

Regular Meeting

THE LEAWOOD CITY COUNCIL

October 21, 2013

Minutes

DVD No. 311

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 21, 2013. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Carrie Rezac, James Azeltine, Lou Rasmussen, Julie Cain, Debra Filla, Tom Robinett, and Andrew Osman (via teleconference).

Councilmembers absent: None

Staff present: Scott Lambers, City Administrator
John Meier, Police Chief
Dave Williams, Fire Chief
Mark Andrasik, Info Systems Director
Richard Coleman, Comm. Dev. Director
Mark Klein, Planning Official
Joe Johnson, Public Works Director
Patty Bennett, City Attorney
Dawn Long, Finance Director
Chris Claxton, P&R Director
Lovina Freeman, HR Director
Deb Harper, City Clerk
Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following addition to the agenda:

- Addition of Consent Agenda Item No. 7W – Public Art Impact Fees

A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Filla. 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 Johnson County Budget Highlights-
Presented by County Commissioner Ed Peterson**

Johnson County Commissioner Ed Peterson presented highlights on the 2014 Johnson County Budget. The major components of revenues are Sales and Other Taxes, and Ad Valorem Taxes, which are similar to last year. The major components of expenditures are Public Safety and Infrastructure. The County is approximately \$2.5 Million below the former \$15.4 Million in 2008 for the CARS Program [County Assistance Road Program]. Sources of revenue for this program are the County's share of the five-cent per gallon Highway Gasoline Tax. This has been declining, which is anticipated to continue due to more efficient vehicles. The mill levy has capped at .343 mills. Future years for County tax support are based on that rate and projected assessed valuation. The only increases the County would see would be increases in appraised value, which are not expected to reach the 2008 figures until 2016-2017. The County purchased the former King Louie property (76,000 sq. ft.) for \$1.95 Million for future relocation of the existing Johnson County Historical Museum. 40% of the square footage will be needed for the museum, with the remaining 60% for other uses. The cost of finishing the museum space is estimated at \$5 Million; with the cost estimated at \$5.5 Million to finish the remaining space. Total cost to complete the entire build-out of the facility is estimated at \$15.9 Million. The cost of building a new museum from the ground-up was estimated to exceed \$38 Million. Historically, the State has contributed to funding some of the necessary County provided services; however, the total dollars spent over the last five years has increased, while State support is decreasing. The Per Capita Revenue from Ad Valorem Tax has declined by -18.47% over the last five years due to flat appraised values and a flat real estate market with an increase in population. Personal Income per Capita has increased 31.74% over the last ten years (in actual dollars); however, the County is not keeping pace with the State or national average (in constant dollars) with only a 6.4% increase. The market value of new construction has made a dramatic decline over the last five years; however, they are showing an increase for 2013. Projections indicate a slow gradual increase over the next three-five years.

6. SPECIAL BUSINESS

Resolution No. 4133 finding as to the advisability and authorizing the creation of a Benefit District and accepting Petition for the Traffic Calming to be located along 85th Terrace between State Line Road and Lee Boulevard within the City of Leawood, Kansas, pursuant to the provisions of K.S.A. § 12-6a01 ET SEQ.

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

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 2013-35, 2013-36, 2013-37, 2013-38, 2013-39, and 2013-40
- B. Accept minutes of the September 16, 2013 Governing Body meeting

- C. Accept minutes of the August 15, 2013 Leawood Foundation meeting
- D. Accept minutes of the August 14, 2013 Public Works Committee meeting
- E. Accept minutes of the July 11, 2013 Sustainability Advisory Board meeting
- F. Accept minutes of the September 12, 2013 Sustainability Advisory Board meeting
- G. Accept minutes of the May 14, 2013 Historic Commission meeting
- H. Accept minutes of the April 9, 2013 Historic Commission meeting
- I. Approve Change Order No. 1 in the amount of \$110,000 to O'Donnell & Sons Construction Company pertaining to the 119th Street Arterial Mill & Overlay Project [Project # 710500]
- J. Approve Change Order No. 2 in the amount of \$25,000.00 from Freeman Concrete Construction pertaining to the 2013 Curb Program [Project # 80250]
- K. Approve purchase in the amount of \$16,194.00 [less trade-in and equipment install for total of \$7,494.00] from Gail's Harley Davidson of PD motorcycle
- L. Approve purchase in the amount of \$15,895.00 from Laser Specialists, Inc., pertaining to the GEO Max 2 Unit Second Robot Package-Survey Equipment
- M. Approve Massage Establishment License for Harrington Massage Therapy, located at 5401 College Boulevard, Suite # 110, in accordance with Code §5-510 of the Code of the City of Leawood 2000
- N. Approve Massage Establishment License for Lotus Yoga, located at 15057 Nall Avenue, in accordance with Code §5-510 of the Code of the City of Leawood 2000
- O. **Resolution No. 4134** approving and authorizing the Mayor to execute 2014 Employee Benefit Plan documents
- P. **Resolution No. 4135** designating holidays for the year 2014
- Q. **Resolution No. 4136** approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$44,800, between the City and Wiedenmann & Godfrey Construction for the installation of storm sewer pipe at the Public Work Facility located at 14303 Overbrook Road
- R. **Resolution No. 4137** approving and authorizing a Design/Built Construction Agreement in the amount of \$900,000.00 between the City and Gene Fritzel Construction Co. Inc., pertaining to the Ironhorse Golf Clubhouse Expansion [Project # 49132]
- S. **Resolution No. 4138** approving a Revised Final Plat for University Park - Fifth Plat, located south of W. 112th Street and east of Nall Avenue. (PC Case 113-13) [*from the September 24, 2013 Planning Commission meeting*]
- T. Fire Department Monthly Report
- U. Police Department Monthly Report
- V. Municipal Court Monthly Report
- *W. Public Art Impact Fees – September, 2013

Councilmember Rasmussen requested to pull Item No. 7J; Councilmember Rezac pulled Item No. 7R; and Councilmember Filla pulled Item No. 7A for discussion.

A motion to approve the remainder of the Consent Agenda was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

- 7A. Accept Appropriation Ordinance Nos. 2013-35, 2013-36, 2013-37, 2013-38, 2013-39, and 2013-40

Councilmember Filla noted the City would see significant savings with KCP&L once the purchase of the streetlights is final.

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

- 7J. Approve Change Order No. 2 in the amount of \$25,000.00 from Freeman Concrete Construction pertaining to the 2013 Curb Program [Project # 80250]

Councilmember Rasmussen was not in favor of this Change Order due to the \$50,000 originally budgeted for sidewalk repair. When the Curb Program began, he had expressed concern of increasing the \$50,000 to \$100,000 because of the possibility of bonding. City staff assured him they were not bonding. With this Change Order, the amount would increase from \$100,000 to \$125,000 per year. He was concerned this would allow repair of private property.

Public Works Director Joe Johnson confirmed these repairs are in the City's public ROW [right-of-way]. \$100,000 has been allocated each year for five years with an additional \$25,000 in the Public Works Budget to cover extra sidewalk repairs. This Change Order totaling \$125,000 is intended only for this year.

A motion to approve Consent Agenda Item No. 7J was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a vote of 7-1. Nay: Councilmember Rasmussen.

- 7R. **Resolution No. 4137** approving and authorizing a Design/Built Construction Agreement in the amount of \$900,000.00 between the City and Gene Fritzel Construction Co. Inc., pertaining to the Ironhorse Golf Clubhouse Expansion [Project # 49132]

Parks and Recreation Director Chris Claxton confirmed the proposal submitted by the design/build contractor is \$860,950.85. The budget also allowed for an additional \$100,000 for engineering and design, of which \$40,000 has been encumbered per the agreement with Continental Consulting Engineers. The \$40,000 would only be used if the City requested changes and would not be used as a contingency for the design/build contractor.

A motion to approve Consent Agenda Item No. 7R was made by Councilmember Rezac; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended Ingram's Magazine's "2013 Best of Business Kansas City Awards Ceremony." The City of Leawood received the Bronze Award for "Best Business Friendly City." Three cities, all from Johnson County, received an award in this area. Mayor Dunn recognized Community Development Director Richard Coleman and Public Works Director Joe Johnson for all of their efforts in helping to make Leawood a business friendly community.
- B. Attended a Leawood Chamber of Commerce ribbon cutting ceremony for "New You Health Studio," located in Mission Farms. Their focus is on "turning back the hands of time and caters to those not satisfied with today's status quo of healthcare." Mayor Dunn wished them much success.
- C. Attended a Leawood Chamber of Commerce ribbon cutting ceremony for "Pinot's Palette," located in Park Place. Their motto is "Paint, Drink, and Have Fun." No art experience is required. Mayor Dunn wished them much success.
- D. Attended a Leawood Chamber of Commerce ribbon cutting ceremony for the "Red Door Woodfire Kitchen & Bar," formerly named "Red Door Grill." Co-owners are Debbie Gold and Gary Zancanelli. This is a great new restaurant that features wood-fired grilling techniques. Mayor Dunn wished them much success.
- E. The Johnson & Wyandotte Counties Council of Mayors' meeting was hosted by Edgerton Mayor Don Roberts at the Burlington Northern Santa Fe Logistics Park Kansas City Intermodal Facility. Speakers included the Director of Economic Development and Executive Director of Government Affairs. This is a very massive, impressive facility.
- F. Reminder for the City Council to mark their calendars for Wednesday, December 4th, for the Council of Mayors' December Social with spouses invited. Please R.S.V.P. to City Clerk Deb Harper.
- G. The City of Leawood held its United Way Campaign Kick-Off Breakfast on October 4th and will conclude on October 25th. Thanks to Human Resources Director Lovina Freeman for spearheading and organizing this event once again. There is still time for any members of the City Council who wish to participate. The overall goal for the entire community this year is to increase participation from past years.
- H. Participated in the 11th Annual Leadership Exchange to Baltimore, Maryland, sponsored by Polsinelli Law Firm, presented by the Greater Kansas City Chamber of Commerce. This was a very interesting, educational opportunity that is planned, organized and run by Kansas City Chamber professional Cathy Bennett, sister of City Attorney Patty Bennett.
- I. Mayor Dunn was joined by Councilmember James Azeltine at the League of Kansas Municipalities 2013 Annual Conference, held in Overland Park. The theme was "Investing in Healthy Cities." Mayor Dunn served as the voting delegate. Included in the Council Packets is the "2014 Statement of Municipal Policy" that was approved by the League Governing Body and approved unanimously by the voting members.

- J. The delegation from Leawood's Sister City, I-Lan, Taiwan, spent this last week in Leawood and was led by Ming-Chen, who is the Principal of the Jhong Shan Elementary School in I-Lan County. There were eight students and six adults in the delegation. Mayor Dunn recognized Councilmembers and I-Lan Sister City Committee Liaisons Debra Filla and Jim Rawlings, the I-Lan Sister City Committee members and Chairman Jim Rochel, Staff Liaison Julie Berger from the Police Department, Blue Valley Schools Superintendent Dr. Tom Trigg and Deputy Superintendent Dr. Al Hanna, along with Sue Denny and the elementary school principals from Leawood Elementary, Mission Trail and Prairie Star, and Dr. Bo Yan from the Blue Valley School District, who served as a volunteer interpreter for the group. They were all very instrumental in planning, organizing and locating host families from the district who graciously opened their homes to the students. Also, thank you to Director General Jack Yang, from the Taipei Economic and Cultural Office [TECO] in Kansas City for hosting a dinner to honor the delegation members. Finally, a special thanks to City Administrator Scott Lambers who organized the itinerary from beginning to end with no details forgotten. The height of enjoyment of their trip was either experiencing Halloween, which they had only heard and read about, or Public Works Director Joe Johnson's BBQ, because they had only seen it on television or in movies. This is the 25th Anniversary of the City of Leawood's Sister City relationship with I-Lan, Taiwan. Mayor Dunn shared some of the gifts they received from Ming-Chen. Mayor Huang and Chairman Lin sent a beautiful cut-glass sculpture that will be displayed at City Hall with other gifts received over the years. Terence Chen, former librarian from I-Lan City, contracted with Lin Chen, an 80-year old famous painter and the President of the Association of I-Lan Fine Arts, gifting the City of Leawood a painting of the "Leawood Bridge," which spans the I-Lan River. This bridge, dedicated in honor of Leawood, depicts the symbol of profound friendship and ties of our two cities. Former Mayor Lu sent three portfolios of the "2009 Taiwan Lantern Festival Stamps," which also depict the bridge. Ming-Chen and the Jhong Shan Elementary School in I-Lan County sent a beautiful certificate of appreciation regarding the Cultural, Educational and International Exchange Program showing pictures of the delegation from 2004 and the current delegation from this visit.
- K. Attended the Leawood Arts Council's Art Show for Judith Mackey and Aaron Norris, held at the Rice Gallery of Fine Art in Hawthorne Plaza.
- L. Attended the Leawood Lion's Pancake Breakfast that was held in the City Hall Oak Room over the weekend. This is their largest fundraiser. Thanks to all who participated.
- M. Congratulations to Fleet Maintenance Technician Chris Skaggs who placed 2nd in the Mechanic's Competition at the Annual American Public Works Association [APWA] Snow Expo. Chris has a history of performing well at this, continuing a tradition of all our Leawood techs finishing consistently at the top going back many years.

- N. Congratulations to Debbie Bond, Principal of Mission Trail Elementary School, for being selected as a “2013 National Blue Ribbon School.” This was the only Johnson County school given this honor and one of only five schools in Kansas. The recognition comes from the U.S. Department of Education who gave this distinction to only 286 schools nationwide.

9. COUNCILMEMBERS’ REPORT

- A. Councilmember Rawlings- Update on Justice Center Construction Project

Councilmember Rawlings reported the upper floor of the Police Department is completed with all furniture installed. The Information Systems Department is in the process of installing the computer equipment. The main level has a few remaining items to complete on the punchlist. The lower level should be completed by the end of this week. Janitorial services will begin next week. Trees are scheduled to be delivered and planted on Wednesday. The entire parking lot will be asphalted and striped this week, weather permitting. The common area landscaping around the building should be completed by November 4th, which is the scheduled move-in date. The exterior landscaping should be completed in early December.

10. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the July 23, 2013 Planning Commission meeting]

- A. Ordinance approving a Revised Preliminary Plan for Ranch Mart – Renovation, located north of 95th Street and east of Mission Road (PC Case # 61-13) [Roll Call Vote] – ***CONTINUED TO THE NOVEMBER 18, 2013, GOVERNING BODY MEETING*** [Roll Call Vote]

[From the September 25, 2013 Planning Commission meeting]

- B. **Ordinance No. 2641** amending Section 16-4-6.13, of the Leawood Development Ordinance [LDO], Permanent Sign Regulations, pertaining to wall and canopy signs (PC 96-13) [Roll Call Vote]

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

Planning Official Mark Klein stated this amendment is intended to clarify the Leawood Development Ordinance [LDO] regarding signage. The proposed amendment clarifies that a maximum of two signs per business is permitted, which can be wall signs, canopy signs, or a combination of both.

The motion carried following a roll call vote of 7-1. Nay: Councilmember Osman.

Councilmember Osman asked if current businesses with more than the two signs would be grandfathered in. Mr. Klein replied this amendment does not change how the ordinance has always been applied. Developments with sign criteria that allow canopy signs in addition to wall signs and have been approved by the Governing Body would still be allowed as a deviation to the LDO. Councilmember Osman noted larger tenants may have multiple canopies and felt they should be allowed more than the maximum two signs in addition to wall signs. Mr. Klein confirmed with this amendment; no one would be required to remove their current signage.

- C. **Resolution No. 4139** approving a Revised Final Plan for Town Center Plaza - Pedestrian Plaza, located north of 119th Street and east of Nall Avenue (PC Case 99-13)

John Peterson, Esq., Polsinelli Law Firm, gave a presentation on behalf of the applicant, Brian Suiter, Glimcher Realty Trust. Mr. Peterson stated the applicant agrees to all of the Planning Commission stipulations, with exception to Stipulation No. 2, requesting it be removed. The stipulation reads as follows: "The pedestrian connection to 119th Street to the pedestrian plaza shall be constructed to meet all ADA standards, if required." By removing it, the pedestrian connection would not be constructed along the drive that is east of the 810 Zone and west of Houlihan's. This stipulation is not consistent and directly contravenes the action from the Governing Body with the approval of the Revised Preliminary Plan, in which it was understood that this pedestrian access would not be ADA compliant. Further, this stipulation is not reflective with the action taken by the Planning Commission in regards to their recommendation for approval of this Final Plan. The desire for the City to have an additional pedestrian connection to 119th Street was discussed at length at the Preliminary Plan, in which they agreed to make that connection with the condition from the Planning Commission "if feasible." They had made it clear that this connection could not be made ADA compliant with the City's understanding that there were other ADA accessible sites into the center. There are no interpretations in ADA Code that would require it be ADA because of the other ADA access points. They do not own enough ground to make this connection ADA compliant. When the center was originally constructed, this particular access was intended for vehicle use only, which was fully compliant.

Mayor Dunn stated she had listened to this discussion from the Planning Commission meeting and read the minutes, in which she understood that Mr. Peterson was planning to inquire about ADA standards. That meeting was almost one month ago. This is not a matter of who is right or wrong; it is a difference of opinion between the applicant and City staff. Mr. Peterson replied the Governing Body recording from the Revised Preliminary Plan meeting was very clear that this connection would not be built ADA accessible. They spoke with the Justice Department before this went to the Planning Commission, which directed them to the section of the ADA Code they were already aware of that states there must be at least one ADA accessible site to a center. There are exceptions dedicated to "vehicular traffic only" and "feasibility". Feasibility is partly determined by whether the ADA pedestrian connection would exceed the cost of a typical sidewalk by 20%. The cost to build a typical sidewalk is estimated at \$20 per linear foot and \$50 per linear foot to build to ADA standards. The Justice Department would not give a legal opinion, only advisory.

Councilmember Filla asked if this resolution is approved with all stipulations if they were planning to have no pedestrian connection. Mr. Peterson replied if their only option is to build it to ADA standards, they would not be able to do so because the slope of the grade does not comply with ADA standards of 5% and they do not own enough ground to change the slope.

Brian Suiter, Glimcher Realty Trust, stated he had hoped to discuss the architectural details of the center; however, this entire discussion has focused on a very small portion of this project. This is an important aspect; however, had they known it would go this far, they would have said early-on this would be vehicular access only. They are spending a huge amount of money on this project and he preferred to focus on the great attributes being added to the center. He reiterated there are other ADA access points to get the center and to specifically get to this area.

Community Development Director Richard Coleman stated the LDO requires connection from a building to a street. There was no direct connection; therefore, City staff had requested they build a sidewalk. In the early Planning discussions, they were not sure if it was going to be feasible to be ADA. This was changed by the Planning Commission to say "if required." Mr. Coleman stated he had asked the City's Building Official and ADA Certified Specialist Travis Torrez to review this independently, in which he agreed it should be made ADA accessible. Staff contacted the Justice Department, which referred them to an ADA center in Columbia, Missouri. Staff sent them the plans and they have had several discussions regarding whether this should be made ADA accessible. They were aware there were two other ADA access points. The head of the ADA center responded in agreement with staff conclusions to connect the ADA accessible route. ADA standards require all primary function areas to have ADA access. The City's Building Code mimics ADA standards; therefore, staff would not issue a building permit unless they comply.

Mr. Peterson stated in regards to this being a requirement in the LDO, the Governing Body approved the Revised Preliminary Plan, very cognoscente of the LDO requirement. He indicated if the legal position of the City requires that the sidewalk be made ADA compliant then they would have to withdraw the pedestrian connection. Mr. Coleman replied staff's recommendation is to build the pedestrian connection ADA, based on their interpretation of the ADA Code.

Mayor Dunn noted the discussion at the Planning Commission meeting was focused on ADA compliance, not whether a typical pedestrian connection would be made. Their belief was that the applicant was still planning to build a pedestrian connection. The argument was that it could not be made ADA. City staff and the applicant were supposed to have conversations with the Justice Department together and have this resolved by the time it comes before the Governing Body this evening.

Councilmember Rezac stated with no disrespect to City staff, the primary function of this development is shopping. She couldn't understand the basis of the ADA center needing ADA entrance from the front when there is ADA accessibility from the back. Typically, ADA requires one accessible entrance and that it be in a public route. She felt they should not be focusing on just this one area and the basis for the argument is not there. Ultimately, when there is this much controversy over something, the risk is on the owner. If anything were to happen in a legal aspect, the owner would be taking on that risk by not providing ADA.

Ms. Rezac reiterated Mr. Peterson's remarks that the Justice Department does not give a clear ruling on a guideline. They wait until there is a legal issue and it goes before the courts. She was not in favor of requiring ADA access at that location.

Councilmember Rawlings concurred with Councilmember Rezac and questioned how safe that entrance currently is and whether it would be safe adding any type of pedestrian access.

Councilmember Azeltine asked which City employee was in charge of interpreting and enforcing the ADA Code. City Attorney Patty Bennett replied Mr. Torrez is in charge of interpreting it with assistance from the Legal Department. He would also be in charge of enforcing it for building permit purposes. Determining whether the applicant is required to be ADA compliant will be determined by the Building Official, not the City Council. The City Council cannot override the City's Code, absent changing the Code by ordinance. If the stipulation is removed and the applicant proceeds, the possibility exists they would not be allowed a building permit. Unfortunately, the ADA Code is not clear with one statement saying only one ADA entrance is required, while another statement reads as advisory at each entrance.

Mr. Suiter asked the distinction for ADA compliance between this particular entrance versus all of the other entrances to the center. He requested this be taken off the table due to not being able to come to an agreement and they would not build any pedestrian access at this location. Mr. Coleman replied this is a primary function because of their new outdoor entertainment area adding square footage. It is a major entry into the center, which lines up directly with the entertainment area. He recommended it connect because it lines up to 119th Street. Removing the sidewalk completely would not be a good option. In his professional opinion, he stated this connection could and should be built ADA compliant.

Mr. Peterson thought this to mean that any existing shopping center with a modification that requires a building permit would be required to be ADA compliant at every access point regardless of how it was originally constructed or they would not be allowed a building permit. Mr. Coleman replied that is not what he was saying. This is a specific case that cannot be generalized to all other instances.

Councilmember Rasmussen was not in favor of requiring ADA access at that location.

Mr. Suiter clarified they own a portion of the ground directly adjacent to the drive; however, in order to build an ADA access, they would need an easement or need to purchase additional land from Houlihan's. Engineers have informed them they currently do not own enough land for this to be made ADA compliant. Brett Lauritsen, Olsson & Associates Engineering, confirmed the applicant owns approximately 9-10 feet based upon AIMS mapping from the back of curb on that drive. To construct an ADA sidewalk they were requested to locate it off the back of curb approximately 3 feet. A 5-foot sidewalk brings this to 8 feet. They would need a small retaining wall on the west side to make it possible. Construction would put them onto Houlihan's property. Mr. Coleman replied they could allow them to move the sidewalk closer to the curb to gain an extra 3 feet.

Councilmember Filla commented if they knew then what they know today, this would have been designed much differently. At that time, this center was designed for vehicle travel, unlike the Kansas City Plaza to park and walk. In all reality no one would be able to use a wheelchair at this site, unless it is motorized. She couldn't imagine a scenario of anyone even wanting to come up that grade in a wheelchair. She felt they were debating over complaints that make no common sense.

Ms. Bennett reiterated that the City Council's decision tonight would not impact the Building Code or the Building Officials duties regarding issuing a building permit. The City Council should do what they feel is right and the Building Official can work with the Legal Department on whether this should be ADA compliant. If they maintain their decision and the applicant disagrees, they have the right to take this to the Building Code Board of Appeals or to District Court.

Mayor Dunn suggested the language in Stipulation No. 2 be changed to read "If the pedestrian connection to 119th Street is constructed, it will be ADA compliant, if required by the City's Building Official." Ms. Bennett confirmed this gives the developer the option of whether or not they want to build the sidewalk. Mr. Suiter and Mr. Peterson were in agreement with the amended language.

City Administrator Scott Lambers stated in his non-legal professional opinion it is up to the Building Official to determine whether the sidewalk should be built ADA compliant. The City Council has no role in this determination. Mr. Lambers stated this is a good improvement and they want to see it move forward correctly. He suggested they require a sidewalk and let the Building Official determine whether it needs to meet ADA. Staff could allow them a Building Permit and Temporary Certificate of Occupancy [TCO] to allow the project to proceed. This could go through litigation in getting it resolved; however, he hoped this would not be necessary. There is no definitive answer on either side. The Building Official operates independent of all of this.

Mr. Peterson replied they cannot take the risk of going through Final Design saying they will build a sidewalk and then have the Building Official determine they can't get a Building Permit and Certificate of Occupancy because it does not meet ADA compliance. He requested they use the amended language for Stipulation No. 2 that was suggested by the Mayor.

A motion to approve the resolution with the amended language stated by the Mayor to Stipulation No. 2 was made as follows: "If the pedestrian connection to 119th Street is constructed, it will be ADA compliant, if required by the City's Building Official" by Councilmember Azeltine; seconded by Councilmember Rasmussen.

Councilmember Cain felt the concept that the developer may eliminate a pedestrian access because they cannot come to an agreement was ludicrous because they have been trying to make the City a more pedestrian and bicycle friendly community. They should be doing everything possible to make Town Center Plaza more pedestrian friendly. She was frustrated that this entire discussion had focused on ADA and they hadn't even talked about the plan and its amenities.

Mr. Suiter asked the City Council to realize when they vote that this is just one small piece of what will be a multi-million dollar attribute to the center.

Mr. Peterson understood Councilmember Cain's concerns and comments and stated they would continue to strive to make this center more pedestrian friendly.

Mayor Dunn noted this would be an override of the Planning Commission's recommendation, which requires a super majority vote.

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

Councilmember Azeltine suggested City staff review how this type of issue could be handled in the future.

Mr. Lambers replied had this not been brought up through conversation and if Mr. Torrez would have told them at a later point that this was required ADA access; the applicant could come back saying staff hadn't informed them. Staff did not want the applicant to be blindsided by this in the future. Mr. Lambers clarified an incorrect statement made by Mr. Peterson regarding that the City Council does not have the right to remove a stipulation at a Preliminary Plan. Even though a stipulation is part of a Preliminary Plan, the City Council has every right to go back and add, modify, or remove stipulations. The Preliminary Plan is in place to get a concept of the plan and approve the zoning. The Final Plan has complete details that identify the stipulations specifically.

Public Works Director Joe Johnson reviewed this access as well. He indicated an access easement may be needed; however, he felt there was room to build this to ADA standards.

Councilmember Rezac requested in the future, should there ever be anything in the stipulations that cannot be decided by the City Council that staff remove it from the table from the very beginning to make these discussions go much easier. Mr. Lambers concurred; however, he indicated the possibility exists they could revisit the issue when that disagreement cannot be resolved. If there is a future dispute at the staff level they will work to resolve it through another venue so that the City Council does not have to be drug into it.

- D. **Resolution No. 4140** approving a Revised Final Sign Plan for Ranch Mart, - Revised Sign Criteria, located north of 95th Street and east of Mission Road (PC Case 115-13)

Henry Klover, Klover Architects, stated the purpose of this Revised Final Sign Plan was to get approval for 'Care Spot', which is located in the prior Leawood Post Office building.

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Robinett. The motion carried following a vote of 7-0. (Councilmember Osman left the meeting via teleconference).

12. OLD BUSINESS - None

13. OTHER BUSINESS - None

14. NEW BUSINESS

- A. **Ordinance No. 2639C**, amending Chapter 11, Article 1 of the Code of the City of Leawood, Kansas, 2000, by amending sections 11-101 through 11-106, 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,' 2013 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 [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a roll call vote of 7-0. (Councilmember Osman left the meeting via teleconference).

- B. **Ordinance No. 2640C**, amending Chapter 14, Article 1 of the Code of the City of Leawood, Kansas, 2000, by amending Sections 14-101 through 14-113, pertaining to regulating traffic within the corporate limits of the City of Leawood, Kansas; incorporating by reference the 'Standard Traffic Ordinance for Kansas Cities, 2013 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 [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Rezac. The motion carried following a roll call vote of 7-0. (Councilmember Osman left the meeting via teleconference).

ADJOURN

There being no further business the meeting was adjourned at 10:05 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory, Assistant City Clerk