

Minutes

Audio Tape No. 547

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 1, 2002. Mayor Peggy J. Dunn presided.

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

Staff present:

Scott M. Lambers, City Administrator
Patricia A. Bennett, City Attorney
Ben C. Florance, Fire Chief
Sid Mitchell, Chief of Police
Cindy Pitts, Human Resources Specialist
Martha Heizer, City Clerk

Joe Johnson, Public Works Director
Diane Binckley, Planning/Development Dir.
Chris Claxton, Parks & Recreation Dir.
Kathy Rogers, Finance Director
Mark Andrasik, Info. Services Director
Deb Harper, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

180 **2. APPROVAL OF AGENDA**

The Mayor noted that Items 11.A. and 12.A. would be continued to the May 6, 2002, Governing Body meeting, and that Item 12.B. would be continued to the May 20, 2002, Governing Body meeting. On motion of Dunn, seconded by Gill, Council unanimously approved the agenda.

240 **3. CITIZEN COMMENTS**

Robert Sjolin, 3217 W. 82nd Terr., made comments about Agenda Items 7.E. and 11.F.

Darleen Gates, 10115 Wenonga Lane, expressed her opposition to the sport court at 10111 Wenonga Lane, Agenda Item 11.F. (tape meter #5255), because of noise.

4. PROCLAMATIONS

The Mayor proclaimed April 2002 as "Fair Housing Month."

5. **PRESENTATIONS/RECOGNITIONS** – None.

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6. **SPECIAL BUSINESS**

- A. **Second of Three Readings: Ordinance granting Kansas City Power & Light Company, its grantees, successors and assigns, the right and franchise to construct and maintain all works and plants necessary or proper for supplying consumers with electricity, granting to said company the right to use the streets, alleys and other public rights-of-way, providing for compensation from such company for said right and franchise, prescribing the terms of and relating to such franchise and repealing Ordinance No. 1215 [Effective Date: June 15, 2002]**

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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 No. 942
- B. Minutes of the March 18, 2002, Governing Body meeting
- C. Minutes of the February 12, 2002, Parks and Recreation Advisory Board meeting
[removed for some clarification and to be placed on the May 6, 2002, Governing Body meeting agenda]
- D. Approve Declaration of surplus property [Public Works Administration Services Division fax machine to be sent to auction conducted by Nationwide Auction Systems, Inc.]
- E. Resolution No. 1676 approving the final plat for Villas of Whitehorse located north of 151st Street and east of Nall Avenue *[from March 12, 2002, Planning Commission meeting]*
- F. Resolution No. 1677 approving and authorizing the City to participate in the Juvenile Accountability Incentive Block Grant [JAIBG] Program from July 1, 2002, through June 30, 2003 [JIAC]
- G. Proposal in the amount of \$28,827.68 from Corporate Express for furnishings for the Public Works Maintenance Facility to be located at 14303 Overbrook Road
- H. Low bid in the amount of \$79,900.00 from Wheeled Coach Industries, Inc., for the purchase of a 2002 Ford Ambulance *[This item was approved by the Governing Body in the budget process]*
- I. Change Order No. 3 to Theis Doolittle Associates, Inc., in the amount of \$30,318.75 for design fees associated with additions to the project scope of Ironwoods Park.

The Mayor requested that Item 7.C. be removed for some clarification and be placed on the May 6, 2002, Governing Body meeting agenda. Items 7.E. and 7.I. were removed for discussion. On motion of Rasmussen, seconded by Gill, Council unanimously approved the remainder of the Consent Agenda.

Item 7.E. Councilmember Gill noted that the staff report indicated that the final plan called for 39 units with a density of 4.0 dwelling units per acre, however, the Planning Commission minutes indicated that the preliminary approval was for 61 units with a density ratio just slightly under 4.0. He understood from staff that the reason for going from 61 to 39 units was that 39 was only Phase 1 and that the remaining units would be in Phase 2 with no change in density. Councilmember Bussing stated his objection to RP-4 zoning designation in the area primarily because RP-4 allowed for alternatives to single family housing which he was opposed to, and he was also opposed to the variances to the setbacks. On motion of Gill, seconded by Taylor, Council adopted the resolution; Gullede, Rawlings, Dunn, Gill, Rasmussen, Taylor in favor; Bussing opposed.

Item 7.I. Councilmember Taylor explained that the Parks & Recreation Advisory Board increased the scope of work because additional funds had been generated over and above the bond funds allocated to the project. Based on that, they authorized and incurred additional design features for Ironwoods Park and FLan Park. On motion of Taylor, seconded by Dunn, Council unanimously approved the change order.

8. MAYOR'S REPORT

- A. Attended a legislative luncheon in Topeka with the Johnson & Wyandotte Counties Council of Mayors and met with the Johnson & Wyandotte Counties delegation
- B. Recent successful Art Show at Gold Bank with Wendall Anschutz the featured artist
- C. Groundbreaking for Heartland Bank at Town Center Plaza

9. COUNCILMEMBERS' REPORTS – None.

COMMITTEE RECOMMENDATIONS

1120 10. PUBLIC WORKS COMMITTEE

[from March 13, 2002, Public Works Committee meeting]

- A. **Resolution approving and authorizing the execution of a Professional Service Agreement for an amount not to exceed \$84,000.00 between the City and DeGasperi & Associates, Inc., for architectural services related to the Fire Station No. 2 Remodeling Project located at 12701 Mission Road**

Councilmember Gill moved to continue the matter to the June 3, 2002, Governing Body meeting, seconded by Bussing. Mr. Gill said he was entirely in favor of the project, however, the City was still in a state of uncertainty about what budget discussions in Topeka might or might not mean to City funding. Rather than start a major project with large expenditures, he preferred to wait and see what would happen in the legislature. City Administrator Lambers said continuance was probably prudent; the project wasn't time sensitive, a 60-day continuance not affecting it. The picture in Topeka didn't look

good; there were a number of legislative bills to remove monies from cities, and the State wasn't even close to balancing its budget. Mr. Gill's motion carried; Gullledge, Bussing, Rawlings, Gill, Rasmussen, Taylor in favor; Dunn opposed. Mr. Dunn said the money was available in the current budget, and he really didn't know where to start and where to stop in the process Mr. Gill was asking the Council to engage in.

1405 **11. PLANNING COMMISSION**

[from August 28, 2001, Planning Commission meeting & September 26, 2001, Board of Zoning Appeals meeting (BZA)]

A. Ordinance amending Code § 4-4 of the Leawood Development Ordinance pertaining to Off-Street Parking, Storage, Loading Regulations and Parking Lot Design Standards [Recreational Vehicles] [Continued from March 4, 2002, Governing Body meeting] [companion ordinance]

On motion of Rasmussen, seconded by Gill, Council voted unanimously to continue the matter to the May 6, 2002, Governing Body meeting.

[from February 26, 2002, Planning Commission meeting]

1435 **B. Resolution No. 1678 approving a revised preliminary site plan and final site plan for Plaza Pointe, an office retail development located at 135th Street and Roe Avenue**

Councilmember Taylor recused himself to avoid the appearance of a conflict of interest and left the Council Chamber. Architect David Suttle gave a presentation. On motion of Gill, seconded by Gullledge, Council adopted the resolution; Gullledge, Rawlings, Dunn, Gill, Rasmussen in favor; Bussing opposed (he was opposed to the project).

1950 **C. Resolution No. 1679 approving a preliminary site plan for Lot 8 of Plaza Pointe for a Carpet Corner retail store located within Plaza Pointe Development at 135th Street and Roe Avenue**

Councilmember Taylor remained away from the Council Chamber. Architect Jack Shank gave a presentation. On motion of Gill, seconded by Dunn, Council adopted the resolution; Gullledge, Rawlings, Dunn, Gill, Rasmussen in favor; Bussing opposed (he was opposed to the project). Mr. Bussing commended the applicant on his movement towards the spirit of the 135th Street Corridor Guidelines which was the basis for Mr. Bussing's persistent declination of the project; the artistic work at the front of the building and the addition of the pergola were the types of items he had hoped to see throughout development along the 135th Street Corridor.

Councilmember Taylor returned to his Council seat.

[from March 12, 2002, Planning Commission meeting]

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D. Resolution No. 1680 approving preliminary site plan and preliminary plat and request for rezoning from RP-1, Planned Single Family Residential, to RP-4, Planned Cluster Residential, for Reserve at St. Michael's single family subdivision located at 141st Street and Nall Avenue [companion ordinance]

Councilmember Gill moved to remand the matter to the Planning Commission for consideration of a zoning classification of RP-1 rather than RP-4, seconded by Bussing. Mr. Gill said the subdivision was single family, yet the zoning classification being sought (RP-4) was a multi-family zoning classification which meant that if the plan was approved but the actual single family units weren't built for whatever reason and the project didn't go forward, the City could be faced, as it had been in other areas of the City, with an existing zoning classification and a request for a multi-family, attached unit type of project (which the proposed plan was not), one that Mr. Gill would be opposed to at 141st and Nall.

The Mayor recalled a previous project with the same discussion. She remembered that every dwelling unit would have to go before the BZA for a variance, and the Council voted for the RP-4 just to eliminate that burden. Planning Director Binckley said that staff had the ability to do an RP-1 on the proposed plan, however, the developer had a problem with side setbacks, wanting to build side entry garages, so he would need the lower setback. On any of those types of lots, the developer would have to go before the BZA.

2745Brick Owens of HNTB said that with an earlier development, Tuscany Reserve Residential, the developer had agreed that if the project wasn't constructed within 3 years, the zoning would revert to Agriculture. The developer of Reserve at St. Michael's agreed to 5 years or revert, and was willing to agree to 2 years to show the intent to build the project and tie the plan to the proposal. Councilmember Gill said that the proposal under consideration was entirely acceptable to him, but he understood that the zoning classification couldn't be reverted to AG; while the plan itself could sunset, the zoning classification could not revert and the Council would be stuck with RP-4. City Attorney Bennett said that the zoning could not automatically revert, but the Council could request that an application be filed by the owner or by the City to have the zoning revert and have the owner/applicant agree that they wouldn't object, but all the hearings, publications, notices would have to be done. Ms. Bennett added that the applicant's agreement would have to run with the land.

Mr. Gill asked how difficult it would be for the developer to go to the BZA with 23 lots and request side lot variances so they could do side entry garages. That seemed straightforward to him and not nearly as cumbersome as the process Mr. Owens was going through with Tuscany. Mr. Gill would much rather do that than grant a zoning classification that if abused, would be bad for the City, and "abused" would be, in his judgement, attached multi-family dwelling units within the confines of the zoning classification. The Mayor would agree with Mr. Gill if going to the BZA was perfunctory and "housekeeping," but BZA meetings were not run that way whatsoever. The Mayor wouldn't like to see the entire project changed at the BZA if indeed the Council was comfortable with the appearance, the

quality, the layout. The BZA was a totally independent group. City Attorney Bennett agreed and said that the variance procedure was statutory and there were 5 factors that the BZA would have to find on each of the lots. Ms. Bennett said that the Council could approve the preliminary site plan and preliminary plat and not approve the rezoning, with an additional stipulation that the developer obtain variances on whatever lots necessary. Planning Director Binckley said the Council would also want to have a stipulation allowing for the deviation of lot size.

3415 Councilmember Bussing was concerned about the side yard setbacks being requested; he understood the intent to have some side entry garages which was good, but he felt that part of the character of Leawood was the fact that homes weren't stacked on top of one another, and when the side yard setbacks were diminished, that appearance was evident. He wasn't as uncomfortable with the front yard setbacks.

3620 Brick Owens gave a presentation.

4615 Mr. Gill suggested keeping the zoning RP-1, approving the plan as presented, granting the variances to the extent that the Council had authority to grant variances, and to the extent the Council didn't have that authority (side yard variances), then the BZA would become involved. If for whatever reason the BZA was to reject the variances and if the developer could get back to the Council quickly, the Council could consider plan b which might be RP-4 or something else so the developer wouldn't have to start the planning process over and lose time. Mr. Owens felt that suggestion was good so they could move forward rather than having to back up and return to the Planning Commission.

Councilmembers Gill and Bussing withdrew their motion and second to remand to the Planning Commission. Mr. Gill moved to approve the plan as presented, except that it would retain its RP-1 zoning classification; to the extent that variances were required that the Council could grant, the motion would include the granting of those variances; to the extent there were variances that the Council couldn't grant (and the only one Council was aware of was the side yard setback variance), the matter would go to the BZA for its approval; and finally if the BZA didn't approve the side yard setback variances, the Council would schedule the matter at the earliest convenient opportunity for the Council to review the plan again and consider alternatives, including the possibility of granting RP-4 zoning. Motion seconded by Gullede.

Councilmember Bussing understood that approximately 50% of the dwelling units might have side yard setbacks, and upon completion of the process, he expected to see about that number. He also asked that the developer, in the construction of the landscaping and berming to the south, give careful consideration to what would be ultimately built to the south and provide adequate buffering.

Mr. Gill's motion carried unanimously.

E. Ordinance approving rezoning from RP-1, Planned Single Family Residential, to RP-4, Planned Cluster Residential, for Reserve at St. Michael's single family subdivision located at 141st Street and Nall Avenue

City Attorney Bennett suggested the Council continue the ordinance to a date certain to return to the Council so the applicant wouldn't have to re-notice, go back to the Planning Commission, and then back to the Council. Ninety days should give Mr. Owens time to take the matter to the Board of Zoning Appeals. On motion of Dunn, seconded by Gill, Council voted unanimously to continue the ordinance to the July 1, 2002, Governing Body meeting.

5255 **F. Approve Special Use Permit [SUP] for a Sport Court to be located at 10111 Wenonga Lane [Applicant: Teahan]**

The applicant, Mark Teahan, 10111 Wenonga Lane, addressed the Council. Councilmember Gullede moved to approve the permit as long as the applicant agreed to meet the 10-foot setback requirement as well as the landscaping requirements, seconded by Taylor. Darleen Gates, 10115 Wenonga Lane, who spoke under Citizen Comments at the beginning of the meeting, reiterated her opposition to the sport court because of constant noise.

5775 In response to Councilmember Gill, Planning Director Binckley said there was a company who might supply a special artificial surface for the court, specifically designed for exterior use to dampen noise. There was discussion about the grounds for denial of the permit; they would have to comply with Golden case factors. Councilmember Rasmussen said that understanding Mrs. Gates' problems and feelings, the applicant complied with every stipulation required; the Council would have to come up with some other stipulation that would be so onerous that the Council would be depriving the applicant of his ability to utilize his own property. Mr. Rasmussen said he couldn't think of a stipulation to do that.

6465 There was discussion about a friendly amendment to the motion to grant the permit for 8 months and that after that time, have a report from staff after investigating the site and interviewing the Teahans and neighbors on what the status of the court was at that time - was the landscaping placed as requested, was the noise manageable, was life returning to normal - to be sure the stipulations and conditions were in fact in place, that there was substantial compliance. Councilmember Bussing said he would be comfortable with substantive compliance with the issues outlined in the special use permit conditions. Mr. Gullede, who made the motion for approval, said he didn't have a problem with the friendly amendment as long as it related to the stipulations mentioned and agreed to (bringing the court to the required setbacks, proper landscaping approved by the City, etc.), without subjectivity. Councilmember Taylor, who seconded the motion for approval, said he was not in favor of the friendly amendment; the City had staff that regulated special use permits, and the Council just recently approved a sport court in the southern part of the City and didn't make such a friendly amendment for that court, and he believed such an amendment would be out of place.

Mr. Gulledge's motion to approve the special use permit (without any amendment) carried; Gulledge, Bussing, Rawlings, Dunn, Rasmussen, Taylor in favor; Gill opposed. Mr. Gill didn't think that the sport court complied with the spirit and letter of City ordinance; the permit wasn't sought in advance, so the Council was having to retrofit an approval to an existing structure; based on testimony heard and letters he had read, the demographics of the particular location would dictate something more stringent than just the bare minimum standards for a special use permit.

7580 **12. OLD BUSINESS**

- A. Ordinance amending Chapter 14, Article 3, Sections 14-301, 14-302, and 14-304, of the Code of the City of Leawood 2000, pertaining to parking [Recreational Vehicles] [Continued from March 4, 2002, Governing Body meeting] [companion ordinance]**

On motion of Dunn, seconded by Gill, Council voted unanimously to continue the matter to the May 6, 2002, Governing Body meeting.

- 7620 **B. Installation of gate to restrict traffic on IronHorse Drive/Circle located within the Estates of Iron Horse Subdivision, located at approximately 157th Street east of Nall [Continued from the March 4, 2002, Governing Body meeting]**

On motion of Dunn, seconded by Taylor, Council voted unanimously to continue the matter to the May 20, 2002, Governing Body meeting.

7660 **13. NEW BUSINESS**

- A. Request assignment to Public Works Committee regarding the selection of a design consultant for SMAC Project JB-04-008 from 103rd Street to I435 between Lee Boulevard and State Line Road**

On motion of Dunn, seconded by Rasmussen, Council voted unanimously to assign the selection to the Committee.

14. OTHER BUSINESS – None.

7845 **ADJOURN**

There being no further business before the Council, the meeting was adjourned at 9:25 P.M.

Council Minutes
Audio Tape No. 547

April 1, 2002

Martha Heizer, City Clerk