

Minutes

Audio Tape Nos. 511 & 512

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, April 16, 2001. Mayor Peggy J. Dunn presided.

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

Staff present:

Patricia A. Bennett, City Attorney
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Sid Mitchell, Police Chief
Chris Claxton, Parks & Recreation Director
Martha Heizer, City Clerk

Ben C. Florance, Fire Chief
Diane Binckley, Planning/Develop. Dir.
Sarah Hilton, Admin. Services Manager
Mark Andrasik, Info. Services Director
Deb Harper, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

320 **2. APPROVAL OF AGENDA**

Items 6.O., request to purchase Police radios, and 6.P., acceptance of report from the Police Needs Task Force, were added. It was noted that Items 8.A. and 9.A. had been withdrawn. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the agenda as amended.

395 **3. PRESENTATION**

Lew Herman of the audit firm Cochran Head & Co. gave a presentation on the results of the audit of financial statements for 2000; the presentation included information about a new required financial reporting model, a very significant change for the Finance Department and the City, with financial statements to be on a full accrual basis of accounting, to present the full financial condition of the City. Finance Director Kathy Rogers introduced her staff and thanked them for their work in the Department.

4. PROCLAMATIONS

Student Achievement Days, Showcasing Student Excellence – April 26-29, 2001
Arbor Day – April 27, 2001

5. CITIZEN COMMENTS – None.

1560 **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. 915
- B. Minutes of the April 2, 2001, Governing Body meeting
- C. Minutes of the March 13, 2001, Historic Commission meeting
- D. Minutes of the March 13, 2001, Parks & Recreation Advisory Board meeting
- E. Departmental reports
- F. Approval and acceptance of audited Financial Statements for 2000
- G. First Quarter 2001 Action Center report
- H. Approval of permit for fireworks display at Ironhorse Golf Course 7th Hole on June 2, 2001 [Applicant: Mark Simpson]
- I. Temporary one-day permit to sell/serve alcoholic beverages at City Hall Courtyard on June 9, 2001, for a fund-raising event [Applicant: Leawood Chamber of Commerce]
- J. Resolution No. 1606 designating Leawood City Hall Courtyard as a portion of the Leawood Community Center to conduct a fund-raising event on June 9, 2001, in accordance with Leawood Code Section 3-207 (re sale/service of alcoholic beverages)
- K. Approve and authorize execution of an agreement with Black & Veatch for engineering design services in the amount of \$693,608 for channel improvements from 82nd Terr. & Wenonga to 900 feet south of 86th St. & Cherokee Lane [SMAC Project DB-04-024]
- L. Approve bid in the amount of \$2,356,759.90 from low bidder Seal-O-Matic Paving Company for 2001 Street Improvement Program [PW Project #01-003]
- M. Approve bid in the amount of \$161,146.45 from McCorkendale Construction Company (the only bidder) for 143rd & Granada reinforced concrete box culvert construction [PW Project #01-069]
- N. Approve low bid in the amount of \$13,723 from Office Max for Police Department office furniture
- O. Purchase of (13) 800MHz mobile radios for \$6,500 for the Police Department
- P. Acceptance of Police Needs Task Force report

Items 6.K, N, and P were removed from the Consent Agenda for discussion. On motion of Dunn, seconded by Story, Council unanimously approved the remainder of the Consent Agenda. The Mayor asked that Item 9.H. (Resolution No. 1605) of the April 2, 2001, Governing Body minutes reflect that a valid protest petition had been filed. The Mayor also commented on 6.H.; she assumed that the fireworks would be similar to those that Council approved for the Y2K celebrations and Fire Chief Florance confirmed that they would be.

6.K. The design fee was 15% of the total construction cost of \$4,595,000 estimated in the preliminary engineering study phase. The Mayor thought that was a high percentage for design. Public Works Director Johnson explained that design was only about 8 or 9%, that other items such as survey work

and meetings with property owners were included in the 15%. Mr. Johnson added that he felt there was more than just a bare majority of property owners who were in favor of the project, and that easements would be obtained from the property owners as early in the process as possible. On motion of Rasmussen, seconded by Dunn, Council unanimously approved the execution of the agreement.

6.N. Councilmember Taylor thanked Chief Mitchell for soliciting bids from more than one vendor. On motion of Taylor, seconded by Rasmussen, Council unanimously approved the bid from Office Max.

6.P. Councilmember Story, Chairman of the Police Needs Task Force, thanked Task Force members for their work. Councilmember Rasmussen moved to accept the Task Force's report, seconded by Rawlings. Motion carried unanimously.

2185 **7. MAYOR'S REPORT**

- ?? Thanked the Police Needs Task Force for their work (their report was accepted by Council under the Consent Agenda)
- ?? Council of Mayors meeting hosted by Wyandotte County/Kansas City, Kansas Mayor Carol Marinovich at Nascar Race Track – discussed Senate Bill No. 306 re telecommunications and use of public rights-of-way, and Mayor Dunn was elected new chairman of the Council of Mayors
- ?? Open House for Kansas City Orthopedic Institute in Leawood
- ?? Kansas City Young Matrons program regarding Leawood versus Kansas City, Missouri issues
- ?? Invitation from Elizabeth Chu for the Grand Opening Reception of "Embracing Taiwan Photographic Exhibition" at UMKC
- ?? Congratulated Parks & Recreation on their terrific summer program guide, and the lifeguard staff on their "2000 Bronze National Aquatic Safety Award"
- ?? Reminded Council of work session, 6:00 P.M., May 7th, regarding the CIP

8. COMMITTEE RECOMMENDATIONS

PLAN COMMISSION

[from 01-23-2001 Plan Commission meeting]

- A. Approve Special Use Permit [SUP] for a sport court located at 13000 Meadow Lane. [Applicant: Hovelsrud] – APPLICATION WITHDRAWN**

[from 03-27-2001 Plan Commission meeting]

2475 **B. Resolution No. 1607 approving preliminary site plan and a Conditional Use Permit for a daycare located at approximately 137th Street and Roe Avenue, Plaza Pointe Lot 5. [Applicant: Interplan, representing Primrose Daycare]**

Applicant Troy Castro of Interplan of Orlando, Florida, national architects and civil engineers for Primrose Daycare Centers, gave a presentation. Councilmember Dunn moved to adopt the resolution, seconded by Gullede. Motion carried; Gullede, Rawlings, Dunn, Story, Gill, Rasmussen, Taylor in favor; Bussing opposed (he felt that the land use and development were inconsistent with the view of the 135th Street Corridor Plan). The CUP was for an indefinite period of time.

3340 **C. Resolution approving preliminary site plan and final site plan for a Public Works Facility to be located at 14303 Overbrook Road. [Applicant: City of Leawood]**

Jeff DeGasperi, project architect, gave a presentation.

4130 Public Works Director Johnson talked about 3 interact meetings with surrounding property owners and noted their concerns – 1) they wanted the City to change the outside appearance of the buildings using a stucco/brick alternative in place of metal sidings, 2) they wanted to look at additional landscaping, berming, a wrought iron fence with concrete pillars placed every so often versus a solid stucco type of wall, irrigation, monument signs, a different building color, and changes in roof material. A big concern was screening the site to make it less noticeable from the residential development and buildings in the Bi-State development. Mr. Johnson said that the City would be able to build a 5-6 foot tall berm along Kenneth Road and landscape it; staff looked at options for putting up 2 different types of fences along the right-of-way, and looked at changing the metal sidings to a stucco material. If Council wanted to change the appearance of the buildings with a stucco material, there would be about \$385,000 additional cost; with dryvit, which wasn't the same quality as stucco, there would be about \$287,000 to change out. Staff looked at irrigating the area along Kenneth Road only at a cost of about \$17,000. A brick and wrought iron fence would cost about \$55,000; a solid stucco type of fence would cost about \$80,000; 5-6 feet of berming would be about \$30,000 (which included the landscaping). Parties also talked about doing different things with the roof material and roof line; to change either would require changes in the HVAC structural designs, and the cost was fairly high to do that. The roof color would be darker.

4900 Chug Tuttle, 5109 W. 111th Terr., hoped the City would reconsider certain building materials even though they cost more in order to maintain the same high standards and quality that the City expected from its citizens and businesses.

Attorney John Petersen, on behalf of Bi-State Development Corporation and Camden Ventures (developer of residential community Camden Woods), said the parties hadn't yet reached a good level of compromise. He addressed the concern about the visual impact of the project as proposed. He noted several items of the project that were outside the design standards of the City – 1) metal buildings; they were not allowed in a business park in Leawood; 2) Leawood code prohibited outside

storage and outside activity in a lot in a business park area, and outside storage and activity were obviously going to take place; 3) Leawood code required that all vehicles be stored and screened; “carports” (with no doors) were not allowed; 4) screening of all trash enclosures was required; 5) in terms of landscaping, Leawood code used the term “park-like landscaping” and required full irrigation of all landscaping. He said he was hearing that the City didn’t have to follow its own code, and if the City met the concerns of surrounding developments, it would be expensive and might not be within the City’s budget and might not balance out to where the City could do the project.

Mr. Petersen had 3 requests – 1) no metal buildings; whatever alternative material was chosen, all 4 sides should be treated the same as contemplated for a business park; 2) the pitch of the roof looked like a shed rather than a business park building, of particular concern to Camden Woods; the pitch should be brought up a little bit to look more aesthetically pleasing; 3) an increase in the application of the landscaping along the north property line. The 6-foot berm would be very much appreciated and a stucco fence would be great to ring the site. He wanted a doubling of the landscaping proposed on the perimeter and irrigation of the perimeter.

6870 There was discussion about some of Mr. Petersen’s remarks about the City’s compliance with its own codes.

8490 Councilmember Gill felt the appearance of the buildings needed to be upgraded. He wanted to know whether or not there were usage restrictions imposed so the City didn’t build a multi-million dollar structure and find out that there couldn’t be any outside storage or activities, not be able to do with the property what it had planned. If it was to turn out that the City’s usage restrictions were impaired or subject to future challenge, he felt the Council needed to deal with it now.

9090 Councilmember Gulledge felt there were too many questions yet to be answered for him to vote in favor of the project. He wanted to know the costs for items that Mr. Petersen requested – visual impact, landscaping, and the pitch of the roof.

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50 Mr. Gulledge continued. He wouldn’t approve a metal building project for a developer; it wasn’t what the City held people accountable to. It was difficult for him to say that it was alright for the City to build one, but not a developer.

575 Councilmember Dunn said that staff and the Public Works Committee had spent many hours trying to build a quality project at significant savings that complied with City code. Before Council decided that the project was of such a quality that they had to spend a quarter million or more dollars changing the design, at the very least, they needed to ask the City Attorney to look at the specific questions raised by Mr. Petersen and advise if there was a problem with the code. Councilmember Story wanted to know

that the City could use the property for a public works facility without a variance; hopefully the answer would be “yes.”

1230 Councilmember Rasmussen thought that the issue was one of the reasons why cities were exempt from their own codes because of the diverse variety of uses that could occur, because of the various things cities were involved in.

1425 Mr. Gullede moved to continue the matter to the May 7, 2001, Governing Body meeting in order to pursue the items discussed, seconded by Bussing. Councilmember Gill was particularly interested in costs associated with Mr. Petersen’s requests, further dialogue with Mr. Petersen’s group, and elevation drawings to illustrate visual impact. Motion carried; Gullede, Bussing, Rawlings, Story, Gill in favor; Dunn, Rasmussen, Taylor opposed.

1765 **D. Resolution No. 1608 approving preliminary site plan and plat for Scottsdale Asset Management II Office Building to be located at 4901 College Boulevard. [Applicant: Chuck Peters]**

Chuck Peters gave a presentation. Chug Tuttle, 5109 W. 111th Terr., President of the Leawood Country Manor Homes Association, said that the Association supported the building. On motion of Rawlings, seconded by Rasmussen, Council unanimously adopted the resolution.

2105 **E. Approve a Special Use Permit [SUP] for temporary office buildings located at 14200 Kenneth Road. [Applicant: Christ Community Church]**

The applicant wasn’t present. The SUP would be the third SUP granted to the Church and would be the last extension granted. Councilmember Taylor moved to continue the matter to the May 7, 2001, Governing Body meeting for the applicant to be present to explain why they needed another extension. Motion seconded by Gill and carried unanimously.

PUBLIC WORKS COMMITTEE

[from 03/28/2001 Public Works Committee meeting]

2510 **A. Recommendation regarding SMAC Cash Flow Analysis.**

Councilmember Dunn, Chairman of the Public Works Committee, explained the Committee’s recommendation for a “mini-capital improvements plan” for non-SMAC funded stormwater projects. The City collected a one-eighth cent sales tax that could be used for both street and storm sewer improvements. Staff presented 3 funding options to the Committee, and the Committee recommended the funding level of Option 1 for funding street and storm sewer improvements on an approximately 50/50 basis for a long-range plan for funding of non-SMAC stormwater projects. On motion of Bussing, seconded by Gill, Council unanimously approved the recommendation.

2775 **B. Recommendation regarding prioritization of remaining unimproved arterial streets for federal funding.**

Councilmember Rasmussen moved to approve the Committee's recommendation of staff's street listing, seconded by Taylor. Councilmember Gill was concerned that improvements to Nall, 143rd St. to 151st St., the third street on staff's list, weren't planned until 2007; there was rapid growth in that area with poor infrastructure. Motion carried unanimously.

9. SPECIAL BUSINESS

A. An ordinance granting to American Fiber Systems, Inc., a franchise authorizing the right to construct, operate, and maintain a communications system using the rights-of-way in the City of Leawood, Kansas - WITHDRAWN

2900 **B. Executive Session regarding Pending and Potential Litigation (2 matters).**

On motion of Gill, seconded by Gulledge, Council voted unanimously to convene in executive session for a period not to exceed 30 minutes.

2960 10:20 P.M. Council convened in executive session.

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Council returned to regular session at 10:40 P.M.

C. Approve franchise agreement between the City and Metromedia Fiber Network [MFN].

Councilmember Dunn moved to approve the franchise agreement in ordinance form (**Ordinance No. 1892**) between the City and Metromedia Fiber Network subject to three (3) conditions: 1) an order issued by Judge Lungstrum of the Federal District Court in appropriate form and substance as approved by the City Attorney, 2) a letter from Metromedia regarding its business and regarding the enforceability provisions and the voidability provisions of the agreement be attached to and incorporated in a part of the agreement, and 3) the action which was currently pending between Metromedia and the City of Leawood be dismissed with prejudice with each of the parties to bear its own costs and fees. Motion seconded by Rasmussen. The ordinance was passed unanimously on roll call vote.

D. First Reading of Franchise Ordinance for Metromedia Fiber Network [MFN].

E. Approve Park Land Use Agreement between the City and Metromedia Fiber Network.

Councilmember Rasmussen moved to approve the agreement subject to the same conditions in the motion made for Item 9.C. Motion seconded by Taylor and carried unanimously.

ADJOURN. There being no further business, the meeting was adjourned at 10:45 P.M.

Martha Heizer, City Clerk