

Minutes

DVD No. 204

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, December 1, 2008. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
John Meier, Police Department
Chief Ben Florance, Fire Department
Karl Weinfurter, Info. Systems Specialist
Patty Bennett, City Attorney
Deb Mansfield, City Clerk

Mark Klein, Asst. to the Planning Dir.
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Lovina Freeman, HR Director
Joe Johnson, Public Works Director
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modifications to the Amended Agenda:

- * A footnote on Item Nos. 13C and D with remarks from the City Clerk's office
- * Addition of Item No. 9 - Councilmembers Report from Councilmember Filla
- * Addition of Item No. 16C – Schedule an Executive Session immediately following meeting

A motion to approve the Amended Agenda was made by Councilmember Bussing; seconded by Councilmember Azeltine. 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. **Public Hearing:** Consider amendments to 2008 Fiscal Budget for City of Leawood, Kansas

Mayor Dunn opened the public hearing for comment.

As no one was present to speak, a motion to close the public hearing was made by Councilmember Gill; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 8-0.

- B. **Resolution No. 3127** adopting amendments to the 2008 Fiscal Budget for the City of Leawood, Kansas

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Gill. The motion carried following a vote of 6-2. Yea: Councilmembers Bussing, Gill, Peppes, Cain, Rawlings, and Azeltine. Nay: Councilmembers Filla and Rasmussen.

Councilmember Filla felt they should stay in context with the original budgeted amount for Gezer Park.

Mr. Rasmussen felt there was a budgeted amount the City should spend and they shouldn't amend the budget to accommodate changes.

City Clerk Deb Mansfield noted she had an amended certificate from the County for the budget that required signatures.

- C. **Resolution No. 3128** amending the City of Leawood's Investment Policy and repealing Resolution No. 2912

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

Councilmember Azeltine commended staff for their diligence during this treacherous environment in capital markets. He appreciated the caution staff has taken with the City's short term funding and concurred with this amendment.

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

- D. **Resolution No. 3129** approving and authorizing the Mayor to execute a Construction Agreement between the City and Mega Industries, pertaining to Phase II, Gezer Park, located at located at 133rd and Mission Road [# 76006]

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings.

Mayor Dunn stated they had held a work session regarding this prior to tonight's meeting.

Ms. Mansfield stated the actual contract amount was for \$1,749,982 plus contingencies to equal \$1,843,407. This would be the total amount needed to be approved.

Finance Director Kathy Rogers confirmed with Mr. Lambers that the contract amount needed to be approved for \$1,749,982 with the authority to have contingency of \$1,843,407.

Councilmember Azeltine confirmed with Ms. Rogers that the amount published in the public notice was for \$1.5 Million with \$683,000 still remaining.

The motion carried following a vote of 6-2. Yea: Councilmembers Bussing, Rawlings, Azeltine, Cain, Peppes, and Gill. Nay: Councilmembers Filla and Rasmussen.

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. 1115B and 1116A
- B. Accept Minutes of the November 17, 2008 Special Call Governing Body meeting
- C. Accept Minutes of the October 27, 2008 Special Call Governing Body meeting
- D. Accept Minutes of the October 23, 2008 Ironhorse Advisory Board meeting
- E. Accept Minutes of the October 10, 2008 Stormwater Management Committee meeting
- F. Accept Minutes of the October 7, 2008 Parks and Recreation Advisory Board meeting
- G. Accept Minutes of the September 23, 2008 Arts Council
- H. Accept Minutes of the September 9, 2008 Leawood Historic Commission meeting
- I. Accept Minutes of the August 13, 2008 Leawood Foundation meeting
- J. Approve quote in the amount of \$204,271 from Travelers Insurance, with brokerage services from Monte Giddings of CBIZ, for the City's 2009 property and casualty insurance
- K. Accept 13th and Final Payment in the amount of \$43,391.19, to SM Wilson, LLC, pertaining to the construction of new buildings at Ironwoods Park, located at 14701 Mission Road; for 3 buildings: Park Maintenance Building; Restroom/Shower for the cabins; and restroom adjacent to the playground [Project # 76001; 71001]
- L. **Resolution No. 3130** revising the 2009 Fee Schedule for fees not specifically provided for in the Code of the City of Leawood, 2000, and rescinding Resolution Nos. 2913, 3029, 3037, 3051, 3081, and 3046, in accordance with § 1-701 of the Code of the City of Leawood, 2000

- M. Approve 3rd and Final Payment in the amount of \$14,193.29, to McCorkendale Construction Company, pertaining to the 2008 Public Storm Sewer Replacement Project, 8308 Meadow Lane [Project #76014] and 9733 Overbrook Road [Project #76013]
- N. Approve Change Order No 6 in the amount of \$18,975.00 to Miller Paving Co., Inc., pertaining to the Town Center Drive Project, Phase III, [CIP # 196]
- O. **Resolution No. 3131** authorizing the acceptance of a Gift of artwork pieces from Barbara Wagner
- P. **Resolution No. 3132** approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2009 Alcohol Tax Fund for an amount not to exceed \$110,000
- Q. **Resolution No. 3133** approving the recommended City of Leawood's 2009 allotment to the 2009 Human Service Fund [United Community Services – UCS] and the City of Leawood's participation for an amount not to exceed \$10,000
- R. **Resolution No. 3134** accepting Public Infrastructure Improvements through private development Hallbrook Office-Overbrook Extension; south of College Boulevard, in accordance with the GASB-34 Guidelines of reporting inventory of Assets
- S. **Resolution No. 3135** approving and authorizing the Mayor to execute an Interlocal Agreement between the City and the Board of Johnson County Commissioners pertaining to the Roe Avenue Improvement Project between 135th Street to 141st Street, [Estimated cost of project \$544,000 with 50% CARS Funding, CARS Funds not to exceed \$272,000] [CARS PROJECT]
- T. **Resolution No. 3136** approving and authorizing the Mayor to execute an Interlocal Agreement between the City and Board of Johnson County Commissioners pertaining to Mission Road Improvement Project between 127th Street and 135th Street Public [Estimated cost of project \$674,000 with 50% CARS Funding, CARS Funds not to exceed \$337,000] [CARS PROJECT]
- U. **Resolution No. 3137** approving and authorizing the Mayor to execute an Interlocal Agreement between the City and Board of Johnson County Commissioners pertaining to the State Line Road Improvement Project between 92nd and 103rd Street [Estimated cost of project \$303,000 with 50% CARS Funding, CARS Funds not to exceed \$76,000] [CARS PROJECT]

Mayor Dunn requested to pull Item Nos. 7P and 7Q. Councilmember Rasmussen requested to pull Item No. 7L.

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

- L. **Resolution No. 3130** revising the 2009 Fee Schedule for fees not specifically provided for in the Code of the City of Leawood, 2000, and rescinding Resolution Nos. 2913, 3029, 3037, 3051, 3081, and 3046, in accordance with § 1-701 of the Code of the City of Leawood, 2000

Councilmember Rasmussen referred to page 21 of the 2009 Fee Schedule and noted an error in the last paragraph associated with the golf course. Mr. Rasmussen noted the only change was that the Golf Committee had recommended that participants who sign up be allowed to make two payments.

A motion to approve the 2009 Fee Schedule as amended was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Mayor Dunn confirmed with Mr. Rasmussen he was referring to the "Revised 7L" memo that had been placed upon the dais.

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

- P. **Resolution No. 3132** approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2009 Alcohol Tax Fund for an amount not to exceed \$110,000
- Q. **Resolution No. 3133** approving the recommended City of Leawood's 2009 allotment to the 2009 Human Service Fund [United Community Services – UCS] and the City of Leawood's participation for an amount not to exceed \$10,000

Mayor Dunn noted she pulled Item Nos. 7P and 7Q to recognize Karen Wulfkuhle, Executive Director of United Community Services and Kimberly Reene, who serves on the Drug and Alcohol Council and also a City of Leawood community volunteer.

A motion to approve Item Nos. 7P and 7Q was made by Councilmember Filla; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended the 10th Anniversary Celebration of Saint Luke's South Hospital. Mayor Dunn expressed appreciation for the great job they continue to do in serving the community's health care needs.
- B. Mayor Dunn co-hosted a legislative breakfast at Saint Luke's South Hospital with former Senator Audrey Langworthy which included Johnson County delegation members. The topic was in reference to the "2009 Kansas Legislative Outlook for Health and Health Care."
- C. Attended a farewell reception for former Kansas Senator David Adkins, who will be leaving Leawood and moving to Kentucky to head the Council of State Governments. Mayor Dunn noted appreciation for his many years of public service to the community.
- D. Attended the Jewish Community Relations Bureau/American Jewish Committee dinner honoring Leawood resident Bob Regnier, recipient of the "2008 Henry W. Bloch Human Relations Award," which recognized his commitment to justice, his selfless service to the community, his civic leadership and vision for the greater metro region.

- E. Attended the Annual Holiday Lighting Ceremony of Leawood's 60th Anniversary Finale Celebration. Anniversary Co-Chairs Alice and Mel Hawk helped Mayor Dunn flip the switch to light City Hall and the surrounding trees. The Mayor expressed appreciation to Parks and Recreation Director Chris Claxton and her department for orchestrating the event. Nearly all Councilmember's and department heads were in attendance and were joined by hundreds of carolers in the crowd, which included the Nativity Star Singers, The Leawood Singers, and the Brookwood Elementary School Choir. David Basse was present singing "Leawood Long and Green," the song he wrote and dedicated to Leawood's 60th Anniversary. Mayor Dunn expressed appreciation to Commerce Bank for sponsoring the holiday lighting event this year and for the past several years. The Mayor thanked Connie Aversman of Commerce Bank, who presented an additional \$2,000 donation that evening.
- F. Attended a farewell reception for Leawood resident and employee Jerry Strack, former Fire Chief for the City of Leawood prior to Chief Ben Florance. After retirement from the Fire Department, Mr. Strack went on to work for the Information Services Department under Director Mark Andrasik. Mr. Strack retired after 42 years of service to the City. He felt something that set Leawood apart from other cities was the fact that the City of Leawood strives for excellence and has a commitment for community service. Mayor Dunn wished him the best of luck in his future endeavors.
- G. Mayor Dunn expressed appreciation to Kathy Byard of the Finance Department and Debbi Naster of the Human Resources Department for their work on the "Have a Heart" program in collecting gifts for TLC for Children and Families, as well as the Johnson County Share Hope and Johnson County Nursing Center. They were extremely impressed, as was the Mayor, for the generosity of the City of Leawood employees. Mayor Dunn expressed her gratitude to all of the employees who participated.
- H. Mayor Dunn announced that Leawood Chamber of Commerce Chairman Tom Robinett presented statistics by municipality of "yes" votes on Johnson County Question #2 and noted 61.48% of Leawood residents voted in approval of the question which was endorsed by the Leawood Chamber of Commerce.
- I. Reminder of the Council of Mayors' December Social on Wednesday, December 3, 2008, to be held at the Overland Park Sheraton Hotel at 5:30 P.M.
- J. Reminder of the Leawood Employee Appreciation Luncheon, located at City Hall on Monday, December 8, 2008, at 11:30 A.M.

9. COUNCILMEMBERS REPORT

Councilmember Filla reported that on Monday, January 26, 2009, the I-Lan Sister City Committee will be hosting a Lunar New Year Dinner.

Ms. Filla felt it was worthy to note that Mayor Dunn would be inducted into the Hall of Fame at the Chamber of Commerce luncheon tomorrow.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. STORMWATER MANAGEMENT COMMITTEE MEETING

[from the November 14, 2008 Stormwater Management Committee meeting]

- A. Recommendation concerning drainage concern in Edgewood subdivision [behind City Hall]

Staff Comment: The City Administrator does not concur with the Committee's recommendation with regards to the expenditure of City funds on private property.

Councilmember Rawlings recommended this be continued to the December 15, 2008, Governing Body meeting so that everyone would have a chance to review the minutes from the Stormwater Management Committee meeting.

Mayor Dunn confirmed with Public Works Director Joe Johnson that this would allow enough time to have the minutes completed.

A motion to continue Item No. 11A to the December 15, 2008, Governing Body meeting was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

12. PARKS AND RECREATION ADVISORY BOARD

[from the September 8, 2008 Parks and Recreation Advisory Board meeting]

- A. Approve Change Order No. 1 in the amount of \$12,000 to Ankeny Kell Architects, Inc., pertaining to a feasibility study for a potential future Community Center for the City of Leawood – **CONTINUED FROM THE OCTOBER 20, 2008 GOVERNING BODY MEETING - TABLED**

13. PLANNING COMMISSION

[From the November 11, 2008 Planning Commission meeting]

- A. **Ordinance No. 2374** approving a Special Use Permit [SUP] for skilled nursing facility for Villaggio Neighborhoods at Sharon Lane, located on the southeast corner of 135th Street and Roe Avenue (PC Case #71-08) [Roll Call Vote]

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

Estel Hipp, applicant, 12601 Cedar, gave a presentation of the facility. Mr. Hipp stated the Neighborhoods at Sharon Lane is a 120-bed skilled care facility proposed for the southeast corner of 137th Street and Roe Avenue. He presented a model of the project noting it was going to be two-stories totaling approximately 90,000 square foot. The 120-bed units will be organized into 8–15 bed neighborhoods, in which 15 residents will reside. These particular units will allow the residents to have a homemaker as part of the skilled staff on duty with them 24 hours a day, 7 days a week. If able, residents will be allowed to cook their own meals and there will also be a central dining facility as well.

Mr. Hipp indicated the development had a Tuscan flair in accordance with the Villaggio at Leawood Design Guidelines and stated the exterior materials were a combination of concrete barrel tile for the roof areas, stucco and thin stone veneer in the tower elements and an accent around the entrance.

The site plan demonstrated the extent of landscaping staff had been working on with them to screen the existing homes at Leawood Meadows from the development. There is a 75 foot setback, which was mandated in the zoning proceedings for Villaggio that has been maintained between the south building line and south property line of this particular tract.

The parking area on the east side of the building will be depressed approximately three feet. This usage of the site was switched from its original zoning of two buildings; one assisted care and one independent living, for a total of 107,000 square feet, to a smaller 90,000 square foot building and changed to a skilled care facility. This requires substantially less parking and will reduce traffic in and out of the facility.

Mr. Hipp stated they were increasing the size of the existing berm along the south side of the property line that was put in place when Villaggio was developed and noted they would be planting additional trees to further screen the project from the neighbors to the south.

The revised site plan addressed staff comment No. 33 regarding redistribution of evergreen material along the south property line to include some Eastern White Pine trees.

Mayor Dunn asked for confirmation that these trees would be a species of pine that was resilient to wilting.

Michael Ashley, Michael Ashley and Associates, stated the pine wilt has affected the Austrian and Scotch Pine trees. Mr. Ashley noted they have replaced the Juniper on the berm with some Eastern White Pines as well. They disbursed evergreens throughout the southern portion of the site and noted he would personally lay this out to be assured it is well screened. In addition, they have agreed to place the shrubs every five feet, per the code.

Councilmember Rasmussen confirmed with Mr. Hipp there was not an Alzheimer wing located in the facility.

Mr. Rasmussen confirmed with Mr. Hipp that the facility is not tax exempt. Mr. Hipp stated they will have 140 employees; 40 professionals and 100 skilled staff. The annual payroll will be approximately \$3.8 Million. Taxes are estimated to be over \$200,000 per year.

Mayor Dunn stated in the currently approved plan, there were 28 land banked surface parking spaces and noted they were only proposing 80 above ground parking spaces for the facility. She realized there would be different shifts; however, was concerned with the number of employees that this may not be adequate parking. Mr. Hipp noted there would be three shifts.

Mayor Dunn asked if they could continue the land banked component of the new proposal. Mr. Hipp stated there is a substantial amount of green space located to the east of the project, which is where the underground stormwater detention facility is located. He indicated if they ever need additional parking, they could utilize this space.

Mayor Dunn asked if Mr. Hipp felt comfortable that the facility would be amply parked with 80 above ground spaces. He indicated they had worked with staff and reduced the parking to accommodate the daytime staffing, visitors, and rehabilitation patients.

Councilmember Gill referred to the 140 employees and noted if they were evenly divided over three shifts, it would be approximately 46 employees per shift; this leaves 34 parking spaces for 120 patients. Mr. Hipp asked Council to keep in mind this is a skilled care facility where people are bedridden. Mr. Gill wanted assurance that on heavily visited days, there would be ample parking.

Assistant Planning Director Mark Klein stated this was the number of spaces proposed by the applicant. Staff felt comfortable with this because of its use. There is space available to the east, if the Governing Body wanted to modify it.

Harry Baum, owner of the facility, stated there will be more visitors on weekends; however, staffing is not as heavy as it is during the week. Mr. Baum indicated he also owned a facility that has 96 beds with approximately 60 parking spaces and had never run into parking issues. He felt comfortable with the number of spaces at the proposed facility; however, noted there was room for expansion, if needed in the future.

Mr. Lambers stated they could add a stipulation that if the City determined additional parking was needed, the property to the east would be shown as being land banked.

Councilmember Rasmussen felt comfortable with the parking Mr. Baum was proposing; however, noted there may be times they could be pressed for parking, especially on holidays.

Mayor Dunn asked if Mr. Baum would need to change anything when construction begins if staff felt it was necessary to change the land banking area to parking in the future.

Tim Fisher, Ron Reid & Associates, stated there would be no construction modifications required.

Councilmember Bussing was concerned with the FEMA approved safe rooms and wanted to review the LDO requirements with staff at a future date for sub-terrain shelters.

Councilmember Azeltine asked for clarification of the thin set stone veneer.

Mr. Lambers stated the applicant originally wanted to use cultured stone and noted the City has had poor experience with its durability; it doesn't maintain its adhesiveness. The applicant did not agree that real stone should be used on this project; therefore, they have proposed a real stone veneer.

Staff felt the same adhesive problem exists with the real stone veneer as the cultured stone. The real stone is attached in a different fashion, is more secure, and is more expensive. For this reason, two of the Planning Commissioners did not support the application; they felt the veneer would have the same problem. Staff's position is to prohibit cultured stone from being used. Mr. Lambers thought the real stone veneer could be an alternative to requiring real stone.

Mr. Azeltine confirmed with Mr. Lambers that the real stone veneer and the way it is applied had not yet been used in Leawood.

Mr. Lambers stated staff maintains that real stone be used; however, the majority of the Planning Commission felt the applicant should be given the opportunity to try this product and thought the City could use this as a test opportunity to see if it is better. The cultured stone is falling apart within a year of its installation.

Mayor Dunn noted this would also include a special inspector employed by the applicant.

Mr. Hipp stated due to staff concerns; they would employ an independent third party to be on site to monitor the installation of the material.

Mr. Azeltine confirmed with Mr. Hipp that he had no prior experience with this type of veneer.

Councilmember Cain asked for clarification as to the type of veneer being used.

Mr. Hipp stated architects refer to anything on the outside of a building as veneer. Staff was recommending full depth real stone veneer, which is approximately four to five inches thick. Mr. Hipp noted they suggested a thin cut stone veneer, which is approximately one to two inches thick. It will be real stone; however, not as thick and is still referred to as a veneer.

Ms. Cain referred to Stipulation No. 17 and confirmed with Mr. Hipp they were not doing what the staff recommended.

Mayor Dunn noted the Planning Commission had substituted a different Stipulation No. 17. The one shown is the one they approved. The one on page four was the one the staff had first recommended.

Mr. Lambers stated staff was willing to let this project proceed, recognizing the additional cost of real stone. He felt for the long term, the thick real stone would be the solution that the City would require for all applications. The design guidelines, which allow cultured stone, were approved five years ago before the City began seeing all of the problems; therefore, he felt they should be able to prohibit its use even though it's on the approved list.

A friendly amendment on the motion was made by Councilmember Gill to add an additional stipulation regarding land banking of parking, if necessary; seconded by Councilmember Peppes. Mayor Dunn clarified this would be the addition of Stipulation No. 52.

Mayor Dunn noted they would be overriding the Planning Commission with the additional stipulation; therefore, it would require a super majority vote for approval.

Mayor Dunn confirmed with Mr. Hipp they would be willing to have staff concur with the selection of the special inspector for the installation of the thin set veneer.

The motion to pass the ordinance with the additional stipulation carried following a unanimous roll call vote of 8-0. Yea: Councilmember Gill, Peppes, Azeltine, Cain, Filla, Rasmussen, Rawlings, and Bussing. Nay: None.

- B. **Ordinance No. 2375** approving a Revised Preliminary Site Plan and Final Site Plan for Villaggio Neighborhoods at Sharon Lane, located on the southeast corner of 135th Street and Reo Avenue (PC Case #71-08) [Roll Call Vote]

A motion to approve the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. The motion carried following a unanimous roll call vote of 8-0. Yea: Councilmembers Rasmussen, Rawlings, Bussing, Gill, Azeltine, Filla, Cain, and Peppes. Nay: None.

- *C. **Resolution No. 3138** approving the Planning Commission's recommendation for denial of a Special Use Permit [SUP] for a drugstore with a drive-thru for CVS Pharmacy, located on the southeast corner of 151st Street and Mission Road. (PC Case #73-08)

Staff Comment: The City Clerk's Office has received a Protest Petition. The petition has been determined to be invalid due to insufficient property ownership.

City Attorney Patty Bennett stated a protest petition had been filed; however, after measuring the land and looking at the signatures, it did not reach the required 20%. Had the signatures been properly attested with both husband and wives signatures, it would have come close to 22%. This protest petition will not have an impact on the vote this evening.

John Peterson, Polsinelli Law Firm, stated he was representing Cedarwood Development, the proposed developer. He gave a presentation of the 5.6 acre proposed site for CVS Pharmacy, located at 151st and Mission Road and noted the facility would be 13,225 square feet. Located south of the pharmacy is a 2,400 square foot retail building; its exact use not identified at this time. There are two locations proposed for accessing the site; one located off of Mission Road and the other on 151st Street, which would be restricted to a right in/right out only.

Mr. Peterson stated this site was zoned for 45,000 square feet of retail development in 1996. The site plan approved at that time was for a shopping center. He acknowledged that this plan did not meet the design guidelines in terms of preliminary plans today.

There are three different plans that could work from an engineering standpoint; the one that was originally approved, one that meets the zoning constraints and the design criteria of the City, or their proposed plan of 13,225 square feet, which is less than 1/3 of the originally approved 45,000 square feet. By reducing the square footage, it allows them to “tuck” the building into the site and enables them to take the finished floor area and drop it 12 feet below the grade of 151st Street. In essence, this creates a 12 foot berm. It also creates a berm from Mission Road by utilizing the grades. This presents a natural barrier to the parking areas. They intend to use a significant portion of the site for additional buffering, landscaping and stair step addressing of the grades. This will help to screen and provide an aesthetic area for the neighbors along Ironhorse Court and neighbors to the east and south. He indicated the grade was significant with approximately a 15 foot drop. This will be tiered with rock walls and landscaping. He indicated they were able to maintain significant portions of existing vegetation on the site.

The City of Leawood requires an interact meeting with the neighbors, which Mr. Peterson indicated they had a total of five meetings. A significant impact to the neighborhood to the south is the ribbon of green space that currently exists. This area has been maintained by the developer and the neighborhood. There is a monument located on the corner of 151st Street and Ironhorse Court that was constructed by the neighborhood. Mr. Peterson indicated their goal was to maintain this and see how they might enhance it. He noted the President of the Homes Association had indicated they did not have an easement for the monument to be there.

Mr. Peterson stated they received a list of concerns from some of the neighbors:

- Parking lot lighting
- Construction parking
- Dumpster location
- Outside storage and materials
- Replacement of dead vegetation
- Easement for monument
- Improvements to the grading
- Join the homes association

He indicated they could meet all of the requests, except for joining the homes association. They didn't want to get into the legal issues of a company joining a homes association. Mr. Peterson stated they were; however, willing to contribute 10 years worth of homes association dues for ongoing maintenance of the neighborhood.

Mr. Peterson listed reasons staff was recommending that the Planning Commission deny the plan:

1. The large amount of fill and the number of trees that would be removed

There were two stipulations that before they removed any trees they would do an inventory of the trees and work with staff to identify a good species and maintain as much existing vegetation. He noted there would be a lot less fill and tree removal with their plan than the original 45,000 square foot plan.

2. The site is less than 10 acres and would require a deviation for development

He indicated a recent ordinance had been passed setting this issue aside. This six acre project was approved and zoned as part of an overall development, which is currently in the third phase. He indicated this was not a valid reason to deny this application.

3. Staff is not supportive of the proposed architecture and recommends certain architectural elements

At the outset of this application they acknowledged there would need to be modifications to the original architecture proposed and agreed this would be most appropriately handled at the final plan. This understanding with staff is reflected in Stipulation No. 14.

4. The retaining wall located on the east side of the project

Staff had indicated they were proposing three large segmental concrete block retaining walls and Mr. Peterson stated they were proposing natural stone retaining walls. They will replicate the existing walls at the northeast corner of the site.

5. Concern that when the drive-up window is utilized the headlights of vehicles would be facing east shining into residences

The headlights should be approximately twenty feet above the yard of any single-family home; however, Mr. Peterson indicated they redesigned their landscape plan to increase the hedges to 36 inches tall.

6. Staff is requiring 8 feet sidewalks with 10 feet of landscaping from the building to the sidewalks

They had proposed five to six foot sidewalks due to attempting to provide a lot of open space to the east. Mr. Peterson indicated if this was a reason to deny the application, they would find a way to install eight foot sidewalks.

7. Concern regarding the noise of the compactor

Behind an eight foot wall in the back of the building, there is a cardboard box compactor. This functions internally; boxes are broken down and put in the compactor through a portal inside the store and once a week the compactor will be emptied. He indicated they increased the height of the wall on request of the neighbors and installed baffling systems in to ensure no noise pollution. In accordance with the current ordinance, noise generated by commercial activity cannot exceed 60 decibels when it abuts residential property. Peterson stated they could meet this requirement.

8. Staff was concerned they had too much parking

The City requires 3.5 – 4.5 parking spaces per 1,000 feet of development. Mr. Peterson indicated they have 4.61. The code requires 70; they have 72. He indicated if 70 spaces were the most the City would allow them to have, they were willing to handle it accordingly. There are eleven spaces they have land banked to provide additional parking, if necessary.

9. Concern they do not meet the 60/40 boundary requirement

Mr. Peterson requested a deviation from this, and noted Council was allowed to grant this under the code provision.

10. Staff is not supportive of the rezoning to SD-CR or the Special Use Permit [SUP] because the proposed use is a more intense use than is permitted within the SD-NCR district and requires a SUP within the higher intensity SD-CR district

Mr. Peterson indicated they were requesting this rezoning because it was the only zoning category that allows a drive-thru window. He indicated it would be used on a fairly irregular basis, but as a convenience. Mr. Peterson stated if this were a bank there could be a three-lane drive-up facility and the property would not need rezoning. A bank would bring much more of an intense use. Mr. Peterson stated Council could add a stipulation that if they approved the rezoning, they could restrict them to only the use of a pharmacy with a drive-thru window and would be restricted to any other uses, or if CVS should close the property would revert back to SD-NCR zoning.

The Planning Commission recommended denial with a 4-2 vote and staff listed three reasons why. None of these three reasons were listed in the record of the hearing.

1. The rezoning would potentially allow too intense of a development on the proposed site including one with a higher F.A.R.

Mr. Peterson stated they were requesting 1/3 of the floor area ratio (from 45,000 to 13,225). He indicated the higher F.A.R. was not relevant to the application before Council.

2. The drive-thru also creates difficulties with regard to providing landscaping required by the Leawood Development Ordinance [LDO]

He stated they had met every landscape requirement and didn't understand the factual basis of that comment.

3. The intensity and design of the project is not appropriate for the proposed site

Mr. Peterson indicated there would be less traffic and less parking than what would be required to support 30,000 or 40,000 square feet. The intensity and density balance out in favor of what they thought was a good compromise and good application.

Mr. Peterson referred to the "Golden Criteria" and stated staff was critically subjective to the removal of these restrictions (current zoning) and could potentially have large impacts on the surrounding single-family homes. This isn't speculative zoning and requested their plan be approved. The landowner has been trying to bring a user that is compatible. They have determined it could be approved at close to the level of density and intensity.

Councilmember Gill requested a copy of the Council minutes that approved the plan for 45,000 square feet in March, 1996.

Mayor Dunn confirmed with Assistant Planning Director Mark Klein that there was no need to underground utility lines because there were only large transmission lines that run along the east side of the property. There are; however, three lines that cross over on one pole to the south side to 151st Street and stops.

Mayor Dunn asked City Attorney Patty Bennett to clarify the restrictions of the new zoning category. Ms. Bennett didn't recall the City had ever restricted the zoning as far as use; however, it would restrict the preliminary plan and noted she would need to look into this. She deferred to Mr. Peterson's experience that other cities had done this, but it doesn't necessarily mean that Leawood's ordinances would allow it.

Mr. Peterson noted the impact fees for the road improvements on 151st Street and Mission Road would be a total of \$432,918. That equals \$77,000 of exactions per acre. This almost makes the property non-developable. He indicated they would ask for some relief on Mission Road at final plan since it has already been approved to some extent and it is not going to be a full arterial.

Mr. Peterson requested Council take into consideration that they have a developer willing to construct a quality development and carry the burden of addressing their own impacts to the street and stormwater systems and beyond.

Councilmember Gill asked how much money they planned to contest at final plan.

Mr. Peterson indicated they would need to pay for what the City has determined would be the cost for a major collector, which is \$311 per linear foot.

Mayor Dunn indicated the City of Leawood may be doing this differently than some cities he had experienced.

Mr. Peterson stated 151st Street would be approximately \$167,000 and Mission Road is \$198,000. According to the ordinance this is the cost of a major collector.

Mayor Dunn confirmed with Mr. Klein that Mission Road will be a 4-lane arterial in the future.

Mr. Gill indicated this would be a factor whether or not there was going to be negotiation over some or all of the \$198,000.

Karmin DeBey, 3705 Ironhorse Court, stated she was representing the majority of residents in the Reserve at Ironhorse. Ms. DeBey emphasized concerns from her neighborhood and neighboring subdivisions that the proposed rezoning was not suitable for a residential neighborhood. There was also concern of what would replace the pharmacy if it were to close. She indicated there are at least 10 pharmacies located within 3 miles from her home and asked that the City not sacrifice the character of their residential neighborhood for economic gain. There was also concern of the large amount of fill and the trees that would be removed to accommodate the drive-thru. Ms. DeBey stated there was never anything represented to them that this corner would ever be developed as retail and had they known this, they would not have purchased their land in this location. In addition, the stormwater drainage has been a major issue since the development of this area 12 years ago. The City, as well as residents, have spent thousands of dollars to minimize the effects of run-off and erosion.

Ms. DeBey illustrated a picture of a home with significant flooding and noted the creek runs directly behind their homes and they felt that the commercial development and the run-off affected the erosion of their properties.

Mr. Gill asked if this property was located up or downstream.

Public Works Director Joe Johnson indicated the channel that runs from the golf course can't get into the Blue River; therefore, begins to back up. The impact this development has on flooding would be negligible.

Ms. DeBey stated they had traffic concerns and noted the traffic impact study indicated there would be more than 2,000 additional trips. The intersection is not signaled and there are no turning lanes. If approved, the additional traffic, including delivery vehicles, will only exacerbate the problem. There is also a large amount of bike traffic on 151st Street and it is already dangerous. They were concerned that the lighting would create a halo in the middle of their neighborhood. Even though the drive-thru headlights would be buffered with hedges, they will lose their leaves in the winter and the lights will shine into second stories of adjacent homes. They also felt the applicant was requesting too much signage for such a small tract of land.

In conclusion, Ms. DeBey asked that the Council adhere to the City's "Golden Criteria" when considering this application and felt it would have a detrimental effect on their property values. She asked that Council uphold the Planning Commission's recommendation to deny this application.

Dennis Bryant, 3701 Ironhorse Court, stated there were 26 out of the 32 lots in the homes association that were opposed to this application.

Bill McKean, 15141 Mohawk Circle, stated he is the President of the Homes Association. He indicated they were invited to a meeting held by the developer on September 2, 2008. The City required that invitations go out to residents within 200 feet of the development. They were unaware that everyone was not invited. There were many concerns brought forth at this meeting and he indicated they sent a letter to residents of the development asking for their involvement.

Mr. McKean met with Mr. Peterson regarding the complaints of the residents and indicated they remedied them to the satisfaction of the board. He felt the applicant did everything possible to make the residents happy and indicated he bought his property in 1998 and was well aware that this property was a commercial site and would be sold in the future.

Mr. McKean asked that Council consider the rights of the property owner and developer and noted they went to great extent to make this a good plan.

Jim Rochel, 15422 Ironhorse Circle, stated he wanted to express concerns of some of the residents of the Estates of Ironhorse. There were approximately 30 residents that attended the Planning Commission meeting in opposition of the proposed zoning change and indicated he had heard from approximately 40 residents in opposition. There is a pharmacy within a 30 second drive from the proposed location. There is a safety, residential and local concern for the continuation of the character of their neighborhood. The proposed store will add a large amount of traffic to this intersection and was concerned that the entrance was located on a hill. The proposed removal of most of the trees will add to the water run-off concerns. He also expressed concern that a free-standing store of this nature could be a strong attraction for drug dealers and a possible hang out for teenagers. They felt the Planning Commission made the right decision in denying this application and asked the City Council to support that decision.

Cathy Sherman, 3409 Ironhorse Court, was concerned of the amount of area that will be paved and indicated there is a lot of natural woods with wildlife diversity and if approved, would be destroyed.

Joan Varriano, 3609 Ironhorse Court, clarified that there would be a two lane drive-thru. Ms. Varriano was concerned to area neighborhood traffic echoing due to the rock walls intended for buffering.

Richard Woodall, 14905 Alhambra, Pavilions, indicated there was a study done in the Kansas City Star regarding median household income by zip code in the Kansas City metro area and recalled one of the highest included the Pavilions of Leawood; the other was in the vicinity of Hallbrook. Mr. Woodall felt the proposed application would have a negative impact on their property values.

Alan South, 3709 Ironhorse Court, indicated the illustrated photo presented earlier was his home and noted the water was from Negro Creek. After elevating and filling the proposed project, the surface of the parking lot will be 20 feet above many of the homes. He indicated this will create significant run-off, which will flow into his backyard. Mr. South stated although there was recent work done at Ironhorse Golf Course, his yard still floods. He asked that the Council deny this application and felt the City had a responsibility to the people that bought a house in this subdivision in Leawood. Mr. South stated his home is currently located in a flood plane and has to carry flood insurance and noted it wasn't in a flood plane when he purchased it in 2002.

Councilmember Rasmussen confirmed with Mr. South that he owned Lot No. 1 and that there is a storm sewer pipe located on the western edge of his property.

Mari Lynn Garcia, 3105 Ironhorse Court, referred to Mr. McKean's previous comments and stated he acted on behalf of the homeowners association President with his personal concerns; however, did not act in authority for all of the homeowners.

Ms. Varriano referred to earlier comments regarding the possibility of CVS closing in the future and was concerned to the already large amount of retail space available at 151st and Nall.

Councilmember Rasmussen asked Mr. Johnson to clarify the language in the memo from City Engineer David Ley. Mr. Johnson stated the storm sewer system would tie into the existing one under Ironhorse Court. He noted they will have to detain the run-off in excess of whatever the capacity of the pipe.

Mr. Rasmussen asked how the water is controlled to get it off the site. Mr. Johnson stated they would need to have either an open base or an underground detention to store the water in.

Mr. Rasmussen confirmed with Mr. Johnson that if Council approved the application, he could be assured that the property owners concerns would be addressed.

Councilmember Rawlings noted one of the major issues was the drive-thru window and asked how often customers would use it and if it was necessary. Mr. Peterson stated without it, CVS would not proceed since they feel it is critically important to provide full service to their customers.

Councilmember Rasmussen asked how they would handle the area until it is fully developed. Mr. Peterson stated they would install the curbing to support the CVS and seed and maintain it as a green space area until it is fully developed. Mr. Rasmussen noted there was not area for detention. Mr. Peterson indicated the water would be transported into an underground stormwater system through appropriately sized pipes. He indicated they would not have water coming off of the site any faster than what currently comes off.

Councilmember Cain asked when 151st Street and Mission Road was supposed to be widened.

Mr. Lambers indicated they were not in the current CIP.

Mr. Peterson indicated with the immediate improvements they are required to make, the facility will operate at an acceptable level of service. He clarified that the proposed future use of the 2,400 square feet would only be used under the current zoning.

Mayor Dunn asked if Mr. Peterson was familiar with the CVS Pharmacy located at 63rd and Brookside and the one at Camelot Court and noted they don't have a drive-thru. Mr. Peterson indicated pharmacies in inline centers are either closing, or are moving to an end-cap in order to have a drive-thru facility. Some of them are also moving out onto a pad site.

Councilmember Bussing stated the CVS Pharmacy located at 131st and State Line Road consistently violates the sign ordinances. He wanted assurance that the proposed store would adhere to Leawood's preferences for understated elegance.

Mr. Peterson indicated they were not asking for sign approval and understood they would need to present proposed signage separately. He wanted to bring an enforceable binding resolution to the problems Mr. Bussing was referring to for any CVS in Leawood.

Councilmember Gill felt the residents speak truthfully and compellingly when they say they have invested thousands of dollars into their homes because they were told by the developer this would be a low-impact neighborhood residential zoning. Mr. Gill stated he would not be supporting a zoning change.

Mr. Peterson stated the residents were not going to support neighborhood development, regardless of drive-thru windows or square footage.

Councilmember Azeltine felt it was presumptuous for Mr. Peterson to state that the residents would or would not support any application. Mr. Azeltine couldn't recall ever having an application that was a rezoning request in conjunction with an SUP that was on a plot of land less than 10 acres. He stated the proposed plan doesn't comply with the City's development ordinance and he could not support it.

Councilmember Peppes stated he could approve the project and the pharmacy; however, felt it shouldn't be located in the middle of a neighborhood on a small six acre tract. Dr. Peppes stated he wouldn't be supporting the zoning change.

A motion to approve the Planning Commission's recommendation for denial of a Special Use Permit [SUP] for a drug store with a drive-thru for CVS Pharmacy located on the southeast corner of 151st Street and Mission Road was made by Councilmember Azeltine; seconded by Councilmember Filla.

Councilmember Gill felt that if resident's needed a pharmacy with the convenience of a drive-thru, there were several located within a few miles of their homes and thought the homeowners were entitled to the benefit of the zoning that was discussed at the time they purchased their homes.

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

- *D. **Resolution No. 3139** approving the Planning Commission's recommendation for denial of a Rezoning from SD-NCR [Planned Neighborhood Retail] to SD-CR [Planned General Retail] and Preliminary Site Plan and Preliminary Plat for CVS Pharmacy, located on the southeast corner of 151st Street and Mission Road (PC Case #73-08)

Staff Comment: **The City Clerk's Office has received a Protest Petition. The petition has been determined to be invalid due to insufficient property ownership.**

A motion to approve the Planning Commission's recommendation for denial was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

[From the October 28, 2008 Planning Commission Meeting]

- E. **Ordinance No. 2376** approving a Preliminary Site Plan and Final Site Plan for Parkway Plaza - Little Sunshine Playhouse, located on the northwest corner of 135th Street and Roe Avenue (PC Case 87-08) [Roll Call Vote] – ***CONTINUED FROM THE NOVEMBER 17, 2008 GOVERNING BODY MEETING***

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

Jeff Skidmore, Schlagel & Associates, stated he was present on behalf of Little Sunshine Development. He described the development location and stated they were in agreement with the stipulations set forth by the Planning Commission.

Mayor Dunn confirmed with Mr. Skidmore that the project would be built with natural lime stone veneer at 3 – 4 inch thickness, mechanically attached.

The motion carried following a unanimous vote of 8-0. Yea: Councilmembers Rasmussen, Gill, Azeltine, Peppes, Rawlings, Filla, Cain, and Bussing. Nay: None.

- F. **Ordinance No. 2377** approving a Special Use Permit [SUP] for Parkway Plaza - Little Sunshine Playhouse, located on the northwest corner of 135th Street and Roe Avenue (PC Case # 87-08) [Roll Call Vote] ***CONTINUED FROM THE NOVEMBER 17, 2008 GOVERNING BODY MEETING***

A motion to approve the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Gill. Yea: Councilmembers Rasmussen, Gill, Azeltine, Rawlings, Cain, Filla, Bussing, and Peppes. Nay: None.

- G. **Resolution No. 3140** approving a Sign Plan for Nall Valley Shops - Capitol Federal Savings Signs, located on the northeast corner of 151st Street and Nall Avenue - ***CONTINUED FROM THE NOVEMBER 17, 2008 GOVERNING BODY MEETING***

Mr. Lambers stated staff felt the deviations are such that the application should be denied and noted the Planning Commission had a close vote of 5-4 approving the signage. He asked for direction from Council as this potential approval will signal others to disregard the sign guidelines. Mr. Lambers stated staff considers logos that are attached to the verbiage of the sign to be part of the sign; therefore, if connected and has some reasonable relationship to the design guidelines in terms of its size and height, it would be considered appropriate. When a logo becomes a separate feature by itself, it is considered a separate sign. The size of the sign does not meet the design guidelines.

Scott Bixler, Architect Principal with WDM Architects, stated the project was approximately 20 days from receiving Certificate of Occupancy and noted they had received approval twice from the Planning Commission. They were allowed to return before the Council with another alternate, due to their not liking the vinyl that was placed on the inside of the window. They have returned with two alternatives. Mr. Bixler noted instead of "Capitol Federal Savings," they wanted it to read "Capitol Federal." The sign text is under the maximum size that is allowed by the shopping center, and noted the letters were 22". He indicated they were also under the square footage percentage that is allowed.

Mr. Bixler stated the logo was approved; however, staff had noted that it wasn't three dimensional as shown in the rendering. They had shown a box sign on the inside of the window and on advice of staff, asked to return with a more architecturally applied element. He noted they have taken the center glass area of the upper elevation and were making it a "Ford" blue tint. They intended to sandblast the "Capitol Federal" logo into the blue glass. It is not backlit or internally illuminated and they considered it an architectural element and the Planning Commission agreed.

Mayor Dunn noted staff point No. 5 stating that the light fixture used for the logo was not an approved light fixture and thought Mr. Bixler had indicated there would be no light.

Mr. Bixler stated they wanted to have a light fixture on the canopy below that could not be seen from the road to shine upon the cut glass at night. This lighting is currently not used in the shopping center; however, he felt confident that the owner/developer would approve it.

Assistant Planning Director Mark Klein stated the lighting was not approved as part of the design guidelines. He also noted the overall size of the letter (bottom of the "p" to the top of the "C") of the proposed sign was 2' - 4 5/8". This is over the 24" maximum.

Mr. Bixler stated the sign ordinance states each letter cannot be over 24" and they are not. Mr. Lambers noted staff has always interpreted the ordinance to mean that the total length from the top of the tallest letter to the lowest point of the lowest letter to be no more than 24" tall.

Councilmember Gill confirmed with Mr. Bixler there were no words written on the logo.

Mr. Lambers described both the staff reviewed design and substitute applicant design and stated the applicant submittal was considered an architectural feature, as it has a three dimensional aspect.

Mr. Bixler felt their sign shouldn't be perceived as three dimensional and thought it was difficult to ascertain from the photograph.

Mr. Lambers noted they were willing to proceed despite it being a separate logo because of the quality it portrayed. Staff felt the subsequent submission didn't meet that standard.

Councilmember Filla found it difficult to imagine what the etched glass would look like. Mr. Bixler indicated after the sandblasting, there would be a white etching surrounding the glass; however, noted it was difficult to demonstrate this in the picture.

Ms. Filla felt they needed to uphold the 24" maximum on the letters from top to bottom. As far as the lighting, Ms. Filla felt it was unnecessary to have the illumination of the sign at night.

Mayor Dunn thought she had asked the applicant to bring back both applications of the signage so Council could have a choice in the design of either what the applicant wanted to propose or the architectural feature.

Mr. Bixler stated what they had proposed the first time was the same application; however, it had vinyl on the inside versus the etched glass. Staff had felt the vinyl was cheap; therefore, they intended to make the sign more elegant.

Mayor Dunn noted she had envisioned the architectural look as an alternative when they returned.

A motion for denial of the Planning Commissions' recommendation to approve the sign plan for Capitol Federal was made by Councilmember Rasmussen.

Mr. Bixler asked that consideration be given to the fact that they needed to install a sign, since they were supposed to open within 30 days. He noted they wanted the proposed signage because it looks right for the building, not because they wanted to add additional signage.

The motion for denial died for lack of a second.

A motion to extend the meeting for a period of 30 minutes (to 11:30 P.M.) was made by Councilmember Gill; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 8-0.

A motion to approve the signage for a total of 2 text signs with 2 logos and the lettering to be a maximum height of 24" for the Capitol Federal signs with an architectural feature of the blue glass with etching with the applicant's logos shown as 5'-6" tall for the center piece as depicted without any nighttime lighting on the logo was made by Councilmember Filla; seconded by Councilmember Azeltine.

Councilmember Azeltine was concerned that other applicants could follow suit if this application was approved for a total of 4 signs and the design guidelines state 2. He wanted assurance that Council could refer to the logos as being an architectural element and not a sign.

Mr. Lambers didn't define this as an architectural element and was concerned that if this proceeds, future applicants would use the same example that the logos can be independent of the total signage and that signs need to be a certain size in order to be concise with buildings.

Councilmember Azeltine noted the applicant was 20 days from occupancy and needed signage.

Mr. Lambers indicated the City allows temporary banners and signage if needed.

Mr. Bixler stated this was not intended to put pressure on anyone and noted they would have liked to have had this completed much earlier.

Mayor Dunn clarified that the Capitol Federal sign would be lit.

Mr. Bixler noted there could be light shining through from the window of the building onto the logo. Ms. Filla stated she was referring to not having a light fixture.

Councilmember Cain confirmed with Mr. Bixler that the Capitol Federal letters would be white and the sign would have "halo" type lighting.

Ms. Cain asked how this was three dimensional if it was always proposed in glass. Mr. Lambers noted there is perceived space between the eagle and the circle, which creates the perception that there is distance.

Councilmember Bussing concurred that he felt it was three dimensional.

Mr. Bixler noted the intension of three dimensions was due to their thinking it would be a can type sign on the inside of the glass. They knew there was concern to the number of signs when comments came back to them to make it more of an architectural element. They incorporated it into the window by glazing and etching it in. He noted they don't have objection to doing it three dimensionally; however, was concerned of it still being legible.

The motion to approve the signage as stated previously failed following a vote of 4-4. Yea: Councilmembers Azeltine, Filla, Gill, and Peppes. Nay: Rasmussen, Bussing, Rawlings, and Cain. Mayor Dunn noted they needed six votes for super majority to override the Planning Commission.

Mr. Lambers clarified that the change in the height of the signage and lighting was not consistent to what the Planning Commission approved; therefore, required a super majority vote.

A motion to approve the lettering on the two Capitol Federal signs not to exceed 24" and allow the applicant to continue to work with the staff to develop a solution for the logos and return to Council at a later date was made by Councilmember Bussing; seconded by Councilmember Cain.

Mr. Lambers clarified for Mr. Bixler that this motion would approve the verbiage of the Capitol Federal signs for the two places requested with the height reduced. The content, size and design of the logo would need to be further discussed with staff.

Mr. Bussing stated his intent of the motion was to have the applicant return to Council after working with the staff with an architectural feature, not a sign.

Mayor Dunn noted concern to the size of the proposed logo being way beyond the design guidelines.

Mr. Lambers told Mr. Bixler staff could accept a smaller logo that was similar to what was created in the first picture. He felt the proposed logo was a substantial deviation from the design guidelines.

Mr. Bixler noted the Planning Commission approved the 5 ½ foot logo sign. He stated they were willing to work with staff and return; however, if the logo is reduced it wouldn't look right.

Mr. Bixler confirmed with Mr. Lambers that if they were to propose a 24" high logo to the front of the Capitol Federal verbiage, it would be approved. Mr. Bixler confirmed with Mr. Lambers that if they capitalized all of the letters and made them 24", it would be approved.

Councilmember Filla asked Council to keep in mind that the building was two-stories and people would need to be able to see the logo from a distance, versus a one-story building.

Mayor Dunn clarified they were not approving the signage to be 24" in all capital letters.

Mr. Bixler indicated he was only asking for Mr. Lambers interpretation of what was permitted.

Mr. Lambers noted some applicants will reduce the size of the sign lettering to justify asking that the logos be larger.

Councilmember Rasmussen confirmed with Mr. Lambers that the motion was to only approve two Capitol Federal written signs and return to Council at a later date with an alternative plan to the logo.

Mr. Bixler thought they would not be interested in putting up temporary signs and would return to Council with either the logo to the front or above the lettering.

Councilmember Azeltine asked to have an example of their design when they returned.

Mr. Bixler asked how much time he had to submit it. Councilmember Bussing noted his intent was to allow as much time as they needed and asked Mr. Lambers to expedite Mr. Bixlers' request when he was ready.

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

A motion to extend the meeting an additional 30 minutes was made by Councilmember Azeltine; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

14. OLD BUSINESS – None.

15. OTHER BUSINESS – None.

16. NEW BUSINESS

- A. Discussion regarding reaffirmation of utilization of design build for construction of the Justice Center

Mr. Lambers noted Council may want to have a work session to reaffirm the decision to use the same contractor that was used for the addition of the Public Works facility or to consider going through the traditional bidding process to select an architect. This has been estimated to be up to a \$16 Million project.

Councilmember Filla clarified they would utilize the design build process and then get proposals from multiple teams of architects and contractors.

Councilmember Gill had reservations regarding a design build and the risk of change orders, lack of detail designs, and not having a fixed price.

Mayor Dunn noted there would be a fixed price.

Mr. Johnson stated on a design build they would sign a contract and would be given a guaranteed price. He noted they would define what they wanted and this would give the team the ability to begin designing. Within approximately 30% of the project they give the guaranteed price if the scope of the project doesn't change.

Mr. Gill confirmed with Mr. Johnson that less than 1% of expense is incurred against the budget before getting to the detailed construction drawings.

Councilmember Azeltine felt it was important for Council to understand what design build means due to the magnitude of the project.

Mr. Johnson stated Shawnee, Kansas just completed their Justice Center with the design build process and it turned out very well. Many police and fire stations are being constructed under the design build as well.

Mayor Dunn noted there was potential to catch mistakes in advance as the project proceeds.

Police Chief John Meier concurred that many projects were moving toward the design build process.

Mayor Dunn got consensus from the Council there was no need to schedule a work session on this.

- B. Schedule a Governing Body Work Session meeting at 6:00 P.M. on Monday, December 15, 2008 to discuss Transportation Development District [TDD] and Special Benefit District [SBD] Financing along 135th Street between State Line Road and Pawnee

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

Councilmember Gill referred to the zoning denial previously discussed for CVS Pharmacy and asked if someone could research what was allowed in the zoning classification in 1996.

- C. Executive Session immediately following meeting for 15 minutes to consult with an attorney regarding matters protected by the attorney/client privilege.

A motion to recess into executive session for a period of 15 minutes was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

A motion to extend the meeting for a period of 15 minutes was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

The Governing Body reconvened into regular session at 12:15 A.M.

There being no further business, Mayor Dunn adjourned the meeting at 12:15 A.M.

ADJOURN

Debra Mansfield, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk