

**MERRIAM CITY COUNCIL
MINUTES
CITY HALL
9000 W. 62ND TERRACE
October 22, 2007
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Carl Wilkes called the meeting to order at 7:05 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; Jerry Montgomery, Fire Chief; Dennis Enslinger, Community Development Director; Cindy Ehart, Interim Finance Director; Randy Carroll, Public Works Director, 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 September 24, 2007.
2. Approval of the minutes of the regular City Council meeting held September 24, 2007.
3. Approval of a Professional Services Agreement with Affinis Corporation for the Residential Street Group II project (2009 construction).

4. Concurrence with the selection committee recommendation to secure George Butler Associates to provide design services for the Shawnee Mission Parkway Bridge over Turkey Creek Tributary (2010 construction).
5. Approval of the "short-term, low-cost improvements" identified in the Mastin Street and Johnson Drive Traffic Signal Warrant Analysis.
6. Approval of a request by NSP Architecture for additional services fees associated with the Merriam Aquatic Center Upgrades

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS 1-6. 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.

Tom Robinson, Community Business Manager, KCPL addressed the council to introduce himself and presented the council with his contact information and encouraged the council to contact him with any issues related to KCPL.

V. MAYOR'S REPORT

1. Consider appointment of Dan Ellerman (W2) to the Board of Zoning Appeals for the term expiring December 31, 2008 (BZA appointments are not Ward specific).

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL CONFIRM THE APPOINTMENT OF DAN ELLERMAN TO THE BOARD OF ZONING APPEALS FOR THE TERM EXPIRING DECEMBER 31, 2008. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider appointment of Kristen Leathers from Affinis, for City Engineer and authorize the mayor to sign the letter of understanding.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE THE APPOINTMENT OF KRISTEN LEATHERS FROM AFFINIS, AS THE CITY ENGINEER AND AUTHORIZE THE MAYOR TO NEGOTIATE AND SIGN THE LETTER OF UNDERSTANDING. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider approval of Cereal Malt Beverage license for non-consumption on the premise to 7-Eleven Sales Corporation for the premises located at 6850 Antioch Road.

Assistant City Administrator Stephanie Dawkins provided the background for this item. The City received notification that 7-Eleven Sales Corporation was taking over ownership of the convenience store located at 6850 Antioch Rd. from Lucky H. Inc. The City of Merriam Code of Ordinances does not allow for a cereal malt beverage license to be transferred to another licensee. Therefore 7-Eleven Sales Corp. is requesting the issuance of a cereal malt beverage license for non-consumption at this location. The application has been approved by the Community Development, Fire, and Police Departments.

COUNCILMEMBER CRABTREE MOVED THAT THE COUNCIL APPROVE A CMB LICENSE FOR NON-CONSUMPTION ON THE PREMISE TO 7-ELEVEN SALES CORPORATION FOR THE PREMISES LOCATED AT 6850 ANTIOCH ROAD. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Discussion regarding initiating a Request for Proposal (RFP) process for an independent financial review of information regarding consolidation of fire services (tabled from the August 20th and September 24th City Council meetings).

City Administrator Quinn Bennion commented that the ad-hoc committee report has not been received. Communications with committee representatives indicate that the draft report is still being reviewed.

Councilmember Crabtree questioned who would pay for the independent financial review.

Quinn Bennion replied that the cost would be paid by the city.

COUNCILMEMBER BERTONCIN MOVED THAT THE COUNCIL TABLE ITEMS 4 AND 5. THE MOTION WAS APPROVED. COUNCILMEMBERS CRABTREE AND HUPP VOTED NAY.

Councilmembers Burks, Crabtree, and Hupp did not want this item to be tabled until the next regular city council meeting. It was suggested that it only be tabled until November 5, 2007 when a Special Council Meeting can be called.

5. Consider approval of a resolution regarding consolidation of fire services with Consolidated Fire District No. 2 (tabled from the August 20th and September 24th City Council meetings).

COUNCILMEMBER STEPHENS MOVED THAT THE CITY COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSIDER CONSULTATION WITH LEGAL COUNCIL ON MATTERS THAT WOULD BE DEEMED PRIVILEGED IN AN ATTORNEY-CLIENT RELATIONSHIP. PRESENT WILL BE THE CITY ATTORNEY, CITY ADMINISTRATOR, BOND COUNSEL, AND COMMUNITY DEVELOPMENT DIRECTOR. THE

**MEETING WILL RECONVENE IN COUNCIL CHAMBERS AT 7:50 P.M.
COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS
APPROVED. COUNCILMEMBER LEAP VOTED NAY.**

The meeting reconvened at 7:50 p.m.

6. Consider approval of an amendment to the Development Agreement for Merriam Pointe Redevelopment Project.

John Sankey, 10121 W. 65th Drive, commented that the developer is asking for a change in zoning to allow for a car lot. Mr. Sankey encouraged the council to take time to fully understand the value of this property. The zoning is the only control the city has on the property and should not feel pressured by the developer to make a hasty decision.

Councilmember Stephens commented that she is very supportive of the car dealerships that are currently in Merriam and will continue to support expansion of those businesses over new dealerships.

Councilmember Leap voiced some concern over existing car dealerships that he believes want to move to the Merriam Pointe site in order to receive a tax incentive which he does not support.

Stoney Bogan, 5732 Connell Dr., Chair-elect, Northeast Johnson County Chamber of Commerce, wanted it known that the Chamber does not support the previous comments by Mr. Yarnell who stated that they were in support of a trash transfer/recycling station on the Merriam Pointe site. The Chamber has never given their support to Mr. Yarnell and that idea was never presented to the Chamber.

**COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE THE
FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT WITH
MERRIAM POINTE, LLC. THE MOTION WAS APPROVED.
COUNCILMEMBERS STEPHENS, LEAP AND BERTONCIN VOTED NAY.**

7. Consider approval of an ordinance authorizing the creation of a transportation development district in the City of Merriam, Kansas (Merriam Pointe Development).

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE AN
ORDINANCE AUTHORIZING THE CREATION OF A TRANSPORTATION
DEVELOPMENT DISTRICT IN THE CITY OF MERRIAM, KANSAS;
AUTHORIZING THE MAKING OF CERTAIN TRANSPORTATION
PROJECT IMPROVEMENTS; APPROVING THE MAXIMUM COSTS OF
SUCH IMPROVEMENTS AND PROVIDING FOR THE METHOD OF
FINANCING OF THE IMPROVEMENTS INCLUDING THE LEVY OF A
TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX WITHIN THE
BOUNDARIES OF THE DISTRICT AND AUTHORIZE THE MAYOR TO
SIGN THE EFFECTUATING ORDINANCE. THE MOTION WAS**

APPROVED. COUNCILMEMBERS STEPHENS, LEAP AND BERTONCIN VOTED NAY.

8. Consider approval of a resolution setting a public hearing for the consideration of adopting a revised Merriam Pointe Project Plan.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE A RESOLUTION SETTING A PUBLIC HEARING FOR NOVEMBER 26, 2007 TO CONSIDER AMENDMENTS TO THE MERRIAM POINTE REDEVELOPMENT PROJECT PLAN AND AUTHORIZE THE MAYOR TO EXECUTE THE RESOLUTION. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

Mayor Wilkes commended City Administrator Quinn Bennion who has taken the City Administrator position with the City of Prairie Village

VI. PLANNING COMMISSION

1. Consider request for approval of a Change in Use for Merriam Automotive Center on Property Located at 9900-9940 West 62nd Terrace in a PUD-G, Planned Unit Development-General, Zoning District (6764-UC3-0907).

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

This site was zoned PUD-G and approved for automobile related uses including repair (no auto body or painting), tire sales/service, accessory equipment, etc. (Ordinance #1075) in October of 1987. On January 7, 1991 the City Council approved a change in use to allow for office and retail uses on the site, Ordinance #1164. The applicant is requesting a change in use to allow for a granite design and fabrication facility in the structure. The applicant has indicated that the design and fabrication facility is ancillary to a retail home-decorating showroom offering counters and tops made of granite, marble and tile in addition to sinks, faucets, and appliances. It should be noted that the granite business is currently occupying a space within the building but is currently refraining from fabrication while this issue is being considered.

Because the originally approved ordinances related to the site do not specifically allow for this type of use, the City Council should review the request as a change in use. The property is currently shown as commercial-retail/office on Map 7-1 of the Comprehensive Plan. Staff offers the following comments regarding the Golden Factors and the items listed in (Section 20-21(e)):

Character of the Neighborhood

Finding: The subject property is located just west of I-35 and on the north side of Shawnee Mission Parkway. This site is surrounded by a number of other Planned Unit Development areas which were originally developed in the

1970s and 1980s. The area to the west contains automobile related approved uses in the Baron Automotive Service and Vehicle Storage facility (approved in 2007 but not under construction). The area to the immediate east contains recreational uses with Coachlite Skateland. The area to the south contains a used auto sales facility (Enterprise) and a restaurant facility. The area to the west contains a mixture of office, funeral home, and restaurant uses. The area to the north contains a multiple-family housing complex (El Conquistador Apartments and Trinity Manor). In addition, Sunflower Apartments, a senior housing complex, is located to the west of the subject site. Merriam Park Elementary School is located northwest of the subject site. Overall, the area contains commercial uses adjacent to Shawnee Mission Parkway and multiple family residential uses as a buffer to the commercial uses.

Nearby Zoning and Uses

Finding: The property to the south, east and west is zoned PUD-G (Planned Unit Development) and is developed with restaurant, auto service/repair, recreational and office uses. The property to the immediate north is zoned R-4 (Multiple-Family Residential) District and is developed with multiple-family residential uses (El Conquistador Apartment Complex and Trinity Manor). The property to the northwest is zoned Parks, Schools & City Facilities and is developed with Merriam Park Elementary School. There is also PUD-R (Planned Unit Development-Residential) District to the west which is developed with a senior housing development (Sunflower Apartments). Across Shawnee Mission Parkway is the Sherwood Forest Subdivision which is zoned R-1 (Single Family Residential).

Suitability of the Property for the Current Zoning

Finding: The current zoning of the property is Planned Unit Development-General (PUD-G) and allows for automotive, retail and office uses. The zoning of the property would still remain PUD but would allow for a granite fabrication use as an accessory use to the site. There are no other fabrication uses either primary or accessory in the general area. However, there are full automotive and repair (except body and paint) uses in the area and on the subject site.

Extent to which the Requested Zoning will Detrimentially Affect Nearby Property

Finding: Adding granite fabrication, even as accessory to a primary retail use, will alter the permitted uses of the subject site. It is anticipated that there will not be an increase in the amount of traffic to the site with the change in use. Given the location of the site with other adjacent automotive service uses, there would be little or no impact on adjacent uses within the surrounding area. As part of the Planned Unit Development process the Planning Commission and City Council could place restrictions on the fabrication use, such as, it must be accessory in nature to the retail use, that all necessary codes including wastewater requirements must be complied with, limiting the hours of operation, and/or restricting all activities including storage to the interior of the structure.

Length of Time the Property has been Vacant as Zoned

Finding: The property is currently occupied.

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

Finding: Changing the allowable uses on the subject parcel to allow for fabrication of counter top materials as accessory use will not impact public health, safety and welfare of the community or surrounding properties if conducted in the confines of the structure. The immediately surrounding uses are, automobile repair, commercial and multiple-family in nature and should not be adversely affected by the proposed new use.

Conformance with the Master (Comprehensive Plan)

The property is currently shown as commercial on Map 7-1 of the Comprehensive Plan. The Comprehensive Plan discusses the area as part of the Shawnee Mission Parkway Development Node (pages 5-6 through 5-8). The Comprehensive Plan does not make specific recommendations related to this site but does make a number of design recommendations related to visual character. The applicant is not proposing to make any exterior modifications to the structure as a result of the proposed use.

Finding: The property is currently shown as commercial on Map 7-1 of the Comprehensive Plan. The Comprehensive Plan identifies this site as within the Shawnee Mission Parkway Node and makes a number of recommendations regarding visual character.

Because the applicant is not proposing to make any site or exterior building modifications related to the proposed use, staff has not addressed Section 9-103: Standards and Criteria for Planned Developments.

Staff Recommendation:

The Community Development Director recommends approval of the change in use 6764-UC3-0907 Merriam Automotive Center - fabrication/assembly of products directly related retail uses already approved for 9900-9940 West 62nd Terrace and recommends approval based on the findings of fact found in the body of the staff report subject to the following conditions:

1. The proposed fabrication use shall be an accessory use to the approved retail uses;
2. That all applicable building code, fire code, and wastewater provisions apply to the accessory use; and
3. All fabrication and storage related to the use be contained within the structure.

The Planning Commission held a public hearing on September 5, 2007 which was continued to October 3, 2007. At the October 3, 2007 meeting, the Planning Commission voted, unanimously, to recommend approval of the proposed change in use (to allow for fabrication/assembly of products directly related to retail uses already approved for 9900-9940 West 62nd Terrace)

with conditions. A copy of the Planning Commission Staff Report and associated minutes were included with the agenda materials.

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 provided a draft ordinance reflecting the Planning Commission conditions of approval, for the City Council consideration. Legal Counsel has reviewed and approved the draft ordinance.

Councilmembers Hupp and Stephens asked if the code issues with this complex have been resolved.

Mr. Enslinger responded that that the property owner has been working with an on-site tenant to resolve code violations with debris and landscaping.

There were other concerns over noise associated with the granite fabrication process because of its close proximity to Trinity Lutheran Nursing Home.

The property owner David Noon, 7180 W. 107th St, Overland Park, commented that the tenant space for the granite fabrication business is on the far south east unit end which is on the Shawnee Mission Parkway side. Mr. Noon further commented that fencing and landscaping has recently been installed on the property.

COUNCILMEMBER BURKS MOVED THAT THE GOVERNING BODY, BASED ON EVIDENCE PRESENTED AT THE SEPTEMBER 5, 2007 AND THE OCTOBER 3, 2007 PUBLIC HEARINGS AS WELL AS THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, APPROVE, SUBJECT TO CONDITIONS, THE PROPOSED CHANGE IN USE (TO ALLOW FOR FABRICATION/ASSEMBLY OF PRODUCTS DIRECTLY RELATED TO RETAIL USES ALREADY APPROVED FOR 9900-9940 WEST 62ND TERRACE) ON THE PROPERTY LEGALLY DESCRIBED AS MERRIAM AUTOMOTIVE CENTER, LOT 1 (6764-UC3-0907) AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTuating ORDINANCE. THE MOTION WAS UNANIMOUSLY APPROVED.

2. Consider request for approval to Restrict Uses under Section 4-402.D.4 of the Merriam Zoning Code on Property Located at east end of Benson Street in the 5100 Block in an IP-1, Light Industrial Planned, Zoning District (Z-1-07).

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

This site was zoned IP-1 since at least 1997. The property located at Tristen Corner Lot 1 was acquired by the City as part of a larger parcel related to the Antioch Road and I-35 Interchange improvements. The City of Merriam has replatted the subject parcel to ensure that proper easements and any necessary rights-of-way were dedicated prior to the sale of the property. To ensure that future development of the property is compatible with the long range goals of the community, the City Council discussed rezoning the subject parcels to uses which are more compatible with the community's long range goals. The IP-1 (Light Industrial Planned) District allows for the restriction of uses under Section 4-402.D.4. On August 20, 2007, the City Council authorized the Mayor to submit a rezoning request restricting the uses on the subject parcel as outlined detailed on pages 3 through 7 of the Planning Commission Staff Report. The Planning Commission held a public hearing on October 3, 2007 and voted, unanimously, to recommend approval of the proposed restriction in use as identified in the Planning Commission Staff Report (pages 3-7). A copy of the Planning Commission Staff Report and associated minutes were included with the agenda materials. Staff has provided a draft ordinance for the City Council consideration based upon the Planning Commission's recommendation. Legal Counsel has reviewed and approved the draft ordinance. Staff offers the following comments regarding the Golden Factors and the items listed in: (Section 20-21(e)):

Character of the Neighborhood

Finding: The subject property is located on the west side of I-35 and on the west side of Antioch Road. The area generally contains warehouse, office, and industrial uses such as contractor storage yards, construction offices, printing shop and automobile body repair shops. The area to the south contains a mixture of industrial and commercial uses such as a contractor yard, automotive repair, taxidermy shop and a non-conforming single-family residential use. The area to the east is located in the City of Overland Park, Kansas and contains a mixture of commercial and industrial uses. The area to the immediate west contains commercial, warehouse and industrial uses. There are also residential uses to the west as part of a single-family development along with the former South Park Elementary School. The area to the north also contains a mixture of commercial, industrial and non-conforming single-family residential uses.

Nearby Zoning and Uses

Finding: The property to the immediate north, south and west is zoned IP-1 (Light Industrial Planned District) and is developed with industrial, office/warehouse, auto body repair uses and non-conforming single-family residential uses. The property to the south is zoned I-1 (Light Industrial District) and is developed with industrial, commercial and non-conforming single-family uses. Property to the east is located within the City of Overland Park, Kansas. There are also two small commercial areas to the west which are zoned: C-2 (Retail Commercial District) developed with a former hotel which is now an apartment complex and C-1 (Neighborhood Commercial District) which is currently vacant. The former South Park Elementary School which is currently zoned Parks, Schools, and City Facilities is also located to the west of the subject property.

Suitability of the Property for the Current Zoning

Finding: The current zoning of the property is IP-1 (Light Industrial Planned District) and allows for all of the uses within the I-1 Light Industrial zoning district. The zoning of the property would still remain IP-1 but the proposed zoning would restrict the allowable uses on this site eliminating a number of uses currently allowed on the site.

Extent to which the Requested Zoning will Detrimentally Affect Nearby Property

Finding: Since the rezoning request would actually limit the uses on the current site there would be no detrimental affect on nearby property. In addition, as part of the planned zoning district ordinance provisions any development on the site would need to have a preliminary and final development plan approved before any specific use was allowed.

Length of Time the Property has been Vacant as Zoned

Finding: The property has been vacant since the redevelopment of the I-35 Antioch Interchange which was completed in 1999.

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

This factor requires the hardship of the owner if the proposed use is not approved to be weighed against the gain to the general public if the proposed use and development plan are approved.

Finding: The subject parcel is currently vacant and owned by the City of Merriam. The proposed uses would decrease the intensity of both commercial and industrial uses currently permitted on the site. The immediately surrounding uses are commercial, office, industrial and non-conforming single-family in nature and would not be adversely affected by the proposed restriction of uses.

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 this site as part of the Antioch Interchange Future Land Use Opportunity (page 7-8 see attached documentation). The Comprehensive Plan states that while it is shown as light-industrial the area should accommodate commercial retail and office activity and that any industrial should be contained within an industrial or business park.

In addition, the City of Merriam recently completed a comprehensive plan amendment for the former South Park Elementary School site and the adjacent city owned property. The South Park Sub-Area Plan recommends that the school site be a mixed use development with commercial, office, public, multiple-family and single-family residential uses. The proposed rezoning would be more compatible with the uses shown in the adopted South Park Sub-Area Plan.

Preliminary and Final Development Plans within a Planned District (4-402 of the Merriam Zoning Code)

The applicant, the City of Merriam, is not currently proposing the construction of any buildings for a specific use on the site. As part of the planned district zoning requirements, a preliminary and final development plan must be submitted and approved prior to any construction.

Staff Recommendation:

Based on the findings of fact, as well as, the criteria outlined in the City's zoning ordinance as detailed in this Staff Report the Community Development Director recommends approval of the rezoning request, Z-1-07 Tristen Corner Lot 1- Rezoning Restricted IP-1 Uses, as identified on pages 3-7 and forwarding it to the City Council with a recommendation for approval subject to the following condition:

Submission of a preliminary and final development plan.

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).

COUNCILMEMBER ROWE MOVED THAT THE GOVERNING BODY, BASED ON THE EVIDENCE PRESENTED AT THE OCTOBER 3, 2007 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, TO APPROVE THE PROPOSED RESTRICTION OF USES AS IDENTIFIED IN THE PLANNING STAFF REPORT (PAGES 3-7) FOR THE PROPERTY LEGALLY DESCRIBED AS TRISTEN CORNER, LOT 1 (Z-1-07) AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider request for approval to Restrict Uses under Section 4-402.D.4 of the Merriam Zoning Code on Property Located at 5032/5036 Antioch Road in an IP-1, Light Industrial, Zoning District (Z-2-07).

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

This site was zoned IP-1 since at least 1997. The property located at 5032-36 Antioch Road was acquired by the City as part of a larger parcel related to the Antioch Road and I-35 Interchange improvements. The City of Merriam has replatted the subject parcel to ensure that proper easements and any necessary rights-of-way were dedicated prior to the sale of the property.

To ensure that future development of the property is compatible with the long range goals of the community, the City Council has discussed rezoning the subject parcels to uses which are more compatible with long range goals. The IP-1 (Light Industrial Planned) District allows for the restriction of uses under Section 4-402.D.4. On

August 20, 2007, the City Council authorized the Mayor to submit a rezoning request restricting the uses on the subject parcel as outlined below (strikethrough text represent uses which would not be permitted if the rezoning is approved):

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

Character of the Neighborhood

Finding: The subject property is located on the west side of I-35 and on the west side of Antioch Road. The area generally contains warehouse, office, and industrial uses such as contractor storage yards, construction offices, printing shop and automobile body repair shops. The area to the south contains a mixture of industrial and commercial uses such as a contractor yard, taxidermy shop and a non-conforming single-family residential use. The area to the east is located in the City of Overland Park, Kansas and contains a mixture of commercial and industrial uses. The area to the immediate west contains commercial, warehouse and industrial uses. There are also residential uses to the west and north as part of a single-family development along with the former South Park Elementary School. The area to the north also contains a mixture of commercial, industrial and non-conforming single-family residential uses.

Nearby Zoning and Uses

Finding: The property to the immediate north and west is zoned IP-1 (Light Industrial Planned District) and is developed with industrial, office/warehouse, auto body repair uses and non-conforming single-family residential uses. The property to the south is zoned I-1 (Light Industrial Planned District) and is developed with industrial, commercial and non-conforming single-family uses. Property to the east is located within the City of Overland Park, Kansas. There are also two small commercial areas to the west which are zoned: C-2 (Retail Commercial District) developed with a former hotel which is now an apartment complex and C-1 (Neighborhood Commercial District) which is currently vacant. The former South Park Elementary School which is currently zoned Parks, Schools, and City Facilities is also located to the west of the subject property.

Suitability of the Property for the Current Zoning

Finding: The current zoning of the property is IP-1 (Light Industrial Planned District) and allows for all of the uses within the I-1 Light Industrial zoning district. The zoning of the property would still remain IP-1 but the proposed zoning would restrict the allowable uses on this site eliminating a number of uses currently allowed on the site.

Extent to which the Requested Zoning will Detrimentially Affect Nearby Property

Finding: Since the rezoning request would actually limit the uses on the current site there would be no detrimental affect on nearby property. In addition, as part of the planned zoning district provisions any development on the site would need to have a preliminary and final development plan approved before any specific use was allowed.

Length of Time the Property has been Vacant as Zoned

Finding: The property has been vacant since the redevelopment of the I-35 Antioch Interchange which was completed in 1999.

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

This factor requires the hardship of the owner if the proposed use is not approved to be weighed against the gain to the general public if the proposed use and development plan are approved.

Finding: The subject parcel is currently vacant and owned by the City of Merriam. The proposed uses would decrease the intensity of both commercial and industrial uses currently permitted on the site. The immediately surrounding uses are commercial, office, industrial and non-conforming single-family in nature and would not be adversely affected by the proposed restriction of uses.

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 this site as part of the Antioch Interchange Future Land Use Opportunity. The Comprehensive Plan states that while it is shown as light-industrial, the area should accommodate commercial retail and office activity and that any industrial should be contained within an industrial or business park.

In addition, the City of Merriam recently completed a comprehensive plan amendment for the former South Park Elementary School site and the adjacent city owned property. The South Park Sub-Area Plan recommends that the school site be a mixed use development with commercial, office, public, multiple-family and single-family residential uses. The proposed rezoning would be more compatible with the uses shown in the adopted South Park Sub-Area Plan.

Preliminary and Final Development Plans within a Planned District (4-402 of the Merriam Zoning Code)

The applicant, the City of Merriam, is not currently proposing the construction of any structure related to a specific use on the site. As part of the planned district zoning requirements, a preliminary and final development plan must be submitted and approved prior to any construction.

Staff Recommendation:

Based on the findings of fact, as well as, the criteria outlined in the City's zoning ordinance as detailed in this Staff Report the Community Development Director recommends approval of the rezoning request, Z-2-07 Wanda's Woods, Lot 1- Rezoning Restricted IP-1 Uses, as identified on pages 3-7 and forwarding it to the City Council with a recommendation for approval subject to the following condition:

Submission of a preliminary and final development plan.

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).

The Planning Commission held a public hearing on October 3, 2007 and voted, unanimously, to recommend approval of the proposed restriction in use as identified in the Planning Commission Staff Report (pages 3-7). A copy of the Planning Commission Staff Report and associated minutes was included with the agenda materials. Based on the evidence presented at the October 3, 2007 public hearing, as well as, the criteria outlined in the City's zoning ordinance as detailed in the Planning Commission Staff Report, the Planning Commission, has recommended approval of the proposed restriction of uses as identified in the Planning Commission Staff Report (pages 3-7).

COUNCILMEMBER BERTONCIN MOVED THAT THE GOVERNING BODY, BASED ON THE EVIDENCE PRESENTED AT THE OCTOBER 3, 2007 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, APPROVE THE PROPOSED RESTRICTION OF USES AS IDENTIFIED IN THE PLANNING STAFF REPORT (PAGES 3-7) FOR THE PROPERTY LOCATED AT 5032-36 ANTIOCH ROAD (Z-2-07) AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. THE MOTION WAS UNANIMOUSLY APPROVED.

COUNCILMEMBER BURKS 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, CITY ATTORNEY, AND OUTSIDE COUNSEL. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:05 P.M. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

The meeting reconvened at 9:05 p.m.

VII. COUNCIL ITEMS

A. Work Session

B. Finance and Administration Committee

1. Consider approval of a resolution amending the effective date of the transient guest tax rate increase.

COUNCILMEMBER BURKS MOVED THAT THE COUNCIL APPROVE A RESOLUTION AMENDING THE EFFECTIVE DATE OF THE TRANSIENT GUEST TAX RATE INCREASE. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP AND CRABTREE VOTED NAY.

COUNCILMEMBER BERTONCIN WAS NOT PRESENT FOR THE VOTE.

Councilmember Stephens announced that former councilmember and community leader John Chatlain passed away. Mr. Chatlain had served on the city council for many years, eight of those years as Council President.

C. Community Development/Public Works Committee

1. Consider Approval of a Resolution in Support of the Mayors Climate Protection Agreement and the Cities for Climate Protection Campaign.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL APPROVE A RESOLUTION IN SUPPORT OF THE MAYORS CLIMATE PROTECTION AGREEMENT AND THE CITIES CLIMATE PROTECTION CAMPAIGN. THE MOTION WAS UNANIMOUSLY APPROVED.

VIII. STAFF ITEMS

1. Consider approval of a resolution supporting the transportation enhancement grant application.

Neighborhood Services Manager Beth Linn provided the background for this item.

Kansas Department of Transportation is currently accepting applications for the Transportation Enhancement (TE) Program for fiscal year 2009-2010. To be eligible for funding, applications must meet three criteria: relate to surface transportation, fit into one of three categories (historic, scenic and environmental, or pedestrian and bicycle facilities), and be submitted by a local government entity.

Staff and council have previously discussed the opportunity to address water quality, stormwater runoff, and beautification related to the I-35/ Shawnee Mission Parkway interchange as a gateway into Merriam. By focusing on water quality, the city would be addressing NPDES plan goals and improving conditions in Turkey Creek. Staff anticipates that the project would focus on solutions to improve water quality and reduce runoff into Turkey Creek from I-35 and Shawnee Mission Parkway with beautification of the interchange as a secondary purpose.

Patti Banks Associates (PBA) agreed to help staff, at no cost, prepare and submit the necessary application materials. PBA will assist in developing ideas of ways to clean and store water runoff to be used for irrigation of plantings.

TE grants require 20% local match. Possible funding sources for this project include I-35 Corridor Improvements as identified in the I-35 District

Enhancement Budget of the CIP Plan. Part of the application materials, includes a resolution of endorsement from the City Council. The deadline for application is November 7, 2007.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE A RESOLUTION SUPPORTING THE TRANSPORTATION ENHANCEMENT GRANT APPLICATION. THE MOTION WAS UNANIMOUSLY APPROVED.

City Administrator Quinn Bennion announced that this would be his last City Council Meeting as he has taken the City Administrator position in Prairie Village. Mr. Bennion shared some reflections of his time with Merriam over the past ten years.

IX. OLD BUSINESS

X. NEW BUSINESS

XI. EXECUTIVE SESSION

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 NON-ELECTED PERSONNEL PRESENT WILL BE THE CITY ATTORNEY. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:35 PM. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

The meeting reconvened at 9:35 p.m.

COUNCILMEMBER ROWE MOVED THAT THE CITY COUNCIL WAIVE THE REQUIREMENT OF SECTION 3(B)2 (RELATED TO RESIGNATION) OF THE AGREEMENT BETWEEN QUINN BENNION AND THE CITY OF MERRIAM DATED JANUARY 29, 2002. THE MOTION WAS UNANIMOUSLY APPROVED.

COUNCILMEMBER HANDS 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 NON-ELECTED PERSONNEL PRESENT WILL BE THE CITY ATTORNEY. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:55 PM. COUNCILMEMBER CRABTREE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

The meeting reconvened at 9:55 p.m.

COUNCILMEMBER ROWE MOVED THAT THE CITY COUNCIL RECESS INTO EXECUTIVE SESSION CONSULTATION WITH LEGAL COUNSEL ON

MATTERS THAT WOULD BE DEEMED PRIVILEGED IN AN ATTORNEY-CLIENT RELATIONSHIP RELATING TO NON-ELECTED PERSONNEL PRESENT WILL BE THE CITY ATTORNEY. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 10:15 PM. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS APPROVED. COUNCILMEMBER CRABTREE WAS NOT PRESENT FOR THE VOTE.

The meeting reconvened at 10:15 p.m.

COUNCILMEMBER HUPP MOVED THAT THE CITY COUNCIL APPOINT STEPHANIE DAWKINS AS INTERIM CITY ADMINISTRATOR UNTIL SUCH TIME THE CITY COUNCIL SELECTS AND APPOINTS A CITY ADMINISTRATOR SUBJECT TO AN AGREEMENT TO BE CONSIDERED BY THE COUNCIL AND MS. DAWKINS AT A SPECIAL COUNCIL MEETING IN NOVEMBER. THE MOTION WAS APPROVED. COUNCILMEMBERS BERTONCIN, CRABTREE AND LEAP WERE NOT PRESENT FOR THE VOTE.

Community Development Director Dennis Enslinger reminded the council of the housing tour scheduled with staff and council on Saturday October 27, 2007 at 8:30 a.m.

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER ROWE MOVED TO ADJOURN AT 10:28 P.M. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS APPROVED. COUNCILMEMBERS LEAP AND CRABTREE LEFT THE MEETING AT 10:25 P.M.

Approved: 11/26/07

Respectfully submitted,

Juli Pinnick
Deputy City Clerk