

Minutes

Audio Tape No. 506

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., on Monday, March 5, 2001. Mayor Peggy J. Dunn presided.

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

Staff present:

Patricia A. Bennett, City Attorney
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Sid Mitchell, Chief of Police
Julie Hakan, Human Resources Director
Chris Claxton, Parks & Recreation Director
Scott Barton, Police Captain
Martha Heizer, City Clerk

Ben C. Florance, Fire Chief
Diane Binckley, Planning/Develop. Dir.
Jeff Cantrell, Neighborhood Serv. Admin.
Sarah Hilton, Admin. Services Manager
Mark Andrasik, Information Services Dir.
Brian Anderson, Parks Supervisor
Deb Harper, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

150 **2. APPROVAL OF AGENDA**

A presentation by the Leawood Chamber of Commerce to the Leawood Arts Council was added under Item 4. The Mayor noted that Items 8.A. through 8.E. and Item 9.A. were continued to the April 2, 2001, Governing Body meeting. The agenda as amended was approved unanimously on motion of Bussing, seconded by Rasmussen.

3. PROCLAMATION

The Mayor proclaimed March 2001 as "National Athletic Training Month."

200 **4. PRESENTATION**

The Mayor presented a plaque to Finance Director Kathy Rogers - the Certificate of Achievement for Excellence in Financial Reporting awarded to the City by the Government Finance Officers Association of the United States and Canada (GFOA)

for the City's comprehensive annual financial report (CAFR) for fiscal year ended December 31, 1999. An Award of Financial Reporting Achievement was also awarded to Mrs. Rogers as the person primarily responsible for preparing the CAFR.

The Leawood Chamber of Commerce and Leawood Arts Council recently collaborated to present an event – Spotlight on Leawood hosted by AMC Theaters – which was a fund-raiser for the Chamber and Arts Council. Marga Spangler, past Chairman of the Chamber, presented the Mayor and Arts Council Chairman Mary Tearney a check for \$6,000, the Arts Council's half of the proceeds.

356 **5. CITIZEN COMMENTS**

Steve Schwendemann, representative of Metromedia Fiber Network Services, addressed the Governing Body about an interim construction agreement to be considered under the Consent Agenda. Metromedia wanted to place fiber optic cable in conduits owned by Axon Telecom which were already in the public right-of-way, and place a small portion of their own conduit in the right-of-way. They were granted two permits by the City to install the fiber optic cable, but were denied a third permit because they didn't have a franchise. It was Metromedia's position, under State law, that the City didn't have the right to require them to obtain a franchise because they didn't have any customers in Leawood and were merely passing through the City. The company finally agreed, in order to resolve the matter, that they would get a franchise and an interim construction agreement. Mr. Schwendemann said that the agreement on the Consent Agenda wasn't the agreement his company was willing to agree to; it contained an outright prohibition on their rights to transmit across the fiber optic cable. There was another agreement that the City Attorney had that his company wanted the Council to consider. He said that requirements regarding use of fiber optic cable needed to be 100% in a franchise agreement, not in a construction agreement. Even a prohibition on use shouldn't be in a construction agreement, but be reserved for a franchise agreement. City Attorney Bennett said that the agreement was pretty much the City's standard interim construction agreement allowed for Axon previously and American Fiber, also to be considered under the Consent Agenda. She said that staff recommended the standard agreement, and obviously, if Metromedia didn't accept it, it wouldn't be effective.

780 **6. CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Appropriation Ordinance No. 912
- B. Minutes of the February 20, 2001, Governing Body meeting
- C. Minutes of the January 16, 2001, Arts Council meeting
- D. Minutes of the February 2, 2001, Records Management Committee meeting
- E. Minutes of the February 14, 2001, Public Works Committee meeting
- F. Minutes of the February 15, 2001, Records Management Committee meeting
- G. Minutes of the February 28, 2001, Strategic Spending Committee meeting
- H. Bid in the amount of \$1.08 per sq. yd., for a total amount not to exceed \$150,000, from low bidder Musselman & Hall Contractors for the 2001 Slurry Seal Program

- I. Approve bid and authorize execution of Construction Agreement with second low bidder Weigel Construction, Inc., in the amount of \$103,417 for construction of the Parks & Recreation Maintenance Building to be located at Leawood City Park
- J. Bid in the amount of \$117,177 from Shawnee Mission Ford for the purchase of 7 Ford Crown Victoria police vehicles
- K. Bid in the amount of \$15,000 from Ericsson for the purchase of an 800MHz police radio antenna (for cellular tower at 135th & Nall)
- L. Bid in the amount of \$10,750 from Christopher Hedges for electrical work on the temporary office facility at the Police Department, 9617 Lee Blvd.
- M. Bid in the amount of \$5,450 from Super-Clean for plumbing work on the temporary office facility at the Police Department, 9617 Lee Blvd.
- N. Bid in the amount of \$17,700 from Kustom Signals, Inc., for the purchase of 11 police radar units
- O. Purchase request in the amount of \$18,475 from Hummert International to purchase equipment to construct a Greenhouse to be located at the Parks/Public Works Maintenance Facility at 2008 W. 104th St.
- P. Approve and authorize execution of a Lease Agreement with ISO Capital in the amount of \$29,040 for additional copy machines for various departments
- Q. Approve and authorize execution of an Interim Rights-of-Way Construction Agreement with Metromedia Fiber Network, Inc., to provide telecommunication services
- R. Approve and authorize execution of an Interim Rights-of-Way Construction Agreement with American Fiber Systems to provide telecommunication services
- S. Resolution No. 1591 establishing a fee, not specifically provided for in the Code of the City of Leawood, 2000, for reproduction of audiotapes, in accordance with the Open Records Act, K.S.A. 45-215, et seq.

On motion of Rasmussen, seconded by Gullede, the Consent Agenda was approved unanimously. The Mayor commented that Items 6.D. and 6.F. were in-house committee reports that didn't need to be on the agenda, and that for matters like Items 6.L. and 6.M., it would be helpful for the Governing Body to see bidders and quoted prices in staff memos.

860 **7. MAYOR'S REPORT**

- ?? Youth Art & Music Month (March) - art exhibit and music performance featuring Prairie Star Elementary School students, 6:30 P.M. prior to Council meeting
- ?? Thanked Finance Director Kathy Rogers for her report on 2001 change in appraised and assessed valuation in Leawood distributed in Council packets
- ?? Blue Valley Education Foundation Selection Committee for 2001 Sunflower Celebration on April 4th to honor public education in Blue Valley; K.U. Basketball Coach Roy Williams to receive the Blue Valley Good Neighbor Award
- ?? Merriam Mayor Irene French received first annual Kansas Mayor of the Year Award
- ?? Councilmember Rasmussen's legislative testimony on Kansas Senate Bill No. 306 regarding use of public rights-of-way by telecommunications providers

?? Participated in Read Across America on Dr. Seuss' birthday at Prairie Star Elementary

8. PLAN COMMISSION RECOMMENDATIONS

- A. Resolution approving recommendation regarding preliminary site plan, preliminary plat, and rezoning request from RP-2 (Planned Two-Family Residential) and AG (Agricultural) to R-1, Single Family Residential; RP-3, Planned Apartment House Residential; and AG, Agricultural, for an apartment complex and single family dwellings located within Pine Lakes subdivision at 137th & Mission Road – tabled to the April 2, 2001, Governing Body meeting.**
- B. Ordinance rezoning from RP-2, Planned Two-Family Residential, to RP-3, Planned Apartment House Residential, for property located within Pine Lakes subdivision at the southeast corner of 137th & Mission Road – tabled to the April 2, 2001, Governing Body meeting.**
- C. Ordinance rezoning from AG, Agricultural, to RP-3, Planned Apartment House Residential, for property located within Pine Lakes subdivision at the southeast corner of 137th & Mission Road – tabled to the April 2, 2001, Governing Body meeting.**
- D. Ordinance rezoning from RP-2, Planned Two-Family Residential, to AG, Agricultural, for property located within Pine Lakes subdivision at the southeast corner of 137th & Mission Road – tabled to the April 2, 2001, Governing Body meeting.**
- E. Ordinance rezoning from AG, Agricultural, to R-1, Single Family Residential, for property located within Pine Lakes subdivision at the southeast corner of 137th & Mission Road – tabled to the April 2, 2001, Governing Body meeting.**
- F. Resolution No. 1592 approving preliminary site plan for Financial Advisory Services office building located within Plaza Pointe Development at 135th and Roe Avenue [tabled from 02/20/2001 Governing Body meeting].**

1010

Adopted unanimously on motion of Gill, seconded by Story.

G. Approve Special Use Permit (SUP) for a sport court located at 13000 Meadow Lane in the Greenbrier of Leawood subdivision (Applicant: Hovelsrud).

The Plan Commission recommended denial because they felt the size of the court was too large for the area for which it was proposed, it was difficult to monitor and control the number of unsupervised youths who might use the court, and noise might create a nuisance for adjoining properties.

1395 Christine Vogt, 12854 Sagamore, directly north of the proposed sport court, was concerned that the court would add more water to an already bad runoff problem, and was concerned about noise and youth supervision. Cheryl Mattke, 12856 Sagamore, was concerned about increased flooding and possible mosquito infestation in the summer, unwanted noise, and negative impact on property values. Lynn Dishon, 12852 Sagamore, was concerned about noise and effect on resale value.

1846 Councilmember Bussing was concerned about what appeared to him to be the subjective rationale that the Plan Commission used to recommend denial. The size of the court “is too large” seemed to be way too subjective a measure as a reason for denial. He said that staff couldn’t find any ordinance that addressed monitoring and controlling the number of unsupervised youths. He felt the Commission’s reason for denial about noise was a totally ambiguous and subjective judgment. Decisions needed to be based on objective criteria founded in City ordinances. Mr. Bussing moved to remand the matter to the Plan Commission to have the Commission provide an explanation of the rationale for their recommendation for denial, what criteria did they use to arrive at their 3 reasons for denial. Motion seconded by Gullede. Councilmember Gill asked Mr. Bussing to reconsider a remand; he talked about the special use ordinance for unique situations or uses that were exceptions rather than rules without rights or entitlements. Mr. Gill hoped for a compromise, to raise the minimum standards to facilitate the applicant but to also be respectful of neighbors’ concerns. Councilmember Rasmussen felt a continuance would be a satisfactory approach to provide the applicant and neighbors a chance to come up with a solution. Mr. Gullede withdrew his second to Mr. Bussing’s motion to remand; there was no other second.

Mr. Rasmussen moved to continue the matter to the April 2, 2001, Governing Body meeting to see if the parties involved could come up with a feasible accommodation of their needs and desires, seconded by Gullede. Staff would moderate the matter through City Hall. Mr. Gill suggested some stipulations: 1) no more lights; 2) a licensed water engineer to certify the plans for the drains so there would be no incremental flow coming off the site that wasn’t captured; 3) there would be some discussion about the hours of use; 4) sport court not to be used for team or group activities, but be for private use by applicant’s children and their friends; 5) there would be 1 basketball pole; 6) there would be discussion about size reductions/considerations; 7) landscaping with aggressive growth for a solid screen year round, with aggressive growth; 8) the

special use permit should be of limited duration, perhaps 5 years. Mr. Rasmussen's motion carried; Bussing opposed (he preferred a remand); Gullede, Story, Gill, Rasmussen in favor.

2622 **H. Approve Special Use Permit (SUP) for a temporary sales information trailer (for Grace Gardens) located on the southeast corner of 143rd & Nall (Applicant: Baptist Foundation of Kansas City).**

On motion of Rasmussen, seconded by Story, Council unanimously approved a permit limited to 2 years from the date of issuance of a building permit.

9. OLD BUSINESS

A. Ordinance amending Section 11-205 of the Code of the City of Leawood, Kansas, 2000, pertaining to Disturbing the Peace – tabled to the April 2, 2001, Governing Body meeting.

2675 **B. Staff update on Wilshire landscaping pertaining to the 133rd Street Benefit District Project.**

There had been several meetings with Wilshire residents regarding landscaping along their south property lines. At the last meeting, everyone agreed with the proposed landscaping. Shafer, Kline & Warren was finalizing the plans to be bid as part of the 133rd Street improvement, estimated cost of \$77,349.00 to be part of the improvement district costs. SK&W was working on the legal description for the easement the Jameson Trust would sign to permit the landscaping and interim maintenance. The only outstanding issue was whether the City or Wilshire property owners would maintain the landscaping between now and the time the Jameson tract was developed, at which time the Jamesons would take over maintenance. Staff recommended the approval of the landscaping plan and asked for direction on the maintenance issue. With mowing kept to a minimum, the maintenance issue was focused on trees and shrubs. City Attorney Bennett clarified that the easement would be written that it was the City's responsibility or its designee to maintain the landscaping, so if the City arrived at an agreement with Wilshire residents, then the City would have the right to convey that duty to them. Councilmember Rasmussen believed that the public interest was served in starting the landscaping, and by the very fact that the City had control about when the turnover would occur, he felt the City should maintain it in the interim period, even though he recognized it wasn't the City's usual policy to maintain landscaping on private property, but construction of 133rd St. was a unique situation.

3242 Councilmember Bussing recalled that the accelerated development of the land was solely for the benefit of Wilshire residents, so landscaping maintenance should be their responsibility; he was opposed to the City incurring ongoing maintenance costs for what could be several years. Alec Weinberg, 13252 Delmar Ct., represented the Wilshire Homes Association. He said that the Association couldn't maintain the landscaping, wasn't empowered as a homes association to maintain property that wasn't part of the association. He said from a general standpoint, he thought residents abutting the development would probably agree to maintain the landscaping. Mr. Weinberg already maintained a berm adjacent to his property. Mr. Bussing was concerned

that a homeowner could agree to maintain the property, then change his mind, then by default, the City would have to maintain it. It was noted that property owners would accept maintenance responsibility with some type of written instrument.

3930 Mr. Gulledge moved to approve the landscaping plan as outlined as well as maintaining the landscaping program through the City until such time as the Jameson Tract was developed, seconded by Rasmussen. There was discussion about reducing maintenance costs by putting in a watering system and adding it to the benefit district along with water costs, and subcontracting required mowing under the City's current median and rights-of-way mowing contract. Mr. Gulledge added to his motion that Mr. Weinberg would talk to the other 15-17 homeowners to determine whether or not they would assume some responsibility for maintenance and return to Council with their answers. Mr. Story made a friendly amendment to state that Council approve the landscaping plan as designed and presented and delay decision on the final implementation of the landscaping plan and payment of the maintenance cost associated with that landscaping plan until such time as Mr. Weinberg had the opportunity to discuss with the residents immediately adjacent to the subject easement their willingness to participate to some degree in the maintenance of that property. Public Works Director Johnson said he would meet with SK&W to tell them that an irrigation system was a possibility, go under the assumption that the landscaping would be similar to the maintenance of that at Hallbrook along 119th St., would work with Parks Supervisor Brian Anderson to put together an annual maintenance cost to maintain the landscaping in that fashion, and bring back the additional cost to add an irrigation system. Mr. Story clarified that his friendly amendment was intended to suggest approval of the plant selection, the number of plants, as designed in the landscaping plan, not to exclude anything additional that might be suggested by staff or worked out by Council and residents. Mr. Gulledge's motion (as underlined) carried unanimously.

10. NEW BUSINESS

4660 **A. Schedule Strategic Planning Work Sessions to be held on Thursday, March 15, 2001, from 5:30 P.M. to 9:30 P.M., and on Tuesday, March 27, 2001, from 5:30 P.M. to 9:30 P.M.**

So scheduled unanimously on motion of Rasmussen, seconded by Bussing.

4690 **B. Resolution No. 1593 requesting Johnson County, Kansas, participation in the City's 5-Year Capital Improvement Program through the County's Assisted Road System (C.A.R.S.) Program for 2002-2006.**

Adopted unanimously on motion of Rasmussen, seconded by Gill.

4750 **C. Ordinance No. 1885C amending Section 13-102 of the Code of the City of Leawood, Kansas, 2000, pertaining to Construction Standards.**

On motion of Rasmussen, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

11. OTHER BUSINESS – None

12. EXECUTIVE SESSION

A. Attorney/Client Privilege-Pending Litigation.

On motion of Bussing, seconded by Story, Council voted unanimously to convene in executive session for a period not to exceed 35 minutes to discuss attorney/client privilege-pending litigation matters.

4800 Council convened in executive session at 10:00 P.M. They reconvened into regular session at 10:40 P.M. On motion of Bussing, seconded by Gill, Council voted unanimously to extend the executive session for 17 minutes. Council reconvened into executive session at 10:43 P.M. and reconvened into regular session at 11:00 P.M. Councilmember Gill moved to authorize the Mayor to sign the Rhodes release, as drafted from the last meeting, with the following modification at the end of the first substantive paragraph: Provided, however, that the City is not released for its failure to timely construct the improvements referenced herein, if such failure is for reasons within the City's control, and to further attach the plan profile for the improvements to the release. Motion seconded by Bussing and carried unanimously.

ADJOURN. On motion of Gill, seconded by Story, Council voted unanimously to adjourn the meeting at 11:20 P.M.

Martha Heizer, City Clerk