

**City of Westwood, Kansas
City Council Meeting
December 12, 2024 – 7:00 p.m.**

Council Present: David E. Waters, Mayor
Jeff Harris, Council President
Andrew Buckman, Councilmember
Jason Hannaman, Councilmember
Laura Steele, Councilmember
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, City Administrator
Curtis Mansell, Police Chief
Ryan Denk, City Attorney
Abby Schneweis, City Clerk
John Sullivan, Public Works Director

Call to Order

Mayor Waters called the meeting to order at 7:00 p.m. on December 12, 2024. Ms. Schneweis called the roll. A quorum was present. The evening's meeting was held in a hybrid manner, with attendees joining both in person and via Zoom.

Approval of Agenda

Mayor Waters asked the City Council to consider removing agenda item XII. A., an Executive Session to consult with the City Attorney on matters relating to real property located at and around 4700 Rainbow Boulevard, from the meeting agenda.

Mayor Waters also asked the City Council to consider moving agenda item X. K., Consider various agreements relating to redevelopment at and around 50th & Rainbow Blvd, to be considered after agenda item XII. B.

Motion by Councilmember Hannaman to approve the agenda as amended. Second by Councilmember Harris. Motion carried by a 5-0 voice vote.

Public Comment

Stephen Platt, 4910 Glendale in Westwood Hills, provided written comments to the Governing Body from which he read, this document is included in Appendix A of this minutes document.

Rebecca Brown, 2407 W 49th Terrace, said she believes the City Council is relying on false information. Ms. Brown asked the members of the City Council if Mayor Waters has disclosed professional conflicts of interest regarding the proposed Karbank development to them. Ms. Brown said she believes the Governing Body has neglected its duty to take precautions about the City's finances by signing contracts for the proposed Karbank development without appraisals. Ms. Brown said the Governing Body should abandon the Karbank proposal and purchase the former Westwood View Elementary School property with the proceeds from selling City-owned property at 47th and Rainbow Boulevard.

Malisa Monyaulka, 2821 W 51st Terr, said she requested information from the City regarding the financial analysis of the Karbank proposal. Ms. Monyakula said she would like to be provided with that information as soon as possible and for the City to be transparent.

Bernard Brown, 2085 W 51st Terr, said he sent an email to the Governing Body earlier that day, and provided an overview of his email. Mr. Brown encouraged the Governing Body to rescind a letter sent in November 2023 from McAnay, Van Cleave & Phillips on behalf of the city to his sister, Rebecca Brown.

Spencer Day, 3003 W 49th Terr., read a letter of support for the proposed Karbank development that was circulated and signed by members of the community. The letter and signatures are included in Appendix B of this minutes document.

Leslie Carto, 5368 Mission Woods Road in Mission Woods, said she is concerned about the transparency and traffic safety of the proposed Karbank development. Ms. Carto said she believes if so many people are in favor of the new park proposal, then the Governing Body should put the sale of the old park to a vote.

Presentations and Proclamations

No presentations or proclamations were made during the meeting.

Consent Agenda

All items listed below are considered to be routine by the Governing Body and will be enacted in one motion. There will be no separate discussion of these items unless a member of the Governing Body so requests, in which event the item will be removed from the consent agenda and considered separately following approval of the consent agenda.

- A. Consider November 14, 2024, City Council Work Session & Meeting Minutes
- B. Consider November 20, 2024, Special City Council Meeting Minutes
- C. Consider Appropriations Ordinance 769

Motion by Councilmember Harris to approve the Consent Agenda as submitted. Second by Councilmember Steele. Ms. Schneweis conducted a roll call vote. Motion carried by a 5-0 vote.

Mayor's Report

Mayor Waters said before the City Council meeting an author's reception was held to celebrate the publication of *Wonderful Westwood*, a history book by former Mayor Karen Johnson with assistance from fellow residents Lucas Wetzol, Jennifer Wetzol, and Heather Torpey.

Councilmember Reports

Councilmember Wimer thanked City staff for planning and conducting the Mayor's Holiday Tree Lighting Ceremony on December 5th.

Councilmember Hannaman said he felt the need to respond to Ms. Brown's assertion during Public Comment that Mayor Waters had a conflict of interest in relation to the proposed Karbank project. Councilmember Hannaman noted that Mayor Waters denied the same in an email to Ms. Brown's brother, Bernard Brown. Councilmember Hannaman said he understands that the community can have differences of opinion on development projects, but Ms. Brown's accusation is inaccurate and untrue.

Staff Reports

Administrative Report

Ms. Herring provided an overview of the December 2024 Administrative Report included in the agenda packet and offered to answer questions.

Public Works Report

Mr. Sullivan provided an overview of the November and December 2024 Public Works Reports included in the agenda packet and offered to answer questions.

Public Safety Report

Chief Mansell provided an overview of the November 2024 Public Safety Report included in the agenda packet and offered to answer questions.

Treasurer's Report

The November 2024 Treasurer's Report was included in the agenda packet, no questions or comments were made about the report.

City Attorney's Report

Mr. Denk did not have any items to report.

Old Business

No old business items were considered during the meeting.

New Business

Consider Ord. 1046

In 2004, the City adopted the Johnson County Environmental Code. The City does not regulate, inspect or issue permits for sanitary sewer systems, including on-site sanitary sewer systems (septic tanks), nor does the City regulate or inspect public or semi-public swimming pools. The adoption of the Johnson County Environmental Code gave Johnson County Health and Environment the authority to regulate, inspect, and issue permits for these activities in the City of Westwood.

Johnson County has adopted new Environmental Codes effective January 1, 2025, and in order for the County to continue regulating sanitary sewer systems and public and semi-public swimming pools in the City of Westwood, the City needs to adopt these new codes.

The most significant change between the 2004 Environmental Code and the 2025 Code is the splitting of the sanitary sewer and pools into separate codes: Johnson County Sanitary Code and Johnson County Aquatic Health Code, respectively. The Aquatic Health Code is based on the "2023 Model Aquatic Health Code, 4th Edition" and regulates public and semi-public pools, not private or residential swimming pools. The Sanitary Code regulates sanitary sewer systems, including on-site sanitary sewer systems (septic tanks). While the City does not permit the installation of septic tanks for new development, the replacement of existing tanks is allowed, provided that the replacement meets Johnson County requirements.

There are no known septic tanks still existing in Westwood. The pools at Woodside are considered semi-public pools for purposes of these regulations; there are no other pools in Westwood subject to this Code.

Motion by Councilmember Harris to approve Ordinance No. 1046 relating to regulations concerning Johnson County sanitary and aquatic health code. Second by Councilmember Wimer. Ms. Schneeweis conducted a roll call vote. Motion passed 5-0.

Consider Resolution No. 137-2024 adopting a Governing Body Strategic Plan

The Governing Body is creating a strategic plan to provide formal direction to staff for work activities, budgeting, and for the development of performance metrics. This plan is intended to ensure a framework for accountability, responsiveness, and efficient use of tax-payer resources. Performance metrics, communications objectives, and strategic priority identification are all anticipated outcomes of this Governing Body Strategic Plan creation process, which has been taking place throughout 2024 and was kicked off ten months ago.

The Governing Body Strategic Plan is based on the results of a statistically-valid city-wide survey. The Mayor and City Council worked with PorchLight Insights to develop topics and questions to include on the survey at its February 8, 2024 City Council meeting work session. The survey results were then compiled and analyzed by ETC Institute, which is one of the nation's leading firms in the field of local government research. For Westwood's survey, ETC partnered with PorchLight Insights, a consulting firm that specializes in data-driven decision making, and that team is also aiding the Governing Body and staff in the creation of their Strategic Plan.

The survey was mailed to all Westwood addresses – both residential and commercial – and responses were accepted by pre-paid return mail and online. Up to two responses per address were accepted and survey responses will remain confidential.

The resident survey was open from May 15 - July 12, 2024 and 306 completed surveys were received. There was a margin of error: +/- 4.4% at the 95% level of confidence, indicating that findings of the resident survey have a very high degree of statistical significance.

The survey results were presented to the Governing Body on August 8, 2024 and a strategic planning session facilitated by PorchLight Insights was held on August 24th. The ETC presentation, full report, and PorchLight Insight's analysis presentation are all available on the City's website at: <https://www.westwoodks.org/projects-and-plans/page/2024-governing-body-strategic-plan>

Motion by Councilmember Steele to approve Resolution No. 136-2024 adopting a Governing Body Strategic Plan for the City of Westwood. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

Consider Resolution No. 137-2024 adopting a Communications Strategic Plan

The City of Westwood has been recognized for its work to create a Community for All Ages. Westwood received Gold level recognition in November 2023, which acknowledges the work the City has done to become more age friendly. This Gold level award follows the City's recognition as a Bronze level City in October 2022 and as a Silver level City in April 2023.

The Communities for All Ages (CFAA) recognition program was developed by the First Suburbs Coalition and KC Communities for All Ages — two groups convened by the Mid-America Regional Council (MARC) to develop programs and tools to support first-tier suburbs, help communities respond to a rapid increase in the older adult population, and make communities more welcoming for all age groups. The program is available to all jurisdictions in the nine-county MARC region. Since the program started, 24

local jurisdictions have been recognized for their efforts to make their communities more age friendly. The program's three sequential levels of achievement reflect increasing degrees of commitment to becoming a CFAA. The Bronze Level recognizes heightened age awareness and requires a resolution or commitment by the city's elected body, along with community presentations and public engagement. The Silver Level adds the completion of an assessment process and requires the community to appoint a resident-based committee to assess related city activities and investments. Gold, the highest level, recognizes communities that formally adopt a CFAA plan based on the assessment completed at the Silver Level. Communities can maintain their recognition status by advancing to higher levels or, once the Gold Level is achieved, continuing to implement new elements of their plans. The program encourages communities to respond positively to changing demographics and adopt policy and program approaches that make the region a great place to live and age well.

City staff with the assistance of Gather Media created the Communications Strategic Plan based on the findings and recommendations of the CFAA Bronze and Silver level activities and will implement this Strategic Plan once formally adopted by Resolution 137-2024. The adoption of both a Governing Body Strategic Plan and the Communications Strategic Plan follow a community-wide survey and Governing Body Strategic Planning retreat conducted earlier this year.

The Communications Strategic Plan spans 2025 – 2027 and City staff will begin to implement it once formally adopted.

Motion by Councilmember Harris to approve Resolution No. 137-2024 adopting a Communications Strategic Plan for the City of Westwood. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Consider authorization of purchase of 2024 Dodge Durango & related equipment to replace 2017 police fleet vehicle

Staff recommends that the Governing Body approve an expenditure to purchase of a 2024 Dodge Durango Police Cruiser and related equipment as listed in the 2025 Equipment Replacement Plan. Funds used are identified within the Equipment Reserve Fund. This vehicle would replace an existing 2017 Ford Police Interceptor.

The vehicle would be delivered and upfitted by Superior Emergency Response Vehicles (SERV, LLC), a company located in Andover, KS. The list of equipment to be installed along with pricing for decommissioning the 2017 Ford Interceptor quote from SERV, LLC was included in the agenda packet. SERV, LLC has pre-negotiated contracts for upfitting and equipment for numerous public safety agencies in Kansas. They also act as a "pass-through" for delivering police vehicles based on contract pricing. Most notably for the Dodge Durango via the Kansas Highway Patrol contract.

Staff recommends that the City Council authorize the purchase of the Dodge Durango Police Cruiser from SERV, LLC in the amount of \$45,160.00 and to accept the quote for equipment and upfitting of the new vehicle from SERV, LLC, in the amount of \$14,796.17, to be paid from the Equipment Reserve Fund allocated in FY25.

Funds for the purchase have been allocated in the 2025 Equipment Reserve Fund in the amount of \$68,250, representing \$52,500 for the vehicle purchase in addition to \$15,750 in related equipment. Pursuant to the City's Financial and Purchasing Policy, for purchases over \$10,000, three (3) price quotes

are generally required unless there is a pre-negotiated contract through another governmental agency for the product. The State of Kansas has a contract in place for Police Dodge Durangos running through 01/31/2028. This particular contract (51156) also allows availability at contract pricing to other political subdivisions and state agencies.

The anticipated total expenditure is expected to be significantly less than the total budgeted amount of \$68,250. However, there may be some contingency expenditures that exceed the attached equipment quote based on the condition of any equipment currently owned that is planned for re-use.

The 2017 Ford Interceptor will be put up for auction. The proceeds will be deposited in the Equipment Reserve Fund.

Motion by Councilmember Hannaman to authorize the purchase of the Dodge Durango Police Cruiser from Superior Emergency Response Vehicles in the amount of \$45,160.00 to be paid from the Equipment Reserve Fund in 2025 and to accept the quote for the related equipment and upfitting for the 2024 Dodge Durango Police Cruiser from Superior Emergency Response Vehicles in the amount of \$14,796.17, to be paid from the Equipment Reserve Fund in 2025. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

Consider 2025 Addendum to Public Works Agreement with the City of Mission Woods

An annual review of the services provided to the City of Mission Woods is being carried out to determine any adjustments to the costs of the various services provided as well as any adjustments to the employees' wages and benefits.

Motion by Councilmember Wimer to authorize the Mayor to execute the 2025 addendum to the existing Agreement between the City of Mission Woods Kansas and the City of Westwood, Kansas, for the Public Works Services. Second by Councilmember Hannaman. Motion carried by a 5-0 voice vote.

Consider 2025 Addendum to Public Works Agreement with the City of Westwood Hills

An annual review of the services provided to the City of Westwood Hills is being carried out to determine any adjustments to the costs of the various services provided as well as any adjustments to the employees' wages and benefits.

Motion by Councilmember Buckman to authorize the Mayor to execute the 2025 addendum to the existing Agreement between the City of Westwood Hills, Kansas and the City of Westwood, Kansas, for the Public Works Services. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Consider Interlocal Agreement with the Unified Government for the 2026 Pavement Reconstruction and Repair of the intersection at W. 47th Street and Rainbow Boulevard

The intersection at W. 47th Street and Rainbow Boulevard is failing. The intersection is shared equally with the Unified Government and is also a KDOT highway, US-169. The intersection is eligible for City Connecting Link Improvement Program (CCLIP) funding in 2026 which was applied for by Westwood and the UG and approved by KDOT. Agreement No. 151-24 details the responsibilities for funding from KDOT. The interlocal agreement outlines the responsibilities for each party as it relates to funding and governance.

CCLIP funding for a community of our size means that the City of Westwood will not be responsible for the following costs to include design, construction and construction inspection unless the project

exceeds the total cost of the funding allocated. The allocated funding is \$400,000. The UG is responsible for some costs of this project and in this case, they will be responsible for the engineering costs. The Interlocal Agreement clearly defines each entity's responsibilities for project costs and governance. As noted in the Interlocal Agreement, should the bid exceed the amount allocated by KDOT or the engineering design costs exceed the amount allocated, then the UG could end the project. The same would be true for Westwood.

Motion by Councilmember Hannaman to authorize the Mayor to execute the Interlocal Agreement between the Unified Government and the City of Westwood for KDOT Agreement No. 151-24, Project No. 169-106 KA-7263-01 subject to review by the City Attorney. Second by Councilmember Steele. Motion carried by a 5-0 voice vote.

Consider Agreement with KDOT and the UG for CCLIP funding of Improvements to the intersection of W. 47th Street and Rainbow Boulevard

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CCLIP funding for a community of Westwood's size means that the City of Westwood will not be responsible for the following costs to include design, construction and construction inspection unless the project exceeds the total cost of the funding allocated. The allocated funding is \$400,000. The UG is responsible for some costs of this project and in this case, they will be responsible for the engineering costs.

Motion by Councilmember Buckman to authorize the Mayor to execute Agreement No. 151-24, Project No. 169-106 KA7263-01, between the Secretary of Transportation, Kansas Department of Transportation and the City of Westwood, Kansas, and the Unified Government of Wyandotte County and Kansas City, Kansas, collectively. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Consider Agreement with Johnson County, Fairway, and Roeland Park for 2025 CARS Project Mission Road from W. 53rd Street to W. 47th Street

Mission Road will undergo resurfacing and geometric improvements in 2025, including a two-inch mill and overlay and a Complete Streets redesign. This is a joint project with the City of Roeland Park and the City of Fairway. The total project cost is currently estimated to be \$2,814,432, with the total cost to Westwood estimated to be under \$472,347.

As a designated County Assistance Road System ("CARS") Program Road, this work on Mission Road qualifies for up to 50% financial assistance from Johnson County. Since the roadway is located within three jurisdictions, Westwood will be reimbursing the City of Roeland Park for the work performed within Westwood and for half of the street lighting costs of which most lay within the City of Roeland Park. The agreement for Johnson County CARS funding for the Mission Road work was included in the meeting agenda packet.

The engineering/design phase for this project is wrapping up and city staff is currently reviewing the plans and working toward a December 18th letting (construction contract competitive bidding process). As such, the plans submitted to the cities in November illustrate the [pretty close to] final design for the project and highlights are presented in the agenda packet materials.

Westwood has \$571,524 budgeted in the Capital Improvement (CIP) Fund for this project between 2024 design engineering and 2025 construction.

Motion by Councilmember Wimer to authorize the Mayor to execute the Agreement between Johnson County, Kansas, and the City of Westwood, Kansas, for the 2025 Public Improvement of Mission Road, W. 53rd Street to W. 47th Street. Second by Councilmember Steele. Motion carried by a 5-0 voice vote.

Consider approval of survey and preliminary engineering expenses related to Complete Streets improvements on W. 47th Place to be covered by Woodside CID2 proceeds

West 47th Place between Rainbow Blvd. and State Line Rd. underwent a PSP Study in 2021 specifically investigating a possible Complete Streets Project. Over the past couple years, Woodside owner Blair Tanner has expressed interest in the City making Complete Streets improvements – specifically pedestrian safety enhancements – within the right of way between his north and south Club facilities.

Improvements to 47th Place are needed and had been included in the City's 2030 Capital Improvement Plan. This section of roadway is a CARS route, making it eligible for County cost-share funding. The City does not currently have the resources to expedite this project, as desired by Mr. Tanner; however, in an attempt to be responsive to pedestrian safety concerns (mainly created because of the location of the Woodside Club facilities on both the north and south sides of the public roadway), City staff suggested to Mr. Tanner that the local funding match required by the CARS be covered by revenues accruing in the Woodside CID2 account.

In order to secure CARS funding for a 2026 construction project, the City would need to submit an application and estimate of probable cost to the County in February 2025. The agreement before you with our City Engineer, UHL Engineering, is for preliminary design work to provide a realistic project figure for the CARS application. We will be implementing as many of the design initiatives as possible from the PSP study, including:

- streetlighting,
- a shared use path,
- a new 6-foot sidewalk,
- 3 marked crosswalks with RRFB's,
- new curb & gutter,
- 2-inch mill and overlay or full depth replacement of driving surface,
- relocation of stormwater inlets,
- realignment of some driveway approaches, and
- a walking trail and some landscaping.

The City Administrator has presented this information to Mr. Tanner and has informed him that in order to submit a funding application to the County by February 2025, the preliminary engineer and survey work quoted in the attachment from Uhl Engineering must be approved in December 2024 at the latest. Should City staff and Mr. Tanner not be able to agree on the City's use of CID2 proceeds for this engineering work, the City will delay this work another year or until the parties can come to an agreement.

The City's bond counsel and City Attorney have both reviewed the use of the CID2 proceeds in this way and see no issue with this approach.

Currently there is over \$700,000 in CID2 proceeds which the City has been collecting since 2018. The City continues to receive monthly distributions from this Community Improvement District on the Club facility and has begun moving these funds to an investment account, as they are idle. There have been no eligible expenses submitted by Mr. Tanner to date to expend these funds on eligible improvements to the Club facilities. As the development agreement between Woodside and the City has expired and since Mr. Tanner has no immediate plans to make improvements to the Club facility that would constitute an eligible expense, the City is seeking to use the proceeds of this additional sales tax on public improvements benefiting the Club.

The City would seek to cover the cost of this preliminary design and survey work from the CID Fund, using CID2 funds. Should the City not receive the coordinated communication needed from Mr. Tanner, City staff does not recommend using funds from any other City sources on this work at this time and would delay this work and project until such time as the City and Mr. Tanner can reach agreement. Such agreement and expenditure of funds would require a budget amendment in fiscal year 2025, as these expenses are not currently budgeted.

Motion by Councilmember Hannaman to authorize the Mayor to execute the Preliminary Design Agreement with UHL Engineering for the preliminary design of Complete Street improvements to W. 47th Place in the amount of \$52,535 from fiscal year budget 2025 subject to use of CID2 revenues to cover the full cost of the contract upon consent of the Woodside Club owner. Second by Councilmember Steele. Motion carried by a 5-0 voice vote.

Announcements/Governing Body Comments

No announcements were made.

Executive Session

Consultation with the City Attorney on matters relating to real property located at and around 5000 Rainbow Blvd., which would be deemed privileged in the attorney-client relationship

Motion by Councilmember Hannaman to adjourn into Executive Session for 45 minutes for consultation with the City Attorney on matters regarding petitions, litigation related thereto, and elections which would be deemed privileged in the attorney-client relationship under K.S.A. 75-4319(b)2 present will be the members of the Governing Body, the City Administrator, and the City Attorney. The regular meeting will resume at 9:00 p.m. Second by Councilmember Harris. Motion carried by a 5-0 voice vote.

At 9:00 p.m. the Governing Body returned to the dais. Mayor Waters said no action was taken during the Executive Session.

Motion by Councilmember Hannaman to adjourn into Executive Session for 30 minutes for consultation with the City Attorney on matters regarding petitions, litigation related thereto, and elections which would be deemed privileged in the attorney-client relationship under K.S.A. 75-4319(b)2 present will be the members of the Governing Body, the City Administrator, and the City Attorney. The regular meeting will resume at 9:30 p.m. Second by Councilmember Harris. Motion carried by a 5-0 voice vote.

At 9:30 p.m. the Governing Body returned to the dais. Mayor Waters said no action was taken during the Executive Session.

Consideration of Resolution 138-2024 A resolution of the governing body of the City of Westwood, Kansas, authorizing and providing for the calling of an election in Westwood, Kansas, for the purpose

of submitting to the qualified electors of the city the question of trading, exchanging, or selling real property commonly known as Joe D. Dennis park, and providing for the giving of notice of said election

Mr. Denk provided an overview of proposed Resolution 138-2024 providing for the calling of an election in Westwood for the purpose of submitting to the qualified electors of the City the question of trading, exchanging, or selling real property commonly known as Joe D. Dennis Park.

Mr. Denk said the question for the ballot will be taken straight from the petition circulated and submitted to the City Clerk's office in December 2023. The City has been in contact with the Johnson County Election Office, and they have committed to holding a mail ballot election on April 1, 2025.

Additionally, Mr. Denk said Section 6 of Resolution 138-2024 retracts a letter dated November 8, 2023 from his office to Todd Hauser of Bushyhead LLC that asserts K.S.A. 12-1301 did not apply to the City-owned property at 50th & Rainbow Boulevard. The language in proposed Resolution 138-2024 abandons that argument.

Councilmember Hannaman said based on prior legal interpretations the City did not believe it had the legal authority to hold an election regarding the property at 50th & Rainbow Boulevard. Based on the ruling made by the Kansas Court of Appeals, the City now believes it has the authority to hold an such election. Mr. Denk confirmed Councilmember Hannaman is correct.

Motion by Councilmember Hannaan to pass Resolution 138-2024: a resolution of the Governing Body of the City of Westwood, Kansas, authorizing and providing for the calling of an election in Westwood, Kansas, for the purpose of submitting to the qualified electors of the City the question of trading, exchanging, or selling real property commonly known as Joe D. Dennis park, and providing for the giving of notice of said election. Second by Councilmember Wimer. Ms. Schneeweis performed a roll call vote. Motion passed 5-0.

Consider various agreements relating to redevelopment at and around 50h & Rainbow Boulevard

On March 9, 2023, the City and Karbank Real Estate entered into a Funding and Exclusivity Agreement to explore Karbank's proposal to the Westwood City Council for redevelopment of the Rainbow Blvd. frontage between 50th and 51st Street, which property is owned by the City of Westwood. Following that initial presentation and Agreement execution, on June 8, 2023, the Shawnee Mission School District and the City of Westwood entered into a Purchase Agreement to leverage its option to purchase the former Westwood View Elementary School located at 2511 W. 50th St. and, that same night, the City of Westwood and Karbank entered into a Purchase Agreement for Karbank to acquire the City's Rainbow Blvd. frontage property parcels, subject to the terms of those agreements.

Thereafter, Karbank submitted an application for and received conditional approval in October 2023 from the Governing Body of the necessary associated rezoning, development plan, and platting to construct the mixed-use redevelopment project. Commensurate with the Governing Body's approval of these land entitlements, the City Council approved several documents setting out terms and conditions for the agreement between the City of Westwood and Karbank. These agreements included:

- a. Development Agreement;
- b. Donation Agreement (Covenants & Restrictions are set out in an exhibit to this document); and
- c. First Rights Agreement.

In December 2023, upon authority granted by the City Council at the November 9, 2023 regular City Council meeting, Mayor Waters executed amendments to such agreements to extend the contractual deadlines. On June 13, 2024, the City Council extended the agreements by way of a second amendment. Now again, extensions to such agreements are sought to lengthen the due diligence period prescribed for the City to convey to Karbank fee simple title to City-owned property located at 5000 Rainbow Blvd.

All expenses incurred relating to these documents since the Governing Body's October 12, 2023 initial approvals have been borne by the City and funded from the General Overhead Department of the General Fund. These expenses are unbudgeted.

The SMSD School Board has asserted during these contract discussions that the protracted timeline of the sale has harmed the school district financially and has asked for a lump sum payment of \$135,000 to cover carrying costs of the former Westwood View property. Karbank Holdings, LLC will be paying the carrying costs requested by the SMSD at the time of closing. Ms. Herring noted the contract documents were not finalized for the agenda packet until the afternoon of December 12th.

Motion by Councilmember Harris to authorize the Mayor to execute the Third Amendment to Real Estate Purchase Agreement with Shawnee Mission School District for real property at 2511 W 50th Street. Second by Councilmember Buckman. Ms. Schneweis conducted a roll call vote. Motion passed 5-0.

Motion by Councilmember Harris to authorize the Mayor to execute the following documents subject to the City Attorney's review:

1. the Third Amendment to the Real Estate Contract Modification Agreement with Karbank Holdings LLC for real property at 5000 Rainbow Boulevard;
2. the Second Amendment to Development Agreement with Karbank Holdings LLC; and
3. the Third Amendment to Funding and Exclusive Rights Agreement with Karbank Holdings LLC.

Second by Councilmember Steele. Ms. Schneweis conducted a roll call vote. Motion passed 5-0.

Adjournment

Motion by Councilmember Wimer to adjourn the meeting. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote. The meeting was adjourned at 9:55 p.m.

APPROVED: _____
David E. Waters, Mayor

ATTEST: _____
Abby Schneweis, City Clerk

City of Westwood, Kansas
City Council Meeting Public Comment
Appendix A

My name is Stephen Platt. I live at 4910 Glendale Westwood Hills, KS. I live within 1000 feet of Joe D Dennis Park and have been a collector of a protest petition that would require the abandonment of the sale of the park or a city wide vote to approve the deal. I have been bullied in the process as well as others. As you discuss a strategic communication plan, considering including a dialogue exchange rather than editing or omitting comments. My comments get cut off precisely at three minutes. I will do my best to finish this in that time however have provided a printed copy in the event I do not.

Last spring the council revised the Woodside agreement to allow the developer to shield a federal tax liability gain from taxation using a 1031 exchange. Perfectly legal, however I question what the city got out of it except a legal bill to set it up.

Comments in March were left out of the minutes or were omitted ask the council about approving another financial arrangement with a developer providing a donation to buy the old Westview school. The comments were "the extension of the school purchase being considering is quid pro quo requiring the city to provide requirements and a land swap and to complete this deal.

The conveyance and exchange of Joe D Dennis park uses money "donated" by the developer.

Donation agreement –

8.2 Westwood shall provide Donor - A statement that no goods or services were provided by the organization in exchange for or in connection with such Donation and that such Donation is strictly for a public purpose.

Can the members of the council truthfully attest to this statement?"

For \$14-16 dollars a square foot the city gets 4.5 acres of land and a building, But there's a catch, This donation requires a swap for rezoned land and the current Joe D Dennis Park. Lacking an appraisal and release of financials surrounding this exchange I can only rely on the MultiStudio assessment valuing this land at \$30-35 per square foot leaving a benefit to the developer of 1.5 – 3 million dollars for his donation."

You may call it a feature park but it really the back yard to an office complex.

The city lost an appeal to quash the citizen's protest for the sale of Joe D. Dennis park. Attached is the appeal court's decision to these comments for inclusion in the minutes. I especially want to point out the statement about dismissing protests and not properly considering them. The court draws "attention to the maxim cited by the district court: "[C]ourts should "exercise extreme" caution when rejecting citizens' initiative or referendum petitions on mere technicalities."

For the city to spend over \$100,000 to oppose its citizens is unprecedented. Probably a couple mills worth for those looking at their property taxes.

The city council needs to peel this back and start over. Stop the secret meetings, be open. A vote to sell the park would be compromised if the city requested a vote with a planned development already authorized in place. The purchase of the property needs to be reconsidered. The city administrator thinks the city can find \$6 million to put bike lanes on Rainbow (and also on Mission Road for those Roland Park neighbors) but have we tried to find \$2.6 million dollars to buy green space. Even if 16 \$1million dollars homes or townhomes were built (one potential outcome) the city would still benefit financially. The city would still have green space and a community of single family homes zoned residential as envisioned in the master plans of years past.

My name is Stephen Platt. I live at 4910 Glendale Westwood Hills, KS. I live within 1000 feet of Joe D Dennis Park and have been a collector of a protest petition that would require the abandonment of the sale of the park or a city wide vote to approve the deal. I have been bullied in the process as well as others. As you discuss a strategic communication plan, considering including a dialogue exchange rather than editing or omitting comments. My comments get cut off precisely at three minutes. I will do my best to finish this in that time however have provided a printed copy in the event I do not.

Last spring the council revised the Woodside agreement to allow the developer to shield a federal tax liability gain from taxation using a 1031 exchange. Perfectly legal, however I question what the city got out of it except a legal bill to set it up.

Comments in March were left out of the minutes or were omitted ask the council about approving another financial arrangement with a developer providing a donation to buy the old Westview school. The comments were "the extension of the school purchase being considering is quid pro quo requiring the city to provide requirements and a land swap and to complete this deal.

The conveyance and exchange of Joe D Dennis park uses money "donated" by the developer.

Donation agreement –

8.2 Westwood shall provide Donor - A statement that no goods or services were provided by the organization in exchange for or in connection with such Donation and that such Donation is strictly for a public purpose.

Can the members of the council truthfully attest to this statement?"

For \$14-16 dollars a square foot the city gets 4.5 acres of land and a building, But there's a catch, This donation requires a swap for rezoned land and the current Joe D Dennis Park. Lacking an appraisal and release of financials surrounding this exchange I can only rely on the MultiStudio assessment valuing this land at \$30-35 per square foot leaving a benefit to the developer of 1.5 – 3 million dollars for his donation."

You may call it a feature park but it really the back yard to an office complex.

The city lost an appeal to quash the citizen's protest for the sale of Joe D. Dennis park. Attached is the appeal court's decision to these comments for inclusion in the minutes. I especially want to point out the statement about dismissing protests and not properly considering them. The court draws "attention to the maxim cited by the district court: "[C]ourts should "exercise extreme" caution when rejecting citizens' initiative or referendum petitions on mere technicalities."

For the city to spend over \$100,000 to oppose its citizens is unprecedented. Probably a couple mills worth for those looking at their property taxes.

The city council needs to peel this back and start over. Stop the secret meetings, be open. A vote to sell the park would be compromised if the city requested a vote with a planned development already authorized in place. The purchase of the property needs to be reconsidered. The city administrator thinks the city can find \$6 million to put bike lanes on Rainbow (and also on Mission Road for those Roland Park neighbors) but have we tried to find \$2.6 million dollars to buy green space. Even if 16 \$1million dollars homes or townhomes were built (one potential outcome) the city would still benefit financially. The city would still have green space and a community of single family homes zoned residential as envisioned in the master plans of years past.

NOT DESIGNATED FOR PUBLICATION

No. 127,371

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF WESTWOOD,
Appellee,

v.

STATE OF KANSAS, *ex rel.*, KRIS W. KOBACH, Attorney General, and STEPHEN M. HOWE,
District Attorney for Johnson County,
Appellees.

v.

REBECCA R. BROWN,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; DAVID W. HAUBER, judge. Oral argument held October 15, 2024. Opinion filed November 15, 2024. Reversed and remanded with directions.

Jeffrey R. King, of Crossroads Legal Solutions, LLC, of Westwood Hills, and *Ryan Kriegshauser*, of Kriegshauser Ney Law Group, of Olathe, for appellant.

Ryan B. Denk and *Spencer A. Low*, of McAnany, Van Cleave & Phillips, P.A., of Kansas City, for appellee City of Westwood.

No appearance by appellees State of Kansas, *ex rel.*, Kris W. Kobach and Stephen M. Howe.

Before COBLE, P.J., GARDNER, J., and CARL FOLSOM III, District Judge, assigned.

PER CURIAM: The sale of a municipal park by the City of Westwood (Westwood) was the topic of a protest petition submitted by Westwood citizens seeking to put the sale

to public vote. One of the signatories of that petition was Rebecca R. Brown. Brown, who attempted to intervene in Westwood's district court case, now challenges the Johnson County District Court's judgment in that case declaring the citizens' protest petition deficient in form and content and declining to address her motion to intervene as moot. Brown appeals, and based on our order, the parties first argue whether we possess jurisdiction over the appeal and whether Brown has standing to pursue this appeal or intervene. Assuming we do have jurisdiction and that she has standing, Brown argues that the district court abused its discretion in denying her motion to intervene. Brown also contends the district court misconstrued the relevant statutes to find the protest petition deficient and the court should have nullified the sale because of Westwood's alleged failure to provide adequate notice.

On our thorough review, we find we do possess jurisdiction over this appeal, both because Westwood filed its action as a declaratory judgment under Chapter 60 and because the district court's denial of a motion to intervene is immediately appealable. But additional factual development is required to determine whether Brown has standing to pursue her appeal, and the district court erred by deciding the merits of the action before inquiring into standing and deciding Brown's motion to intervene on its merits. We must reverse the district court's denial of her motion to intervene as moot and remand the case to the district court to properly consider both Brown's standing and her motion.

FACTUAL AND PROCEDURAL BACKGROUND

In March 1969, Westwood purchased property at the corner of West 50th Street and Rainbow Boulevard from Fred and Bessie Ellis. Whether formally or informally, Westwood used a portion of the property as a municipal park, eventually denoted the "Joe D. Dennis Park." Before litigation and before the district court, the parties disputed whether Westwood legally designated the property as a municipal park within the meaning of K.S.A. 12-1301, which imposes requirements on cities for sale of public

parks. On appeal, however, Westwood concedes that the district court determined that K.S.A. 12-1301 applied to a portion of the property and that Westwood had not appealed that determination. For purposes of this appeal, then, a lengthy discussion of the property's use and designation as a municipal park is unnecessary.

At a city council meeting on March 9, 2023, Westwood entered into a "Funding and Exclusive Rights Agreement" with Karbank Holdings, LLC (Karbank) for the sale of property at the corner of West 50th Street and Rainbow Boulevard, including the area used as a municipal park, for private development. This agreement eventually led to a "Real Estate Purchase Agreement" between Westwood and Karbank, signed on June 8, 2023. The sale of the park property was part of a complicated transaction, the details of which are not important to this appeal.

Westwood claims it announced the city council meeting agendas on the city's website. Months after approving the purchase agreement, after rezoning disputes and eventual rezoning, and after a letter from an attorney notifying Westwood of its duty to publish notice under K.S.A. 12-1301, Westwood published notice of the proposed sale in the local newspaper, *The Legal Record*, on November 7 and 14, 2023. The notice on each date was identical and provided:

"Pursuant to K.S.A. 12-1301, notice is hereby given that the City of Westwood, Kansas, intends to sell certain property that may be considered public park property, such property commonly known and numbered as 5000 Rainbow Blvd. (Johnson County Parcel Nos. RP63000001 0001 and RF251203-3060) and 5050 Rainbow Blvd. (Johnson County Parcel Nos. RP27000000 008D and RP30000001 0012B). Full legal descriptions of such parcels are available at Westwood City Hall, 4700 Rainbow Blvd. The City of Westwood reserves all rights to challenge the applicability of K.S.A. 12-1301 as to such parcels."

On December 12, 2023, residents of Westwood filed 11 petitions with the Westwood City Clerk, for which the clerk signed acknowledgment of receipt. The petitions contained varying numbers of signatures, protesting Westwood's proposed sale of the park for private development. Brown was not the circulator of any of the petitions, but she signed one of them. Although the petitions all had different signatories, the form of the petitions were the same and each provided:

**"PETITION OF PROTEST OF THE CITY OF WESTWOOD, KANSAS'
SALE, TRADE, OR EXCHANGE IN CONNECTION WITH JOE D. DENNIS
PARK**

"Re: The City of Westwood, Kansas' sale, trade, or exchange of Joe D. Dennis Park

"The undersigned hereby invokes the provisions of Kansas Statutes Annotated 12-1301 (Land for park purposes; sales or exchanges in connection with parks; use of moneys; notice; protest; election; validation of prior sales and conveyances) and do hereby register protest under K.S.A. 12-1301 against the City of Westwood, Kansas' proposal to sell, trade, or exchange the following described property:

"Joe D. Dennis Park generally located at the southwest corner of 50th and Rainbow Boulevard in Westwood, KS 66205.

"The undersigned hereby certify that they are a qualified elector within the corporate limits of Westwood, Kansas, and join this petition with the intent to meet the threshold number of qualified electors necessary to require the governing body to place on the ballot the question as to whether the Joe D. Dennis Park shall be sold, traded, or exchanged."

Each petition had one or more circulator affidavits attached. While the names of the circulators changed, each affidavit was printed in the same form:

"CIRCULATOR'S AFFIDAVIT

"State of Kansas

"County of Johnson

"I, [Name of Affiant], a resident of the State of Kansas, being first duly sworn, say the attached list of individuals signed the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town, or village correctly, and that each signer is a registered voter of the State of Kansas, County of Johnson, City of Westwood.

FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLEAD [*sic*] GUILTY TO ANY OFFENSE INVOLVING FORGERY.

"I am at least 18 years of age, I do ___ do not X (check one) expect to be paid for circulating this petition. If paid, list the payer ____."

Each affidavit was followed by the signature and printed name of the affiant and the affidavit was sworn and notarized before a notary public.

The city clerk forwarded the petitions to the Johnson County Counselor's office on January 10, 2024. On January 17, the county counselor provided a letter, expressing the opinion that the combined petitions—considered as a single petition—failed to state a question in a form that complies with Kansas law. That same day, the city council in special session adopted a resolution invalidating the petitions on several procedural grounds regarding the submission and form of the petitions. The council concluded that it lacked statutory authority to amend the petitions to comply with state statutes and the petitioners could not remedy the defects in the petitions.

The following day, Westwood filed a declaratory judgment action under K.S.A. 60-1701 in the district court, naming the State of Kansas, the Kansas Attorney General, and the Johnson County District Attorney as defendants. In Counts I and II of its petition, Westwood sought a judicial determination that the form of the petitions was invalid and a judicial affirmation of the city council's resolution. In Count III, Westwood also sought a judicial declaration that K.S.A. 12-1301 was inapplicable to the dispute because the property in question was never formally dedicated as a municipal park.

The district court held a preliminary scheduling hearing on February 6, 2024. After the hearing, Brown moved to intervene in the proceedings and submitted her proposed competing petition for declaratory relief, quo warranto, damages, and injunctive relief or mandamus. On February 20, 2024, the court held another nonevidentiary hearing. The court assumed for the purposes of the hearing that Brown was properly allowed to intervene and permitted Brown's counsel to participate. Although the State defendants appeared through counsel, that counsel specified the State did not "really have a position on any of these matters." Westwood argued that only the attorney general or district attorney had a statutory right to challenge the municipal resolution about the petitions. Westwood also claimed that Brown lacked standing to challenge the resolution. Brown responded that Westwood failed to provide sufficient notice to residents. The district court took a brief recess before informing the parties that it would address the motion to intervene and standing in a written order.

On February 23, 2024, the district court issued a judgment granting declaratory judgment in favor of Westwood on Counts I and II regarding the form of the petitions and denying declaratory judgment on Count III because it would require an evidentiary hearing and, because Westwood felt only judgments on Counts I and II were necessary to determine whether a ballot question was required, it did not consider Count III further. The district court found Brown's motion to intervene moot without discussion.

Brown filed a timely notice of appeal from the judgment. Westwood asked this court to dismiss the appeal for lack of subject matter jurisdiction and for Brown's lack of standing. We denied the motion and ordered the parties to brief the issue of standing, and we have now considered the parties' briefing and oral arguments.

A THRESHOLD ISSUE: JURISDICTION

In its appellate brief, Westwood contends we lack subject matter jurisdiction to consider Brown's appeal. Though the issue was not raised in the district court, jurisdiction is a matter a court may consider at any time, even on its own initiative for the first time on appeal. See *Benchmark Property Remodeling v. Grandmothers, Inc.*, 319 Kan. 227, 233, 553 P.3d 974 (2024). An appellate court exercises unlimited review over issues concerning subject matter jurisdiction. 319 Kan. at 233.

Article 3, section 3 of the Kansas Constitution provides that Kansas courts only possess appellate jurisdiction as provided by law. Consequently, appellate jurisdiction exists only as provided by statute. 319 Kan. at 233. Now characterizing the district court's decision only as a special proceeding under K.S.A. 25-3601(e)—a law outlining procedures applicable to petitions for elections—Westwood contends this statute does not provide for appellate review because it only suggests review by the district court. The law reads:

"(e) Any action challenging the validity of the form of a question in a petition shall be filed *in the district court* within 20 days after such petition has been filed with the county election officer.

"The court shall render an opinion in any action filed to challenge the validity of the form of a question in a petition within 20 days after the date such action is filed with the court." (Emphasis added.) K.S.A. 25-3601(e).

But Westwood's argument is unconvincing. Westwood did not seek judicial review under K.S.A. 25-3601(e) but under K.S.A. 60-1701, the declaratory judgment statute. Westwood's petition only relies on K.S.A. 25-3601 in Count I, where it challenges the form of the question presented in the protest petitions. Neither of the two remaining counts of Westwood's petition mention K.S.A. 25-3601, and the claims raised by Westwood in its petition are considerably broader than the scope of judicial review authorized by K.S.A. 25-3601(e), which permits only a challenge to the validity of the form of a question in a petition.

By framing the action as a declaratory judgment action under K.S.A. 60-1701 et seq., and obtaining a judgment within that framing, Westwood is now judicially estopped from reframing its action on appeal. See *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." [quoting *Davis v. Wakelee*, 156 U.S. 680, 689, 15 S. Ct. 555, 39 L. Ed. 578 (1895)]); *Estate of Belden v. Brown County*, 46 Kan. App. 2d 247, 263, 261 P.3d 943 (2011) ("The [judicial estoppel] doctrine is a flexible one, operating with sufficient suppleness to remedy impermissible manipulations in varied situations.").

Declaratory judgments, whether framed in the affirmative or the negative, are subject to appellate review like any other judgment of the district court. See K.S.A. 60-1701 ("The declaratory may be either affirmative or negative in nature, and such declarations shall have the force and effect of a final judgment."); K.S.A. 60-1709 ("All orders and judgments under this act may be reviewed as other orders and judgments as provided in K.S.A. 60-2101 through 60-2103 and amendments thereto.").

In addition to our power to hear appeals from declaratory judgments, another basis for jurisdiction exists. That is, the nature of the district court's action from which Brown appeals. Brown challenges the district court's declaratory judgment and its refusal to grant her motion to intervene in the declaratory proceedings under the authority provided in K.S.A. 2023 Supp. 60-2102(a)(4), as an appeal of a final decision. The denial of a motion to intervene is immediately and independently appealable. See *City of Mulvane v. Henderson*, 46 Kan. App. 2d 113, 117, 257 P.3d 1272 (2011) ("It should be noted that the denial of a motion to intervene is an appealable final order."). We may properly exercise appellate jurisdiction to review these rulings by the district court.

ADDITIONAL FACTUAL DEVELOPMENT IS
REQUIRED TO ASSESS WHETHER BROWN HAS STANDING

As indicated above, this court ordered the parties to address standing. Whether a party lacks standing to litigate an action is question of law subject to unlimited appellate review. *League of Women Voters of Kansas v. Schwab*, 317 Kan. 805, 814, 539 P.3d 1022 (2023).

The Kansas Supreme Court has interpreted the judicial power under the Kansas Constitution to find a court may exercise its authority to decide only genuine cases and controversies. Accordingly, if challenged, a party must be prepared to demonstrate a legally cognizable injury and a causal connection between the injury and its opponent's challenged conduct. 317 Kan. at 813. Here, the parties do not dispute the causal connection between Westwood's conduct (negotiating a sale of the municipal park property) and Brown's alleged grievance. Rather, they present competing arguments regarding the legally cognizable nature of Brown's injury. A cognizable injury is "a personal interest in a court's decision" without which the claimant "suffers some actual or threatened injury as the result of the challenged conduct." *Sierra Club v. Moser*, 298 Kan. 22, 33, 310 P.3d 360 (2013).

When a right is created by statute, a party must establish both that the statute authorizes a private cause of action and that he or she possesses traditional standing. See *Baker v. Hayden*, 313 Kan. 667, 673, 490 P.3d 1164 (2021) (noting that plaintiff must demonstrate right to bring claim under open records act); *Creecy v. Kansas Department of Revenue*, 310 Kan. 454, 460, 447 P.3d 959 (2019) (standing encompasses demonstration of ability to seek relief under the Kansas Judicial Review Act); *In re Estate of Mouchague*, 56 Kan. App. 2d 983, 987, 442 P.3d 125 (2019) (discussing statutory authority to bring action under the Kansas Probate Code); *Hunter Health Clinic v. Wichita State Univ.*, 52 Kan. App. 2d 1, 6-7, 362 P.3d 10 (2015) ("Kansas law provides that '[t]o have standing, a party must satisfy any statutory standing requirements and meet the traditional tests for standing.'" [quoting *Friends of Bethany Place v. City of Topeka*, 297 Kan. 1112, Syl. ¶ 2, 307 P.3d 1255 (2013)]).

Statutory Standing

Westwood contends that individual residents within a municipality do not have a private cause of action to compel a municipality to comply with K.S.A. 12-1301; only the State may bring an enforcement action. Whether a statute creates a private cause of action is a question of law subject to unlimited review. *Kansas Fire and Safety Equipment v. City of Topeka*, 317 Kan. 418, 426, 531 P.3d 504 (2023).

Again, Westwood's argument on appeal is unpersuasive. Relying on *Douglas v. City of Wichita*, 148 Kan. 619, 83 P.2d 657 (1938), Westwood contends that a resident does not have a private cause of action to enforce K.S.A. 12-1301. But Westwood did not deny Brown's protest petitions for failing to comply with K.S.A. 12-1301. In fact, Westwood has never suggested the protest petitions failed to meet the requirements of K.S.A. 12-1301 standing alone—it only claimed the Petition Procedure Act, K.S.A. 25-1601 et seq., imposes formal requirements on a petition submitted under K.S.A. 12-1301.

Westwood's rejection of the protest petitions relied solely on its finding that they failed to comply with the Petition Procedure Act.

Without finding that the Petition Procedure Act applies in this instance, we recognize that K.S.A. 25-3601 et seq. does not contain a specific provision regarding standing. Instead, the language of K.S.A. 25-3601(b) is broad, permitting "[a]ny person" to challenge the "validity of the form of a question," and such person "shall have the burden of proving in the district court that the form of the question is invalid." (Emphasis added.) K.S.A. 25-3601(e) likewise does not limit the scope of standing to challenge the validity of the form of a question in the district court. Nothing within K.S.A. 25-3601(b) or (e) suggests the Legislature intended to limit enforcement to the State of Kansas.

Further, we find *Douglas*, the case cited by Westwood to suggest Brown lacks statutory standing under K.S.A. 12-1301, is inapplicable to these facts. 148 Kan. 619. The dispute before us differs from the dispute presented in *Douglas* and is both legally and factually distinguishable. In *Douglas*, the City of Wichita purchased land under K.S.A. 12-1301 to be used as a public market, and the issuance of bonds for the purchase was submitted to Wichita voters and passed. Several years after purchasing the land, Wichita did not develop the land into a public market, and Douglas brought a mandamus action, attempting to force Wichita to develop the public market. The Kansas Supreme Court granted a demurrer to the action on the basis that Douglas lacked an interest in the action greater than any other resident of Wichita. 148 Kan. at 623.

Contrary to Westwood's argument, *Douglas* did not involve a challenge to the validity of a protest petition under K.S.A. 12-1301. While Wichita acknowledged that it acquired the land by bond and related public vote for use as a public market under K.S.A. 12-1301, Douglas did not obtain and present a protest petition when Wichita later passed a city ordinance disposing of the property. Douglas sought to enforce the use of the property as a public market by seeking to enjoin Wichita from using the property for

another purpose. As a result, *Douglas* did not involve the rejection of a protest petition. The *Douglas* court found that an action must be brought by a county attorney or the attorney general when an individual plaintiff lacks an interest in the issue different from that of all other private citizens and taxpayers. 148 Kan. at 622-23.

This brings us to Brown's interest in this issue, which is more a matter of traditional standing rather than statutory standing. For purposes of this decision, we will assume Brown meets the statutory standing requirement under either K.S.A. 12-1301 or the Petition Procedure Act, because our decision rests primarily on whether she possesses the requisite traditional standing to maintain this appeal.

Case-or-Controversy Standing: More Evidence is Needed

As stated above, a party may not rely on statutory authority alone to establish standing. He or she must also demonstrate compliance with traditional concepts of standing. *Hunter Health Clinic*, 52 Kan. App. 2d at 6-7. Westwood contends that Brown has suffered no injury greater than any other citizen of Westwood, which is not an injury the law is prepared to recognize. In other words, Westwood contends that Brown cannot establish an injury unique to her.

This argument appears to rely on principles of federal prudential standing. See *Kansas Bldg. Industry Workers Compensation Fund v. State*, 302 Kan. 656, 679, 359 P.3d 33 (2015) ("The prudential standing principles are: (1) the plaintiff asserts his or her own rights and not those of a third party; (2) the plaintiff's grievance is not a general one shared by a large class of citizens; and (3) the interests which the plaintiff seeks to protect are arguably within the zone of interests protected by statutory or constitutional guarantee."). Nevertheless, Kansas courts have seemingly adopted these prudential principles as part of the standing requirements, holding that, to constitute a legally cognizable injury, the injury must affect a party in a personal and individual manner and

may not base a claim to relief on the legal rights or interests of third parties. *Peterson v. Ferrell*, 302 Kan. 99, 103, 349 P.3d 1269 (2015); *Moser*, 298 Kan. at 33; *Ternes v. Galichia*, 297 Kan. 918, 922, 305 P.3d 617 (2013).

Westwood argues Brown has suffered no greater injury through the denial of the protest petition than any other resident in Westwood, all of whom will be affected by the sale of the park property for private development. See *Kansas Bar Ass'n v. Judges of the Third Judicial Dist.*, 270 Kan. 489, 495, 14 P.3d 1154 (2000) ("Sweeping complaints about the unauthorized practice of law and potential harm to the public do not amount to specific injuries."). But this argument ignores the procedural framing of this appeal.

The signatories of the protest petitions filed in this case have suffered a legal injury distinct from residents of Westwood generally or members of the Westwood electorate specifically. The signatories of these protest petitions have had their petitions rejected, not on substantive grounds, but on questionable legal or procedural technicalities. Without specific authority requiring as much, Westwood applied the provisions of the Petition Procedure Act to the protest petitions brought under a more specific statutory framework—K.S.A. 12-1301. Due to the legal uncertainty of this application, Westwood then sought a judicial determination through declaratory judgment to clear the potential cloud on its pending sale. Brown and other signatories to these petitions have suffered a legally cognizable injury in Westwood's rejection of their protest petitions on a potentially illegal basis.

Our court has previously found a petition circulator has standing to sue, based partly on the circulator's acting "in a representative capacity for the electors that signed the petition." *City of Prairie Village v. Morrison*, No. 104,918, 2011 WL 6310196, *4 (Kan. App. 2011) (unpublished opinion). And Brown suggests she was not only a signatory to the protest petitions but was also "heavily involved in the Protest process" and a "recognizable face in the community as a leader opposing the" sale. At oral

argument, her counsel suggested she also lived near enough to the proposed development such that anticipated traffic would directly affect access to the driveway of her residence—an allegation which was generally included in her motion for intervention, as well, including a referenced traffic study. But this appellate court is not a fact-finder, and the district court made no findings on these alleged facts for us to review. Was Brown's involvement in the petition circulation process sufficient to confer standing? Does the adjacency of her home to the proposed development provide another basis for cognizable injury? We cannot say. It is the district court which must make the necessary findings to determine whether Brown "personally suffers some actual or threatened injury," whether that is in the form of a signatory to the protest petition or in another fashion. See *Sierra Club*, 298 Kan. at 33.

This lack of fact-finding leaves us in a quandary where we can neither definitively find a lack of standing, nor can we assume standing, at this juncture. The reason for this is the district court's error—that is, deciding the merits of the action without first considering matters of standing and intervention.

THE MOTION TO INTERVENE MUST BE DECIDED FIRST

Rather than addressing the issue of standing and intervention, the district court dismissed Brown's motion to intervene as moot after deciding the merits of Westwood's petition. We find this method and order of events both legally insufficient and inconsistent.

We review a district court's decision on intervention under an abuse of discretion standard. *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663, 666, 722 P.2d 1093 (1986). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *In the Matter of Spradling*, 315 Kan. 552, 590, 509 P.3d 483 (2022).

Three factors must have been present for the district court to permit Brown's intervention under K.S.A. 60-224(a)(2): "(1) timely application; (2) a substantial interest in the subject matter; and (3) lack of adequate representation of the intervenor's interests." *Montoy v. State*, 278 Kan. 765, 766, 102 P.3d 1158 (2005) (quoting *Knutson*, 239 Kan. at 666). The parties do not dispute Brown's motion to intervene was timely filed. Westwood tacitly admits a potential correlation between if the district court were to find Brown has standing, she likewise demonstrates a sufficient interest in the litigation to sanction her intervention. The parties dispute whether adequate representation of Brown's interest exists without her participation.

Again, though, it is not for us to decide these questions, as none of them were answered by the district court. But as evidenced by the record, the district court clearly accepted both Brown's interest in the litigation and an inadequate representation of those interests without her participation by acknowledging it thought "Mr. Kriegshauser [Brown's counsel] back there . . . is the other side" opposing Westwood and identified Brown as "an indispensable party that needed to be added to this case." Yet, the district court made no formal findings as such, and in fact ignored as much when addressing the merits of Westwood's action without first addressing Brown's position.

Mootness is not defined in the Kansas statutes. Our Supreme Court has defined a moot case as "a case in which determination of an abstract question is sought when in reality there is no actual controversy existing." *Lawrence Preservation Alliance, Inc. v. Allen Realty, Inc.*, 16 Kan. App. 2d 93, 107, 819 P.2d 138 (1991) (citing *Moore v. Smith*, 160 Kan. 167, 170, 160 P.2d 675 [1945]). Black's Law Dictionary defines "moot" as "[h]aving no practical significance; hypothetical or academic" and "no longer involving a real, live controversy." Black's Law Dictionary 1205 (12th ed. 2024). Here, Brown's intervention is not an abstract question, and her participation has real practical significance to whether a true controversy existed before the district court.

A search for authority on why a motion to intervene, like Brown's, should be decided before the merits of the case yields nothing. But we find the answer to be intuitive. If Brown had the right to intervene, it necessarily follows that her rights are not adequately protected. Resolving the case against her without adequate representation in the proceedings is a matter of due process—the meaningful opportunity to be heard. See *Landmark Nat. Bank v. Kesler*, 289 Kan. 528, 544, 216 P.3d 158 (2009) ("Due process provides any interested party with the elementary and fundamental right to notice of the pendency of an action and the opportunity to present its objections in any proceeding that is to be accorded finality.").

Westwood contends that this error should be deemed harmless because Brown's attorney argued at the district court hearings. But her attorney's participation involved only a portion of the overall proceedings. Brown not only tried to respond to Westwood's petition for declaratory judgment, but she sought to raise additional claims against Westwood. These claims have gone unresolved, not on substance, but because the district court denied the motion to intervene as moot first. The district court's conduct is inconsistent at best, and erroneous because it tacitly granted the motion to intervene in its consideration of Brown's necessary participation in the case, despite its ruling to the contrary, without first considering Brown's interests. Its decision was likewise flawed for permitting Brown's attorney to advocate against Westwood's petition when Brown was not a party to the case. The district court apparently sought the benefit of argument opposing Westwood's position to assist with deciding the case but wanted to avoid resolving Brown's counterclaims. Accordingly, Brown was thrust into a state of limbo where she was permitted to respond to Westwood's arguments yet not allowed to fully present her own. A better approach by the district court would be to presume both standing and the right to intervene, then resolve the substantive issues presented by all parties.

On remand, we foresee additional issues that may arise for which we lack the evidence and findings to determine now. First, a real question exists whether Westwood possesses "case and controversy" standing without Brown's presence in this action. The State has consistently maintained that it lacks an interest in the litigation and has not filed a brief in this appeal nor did it appear at argument. If, indeed, Brown lacks standing to challenge the city council's action, where is the case or controversy justifying Westwood's own standing to obtain declaratory judgment? Though standing requirements are relaxed in a suit seeking only a declaration of rights, the case must still present a case or controversy. *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 896-97, 179 P.3d 366 (2008).

Second, the parties have not addressed whether "[a]ny election required as herein provided *shall be called and held as provided by law for bond elections*," as the last sentence of K.S.A. 12-1301 requires. (Emphases added.) Kansas general municipal bond law is found in K.S.A. 10-101 et seq. and permits an election on any bond issue where an enabling act allows for petitions. K.S.A. 10-120a(c); see Parnacott, *People Have the Power: The Power of the Petition*, 80 J.K.B.A. 32, 41 (March 2011). Does this necessarily mean that the Petition Procedure Act does not apply? May the court, through statutory interpretation, properly synchronize all three statutory frameworks (K.S.A. 12-1301, general municipal bond law, and the Petition Procedure Act), especially considering the distinct timelines outlined in each? Finally, applying bond election procedure, does Westwood, as the municipality, bear a greater responsibility in ensuring the calling of an election than do citizens who have complied with K.S.A. 12-1301 on its face? These are all puzzles we are not at liberty to solve given the limited questions before us today.

CONCLUSION

We acknowledge the expedited nature of this proceeding, and that this decision will necessarily result in continued postponement of Westwood's pending real estate sale. While a regretful consequence, it is of utmost importance that litigants have their disputes properly considered on their merits. Had the district court first considered the propriety of Brown's intervention, it would have then undergone an analysis of Brown's interest in the litigation, both in terms of her cognizable injury for traditional standing purposes, and for purposes of intervention. By skipping this necessary analysis, the district court misapplied the law by denying Brown due process and perhaps ignoring the lack of controversy if Brown were not a party to the litigation.

We draw attention to the maxim cited by the district court: "[C]ourts should "exercise extreme" caution when rejecting citizens' initiative or referendum petitions on mere technicalities." *City of Wichita v. Peterjohn*, 62 Kan. App. 2d 750, 756, 522 P.3d 385 (2022). Given this policy, we direct the district court to provide a full and fair hearing on the issue of Brown's intervention and, relatedly, her standing to proceed, with adequate notice and the opportunity to develop and present relevant evidence. See *Lawrence Preservation Alliance, Inc.*, 16 Kan. App. 2d at 107 (considering a second appeal on a property owner's suit challenging city's denial of a demolition permit, and finding the city acted arbitrarily and capriciously in failing to notify group and historical society of hearing and in refusing to grant continuance to allow full airing of relevant factors and feasible and prudent alternatives).

Reversed and remanded with directions.

City of Westwood, Kansas
City Council Meeting Public Comment
Appendix B

Westwood City Council
4700 Rainbow Blvd
Westwood, KS 66205

Dear City Council Members,

We, the undersigned, as proud members of the Westwood and neighboring community, are looking forward to a future that includes an expanded park at the former Westwood View Elementary site. This project honors our values by balancing family-centered recreation, environmental integrity, and the historic location of Westwood View Elementary. We stand behind the council's decisions and their steadfast commitment to a development plan that brings new opportunities for gathering, play, and community for all Westwood residents.

Why We Support This Development

- **A Space That Reflects Our Community Values:** The new park will be designed with the needs of Westwood's families and children at its heart. Dedicated play areas, natural green spaces, and accessible, welcoming amenities will create a space where everyone—of all ages—can enjoy the outdoors safely and comfortably. Community feedback has shown a shared enthusiasm for updated play areas and natural elements that support a family-friendly atmosphere right here in Westwood.
- **Preserving Green Spaces & Enhancing Safety:** Our council's careful planning reflects Westwood's commitment to preserving mature trees and green spaces while prioritizing safety and accessibility. Parents and residents have voiced their appreciation for a project that thoughtfully incorporates safe pedestrian pathways and traffic improvements, making Westwood a place where everyone can enjoy their neighborhood on foot or bicycle. This initiative builds a stronger, more connected community.
- **Supporting Westwood's Economic and Community Growth:** By expanding our green spaces and investing in the future of our neighborhood, this development benefits the local economy, providing resources that will help keep Westwood strong. The tax revenue generated from this development will directly support Westwood's schools, parks, streets and essential services, securing a sustainable future for our community and a lasting legacy for future generations.

We recognize that any new development will raise important questions, and the council has taken community feedback into consideration every step of the way.

We urge the council to maintain its commitment to address traffic concerns by continued support of the Rainbow Boulevard Complete Streets and Traffic Management Plan while it is under review by partner stakeholders. We also encourage future study of other traffic calming measures on residential streets.

We further urge the School Board of Shawnee Mission School District to continue its participation and patience as the City of Westwood works through this process.

This letter represents a shared vision for Westwood's future that values progress and preservation, making a lasting difference for the children, families, and neighbors who call Westwood home.

Sincerely,

Westwood Residents and Neighbors in Support of Our Future