art and installation, which does not include sidewalk installation.

**A motion to approve Resolution No. 4320 with the modification of the stipulation to include the sidewalk to the south of the installation as discussed in the work session and this meeting, and synchronization of the Master Plan text and Site 10 map call-out to state “Site retracted due to costly installation of the Paley Art Piece”, and identification of Site 11 as the proposed site for “Variance” was made by Councilmember Filla; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 7-0.**

## **12. OLD BUSINESS - None**

**13. OTHER BUSINESS - None**

**14. NEW BUSINESS**

- A. Ordinance 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,' 2014 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 § 11-101 through 11-106, and other sections in conflict herewith [Roll Call Vote]
  
- B. Ordinance amending Chapter 14, Article 1 of the Code of the City of Leawood, Kansas, 2000, by amending Sections 14-101, 14-103, 14-104, 14-105, 14-106, 14-107, 14-108 and 14-113 and by adding new Sections 14-102E and 14-108A, pertaining to Regulating Traffic within the Corporate Limits of the City of Leawood, Kansas; incorporating by reference the 'Standard Traffic Ordinance for Kansas Cities, 2014 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; repealing existing Sections 14-101, 14-103, 14-104, 14-105, 14-106, 14-107, 14-108 and 14-113; and other sections in conflict herewith [Roll Call Vote]

Ms. Bennett requested a continuance of Item Nos. 14.A. and 14.B. to the October 6, 2014 Governing Body meeting.

**A motion to continue Item Nos. 14.A. and 14.B. to the October 6, 2014 Governing Body meeting was made by Councilmember Rawlings; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 7-0.**

- C. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, October 6, 2014, to discuss Parks Master Plan Priorities List.

**A motion to approve Item No. 14.C. was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 7-0.**

The meeting was adjourned at 10:15 P.M.

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Deb Harper, CMC, City Clerk

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Cindy Jacobus, Assistant City Clerk