

OVERLAND PARK CITY COUNCIL MEETING

August 5, 2002

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

Mr. Carl Gerlach, Council President; Ms. Marcia A. Gilliland; Mr. Byron C. Loudon; Mr. Neil S. Sader; Mr. Jim Hix; Mr. Thomas C. "Tim" Owens; Mrs. Terry Happer Scheier; and Mr. Terry Goodman. Mr. George Kandt arrived at 7:40 p.m., and Dr. Jay F. Lehnertz was absent (excused).

Also present were: Mr. John M. Nachbar, City Manager; Mr. Bob Watson, City Attorney; Mrs. Kristy Stallings, Director of Finance, Budget and Administration; Mr. Bob Lowry, Director of Public Works; Mr. Bart Budetti, Senior Assistant City Attorney; Mr. Ken Rodney, Director, Information Technology; Mr. Brian Shields, City Traffic Engineer; Mr. Jim Cox, Director of Parks and Recreation; Mr. Keith Faddis, Deputy Chief of Police/Major; Mr. Sean Reilly, Manager, Communications; Mr. Don Sanders, Manager, Payroll/Retirement Plans/HRIS; Ms. Gena Schallehn, Manager, Budgeting; Mr. Roger Peterson, Director of Planning and Development Services; Mr. Bob Lindeblad, Administrator, Current Planning; Mr. John Rod, Administrator, Long Range Planning; Ms. Mary Hunter, Senior Planner; Ms. Lori Knadle and Ms. Penny Postoak, Assistant City Managers; Mr. Rob Roberts, Sun Publication; Mr. Brad Cooper, Kansas City Star; and Ms. Nancee Ellis, Recording Secretary. Approximately 20 persons were in the audience.

PLEDGE OF ALLEGIANCE

Mayor Ed Eilert led the audience in the Pledge of Allegiance.

Mayor Eilert recognized members of Boy Scout Troop No. 256, Valley View United Methodist Church and Boy Scout Troop No. 257, Atonement Lutheran Church, who were in the audience.

PUBLIC HEARING

2002 MASTER PLAN

ORDINANCE NO. OPMP-2391

2002 OFFICIAL STREET MAP

ORDINANCE NO. CSM-2392

Senior Planner Mary Hunter advised that tonight's public hearing is the second of two scheduled hearings on the 2002 Master Plan and the only scheduled public hearing on the Official Street Map (August 2002 version).

At the July 15, 2002, City Council meeting, Ms. Hunter said she reviewed in detail the changes to the Master Plan.

The major changes this year are: Updates to the Master Plan Elements, and the addition of a New Master Plan Element; Updates to the Community Policy Issues, Specific Plan, Plan Policies, and Research Topics sections of the Plan Implementation text; Map changes to the Future Development Plan, Future Parks Plan, Greenway Linkages Plan, Street Network/Official Street Map, Community and Neighborhood Boundaries North of 95th Street Map, and Community and Neighborhood Facilities Map.

Ms. Hunter relayed that staff is recommending that the City Council hold the Master Plan public hearing, ask questions of staff, if necessary, and then approve Ordinance No. OPMP-2391, adopting the 2002 Master Plan and repealing Ordinance No. OPMP-2327.

With regard to the Official Street Map, Ms. Hunter stated there are a few suggested changes that relate to showing collector streets and interchanges as either improved or unimproved. She relayed that this is a feature that staff has had on the Master Plan for a number of years for thoroughfares. There will be an amendment to the City limits on this and a couple of road-status changes that had been shown as unimproved but will now be shown as improved (Switzer; 127th to 135th Streets; and Metcalf; 143rd to 151st Streets).

Like with the Master Plan, Ms. Hunter suggested the public hearing be opened for the Official Street Map, ask questions of staff, if necessary, and then approve Ordinance No. CSM-2392, adopting the Street Network Map as the Official Street Map (August 2002) and repealing Ordinance No. CSM-2362.

Ms. Hunter noted that a question was raised at the July 15th City Council meeting regarding use of R1-A zoning as a transitional land use between R-1 Single-Family Residential and nonresidential land uses. Staff believes that is best handled within the zoning ordinance, and this issue will be discussed at an upcoming Community Development Committee meeting. Ms. Hunter advised that at the September Community Development Committee meeting, staff intends to propose that next year's Future Development Plan be amended to distinguish between the different types of commercial centers that exist within the City, such as a neighborhood center versus a community or a regional center.

Mayor Eilert opened the public hearing with regard to the 2002 Master Plan, but with no one to be heard, he declared the public hearing closed.

Mr. Carl Gerlach moved for the approval of Ordinance No. OPMP-2391, approving the 2002 Master Plan. Mr. Thomas C. "Tim" Owens seconded the motion, which passed by a roll-call vote of 8 to 0.

Mr. George Kandt arrived at 7:40 p.m.

Mayor Eilert declared that the public hearing was open regarding the 2002 Official Street Map. With no one wanting to comment, he closed the public hearing.

Mr. Byron C. Loudon moved for the approval of Ordinance No. CSM-2392, approving the 2002 Official Street Map. Mr. Gerlach seconded the motion, which passed by a 9 to 0 roll-call vote.

2003 BUDGET

Manager, Budgeting Gena Schallehn advised that tonight was the second of two public hearings held on the proposed 2003 Budget. She relayed that the purpose of tonight's public hearing is to obtain public input regarding the budget, and the Council will not need to take any action. Ms. Schallehn said the budget is scheduled to be adopted on August 19th.

Mayor Eilert stated that the proposed 2003 Budget totals \$186,326,000, which is an increase of approximately .4 percent over the 2002 Budget. The Operating Budget, which involves primarily personnel costs, is approximately \$98,034,000 of that number.

Mayor Eilert advised that the budget presented this evening does not include any new programs and eliminates seven full-time positions; reduces the employee salary increase pool, and will delay 2003 pay increases for three months.

The City's sales tax growth forecast for the 2003 Budget is 2.5 percent, which is significant due to the fact that most of the City's revenue to finance City operations comes from the sales taxes.

Mayor Eilert stated that in 2003, the mill levy is projected to be 7.850 mills, which is a .201 mill increase over 2002. He said much of that increase comes from the storm-water management issues, which are partially mandated by the federal government. For a \$150,000 home, the Mayor said the property taxes would increase approximately \$3.50, which raises it from \$132 in the 2002 Budget to \$135.50 for that same home in the 2003 Budget.

Mayor Eilert commented that most residents are aware that they pay a lot more property taxes than just to Overland Park. The City's mill rate makes up less than ten percent of a property owner's total tax bill in the Shawnee Mission, Blue Valley and Olathe school districts.

Referring to the Operating Budget, the Mayor said 25 percent of this budget goes to Police Operations; 21 percent goes to Public Works; 15 percent goes to Fire Operations; 20 percent to Administration; 11 percent to Parks and Recreation, and 8 percent goes to Planning and Development.

Mayor Eilert opened the public hearing.

From the audience, an unidentified person asked a question pertaining to whether the City is experiencing any problems due to a delay in pay increases. The Mayor explained that the City has a pool of dollars that are available for City workers, which is determined through evaluations by department directors as to what percentage a City employee receives.

City Manager John Nachbar stated that the City is not experiencing any problems, adding that employees have empathy for the City's financial situation; have an

understanding for what it takes to run the City and what kinds of pressure the City is under these days.

Mayor Eilert commented that the three-month deferral of the pay increases has occurred due to a decision to move to a universal review date, rather than the employee's anniversary of hiring date. Mr. Nachbar added that the City recently developed and adopted a new compensation program, which proposes that all merit increases would be given on the same day.

With no further comments, the public hearing was closed, and Mayor Eilert stated that final action on the 2003 Budget would be taken at the City Council meeting of August 19, 2002.

CITY MANAGER JOHN M. NACHBAR

AGREEMENT – Fine Host Corporation Food Service Management Agreement for the Overland Park Convention Center.

Assistant City Manager Penny Postoak advised that the referenced agreement is with Fine Host for food and beverage services at the new convention center, with exclusive rights, with a few exceptions. One example is that Fine Host may be called upon to arrange for delivery of specialized food services including kosher catering and Kansas City barbeque.

Ms. Postoak stated that there is a Termination of Convenience clause similar to that of the Convention Center Operator, which she said the Governing Body has seen before.

Referring to the Compensation area, Ms. Postoak said there is a pre-opening term, and a budget not to exceed \$250,000, to include staff and some opening events.

Under the Operating Term, there are two fees--a Fixed Management Fee, which increases years 1 through 5, from the grand opening date of November 17, 2002. The second fee is an Incentive Fee, which is based on satisfaction surveys. Ms. Postoak advised that Fine Host will not receive points if they do not receive above-average or excellent comments. Fine Host has the ability to obtain 100 percent of the incentives, as outlined in the agreement, if they receive an excellent score.

Mr. Gerlach asked Ms. Postoak to comment on the Intern Scholarship Program. Ms. Postoak advised that language in the contract sets out establishments of Johnson County Community College Internship Program and Johnson County Community College Scholarship Fund Program in the amount of \$2,500.

Mr. Gerlach clarified that the incentives which Fine Host can earn, based on the points set up in the agreement, are established for the first year, after which, the system would be re-evaluated. Mr. Nachbar replied that is correct, adding that an existing Fine Host customer satisfaction mechanism would be used and evaluated over the first year. It will then be determined if that mechanism should continue to be used or whether a new one should be developed.

Mr. Gerlach moved for the approval of the agreement with Fine Host Corporation Food Service Management Agreement for the Overland Park Convention Center as presented. Mr. Owens seconded the motion, which carried unanimously.

Mayor Eilert commended Mr. Nachbar, and those who served on the committee regarding this matter, on a well-thought-out process. He stressed that this is a very important component to the success of any kind of food-service business.

CONSENT AGENDA

PUBLIC SAFETY

STAFF ITEMS

APPLICATION FOR NEW MASSAGE THERAPY BUSINESS LICENSE –

Therapeutic Massage, 9200 Glenwood, Shara L. Palmer, applicant.

APPLICATIONS FOR RENEWAL OF MASSAGE THERAPY AND IN-OFFICE
MASSAGE THERAPY BUSINESS LICENSES:

Envogue The Salon & Spa, 6727 W. 119th Street, Beverly Davis, applicant.
Therapeutic Health Services, 6540 W. 95th Street, Patti J. Nelson, applicant.

APPLICATIONS FOR RENEWAL OF MASSAGE THERAPY BUSINESS LICENSES:

Dillard's Your Salon & Spa, 11601 W. 95th Street, Shari Roper, applicant.
Hands of Healing Therapeutic Massage, 10460 Mastin, Jennifer G. Chase,
applicant.

PUBLIC WORKS

STAFF ITEMS

ORDINANCE NO. STR-2386 – An ordinance relating to street and sidewalk construction, repair standards and public improvements within the City.

ORDINANCE NO. MC-2384 – Relating to general provisions for definitions in the Overland Park Municipal Code, Section 1.04.010 and 1.04.020

A memo to the Governing Body, dated July 16, 2002, from Senior Assistant City Attorney Jane Neff-Brain, relayed that at the July 1, 2002, Council meeting, the City Council approved additions to definitional Section 1.04.010 of the O.P.M.C. It has since been determined that those additions relate only to Titles 13 and 15 and would more appropriately be added to Title 13 at new Section 13.015.

The memo relayed that additionally, in attempting to repeal old Section 1.04.010, a typographical error occurred and Section 1.04.020 was inadvertently repealed.

Therefore, the referenced ordinance is before the Council tonight in order to add the requested definitions to Titles 13 and 15. Ordinance No. MC-2384 restores former Sections 1.04.10 and 1.04.020.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE ITEMS

WAIVER OF BIDDING PROCESS AND SUBSTITUTING ALTERNATE PROCUREMENT PROCESS – Overland Park Convention Center furniture, fixtures and equipment.

ORDINANCE NO. TGT-2272,A – Levying a Transient Guest Tax of six percent (6 %) upon the gross receipts derived from or paid by transient guests for sleeping accommodations within the City of Overland Park, Kansas; establishes funds and accounts to account for said tax; and authorizes the apportionment and expenditure of said tax by amending and repealing Section 6 of said ordinance relating to the purposes for which revenue in the Transient Guest Tax Capital Project and Convention Center Fund unallocated reserve account may be expended.

STAFF ITEMS

COUNCIL MINUTES – June 17, July 1, and July 8, 2002.

CONFIRMATION OF INVESTMENTS – Confirmed \$3,975,066.66 in Treasury Bills and \$4,960.863.33 in U.S. Agency Securities.

EXPENDITURE ORDINANCE NO. 7B – Outlining the expenditures from the General Operating Fund for July 4 through July 17, 2002.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 7C – Outlining the expenditures from the Capital Projects Funds for July 11 through July 17, 2002.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 7D – Outlining the expenditures from the Capital Projects Funds for July 18 through July 24, 2002.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 7E – Outlining the expenditures from the capital projects funds for July 25 through July 31, 2002.

APPLICATION FOR RENEWAL OF DRINKING ESTABLISHMENT LICENSE – GM Restaurants of Kansas, Inc., d/b/a The Olive Garden Italian Restaurant #1111, 6750 W. 95th Street, Jerry Flaig, new manager.

APPLICATION FOR RENEWAL OF CEREAL MALT BEVERAGE LICENSE – Bishop Rink Holdings, L.L.C., d/b/a Ice Midwest, 12140 W. 135th Street, Randall L. Brilliatine, manager.

Mr. Owens moved for the approval of the preceding consent agenda items as recommended. After a second by Mr. Gerlach, the motion carried by a 9 to 0 roll-call vote.

REGULAR AGENDA

COMMUNITY DEVELOPMENT

COMMITTEE REPORT: Neil S. Sader, Chairman

No report.

STAFF REPORT

AGREEMENT – Board of Commissioners of Johnson County, Kansas, to operate a low cost meal site for senior citizens at the Overland Park Community Center.

AGREEMENT – Johnson County Parks and Recreation District to provide for the operation of a day-care center at the Overland Park Community Center.

Director of Parks and Recreation Jim Cox advised that the first agreement listed is a facility-usage agreement with the Board of County Commissioners to operate the meal site for senior citizens at the Overland Park Community Center. He said this is the same agreement the City has had with the Board for several years, and there are no changes.

The second agreement is a cooperation agreement with Johnson County Parks and Recreation District for the operation of a day-care center at the Overland Park Community Center. This is also an agreement that has been in place for several years, and there are no changes.

Staff recommended approval of both agreements as outlined.

Mr. Owens moved for the approval of the two agreements as recommended by staff. Mr. Neil S. Sader seconded the motion, which passed by an 8 to 0 vote. Mr. Gerlach had stepped away.

PUBLIC SAFETY

COMMITTEE REPORT: George Kandt, Chairman

No report.

STAFF REPORT

No report.

PUBLIC WORKS

COMMITTEE REPORT: Byron C. Loudon, Chairman

No report.

STAFF REPORT

BID TABULATION – Disposal of used trucks and equipment.

Director of Public Works Bob Lowry advised that the staff recommends acceptance of the following high bids for the disposal of used trucks and equipment:

<u>Vehicle/Equipment Number</u>	<u>High Bidder</u>	<u>Bid Amount</u>
8125 – Single Axle Dump Truck	Fleet Sales	\$8,050.00
8140 – One Ton Truck	Fleet Sales	5,050.00
8147 – One Ton Truck	Fleet Sales	4,050.00
8158 – Ranger Pickup	William Ramm	1,383.00
8168 – Crew Cab Pickup	Jansen Motors	2,950.00
8169 – Crew Cab Pickup	Jansen Motors	2,950.00
8199 – Ranger Pickup	William Ramm	783.00
8250 – Mudjack Machine	Mark Kalman	2,001.00
8251 – Cement Mixer	Thuan Tran	265.00
8256 – Air Compressor	Brent Hostetler	2,727.00
8262 – Backhoe	Brent Hostetler	12,711.00
8281 – Skid Steer Loader	Don Leven	7,101.00
8670 – Lift Van	National Truck Parts	3,500.00

Mr. Gerlach moved for the approval of the preceding high bids, as listed, for the disposal of used trucks and equipment. After a second by Mrs. Happer Scheier, the motion carried unanimously.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT: Thomas C. “Tim” Owens, Chairman

INFORMATIONAL ITEM – City Council Ward Redistricting

Mr. Owens advised that the Committee began discussion of ward redistricting and provided the following direction to staff: (1) To retain current policy to maintain Councilmembers in their existing wards, with the exception that because a sixth ward is being created, Councilmember Kandt’s position could be moved into the sixth ward; (2) Although past policy has been to use Antioch Road as the north/south boundary between Wards 4 and 5, the direction was that options should be prepared where the

north/south boundary was not necessarily Antioch, which would permit other configurations for review in establishing a sixth ward; (3) To whatever extent possible, the priority should be compactness of wards rather than avoidance of precinct moves from one ward to another.

Mr. Owens stated that the Committee also directed staff to contact the Johnson County Election Commissioner to obtain information regarding precinct changes under consideration for November.

PROPOSED POLICE AND FIRE PENSION LEGISLATION – An amount not to exceed \$30,000 be authorized from the Contingency Fund for legal fees necessary to research and draft appropriate legislation, negotiate the language with KPERs, and revise the existing private plan for governmental status.

Mr. Owens stated that by a vote of 4 to 1, the Committee recommended approval of the OPFD/City Task Force to seek legislative changes to the Kansas Public Employees Retirement System statutes in order to maintain the existing OPFD pension plan and benefits should a merger between the City and OPFD be approved. He said the Committee further recommended that an amount not to exceed \$30,000 be authorized from the contingency fund for legal fees necessary to perform research and to draft the proposed legislation, and Mr. Owens so moved. After a second by Loudon, the motion carried unanimously.

STAFF REPORT

APPLICATIONS FOR RENEWAL OF DRINKING ESTABLISHMENT LICENSES CONTINGENT ON RECEIVING STATE LICENSES:

Birdie's Pub & Grill, d/b/a Birdies Pub & Grill, 8889 W. 75th Street, Michelle Clements, manager.

Carousel Comedy Club, Inc., d/b/a Jesters Comedy Club, 9601 B Metcalf, Scott Coleman, manager.

Johnny's Quivira, Inc., d/b/a Johnny's Tavern, 11316 W. 135th Street, Patrick Roberts, manager.

The Hine, Inc., d/b/a Fieldhouse, 9617 W. 87th Street, Forest E. Spinner, manager.

The Other Place, Inc., d/b/a The Other Place, 7324 W. 80th Street, Troy Stedman, manager.

Director of Finance, Budget & Administration Kristy Stallings advised that the five preceding renewal applications were ready for approval contingent upon the receipt of state licenses.

Mr. Gerlach moved for the five renewal applications, with the contingencies as noted. The motion was seconded by Mr. Owens and passed by a 9 to 0 vote.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA

REVISED PRELIMINARY PLAN APPROVAL – Blue Valley Business Center, vicinity of 161st Street and Foster. Application made by Abeln & Associates Architects, P.A. The Planning Commission approved this item on July 8, 2002, by a vote of 7 to 0.

FINAL PLAT NO. 2002-48 – Christ Evangelical Lutheran Church, 11720 Nieman Road. Application made by Shafer, Kline & Warren, Inc. The Planning Commission approved this item on July 8, 2002, by a vote of 8 to 0.

SPECIAL USE PERMIT NO. 2002-12 – 10590 Barkley Street. A special use permit is requested for an indefinite period of time to allow an overnight sleep disorder testing and diagnostic center. This property is currently zoned CP-0, Planned Office Building District. Application made by Zeotech Construction Company. The Planning Commission approved this item on July 8, 2002, by a vote of 6 to 0. Ordinance No. Z-2939

SPECIAL USE PERMIT NO. 2002-15 – 12000 Quivira. A special use permit is requested for a ten-year period of time to allow a communications tower. This property is currently zoned CP-0, Planned Office Building District. Application made by Polsinelli, Shalton & Welte. The Planning Commission approved this item on July 8, 2002, by a vote of 7 to 0. Ordinance No. Z-2940

SPECIAL USE PERMIT NO. 2002-19 – 8750 Santa Fe Drive. A special use permit is requested for a three-year period of time, to allow a drinking establishment in conjunction with a restaurant. This property is currently zoned CP-2, Planned General Business District. Application made by Paula Mann. The Planning Commission approved this item on July 22, 2002, by a vote of 9 to 0. Ordinance No. Z-2944

UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT NO. ZRR-2374 – Amendments to Unified Development Ordinance Sections 18.100.080 and 18.460.011 regarding: 1) The adoption of County zoning regulations by reference, and 2) The exemption from the platting requirements of certain lands zoned RUR or RP-OE. The Planning Commission approved this item on July 8, 2002, by a vote of 7 to 0. Ordinance No. ZRR-2374

Mr. Owens moved for the preceding consent agenda items as stipulated and recommended by staff, and Mr. Loudon seconded.

The Mayor opened the public hearing for each special use permit application and Unified Development Ordinance Text Amendment No. ZRR-2374. With no one to be heard on any of those items, the public hearing was closed.

The motion to approve the preceding consent agenda items as recommended and stipulated passed by a 9 to 0 roll-call vote.

PLANNING COMMISSION REGULAR AGENDA

SPECIAL EVENT PERMIT NO. 2002-257 – Vicinity of 10448 Mastin. Special Event Permit requested to allow a rummage sale and off-site advertising. Application made by Miller-Marley Youth Ballet.

Administrator, Current Planning Bob Lindeblad advised that the applicant is requesting a special event permit to allow a rummage sale and 20 off-site advertising signs. The sale is planned for August 23rd and 24th, from 8 a.m. through 6 p.m. Three of the proposed signs would be on shopping center property, and the other 17 are proposed for off-site locations.

Mr. Lindeblad stated that the City's ordinance does not allow off-site promotional signs of this type for any type of business. While the City Council has allowed limited off-site signs on few occasions, staff is of the opinion that this request is not unlike other garage or rummage sales, and there are other forms of advertising available.

Staff recommended that only the signs proposed within the shopping center where the property is be allowed.

Mr. Terry Goodman recalled that recently, the Master Gardeners requested permission to put up signs, and he asked staff to clarify what they actually requested. Mr. Lindeblad replied that they requested directional signs at limited locations for each house, and staff recommended against that.

Mr. Dave Waxse, 9976 Hemlock, advised that he just recently became president of this not-for-profit organization, noting that his wife has been working with it for the last five years. He said this organization provides two performances a year for children in the City, and they raise approximately one-third of their budget through this rummage sale, which he said is not much. Mr. Waxse said the organization cannot afford to pay for advertising because it cuts into what little profit they make. He understood staff's position, stating that he would be happy to obtain approval for just some of the signs originally requested on a very temporary basis. Due to this location, with only signage on the property, there is not enough traffic to bring people to the event. Mr. Waxse said signage at highly traveled intersections like Metcalf and 103rd Street and Antioch and 103rd Street, for instance, would help tremendously.

Mr. Sader asked Mr. Waxse if he would be happy with approval of 10 signs north of College Boulevard, for instance. Mr. Waxse said that would be great. Mr. Sader said he could support that, provided they would be removed immediately afterward.

Mayor Eilert opened and closed the public hearing, with no one wanting to comment.

Mr. Owens moved for approval of 12 sign locations to include all of those from College Boulevard north, as shown in the applicant's request. The motion was seconded by Mr. Sader and carried by a 9 to 0 vote.

STORM SEWER EASEMENT VACATION NO. 2002-6 – Vicinity of the northeast corner of 127th Street and Pflumm Road. Application made by Phelps Engineering, Inc. Ordinance No. VAC-2385

Mr. Lindeblad said staff learned this afternoon that the required notification for the proposed utility vacation was not done correctly. Therefore, this item must be continued to the September 9, 2002, City Council meeting, in order to allow for proper notification.

Mr. Gerlach moved for the continuance as recommended by staff. The motion was seconded by Mr. Sader and carried unanimously.

Before moving on, Mr. Lindeblad said Senior Assistant City Attorney Bart Budetti informed him that there needs to be further action regarding the text amendment that was included and approved with the Planning Commission Consent Agenda.

Mr. Budetti apologized, stating that item 6, Unified Development Ordinance Text Amendment No. ZRR-2374 should have been removed from the consent agenda because the date needs to be changed within that ordinance. He explained that the date is correct in the copy that Councilmembers have; however, it represents a different date than what was before the Planning Commission. Thus, technically, that would be a change in the Planning Commission's recommendation.

Mr. Loudon moved to reconsider the Planning Commission consent agenda. Mrs. Happer Scheier seconded the motion, which passed by a 9 to 0 vote.

Mr. Loudon then moved to approve the Planning Commission consent agenda, as recommended, with the removal of item 6, Unified Development Ordinance Text Amendment No. ZRR-2374. Mrs. Happer Scheier seconded the motion, which passed by a 9 to 0 roll-call vote.

Mr. Gerlach moved for the approval of Ordinance No. ZRR-2374 (Unified Development Ordinance Text Amendment No. ZRR-2374), as amended, with the date changed from 1994 to May 8, 2002. Mr. Owens seconded the motion, which passed by a 9 to 0 roll-call vote.

REZONING NO. 2002-4 – Vicinity of the northeast corner of 159th Street and Lowell Avenue. Rezoning requested from A-J, Agricultural District to RP-4, Planned Cluster Dwelling District, to allow a multifamily development. Application made by Andrew Schlagel. The Planning Commission denied this item on July 8, 2002, by a vote of 6 to 2. Ordinance No. Z-2932.

Mr. Lindeblad advised that the City Council first considered this item on June 3, 2002. After much discussion, the City Council remanded this item back to the Planning Commission in order for the applicant to consider incorporating an east/west public street through the project for access to adjacent, vacant property.

Mr. Lindeblad said the Future Development Plan shows the north third of the tract as low-density residential and the rest of the tract as medium-density residential.

The applicant is requesting approval of a rezoning from A-J to RP-4, for a 154-unit town home development with an overall density of 6.41 dwelling units per acre. The intent of the RP-4 district is to allow attached and/or detached dwelling units designed as an integrated project with common, functional, open space.

Mr. Lindeblad said when this tract was extensively studied, around the intersection of U.S. 69 and 159th Street, a ridge line divided this tract and other tracts whereby

generally south of the ridge line, the property was oriented towards 159th Street versus on the other side of the ridge line where property was oriented generally towards the north. Staff believed that was suitable for low-density residential single-family homes. Staff believed that the tract which was oriented more towards 159th Street was more appropriately laid out for multifamily residential.

Mr. Lindeblad said the applicant, at the meeting in June, proposed a gated community on private drives with access to an additional tract of land to the northeast, which they did not own. Also, the applicant proposed a private drive as potential access to the 8 acres from another southerly drive adjacent to the detention basin. He said the City Council determined that those access points were not appropriate and requested that the applicant revise the plan adding public streets for better access to the vacant tracts.

Mr. Lindeblad commented that the plan before the Council shows a public street now connecting Lowell directly with the vacant tract to the northeast. However, the only direct access to the 8-plus acres of the applicant's ownership is the private drive on the north side of the detention basin.

Mr. Lindeblad advised that the Planning Commission reviewed the revised alignment at its July 8th meeting. Prior to that, the applicant met twice with the Site Plan Review Committee to review the revised layout. He said the Site Plan Review Committee believed that public street access needed to directly reach the 8-plus acres to the east, which had no direct public access. The Committee preferred that the 8-plus acres be planned at the same time as the rest of the ownership to ensure there was good access and a good plan for the entire ownership. Mr. Lindeblad stated that the Site Plan Review Committee then recommended to the Planning Commission that this plan not be approved.

On July 8, 2002, Mr. Lindeblad said the Planning Commission voted 6 to 2 to recommend denial of the rezoning. The two reasons mentioned were that the north portion of this site is very suitable for single-family residential. The property still shown as multifamily can continue to be developed for town homes. The Planning Commission also felt that the public street should have direct access both to the applicant's ownership and the other ownership to the northeast.

Mr. Lindeblad said if the City Council does feel this is an acceptable plan and rezoning, staff recommends the inclusion of stipulations a through i, with any motion for approval.

Mayor Eilert noted that because this was the second time this item has been before the Council, if there is a motion to approve, there must be six affirmative votes. Mr. Budetti concurred.

Mr. Owens noted that the site plan map indicates that the public access street continues on over into the property. He referred to the dotted line going south and asked if that would be a public street access to the 8 acres from that site. Mr. Lindeblad replied that it depends on the development of this tract. Mr. Owens asked if that could be required when development takes place, and Mr. Lindeblad said yes, depending on the layout

Looking at the south, coming off 159th Street, Mr. Owens clarified that was a public access into the 8-acre tract. Mr. Lindeblad concurred, adding that is the current preliminary alignment of the ramp that would come off U.S. 69, which presumably would have access into the property to the north. He said the applicant has mentioned that some of the owners within that interchange were trying to obtain a different alignment of the ramps instead of most of them being at the southwest portion of the interchange. If that changes and this becomes more of a diamond-shaped intersection, there may not be any median break access for those 8 acres, which is an unknown at this time.

Mr. Owens commented that the City seems to be dictating, somewhat, that the 8 acres should be residential, noting that it is next to an interchange and utilities. He said he wondered why the applicant could not be given an option regarding this, adding that the applicant has done everything he has been asked to do. Mr. Owens asked what is inappropriate with commercial next to an interchange and utilities as a type of buffer. In response, Mr. Lindeblad referred to the projection screen showing the Master Plan, advising that there had been an extensive study done with the City and the county in this entire area regarding land-use planning, which took over a year. He said every landowner at every intersection wants commercial zoning and Master Plan land uses at the intersections. With the approval by the Planning Commission, City Council and the county, Mr. Lindeblad said it was deemed appropriate that the commercial be at 159th Street and Metcalf Avenue, rather than placing commercial and retail along 159th Street.

Mr. Gerlach asked what retail has been approved to the west of U.S. 69 on 159th Street. Mr. Lindeblad replied that it is all residential.

Mayor Eilert asked if the Planning Commission's recommendation was primarily based upon concerns about what would happen with the remaining 8-acre tract if this application were approved. He asked if the Planning Commission wanted the land next to the apartment units to remain single family. Referring to the Master Plan map, Mr. Lindeblad said the Planning Commission's desire was to keep everything that is shown as white as single family. He pointed to one cohesive piece of land that could be developed as single family, adding that if it develops as attached homes or multi-family, then it would affect another piece of land to which he pointed.

If the ramp is reconfigured, Mr. Goodman asked Mr. Lindeblad if he perceived that reconfiguration happening in such a way that it would completely remove access off 159th Street to this property or that it would be limited only to right-in, right-out access, versus full access. Mr. Lindeblad said it was his understanding that if there was to be a diamond-shaped interchange, there would likely be right-in, right-out access but no median.

If the ramps are moved and reconfigured, Mr. Goodman asked what the probability would be of duplicating the difficult situation that exists on 151st Street with Lowell, the exit off the highway and the proposed Target Store. Mr. Lindeblad explained that the distance from Lowell to the highway is much further away on 159th Street than the distance on 151st Street.

If this 8 acres develops commercially whereby there exists the possibility that access on 159th Street might be limited, Mr. Goodman asked if staff thought that would be forcing an inordinate amount of commercial traffic into residential neighborhoods. In

response, Mr. Lindeblad said that it would if there was direct access and that was the only way to a median break.

Mayor Eilert commented that apartments would be appropriate for this land use, and Mr. Lindeblad agreed. The Mayor noted there is multifamily on the east side of the highway, and Mr. Lindeblad concurred. Mayor Eilert saw no reason why, east of this tract, the multifamily designation could not remain. Mr. Lindeblad agreed. Based on everything the Mayor knew now of the undeveloped 8 acres, he was not in favor of it being anything but some kind of multifamily development. He stated that this particular application should not have a negative impact on the ability of the Master Plan to be carried out on this tract.

Mr. Andy Schlagel, planning consultant, stated that in explaining the history and planning of this area, staff did not mention that this was done in the timeframe between 1994 through 1996. Since then, the interchange of 159th and U.S. 69 Highway has been designed, modified and adopted and included on the regional plan. He said the Merrill tract that was initially shown as low density residential has been converted to an industrial use, which runs all the way over to Lowell.

Mr. Schlagel said it has been fairly stated that the major issue that the applicant had before was the question of should the northern third of the ground arbitrarily be cut off and put to a traditional conventional single-family use producing 15 single-family lots with the balance devoted to a traditional multifamily use. He stated that anywhere else in the City, traditional multifamily use, medium density, traditionally gets converted to apartments; however, Mr. Schlagel said that does not apply to this application. He said that would double the density of this project to go from the applicant's density of 6.4 units per acre to 12.4 units per acre and go most likely from an ownership type of pattern to a rental type of pattern. Mr. Schlagel said the applicant could probably achieve, with staff's support, a plan that would produce just that.

Mr. Schlagel said the applicant has an area in which he intends to provide an attached, single-family type of use. He said this is not conventional single family, noting that it is a high dollar, \$250,000 and up condominium home ownership type of project.

With regard to a public street, Mr. Schlagel said the applicant's first plan showed a public street that ran down and abutted right into the 8-acre parcel. The applicant worked with the Site Plan Review Committee and staff, and that proposal was refused, and the applicant relocated the public street where it had been recommended by staff. Mr. Schlagel said it concerns him that more of an issue is being made over this 8-acre tract. He believed that Councilmembers understood clearly the limitations of the study being sponsored by the property owner to the south. For the record, Mr. Schlagel said that Mr. Campbell has no difficulty with the interchange design that is proposed today and which the City has endorsed. Mr. Schlagel said the applicant has provided public street access, adding the northern portion has been redesigned as a southern portion has, which resulted in the loss of two units. The northern portion would be gated, and the southern portion would be ungated. Emergency fire access has been provided out to Lowell, there are heavy landscaping, good internal pathways and recreational spaces that occur along with a special recreation center. Mr. Schlagel stated that the applicant feels this is a project that meets the objectives the Council asked the applicant to look at. Mr. Schlagel relayed that any dissatisfaction at the Planning Commission level was not based upon the plan, the design, the

units, the quality or any details of the plan, but more with the philosophy of this adjacent 8-acre tract.

Mr. Schlagel said the applicant believes this is a plan that works well in recognition of the changes that have occurred in the area. He said this is the market that is present today, and the applicant is prepared to move ahead immediately, noting that Lowell has recently been completed from 159th Street to where the street is stubbed out.

Mr. Goodman understood that this plan came with a commercial development plan for the 8.77 acres attached, and at some point, the applicant abandoned the request for commercial rezoning. Mr. Schlagel concurred, adding that there was a joint application that had approximately 6.5 to 6.75 acres as low-density office and approximately 2 acres shown as a retail site.

Mr. Goodman understood from reading previous Planning Commission meeting minutes that the applicant is convinced that he has no plans for this 8.77 acres as a residential, multifamily-type development. Mr. Schlagel believed that was accurate. What is not anticipated to change is a cell tower that is immediately adjacent and an old water district facility. If that were to change and the ramp configuration changes, Mr. Schlagel did not know what might occur. He said the applicant tried to let the Planning Commission know that he did not think it was realistic to sell any quality residential development, which is directly adjacent to the 159th Street ramp, the water district property and the cell tower.

Mr. Gerlach believed these 8 acres is an appropriate use for multifamily development and asked Mr. Schlagel if it could be built with multifamily. Mr. Schlagel said it could be integrated into this type of design.

Mr. Gerlach said he likes the project that has been presented; however, he did not like the project if it restricts development for something other than multifamily. He said multifamily is transitional, noting there were a lot of multifamily developments that back up to water towers and cell towers. Mr. Schlagel stated that the Master Plan clearly indicates the intended use for the remaining 8-acre parcel. There is no application before the Council for this piece of ground, which is zoned Agricultural.

Mr. Gerlach said as long as this property can be developed as multifamily in the future he believed the application should be approved. Mr. Schlagel said his client agreed there is certainly the option of residential/multifamily development for this property. Thinking outside the box, Mr. Schlagel said it might be possible that an assisted living facility be developed or a nursing home, which also make good transitional uses.

Mr. Sader asked Mr. Schlagel if this would have been an ideal development for new urbanism type of planning to open up some green space and further consolidate the residential aspect. Mr. Schlagel replied that the owners, developers and builders have expertise in building this type of product. Mr. Sader asked if the applicant looked at any alternate ideas, and Mr. Schlagel said he did not due to concern about the urbanism name tag, and there has not been much demonstrated market success for it to date.

Mr. Sader asked if staff looked at that alternative as a possibility for this tract of land, given the plan before the Council now. Mr. Lindeblad said knowing that this is the specific product that this builder builds, staff did not look at alternatives. He said on

the east side of the highway, where multifamily is shown, a new urbanism townhouse development was approved.

Mayor Eilert opened the public hearing.

Mr. John Robinson, 5812 West 101st Terrace, asked what would happen if everything is built, but it did not sell.

Mayor Eilert replied that would be the developer's issue to address.

Mr. Schlagel commented that he hoped that the market research of the development team on any project is adequate to determine the project's marketability.

With no one further to comment, the public hearing was closed.

Mr. Jim Hix said the applicant did confirm, for the record, that the 8-plus acres could be developed as multifamily. If that option is left open, he believed the opportunity existed to have a development that will have a market.

Mr. Hix then moved for approval of Rezoning No. 2002-4, vicinity of the northeast corner of 159th Street and Lowell, with stipulations a through i, and Mrs. Happer Scheier seconded the motion.

Mr. Owens said he could support the motion, but he needed clarification on one matter. He asked if this motion, with the stipulations, requires that the stub street on the southern part (shown as blue on the map) be put there. Mayor Eilert said yes, adding that both the pink and the blue areas shown on the map would be there.

Mr. Owens said he had a problem with the blue area because there have been discussions about leaving options open regarding what could go there. He said one option brought forward is residential. Mr. Owens said it is also an option at some point that the best option might be a small commercial development. He advised that if the street (blue area on map) is required to be there, the Council has effectively precluded the developer from putting in any kind of commercial development because due to the City's policy, commercial traffic cannot be routed through a residential neighborhood. Mayor Eilert understood that the stub street to which Mr. Owens referred is a connection for the future if needed. Mr. Lindeblad interjected that the plan shows the stub street dashed, which presumes that is a future stub if needed. At final plan approval, staff would obtain some kind of access easements that would run along there to ensure the street could be constructed in the future if needed for the property to the east.

Mr. Owens said he could only support this motion as long as the Council is not precluding, by its action, the option for commercial, if in fact, at some point in the future that becomes the best option. He did not want the Council to take an action that is, in effect, going to close that possibility out completely and then dictate that this will only be residential. Mr. Owens did not think that was appropriate for this particular piece of property. Mayor Eilert said it was his understanding that this would allow a connection, if appropriate, and Mr. Lindeblad agreed.

Mr. Owens asked Mr. Schlagel if it was his understanding that this motion does not preclude the applicant, in the future, from developing commercial if it is deemed

appropriate. Mr. Schlagel replied his understanding is that it does not preclude alternative development plans, one of which could be commercial/office. He questioned whether a connection should be made if an assisted living/nursing center is built there. What the applicant offered at the Planning Commission level was that the ground shown on the map, with the blue connection, would be preserved and set aside. Then, whenever the 8-plus acres develops, if the Council determines the connection should be made, it is made at that point.

Under those circumstances and as long as that option remains open, Mr. Owens said he could support the motion. Mr. Hix stated that keeping the option open was the intent of his motion.

Mr. Sader said he would support the motion. With regard to the northern tier and the expressed desire by staff that some of that area be developed all in one manner as single-family homes, he relayed that there has not been much success with 15- or 16-home subdivisions. Mr. Sader said this is a beautiful piece of land; however, there is a lot of concrete, which could provide an opportunity to create something unique, yet very saleable and marketable. He favored allowing more opportunities for alternatives.

Mr. Goodman said he would oppose the application. While he heard the applicant state that they have the option in the future of complying with the Master Plan, given the Planning Commission's testimony, he believed the applicant has no intention at this point in time of complying with the Master Plan with regard to the 8.77 acres. He believed the presumption is, if not the certainty, that the Council will see commercial applications on those 8.77 acres. Mr. Goodman recalled that the Council started tonight's meeting by voting on and approving the Master Plan, which shows these 8.77 acres as multifamily. He said the applicant has made a strong case that they do not see it that way and intends to develop it in some other manner. He believed that approval of this plan represents either intentional, inadvertent, or incidental incrementalism. He said there is a unanimous recommendation from the Site Plan Review Committee for denial and a strong recommendation from the Planning Commission for denial. There are significant site plan issues that remain unresolved, and he believed that staff called this "bad planning," with which Mr. Goodman concurred. He said it is easy to fall into a trap whereby the thought is that commercial is appropriate anywhere there is an intersection or a cell tower. Mr. Goodman believed the Council was missing a golden opportunity to require this applicant to present a plan that is appropriate for all of the acreage in the applicant's ownership, including the 8.77 acres.

Mayor Eilert said the issues for him in this application relate to the large amount of medium density, i.e., apartments that could be developed on this tract. He said he has argued previously, to no avail, that in other areas of the City there are too many apartments that have been zoned. He preferred the type of medium density project that is before the Council this evening than to see the majority of these tracts go to some higher density apartment project. The Mayor believed there is an issue, unqualified, that the design of the future interchange is still in question, which has an impact on this property. He did not see at this point, any reason that the balance of that property cannot develop as some type of multifamily, even with an alternate design. The possibility exists for that to occur with a street to be stubbed with access to this property, depending upon the design of the interchange. For those reasons, and primarily that a large amount of property can be removed from developing as future apartments to an ownership type of medium density residential development,

the Mayor respectfully disagreed with the recommendation of the Planning Commission.

Mr. Goodman stated that he did not disagree with what the Mayor just said; however, he believed for all those reasons that zoning should be extended to the remaining 8.77 acres at this time.

The motion for approval passed by an 8 to 1 roll-call vote. Mr. Goodman opposed.

OLD BUSINESS

Mr. Lindeblad stated that the following items relate to the cell tower property that was approved on the Planning Commission consent agenda, Ordinance No. Z-2940 (Special Use Permit No. 2002-15), 12000 Quivira, which incorporated both of these former special use permits into a larger tract. Because that has now been approved, the two previous special use permits for that same tract can be revoked. He said staff has received approval from the landowners and the lessees in order to proceed.

Because consent has been received from all parties involved, Mr. Budetti said no public hearing is necessary, and a motion to approve the revocation of both items is all that is needed.

REVOCATION OF SPECIAL USE PERMIT NO. 1999-20 – 12000 Quivira Road. A special use permit was requested for an indefinite period of time to allow for the construction of a 100-foot telecommunications monopole and related equipment. This property is currently zoned RP-3, Planned Garden Apartment District. Polsinelli, White, Vardeman and Shalton, were the applicants for this request. The City Council approved this item on July 12, 1999, by a vote of 8 to 0, for a five-year period of time, which expires July 14, 2004.

Mr. Gerlach moved for the revocation of Special Use Permit No. 1999-20, 12000 Quivira Road, as recommended by staff. The motion was seconded by Ms. Marcia A. Gilliland and carried unanimously.

REVOCATION OF SPECIAL USE PERMIT NO. 2000-29 – 12000 Quivira Road. A Special Use Permit was requested for a five-year period of time to allow the expansion of the equipment area for colocation of telecommunications equipment on the existing 100-foot monopole. This property is currently zoned RP-3, Planned Garden Apartment District. James D. Neighbor Construction Company was the applicant for this request. The City Council approved this item on November 7, 2000, by a vote of 9 to 0 for a five-year period of time, which expires November 22, 2005.

Mr. Gerlach moved for the revocation of Special Use Permit No. 2000-29, 12000 Quivira Road, as recommended by staff. After a second by Mr. Owens, the motion passed by a 9 to 0 vote.

ADJOURNMENT

At 9:10 p.m., Mr. Gerlach moved to adjourn the meeting. Mrs. Happer Scheier seconded the motion, which passed by a 9 to 0 vote. Minutes transcribed by Nancee Ellis.

Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk