

The following are subject to modification and are not official minutes until approved by the Governing Body.

CITY OF MERRIAM, KANSAS

9000 W. 62ND TERRACE

REGULAR COUNCIL MEETING

MINUTES

MAY 24, 2004

I. CALL TO ORDER – PLEDGE OF ALLEGIANCE

The Regular Council Meeting of the City of Merriam, Kansas, was called to order by Acting Mayor Allen Troyer on Monday, May 24 at 7:05 p.m.

II. ROLL CALL

Members Present

Acting Mayor Allen Troyer

R. Kevin Buchta
Bryan Burks
Nancy Hupp
Gayle Stephens
Jim Wymer

Staff Present

Quinn Bennion, City Administrator; Stephanie Dawkins, City Clerk/Assistant City Administrator; Beth Linn, Assistant to the City Administrator; Maureen Rogers, Finance Director; Scott Crain, City Engineer; Susan Hayden, Parks and Recreation Director; Kenneth Sissom, Police Chief; Michelle Daise, City Attorney; Dustin Smith, Community Development Director and Barbara Hall, Recording Secretary.

Acting Mayor Allen Troyer stated that Mayor Wilkes is absent due to a death in his family. He stated that green shamrocks are displayed in memory of Councilmember Mike McCormick and in appreciation for his service to Merriam as a member of the City Council. He requested that following the Pledge of Allegiance and Roll Call, the City

Council and audience join in a silent prayer for Mike McCormick and Mayor Carl Wilkes and family in the loss of his brother.

Ms. Hall was recognized for filling in as recording secretary until the position left vacant by former City Clerk Sheryl Roederer is filled.

III. CONSENT AGENDA

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so request, in which case that item will be removed from the Consent Agenda and considered separately.

A. Council Items:

1. Approval of the minutes of the regular City Council meeting held April 26, 2004.
2. Approval of the minutes of the Public Hearing (5518 Goodman) held April 26, 2004.
3. Approval of the minutes of the Public Hearing (Redevelopment Project Plan) held April 26, 2004.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS 1-3. THE MOTION WAS UNANIMOUSLY APPROVED.

IV. PUBLIC ITEMS

- #### **A.**
- Members of the public are encouraged to use this time to make comments about matters that do not appear on the agenda. Comments about items on the regular agenda will be taken as each item is considered.

Terry Brown, 6349 Woodward, stated that he is on the Board of Directors of the Vernon Place Homes Association and was concerned about a replacement for the vacant council seat. He stated that there have been 3 vacancies in the past 3 years and he believed that the policy for filling vacancies should be consistent and demonstrate to the public that the city is following honorable procedures. He believed that a previous appointment by the President of the Council was not legal and the procedure for filling Mike McCormick's position should honor his memory.

He stated that one suggestion would be for the City Council to appoint a replacement for a 90 day term until a special election and he encouraged the Council to support this method.

Jim Stanker, 6423 Hadley, stated that he is Vice President of the Vernon Place Homes Association. He stated that he attended a meeting with approximately 40 people who concurred that the City Council should appoint an interim person to serve until the election in April. He recommended that the Council request applications, announce the names and invite public discussion. He asked that the City Council change the city regulations to allow an appointment to fill the vacancy only until the general election in April, not the remainder of the term.

Acting Mayor Troyer stated that discussion regarding the vacancy is the last item on the agenda and action would be deferred until the end of the meeting.

V. MAYORS REPORT

1. Recognition of GFOA budget award and Special Capital Recognition

Acting Mayor Troyer stated that the city of Merriam 2004 Budget document recently received, for the first time ever, the Special Capital Recognition Award from the Government Finance Officers Association (GFOA). This special recognition was in addition to the Distinguished Budget Presentation Award, which the City has been receiving for the last 14 consecutive years. Special Capital Recognition is given to governments that are rated "outstanding" by three out of three reviewers in the categories of presentation of capital expenditures, and explanation of the impacts of capital expenditures on the operating budget. Many reviewers over the last several years have admired this section of the budget, thanks to both past and present CIP and Finance personnel. The 2004 budget included much more detailed analysis of the effects of each project on the operating budget than in prior years. Maureen Rogers coordinated with Randy Carroll and Scott Crain to quantify future annual maintenance, utility and other ongoing costs by individual projects. Out of 1,004 governments throughout North America that received the Distinguished Budget Award for 2003, only 7 received the Special Capital Recognition award. Congratulations to Maureen Rogers, Quinn Bennion, Scott Crain, Randy Carroll, Beth Linn and other staff for their many contributions to this process.

2. Consider approval of a bid from J.M. Fahey and authorize the Mayor to sign a contract in the amount of \$349,775.17 for the 2004 curb replacement and overlay program.

Scott Crain stated that the 2004 Curb Replacement and Overlay program consists of a significant amount of asphalt milling and overlay, but the curb and gutter replacement has been scaled back from the 2003 program. He stated that four bids were received and three bids were valid. J. M. Fahey was the low bid and also under the engineer's estimate and below

the amount budgeted for the project. In addition to this project, contract street maintenance funds will be used to address maintenance work on 75th Street and Switzer Road in conjunction with Shawnee and Overland Park. The remaining budgeted funds are more than sufficient for the 2004 Curb Replacement and Overlay Program and staff will likely bring a change order back to the June Council meeting to add additional street sections to this contract.

Councilmember Stephens stated that she was concerned about streets in the Forest Park project.

Mr. Crain stated that street patches were unacceptable and monies were withheld. He stated that the contractor has signed off on the money and the City will overlay those streets rather than require the contractor to patch them. The project will be greatly benefited.

In response to Councilmember Stephens' question about other streets, Scott Crain stated the improvements include 67th Street, a section of Forest Park north of 67th Street, and a portion of a street north of Johnson Drive and west of I-35. He stated that there was a possibility that 55th Terrace could be put back in the program. The Vernon Place streets might be approved with the 2006 CIP projects.

Councilmember Stephens expressed concern that 67th Street from the bridge to Mastin was already in the project and could be torn up in the future with a proposed redevelopment project. Mr. Crain stated that turn lanes are possible but that the redevelopment project should not compromise the benefit of this project.

COUNCILMEMBER BUCHTA MOVED THAT THE COUNCIL APPROVE THE BID FROM J. M. FAHEY AND AUTHORIZE THE MAYOR TO SIGN A CONTRACT IN THE AMOUNT OF \$349,775.17 FOR THE 2004 CURB REPLACEMENT AND OVERLAY PROGRAM. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider approval of a bid from Miles Excavating, Inc. and authorize the Mayor to sign a contract in the amount of \$565,582.75 for Goodman Road street and storm drainage improvements.

Scott Crain explained the history, requests for bids, and rebidding over a two year period for the Goodman Street project. He stated that there was only one bid submitted on May 12, 2004 from Miles Excavating, Inc. and it was below the engineer's estimate and was favorable. He recommended approval of Miles Excavating, Inc. for the Goodman Road Street and Storm Drainage Improvements.

Councilmember Stephens asked if Miles Excavating has done previous work for the City. Mr. Crain replied no.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE THE BID FROM MILES EXCAVATING, INC. AND AUTHORIZE THE MAYOR TO SIGN A CONTRACT IN THE AMOUNT OF \$565,582.75 FOR GOODMAN ROAD STREET AND STORM DRAINAGE IMPROVEMENTS. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of a bid from D. F. Freeman Construction Company and authorize the Mayor to sign a contract in the amount of \$1,333,484.10 for the Downtown Merriam Revitalization project.

Mr. Bennion requested a 5 minute recess. Acting Mayor Troyer acknowledged the request and called for a recess. The meeting reconvened at 7:37 p.m.

Scott Crain asked Council to refer to the information provided in their packet with respect to this issue. Mr. Crain asked Council to note that statement that was made relative to Brandy Electric's recent completion of a project well beyond the contract length for the project. Mr. Crain indicated to Council that after further investigation, this statement was incorrect and that he had been able to verify from multiple sources that the project was completed on time.

Mr. Crain also indicated that further investigation into Brandy Electric, after the packet had been prepared for council, resulted in the following discoveries:

- * 10 employees on payroll for Brandy
- * According to Terri Asher, the President of Brandy Electric, they have never been the general contractor on a job greater than \$1,000,000.
- * When asked this afternoon, the President of Brandy Electric could only name one job over \$500,000 where they were the general contractor. She indicated that there have been others but couldn't recall what they were. The one that was mentioned over \$500,000 was the one discussed in the memo to Council. When Mr. Crain contacted them today, the consulting firm hired to perform the design and inspection services confirmed the concerns expressed by the municipality
- * Of their "contracts on hand" and "more important projects recently completed" that were submitted with the Statement of Bidders Qualification, Brandy Electric is/was a general on only one of

those projects. It involved site lighting and excavation for the Blue Valley Ball Fields in the approximate amount of \$170,000.

- * Mr. Crain contacted one general contractor and one additional municipality and has received excellent reference checks for Brandy as an electrical contractor.
- * As of this afternoon, Terri Asher could not tell Mr. Crain who their concrete subcontractor would be if they were selected for this job.

Mr. Crain stated that Brandy Electric's experience as a general contractor appears limited. There appears to be very little experience as a general on jobs over \$500,000. Based on this information, that which has been previously submitted to Council and the significance of the downtown Merriam revitalization project in terms of financial outlay and exposure, Mr. Crain stated that he can not recommend Brandy Electric for this project.

Scott Crain referred to the staff report and stated that the three low bidders were Brandy Electrical, D.F. Freeman Construction Company, and Miles Excavating, Inc. D. F. Freeman Construction Company was selected as the next low bid; however the bid of Miles Excavating, Inc., was very close in amount. Since writing the staff report, Mr. Crain stated that a multiplication error was discovered in the bid of Miles Excavating, Inc. Correction of this error resulted in Miles becoming the second low bid. Mr. Crain stated that based on this new information that was brought to light, it was appropriate for him to change his recommendation from D. F. Freeman to Miles Excavating, Inc.

In response to Councilmember Buchta's question, Mr. Crain stated that Miles Excavating, Inc.'s revised bid is \$1,332,870.10 and that is his recommendation for the Downtown Merriam Revitalization project.

Councilmember Wymer asked if Miles Excavating, Inc. could handle Goodman Street and Downtown Merriam projects at the same time. Mr. Crain stated that he believes that Miles Excavation has the ability as he recalls that information provided by Miles indicated that they have 85 employees. Mr. Wymer agreed that Miles Excavating is one of the largest contractors around.

Councilmember Stephens stated that the difference in costs between the two companies was about \$2,000. Mr. Crain stated that from a professional perspective he tends to select the low bid, but the Council can award the contract to whomever they believe is the lowest and best bidder.

Councilmember Hupp asked about the start time of the projects. Mr. Crain stated that the contractor is ready to start now.

Councilmember Buchta commended staff for scrutinizing the bids.

COUNCILMEMBER BUCHTA MOVED THAT THE COUNCIL APPROVE THE BID FROM MILES EXCAVATING, INC. AND AUTHORIZE THE MAYOR TO SIGN A CONTRACT IN THE AMOUNT OF \$1,332,870.10 FOR THE DOWNTOWN MERRIAM REVITALIZATION PROJECT.

Councilmember Burks asked about the alternate bid.

Quinn Bennion stated that the alternate bid includes demo, backfill, and parking lot at the bank building property. He asked Mr. Buchta if his motion intended to accept the base bid only and reject the alternate. Mr. Buchta replied that it did.

COUNCILMEMBER BUCHTA AMENDED HIS MOTION TO APPROVE THE BASE BID ONLY AND REJECT THE ALTERNATE BID AND AMEND TO REFLECT CHANGE IN CONTRACTOR AND CONTRACT AMOUNT. THE MOTION WAS APPROVED. COUNCILMEMBER STEPHENS VOTED NAY.

Scott Crain apologized for any confusion.

VI. PLANNING COMMISSION

1. Consider request to vacate a portion of Milburn Terrace (vacate street right-of-way).

Acting Mayor Troyer introduced Community Development Director Dustin Smith, a planner from Bonner Springs who is Paul Graves' replacement.

Dustin Smith stated that on May 5, 2004, the Planning Commission recommended approval of a vacation of Milburn Falls between the right-of-way of 66th Terrace and 67th Street subject to a reservation of an easement for a gas line and subject to a recorded access easement agreement between the three adjoining property owners as directed by the City Attorney.

COUNCILMEMBER STEPHENS MOVED THAT THE GOVERNING BODY UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION TO APPROVE THE VACATION OF MILBURN TERRACE FROM 66th TERRACE SOUTH A DISTANCE OF 120.18 FEET SUBJECT TO THE RESERVATION OF A PERMANENT EASEMENT FOR PUBLIC UTILITIES AND SUBJECT TO THE RESERVATION OF A PERMANENT

EASEMENT FOR INGRESS AND EGRESS FOR ABUTTING PROPERTIES; AUTHORIZE THE CITY ATTORNEY TO PREPARE THE EFFECTUATING ORDINANCE; AND AUTHORIZE THE MAYOR TO SIGN THE ORDINANCE. THE MOTION WAS UNANIMOUSLY APPROVED.

VII. COUNCIL ITEMS

Acting Mayor Troyer stated that a quorum of 4 members must be present to vote at committee meetings and neither committee had a quorum of members present.

A. Community Development/Public Works Committee

1. Consider approval to submit an application for CDBG Grant funding for Mastin Street from 53rd to 55th Streets.

Councilmember Buchta stated that there were only three members present at the meeting, however the members discussed and voiced informal approval of the first two items, but referred the third item for discussion by the full Council. He stated that the public hearing for CDBG Grant funding was held tonight and the request is in order for approval.

COUNCILMEMBER BUCHTA MOVED THAT THE COUNCIL APPROVE THE SUBMITTAL OF AN APPLICATION FOR CDBG GRANT FUNDING FOR MASTIN STREET FROM 53RD TO 55TH STREETS. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider acceptance of the Forest Park Drainage Improvement Project and authorize final payment to Meadows Construction, Inc.

Scott Crain stated that he met with the contractor and reviewed the final figures. He stated that change order #3 (for a sanitary sewer line) was not discussed at the May CD/PW committee, but after review with the contractor, it is clear that this is an item that should be paid under the terms of the contract.

Councilmember Buchta had a question about the proposed townhouses on 67th & Farley and how it would impact the Forest Park project. Scott Crain stated that he had received a stormwater drainage study for the Timber Ridge Villas project that he will review and make recommendations.

COUNCILMEMBER BUCHTA MOVED THAT THE COUNCIL ACCEPT THE FOREST PARK DRAINAGE

IMPROVEMENT PROJECT AND AUTHORIZE FINAL PAYMENT TO MEADOWS CONSTRUCTION, INC. THE MOTION WAS UNANIMOUSLY APPROVED.

Acting Mayor Troyer stated that he heard complaints about asphalt work in Forest Park and he relayed information about the overlay program.

3. Consider approval of change Order #13 for the City Hall/Public Safety facility in the amount of \$21,302.

Scott Crain stated that there are 8 items in Change Order #13 totaling \$21,302. Through negotiations, the project team has reduced the expenditures associated with this change order by approximately \$6,700. Documentation is available for review at City Hall. He stated that the project architect, Bill Scott is present to answer questions.

COUNCILMEMBER BUCHTA MOVED THAT THE COUNCIL APPROVE CHANGE ORDER #13 FOR THE CITY HALL/PUBLIC SAFETY FACILITY IN THE AMOUNT OF \$21,302. THE MOTION WAS UNANIMOUSLY APPROVED.

Councilmember Stephens stated that she was disappointed with the addition of 23 days to the contract time and hoped that was the last time days would be added.

B. Finance and Administration Committee

1. Consider sponsorship of an application for CDBG funding for Community Living Opportunities (CLO) with reimbursement not to exceed \$12,000.

Acting Mayor Troyer stated that he is the Chair of the Committee. He stated that there were three members present and those present concurred with the items discussed. He stated that the first item has been withdrawn by CLO and no action is required.

Councilmember Hupp stated that the CLO was concerned about water damage and she envisioned code violations occurring if repairs were delayed.

Quinn Bennion stated that CLO cited environmental issues in their bathrooms, but determined that temporary repairs could delay extensive work for another year. He stated that the decision to

withdraw was due to the fact that CLO's 2003 grant has not been finalized.

2. Consider approval of a contract with Gold Bank to serve as the City's official depository bank.

Acting Mayor Troyer commented that it is beneficial not to change banks.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE CONTRACT WITH GOLD BANK TO SERVE AS THE CITY'S OFFICIAL DEPOSITORY BANK. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider acceptance of the 2003 Audit of Financial Statements.

Maureen Rogers reported that the financial audit report is unqualified meaning there were no material weaknesses or reportable conditions identified. She commended Cochran, Head & Company, P.A. for the smooth transition when implementing GASB No. 34 and conducting the audit.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL ACCEPT THE 2003 AUDIT OF FINANCIAL STATEMENTS. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of Work Agreement with Kelly/Russell Advertising for logo design and image campaign for the City of Merriam.

Stephanie Dawkins stated that Kelly/Russell Advertising was selected by a Committee to conduct a study for new logo design and image. Approval of the Work Agreement would provide services for a fee of \$26,000 to be funded from several sources.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE AND AUTHORIZE THE MAYOR TO SIGN WORK AGREEMENT WITH KELLY/RUSSELL ADVERTISING FOR LOGO DESIGN AND IMAGE CAMPAIGN FOR THE CITY OF MERRIAM. THE MOTION WAS UNANIMOUSLY APPROVED.

Councilmember Hupp commented that the presentation was very professional. Mr. Bennion stated that the \$26,000 fee is reasonable

and the lowest received. Councilmember Stephens found it interesting that Mr. Kelly grew up in Merriam.

*The meeting was interrupted by tornado warnings and all adjourned to the basement.
The meeting reconvened in the basement at approximately 9:00 p.m.*

VIII. STAFF ITEMS

Disposition of Court Cases

- a. Michelle Daise reported that a case for a quiet title involving a dispute of property lines between the City and Daniel Leap was upheld in District Court in the City's favor. Mr. Leap's appeal in the Court of Appeals failed.
- b. Ms. Daise stated that she received word today that Leap vs Merriam regarding a contract to purchase a city-owned building failed and was dismissed. The court found in the City's favor. Mr. Leap could file in the Supreme Court of Kansas within a specified time limit.

Councilmember Buchta asked if both cases are unpublished. Ms. Daise stated the cases are finalized, but would not be published. Councilmember Wymer asked for copy of the ruling. He stated that previously staff had been directed to proceed with the sale of the property and asked if the project could now move ahead.

Mr. Bennion stated that there are two city-owned buildings: one next to KC Strings at 5848 Merriam Drive and the former bank building at 5854 Merriam Drive. It was the intent of the previous Council to sell the two buildings, but direction is needed from the present Council before drafting the contract and Requests for Proposals (RFP).

Councilmember Buchta suggested holding a work session. Mr. Bennion stated that there are two work sessions scheduled in June (June 14 and June 21) and July might be a more appropriate time. Ms. Daise stated that she would check on the time limit for an appeal.

2. Sign at 9600 Johnson Drive

Michelle Daise reported that John Ross' request for a variance to allow a yard sign (a stone marker with Phoenix Photography) for a home occupation in a residential neighborhood at 9600 Johnson Drive was denied. An appeal was not filed in the District Court in the required time limit. Mr. Ross has received a citation from the City to remove the stone sign or appear in Municipal Court on June 8th. Ms. Daise reported that Mr. Ross has petitioned to officially change his name to Johnny Phoenix

Photography, an obvious attempt to circumvent the sign ordinances that does not prohibit a homeowner's name and address on a yard sign. Ms. Daise stated that the city could file an objection in court to the name change and would like direction as how to proceed.

Councilmember Hupp and Wymer believed the matter should be discussed in an Executive Session.

Councilmember Burks stated that he believed the City should move forward to uphold its laws. As long as the City has sent a clear message by citing Mr. Ross in court, then there is no reason to pursue it further. Councilmember Buchta agreed that to legally change one's name is extreme. Councilmember Stephens questioned the wisdom of incurring more legal fees. Councilmember Wymer stated that Mr. Ross has been in violation for 30 days and cited in Municipal Court and to let the court handle the matter.

Mr. Bennion stated that an Executive Session could be held at the end of the meeting.

IX. OLD BUSINESS

1. Nuisance abatement hearing regarding 5518 Goodman as requested by Willmar E. Koehler, Jr. and Koehler Construction Company (contractor) pursuant to K.S.A. 12-1617e and Resolution No. 706. Acting Mayor Troyer stated that this is an appeal hearing and not a public hearing, however the public is free to speak,

Willmar E. Koehler, Sr., stated that his family home at 5518 Goodman was built in 1922. In 1972, his parents died and left the house to him and his sister, who was named executor. Mr. Koehler stated that his sister is very ill and he has Power of Attorney. He apologized to his neighbors for the long delay in completing the remodeling project. He stated that the property has great sentimental value to his entire family and he is moving slowly to restore and preserve as much of the house as possible. He could not understand why his neighbors did not contact him personally with their complaints instead of the city.

Councilmember Burks asked Mr. Koehler to explain to the Council why the property still is in disrepair and constitutes a nuisance and what is his plan to abate the nuisance.

Mr. Koehler stated that he had been working under a valid building permit. When his building permit expired, he requested an extension. He was told that no inspections or progress have been made and the issuance of an extension would depend on the outcome of his appeal to the

nuisance abatement hearing. He stated that he had requested an inspection on March 26th before pouring the foundation, but he was told to call 2 days before he was ready to pour and never got the inspection. He presented a book of plans he was requested to submit to the building inspector and thought it was excessive documents for a residential house. He stated that the dirt pile in his yard was backfill and was approximately 16 feet tall, not 30 feet as reported. He related the history of his efforts to obtain a variance and the subsequent dismantling and moving of the house.

Councilmember Wymer asked when the forms for the foundation were set. Mr. Koehler stated that he asked for a footing inspection for his garage on October 16, 2003. Councilmember Wymer stated that it should not take over 30 days to pour the foundation.

Chief Sissom reported that the weather bureau issued an “all clear” and the meeting could return to the Council chamber. The meeting reconvened at 9:15 p.m.

Councilmember Stephens continued her questioning of Mr. Koehler. She asked Mr. Koehler what is his schedule for completion.

Mr. Koehler stated that his building permit has expired. When his son asked for an extension, it was refused pending the outcome of the meeting tonight. He stated that he is ready to pour the foundation as soon as he has a valid building permit. He stated that the concrete must cure for 27 days so no walls or backfill could be added for a month. He stated that he has been delayed by rain and had to clear mud out of the basement three times.

Mr. Koehler stated that the house is not ordinary and discussed the plans with Councilmember Wymer. Mr. Koehler stated that he would be ready to pour the foundation about five days after he receives his permit.

Councilmember Burks stated that he does not understand how this project is going to be completed without hiring a professional company. Mr. Koehler stated that he owns a professional company and was confident he could accomplish the project.

Councilmember Stephens asked what would be accomplished while the concrete is curing? Mr. Koehler replied that he would clean up the site. Councilmember Wymer replied that there was a lot of work that could be completed in 27 days and related his experience in setting forms, pouring concrete, installing plumbing, etc.

Acting Mayor Troyer stated that the residents are tired of looking at the unfinished house. He stated that Mr. Koehler is being given the

opportunity tonight to provide a schedule for completion and outline of the work.

Mr. Koehler stated that he believed that by using his work force and own finances, he could have the exterior of the house completed in 6 months. Councilmember Burks asked about the inside.

Michelle Daise stated that the nuisance hearing is about the exterior and how it affects the neighborhood. She stated that if the Council decides to postpone the court action, progress reports could be required to ensure that the inside of the house is also completed in a timely manner.

Councilmember Wymer asked what is the Council's recourse if the nuisance case is dropped and the second building permit expires without the house being completed.

Michelle Daise stated that she recommends that the nuisance charges not be dropped, just suspended. She stated that if the house is not completed within a reasonable time, she would then file in District Court.

Councilmember Wymer did not think that Mr. Koehler's company would have much results without bringing in outside help.

In response to Councilmember Buchta's question about landscaping, Ms. Daise stated that the grounds must be maintained so as not to be unsafe or hazardous, but the Council could not control the planting details.

Councilmember Buchta stated that the property is deplorable. He voiced his concern that if Mr. Kohler was given a building permit, if he would follow a timetable and keep his word.

Councilmembr Stephens stated that if the house is not completed in 180 days, the case should be filed in district court. She stated that the Council should be updated at every Council meeting and if there is no evidence of good progress after 60 days, the case should be filed in court sooner.

Councilmember Wymer stated that the roof should be installed in 90 days or the house should be demolished.

Councilmember Burks stated that two years is too long a period to complete the inside of the house and not fair to the neighbors who expect a nice house or a vacant lot. The Council should be clear with their expectations and if those expectations are not met, action should be taken.

Councilmember Hupp summarized the discussion and asked for a recess for an Executive Session.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL ON MATTERS PRIVILEGED IN THE ATTORNEY/CLIENT RELATIONSHIP RELATING TO 5518 GOODMAN. PRESENT WILL BE THE CITY ATTORNEY AND THE CITY ADMINISTRATOR. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:45 P.M. THE MOTION WAS SECONDED BY NANCY HUPP AND UNANIMOUSLY APPROVED.

Acting Mayor Troyer entertained a motion.

Councilmember Stephens stated that the Council members were of the strong opinion that this abatement could be completed in 180 days and the house occupied before the winter.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL AUTHORIZE STAFF TO ISSUE A BUILDING PERMIT FOR 5518 GOODMAN PROVIDED THAT ALL STANDARD DOCUMENTATION IS SUBMITTED BY FRIDAY, MAY 28, 2004. THE BUILDING PERMIT FEE WILL BE AT FULL RATE AS WITH ANY NEW BUILDING PERMIT. THE COUNCIL WILL SUSPEND THE DISTRICT COURT ACTION CONTINGENT UPON THE FOLLOWING CONDITIONS:

- 1. MR. KOEHLER FOLLOWS A STRICT CONSTRUCTION SCHEDULE FOR THE COMPLETION OF THE EXTERIOR OF THE HOUSE INCLUDING FOUNDATION, ROUGH-IN, WINDOWS, SHINGLES, ROOF, DRIVEWAY AND LANDSCAPING WITHIN A 90 DAY PERIOD.**
- 2. MR. KOEHLER WILL APPEAR BEFORE THE CITY COUNCIL AT THE REGULARLY SCHEDULED COUNCIL MEETING IN JUNE 2004 AND EVERY COUNCIL MEETING THEREAFTER FOR THE BUILDING PERMIT TERM AND PROVIDE AN UPDATE OF THE STATUS OF THE PROJECT.**
- 3. IF THERE IS INDICATION THAT THE CONSTRUCTION SCHEDULE CANNOT BE MET WITHIN THE TIMEFRAME, THE COUNCIL WILL REVISIT THE SCHEDULE AND NUISANCE ACTION AND CAN, AT THEIR OPTION, REINITIATE DISTRICT COURT**

PROCEEDINGS. THE MOTION WAS UNANIMOUSLY APPROVED.

Councilmember Buchta asked Mr. Koehler if he understood the motion and he replied that he did.

X. NEW BUSINESS

1. Consider approval of funding not to exceed \$4,000 to participate in the EasyRide senior transportation program from June 1 through December 2004.

Susan Hayden stated that the EasyRide transportation program for persons age 50 and over was discussed at a Council work session in preparation for the 2005 Budget. Representatives of the program are present to explain the program and extend the service to Merriam residents for the remainder of 2004 (from July to December). Hours of service are Tuesday and Thursdays from 10 a.m. to 3:00 p.m. Ms. Hayden stated that the cities that are serviced by Johnson County Transit are Roeland Park, Mission, Fairway, Westwood and a portion of Merriam. Should the council decide to provide funding for 2004, the service area would be extended to the entire City of Merriam. The cost for the remainder of 2004 would not exceed \$4,000.

Councilmember Stephens asked if there was space on the bus for younger persons assisting those who are disabled and what would be the cost.

Russel Green, a representative of the Northeast Johnson County Transit Task Force, stated that there are no fares and anyone is welcome to ride who may be assisting a disabled person.

Councilmember Hupp discussed boundaries shown on the map.

Councilmember Burks asked about the total cost of the program for 2005. Ms. Hayden stated that the cost is per capita and Merriam would pay \$11,000.

Quinn Bennion referred to the map and asked if persons could be dropped off in Northern Overland Park, but not picked up. Mr. Green replied yes.

In response to Councilmember Wymer's question about the percentage of residents in Merriam over 50 years of age, Mr. Bennion stated that he did not have that information at the meeting, but it could be provided.

Councilmember Stephens stated that she was in favor of starting the program in 2004, but suggested re-evaluating the number participating in

December. Acting Mayor Troyer stated that the money would be included in the 2005 budget. Councilmember Wymer stated that by starting in 2004, word of the service should spread to the residents by 2005.

Councilmember Hupp stated that as Merriam Village is developed, the service would provide transportation to the hospital or other parts of the city.

Acting Mayor Troyer entertained a motion.

COUNCILMEMBER BUCHTA MOVED THAT THE COUNCIL APPROVE FUNDING NOT TO EXCEED \$4,000 TO PARTICIPATE IN THE EASYRIDE SENIOR TRANSPORTATION PROGRAM FROM JUNE 1 THROUGH DECEMBER 2004. THE MOTION WAS UNANIMOUSLY APPROVED.

Acting Mayor Troyer asked to be informed of the amount of participation.

Margaret Gill-Benlon, 6131 Terrydale, asked who would be responsible for advertising the program.

Mr. Green stated that Johnson County Transit provides their own advertising.

Acting Mayor Troyer stated that Merriam could inform residents through the web site and in the Merriam Highlights.

Councilmember Hupp stated that the Johnson County Nutrition site is located at the Merriam Community Center and a good place to advertise.

2. Consider approval of a Professional Services Agreement with Terry Harris to provide consulting services as the Downtown Development Coordinator.

Quinn Bennion stated that the former Downtown Coordinator resigned the position in December. In February a work session was held and staff was directed to advertise the position as a part-time or contract position. Approximately 30 applications were received and a committee consisting of Quinn Bennion, Dustin Smith, Shelly Plekowski and Johnny Pieters interviewed 5 candidates. Terry Harris, whose resume is included in the packet, was the unanimous choice.

Terry Harris stated that his previous work experience included serving as Director of Lees' Summit Main Street, Executive Director of Main Street Development Corporation in Midtown Kansas City, Business and Community Development Administrator and Community Development

Administrator in Wilson, North Carolina, Vice-President of BioEconomic Development Corporation and he has conducted many presentations at Professional Conferences. He stated that he had read about Merriam in the newspapers and was anxious to provide assistance.

Councilmember Buchta stated that Mr. Harris' resume is very impressive and his reputation has proceeded him.

Quinn Bennion stated that the position would be an independent contractor position reporting to the Community Development Director. The Professional Services Agreement, drafted by the city attorney, is for a two-year term at the rate of \$34,200 per year for approximately 20 hours a week.

In response to Councilmember Buchta's question regarding how soon Mr. Harris could begin, Mr. Bennion replied that the start date is May 25th.

COUNCILMEMBER BUCHTA MOVED TO APPROVE THE PROFESSIONAL SERVICES AGREEMENT WITH TERRY HARRIS TO PROVIDE CONSULTING SERVICES AS THE DOWNTOWN DEVELOPMENT COORDINATOR. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider approval of Inter-local Agreement between the City of Overland Park and City of Merriam for the public improvements to 75th Street.

Scott Crain stated that a similar agreement with Overland Park was for microsurfacing 75th Street east of Switzer. This agreement with Overland Park would share costs 50/50 for improvements on 75th Street from Wedd to East Frontage Road and include concrete curb and gutters, joint repairs, milling and overlay, pavement markings, traffic loops, and other incidental items. Overland Park would administer the project. Merriam's share would be about \$100,000. Originally the 2004 budget had \$240,000 programmed from the Enterprise Zone for improvements on this section of 75th Street. Funding associated with this Inter-Local Agreement will be taken from that account.

Acting Mayor Troyer entertained a motion.

COUNCILMEMBER STEPHENS MOVED TO APPROVE AN INTER-LOCAL AGREEMENT BETWEEN THE CITY OF OVERLAND PARK AND CITY OF MERRIAM FOR THE PUBLIC IMPROVEMENTS TO 75TH STREET FROM WEDD TO I-35 AND EAST FRONTGAGE ROAD. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of reclassification of one Court Clerk to Lead Court Clerk with new salary range effective June 7, 2004.

Stephanie Dawkins stated that the Municipal Court operates with two full-time clerks and one part-time clerk. The Lead Court Clerk position would place one clerk in the role of supervisor of the day-to-day court operation. The increase in salary would start with the next pay period.

COUNCILMEMBER STEPHENS MOVED TO APPROVE THE RECLASSIFICATION OF ONE COURT CLERK TO LEAD COURT CLERK WITH NEW SALARY RANGE EFFECTIVE JUNE 7, 2004. THE MOTION WAS UNANIMOUSLY APPROVED.

5. Consider approval of reclassification of Receptionist to Administrative Assistant effective June 7, 2004.

Stephan Dawkins stated that the City Council approved the reclassification of the vacant City Clerk position to Deputy City Clerk. Additional responsibilities have fallen on the Receptionist position making the position more closely fit those of an Administrative Assistant. She recommended approval of the reclassification from Receptionist to Administrative Assistant with the salary increase as set forth in the Employee's Handbook.

COUNCILMEMBER BURKS MOVED TO APPROVE THE RECLASSIFICATION OF RECEPTIONIST TO ADMINISTRATIVE ASSISTANT EFFECTIVE JUNE 7, 2004. THE MOTION WAS UNANIMOUSLY APPROVED.

6. Consider approval of an ordinance repealing Section 23-22 of the Code of Ordinances relating to bond requirements for authorized collectors of solid waste (first reading).

Quinn Bennion stated that the City Council has had many discussions to encourage competition in solid waste collection. Deffenbaugh is the lone collector at the present, but there is another company who is interested. Mr. Bennion stated that the current disposal franchise application requires solid waste collectors to post a \$1,000 cash performance bond or a \$2,000 surety bond. Staff feels that this requirement, approved in 1978 and not presently relevant, may prevent smaller companies from starting service in Merriam. He recommended repealing Section 23-22 of the Municipal Code of Ordinances relating to bond requirements for authorized collectors of solid waste. He stated that the city attorney drafted the ordinance. He recommended moving forward with a motion waiving the first reading and approving the ordinance with a second motion.

COUNCILMEMBER WYMER MOVED TO WAIVE THE FIRST READING OF ORDINANCE REPEALING SECTION 23-22 OF THE CODE OF ORDINANCES. THE MOTION WAS UNANIMOUSLY APPROVED.

COUNCILMEMBER HUPP MOVED TO CONSIDER APPROVAL OF AN ORDINANCE REPEALING SECTION 23-22 OF THE CODE OF ORDINANCES RELATING TO BOND REQUIREMENTS FOR AUTHORIZED COLLECTORS OF SOLID WASTE. THE MOTION WAS UNANIMOUSLY APPROVED.

Mr. Bennion stated that a solid waste collector has expressed interest and could begin this summer.

7. Discussion regarding vacant Ward 4 Council position.

Acting Mayor Troyer relayed Mayor Wilkes' suggestion to advertise in the newspaper for applications to fill the vacant City Council position and discuss the applications or conduct interviews with the applicants at a work shop.

Councilmember Buchta stated that requesting resumes is the best method and would ensure more qualified candidates. The Council would be involved in the review and selection. He stated that the last appointment was contentious.

Acting Mayor Troyer asked for comments from the floor.

John Sankey, 10121 West 65th Drive, presented handouts to the Council. He stated that he would like to support the remarks by representatives of the Vernon Place Homes Association members who spoke earlier. He stated that he attended the meeting that included members of Vernon Place, West Vernon Place, Merriam Hills and Sherwood Forest Homes Associations. He recommended that the City Council request applications with resumes. The person selected would fill the position until the election in April. After the election the elected councilperson would serve the remainder of Mr. McCormick's term (2 years instead of 4 years) to ensure that the 2 year staggering system did not change. He stated that the city ordinance is obsolete and the City should follow the State Statutes and also change the city ordinance so that the procedure would give the citizens a role in the selection process.

Michelle Daise stated that in the absence of a clear city ordinance, the process is currently governed by State Statutes that require that the Governing Body vote to fill a position and that person serves the remainder of the term. However, the procedure is not outlined and is up to

the Governing Body to develop the selection process. If the Council wants to change that procedure and have the person serve only until the next general election, a Charter Ordinance must be passed. Once the Charter Ordinance is passed, there must be two publications. Following the publication there is a 60 day process period. Given the anticipated schedule, the position could not be filled until September. She stated that to pass a Charter Ordinance would require a two-thirds vote of the City Council or 6 out of 9 members must vote in favor. Ms. Daise stated that the two provisions in the ordinance that are different from the State Statute are the length of the appointment and appointment by the Mayor with the ratification of the governing body as opposed to only the Mayor. Under the State Statute, the person selected by the Council would serve the remainder of the 3 year term.

Councilmember Stephens stated that she believed that the intent of the Council in writing the ordinance was that the person be appointed to serve only until the next general election which is the method that she prefers.

Councilmember Wymer stated that at the time of the election, there would be 2 years left in Mr. McCormick's term, but a new term is 4 years. He believed the city should follow the state statutes rather than adopt a charter ordinance. He asked what would happen when two people run from the same Ward and how would it be determined who received the longer term.

Michelle Daise stated that typically the person who gets the most votes would serve the longer term.

Councilmember Burks stated that he thought that the candidates would be filing for a specific seat and term and there would be two positions on the ballot. Ms. Daise stated that she would research the matter.

Councilmember Wymer stated that by state statute, the person who gets the most votes gets the longest term applies to the first time a council is formed, but this isn't the first time the council is formed.

Michelle Daise agreed and stated that she would research the election law.

Councilmember Burks commented that there is about 3 years left in the term and the appointee could serve out that term. He did not think it necessary to change the city charter ordinance.

Councilmember Wymer stated that to him it indicates a powerplay.

Councilmember Stephens stated that she believed it is the opposite. She believed that the residents should have the opportunity to vote for the person in April.

Councilmember Wymer stated that the City is under the State Statutes. Councilmember Stephens replied that the council has the right to change that with a charter ordinance.

Anita Maggio, 6344 Robin Hood Lane, stated that she attended the meeting with representatives of the homes associations and agrees that the appointment until the general election is a more open process. She stated that if the appointment is for 3 years, the public has no vote. She believed that a power play develops when only the City Council members vote for a replacement.

Paul Cassetta, 9112 W. 69 Terrace, stated that by voting in April it would prevent the opportunity for manipulation by the City Council. He believed that Councilmember Wymer is wrong. Mr. Cassetta believed that the city ordinance is obsolete. He stated that the residents should have the opportunity to vote for their choice.

Councilmember Wymer stated that every time we don't agree with the way things are, we start rewriting the laws to suit us. In response to Mr. Cassetta's remark that the charter ordinance is obsolete, Mr. Wymer stated that he was talking about changing the state statute.

Anita Maggio, stated that she also disagrees with Councilmember Wymer. She stated that the City Council opts out of State Statutes by ordinance. What the state statute said about filling a vacancy was ineffective and the residents are asking for a new charter ordinance. Some residents met to discuss what a new ordinance should say that would be best for the city.

In response to Councilmember Buchta's question about how many attended the meeting, Ms. Maggio stated that there were about 13 people present at the meeting, representing 4 home association groups.

John Sankey stated that four homes associations had members at the meeting and he felt that they represented the opinions of many of the residents.

Margaret Gill-Benlon stated that she is not in a homes association and she wasn't informed about any meeting. She had no representative speaking for her. She reflected that in the past some Councilmembers were asked to leave the Council. Acting Mayor Troyer stated that Ms. Gill-Benlon is referring to the recall of elected council members and explained that process must be initiated by a petition. In response to Ms. Gill-Benlon's question about how long Merriam has been a city and operated under state statutes, Councilmember Wymer stated about 51 years.

Ms. Gill-Benlon was not in favor of changing the state statute. She stated that she agrees with Mr. Wymer. She stated that her neighbors were not invited to meetings or informed when ordinances are changed.

Councilmember Stephens stated that the state statute and the charter ordinance say two different things and asked the city attorney to explain the error in the charter ordinance and why it has to be changed.

Councilmember Wymer stated that the charter ordinance is invalid so we have one law and that is the state statute.

Councilmember Stephens stated that the problem is that the Charter Ordinance has not been repealed and is still on the books.

Councilmember Burks stated that the Council needs to start the process of advertising for applicants but in fairness to the applicants, needs to be in agreement as to what the process is. He stated that the Council needs to focus on being role models and create an environment that would attract qualified candidates. If the applicant serves until the election, he stated that he does not agree it is necessary to change the charter ordinance.

Councilmember Wymer stated that if Council doesn't want to advertise for resumes and conduct interviews, they can leave the position empty until the election or we can do our job and move on.

Michelle Daise explained that Charter Ordinance 9 opted out of the wrong section of the State Statute. The ordinance said Section 14-201 instead of 14-204, so inadvertently it never left the state statutes' requirements and the state statutes are still in effect. The intent at that time was for the Mayor to appoint a person until the next general election. The City Council has a choice to continue under the State Statutes, follow what the City Council intended 30 years ago, or pass a new Charter Ordinance with modifications that allow an application process for a person to serve until the general election. She stated that tonight she heard interest in advertising for applications to fill the position until the election. One option is to determine how applicants would be contacted, when and how to conduct the interviews (in person, in writing or questioned at a City Council meeting). The details need to be worked out so the process would be orderly and noncombative.

The other option is to clean up the charter ordinance that repeals the state statute. The draft could be voted on in June and could pass with 6 votes. If it does not pass, then it can be rewritten to determine how long the person would serve in the position.

COUNCILMEMBER WYMER MOVED TO DIRECT STAFF TO ADVERTISE FOR APPLICANTS INTERESTED IN FILLING THE VACANT CITY COUNCIL POSITION

Discussion followed.

Councilmember Wymer stated that he would like to have resumes returned so that he could call each individual personally. Councilmember Stephens stated that the City Council should conduct the interviews, but June is a busy month. Councilmember Hupp stated that either the Committee or full Council should conduct the interviews, not individual members. Councilmember Burks stated that a deadline for returning applications is needed. He stated that Shawnee held a special meeting to meet applicants and then the Council interviewed the applicants individually.

The date of June 23rd was selected for the deadline to return resumes to enable the names to be included in the Council packet. Councilmember Wymer was asked to restate his motion.

COUNCILMEMBER WYMER MOVED TO DIRECT STAFF TO ADVERTISE FOR APPLICANTS INTERESTED IN FILLING THE VACANT CITY COUNCIL POSITION AND SUBMIT RESUMES BY JUNE 23, 2004. THE MOTION WAS UNANIMOUSLY APPROVED.

Councilmember Wymer stated that the process could take about 3 months before a replacement is selected.

In response to Councilmember Buchta's question about the timeline used by others cities, Mr. Bennion stated that he did not know.

XI. EXECUTIVE SESSION – ACQUISITION OF REAL PROPERTY

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL ON MATTERS PRIVILEGED IN THE ATTORNEY/CLIENT RELATIONSHIP RELATING TO THE ACQUISITION OF REAL PROPERTY. PRESENT WILL BE THE CITY ATTORNEY AND THE CITY ADMINISTRATOR. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 11:10 P.M. THE MOTION WAS SECONDED BY COUNCILMEMBER BUCHTA AND APPROVED UNANIMOUSLY.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL ON MATTERS PRIVILEGED IN THE ATTORNEY/CLIENT RELATIONSHIP RELATING TO A LEGAL ISSUE. PRESENT WILL BE

THE CITY ATTORNEY AND THE CITY ADMINISTRATOR. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 11:15 P.M. THE MOTION WAS SECONDED BY COUNCILMEMBER BUCHTA AND UNANIMOUSLY APPROVED.

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER BUCHTA MOVED FOR ADJOURNMENT AT 11:15 P.M. COUNCILMEMBER STEPHENS SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

Barbara Hall,
Recording Secretary