

Minutes

Audio Tape No. 486

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, May 15, 2000. Mayor Peggy J. Dunn presided.

Councilmembers present: Scott E. Gulledge, 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; Julie Hakan, Director of Human Resources; Sarah Hilton, Administrative Services Manager; Captain Craig Hill, Police Department; 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. City Attorney Bennett asked for an addition to the agenda, that the Council consider waiving the normal 6-month waiting period between the denial of a plan and the filing of a new plan on the Columbian Bank matter (drive thru commercial bank facility at 4701 College Blvd. denied at the April 17th Council meeting). Councilmember Rasmussen objected; a staff memo indicated that the Plan Commission and Council had given the applicant clear guidance for change on several aspects of the plan but he didn't recall anything in the minutes that addressed such guidance, and in addition, the public wasn't aware that the Council would be asked to consider the matter, so he felt it was an improper addition to the Council agenda. Councilmember Dunn moved to add the matter to the agenda under Old Business, item 8E, seconded by Story. Motion carried; Gulledge, Bussing, Dunn, Story, Gill in favor; Rawlings, Rasmussen, Taylor opposed.

The agenda was approved on motion of Dunn, seconded by Story; Rasmussen opposed (for consistency in his voting); all others in favor.

3. PROCLAMATIONS. The Mayor proclaimed May 21-27, 2000, as "National Public Works Week," and May 15-19, 2000, as "Police Week" with May 15, 2000, as "Peace Officers Memorial Day."

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

5. CONSENT AGENDA

- A. Minutes of the May 1, 2000 Council meeting;
- B. Committee reports
 - 1. Contract Review Committee report (minutes) on their May 3, 2000 meeting;
 - 2. Golf Course Committee report (minutes) on their April 27, 2000 meeting;
 - 3. Historic Commission report (minutes) on their March 21, 2000 meeting;

4. Historic Commission report (minutes) on their April 11, 2000 meeting;
5. Parks & Recreation Advisory Board report (minutes) on their April 11, 2000 meeting;
- C. Departmental reports – removed from the agenda;
- D. Purchase of Kansas City Wizards tickets in the amount of \$17,216.00 for Leawood Youth Soccer awards;
- E. Declaration of surplus property – obsolete/old Fire Department equipment to be sent to auction;
- F. Application (renewal) for Cereal Malt Beverage License – Hallbrook Country Club;
- G. Application (new) for a retail liquor occupation license – Wolff's Fine Wines & Spirits, 11841 Roe Ave.;
- H. Appointment of Albert Armstrong, 4316 W. 110th St., to the Budget & Finance Committee.

The Consent Agenda was approved unanimously on motion of Story, seconded by Gill, after a question about some exercise equipment to be declared surplus property.

6. PLAN COMMISSION

A. **Resolution No. 1523, attached as part of the record, approving request for rezoning from AG to RP-1, and preliminary site plan and preliminary plat, for Wilshire Place, approximately 132nd and High Drive.** Brick Owen of HNTB Architects, Engineers and Planners, gave a presentation.

Regarding stipulation of approval #22 and construction traffic, Councilmember Gill asked Mr. Owen if he had access from State Line Rd. to 133rd St., would he agree to a refinement of the stipulation that construction equipment would access 133rd St. from either State Line or a 135th St. access so construction traffic wouldn't be near Mission Trail Elementary on Mission Rd. Mr. Owen agreed.

Mr. Owen said that engineer Ed Schlagel would do the stormwater study. Mr. Gill asked the City Attorney if she was aware of any litigation issues, past or present, involving Mr. Schlagel over other water projects that Mr. Schlagel had engineered. Ms. Bennett said she knew of a current case relating to 143rd St. improvements. In view of the significance of the stormwater report for Wilshire Place, Mr. Gill wanted, perhaps for informational purposes only, to have the status of the report returned to the Council for an informative session; he didn't want any compromise situation on stormwater. Mr. Owen said he would be very willing to work through Public Works Director Johnson to make sure he had what the developers were proposing so Mr. Johnson could communicate the information to the Council.

Councilmember Taylor wanted the Council to have the final approval, not just a review, of the stormwater design, and he wanted that as a condition of approval. Mr. Taylor noticed that the developer would provide trees every 40 feet of lineal feet of street and asked that the developer make a statement as to the size, caliber of the trees. Mr. Owen said the trees would be 2 to 2.5 inch caliber.

Councilmember Dunn didn't think the Council should approve the final stormwater plan; it was Council's job to be sure the stipulation required that the developers meet the requirements of the Public Works Department and that stormwater was overseen carefully by that Department.

Residents addressed the Council particularly about undue additional traffic, including construction traffic, on residential streets (132nd St., High Dr., and Sagamore Rd. north in Leawood South).

Councilmember Bussing moved to adopt the resolution with a change to stipulation #22 to indicate that construction access via 133rd St. would come from State Line Rd. or 135th St. rather than Mission Rd. provided that the reverse frontage road was built through (staff to reword). Motion seconded by Story and carried unanimously.

Mr. Bussing moved to assign an evaluation of traffic issues at 128th and Sagamore and stop sign issue at 132nd and High Dr. to the Public Works Committee, seconded by Gill and carried unanimously.

B. Ordinance No. 1863 rezoning from AG to RP-1, Wilshire Place. On motion of Bussing, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

C. Resolution relating to the final plat of Highlands Creek 1st Plat. Developer Don Donohoo gave a presentation. The stormwater detention area was proposed to be the originally proposed more westerly location rather than towards the eastern boundary of the project in order to save the natural treed creek area most prominent from the central to the east central location of the project. Regarding the maintenance of the detention area and the funding for it, Mr. Donohoo said that the homes association dues would be \$750 per lot per year with \$150 of that allocated only for maintenance of the detention area. He also noted that stipulation #16 relating to a reserve fund of a one-time assessment of \$200 per lot for dredging of a detention pond wouldn't be necessary because dredging wouldn't be necessary with the type of detention area he proposed to build.

Councilmember Gill noted that Chris Wally and Dr. Joe Waeckerle who lived at the east end of the project weren't at the meeting. He asked Mr. Donohoo if he would entertain a continuance of the matter to the June 5th Council meeting in order for staff to notify them and for the Council to hear their input. Mr. Donohoo said that would be a burden. Councilmember Rasmussen moved to continue the matter to the June 5th Council meeting to get input from the 2 property owners, seconded by Taylor. In response to the Mayor, Mr. Donohoo said that if the City wanted to mandate the detention basin and its location at the east end of the development, he was prepared to move forward with that to get Council approval rather than have the matter continued for 3 weeks even though he thought that was the wrong thing to do.

Mr. Rasmussen called for the question, seconded by Taylor and carried unanimously. His motion to continue carried; Bussing, Rawlings, Dunn opposed; Gullede, Story, Gill, Rasmussen, Taylor in favor.

D. Resolution relating to a request for rezoning from AG to R-1 and preliminary plat approval, for Mission Prairie, approximately 141st and Mission Rd. No one was present to address the request. On motion of Taylor, seconded by Gill, Council voted unanimously to continue the matter to the June 5th Council meeting.

E. Ordinance rezoning from AG to R-1, Mission Prairie. Continued to the June 5th Council meeting.

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

- a. National Day of Prayer program at the elementary school at Church of the Nativity on May 4th;
- b. Retired and senior volunteers at Lakeview Village and the Retired & Senior Volunteer Community Service Program;
- c. Recent Council of Mayors meeting – reduction in demand transfers would occur, 2001 budget for the State of Kansas, school finance formula changes, increases in property reappraisals, recommendation that Leawood's Arts Council be connected to the Metropolitan Arts Council as well as the Johnson County Arts and Humanities Association regarding the language of the cultural arts prospects for the new bi-state tax, update on the Johnson County Charter Commission;
- d. Leawood Appreciation Day on May 20th at the Kansas City Wizards game.

8. OLD BUSINESS

A. Resolution No. 1524, attached as part of the record, of finding as to the advisability and authorizing the improvement and construction of 133rd Street from Roe Ave. to Mission Rd. Councilmember Rasmussen moved to adopt the resolution, seconded by Rawlings. Residents addressed the Council about construction of 133rd St. and its impact on stormwater drainage (flooding) in the area of the undeveloped Jameson tract between Roe and Mission. The need for aesthetics and landscaping (berming and trees) at least on the north side of the road prior to the development of the Jameson tract to mitigate the impact of the road on adjacent residential properties was also a concern.

Councilmember Story said that most likely the location of the road would not be changed, but if the resolutions authorizing the improvement were adopted, then the City Attorney could be directed to review what was approved for the Price Chopper project a few weeks ago and determine if any latitude existed as it related to berming and landscaping. In the design phase for 133rd St., residents could give their input, comments and concerns to the design engineers.

Councilmember Gill said that the resolutions indicated that the project generally consisted of a road, guttering, lighting, etc., and "such other appurtenances" as were required pursuant to the final plans approved by the City. Why wouldn't a landscaping plan or concept be considered an appurtenance? City Attorney Bennett said it would, but the landscaping would be placed on private property and that was a problem; she would need to review the road plans.

Mr. Rasmussen's motion to adopt the resolution carried; Gulledge opposed (the issues that residents of Wilshire spoke about hadn't been addressed); Bussing, Rawlings, Dunn, Story, Gill, Rasmussen, Taylor in favor. Mr. Gill's approval was based on the advice that the word "appurtenances" included the right to landscape and the easement the City received included the right to get access if it didn't have it; if there were different meanings to "appurtenances" or the rights of the easement, then he was opposed and it was in conflict with the settlement and would not be pursuant to the settlement.

B. Resolution No. 1525, attached as part of the record, of finding as to the advisability and authorizing the improvement and construction of 133rd Street from Mission Rd. to State Line Rd. Adopted unanimously on motion of Rasmussen, seconded by Rawlings.

C. Discussion of draft of design-build agreement. There was discussion about the design/builder's fee on page 41 (6.5.1.3), the guaranteed maximum price/savings on page 32 (5.1), the contingency on page 38 (5.15) being refunded 100% to the City if 5.15 remained in the contract (it wasn't normally part of a design/build sum according to Councilmember Taylor), insurance requirements (Exhibit L) including the need for builders risk noted on page 83 to be considered by staff.

Councilmember Rasmussen moved that it be resolved that the design/build agreement reflected the policy of the Council to be adhered to and that it be forwarded to the City Attorney for legal review, then returned to the Council for formal action. Motion seconded by Dunn and carried unanimously.

Mr. Rasmussen moved that the Mayor dissolve the reactivated ad hoc Contract Review Committee, seconded by Dunn and carried unanimously.

D. Discussion of concerns/damage at Ironhorse Golf Course. Sam Maupin, Building Official, reported that staff was making progress at the golf course areas where either construction activity or homeowners were possibly causing damage, and working with the City Attorney on certain issues.

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

E. Discussion of waiving the 6-month waiting period between the denial of a plan and the filing of a new plan for the Columbian Bank drive thru commercial bank facility at 4701 College Blvd. denied at the April 17th Council meeting. Councilmember Bussing moved to waive the 6-month waiting period because he understood that the applicant was willing to make changes to the plan which would constitute an entirely new plan to go before the Plan Commission and Council with notice to residents and he didn't see any benefit in the 6-month waiting period. Motion seconded by Story.

Councilmember Rasmussen moved to amend the motion to state that the matter not return to the Council before August, seconded by Gill.

Residents were invited to address the Council - two from Leawood Country Manor spoke in opposition to the waiver.

Motion to amend the motion carried; Taylor, Story, Gullledge, Bussing opposed; Rasmussen, Gill, Rawlings, Dunn in favor; the Mayor in favor.

Mr. Bussing's motion as amended carried; Rasmussen, Taylor opposed; Gullledge, Bussing, Rawlings, Dunn, Story, Gill in favor.

9. NEW BUSINESS

A. Approval of Appropriation Ordinance No. 891. On motion of Bussing, seconded by Dunn, Council unanimously passed the ordinance on roll call vote.

B. Authorize contract for design of 133rd St. improvements, State Line Rd. to Roe Ave. Councilmember Gill moved to approve a contract with Shafer, Kline & Warren in the amount of \$225,900 with a slight clarification to the scope of services to be sure that aesthetic appurtenances were taken into consideration, adding wording wherever the City Attorney deemed appropriate. He suggested that paragraph 1 of Preliminary Design Phase read "In consultation with the City, determine the extent of the Project, to include appurtenances designed for aesthetic buffering." Motion seconded by Bussing.

The Mayor asked why the usual engineering selection procedure by the Public Works Committee wasn't followed. Public Works Director Johnson said for the record that 1) SK&W was already the design engineer for the site improvements for the Price Chopper project (he wanted to avoid having 3 engineers trying to coordinate 3 projects), and 2) there was a timing issue in trying to get 133rd St. built not only for AWG but also for Wilshire as discussed earlier; the selection process would take about 6-8 weeks and to delay the design for that period of time wasn't acceptable to the Wilshire developers nor AWG.

With regard to making the changes in the scope of services suggested by Mr. Gill, Mr. Johnson noted that the scope was SK&W's which they attached to the City's standard contract. Mr. Johnson said he didn't know how the changes would affect their fee. It was pretty open as to what was going to be required of SK&W for landscaping. As they reached that point, Mr. Johnson might be back before the Council with an addendum to the design contract which would include designing plans to accommodate the residents of Wilshire for landscaping. Then there would be an increase in construction costs to accommodate the landscaping.

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Mr. Gill's motion carried unanimously.

C. Authorize architectural services agreement for design of South and Nall Parks.

On motion of Taylor, seconded by Rasmussen, Council unanimously approved the agreement with Theis Doolittle Associates, Inc. in the amount of \$484,500.

D. Authorize contract for design of stormwater management project IC-04-039, Indian Creek near 104th and State Line Rd. On motion of Dunn, seconded by Bussing, Council unanimously approved a contract with Olsson Associates in the amount of \$79,200, City's share to be 25% or \$19,800.

E. Authorize contract for surveying services for a non-SMAC storm drainage improvement project, 121st and State Line Rd. On motion of Taylor, seconded by Bussing, Council unanimously approved a contract with Landplan Engineering in the amount of \$5,150.

11:30 P.M. On motion of Bussing, seconded by Rasmussen, Council voted unanimously to extend the meeting to 12:00 A.M.

F. Authorize Right-of-Way Maintenance Agreement for Highlands Ranch 2nd Plat – to allow the developer to install certain amenities in street right-of-way and setting forth the developer's responsibilities for maintaining the amenities. On motion of Rasmussen, seconded by Dunn, Council unanimously approved the agreement.

G. Authorize agreement to renew participation in the Johnson County Urban County Consortium for participation in the Community Development Block Grant and Home Investment Partnership Programs beginning with federal fiscal years 2001, 2002 and 2003. On motion of Bussing, seconded by Gulledge, Council unanimously approved the agreement.

H. Authorize interlocal agreement with Johnson County relating to the development of a countywide hazard mitigation plan and community infrastructure plan. On motion of Dunn, seconded by Rawlings, Council unanimously approved the agreement.

I. Ordinance No. 1864 accepting a permanent drainage easement for storm drainage facilities as shown on the plans for The Woods. On motion of Taylor, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

J. Schedule executive session. On motion of Bussing, seconded by Gulledge, 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 a personnel matter.

10. OTHER BUSINESS

A. Discussion of senior citizen recreational facilities. Councilmember Rasmussen moved to direct the City Administrator to report back to the Council (within 60 days) on the programs that Leawood had for senior citizens, how they integrated with County programs/agencies, seconded by Story and carried unanimously.

B. Discussion of the area in the vicinity of U.S. Toy and Fritz's Meat Co., 103rd and State Line Rd., what had become a major eyesore to the neighboring residential property owners. Councilmember Rasmussen moved to direct the City Administrator to report back to the Council (within 60 days) as to the extent, if any, or all, that the zoning rules, regulations and ordinances relating to the property from 103rd St. basically down to Indian Creek and backing up to Sagamore had been complied with (which would require research going back several years). Motion seconded by Taylor and carried unanimously.

11. ADJOURN. 11:45 P.M. Council convened in executive session and returned to regular session at 12:15 A.M. There being no further business before the Council, the meeting was adjourned.

Martha Heizer, City Clerk