

Minutes

Audio Tape No. 515

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 21, 2001. Mayor Peggy J. Dunn presided.

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

Staff present:

Patricia A. Bennett, City Attorney	Ben C. Florance, Fire Chief
Diane Binckley, Planning/Develop. Dir.	Jeff Cantrell, Neighborhood Serv. Admin.
Joe Johnson, Public Works Director	Julie Hakan, Human Resources Director
Sid Mitchell, Police Chief	Bob Sadler, Internet Specialist
Chris Claxton, Parks & Recreation Director	Martha Heizer, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Approved unanimously on motion of Bussing, seconded by Story.

3. PROCLAMATION

Emergency Medical Services Week, May 20-26, 2001 (Mayor read and presented proclamation to Fire Chief Florance).

4. CITIZEN COMMENTS

Kansas State Representative Doug Patterson reported on the 2001 legislative session, with main focus on education and budget. He talked about the franchise telecommunications bill that would restrict home rule powers and possible reduction in the alcohol tax that would have affected the Parks & Recreation budget. The Legislature passed a DUI bill that placed severe sanctions on repeat DUI offenders, but failed to make sure cities were ready for increased defense costs, etc. They backed off the imposition of more significant sanctions pending input from cities on how they would deal with the prosecution costs, the increased court time, and other costs. The Legislature also passed a bill that said if cities failed to collect taxes or special

assessments 3 years after they were delinquent, then cities would have all the powers that counties had to collect delinquent taxes.

G. Gordon Thomas, 10516 Mohawk Lane, had questions about historic Leawood and about the 2 telecommunications items on the agenda (Items 6.A & B).

1010 **5. 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. 918
- B. Minutes of the May 7, 2001, Governing Body meeting
- C. Minutes of the April 10, 2001 Historic Commission meeting
- D. Minutes of the May 9, 2001, Strategic Spending Committee meeting
- E. First and Final Payment in the amount of \$8,214.00 to Pyramid Contractors, Inc., for work performed on the jogging bridge along Mission Rd. north of College Blvd.
- F. Approve the operation of the Leawood Stage Company be placed under the direction and authority of the Parks & Recreation Department to become effective in 2002
- G. Resolution No. 1610 appointing Martha Heizer, City Clerk, as the local Freedom of Information Officer for the City of Leawood, and providing for the Officer's duties, and repealing Resolution No. 1536
- H. Departmental reports

Items 5.D and F were removed from the Consent Agenda for discussion. On motion of Dunn, seconded by Story, Council unanimously approved the remainder of the Consent Agenda.

Item 5.D. Councilmember Bussing pointed out the new mandated initiatives that the 2002 budget would have to incorporate, and increased costs that the City would have to incur in 2002 as a result of a number of issues. On motion of Bussing, seconded by Rawlings, Council unanimously approved the minutes.

Item 5.F. The Mayor referred to Parks & Recreation Director Claxton's memo and asked for a correction in the third paragraph, first line to read, "...the monies collected from Arts Council line item (instead of public art fees) will support both..." On motion of Bussing, seconded by Story, Council unanimously approved 5.F. with the correction.

1230 **6. SPECIAL BUSINESS**

- A. Approve and authorize the execution of an Interim Rights-of-Way Construction Agreement between the City of Leawood and Everest Connections Corporation, to authorize the use of the City rights-of-way to construct and install its communications fiber optic cable for the purpose of creating certain telecommunication capability.**

On motion of Taylor, seconded by Rawlings, Council unanimously approved and authorized the execution of the Agreement.

- 1300 **B. Third and Final Reading: Ordinance No. 1893 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.**

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

1345 **7. MAYOR'S REPORT**

- ?? Mayor Lu of I-Lan, Taiwan, planned to name a new suburban expressway in I-Lan "Leawood Friendship Drive," the first road to be named for a foreign city
- ?? Awards ceremony at Leawood Elementary School; they received the Presidential Service Project Award for 19 students having given 50 hours of service over the last year
- ?? Unveiling of the State Line Link banners along State Line Road
- ?? Taiwan Heritage Week celebration, the unveiling of their photographic exhibition at UMKC
- ?? Telecommunications Summit in Topeka
- ?? The Historic Commission to dedicate their display case at City Hall on Monday, June 4th, 2:00 P.M., instead of May 23rd
- ?? Councilmember Dunn attended the Cure of Ars DARE graduation in the Mayor's absence

1675 **8. COMMITTEE RECOMMENDATIONS
PLAN COMMISSION**

[from 04-24-2001 Plan Commission meeting]

- A. Resolution No. 1611 approving and authorizing a preliminary site plan for the Heartland Building of Bi-State, located at approximately 143rd and Kenneth Road. [Applicant: David Rezac of CDFM2]**

Terry Newell of CDFM2 Architects gave a presentation.

Planning Director Binckley said that staff had requested a sidewalk on the east property line (west side of Overbrook). Since the property owner already had a sidewalk on the west property line along Kenneth Road, he asked that staff investigate putting the sidewalk on the east side of Overbrook to save him the cost of the additional sidewalk and he would then be willing to put that money towards landscaping along Kenneth Road.

Mayor Dunn asked that stipulation #2 read at the beginning, "The applicant is responsible for a public art impact fee or a piece of public art..."

Councilmember Taylor moved to adopt the resolution with an additional stipulation that staff work with the property owner to eliminate the sidewalk on the east property line and in lieu of that, the property owner would provide additional landscaping on the west property line. Motion seconded by Bussing. Mayor clarified the intent of the motion - that staff would work with the property owner regarding the entire sidewalk issue and landscaping in lieu of that, just in case the sidewalk issue couldn't be resolved. Motion carried unanimously.

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B. Resolution No. 1612 approving and authorizing a preliminary site plan and preliminary plat for Villas at Whitehorse, located at approximately 151st Street and Nall. [Applicant: Wayne Kirchhoff of GBA]

The Mayor requested an additional stipulation #26 in response to the Plan Commission's concern regarding the private drives/auto courts issue, said stipulation to read, "All streets within the subdivision shall be public. Shared driveways/auto courts are not to be considered public streets but private drives and are to be the sole responsibility of the homes association in perpetuity."

Wayne Kirchhoff of George Butler Associates engineers/architects gave a presentation.

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In response to Councilmember Taylor, applicant Jim Riffe described design criteria for the structures. Mr. Taylor said it seemed that about 40% of the street system was private drives and he wondered if the applicant had set up the deed restrictions to accommodate some type of fund that would exist to repair/replace the streets in the future as a guarantee to home buyers that they would have sufficient funds to repair/replace private streets; the issue should be part of the plan application. Mr. Riffe felt that the Plan Commission had mandated that an escrow fund be established for that purpose, so it would be taken care of. City Attorney Bennett said the escrow fund was a way for the City not to get involved in the private financing and not to ultimately, down the road, have to worry about whether the City had done the right thing and if there was enough money in the escrow account or homes association deed restrictions; the City didn't want to undertake a duty because there was no guarantee the City would be able to estimate the street costs out for 20 years. She advised the Council to move forward with stipulation #26. Planning Director Binckley asked if Council would allow the applicant to work on the figures and then to bring the deed restrictions to the Council for their review at the time the final plat was considered; Mr. Taylor thought that would be alright. Councilmember Bussing felt the Council should

follow the City Attorney's advice and not formalize any City documentation. Ms. Bennett said she wouldn't want the Council to approve an amount as sufficient and have residents believe that the City had done a lot of research to guarantee the street repair/replacement costs, just to find out later that the funds weren't sufficient for various reasons. Councilmember Story agreed with Ms. Bennett that the City shouldn't endorse a plan and give a stamp of approval that funds would be sufficient to cover the costs of repair or replacement down the road, however, he also agreed with Mr. Taylor that to the extent the Council could do something short of that, he felt the City would be in a better position in the future if it took some steps to ensure that developers at least made an effort to come up with a realistic plan as opposed to some of the developments with private street issues that Council had seen before them in the last year or so; so to that extent, not necessarily in conjunction with Whitehorse, he felt the City should look at the issue and possibly develop a plan to implement when the City had these situations to make sure the escrow accounts at least had some teeth to them, not the City's stamp of approval, but that the developers had gone the extra mile to ensure the ability to repair and replace streets.

Councilmember Bussing moved to adopt the resolution with the additional stipulation #26, seconded by Dunn and carried unanimously. It was noted that staff would continue discussions with the applicant about the escrow account.

- 4320 **C. Resolution No. 1613 approving and authorizing the issuance of a Special Use Permit [SUP], preliminary site plan, preliminary plat, for St. Michael the Archangel Catholic Church & School; and approving preliminary site plan, preliminary plat and rezoning request from AG, Agriculture, to RP-1, Planned Single Family Residential, for a residential subdivision, located at approximately 143rd & Nall. [Applicant: Brian Steiner of GLPM Architects] [companion ordinance]**

Dave Livinggood with GLPM Architects gave a presentation. On motion of Taylor, seconded by Rawlings, Council unanimously adopted the resolution.

- 5410 **D. Ordinance No. 1894 rezoning from AG, Agriculture, to RP-1, Planned Single Family Residential, for a residential subdivision, located at approximately 143rd & Nall. [Applicant: Brian Steiner of GLPM Architects]**

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

5465 **9. NEW BUSINESS**

- A. Resolution amending Resolution No. 1553 finding as to the advisability and authorizing the improvement and construction of the 135th Street and Roe Avenue Project, pursuant of K.S.A. 12-16a01 et seq.**

Councilmember Taylor recused himself and left his Council seat. With that, Council's quorum was lost. The resolution would have to be reconsidered at the June 4, 2001 Governing Body meeting.

Mr. Taylor returned to his Council seat; quorum was restored.

10. OTHER BUSINESS – None.

5610 **11. EXECUTIVE SESSION**

A. Discuss pending litigation.

9:00 P.M. On motion of Dunn, seconded by Story, Council voted unanimously to convene in executive session for a period not to exceed 30 minutes to discuss pending litigation.

ADJOURN. Council returned to regular session at 9:15 P.M. No action was taken. There being no further business, the meeting was adjourned.

Martha Heizer, City Clerk