

**MERRIAM CITY COUNCIL
MINUTES**

**CITY HALL
9000 W. 62ND TERRACE**

**July 24, 2006
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Carl Wilkes called the meeting to order at 7:20 p.m. following the public hearing.

II. ROLL CALL

Members Present

Mayor Carl Wilkes
Bryan Burks
John Crabtree
Dan Leap
Shawn McConnell
Chris Evans Hands
Nancy Hupp
Chad Rowe
Gayle Stephens

Staff Present

Quinn Bennion, City Administrator; Stephanie Dawkins, Assistant City Administrator; Beth Linn, CIP Project Manager; Michelle Daise, City Attorney; Bill Lietzke, Police Chief; Jerry Montgomery, Fire Chief; Dennis Enslinger, Community Development Director; Maureen Rogers, Finance Director; Scott Crain, City Engineer and Juli Pinnick, Deputy City Clerk.

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 requests, 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 Public Hearing held June 26, 2006.
2. Approval of the minutes of the regular City Council meeting held June 26, 2006.
3. Approval to submit request for construction project to Kansas Department of Transportation for replacement of the Shawnee Mission Parkway Bridge at Mastin.
4. Approval of Facility Usage Agreement with Johnson County Nutrition Program.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS 1-4 WITH AN ADDITION TO ITEM 2 MINUTES OF JUNE 26, 2006 REGULAR CITY COUNCIL MEETING PAGE 4, REGARDING THE MOTION TO APPROVE CONDITIONAL USE PERMIT C-14-06 TO ADD THE SENTENCE "THE MOTION WAS UNANIMOUSLY APPROVED". THE MOTION WAS UNANIMOUSLY APPROVED.

IV. PUBLIC ITEMS

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.

Vera Locke, 5757 Knox, expressed concern for the number of multi-family dwellings that were built in the city, which is reducing green space.

V. MAYOR'S REPORT

1. Presentation by Fields for Freedom committee chair.

Ken Sissom, 7215 Mastin, Chair of the Fields for Freedom event presented a follow up report of the event. Mr. Sissom displayed numerous photos of the event and announced that the success of the event resulted in a \$6,000 donation to the Merriam Community Center Foundation. There were several hundred flags that were donated back to the foundation for future use. Mr. Sissom thanked all of the volunteers and agencies that assisted with the event.

Mayor Wilkes presented Committee Co-Chairs Ken Sissom, and Heidi Bennion, and city Administrator Quinn Bennion with certificates of appreciation from the City of Merriam.

2. Consider approval of an ordinance amending Section 17-10 of the Municipal Code relating to court costs (second reading).

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE AN ORDINANCE AMENDING SECTION 17-10 OF THE MUNICIPAL CODE RELATING TO COURT COSTS. THE MOTION WAS UNANIMOUSLY APPROVED.

VI. PLANNING COMMISSION

1. Consider request for approval of a revised preliminary Development Plan for Merriam Village on property located at vicinity of Southeast corner of I-35 and Johnson Drive (Z-7-04/PD2-0606).

Community Development Director Dennis Enslinger presented the background for this item.

The approved Preliminary Development Plan – Merriam Village (September 2004) included two sections of development: the I-35 Retail and the Village Portion. While the I-35 Retail portion of the site has remained relatively the same, the Village portion of the site has changed considerably from the approved plan. Based on these changes, staff requested the applicant provide a revised preliminary development plan for Planning Commission and Council approval.

Since the approval of the Final Development Plan – I 35 Retail portion of the site in April of 2006 the developer has revised the site plan to eliminate Major Retail Building A (48,512 sq. ft.) and replaced it with a hotel which will have between 83-114 rooms (see Final Development Plan for I-35 Retail). The remainder of the I-35 portion of the site will not change in layout or general square footage numbers. This includes building Major Retail B -1a which is 121,180 sq. ft. and parking areas to serve these buildings. The project also involves the extension and construction of Eby Street, which will run from Shawnee Mission Parkway to Johnson Drive. Eby will intersect Johnson Drive and create a signalized intersection with the entry and exit ramps to I-35.

There have been some changes to the proposed grades to the site, which has allowed for the reduction of the overall height of several retaining walls. Staff has requested that the applicant incorporate the changes to the I-35 portion of the site into the revised preliminary development plan.

Because there are significant changes to the layout of the Village portion of the site, the City Council should review the request as a revised preliminary development plan. Article 9 of the Merriam Zoning Ordinance lists criteria, which are to be taken into account when considering a Preliminary Plan for a Planned Unit Development. Findings related to these criteria can be found in the body of the Planning Commission Staff report. At the July 5, 2006 meeting the Planning Commission voted, unanimously, to recommend approval of the

revised preliminary development plan with conditions. The Governing Body has 4 options regarding this application:

1. Vote to Approve (5 affirmative votes required);
2. Vote to Deny (6 affirmative votes required);
3. Table the Application (majority of those present required); or
4. Refer the Application back to the Planning Commission with specific recommendations (majority of those present required)

Staff has drafted an ordinance for the City Council consideration. Should the Governing Body find the proposed preliminary development plan in order for approval, staff will be bringing forth the documents necessary to amend the Merriam Village Project Plan, I-35 Redevelopment District Plan and the Redevelopment Agreement according to the following schedule:

August 14, 2006	Presentation of the draft Resolutions setting public hearings to amend the I-35 Redevelopment District Plan and Merriam Village Project Plan
August 21, 2006	Resolutions setting public hearings to amend the I-35 Redevelopment District Plan and Merriam Village Project Plan
September 25, 2006	Public hearings and considerations of amendments I-35 Redevelopment District Plan and Merriam Village Project Plan. Consideration of amendments to Redevelopment Agreement.

The revision to these documents is not considered substantial and deals with revised TIF projections and further clarifications to project area J to include the hotel use on the site.

Councilmember Stephens expressed concerns over the exterior materials that would be used for the hotel, specifically roofing materials and asked if Council would be allowed the opportunity to view the materials proposed. Other concerns expressed by Councilmember Stephens were related to the Village portion of the site and the reduction of green space along Slater, which now is shown on the plan as parking lots. In the previous plans that area with the residential uses had more green space.

Councilmember Rowe questioned if the franchisee for the hotel had been secured and the type of hotel it would be. Councilmember Rowe questioned if the owner of the hotel would be allowed to change the franchisee after a few years. The concern is that the hotel quality would deteriorate if the franchisee changes and the hotel type changes from the original intent.

Dennis Enslinger responded that the type of hotel that the developer has indicated that interest received from tenants is an extended stay type of property. The Developers Agreement will need to be amended to allow for the hotel along with those amendments provisions could be added to stipulate whether or not the owner would be allowed to change the hotel type and franchisee.

Councilmember Leap questioned if the city had a need for another hotel with five currently in the city, and it would be his preference to have a retail pad site rather than a hotel. Councilmember Leap further questioned the occupancy levels of the current hotels in Merriam and if another hotel is necessary.

Councilmember Hupp commented that she perceives a hotel as a very positive aspect in the development, with the senior housing and condo properties located within the development guests visiting of those residents would utilize the hotel.

Councilmember McConnell shared the concerns of Councilmember Rowe with maintaining the quality of the hotel and that quality being consistent with the rest of the development. Other concerns expressed by Councilmember McConnell were the evolution of the loss of green space on the East Side of the site, which seems to create less of the village type concept. Councilmember McConnell requested the developer explore some type of underground parking for the residential area of the site to bring back the green space as shown in previous plans.

Chase Simmons, Polsinelli Shalton Welte Suelthaus representing the developer addressed the Council to respond the concerns expressed. Replacing the retail pad site with a hotel site does require an amendment to the Developer's Agreement. Stipulations from Council and the Planning Commission can be part of that agreement. As the developer would also rather have a retail site there has been a greater tenant response for a hotel site. The control of the hotel site will be maintained by DDR as will the entire development. It is not the intention of DDR to sell off the hotel pad site. The Village portion of the development continues to evolve and DDR is open to feedback on that area regarding green space and other concerns. The retail portion of the development is ready to move forward as tenants have been secured for the retail sites. There are further Council actions that must take place to continue the forward process of the project and the action tonight will begin those processes.

Quinn Bennion commented in response to Councilmember Leap's question that occupancy rates for the 5 hotels currently in Merriam range from 52.69% to 73.87% for the five month period of January through May.

COUNCILMEMBER HUPP MOVED THAT BASED ON EVIDENCE PRESENTED AT THE JUNE 7, 2006 AND JULY 5, 2006 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, THE GOVERNING BODY UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE A REVISED PRELIMINARY DEVELOPMENT PLAN FOR MERRIAM VILLAGE ON PROPERTY LOCATED IN THE VICINITY OF THE SOUTHEAST CORNER OF I-35 AND JOHNSON DRIVE (Z-7-04/PD2-0606) AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

2. Consider approval of a final plat (P-2-06) for Merriam Village - a five (5) lot commercial subdivision generally located along the East Side of I-35 between 62nd Street and Johnson Drive.

Community Development Director Dennis Enslinger provided the background for this item.

The Merriam City Council approved Ordinance #1495 establishing a Redevelopment Project Plan for the Merriam Village Project on April 26, 2004. The Redevelopment Project Plan was amended on February 28, 2005 (Ordinance #1495) The subject property was rezoned to a Planned Unit Development on April 14, 2005. A preliminary development plan was also approved by the City of Merriam with the rezoning request. The Planning Commission approved a Final Development Plan – I-35 Retail on April 5, 2006. The Planning Commission held a public hearing regarding (Z-7-04/PD2-0606) – Revised Preliminary Development Plan-Merriam Village and voted, unanimously, to recommend approval of the revised preliminary development plan.

Normally, the final plat would have been considered at the April City Council meeting. However, the applicant requested that the final plat be delayed for City Council consideration until revised preliminary development plan was considered and approved. The City Council is considering a revised preliminary development plan as a separate agenda item. Therefore, the final plat is being brought forward at this time. The applicant is requesting the approval of a final plat. The proposed lots are in compliance with the (Z-7-04/PD2-0606) – Revised Preliminary Development Plan-Merriam Village. The final plat is in compliance with the approved preliminary plat.

Special notation regarding the I-35 right-of-way is noted as the proposed plat assumes the exchange of land between the developer and the City of Merriam. The City of Merriam currently holds title to the I-35 right-of-way. The existing ROW lines are portions of partial lots and create a jagged edge. The proposed exchange will clean up the property ownership lines along the I-35

corridor similar to what was done in the case of Merriam Town Center. Separate deeds will need to be filed prior to filing of the final plat. If the Governing Body approves the proposed final plat they will be authorizing to Mayor to execute the appropriate documents to transfer land between KDOT and the City of Merriam.

The proposed plat will vacate several rights-of-way including portions of Grandview Avenue, portions of Eby Street, 62nd Street, 61st Street, 61st Terrace, and 60th Street. The plat also dedicates right-of-way for Eby Street. With the approval of this plat, Eby Street will go from Shawnee Mission Parkway to Johnson Drive. Because the proposed plat will be vacating Grandview Avenue north of Lot 1, accommodations will need to be made for a branch turn-a-round or a hammer head to meet the subdivision regulations. Based on an initial staff review, it appears that this could occur in existing Grandview right-of-way, which is 70 feet (in excess of the required 60 feet). The applicant will need to provide an agreement to construct the appropriate branch turn-a-round or hammer head as part of the plat approval.

Grandview provides access to Lot 1. Access for Lots 2, 3, 4 and 5 will be taken from either Eby Street, 60th Street or Slater. Because of Johnson Drive's designation as a primary thoroughfare, staff is recommending that an access restriction be placed on the face of the plat restricting direct access to Johnson Drive for Lots 3 and 4. Actual access points would be determined as part of the approval process for each final phase of the development.

The plat also contains the dedication of a number of drainage easements to facilitate the construction of an area detention facility for the lots contained within the plat. In addition, the proposed detention facilities will be accommodating the existing detention provided at the City Hall/Police Building complex. The proposed covenants and restrictions, to be filed with the plat, should address this issue and include maintenance provisions.

The proposed plat will be vacating a number of existing easements and dedicating a number of new easements. The plat has provided easements for proposed sanitary sewer however, the plat should be revised to provide for general utility easements to accommodate other utility services.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE A FINAL PLAT (P-2-06) FOR MERRIAM VILLAGE AND HEREBY VACATING EXISTING RIGHTS OF WAY AND ACCEPTING THE EASEMENTS AND DEDICATIONS. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

3. Consider request for approval of a revised Final Plat for Timber Ridge Villas on property located at 9920, 10016, and 10024 West 67th Street (P-4-06).

Community Development Director Dennis Enslinger presented the background for this item.

The Merriam Planning Commission recommended approval of a rezoning request (increase in density) and associated Preliminary Development Plan (Z-01-06/PD2-0606 – Revised Preliminary Development Plan –Villas at Timber Ridge) on June 7, 2006. The City Council approved the rezoning and associated Preliminary Development Plan –Villas at Timber Ridge on June 26, 2006.

The applicant is requesting the approval of a final plat. The proposed lots are in compliance with the Preliminary Development Plan –Villas at Timber Ridge. Just over half (17) of the lots comply with the R-1 (10,000-sq. ft.) or the R-2 (7,500-sq. ft.) district requirements. The remainder of the lots (16) are in the 7,000 - 5,773 sq. ft. range. The final plat is in compliance with the approved preliminary plat.

The applicant is proposing to dedicate new right-of-way to provide access to the site. The street will be a cul-de-sac, which will intersect with 67th Street. The proposed dedication meets the minimum ROW requirements (50 feet) for residential streets. West 67th Street is currently designated as a Primary Thoroughfare, which typically requires a minimum of 80 feet of ROW. At this location the existing ROW is 50 feet along 67th Street. The City Engineer has reviewed this issue and determined that at this particular location 50 feet of ROW is sufficient to deal with any perceived future road improvements. The City Engineer has requested that Lots 1, 21, 22, and 33 shall be restricted from accessing West 67th Street. This is a condition of approval.

The proposed plat indicates the dedication of several drainage, sanitary sewer, and water easements. The final plat does not indicate the need to vacate any existing easements. The Subdivision Regulations (Section 24) indicates that general utility easements should be provided on the rear or side lot lines to adequately service the proposed lots. Dedication of these easements is a condition of approval.

The City Engineer has also requested a drainage easement along the north property line from the east property line to the west property line as part of the preliminary development plan approval process the plat should reflect this request. In addition, the City of Merriam has requested a trail easement for a possible future connection to the streamway path. A fifteen (15) foot trail easement should be noted on the face of the plat between Lots 8 and 9.

The Planning Commission has recommended approval of P-4-06 Final Plat – Timber Ridge Villas. The Community Development Director finds the plat in order for the approval and acceptance of dedications by the Governing Body.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE THE REVISED FINAL PLAT FOR TIMBER RIDGE VILLAS ON PROPERTY LOCATED AT 9920, 10016, AND 10024 WEST 67TH STREET (P-4-06) AND HEREBY ACCEPTING THE EASEMENTS AND DEDICATIONS. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider request for approval of a revised Preliminary Development Plan for Shawnee Mission Medical Center Campus - Medical Office Buildings (Z-4-04/PD2-0706).

Community Development Director Dennis Enslinger presented the background for this item.

The City of Merriam approved a rezoning request (Z-3-03) to change the various zonings on the Shawnee Mission Medical Center (SMMC) Campus to PUD in September 2003. Subsequently, the City approved a Preliminary Development Plan – SMMC Campus in April 2004. With the approval of the Preliminary Development Plan it was understood that the overall plan could take up to 10 years to construct. A Final Development Plan for a Critical Care Unit addition and the construction of a parking garage was approved by the Planning Commission on April 6, 2005 with the following conditions:

1. The approval of a complete Stormwater Management Plan.
2. The approval of a revised landscaping plan (planting must be provided at the 75th St. and Frontage Road Intersection).
3. The completion of the vacation of the necessary and appropriate section of the street rights-of-way.

The Planning Commission packet information contains a copy of the previously approved preliminary development plan which shows two phases of Medical Office Buildings (MOB), future parking garage, Critical Cardiac Care area expansion and other buildings located on the east end of the campus. In comparing the two preliminary development plans, it is easy to ascertain that there are significant modifications to the layout, size and number of structures. While some of these items were addressed with the approval of the Final Development Plan-Critical Care Unit addition and the construction of a parking garage (April 6, 2005), there are still significant changes to the approved preliminary development plan.

Because there are significant changes to the layout of the MOB portion of the site, the City Council should review the request as a revised preliminary development plan. Article 9 of the Merriam Zoning Ordinance lists criteria, which are to be taken into account when considering a Preliminary Plan for a Planned Unit Development. The Planning Commission held a public hearing on July 5, 2006 and voted, unanimously, to recommend approval of the revised preliminary development plan with conditions.

Councilmember Stephens had questions regarding the entrances to the medical center complex.

Kurt Broeckelmann, Shawnee Mission Medical Center explained that the new plan is designed to streamline the traffic throughout the complex.

COUNCILMEMBER HANDS MOVED THAT BASED ON EVIDENCE PRESENTED AT THE JULY 5, 2006 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, THE GOVERNING BODY UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE A REVISED PRELIMINARY DEVELOPMENT PLAN FOR SHAWNEE MISSION MEDICAL CENTER CAMPUS-MEDICAL OFFICE BUILDINGS (Z-4-04/PD2-0706) AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. THE MOTION WAS UNANIMOUSLY APPROVED.

VII. COUNCIL ITEMS

COUNCILMEMBER HUPP MOVED THAT CITY COUNCIL CENSURE AND REPRIMAND COUNCILMEMBER DAN LEAP FOR AN IMPROPER MOTION HE MADE AT THE JUNE 26, 2006 COUNCIL MEETING FOLLOWING AN APPROPRIATELY CALLED EXECUTIVE SESSION. BY MAKING HIS MOTION COUNCILMEMBER LEAP DID THE FOLLOWING:

- 1. JEOPARDIZED THE CONFIDENTIAL NATURE OF ATTORNEY-CLIENT RELATIONSHIP.**
- 2. VIOLATED SECTION 2-107L OF THE CITY'S CODE OF ETHICS WHICH REQUIRES COUNCIL MEMBERS TO "NEVER INTENTIONALLY ACT OUTSIDE THE SCOPE OF HIS OR HER AUTHORITY." COUNCILMEMBER LEAP KNEW, BASED ON COMMENTS BY FELLOW COUNCILMEMBERS IN EXECUTIVE SESSION, THAT HE WAS NOT AUTHORIZED TO WAIVE THE ATTORNEY-CLIENT PRIVILEGE ON BEHALF OF THE COUNCIL, YET HE CHOSE TO MAKE A MOTION WHICH ATTEMPTED TO DISCLOSE THE CONTENT OF A PRIVILEGED AND CONFIDENTIAL DISCUSSION BETWEEN THE COUNCIL AND ITS ATTORNEY.**
- 3. VIOLATED THE CITY OF MERRIAM GOVERNING BODY RULES OF PROCEEDURE WHICH STATES THAT SUBJECTS DISCUSSED DURING EXECUTIVE SESSION ARE CONFIDENTIAL. BY VIOLATING THE GOVERNING BODY RULES, COUNCILMEMBER LEAP BREACHED SECTION 2-107B OF THE CODE OF ETHICS WHICH STATES THAT A COUNCILMEMBER SHOULD UPHOLD**

THE LAWS AND REGULATIONS OF THE CITY OF MERRIAM AND NEVER BE A PARTY TO THEIR VIOLATION.

- 4. VIOLATED SECTION 2-107A OF THE CODE OF ETHICS WHEN HE CHOSE TO DISCUSS IN OPEN SESSION A TOPIC THAT WAS RIGHTFULLY DISCUSSED IN EXECUTIVE SESSION. WHILE COUNCILMEMBER LEAP HAS A RIGHT TO HIS OPINION, HE HAS AN OBLIGATION UNDER SECTION 2-107A TO PUT LOYALTY TO THE CITY OF MERRIAM ABOVE HIS LOYALTY TO ANY OTHER PERSONS OR POLITICAL INTEREST.**

- 5. VIOLATED SECTION 2-107I OF THE CODE OF ETHICS WHICH STATES THAT A COUNCILMEMBER SHOULD "AT ALL TIMES, DISPLAY THE HIGHEST LEVEL OF INTEGRITY IN PERFORMING HIS OR HER DUTIES AND NEVER KNOWINGLY NOR NEGLIGENTLY MISLEAD OR ALLOW OTHERS TO MISLEAD THE PUBLIC." BOTH IN HIS MOTION AND BY HIS ACTIONS, COUNCILMEMBER LEAP HAS MISLED THE PUBLIC BY INDICATING THAT SIX COUNCILMEMBERS "VOTED TO THREATEN LOCAL BUSINESS WITH CONDEMNATION." THIS IS AN UNTRUE STATEMENT. COUNCILMEMBER BURKS SECONDED THE MOTION. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP ABSTAINED. COUNCILMEMBER CRABTREE VOTED NAY.**

A. Work Session

B. Finance and Administration Committee

1. Consider approval of an ordinance to authorize an increase in tax revenues for the 2007 budget (first reading).
2. Consider approval of an ordinance to adopt the 2007 budget (first reading).
3. Consider approval of an ordinance authorizing expenditures for the 2007 budget by the City Administrator (first reading).

C. Community Development/Public Works Committee

1. Consider approval of an ordinance relating to the Tree Board (second reading).

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE AN ORDINANCE RELATING TO THE TREE BOARD. THE MOTION WAS UNANIMOUSLY APPROVED.

VII. STAFF ITEMS

City Administrator Quinn Bennion announced that the easement documents have been signed by Sam Matier. The Merriam Hills project will continue as planned with no action of condemnation.

VIII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER CRABTREE MOVED TO ADJOURN AT 8:45 PM. COUNCILMEMBER HANDS SECONDED. THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

Juli Pinnick
Deputy City Clerk