

## OVERLAND PARK CITY COUNCIL MEETING

June 7, 2010

Mayor Carl R. Gerlach called the Overland Park City Council meeting to order at 7:30 p.m. The following members were present, constituting a quorum:

Mr. Terry Goodman; Mr. George Kandt; Mrs. Terry Happer Scheier; Mr. David White; Mr. Jim Hix; Mr. John Skubal; Mr. Curt Skoog; Mrs. Donna Owens; Mr. Dan Stock; and Mr. Paul Lyons. Mr. Dave Janson, Council President, and Mr. Fred Spears were absent (excused).

Also present were: Mr. John M. Nachbar, City Manager; Mr. Bob Watson, City Attorney; Mr. Bill Ebel, Director of Planning and Development Services; Mr. Tony Cosby, Acting Director of Recreation Services; Mr. Greg Ruether, Acting Director of Parks Services; Mr. John Douglass, Police Chief; Mr. Bryan Dehner, Fire Chief; Mr. Bart Budetti, Senior Assistant City Attorney; Mrs. Vicki Irey, Director of Information Technology; Mr. Doug Brown, Director of Public Works; Mr. Dave Scott, Chief Financial Officer; Mrs. Leslie Karr, Current Planning Manager; Mrs. Tammy Owens, Senior Assistant City Attorney; Mrs. Norma Peters, Senior Human Resources Assistant; Mr. Angelo Phillips, Safety and Loss Prevention Administrator; Mr. Mark Stuecheli, Senior Transportation Planner; Mr. Sean Reilly, Communications Manager; Mr. Lloyd Nichols, Senior Help Desk Support Specialist; and Ms. Pamela Blaszyk, Recording Secretary. Approximately 30 people were in the audience.

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### PLEDGE OF ALLEGIANCE:

Mayor Carl R. Gerlach led the audience in the Pledge of Allegiance.

Mayor Gerlach recognized a Boy Scout from Troop No. 10, sponsored by the Leawood Lion's Club.

### PUBLIC HEARING

#### UNSAFE AND DANGEROUS STRUCTURE – 7800 W. 60th Street.

Director of Planning and Development Services Bill Ebel stated that the subject site is to the west and south of Shawnee Mission North High School. In July 2008, staff received a complaint that this property was in disrepair. Multidisciplined Inspector Sue Freeman took care of interior property maintenance for the City, and she investigated the site. Ms. Freeman discovered that the place had been abandoned. Two egress doors were broken, several windows were missing and there were large holes in the roof, which has resulted in some significant damage to the interior of the property. The structure was unsanitary for living, so Ms. Freeman posted it immediately with the approval of Codes Administrator Tim Ryan. In late 2008, staff hired a contractor to board up the house because of security issues and vandalism. In 2009, they removed an inoperable vehicle from the site. In late 2009, they changed the locks, because there had been some additional vandalism to the property. This property has been an ongoing maintenance issue for the City. They have contracted for lawn services to make sure the grass is cut. They have also taken other measures to ensure that the property is at least stabilized. One such measure was to have a

blue tarp installed that completely covered the roof. To date, the City has spent approximately \$4,000 in an attempt to maintain this property.

When they started to research the property, they discovered that the property owner, Mr. Harold F. Orten, died on March 24, 2008. The house was paid for and there was no mortgage. Staff attempted over several months to find out who was in control of this property. They discovered that there was no will, and the immediate family had no interest in assuming ownership or taking control of the property. Basically, it has been left in the hands of probate and the county. In the meantime, staff has been maintaining the site on behalf of the neighborhood to ensure that the property does not go into further decline. To date, no action has been taken to assume control of this property by anyone, nor has any probate action been started. The structure is continuing to deteriorate. Damage has been caused by the holes in the roof, which is why they secured the roof with a tarp. Although the structure is in an unsanitary condition, the City has not cleaned it up because there is a period of time that must lapse to ensure that any personal effects of the deceased are handled by the family. However, the family has chosen not to do anything with the property. Staff was presenting three options to consider for this property.

With Option 1, staff would prepare a resolution to declare the house as an unsafe structure and order immediate demolition and removal of the structure. Once the house is demolished, it would be a vacant property with a grass lot, and they would have to continue to maintain it until it is sold by the county at public auction. It has been delinquent for two years of property taxes. A third year is required before the county will start the public sale process. The cost to maintain the property in the meantime is estimated to be an additional \$14,000 to \$16,000 over what they have already spent.

With the approval of Option 2, the City would declare this property abandoned. That would mean that the City could start the public sale process as soon as possible without having to wait the additional third year for delinquent property taxes. Staff was of the opinion that the property could possibly be sold within one year. There would still be ongoing maintenance costs. The blue tarp is not a long-term measure, and they would either need to repair or replace the tarp or replace the roof. The blue tarp has been on the roof for over one year, and it is decayed. Staff was estimating that it would cost \$5,000 to \$6,000 to stabilize the house and get it into a condition where it could be sold at a public sale.

Option 3 is basically the same as Option 2 with the exception that they would wait for the county to declare the site delinquent in its taxes. They would still have to go through all of the same steps to maintain the structure. The difference between Option 2 and Option 3 is that with Option 2, they are declaring the structure abandoned, which allows them to start the public sale process immediately. With Option 3, they allow the natural process to take place, and they would still have to do some immediate repairs and stabilize the property. They would need to clean out the inside of the house and continue to maintain the outside.

Regardless of what option they choose, Johnson County cannot guarantee that the property will be sold. They are assuming that it would take eight months to one year to sell the property after they start the process. However, the City would have to continue to maintain the property until it is sold. Selling the property does not necessarily mean that anything will be done with the property other than having

someone who would be responsible for the property. The likelihood of someone purchasing the property and not doing anything with it is remote, but it is still a possibility. In terms of recovering their costs, everything that they have done and that they would do up to the sale of the property is being assessed to the property as a lien. Therefore, the amount would be paid to the City upon transfer of the property. That would be part of the conditions of the sale, and the county would make the potential buyer aware of the lien.

Mayor Gerlach understood that someone wanted to buy the property, and the family declined that request. Mr. Ebel replied that they have had a couple of cash offers for the property, and the brother declined from taking any responsibility or control of the property. Staff is in no position to take an offer on the property, since they are not in control of the property.

Mayor Gerlach was wondering if it was more likely that someone would purchase the property and then try to repair the structure or just raze the building. Mr. Ebel replied that the cash offers they received were basically in the \$15,000 to \$25,000 range. Once an individual purchased the site, they would have to make sure that the exterior and interior was clean. That would be the City's only responsibility and the limit of what they could do once an individual gained control of the site. Mayor Gerlach asked if the City demolished the site, would there be added costs from dealing with asbestos and mildew. Mr. Ebel replied that they would have to take those things into account. They have not done any further assessment other than a visual inspection. It is possible that the mildew and asbestos could increase the cost, but he doubted that the cost would be much more than the estimated \$11,000, even if they had to do any additional work.

Mr. Jim Hix asked what the value of the land would be without the house. Mr. Ebel replied that the county appraisal on the property is in the \$30,000 to \$35,000 range for the lot. It is a nice corner lot on a secluded street. The rest of the properties on the street are in good condition. Mr. Hix assumed that the sale price would cover the lien. Mr. Ebel agreed that they would probably recover most if not all of their costs.

Mr. Dan Stock asked if the lot is worth more than the house if the house was removed. Mr. Ebel replied that the house fits in with the neighborhood. He did not know how much it would cost for someone to repair the house or if there would be more interest if there was a vacant lot. Mr. Stock asked if staff was recommending one of the three options. Mr. Ebel replied that he did not offer a recommendation. It seemed that Options 1 or 2 would be preferable. Option 2 is an action that the Council could take to get the process started more quickly. He did not know if the site would generate more interest with a repaired house or with an empty lot.

Mr. Paul Lyons asked if the house sits on a slab. Mr. Ebel replied that there is a crawl space. Mr. Lyons asked if they were to choose Option 2, what would be the extent of the repairs. Mr. Ebel replied that they would basically repair the roof, remove the debris from the inside of the house and make sure that it was secure. They would hire a contractor to do those repairs.

Mr. Curt Skoog asked if the house had been a problem in the neighborhood prior to the owner's death. Mr. Ebel replied that he understood the exterior of the property was being maintained when the owner was alive. Their records do not indicate that there were a lot of issues with the exterior of the house. However, the neighbors are

now concerned about the property. They called and indicated that the house had been abandoned and the exterior was in disrepair. Mr. Skoog asked if the neighbors had expressed an opinion regarding Options 1 or 2. Mr. Ebel replied that the only opinion the neighbors have indicated is that they would like to see the property stabilized and that someone should take control of it so that it is restored to good condition. Mr. Skoog asked if the other homes in the neighborhood are similar or if they have a different character. Mr. Ebel replied that most of the homes are of the same vintage. It is a nice area, and this is the only house on the block that is in disrepair.

Mr. Hix asked if they cleared the lot, are the values in the neighborhood such that it would not be reasonable to build a new home and the City would have to maintain the lot indefinitely. Mr. Ebel replied that this is one of the nicer lots in the neighborhood. Other than the roof, the structure of the home is in fairly good shape, and it fits in with the vintage of the neighborhood. It might be a better solution to stabilize the building and let someone purchase the property. The fact that there have been a couple of cash offers seems to indicate that there is some interest in restoring the property.

Mayor Gerlach opened the public hearing regarding this unsafe and dangerous structure. There was no response, and the hearing was closed.

Mayor Gerlach agreed with Mr. Ebel that they should choose Options 1 or 2. He liked Option 2, because someone might renovate the house and sell it. However, if the house is not sold, the City would have to maintain the property.

Mr. Skoog moved to approve Option 1. The motion was seconded by Mr. Hix.

In consideration of the state of the house and the neighborhood, Mr. Skoog was of the opinion that it was a better option in the long term for the City and the neighbors to have the building razed. The risk of someone buying the house and having it as a low cost rental property is too high. This is an opportunity for the City to recoup their costs.

Mrs. Terry Happer Scheier stated that when she first heard about this house, her initial opinion was that it should be demolished. However, she knew of a house that sat vacant for a long time and was ultimately renovated. People are now living in what has been made into a nice house. She was torn between the two solutions. While she agreed with Mr. Skoog that the house could be demolished and they could start over, she also thought that it would be possible for the house to be renovated.

Mr. David White was of the opinion that they need to put this item in line so it can be moved on by the county as quickly as possible. They ought to declare it an abandoned property so the process can go forward.

Mr. Stock felt that it would be easier to vote on this item if they had an internal condition report. If the house has mildew or there is structural damage, it would be easier to make the decision to demolish the house. He did not necessarily disagree with the motion, but he wondered if the condition of the house warranted that it be razed. Mr. Ebel replied that the structure is not settling or falling down. They do need to repair the roof, and there is mold in the house. The mold would have to be dealt with as a part of the stabilization process. Mr. Stock stated that he tended to support the motion.

Mr. Lyons understood that Option 2 was more of a fast path for getting the property sold. He asked why Option 1 would slow down that process. It seemed that the process should have started in March 2008. Mr. Ebel explained that under the county process, they still have one more year of delinquent taxes before the property becomes eligible to be sold. The abandonment would basically allow them to eliminate that last year. However, after talking with Senior Assistant City Attorney Bart Budetti, he was not certain that they could demolish the structure and call the lot abandoned, because there would be no structure on the site. Therefore, they may have to still wait one more year to sell the property. Mr. Lyons asked if the entire property would have to be abandoned to make that declaration. Mr. Ebel replied that under the state law, the abandonment has to do with the structure. The lot cannot be called abandoned to speed up the process. If they demolish the house, there is no structure, so there is no abandonment. It is basically property that is delinquent on its taxes, and it would go through the regular process.

Mayor Gerlach clarified that they could demolish the structure as soon as possible, but they would have to wait another 12 months before the property could be sold. Mr. Ebel replied that if the Council approves Option 1, then they would start the process to hire a contractor and go through the process to demolish the structure. That process might take 60 to 90 days, but by the end of the summer, the house should be demolished if that is the option the Council chooses. Mr. Lyons understood that the Staff Comments indicated that it would be a two- to three-year process to sell the property. Mr. Ebel replied that they assumed it would take one year to go through the delinquent tax period and one more year to sell the property. That is an assumption that staff determined. Mr. Lyons replied that he was also torn between Options 1 and 2. He agreed with Mr. Skoog that it is going to be less of a burden on the neighborhood if they were to just have the building demolished. Since they would care for the property by mowing the grass, the lot would look better. He did not want the building to create a continual burden on the neighborhood. He would support the motion.

Mr. White observed that Option 1 indicates that the financing for the demolition would have to be found with the City's current operating budget. He asked if the \$14,000 to \$16,000 would be taken from contingency funds. City Manager John Nachbar replied that they would search for other places to find the funds for the demolition. However, if it was necessary to use the contingency funds, that is what they would do.

Mr. Terry Goodman stated that he was supportive of the motion to raze the structure. He was concerned with Option 2, since Johnson County does not guarantee the sale of the property, so they do not know how long that will take. Even if the property was to be sold, there was no guarantee that whoever buys it will immediately renovate the house. They could have the perpetuation of an unacceptable condition, which requires a more immediate resolution.

Mrs. Happer Scheier noted that she had decided that they should demolish the structure as indicated in Option 1.

Mrs. Donna Owens stated that from a family standpoint, she was involved with the aftermath of a large tornado that occurred in Oklahoma City, and it is difficult to rehabilitate a structure that has had this much damage. She saw this as an opportunity for a young couple to build a new house on this site in what is a good neighborhood. She supported removing the current house so there is real renewal on

the site rather than having a makeshift structure, which would not be good for the neighbors.

The motion to approve Option 1 carried with a vote of 10 to 0.

Mr. Ebel clarified that staff would prepare a resolution to present to the Council at the next Council meeting.

MAYOR CARL R. GERLACH

PROCLAMATION – Proclaiming June 1 through June 30, 2010, as National Safety Month in Overland Park.

Mayor Gerlach invited Safety and Loss Prevention Administrator Angelo Phillips to meet him at the podium.

Mayor Gerlach proceeded to read a proclamation that proclaimed June 1 through June 30, 2010, as National Safety Month in Overland Park. He called upon all citizens and civic organizations to recognize the importance of safety and health in the work place. Mr. Phillips accepted the proclamation.

PROCLAMATION – Proclaiming June 18-19, 2010, as Relay for Life Days in Overland Park.

Mayor Gerlach noted that a proclamation had been prepared to proclaim June 18-19, 2010, as Relay for Life Days in Overland Park. Since a representative from Relay for Life was not present, he indicated that the proclamation would be forwarded to the organization.

APPOINTMENT TO THE JOHNSON COUNTY STRATEGIC TRANSIT ACTION  
RECOMMENDATION TASK FORCE (START):

Councilmember Terry Goodman

REAPPOINTMENTS TO THE BOARD OF ZONING APPEALS:

Margaret Klein – Term 5/2/10 to 5/2/13  
Eric (Ric) Johnson – Term 5/2/10 to 5/2/13

Mr. George Kandt moved to approve the referenced appointment and reappointments as presented. The motion was seconded by Mrs. Terry Happer Scheier and carried with a vote of 10 to 0.

CITY MANAGER JOHN NACHBAR

No report.

CONSENT AGENDA:

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE ITEMS:

AUTHORIZATION TO PERMIT VERIZON WIRELESS TO MOVE FORWARD WITH APPLICATION FOR A SPECIAL USE PERMIT – For construction of a monopole (cell tower) at St. Andrews Golf Course.

AGREEMENT – Charlesworth and Associates, L.C., for Risk Management Services, maintaining the current annual fee of \$60,000.

AUTHORIZATION TO NEGOTIATE AGREEMENT – JCA Incentives/Eagle Recognition for the Employee Service Recognition Award Program for a three-year period of time.

AUTHORIZATION TO NEGOTIATE AGREEMENT – Rimini Street, Inc., to provide software support services for the PeopleSoft Human Resources Management System software.

ORDINANCE NO. TF-2612,A – Amending the telecommunications franchise with Everest Midwest, L.L.C., by extending the term of the franchise to May 31, 2013.

STAFF ITEMS:

COUNCIL MINUTES – April 12, April 19, and May 10, 2010, Council meeting.

EXPENDITURE ORDINANCE NO. 5A – Outlining the expenditures from the General Operating Fund for April 28 through May 11, 2010.

EXPENDITURE ORDINANCE NO. 5B – Outlining the expenditures from the General Operating Fund for May 12 through May 25, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 5C – Outlining the expenditures from the Capital Projects Fund for May 13 through May 19, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 5D – Outlining the expenditures from the Capital Projects Fund for May 20 through May 26, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 6A – Outlining the expenditures from the Capital Projects Fund for May 27 through June 2, 2010.

APPLICATION FOR NEW CEREAL MALT BEVERAGE LICENSE – JoCoSalsa, L.L.C., d/b/a Salsarita's Fresh Cantina, 8905 W. 135th Street, Amy G. Weber, manager.

APPLICATIONS FOR RENEWAL OF CEREAL MALT BEVERAGE LICENSES:

A and A Industries, L.L.C., d/b/a Dickey's Barbecue Pit, 7284 W. 121st Street, Sam Kafoure, manager.

Sam's West, Inc., d/b/a Sam's Club No. 4707, 8300 W. 135th Street, John Festa, manager.

Sunitha, Inc., d/b/a 7-Eleven Store No. 27832C, 11724 Quivira, Sunil R. Epur, manager.

APPLICATION FOR TEMPORARY PERMIT TO SELL CEREAL MALT BEVERAGE – Rotary Club of Overland Park, for an event to be held July 4, 2010, from 4 p.m. until 11 p.m., at 9711 W. 109th Street, Andy Heath, manager. (Special Event Permit No. 2010-237).

APPLICATION FOR TEMPORARY PERMIT TO SELL ALCOHOLIC LIQUOR – St. Dionysios Greek Orthodox Church, for an event to be held June 11, from 5 p.m. to 10 p.m.; June 12, 11 a.m. to 10 p.m.; and June 13, 2010, from 12 p.m. (noon) until 7 p.m., 8100 W. 95th Street, Chris Antos, manager.

REQUEST TO EXTEND PREMISES TO SELL ALCOHOLIC LIQUOR – Fox and Hound of Kansas, Inc., d/b/a Fox and Hound English Pub and Grille, for an event to be held at 10428 Metcalf, on June 19, 2010, from 3 p.m. until midnight, Jenny Odell, manager. (Special Event Permit No. 2010-242).

REQUEST TO EXTEND PREMISES TO SELL ALCOHOLIC LIQUOR – Fuel, Inc., d/b/a Fuel American Made Bar and Grille, for an event to be held at 7300 W. 119th Street, on June 26, 2010, from 5 p.m. until 11 p.m., Shawn McClenny, manager.

REQUEST TO EXTEND PREMISES TO SELL ALCOHOLIC LIQUOR – Fuel, Inc., d/b/a Fuel American Made Bar and Grill, for an event to be held at 7300 W. 119th Street, on July 3, 2010, from 5 p.m. until 11 p.m., Shawn McClenny, manager. (Special Event Permit No. 2010-265).

REQUEST TO EXTEND PREMISES TO SELL ALCOHOLIC LIQUOR – Overland Park Marriott, for events to be held June 15-19; June 22-26; July 16-20 and July 21-25, 2010, from 6:30 a.m. until 1 a.m., at 10800 Metcalf, Shawn Cummins, manager.

Mr. Kandt moved to approve the Consent Agenda as presented. The motion was seconded by Mrs. Happer Scheier and carried with a roll-call vote of 10 to 0.

REGULAR AGENDA:

PUBLIC SAFETY

COMMITTEE REPORT: George Kandt, Chair

No report.

STAFF REPORT:

No report.

COMMUNITY DEVELOPMENT

COMMITTEE REPORT: Terry Goodman, Chair

No report.

STAFF REPORT:

AGREEMENT – The Salvation Army, to provide a Community Development Block Grant in the amount of \$14,116 for funding of emergency assistance, including, but not limited to, rent, utilities, mortgage, and food assistance for income-eligible Overland Park families.

AGREEMENT – Board of County Commissioners of Johnson County, to provide a Community Development Block Grant for minor home repair and revitalization services for income-eligible Overland Park home owners in the amount of \$100,000.

Mr. Ebel indicated that staff was recommending approval of the agreement with The Salvation Army to provide a Community Development Block Grant in the amount of \$14,116 for the funding of emergency assistance including, but not limited to, rent, utilities, mortgage and food assistance for income-eligible Overland Park families.

Staff was also recommending approval of the Agreement with the Board of County Commissioners of Johnson County to provide a Community Development Block Grant for minor home repair and revitalization services for income-eligible Overland Park home owners in the amount of \$100,000.

Mr. Goodman moved to approve the referenced Agreements as recommended by staff. The motion was seconded by Mr. Skoog and carried with a vote of 10 to 0.

RESOLUTION NO. 3823 – Enlargement of Consolidated Main Sewer District, Meadows of Mills Farm 2nd Plat, vicinity of 165th Street and Quivira.

Mr. Ebel noted that staff was recommending approval of Resolution No. 3823 to allow the enlargement of an existing Sewer District for Meadows of Mills Farm, 2nd Plat, which is in the vicinity of 165th Street and Quivira.

Mr. Goodman moved to approve Resolution No. 3823 as recommended by staff. The motion was seconded by Mr. Skoog and carried with a vote of 10 to 0.

PUBLIC WORKS

COMMITTEE REPORT: Terry Happer Scheier, Chair

No report.

STAFF REPORT:

BID TABULATION – 2010 Miscellaneous Bridge Repairs.

Director of Public Works Doug Brown indicated that staff was recommending acceptance of the low bid from PCI Roads, L.L.C., for the 2010 Miscellaneous Bridge Repairs Project in the amount of \$274,740.

BID TABULATION – 83rd Street and Grandview Ditchliner Improvements.

Mr. Brown added that the staff recommendation was to accept the low bid from Miles Excavating, Inc., for the 83rd and Grandview Ditchliner Improvements Project in the amount of \$358,949.15.

BID TABULATION – Two Tandem Axle Snowplow Dump Trucks.

Mr. Brown indicated that staff was recommending acceptance of bid “A” from Diamond International for the purchase of two tandem axle snowplow dump trucks in the amount of \$335,084.

Mrs. Happer Scheier moved to approve the referenced three bids as recommended by staff. The motion was seconded by Mr. Stock and carried with a vote of 10 to 0.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT: Jim Hix, Chair

No report.

STAFF REPORT:

Mrs. Stallings asked for acceptance of a non-agenda item for a New Drinking Establishment License.

Mr. Hix moved to add a non-agenda item to the agenda. The motion was seconded by Mrs. Happer Scheier and carried with a vote of 10 to 0.

NON-AGENDA ITEM:

Mrs. Stallings indicated that last Wednesday, the City Clerk’s office received an application for a New Drinking Establishment License from the Blue Moose O.P., L.L.C. This item was submitted too late to be on the agenda. However, staff was able to get all of the checks done by the end of the week, and the applicant asked that this be a non-agenda item. The state license and all City license issues for this application are in order. Staff was recommending approval of the application for the New Drinking Establishment License for the Blue Moose O.P., L.L.C., d/b/a Blue Moose, 9100 West 135th Street, Michael Hockenberger, manager.

An individual was present to represent the Blue Moose. She did not have any comments.

Mr. Hix moved to approve the application for the New Drinking Establishment License for the Blue Moose O.P., L.L.C., d/b/a Blue Moose, 9100 West 135th Street, Michael Hockenberger, manager. After a second by Mr. Skubal, the motion carried with a vote of 10 to 0.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA:

SPECIAL EVENT PERMIT NO. 2010-237 - 9401 Indian Creek Parkway. A special event permit is requested to allow the annual 4th of July fireworks and concert in Corporate Woods. Application made by the Overland Park Rotary Club, represented by Chad Tenpenny.

SPECIAL EVENT PERMIT NO. 2010-242 – 10428 Metcalf. A special event permit is requested to allow a summer bash on June 19, 2010. Application made by Fox and Hound of Kansas, Inc.

SPECIAL EVENT PERMIT NO. 2010-259 – 10800 Metcalf. A special event permit is requested to allow a tent as temporary facilities for food and beverage service, from July 26 to August 25, 2010. Application made by the Overland Park Marriott, represented by Shawn Cummins.

SPECIAL EVENT PERMIT NO. 2010-265 – 7300 West 119th Street. A special event permit is requested to allow an outdoor Independence Day celebration and concert on July 3, 2010. Application made by Fuel American Made Bar and Grill, represented by Shawn McClenny.

ACCEPTANCE OF RIGHT-OF-WAY – FINAL PLAT NO. 2010-9 – Meadows of Mills Farm, Second Plat, vicinity of the southeast corner of 165th Street and Quivira. Application made by Phelps Engineering, Inc. The Planning Commission approved this item on May 10, 2010, by a vote of 11 to 0.

Mr. Kandt moved to approve the Planning Commission Consent Agenda as presented. The motion was seconded by Mr. Stock and carried with a roll-call vote of 10 to 0.

PLANNING COMMISSION REGULAR AGENDA:

REVISED PRELIMINARY PLAN APPROVAL – The Met at 435, vicinity of the northeast corner of 110th Street and Metcalf. Application made by Polsinelli Shughart, PC. The Planning Commission denied this item on May 10, 2010, by a vote of 10 to 1.

Current Planning Manager Leslie Karr indicated that this was the Revised Preliminary Plan for The Met at 435 located at the northeast corner of 110th Street and Metcalf. The plan includes the development of a McDonald's restaurant, a pad site and the refurbishing of an existing building. This site was the previous location of Dick Clark's American Bandstand Grill. That facility has been torn down, and the pad site is now vacant. The applicant's proposal is to place the McDonald's in the southwest corner of the property and construct a new building on the former Dick Clark's pad site to be used as a combination restaurant/office building. The plans also include the renovation of the existing building to the south.

Staff and the Planning Commission had concerns about the overall layout of this site, which includes the location and orientation of the McDonald's, the westernmost access point, stacking in the drive-thru lane and at the entrance to the property, pedestrian access and other concerns related to the newly adopted Commercial Design Guidelines. This project is coming forward with a recommendation for denial from the Planning Commission.

The applicant has indicated that they would like to have the project remanded back to the Planning Commission to work on some of those issues.

Mr. John Petersen, attorney for the applicant, 6201 College, indicated that McDonald's Plaza, L.L.C., is the owner of the shopping center. They have been working to appropriately locate the pad site use for McDonald's. McDonald's has been a part of the shopping center successfully for a significant period of time.

Mr. Petersen observed that as the City moves into more infill development, it can be a challenge to upgrade some of their existing centers of commerce. The former Dick Clark's facility has been razed from the site. They plan to renovate the former Kansas City Masterpiece building and turn it into a new restaurant on the first floor. They also want to have some retail focused on the 110th Street frontage to provide some streetscape. The second floor of that building will no longer be used for any commercial purposes. They plan to build a new building where the former Dick Clark's facility was located, and it will be another sit-down restaurant with some office use. There will be a total of approximately 26,000 square feet with the added 4,110 square feet in the parking lot for the newly constructed McDonald's.

This is a great site in terms of visibility. The subject site is 4.6 acres in size, so they do not have a lot of flexibility in terms of what they can do from an economics standpoint. They have further constraints with this site. A row of parking was placed on the site on an easement granted from KDOT. The easement is in existence by permission of KDOT, and it could be taken away in the future. Another easement on the site was granted many years ago in favor of the Drury Inn, the hotel operators to the back of the site. That easement indicates that they must maintain access through this parking lot and use the right-in, right-out driveway, which is in fairly close proximity to Metcalf. Staff and the Planning Commission have some concerns about this driveway because of its proximity to Metcalf. After the Planning Commission recommended denial of this application, they went back to work with McDonald's and the shopping center owners to make sure the site layout works for them. They have also been in discussions with the Drury Inn to see if they could do something to alleviate or eliminate their obligations under that easement. The easements cause more constraints than it would initially seem, because they want to modernize this center. They assume that at some point they are going to lose the KDOT parking spaces, and they have to maintain some type of driveway access through the parking lot for the Drury Inn, even with a renegotiated easement. They have just enough parking to add the McDonald's and modernize and provide the other uses in the center. They must work within these constraints.

If this item is remanded back to the Planning Commission, their goal will be to work with the Drury Inn and address the driveway issue, get some better use on the main driveway for the center as recommended by staff, and do the best they can in terms of the orientation of the building while still respecting the parking constraints in the center. They think that these concerns can be addressed. They want to work with staff to see if they can create an improved plan.

Mayor Gerlach understood that because of the economic problems the state is having, they are considering selling some of their easements. Perhaps the applicant would have an opportunity to purchase the KDOT easement on the site. He pointed out that another problem with the site was with the vehicles backed up at the busy McDonald's. He was looking at a photo, which showed 13 cars that were backed up in

the drive-thru lane at the McDonald's on the site at that point in time, which is a problem when the entrance is so close to Metcalf. Mr. Petersen pointed out that this McDonald's would be more busy during the breakfast and lunch hours rather than in the evening when this area has the most traffic. However, they would address the driveway issue.

Mr. Hix moved to remand back to the Planning Commission the Revised Preliminary Plan for The Met at 435 with instructions to the Planning Commission to work with the applicant in the areas of concern as indicated in Staff Comments including a cohesive plan, site amenities, cohesive pedestrian connectivity, materials and fenestration, the westernmost drive, and pedestrians crossing through the drive-thru lanes. The motion was seconded by Mr. Lyons and carried with a vote of 10 to 0.

### OLD BUSINESS

SPECIAL EVENT PERMIT NO. 2010-236 – Vicinity of the southwest corner of 135th Street and Metcalf. A special event permit is requested to allow First Thursdays from June 3 through October 7, 2010. Application made by Alice Werth, representing Metcalf Center Merchants Association. The City Council approved this item on May 17, 2010, by a vote of 12 to 0.

Mrs. Karr stated that the Council approved this item on May 17, 2010. The applicant was unable to attend that meeting, and Mrs. Karr spoke with the applicant about some of the concerns that had been expressed by the Council regarding this item. As a part of the approval, there was a stipulation that no signage could be placed as a part of the event. The applicant, who was present, wanted to ask that the Council reconsider that stipulation restriction. The applicant provided staff with a picture of the signage they would like to have reinstated for their event. They have two, 3- by 8-foot signs. They are asking to place one sign at the southwest corner of 135th Street and Metcalf and one sign in front of the shops that are sponsoring the event.

Mr. Stock clarified that the approval of the signage would not allow it to be placed in the right-of-way. The signs would be 3 feet by 8 feet in size. The special events were for the first Thursdays per month from July through October, so there would be four more events. The signs would be up for a couple of days prior to each of the one-day events.

Ms. Alice Werth, applicant, 9312 Swarner, Lenexa, said she is the owner of Fantastic Sams, which is a part of the shopping center located at 135th Street and Metcalf. They have already had two of these events to build awareness of the center. The events are family oriented, and they have been successful. They have an event company that helps them promote the events, and the shop owners are attempting to bring more business to their center. A band plays from 5 p.m. to 8 p.m. Ms. Werth thanked the Council for approving these events through October. It would help them if they could get approval to have a banner to build awareness of the event one or two days before it occurs.

Mayor Gerlach clarified that the special First Thursday events would be held from July through October. The signage would only be up for two days prior to each one-day event. The signs would be taken down the evening of the event.

Mr. Stock stated that the original concerns with the signage had to do with protecting the 135th Street commercial corridor and making sure that it was fair and it did not create a carnival-like atmosphere. Mr. Stock understood the need for signage and that the signs are in good taste.

Mr. Stock moved to approve the modification of Special Event Permit No. 2010-236 to allow two, 3- by 8-foot banners, as presented, to be displayed out of the right-of-way two days before and the day of the First Thursday events from June 3 through October 7, 2010, with stipulations a through e. Mr. Stock asked the applicant to work with staff to identify the right-of-way areas. Ms. Werth agreed with that request.

The motion was seconded by Mr. Hix and carried with a vote of 10 to 0.

#### NEW BUSINESS

No report.

#### ADJOURNMENT

At 8:30 p.m., Mr. White moved to adjourn the meeting. The motion was seconded by Mrs. Happer Scheier and carried with a vote of 10 to 0. Minutes transcribed by Pamela Blaszyk.

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Carl R. Gerlach, Mayor

ATTEST:

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Marian Cook, City Clerk