

Minutes

Audio Tape Nos. 513 & 514

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, May 7, 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.
Jeff Cantrell, Neighborhood Serv. Admin.
Karl Weinfurter, Info. Systems Specialist
Julie Hakan, Human Resources Director
Deb Harper, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

222 **2. APPROVAL OF AGENDA**

The Mayor noted that Item 11.A. had been tabled to the June 4, 2001, Governing Body meeting. Item 15.B., a personnel matter to be discussed in executive session, was added. On motion of Dunn, seconded by Story, Council unanimously approved the agenda as amended.

275 **3. PRE-BUDGET PUBLIC INPUT ON 2002 BUDGET**

Finance Director Kathy Rogers received input from Mrs. Charles Buster, 2205 W. 104th Terr., regarding senior citizens. She said that Mrs. Buster felt that seniors were overlooked in Leawood. She was aware of the senior luncheons sponsored by the Parks & Recreation Department, but didn't feel they were enough. Leawood needed a senior center. Mrs. Rogers passed Mrs. Buster's comments on to Parks & Recreation.

445 **4. PROCLAMATIONS**

National Public Works Week, May 20-26, 2001 (the Mayor read and presented the proclamation to Public Works Director Johnson)
Historic Preservation Week, May 13-19, 2001

Foster Care Month, May 2001

5. CITIZEN COMMENTS – None.

625 **6. APPEAL – of denied animal permit to allow more than two canines (4) at 4101 W. 124th Street. [Appellant: Sandra Ryals Alig]**

Mrs. Alig gave a presentation. The Mayor noted that the Berkshire Homes Association had its own restrictions on animals, not allowing more than 2 dogs. Mrs. Alig said she would be talking to the homes association after Council's consideration.

1395 Roberta and Terry Dierks, 12405 Catalina, felt the barking was reduced or curbed only after the denial of the permit. The 4 dogs were very "yappy" when outside together. Their dog wouldn't go out in their backyard regardless of the fence unless a family member went out with him. Mrs. Dierks had complained about barking early in the mornings. The Dierks felt that 4 dogs were too many. They felt that the Aligs should have requested a permit for 4 dogs before purchasing the 2 additional puppies. And the homes association allowed only 2 dogs.

Cynthia Gerwe, 4021 W. 124th St., disliked the barking; there was enough barking with 2 dogs, it was hard to control 4 dogs.

1745 In response to Councilmember Gill, City Attorney Bennett said that the City's nuisance ordinance would address excessive barking and barking early in the morning and late at night. There was discussion about a doctor's recommendation to purchase the 2 additional dogs for Mrs. Alig's mother, and about how the barking would be kept under control.

2555 Councilmember Taylor felt there hadn't really been a true test of keeping the barking under control since the 2 additional dogs' purchase last November because since November, the weather had been extremely severe, not permitting the dogs to be outside for very long. The true test would be in the summer when neighbors and dogs would be outside at the same time. Mr. Taylor felt that 4 dogs placed a lot of stress on the neighbors regardless of the 2 additional dogs being a medical solution for Mrs. Alig's mother.

3010 In response to Councilmember Dunn, City Attorney Bennett said the Council could grant a conditional permit through say the end of August to be reviewed at that time. Councilmember Story moved to grant a temporary permit up to the second Council meeting in July to allow the Aligs time to monitor the dogs in an environment that allowed the dogs to be outside more, and to allow the neighbors an opportunity to record their own information, the matter to return to the Council July 16, 2001, for determination. Motion seconded by Taylor. Mr. Story said the motion included all of Mrs. Alig's suggested agreements (including the timing for the dogs to be outside between 8:00 and 10:00 a.m. as much as possible), included everything she had done to date which hopefully would prove sufficient. Mr. Story clarified that the important factors for him on July 16 would be what the neighbors had to say when they returned for a second time to voice their opinions, and said that regardless of Council's action or any

other action, Mrs. Alig was still subject to the City's nuisance ordinance and if violation(s) occurred, any Council action taken tonight would have no effect on that. Mr. Story's motion carried; Bussing, Rawlings, Dunn, Story, Gill, Taylor in favor; Rasmussen, Gullede opposed. Mr. Rasmussen said that Mrs. Alig indicated that in the event her mother left the home, Mrs. Alig would keep the 4 dogs. He said the ordinance was put into effect several years ago to address the number of animals at any particular time at any particular location in terms of adverse effect on neighbors. He also felt that the City was founded on homes associations with covenants running with the land, and historically, the City had supported those covenants. By granting a temporary permit, the Council was forcing the homes associations into unnecessary litigation. Mr. Gullede felt City ordinance should be followed and felt the Council was placing homes associations in an awkward position.

3600

7. 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 Nos. 916 & 917
- B. Minutes of the April 16, 2001, Governing Body meeting
- C. Minutes of the March 28, 2001, Public Works Committee meeting
- D. Minutes of the April 23, 2001, Strategic Spending Committee meeting
- E. Minutes of the March 22, 2001, Golf Course Committee meeting
- F. First Quarter 2001 Goals & Objectives report
- G. Cereal Malt Beverage [CMB] License renewal for Hallbrook Country Club at 11200 Overbrook Rd.
- H. Approve and authorize execution of an agreement in the amount of \$10,740.85 between the City and S.E.C.T. Theater Supplies for a community theater production
- I. Approve and authorize execution of an Amendment to Development/Settlement Agreement between the City of Leawood and Supermarket Developers, Inc., regarding schedule of conveyance of parkland and funds
- J. Approve bid in the amount of \$992,949.73 from low bidder R.A. Knapp Construction for the SMAC Project DB-04-015 located at approximately 84th & State Line Road
- K. Approve bid in the amount of \$980,208.72 from low bidder Seal-0-Matic Paving Co. for Lee Boulevard improvement project [CIP 177], 103rd St. to I-435
- L. Approve bid and authorize execution of contract in the amount of \$2,417,000.00 from lowest base bidder Merit General Contractors, Inc., for the construction of Fire Station No. 3, 14801 Mission Rd.
- M. 3rd and Final Pay Request in the amount of \$26,849.20 to Wiedenmann & Godfrey Construction for pedestrian bridge over Indian Creek
- N. 8th and Final Pay Request in the amount of \$2,000.00 to Obermiller Construction Services for Normandy Place improvements [CIP 164]
- O. 2nd and Final Pay Request in the amount of \$3,679.33 to F & W Construction for the remodel of the lower level of City Hall

- P. Approve declaration of surplus property: Public Works Unit 408, 1991 Ford Explorer (VIN 0223); and miscellaneous Parks & Recreation property
- Q. Mayoral appointment of Governing Body Presiding Officers for 2001-2002: Pat Dunn, May-July 2001; Lou Rasmussen, August-October 2001; Gary Bussing, November 2001-January 2002; and Scott Gullede, February-April 2002
- R. Mayoral appointments to committees/commissions (attached as part of the record)
- S. Approve revisions to Public Art Policy
- T. Configuration of 133rd Street and landscaping issues along said street from Mission Road to State Line Road – [*cont'd from 04-02-01 Governing Body meeting*]

Items 7.J, R, S, and T were removed from the Consent Agenda for discussion. On motion of Gullede, seconded by Story, Council unanimously approved the remainder of the Consent Agenda.

3745 Item 7.J. Public Works Director Johnson responded to a few questions that Roy Lutes (2015 W. 84th St.) asked. On motion of Taylor, seconded by Rawlings, Council unanimously approved the bid from R.A. Knapp Construction.

4035 Item 7.R. The Mayor recognized appointees Diane Breneman (Plan Commission), Carolyn Long (Public Works Committee), and Melvin Henderson (Plan Commission). On motion of Bussing, seconded by Rawlings, Council unanimously approved the appointments.

4150 Item 7.S. The Mayor thanked Councilmember Bussing for his work with the Arts Council and on the public art policy. Mr. Bussing explained that the policy revisions would allow the Arts Council to utilize the \$5.00 per head funding they received from the City for all of their funded activities, including any personnel costs incurred to support the Leawood Stage Company and/or the Arts Council. Mr. Bussing moved to approve the revisions, seconded by Rawlings. There was discussion about the application of funds from fund-raising events conducted by the Stage Company, a 501(3)© organization, and the Arts Council which wasn't 501(3)©. If funds were raised for a 501(3)© organization, the funds would go to that organization; if funds were raised for the Arts Council (and not the Leawood Foundation 501(3)©), funds would go to the Arts Council's line item in the City's budget and be used to reduce any monies spent out of the \$5.00 per head. Mr. Bussing's motion carried unanimously.

4645 Item 7.T. No residents wanted to address the issue. Councilmember Gill moved to approve staff's recommendation to move forward with the current configuration of 133rd Street (absent the curve area through the airport property) with the landscaping along the roadway and specifically the landscaping next to the residential landowners. Motion seconded by Taylor and carried unanimously.

4740 **8. SPECIAL BUSINESS**

- A. **Second of Three Readings:** An ordinance granting to and authorizing to Metromedia Fiber Network Services, Inc., a Franchise Agreement authorizing the right to construct, operate, and maintain a communications system using the rights-of-way in the City.

4780 9. **MAYOR'S REPORT**

- ?? Council of Mayors meeting with Johnson and Wyandotte County legislators had to be rescheduled to May 23 because the Legislature was still in session; thanked Parks & Recreation staff members who went to Topeka regarding the Legislature's suggested cutting of local alcoholic liquor funds for the City's Special Park Fund
- ?? Unveiling of State Line Links Mayors' banners along State Line Rd., May 16, 2001
- ?? Invitation to League of Kansas Municipalities' telecommunications summit, May 17, 2001
- ?? Grand Opening of the Stowers Institute – 6 years ahead of schedule in their recruitment of physicians
- ?? Annual conference of the False Alarm Reduction Association held in Kansas City and coordinated by Jim Cogswell of the Leawood Police Department
- ?? Johnson County Retired and Senior Volunteer Program luncheon
- ?? Boy Scout Troop 10 Eagle Court of Honor
- ?? Leawood hosted M.A.R.C.'s education seminar for newly elected Johnson County officials
- ?? United Community Services Council of Advisors meeting – unveiled their strategic plan for 2001 and 2003 – noted that the Hispanic population was the fastest growing racial and ethnic group in Johnson County in the last 10 years; by July 2001, El Centro would have an office in Johnson County
- ?? Youth Excelling in Service reception held by Volunteer Center of Johnson County; a number of Leawood residents were recognized
- ?? Harry S. Truman Good Neighbor Award given to former Kansas Senator Bob Dole
- ?? Leawood Historic Commission to dedicate their display case at City Hall on May 23, 2001, 10:30 a.m.

5565 10. **COMMITTEE RECOMMENDATIONS**
PLAN COMMISSION

[from 03-27-2001 Plan Commission meeting]

- A. **Resolution No. 1609 approving preliminary site plan and final site plan for a Public Works Facility to be located at 14303 Overbrook Road. [Applicant: City of Leawood] – [cont'd from 04-16-01 Governing Body meeting]**

Planning Director Binckley gave a presentation. She said the City was in compliance with its code, with BP zoning. The only remaining compliance issue was the outside storage of sand; the Council would

have to decide if the City should exempt itself from the issue based on the use of the facility or seek a variance from the Board of Zoning Appeals. She showed examples of various maintenance facilities in the City that were metal buildings; some were adjacent to residential developments. Councilmember Taylor summarized issues that adjacent neighbors had – 1) the site lines from Kenneth Road (the front yard of the facility), from an elevated second story of a proposed office building on the north side, and from the residential area; 2) materials other than metal for the exterior of the building; 3) more elevated roof lines; and 4) security fencing.

6425 Project architect Jeff DeGasperi gave a presentation. A letter from Attorney John Petersen stating his clients' requests was distributed – 1) an 8-foot berm along Kenneth Road with shrub plantings on top (approximately 2 feet in height) plus evergreen trees planted on the east side of the berm; 2) significant landscaping on the north perimeter, preferably evergreens, 6 to 8 feet in height at 10-foot centers; 3) irrigation of all perimeter landscaping; 4) understanding that a security fence was needed, suggested a decorative fence on the north perimeter along the lines of what was shown at an interact meeting; the type of fence utilized elsewhere on the site was less important since it would be screened; 5) pitch of metal roofs raised to 3/12 pitch, at least for the main building and gas/wash building; 6) color treatment of roofs to either match metal sides and/or be compatible; 7) stucco/EFIS and/or brick treatment on west and north facades of perimeter buildings; some metal on the west side of the main building would be alright, similar to the east elevation option presented at interact meeting.

Doug Boyd of ACI Boland, project administrators, talked about costs – 1) \$35,000 for a 6-foot berm, \$70,000 for an 8-foot berm; Mr. Boyd recommended a 6-foot berm; 2) the significant landscaping requested was on the plan and had been revised in terms of its areas of concentration; 3) approximately \$16,000 for irrigation of the berm along Kenneth Road (the front yard of the facility) and approximately \$13,000 for irrigation on the north property line; Mrs. Binckley said it was very appropriate to irrigate along Kenneth Road, but based on the heavy amount of landscaping requested on the north, she didn't feel it was a good location to try to irrigate, would be too dense for an irrigation system; 4) a 6-foot stucco panel fence with 2x2 brick columns every 20 feet to be placed along Kenneth Road in lieu of a 6-foot chain link security fence (and perhaps in lieu of a 6-foot berm) would be \$82,000; Mr. Boyd didn't have a price for a decorative fence on the north property line, however the length along the north line was very similar to that along Kenneth Road; Public Works Director Johnson added that the cost of brick columns with wrought iron fence between the columns was about \$56,000, and that the fencing along the north could be done in lieu of the requested heavy landscaping; 5) \$26,000 to change to a color for the roof, and estimated \$26,000 to raise the pitch of the roof up to 3/12 plus additional cost for re-engineering/re-design of the buildings;

9034 **END OF TAPE NO. 513**
NEW TAPE NO. 514

50 6) to use stucco/EFIS on administration building only would add about \$156,000 to the cost, on all of the buildings would add about \$384,000.

335 Attorney John Petersen addressed the Council, especially about the points in his letter.

1040 It was clarified that the Kenneth Rd. side or the west facades of all the buildings would have stucco with some metal on the upper portions of the gables. Mr. Petersen said if his clients could also get the bronze color (\$26,000) and the pitched roof (\$26,000 with no additional engineering cost for 3/12 pitch) on the west side, that would be a fair treatment. The bronze color, raised pitch, 6-foot berm, irrigation on west and north was an estimated additional \$116,000 and the plan already included the significant landscaping and some façade changes.

1385 Councilmember Bussing moved to adopt the resolution and to proceed with a 6-foot berm along Kenneth Road with shrub plantings on top and with evergreen trees on the east side of the berm, landscaping on the north perimeter 6 to 8 feet in height at 10-foot centers, irrigation along Kenneth Road and on the north, raising the roof pitch to 3/12, bronze roof and color schemes he thought Council had already agreed to, all as a means to provide some comfort to neighboring property owners (total about \$116,000). Motion seconded by Story and carried unanimously.

1825 **B. Approve a Special Use Permit [SUP] for temporary mobile office located at 14200 Kenneth Road. [Applicant: Christ Community Church] – [cont'd from 04-16-01 Governing Body meeting]**

David Greusel, a member of the Church, understood this would be the last extension of the SUP. Councilmember Taylor said the last time the Council approved an extension he said he wouldn't vote for another one if the Church returned to request one. Councilmember Gulledge moved to approve the SUP as recommended by the Plan Commission for a period of 3 years from the date of Governing Body approval, to be the last extension granted. Motion seconded by Rasmussen and carried; Taylor opposed; Gulledge, Bussing, Rawlings, Dunn, Story, Gill, Rasmussen in favor.

11. PUBLIC WORKS COMMITTEE

A. Discussion regarding landscaping and irrigation issues pertaining to 133rd Street from Roe Avenue to Mission Road – Tabled to June 4, 2001 Governing Body Meeting.

2055 **12. OLD BUSINESS**

A. Ordinance amending Section 11-205 of the Code of the City of Leawood, Kansas, 2000, pertaining to Disturbing the Peace – [tabled from 04-02-01 Governing Body meeting]

Councilmember Gill wanted to continue the matter indefinitely. The ordinance needed more work. On page 4 of the ordinance, there was a section regarding "prima facie violation" that indicated that a person could be charged for operating any noise or sound producing device that was plainly audible at a property line between 10:00 p.m. and 7:00 a.m. He didn't think that was logical, and felt that the clause was unconstitutional and didn't fairly state what the law was or should be. And he was opposed to

lifting the moratorium on the prima facie violation section. Decibel level standards needed more work and perhaps it was time to hire an expert.

Councilmember Rasmussen wondered why the Council was even considering the amended ordinance because the existing ordinance had served the City well for years and years; when problems arose, there was always compromise. If Council proceeded with working further on the amended ordinance, he wanted it to state very clearly that the City had the right to exempt itself from the ordinance in order to run equipment to maintain its facilities and properties – i.e. the golf course. The amended ordinance needed further clarification.

City Attorney Bennett suggested continuing the matter for approximately 6 weeks instead of indefinitely in order to work on concerns. Councilmember Gill moved to continue the matter for 2 months (to the July 2, 2001 Governing Body meeting), seconded by Bussing and carried; Gulledge, Bussing, Rawlings, Dunn, Story, Gill, Taylor in favor; Rasmussen opposed (because Council didn't lift the moratorium on the prima facie section of the existing ordinance).

2755 **13. NEW BUSINESS**

A. Ordinance amending Chapter 15, Article 4, of the Code of the City of Leawood, Kansas, 2000, pertaining to Solid Waste Management, and repealing existing Article 4.

Recycling would no longer be required in the City. Councilmember Taylor moved to pass the ordinance, seconded by Bussing. Councilmember Rasmussen reviewed the history of the existing ordinance and noted that if several of the homes associations opted for no recycling, the cost of recycling would probably increase for the associations that continued recycling. Councilmember Gill said he would vote against the motion; he felt recycling was the right thing to do and a responsibility to the community and the environment; residents in homes associations that opted out wouldn't have a realistic recycling alternative; he didn't see any need to change. Councilmember Story was also opposed to the motion; he found it strange that the City would abandon recycling with no real discussion when in the past, there was lots of discussion about the value/benefits of recycling; it was a valuable program that deserved more consideration. Mr. Rasmussen said there was no mass movement for passage of the existing ordinance in 1990; only 1 Councilmember pushed for recycling and passage of the ordinance. Mr. Taylor's motion failed; Taylor, Bussing in favor; Gulledge, Rawlings, Dunn, Story, Gill, Rasmussen opposed.

Councilmember Gill moved to continue the matter to the June 4, 2001, Governing Body meeting in order to allow for review of the other substantial housekeeping changes in the ordinance, seconded by Bussing. Motion carried unanimously.

3435 **14. OTHER BUSINESS**

- A. Schedule Executive Session at 6:00 P.M. on Monday, June 4, 2001 (rather than May 21, 2001), regarding personnel matter.**

On motion of Bussing, seconded by Gill, Council voted unanimously to so schedule the executive session.

3599 **15. EXECUTIVE SESSION**

- A. Discuss matters protected by Attorney/Client Privilege.**
B. Discuss personnel matter.

On motion of Bussing, seconded by Gullledge, Council voted unanimously to convene in executive session for a period of 30 minutes to discuss a personnel matter and matter(s) under attorney/client privilege.

10:30 P.M. Council convened in executive session and returned to regular session at 11:00 P.M. On motion of Bussing, seconded by Rawlings, Council voted unanimously to return to executive session for another 30 minutes.

ADJOURN. Council returned to regular session at 11:27 P.M. No action was taken. There being no further business, the meeting was adjourned.

Martha Heizer, City Clerk