

Minutes

Audio Tape No. 579

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, March 17, 2003. Mayor Peggy Dunn presided.

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

Councilmembers absent: Louis Rasmussen.

Staff present:

Scott Lambers, City Administrator
Sid Mitchell, Police Chief
Joe Johnson, Public Works Director
Jeff Cantrell, Neighborhood Serv. Adm.
Diane Binkley, Planning & Develop Dir.
Kathy Rogers, Finance Director

Patricia A. Bennett, City Attorney
Ben C. Florance, Fire Chief
Chris Claxton, Parks & Rec. Dir.
Deb Harper, City Clerk
Emily Watson, Deputy City Clerk

191 **1. PLEDGE OF ALLEGIANCE**

233 **2. APPROVAL OF AGENDA**

Mayor Dunn asked to add item 14C under New Business to the Agenda, concerning scheduling a Work Session on Special Benefit Financing on March 31, 2003, at 6:30 PM. Councilmember Gullede moved to approve the revised Agenda, seconded by Councilmember Dunn. The motion was approved by a unanimous vote.

257 **3. CITIZEN COMMENTS**

Mayor Dunn stated she would call on the citizens who requested to speak during the discussion of Item 6 under Special Business.

265 **4. PROCLAMATIONS**

Mayor Dunn declared March 20, 2003, as **Absolutely Incredible Kid Day®**.

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

285

6. SPECIAL BUSINESS –

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

Mayor Dunn stated that prior to the vote on lifting the Stop Work Order, the Governing Body would meet in an Executive Session in the Main Conference Room. Prior to the Executive Session, the Governing Body would listen to citizen comments. The Governing Body would reconvene and take action following the Executive Session.

Dick Wetzler, 3000 W. 121 Street, spoke as the representative of several residents who live on 96th Street. He acknowledged that he had written a letter supporting the suggested compromise by Larry Winn. Mr. Wetzler pointed out the current Ordinance, 16-2-4.5, Leawood Development [LDO], protects existing neighborhoods from deviations such as changes in setbacks. The ordinance provides that certain matters can go to the Board of Zoning Appeals (BZA) where equity doesn't permit the routine variations that are followed by the ordinance. Ninety-sixth Street is a very unique street, and asked that the integrity of that neighborhood not be compromised for a threat of litigation or for a few bucks.

Lance Turpin, 2004 W. 96th Street, felt that the building out of the garage at 2016 W. 96th Street would change the whole character of the neighborhood, and by allowing the building to proceed, the value of all the properties in the neighborhood would be compromised.

David Imhoff, 2037 W. 96th Street, spoke on the consequences, should the building at 2016 W. 96th Street be allowed as it pertained to advancing setbacks. A precedent would be set, allowing other residents to use the average of the setbacks on either side and move their houses forward.

Dana Yarrington, 2018 W. 96th Street, stated that at the time the Ruf's attorney approached Patty Bennett with the promise of no further remedy that the City's position turned 180 degrees from issuing the Stop Work Order to allowing the work to continue. She felt the important issue was to focus on the permit process and how it has been done incorrectly twice in this matter. By allowing the Order to stand, and the errored permit that came out of it, the City denies the neighborhood homeowners due process. LDO § 16-1-2.2 states when in doubt, the more restricted provision or parts shall apply; to rule to the more restrictive than to the more lenient, or, over-protect the neighborhoods. Section 16-2-3.3 or 16-2-4.5 addresses the specific questions of modification of residential setbacks. Section 16-1-2.2; 16-1-2.1 (aesthetics); 16-6-4 (instructing BZA to not grant a variance in opposition to the spirit of an Ordinance); all apply to this situation. The LDO gave the setback decision-making authority to the Planning Director and to the BZA, and did not allow administrators and attorneys to make the setback decisions.

762 The Mayor asked for a motion to recess to an Executive Session for Attorney-Client Privilege for a period not exceeding thirty minutes, reconvening in the Council Chambers at 8:30 PM. Motion was made by Councilmember Dunn, seconded by Councilmember Gulledge. The motion passed unanimously.

1050 The Mayor reconvened the Governing Body into Regular Session at 8:39 PM.

City Attorney Patty Bennett stated that it was Staff's request for the Council to lift the Stop Work Order; ratify Staff's determination that was reflected in her letter of December, 2002; preserve the rights of the neighbors as well as the Rufs; and determine that any appeal rights that either party may have will start to run tonight (i.e. effective March 17, 2003).

Councilmember Taylor made the motion to proceed as Ms. Bennett directed, seconded by Councilmember Dunn. The motion carried by the following vote: Yea: Councilmembers Taylor, Dunn, Gill, Gulledge and Bussing. Nay: Councilmembers Story and Rawlings. Mayor Dunn stated that had she been voting, she would have also voted in the affirmative.

1105 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. 968
- B. Minutes of the March 3, 2003, Governing Body meeting
- C. Minutes of the February 11, 2003, Park and Recreation Advisory Board meeting
- D. Minutes of the January 30, 2003, IRONHORSE Golf Course Meeting
- E. Minutes of the January 17, 2003, Stormwater Management Committee meeting
- F. Resolution No. 1901 calling for a Pre-Budget Public Hearing to be held on April 7, 2003, at 7:30 P.M., regarding the 2004 Fiscal Budget for the City of Leawood, Kansas
- G. Resolution No. 1902 calling for a Public Hearing to be held on April 7, 2003, at 7:30 P.M., regarding the 2004-2008 Capital Improvement Program [C.I.P.] for the City
- H. Resolution No. 1903 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the City of Overland Park, pertaining to Mission Road Improvement Project [from 99th to 103rd Street]
- I. Resolution No. 1904 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the City of Overland Park, pertaining to El Monte Street Improvement Project [from College Boulevard to 109th Street]

- J. Resolution No. 1905 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of County Commissioners of Johnson County [BOCC] for preliminary Engineering Study of a Stormwater Management Project [SMAC] Project, NC-04-001, Negro Creek at 153rd & Rosewood; Brittany Woods Subdivision and IRONHORSE Golf Course
- K. Resolution No. 1906 approving and authorizing the Mayor to execute Addendum No. 1, to the Design Engineering Agreement, between the City and Continental Consulting Engineers, for an amount not to exceed \$20,000, pertaining to the SMAC Project No. JB-04-008, James Branch at Lee Boulevard to State Line and between 103rd Street to I-435 Highway
- L. Resolution No. 1907 approving and authorizing the Mayor to execute a Service Agreement in the amount of \$5,800, between the City and RTI, pertaining to roof repair at City Pool, located at 10601 Lee Boulevard
- M. Resolution No. 1908 approving and authorizing the Mayor to execute a Right-of-Way [ROW] Maintenance Agreement between the City and Ed Kennamore, Developer, for ROW located within Tuscany Reserve, at 137th & Pawnee
- Q. Police Department Monthly Report
- R. Fire Department Monthly Report
- S. Municipal Court Monthly Report

Mayor Dunn asked for “7N” to be pulled for a brief remark. Councilmember Taylor asked for “7O” and “7P” be pulled.

Mayor Dunn asked for a motion to approve the Consent Agenda. A motion was made by Councilmember Taylor and seconded by Councilmember Story. The motion passed unanimously.

1124 **N. Resolution No. 1909 approving the Emergency Operations Plan [EOP] for the City of Leawood, Kansas**

Mayor Dunn stated she wanted to compliment Deputy Fire Chief Randy Hill for his extensive update of the EOP Manual and asked Chief Florence to extend her compliments to him.

A motion to approve the EOP Manual was made by Councilmember Dunn, seconded by Councilmember Story. The motion was approved unanimously.

1142 **O. Approve Change Order No. 11, in the amount of \$20,606.00, to Vanum Construction, Inc., pertaining to the Ironwoods Park Project [CIP # 116**

Councilmember Taylor stated he was concerned with several of the items listed in the Change Order, specifically: [No. 3], for ashtrays at the entrance of the Activity Lodge where smoking is prohibited within 30 feet of a building; [No. 4], for modifications for the dormers details of the Activity Lodge, which is a design change by the architect. He felt the Governing Body should have more information as to why the City had to pay this cost; and [No. 10], for items he felt the Contractor had not provided sufficient specific information to the Governing Body. Councilmember Taylor requested Staff to review these items and make recommendations to the Governing Body, and made a motion to continue the approval of the Change Order to the April 7, 2003 Governing Body meeting.

Mayor Dunn asked Chris Claxton whether the continuance of this matter for three weeks would affect the timeline of the project. Ms. Claxton stated that this would not affect the project. The motion was seconded by Councilmember Gulledge, and the motion was approved unanimously.

1272 **P. Approve Change Order No. 12, for an amount not to exceed \$5,000.00, Vanum Construction, Inc., pertaining to the Ironwoods Park Project [CIP # 116]**

Councilmember Taylor stated he would like the Governing Body to stipulate that the maximum amount of the Change Order not to exceed \$5,000, with payment on the basis of time and materials only.

Councilmember Taylor made the motion as stated, seconded by Councilmember Dunn. The motion was approved unanimously.

1326 **8. MAYOR'S REPORT**

- A. Roxanne Wu-Rebein is donating a Sissinghurst bench in honor of her mother, Lilli Wu, to I-Lan Park.
- B. Attended a groundbreaking ceremony by the Leawood Lions Club for a fountain at City Park.
- C. Attended a groundbreaking ceremony for the Bank of Blue Valley at 135th Street and Mission Road.
- D. City Administrator Scott Lambers and the Mayor attended a speech by Governor Sebelius at Johnson County Community College. The Governor was asked by many in attendance to increase taxes to keep City services at the current standard.
- E. Attended an Inter-Faith Prayer Breakfast at St. Joseph Health Center focusing on the growing population of those who are unable to afford health insurance.
- F. Asked the Governing Body to suggest appointments for Committee vacancies that she will be filling over the next month.

1504 **9. COUNCILMEMBERS' REPORT**

Councilmember Gill reported on his son and two other Blue Valley North students who spent four hours picking up trash for a community service project for their biology class. He stated that more schools are requiring community service hours from their students and he suggested that the City work towards coordinating service projects with the schools.

1575 **10. STAFF REPORT –**

A. Resolution No. 1910 accepting the City of Leawood's Stormwater Maintenance Policy for City-Owned Stormwater Structures [TRACKER]

Councilmember Dunn stated that it was the Stormwater Management Committee's recommendation that the Mayor assign the Committee the task of drafting an executive summary for use by citizens to give them a summary of what their rights and responsibilities are under the current Stormwater Policy. He urged the Council to adopt the recommendations of the Stormwater Management Committee.

The motion to adopt the Policy was made by Councilmember Taylor and seconded by Councilmember Rawlings. The motion was approved unanimously.

COMMITTEE RECOMMENDATIONS

1666 **11. PUBLIC WORKS COMMITTEE –**

[from the January 29, 2003, Public Works Committee Meeting]

A. Approve the Committee's recommendation of the scope of the Roe Avenue Improvement Project [between 124th Street and 135th Street][CIP #110]

Councilmember Bussing discussed the "Summary of the March 10, 2003 Council Workshop on Roe Avenue" as prepared by Bucher, Willis & Ratliff, highlighting the responses to citizen concerns about the project that was included in the Council packet. These concerns included the widening of Roe Avenue, stormwater runoff, noise abatement, landscaping and raised retaining walls, as well as funding as requested by Councilmember Gill.

1986 Mr. Lambers spoke on the CARS program, stating that the funding for the Roe Avenue Improvement Project had been allocated; however, if the Project was deferred, the money would be jeopardized. He recommended that the Governing Body approve the Project.

Councilmember Bussing made the motion to approve, and Councilmember Dunn seconded it.

Councilmember Taylor discussed his concern about whether residents would receive more stormwater flooding than they already get should this project be completed. Councilmember Bussing stated they would not. Councilmember Taylor stated he understood the Federal government would not allow Federal funding to residential projects that was over 55 decibels. He asked for that issue to be reviewed. His other concern was of the raising of the retaining walls. Councilmember Taylor stated that while he was a strong proponent of the Roe Avenue Project, he would have to vote against the recommendation based on his concerns relating to the noise and the retaining walls.

Councilmember Gullledge stated his concern about safety at key locations would prevent him from voting for the project. Joe Johnson spoke on the placing of guardrails that were not included in the recommended plan.

Councilmember Gill favored the recommendation, and asked Councilmember Gullledge whether the addition of guardrails in the plan would change his opinion. Councilmember Gullledge answered in the affirmative.

The motion carried by the following vote: Yea: Councilmembers Bussing, Gill, Rawlings, Story and Dunn. Nay: Councilmembers Gullledge and Taylor.

2558 **12. PLANNING COMMISSION**

[From February 25, 2003, Planning Commission meeting]

A. Resolution No. 1911 approving a Final Site Plan for Town Center Plaza, Bravo Restaurant, located at 5005 W. 117th Street]

Jim McKenzie, Bravo Development, Green Falls, Ohio, brought a sample of the Bravo signature awning material and brochures showing photos of the exteriors of various Bravo Restaurant locations throughout the United States. He stated Leawood's Bravo Restaurant would be the 26th such restaurant.

Councilmember Gill asked Diane Binkley what policy would be in place should other businesses come forward asking to deviate from Town Center Plaza's guidelines on exterior appearance. Ms. Binkley stated that the size of the tenant (Bravo) and the fact that it's a restaurant distinguishes it from other tenants. She said certain criteria would need to be established to allow deviation from the current guidelines, which allows any color of solid awnings. The Planning Commission approved Bravo's request for striped awnings.

Councilmember Taylor pointed out that Panera Bread's awnings were charcoal brown and white stripe, unlike the black and white of Bravo's. While Bravo's design is attractive and is their signature design, he questioned the incorporation of it in Town Center Plaza's overall plan, and the future requests of other businesses.

Mr. McKenzie stated it was Bravo's understanding that there was no ordinance restriction to striped awnings in Leawood except at Town Center Plaza, located on the south side. They submitted this plan upon the recommendations of Town Center, the Planning Commission and the architect of the center. It is not Bravo's intention to set precedence for Town Center Plaza with striped awnings; it (striped awnings) defines their restaurant. They feel that being the first Bravo restaurant in the area, it is important that they keep their identity.

Councilmember Story stated he was not as concerned about the stripes as the lettering, and that issue had been resolved with the limitation of using the restaurant name only.

Councilmember Gullede stated he approved of the design and décor of the Bravo Restaurants.

Councilmember Dunn felt the Planning Commission, the Staff, and the Council could be relied upon to choose a tasteful design and that issues that came up in the future could be resolved amicably.

Councilmember Dunn made a motion to approve the Final Site Plan, with a second from Councilmember Rawlings. The motion was approved unanimously.

3085 **B. Ordinance No. 1982 approving a preliminary site plan and preliminary plat for Mission Farms, Mixed Use Development, located south of 105th Street and east of Mission Road [Roll Call Vote]**

Jason Clement, representing CDFM² Architecture, gave a presentation on Mission Farms. He asked for a change in zoning from SD-CR to MSD, and also the approval for the following changes in the plans: [1] the addition of several town homes that are now included near the clubhouse; [2] the deletion of a right-in driveway at the SW corner; [3] the addition of a north-south artery at the main entrance to provide access from the south main drive to the north main drive; and [4] the increase in the setbacks of the town homes.

3162 Councilmember Gullede left the Council Chambers.

Councilmember Dunn questioned the reasoning behind the proposed private drive. Mr. Clement stated if the road were public, the setback would be so great that the town homes could not be constructed. Councilmember Dunn asked the intent behind Stipulation 4 of the Staff Report on this site plan. Ms. Binkley stated the Planning Commission did not want the gating of the section in question, to make it more accessible to other citizens and emergency personnel. Councilmember Dunn asked that it be stipulated that owners of the town homes be responsible for the road and the funding.

3266 Councilmember Gullede returned to the Council Chambers.

Councilmember Gill recalled that gating was not part of the plan originally approved. He added he was opposed to gating and would not support the plan until he heard more information as to why the area should be gated. Mr. Lambers stated that the City's current gating policy applies only to public streets. Mr. Clement said the intent of the gating was to discourage traffic flow through the area.

Councilmember Taylor was also opposed private streets. He asked if the reasoning behind the private street was economically based. He felt there were other ways to limit traffic flow besides gating, and that he would not support this plan.

Councilmember Dunn asked if Stipulation 12 would require the developer to seek a setback variance from the BZA. Ms. Binkley stated that was correct for the setbacks on the north between the town homes and the residential property. Currently, the setback is 75 feet, and they would be asking for a variance of 35 feet. If the variance is not approved, the town homes would not be built.

Councilmember Story questioned Stipulation 13, on the signage on the east side of the building, as to where it was going to be and if it would be visible to the homeowners directly to the east. Mr. Clement stated the signage would be on the lowest level only.

Councilmember Rawlings asked if there was a walking trail on the map. Mr. Clement stated it was an existing trail. Councilmember Rawlings asked why this trail was not connecting up to the trail on Mission Road through the new development. Mr. Clement said the residents to the east did not want this and so it had not been planned that way.

Councilmember Dunn made a motion to approve the preliminary site plan with the following changes: [1] the applicants agree to not gate the drive and [2] that the developer and/or the Homes Association establish an escrow account to maintain the streets as needed. Councilmember Story seconded the motion.

Councilmember Gill pointed out that Stipulation 4 mentioned alternative controlled access points. He said he would not support any type of control. He asked Councilmember Dunn if he would amend his motion to include no access restrictions; Councilmember Dunn stated that had been his intention. Councilmember Bussing asked if Councilmember Gill would allow traffic plateaus. Councilmember Gill stated he would, as it was not a barrier to access, but to speed. Councilmember Taylor asked for a friendly amendment to Councilmember Dunn's motion, to ask for the funding of the escrow account for street repair to be made up front by the developer, who would be reimbursed by the Home Association.

Councilmember Gill asked what had happened to the turning circle under Stipulation 5. Mr. Clement stated that currently it was left out of the plan, but it is still being considered.

The roll call vote was taken with the following result: 7 to 0 in favor of the motion. Mayor Dunn stated for the record that had she been voting, she would have abstained due to a conflict of interest.

C. Ordinance No. 1983 rezoning from RP-A; Planned Rural Density Single Family Residential, and SD-CR; Planned General Retail, to MXD; Mixed Use District, for Mission Farms located south of 105th Street and east of Mission Road [Roll Call Vote]

Councilmember Dunn made the motion to approve, seconded by Councilmember Rawlings. The roll call vote was taken with the following result: 7 to 0 in favor of the motion. For the record, Mayor Dunn stated that had she been voting, she would have abstained due to a conflict of interest.

4025 **13. OLD BUSINESS – None**

4027 **14. NEW BUSINESS**

4028 **A. Approve bid in the amount of \$272,000 to Club Car, Inc., pertaining to the golf cart fleet at IRONHORSE Golf Club**

Councilmember Gullede made the motion to approve, seconded by Councilmember Dunn. The motion was passed unanimously.

4076 **B. Schedule Executive Work Session at 6:00 P.M., on Monday, April 14, 2003, regarding City Administrator's semi-annual review.**

Councilmember Dunn made a motion to approve, seconded by Councilmember Rawlings. The motion was passed unanimously.

4099 **C. Schedule Governing Body Work Session at 6:30 P.M., on Monday, March 31, 2003, regarding Special Benefit District Financing.**

Councilmember Dunn made the motion to approve, seconded by Councilmember Gill. The motion was passed unanimously.

4137 **15. ADJOURN**

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

Debra Harper, City Clerk

Emily Watson, Recording Deputy City Clerk