

**MERRIAM CITY COUNCIL
MINUTES
CITY HALL
9000 W. 62ND TERRACE
JULY 23, 2007
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Carl Wilkes called the meeting to order at 7:15 p.m. following the Public Hearing.

II. ROLL CALL

Mayor Carl Wilkes

Pam Bertoncin
Bryan Burks
John Crabtree
Nancy Hupp
Chris Evans Hands
Dan Leap
Chad Rowe
Gayle Stephens

Staff Present

Quinn Bennion, City Administrator; Stephanie Dawkins, Assistant City Administrator; 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 regular City Council meeting held June 25, 2007.
2. Approval of 2008-2010 Turkey Creek Festival Agreement with Johnson County Park & Recreation District for the use of Antioch Park.
3. Approval of amendment to interlocal agreement between the City of Merriam and Johnson County Park and Recreation District for the Development of Waterfall Park.

4. Approval of a contract with FP&C, Fire Protection and Code Consultants, Inc., in the amount of \$93,000.00 to conduct interior tenant finish inspections for the Critical Care Unit at the Shawnee Mission Medical Center.

COUNCILMEMBER STEPHENS 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.

Heidi Bennion provided a summary of the Fields for Freedom 2007 event. The event drew thousands of people to Merriam over the week long event. Over 200 community volunteers from the communities of Merriam and Shawnee came together to make the event happen and was a great success.

Shelly Plekowski spoke regarding an issue with placement of flags along Merriam Dr. and a misunderstanding with two businesses who initially did not receive flags in front of their business. The issue was quickly resolved and flags were then placed at those businesses. Ms. Plekowski also addressed an issue with stolen flags in several areas around the city. Regardless of these two issues the event has a huge success and positive reflection of the community.

Dan Leap, 5848 Merriam Dr., addressed the council as a business owner and resident regarding the Fields for Freedom event and an issue with the placement of flags along the front property lines of the businesses along Merriam Dr. Mr. Leap and his father, Bill Leap owners of properties located at 5847 and 5848 Merriam Dr. did not object to flags being placed on their front property lines. On June 30th when all the flags were placed along Merriam Dr. no flags appeared on either of the Leap's properties. Mr. Leap called the Merriam Police Department thinking the flags may have been stolen. Mr. Leap reported that the Police Department quickly resolved the issue and flags were soon placed in front of each of the Leap's businesses. Mr. Leap later reviewed his surveillance tape to try to determine if the flags had indeed been stolen. The tape revealed committee volunteer Jim Wymer placing then removing the flag in front of Dan Leap's business. Mr. Leap believes that Mr. Wymer's actions were politically motivated and requested the Fields for Freedom committee excuse Mr. Wymer from volunteering on the committee in the future.

Ken Sissom, 7215 Mastin addressed the council regarding the Pointe at Prairie Haven Development and the lack of progress regarding that project. Mr. Sissom distributed photos of the project which depicted tall weeds, and lack of fencing to secure the sight. Other concerns regarding erosion issues and debris on the site

have been raised by the neighbors. Mr. Sissom questioned the status of the building permit and whether it is valid.

Community Development Director Dennis Enslinger responded that he has been corresponding with the developer regarding the building permit which would have been declared inactive on June 26, 2007 due to lack of activity on the project. The developer did request and was granted an extension for six additional months. Staff has been working with the developer to bring the site into compliance. The City has contracted to have the site mowed twice and have billed those fees back to the developer. Erosion issues have been addressed with the developer. The fencing that has been removed was not removed by the developer but individuals conducting illegal dumping on the site. That fencing has been replaced by the developer six times. Staff will continue to monitor the site and work with the developer to ensure compliance on the site.

V. MAYOR'S REPORT

1. Presentation and discussion of Supplement to Exploratory Report regarding consolidation of fire services in Merriam.

City Administrator Quinn Bennion provided an overview of the Supplement Exploratory Report.

There were five unresolved items as presented in the *Exploratory Report*. The group met on June 29th and July 11th. The meetings resulted in proposed resolutions of the outstanding issues to be considered by both governing bodies. The following is the proposed resolution for each:

1. Motor Vehicle Tax:

When changes occur in the distribution of motor vehicle tax revenue by the County, the changes are delayed by one year from when the mill levy change occurs. As such, CFD2 desires to be compensated for the amount of motor vehicle tax Merriam would receive in the first year of consolidation that corresponds to the CFD2 mill levy.

Proposed resolution -

The City would forward to CFD2 the portion of motor vehicle tax in 2009 corresponding to the CFD2 mill levy. The amount of the payment is estimated at \$167,000. Since the distribution delay is only one year, this proposed payment would occur in 2009 only.

2. Building Lease:

Merriam is seeking a lease arrangement that compensates for the use of the current fire department space. CFD2 would like an arrangement in the first ten years of consolidation that would provide that CFD2 pays for an allocated amount of building utilities and insurance, but does not include a form of rent payment. CFD2 plans to provide its own custodial services and building maintenance, as well as to fund any capital expenditures required for the fire service portion of City Hall. The City would seek a provision for the lease arrangement to be revisited in several years.

Proposed resolution -

CFD2 would credit the City for an annual lease amount, based upon comparable rental per square foot for combination industrial and office buildings. The calculated lease amount is \$88,865 annually. CFD2 would provide their own maintenance and custodial services, and would either provide their own property and liability insurance or reimburse the City for the CFD2 portion of the building. CFD2 will not actually make cash payments to the City for the lease. Instead, the lease amount is considered a credit to the City in resolving the funding gap. The proposed lease arrangement would remain in place until Merriam's two TIF districts expire.

3. Equipment:

CFD2 has expressed interest in continuing to operate the 2001 pumper truck, the pickup truck, and the rescue boat. The City currently owns additional equipment, including the aerial truck. During the merger of Mission District with CFD2, the two districts merged all resources, including liabilities and assets. The treatment of the remaining equipment is another point for negotiation.

Proposed resolution -

MFD and CFD2 would merge all vehicles and equipment. Estimated resale values are on page 28 of the *Exploratory Report* and total \$640,000. All MFD equipment and vehicles are paid for (no outstanding debt). CFD2 would sell any vehicles and equipment not utilized and retain the proceeds. Revenue from the sale of equipment would be used by CFD2 to continue to provide services and help resolve the funding gap.

4. Accrued vacation & sick leave liabilities:

MFD firefighters will have accrued unused vacation and sick leave at the date of consolidation or merger. Employers are required by law to pay employees for unused vacation at the time employment ends. Unused sick leave is more open to employer policy and discretion. Both the City and CFD2 agree that MFD firefighters transferring to CFD2 should keep at least some portion of their accrued sick leave, to protect them in the event of a serious medical condition. The cost and treatment of these accrued liabilities will need to be negotiated.

Proposed resolution -

The City would assume the liability for accrued vacation, estimated at \$72k. These dollars would be paid at the time MFD employees transfer to the CFD2 payroll. CFD2 would assume the liability for accrued sick leave, estimated at \$141k. The City would provide a retirement package for the MFD Fire Chief.

5. Funding Gap:

The difference in the estimated annual revenue generated by Merriam property and the estimated cost for CFD2 to operate a consolidated fire station in Merriam is approximately \$441,000. CFD2 seeks some form of relief to compensate for this funding gap for a period of time.

Proposed resolution -

The funding gap is addressed by a combination of three approaches:

- Merger of all the MFD equipment as described above
- The proposed 2008 contract payment by the City would be approximately \$2.1 million rather than the \$1.96 million estimated to operate a consolidated fire station in Merriam. The MFD proposed budget for 2008 is \$2.2 million, including equipment reserve transfer, custodial service, insurance, etc.
- Mill levy increase for the entire CFD2 taxing jurisdiction from 9.335 to approximately 10.26 starting in 2009. The increased rate reflects the same estimated rate anticipated in the *Exploratory Report*, and would support ongoing costs for both the existing CFD2 and a consolidated station in Merriam. Therefore, the proposed resolution does not include ongoing cash payments between the two entities. All of the actions detailed above take place during a transitional period in 2008 and 2009. The Supplement to *Exploratory Report* contains two 10-year financial projections:
 - CFD2 projected revenue from City property tax and expenditures for the consolidated station in Merriam
 - City projection of the anticipated costs and mill levy equivalent of the existing MFD

CFD2 Projection:

The CFD2 projection was prepared by CFD2's financial consultant. The surplus and deficit lines illustrate that the equipment merger and service contract adjustment alleviate the funding gap through 2010. The Merriam CFD2 station experiences a deficit from 2011 through 2017. The deficit begins to be reduced in 2015 when the I-35 TIF district expires, and becomes a surplus by 2018 as the Merriam Town Center TIF district expires. The projection includes a CFD2 mill levy rate of 10.26 through 2018.

Ten Year Financial Projections**MFD Projection:**

The MFD projection was prepared by City staff. It illustrates the anticipated costs for the next ten years of operating the MFD as it currently exists, with the addition of two firefighters in 2009. The two firefighters have been requested in previous budgets, and are included to provide an accurate comparison of the service level CFD2 would provide in operating a consolidated fire station in Merriam. The analysis details the year-to-year increases in costs and equivalent mill levy, as well as the cumulative increases from 2007 through each year of the projection. The mill levy equivalents are calculated with the following assumptions:

- Mill levy of 21.181 in all years
- Annual increase in assessed valuation of 3.5%
- Increases in assessed valuation in 2015 and future years as TIF districts expire

Staff Recommendations

The *Supplement to Exploratory Report* addresses the remaining issues as directed by the Mayor and City Council. A significant decision such as consolidation of fire services requires serious consideration and analysis. It is a rare opportunity for a city to impact its operating budget to such a degree with similar or improved results.

Advantages exist to maintaining a MFD, as the advantages are identified in the Exploratory Committee Report and confirmed in testimony at the June 25th City Council meeting and include a loss of identity and control. These intangibles have value to the citizens and businesses.

Advantages to consolidation of fire services are also outlined in the *Exploratory Report*. With a merger, Merriam would maintain a fire station at the same location with improved fire services due to increased staffing levels.

An overwhelming majority of members of the MFD support the consolidation of fire services on the basis of improved service to citizens and improved safety for firefighters. The City staff members on the Exploratory Committee recommend that the City Council continue toward a merger with CFD2 and approve a resolution for consolidation of fire services at the August City Council meeting. The Fire District Board voted 5-0 to pursue consolidation.

Fire Chief Jerry Montgomery addressed the council to ask for their support for consolidation. Chief Montgomery and the Merriam Fire Department believes that consolidation will best serve the public both financially and in quality of service.

County Commissioner Ed Peterson addressed the council regarding his involvement in the merger negotiations. The merger of the Merriam Fire Department with Consolidated Fire District No. 2 will have a positive effect on the public both in quality of service and tax base. Commissioner Peterson appoints members to the Consolidated Fire District Board and ensured Merriam representation on the CFD Board.

Richard Wood, 10007 W. 70th Ter., commented that as the public trusts the firefighters to protect and come help those in an emergency the public should trust the fire fighters when they say that the consolidation is a good move for them and their families and support consolidation.

George Rutkoski, 6321 Robinhood Dr., commented that he is against consolidation as he feels there will be a loss of control and identity. There has never been a question as to the excellent service that is given by the Merriam Fire department.

David Parsons, 6602 Craig Rd., had concerns about lowering the mill levy and losing the extra motor vehicle tax.

Myron Merrill, 6809 Mastin, commented that he does not support consolidation and questioned if Consolidated was obligated to maintain the Merriam facility through year 2016. Mr. Merrill also asked if the Merriam station would have 21 firefighters at the station.

City Administrator Quinn Bennion commented that it is anticipated that Consolidated would lease the Merriam facility through 2016 and that the station would be staffed with 21 firefighters.

COUNCILMEMBER CRABTREE MOVED THAT CITY STAFF AND CITY ATTORNEY PREPARE A RESOLUTION AND OTHER MATERIALS FOR REVIEW IN AUGUST TO CONSIDER CONSOLIDATING FIRE SERVICES IN MERRIAM WITH CONSOLIDATED FIRE DISTRICT NO. 2.

Councilmember Hupp asked the Mayor if they could hear from other citizens who may wish to speak to this issue that had not signed up to speak.

COUNCILMEMBER CRABTREE WITHDREW HIS MOTION.

Mitch Fowler, 9103 W. 49th Ter., commented that he is in favor of consolidation and if the firefighters support the merger the public should also support it.

Mike Reilly, 9910 W. 65th Dr., commented that he appreciated the availability of the fire department he has experienced especially regarding burn permits and hoped that the allowance of the burning permits would continue after consolidation.

Assistant Fire Chief Doug Crockett commented that the burning permit process will continue after the merger.

Pat Crockett, 10009 W. 70th St., commented that the Merriam Fire Department and her husband, Assistant Chief Doug Crockett all support the merger with Consolidated Fire District because it is a good move for the City, the District, and employees. Staffing levels will increase at the Merriam station, and this will increase safety to the city and the firefighters. Throughout this process Consolidated has been very accommodating to Merriam and it is their intention to do what is best for Merriam. The taxes citizens will be paying are essentially the same. As long as the trucks come to help when you call what difference does it make if it's a Merriam firefighter or a Consolidated firefighter as long as they come to help and take care of the citizens of Merriam.

Harvey Kube, 8806 W. 69th St., commented that he supports the fire department and its employees and questioned that the Council should have raised the salaries of the fire fighters to make the city more competitive and keep staff as the majority of the firefighters on the Merriam staff have five years or less tenure.

Councilmember Stephens asked if there could be further discussion at the August 6, 2007 Work Session.

Councilmember Leap commented that a citizen had asked about an election to determine the wishes of the Merriam citizens.

City Attorney Michelle Daise commented that she would have to contact the Johnson County Election Commission to see if they would conduct an advisory election as some counties will not conduct advisory elections.

COUNCILMEMBER CRABTREE MOVED THAT THE CITY COUNCIL AND CITY ATTORNEY PREPARE A RESOLUTION AND OTHER MATERIALS FOR REVIEW IN AUGUST TO CONSIDER CONSOLIDATING FIRE

**SERVICES IN MERRIAM WITH CONSOLIDATED FIRE DISTRICT NO. 2.
THE MOTION WAS UNANIMOUSLY APPROVED.**

VI. PLANNING COMMISSION

1. Consider request for approval of a Conditional Use Permit to operate a group day care facility at 10109 W. 69th Terrace (C-04-07).

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

The applicant is requesting approval of a Conditional Use Permit for a Group Day Care at the residence of 10109 W. 69th Terrace. The applicant, Heather Jensen, has indicated that she will have a maximum of six children including one related child and will operate between the hours of 7:00 a.m. and 6:00 p.m. The applicant currently resides in the residence with her mother, Janet Reynolds (property owner of record). The subject site is the applicant's primary residence which meets the requirement for day care services in residentially zoned areas. The application has been properly noticed.

Comments from the Public

Staff has not received any public comments regarding this application.

Conditional Use for Group Day Care Requirements

Group Day Care is a separate distinct conditional use and is not included within the use category "home occupation." Section 4-101.B(5) of the Zoning Regulations allows the approval of a "Group Day Care Home." A Group Day Care Home is defined in Section 12-201 to be:

"GROUP DAY CARE HOME: A home in which care is given to five or more children not related to the operator by close ties of blood, marriage, or legal adoption, away from the home of the parent or legal guardian, for part or all of a day. All day care services shall meet all requirements of the Kansas State Board of Health – Maternal Child Care Division."

The standards listed in the ordinance for home occupations do not strictly apply, but do serve as guidance in determining whether or not a day care home would be disruptive to the neighborhood. Staff has provided comment using the home occupation criteria as a guide to assist in the review of this request.

The expressed intent behind regulating Home Occupations is as follows:

USE LIMITATIONS: The Planning Commission may place such use limitations upon a Home Occupation which it deems appropriate under the circumstances.

Staff Recommendation:

The Community Development Director finds that the applicant's proposal is in order for consideration for approval subject to the following conditions:

1. The group daycare be limited to six (6) children including children related to the applicant;
2. The applicant must comply with the limitations as described in her application and as presented to the Planning Commission and City Council;
3. The applicant secures an Occupational License prior to beginning operation of the group day care; and
4. The applicant meets all necessary state licensing requirements and provides copies of such documents to the City.

Based on the evidence presented at the July 11, 2007 public hearing, as well as, the applicant presentation and the findings of fact detailed in the Planning Commission Staff Report, the Planning Commission has recommended approval of the proposed Conditional Use Permit to Operate a Group Day Care Facility at 10109 W 69th Terrace with the conditions listed in the draft ordinance.

COUNCILMEMBER HUPP MOVED THAT BASED ON THE EVIDENCE PRESENTED AT THE JULY 11, 2007 PUBLIC HEARING, AS WELL AS, THE APPLICANT PRESENTATION AND THE FINDINGS OF FACT DETAILED IN THE PLANNING COMMISSION STAFF REPORT, THE GOVERNING BODY UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE A CONDITIONAL USE PERMIT TO OPERATE A GROUP DAY CARE ON PROPERTY LOCATED AT 10109 WEST 69TH TERRACE (C-04-07) WITH THE CONDITIONS LISTED IN THE ORDINANCE AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. THE MOTION WAS UNANIMOUSLY APPROVED.

There was a 10 minute recess. The meeting reconvened at 9:42 p.m.

2. Consider request for approval of a revised drainage study for preliminary development plan for Merriam Village (Z-7-04/PD2-0606).

Community Development Director Dennis Enslinger presented 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 (Ordinance #1499). 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. With the passage of the original ordinance that approved the rezoning and Preliminary Development Plan the City Council directed staff to look at the drainage issues and determine if the drainage study met the requirements of the ordinance in place contained in chapter 7

of the Merriam Municipal Code. A final drainage study was looked at when the Final Development went before the Planning Commission.

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

A revised Preliminary Development Plan (Z-7-04/PD02-0606) was approved by the Planning Commission on July 5, 2006 and was approved by the City Council on July 24, 2006 (Ordinance #1542). At that point there was an approved drainage study on file which indicated that detention was the route the applicant was proposing and did not explore any detention waiver. Since that approval in July 2006 the applicant has been investigating whether they could qualify for a detention waiver under the current ordinance provisions. Staff brought forth to the council a concept of detention waivers that is currently in place; the council and Planning Commission have approved detention waivers in the past and has been a part of the ordinance since 2002. The detention waiver provision allows to look at whether holding water or detaining water would have a negative impact as opposed to releasing water at the time of the rain event. This option was not explored by the applicant so it was not discussed in the original approval of the stormwater study.

Aware that the applicant was pursuing the detention waiver option, staff came before the City Council to reexamine how the City looks at detention waivers. One provision of the ordinance gives authority to the Community Development Director to grant a detention waiver as long as it was determined to have no adverse impact or less impact on the overall basin. In addition localized flooding would have to be addressed. One difficulty with that ordinance was there was no policy in place for in lieu of payments for impacts on the overall detention basin. On March 26, 2007, the City Council approved Council Policy #128 which sets the Detention Waiver Alternative Mitigation Measures Participation Level Obligation when a detention waiver is granted under the current provisions of the Stormwater Ordinance. Council Policy #128 further states the developer would be required to pay \$900 per each Equivalent Dwelling Unit (EDU). The EDU is calculated by dividing the total impervious surface by 2,750 sq. ft. (EDU) and multiplying this number by \$900.

Prior to adoption of Council Policy #128 Staff met with Downtown Merchants (DMP) and the Merriam Drainage District in early 2007 and talked about detention waivers, the new proposed policy and the fact that the Merriam Village Project would possibly be requesting a revision to their stormwater study. In addition staff met with the Corps of Engineers to discuss the concept of detention waivers and whether detention can be good or negative under certain circumstances.

The Planning Commission reviewed the revised drainage study on July 7, 2007 and the Drainage District was sent a copy of the revised study. Follow up was conducted with the Drainage District and comments were received from the Drainage District's consultant on July 4, 2007. Confusion over both studies meeting the city's ordinance has been expressed. The first study only looked at detention; developers do have options regarding stormwater issues. One option is to request a waiver or meet the detention requirements as outlined in the ordinance. The first study did not consider detention waiver as an option, but how the detention requirements could be met. The second study explored what would be the best solution, detention or waiver.

During the Planning Commission hearing held on July 11, 2007 there was some question regarding the effect of the waiver on Downtown Merriam and a 100 yr. flood. Mr. Enslinger pointed out that currently from 61st Street to 57th Street along Merriam Drive is all within the 100 yr. floodplain, so at some point it will be flooded whether Merriam Village gets built or not. That area is part of the current FEMA Maps and part of the proposed FEMA Maps that are being discussed at the federal level. At some point there will be a significant rain event and have an impact Downtown not related to the Merriam Village Project. The current study states that detention would increase the peak flow within the overall basin during a 100 yr. flood event.

Based on the criteria outlined in the City's Stormwater Ordinance, the submitted revised stormwater study dated May 2, 2007, and Council Policy #128, the Community Development Director recommended approval of Z-7-04/PD2-0606–Revised Stormwater Study-Merriam Village with a recommendation for approval subject to the following conditions:

1. The applicant secure all necessary permits from KDOT to complete the improvements recommended in the revised stormwater study;

Based upon this analysis, the applicant has also provided documentation that by boxing in the culvert at I-35 any flooding issues related to Johnson Drive would be mitigated.

2. The applicant provide plans for review and approval of the City Engineer for the improvements recommended in the revised stormwater study;
3. The applicant provide the total impervious surface calculations based upon the revised Preliminary Development Plan Z-7-04/PD02-0606; and
4. The applicant pay the applicable Participation Level as outlined in Council Policy #128.

Chase Simmons, attorney representing the developer commented that the first stormwater study addressed one question and assumed that detention was a requirement. Shafer, Klein, & Warren, the firm that conducted the first study asked Jim

Gange from Olsson & Associates to perform a peer review of the initial study. Mr. Gagne determined that detention is not necessary or required and in fact would cause adverse effects downstream. There are other off site measures that could be taken which will have less of an impact than detention. The revised plan has been reviewed by Johnson County Stormwater, approved by the Planning Commission, and supported by City staff. The plan is also currently under review by KDOT.

Arnie Tullock, Project Engineer from Shafer, Klein & Warren, addressed the council regarding the initial study which focused solely on stormwater detention as directed by the City. Once that report was completed and approved, Shafer, Klein hired Olsson & Associates to conduct a peer review of the first study. The second study is a result of that review.

Jim Gagne, P.E., Olsson & Associates, presented hydrographs demonstrating the effect of downstream watershed with detention. With detention the water flow will be greater at peak flow times as the water comes from upstream and has a greater surge of water at the confluence at Quaker and Turkey Creek. Discharging the water as it falls will create less downstream impact. The Northeast Johnson County Stormwater study in which the new FEMA maps will be based on show a flooding issue at Johnson Drive. The issue exists currently and is not a result of the Merriam Village development. The Merriam Village stormwater will be handled through contained discharge piping and modifications will be made to existing infrastructure to handle the stormwater and move it into the Turkey Creek at non peak times. Hydraulic improvements of lengthening the wing walls at the existing culvert entrance will lower the water depth and head water elevation. Detention basins are designed to empty out within 24 hours; the water is collected and then released once the basin becomes full. The problem with detention arises when the release of water is delayed several hours and upstream water takes several hours to reach the confluence at Turkey Creek then you begin to start releasing the detained water from Quaker Creek there is a huge surge of water at the confluence at the peak flow times. However, when the water is released immediately as it falls the entire watershed from the Merriam Village site is already gone when the upstream flow makes it to the confluence several hours later at the peak flow.

Councilmember Bertoncin asked Mr. Gange how much water will flow off the Merriam Village site once it is developed as compared to what flows off of the site presently.

Mr. Gange responded that preexisting water discharge is 208 cfs (cubic feet per second), after development the discharge will be 347 cfs, an increase of approximately 67 cfs.

Councilmember Bertoncin then asked about the amount of impervious surface post development.

Mr. Gagne explained that he did not directly compare pervious to non-pervious surface, he used curve numbers which is a device used in the National Resource Council Services Hydraulic Manual for quantifying runoff from a site, this method was also used in the Northeast Johnson County Stormwater Study. Curve numbers are derived from several conditions such as the amount of impervious surface, nature of the soil and level of development. Most soils in the Kansas City are a class C soil. All those factors

are used to develop a curve number, most of the time the curve numbers are listed in the code. A comparison is not based on exact measurement; it is based on the use and nature of the land. An exact measure can be used but typically that is the methodology used. In reference to the EDU portion of the detention waiver Shafer, Klein & Warren is doing an actual impervious surface study.

City Engineer Scott Crain commented that detention is appropriate in the right location. Detention is a detriment on this site. Based on his experience in hydraulic engineering if he had property in downtown Merriam he would not want detention on this site. It appears contrary for the city to say they want to address downtown flooding and want detention on the Merriam Village site. Detention is truly not the best solution for this site. Detention of water from the Merriam Village site will worsen the flooding at Merriam and Johnson Drives.

Councilmember Stephens asked about the current water issues behind Merriam Feed on Johnson Drive on the east side of the railroad that flows into Turkey Creek and if that would be addressed.

Mr. Crain responded that the current water issues at Merriam & Johnson Dr., as well as, the issues behind the feed store are localized issues and not related to the Merriam Village development.

Johnny Pieters, 9309 Johnson Dr., addressed the issue of the flooding of Quaker Creek behind his business. The creek was always open, and then in 1997 the City decided to box in the culvert. In October 1998 there was a flash flood, the boxes backed up and combined with the water flowing under the railroad tracks from the east side, combined with the Quaker Creek and Turkey Creek and created a wave of water eight feet deep. The flooding caused significant damage to businesses. Mr. Pieters immediately came to the city to demand changes be made to the design of the culverts as the boxing in of the culvert was an inefficient design. The culvert on eastside of the tracks was then deepened and the creek was made wider and now handles the water much more efficiently. Mr. Pieters believes that detention is the best for the Merriam Village site as it is uphill and the water flow needs to be released slowly.

Rick Williams, 5826 Merriam Dr., expressed concerns over getting the water into Turkey Creek faster and then flows through Turkey Creek, through Downtown and then downstream. Mr. Williams also was flooded in 1998 from Turkey Creek as it runs behind his business. Mr. Williams does not feel that a detention waiver is the solution for the Merriam Village site.

Louis Silks, attorney representing the Merriam Drainage Board explained the role of the Merriam Drainage Board and introduced Mark E. Meyers, P.E., who has been retained by the Drainage Board to come before the council to ask them to vote no on this issue.

Mark E. Meyers, presented information regarding erosion and stream flow rates. Mr. Meyers explained that detention slows the stream flow rates which will reduce receiving stream erosion and sediment which can cause many problems in the future. When the water is not detained and sent into receiving streams at a high flow rate it can cause flooding and erosion.

Louis Silks addressed the council regarding the importance of the council to make the right decision regarding this issue.

Dan North, Developers Diversified Developers, addressed the council regarding the City's stormwater ordinance which states, "Detention may be waived at the discretion of the Community Development Director in the event that the developer demonstrates in the drainage study that the delayed release rate will increase a downstream peak discharge from the larger overall drainage basin concentrating at a later time than the included subject sub-basin. However, the developer will be required to either propose or participate in alternate mitigating measures if the increase in runoff from the development will cause or aggravate downstream flooding or overtax existing inadequate or obsolete drainage facilities." Mr. North explained that both Shafer, Klein, and Olsson & Associates are reputable engineering firms are putting the seal and company's reputation on this study. The Planning Commission has approved the study, it has been reviewed by the City Engineer, Community Development Director, opposing entities and is currently being reviewed by KDOT and meets the city's stormwater ordinance. The underground detention concept is an expensive one but as well the city's ordinance has a provision for EDU fee structure which provides DDR a means for downstream stormwater improvements. DDR takes this matter seriously and have hired professionals and spent numerous months studying this project to ensure the project will not cause any harm. Mr. North encouraged the council to help the project move forward by approving the plan. In recent months many things have been happening on the site, dirt is moving, Eby Street is being constructed, utilities are going in and an anchor tenant, Circuit City, has signed a lease. Approval of this stormwater study will be another step forward in getting this project completed.

John Sankey, 10121 W. 65th Dr., asked to speak not as a member of the Planning Commission, and will recuse himself if the issue goes back before the Planning Commission. Mr. Sankey, who is an engineer, addressed the issue of the computer models that are used for stormwater studies are based on algorithms that are made on assumptions, then statistics are plugged into them that are based on assumptions then the computer produces numbers that may not necessarily reflect a true situation. Retention always slows down the flow. Dumping all the water into the stream will supercharge the stream which will cause scouring of the base of the stream beds, erosion, and small tree uprooting, every time it storms.

John Fryer, 5937 Merriam Dr., addressed the council regarding the flood of 1998. South of Johnson Dr. three closed culverts that would not allow enough water in went over the berm and caused flooding. Since that time the railroad has put in a retention area to hold the water and that is working now to hold the water and eliminate the flooding. It is Mr. Fryer's belief that retention works.

Ted Derks, 19 W. Concord, Kansas City, MO, property owner at 51st & Merriam Dr., addressed the council regarding his concern of 1998 flood and a future flood and feels that it may happen again and be even more serious. Mr. Derks further questioned what had changed since the first stormwater study that is causing them to now ask for a waiver.

COUNCILMEMBER BURKS MOVED THAT THE CITY COUNCIL DIRECT THE COMMUNITY DEVELOPMENT DIRECTOR TO DENY THE WAIVER REQUEST FOR THE DRAINAGE STUDY FOR MERRIAM VILLAGE (Z-7-04/PD2-0606). THE MOTION WAS APPROVED. COUNCILMEMBERS HUPP AND HANDS VOTED NAY.

VII. COUNCIL ITEMS

A. Work Session

B. Finance and Administration Committee

Councilmember Burks

1. Consider approval of an ordinance to authorize and increase in tax revenues for the 2008 budget (first reading).
2. Consider approval of an ordinance to adopt the 2008 budget (first reading).
3. Consider approval of an ordinance authorizing expenditures for the 2008 budget by the City Administrator (first reading).
4. Consider approval of a Charter Ordinance exempting the City of Merriam from K.S.A. 12-1696, 12-1697, 12-1698, 12-1699, 12-16,100, 12-16,101 entitled "Promotion of Tourism and Conventions," and providing substitute and additional provisions on the same subject (first reading).

C. Community Development/Public Works Committee

VIII. STAFF ITEMS

IX. OLD BUSINESS

X. NEW BUSINESS

1. Consider approval of right-of-way dedications associated with utility line locations in the Merriam Village development project.

City Engineer Scott, Crain provided the background for this item.

Part of the Merriam Village development project includes the relocation of sanitary sewer lines. All work connected with this effort must be met with approval of Johnson County Wastewater. There are two locations where sanitary sewer work will occur on the public property occupied by City Hall/Police Department complex. Johnson County Wastewater has requested easements to allow them the opportunity to construct and maintain the sanitary sewer improvements on City property. Johnson County Wastewater has requested an exclusive easement. The City has refused to grant exclusive easements over public property in the past as it would restrict the use of that area by the City and other public utilities.

Dedicating these areas as public right-of-way allows outside entities the right to occupy the space via franchise or other similar agreements.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE RIGHT-OF-WAY DEDICATIONS ASSOCIATED WITH UTILITY LINE LOCATIONS IN THE MERRIAM VILLAGE DEVELOPMENT PROJECT. THE MOTION WAS UNANIMOUSLY APPROVED.

XI. EXECUTIVE SESSION

COUNCILMEMBER ROWE MOVED THAT THE 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 AND CITY ATTORNEY. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 12:55 A.M. COUNCILMEMBER STEPHENS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

The meeting reconvened at 12:55 a.m.

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL COUNCILMEMBER ROWE MOVED TO ADJOURN AT 12:56 A.M. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

Juli Pinnick
Deputy City Clerk