

Minutes

Audio Tape No. 575

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, February 17, 2003. Due to Mayor Peggy Dunn being out of town, James E. Taylor, Sr. presided.

Councilmembers present: Presiding Officer James E. Taylor, Sr., Shelby Story, Jim Rawlings, Patrick L. Dunn, Mike Gill, and Louis Rasmussen.

Councilmembers absent: Scott E. Gullledge, Gary L. Bussing.

Staff present:

Scott Lambers, City Administrator

Sid Mitchell, Police Chief

Joe Johnson, Public Works Director

Jeff Cantrell, Neighborhood Serv. Adm.

Deb Harper, City Clerk

Patricia A. Bennett, City Attorney

Ben C. Florance, Fire Chief

Chris Claxton, Parks & Recreation
Director

Emily Watson, Deputy City Clerk

135 **1. PLEDGE OF ALLEGIANCE**

153 **2. APPROVAL OF AGENDA**

A motion was entered by Councilmember Rasmussen, seconded by Councilmember Gill to approve the agenda. The motion was approved by a unanimous vote.

218 **3. CITIZEN COMMENTS**

Mr. Larry Winn, attorney, 6201 College Boulevard, representing Troy and Nancy Ruf, 2016 W. 96th Street, gave a background on the Stop Work Order on the Rufs' house. The City issued a building permit to the Rufs, who proceeded to begin work on the home improvement. The first Stop Work Order was issued contrary to the original permit that was granted. An appeal was made to Board of Zoning Appeals [BZA]. The City Attorney sent a letter stating that the previous interpretation of the ordinance was appropriate and work started again. A second Stop Work Order was issued. Mr. Winn stated the Rufs have incurred not only building expenses but also attorney fees. Also, the Rufs are willing to perform in exact accordance with the Lambers/Bennett correspondence. Mr. Winn stated the Rufs are willing, alternately, to sell the house and lot "as is" for their actual out-of-pocket expense. Further, the Rufs are willing to take the matter to District Court, if needed.

Ms. Dana Yarrington, 2015 W. 96th Street, distributed material to the Governing Body and spoke on behalf of homeowners on the street of the Rufs' house. Their position concerns the spirit and intent of Code § 2-2.3 of the Leawood Development Ordinance [LDO] versus the technical

interpretation of the Ordinance. Ms. Yarrington stated that they believe the purpose of writing such an Ordinance was to specifically address such concerns, as the addition to the residence in question, and prevent the erection of a structure that would diminish the overall character of the neighborhood. The Rufs have submitted a plan that would change the addition to the back of the house and incur only an eight foot addition in the front. She stated she felt the stand of Scott Lambers and Patty Bennett was not in the spirit of the Ordinance, but rather what might be technically acceptable. Ms. Yarrington asked that the agreement dated December 26, 2002, be formally voided.

Councilmember Gill asked that the revised plans of the Rufs be made available to the neighbors before the Governing Body make a final decision.

David Imhoff, 2037 W. 96th Street, spoke on the integrity of the street. He stated that many homeowners there had made additions to their homes over the years, and always built on the back of their homes, not the front, to maintain the consistency of the ordinances and aesthetics of the street.

Linda Schurz, 2008 W. 96th Street, spoke on the historical nature of 96th Street and asked the Governing Body to support their position to maintain the street as the Kroh Brothers originally designed it.

Warren Jones, 2323 W. 96th Street, pointed out that the houses off State Line Road were in line with a common setback. Councilmember Taylor advised that the fourth house east of Lee Boulevard has projection beyond the setback of the rest of the houses.

Steve Johnston, 2032 W. 96th Street, speaking as a realtor and a building contractor, opposes the ordinance setback variation at 2016 W. 96th Street, because the building restrictions are designed to protect the theme and integrity of the neighborhoods they oversee, with the setback designation as being the most important. A variance of a front setback is never appropriate unless the original structure is obviously constructed behind the neighboring dwelling and the recorded setbacks. Mr. Johnston stated that should the variance be granted, his neighborhood would be damaged and a precedent made that the setbacks can no longer be defended.

Vicki Scanlon, 2012 W. 96th Street, stated that because of the construction at 2016 W. 96th Street, her view of the street is now blocked. Councilmember Gill asked for clarification from Ms. Scanlon as to the setback of her house and how it should be viewed in light of the ordinance that requires the setback to be between homes on either side of the property in question.

G. Gordon Thomas, 10516 Mohawk Lane, stated in the past the Leawood Estates Homes Association has supported what the residents wanted regardless of what a developer moving in to the area wanted to accomplish.

Lance Turpin, 2004 W. 96th Street, commented that the addition to the house at 2016 W. 96th Street detracted from the home values in the area, by putting in an addition that didn't fit in with the rest of the neighborhood. Mr. Turpin contended that Mr. Ruf was putting in the addition for pure speculation, not to improve the neighborhood.

Steven Scanlon, 2012 W. 96th Street, spoke on how the setback should be determined.

Mike Zanders, President of Leawood Estates Home Association, 2012 W. 98th Street stated that the homeowners had met with the Homes Association and the Association endorsed what the Rufs were trying to do. The Homes Association wants to keep up the integrity of the neighborhood, and asked the Governing Body to back the wishes of the homeowners.

1798 **4. PROCLAMATIONS – None**

1802 **5. PRESENTATIONS/RECOGNITIONS – None**

1805 **6. SPECIAL BUSINESS**

A. Consideration of lifting the Stop Work Order for the residence located at 2016 West 96th Street

Mr. Lambers restated that the position of the Staff was that the Stop Work Order should be lifted, as the construction is in compliance with the Ordinance.

Councilmember Gill asked Mr. Johnston to explain the three setbacks on 96th Street after having viewed the plans.

Councilmember Rasmussen asked for clarification as to whether the Rufs had asked for a variance, or if they had submitted a new proposal that was in conformance with both the new and the old Ordinance. Ms. Bennett acknowledged that Staff views the proposal as not being a variance, and that in light of the expressed language of the City's Ordinance, the recommendation is to lift the Stop Work Order. By lifting the Stop Work Order tonight, all potential litigation with the Rufs would no longer be an issue.

Presiding Officer Taylor gave an overview of the setback issue.

Councilmember Gill stated he felt the new proposal flies in the face of the intent of the spirit of both the old and the new LDO. However, based strictly on the wording of the Ordinance, Councilmember Gill made the motion to lift the Stop Work Order, despite his belief that the Ordinance is flawed and is not in compliance with the Golden Factors. Councilmember Dunn seconded the motion.

Councilmember Story countered that he disagreed with the interpretation of the Ordinance by Staff. He stated the 57' measurement on the lot located at 2012, which is the irregular lot in the corner of a turn, is the appropriate distance to use because it is the only distance on the lot relevant to the remaining houses headed in the direction of 2016 W. 96th Street. Councilmember Story encouraged Staff to review the Ordinance to be sure that they were expressing the interests of the Council. He added there is a loophole that exists in the Ordinance that allows the interpretation that has been determined by Staff, allowing the construction of a project that is not in keeping with the neighborhood. It is the responsibility of all citizens to do the right thing when

it comes to changing the character of a neighborhood. Councilmember Story stated he would be voting against removing the Stop Work Order.

In view of Councilmember Story's interpretation of how to determine the setback, Councilmember Gill withdrew his motion. Councilmember Dunn withdrew his second. Councilmember Dunn then made the motion to continue discussion on this issue in an Executive Session on March 3, 2003. Councilmember Rawlings seconded. The motion was approved by a unanimous vote.

2660 **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. Approval of Appropriation Ordinance No. 966
- B. Minutes of the February 3, 2003, Governing Body meeting
- C. Minutes of the February 3, 2003, Governing Body Work Session meeting
- D. Minutes of the January 29, 2003, Public Works Committee meeting
- E. Minutes of the November 21, 2002, IRONHORSE Golf Course Committee meeting
- F. Approve Drinking Establishment License for Bravo Cucina Italiana, located at 5005 W 117th Street
- G. Approve purchase in the amount of \$14,798.00, from Dell Computers for the purchase of computer network servers
- H. Approve purchase in the amount of \$20,000.00, from Kansas City Wizards for the purchase of soccer game vouchers
- I. Approve purchase in the amount of \$5,555.00, from Yuestrada, Inc., for the purchase of soccer uniforms
- J. Resolution No. 1890 accepting a Deed of Dedication from Anil V. and Linda Gosalia, for right-of-way [ROW] pertaining to the 119th & Mission Road Improvement Project [CIP # 159]
- K. Resolution No. 1891 accepting a Temporary Construction Easement from Anil V. and Linda Gosalia, for right-of-way [ROW] pertaining to the 119th & Mission Road Improvement Project [CIP # 159]
- M. Resolution No. 1893 approving and authorizing the Mayor to execute an Professional Services Agreement between the City and Shaner Appraisals, in the amount of \$16,800, pertaining to the Roe Avenue Improvement Project [between 124th & 135th Street] [CIP # 110]
- N. Resolution No. 1894 approving and authorizing the Mayor to execute Supplemental Consulting Services Agreement No. 1, in the amount of \$20,000, between the City and George Butler Associates, Inc., [GBA], pertaining to the GASB34 Project
- O. Resolution No. 1895 accepting Final Plat for Leawood Pines, located on the northwest corner of 103rd Street & Lee Boulevard *[from January 28, 2003, Planning Commission meeting]*

- Q. Resolution No. 1897 approving and authorizing the Mayor to execute an Authority and Method Procedure Form and Certification of Real Property Acquisition Procedure Form, for the Kansas Department of Transportation [KDOT] pertaining to the 119th & Mission Road Intersection Improvement Project [CIP# 159]
- R. Resolution No. 1898 approving Kansas Department of Health & Environment General Permit Application for Municipal Stormwater Discharges, in connection with the National Pollutant Discharge Eliminations Systems [NPDES] Requirements
- S. Police Department Monthly Report
- T. Fire Department Monthly Report
- U. Fire Department 2002 Annual Report
- V. Municipal Court Monthly Report
- W. Request to purchase storage materials for the Police Property Room [This is a 2003 Budgeted item]

Councilmember Rasmussen requested Item “7P” be moved for discussion to the Councilmembers’ Report. Presiding Officer Taylor requested Item “7L” be removed for discussion. Motion to approve remaining items was made by Councilmember Dunn, and seconded by Councilmember Story. The motion carried by a unanimous vote.

L. Resolution No. 1892 approving and authorizing the Mayor to execute a Service Agreement between the City and Shred-It, for collection and destruction of certain documents and waste materials from City facilities

Councilmember Taylor stated he had a conflict of interest with the company designated in Item “7L” and after putting it back on the agenda, would be removing himself from the vote. The motion to approve the resolution was made by Councilmember Rasmussen, and seconded by Councilmember Dunn. The motion carried by the following vote: Yea: Councilmembers Story, Rawlings, Dunn, Gill, Rasmussen. Nay: None. Recusal: Presiding Officer Taylor.

2736 **8. MAYOR’S REPORT**

- A. Attended the Annual Lunar New Year Celebration held by the Sister Cities Committee on February 5, 2003. Councilmembers Rasmussen, Rawlings, Gulledge, Taylor and Bussing, and Mr. Lambers also attended. A bridge in Taiwan has been named in honor of Leawood.
- B. Attended a reception hosted by Representative Dennis Moore for a Diplomat from Romania, where she was presented a book on the architecture of Romania.
- C. Attended a meeting at the Jewish Community Center with Mr. Lambers where discussion took place concerning a possible sister city relationship with Gezer and Leawood.
- D. Attended the 42nd Annual Mayors’ Prayer Breakfast.
- E. Displayed the artwork presented to the City by the 3rd graders of Leawood Elementary.
- F. Oxford Schoolhouse move is to take place March 1, 2003.

2896 **9. COUNCILMEMBERS' REPORT**
P. Resolution No. 1896 accepting the 2003 IRONHORSE Golf Course Business Plan, as submitted by Orion Management Solutions

Staff Comment: The acceptance of this Business Plan does not constitute approval of the unfunded request for capital improvements and capital equipment.

Councilmember Rasmussen asked for a motion to approve the Golf Course Business Plan that was discussed in the February 10, 2003, Work Session, excluding the Capital Improvement Schedule, which is to be left for the Budget process, but including the Equipment Replacement Schedule dated January 31, 2003. Councilmember Gill seconded the motion.

Mr. Lambers recommended that only the mower be approved in the Equipment Replacement Schedule and that the truck be bought in 2005. Councilmember Rasmussen rejected that recommendation, stating the replacement for the 1994 pickup currently being used has been postponed since 2001.

The original motion was passed, with the following vote: Yea: Councilmembers Taylor, Rawlings, Gill, Rasmussen. Nay: Councilmembers Story and Dunn.

3193 **10. STAFF REPORT – None**

3196 **11. PLANNING COMMISSION – None**

12. OLD BUSINESS – None

3198 **13. NEW BUSINESS**

A. Approve Change Order No. 9, in the amount of \$22,991.00, to Vanum Construction Co., Inc., pertaining to I-Lan Park Improvement Project [CIP # 111].

A motion was made by Councilmember Rasmussen, seconded by Councilmember Gill, to approve the Change Order. The motion carried by a unanimous vote.

B. Schedule Governing Body Work Session to be held on Monday, March 3, 2003, at 6:00 P.M., for presentation of Capital Improvement Projects [C.I.P.].

Mr. Lambers requested the meeting be modified to include an Executive Session at 5:30 P.M. before the Work Session.

A motion was made by Councilmember Dunn, seconded by Councilmember Gill. The motion carried by a unanimous vote.

C. Schedule Governing Body Executive Session to be held on Monday, March 10, 2003, at 6:30 P.M., to discuss matters subject to the attorney client privilege regarding franchise negotiations.

A motion was made by Councilmember Dunn, seconded by Councilmember Gill. The motion carried by a unanimous vote.

D. Rescheduling of Governing Body Work Session to be held on Monday, March 10, 2003, at 7:00 P.M., regarding Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 110] – *[originally scheduled at 6:30 P.M.]*

A motion was made by Councilmember Gill, seconded by Councilmember Dunn. The motion carried by a unanimous vote.

14. OTHER BUSINESS – None

15. ADJOURN

There being no further business, the meeting was adjourned at 9:18 P.M.

Emily Watson, Deputy City Clerk