

OVERLAND PARK CITY COUNCIL MEETING

February 1, 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. Fred Spears, Council President; Mr. Terry Goodman; Mr. George Kandt; Mrs. Terry Happer Scheier; Mr. David White; Mr. Jim Hix; Mr. Dave Janson; Mr. John Skubal; Mr. Curt Skoog; Mrs. Donna Owens; Mr. Dan Stock; and Mr. Paul Lyons.

Also present were: Mr. John M. Nachbar, City Manager; Mr. Bob Watson, City Attorney; 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 Irely, Director of Information Technology; Mrs. Kristy Stallings, Deputy City Manager; Mr. Doug Brown, Director of Public Works; Mr. Dave Scott, Chief Financial Officer; Mrs. Leslie Karr, Manager of Current Planning; Mr. Sean Reilly, Communications Manager; Mr. Dave Price, Senior PC Technician; and Ms. Kathleen Behrens, Recording Secretary. Approximately 45 people were in the audience.

PLEDGE OF ALLEGIANCE

Mayor Gerlach led the audience in the Pledge of Allegiance.

MAYOR CARL R. GERLACH

Mayor Gerlach recognized Boy Scout Troop Nos. 284 sponsored by Christ Church Anglican, 222, 459 sponsored by Colonial Presbyterian Church, and 394 sponsored by the Good Shepherd Church.

NEW APPOINTMENTS TO THE CONVENTION AND TOURISM COMMITTEE:

Suze Parker – Term 1/1/10 to 12/31/10
Kim White – Term 1/1/09 to 12/31/10

REAPPOINTMENTS TO THE CONVENTION AND TOURISM COMMITTEE:

Mark Argotsinger – Term 1/1/10 to 12/31/11
Bill Frey – Term 1/1/10 to 12/31/11
Alton Hagen – Term 1/1/10 to 12/31/11
Dr. Sally Winship – Term 1/1/10 to 12/31/11
Bruce Boettcher – Term 1/1/10 to 12/31/11
Kathy Dickerson – Term 1/1/10 to 12/31/11
Steve Nechvatal – Term 1/1/10 to 12/31/11
Shane Somers – Term 1/1/10 to 12/31/11
Cheryl Troxel – Term 1/1/10 to 12/31/11

REAPPOINTMENT TO THE CITIZENS ADVISORY COUNCIL ON PARKS AND RECREATION:

Richard Wellenstein – Term 11/4/09 to 11/4/11

Mayor Gerlach presented two new appointments, nine reappointments to the Convention and Tourism Committee, and one reappointment to the Citizens Advisory Council on Parks and Recreation for approval.

Council President Fred Spears moved to approve the new appointments and reappointments to the Convention and Tourism Committee, and a reappointment to the Citizens Advisory Council on Parks and Recreation as listed on the agenda. Mr. George Kandt seconded the motion, which carried by a vote of 12 to 0.

CITY MANAGER JOHN NACHBAR

No report.

CONSENT AGENDA

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE ITEMS

AGREEMENT – Treehouse Entertainment and Daniel Taylor Productions for production of an educational DVD regarding the adverse effects of abusing the drugs Oxycontin and heroin in the amount of \$98,900 from the Alcohol Control Fund.

STAFF ITEMS

COUNCIL MINUTES – December 7, December 14, and December 21, 2009, and January 11, 2010.

CONFIRMATION OF INVESTMENTS – U.S. Agency Securities/U.S. Treasury in the amount of \$12,000,000.

EXPENDITURE ORDINANCE NO. 1A – Outlining the expenditures from the General Operating Fund for December 23, 2009, through January 5, 2010.

EXPENDITURE ORDINANCE NO. 1B – Outlining the expenditures from the General Operating Fund for January 6 through January 19, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 1B – Outlining the expenditures from the Capital Projects Fund for January 7 through January 13, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 1C – Outlining the expenditures from the Capital Projects Fund for January 14 through January 20, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 1D – Outlining the expenditures from the Capital Projects Fund for January 21 through January 27, 2010.

APPLICATION FOR NEW DRINKING ESTABLISHMENT - FA 168, L.L.C., d/b/a Hikari Japanese, 9058 Metcalf, Ting Kwong Ng, manager.

APPLICATION FOR RENEWAL OF DRINKING ESTABLISHMENT - Dragon Wok, Inc., d/b/a Dragon Wok, 8400 W. 151st Street, Xue Zhen Zou, manager.

APPLICATION FOR RENEWAL OF CEREAL MALT BEVERAGE LICENSE - Lateef, Inc., d/b/a 7-Eleven No. 25726, 8700 W. 95th Street, Faisal Asad, new manager.

APPLICATION FOR TEMPORARY PERMIT TO SELL ALCOHOLIC LIQUOR - A Midwest Premiere, for an event to be held February 7, 2010, from 5 p.m. until 1:00 a.m., 10635 Floyd, Sophia Chamberlain, manager.

PUBLIC SAFETY

COMMITTEE ITEMS:

AGREEMENT – Animal Haven, Inc., for animal services in the estimated amount of \$50,000.

AGREEMENT – Johnson County Board of County Commissioners for Computer-Aided Dispatch Interoperability System using 911 funds.

REQUEST TO WAIVE BID PROCESS AND SOLE SOURCE PURCHASE – Electronic Technology, Inc., using Edward Byrne Memorial Justice Assistance Grant (JAG) funds, for the purchase of wireless video equipment in the amount of \$32,937.10.

PUBLIC WORKS

COMMITTEE ITEMS

TERRYBROOK FARMS – Deny request for storm drainage improvements.

ORDINANCE NO. SWT-2855 – Relating to storm water treatment in the City.

ORDINANCE NO. STR-2849 – Relating to streets, street lighting and sidewalks in the City.

ORDINANCE NO. EBA-2850 – Regulating explosives and blasting agents within the City.

ORDINANCE NO. SWM-2853 – Relating to storm water management for the City.

ORDINANCE NO. SWM-2851 – Relating to storm water management for the City.

RESOLUTION NO. 3800 – Establishing policy for considering requests related to construction of private improvements in easements containing public drainage facilities.

ORDINANCE NO. TR-2858 – Relating to truck routes in the City.

STAFF ITEMS

RESOLUTION NO. 3801 – Declaring it necessary to appropriate private property for the use of the City for the improvement of a main trafficway – 143rd Street from approximately 264 feet east of the intersection with Quivira to approximately 488 feet west of the Switzer intersection in the City.

ORDINANCE NO. CON-2859 – Authorizing and providing for the acquisition of lands or interests therein by condemnation for the improvement of a main trafficway -143rd Street from approximately 264 feet east of the intersection with Quivira to approximately 488 feet west of the Switzer intersection in the City.

Mayor Gerlach presented the Consent Agenda and asked if there were any items that needed to be removed for separate discussion.

Upon receiving no comments, Mr. Spears moved to approve the Consent Agenda as presented. Mr. Jim Hix seconded the motion, which carried by a roll-call vote of 12 to 0.

REGULAR AGENDA

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT Jim Hix, Chair

No report.

STAFF REPORT

No report.

PUBLIC SAFETY

COMMITTEE REPORT George Kandt, Chair

No report.

STAFF REPORT

No report.

COMMUNITY DEVELOPMENT

COMMITTEE REPORT Terry Goodman, Chair

No report.

STAFF REPORT

No report.

PUBLIC WORKS

COMMITTEE REPORT Terry Happer Scheier, Chair

No report.

STAFF REPORT

BID TABULATION – Mid-America Council of Public Purchasing (MACPP)
Vehicles for 2010 Model Year.

Director of Public Works Doug Brown presented and recommended approval of a bid tabulation accepting the Mid-America Council of Public Purchasing (MACPP) bids for Vehicles for 2010 model year.

Mrs. Terry Happer Scheier moved to approve the bid tabulation to accept the Mid-America Council of Public Purchasing bids for Vehicles for the 2010 model year. Mr. David White seconded the motion, which carried by a vote of 12 to 0.

AGREEMENT – City of Leawood for the public improvement of Mission Road from 95th Street to 400 feet south of 103rd Street, part of the 2010 Street Improvement (Overlay) Program.

Mr. Brown presented and recommended approval of an agreement with the City of Leawood for the public improvement of Mission Road from 95th Street to 400 feet south of 103rd Street as part of the 2010 Street Improvement (Overlay) Program.

Mrs. Happer Scheier moved to approve the agreement with the City of Leawood as presented by staff. Mr. White seconded the motion, which carried by a vote of 12 to 0.

CHANGE ORDER NO. 3 – Ballou Construction Co., Inc., for exercising the City's option to extend the 2009 Microsurfacing contract for one year at the same unit bid prices in order for the contractor to perform the work included in the 2010 Microsurfacing Program in the amount of \$2,737,403.60.

Mr. Brown presented and recommended approval of Change Order No. 3 with Ballou Construction Company, Inc., for exercising the City's option to extend the 2009 Microsurfacing contract for one year at the same unit bid prices in order for the contractor to perform the work included in the 2010 Microsurfacing Program in the amount of \$2,737,403.60.

Mrs. Happer Scheier moved to approve Change Order No. 3 with Ballou Construction Company, Inc., as presented by staff. Mr. White seconded the motion, which carried by a vote of 12 to 0.

AGREEMENT – Walter P. Moore and Associates, Inc., for engineering services for the 2010 Reinforced Concrete Box (RCB) Repairs in an amount not to exceed \$93,426.

Mr. Brown presented and recommended approval of an agreement with Walter P. Moore and Associates, Inc., for engineering services for the 2010 Reinforced Concrete Box (RCB) repairs in an amount not to exceed \$93,426.

Mrs. Happer Scheier moved to approve the agreement with Walter P. Moore, Inc., for engineering services for the 2010 RCB repairs as outlined by staff. Mr. White seconded the motion, which carried by a vote of 12 to 0.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA

SPECIAL EVENT PERMIT NO. 2009-521 – 8804 Grant. A special event permit is requested from April 23 through April 24, 2010, to allow a BBQ cook-off fundraiser for VFW Post 846. Application made by Jim Lilleston, representing VFW Post 846.

SPECIAL EVENT PERMIT NO. 2010-4 – 8431 West 95th Street. A special event permit is requested to allow multiple garage sale/fundraising promotional events in 2010. Application made by Operation WildLife, Inc.

SPECIAL EVENT PERMIT NO. 2010-11 – 7373 West 107th Street. A special event permit is requested to allow an externally-illuminated logo promoting the American Heart Association's "Go Red" event from February 2 through February 28, 2010. Application made by Mary Ryan, representing Sunlighten, Inc.

SPECIAL EVENT PERMIT NO. 2010-13 – 13700 Switzer. A special event permit is requested to allow multiple events from March 1 through December 31, 2010. Application made by the Overland Park Soccer Complex.

SPECIAL EVENT PERMIT NO. 2010-14 – 6100 Sprint Parkway. A special event permit is requested to allow various miscellaneous events and for banners to advertise these events throughout 2010 for the Sprint Corporation. Application made by Phillip Ozias, representing the Sprint Corporation.

SPECIAL EVENT PERMIT NO. 2010-15 – 13270 Metcalf. A special event permit is requested to allow a banner on a building from, February 4 through May 1, 2010. Application made by Eric Clemenson, representing Bank Midwest.

SPECIAL EVENT PERMIT NO. 2010-17 – Vicinity of the southwest corner of 119th Street and Roe. A special event permit is requested to allow detached signs to promote a series of sales events in 2010 for Hawthorne Plaza. Application made by Courtney Parker, representing Colliers Turley Martin Tucker.

SPECIAL EVENT PERMIT NO. 2010-42 – 7899 Frontage Road. A special event permit is requested to allow a banner on a building from February 1 through May 31, 2010. Application made by Mike Miller, representing Auto Now.

REVISED PRELIMINARY PLAN APPROVAL - Metcalf Center, vicinity of the southwest corner of 135th Street and Metcalf. Application made by Klover Architects, Inc. The Planning Commission approved this item on January 11, 2010, by a vote of 10 to 0.

SPECIAL USE PERMIT NO. 2009-45 – 5000 Hadley. A special use permit is requested for a three-year period of time to allow the renewal of a billboard. This property is currently zoned M-2, General Industrial District. Application made by CBS Outdoor, Inc. The Planning Commission approved this item for a three-year period of time on January 11, 2010, by a vote of 10 to 0. Ordinance No. Z-3437.

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT ZRR-2843 – Amendments to Unified Development Ordinance Sections 18.140.270, 18.460.110, 18.460.120, 18.460.230, 18.460.235 and 18.460.320 for streets and sidewalks, utility and drainage easement requirements. Application made by the City of Overland Park. The Planning Commission approved this item on January 11, 2010, by a vote of 10 to 0. Ordinance No. ZRR-2843.

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT – ZRR-2848 – Amendments to the Unified Development Ordinance to be consistent with the approved Architectural and Site Design Standards. These changes are for definitions, setbacks, lot coverage, and parking requirements. Application made by the City of Overland Park. The Planning Commission approved this item on January 11, 2010, by a vote of 10 to 0. Ordinance No. ZRR-2848.

Mayor Gerlach presented the Planning Commission Consent Agenda and asked if there were items to be removed for separate discussion.

Mr. Hix requested that Special Event Permit No. 2010-15 be removed for separate consideration.

Mr. Kandt requested Special Event Permit No. 2010-14 be removed for purposes of abstaining from the vote, since he was a Sprint employee.

Mayor Gerlach opened the public hearing regarding the remaining Planning Commission Consent Agenda items.

With no further comments, Mr. Spears moved to approve the Planning Commission Consent Agenda items as presented with the exception of Special Event Permit No. 2010-15 and Special Event Permit No. 2010-14. Mrs. Happer Scheier seconded the motion, which carried by a roll-call vote of 12 to 0.

Mr. Spears moved to approve Special Event Permit No. 2010-14, 6100 Sprint Parkway. Mrs. Happer Scheier seconded the motion, which carried by a vote of 11 to 0 to 1. Mr. Kandt abstained.

Mr. Hix referred to Special Event Permit No. 2010-15, which is a request to allow a banner on a building located at 13270 Metcalf, from February 4 through May 1, 2010. He stated that after reading through staff's report on this item, he did not feel there was anything unique about this request and that the banner was only to advertise a product that a particular bank was offering. Regarding banners, he asked staff what commercial businesses were entitled to, by right, to have on their buildings.

Manager of Current Planning Leslie Karr explained that staff had recently updated their special event permit ordinance to change what staff could approve from two special events per calendar year to four special events per calendar year. There are three different types of events, and any combination of those three events can be approved by staff for a total of four events. For a single banner on a building, four events would be allowed for 60 days. However, the applicant is requesting 90 days for their request, which is the reason for the application to be considered by the Council. After this request, the applicant has three events that staff can approve in any combination of the three types previously mentioned.

If the Council approves this request, Mr. Hix felt it might require a change to the guidelines to staff, because there is nothing unique in the current request other than the bank offering a checking product they would like to advertise above and beyond normal commercial means. The building is established, no construction is occurring around the building, and they have permanent signage. He felt it was appropriate for the Council to discuss this item regarding the direction they want to move. When the Council recently made the change to allow staff to approve up to 60 days for banners on buildings, he understood that was an indication that the Council would be looking for some uniqueness to justify a longer approval time period than 60 days.

Mr. Terry Goodman asked if special events provided the ability to an applicant to advertise any product they might be offering for sale or if it was more restrictive. Mrs. Karr stated that the issue has more to do with attention-attracting devices that are occurring outside of the business, which could represent a banner on a building, a sign in a yard, a tent sale, a search light, a balloon, anything that calls attention to the business, a product the business has to offer, or an event at that business. Mr. Goodman asked if the ordinance would make any attempt to regulate the language on the signs. Mrs. Karr stated that staff does not regulate the signage content. If the current applicant can put up a sign that appears to limit the purpose to advertising a product that is always offered, Mr. Goodman felt the Council would have little reason to not allow any other applicant making the same request for 90 days. He did not oppose the applicant having the banner, since it is contemplated in the ordinance, but a request beyond 60 days extends outside the ordinance requirements.

Mr. White asked if the applicant was granted the 90-day approval for their banner, whether that applicant could still have three more events during the calendar year. Mrs. Karr agreed. Mr. White asked how long each of the events could last by staff approval only. Mrs. Karr stated that would depend on the kind of event that was requested, which would cover anywhere from five to 15 days. Mr. White asked if there was any amount of time between events that has to elapse, or if the applicant could

hold the events consecutively. Mrs. Karr stated that all three events could be run concurrently.

Mr. White agreed with Mr. Hix and Mr. Goodman's comments in that he did not see any compelling reason to make an exception to staff's rule in this case. He asked if this was the type of request staff experienced all the time. Mrs. Karr explained that staff's hope with the new ordinance provisions was that staff would be able to take care of more of these types of requests by being allowed to approve more applications, so the Council would not have as many requests coming before them unless there was some type of unique circumstance. The message from staff could be that unless there is something unique about a request, staff will not approve those requests. Staff can share that information with applicants as they bring forth their requests. Mr. White felt that was the type of message that should be sent.

Mr. Stock agreed with Mr. Hix, Mr. Goodman and Mr. White's comments.

Mr. Curt Skoog asked if the request had a recommendation of approval from staff, because they did not have any other direction. Mrs. Karr agreed.

Mayor Gerlach asked if the applicant was present. No applicant appeared on behalf of the request.

Mr. Hix moved to approve Special Event Permit No. 2010-15 to include a limitation that the banner can only be displayed for up to 60 days during the time period they have requested. Mr. Spears seconded the motion.

Mrs. Karr added that it would be easier for staff to administer the special event permit if there were 60 consecutive days.

Mr. Hix stated that the intention of his motion is for the applicant to be able to choose when they want to start and stop their allowed 60 days, but within the timeframe they have requested a banner.

Mr. Skoog asked if staff's recommendation was to advertise one event on a banner for the allotted period of time or cumulative through all the events. Mrs. Karr stated this was one permit request, and the applicant still has three permits that staff can approve.

Mr. Hix asked if the applicant could potentially gain an additional 60 days beyond staff's recommendation. Mrs. Karr stated that the applicant could gain 45 additional days by coming in for three additional 15-day permits that staff could approve for them over the calendar year.

Mr. Hix suggested not approving the special event permit request and inviting the applicant to discuss this issue with staff to gain more guidance on how to follow the administrative approval guidelines.

Mr. Hix withdrew his motion, as did the seconder, Mr. Spears.

Mr. Hix moved to deny Special Event Permit No. 2010-15 located at 13270 Metcalf. Mr. Paul Lyons seconded the motion.

Mr. Goodman asked if the applicant would be required to repay an application fee of any kind if the application request is denied. Mrs. Karr stated that staff will allow this fee to apply to the 15-day permit that staff can approve.

The motion made by Mr. Hix and seconded by Mr. Lyons carried by a vote of 12 to 0.

PLANNING COMMISSION REGULAR AGENDA

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT ZRR-2854 – Amendments to the Unified Development Ordinance Chapter 18.390 for accessory uses to develop standards for the screening of pool filtering and heating equipment for permanent in-ground pools in residential districts. Application made by the City of Overland Park. The Planning Commission approved this item on January 11, 2010, by a vote of 8 to 2. Ordinance No. ZRR-2854.

Mrs. Karr presented Ordinance No. ZRR-2854, which represents a request for an amendment to the Unified Development Ordinance for the screening of pool filtering and heating equipment for permanent in-ground pools in residential districts. This request came forward through the Community Development Committee and was discussed on September 2, 2009. The proposal from the Community Development Committee was that all mechanical equipment be screened from view from property lines and streets with landscaping, fencing or other enclosure, or a combination of these options and that a privacy fence on the property line be sufficient to provide the screening.

Mrs. Karr provided a photograph of the type of equipment that is commonly seen with in-ground pools that the ordinance would require to be screened from view for new pool permits. When a resident comes to the City to obtain a pool permit, staff would check to ensure screening was being provided through one of the three methods previously mentioned. This change would not be retroactive, so that existing pools could continue as they are, and make repairs, as no permit is required for those kinds of repairs. The ordinance amendment would only apply to new pool installations that require a permit.

The Planning Commission considered this amendment change on January 11, 2010, and no comments were made at the public hearing. The Commission voted 8 to 2 to recommend approval of the ordinance amendment. The Planning Commission Ordinance Review Committee discussed this ordinance amendment, and they proposed some modifications to the amendment that came out of the Community Development Committee. The two changes that were proposed were to require screening for equipment associated with any pool, including above-ground pools, and to only require screening for equipment if it is located closer than 20 feet from the property line. They recommended that anything beyond 20 feet from the property line would not be required to be screened from view. The two dissenting votes were the two members of the Ordinance Review Committee, who were present at the Planning Commission meeting.

Mr. Spears asked if the screening would have to extend from the street and from the next door neighbor. Mrs. Karr agreed. Mr. Spears asked if the screening was being requested primarily for noise or for view. Mrs. Karr stated that the screening was to be added for the view.

Mr. Dave Janson asked about the chlorinator unit shown on the photograph that appeared to be similar to an air conditioning unit. He asked what the difference would be in having an air conditioning unit in view and the chlorinator unit that has the same appearance. Mrs. Karr stated that there were more pipes and other items associated with the chlorinator and pool equipment.

Mr. Goodman stated that this same situation existed next door to his home. He noted that his neighbor installed an in-ground pool, and the equipment for the pool is similar to the equipment being shown in the photograph. He felt the big difference was that there were two big tanks and a lot more piping. He did not feel the purpose of the amendment change was to implement requirements on existing pool owners.

Mr. Dan Stock noted that some of the pool heaters require ventilation, and he felt the pool heater shown in the picture was a typical pool or gas pool heater that would have to be moved away from the house if there was a window above. He asked if staff required this type of equipment to be completely screened. Mrs. Karr stated that complete screening was not necessary, only from the property line, which is an at-grade screening from the property line of the street. Mr. Stock asked how the pool equipment would be screened when there is no space to screen it and how staff would implement the ordinance in this particular situation if the ordinance amendment is approved. Mrs. Karr stated that each situation is unique, noting that the applicant would provide a solid fence in the current situation depending on what the situation is with the window well. They could also provide some landscaping out and beyond what the picture is showing to satisfy the screening requirement. If the amendment becomes a requirement, the applicant would know about that requirement before they install the equipment if they need to make adjustments to where they install the equipment to adequately provide the screening.

Mr. Stock asked how a situation would be handled if a homes association had a rule stating no wood fences could be used for screening and only rod iron can be used. He asked if the City's ordinance would override that homes association rule and give the homeowner the ability to screen with a wood fence. Mrs. Karr stated that the homeowner would have the option of providing landscaping. Staff does not enforce homes association rules and regulations. This does not mean the homeowner is exempt from those rules, but they have a responsibility as the homeowner to be aware of what those requirements are and ensure they are complying. If the ordinance amendment is approved, and the gas heater is a standard gas heater that requires certain distances away from the home and certain service access areas, Mr. Stock asked if the screening could be placed a certain distance away from the heater. Mrs. Karr agreed. Mr. Stock asked what would occur if the next door neighbor could still see portions of the equipment. Mrs. Karr did not feel the intent was to screen the pool equipment 100 percent from view, but was to provide at-grade screening. Even if landscaping is used, there may be seasonal issues with landscaping where it may not be entirely screened 100 percent of the time. Mr. Stock asked if there were similar ordinances that were written in a similar fashion. Mrs. Karr explained that landscaping is allowed for HVAC equipment in commercial areas if it is ground mounted, which is always an issue in dealing with landscaping. This is an issue because there will be some visibility of that equipment at certain times of the year. This view has been allowed in those types of situations. Staff can make recommendations as to the kinds of materials that will be better to use to provide that kind of screening.

Mr. Stock stated that he owned a pool that has substantial screening around the pool, except from one side where the pool has to be serviced. He did not feel it would be realistic for him to install more screening. He can also see his neighbor's pool equipment from his home, but he did not feel all situations would be as clear cut and create an eyesore. Mrs. Karr stated that only two sides would realistically have to be screened, which includes the street where the fence is located and then from the head-on view that is the side property line. Mayor Gerlach asked if this was because the distance to the back property line would be over 20 feet. Mrs. Karr felt it was because that property distance was far enough away that there may be other materials or items obstructing that view.

Mr. Stock clarified that if the equipment distance was less than 20 feet from the property line, it would have to be screened. Mrs. Karr agreed, and noted that the proposed ordinance requires screening from the side view property lines or from the street. If a house is located at the front line, there is usually about 30 to 40 feet to the rear property line. There may be sufficient distance, trees or other things in the way where they may not have to screen that side of the equipment.

Mayor Gerlach noted that it would be clear in this case that the pool would only have to be screened from two sides and not from three sides. However, the way the ordinance is proposed, someone could technically say they can see the equipment from their backyard. Mrs. Karr agreed.

Mr. Stock wanted to ensure, if they pass the ordinance, that it can be reasonably enforced and it accomplishes their goal in a real life situation. In his experience, he noted that these particular heaters require access and ventilation space. Therefore, landscaping cannot be run up against the heater equipment, because it is dangerous. He agreed with Mr. Janson's comments in that the heaters themselves do not take up any more space than an air conditioner unit, nor do they create any more noise, if any.

Mayor Gerlach felt a property owner would have to screen from all four sides of their home if there was no specification regarding any distance from the property lines, which he felt would be impractical.

Given the Mayor's comments, Mr. Stock asked if staff could suggest how the ordinance amendment could be modified to accommodate the concerns mentioned. Mrs. Karr stated that if there is a real concern about side and front equipment views from the street, they could require screening from the front and side property lines but allow visibility from the rear, or some kind of combination requirement could be made to have the rear side open to view as long as the equipment is more than a specific number of feet from the rear property line. She felt there were a number of things that could be done to make the situation workable. When the Council lets staff know what their specific concern is or how they want to allow that situation to occur, staff can come up with the language that would be workable.

When pools are designed in the future in Overland Park, Mr. White felt they will be put in a non-visible place, which he felt would solve the problem. He asked if partial or full screening would cause an impediment for the Fire Department. Fire Chief Bryan Dehner stated that Fire Department staff comes in contact with screening whether it is for generators or electronic equipment at commercial buildings. He felt the access

would apply mostly to the maintenance people, who will be working on the equipment. He did not see anything that would pose a problem to Fire Department personnel.

Mr. Goodman pointed out that any existing pool would not be impacted by the ordinance amendment, because it would be grandfathered. The only impact would be to people installing new pools and equipment, who will be required to comply with the ordinance. He felt the distance at which the equipment should be located from the property line would suffice at 35 feet. If any property side is located within 35 feet of the property line, it needs to be screened.

Senior Assistant City Attorney Bart Budetti stated that if there is any concern about either access for servicing or ventilation, language could be added to the ordinance amendment saying that the screening shall not unduly impede necessary access and ventilation for the equipment. He felt this language would provide more guidance to staff.

Mayor Gerlach asked about the size of the typical side yard. Mrs. Karr stated that the sizes of side yards vary, but the minimum size is generally 15 feet in a typical R-1 District, 25 feet for a rear yard, and 30 feet for the front yard. Mayor Gerlach noted that many backyards are 25 to 30 feet, so a pool owner would have to screen all the way around the house. Mrs. Karr agreed. She pointed out that Page 20 outlines the amendment that came from the Ordinance Review Committee, which included the restrictions for R-2A, unless the equipment is located greater than 20 feet from any rear or side property line. Staff could modify that to be 35 feet, and then add legal staff's language suggestion.

Mr. Hix suggested referring this item back to the Planning Commission so that all of the ramifications could be considered.

Mayor Gerlach opened the public hearing for Unified Development Ordinance Amendment ZRR-2854.

There were no comments made at the public hearing and the hearing was closed.

Mr. Goodman asked what the minimum rear yard, front yard, and side yard setbacks were. Mrs. Karr stated that 25 feet was the minimum rear-yard setback, the minimum front yard setback was 30 feet, and minimum side yard setback was 15 feet. Mr. Goodman asked if 20 feet would work in all three instances for setback requirements for the pool equipment. Mrs. Karr stated that 20 feet would work in all circumstances, but if the Council was concerned that footage was too close, then 25 or 30 feet might be the most appropriate to have the equipment located more central to the yard as opposed to being located on the periphery.

Mayor Gerlach asked if locating the equipment in the backyard could be done without screening. Mrs. Karr stated that with larger lots, setbacks may exceed 15 feet. In those situations, it still might be possible to put the equipment on the side of the house and still have a more than 20-foot setback and not have to provide screening. She felt the 20 to 30 foot range would be appropriate for the setbacks, depending upon how much the Council would want to see the equipment located on the interior.

Mr. Goodman moved to approve Unified Development Ordinance Amendment Ordinance No. ZRR-2854 adopting the recommendation of the Site Plan Review

Committee to screen the equipment if less than 20 feet from the rear or side property line.

Mayor Gerlach pointed out some lots are very big and the side yard is different for a home located on the corner. Mr. John Skubal stated there was concern about screening on the sides of the house for the equipment. He did not feel there would be much of a problem delineating between the front, back and the side of the house.

Mr. Spears asked for clarification of whether the screening would be located on the side or on the front as well. He asked Mr. Goodman what his intent was for the screening set out in his motion. Mr. Goodman stated that the ordinance calls for screening from the street and side yard.

Mr. White referred to the reference made about sending the item back, and asked if they would be sending it back to the Ordinance Review Committee, which means it would have to go through the Planning Commission and Community Development Committee, or if they could send it straight to the Community Development Committee. He was concerned that they are getting the ordinance now regarding what they discussed in September. If they try to get the ordinance implemented before the pool building season takes place, which may start in May or June, they may end up approving an ordinance in the middle of the season, which would create a burden. If they remand this item, he asked where it would be remanded to. Mr. Budetti stated that staff could take the item to the Planning Commission on Monday, February 8, 2010.

Mr. Goodman withdrew his motion in anticipation of staff taking this item back to the Planning Commission and then bringing it back to the Council sometime this month.

Mr. Goodman moved to remand Unified Development Ordinance Amendment ZRR-2854 back to the Planning Commission for their consideration of the appropriate amount of screening. Mr. White seconded the motion, which carried by a vote of 12 to 0.

Mrs. Karr stated that staff would review some pool permits from last year to determine what makes the most sense based on the kinds of permits the City receives.

OLD BUSINESS

None.

NEW BUSINESS

None.

ADJOURNMENT

Mr. Spears moved to adjourn the meeting at 8:25 p.m. Mr. Kandt seconded the motion, which carried by a unanimous vote.

Minutes transcribed by Kathleen Behrens.

Carl R. Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk