

Minutes

DVD No. 174

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, October 15, 2007. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Joe Johnson, Public Works Director
Mark Klein, Asst. to the Planning Director
Deb Harper, City Clerk
Jack Reece, IS Specialist

Chief Ben Florance, Fire Department
Captain Dale Finger, Police Department
Chris Claxton, P&R Director
Jeff Joseph, Senior Planner
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted that Item No. 6C has been continued to the November 5, 2007, Governing Body meeting. Additions to the agenda will include a report from Councilmember Rawlings as Item No. 9A, a report from Councilmember Filla as Item No. 9B, and a report from Councilmember Rasmussen as Item No. 9C. Mayor Dunn also requested that Item Nos. 16A and 16B be reversed in order.

A motion to approve the agenda was made by Councilmember Gulledege; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.

4. **PROCLAMATIONS – None.**

5. **PRESENTATIONS/RECOGNITIONS – None.**

6. **SPECIAL BUSINESS**

- A. Resolution No. 2890 approving and authorizing the Mayor to execute a First Amendment to that certain Development Agreement, dated October 17, 2005, between the City of Leawood and Park Place Partners, L.L.C., for property located at 117th & Nall Avenue, pertaining to the Park Place Improvement Project [CIP # 83196]

Mayor Dunn informed that she will be recusing from Item Nos. 6A and 6B due to a conflict of interest. She then left the Council Chambers and Councilmember Gary Bussing took over as Presiding Officer.

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

- B. Resolution No. 2891 approving and authorizing the Mayor to execute a Development Agreement for use of Transient Guest Tax for the construction of hotel garage improvements located within the Park Place Development, located at 117th and Nall Avenue, pertaining to the Park Place Improvement Project [CIP # 83196]

A motion to approve Item No. 6B was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. The item was approved following a unanimous vote of 8-0.

Mayor Dunn returned to the Council Chambers.

- C. Ordinance authorizing the issuance and delivery of \$835,000 principal amount of Transportation Development District Special Assessment Bonds, Series 2007 [the Villaggio Project], of the City of Leawood, Kansas; authorizing execution and delivery of a Trust Indenture in connection therewith; providing for the levy and collection of Special Assessments 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] – ***CONTINUED TO THE NOVEMBER 5, 2007 GOVERNING BODY MEETING***

- D. Approve use of fireworks as part of the Holiday Lighting Ceremony and kick-off of the City of Leawood's 60th Anniversary Celebration, on Monday, November 26, 2007, at Leawood City Hall, 4800 Town Center Drive

A motion to approve was made by Councilmember Rawlings; seconded by Councilmember Peppes.

Mayor Dunn confirmed with Parks & Recreation Director Chris Claxton that the President of the Edgewood Homes Association as well as the nearby assisted living center will be notified of the planned fireworks display. Mayor Dunn requested that the information also be relayed to the Leawood Country Manor Homes Association and The Woods Homes Association. The event will begin at 6:00 P.M. with the fireworks beginning immediately upon completion of the singing program at approximately 6:50 P.M.

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

- E. Approve payment to sub-contractor, McAnany Construction Company in the amount of \$24,747.00, pertaining to the 2006 Residential Reconstruction Program

A motion to approve the payment was made by Councilmember Bussing; seconded by Councilmember Gulledge. The motion carried following a unanimous vote of 8-0.

- F. Approval of a 9-month extension to March 6, 2008, for Preliminary Plan and Plat for the northwest corner of 135th Street and Mission Road –*Continued from the September 4, 2007 and October 1, 2007 Governing Body meetings*

On behalf of the applicant, Larry Winn, 6201 College Boulevard, stated the request is being withdrawn as it is not practical that final development plans will be ready for submittal by the end of the extension date. The new managers of the property plan to submit another preliminary plan in the Spring of 2008 following research of the market on 135th Street. It is unlikely that the new plan will contain a residential component given the dwindling demand for such a feature.

Mayor Dunn noted that no action is needed by the Governing Body as the request has been withdrawn.

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. 1087B and 1088A
- B. Accept minutes of the October 1, 2007 Governing Body meeting
- C. Approve Change Order No. 3 in the amount of \$75,000 to Dennis Johnson Construction, pertaining to the Cart Path Replacement Project [# 76003]
- D. Resolution No. 2892 approving and authorizing the Mayor to execute an Engineering Service Agreement in the amount of \$36,500.00 between the City and Continental Consulting Engineers, Inc., pertaining to the Lake Renovation at Ironwoods Park, 14701 Mission Road
- E. Resolution No. 2893 approving a Final Site Plan for a tenant finish for Noel's Gifts, located at the southeast corner of 105th Street and Mission Road, within the Mission Farms development

- F. Resolution No. 2894 approving a Final Site Plan for a tenant finish for Xiphium Salon, located at the southeast corner of 105th Street and Mission Road, within the Mission Farms development
- G. Resolution No. 2895 approving a Final Site Plan for a tenant finish for Fish City Grill, located at the northeast corner of 117th Street and Nall Avenue, within the Park Place Development
- H. Resolution No. 2896 approving a final plat for Park Place Second Plat, located at the northeast corner of 117th Street and Nall Avenue
- I. Fire Department September Monthly Reports
- J. Municipal Court September Monthly Reports
- K. Police Department September Monthly Reports
- L. Resolution No. 2897 approving and authorizing the Mayor to execute a Service Agreement for an amount not to exceed \$24,500, between the City and The Mercer Group, pertaining to recruiting services for the position of Community Development Director

Councilmember Filla requested to pull Item No. 7C for discussion. On motion of Councilmember Bussing, seconded by Councilmember Peppes, the remainder of the Consent Agenda was approved following a unanimous vote of 8-0.

- 7C. Approve Change Order No. 3 in the amount of \$75,000 to Dennis Johnson Construction, pertaining to the Cart Path Replacement Project [# 76003]

City Administrator Scott Lambers clarified for Councilmember Filla that the \$75,000 change order is necessary due to a combination of the cart path project being omitted from the bid documents in error and the identification of additional work after construction began. Funding for the change order will come from the median improvement projects along 135th Street, which will not occur in 2007. A budget amendment will come before the Governing Body later this year. The rationale for the transfer of funds relates to the fact that all needed improvements to the golf course should be completed while it is closed for renovations.

A motion to approve Item No. 7C was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

- 7G. Resolution No. 2895 approving a Final Site Plan for a tenant finish for Fish City Grill, located at the northeast corner of 117th Street and Nall Avenue, within the Park Place Development

Although already approved, Mayor Dunn stated it was her intention to pull Item No. 7G for discussion. New information for this item has been placed upon the dais. She requested elaboration regarding Staff's concerns with the use of a white translucent material.

Mr. Lambers informed that Staff preferred the utilization of a more durable substance versus the proposed material, which is somewhat flimsy in nature. The Planning Commission did not agree with the Staff recommendation.

Mayor Dunn noted that the material has been defined as plastic. Mr. Lambers confirmed that the product was reviewed by Staff and added that the use of plastic materials is discouraged in the development guidelines.

Mr. Lambers verified for Councilmember Azeltine that the material is already in use within other areas of the Park Place development. It is Staff's opinion, however, that the plastic should be avoided if there is an appropriate replacement material, which is applicable in this case. The applicant has clearly stated that use of the proposed material is simply a cost saving measure.

Jeff Alpert of Park Place Developers stated the material in question is generally used in the application of skylights. The durability issue relates to materials that are close to the ground and can be touched by the public. The proposal is to use the material at a height of 10-ft. above the ground. He relayed to Councilmember Azeltine that the planned application of the material is very similar to other areas within the development where it has been approved. Using a site plan drawing, he demonstrated that the Fiberglass Reinforced Plastic [FRB] will be used as a transom above the main glass windows.

As the developer, Mr. Alpert confirmed for Mayor Dunn that he is comfortable with the use of the material although it is discouraged within the guidelines. An architect for Park Place Developers, Dave Anderson with AMAI, actually designed the storefront with the purpose of creating a unique look. Once installed, the material may not be perceived as plastic as it will be approximately 3-4 inches in thickness and similar to an insulated glass pane.

To Councilmember Gill's question, Senior Planner Mark Klein stated Staff's objections in addition to the durability issue also relates to the fact that plastic can sometimes fade and turn yellow. The substitution of a frosted glass was suggested, however the applicant pointed out that this material breaks easily. Mr. Alpert informed that the structures will be solid and constructed of two panels of the FRB with an inner-space. He also affirmed that there is a cost factor as the frosted glass is typically more expensive.

Mr. Alpert clarified for Mayor Dunn that the use of the material is for decorative accent purposes only and will not be in place of the full view glass windows.

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended two Leawood Chamber of Commerce ribbon cutting ceremonies: Bella B's Boutique at 135th Street and Metcalf Avenue, who were also celebrating their one year anniversary; and, along with Councilmember Azeltine, Math Monkey at 151st Street and Nall Avenue.
- B. Attended the Council of Mayors meeting that was hosted by Johnson County at the Sunset Office Building, which is a Gold LEED [Leadership in Energy and Environmental Design] certified structure. A tour was given of the building with comments made by Johnson County Commission Chair Annabeth Surbaugh that a payback on the design is anticipated sooner than the 7-8 year forecast.

Cindy Kemper, Director of Johnson County Environmental Department, provided a presentation regarding a solid waste management plan and the fact that the Johnson County landfill will close no later than 2027 per an agreement with the City of Shawnee. However, it will most likely be necessary to close the landfill by 2022 with 10-15 years needed to site and build a new facility. This is the second such presentation given by Ms. Kemper to serve as notice that a future landfill will probably be more costly and not within the boundaries of Johnson County.

- C. Announced that the 2007 Johnson/Wyandotte County Council of Mayors Annual Social Dinner will take place on December 5, 2007. Mayor Dunn asked that Councilmembers planning to attend the event submit firm confirmations to City Clerk Deb Harper by the November 21st RSVP deadline.
- D. Presented remarks regarding the City of Leawood's development forecasting at the Prudential Kansas City Realty business meeting. Included in the panel of speakers were Bob Marcus, President and CEO of the Kansas City Area Development Council; Andrew Nave, Recruitment & Retention Manager of the Overland Park Chamber of Commerce; and Laura McConwell, Mayor of Mission.
- E. Attended the fourth annual Interfaith Iftar Dinner hosted by the Institute of Interfaith Dialogue. Mayor Dunn thanked Police Chief John Meier and Fire Chief Ben Florance for attending the event as well.
- F. Attended a portion of the League of Kansas Municipalities 99th Annual Conference held in Overland Park. Mayor Dunn extended congratulations to Mayor/CEO Joe Reardon of the Unified Government of Wyandotte County/Kansas City, Kansas for being elected as the new president of the organization. She also thanked Councilmember Rasmussen for his attendance and participation as the voting delegate for Leawood.
- G. Along with City Administrator Scott Lambers, attended a meeting with four visiting Israeli artists from the Gezer Region and Ramla, Israel. In association with the Jewish Federation's Partnership 2000, the artists brought works of art for display at the Jewish Arts Festival at the Jewish Community Center. They were very interested in Leawood's sister city relationship with the Gezer Region and in viewing the plans for Gezer Park. Ramla, Israel is the sister city of Kansas City, Missouri.
- H. Attended a Retirement Reception for Nikki Thomason, Code Enforcement Officer, in celebration of her 25½ years of service to the City of Leawood. Mayor Dunn congratulated and thanked Ms. Thomason for her dedication.
- I. Announced that the City of Leawood will serve as a Silver Level sponsor for Kansas City's Celebration of Disability Mentoring Day in Kansas City on October 31st and in Olathe on October 17th. Mayor Dunn thanked all those involved for taking part in the event.
- J. Mayor Dunn expressed sincere appreciation and deepest gratitude to all who helped Leawood achieve a very successful United Way Campaign. Employee participation increased from 36% in 2006 to 59% in 2007. Debbi Naster, Human Resources Assistant, was congratulated and thanked for organizing the campaign.

9. COUNCILMEMBERS' REPORT

A. Councilmember Rawlings – Recommendation from October 12, 2007, Stormwater Management Committee

Councilmember Rawlings reviewed that at the last Governing Body meeting, three citizens expressed concerns regarding land disturbance problems to their properties as a result of the DB-04-024 stormwater project. The issues were referred to the Stormwater Management Committee. The three property owners provided a presentation at the October 12th meeting; however, due to time constraints, discussion and recommendations took place for only one case. The other two cases will be discussed at the next committee meeting.

Due to the widening of the channel, Delia Tankard at 8409 Cherokee Lane, who provided an easement at no cost to the City, suffered a 20-ft. loss of land to her backyard. Additionally, a significant amount of mature landscaping required removal. Ms. Tankard requested \$4,000 in order to replace grass, sod, trees, and bushes. Taking into consideration the fact that she had also lost 20-ft. of her backyard, the Stormwater Management Committee unanimously agreed that the City should consider her request and restore the landscaping to an amount not to exceed \$4,000 with the work to be done by the City's landscaping contractor. The recommendation is also endorsed by Mr. Lambers as a fair and equitable settlement.

Mr. Lambers clarified that the \$4,000 is in addition to the originally offered \$1,000 for landscaping replacement and \$1,000 for a split-rail fence, which brings the total amount to \$6,000.

A motion to approve the Stormwater Management Committee's recommendation was made by Councilmember Filla; seconded by Councilmember Gill.

Mr. Lambers advised Councilmember Bussing that the City has not made offers to any other homeowners who were affected by the project. At this point, only three citizens have come forward with such a request. The committee did ask for identification of the property owners who received payment for their easements with the position that they should not be entitled to additional compensation from the City in regards to the project. The intention is to categorize the remaining residents into two groups: those who were experiencing flooding prior to the project and those who were not. One committee member very appropriately indicated that residents who previously had problems with flooding are receiving a considerable benefit as a result of the project, which should be taken into account should they come forward with additional requests for property restoration. The committee will consider the information at the October 26th meeting. Ms. Tankard is currently the only homeowner who will receive additional work to her property.

Mayor Dunn noted that any approved monetary amounts will not be paid directly to the individual homeowner but will be submitted to the landscaping contractor. Mr. Lambers stated it is his strong recommendation, as well as that of the City Attorney, that any work to be performed will be handled through the City's landscaping contractor. All of the work will be upon the individual's private property rather than within an easement.

Councilmember Bussing stated his concern with this approach relates to the difficulty associated with maintaining the appearance of equity for all of the affected homeowners. While the compensation efforts are as effective as possible and in good nature, he believes that it may cause problems when future easements are required to improve infrastructure within the City. He voiced his intent to oppose the motion.

Mr. Lambers assured that he does not foresee such problems for future major projects of this type. Going forward in the process, it will be assumed that all easements will receive compensation for the land as well as for disruption of property caused by temporary easements needed to obtain access to the site.

Councilmember Rawlings added that the Stormwater Management Committee shared Councilmember Bussing's concerns and partook in considerable discussion on the matter. However, after viewing photographs revealing great disturbance to Ms. Tankard's property, it was the committee's opinion to let the case stand alone. Future cases associated with the project will likewise be debated based upon merit.

Councilmember Filla reported that the signed easement contained verbiage stating that the City will restore the property owner's lot to equal standing. Ms. Tankard is simply asking the City to uphold this statement and replace the landscaping that existed before the project began. Mr. Lambers pointed out that the language states "as practical as possible," as it would not be feasible to relocate some of the 24" caliber trees that were removed. It is the City's obligation to provide restoration to the best ability.

The motion to augment compensation for the property at 8409 Cherokee Lane by \$4000 as recommended by the Stormwater Management Committee was approved following a vote of 7-1 (Nay: Councilmember Bussing).

- B. Councilmember Filla - Councilmember Filla reported that she had the pleasure to represent the City of Leawood at the Double Ten National Day Celebration at Crown Center along with Jim Rochel, Chair of the I-Lan Sister City Committee, and his wife. The event produced a large gathering with music, dancing, and great food. The committee was successful in receiving permission to hold a Lunar New Year Celebration to bring in The Year of the Rat, which will take place on Monday, January 28, 2008, at Ironwoods Lodge. Save-the-date cards will be distributed in the near future.

- C. Councilmember Rasmussen – Councilmember Rasmussen reported that the Public Works Committee selected Burns & McDonnell as the engineer to be responsible for the reconstruction of 143rd Street. It is the committee's recommendations for the City Council to approve the selection and to have Burns & McDonnell present them with cost estimates to underground the existing primary electric feeders along 143rd Street at the appropriate time, which could possibly be one year from now.

A motion to approve the recommendations of the Public Works Committee was made by Councilmember Rasmussen; seconded by Councilmember Gill.

Public Works Director Joe Johnson commented that there were four very good engineering firms vying for the project. He is in agreement with the recommendations of the committee.

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

Councilmember Rasmussen also reported on the matter of the street islands within the Leawood Homes Association and the Leawood Estates Homes Association. He accompanied Public Works Committee member Carolyn Long in taking photographs of the islands in question, which will be included in the committee minutes. The committee has requested that Staff prepare a proposal to be presented to the City Council concerning the possibility of installing City-owned curbs around the islands. This will clearly delineate the City's liability from the portion of the structure that should be maintained by the homes associations. He reviewed that some of the islands consist of nothing but stone while some are masonry and brick. In the judgment of the committee, repairing the structures without the curbing would be an exercise in futility. The recommendation is an effort at a long-term solution for maintaining the presence of the street features while having a reasonable boundary line between the responsibilities of each party.

On another note, Councilmember Rasmussen stated the Public Works Committee would like to request permission from the City Council to analyze the possibility of installing a school zone in the area St. Michael's on Nall Avenue. A motion to refer the issue to the Public Works Committee was made by Councilmember Azeltine; seconded by Councilmember Gill.

Mayor Dunn asked that the individual who expressed concerns about the school zone issue receive notification of the date that the item will appear on the Public Works Committee agenda as they would like to attend the meeting. The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT – None.

11. OLD BUSINESS – None.

12. OTHER BUSINESS – None.

13. NEW BUSINESS – None.

COMMITTEE RECOMMENDATIONS

14. PUBLIC WORKS COMMITTEE

[from the May 16, 2007 Public Works Committee meeting]

- A. Resolution No. 2898 adopting revisions to the Contractors' Performance Policy, and rescinding Resolution No. 1390

Mayor Dunn noted that a document highlighting the requested changes to the policy has been placed upon the dais.

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

Mr. Johnson reviewed the minor modifications for Councilmember Azeltine. The biggest change is the replacement of the Contractor Performance Evaluation form with an updated version, which will provide more efficient tracking on a monthly basis.

Councilmember Rasmussen characterized the revisions as a reflection of ten years of experience by the City of Leawood and the current recommendations of the State of Kansas.

Councilmember Azeltine verified with Mr. Johnson that while formatted differently, the updated performance checklist does not include substantive changes in the evaluation process.

Referring to No. 7 on the Completing the Form document, Councilmember Gill asked the rationale of deleting the following language: "and specify any liquidated damages that may be assessed for the performance period covered by the report." He stated that liquidated damage proposals from the contractors should be invited. Mr. Johnson explained that placement of the statement in this section is redundant as the issue is spelled out within the contract documents. The City always has the ability to impose liquidated damages regardless of the performance evaluation. The language was also removed from the policy as it is not a criteria used to evaluate the contractor. Mayor Dunn noted that the project manager/inspector who completes the form has the knowledge of spelling out the damages.

Mr. Johnson also informed Councilmember Gill that costs are not included within the policy as it is purely a qualitative evaluation. There is a section within the document that addresses change orders.

Mayor Dunn remarked that she is not certain that the Contractors Performance Evaluation is widely used by other cities as she has received many inquiries regarding the implementation of such. She congratulated Mr. Johnson for having utilized the very effective tool for the last ten years.

Councilmember Bussing and Mr. Johnson discussed the 1 to 5 scaling measure used on the evaluation form.

To Councilmember Azeltine's inquiry, Mr. Johnson stated that the miscellaneous section (Item No. O) as well as some of the other categories on the evaluation form may not always receive a score if not applicable. Sections that are not graded will not be averaged into the final project score.

Councilmember Filla expressed appreciation for the inclusion of Item No. G, Coordination with Utility Companies.

The resolution was approved following a unanimous vote of 8-0.

15. IRONHORSE ADVISORY BOARD

[from the September 18, 2007 Ironhorse Advisory Board meeting]

- A. Resolution No. 2899 establishing a fee, not specifically provided for in the Code of the City of Leawood, 2000, specifically for the 2008 Tournament Events pertaining to IRONHORSE Golf Course, in accordance with the Open Records Act, K.S.A. § 45-215, et seq

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

Mayor Dunn observed that the packet information states it will be important to begin contacting previous events once the rates have been approved. She asked how far in advance events are normally booked and if there is anything scheduled following the reopening of the golf course next Spring. Ms. Claxton stated she has received and referred contacts to Christine Salyer and Shane Gardner of Orion Management Solutions.

General Manager Shane Gardner confirmed that people have called wishing to reserve dates, but it is not possible to schedule events at this time as there not an approved pricing structure. Typically, corporations and charitable organizations book their events up to one year in advance. There are a number of tournaments that the golf course has done business with in prior years who are interested in making reservations. The tentative plan is to reopen IRONHORSE on May 1st with booked events beginning in mid-May. Mayor Dunn wished Mr. Gardner luck with the recruitment efforts.

The motion to approve the fee schedule carried following a unanimous vote of 8-0.

Mr. Gardner informed Councilmember Bussing that a Question & Answer Session with various club members took place on October 3rd and went very well. In addition to recording the entire discussion, very detailed minutes were taken and will be made available to the IRONHORSE Advisory Board.

16. PLANNING COMMISSION

[from the September 25, 2007 Planning Commission meeting]

- A. Ordinance amending Section 16-2-4.5 of Leawood Development Ordinance entitled Modification to Required Setbacks - Residential Districts [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Gullede.

Mayor Dunn pointed out that written consent is to be obtained from the respective homeowners association [HOA] before an encroachment would be permitted. Mr. Lambers affirmed that the process will not require a hearing as the setback deviations will be granted administratively.

Councilmember Gill stated concern with the issue of consent as oftentimes with new and emerging developments, the HOA is controlled by the developer rather than the residents until a certain number of lots are sold. When controlled by residents, the consent will have followed a fair and due process. It would be very easy for encroachment to occur on a common area that has been approved by the Planning Commission and City Council merely by a developer fiat unless the administrative Staff can exercise discretionary judgment and deny the request.

Mr. Lambers suggested a provision allowing only HOAs that are managed by the homeowners proper to grant consent. Councilmember Gill voiced concern that this option may defeat the purpose of approving encroachments in cases when they are actually warranted. He stated he will support the motion if it is clear that Staff has sole discretion in deciding to deny a case based upon merit and is not bound to granting the deviation simply because consent was delivered by the HOA. Mr. Lambers advised that if the Governing Body wishes to give Staff such authority, an appeal process would also need to be set in place.

Mr. Lambers clarified for Councilmember Gill that individual building lines for residential projects are not seen at the time of preliminary and final plan approval. Typically, the plans only include setbacks, easements, and property lines. Mayor Dunn pointed out that a request by a future property owner may not occur until several years following final plan approval.

Councilmember Filla commented that she prefers the approach of allowing only citizen-managed HOAs the ability to request the encroachment as this would omit the need for an appeal process.

Councilmember Azeltine ascertained that the amendment was prompted by situations in which the encroachments were upon common areas that were not developable. Although the HOA granted permission, the setback ordinance prevented the City Administrator from allowing the request. He does not foresee problems with the proposed amendment as encroachments will only be allowed with the caveat that the adjoining property cannot be built upon.

Noting that his concerns have been satisfactorily met, Councilmember Gill stated intent to vote in favor of the ordinance without modifications.

The ordinance passed with the following unanimous roll call vote of 8-0: Yea: Councilmembers Rasmussen, Rawlings, Bussing, Gullede, Azeltine, Filla, Peppes, and Gill. Nay: None.

- B. Ordinance approving a Revised Preliminary Site Plan and Revised Final Site Plan for Mission Farms Building F, located at the southeast corner of 105th Street and Mission Road, within the Mission Farms development [Roll Call Vote]

Mayor Dunn announced that she will recuse from Item Nos. 16B and 16C due to a conflict of interest. Following her exit of the Council Chambers, Councilmember Gary Bussing led the remainder of the meeting as Presiding Officer.

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

Mr. Lambers stated the revised proposal is to add a bank to a project that did not anticipate the need for a structure with a drive-thru. The original plan envisioned the site as a restaurant with pedestrian access around the perimeter of the entire project. Staff is concerned that the proposed drive-thru will disrupt the pedestrian connection through the project by creating pedestrian-vehicular conflict at the entrance and exit points of the bank. Additionally, if approved, Staff recommends extending the portico covering the first lane of the drive-thru over the ATM machine as well. The Planning Commission approved the project contrary to both Staff recommendations. He affirmed for Councilmember Azeltine that if either recommendation is adopted by the Governing Body, a supermajority vote will be required to override the Planning Commission.

Via site plan drawings, Mr. Lambers demonstrated the anticipated internal circulation disruption for Councilmember Rasmussen. The external trail system will not be affected.

Regarding the portico issue, Mr. Lambers elaborated for Councilmember Rawlings that the current proposal features a weather protective covering over the first lane and partially over the lane with the ATM. In response to comments made by the Planning Commission, the cover was extended from an originally proposed shorter version. Staff's recommendation is to provide an architecturally attached feature equally covering both lanes.

Applicant Doug Weltner, 4520 Main Street, Kansas City, Missouri, 64111, stated agreement with all of the stipulations imposed by the Planning Commission. In working with Staff and the Planning Commission, he stated that a proper conclusion has been reached regarding circulation and pedestrian access. A sidewalk has been continued around the drive-thru and an island will be relocated to prevent conflict with vehicles exiting the bank.

Rick Jones, architect with Nearing, Staats, Prelogar & Jones, 3515 W. 75th Street, Prairie Village, Kansas, distributed site plan drawings and renderings demonstrating his opposition to extending the portico. A metal canopy covering the ATM has been added. He is very strongly against completely covering another bay with the portico as the feature is already prominent. The proposed design allows for landscaping in front of the sidewalk and the drive-thru lane. The black metal canopy will provide a different element in the mixed-use development where buildings are typically not monolithic in character. An extended portico would be a mistake concerning the proportions in design and scale, would create darkness within the drive-thru, and would not allow the installation of landscaping planned for the island.

Mr. Weltner informed that the second lane will contain the ATM machine as well as an adjacent tube to conduct transactions with the bank teller. Councilmember Peppes commented that this may cause a prolonged wait for individuals wishing to quickly access the ATM.

Councilmember Gill speculated that possibly too many lanes are being attempted for such a small space and questioned the rationale of not covering both lanes. Mr. Weltner responded that with the increased utilization of on-line banking, long waits for service are not anticipated as drive-thru features are no longer used as widely as they once were. Mr. Jones stated that the landscaping and open space is a better design choice than having a prominent projection extending an extra twelve feet. To this point, Councilmember Gill commented that the constricted space prevents properly covering both lanes with the generally contemplated landscaping. Mr. Jones reiterated that total consistency is not desired for mixed-use developments. The metal canopy will be beneficial in identifying the building as a bank.

Withdrawing his second to the motion, Councilmember Gill stated that he is not satisfied with the overhang issue as it is not in keeping with the character of the structure. A second to the motion was then provided by Councilmember Azeltine.

Councilmember Gullledge remarked that he is pleased with the unique design, including the canopy overhang, and the fact that the second drive-thru provides the option of using the ATM or conducting a transaction. Councilmember Azeltine echoed these comments; however, as public safety is always a top priority, he also expressed concerns pertaining to the pedestrian-vehicle conflict issue. Mr. Jones confirmed that the pedestrian crosswalk will be delineated. Staff's concerns were reviewed by Mr. Lambers.

Noting that pedestrian friendliness has been a major point of discussion for past mixed-use developments, Councilmember Azeltine asked how the concerns have been addressed. Mr. Jones pointed out that cars within the bank site will be traveling at a much lower rate of speed than those driving through the parking lot of the overall development. Five parking spaces were removed when the drive-thru feature was added and the island has been relocated to prevent conflict with vehicles exiting the bank.

Mr. Jones verified for Councilmember Peppes that the planned landscaping would have to be omitted if the portico extended over both lanes due to the inclusion of brick pillars.

Mr. Weltner informed Councilmember Rawlings that at the time of original preliminary plan approval, the use of the building was not specified; however, a bank drive-thru is a permitted use and does not require a Special Use Permit. Mr. Jones stated that a bank is the perfect use for this corner location that faces I-435. The proposed design will allow for the landscaping and the sidewalk. The canopy over the ATM machine will provide partial coverage to the vehicle accessing the site.

Regarding traffic flow, Mr. Jones reviewed the circulation pattern on the site plan drawing for Councilmember Filla. Vehicles exiting the bank site will primarily take a left-hand turn. In terms of considering other locations for placement of the drive-thru, Mr. Weltner informed they were driven by Staff to make the feature as subtle as possible. As there are no other ATMs within Mission Farms, the bank site will provide a pedestrian-friendly element for individuals wishing to walk-up to the machine.

Councilmember Filla expressed appreciation and support for the subtle, California-type look of the overhang structure that achieves the objective of providing weather protection.

Mr. Jones and Councilmember Gullidge discussed the possibility of adding a second matching overhang to cover the entire second lane. Although this was considered, it was felt that the proposed design provided more subtleness.

To Councilmember Azeltine's question, Mr. Jones stated that walk-up ATM users will have to stand in the driving lane while making a withdrawal. The sidewalk is not adjacent to the machine. Mr. Weltner stated the tenant, Solutions Bank, may want to address this issue if an abundant amount of pedestrian traffic occurs. He reminded that as the bank is predominantly a business rather than retail bank, vehicular stacking in the drive-thru lanes is not anticipated; however, the feature must be included for convenience purposes. A future request for another ATM within the development may be a possibility.

Mr. Weltner informed Councilmember Rasmussen that the sidewalk was added at Staff's suggestion with the purpose of aiding pedestrian traffic, but he does not anticipate a high volume of such for this area.

Mr. Lambers clarified for Councilmember Azeltine that walk-up pedestrian traffic is not encouraged in drive-thru lanes. Governing Body approval will not be required if the installation of another machine within the development is warranted. Staff concerns regarding vehicular conflict were addressed with the relocation of the island.

Councilmember Gill stated he would personally be uncomfortable conducting a banking transaction while there is pedestrian traffic in such close proximity. He questioned whether the sidewalk should be placed in this area. Mr. Weltner stated the amenity is a common feature near other ATMs within the metropolitan area, such as at the Capital Grille on the Plaza, and is an enhancement to the theory of a mixed-use development.

In regards to the proposed changes, Councilmember Bussing stated that he shares many of the same concerns expressed by Councilmember Gill. He commented that as Mission Farms has progressed, which is markedly stunning and beautiful, it has become one of the premiere developments in Leawood if not the entire Kansas City area. The proposed bank will spoil this accomplishment as it creates too much mass and issues associated with traffic.

The ordinance approving the revised preliminary and final site plans passed with the following roll call vote of 5-3: Yea: Councilmembers Peppes, Gullidge, Filla, Azeltine, and Rasmussen. Nay: Councilmembers Bussing, Gill, and Rawlings.

[from the September 11, 2007 Planning Commission meeting]

- C. Resolution No. 2900 approving a Final Site Plan for Hallbrook Office Center, located north of 112th Street and west of State Line Road

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

Applicant Mel Lavery with Hallbrook Office Center, 2405 McGee, Kansas City, Missouri, 64105, stated agreement with the twenty-six suggested stipulations.

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

ADJOURN

Mr. Bussing adjourned the meeting at 9:25 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk