

**MERRIAM CITY COUNCIL
MINUTES
CITY HALL
9000 W. 62ND TERRACE
March 26, 2007
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Carl Wilkes called the meeting to order at 7:00 p.m.

II. ROLL CALL

Mayor Carl Wilkes

Bryan Burks

John Crabtree

Shawn McConnell

Nancy Hupp

Dan Leap

Gayle Stephens

Chad Rowe

Chris Evans Hands was absent

Staff Present

Quinn Bennion, City Administrator; Stephanie Dawkins, Assistant City Administrator; Michelle Daise, City Attorney; Bill Lietzke, Police 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 regular City Council meeting held February 26, 2007.
2. Approval of the minutes of the special City Council meeting held March 12, 2007.
3. Authorize the Mayor to sign letter of interest to participate in the Johnson County Wireless Broadband Cooperation agreement.

4. Approval of an Interlocal Agreement with Water District No. 1 of Johnson County.

COUNCILMEMBER CRABTREE MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS 1-4. 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.

Councilmember Leap commented that he met with the resident at 9931 W. 56th St. regarding the condition of the roadway which appears to be crumbling in various places. After checking with staff Councilmember Leap noted that this road is not scheduled for overlay until 2009. Councilmember Leap distributed a photo depicting the condition of the road. Councilmember Leap requested checking into a temporary fix, such as glue, until the project can be done in 2009.

Rob Johnson, President and CEO of the NE Johnson County Chamber of Commerce introduced himself to the council. Mr. Johnson has been in his position since December 2006 and invited the council to call him if they have any questions or needs from the chamber.

V. MAYOR'S REPORT

1. Police Department's 2006 Annual Report.

Police Chief Bill Lietzke presented the 2006 Police Department Report.

2. Presentation regarding the 2007 Fields for Freedom event.

Heidi Bennion and Ken Sissom addressed the council regarding the upcoming Fields of Freedom 2007 event. The 2007 event will include connecting Downtown Merriam to Downtown Shawnee by placing flags along Johnson drive from Merriam to Shawnee. Last years event was very successful with many visitors and community support. The event raised \$7,000 in donations for the Merriam Community Center Foundation. In order to make the 2007 event a success the committee requested city council support for the following items.

1. Use of the Right of Way along Merriam Drive and Johnson Drive.
2. Use of the Farmer's Market (fee waived) from June 30th to July 7th.

3. Authorization to use Irene B. French Community Center and Farmers Market front lawn area.
4. Camping Permit for Boy Scouts and others at Farmer's Market during event.
5. Community Center table use for picnic (if needed).
6. Free meeting space in city buildings for committee planning meetings.
7. General motion of support to utilize reasonable city labor and resources.
8. Sanction the event as a community and city event (for insurance purposes).

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL SANCTION THE FIELDS FOR FREEDOM 2007 AS A CITY EVENT AND PROVIDE THE REQUESTED ITEMS OF SUPPORT. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider the appointment of Joseph Kronawitter (W2) to the Board of Zoning Appeals for the term expiring December 31, 2009.

COUNCILMEMBER LEAP MOVED THAT THE COUNCIL CONFIRM THE APPOINTMENT OF JOSEPH KRONAWITTER (W2) TO THE BOARD OF ZONING APPEALS FOR THE TERM EXPIRING DECEMBER 31, 2009. THE MOTION WAS UNANIMOUSLY APPROVED.

Mayor Wilkes acknowledged Dan North, Developers Diversified Realty, in the audience and requested an update to the Merriam Village Project. Mr. North provided an update including the retaining walls and power line relocations will occur this summer, as well as the realignment of Eby St. The general contractor selection process is complete. The contractor selection for the senior housing and mixed use portion of the project is set to begin. Country Hill Motors relocation is nearly complete. The major anchor tenant contract is due to be signed next month, with the junior tenants to follow soon after. A groundbreaking ceremony will be held shortly after the major tenant contract is signed. The target date for opening Phase I of the project is fall 2008.

VI. PLANNING COMMISSION

1. Consider approval of a Final Plat on property located at 5032 and 5036 Antioch Road (Wanda's Woods), in an IP-1, Light Industrial Planned Zoning District (P-02-07).

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

The applicant is requesting the approval of a final plat. The property owner of record is the City of Merriam. These parcels were acquired as part of the

Antioch Interchange modifications. The City is platting the property in anticipation of selling the replated parcel.

Section 11 of Merriam Subdivision Regulations states that when the subdivision or resubdivision of one, two, three or four lots and abuts an improved public street, the Planning Commission may waive the requirements for submission of a preliminary plat. The proposed plat meets the requirements set forth in Section 11. At the January 3, 2007 Planning Commission Meeting, the Commission waived the requirement for submission of preliminary plat associated.

Stormwater Study (Chapter 7 of the Merriam Municipal Code):

Because the site is less than 1 acre the site is not required to meet the Stormwater Ordinance provisions.

Access:

With the replatting of this parcel, access to Antioch Road will be restricted. The primary access to the lot will be from the alleyway along the west side of the lot

Easements:

The proposed plat indicates the dedication of several general utility easements to bring it into compliance with the Subdivision Regulations and to ensure existing utilities are contained within a dedicated easement. In addition, the proposed plat calls for a 20 foot utility/trail easement along Antioch Road (east edge of the property). This will allow for the city to construct a trail connection should it be desirable in the future.

Lot Size and Bulk Requirements:

The proposed lot does not meet the lot size requirements for IP-1 zoned property. The minimum lot size for an IP-1 lot is 20,000 square feet. The proposed lot is 17,773 square feet. The Planning Commission granted a waiver from this requirement as part of the planned development provisions. All public utilities necessary can be provided to the site.

The Planning Commission has recommended approval of P-2-07 Final Plat – Wanda’s Woods Final Plat. The Community Development Director finds the plat in order for the approval and acceptance of dedications and easements by the Governing Body.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE THE FINAL PLAT FOR WANDA’S WOODS ON PROPERTY LOCATED AT 5032 AND 5036 ANTIOCH RD (P-2-07). THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider approval for a change in use on property located at 5100 Merriam Drive in a PUD, planned unit development zoning district (6584-UC2-0307).

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

The subject property is located at the intersection of West 51st Street and Merriam Drive. The site was rezoned Planned Unit Development as part of a larger area in 1972. The Planning Commission and City Council approved Ordinance No. 739 in March of 1977 which designated this site for office/warehouse uses and approved the final development plan at this location.

Other than restriping of the parking area, the applicant does not propose to alter the existing preliminary development plan on file. If the change in use is approved, the applicant would need to submit a revised final development plan for administrative approval to show the parking lot changes and the approved uses.

Because the original approval and ordinances were specifically for an office/warehouse facility staff has recommended a revision to the proposed uses. The Planning Commission and City Council should review the request as a change in use. 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. These criteria contained in Section 9-103A, along with applicable staff comments, can be found in the Planning Commission staff report.

The Planning Commission held a public hearing on March 7, 2007 and voted, unanimously, to recommend approval of the new use (indoor sports facility) with conditions.

The property is currently shown as light industrial on Map 7-1 of the Comprehensive Plan. The Comprehensive Plan identifies the area as part of the Antioch Interchange which is designated as a future land use opportunity.

The Kansas Supreme Court has specified in case law (Golden v. Overland Park) that certain factors are to be considered when making rezoning decisions. These factors are:

1. Character of the Neighborhood
2. Nearby Zoning and Uses
3. Suitability of the Property for the Current Zoning
4. Extent to which the Requested Zoning will Detrimentally Affect Nearby Property
5. Length of Time the Property has been Vacant as Zoned

6. Hardship on the Owner Compared to the Relative Gain to the Public Health, Safety and Welfare
7. Conformance with the Master (Comprehensive Plan)
8. The Recommendations of the Professional Staff

Staff offers the following comments regarding the Golden Factors and the items listed in: (Section 20-21(e)):

Character of the Neighborhood

Finding: The area is a mixture of land uses including single-family residential, office, warehousing, auto repair, contractor's yards and production facilities. The surrounding area has been under some changes over the last thirty years. The subject site is located in a transition area from residential uses to industrial uses. A number of residential structures in the area have been converted to other uses including office, construction companies and retail. It is anticipated that these changes will continue to occur in the areas that are zoned light industrial or planned unit development-general.

Nearby Zoning and Uses

Finding: The property to the south and west is zoned PUD (Planned Unit Development) and is developed with office/warehouse uses. The property to the east and south is zoned I-1 (Light Industrial) and is developed with commercial and industrial uses. The property to the east is zoned IP-1 (Planned Light Industrial) District and is developed with commercial and industrial uses. The property to the north is zoned R-1 (Single-Family Residential) District and is developed with single family residential uses.

Suitability of the Property for the Current Zoning

Finding: The current zoning of the property is Planned Unit Development (PUD) and allows for office/warehouse uses. The zoning of the property would still remain PUD but an additional use, indoor sports facility, would be added to the allowable uses for the site.

Extent to which the Requested Zoning will Detrimentially Affect Nearby Property

Finding: Adding an indoor sports facility on the site would expand the permitted uses of the subject site from office/warehouse. It is anticipated that there will be an increase in the amount of traffic to the site with the expanded use. The applicant has indicated that the hours of operation for the sports facility would be from 4 p.m. to 10 p.m. (Monday through Friday) and Saturday 8 a.m. to 6:00 p.m. Based upon these projected hours the proposed use would compliment the existing uses which typically operate 8 a.m. to 5 p.m. (Monday through Friday). As part of the Planned Unit Development process the applicant would need to update the final development plan which could address any potential detrimental affects to adjacent property.

Length of Time the Property has been Vacant as Zoned

Finding: The property currently contains a heating and cooling contractor office/warehouse use and one vacant office space which has been vacant for approximately one year.

Hardship on the Owner Compared to the Relative Gain to the Public Health, Safety and Welfare

Finding: The subject parcel currently contains office and warehouse uses these uses would still be the primary uses of the structure. The additional use of an indoor sports facility will increase the amount of traffic generated to the site. The site has direct access to Merriam Drive which should be used as the primary access point to the site. To limit the amount of traffic on W. 51st street the Merriam Drive access point should be used as the primary entrance.

Conformance with the Master (Comprehensive Plan)

Finding: The property is currently shown as industrial on Map 7-1 of the Comprehensive Plan. The Comprehensive Plan identifies the area as part of the Antioch Interchange which is designated as a future land use opportunity. The comprehensive plan notes that this area is not taking full advantage of the I-35 Antioch Road interchange and could contain a mixture of uses including commercial, retail and office activity.

Staff Recommendation:

The Community Development Director recommends approval of 6584-UC2-0307 based on the findings of fact found in the body of the staff report subject to the following conditions:

A revised final development plan be submitted and administratively approved;
The hours of operation be limited to those presented in the application and if changes are necessary, that the changes be reviewed by the Planning Commission as part of a revision to the Final Development Plan; and
that the Merriam Drive access point be used as the primary entrance to the site and the most eastern entrance on 51st Street be used as the primary exit to the site.

The applicant, Tim McCarty, 5100 Merriam Drive, answered questions from councilmembers.

COUNCILMEMBER HUPP MOVED THAT THE GOVERNING BODY BASED ON EVIDENCE PRESENTED AT THE MARCH 7, 2006 PUBLIC HEARING, INFORMATION SUPPLIED BY THE APPLICANT, AS WELL AS, THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE CASE NUMBER 6584-UC2-0307 ALLOWING FOR THE ADDITIONAL USE OF INDOOR SPORTS FACILITY ON THE PROPERTY

LOCATED AT 5100 MERRIAM DRIVE AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE AFTER IT HAS BEEN REVIEWED BY LEGAL COUNSEL. THE MOTION WAS UNANIMOUSLY APPROVED.

VII. COUNCIL ITEMS

A. Work Session

B. Finance and Administration Committee

1. Consider approval of an ordinance making it unlawful to possess weapons in certain city-owned buildings located in the City limits of the City of Merriam, Kansas (first reading).

C. Community Development/Public Works Committee

1. Consider approval of Council Policy 128 regarding Detention Waivers.

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

The Community Development/Public Works Committee has been reviewing the policy issues surrounding the granting of detention waivers under the current provisions of the Stormwater Ordinance. Under the current provisions, a detention waiver may be granted if the stormwater study can demonstrate that detaining stormwater on site and releasing it at the approved delayed release rate would increase the downstream peak discharge in the associated sub-water basin which is typically the Turkey Creek basin.

Based on findings that detention would actually increase the peak flow and aggravate flooding issues, it seems logical that it would not be in the best interest of the community to require detention for the proposed project. Instead of providing detention, the "detention waiver" provisions indicate that the developer should either propose or participate in alternate mitigating measures.

In the past, if the developer met the detention waiver criteria, the city did not typically require the developer to propose or participate in funding alternative mitigating measures which would address downstream flooding or address inadequate or obsolete existing drainage facilities. Given the importance in mitigating downstream issues and the current language contained in Section 7-2 (7) stating that the developer shall propose or participate in such measures, staff recommends that the City Council

adopt a policy on how to equitably determine a participation level if the developer is not constructing improvements which mitigate downstream impacts of the proposed development. It should be noted that this does not limit or absolve the responsibility of the developer to address localized flooding or localized inadequate or obsolete existing drainage facilities as required by an approved stormwater study. Since all development within a particular watershed contributes to the impacts within the basin it should not be the sole responsibility of one development to mitigate flooding issues or improve inadequate or obsolete existing drainage facilities for the entire basin or sub-basin. In trying to determine an appropriate and equitable manner in assessing a participation level for the mitigation of downstream impacts staff looked at several alternatives.

Alternative #1: This alternative would base the amount of participation on the total acreage within a proposed development. This model would assess a fee for instance \$3,000 dollars for each acre within the development. The City of Shawnee uses this alternative. Since the amount of stormwater runoff is directly related to the amount of impervious surface within the development staff looked for other alternatives.

Alternative #2: This alternative would base the amount of participation on the costs which would be incurred if the development was required to build a detention facility per the stormwater management criteria. Under this alternative there would be a direct correlation to the amount of impervious surface within the development and the amount of participation. For example, based on current stormwater code provisions the more impervious surface area the greater amount of detention required. However, there are a number of practical implementation issues with this alternative. The developer would be required not only design a 'detention facility' but would have to provide cost estimates related to the facility. To be equitable cost estimates would need to include construction costs and land acquisition costs. Given the expense the developer would incur to design and provide a cost estimate for a facility which would not be constructed staff looked for another alternative which was based on impervious surface coverage.

Alternative #3: This alternative would base the amount of participation on the amount of impervious surface area which is typically found on a single-family dwelling lot or 2,750 square feet often called an equivalent dwelling unit (EDU). This would allow for the participation level to be calculated based on the number of EDUs within a development. For instance, a development which has 50,000 square feet of impervious surface would have 18.2 EDUs (50,000 divided by 2,750). The number of EDUs would then be multiplied by a set fee per EDU. The City of Lenexa currently uses this alternative.

Of the three alternatives explored, staff would recommend Alternative #3 because it is tied directly to the amount of impervious surface within a development which is correlated to the amount of stormwater runoff produced by the development. In addition, this alternative does not require the developer to incur additional engineer and consultant costs associated with designing a 'conjectural detention facility' but still provides an equitable manner in which to determine participation levels. Staff is recommending a fee of \$900 per EDU which would be established by amending the 2007 City of Merriam, Kansas Fees and Charges for City Services Schedule.

Staff has taken the liberty of looking at several recent projects and provide the participation level for each of the projects. The City will want to be sensitive to developer fees so as not to discourage development because of the amount of fees. Currently, the City of Merriam does not have any impact or development fees. Please note that not all of these projects received detention waivers, they are provided to show a range of projects and are estimates based upon preliminary impervious area calculations.

Animal Haven: 54,874 sq. ft. of impervious surface/ 1.52 acre site
20 EDUs @ \$900 = \$18,000

Aristocrat Motors Expansion: 62,726 additional sq. ft. of impervious surface/4.8 acre site
228 EDUs @\$900 = \$205,200

Walgreens: 70,221 sq. ft. of impervious surface/1.8 acre site
25.5 EDUs @\$900 = \$22,950

Timber Ridge Villas: 33 dwelling units/ 7.29 acre site
33 EDUs@ \$900 = \$29,700

Staff has drafted a city council policy establishing the method of determining the participation level for alternate mitigating measures of developments that meet the criteria for a detention waiver (Chapter & Article 1 Stormwater Management 7-2 (7)).

Mr. Enslinger added that one of the changes with this policy is that when somebody submits a stormwater study they are actually going to have to show that a detention waiver is not in the community's best interest. By approving this policy we are actually saying that in certain cases detention is not good for the overall community because the downstream flow would actually be increased during flood events more than it would be if it is not detained. It will not be an option of whether the applicant chooses the detention waiver but rather if the waiver is the best option for the community based on where the development is. The stormwater fee only

applies to those developments that have to provide the detention waiver as opposed to providing detention on site.

Dan North, DDR asked for clarification regarding if the detention waiver fee could be used for improving the downstream storm system.

Mr. Enslinger responded that the fee would be used for improvements but if there is localized flooding associated with the development that is along a tributary or other aspects within the street those would need to be in addition to the fee that is charged under this waiver.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE COUNCIL POLICY 128 REGARDING DETENTION WAIVERS. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider approval of an amendment to the Fee Schedule to correspond with the Detention Waiver policy.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL AMEND THE 2007 CITY OF MERRIAM, KANSAS FEES AND CHARGES FOR CITY SERVICES SCHEDULE TO REFLECT THE RATE OF \$900 PER EQUIVALENT DWELLING UNIT (EDU) IN CALCULATING DETENTION WAIVER ALTERNATIVE MITIGATION MEASURES PARTICIPATION LEVEL OBLIGATIONS. THE MOTION WAS APPROVED. COUNCILMEMBERS LEAP AND CRABTREE VOTED NAY.

3. Discussion regarding Letters of Support for the Upper Turkey Creek Watershed Study.

Scott Crain, City Engineer, stated that the President's budget for this year did not include funding for the ongoing study for Turkey Creek project. The study portion of the project has to be completed to define alternatives to help define the final set of improvements that they will support and the Federal Government will participate in. He said our now is the time to encourage our congressional representatives to provide funding via the 2008 Energy and Water Appropriations Bill for the Upper Turkey Creek project. Mr. Crain said that sample letters were provided for the councilmembers and prepared for the Mayor's signature. He said those sample letters would be provided to other entities for letter writing campaigns specifically involving Wyandotte County, Johnson County, Downtown Merriam Partnership and Merriam Drainage District. He said support would be provided to any private businesses that wanted to participate.

VII. STAFF ITEMS**VIII. OLD BUSINESS**

1. Consider approval of an ordinance relating to obstruction in required yards and the definitions for awnings, canopies, and carports (first reading).

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

At the January 22, 2007 City Council Meeting, Ms. Lori Keller, 5435 Switzer, requested that the City Council consider allowing her carport to remain in its current location by "grandfathering" structure. With the passage of Ordinance #1530, the structure does not meet the front yard setback requirements for carports and would need to be relocated removed by January 23, 2008. The Community Development/Public Works Committee discussed the item at their February 19th Meeting and forwarded the request onto the City Council for consideration at the February 26, 2007 meeting. At the February 26th Council meeting the City Council directed staff to draft language amending Ordinance No. 1530 extending the period to bring non-conforming carports into compliance to March 21, 2015. In addition, the Council directed staff to evaluate whether removal of the non-conforming carport could be tied to the sale of the property on which it sits. After looking at the legal and enforcement issues related to this proposal, staff is not recommending such language be added to the revised ordinance. Therefore, the proposed ordinance only extends the time in which a property owner has to bring the carport into compliance until March 21, 2015.

There was some discussion regarding not amending the ordinance to extend the compliance period to the year 2015.

Councilmember Stephens stated that a resident call her today to express their opposition to extending the compliance period.

This item will be referred back to the Community Development/Public Works Committee to discuss the time frame.

IX. NEW BUSINESS**XI. EXECUTIVE SESSION**

COUNCILMEMBER MCCONNELL MOVED THAT THE CITY COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSIDER CONSULTATION WITH LEGAL COUNSEL ON MATTERS THAT WOULD BE DEEMED PRIVILEGED IN AN ATTORNEY-CLIENT RELATIONSHIP RELATING TO ACQUISITION OF REAL PROPERTY. PRESENT WILL BE THE CITY

ADMINISTRATOR AND CITY ATTORNEY. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 8:50 P.M. COUNCILMEMBER STEPHENS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

The meeting reconvened at 8:50 p.m.

COUNCILMEMBER STEPHENS MOVED THAT THE CITY COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSIDER CONSULTATION WITH LEGAL COUNSEL ON MATTERS THAT WOULD BE DEEMED PRIVILEGED IN AN ATTORNEY-CLIENT RELATIONSHIP RELATING TO PENDING LITIGATION. PRESENT WILL BE THE CITY ADMINISTRATOR, COMMUNITY DEVELOPMENT DIRECTOR AND CITY ATTORNEY. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:15 P.M. COUNCILMEMBER CRABTREE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED

The meeting reconvened at 9:15 p.m.

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL COUNCILMEMBER CRABTREE MOVED TO ADJOURN AT 9:20 P.M. COUNCILMEMBER BURKS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Approved: 4/23/07 .

Respectfully submitted,

Juli Pinnick
Deputy City Clerk