

**Minutes**

Audio Tape No. 480

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., Monday, March 20, 2000. Mayor Peggy J. Dunn presided.

Councilmembers present: Adam Bold, Gary L. Bussing, Jim Rawlings, Patrick L. Dunn, Shelby Story, Louis Rasmussen, and James E. Taylor, Sr. Mike Gill was absent.

Staff present: Richard J. Garofano, City Administrator; Joe Johnson, Public Works Director; Diane Binckley, Planning Services Administrator; Ben C. Florance, Fire Chief; Kathy Rogers, Finance Director; Chris Claxton, Parks & Recreation Director; Martha Heizer, City Clerk; and Patricia A. Bennett, City Attorney.

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA.** The agenda was approved unanimously on motion of Dunn, seconded by Story, after Councilmember Rasmussen requested the addition of #10, a discussion of an article in "Nation's Cities Weekly" relating to franchise fees.

**3. PROCLAMATION.** The Mayor proclaimed April 9-15, 2000, as "National Volunteer Week."

**4. CITIZEN COMMENTS.** Citizens were invited to speak to the Governing Body.

**5. CONSENT AGENDA**

- a. Minutes of the February 22, 2000 Council meeting;
- b. Minutes of the March 6, 2000 Council meeting;
- c. Arts Council report (minutes) on their February 22, 2000 meeting;
- d. Leawood Foundation Board of Directors' report (minutes) on their December 8, 1999 annual meeting;
- e. Departmental reports;
- f. Final pay request from L.G. Barcus & Sons in the amount of \$44,001.00 for removal and replacement of 2 pedestrian bridges over Tomahawk Creek, south of College Blvd. and north of 119<sup>th</sup> St.

The Consent Agenda was approved unanimously on motion of Rasmussen, seconded by Bold.

**6. PLAN COMMISSION**

**Request for a review and approval of a settlement plan for Market Square Center (Price Chopper), northeast corner of 135<sup>th</sup> and Mission Rd.** The Mayor requested an additional stipulation of approval #40 that the developer was responsible for the payment

of the public art impact fee of \$0.10/square foot as indicated in staff's report, and requested that the street "Pawnee" be added to stipulation #35.

Councilmember Bussing said that the company he worked for was a subsidiary of Associated Wholesale Grocers, the parent of the applicant, and his wife was an attorney for Blackwell, Sanders law firm that represented Supermarket Developers, Inc. He received a letter from the Kansas Governmental Ethics Commission giving him approval to participate in discussions, finding no conflict of interest for Mr. Bussing or his wife. Councilmember Story added that his wife also worked for Blackwell, Sanders, and that he would rely on the information in the letter sent to Mr. Bussing.

Scott Wilmoski of AWG presented the settlement plan which showed a decrease in square footage of about 24,000 square feet of space, the deletion of 3 out parcels (from 6 to 3), and the deletion of any type of fast-food use. The plan called for a 10-acre park between Waterford subdivision and 133<sup>rd</sup> Street to be deeded to the City and graded by the developer with a landscape contribution of \$119,000. The plan showed a mixed-use, neighborhood shopping center designed to be pedestrian friendly.

Ron Petering, a traffic engineer with Shafer, Kline & Warren, gave an update on statistics from previous traffic studies. Traffic was reduced because of the significant reduction in square footage and the elimination of a fast-food restaurant. Arnie Tulloch of Shafer, Kline & Warren described the sidewalks and pedestrian access routes, seating areas, brick crosswalks, screening.

Mr. Wilmoski addressed 133<sup>rd</sup> Street. He submitted a petition before the Plan Commission to create a benefit district for its construction from State Line Rd. to Roe Ave. He didn't get signatures from Blue Valley School District or the Jameson Trust, property owners from Mission Rd. to Roe Ave., but he understood he had the percentage of property owners footage-wise required to create the benefit district for the entire street. Bill High of Blackwell Sanders said the School District wanted to discuss the matter further. With respect to the Jameson Trust, the Trust would object to the benefit district because they felt it was premature with respect to development of their property, however, if in fact the benefit district went through, they recognized there were the necessary consents for the City to force the district through, they recognized that could happen, in which case, they would simply allow it to happen. They also recognized that if the City would be willing to enter into an agreement whereby their assessments would be deferred, ideally for 10 years, they would go ahead and sign off on the petition and give right-of-way to the City.

Mr. High confirmed for Councilmember Rasmussen that the City could enforce the construction of 133<sup>rd</sup> Street from State Line Rd. to Roe Ave. at the benefit district's expense because there were enough signatures on the petition. There was discussion about the current need for the Pawnee access onto 135<sup>th</sup> Street since one of the original conditions of the construction of 135<sup>th</sup> Street was that there wouldn't be any access points. There was realization that half-mile access points only along 135<sup>th</sup> Street wouldn't allow for any development to occur along 135<sup>th</sup> Street; traffic signals at quarter-mile and even some eighth-mile points would be appropriate; there was concern that Mission Rd. remain a 2-lane roadway north of 133<sup>rd</sup> Street, so more traffic would be directed to Pawnee to access the shopping center; with Pawnee signal and access at level of service C, the levels of service for Mission and Chadwick intersections at 135<sup>th</sup> improved to expected level of service D.

It was confirmed for Mr. Rasmussen that the developer would meet all requirements of the current stormwater management ordinance.

In response to Mr. Rasmussen, Mr. Wilmoski said it had always been the developer's intention to transfer the 10-acre buffer once it was graded to the City period, and that the City would create the park with the money the developer planned to contribute.

In response to Mr. Rasmussen, Mr. Tulloch said that at the completion of the landscape installation, the developer would be willing to provide a certification by a landscape architect that all plantings had been installed according to the plan, that they met the size and specie requirements, to assure the City that they received what they had asked for.

Mrs. Binckley stated that the applicant had met all of the 135<sup>th</sup> St. Corridor Plan requirements except that they didn't have the minimum 50% office for the Market Square area. There was discussion about the 50% requirement.

Councilmember Bussing was concerned about the ongoing maintenance of the 10-acre park for the City, and asked if the developer might continue the obligation to keep it as green space, keep the \$119,000 and maintain the area. Mr. Wilmoski said he didn't want to take on that obligation.

Councilmember Taylor said that the Parks & Recreation Advisory Board didn't want a park with the responsibility for maintaining it at a minimum of \$30,000-\$40,000 a year. The Board's recommendation was to not accept the land.

Councilmember Bold said that staff estimated that the cost to the City to defer assessments on the Jameson Tract for 10 years would be \$672,000 principal plus \$218,824 interest. He asked if the developer of Price Chopper would be willing to hold the City harmless for those amounts until such time as the Jameson Trust developed their property and paid the developer of Price Chopper back. Mr. Bold said the only reason for constructing 133<sup>rd</sup> St. at this time was because it was essential to the Price Chopper project. Mr. Wilmoski said no, it was a burden they couldn't absorb; it was unfair of the Jameson Trust to place Price Chopper in that position; they would benefit from the street through their property as well as the residents on the west side of Mission who would use the street instead of 132<sup>nd</sup> St.

Mr. Rasmussen wanted it to be clear that the City didn't want the transfer of the 10-acre park to be such that the City became liable for part of the allocation of the cost of 133<sup>rd</sup> St. Mr. High said that was understood.

Councilmember Taylor asked if the developer would be willing to maintain the cost of maintenance of the brick crosswalks. Mr. Wilmoski said Price Chopper would be willing to do so provided that everyone else at the intersection must install the brick walkways and that every future developer must maintain them as well.

The Mayor read a letter from Councilmember Gill who was unable to attend the meeting. He was prepared to support the revised settlement plan provided that the build through of the reverse frontage road from State Line to Roe was part of phase one. Without that assurance, he was against the proposal because of the impact of through traffic on 132<sup>nd</sup> St. He strongly disfavored the City having to condemn any right-of-way in connection with the build through. The land owners whose property would benefit greatly by the infrastructure should freely give the rights-of-way. Condemnation only added to the project

cost which the City had to fund. He would support a continuance to allow all property owners to get together and figure out how to avoid a condemnation. He wanted other conditions – 1) a negative covenant running with the land and in favor of the City and affected homes associations that the undeveloped green space would not be used for commercial development; the covenant would exist for the life of the development; 2) revise the cost of the plantings and irrigation associated with the park.

Residents were invited to speak.

Andy Schlagel, planning consultant for the Jameson Trust, said that the construction of 133<sup>rd</sup> St. from Mission Rd. to Roe Ave. was in opposition to the Trust's plans, it was premature. He suggested that the creation of a retail center that threw into motion the need for an off-site improvement across someone else's land wasn't necessarily fair to the Jameson Trust. Unless some solution was found for the temporary financing of the street that would relieve them of the premature assessment, they would be in opposition, would be faced with condemnation if the project had to proceed. He hoped the developer of the Price Chopper project wouldn't see fit to place Jameson Trust in a position that would have some impediment produced or created as an offshoot of action taken to accommodate the Price Chopper development.

More residents spoke.

Councilmember Taylor moved to deny the settlement plan as presented, seconded by Bold. Councilmember Bussing wanted to review Bucher Willis Ratliff response to some Council questions about traffic before voting on the settlement plan; 133<sup>rd</sup> St. would affect the traffic about which residents were concerned. He would vote against the motion to deny, but would favor a continuance to April 3<sup>rd</sup>. Councilmember Bold said he seconded the motion to deny because the plan didn't comply with the 135<sup>th</sup> St. Corridor Study, the issue of who would pay to maintain the 10-acre park, the possibility of the City having to bear the costs associated with the Jameson tract, and the unfairness of asking the Jameson Trust to pay for a road years in advance. Councilmember Dunn was satisfied that 133<sup>rd</sup> St. would go through and with that, he felt the project was a good development. Motion to deny failed; Bold, Taylor in favor; Bussing, Rawlings, Dunn, Story, Rasmussen opposed.

Councilmember Bussing moved to continue the matter to the April 3<sup>rd</sup> Council meeting, seconded by Taylor. Included in the motion was a request that Mrs. Binckley provide a summary of the Bucher Willis Ratliff traffic report and perhaps someone from the engineering firm could attend that meeting, and there would be more discussion with staff and the developer regarding the park issue. Councilmember Rasmussen asked that the stipulations of approval include stipulations on landscaping, terms of how the transfer of the park property would be made, terms of the benefit district so that the City wouldn't become a participant. Mr. Bussing's motion carried unanimously.

**7. MAYOR'S REPORT.** The Mayor reported on:

- a. the importance of returning the 2000 Census;
- b. ribbon cutting for Horizon National Bank at Ranchmart Shopping Center, 95<sup>th</sup> & Mission Rd.;
- c. Project Impact, a national program launched by FEMA to build disaster-resistant communities (Johnson County invited to participate).

**8. OLD BUSINESS**

**Staff report on outdoor (store front) sales/short-term special use**

**permits.** Councilmember Rasmussen moved 1) to direct staff to draft an amendment to City ordinance which reflected staff's recommendations to be sent to the Plan Commission for their consideration, and 2) that there be a 60-day moratorium on the enforcement of the existing ordinance since Council was trying to revise an undue burden on the City's commercial enterprises. Motion seconded by Bussing and carried unanimously.

**9. NEW BUSINESS**

**A. Approval of Appropriation Ordinance No. 886.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the ordinance on roll call vote.

**B. Resolution No. 1501, attached as part of the record, consenting to the enlargement of Johnson County Consolidated Main Sewer District – for a property owner in the general vicinity of 140<sup>th</sup> Drive and Mission Road.** Adopted unanimously on motion of Rasmussen, seconded by Taylor.

**C. Approve bid/authorize contract with low bidder Midwest Service Co. in the amount of \$74,630.00 for traffic median and right-of-way maintenance.** On motion of Rasmussen, seconded by Taylor, Council unanimously approved the contract.

**D. Ordinance No. 1852 accepting permanent drainage easement and deeds for 151<sup>st</sup> Street improvements, Metcalf to Nall Ave.** On motion of Bold, seconded by Taylor, Council unanimously passed the ordinance on roll call vote.

**E. Ordinance No. 1853 accepting 2 permanent storm sewer easements for storm drainage facilities as shown on the plans for Highlands Ranch 2<sup>nd</sup> Plat.** On motion of Bold, seconded by Story, Council unanimously passed the ordinance on roll call vote.

**F. Ordinance No. 1854 accepting a permanent sidewalk easement for a sidewalk as shown on the plans for Horizon National Bank at Ranchmart Shopping Center, 95<sup>th</sup> St. and Mission Rd.** On motion of Dunn, seconded by Story, Council unanimously passed the ordinance on roll call vote.

**G. Schedule executive session.** On motion of Bussing, seconded by Story, Council voted unanimously to convene in executive session at the end of the meeting for a period not to exceed 30 minutes to discuss litigation.

**10. OTHER BUSINESS.** Councilmember Rasmussen noted an article in the March 13<sup>th</sup> edition of "Nation's Cities Weekly" which reported that the Circuit Court had upheld a lower court's ruling which held that there was nothing inappropriate about a city charging compensation or rent for city-owned property, so the franchise fee concept that the Council approved was upheld.

11:00 P.M. On motion of Bussing, seconded by Bold, Council voted unanimously to extend the meeting for 30 minutes.

11:10 P.M. Council convened in executive session in the main conference room of City Hall.

**11. ADJOURN.** 11:40 P.M. Council returned to regular session. There being no further business before the Council, the meeting was adjourned.

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Martha Heizer, City Clerk