

## OVERLAND PARK CITY COUNCIL MEETING

May 17, 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. Dave Janson, Council President; Mr. Terry Goodman; Mr. George Kandt; Mrs. Terry Happer Scheier; Mr. David White; Mr. Jim Hix; Mr. Fred Spears; 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. 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. Mike Garcia, Acting Director of Human Resources; Mr. Mike Casey, Deputy Fire Chief; Mr. Bart Budetti, Senior Assistant City Attorney; Mrs. Vicki Irely, Director of Information Technology; Mrs. Kristy Stallings, Deputy City Manager; Ms. Gena McDonald, Assistant Chief Financial Officer; Mrs. Tammy Owens, Senior Assistant City Attorney; Mrs. Leslie Karr, Manager, Current Planning; Ms. Pam Fortun, Senior Storm Water Treatment Engineer; Mr. Tony Meyers, Supervisory Civil Engineer; Mr. Brian Shields, City Traffic Engineer; Mr. Sean Reilly, Communications Manager; Mr. Rob Welton, PC Technician; and Ms. Kathleen Behrens, Recording Secretary. Approximately 25 people were in the audience.

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### PLEDGE OF ALLEGIANCE

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

### PUBLIC HEARING

#### 2010 BUDGET AMENDMENT- Soccer Operations Fund.

Assistant Chief Financial Officer Gena McDonald explained that in late 2009, the City terminated its contract with a third-party provider for concession operations at the Soccer Complex. In doing so, the operations at the Soccer Complex have changed. Originally, revenues and expenditures related to concessions through the Soccer Operations Fund were not anticipated. Now that the City will be running concessions in-house, revenues and expenditures will be running through the Soccer Operations Fund. Staff will be increasing the expenditures above the amount included in the 2010 adopted budget. Due to this change, the City is required by State law to develop a budget amendment in order to remain in compliance with state budget laws. The proposed budget amendment includes increasing the Soccer Operations Fund by \$295,000. That amount is driven by \$170,000 of additional revenues due to concessions, as well as increased revenues of \$125,000 based on new revenue projections for field rental, tenant rental, and interest earnings.

Mr. Dan Stock asked about the amount of projected revenues. Ms. McDonald stated there is \$170,000 of estimated revenue from the concession operations. Expenditures for concessions are estimated at \$160,000, which results in a projected \$10,000 profit from concessions for the year. Mr. Stock asked for further clarification of the budget

document where it shows money being transferred in and out of the Soccer Operations Fund budget. Ms. McDonald explained that at the end of 2009, the Soccer Operations Fund had expenditures in excess of revenues. In order to remain whole in that fund and have a zero fund balance at the end of the year, some of the money was transferred into the fund from one of the Transient Guest Funds with the promise to pay it back when revenues permitted. In 2009, \$163,000 was transferred into the Soccer Operations Fund. Staff anticipates transferring that \$163,000 back to the Transient Guest Tax Fund in 2010, as long as revenues exceed expenditures in that fund. Mr. Stock asked why the capital amount was being adjusted downward from the original budget amount. Ms. McDonald stated that the contingency was there for capital projects and is basically the projected fund balance.

Mayor Gerlach opened the public hearing for the 2010 Budget Amendment for the Soccer Operations Fund.

Without further comment, Mr. Dave Janson moved to approve the 2010 Budget Amendment for the Soccer Operations Fund as outlined by staff. Mr. Fred Spears seconded the motion, which carried by a vote of 12 to 0.

#### MAYOR CARL R. GERLACH

PROCLAMATION – Proclaiming the month of May 2010 as Building Safety Month in Overland Park.

Mayor Gerlach presented a proclamation to Planning and Development Services staff proclaiming the month of May 2010 as Building Safety Month in Overland Park.

PROCLAMATION – Proclaiming the week of May 16 through May 22, 2010, as National Public Works Week in Overland Park.

Mayor Gerlach presented a proclamation to Public Works staff proclaiming the week of May 16 through May 22, 2010, as National Public Works Week in Overland Park.

#### REAPPOINTMENTS TO THE CITIZENS' ADVISORY BOARD ON NON-BIASED POLICING:

Georgia Erickson – Term 5/15/10 to 5/15/14  
Kati Washington – Term 5/15/10 to 5/15/14

Mayor Gerlach presented reappointments, Georgia Erickson and Kati Washington, to the Citizens' Advisory Board on Non-Biased Policing for a term of May 15, 2010, to May 15, 2014.

Council President Janson moved to approve the reappointments to the Citizen's Advisory Board on Non-Biased Policing as outlined by staff. Mrs. Terry Happer Scheier 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

STAFF ITEMS

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 5B – Outlining the expenditures from the Capital Projects Fund for May 6 through May 12, 2010.

APPLICATIONS FOR NEW DRINKING ESTABLISHMENT LICENSES:

Intentions, L.L.C., d/b/a Intentions, 7316 W. 80th Street, Rebecca Perdieu, manager.

Salty Iguana of Overland Park, Inc., d/b/a Salty Iguana of Overland Park, Inc., 8420 W. 135th Street, Matt Branstetter, manager.

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

Hayward's Pit BBQ and Bar, Inc., d/b/a Hayward's Pit BBQ and Bar, Inc., 11051 Antioch, Masrum Minallah, new manager.

Hot Basil Corporation, d/b/a Hot Basil Thai Cuisine, 7528 W. 119th Street, Leechai Hall, manager.

Khiew, Inc., d/b/a Bo Lings, 9055 Metcalf, Teck Fong Wong, manager.

King Louie Lenexa, Inc., d/b/a King Louie College Lanes, 10201 College Boulevard, Ward M. Phillips, manager.

The Cheesecake Factory Restaurants of Kansas, L.L.C., d/b/a The Cheesecake Factory Restaurant, Inc., 6675 W. 119th Street, Chris Plattner, manager.

APPLICATION FOR RENEWAL OF DRINKING ESTABLISHMENT AND CATERERS LICENSE CONTINGENT ON RECEIVING STATE LICENSE - Coach's Bar and Grill, d/b/a Coach's Bar and Grill, 14893 Metcalf, Brian Darby, manager.

APPLICATION FOR RENEWAL OF CLASS A PRIVATE CLUB LICENSE CONTINGENT ON RECEIVING STATE LICENSE - Abdallah Shrine Temple Building Association, d/b/a Abdallah Temple Building Association, 5300 Metcalf, James Michael Guilinger, new manager.

APPLICATION FOR TEMPORARY PERMIT TO SELL ALCOHOLIC LIQUOR - Overland Park Convention and Visitors Bureau, for an event to be held May 20, 2010, from 10:45 a.m. until 11:30 a.m., at 9229 Foster, Jerry Cook, manager.

APPLICATIONS FOR RENEWAL OF CEREAL MALT BEVERAGE LICENSES:

Old Town Pizza, L.L.C., d/b/a Old Town Pizza, L.L.C., 14850 Metcalf,  
James D. Beery, manager.

Varsha Commercial, L.L.C., d/b/a Shell Food Mart, 7427 Metcalf, Mayan  
Saxena, manager.

PUBLIC SAFETY

COMMITTEE ITEMS

REQUEST APPROVAL TO ACCEPT GRANT – Federal Emergency Management Agency (FEMA) Fire Prevention and Safety for the purchase of smoke alarms for the Older Adult Fire Safety Program in the amount of \$15,996.

REQUEST APPROVAL TO APPLY FOR FFY2010 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE (JAG) GRANT AND APPROVE MEMORANDUM OF UNDERSTANDING – City of Olathe and Board of County Commissioners of Johnson County for the purchase of handguns for police officers using grant funding in the amount of \$50,095.

SUPPLEMENTAL AGREEMENT NO. 1 TO AGREEMENT NO. 186-09 - Kansas Department of Transportation (KDOT) for additional Kansas Congestion Mitigation Air Quality (CMAQ) grant for the replacement of 10 vehicles in the amount of \$80,000. The total of 2009 CMAQ grant approved by Council on August 26, 2009, in the amount of \$48,000 (6 vehicles) and the proposed 2010 CMAQ grant in the amount of \$80,000 (10 vehicles) for a total of \$128,000.

REQUEST USE OF FORFEITURE FUNDS – Special Law Enforcement Trust Fund for the purchase of enhancements to the Command and Control Center for workstation, sound system, and other related expenses in an amount not to exceed \$25,000.

Mayor Gerlach presented the Consent Agenda and asked if there were items to be considered separately.

With no further consideration, Mr. Janson moved to approve the Consent Agenda as presented. Mr. George Kandt seconded the motion, which carried by a roll-call vote of 12 to 0.

REGULAR AGENDA

COMMUNITY DEVELOPMENT

COMMITTEE REPORT Terry Goodman, Chair

No report.

STAFF REPORT

No report.

PUBLIC WORKS

COMMITTEE REPORT Terry Happer Scheier, Chair

Mrs. Happer Scheier reported that there would be no May 20, 2010, Public Works Committee meeting.

REPORT FROM SPECIAL PUBLIC WORKS COMMITTEE MEETING HELD  
MAY 17, 2010.

MEMORANDUM OF UNDERSTANDING (MOU) – Federal Transit Administration (FTA); Johnson County, Kansas; Mid-America Regional Council (MARC); and City of Overland Park for the implementation of the Metcalf and Shawnee Mission Parkway Bus Corridor project.

Mrs. Happer Scheier presented a report from the Special Public Works Committee meeting held May 17, 2010. The Committee met to consider approval of a Memorandum of Understanding (MOU) between the Federal Transit Administration (FTA), Johnson County, Kansas, Mid-America Regional Council (MARC), and the City of Overland Park for the implementation of the Metcalf and Shawnee Mission Parkway Bus Corridor project.

Mrs. Happer Scheier moved to approve the Memorandum of Understanding as presented. Mr. Spears seconded the motion, which carried by a vote of 12 to 0.

STAFF REPORT

AGREEMENT – HNTB Corporation for engineering services for Quivira, 119th Street to College Boulevard in an amount not to exceed \$698,700.

City Traffic Engineer Brian Shields presented an agreement with HNTB Corporation for engineering services for the widening of Quivira from 119th Street to College Boulevard from four lanes to six lanes. The agreement amount will not exceed \$698,700.

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

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT Jim Hix, Chair

Mr. Jim Hix moved to add two non-agenda items for consideration. Mr. Kandt seconded the motion, which carried by a vote of 12 to 0.

APPLICATION FOR TEMPORARY PERMIT TO SELL ALCOHOLIC LIQUOR  
CONTINGENT ON RECEIVING STATE LICENSE – Smoke N' Fire, 8030 W. 151st Street, for an event to be held June 5, 2010, from 5 p.m. until 12 midnight., James Cattey, manager.

Mr. Hix presented an application for temporary permit to sell alcoholic liquor for Smoke N' Fire located at 8030 W. 151st Street for an event to be held June 5, 2010, and moved for approval. Mr. Stock seconded the motion, which carried by a vote of 12 to 0.

APPLICATION FOR RENEWAL OF DRINKING ESTABLISHMENT LICENSE – KSA Management, Inc., d/b/a Hyatt Place, 5001 W. 110th Street, Ryan Baldwin, new manager.

Mr. Hix presented an application for renewal of a drinking establishment license for KSA Management, Inc., d/b/a Hyatt Place, located at 5001 W. 110th Street. Mrs. Donna Owens seconded the motion, which carried by a vote of 12 to 0.

STAFF REPORT

No report.

PUBLIC SAFETY

COMMITTEE REPORT      George Kandt, Chair

No report.

STAFF REPORT

No report.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA

SPECIAL EVENT PERMIT NO. 2010-181 – 7126 West 80th Street. A special event permit is requested to allow “Pickin’ on the Patio” on Monday nights from June 7 to August 30, 2010, at Homer’s Coffee House. Application made by Mr. Jim Mathis.

SPECIAL EVENT PERMIT NO. 2010-202 – Vicinity of 179th Street and Switzer, and 179th Street and U.S. 69 Highway. A special event permit is requested to allow temporary off-site signage for the “Stems – A Garden Soiree” event on June 26, 2010, at the Overland Park Arboretum and Botanical Gardens. Application made by the Arts and Recreation Foundation of Overland Park.

SPECIAL EVENT PERMIT NO. 2010-236 – Vicinity of the southwest corner of 135th Street and Metcalf. A special event permit is requested to allow First Thursdays from June 3 through October 7, 2010. Application made by Alice Werth, representing Metcalf Center Merchants Association.

SPECIAL USE PERMIT NO. 2010-4 – 7380 West 162nd Street. A special use permit is requested for a five-year period of time to allow the renewal of a tow lot. This property is currently zoned PRB-3J, Planned Urban Neighborhood Retail Business District, Johnson County. Application made by Blue Valley Tow Service, Inc. The Planning Commission approved this item for a five-year period of time on April 26, 2010, by a vote of 11 to 0. Ordinance No. Z-3448.

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT – ZRR-2860 – Amendments to Unified Development Ordinance Section 18.100.080 relating to zoning of annexed lands. Application made by the City of Overland Park. The Planning Commission approved this item on April 26, 2010, by a vote of 11 to 0. Ordinance No. ZRR-2860.

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT – ZRR-2870 – Amendments to Unified Development Ordinance Section 18.390.140.Q relating to bus shelters. Application made by the City of Overland Park. The Planning Commission approved this item on April 26, 2010, by a vote of 11 to 0. Ordinance No. ZRR-2870.

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

Mr. Stock requested that Special Event Permit No. 2010-236 be removed for separate discussion.

Mr. Janson moved to approve the Planning Commission Consent Agenda with the exception of Special Event Permit No. 2010-236. Mr. Kandt seconded the motion, which carried by a roll-call vote of 12 to 0.

Mr. Stock requested a presentation regarding Special Event Permit No. 2010-236.

Manager of Current Planning Leslie Karr presented Special Event Permit No. 2010-236, stating that this request was for a First Thursday event, which will encompass the event to take place on one Thursday per month through October 2010. Staff has approved one such event at this facility, which was a success. Based on that success, the applicant has come back to request a series of events through October 2010. A brochure was included in staff's report that indicated the activities that would be held at the facility in addition to the concert and some special promotions by some of the merchants in the center. She noted that she spoke with the applicant and learned that she may not be present to answer questions about the request.

Mr. Stock asked about the specific placement and size of the banner. Mrs. Karr stated that the applicant was requesting the use of two banners, which would be located at the southwest corner of 135th Street and Metcalf. Mr. Stock expressed a concern about the banner being in existence for four days each month prior to the event, which would total 25 days that the banner would be shown, if approved. He also wanted to know why staff would allow a noise exemption from 5:00 p.m. to 10:00 p.m. when the events are supposed to finish at 8:00 p.m. Mrs. Karr noted that the noise exemption is a standard stipulation that staff has included with similar requests, which is also based on the noise ordinance. Mr. Stock asked if the bounce house would be located on the site every month. Mrs. Karr noted that the bounce house would only be located on the site on the day of the event. Mr. Stock asked what the specific location would

be for the bounce house relative to 135th Street. Mrs. Karr stated that all the activities will take place on the strip building property that would be located between the bank and the Staples store location. Mr. Stock asked if the bounce house would be visible to the public driving by the site. Mrs. Karr agreed. Mr. Stock felt consideration of this item should be delayed until additional information is obtained from the applicant. He also wanted to know what was planned specifically for each week and what they can expect to see on the site. Mrs. Karr suggested holding the item over until the end of the Council agenda to make contact with the applicant to find out if she or her representative can come in to discuss the item. If the applicant is not available, she suggested continuing it to the next available Council meeting.

Mr. Hix also requested additional information about the size and placement of the banner and the bounce house.

Mr. Kandt referred to Page 5D of staff's report where there is a picture of the corner where the banner would be placed, as well as the bounce house, and asked if that depiction was accurate. Mrs. Karr agreed. She understood that there would be two banners at the site, but one of those banners is not shown on the picture.

Mayor Gerlach announced that Special Event Permit No. 2010-236 would be held over until the end of the Council agenda for reconsideration.

#### PLANNING COMMISSION REGULAR AGENDA

SPECIAL EVENT PERMIT NO. 2010-215 – 6717 Shawnee Mission Parkway. A special event permit is requested to allow two banners on a building from July 11 to September 30, 2010. Application made by Jonathan Accardo, representing DeCloud Portrait Studios.

Mrs. Karr presented Special Event Permit No. 2010-215 for DeCloud Portrait Studios located at 6717 Shawnee Mission Parkway. The request involves the use of multiple banners on the building from July 11, 2010, to September 30, 2010. Considering the new special event permit ordinance that was recently approved, staff has approved four special event permits for the applicant that will be used on the property from June 1, 2010, to July 10, 2010, which encompasses the four permits they are allowed for the site. Because the applicant is asking for multiple banners on their building, they are limited to 10 days for each special event under staff approval. Based on previous action from the Council, staff had not recommended approval of the requested special event permit. However, should the Council recommend approval, staff included stipulation a to accompany that approval, which would allow the banners to remain on the building through October 1, 2010.

Mrs. Karr presented a picture of the building, stating that the applicant had indicated their intent for the placement of the banners to be on the chimney portion of the building. Shawnee Mission Parkway would be located to the left of the site.

Mr. Spears asked if staff approval could be given if the applicant wanted one sign and the four sequential sign permits, including the banner sign. Mrs. Karr explained that if the applicant wanted a single banner sign, staff would approve four of those requests, 15 days for each, for a total of 60 days. However, staff would not be able to approve the full duration of time the applicant is requesting. Staff could approve the time period from June 1, 2010, through the end of July 2010.

Mr. White asked if the applicant had any exterior permanent signage. Mrs. Karr stated that the applicant has a small monument sign, but there is no other building signage visible from Shawnee Mission Parkway. Based upon the City's signage ordinances, Mr. White asked if the applicant would be allowed to have a permanent sign on the chimney. Mrs. Karr felt there would be some opportunities for some permanent signage in that location.

Mr. Terry Goodman understood the sign ordinance allows for four special events per year and asked how long of a duration is allowed for each event. Mrs. Karr stated that it would depend upon the type of event. The applicant's request would allow ten days for multiple banners on the property. Mr. Goodman asked if the applicant had used that option already. Mrs. Karr stated that the applicant has not used that option yet, but the signs were approved from June 1, 2010, through July 10, 2010, to use their four special events. Mr. Goodman asked if the applicant's request would extend what the City would allow anyone else to do through October 1, 2010. Mrs. Karr agreed.

Mr. Ebel added that staff can approve the 40 days, but the applicant is requesting an extension from July 11, 2010, through October 2010.

Mr. Goodman asked if there was anything unique, different or unusual about the request. If the request is approved, he asked if there would be any basis to turn anyone else down who wanted to extend their period of time. Mrs. Karr stated that staff did not see anything unique about the property in question compared to any other property.

Mr. Hix asked about the size of the banner. Mrs. Karr stated that the applicant would provide details about the banners requested.

Mr. Jonathan Accardo, 6717 Shawnee Mission Parkway, the applicant, stated that their business was new to the neighborhood, moving from downtown Kansas City about a year ago. He noted that their business was very seasonal, and they contract with all the Shawnee Mission schools and Blue Valley schools to produce high school senior portraits. Last year they experienced a lot of problems with people trying to find their new location. DeCloud Studios used to be located on 80th Street and Metcalf for 20 years. He requested an extension of time through the season to allow their banners to be displayed so that their customers can easier find their business off Shawnee Mission Parkway.

Mr. Accardo stated that the banner will include the company logo. Their busy season is from June through September, and they were hoping to have the logo on the building for their busy season, because their address actually says Frontage Road. Mr. Goodman clarified that the applicant wanted 40 days to advertise with the banners due to their busy season and an additional number of days for the remainder of the busy season. If the applicant had to choose a busy season to display their banners, he asked which busy season would be the most preferred. Mr. Accardo stated that they would want the banners for the later part of the busy season.

Mayor Gerlach asked if the applicant had any signage when they were in the building last year. Mr. Accardo stated they had no signage at all at that time. Since the clientele of DeCloud studios are high school seniors, Mayor Gerlach asked how that additional banner display would help their business. There will be a new group of students in the following years to come. He asked if this would be an ongoing problem

for DeCloud Studios. Mr. Accardo felt once people begin to familiarize themselves with the new location for DeCloud Studios, it will be much easier for them to be found. He wanted the opportunity to install some permanent signage on their building at some point.

Mayor Gerlach felt obtaining permanent signage would be the best solution for the property. Mr. Accardo stated that they were told by City staff they could not have permanent signage above the roof line. Mrs. Karr stated that there were some opportunities for permanent signage on the building, but that they would have to discuss the issue in more detail.

Mr. Paul Lyons asked what kind of material would be used for the banner that would hang on the chimney. Mr. Accardo stated that the temporary signage would be constructed of 13 ounce vinyl material, which is similar to what is seen with many of the banners in the City. He noted that the size of the banner would not encompass the full length of the chimney. The banner should be sufficiently large to be seen from Shawnee Mission Parkway, which could be about 15 feet wide and 8 feet in height. Mr. Lyons asked if there would be a sign located on each side of the chimney. Mr. Accardo agreed.

Mr. Spears asked what the applicant's plans were for permanent signage on the building. Mr. Accardo stated that he was not sure due to the expense involved, but his goal was to have permanent signage by next year.

Mr. Hix noted that he ran a business in the building next to the applicant's building, and understood the difficulty of the location. He wanted to know what was uniquely different in the applicant's desire to make it easier for people to find the applicant's business than anyone who rents space in the Cloverleaf development or medical building next door, which have addresses that are not located on Shawnee Mission Parkway. In order to make an exception this great, the Council is typically looking for something unique and temporary. He did not feel the applicant's sign was unique or temporary.

Mr. Accardo felt the biggest issue most important to them is the fact they are new to the area. He felt the nice thing about their business was that as long as they continue to contract with the same schools, he felt their location would not be as difficult to find as time goes on. They have only been at their new location for one year, and they have to establish their business in the neighborhood.

Mr. Hix asked how appointments were set up for the business. Mr. Accardo stated that the program is set up through the school. Mr. Hix felt the client would likely look harder to find the business if they have an appointment. Mr. Accardo stated that they establish appointments with their customers and try to inform them as best they can by including maps in their flyers and increased mailings to the students and families. Mr. Hix asked if there were any students that were not able to find the business and never showed up for an appointment. Mr. Accardo stated that they photographed most of the students, but not finding the location causes a lot of grief to the parents.

Mayor Gerlach felt an 8-foot by 15-foot banner put on the chimney of the applicant's building was an extreme situation, and asked if the applicant might consider a different location to be more acceptable. He asked the applicant if he needed a banner that extreme in height and large in size to catch the attention of the customer.

Mr. Accardo stated that although their desire is to have the banner on the chimney, they would consider other options suggested by the Council.

Mr. Goodman asked if the applicant owned the building and if they were the only occupants of the building. Mr. Accardo stated that his father owned the building, and they occupy about half of the building. The Internal Revenue Services (IRS) leases the other half of the building.

Mayor Gerlach opened the public hearing. Upon receiving no comments, he closed the hearing.

Mr. Goodman pointed out that if the identity of the applicant's business in the form of signage and/or banners was so important, he felt that issue should have been something to consider prior to moving into the building. Since uniqueness is a requirement with this type of request, and they have an ordinance that was expanded from two to four signs to give a business an opportunity to identify itself through special events throughout the year, he has heard no case made for uniqueness with this case. If the request is approved, he felt a bad precedent would be set, because the Council would have no basis for not approving similar requests elsewhere.

Mr. Goodman moved to deny Special Event Permit No. 2010-215. Mr. Stock seconded the motion.

Mr. White understood that DeCloud Studios has a presence in the community. He agreed with Mr. Goodman's comments in that identity and ability to find the establishment is something that should be included in a business plan. He noted that the purpose of the banner is not to replace permanent signage. He also pointed out that staff felt there were available opportunities to obtain visible signage that would assist in this process. He felt there should be some flexibility as to when the events can be scheduled to get the applicants through their busy season. If the sign is removed at the end of their busy season, there would be no more temporary signage.

Mr. White proposed amending Mr. Goodman's motion to allow an extension of the temporary signage permit equal to what staff has given with a provision that there is no further temporary signage allowed for the next year.

Senior Assistant City Attorney Bart Budetti stated that the first motion would need to be voted upon if the motion maker and seconder are not willing to withdraw the motion for an alternate motion.

Mr. Goodman maintained his original motion. He added that had no preference in how the applicant would split up the time for the banner to be allowed on the site.

The motion made by Mr. Goodman and seconded by Mr. Stock to deny Special Event Permit No. 2010-216 carried by a vote of 11 to 1. Mr. White opposed the motion.

Mrs. Karr noted that if the applicant chooses to split up the display time for the banners, staff would work with them to break that time up based on the action taken. If the applicant chooses to use only one banner, staff could work out the time frame for the additional days allowed by the ordinance.

REVISED PRELIMINARY PLAN APPROVAL – Corporate Lakes at Metcalf, vicinity of the northeast corner of 123rd Street and Metcalf. Application made by Pars Consulting Engineers, Inc. The Planning Commission denied this item on April 26, 2010, by a vote of 9 to 2.

Mrs. Karr presented the revised preliminary plan for the Corporate Lakes at Metcalf Office Park located at 123rd Street and Metcalf, which encompasses a 40-acre office development. The revised plan focuses on a 1.7-acre tract in the southwest corner of the property. There is a lake on the property. The property is platted as Tract A, Corporate Lakes, but will be replatted as a lot if the application is approved. The applicant has gone before the Planning Commission twice and the Council once. The Council remanded the application back to the Planning Commission for them to look at revisions.

Mrs. Karr presented the original plan that was presented to the Planning Commission for a 5,000 square foot office building with 19 parking spaces. The revised plan that was presented to the Planning Commission April 26, 2010, changed the location of the building with the parking lot from the west side to the east side. The proposal for the 5,000 square foot building would increase the total square footage of the development to 271,000 square feet. The proposed building would be accessed from an access drive across the dam that is currently serving as emergency access for the development. Full access into the office park is located along a dead-end portion, and the emergency access was provided for emergency situations. That emergency access would be maintained with the proposed building. The applicant is proposing to widen a portion of the driveway to 24 feet to service the parking lot. This project is limited to right-in and right-out movements only. Traffic entering from northbound would have to make a U-turn at 123rd Street, and traffic exiting to go southbound would be required to make a U-turn at 121st Street, which are both legal maneuvers. Based on the low square footage and traffic that would be generated, staff felt those U-turns would be safe traffic movements.

The primary issue with the tract is that it is being located within the stream corridor. There is a stream corridor setback required that covers a majority of the tract. Mrs. Karr noted that a deviation was being requested with this project, which is a proposal for a two-story building made of brick. Staff has not reviewed the architecture in detail, but those details could be worked out at the final development plan stage if the revised preliminary plan is approved. The stream corridor deviation is the primary issue for discussion on this item.

Mayor Gerlach asked if one of the possible emergency exits was located across the dam. Mrs. Karr agreed and explained that the exits would be maintained, and the applicant would be improving a portion of it to provide access (24 feet wide) out to Metcalf. The remainder would remain as part of that emergency access. Mayor Gerlach asked if the increased square footage (263,000 square feet) that was approved in 2005 was for the entire office park. Mrs. Karr agreed. Mayor Gerlach asked if the applicant had exceeded that square footage. Mrs. Karr explained that there have been a number of revisions made to this plan over the years, which was originally approved in 1986. A number of different engineers and professionals involved made some errors that staff is correcting, and then adding the 5,000 square feet for the new building.

Supervisory Civil Engineer Tony Meyers referred to the stream corridor deviation request, stating the request was for a deviation width of 32 feet to 55 feet into the 100-

foot stream corridor. There is a detailed analysis of all the ordinance requirements as far as granting a deviation request included in the staff report. According to the ordinance requirement, staff does not feel the deviation request meets the spirit and intent of the stream corridor ordinance.

Mr. Meyers referred to a map showing the limits of the stream corridor, as provided by the ordinance, that has 100 feet on either side of the edge of the stream. The existing location of the stream is outlined in red on the map. The red areas show the encroachments into the stream corridor with either a parking lot or building improvements. At the closest point, the parking lot is 45 feet from the edge of the stream, and the building is about 68 feet from the edge. He presented a ground photo standing at Metcalf looking to the southeast, noting the lake was to the left and the fire access road that would be widened. The stream is hidden by the trees, and there is about 35 years worth of tree growth present, since the stream has been moved last. The building footprint area would go into the trees with the proposed improvements.

Mr. Meyers presented a view from across the lake looking back toward the southwest, showing the development pad site and an access road. He provided a view that was taken last fall standing in the creek with 123rd Street. There is a lot of rock on the right side of the stream and some riprap and other improvements to the stream channel that have been done over the years.

A lot of movement of the stream was manmade, as well as some natural movement of the stream. Mr. Meyers referred to the stream armoring and stated that the dam stability has potential for erosion at the base of the dam due to the stream location next to the development site. The original plan for Corporate Lakes was approved in July of 1987, and it showed a small 5,000 square foot, two-story conference center on the site. That plan was revised in September of 1987 and showed that same piece of ground as open space. All the other subsequent plan revisions for the past 23 years until now have shown that area as an open space tract. He referred to the plan map that was later revised, which shows Tract A, Corporate Lakes of Metcalf, as the piece being proposed to be built upon now. That plan included a note on it from 1987 that indicates Tracts A through F are open areas as shown on the plat. The plan approved in April of 2001 and a plan in 2005 had the same information, showing no improvements on Parcels A through F, and those areas were intentionally planned for open space.

Mr. Meyers referred to the history of the stream, stating that the red lines shown on the map indicate the stream's location in 1941. The green line shows the stream's location in 1941 from the original location. A lake was being contemplated for this area, and the red areas outline the current site location and the encroachments. Some changes were made in 1954 where the lake was built, as well as a dam. The stream had been relocated behind the dam and ran through the site. The yellow line represented the stream location in 1977. The stream shows different areas of location between 1954 and 1977. Somewhere between 1954 and 1977, the dam was widened. A lot of fill occurred on the site, so the stream was relocated again. In 1999, some changes occurred where Metcalf had been widened and gabion baskets constructed to box in the stream by about 200 feet. The stream was shown as running east in the area in the 1970s, but it was no longer running that way by 1999. There was some active erosion occurring since it had been moved around a lot, and the stream was trying to regain some of the natural pattern it may have originally had.

After 123rd Street was built about 10 years ago, more riprap was added on the south bank and the north bank. Currently, about 80 percent of the stream has been riprapped to some extent on the south side of the stream. On the north side, much less riprap was added where two-thirds of it had not been affected by riprap or any other kinds of added changes. There have been many manmade relocations, at least three times counting when 123rd Street was built. The stream was partially armored when Metcalf was built and when 123rd Street was built. There has been some stream erosion in the past, which is a concern.

Mr. Meyers referred to the stream armoring, stating that one of the main components in passing the stream corridor ordinance was to get away from bank armoring as a reaction to building too close to streams. The stream corridor ordinance specifically prohibits relying on the armoring process to reduce a setback. The reason for that is that armoring requires maintenance. Armoring can cause unintended consequences and may cause erosion upstream or downstream from a specific location. In the current case, staff feels if the site improvements are built as proposed, there will be an increased change that might require more armoring on the north bank much sooner than it might have otherwise been needed if there were no improvements placed there. The basic premise for the stream corridor ordinance is to let streams move and erode and to keep things far enough back where they do not create a problem.

The site in question sits entirely on fill and is located near a significant drainageway. The proposed building to be put on piers could create concerns with the settlement of the dam. The concern is more about erosion with the dam and the proximity of the improvements to the site. A geotechnical study that was done by the applicant confirmed that the north bank of the channel may be susceptible to erosion. Although the dam does not appear to be eroding currently, it may not have had a change to adjust to the 123rd Street improvements, but is a potential for erosion to occur in the future.

Mr. Meyers stated that the Stream Corridor Ordinance has been in place since 2002, and there have been 45 projects that have dedicated the stream corridor and some more projects that have been approved but not built. Ten of those projects were granted some kind of a stream corridor deviation for a setback requirement and deviations for other issues. Of those, five of them involved a deviation for putting in a new building that encroached some amount into the stream corridor. The largest deviation to date allowed a building to put 55 feet into a 100-foot setback, which is similar to what is currently being proposed. That deviation request was from the Erickson Campus located at 139th Street and Metcalf, which was granted in 2005. The main difference between the current requested deviation and the Erickson deviation was that the current request involves a much larger stream and drains in excess of 600 acres of tributary area; whereas, the Erickson property had below 200 acres of tributary area.

Mr. Meyers also pointed out that the Planning Commission considered the applicant's revised proposal at a public hearing on April 26, 2010, in which no one spoke at the hearing. The Commission voted 9 to 2 to recommend denial of the revised preliminary plan. At the initial request on February 22, 2010, one person spoke at the public hearing and expressed concerns about bank erosion on the south side of 123rd Street. The Commission voted 8 to 2 to recommend denial of the request of that plan at that time.

In summary, staff's concerns involve some evidence of past stream corridor erosion; the geotechnical report confirms the north bank may be susceptible to erosion; there should be no reliance on armoring the stream corridor to reduce the setback distance; the intent of the ordinance was to let streams erode and to put things far enough back; and the primary concern is stream bank stabilization since the stream has been moved around a number of times in the past. Staff recommended denial of the deviation request and the preliminary plan for Corporate Lakes at Metcalf, 123rd Street and Metcalf. If the application of the deviation is approved, staff recommended approving stipulations a through n.

Mr. Goodman asked if there was negativity associated with armoring the north bank where it could make the situation worse. Mr. Meyers stated that staff would not propose any armoring to be installed at this time, because there is an increased likelihood that armoring might be necessary in the future. Armoring is not consistent with the ordinance and it increases maintenance for part of 123rd Street, part of Metcalf, and the private improvement, which is the main negative. Mr. Goodman understood 80 percent of the south side was already armored, which is maintained by someone else. He asked how much of the north side was already armored. Mr. Meyers stated that about one-third of the north bank is already armored. Mr. Goodman asked if potentially two-thirds of the north bank would ultimately be armored. If it were to become necessary in the future to armor the remaining two-thirds of the north side, Mr. Goodman asked if that could be done in such a manner to eliminate concerns relating to future meandering or erosion. Mr. Meyers stated that with sufficient armoring, a workable situation could be created, but it also creates a long-term maintenance issue for someone to deal with, as well as the associated costs. He felt a solution could be engineered.

Mr. Goodman referred to the issue with the dam and asked if there was anything about the proposed construction that would worsen the stability of the dam. Mr. Meyers stated that the main concern is the fact a stream is running at the base of a dam, and it is questionable as to what the fill material was over the years. He felt an erosion issue of the dam was at stake opposed to anything else. Mr. Goodman asked if settlement or erosion could occur even if the proposed building is not built. Mr. Meyers agreed. Mr. Goodman understood the five standard requirements for a deviation and that staff had indicated in their report that the applicant's request meets four out of the five requirements. These are the four most difficult requirements. The first requirement is that the deviation not adversely affect the rights of adjacent landowners; second, is that the strict application of the provisions of the ordinance would not constitute unnecessary hardship upon the landowner; third is that the deviation not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and the last requirement is that the granting of the deviation will not result in an extraordinary public expense, create nuisances, cause fraud or victimization of the public and comply with existing local, federal, or state laws. He felt the most vague deviation requirement is that the deviation must meet the spirit and intent of the ordinance, which is the requirement staff, feels the applicant does not meet. Mr. Meyers stated that there have been many deviations granted for many years. Mr. Goodman asked what the difference was between granting and not granting a deviation. If the spirit of the ordinance is not to ever allow armoring, he asked if armoring was allowed in other deviations granted. Mr. Meyers did not feel any of the other deviations envisioned any bank armoring. Mr. Goodman asked if staff could foresee a situation where armoring would be the basis of the deviation. Mr. Meyers did not feel staff would support a deviation request that

relied strictly on armoring to protect a building site from a bank failure. Mr. Goodman asked if staff would support the deviation request based on armoring, because the armoring would not do the job or because the armoring was not consistent with the spirit and intent of the ordinance. Mr. Meyers felt both reasons would apply. He felt any armoring will do the job for a certain length of time if designed and constructed correctly. However, armoring can take away from some of the other things that are part of the spirit and intent of the ordinance, such as preserving the vegetation and habitat and some of the items that are not the main focus. Mr. Goodman asked if staff did not see a unique situation with having 80 percent of one bank already armored and 30 percent of the other bank armored. Mr. Meyers was not aware of whether any of the other deviation requests they have seen have had a similar situation to the current request.

Mr. Lyons asked if there was any concern about potential flooding along the stream that could affect the area where the building is proposed to be placed. Mr. Meyers stated that the building and parking permits are for areas that are located up high, and the creek is located in the Federal Emergency Management Agency (FEMA) regulated floodplain. However, in this particular case, there is no concern about flooding of the building or parking areas. Mr. Lyons asked if the stream was open all along the area or buried in the ground at some point underneath the road that is in place. Mr. Meyers stated that the stream was mostly open to the south, but the stream was mostly enclosed to the north and west. The lake in that area was constructed in 2003, and it is mostly enclosed upstream and mostly open downstream. This is the area where it changes to an urban enclosed system to more of a stream type system. Mr. Lyons asked if there was any option to enclose the streamway. Mr. Meyers stated that there are provisions in the ordinance for enclosing small isolated sections. He pointed out that although that could be done, it would be very expensive to do. There would be 600 to 800 feet of a large diameter box to work with which might be a better solution than putting in the site improvements where they are dealing with the deviation that is required. Mr. Lyons asked if the stream was enclosed, whether that would relieve staff's concerns about the applicant placing a building on the site. Mr. Meyers stated that staff's primary concerns involve bank stabilization, and future bank stabilization, which would not exist if the area was boxed or enclosed.

Mrs. Donna Owens expressed concern about the liability the City would have should they approve the applicant's request. She asked what kind of liability the City would have if the project failed. Mr. Meyers stated that if the project was approved, stipulation e would require the owner to sign an indemnification agreement and the City's standard stream corridor maintenance agreement, which include provisions that hold the owner responsible for bank stabilization that would be needed. Mrs. Owens asked if the City would have any risk involved in the proposed project. Mr. Meyers disagreed.

Mr. White referred to the hold harmless clause asking if that was something that would run with the land and whether that clause would remain if the land was sold. Mr. Meyers agreed. Mr. White asked if any potential erosion was contemplated that would jeopardize the integrity of the dam. Mr. Meyers stated that the issue really may depend more on the time scale. There has been some erosion in the past, particularly along 123rd Street, in the 1990s, which took place over a 20-plus year period. He felt there would be a fairly long time period before they get into dam erosion issues. Mr. White asked if the City or some other agency regularly inspects the dam.

Mr. Meyers stated that the dam was private and it is under the size threshold that requires it to be a state regulated dam. Mr. White asked if there was any way of knowing that the dam is jeopardized. Mr. Ebel stated that more than likely an earthen dam is going to be made primarily of clay materials. Most dams such as the one in question, will fail under what is termed seepage. Seepage occurs when the water runs underneath the dam, which may be very difficult to detect since there is currently a stream in there today. There are geotechnical reports and other things that can be done to determine if there is seepage that would violate the integrity of the dam. The piercing of the building is a very difficult engineering challenge, because the integrity of the dam will be violated by drilling the piers. The reason for drilling the piers is to control the excess load or weight on top of the dam, which could cause a slip failure, because the dam is basically supporting itself under its own weight. Additional weight then must be distributed down through the dam to a more stable surface, such as the bedrock.

If staff felt there was a reasonable potential that erosion could jeopardize the integrity of the dam, Mr. White asked what safeguards were in place for those living downstream if the dam happens to collapse or leak. With building a structure on such a dam, Mr. Ebel felt the applicant would likely want to make periodic inspections. It is unique to build a structure on top of an earthen dam, but it can be done.

Mr. White asked if those who live south of 123rd Street would get extra flow that comes out as a result of the erosion. Mr. Meyers agreed, but noted that with the box culvert located under 123rd Street controlling the situation in the south, he did not feel a material change would be seen in that situation other than additional silt that comes from the erosion. Mr. White asked if the effect of erosion was primarily limited to the tract. Mr. Meyers agreed.

Mr. Hix referred to Mr. Goodman's question regarding the spirit and intent of the ordinance, stating he understood the writing of the stream corridor ordinance created a hope they would not see armoring done to facilitate building in the future. When he served on the task force for developing the ordinance, he had taking tours of places where the effect of the spirit and intent of the ordinance would apply. He noted that one of their topics of discussion was the altering of nature's energy in moving water. This was the mindset of the task force as it made its recommendation to the Council.

With regard to the deviation requests, Mr. Hix felt the task force was choosing specific footage for the stream corridor width. They did not want to see a project go down because it was one foot over the clearance requirement and that a more common sense approach should be used. He felt the task force realized that there would be times when deviations would be appropriate without creating environmental damage of any significance, as well as times where it would not create flooding damage. The task force also recognized they would need to make judgment call at times in these types of decisions. They could only expect the Council to look at the degree of infringement on the ordinance when those times occurred.

Mr. Skubal asked if the water flow area was considered a stream or drainage ditch. Mr. Meyers stated that the water from that area drains over 600 acres. It carries water frequently, if not always, and it is located in the FEMA floodplain. The area where the water comes out is at Metcalf and runs along 123rd Street in portions of the site where it can likely be considered a very large roadside ditch. He felt the water flow

represented more of a stream. Mr. Skubal asked if the area where the water drains ever dried up. Mr. Meyers did not feel the area every dried up, and water constantly runs through it. Mr. Skubal asked who armored the stream when that process was done in the past. Mr. Meyers stated that the City armored the stream in 1990 when Metcalf was built. When 123rd Street was built, the stream was armored again. At that time, the stream was running well into the right-of-way, so 123rd Street had to be relocated or the stream needed to move. Both of these armorings occurred before the stream corridor ordinance was developed. Mr. Skubal asked if the City relocated the stream at that time. Mr. Meyers stated that when the City built 123rd Street, a section of the stream was moved. Mr. Skubal asked where the borings were approximately located. Mr. Meyers stated that the applicant could provide that information.

Mr. Spears expressed concern with the volume and velocity of the stream. He felt there would be a slight increase in impervious ground with the widening of the street and the construction of the proposed building and parking lot. He asked how much the volume of the stream would be increased by that new construction. Mr. Meyers stated that the increase would be a very inconsequential amount. Mr. Spears asked about the increase in velocity of the stream if the stream is armored. If the stream is armored, Mr. Meyers felt that may increase the velocity in that armored section possibly creating some impact upstream and downstream, but the amount is difficult to determine. Mr. Spears pointed out that they already have some serious flooding problems downstream off Tomahawk Creek and asked what percentage of impact would occur. Mr. Meyers stated that there would be less than a 1 to 2 percent impact. Mr. Spears asked if the FEMA floodplain would be impacted. If armoring is done, Mr. Meyers stated that would require a floodplain development permit. One of the requirements would be that no impact to the flood elevations could occur with any armoring that is done.

Given that 80 percent of the south bank is armored and 30 percent on the north bank is armored, Mr. Goodman asked what amount is currently unarmored within the site plan. Mr. Meyers stated that the stream is about 675 feet from where it leaves the box culvert under Metcalf to 123rd Street. On the north side, about 250 feet is armored, which would leave about 425 feet that is not armored. On the south side, there are about 560 feet that is armored and about 140 feet that is not armored on that side. Mr. Goodman asked if the Costco development was located to the west of the site. Mr. Meyers agreed. Mr. Goodman asked if the stream on the west side of Metcalf had been enclosed. Mr. Meyers stated that most of the stream has been enclosed, but there was a lake built there and a little bit of an open area downstream on the side of the lake. Mr. Goodman referred to the area immediately adjacent to 123rd Street where the stream goes into a culvert under 123rd Street and then becomes a natural stream again. He asked if the Costco development would have been possible under the City's current stream corridor ordinance. Mr. Meyers stated that some reconfiguring of the site elements over the top of where the box culvert went through would have had to have been done.

Mr. Chase Simmons, Polsinelli Law Firm, 6201 College Boulevard, appeared on behalf of the applicant, Mr. Mark Cohen, the property owner. He noted representatives from Pars Engineer and the architect for the project were also present. He presented an April 6, 2010, letter and stability report prepared by KTI, Inc., who was hired by Pars Engineering to conduct the geotechnical study. He pointed out that there was nothing in that report as clarified by the letter, that suggests there has been any armoring

done on the north side of the creek anticipated or required. Repeatedly, the letter written by the geotechnical consultants indicate there is no evidence of armoring and it is not believed to be necessary. The letter does state that the site needs to be monitored on both sides of the creek, including the area that has been armored in the past. He felt the report and letter make it very clear that armoring is not required or warranted. Since this has been such a big issue, the applicant would be agreeable to a stipulation that prior to final plan approval, if additional testimony was needed from the geotechnical consultants or whomever is necessary to provide that information, they would provide and participate in that discussion. However, it is a very difficult issue to deal with because the applicant has not planned to provide any armoring, but it is an issue that continues to arise.

Mr. Simmons referred to a question that arose as to what they could do with the site and noted that it would be very difficult to enclose the entire site. The reason that is difficult is because there is about a 700- to 800-foot long stream or drainageway in that area and obtaining a permit over 300 feet becomes very difficult. He explained that he was involved with the Costco permit that covered the area back to the west of the same site, which was a much larger permit. He felt that project set the precedence by the testimony given by the landowners and the City of Overland Park, and it was one of the first big Corps of Engineer permits that they went through under the new regulations in the early 2000s. There was a large creek that ran through the old Wallingford property, which had eroded over decades where the bed of the creek was situated 15 to 20 feet in the air. That entire area has been enclosed, and now there is an improved creek in that area upstream. Before the stream corridor ordinance was put in place, there was a natural habitat in that area.

Mr. Simmons felt boxing in the current site and obtaining additional Corps of Engineer permits would be very difficult to do. Another important issue that arose was whether the creek was always wet, and he pointed out that there was always water in the creek in its natural condition. Due to the improvements upstream and the detention pond, there were periods of time that they anticipated there would be dry periods where the creek would dry up, which was an environmental concern of the Corps of Engineers and other agencies they have to report to. The creek will dry immediately south of the detention pond from time to time, but further east where there is more of a natural condition, it is typically wet.

Mr. Simmons referred to the timeline of events that occurred on the site, noting the property was purchased in 2002. The property has always been a private parcel and never been included in the ownership association. This lot is still assessed as a vacant lot. Staff has not indicated any zoning concerns, planning issues, traffic issues or life-safety issues regarding emergency access around the dam. He also pointed out that there were no downstream flooding concerns for the building or anything in the vicinity. He felt the real issue came down to the corridor and some stability and erosion concerns. He felt it was clear the only reason the stream has ever moved was because it has been moved by bulldozers repeatedly, whether it involved the original construction of the lake or enlargements to the lake. Additional dirt was put behind the dam at one point, as well as the Metcalf and 123rd Street improvements. The vast majority of the movements occurred when there had been some sort of major construction project going on in that area.

Mr. Simmons presented a picture of the parcel in the context of the Costco development, showing that there was a stream in that area years ago, but everything upstream of Metcalf is fully improved.

Mr. Simmons referred to the concerns outlined by staff where the impression is made that the site was not intended for development. He noted that the site was very flat, graded as part of the overall development in the beginning, mowed and cleared of vegetation other than grass. He noted that the site has never been in a natural condition since Corporate Lakes developed it. The property is privately owned since the tract was created, which cannot be said of all tracts in Corporate Lakes. There are a number of other open spaced tracts, including the big lake and some smaller tracts that were deeded over to the association once they met a certain build-out requirement.

Mr. Simmons presented a picture of the original 1987 zoning that shows the building has a very similar appearance to the current building proposal. Access shown on that picture has right-in and right-out only from 123rd Street rather than from Metcalf. He felt a different plan was presented by staff where access was coming from Metcalf with a slightly larger building. The original approved plans showed a building on the lot. The second concern of staff was that they felt the site could not be safely developed. He felt the site could be developed, and there is only one thing standing in the way, which is the required deviation from the stream corridor. He felt a real key point was the fact that nothing the applicant is proposing impacts the stream corridor at all. The building and parking lot will be placed on a flat lot. A stream is located in the area that should be protected by the ordinance. Even though the applicant's proposal is infringing on the calculation of the corridor, nothing natural in the area is being affected. He referred to the stability of the dam and felt the drilling of the piers down to the bedrock, which will be about 15 to 17 feet below, is not really a big engineering issue. The building and the piers will be located behind the dam. The dam was there at one point, and then the stream moved again because the building pad was put in. There is area behind the dam that is not the original dam, which is where the drilling will occur for the piers.

Staff earlier indicated that there is no storm water runoff problem that is significant downstream. Mr. Simmons stated that they are doing what they can as they get into the site plan to use some pervious asphalt and things of that nature to help mitigate any water quality concerns that may arise.

Mr. Simmons presented the original plan that was presented to the Council. There were a couple of votes in favor of the plan from the Planning Commission. They had additional meetings with staff and thought going to another plan of a slightly different scale would put the applicant closer to meeting the spirit and intent of the ordinance. They changed the building location so that about half of the building violates the stream corridor ordinance and half of the building is outside of that corridor. The red portion on the map outlines part of the building located within the corridor. The blue portion outlines the building and parking lot located outside of the corridor. The green portion is the remaining portion of the tract that is located within the corridor, which he felt had no impact on the corridor. Staff wants some portion of the parking lot to be impervious and other portions pervious. However, the applicant is willing to make the entire parking area pervious asphalt. According to water quality and runoff conditions, what is occurring now or falling on the flat grassy area and soaking into the soil and down into the creek will be mimicked by the future condition. This is the

proven and chosen method of trying to mimic that condition when they have to build parking lots. Even though the applicant's entire development is located out of the natural corridor, but within the established corridor by the ordinance, the applicant is trying to minimize the project. He noted that 4.1 percent of the site is located outside of the corridor. The entire remaining portion of the site is located within the corridor, representing over 95 percent. Within that 95 percent, only 1.6 percent is represented by that portion of the building that is being put in the corridor. Staff has indicated this to be a huge deviation. However, from the applicant's perspective, they have minimized this issue as much as possible. He noted that he had some other building designs that could possibly tweak the plan more.

After reading the ordinance and reviewing the pictures from the consultant in the original report, Mr. Simmons felt the spirit and intent of the ordinance is to protect streams as best as possible as weighed against the impact on private property owners. He referred to the stability concerns, stating that the applicant does not plan to armor the north bank, and they have reports that indicate armoring is not necessary. The only planned construction will be in the flat, graded area. There is a statistic on the bedrock that it is 17 to 19 feet below the surface, and this project will not take place without good engineering reports and good contractors.

Mr. Simmons entered the KTI letter into the official record. He noted from the letter where it states that (April 1, 2010), "It appears that all areas along the stream bank expected to erode have been armored and to armor the remaining unreinforced vegetative areas is not indicated by the present criteria. We have not found any outward signs of erosion or scour on the north side of the creek. It appears armoring of this area is not warranted at this time." He referred to some comments made by the Planning Commission, stating that Commissioner Thacker had asked what would happen if there is no building on the site and the stream began to meander. Staff responded that the City would have to armor the bank, since meandering to the north would compromise the dam, and the city streets to the south and west would be compromised. The stream cannot be allowed to move whether a building is installed or not. KTI did not feel there were any problems to the north and that it would likely not meander to the north. The studies say that armoring will not be necessary. The stream cannot be allowed to be moved because there are important assets on all sides of the stream, which is why it has been armored in the past and will continue to be monitored.

Mr. Simmons pointed out from the stream corridor ordinance where it says that it would not be contrary to the public interest to grant the deviation, and a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. He felt that type of hardship case had been established, provided the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice is done for the applicant. He referred to the five standards under Kansas law for deviations and variances, stating that staff has indicated they believe the applicant meets four of the five standards. He felt staff wanted to preserve the corridor to allow for future stream migrations, which they have also indicated as a major reason why the corridor was put in place. He did not feel that reason fit the current circumstance. He pointed out that the stream will have to be maintained and protected regardless of the pressures it has now.

Mr. Bob Sanders, Pars Architecture, 6355 West 110th Street, architect for the project. He stated that he along with Mr. Hix served on the task force, which formed in 2001

with a purpose to formulate an ordinance, which is the stream corridor ordinance in place. At that point, they understood they were dealing with a complex subject with the streams and the fact that streams should be natural where possible. He noted that streams in undeveloped areas were allowed setbacks, meandering consideration, and consideration of future development adjacent to existing streams and rivers. He felt the difficult part of the current matter is dealing with streams or ditches located in a developed area or redevelopment area. He felt the applicant was meeting the spirit and intent of the stream corridor ordinance, and that they have done everything possible to stay out of the 100-foot setback. There is no belief any impact is being caused on that portion of the stream. The stream alignment and character of the entire area has been changed due to manmade manipulations of the site. The applicant is trying to save what was there in that quadrant, including the street construction on Metcalf and 123rd Street and the dam.

In consideration of the proposal, Mr. Sanders noted that Mr. Hix had pointed out that a provision for a deviation would have to take place, because not every situation is going to fit the ordinance requirements. The applicant's situation does not fit exactly. He felt the only condition staff felt the applicant was not meeting is the general intent and spirit of the ordinance, which the applicant believes they meet.

Mr. Skubal asked if the geotechnical report had indicated a potential for failure on the north side of the dam. Mr. Simmons stated that issue has come up repeatedly, which was the reason for having KTI issue another letter about the situation. He explained that he would be happy to bring KTI representatives to testify to that issue or do whatever is necessary.

Mr. Greg Miles, Pars Consulting Engineers, 14109 Cambridge, Leawood, referred to the 1941 drawing when the dam was first built. Dams are normally 20 to 24 feet wide and come down 3 to 4 feet in the front and about 2.5 feet in the back. There was a stream situated along the backside of the dam. When the stream was moved, some of the pond was dug out, but the dam stayed in place and was filled in behind, which is the area the applicant is looking to build upon. The dam was not rebuilt, and the embankment is clay filled. The borings showed that clay filled embankment to be 10 to 13 feet deep. Clay fill is not a bad fill, but the uncompressive strength of the soil is about 2,500 pounds per square foot. The piers are required because they do not know how the ground was compacted that many years ago. However, they were concerned about differential settlement, and is why they would drill piers down to bedrock only an additional 3 or 4 feet deep, keeping the differential settlement down to one-quarter of an inch.

Mr. Skubal asked if any geotechnical investigation was done on the dam. Mr. Miles disagreed. Mr. Skubal asked if there had been any cores or Shelby tube samples from the dam, which are used to acquire undisturbed soil samples from compacted soil. Mr. Miles disagreed. Mr. Skubal stated that although it is unknown what the material is in the dam, KTI has indicated that the dam is stable. Mr. Miles stated that the dam has not been moved since 1945 and has about 7 feet of water in front of it. The dam hardly holds back water, because it was built so that the water would go through the spillway. The dam is not built to act as a detention pond. Mr. Skubal asked about the expansion of the road that will be necessary if the project is approved and what would occur with the top section of the dam. Mr. Miles stated that the top section of the dam currently has asphalt on it, which will be removed. They will likely disturb only the top foot of that area to install a 24-foot wide concrete pavement in place of the asphalt.

Mr. Skubal asked if the soil would be stabilized, or if they would go over the top of the dam. Mr. Miles stated that they would come back with a flash process.

Mr. Skubal referred to the piers that are proposed to be drilled on the site and asked if this process still took place when a dam is being considered at the site. Mr. Miles stated that process takes place frequently on the back side of a dam. The piers do not need to be very big in size for the weight of the building. However, for inspection purposes they have to be 30 inches and drilled 1.5 feet into the bedrock.

Mr. Goodman referred to staff's comments relating to the future possibility that if something such as armoring became necessary to fix the stream that a stipulation would require that process to be done at the applicant's expense. Mr. Meyers stated the stipulation that addresses that issue requires a stream corridor maintenance agreement to be in place. The City's standard maintenance agreement includes a provision that any bank stabilization projects are the private property owner's responsibility. If at some point in the future staff were to determine, due to the migration of the stream, that bank stabilization was necessary, Mr. Goodman asked if the staff would require the applicant to do that according to stipulation g. Mr. Meyers agreed. Mr. Goodman asked if the applicant understood under the agreement that if armoring or some other process become necessary in the future that the applicant would do that at their own expense under the direction of the City. Mr. Simmons agreed that was the applicant's understanding, but wanted to be provided the opportunity to see that language before the final development plan and building permit process.

If nothing is done on the site and the stream meanders creating a situation where stream bank stabilization must occur, Mr. Goodman asked whose responsibility that would be if the building is not built. Mr. Meyers stated that since this is private property, the City should have no responsibility, but there is no recorded document stating the City has no requirements. If nothing were built on the site and there were bank stabilization problems to the point of endangering the dam, that property owner could always take that request to the Governing Body and evaluate it on the merits similar to what is done on any other bank stabilization project. Mr. Goodman asked what kind of stream bank stabilization project would be done if the stream would meander endangering the dam. Mr. Meyers stated that information is unknown at this time, but possibilities would include armoring, bio-engineering or boxing in the stream. A preliminary engineering analysis would be done, and staff would look at alternatives. Mr. Goodman asked if there was a likelihood that the stream will meander in the future in such a way that it will create a need for stream bank stabilization. Mr. Meyers stated that he could not say one way or the other, because there have been many disturbances to the stream over the years, including City projects and private projects. The stream is still adjusting to the urbanization on the watershed. He pointed out that streams often take decades to fully adjust to new conditions. It is likely there will be some erosion to the stream in the future.

Although no armoring is necessary on the north side, Mayor Gerlach asked if any armoring would be required on the south side. Mr. Simmons stated that he did not study possible armoring opportunities as closely for the south side, but was told by his engineer that it would not be needed for that side. Mayor Gerlach asked if no armoring at all would be included. Mr. Simmons stated that there is no indication in the updated reports that any armoring is necessary on the north side. If this property was part of the overall site plan, Mayor Gerlach asked why the density should be increased above the 263 feet that was already surpassed with the numerous changes

that have occurred with the land over the years to increase density on other parts of the plan. Mr. Simmons noted that there was a time where the proposed corridor was booming and Corporate Lakes was not doing as well. Much of that had to do with the original approvals going on, such as architectural requirements that were closely tied to some certain styles of residential architecture. There were density requirements. As the City has relaxed some of its original rules for density or architectural requirements, the Corporate Lakes development has been successful over the last few years. When Mr. Cohen purchased this property, the lot had always been considered a buildable lot. Mayor Gerlach stated that there have also been requests presented to the Council to remove certain things in order to move the density somewhere else on the property. He noted that there are many projects that would like to go above the density level, and increased density levels are only approved for certain reasons. He asked what the justification for the applicant to receive approval for allowing the density to go above its limit. Mr. Simmons stated that he did not feel any suggestion was being made by staff or any of the applicant's neighbors that there is some drawback to the public or the City by adding 5,000 square feet to the project. He felt putting in a nice quality building at the proposed site will help refine that corridor. He also pointed out that this was the only property Mr. Cohen owns on that side of Metcalf and was not the one being benefitted from other densities being moved around, because there were many other professionals involved. If there are any impacts from the project, he was willing to address that issue.

Mr. Skoog referred to comments made about the project having no impact from the construction, but wanted to ensure the benefit of the corridor is that it has room to meander without bothering anything. However, if the stream decides to meander toward the dam, it would not be able to do so because of the project. Mr. Simmons stated that there may be some amount of meandering of the stream. Mr. Skoog felt that any possible meandering would be an issue constituting the purpose of having the ordinance in place to address that issue and allow that meandering. He asked who the owner of the dam was. Mr. Simmons stated that the association owned the dam. Mr. Skoog asked if Mr. Cohen was a member of the association. Mr. Simmons agreed. If the dam is damaged and needs repair, Mr. Skoog asked how that would occur. Mr. Simmons stated that if the applicant damages the dam, they would be responsible for that repair. There are maintenance funds available to take care of that situation if there is a problem with the dam in the future.

Mr. White asked if the applicant had any reservations about the "hold harmless" requirement included in the stipulations. Mr. Simmons understood the requirement, but wanted to see the actual language included. Mr. White understood there were alternatives to armoring, such as increased vegetation and things of that nature and asked if the applicant was considering such options as a preventive measure.

Mr. Miles stated that at the present time between the north side of the stream and the bank that goes up to the property, there is currently good vegetation in there. This is one of the major reasons the stream does not need to be armored at this point.

Mr. White felt if the applicant was going to use an option that was the least costly to prevent the possibility of erosion that they would seek to put in those plantings now so the erosion does not occur later. A solution was used to increase the vegetation in other projects that encroached into the streamway corridor. He asked what concept the applicant was planning to use. Mr. Miles stated that the applicant was not planning to do anything at this point. When the armoring was put in the stream, the City armored the outward bends. Some plantings could be added, but there is a good stand of trees currently on the site. Mr. White asked if the association inspects the

dam on regular basis. Mr. Simmons was not aware of whether the association makes those inspections, but the consultants make a visual inspection. Mr. White asked if there were any agreements that exist between the applicant and the association concerning any damage that could take place. Mr. Simmons felt that issue was covered under the association rules, and there is no agreement between the applicant and the association at this time. That issue would be covered under state tort law and trespass law; however, as they move forward with the project, some easement work will need to be done over the access. There will be some agreements at that time, and the same hold harmless and indemnity clauses will be included that are required by the City.

Mr. Hix referred to the spirit and intent of the ordinance and noted that one of the major spirits of the ordinance involves the environmental spirit, which addresses above and beyond flooding, damage and dangers and that kind of thing. Part of the reason for the 100-foot setback was the belief that the environmental activity was occurring within 100 feet of a stream. Even if a stream does not meander, there are still strong reasons to not build upon it. In the current case where the property is at a higher elevation, where it is already flat and being mowed, he asked if there are any environmental impacts that should be taken into consideration when looking to meet the spirit and intent of the ordinance. Mr. Meyers stated that although the property is at a higher elevation and mowed, there are some environmental impacts in that it filters some pollutants before they run down into the creek. He did not feel this was a major impact in the current situation. If a stream corridor was dedicated for a project, the property was not mowed and it grew back to its natural state, then there is more benefit. Mr. Hix asked if the applicant's use of pervious material for the parking would have any environmental impact on the distribution of the water. Mr. Meyers stated there was a benefit to having a pervious pavement. One of the questions that will arise at the final plan stage, if the plan is approved, is whether it is a good idea to have a pervious pavement that funnels water into an embankment that is part of the dam or behind the dam. Mr. Simmons stated that the intent of the construction of the pervious asphalt would be to mimic the current grass situation.

Mr. Stock stated that considering the fact the proposed building will be situated between a lake and a dam, it appears to be a setup for failure. He understood the building would not be built on the dam, but it appears that way. If the dam were to fail, there would be seepage underneath, which would likely go into the channel. If the dam were to show signs of failure or if there was a building on it versus no building as it currently sits, he asked how that situation would be remedied. He felt what should happen is to provide more fill material behind the dam. Mr. Simmons stated he was not in a position to figure out how the dam would be repaired if problems would occur, but he could provide information about that at a later time. Mr. Stock pointed out that when bank erosion occurs on a stream, there is flow that runs underneath the bank that could cause the top of the bank to fall off. With having 600 acres draining on the current site, he did not understand putting a building on top of what is not an earthen dam. He expressed concern with long-term problems, because he felt this situation would cause serious problems in the future, and that it would only be a matter of time as to when that would happen based on the current conditions. He asked why that would not be a valid concern. Mr. Simmons stated that the site has and will continue to be very well studied. The situation is very mature in terms of the dam. The building will not be placed right on top of the creek, because it will be located 50 feet from the creek. Although engineering is required for this project, there are three different instances with buildings situated in this area very close to detention

ponds. He noted that many residential developments in Overland Park have old farm ponds and detention ponds where many times there is sediment near those ponds. They usually end up installing piers for the buildings in those situations so they do not have to worry about what kind of fill material is on the site and bedrock is sought to be used.

Mr. Stock understood the site had been studied a lot and will continue to be studied in the future. He asked what options can be used if things change once a building goes onto the site. Mr. Simmons felt the use of piers would help fix a dam to prevent it from leaking. He did not feel the fact a building was put on the site would change the option with respect to the dam or the spillway. The area is stable and needs to remain that way since there are assets on all sides that need to be protected.

Mr. Lyons referred to one of the charts shown that indicated the current owner purchased the property in September 2002. He asked if that purchase was made before or after the new stream corridor ordinance went into effect. Mr. Meyers stated that the purchase would have been made about a month before the ordinance went into effect. He noted that the work had been done on the ordinance, but was not passed until October of 2002. Mr. Lyons referred to the map showing the 96 percent of the property located within the stream corridor, and he felt that demonstrates the land is not usable for building from that point due to the new stream ordinance. The diagram shows that only 4 percent of the proposed site is usable outside of the corridor, but the diagram also shows the majority placement of the building and parking lot is located within the corridor. He asked if it had always been the owner's expectation to request a deviation after the purchase was made. Mr. Simmons stated that the applicant did not understand the implications of the new ordinance when he bought the property. A regulation that renders a property completely unusable is why deviations exist. He felt it was significant that the owner bought the property before the ordinance went into effect. If he would not have made that purchase then, it is likely a deviation would have been expected. He also felt the criteria outlined show what is being protected in the corridors was being provided in the applicant's proposal.

Mayor Gerlach referred to the plan that showed the building on the site and noted that the building would not have been on the plan when the owner made his purchase, because there was a separate plan in 2002. Mr. Simmons stated that the first two plans in 2002 showed no building on the site.

Mr. Goodman felt it was important to rely on the professional staff and experts' opinions. He pointed out that Mr. Ebel's comments relate to putting a building on or near the dam could be done. Mr. Ebel agreed and stated that they could engineer a solution, but anything on the front or back of a dam is not simple to work with and not done very often. Mr. Goodman felt the most important issue to consider is whether the project meets the spirit and intent of the ordinance. He understood that the proposed lot is the last lot on the site that is subject to development. If the building is allowed to be built and the stream continues to meander in such a way that it jeopardizes the dam or causes some other kind of problem, he felt that situation would be addressed adequately by two stipulations. Stipulation g refers to the maintenance agreement, which requires the applicant to stay consistent with what has been done in the past to maintain the streamway corridor. Stipulation i is the hold harmless requirement, which would eliminate the City's responsibility for future streamway corridor projects should they become necessary.

Mr. Goodman felt the proposal was unique, especially considering the fact those 1,375 feet of the stream will run through the project with 58.9 percent of already armored. The stream has already been protected against further erosion. Looking to the west, most of the stream has been boxed in, and upon exiting the property it goes through a culvert to get under 123rd Street. There is now only 41 percent of the stream that has not been artificially affected. He also felt there did not appear to be any flooding concerns as a result of constructing the project. He felt this was a good situation to consider a deviation request.

Mr. Skoog moved to support the Planning Commission's decision and deny the revised preliminary plan for Corporate Lakes at Metcalf. Mrs. Owens seconded the motion.

Mr. Skoog felt there were two real benefits to the project. First, the building lot is favorable and the building could be very attractive on this site. The second benefit to the City is that there is no responsibility to fix the stream in the future if problems occur. He felt the overall project concerned a bigger issue than the stream corridor. He pointed out that about 98 percent of the project is located in the stream corridor according to the ordinance. He felt there would have been potential to get past that issue if there were not other things involved, such as the fact that they treated the project as a Master Plan project with accompanying densities. He did not feel the thought process should change if they sell off one lot. He did not feel a case was made by the applicant when the Mayor asked about that issue. He felt the dam being located on the site was questionable with a building on the site. He expressed concerns about the downstream effects, since the stream had been moved a number of times. He pointed out that the Planning Commission has considered this proposal twice and voted 9 to 2 against approval.

Mr. Lyons supported the motion to deny the request. He felt there was sufficient opinion from staff that this is not necessarily a good idea. The discussion about the dam showed that the true condition of the dam is not known at this time. Although pylons could be drilled and the building placed upon them, staff stated that was not necessarily something that is typically done next to a dam and there may be an impact on the dam. The stream is another issue. He referred to the diagram pointing out that the entire property is located within the stream corridor setback except for 4 percent. He felt the discussion of the spirit and intent of the ordinance led him to believe that a common sense approach was taken as to whether it is the right thing to do. He felt the entire property was shown within the streamway setbacks by a large amount. He also felt the ordinance that was approved in 2002 had a rationale as to why it was needed to specify a setback and why buildings should not be put within that setback. He did not feel it was the right thing to do at this point in going forward.

Mr. Stock supported the motion to deny the proposal and felt the issue was about the streamway corridor in terms of the intent of the ordinance. In considering other projects that were built in the City too close to streams, he had seen the damage to the structures. He had also seen residents come forward at Public Works meetings requesting assistance in addressing flooding issues and damage to their property. He felt the reason in passing the ordinance was to minimize the future impact. He referred to a property located 143rd Street and Antioch that experienced substantial water damage because it was built too close to a stream. He also noted that there was some apartments located very close to the same area that have walls built closer to the stream that are crumbling due to the pressure and the change in the stream and how it has meandered over time. Although he puts a lot of value on expert testimony, at the same time he questioned what the development will be like 30 to 40 years from

now if the current project is approved and what will happen to the property over time. He noted that there are small parcels of land that will not get developed due to the stream corridor ordinance.

Mr. White felt there was a problem in predicting what the water will do in this area. He felt the property owner was willing to take the risk. He felt that the creek will meander in this situation. The stipulations included in the request appear to protect the City, but he felt they create a risk for the applicant. He felt this might be a situation where the stream corridor ordinance had an unintended consequence of making an otherwise buildable parcel of land not buildable. He did not feel that was the intent when the stream corridor ordinance was passed. He opposed the motion, because he felt the project could be saved with the appropriate work done.

Mr. Skubal opposed the motion. He was not fearful of the dam having problems. Although they must be aware of the stream corridor ordinance, he felt the City would be obligated to fix the stream one way or the other if it tends to meander.

Mr. Hix supported the motion. If there had not already been a final development plan approved on the site without building on it, he felt an undue burden would have been put on the property owner. Since that final development plan was approved at the density levels for the development, there would be reasons for argument for or against whether it was appropriate to add density at the last minute even if there was no stream corridor. He felt the mitigating circumstance in the current case was that he would not have taken the developable property away if a total final plan had not already been approved for the site. At that point, he felt the City and the landowner had an agreement that the project was viable as approved, and the other complications make it more difficult to make an exception to the already approved final plan.

Mr. Goodman stated the fact that a final plan exists only means that at some point in time, there was an approvable final plan. However, that does not mean there may not be a different approvable plan in the future. He referred to the density issue and stated he had not heard any arguments about why the additional density is not acceptable by adding 5,000 square feet spread out over the project other than the fact it is more density than the previous project. He asked what percentage of increased density staff can approve administratively without bringing the application forward for Council consideration and approval. Mr. Ebel stated that staff could approve a 10 percent increase in density. He noted that the total square footage of the project was 271,000 square feet. Mr. Goodman confirmed that staff could approve 2,700 square feet of additional square feet without bringing a revised plan back to the Council. Senior Assistant City Attorney Bart Budetti stated that there were other criteria that would require it to go through the rezoning process. Mr. Goodman asked if staff could administratively approve 2,700 additional square feet for the current project, as long as it met the other criteria. He did not feel the additional square footage was a sufficient reason to not approve the project. He opposed the motion.

Mr. Hix clarified that he was looking for an element of whether the stream corridor ordinance created an unfair situation for the developer by taking away developable land that he had a reason to expect and anticipate was available to him. He felt they were dealing with something that is judgmental when they begin to consider the spirit and intent of the ordinance. When the ordinance was implemented, the time period was extended where they allowed any applications in process to be completed and exempt from the new ordinance requirements. They wanted to ensure the ordinance

was not used in a way that would cause someone to unexpectedly lose developable land. Since there was an approved plan on the land already, he did not feel that was an issue with the current request. He felt this was more the point than the amount of density, since there was a previously approved plan.

The motion made by Mr. Skoog and seconded by Mrs. Owens to deny the revised preliminary plan for Corporate Lakes at Metcalf carried by a vote of 8 to 4. Those opposing the motion were Mrs. Happer Scheier, Mr. White, Mr. Skubal and Mr. Goodman.

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Mrs. Karr referred to Special Event Permit No. 2010-236 that was removed from the Planning Commission Consent Agenda for separate discussion and noted that she had contacted the applicant regarding some questions from Mr. Stock. The applicant had indicated to her that they had two small banners, one placed at 135th Street and Metcalf and one banner adjacent to 135th Street. These banners are relatively small, and they were debating whether to use them. If the banners pose an issue, the applicant would not put the banners back up and forgo those two small banners. The other issue with the bounce house is the primary activity that was going on. The applicant has hired a company that is responsible for that bounce house. There will be a band performing on the site conducting three 40-minute sets on a small rise out in front of the shops. All the merchants in the strip center support the event, which will benefit those businesses there to draw attention to them. An event coordinator has been hired to coordinate the event and oversee the entire event. The first event they held had 65 people in attendance.

Mr. Stock asked if the Council action would supersede the individual's ability to come forth and ask for their own special event permit. Mrs. Karr stated that each of the businesses could request a special event permit, and staff could deal with those requests administratively. Mr. Stock asked if the applicant represented all the businesses combined. Mrs. Karr agreed. Mr. Stock asked if there was the possibility of the businesses forming small sub-entities where those sub entities could be part of different entities, and if every sub entity would get the opportunity to request a special event permit and have it automatically considered. Mrs. Karr stated that each entity is tied to an address; therefore, each business address could have the four banners or signs approved by staff. There have been situations, such as Oak Park Mall, where the Oak Park Mall Association wants to do events, and staff would have to manage how those events are being coordinated, so there is not an overabundance of events going on.

Mr. Ebel stated that when staff reaches a stage of being uncomfortable with a situation, they would bring that issue to the Council.

Mr. Stock wanted to disallow the appearance of a carnival atmosphere at 135th Street and Metcalf. He was concerned about a band playing in that area, especially if it is during rush hour. He questioned whether that kind of event would disturb the traffic.

Mr. Stock stated that he would make a motion to approve Special Event Permit No. 2010-236, but a stipulation would have to be included that would address possible concerns as a result of what is going on at the site, and that the Council revisit the request and address those concerns.

Mr. Ebel stated that according to the special event ordinances every time the Council approves a special event permit, compliance must occur on a site. Staff also visits the site to ensure the compliance is taking place. If they get into a situation that may cause problems, staff would work with the individuals to ensure they comply with ordinance.

Mr. Stock moved to approve Special Event Permit No. 2010-236, including a stipulation that there be no signage banners placed on the southwest corner of 135th Street and Metcalf. Mr. Hix seconded the motion, which carried by a vote of 12 to 0.

#### OLD BUSINESS

MOTION TO RESCIND THE PREVIOUS ACTION APPROVING REZONING NO. 1989-21, ORDINANCE NO. Z-1968 – Vicinity of the southeast corner of 81st Street and Metcalf. Rezoning No. 1989-21 was approved on October 16, 1989, by a vote of 8 to 2.

Mr. Ebel presented the motion to rescind the previous action approving Rezoning No. 1989-21, Ordinance No. Z-1968, and recommended withdrawal of this item. The issue was the issuance of an access agreement with the property owner that was stipulated when the original zoning was going to be published. Staff has received those access agreement documents today, which means if those agreements are in order, staff could administratively approve those and publish the zoning ordinance as it was originally intended. No action is required by the Council on this item.

#### NEW BUSINESS

None.

#### ADJOURNMENT

Mr. White moved to adjourn the meeting at 10:50 p.m. Mr. Janson seconded the motion, which carried by a unanimous vote.

Minutes transcribed by Kathleen Behrens.

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Carl R. Gerlach, Mayor

ATTEST:

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Marian Cook, City Clerk