

MINUTES OF THE MISSION CITY COUNCIL MEETING, OCTOBER 16, 2019

The Mission City Council met in regular session at Mission City Hall on Wednesday, October 16, 2019. The meeting was called to order by Mayor Ron Appletoft. The following councilmembers were present: Ken Davis, Sollie Flora, Kristin Inman, Debbie Kring, Pat Quinn, Arcie Rothrock, Nick Schlossmacher, and Hillary Thomas.

Mayor Appletoft welcomed the public and provided a brief overview of meeting procedures.

REVISED AGENDA

Moved by Quinn, seconded by Kring to approve the October 16, 2019 City Council Meeting Agenda as revised. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

PUBLIC HEARING - Roeland Park De-Annexation

Public Hearing Concerning the Exclusion of Certain Real Property from Mission's Corporate Limits Pursuant to K.S.A. 12-504

Mayor Appletoft stated a public hearing on the de-annexation of property from Mission's corporate boundaries is required tonight and introduced Ms. Smith to provide an overview.

A transcript of this public hearing is attached to and made a part of these minutes. (Please see attached.)

There being no further comments, the public hearing was closed.

Ordinance Excluding Certain Portions of Land from the City of Mission's Corporate Limits

Moved by Quinn, seconded by Davis to adopt an ordinance excluding certain lands from the City of Mission, Kansas in conformity with the provisions of K.S.A. 12-504 and K.S.A. 505 and all amendments thereto. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

PUBLIC HEARING - 5399 Martway

Mayor Appletoft opened the Public Hearing regarding the structure at 5399 Martway and introduced Pete Heaven, Spencer Fane, Mission Land Use Attorney, to provide information on the purpose of this hearing.

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A transcript of this public hearing is attached to and made a part of these minutes. (Please see attached.)

There being no further comments, the public hearing was closed.

Moved by Flora, seconded by Schlossmacher to direct staff to prepare a resolution to adopt the findings of fact regarding the structure at 5399 Martway Street for consideration at the November 18, 2019 City Council Meeting. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

SPECIAL PRESENTATIONS

Update from Johnson County Commissioner Backy Fast

Commissioner Fast, representing District 1, presented information on the County's Budget, including:

- The 2020 approved County budget, which includes support services, public safety, judicial and emergency services (20%), infrastructure (25%), health and human services, culture and recreation, records and taxation, and reserves (26%). With 26% of the budget going to reserves, this has assisted the County in keeping a AAA bond rating.
- 2020 anticipated revenues with the largest amounts coming from taxes (33%) and reserves (26%).
- Major projects that include the new courthouse, which is anticipated to be completed summer 2020, Meadowbrook Park, the Medical Examiner's building, Lenexa Library, Merriam Library and a feasibility study on improvements to Corinth Library
- CARS program and its funding sources. Improvements to I-35 (widening at 75th Street) is a large upcoming project that does not have a Federal funding match available.
- 2019 CARS Program that includes projects in Leawood, Merriam, Mission (Broadmoor from Johnson Dr. to Martway), Prairie Village and Roeland Park.
- Stormwater Management and the change in the strategic plan from placing the emphasis on city needs to the watershed. She stated they hope this change will provide more equity in the program and more funding for Northeast Johnson County, which has the highest need. She discussed concerns with not having enough funding for this program, the scoring method for projects, and provided information on 2014-2019 SMP funded projects.

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- Wastewater program and efforts to work with Kansas City, Missouri. She provided information on the Tomahawk Creek treatment plant improvements underway, and the Nelson plant located in Mission that is the oldest in Johnson County and the next project planned.
- Solid Waste Management and the new Solid Waste Management Plan 2020-2025. This includes encouraging food waste diversion and the separation of yard waste (limbs, leaves, etc.) for composting. She would also like to see multi-family recycling encouraged.
- Vulnerable populations including the aging population, mental health services, and increasing jail populations. She noted that Mission has a mental health co-responder and they are seeing more and more need for these services. She discussed how to address mental health and substance abuse problems with those in jail. The current prisoner fee is \$35 per day and this will be increasing to \$50 per day in 2020 (average cost to house an inmate is \$157 per day).
- Appraisal challenges including the “dark store theory” that could spread to all stores, not just large retail. Many cases related to this are pending.
- An update on sales taxes for 2019 year-to-date. Sales taxes are currently up.

Councilmember Flora asked if an environmental impact analysis was done on the upcoming I-35 expansion. Commissioner Fast did not think so, but did discuss incentives with the CARS program to use recycled cement and asphalt.

Councilmember Thomas thanked Commissioner Fast for her efforts towards improving mental health services and affordable housing.

CONSENT AGENDA

Moved by Kring, seconded by Schlossmacher to approve the Consent Agenda, items 4a through 4e.

- 4a. Minutes of the September 18, 2019 City Council Meeting
- 4b. Upgrade to Laserfiche Software
- 4c. Adoption of 2019 Standard Traffic Ordinance and Uniform Public Offense Code
- 4d. Agency Participation Agreement with MARC and TTS for Data Authorization
- 4e. Demolition Contract for 5122 W. 60th Terrace Property

Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas.
Motion carried.

PUBLIC COMMENTS

Mayor Appletoft introduced Lambert O'Brien, Mission resident, who served as the Grand Marshall of the recent Sunflower Parade. At the parade, Lambert told the Mayor about an issue he is interested in and it was recommended he come to a Council Meeting. Lambert stated he is concerned about vaping and the number of people who have died or are sick from it. He would like to make vaping against the law. Lambert is currently a student at Rushton Elementary is 7 years old.

Holly Grohman, Mission resident, stated she would like to call the City's attention to issues at 6604 Dearborn Drive in Milhaven where Grant Oshman is the resident. She stated the home is an eyesore with the resident running a business (selling cars) from the residence. There are multiple vehicles at the property, and flags, tents and an unfenced pool. She feels the pool is a liability as it is not fenced and although not full, it does collect water when it rains. She discussed Mr. Oshman's recent arrest and upcoming court appearance, and noted that many of the vehicles had not moved in two weeks, that a limo was towed from the property but there is another one there, and the flags and tents are present but falling down. She currently serves as the president of the homeowners association and the residents are concerned with his disregard for City ordinances. She also believes there is a small dog in the house that is kennelled except when it is fed by a business partner. She asked that the City "get a plan" to address these issues and share the plan with residents in the area.

Kevin Fullerton, Cathy Casey, and Sandi Russell, Mission residents and business owners, and members of the Mission Business Development Partnership and Sunflower Festival Committee, thanked the City for all their work associated with the Sunflower Festival. This was a great opportunity for the businesses to celebrate Mission and showcase their businesses. They thanked the City Council, City staff, and fire district for their support, and thanked all those who participated in the parade.

Ms. Smith responded to the issues raised by Ms. Grohman regarding a Milhaven resident. She stated the resident has been cited by the City and is scheduled to appear in Municipal Court on October 23rd at 9:00 a.m. He also has a hearing in Johnson County District Court on October 18th. At the trial in Municipal Court, the vehicles, pool, some of the tents, and business being conducted will be addressed. The City is aware of the vehicles and additional citations have been issued. Currently, it appears the vehicles have been moved. She stated we are addressing the animal issue to the extent that we can and she suggested that neighbors contact the Police Department when they see someone at the home. Mayor Appletoft stated the City is aware of the situation and is doing all it can to

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address this situation through our ordinances. Staff is working to revise our ordinances to strengthen them for these types of situations. The Police Department routinely checks the property and citations have been issued to try to resolve the issue. Councilmember Thomas requested information on what the City can do with regards to the pet at the residence. Chief Hadley stated that Mr. Oshman has been contracted and he has stated someone is taking care of the animal. The City can not enter the home, but is doing all it can. Councilmember Flora stated she would like for us to look at our animal cruelty ordinance for these types of situations.

FINANCE & ADMINISTRATION COMMITTEE

Councilmember Flora stated the Finance & Administration Committee met on October 2 and October 9 and considered a total of seven items, including approval of the meeting minutes. Two items were considered on tonight's consent agenda and action on the de-annexation of property was taken earlier this evening following a public hearing on the issue. There are three remaining items from the Finance & Administration Committee for consideration tonight..

Award of Contract for Solid Waste Collection Services

Councilmember Flora reported the current contract with Waste Management for residential solid waste collection services will expire December 31 of this year. Staff solicited bids for a new residential solid waste collection services agreement and three bids were received. The request for bids was structured to include the services currently being provided, which includes poly-carts, solid waste, recyclables and yard waste collection, and monthly bulky item pick-up. Customer service was emphasized in the process. Staff is recommending approval of a contract with WCA of Missouri, LLC as the best and lowest bid. Residents currently pay \$203.64 annually for this service and the new contract with WCA will lower the price slightly to \$192.54 annually. The proposed contract with WCA is for a period of five years with two optional renewal terms of five years.

Moved by Flora, seconded by Kring to approve an agreement with WCA of Missouri, LLC for residential solid waste collection services for a period of five years with two optional renewal terms of five years each. Councilmember Thomas stated she will be voting in support of this contract, but she would have liked for the Sustainability Commission to be a part of this process, especially due to the length of the contract. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas.
Motion carried.

**Resolution Calling a Public Hearing on the Division of the Rock Creek
Redevelopment (TIF) District**

Councilmember Flora stated the Rock Creek TIF District was established in 2006 and contains approximately 71 acres of property which generally follows the Rock Creek floodplain from Roe to Lamar. The district originally included four redevelopment areas, but was amended in 2009 to include a total of five redevelopment areas. Project Area 2a was added to separate the Capitol Federal project. Because the TIF Act provides that increment is computed on a district-wide basis, all areas must be generating positive increment before any funds may be distributed. Currently, the overall Rock Creek TIF District is generating a negative increment. She stated that as we have worked to amend the Gateway Redevelopment Agreement and consider the issuance of Special Obligation Bonds for the project, it was determined that the current Rock Creek TIF District should be split into separate districts. To accomplish this, the City will provide the same notice and hearing as was required when the original district was established. This proposed resolution sets the date and time of a public hearing regarding the division of the Rock Creek Redevelopment District into separate redevelopment districts. The public hearing will be held at the City Council Meeting on Monday, November 18, 2019 at 7:00 p.m.

Moved by Flora, seconded by Quinn to adopt a resolution of the City Council of the City of Mission, Kansas establishing the date and time of a public hearing regarding the division of the Rock Creek Redevelopment District into five redevelopment districts. The public hearing will be held on Monday, November 18, 2019 at 7:00 p.m. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

**Resolution Approving Amendment to Third Amended and Restated Redevelopment
Agreement, The Gateway Project**

Councilmember Flora reported in October 2017, the City approved the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. Now, as a result of the project's evolution over the past two years, the City and its consultant team have negotiated a proposed "First Amendment" to the 2017 agreement. This amendment serves a crucial role in reconciling the current project to the 2017 agreement. In 2017, the project was contemplated to be built in phases, but with the schedule for the project now being driven primarily by the Cinergy component and the need to complete the parking structure sooner in the process, and updated agreement is required. This proposed amendment aligns the underlying goals and assumptions included in the 2017 Redevelopment Agreement with the realities of the 2019 project.

Moved by Flora, seconded by Quinn to adopt a resolution of the City of Mission, Kansas approving the First Amendment to the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. Councilmember Davis asked if Mr. Tom

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Valenti, Gateway Developers, wanted to provide an update on the project. Mr. Valenti stated the project is moving forward although it has been a long process. He commended the staff and consultants for doing an outstanding job in working with the developer. Construction is continuing and he anticipates the Cinergy building going vertical by December 2019. He stated the project is coming together and he appreciates Council's patience and cooperation. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

COMMUNITY DEVELOPMENT COMMITTEE

Councilmember Thomas reported the Community Development Committee also met on October 2 and discussed five items. These included acceptance of the committee minutes, and two public presentations - a season review of the Mission Summer Camp and the Mission Family Aquatic Center, and a season review of the Mission Market. Two action items from the committee were approved on tonight's Consent Agenda. There were no additional items for consideration.

NEW BUSINESS

Change in Dates for Upcoming Meetings

Mayor Appletoft stated that we need to change the dates for the November City Council Meeting to Monday, November 18 and the date of the December Council Committee Meetings to Wednesday, December 11.

Moved by Davis, seconded by Kring to move the regularly scheduled November City Council Meeting to Monday, November 18, 2019 at 7:00 p.m. and move the regularly scheduled December City Council Committee Meetings to wednesday, December 11, 2019 at 6:30 p.m. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

Approval of De-Annexation Terms **(NE Corner Johnson Drive and Roe Boulevard)**

Mayor Appletoft reported Councilmembers Flora and Inman have been working with two designated representatives from Roeland Park City Council in an effort to negotiate acceptable financial terms for the de-annexation and resolve the remaining outstanding issues.

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Councilmember Inman reported that she and Councilmember Flora met earlier today with Erin Thompson and Jim Kelly, Roeland Park Councilmembers, to consider the financial terms of the de-annexation. They looked at what Mission gets in stormwater fees and property taxes from the parcel (\$3,492/year) and the benefits to the Roeland Park developer should the de-annexation occur. The negotiations began at \$85,000. The range currently being considered is \$62,856 - \$69,840, which represents the estimated taxes and fees that Mission would receive from the parcel over a 15 (\$62,856) or 18 (\$69,840) year period. This range will be brought to their City Council on Monday, October 21st for consideration. Councilmember Flora stated Roeland Park will be holding a special meeting tonight to approve the ordinance only on this de-annexation, and that those working on the negotiation agree in principle to the proposed range.

Moved by Flora, seconded by Davis to authorize the Mayor and City Administrator to complete the remaining steps necessary to finalize an agreement with the City of Roeland Park for compensation associated with the de-annexation of a parcel of land at the northeast corner of Johnson Drive and Roe Boulevard, and to allocate cost sharing 50/50 for the traffic signal owned by KCPL at this intersection as long as the Roeland Park City Council approves compensation in an amount with the following range: \$62,856-\$69,840.

Councilmember Schlossmacher asked why a range was decided upon rather than a specific number. Councilmember Flora stated the range was as close as they could get, but they felt it was small enough that it could come to Council for approval. Councilmember Quinn asked if this will come back to Council with a specific number and Councilmember Schlossmacher asked if he could amend the motion to include a specific amount. Discussion continued on moving forward with the range with Mayor Appletoft stating Councilmembers Flora and Inman will finish the negotiations for Mission.

Moved by Schlossmacher, seconded by Kring to amend the original motion to accept compensation of no less than \$65,555 from the City of Roeland Park. Councilmember Davis stated he is against this amount as there is a process in place and a range within which to negotiate. Councilmember Schlossmacher stated he believes Roeland Park will not approve an amount more than the least amount in the range and we should go back to them with a specific number. Councilmember Quinn stated there is still an opportunity for them to approve an amount up to the top of the range. Councilmember Davis again stated Council should honor the process that we went forward with. Councilmember Inman provided additional information on the negotiations which included discussion of the costs incurred by Roeland Park and their commitment to pay for 50% of the traffic signal. Councilmember Flora stated they must take these negotiations to their council and this

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gives them some flexibility within a small range. Councilmember Schlossmacher again expressed his belief that they will approve the lowest number and that it is in our best interest to approve a specific amount.

The vote was taken on the amendment Voting AYE: Quinn, Rothrock, Schlossmacher. NAY: Davis, Flora, Inman, Kring, Thomas. **Motion failed.**

Councilmember Davis thanked Councilmembers Flora and Inman for their work on this issue on behalf of the City.

The question was called on the original motion. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

COMMENTS FROM THE CITY COUNCIL

Councilmember Inman announced a Ward III meeting scheduled for October 17th at 7:00 p.m. at the Community Center. All were invited to attend. She also announced the First Tier Suburbs meeting scheduled for Friday, October 18th at Matt Ross Community Center, 8:00 a.m.

Councilmember Thomas announce a Ward I meeting on October 30 at 6:30 p.m. at the Community Center.

Councilmember Flora stated she and Councilmembers Davis and Inman recently attended the LKM annual conference in Overland Park. Please contact any of them if you would like additional information from the conference.

Councilmember Kring announced that on October 22 she will be attending a 3.5 hour Sustainability Commission Retreat. The Commission will work to set their goals and objectives.

Councilmember Davis thanked staff for their work on the Sunflower Festival and Parade.

Councilmember Rothrock announced the Holiday Family Adoption Committee will host a pig roast on Sunday, October 27 at The Welstone apartments. Tickets are \$25 each and there will be a silent auction. She also brought up the issue of including options for those who are vegan or Jewish (there will be a beef option) and have dietary restrictions. Mayor Appletoft stated this has been addressed and the menu will be expanded to include vegan

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options. Councilmember Rothrock also announced that Tip-A-Cop will be held on October 17 at Johnny's BBQ.

MAYOR'S REPORT

Mayor Appletoft again congratulated and thanked all for their work on the Sunflower Festival. He asked the members of the committee present how this year's festival compared to those in the past. Mr. Fullerton stated the first year was great, but the second year was very hot and attendance was lower. This year attendance was back up and moving it to October helped due to the cooler weather. Ms. Russell stated the parade had 10 more entrants than in the past.

Appointments

Drug & Alcoholism Council of Johnson County

Mayor Appletoft put before Council the appointment of Liana Riesinger to the Drug & Alcoholism Council of Johnson County with a term expiring December 31, 2022.

Moved by Davis, seconded by Rothrock to uphold the appointment of Liana Riesinger to the Drug & Alcoholism Council of Johnson County with a term expiring December 31, 2022. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

Parks, Recreation & Tree Commission

Mayor Appletoft put before Council the appointments of Ben Chocie, Mary Ryherd, and David Schwenk to the Parks, Recreation & Tree Commission with terms expiring December 31, 2021.

Moved by Kring, seconded by Rothrock to uphold the appointment of Ben Chocie, Mary Ryherd, and David Schwenk to the Parks, Recreation & Tree Commission with terms expiring December 31, 2021. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

Sustainability Commission

Mayor Appletoft put before Council the appointment of Cathy Boyer-Shesol to the Sustainability Commission with a term expiring December 31, 2020.

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Moved by Kring, seconded by Inman to uphold the appointment of Cathy Boyer-Shesol to the Sustainability Commission with a term expiring December 31, 2020. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

CIP Committee

Mayor Appletoft put before Council the appointments of Jacque Gameson to the CIP Committee with a term expiring December 31, 2020 and David Schwenk to the CIP Committee with a term expiring December 31, 2021.

Moved by Davis, seconded by Rothrock to uphold the appointments of Jacque Gameson to the CIP Committee with a term expiring December 31, 2020 and David Schwenk to the CIP Committee with a term expiring December 31, 2021. Voting AYE: Davis, Flora, Inman, Kring, Quinn, Rothrock, Schlossmacher, Thomas. **Motion carried.**

CITY ADMINISTRATOR'S REPORT

Ms. Smith thanked Council for confirming the recommended appointments this evening. She stated that there are still a few vacancies to be filled, including someone from Ward I for the CIP Committee. There is also one vacancy on the PRT who can be from any ward or a youth member, and the Sustainability Commission needs a youth member. Mayor Appletoft stated there have been questions are on the appointment process. We have not been overwhelmed with vacancies and there are membership criteria that is set by ordinance for each. He stated the City typically puts out a "call" for those interested to contact the City by sending in their resume. These are then pulled together and people are interviewed either in person or by phone. He stated we try to match their interest with vacancies available and noted that we usually get barely enough interest to fill our vacancies. Councilmember Quinn stated Ward I meetings always include information on how to apply for a commission or committee.

Ms. Smith stated that proposals for the County Housing Inventory have been received and she will be participating on the review panel on Monday, October 28.

ADJOURNMENT

Moved by Quinn, seconded by Kring to adjourn the meeting at 9:04 p.m. All present voted AYE. **Motion carried.**

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Respectfully submitted by Martha Sumrall, City Clerk.

Ronald E. Appletoft, Mayor

Martha M. Sumrall, City Clerk

Transcript

Excerpt from October 16, 2019, Mission City Council Meeting

Item 1a. – Public Hearing – Roeland Park De-Annexation

Laura Smith: As everyone is aware, since December of 2018, the cities of Mission and Roeland Park have been in conversation about the potential benefits of annexation and de-annexation of a parcel of property that's about 7/10th of an acre at the northeast corner of Johnson Drive and Roe Boulevard. This is former KDOT right-of-way that was purchased by the city of Roeland Park several years ago in order to help round out a potential site for development in their community, but the city limit boundaries currently bisect or cross through the site, and that piece of ground is actually in the city of Mission, Kansas.

Earlier this year, the city of Roeland Park began negotiations with a developer for redevelopment of that property. As we looked at it, we considered primarily the bureaucracy and red tape of asking a developer to go through zoning approval process within two cities for a particular project, sort of re-engaged in our conversations about the potential benefits of that annexation and de-annexation. Earlier this month, our two cities agreed to proceed with the process, primarily for the benefit of the developer and that project. The first step in that process was to pass a resolution, calling a public hearing for this evening, giving people the opportunity to speak on either side, in favor or against the potential de-annexation. Following the conclusion of the public hearing, the Council will consider an ordinance that would exclude the property from our corporate boundaries. The city of Roeland Park would then also convene a special meeting this evening to potentially look at annexing that same piece of ground into their city. I'm happy to answer any questions.

Mayor Appletoft opened the public hearing.

Mayor Appletoft: I'd entertain comments from the public. If you'd like to comment, please come forward to the lectern and state your name and city of residence for the record. Is there anybody here to speak on the de-annexation? Yes, please come forward.

James Hampton: My name is James Hampton, I'm a resident of Kansas City, Missouri. I'm here with Mauer Law Firm, the city attorneys for Roeland Park. The City apologizes that they can't be here. They have a meeting as well, as you know. So, kind of like you heard, the process going forward with de-annexation and annexation. Pursuant to KSA 12-504 and 505, the City Council for Mission has to make certain findings regarding the land, and I wanted to talk about some of the specific findings that the city of Mission and your Council need to find.

First, that no private rights will be injured or endangered by the exclusion of land. That will not be the case. The City of Roeland Park is the only owner of record for this land. The public will suffer no loss or inconvenience by the exclusion. Again, the City of Roeland Park is the only owner. This will save a lot of time and a lot of money for both the City of Mission and Roeland Park, moving forward with the development of the parcel of land. Also, that [inaudible] requires that Roeland Park's petition for de-annexation be approved. Again, this land is being used to develop a project, and if the land remains in the

city boundary of Mission, then the developer will have to go through two city planning commissions and two city councils. So, we request that you grant our petition, and that you pass the ordinance. Thank you.

Mayor Appletoft: Thank you. Anyone else here to speak on the de-annexation? Seeing none, we will close the public hearing. The next step is consideration of the ordinance, excluding approximately .7 acres at the northeast corner of Johnson Drive and Roe Boulevard from Mission's corporate limits. I would entertain a motion.

Councilmember Quinn: Mayor, I move that City Council adopt an ordinance excluding certain lands from the city of Mission, Kansas, in conformity with the provisions of KSA 12-504 and KSA 505, and all amendments thereto.

Councilmember Davis: Second.

Mayor Appletoft: We have a motion and a second. Discussion?

Ms. Smith: Mayor, if I might, I might clarify, Mr. Hampton did reference the specific findings, and those are detailed in the ordinance that was included in your packet.

Mayor Appletoft: Seeing no discussion, I would call for a vote.

Aye: Davis, Schlossmacher, Flora, Thomas, Inman, Kring, Rothrock, Quinn (8)

No: (0)

Motion was approved 8-0.

Item 1b. – Public Hearing – Structure at 5399 Martway

Mayor Appletoft: Moving on to item 1b., it's a public hearing for 5399 Martway. I would now like to open our second hearing. This is the former Mission Bowl property. Pete Heaven, Mission's land use attorney, will begin by providing us with information on the purpose of this hearing tonight. Mr. Heaven.

Mr. Pete Heaven, Spencer Fane: Mayor and Council. Under Chapter 510 of our code, the City enjoys the ability to regulate unsafe, dangerous structures, either by requiring that they be rehabilitated, or removed. Mission Bowl suffered a substantial fire in 2015, and it came to our attention that nothing has been done with that property. So, we initiated the procedures under Chapter 510 and had an inspection on the property. Tonight, the purpose of this hearing is for you to gather facts from those who wish to speak and make a determination whether this building is unsafe or dangerous, and require either rehabilitation or removal.

At the end of the hearing, the Council will take this under advisement. Staff has prepared suggested findings of fact based on *[inaudible, coughing]* hearing, and take this up at a later time through resolution, probably at the November meeting. At this time, I'd like to introduce Jim Brown, who is our official who has taken a look at the property, and is going to give a report.

Mr. Jim Brown, Building Official: Good evening, Mayor and Council. What I will be speaking to is the *[inaudible, coughing]* inspection report that was done on the day of July the 8th, which brought us around to where we are today. Effective on that day, we were provided, as staff, escort into the building, access

to the building, by a former tenant Mrs. O'Donnell, provided access to both myself and the fire marshal, so we could do an investigation and determine whether or not this is indeed a dangerous structure.

One of the roles of a building official is to evaluate these type of structures and make that determination, whether it is or is not. We use specific criteria to reach that end. Whereas it is basically... The International Property Maintenance Code gives us the conditions and criteria, outlines those for us. In this case, the 2012 International Property Maintenance Code, and specifically Section 108.1.5. There's 11 conditions included in that that provides guidelines that we use so that we can make a determination. Out of those 11, there were eight points that were to be discussed and investigated on this particular structure. And so, in that investigation, it was determined that... Something else to know. Whenever we do these investigations, the property maintenance code also has a provision that any structure or premises which has any or all the conditions or defects described in those 11 items shall be considered dangerous. So, it's not "may be" considered dangerous; it's "shall be" considered dangerous. Any or all, keeping it in mind, it could be one, it could be four, it could be five. It could be a combination of anything, or all. Which leads us down this path. In this case, any door, aisle passageway, stairway, exit, or other means of egress that does not conform to the building or fire code of the jurisdiction as related to the requirements for the existing building. Well, extensive damage was at the origin of the fire, which is located adjacent to the front entrance, thereby making a means of egress impossible to traverse or utilize after the fire event, which occurred on April 3, 2015. The walking surface of any aisle, passageway, stairway, exit, or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress. Again, the intensity of the fire was so intense that it damaged this area to the point where it heavily damaged the means of egress to this particular structure.

Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or any other cause, to an extent that is likely to partially collapse or become detached or dislodged. The fire damaged several areas of this structure. One area in particular of the roof structure adjacent to the front entry, is composed of what's commonly known as a Warren SJ type trusses. That's the roof support. So, four of these are approximately five feet on the center, and they have corrugated roof decking, which is a common component. And the exterior was damaged to the point that it regulated it to require temporary shoring be put in place so as not to continue to sag or fail. Several roof leaks existing. All the galvanized coating on the roof components have completely flaked off because of extreme heat. It is bowed, it's caused a lot of deflection. Mold and mildew is present in several areas. Of course, roof leaks continue to exist. The building remains, for the most part, in the same condition it was after the fire event and has not improved in any way, and it will continue to deteriorate due to weather events and other extremities.

Any portion of a building or member, appurtenance or ornamentation to the exterior thereof not sufficient in strength or stability, or is not anchored, attached or fastened in place, be place, be capable of resisting the natural or artificial loads of one and one-half the original designed value. This one and a half times value is something that's typically done by engineering, just to make sure that you have a safety factor over and beyond what is required for any structure. The front wall of this building is incapable of supporting specifically the roof components that I spoke about, and again, required a temporary shoring, so there's no way it can hold even its own weight, much less that that would be required, one and a half times what the amount of the load should be.

If the building or structure, or any portion thereof, is unsafe for its use and occupancy. Well, due to the extensive fire event, firefighting efforts temporarily destroyed evidence of damage. Instability of the front wall to support a roof structure. All utilities are disconnected. All of these items clearly demonstrate the building is unsafe for its intended use and occupants.

The building structure is neglected, damaged, dilapidated, unsecured, abandoned, etc., becomes a harbor for criminals, immoral persons, or enables persons to resort to committing a nuisance or an unlawful act. The building, in essence, is abandoned. During our investigation, the fire marshal himself discovered that the front door was officially unlocked. Anybody could walk up to it, open the door, and enter the premises, thereby leading to its enticement as an attractive nuisance, which could contribute to unauthorized activity, etc., unauthorized individuals occupying the space.

The above-listed conditions be a detriment to the health, safety or welfare of the city's residences existing, which constitutes [inaudible] nuisance. Any building or structure, because of lack of sufficient and proper fire-resistance-rated construction, fire protection system, electrical system, fuel connections, etc., could be a threat or is determined to be a threat to life and health. Again, all utilities have been shut off dating back to the fire event of April 3, 2015. There is no operating fire system, mechanical system, plumbing system, or any other system. Any portion of a building which remains on the site after demolition or destruction of a building or structure so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public. Again, this building is completely vacant. The front door was discovered being open, unsecured, and it is, by evidence of its present condition, ongoing condition, and continuing condition, it is evidence that this structure indeed meets the criteria as stipulated in our code to deem it as being a dangerous structure.

We have some photographs, we'll probably have to dim the lights considerably to see them somewhat clearly. The first photograph here is a view looking north towards the main entrance. The north wall was damaged to an extent to not to support the [inaudible] roof loads. The temporary shoring supporting the roof loads [inaudible] expanding the joist. The temporary shoring you've got here consists of some four-by-fours and other elements that help support the roof components, which span to the exterior wall here. You see the opening where the fire burned through the roof system, creating openings in the roof. So, the support member of this particular joist, of these, is virtually non-existent. So, without the shoring, you're looking at a situation where that could possibly sag even more and cause a collapse. This view of the exterior load wall showing flexion in the roof joists. And you can see the flexion, meaning this. Not only is the galvanized roof in flexion, but other components of the roof system, which is what we commonly call "bridging." Bridging is a component put into these type of truss systems to stabilize and provide wind bracing, etc., for the truss, basically keep it in line, keep it straight. They're not intended to move or alter in their condition without causing some significant strain onto the trusses themselves.

This photograph shows a little more clearly as to the exterior wall, and the bearing points of the joists onto this wall system. When this burned away, there was so much flexion in the roof, not only did it peel away some of the exterior components, but it peeled away the structural integrity of those. So, these are typically welded into a weld plate on top of that wall system. So, if the wall system moves in any way, it jeopardizes the integrity of that connection, and you're looking at a very dangerous situation.

This view is basically the origin of the fire, and the bag is actually called, here where a grease duct used to be, a grease duct serving the kitchen area. This component was placed to help, I think protect from

weather elements and those kinds of things, and it's continued to leak because no other repairs have been done in four-plus years, whatever it may be.

Another photograph, a similar situation where the temporary tarp-type, plastic components in, try to control some of the weather events. This is a main component, too, where this framing connects to the roof system, and there's significant charring or burning here, to the point where the structural integrity is gone. Those components are gone.

This beam is one of the most tell-tale signs of the damage and the heat transfer from the fire to the steel structure. When the fire hits a steel structure, the temperatures are so extreme it causes steel to warp. So, you see that, the bridging edge – you remember, I was speaking about bridging. Look at the warp that's in this bridging component. It's tying these trusses together. The heat was so intense that it started to bend and warp and move the steel components. It also warped this heavy beam that's a main structural component of the whole building, and it was also... Notice, it's something that occurred during the fire. But during the investigation, it was noticed that where this arrow is pointing, there's a column – this column – there was a support column here at some point in time. The bolt connection is there, the holes are there, and that column is gone. Now, it's not something that happened during the fire, but it is something that raises concern to me. Because now, this column is in place, and this distance has just increased. So, was it designed for that particular use? This is already warped through the fire event, so it's causing even more stresses and strain onto the structure. Again, you can see the roof components warping severely. And that is continuous, especially for the front of the building. This is ongoing because that was basically the origin of the fire, where the most intense fire was, the heat of the fire. And you can see evidence of just how intense this fire was. For those fighting this fire, one can only imagine how intense it was for them as well, trying to control this with a heat transfer of a thousand degrees, which it had to be to cause these conditions. Again, you'll see it repeated over and over. Now, everywhere you see this, keep in mind, too, that the roof itself is on top of this metal backing. And it's screwed and connected to various components to that metal backing, and when this fails and it separates, the acts of nature [inaudible, coughing] do its damage to this particular building. You can see in several locations this thing keeps repeating itself, as the damage that we saw provides us evidence to reach this conclusion.

There's the front door. As we said, it was open; it was not secure, it was not locked, so anyone could have walked into this building at any time. Do keep in mind, though, we did, the fire marshal himself locked this door as we departed, just to provide another layer of security that wasn't present at the time. This is the back room, storage room. These doors are secure to prevent anyone from entering from the back side. There's an example of the electrical panel. For the panel and the components that you see here, either that was done after the fact, or someone trying to remove elements out of that panel failed. Whatever the case may be. Or, it would be frightful to note that the panel was in that kind of condition before we ever had the fire event.

Another area of storage in the back. You see all kinds of exposed wire and components, again, leading to this being a dangerous structure, whether it was related to the fire or not. This particular window has a screwdriver stuck into the latch of the window itself to kind of provide some kind of security from somebody opening the window from the outside and gaining entry into the building. In the back, this is a storage shed, typical storage shed in the rear of the building, to the south, adjacent to where the wastewater treatment facility is. There's evidence of cots, bedding, pallets, if you will, someone using it at some point in time as a place of refuge, I suppose. Again, in this part of it, there was evidence of that

as well, of people probably spending the night, or whatever the case is. Gaining access to what used to be the putt-putt area.

So, with all of these items and all of this that we presented this evening, this is the very reason we declare this as a dangerous structure. We feel confident we have enough evidence to support that as we go forward in this process. That concludes what I have this evening for a presentation. Thank you.

Councilmember Kring: What have we done to secure that building so that people aren't coming in there?

Mr. Brown: The building right now, we secured that front door, and the rear doors are secure. As far as the shed, last time I checked on the shed was, I believe it was last Thursday, and that door appeared to be closed and had a padlock on it at the time. Who did that, I don't know. The City didn't take that action.

Mayor Appletoft: All right. I would now like to entertain comments from members of the public. Please limit your comments to five minutes, and comments are to be addressed to Council. So, if you have some comments, please come forward to the lectern, state your name, city of residence, and sign in, please.

Mike Baumberger: Good evening. My name is Mike Baumberger. I am an attorney for National Catastrophe Restoration, Inc, or NCRI, as they are referred to. They have a substantial lien, a mechanics lien on the property, about \$900,000. Before I start, I'd like to give you each a three-ring binder.

[Distributes binders to council members.]

Mr. Baumberger: As you know, a fire started on the property on April 3rd of 2015. It started in the kitchen area, did considerable damage in the kitchen area, and my client was actually contacted that day to go ahead and provide various remediation and restoration services on the property. If you look at Exhibit 1, that's actually the contract between my client and Mission Recreation, Inc., which is the entity that operates the bowling alley, but also the tenant on the property. If you look at Exhibits 2 and 3, you'll see photographs of what was going on at the time of the fire. You'll see where the fire department has busted out the front windows. They even went ahead and put some holes in the roof to make sure the fire was out. Then, you'll see a few photos that will kind of give you a flavor of what the insides looked like immediately after the fire. That should cover most of what is in Exhibits 2 and 3.

Now, before my client actually went inside and did any work, they had a structural engineer come out to make sure that the building was safe for its employees to go ahead and work in there. If you look at Exhibit 4, it's a letter from John Krudwig of Krudwig Structural Engineers. The next to last paragraph says [reading] *In my professional opinion, the existing building structural framing is structurally sound to allow access and occupancy during the cleaning, restoration and repair work phase of this project.* So, we've got some front-end notification that the premises are structurally sound. If you look through Exhibits 6, 7 and 8, you'll see considerable work was actually done on the premises. In Exhibit 5, you'll see where there's a lot of plywood put up around the doors and windows on the front. You'll see in Exhibit 6 where the lanes have been cleaned, covered with cardboard. You'll see that there are pin setters in the back. You'll basically see that the building has been gutted from all its materials. There was a lot of wet insulation, ceiling tiles, carpet, and all the contents were cleaned out of the building. Then, efforts were made to dry the premises out. If you look at Exhibit 7, you can see that the pin setters have been covered with plastic. The lanes look to be in pretty good shape. You can see ball return mechanisms are still in there. And what they did is they had to go in with dry ice blasting, and that basically removes all the soot. And then, they go back in with a sealer, and that's where you can seal the walls and the ceiling trusses, roof trusses, are

all white from that sealer. So, there was considerable work done in there. I just, to the extent anybody represents that no work was done in there, there was considerable work. In fact, our mechanics lien is Exhibit 8, which is about \$900,000. That lien actually attaches to both the leasehold interest in the property, which is Mission Recreation is the leasehold/tenant, and it also attaches to the fee simple interest of the owner of the property, which is Mission Mart Shopping Center, Inc. There is a ruling – which is Exhibit #9 – from the District Court of Johnson County, which basically fleshes that out. I've noted, there's a little bit of an [inaudible, coughing], if you want to call it that, at the very beginning of your binders, and it's actually got paragraph numbers from Exhibit 9 that would point out the fact that there is an agency relationship between those two parties, and that served for the basis of the lien attaching both the leasehold and the fee simple interest in the property.

My client did all the restoration and remediation services in the first couple of months, and they ultimately were not selected to be the Phase II contractor that would go in and do the rebuild. They did an estimate that would cost about \$282,000 to put the building back to the way it was. That's attached as Exhibit 10. Obviously, there has been litigation going on since basically 2015 regarding this property. I've actually been out to the property twice for inspections. Once was in February, February 17, 2017, so a little over two and a half years ago. At that point in time, we couldn't get access without keys. We had to have the owner and their attorney show up to let us in. And if you look at Exhibit 12, that will give you some pictures. You'll see the front entryway. The door is still accessible, there's just plywood beside one of the panels. You can see that there's still tarping over part of the roof that was the kitchen area. If you scroll to the second page, you'll see a second entryway. Third page also. Fourth page, similar. There is still plywood up, covering all the windows that were busted out with the fire department's efforts. A couple pictures of the condition of the golf course at that time. If you go through, you'll see some other photos, again, of the condition of the interior. One thing you'll notice is there's no longer any pin setters in the building, and they've started to remove some of the select panels from the lanes.

When you get back to, about the tenth or so page in, you'll see a little bit different picture that shows that there's a pit underneath the lanes. It's probably about 18 inches deep and it spans the width of all these lanes. I'll come back to why that might be an issue for you down the road. Give you a few more pictures of what the condition of the building is. There's actually another door on, I believe it's the west side. Where there was cardboard covering all these lanes, you'll now see cardboard is kind of strewn around, and I think that was probably removed from the lanes at the time they removed the pin setters in June of 2016.

The last inspection we did was in July of this year, about two weeks after the inspection that was just discussed. At the time we came into the inspection, the doors were locked, we couldn't gain access, and the owner of the property actually had to go back home and get the correct keys. We had to wait about 15 or 20 minutes so we could gain access to the building. So, it was locked up and secure at that point in time. And if you'll look through the pictures, it just gives you a little bit better flavor of what's going on now. You can see some of the plywood that covered up the windows before has gradually deteriorated and fallen off. You can see the back door entryway. You can see a picture of the little shed that was discussed earlier. When I looked at that shed, I didn't see that there was any notable signs of access to it, and you can see that there's some pretty high vegetation around it. So, if there was some access in the past, it didn't look like it was apparent from a recent standpoint.

There's a picture of the gate and the locking mechanism to the gate to the back of the golf course area. Some photographs of the golf course area. Again, some other photos from the interior. It shows additional pane panels have been removed, and you'll see at the very end, some of the mechanisms that were, locks that are in place to keep the back door secure. So, that gives you a little bit of a flavor of the condition of the property.

I wanted to discuss a little bit about the report itself, a couple of the concerns I'd like to address with the report, and also talk about a couple of options. First, when it comes to item number 1 of the July 8, 2019, dangerous structures inspection, it's represented in item 1 that damage located adjacent to the front entrance eliminates all points of safe entry and exit. There's actually five different doors to the property. There's an entry way through the golf course, there's an entry way right next to where the golf course building was added on; there's the front doors; there's another entry way or ingress/egress on the west side of the building, and there's at least on the back of the property. So, there is ingress and egress, and as he pointed out, the door was actually open at the time that he went for the inspection, and the front door is a means of ingress and egress at this point. That's also another, that's brought up again in item number 2, so I would basically address it the same way.

With regards to the fire damaging several areas of the structure, I would point back to the structural engineer report I pointed out as Exhibit 4. After that structural engineer came out on April 6th and said you're good to go, my client was prohibited from doing any work in the kitchen area for about four weeks because that area was cordoned off while fire investigators and insurance investigators were doing their investigation. It wasn't until about May 1st that they were given the green light to go ahead and do the demolition of that area. I would think if it was truly a dangerous structure, they wouldn't have been given the green light to go forward and demo at that point in time. I believe in the action items summary from August 7, 2019, it was noted that the City received numerous complaints. I don't know who those complaints had come from, or how numerous they've been. We haven't seen anything presented, at least tonight on that.

When it comes to the August 7, 2019, minutes of the Mission Community Development Committee, there was a reference on page 3 that Councilmember Schlossmacher – if I pronounced that correctly – asked if there were any objections to the demolition been raised with the City, and Ms. Smith stated that the restoration company has, but it was denied by the court. I don't know what that is reference to. There's been no action in a court where we've been denied, have any objection. There was a motion by the City in the bankruptcy case, where they basically wanted an order stating that they could have the automatic stay lifted in the bankruptcy case, or that it didn't apply. NCRI – my client – objected to it because there was language in the order that was what we deemed to be inappropriate, objectionable, and we weren't given proper notice. The bankruptcy judge ended up ruling in our favor, that that particular order should be vacated, and actually, ordered that it be resubmitted by agreement of the parties. I just wanted to point that out.

I've already addressed the fact that there was considerable work, so, to the extent that there's been any representation that there was no work since the fire, we [inaudible, coughing].

My last point would really be the options. I know I've taken more time than I've probably been allotted, but it seems to me you have a couple of options. One, you could do some repair work on the building, and the other option is to demo the building. If you're going to do some repair work, it seems to me you can go in and replace some locks, or have a locksmith go in and replace some locks. You can have somebody

come in and put some plywood up over the windows that are busted out, where the plywood has gradually deteriorated away. You can have some boards put over that back shed. If there's concern about people entering the property, if you look back, I think it was Exhibit 11, I pointed out, there were three different photographs from when a general contractor had been hired to go through with Phase II, and they had actually put some fencing up, some chain-link fencing up around the front of the building. So, that might be an option if you're concerned about people being able to get into the building. I think some of those options seem a lot less expensive than demolition, which I would guess maybe is in excess of six figures. And if you do go down the route of demolition, there's probably concerns about asbestos removal because we know there were asbestos tiles in the building, and you're getting into the whole cost of removing all the interior contents, destroying, you know, demolition of the building, you've got to haul everything away. When it's all said and done, you're going to be left with this big pit in the middle of a parking lot that's 18 inches deep. So, are you going to end up with situations where people drive through that parking lot at night and drive into a big pit? Are you going to have snow in the parking lot where people can't see the pit? What are you going to do to fill that in? People walking through that parking lot, are kids going to think it's an attractive nuisance, where it's now a skateboard park? So, I think you've got concerns there, and it seems to me that the temporary repairs might be the most prudent measure. NCRI is in the process of actually starting some negotiations with other parties in the lawsuits, so it may make sense to see if there's any traction with resolution between the parties before you do take any action. And, I think, if you get into the situation where you increase the liens on a property because you've spent a lot of money on the demolition, that may have an impact on whether or not the property can be easily sold, whether that money can be used to pay liens, or what-not. Those are my comments.

Councilmember Quinn: Can I ask a question? You mentioned the last time you were there, you were able to lock the front door on the way out. When were you there?

Mr. Baumberger: The last time I was there was July 25th of this year. We showed up, the attorney for the tenant – Mission Recreation, Inc. – showed up, along with one of the owners. They weren't able to get us access to the building immediately because they brought the wrong keys. So, they had to leave, go home, get the right keys, and they came back 15 or 20 minutes later. So, I'm just pointing out to you that it is locked up and they have a set of keys to it. It's not a free-for-all inside.

Councilmember Quinn: Those keys to the front door [crosstalk].

Mr. Baumberger: The doors, if I recall correctly, they were keys to the front door.

Councilmember Quinn: So, July 25th was after the other inspection.

Mr. Baumberger: A couple weeks.

Councilmember Schlossmacher: When was the last time that your client actually did any work on that site? When did they complete their part of the...?

Mr. Baumberger: My client's work was completed in early June of 2015, and then, they were locked off the premises on June 11, 2015.

Councilmember Schlossmacher: So, before and after your [inaudible].

Councilmember Flora: So, you said you most recently inspect in July 2019, and you've raised a couple of issues potentially with the findings report from City staff. But, did you have a position on the overall finding, whether it was unsafe in 2015, it's now unsafe today?

Mr. Baumberger: My question would be... And it's totally up to you, what you guys want to do with the property. Obviously, it's within your dangerous structures' powers. I'm just pointing out that there are costs associated with that, how that could affect any kind of resolution between the parties, whether it's going to be easy to sell the property down the road. Our concern, at least one of our concerns, is we don't want findings that are averse to our case, because one of the issues in our lawsuit is whether or not our work actually improved the property. And we took issue with the idea that, there's pleadings out there stating it's a dangerous structure, or that it's a public health and safety risk. If there's language in there about any actual evidence or findings, we were taking issue with that because we were concerned that somehow a party in the case would turn around and use that as some kind of basis to say, "You didn't improve the property." Does that make...? Probably more than you want to know.

Councilmember Schlossmacher: Are you speaking also to the water damage that was done to the property after...? My understanding is there was a tarp that wasn't secured.

Mr. Baumberger: Initially, there was a tarp that was put over the kitchen area, and then, in 2015, there was a serious amount of rainfall in the city, as you all probably remember, excessive amounts of rain. We ended up – NCRI – putting an extra tarp over the top of it. They were prohibited from doing anything beyond the tarping because of the buyer and insurance investigations, and by the time that it was released to go back to NCRI to do any further work, they were basically notified that they were being, I won't say terminated, but basically, their role was going to be limited going forward, and the roof repair was not in their role.

Mayor Appletoft: You mentioned that the City filed a petition with the bankruptcy court...

Mr. Baumberger: Yes.

Mayor Appletoft: ... to move ahead with the process of declaring this a dangerous structure. I thought you said that bankruptcy court ruled in your favor and it was not granted. Is that...?

Mr. Baumberger: The motion... I will call it kind of a motion, or a comfort motion, because under the dangerous structures' powers in the bankruptcy code, there are exceptions that would allow the City to go forward without getting an order from the bankruptcy court. So, the motion that was filed was basically seeking a comfort just to say, hey, judge, we're checking off all our boxes here to make sure we can go forward, and it's all good. But we took issue with the fact that there was language in the order, and there was no evidence that had been presented to support that, and we were not given proper notice in advance of that. So, we ended up filing a motion to set the order aside. Because there was a motion, and an order was filed simultaneously. The order was basically a stipulating order between Mission Recreation, who is the tenant, and the City, that since we have a lien on the property, we should have been notified in advance. That's where we took issue, and the court basically said, yes, we're going to set aside the order, stipulated agreed order between the City and Mission Recreation, and now, the parties need to get together and put together an agreed order that they can come to agreement on. That's what was filed.

Mayor Appletoft: And that was approved by the court?

Mr. Baumberger: Right.

Mayor Appletoft: Okay.

Councilmember Rothrock: You said that NCRI secured a second tarp, but couldn't get back to the area of the kitchen. But earlier, you said that that was only a four-week span of time, that you guys were granted access May 1st. Did you guys...? I guess just hired to [inaudible]...? You also said that on both of your inspection dates, you couldn't get into the building without keys, and that the owner at one time had to go back [inaudible]. But, who's to say that, I mean, even with the pictures, the windows and everything are open, that people couldn't get in, outside of those [inaudible].

Mr. Baumberger: So, two questions. First one, my client was on site, contracted with Mission Recreation, on the same day as the fire, April 3rd. We were able to put tarps – a tarp – on top of the roof pretty early on. And then, I believe it was April 12th or so, after a rain storm came through, there was approval for a second tarp by the insurance company, so a second tarp was put over the top of it around April 17th. That's all over the kitchen area, which is the cause and origin area. And NCRI was not permitted, either by the fire department or the insurance company, of doing anything more. And then, that part of the property, that kitchen area, was finally released from its inspections and investigations about April 30th. So, NCRI was given the green light to go ahead and clean out or demo out the kitchen area as of that timeframe. But I think it was May 4th, is the date that they were actually told that they would not be, they would only be doing limited work going forward, and [inaudible] task that they would be doing. So, that was the first question.

Second question went to the idea that somebody could get in through the windows. The windows are pretty high up, so I don't know how anybody would access them. It would be like if they were coming along with a ladder, which doesn't seem likely to me. Because they're way up towards the top, by the roof. And I've seen no signs of anybody trying to live in the building itself. The only evidence of somebody potentially trying to reside on the property was evidence that the prior gentleman discussed, and that was based upon that back shed behind the building.

Councilmember Quinn: I heard you mention that two or three of the parties are considering opening negotiations again. Is that the owner, yourselves and the tenant?

Mr. Baumberger: We've reached out for discussions with the owner of the property.

Councilmember Quinn: So, it's between you and the owner.

Mr. Baumberger: And I think that... His goal was to go ahead and reach out to the tenant and see where we could go with negotiations.

Councilmember Quinn: What are your hopes? What do you want to see from those negotiations?

Mr. Baumberger: I don't know that I can say a whole lot on that topic, other than, in the grand scheme of things, it would be great if the parties could come together on some kind of number that would resolve their differences.

Councilmember Quinn: That would be great.

[Laughter]

Mr. Baumberger: It's been going on, the lawsuit has been going on since 2015.

Councilmember Flora: I have one other question. Do you have a position on the lien priority? I'm just curious on your view on that and what's the likely on your repair versus condemn?

Mr. Baumberger: It's my understanding that the City's lien would take priority over our lien. But ultimately, the question is, you're going to go ahead and foreclose on that lien, and is somebody going to be able to come along and wipe out all the liens at one time?

Councilmember Kring: Pete, have you heard about all this, and you're...?

Mr. Heaven: Oh, yes.

[Laughter]

Councilmember Kring: Okay. I wanted to make sure.

Councilmember Davis. Could you give us the chronology again of the order to set aside, when that was?

Mr. Baumberger: The motion, as I recall – and I don't want to step on anybody's feet here – the motion to... I think I've got a copy of it, so I'll rattle off the title. There was, on June 6th, which this is about a month before the actual inspection occurred, there was an unopposed motion to determine automatic stay pursuant to 11 USC 362, does not apply, or alternatively, modification of the automatic stay. So, basically, the City of Mission was seeking an order of the court, basically saying, even though the automatic stay provisions don't apply, we should be granted a stay of relief. And that's what we took issue with. The order that was basically... How was it phrased? Stipulated and agreed order was between the City of Mission and Mission Recreation, who is the debtor in the bankruptcy case, and we filed a motion to set aside the order after the fact, and I think it was granted probably sometime around July 10th, I think. It was after that that the new agreed order came into play where NCRI's counsel was working with the City's counsel to make sure that the new order be agreeable to everybody.

Councilmember Davos: So, that's in place now.

Mr. Baumberger: Right.

Mayor Appletoft: All right. Let's see if anybody else has comments they want to make on this issue. Does anybody else want to come and speak on this issue? All right.

Frank Bruce: Frank Bruce, 5706 Lamar. As the old saying goes, once something is done, quite often it can't be undone. It sounds like you tear the building down, you're going to add a lot of cost to the property, which may preclude a sale. And as you go over to the Metcalf Crossing area in Overland Park, you'll see that they did put a chain-link fence around that dangerous building to keep people out of it. So, it looks like there would be alternative approaches to secure the property until such time as it can be worked out, and hopefully, a sale and a rehab of the building, which has been a great asset to Mission. It was empty ground before Mission Bowl was built. So, thank you.

Mayor Appletoft: Thank you. Anybody else want to make comments? All right, seeing none, the public hearing to show cause why the structure at 5399 Martway Street should not be condemned and ordered repaired or demolished, as an unsafe structure is closed. The next step then in this process if for Council

to direct staff to draft a resolution to adopt the findings of fact regarding the structure. That resolution then would be considered at our November 18th City Council meeting. I would entertain a motion.

Councilmember Flora: Mayor, I move that staff be directed to prepare a resolution to adopt the findings of fact regarding the structure at 5399 Martway Street, for consideration at the November 18, 2019, City Council meeting.

Councilmember Schlossmacher: Second.

Mayor Appletoft: We have a motion and a second. Discussion on this motion? Seeing none, I would call for the vote.

Aye: Davis, Schlossmacher, Flora, Thomas, Inman, Kring, Rothrock, Quinn (8)

No: (0)

Motion was approved 8-0.

End of Transcript