

OVERLAND PARK CITY COUNCIL MEETING

February 15, 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. Dave Janson; Mr. John Skubal; Mr. Curt Skoog; Mrs. Donna Owens; Mr. Dan Stock; and Mr. Paul Lyons. Mr. Fred Spears, Council President was 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; Mrs. Vicki Irey, Director of Information Technology; Mrs. Kristy Stallings, Deputy City Manager; Mr. Doug Brown, Director of Public Works; Mr. Mike Garcia, Acting Director of Human Resources; Ms. Gena McDonald, Assistant Chief Financial Officer; Mr. Bart Budetti, Senior Assistant City Attorney; Mr. Erik Sartorius, Assistant City Manager/Director of External Affairs; Mr. Dave Scott, Chief Financial Officer; Mr. Brian Shields, City Traffic Engineer; Mr. Mark Stuecheli, Senior Transportation Planner; Mr. Sean Reilly, Communications Manager; Mr. David Price, Senior PC Technician; and Ms. Pamela Blaszyk, Recording Secretary. Approximately 20 people were in the audience.

PLEDGE OF ALLEGIANCE

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

Mayor Gerlach recognized Boy Scout Troop No. 91 sponsored by Village Presbyterian Church.

MAYOR CARL R. GERLACH

ADOPTION OF THE 2011-2015 CAPITAL IMPROVEMENTS PROGRAM FOR BUDGET PLANNING PURPOSES.

Assistant Chief Financial Officer Gena McDonald stated that the recommended 2011-2015 Capital Improvements Program (CIP) was scheduled for adoption this evening. The 2011-2015 CIP includes \$138.9 million in funding for capital projects including \$43.1 million for projects in 2011. Most of the improvements scheduled for 2011 are related to City streets and thoroughfares including the 2011 Neighborhood Residential Street Reconstruction Project and the widening of U.S. 69 Highway from 75th Street to I-435.

Mayor Gerlach opened the public hearing regarding the 2011-2015 CIP. There was no response, and the hearing was closed.

Mr. Jim Hix moved to adopt the 2011-2015 Capital Improvements Program as presented for budget planning purposes. The motion was seconded by Mr. Paul Lyons and carried with a vote of 11 to 0.

COUNCIL PRESIDENT FRED SPEARS

REPORT FROM COMMITTEE-OF-THE-WHOLE MEETING HELD FEBRUARY 15, 2010 – National Legislative Agenda.

Mr. Hix stated that immediately prior to this meeting, the Committee of the Whole met to consider the 2010 National Legislative Agenda that was a statement of positions regarding federal legislation that they wish to communicate to their federal legislators. The Committee of the Whole voted to recommend approval of the legislative program as presented with some minor changes in wording.

Mr. Hix moved to adopt the Committee-of-the-Whole recommendation for the 2010 National Legislative Agenda with the minor changes in the language as presented at the meeting. The motion was seconded by Mr. George Kandt and carried with a vote of 11 to 0.

CITY MANAGER JOHN NACHBAR

No report.

CONSENT AGENDA:

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

STAFF ITEMS:

COUNCIL MINUTES – January 4, 2010.

EXPENDITURE ORDINANCE NO. 2A – Outlining the expenditures from the General Operating Fund for January 20 through February 2, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 2B – Outlining the expenditures from the Capital Projects Fund for February 4 through February 10, 2010.

APPLICATION FOR RENEWAL OF DRINKING ESTABLISHMENT LICENSE – Heartland Outback-I, LP, d/b/a Outback Steakhouse, 9501 Quivira, Brandon Becker, manager.

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

Jalapenos of Kansas, Inc., d/b/a Jalapenos Mexican Restaurant, 7729 W. 151st Street, Sheri Custer, manager.

O.P. Hospitality Company, Inc., d/b/a Holiday Inn and Suites, 8787 Reeder, David Brown, manager.

APPLICATION FOR RENEWAL OF DRINKING ESTABLISHMENT AND CATERERS LICENSE – Nordstrom Restaurant Kansas, Inc., d/b/a Cafe Nordstrom, 11143 W. 95th Street, Nia Nicole Thomas, manager.

PUBLIC SAFETY

COMMITTEE ITEMS:

APPLICATION AND ACCEPTANCE OF GRANT – Kansas Department of Transportation (KDOT) for enforcement of underage drinking laws with no matching fund requirement.

REQUEST TO USE FORFEITURE FUNDS – To support the efforts of the Metropolitan Organization to Counter Sexual Assault (MOCSA) through a contribution in the amount of \$15,000.

REQUEST TO USE FORFEITURE FUNDS – To purchase TV monitors for the Chief's Conference Room in an amount not to exceed \$4,000.

REQUEST TO USE FORFEITURE FUNDS – For upgrade of Public Safety Answering Point (PSAP) workstations in an amount not to exceed \$6,300.

ORDINANCE NO. DAC-2864 – Expanding the definition of cruelty to animals.

ORDINANCE NO. PAR-2842 – Relating to the recovery of City personnel and equipment fees from persons who apply for parade permits.

RESOLUTION NO. 3777 – Establishing a fee schedule for recovery of personnel and equipment costs from applicants for parade permits.

Mr. Kandt asked that Ordinance No. PAR-2842 and Resolution No. 3777 be removed from the Consent Agenda for further consideration.

Mr. Hix moved to approve the Consent Agenda as presented with the exception of Ordinance No. PAR-2842 and Resolution No. 3777, which were removed for further consideration. The motion was seconded by Mrs. Terry Happer Scheier and passed with a roll-call vote of 11 to 0.

With regard to Ordinance No. PAR-2842 and Resolution No. 3777, Mr. Kandt stated that the Law Department has recommended that the Public Safety Committee should review these two items once again before the Governing Body considers them for final action.

Mr. Kandt moved to remand Ordinance No. PAR-2842 and Resolution No. 3777 back to the Public Safety Committee for further consideration during the Public Safety Committee meeting in March. The motion was seconded by Mrs. Donna Owens and carried with a unanimous vote.

REGULAR AGENDA:

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 – Retrofit existing flatbed truck for snow removal.

Director of Public Works Doug Brown stated that staff was recommending acceptance of the low bid from American Equipment Company to retrofit the existing flatbed truck for snow removal in the amount of \$38,958.16. Mr. Brown added that the memorandum in the packet materials indicated an amount of \$38,958.15; however, the correct amount was \$38,958.16.

Mrs. Happer Scheier moved to accept the low bid from American Equipment Company to retrofit the existing flatbed truck for snow removal in the amount of \$38,958.16. The motion was seconded by Mr. David White and carried with a vote of 11 to 0.

RESOLUTION NO. 3806 AND AGREEMENT NO. 323-09 – Kansas Department of Transportation (KDOT) for the installation of highway lighting at the U.S. 69 and 135th Street interchange.

Mr. Brown added that staff was recommending approval of Resolution No. 3806 and Agreement No. 323-09 with the Kansas Department of Transportation for the installation of highway lighting at the U.S. 69 and 135th Street interchange.

Mrs. Happer Scheier moved to approve Resolution No. 3806 and Agreement No. 323-09 with the Kansas Department of Transportation for the installation of highway lighting at the U.S. 69 and 135th Street interchange. The motion was seconded by Mr. White and carried with a vote of 11 to 0.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT: Jim Hix, Chair

No report.

STAFF REPORT:

No report.

PUBLIC SAFETY

COMMITTEE REPORT: George Kandt, Chair

Mr. Kandt indicated that at the suggestion of Mr. Hix, the Public Safety Committee decided that it would be a great opportunity for the Governing Body to have CPR training. The Fire Department staff and emergency medical service (EMS) personnel are going to provide Friends and Family cardiopulmonary resuscitation (CPR) training to the Governing Body. Each member of the Governing Body can also invite their spouses or significant others to attend the training, which is scheduled to be held prior to the next Council meeting at the City Hall on March 1, 2010. Mr. Kandt encouraged the Councilmembers and their spouses to attend the CPR training session.

Fire Chief Bryan Dehner stated that he was excited about providing this opportunity to the Councilmembers and their spouses. The CPR training session could also be used as a media opportunity to encourage other people in the City to attend the Friends and Family CPR Training. The idea was suggested by Mr. Hix after they presented an award to one of their police officers for activating CPR in response to an emergency situation until the EMS personnel arrived. The patient was also present as the police officer received the award. CPR makes a difference in saving lives.

STAFF REPORT:

No report.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA:

SPECIAL EVENT PERMIT NO. 2010-30 – Vicinity of Santa Fe Drive, between 79th Street and 80th Street. A special event permit is requested to allow a series of special events in downtown Overland Park for 2010. Application made by the Downtown Overland Park Partnership, Inc.

Mr. Hix moved to approve Special Event Permit No. 2010-30 as presented. The motion was seconded by Mrs. Happer Scheier and carried with a roll-call vote of 11 to 0.

PLANNING COMMISSION REGULAR AGENDA:

SPECIAL USE PERMIT NO. 2009-47 – vicinity of the southeast corner of 93rd Street and Nieman. A special use permit is requested for a five-year period of time to allow a utility structure. The property is currently zoned R-2, Two-Family Residential district. Application made by Southern Star Central Gas Pipeline. The Planning Commission approved this item for a five-year period of time on January 25, 2010, by a vote of 11 to 0. (A valid protest petition has been received). Ordinance No. Z-3438.

Director of Planning and Development Services Bill Ebel indicated that staff was presenting Special Use Permit No. 2009-47, vicinity of the southeast corner of 93rd Street and Nieman, for a five-year period of time to allow a utility structure.

Southern Star Central Gas is the applicant for this request. A valid protest petition regarding this special use permit has been submitted.

The subject property is the open space and amenity tract for the Southdale Homes Association. The properties to the north and south are zoned R-3, Garden Apartment District, for homes in Southdale. To the west across Nieman is property zoned R-1, Single-Family Residential District, for the Westridge Middle School. To the northwest of the site is Congleton Industrial Park, which is zoned M-1, Light Industrial District. U.S. 69 Highway runs along the east side of the Southdale neighborhood.

Southern Star Gas has requested this special use permit to allow a metering measuring device. The metering measuring device was determined to be needed by Kansas Gas Service, the actual user of gas distributed by Southern Star Gas. The need for this device was based on a study that was indirectly started as a result of the U.S. 69 Highway road widening project and the removal of a gas line across the 95th Street bridge. Kansas Gas Service is the distribution end user that sells gas to the individual businesses and residents in the area. Kansas Gas Service was looking at the reliability of service in the area based on growth in the City. If the major line that serviced this area became unusable, they would basically have to siphon off 14,000 customers to do maintenance or repairs on that particular line. This device would basically provide system redundancy so that if any particular line in the area was no longer usable, they would still be able to continue providing service to all of the residents in that vicinity. That is why they were requesting this utility structure.

The utility structure is a metering measuring device. Southern Star Gas is an interstate dealer of natural gas. As the gas comes off the Southern Star pipeline and is provided to Kansas Gas, they have to meter and measure it so they can pay Southern Star for the gas.

Mr. Ebel referred to a detailed map of the subject site and pointed out the general area of the utility structure. Southern Star owns an existing easement, which was one of the four criteria that they used in locating this structure. The four criteria that had to be met included: 1) location on the Southern Star pipeline; 2) close proximity to the Kansas Gas Service line; 3) adequate area for the size of the enclosure; and 4) access to the site.

Southern Star had to acquire an easement on the open space and amenity tract that is owned by the Southdale Homes Association. They began negotiations with the Southdale Homes Association, and when those negotiations ended, Southern Star filed for condemnation on the easement. Those hearings are still in process, but with the initial step, the court determined that the condemnation is valid. They are now going through the condemnation proceedings to determine the amount of the final payment to the Southdale Homes Association.

The landscaping site plan basically shows that landscaping will be provided on the western edge of the facility. Another detailed plan is to show some elevations of what the structure would look like. There will be a building structure on the site along with some piping that will come out of the site plan in specific locations. The entire area is supposed to be enclosed by a wooden fence with masonry columns.

During the January 25, 2010, Planning Commission meeting, two members of the Southdale Homes Association spoke in opposition to this proposal. They questioned

why this facility had to be placed at this location. There were also concerns about the size of the facility and potential odor or noise coming from the facility. The homes association had asked that the fence be wrought iron. There was some concern that this location could be a gathering place for minors who would travel across the road from Westridge Middle School. The Planning Commission determined that the fence around this utility structure should be 8 feet high and consist of solid wood.

After considering this item, the Planning Commission voted unanimously to recommend approval of Special Use Permit No. 2009-47 for a five-year period of time to allow a utility structure with stipulations a through e.

Mayor Gerlach noted that during the Planning Commission meeting, a couple of commissioners discussed a possible wrought iron fence. They also discussed upgrading the tin building that was inside the wrought iron fence. He asked what kind of upgraded building was recommended. Mr. Ebel replied that they talked about a masonry structure, but that was in combination with the wrought iron fence, because they would be able to see through the fence. The Planning Commission finally concluded that because the recommended fence is solid, they would not be able to see the structure and there would be no requirement to upgrade the building.

Mr. Lyons observed that the special use permit was for a five-year period of time. He asked what would happen after the five years. Mr. Ebel replied that most special use permits for utility structures are approved for a longer period of time. Because of the sensitivity of this project, staff felt that if there were any issues with the structure or maintenance, the permit could be reviewed after five years. He assumed that when the permit is renewed, they would consider a special use permit for an indefinite period of time. Mr. Lyons added that Staff Comments indicated that Southern Star falls under the jurisdiction of the Federal Energy Regulatory Commission. He asked to what extent does the City have influence over this request. Mr. Ebel replied that because Southern Star provides an interstate commodity and they are governed by the Federal Energy Regulatory Commission, the City is limited in what they can do legally. Because they are governed by federal regulations, if there is a conflict, the federal regulations would override the City.

Senior Assistant City Attorney Bart Budetti added that the applicant in this case has voluntarily gone through the application process. They have not raised any arguments about preemption other than to generally indicate who regulates them. Given their cooperative attitude, unless it became adversarial, it would not be appropriate to discuss whether the City has full regulatory authority in an open meeting. At this point, it is not an active issue with them. However, it is clear that they are an interstate operation that is regulated by the federal government. The general trend of these types of operations is that they are required to make a good effort to cooperate with local governments. However, there are some issues that could arise as to whether they could be prevented from actually doing what the regulations require them to do in terms of their operations. Since they are cooperating with the City, it would be premature to get into those issues. Mr. Lyons asked if it is voluntary for the utility to maintain the appearance of the facility. Mr. Budetti replied that they would generally be required to meet reasonable conditions. Where they get into an issue of preemption would be if the City denied the action that the applicant is requesting and they interfered with their ability to fulfill their federal regulations and the proper function of the interstate operation. It is within the City's power to require reasonable maintenance of the facility. Mr. Lyons asked if the Council was to reject this proposal,

would they also be rejecting what the Planning Commission approved in terms of the landscaping and aesthetics of the facility rather than the facility itself. Mr. Budetti replied that if the Governing Body is in favor of the facility itself but wants to change the aesthetic aspect of the structure, they could implement those changes either by sending the item back to the Planning Commission or by making motions to amend the stipulations.

Mr. Lyons asked if they deny this special use permit, where would it go from there. Mr. Budetti replied that would depend on the reason for the denial. The evidence that was presented to the Planning Commission was the necessity for this facility and the lack of reasonable alternatives. If there is additional evidence on that point that is going to be presented, then they may have some ability to deny the request. If they are denying the permit and there is no reasonable alternative, they are in essence saying that the applicant cannot have this facility where it would be a needed location. That could become a serious issue. If there is additional evidence that there are reasonable alternatives based on expert testimony, that would be a different issue. If the council is just indicating that they do not want the facility whether or not there are any alternatives, then some issues would arise. Mr. Lyons noted that it seemed to be somewhat similar to the cell phone tower issue. However, with the cell phone tower applications, the City is restricted in what criteria they can use to reject or accept a cell phone tower application. This seems to be more nebulous. Mr. Budetti replied that with the cell phone towers, there is specific language in the federal act that deals with those issues. With this type of application, there are not specific requirements set forth in the federal act. They deal with a more nebulous issue of preemption and the supremacy of federal law, which is why it is not quite as clear cut.

Mr. Dan Stock asked if there is another graphic to indicate the size of the proposed finished structure. Mr. Ebel replied that the actual subject site is 40 feet by 70 feet. Perhaps the applicant could provide some perspective regarding the size of the actual building. Mr. Stock asked if the need for the structure was quantified in the public hearing. Mr. Ebel replied that the four criteria were discussed. The applicant discussed the other locations that they considered and explained why those locations did not meet the first two criteria, which is that it has to be located on the Southern Star pipeline and it has to be adjacent to the Kansas Gas Service line.

Mr. Stock noted that when they constructed the U.S. 69 Highway widening project, there was a pipeline across the 95th Street bridge that was removed. Mr. Ebel replied that there is a pipeline that goes across the 95th Street bridge. When that bridge is replaced, they will replace the pipeline. In combination with this distribution facility, the operation will have greater reliability and system redundancy so that whenever they have disruption in service, they will still be able to continue to provide 100 percent service to Overland Park residents and businesses without disruption while they make the repairs.

Mr. Terry Goodman clarified that both gas companies have lines that currently intersect at this location. Mr. Ebel replied that the Kansas Gas Service main line goes down 95th Street and Southern Star has a line that cuts across Overland Park. It starts around 119th Street and Quivira near Johnson County Community College. It continues across the City through the subject site. Mr. Goodman replied that since within this easement the gas lines already exist, the only issue before them is whether the structure itself is properly screened and maintained. Mr. Ebel replied that is correct, which is why they were taking those factors into consideration with the site

plan to ensure that the facility would be separated from the neighborhood. The Planning staff also focused on the landscaping, the fencing and those types of items. Mr. Goodman asked if the stipulations require the facility and the landscaping to be maintained, and if for any reason the applicant was not compliant with the terms and conditions of the special use permit, the permit would be subject to revocation at any time. They would not have to wait five years to address problems that may arise. Staff included five years as a marker to ensure that they would look at the use in five years.

Ms. Rachel Lipman Reiber, attorney for the applicant, Martin Pringle Law Firm, 6900 College, Suite 700, stated that she was appearing on behalf of the Southern Star Central Gas Pipeline. Ms. Reiber noted that they had five representatives from Southern Star including engineers who could respond to the question of the Council. Also, Mr. John DeCoursey, Kansas Gas Service, was present with two individuals from his company.

Ms. Reiber advised that condemnation proceedings have been initiated in the Johnson County District Court. The court has issued a finding that condemnation is proper. The acquisition is in the process. Two-thirds of the area that is required for the construction of this facility was already owned by Southern Star and its predecessors. The easement they were granted predated the existence of the pool house. Property law would indicate the first in time, the first in right. She noted that 60 percent of the land that is needed for this facility is currently subject to Southern Star's easement, and it is the additional 20 percent that is the subject of the condemnation action in Johnson County.

Mayor Gerlach asked if they have any pictures to indicate the appearance of the proposed building. He also wanted to know who chose this site for this facility.

Mr. Mike Degrave, manager of product engineering, Southern Star Central Gas Pipeline, referred to an illustration on the screen and noted that there was a picture of the metal structure building that would be 6 feet by 8 feet in length and width and approximately 8.5 feet in height. It is a shed type of structure. The fence is proposed to be 8 feet high, and only the top of the shed should be visible from outside the fence.

Mayor Gerlach asked why there was a need for barbed wire in the enclosure. Mr. Degrave replied that they have security measures that they need to follow to make sure the facilities are protected. It falls in line with the homeland security plan that is in place. Mayor Gerlach asked if Southern Star Central has ever built any facilities that did not have barbed wire. Mr. Degrave replied in the affirmative. Mayor Gerlach clarified that it was possible that barbed wire would not be required for this location.

Mr. Curt Skoog asked if Kansas Gas Service already has the gas pipelines on the property or if they would have to extend the pipes to this property. Mr. Degrave replied that the Kansas Gas pipelines are located on the road right-of-way. They are not yet on the property. The pipes will be connected to the existing main in the street. Mr. Skoog noted that in this part of the town they have residential neighborhoods on the right side. On the left side is a school and an industrial district. He asked if this is a regulator station. Mr. Degrave replied that this facility will have the meter where they measure the gas that they deliver to Kansas Gas Service. They want these types of facilities to be adjacent to their pipeline. They do not want to run lateral lines. This is the approach they take. They rely on the distribution companies or their customers

to build up to their meter setting. They like to keep things compact within their easement. Mr. Skoog asked if they have considered other locations. Mr. Degrave replied in the affirmative. He explained that they went down through the pipeline corridor to the south and looked at the intersection of 95th Street and Nieman. There was some available space there, but the proximity to the road was a concern for them, especially with the traffic that goes along 95th Street. That was a safety issue, and they did not feel comfortable with putting a facility in that location. Also, in order to make a tap into their pipeline, they would have valving out in the street or underneath the sidewalk. That is not a safe situation, and it is not something that they can design around. Mr. Skoog asked if that was the only other main location they considered. Mr. Degrave replied in the affirmative. He noted that they were working with Kansas Gas Service on where their main is located and where they could have a connection for this area.

Mr. Skoog asked if the gas is odorized before it comes to this station. Mr. Degrave replied in the affirmative.

Noting the Southdale Homes Association residents seemed to be concerned about the odor, Mr. Dave Janson asked if the pipes leak. Mr. Degrave replied in the negative. With the facilities that they install, they have valving. The valving has packing to it, which keeps the gas inside the valve. Sometimes the packing leaks over time and has to be replaced. When that happens, it is not a hazardous situation, but they inject an odor into the gas stream so it can be detected in the area of their meter setting. With the design of the facility, they will have new valving, which minimizes the packing design. The leaks tend to occur more often with the older facilities that have been in place for 40 years, and they have to do more maintenance of the older facilities to reduce the leaks.

Mr. Lyons added that another issue had to do with the noise of the flow of the gas through the facility. He asked how noisy this facility would be. Mr. Degrave replied that there should not be any noise attributed to the gas flowing through the meter setting.

Mr. Tony Saletti, Kansas Gas Service, added that he designed the regulator station with heavy wall pipe to minimize the noise. Also, an additional feature has been purchased with the regulators to minimize noise. They have taken all of the steps to mitigate the noise. Mr. Lyons asked if someone by the basketball court or one of the homes that is near the facility would be able to hear any noise. Mr. Saletti replied that he did not believe they would hear any noise over the traffic.

Mr. Stock wanted to know what architectural considerations were made to blend the facility with the area. If he lived in the vicinity of the subject site, he would be concerned with how the facility would look in his neighborhood. He asked what architectural considerations were made in the planning of this building.

Mr. Saletti replied that they worked with the City staff and the Planning Commission and used the recommendations and direction from them to determine what would be appropriate for the area. Mr. Stock replied that he was concerned that they were building a tin shed that would not blend in with the surrounding neighborhood. He was of the opinion that they could do a better job, especially if a tin roof would be visible above the top of the fence. He understood that they need the facility, but he was concerned with the lack of visual appeal.

Mr. Larry Johnson, Southern Star Central Gas Pipeline, 13400 West 99th Street, stated that he was the one who originally submitted the application for the special use permit. In talking with Planning staff, they went and looked at the area to see what kinds of fences were in the neighborhood. They just recently constructed some fences on this property, and they used that as the basis for what they would do with the fence. Since the fence is 8 feet in height, people will not be able to see the facility as they drive by, although they could probably see it from a second story building. People who are on the basketball court will not see the facility because the elevation of the basketball court is 3 to 4 feet lower than the site. They originally proposed a 6-foot fence and in working with the Planning staff and their group, they decided to construct an 8-foot fence to minimize the appearance of the building inside the enclosure.

Mr. Stock asked what is the distance to the closest residential home from this compound. Mr. Johnson replied that he did not have that information. Mr. Stock asked if they considered moving the building closer to the corner and away from the residential homes. Mr. Johnson replied that the green space next to the utility area is encumbered by two separate easements in addition to the Southern Star easement. KCPL and Southwestern Bell also have easements on that property with some facilities. Trees were also considered. They would need to remove one tree that is located underneath the power light easement. It has been trimmed to the point where it is dwarfed, and it is going to be removed. They plan to leave the rest of the trees in place. If they would move the facility to a different portion of the site, they might have to remove more trees. Mr. Stock asked if it would be possible to place a tree line between the structure and the residential homes. Mr. Johnson replied that they follow Department of Transportation (DOT) regulations. Their normal practice is not to have a large wooded tree in their easement. They have found through tests that the roots from a tree cause problems with the pipeline. Mr. Stock clarified that they could put a tree line at the edge of their easement.

Mr. White understood that, for security measures, they planned to have some barbed wire on the interior of the enclosure. He clarified that it would be straight barbed wire and it would be below the top elevation of the wooden fence. Mr. White noted that this facility is across the street from a middle school. He asked if warning signs would be posted to make sure that the students would know that there is barbed wire inside the enclosure.

Mayor Gerlach clarified that this is a solid wood fence, so no one would be able to see the barbed wire. When they were asked about moving the structure to the north, Mr. Johnson mentioned other easements. Mayor Gerlach asked if they had ever negotiated to put their structure in another easement. Mr. Johnson replied that they do not normally put their buildings underneath power lines. They have an aboveground facility on this site. They moved that out of the easement of the power line. If there was an occurrence so the power line fell down on their facilities, the electricity might cause a problem with the gas line. Mr. Johnson added that Mr. Bob Bath, the manager of the facility in the area was also present. Whenever they acquire a facility, they like to have a good working relationship between their manager and the landowner. The landowner will have a contact number to reach Mr. Bath at any time. When the manager receives a call to inform him that something has happened at the site, they will send someone out to look at the facility in a timely manner.

Mayor Gerlach opened the public hearing regarding this item.

Mr. Alan Kidd, president of the Southdale Homes Association, 3341 West 143rd Terrace, Leawood, Kansas, said that they do not want the structure to be constructed at the proposed location. They are concerned about the values of their property and their park. Southdale has 297 townhomes and duplexes. There are approximately 80 owners of those units. There are many rental units, but there are also several owner occupied units. Their concern is with what will happen to their park area. In recent years, they have spent a lot of time and effort to clean up the park. It used to be a place where teenagers congregated to drink and smoke. They removed the parking lot where cars would come in from outside, and where trash was being left. They removed some old playground equipment that was on Nieman where this facility is being constructed, because it became a hangout place. They were concerned about a privacy fence creating a place where youth would congregate between their pool area and this facility. The facility is right next to their pool area.

Mr. Kidd noted that Mr. Stock previously asked how far the fence would be to the nearest residence, and he also wanted an answer to that question. Mayor Gerlach replied that they do not have that data, but they have pictures of the location. Mr. Kidd could provide an estimate. Mr. Kidd explained that it is not very many steps to the nearest residence. He has walked around other similar facilities in Johnson County, and he did not know of any other facility that would be this close to residences. He feared that this structure would have a negative impact on the area. He asked if there is an alternate location on Nieman for this structure.

Mr. Kidd added that they have a fence that goes around their pool area. They removed the barbed wire from the top of that fence a few years ago, because it was unattractive. He understood that the barbed wire is lower than the wooden fence. He wanted to make sure that it would not be visible. He wanted the fence to be higher to completely hide the structure if this facility is ultimately built.

No one else wished to speak, and the hearing was closed.

Mayor Gerlach asked if the City ever asks for a 9-foot fence. Mr. Ebel replied that their ordinance allows privacy fences up to a maximum height of 8 feet. Someone would have to go to the Board of Zoning Appeals to request a fence that is 9 feet high. If the Council thought that would be required, that could be stipulated as a part of the approval process.

Mr. Lyons added that he drove around to view some of these different facilities, and he did not recall seeing any other gas facilities that were near residential areas. He asked if there are other facilities that are near residential in the City. Mr. Ebel replied that there are some facilities next to multifamily homes. Southern Star or Kansas Gas could provide the exact locations. There are some utilities in some commercial shopping centers. Some of the facilities are located in residential areas. He estimated that in this case, the closest home would be 40 to 50 feet away from the fence. He knew that the applicant provided some other locations to the Southdale Homes Association to look at, and some of those structures were located in the areas that he just described.

Mr. Hix asked about the landscaping and visual image that would be there. Mr. Ebel replied that the landscaping is just on the west side. There was some discussion about the landscaping plan during the Planning Commission meeting. Some of the requirements had to do with accessibility and maintenance. The landscaping came

about with the discussion of a wrought iron fence and being able to see through it, so they wanted to provide some other type of screening. There was some contradictory discussion, because the homes association did not want to be able to see through the wrought iron fence. In the end, the Planning Commission decided that in the best interests of the neighborhood and creating a screen, a solid wood 8-foot fence with landscaping on the western edge to hide it from the street would be the best solution. There was a discussion about the trees, and the applicant indicated that the roots cause problems with their pipeline. There was also a discussion about shrubbery and ultimately, the landscape as indicated on the plan was approved.

Mr. Goodman asked if the City was to deny this special use permit for aesthetic reasons, and the applicant then asserted their right to construct this facility pursuant to their privileges under the federal laws, what entity would have the ability to regulate the location and appearance of the facility. Would that then be under the purview of the City, the federal government or the applicant. Mr. Budetti replied that would be up to the court, but it would put at risk specific requirements of the City, which would have been attached to the conditions for approval. He did not know what the court would determine if there was preemption. Conceivably, they could indicate that the applicant was free to do whatever the regulations would allow. That would be the worst case scenario, and it is hard to predict. If every stipulation of the City was upheld, that would depend on the evidence presented to the court. It would be placing the stipulations at risk.

Mr. Skoog observed that the subject site is at a higher elevation than the basketball court elevation. The street seems to be at a lower elevation than the subject site. He was concerned with the roof of the structure. Mr. Ebel replied that from the park, the pool is at a lower elevation than the utility structure site, and the basketball court is at an even lower elevation. The adjacent residences are at a similar elevation. With an 8-foot fence, the roof could possibly be viewed from various angles. It may not be possible to see the roof at all from some locations. Mr. Skoog clarified that the roof is tin. Mr. Ebel added that this is a prefabricated structure, which is usually made out of sheet metal or tin. Mr. Skoog clarified that it is a gray metal roof. He asked if there was an alternate material that could be used to make it more attractive. Mr. Ebel replied that there were discussions of a different material when they were considering a wrought iron fence. With a solid wood fence, they did not feel the need to require a different material because most of the building would not be seen. When they were discussing a wrought iron fence, the applicant was cooperative and indicated a willingness to build something that is more aesthetically pleasing; however, they would need to have access to the structure. There will be piping that comes out of the ground in this enclosure. The footprint is larger than the actual building because they have to be able to bring equipment into the enclosure for maintenance.

Mr. Stock asked if the homes to the north were part of the notification area. Mr. Ebel used a map to indicate the legal notification area. He added that the City also sent postcards to neighbors, businesses and homes associations in the vicinity. They sent more notifications than what was required. Mr. Stock asked if the tree that is to be removed is located on the north side of the site. Mr. Ebel replied that the tree is located on the northeast side. There are also some trees in the park area and the residential area. Mr. Stock clarified that there is some existing vegetation on the south side, and it would be left intact when the facility is built.

Mr. Goodman moved to approve Special Use Permit No. 2009-47 for a five-year period of time to allow a utility structure with stipulations a through e and with added stipulation f to indicate "The barbed wire on the interior of the enclosure shall be deleted from the design." Mr. Goodman noted that if the barbed wire is on the interior and unseen from the exterior, then it would not be a deterrent, and it would only have a punitive impact on someone who climbs over the fence.

The motion was seconded by Mr. White.

Mr. Goodman added that this matter is before the Council because the City wants the 95th Street bridge to be replaced, which is occurring in conjunction with improvements to U.S. 69 Highway. It seems that there are perhaps two locations for this structure, and both locations are near the Southdale neighborhood whether it is at 95th Street or the proposed location at 93rd Street. He was not sure how to decide if the south or north location is preferable other than that two-thirds of the easement already exists at the subject site. The court has already ruled that condemnation is reasonable for the balance of the easement. The land is available in this location. It is incumbent on the Council to consider that preemption is always a possibility. With preemption, they would lose any ability to control this use at all. This applicant has made a reasonable effort to accommodate the neighborhood by designing an 8-foot solid wood fence with stone work. It should be an attractive fence leaving a small portion of the structure visible from ground level. It is not a perfect solution; however, it appears that this structure must be built, and the applicant has been cooperative.

Mr. Lyons indicated that he has had a number of conversations with Mr. Kidd about this facility. The Southdale Homes Association made an effort to improve their neighborhood. They are doing the kinds of things that the City is encouraging other neighborhoods to do to make their areas more attractive. They have cleaned up the park area, and this facility will somewhat destroy the ability of the Southdale residents to use the entire area. However, they must consider what is in the best interest of everyone who is involved. If the Council denies this application, they may no longer have the ability to have any impact on how this structure looks, and that is not a desirable conclusion. Although he would prefer to have this facility located somewhere else, they do not know if there is an alternate site. Given the circumstances with the U.S. 69 Highway project and the need to have the utility in the area, he was going to reluctantly support this application. However, he feared that the structure would have an impact on the ability of the homes association to continue to improve their neighborhood.

Mr. Skoog added that he would reluctantly support this application. However, it was unfortunate that they could not find a better place for the utility. It was decades ago when these easements and the pipeline were placed there. They did not know what would happen in the area in the future. He hoped that the homes association would continue to improve their neighborhood. This area will become more attractive as they continue to improve 95th Street and other assets in that vicinity.

Mr. Stock said he would support the motion, and he trusted that staff would ensure that they have a quality facility in that location that is aesthetically appropriate. This could have been easier if they would have required an illustration of the finished product. If the neighbors had come to oppose the permit, the illustration would have helped to make them more comfortable, and he would have also been more

comfortable with this proposal. What ultimately helped him was to look at a topographical map of the site, which showed the existing vegetation in the area.

Mr. White encouraged the applicant and the residents to coordinate with the School Resource Officer at Westridge Middle School to make sure that they do not have a problem with students loitering at the facility.

The motion carried with a roll-call vote of 11 to 0.

OLD BUSINESS:

MID-AMERICA REGIONAL COUNCIL'S LONG RANGE TRANSPORTATION PLAN
TITLED "TRANSPORTATION OUTLOOK 2040."

City Manager John M. Nachbar stated that during the last Council meeting, the Mayor indicated that a resolution would be prepared for the Council's consideration. Staff prepared the resolution and the resolution was provided to the Council on Friday evening. They did their best to try to anticipate the various components or concerns that the Council might want to express with regard to the Mid-America Regional Council (MARC) Adaptive Scenario. The resolution is meant to serve as an opportunity for the Council to discuss this issue. After the "Be it Resolved" portion of the resolution, there is a blank space in the first numbered paragraph to encourage Council discussion.

Mayor Gerlach indicated that staff has done a good job of including what they discussed in the resolution. He understood that the Council would need to fill in the blank in point No. 1 of the resolution. The three points that appear at the end of the second page would be the main points of discussion.

As the MARC representative, Mr. Skoog stated that he would provide some background regarding this item. He noted that MARC is driven by its board of directors that is comprised of elected members from the metropolitan area. MARC is an attempt at taking a regional approach to solve regional issues. MARC has had a transportation plan for as long as it has been in existence under its federal guidelines. The transportation plan in the past has been fairly straightforward. The plan was driven by suburban growth, and it does not necessarily indicate where the growth would occur in the future. It was planned to support the growth that had occurred. The federal dollars were allocated by the committees based on federal and local formulas. For the last ten years, MARC has been leading a community-wide discussion to consider if their approach to growth should be addressed. As a community, there has been robust discussion about growth in the metropolitan area. The Council participated in the joint meeting they had with the Planning Commission. That was the first presentation MARC had given to introduce the new plan "Transportation Outlook 2040," to the community, and he felt that there was some misunderstanding about MARC's plan.

Resolution No. 3807 addresses the biggest concerns they have discussed as a community. Point No. 2 on page No. 2 of the resolution indicates "The City of Overland Park thinks that all development, regardless of location, is fundamentally dependent upon market conditions." They have all had discussions about that position while he has been on the Council, and it was a distinct part of the discussion with Vision Metcalf. Point No. 3 indicates that "While the City of Overland Park

supports the use of incentives to encourage refill, it does not support policies aimed at controlling or limiting development..." They have taken a stand to indicate that they do not support any kind of growth limiting proposals in their community. They are sending a firm comment to the metropolitan area to indicate that they need market based solutions for growth, and they have taken a stand against any kind of draconian growth limiting boundary.

The question with the first point is to determine the right percentage to fill in the blank. No. 1 indicates "The City of Overland Park supports an Adaptive Growth Scenario that seeks to achieve a refill goal of at least 10 percent by 2040 in individual cities within the region and an overall refill goal of between 15 percent and _____ percent by 2040 in the existing urbanized areas within the region as a whole."

With the Vision Metcalf plan, they had an extensive technical review of redevelopment, and they determined that it was reasonable to have a goal of 10 percent to 15 percent for redevelopment. They knew that goal was conservative, but they believed that those numbers were justifiable because their community expects that type of approach when they approve a detailed plan like Vision Metcalf. The rest of the metropolitan area is not as far along as they are in planning. He was recommending that they fill in the blank on point No. 1 of the resolution with 30 percent, so it would indicate "an overall refill goal of between 15 percent and 30 percent by 2040." He has had detailed discussions with MARC. There are no plans to create limits on the federal funding of projects. He realized that there are some concerns that if they approve this percentage, then MARC will no longer give them the funds they think they deserve. Since Overland Park has one of the most mature redevelopment plans in the region, they are well positioned to get what they deserve or more under the current formulas. He thought that 15 percent to 30 percent is an appropriate percentage for them to set as a goal for the metropolitan area. It may be an ambitious goal, but it would not harm the City of Overland Park.

Mr. Hix noted that this is an important document, and all of them understand the need to support the concept of encouraging increased infill and refill development in the metropolitan area. However, that support should not be at the expense of curtailing market driven green field development. As Mr. Skoog indicated, their resolution speaks to that position in point Nos. 2 and 3. Mr. Hix said he was attempting to consider a realistic infill/refill development goal. He and Mr. Skoog have discussed this issue, and they disagree on the importance of establishing a realistic goal versus setting a higher target. He had some great concerns about establishing a goal that exceeds what seems to be practical and realistic, because it has the potential of giving some license to people who are making decisions about their transportation planning and using that goal as a basis for their decisions. He felt that a 40 percent or a 30 percent goal for infill and redevelopment is too extreme when they consider that the historical rate has been from a negative 7 percent up to 0 percent when Kansas City, Missouri, was adding lofts at a rapid rate through extraordinary tax incentives, which removed personal property taxes for the owners of the lofts. He was of the opinion that it would be too much of a leap to start talking about a 30 percent to 40 percent infill goal when they have been operating in negative numbers.

Mr. Hix was so concerned about this issue, he attended another MARC presentation that was given by Mr. Frank Lenk. He asked Mr. Lenk how MARC decided to present a 40 percent goal for infill and redevelopment. Mr. Lenk basically replied that they looked at what infill has been and what it could be, and they thought that would be a

good number. The number is not supported by statistical analysis or data. It is an estimate on what they think might be a nice number. Mr. Hix was of the opinion that they probably picked a much higher number than they expected to actually be adopted as an aspirational goal. Mr. Hix was of the opinion that they should endorse a realistic goal rather than an aspirational goal. The number that the Overland Park Chamber of Commerce presented for point No. 1 was more realistic with an infill goal of 10 percent to 15 percent for the overall region. That is aggressive in comparison to a negative number. However, it might be achievable if market forces cooperate with this goal. If they start setting goals much higher than that, they may risk forcing actions that cause people to have to change living styles beyond what they might otherwise choose. He also feared that if they over force infill and refill development to the point where it creates limitations on natural suburban growth, there are going to be people who move away from the City to get away from the controls to build without those restrictions. They will have exurbia development that has little planning. The amount that individual cities grow will vary. They have some cities in Johnson County that will have 100 percent infill growth because they have no place to build and develop that is not infill or refill. For example, Mission does not have any green field property so any of their development will be 100 percent infill. In Gardner or some other areas that have large green areas, they will have less infill although there is a strong effort by all of the cities to promote the infill and refill.

Point Nos. 2 and 3 of the resolution are more important than the goal number. He had no suggestions or alterations for those points other than to indicate how important they are. For No. 1, he wrote different language to be considered by the Council.

Point No. 1, as proposed by Mr. Hix, indicated that "The City of Overland Park supports an Adaptive Growth Scenario that seeks to achieve a regional refill goal of between 10 percent and 15 percent, compared to a historical rate of a negative 7 percent to 0 percent. The City recognizes that refill opportunities will vary among the cities in the region and that some cities will seek a higher percentage of refill development while other cities will seek a lower percentage of refill development. The City further supports the use of refill incentives in the pursuit of these goals. The City believes these goals can be achieved while adhering to the fundamental principles of items 2 and 3 of this resolution."

Mr. Hix noted that they would probably get to the same place if he had simply said to put 15 percent in the blank space; however, he wanted to provide clarification and reinforcement of their position.

Mrs. Owens also believed that this is an important document for the City. She added that MARC has adopted an agenda of "a green community," which is driving this plan. The numbers they are seeing are not strictly based on experiences, but it is a projection from a management standpoint. She noted that MARC recognizes the work Overland Park has done and the reality check from the Council's discussion with MARC. MARC is dealing with a group of committees that are comprised of people from other governing bodies in their region. Because Overland Park has land that can be developed, the City's position is different from the position of other communities in the region. It is a dynamic political process that occurs, and it is important to have good representation by the Governing Body on those committees. She would have trouble presenting an infill goal of 30 percent. She understood that MARC would be voting on

March 3, and it would be a compilation of positions from the different members who are voting. She felt that they need to present a lower number in this document.

Mr. Lyons agreed with the general direction of the discussion. He supported item Nos. 2 and 3, and he also liked emphasizing those points with No. 1. However, he was struggling with setting any goal. To set a goal implies that they are going to make a policy decision to support the goal. If they do not change their policy, then it does not mean a lot to set a goal. He did not know what policy decisions they would make to know what goal to set; therefore, he did not think that they should set a goal at this time. While he understood why they were talking about this and why it is important to the region, he was inclined to suggest that they make a general statement in support of the Adaptive Growth Scenario rather than setting a goal.

Mr. Skoog indicated that the City has already set their goals with Vision Metcalf. It is what this resolution envisions for the entire metropolitan area. Whether the 40-year refill goal is set at 15 percent or 30 percent, the thing to remember is that it is the goal for the metropolitan area. The City's goal has already been set. MARC is a board that is comprised of members that come to a common understanding. There have been few, if any, issues that have gone through the MARC board and received very many negative votes. They are a group that comes to a consensus. A lot of people feel strongly about the percentages. He was of the opinion that 30 percent is a great target for the whole region. He did not see any downside for Overland Park if they approve an infill target of 30 percent or the language proposed by Mr. Hix. There is a potential public relations issue for Overland Park as well. Since he did not see any risk to Overland Park with the higher target, he could make this argument without any concern. The perception may be that if he is forced to vote "no" on this plan at a MARC board meeting, it will be perceived that Overland Park only cares about green field development. He did not know that is the image they want to have in the community. They are a leader in the metropolitan area. This is a chance for the City to communicate that if the rest of the region thinks that 30 percent is a good infill target for the metropolitan area, then they are not going to stop that. He was concerned that with a goal of 15 percent, he would vote no or stop the discussion, this plan would be sent back, and they would not see it again for two years. The other communities in the metropolitan area need the kind of guidance they have had with Vision Metcalf, and they may take the opportunity to wait, which is not good for the region. He was comfortable with the goal of 30 percent, because he did not think it would impact the City. If there is any impact, he believed that it would result in more money coming to projects that can be funded with federal dollars inside I-435 to support their Vision Metcalf plan.

Mr. Janson observed that Mr. Lyons did not want to set a goal, Mr. Skoog preferred a goal of 30 percent, and Mr. Hix was in the middle. He asked if the resolution is a non-binding resolution. Mr. Nachbar replied that the resolution is merely stating the position of the City and a communication to the Mid-America Regional Council.

Mr. Janson noted that Mr. Hix mentioned that when he talked to Mr. Lenk, he concluded that the 40 percent goal was an arbitrary number based on no statistical data. He asked what Mr. Hix was basing the 15 percent number on that he was recommending. Mr. Hix replied that it is a number he chose, since it seemed to be more reasonable and attainable. If there were ever misuses of the goals, the lower percentage would not result in the same degree of problems. If someone was making an argument to make a decision about how federal money was to be spent or how

regional transportation planning was to be done, it would rein in the opportunity to use the 40 percent number to justify a decision. This is a goal for the next 30 years, and they do not know who will be making decisions at MARC during the time that this plan will be in place. He was not implying that there was anyone at MARC currently that would misuse the goal of 40 percent, but there are many unknowns about the next 30 years. He would rather protect the City against any bureaucracy that might make decisions with the belief that the 40 percent goal is not an aspirational goal but a goal that justifies their decisions. He felt that a 15 percent goal was more manageable.

Mr. Janson replied that the goal proposed by Mr. Skoog of 15 percent to 30 percent is a wide gap. He asked if they meet 15 percent, have they have met their goal. Mr. Hix replied that if the goal is met, it can be exceeded. They were talking about the basis for planning.

Mayor Gerlach added that while Mr. Hix may have arbitrarily chosen 10 percent to 15 percent as infill percentages, the Vision Metcalf plan set a goal of approximately 12 percent for infill development. They paid their consultant \$1 million to calculate the percentage of infill redevelopment in Overland Park that would be needed to realize the Vision Metcalf plan. He asked staff to clarify if 12 percent was the overall projected percentage of growth for Vision Metcalf. Mr. Ebel replied that there was growth for residential, hotels, retail and office. The growth varied from 9 percent to 15 percent depending on the type of market they were discussing. Mayor Gerlach added that he assumed Mr. Hix was aware of that number. Mr. Hix replied in the affirmative. He added that for the region he had to just choose a number. He was probably influenced by what the City had done with Vision Metcalf.

Mayor Gerlach expressed concern with trying to anticipate what a governing board comprised of elected officials from municipalities throughout the metropolitan area are going to determine this infill goal means in 10 to 30 years. He questioned if they should set a number for a goal, because MARC has already started talking about punitive actions if the goal is not met. Those punitive actions include the sharing of taxes, growth limits, and other points. If the percentage is going to be nothing more than an aspirational goal, and MARC will indicate in writing that they will never limit the City's funding based on them not achieving a goal, he did not care what percentage they would present. However, MARC will not give them that assurance. He was concerned with what some elected group would determine this goal means in 30 years. That is why he was concerned with the notion that it means nothing, and they just need to choose a number. They have factual goals that have been established by professionals in the economic world who said that 9 percent to 15 percent of infill development is a realistic goal. That even seems high in light of the historical infill percentage of a negative 7 percent to 0 percent. That is why he hesitated to arbitrarily choose an aspirational goal.

In agreement with the Mayor's comments, Mr. Stock said that he also did not understand the significance of having Overland Park support a number beyond 15 percent, since that appears to be an aggressive goal in light of the historical growth. He noted that they attempted to annex 15 square miles because of what was happening in the annexation area and what could happen if the City was not involved. They did not pursue the annexation because they wanted to grow their City by 15 square miles. They reached out in almost a defensive movement on their part. He has seen the roads the county builds with the single street cul-de-sacs and the lack of

an efficient tax base that will ensure sustainability in the long term. Because of that, they reached out and attempted to annex 15 square miles. If they were to have any other position from what is indicated in Nos. 2 and 3 of the resolution, it could negatively impact the City and their ability to sustain their community in the future. He needed to understand why they need to present a goal higher than 15 percent. He agreed with Mr. Lyons that they might not even need a number. Mr. Stock assumed that the 15 percent is a region-wide goal, and they do not have the ability to impact regional growth other than what occurs in the City. When they looked at Vision Metcalf, they considered what they needed to do or what they thought would be appropriate. They then backed into the percentage to test that vision. They established a vision, and then they tested that number to see if it was realistic. A better approach for the MARC board might be to figure out what they want to do and then test that number. If he supported any goal at this time, it would be a number that is significantly less than 30 percent.

Mr. Goodman indicated that the infill goal of 12 percent was the conclusion of the Vision Metcalf study. In order to realize the vision, it would require 10 percent to 12 percent of future growth in Overland Park to be infill type development. It does not set that as a goal or mandate that percentage. It just indicates that if they want the vision to become a reality, the future development will need to have certain characteristics. Mr. Goodman agreed with Mr. Lyons in his analysis. In looking at the resolution, they agree with Nos. 2 and 3 to indicate that development in the City is dependent upon market conditions. Now they are going to attempt to define those market conditions by setting some number. Future development would be a function of adopted policies, and they have not identified the policies. Resources are limited for the City and the region, and MARC has a key role. If the City has signed on to a goal supporting refill numbers absent the policies, he would anticipate that MARC would attempt to allocate all of the resources to generate that number. He appreciated Mr. Lyons' comments, and he could support a statement indicating that in principle the City supports infill and redevelopment, but the future will be determined by market conditions.

Mr. Skoog asked if they removed bullet No. 1 and just submitted bullet Nos. 2 and 3, would that indicate the opinion of the Council. Mr. Goodman replied that he did not object to Nos. 2 and 3. However, he would also indicate that the City of Overland Park supports refill and redevelopment. He would not object to just including Nos. 2 and 3. Mr. Skoog noted that the portions of the current resolution that begin with the word, "whereas," clearly indicate that they support infill development through their Vision Metcalf plan. He suggested that they should take the first sentence out of No. 1, put it in front of No. 2 and remove the rest of No. 1. Then they would have only Nos. 2 and 3.

City Attorney Bob Watson clarified that they needed to add the resolution to the agenda.

Mr. Skoog moved to add a non-agenda item, Resolution No. 3807, to the agenda. The motion was seconded by Mr. Lyons and carried with a vote of 11 to 0.

Mr. Skoog moved to approve Resolution No. 3807 with the following revisions:

1) Moving the following portion of point No. 1 "The City of Overland Park supports an Adaptive Growth Scenario" to the first part of point No. 2 and renumbering No. 2 as No. 1; 2) The rest of point No. 1 would be deleted. Mr. Janson seconded the motion.

With regard to the motion, Mr. Hix stated that from a theoretical standpoint, he would support Mr. Lyons' suggestion. From a practical standpoint, Mr. Hix feared that if they approve this motion, the MARC board would set the goal for infill development at 40 percent for the next 30 years. When Mr. Lenk spoke to the Council and Planning Commission, he specifically stated that for the economists and MARC to make long-range plans, they must have a number for a goal. Mr. Hix noted that indicates that they are going to plan based on a goal. If the City simply supports the Adaptive Growth Scenario but they do not want to present a number, when the discussion is through, there will probably be a 40 percent goal indicated with the Adaptive Growth Scenario. If they do not give MARC a number as an option, he feared that the City will default any participation in determining the goal that is included in the official document.

In agreement with Mr. Hix, Mr. White stated that this is the basis for the long-range transportation plan, which will guide the policy and the distribution of transportation dollars from now until 2040. They must be involved in that discussion. The Adaptive Growth Scenario indicates that the goal for infill development in the next 30 years is 40 percent. If they support the Adaptive Growth Scenario, they are insinuating that they agree with the 40 percent goal. If they are going to be critical of that goal, they need to offer their own percentages. Many cities in the region will have 100 percent of infill development, because they have no green field areas. They will drive the allocation of transportation dollars, because they are going to want to have refill development along transportation corridors so more people will ride public transit. It is going to be difficult for Overland Park to compete in that environment if the numbers are set without their input. He was of the opinion that they need to discuss the percentages and at least put forward what they have in Vision Metcalf. They should define what they are willing to do.

Mrs. Owens stated that during their meeting with Mr. Lenk, she asked about the impact of the transportation plan. The impact is that this is the use of a formula to distribute federal money, and it is a critical issue. When MARC began the process of developing a transportation plan, they did not use zoning and planning as a part of their criteria. They are merging these factors together at this time. This is a unique process that has been undertaken by MARC, and it is creating a perspective for changing some of the trends. Some of the cities in Johnson County believe that they have not received their fair share of transportation dollars, because the dollars have been allocated for new development. This plan is tied to the distribution of funding, and they will not be served well without providing some kind of a specific target. She suggested that a 20 percent goal would be preferable to a 30 percent goal because of where they are currently, although that would still be a leap.

Mr. Skoog reminded the Council that he sent an e-mail to them previously, and he explained that the 40 percent goal was an aspirational target that was set for planning purposes. If they are planning to change the way things have been done for the last 40 years, they need to indicate some type of approach to take. This approach, which was previously identified as the draconian approach for limiting development, was the result of throwing together some ideas for achieving 40 percent of infill development. MARC did not endorse that percentage. The MARC sub-committee, that is being co-chaired by Community Services and Planning Manager John Rod, indicated that the 40 percent goal is ambitious, and they discussed what it would take for that goal to be achieved. They looked at different factors that are being used across the country to limit green field development, and they created a list. It was never proposed to be a

part of the plan. It was intended to facilitate discussion. In terms of annexation, this plan will not stop continued green field growth in the metropolitan area. It will not prevent the City from expanding as growth is driven by the market. The transportation plan is based on existing plans for various municipalities for redevelopment including Vision Metcalf and the other development plans in the metropolitan area.

They can take one of two approaches. They can determine a percentage to present, or they can remove the percentage, and as the City's representative to MARC, Mr. Skoog would discuss the goal during the MARC meetings. The target is not going to be 40 percent. It will probably not be 30 percent. It is a community percentage set by elected officials from across the metropolitan area. It is not going to be determined by bureaucrats. It will be set by elected officials from the region. In response to the concerns expressed about what future elected officials will do, Mr. Skoog observed that the officials will be elected by people of their time and place to determine the future of the region. Overland Park and Johnson County will continue to have a voice in those discussions. If the Council has a poor expectation of what the City Council will be doing 20 years from now, perhaps they should set a percentage. He was still in favor of the current motion. He and Mrs. Owens would participate in the discussions to set a mutually agreed upon percentage that represents the vision of the elected officials for the region.

Mr. Goodman wanted to offer an amendment to the motion. For Paragraph No. 1 he wanted to delete the term "Adaptive Growth Scenario" because he feared that it represented a percentage of 40 percent. The revised language would indicate that "The City of Overland Park supports a growth scenario that seeks to achieve a refill goal of at least 20 percent by 2040 in individual cities within the region and an overall refill goal of between 10 percent and 15 percent by 2040 in the existing urbanized areas within the region." He noted that the balance would be as stated by Mr. Hix.

Mrs. Owens seconded the motion.

Mayor Gerlach asked Mr. Goodman to once again clarify the percentages. Mr. Goodman replied that the first percentage was 10 percent and it would remain 10 percent with his amendment. The second two percentages would be between 10 percent and 15 percent. Mayor Gerlach clarified that Mr. Goodman had previously stated 20 percent for the first percentage, but he wanted to actually indicate 10 percent.

Mrs. Owens noted that since Mr. Goodman was not going to use a refill goal of 20 percent in the amendment, she would withdraw the second.

Mr. Goodman decided to use the language as proposed by Mr. Hix with the removal of the phrase "Adaptive Growth Scenario. The amendment to the motion should read as follows, "The City of Overland Park supports a growth scenario that seeks to achieve a regional refill goal of between 10 percent and 15 percent compared to a historical rate of a negative 7 percent to 0 percent. The City recognizes that refill opportunities will vary among the cities in the region and that some cities will seek a higher percentage of refill development while other cities will seek a lower percentage of refill development. The City further supports the use of refill incentives in the pursuit of these goals. The City believes these goals can be achieved while adhering to the fundamental principles of item Nos. 2 and 3 of this resolution."

Mayor Gerlach clarified that the amendment to the motion was to add the language that Mr. Goodman just read that was originally provided by Mr. Hix with the exception that the words "Adaptive Growth Scenario" were deleted. Mayor Gerlach clarified that the sentence that had been proposed to be moved by Mr. Skoog from No. 1 to the first part of No. 2 was being returned to No. 1 with this amendment.

Mr. White seconded the amendment to the motion.

Mr. Skoog asked what growth scenario Mr. Goodman was referring to, since there was not a generic growth scenario presented in the transportation plan. Mr. Goodman replied that if the seconder agreed, he wanted the motion to indicate, "The City of Overland Park supports growth" and to delete the word "scenario." Mr. White agreed with the revision to the amendment.

Mayor Gerlach clarified that they were removing the words "Adaptive Growth Scenario" because the phrase seemed to be connected to the 40 percent goal for infill development.

Mr. Lyons wanted to clarify that the original motion was to eliminate item No. 1 completely and to add a sentence to item No. 2. The amendment is to add No. 1 back in and item Nos. 2 and 3 would remain as they were initially proposed in Resolution No. 3807. Mayor Gerlach clarified that item No. 1 would be the language proposed by Mr. Hix with the exception that the words "an Adaptive Growth Scenario" would be deleted. The first few words of the first sentence of point No. 1 would indicate "The City of Overland Park supports growth that seeks to achieve..."

Mr. Skoog stated that he opposed the amendment, because it does not relate to the document that they are discussing.

Mayor Gerlach asked if Mr. Skoog could go to the MARC meeting and relay what the Council was discussing. Mr. Skoog replied that there are two things on the table. There is the current Baseline Scenario and the Adaptive Scenario. He asked if they are indicating that they prefer the Baseline Scenario. Mayor Gerlach replied in the negative. Mr. Ebel explained that two scenarios are being considered for developing the forecast. One is the Baseline Scenario which is not based on historical trends. It is a new approach. The Adaptive Scenario is what they are discussing tonight.

Mr. Nachbar advised that the Adaptive Scenario means that they are doing something to alter the market. Although they do not agree with the numbers, the Baseline Scenario is intended to indicate what they will get if they allow market forces to occur undeterred by government intervention. With the Adaptive Scenario, they are trying to adapt growth to achieve a higher refill goal. Mr. Ebel agreed with that observation.

Senior Transportation Planner Mark Stuecheli added that the Baseline Scenario was intended to be a trend type of forecast. It was intended to show what would occur if things that happened in the past were to continue. The Adaptive Scenario presumes there would be more infill redevelopment. MARC selected a 40 percent goal for infill development. He assumed that the final forecast would be between the Baseline and the Adaptive Scenario.

Mr. Nachbar stated that he did not think that the Baseline Scenario numbers are reflective of what has actually happened in the past. He was of the opinion that they

were arbitrarily established to make the Adaptive Scenario look more attractive. Mr. Ebel agreed that the Baseline Scenario is not the historical trend. Mr. Stuecheli replied that the statement from MARC was that it was not quite accurate in its depiction.

Mayor Gerlach wanted to make sure that they were clear in their recommendation. If the word Adaptive Scenario does not mean a 40 percent goal, it does mean that they are going to try to do something to achieve a goal. He did not agree with endorsing the Adaptive Scenario without setting a percentage, because they are not quite sure what it means.

Mr. Skoog replied that he and Mrs. Owens would be voting based on the document that the Council would be approving tonight. They understand what the Council means, and that is why they are comfortable with the removal of the percentage and working for the benefit of this group to make the percentage as low as possible. Since he represents the Council, he would vote based on what the document indicates. Mayor Gerlach replied that the Council is indicating that they want Mr. Skoog to work towards achieving as low of a goal as possible. However, they want to set a percentage to indicate that if he cannot get the percentage down to the number that is indicated in the resolution, then Mr. Skoog should change his vote to a "no vote" versus a "yes vote." That direction needs to be set by the Council.

With regard to the Adaptive Scenario, Mrs. Owens defined it as the application of certain parameters that then produce results that are going to create more density. Within that context, the Adaptive Scenario is well defined.

Mr. Goodman added that the use of Adaptive Scenario does have a connotation and an expectation of the people who have been involved in this process.

He wanted to offer some revised language for point No. 1 to indicate that "The City of Overland Park supports approaches to growth that seek to achieve a regional refill goal of between 10 percent and 15 percent..." The rest of the language would remain the same.

Mayor Gerlach asked that the first amendment be taken off the table. Mr. Goodman and Mr. White took the first amendment off the table.

Mayor Gerlach clarified that they would add back No. 1 as revised and leave Nos. 2 and 3 identical as indicated in Resolution No. 3807. No. 1 would indicate that "The City of Overland Park supports approaches to growth that seek to achieve a regional refill goal of between 10 percent and 15 percent..." The rest of the wording would remain the same. They have deleted the words "an Adaptive Growth Scenario" and added the words "approaches to growth."

Mr. White seconded the motion.

Mr. White indicated that he supported the new amendment because the Adaptive Growth Scenario is based on assumptions to achieve an infill development goal of 40 percent. Their representatives to MARC need to tell the MARC board that they have to go back to the drawing board and come up with a new set of assumptions to achieve an infill development goal of 10 percent to 15 percent. The proposed motion is a way to convey that message. If they say that they want the Adaptive Growth

Scenario that results in a 15 percent growth, they are indicating that they like the methodology, and they should just revise the percentage goals. With the proposed motion, the Council is presenting the preferred result and telling the MARC board that they are not mandating the assumptions that will achieve that goal, but there needs to be a new scenario.

Mrs. Owens clarified that the goal associated with the percentage is for infill development.

Mr. Skoog stated that he was still against the motion. The concern that everyone has about this change regards the \$54 million they have received through this program since 1998. Of that amount, 15 percent or \$8.8 million has been used for projects within the I-435 corridor. They took full advantage of the program that existed and used it to build a great thoroughfare system in their City. The reason that he felt it is important to adjust these percentages to be a little higher is that their Vision Metcalf plan and other replacement projects can leverage some of the federal dollars over the next 40 years as they have previously to build thoroughfares in the southern part of the City. He clarified that a 40 percent infill goal is not on the table at MARC. It was a planning number. While he could accept the wording of the resolution, he still believed that the percentage for the refill development goal was too low.

Mr. Hix asked if the motion maker was interested in making references to refill be changed to infill/refill. The motion maker and seconder agreed with that revision.

Mr. Janson asked the motion maker to read the paragraph.

Mr. Goodman indicated that No. 1 was as follows: "The City of Overland Park supports approaches to growth that seek to achieve a regional infill/refill goal of between 10 percent and 15 percent, compared to a historical rate of a negative 7 percent to 0 percent. The City recognizes that refill opportunities will vary among the cities in the region and that some cities will seek a higher percentage of infill/refill development while other cities will seek a lower percentage of infill/refill development. The City further supports the use of infill/refill incentives in the pursuit of these goals. The City believes these goals can be achieved while adhering to the fundamental principles of item Nos. 2 and 3 of this resolution."

The motion to approve the amendment to the motion carried with a vote of 8 to 3 with Councilmembers Skoog, Owens and Lyons voting nay.

Mr. Skoog clarified that since this was different from the original motion that he made, he would not be supporting the motion.

The motion to approve Resolution No. 3807, as amended, carried with a vote of 9 to 2 with Councilmembers Skoog and Owens voting nay.

NEW BUSINESS:

No report.

ADJOURNMENT:

At 10:05 p.m., Mr. Kandt moved to adjourn the meeting. The motion was seconded by Mr. White and carried with a vote of 11 to 0. Minutes transcribed by Pamela Blaszyk.

Carl R. Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk