

**Minutes**

Audio Tape No. 481

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, April 3, 2000. Mayor Peggy J. Dunn presided.

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

Staff present: Richard J. Garofano, City Administrator; Mark Andrasik, Director of Information Services; Sid Mitchell, Chief of Police; 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 that Old Business be considered after the Consent Agenda and the addition of 11C, an update on the installation of pumps and access road at Ironhorse golf course.

**4. PROCLAMATIONS.** The Mayor proclaimed April 2000 as "Fair Housing Month," and April 9-15, 2000 as "Crime Victims' Rights Week."

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

**3. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING FROM GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA) FOR THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR 1998.** The Mayor presented the Certificate (plaque) to Finance Director Kathy Rogers.

**6. CONSENT AGENDA**

1. Minutes of the March 20, 2000 Council meeting;
2. Historic Commission report (minutes) on their February 8, 2000 meeting;
3. Purchase of 2 1-ton trucks for Public Works from Raytown Dodge for a total of \$37,383.00;
4. Resolution No. 1502, attached as part of the record, designating the courtyard area of City Hall as part of the Community Center to permit the Leawood Chamber of Commerce to serve alcoholic liquor at a June 3, 2000 event.

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

## 9. OLD BUSINESS

**Change to Leewood Public Art Policy.** Councilmember Rasmussen moved to approve the Arts Council's recommendation that the 2% for Public Art provision of the Public Art Policy be removed and the Per Resident Public Art Funding be increased from \$1.00 to \$5.00, to be effective in 2001. Motion seconded by Taylor and carried unanimously.

## 7. PLAN COMMISSION

**A. 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.** Finance Director Rogers explained the financing structure that could be used in order to address the Jameson Trust's concern about their benefit district assessment costs, rolling over temporary notes until June 1, 2004. Councilmember Bold pointed out that a lot of thought went into the capital improvements program and he didn't remember 133<sup>rd</sup> St. ever being discussed. He was concerned that the City would be using its borrowing power through temporary notes to pay for the construction. City Administrator Garofano explained that benefit districts that were 100% assessed against the properties weren't put into the capital improvements program because there was no tax impact from a benefit district so structured. The Mayor noted that the City used its borrowing power with every benefit district – that was the way they were constructed. Mr. Bold added that it wasn't typically the City's practice to offer the use of the City's borrowing power as an incentive to get a commercial project built.

Councilmember Gill asked about the reference to a traffic study prepared by TEC Engineering in 3.b. on page 2 of the development/settlement agreement. He thought that TEC's was the very first traffic study done and was withdrawn as having been based upon inadequate data from KDOT. Why would the City reference an outdated report as a condition to the type of improvements to be built as opposed to the more recent one by Bucher Willis Ratliff engineers? City Attorney Bennett said it was her understanding that TEC concentrated on the right-in and right-out turns mentioned in the stipulation, and perhaps it would be better to delete the first sentence of 3.b. deleting the reference to TEC and simply state that the entrance would be right-in and right-out only between 133<sup>rd</sup> and 135<sup>th</sup> on Mission Rd.

Regarding 3.e. on page 2 of the agreement, Mr. Gill asked if the Blue Valley School District had agreed to remove and replace the current southerly access drive from the school parking lot onto Mission Rd. with sod at the time that the new drive to 133<sup>rd</sup> St. was completed. Ms. Bennett said that was a stipulation from the beginning. She said that Supermarket Developers indicated that they would do that if necessary.

In response to Mr. Gill, Ms. Bennett said that under the agreement, it was anticipated that the construction of 133<sup>rd</sup> St. would go straight through from State Line to Roe in one project. Mr. Gill wanted to know where that was stated in the agreement because that was an absolute requirement for him to vote in favor of the agreement. Ms. Bennett said that under the existing petition or if different petitions were needed, it was open to the City's discretion on how to construct the road – from State Line west or from Roe east – but it was anticipated to be one project.

Mr. Gill didn't see any reference to a High Drive connection to 133<sup>rd</sup> St. Ms. Bennett said that wasn't part of the agreement. Mrs. Binckley said there was a project before the Plan Commission that would be considered by Council in about one month for development north of 133<sup>rd</sup> St. which would connect High Dr. Mr. Gill asked if conditions could be added requiring that High Dr. be connected and that the road be built from State Line to Roe. Mrs. Binckley said yes.

Mr. Gill said he had 3 concerns – 1) the lack of certainty regarding the Jamesons; they needed to be locked down, 2) he was philosophically strongly opposed to government financing private development, and 3) there had to be an absolute condition that 133<sup>rd</sup> St. be built from State Line Rd. to Roe so that the reverse frontage road functioned as it should contemporaneous with the opening of the development and that there be the access points out of the neighborhoods so that the residential street 132<sup>nd</sup> St. east and west of Mission Rd. didn't get bombarded with additional through traffic.

Councilmember Bold said that the developer had agreed to donate \$132,000 for the landscaping of the 10-acre park. He wasn't convinced that that amount would get the City anywhere, couldn't landscape the park in a standard equivalent to what the City had at other facilities. There was still the question of who was going to maintain the park. He said that the project didn't comply with the 135<sup>th</sup> St. Corridor Study.

Councilmember Bussing said that traffic was unavoidable and the key to managing the traffic and making the traffic on Mission as safe as possible was the development of the reverse frontage road, taking traffic off of Mission, relieving the congestion in front of the school moving it around to the south side of the school, significantly enhancing the traffic flows along Mission. The Mayor added that the reverse frontage road would help alleviate the stormwater flooding in Waterford and Wilshire. Mr. Bussing said that one of the things the City stipulated was the closing of Pawnee, not allowing it to have access to the reverse frontage road; traffic that wasn't going to go down Pawnee was going to go down Mission Rd., approximately 100 additional cars per day on Mission Rd. He felt Council needed to think carefully about closing off access to the reverse frontage roads as they moved forward with other projects, it defeated the purpose for which they would be built.

Councilmember Dunn asked about adding stipulations – 1) include in 3.f.(iii) that not only would no building permit be issued until petitions were in hand, but also that a plan would be in place for construction of 133<sup>rd</sup> St. contemporaneously with the development, and 2) in 3.f.(iv) that the City would obtain the commitment from the Jameson Trust that there would be a deferral of no more than 4 years.

Councilmember Story said that from a traffic standpoint, the project was about the best that the City could hope to get on the land. He said that concerns about the 135<sup>th</sup> St. Corridor Plan were legitimate, but he didn't feel approval of the project would set a precedent; future developers should understand that, and that present and future Councils weren't bound to do similar deals in the future for different projects. He felt the City would benefit immediately, help traffic problems immediately along Mission Rd. and around Mission Trail Elementary, by constructing 133<sup>rd</sup> St. from State Line Rd. to Roe Ave. He was concerned about the ongoing maintenance of the park, felt that the Parks Department needed to establish a plan that required very minimal maintenance of the land if the project was

approved. Regarding the buffer zone on the west side of Mission Rd., he understood the concerns of residents who owned homes that would abut 133<sup>rd</sup> St., but it was important to understand that the road was platted in its proposed location long before the homes were built.

Residents, opposed to and in favor of the project, addressed the Governing Body.

Councilmember Bold moved to deny the settlement agreement (as written) based on the discussions on the uncertainty and the costs involved to the City of 133<sup>rd</sup> St., and on noncompliance with the 135<sup>th</sup> St. Corridor Study, seconded by Taylor. Motion to deny carried; Bold, Taylor, Bussing, Rasmussen, Gill in favor (Mr. Gill because of the lack of certainty that 133<sup>rd</sup> St. would be built through to Roe and concerns about the financing of the Jameson tract); Story, Rawlings, Dunn opposed.

Councilmember Dunn moved to approve the settlement agreement with amendments – 1) in 3.f.(iii) on page 3, include at the end “and a plan is in place for construction of 133<sup>rd</sup> St. from State Line to Roe contemporaneous with the development”; 2) a new 3.f.(vii) that SMD must obtain within 60 days written agreement from the Jameson Trust to grant right-of-way and agree to the 4-year extension not to extend past 2004, or Council approval would lapse. Motion seconded by Story.

Councilmember Gill moved to amend the motion to delete the language in the motion that would provide the Jameson Trust the 4-year extension and simply offer what the law allowed for which was creation of a benefit district. He wasn't in favor of extending financial terms to someone without any evidence of need. Motion seconded by Taylor and failed; Gill, Bold, Taylor in favor; Bussing, Rawlings, Dunn, Story, Rasmussen opposed.

Mr. Dunn's motion to approve the agreement carried; Rawlings, Dunn, Story, Rasmussen in favor; Bold, Bussing, Gill, Taylor opposed; Mayor in favor (because of the reverse frontage road helping to alleviate traffic and stormwater problems, the additional green space, the additional money for park maintenance).

**B. Request for a special use permit to allow a farmers market on the north side of Town Center Plaza. May through October 2000.** Mrs. Binckley said that the Planning staff offered 3 additional stipulations to the Plan Commission's stipulations of approval and an amendment to stipulation #6, all of which the applicant agreed to. Carrie Hartman, Director of Marketing for Town Center Plaza, said that TCP had several unanswered questions about the market, and in response to Councilmember Rasmussen, said that the storeowners had not discussed and approved the market. She clarified that the leasing agent, Poag & McEwen, made the lease arrangements for the farmers market with the applicant, and didn't consult with TCP staff.

Councilmember Gill moved to defer the matter to the April 17<sup>th</sup> Council meeting, until there was a real proposal to consider, seconded by Bold. Councilmember Rasmussen was concerned about the internal and external traffic flow; more information was needed. Councilmember Story wanted TCP to have an opportunity to have their questions answered and that Council have some sense as to how the merchants at Town Center felt about the project.

The applicant Gary Whittaker said it was necessary to move forward rapidly in order to secure vendors. He clarified that the market would be open on Saturdays 7:00 a.m. to approximately 1:30 p.m. or 2:00 p.m., and on Thursdays approximately 11:00 a.m. to about 4:00 p.m.

Mr. Gill and Mr. Bold withdrew their motion and second. Councilmember Dunn moved to approve the special use permit with market hours to be 11:00 a.m.-4:00 p.m. on Thursdays, and 7:00 a.m.-2:00 p.m. on Saturdays, and with staff's 3 additional stipulations and amendment to stipulation #6. Motion seconded by Taylor and carried; Rasmussen, Bold opposed; Bussing, Rawlings, Dunn, Story, Gill, Taylor in favor.

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

1. focus group meetings on the City's comprehensive plan;
2. art show April 7<sup>th</sup> at Gold Bank;
3. April 30<sup>th</sup> volunteer appreciation family barbeque and concert at City Hall;
4. her appointment by Governor Graves to the Vision 21<sup>st</sup> Century Task Force, Water Quality Committee;
5. elections in Taiwan.

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

**10. NEW BUSINESS**

**A. Approval of Appropriation Ordinance No. 887.** On motion of Taylor, seconded by Rasmussen, Council unanimously approved the ordinance on roll call vote.

**B. Hearings (2) regarding suspension/revocation of solicitation permits.** The Mayor opened the hearings; no one was present to address the issues; on motion of Dunn, seconded by Story, Council voted unanimously to close the hearings. Councilmember Bussing moved to affirm the City Administrator's decision to revoke solicitation permits issued to Jerome Carthell and Joseph A. Latham of G.O. Innovators of Michigan City, Indiana. Motion seconded by Bold and carried unanimously.

**C. Resolution No. 1503, attached as part of the record, approving and authorizing the Mayor to execute a Right-of-Way Agreement with Johnson County Water District No. 1 for managing the use and occupancy of public right-of-way.** Adopted unanimously on motion of Taylor, seconded by Bussing.

**I. Resolution No. 1516, attached as part of the record, calling for a public hearing to consider the vacation of street right-of-way at approximately 111<sup>th</sup> Street and State Line Road.** Adopted unanimously on motion of Bussing, seconded by Taylor.

**G. Ordinance No. 1855 authorizing and providing for the issuance and delivery of temporary notes in the principal amount of \$5,500,000 to pay the cost of public improvements.** On motion of Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote.

**END OF TAPE**

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**H. Resolution No. 1507, attached as part of the record, authorizing temporary notes; Project 108; College Blvd.; \$500,000.** Adopted unanimously on motion of Taylor, seconded by Rasmussen.

**Resolution No. 1508, attached as part of the record, authorizing temporary notes; Project 148; City Park, Phase 1; \$2,100,000.** Adopted unanimously on motion of Rasmussen, seconded by Dunn.

**Resolution No. 1509, attached as part of the record, authorizing temporary notes; Project 151; Fire Station No. 3; \$400,000.** Adopted unanimously on motion of Bussing, seconded by Dunn.

**Resolution No. 1510, attached as part of the record, authorizing temporary notes; Project 159; 119<sup>th</sup> Street and Mission Road intersection; \$200,000.** Adopted unanimously on motion of Bold, seconded by Bussing.

**Resolution No. 1511, attached as part of the record, authorizing temporary notes; Project 164; Normandy Place; \$200,000.** Adopted unanimously on motion of Taylor, seconded by Bold.

**Resolution No. 1512, attached as part of the record, authorizing temporary notes; Project 166; Lee Blvd.-103<sup>rd</sup> St. to Mission Rd.; \$900,000.** Adopted unanimously on motion of Dunn, seconded by Rawlings.

**Resolution No. 1513, attached as part of the record, authorizing temporary notes; Project 167; 151<sup>st</sup> St.-Nall Ave. to Mission Rd.; \$700,000.** Adopted unanimously on motion of Bold, seconded by Taylor.

**Resolution No. 1514, attached as part of the record, authorizing temporary notes; Project 169; Roe Ave.-137<sup>th</sup> St. to 138<sup>th</sup> St.; \$200,000.** Adopted unanimously on motion of Taylor, seconded by Bold.

**Resolution No. 1515, attached as part of the record, authorizing temporary notes; Project 171; Municipal Pool Bathhouse; \$300,000.** Adopted unanimously on motion of Taylor, seconded by Dunn.

**J. Resolution No. 1517, attached as part of the record, calling for a public hearing to consider the vacation of a permanent drainage easement of Tract "C" in The Woods.** Adopted unanimously on motion of Taylor, seconded by Bussing.

**K. Resolution No. 1518 adopting debt management policies.** Adopted unanimously on motion of Bussing, seconded by Dunn.

**L. Work Session.** Scheduled for April 10<sup>th</sup>, 5:30 P.M., for CIP review and 2001 Budget guidelines.

**M. Executive session.** On motion of Dunn, seconded by Bussing, 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 and attorney-client privilege matters.

#### **11. OTHER BUSINESS**

**A. Historic Commission display case.** Councilmember Bussing moved to support the Historic Commission's obtaining proposals for a permanent display case at City Hall not to exceed \$2,000. Motion seconded by Gill and carried unanimously.

#### **10. NEW BUSINESS (continued)**

**D. Resolution No. 1504, attached as part of the record, authorizing the improvement of Roe Ave. between 137<sup>th</sup> St. and 138<sup>th</sup> St.** Adopted unanimously on motion of Rasmussen, seconded by Taylor.

**E. Resolution No. 1505, attached as part of the record, authorizing the improvement of the intersection of 119<sup>th</sup> St. and Mission Rd.** Adopted unanimously on motion of Bussing, seconded by Dunn.

**F. Resolution No. 1506, attached as part of the record, authorizing the improvement of 151<sup>st</sup> St. between Nall Avenue and Mission Road.** Adopted unanimously on motion of Taylor, seconded by Bussing.

#### **11. OTHER BUSINESS (continued)**

**C. Update on installation of pumps and access road at Ironhorse golf course.**

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

**B. Construction contract for Leawood City Park/Lee Blvd. improvements.** To be discussed in executive session under attorney-client privilege.

11:35 P.M. Council convened in executive session and returned to regular session at 11:55 P.M. On motion of Dunn, seconded by Taylor, Council unanimously approved a contract with J.M. Fahey Construction Co. in the amount of \$5,928,540.50 for construction of Leawood City Park/Lee Blvd. improvements.

11:57 P.M. Council returned to executive session and returned to regular session at 12:10 A.M. Councilmember Gill moved that the City not participate in the costs to bury overhead power lines in The Woods development. Motion seconded by Story and carried unanimously.

**12. ADJOURN.** 12:15 A.M. Council returned to executive session and returned to regular session at 12:25 A.M. There being no further business before the Council, the meeting was adjourned.

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Martha Heizer, City Clerk