

Minutes

Audio Tape Nos. 589-590

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, June 2, 2003. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

Staff present:

Scott Lambers, City Administrator
Ben C. Florance, Fire Chief
Colleen Browne, H.R. Director
Diane Binckley, Planning & Develop Dir.
Mark Andrasik, Info. Systems Dir.
Shannon Marciano, Ass't. City Attorney

Chris Claxton, Parks & Rec. Dir.
David Ley, City Engineer
Jeff Cantrell, Neighborhood Serv. Adm.
Deb Harper, City Clerk
Emily Gleasure, Deputy City Clerk

108 **1. PLEDGE OF ALLEGIANCE**

125 **2. APPROVAL OF AGENDA**

Mayor Dunn noted that Item 13D had been withdrawn, and that a report from Councilmember Gill would be added under Item 9, Councilmembers Report. Councilmember Dunn made the motion to approve, seconded by Councilmember Gill. The vote to approve was unanimous.

166 **3. CITIZEN COMMENTS**

G. Gordon Thomas, 10516 Mohawk Lane, questioned the reasoning behind adopting another sister city for Leawood.

Dan Ogilvie, owner of Ranchmart Wine and Spirit Shoppe, 3748 W. 95th Street, asked for Governing Body support on the recommendation to allow Sunday and holiday sales of liquor.

- 335 **4. PROCLAMATIONS**
Mayor Dunn made the following proclamations:
- **Leawood Relay for Life Day, June 13, 2003**
 - **Designation of Oxford Schoolhouse, 14701 Mission Road, as 'Leawood Historic Structure' Leawood**
Historic Commission Chairperson Beverly Hurley accepted the proclamation on behalf of the Commission.
- 414 **5. PRESENTATIONS/RECOGNITIONS - None**
- 417 **6. SPECIAL BUSINESS**
Discussion regarding 'Draft' resolution approving the establishment of a Sister City relationship between the City of Leawood, Kansas and The Gezer Region, located in Israel, that is tentatively scheduled to be placed on the June 16, 2003, Agenda for formal adoption
Mayor Dunn stated that the Gezer Region was planning to call a special meeting on June 16, 2003. They plan to adopt a formal agreement of the Sister City relationship with Leawood on the same day as the Governing Body would do so here. The Mayor also indicated there was a possibility of a ceremonial signing through video-conferencing at a later date.
- Councilmember Taylor stated he gave his full support to the Sister City relationship with the Gezer Region.
- 532 **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. 974
 - B. Minutes of the May 19, 2003, Governing Body meeting
 - C. Minutes of the May 12, 2003, Special Governing Body meeting
 - D. Minutes of the May 5, 2003, Governing Body meeting
 - E. Minutes of the May 19, 2003, Public Building Commission meeting
 - F. Minutes of the March 25, 2003, Arts Council meeting
 - G. Approve purchase in the amount of \$2,973.82, from Scott Rice pertaining to the buildings at Ironwoods Park, 14701 Mission Road
 - *H. Approve purchase for an amount not to exceed \$75,170.57, from John Marshall pertaining to the ancillary furniture at Ironwoods Park, 14701 Mission Road
 - I. Approve purchase in the amount of \$4,313.50, from Sico America, Inc., pertaining to the purchase of a mobile stage at Ironwoods Park, 14701 Mission Road
 - J. Approve purchase in the amount of \$5,440.00, from Serta Mattress Company, pertaining to the purchase of bed mattresses for buildings at Ironwoods Park, 14701 Mission Road

- *K. Approve purchase in the amount of \$6,608, from Kansas City Tent & Awning, pertaining to the purchase of mattress accessories for buildings at Ironwoods Park, 14701 Mission Road
- *L. Approve purchase for an amount not to exceed \$6,231, to Country Casual, pertaining to the purchase of teak furniture for Ironwoods Park, 14701 Mission Road
- *M. Approve purchase for an amount not to exceed \$11,761, from Gene Gladstone Associates, pertaining to the purchase of outdoor furniture for Ironwoods Park, 14701 Mission Road
- N. Approve purchase in the amount of \$5,980, from Annie's Mountain & Log Furniture, pertaining to the purchase of furnishings for Ironwoods Park, 14701 Mission Road
- O. Approve bid in the amount of \$1,938,085.00, to Miles Excavating, pertaining to the, SMAC Project JB-04-008, from Lee Boulevard to State Line between 103rd Street and I-435
- P. Approve Request for expenditure for an amount not to exceed \$900,000, pertaining to bid information received through Kansas Department of Transportation [KDOT] pertaining to the 119th Street & Mission Road Improvement Project [CIP # 159]
- Q. Resolution approving a Final Plat for Tuscany Reserve, located at the southwest corner of 137th Street & Chadwick ***[from May 27, 2003, Planning Commission meeting]***
- R. Resolution approving a Final Site Plan for Cold Stone Creamery outdoor seating located at 5234 West 119th Street ***[from May 27, 2003, Planning Commission meeting]***
- S. Resolution approving a Final Site Plan for Discover Vision Center emergency generator located at 11705 Roe Avenue ***[from May 27, 2003, Planning Commission meeting]***
- T. Resolution approving and authorizing the execution of a Service Agreement in the amount of \$5,818.50, between the City and Weather Services, Weather or Not, Inc., pertaining to providing inclement weather information

[* Deb Harper stated Chris Claxton had changes to Items 7H, 7K, 7L and 7M pertaining to the purchase amounts. Councilmember Taylor confirmed with Ms. Claxton that the increase in the total amount was within the budget for the Ironwoods Park project.]

Councilmember Gullledge made the motion to approve with the changes, seconded by Councilmember Gill. The Consent Agenda was approved unanimously.

- 650 **8. MAYOR'S REPORT**
- A. Attended D.A.R.E. graduations at Brookwood and Nativity schools
 - B. Attended the ribbon cutting ceremony for Davidson's Promotional Products
 - C. Attended the Leawood Women's Club Philanthropic luncheon where approximately \$3500 was donated to both the Leawood Fire Department and Leawood Police Department for equipment
 - D. Received a letter from Elizabeth Chu stating she had been promoted and reassigned as of June 8, 2003. Ms. Jo-Chin Wang will be her replacement.
 - E. Recognized Kevin Jeffries, Chamber of Commerce President, for his work on the Taste of Leawood event
 - F. Asked for a Councilmember to attend the MARC 7th Annual Regional Assembly on Friday, June 13, 2003
 - G. Reminder that the intersection of 119th Street and Mission Road would be closed completely from June 5th through August 15th

- 831 **9. COUNCILMEMBERS' REPORT**
- Councilmember Gill recognized Mr. Ogilvie, of Ranchmart Wine and Spirit Shoppe, for his help with the Taste of Leawood event. Councilmember Gill asked that the Governing Body move forward with the process of finalizing liquor sales on Sunday and holidays. Councilmember Gill made a motion to have the first reading of the new ordinance read at the next Governing Body meeting on June 16, 2003, and the second reading at a Special Call Meeting of the Governing Body at 6:00 P.M. on June 23, 2003, before the Budget meeting. Councilmember Rasmussen seconded the motion. The motion passed 7-1-0, with Councilmember Gullledge voting against the motion for reasons previously stated at the April 7, 2003, Governing Body meeting.

Councilmember Gill also made a motion to direct staff to prepare a proposed ordinance for the June 16, 2003, Governing Body meeting on banning pit-bull dogs in Leawood. Councilmember Rasmussen seconded the motion. Scott Lambers asked for a friendly amendment to the motion to include a moratorium on licensing such dogs in Leawood until the June 16, 2003, meeting. The motion passed unanimously.

- 1048 **10. STAFF REPORT – None**

COMMITTEE RECOMMENDATIONS

1050 11. **PLANNING COMMISSION**

[from April 8, 2003, Planning Commission meeting]

Ordinance No. 1988, approving preliminary site plan and preliminary plat and rezoning from SD(O) *[formerly known as CP(O)]* Planned Office to MXD Mixed Use District, for Park Place, located on the northwest corner of 117th Street and Nall Avenue [Roll Call Vote] *[Continued from the May 5, 2003, Governing Body meeting]*

John Petersen, attorney for the applicant, gave the applicant's presentation. The three primary issues raised at the May 5, 2003, presentation to the Governing Body were: 1) density; 2) height; and 3) stormwater detention on or off site. Mr. Petersen directed his attention to discussing the stormwater detention, stating four independent studies had been conducted, including one by HNTB, that indicated detention onsite was detrimental to the site development. He assured the Governing Body that as the project progressed, further studies would be done to check for proper capacity to offset flooding over Town Center Drive.

Mr. Petersen acknowledged the apprehension of the neighbors concerning height and density. He stated that the applicant had strived to cooperate with the neighbors in Edgewood and Leawood Country Manor, meeting on four different occasions to hear their concerns. These concerns were then incorporated into the plan which has been modified significantly.

Mr. Petersen addressed the issue of precedence in approving the plan that was seeking significant deviations to the Code. He pointed out that precedence would only be plausible should another plan similar in terms of circumstances be presented, and that the Governing Body would not be duty bound to approve all future submitted plans with deviations. The MXD ordinance was well crafted in terms of avoiding a situation where someone could argue precedence, by not offering a promise to approve a deviation, but to require proof to do so.

1695 Richard Heaps, of StreetWorks, gave a Powerpoint presentation on the features of the plan's design. Specifically, he spoke on the setbacks of the buildings, their height, and the anticipation of what the first phase would encompass. Computerized animation showed the effects of shadows from the taller buildings on the Edgewood homes. In the spring and fall, the reduction of one story from the office buildings would reduce the shadowing time by only six minutes; by reducing the height of the building by half, less than half an hour would be cut from the time shadows are cast on the homes. The parking structures were also discussed, with Mr. Heaps pointing out that while the structures were seven stories tall, only 4½ stories were on street level, with 2½ stories underground.

2532 Jeffrey Alpert, 2912 W. 113th Street, stated that Park Place would have no negative impact on the adjacent residential neighborhoods, but rather increase the value of the neighborhoods.

- 2632 Mayor Dunn stated the Governing Body would now take citizen comments. Michael Fleming, 5300 W. 116h Street, spoke on behalf of Edgewood Homes Association as their Secretary. He spoke on the impact of Park Place on the character of Leawood, the lack of a buffer zone between Park Place and Edgewood, the future use of MXD zoning, and water detention.
- 2985 Dr. Morton Jacobs, 11509 Rosewood Street, questioned where the increased water runoff brought about by the project, coupled with the marsh that is already there, would flow to, without jeopardizing Town Center Plaza every time it rained. He also asked for more protection of the surrounding neighbors' property.
- 3054 Bob Barton, 11516 Juniper, questioned the amount (44%) of open space as stated by the applicant, and if the applicant had included sidewalks and streets in their open space calculation. He stated he felt they were putting aside the concerns of Edgewood residents for a plan that was financially profitable to the applicant.
- 3194 Mary Jane Susz, 11500 Juniper, asked that stormwater runoff be first on the priority list of concerns, specifically between Edgewood and City Hall.
- 3265 George Boch, 5309 W. 116th Street, quoted from the 2000 Leawood Comprehensive Plan: The Guide to Future Development of the City of Leawood, to backup his view that by approving the Park Place plan, the Governing Body was going against a previous resolution to insure that Leawood would remain open and residential, with buffer zones between residences and commercial land usage.
- 3398 Sharon Cohen, 5213 W. 116th Street, asked that the plan go back to the applicant to get it to conform more to the character of Leawood.
- 3517 Dick Noon, 11521 Juniper, gave a slide show on the drainage system that already exists along Town Center Drive and behind Juniper in Edgewood, and the results of inadequate stormwater runoff as it affects the trees and landscaping.
- 3855 Chug Tuttle, 5109 W. 111 Terrace, gave a history and showed maps and photos of detention ponds/basins in the Park Place area. He emphasized that detention worked, and that his photos were proof of that fact.
- 4061 Don Smith, 5209 W. 116th Street, Vice President of Edgewood Homes Association, stated that 46 of the 48 residents of Edgewood had asked the Planning Commission to require the applicant to remove the tall buildings early in the planning. He questioned the acreage amount used for calculations for the Park Place plan's F.A.R. Mr. Smith asked if the Governing Body was a "Developer's Council" or a "Resident's Council".
- 4311 Whitney Kerr, 310 W. 49th Street, a real estate broker for Neil Douthat, stated he would receive a commission should this property be sold. Mr. Kerr said the density F.A.R. of Park Place was not high; that the Plaza was eight times higher in density than this plan. He felt the overall area (160 acres of the Douthat farm) should be taken into consideration, and not just one small area of the whole.

- 4509 Ken Bush, 5187 W. 114th Place, stated he was still opposed to the plan. Density depended upon an individual's perspective. The presentations were well done, with photos chosen for marketing purposes, not to show how it would ultimately affect the residents nearby.
- 4663 Carl Lasala, 5007 W. 112th Street, a commercial real estate broker, stated there was a need for good quality retail, office and residential developments in this (Leawood) area, and he supported the plan.
- 4763 Kevin Jeffries, 2919 W. 124th Terrace, stated he lived in Leawood because he believed in the high quality of development here. Mr. Jeffries opposed the project as it now stands.
- 4900 Justin Johl, 5024 W. 112th Terrace, supported the plan, and looked at it as an alternative lifestyle choice for his wife and himself when they got older.
- 4967 Mayor Dunn turned the meeting over to Councilmembers' questions. Councilmember Dunn asked about bioengineering channel improvements for the project. John Kaul from Terra Technologies stated that at this point the stability of the stream system had been analyzed and what the effects of development would be on the stream channel. Currently the stream behind City Hall was unstable and the erosion it was causing would need to be addressed in the future. At the present time, his company was suggesting using a vegetative stabilization application to offset conditions in the area. Mr. Kaul explained how they plan to widen the stream channel. He stated detention would have a more detrimental effect on the stream than if they allowed the water to pass through quickly.
- 5290 Councilmember Gill asked about traffic. Mike Walsh, from Transitions Corporation, spoke on the traffic study that gave the intersections of 117th Street & Nall, and 117th Street & Town Center Drive "E's" and "F's" in the scoring. Options included installing traffic signals and coordinated signalization. He stated there was not currently a pedestrian crossing from Edgewood to Park Place in the plan, but the applicant was working with staff to accommodate the access.
- 5747 Councilmember Gill asked for another view of the parking structure, a repeat of what the Phase I commitments were in terms of building, and an estimate as to the price per square footage for the condos. Mr. Heaps responded the sales price would be approximately \$250 per square foot for the condos, or \$400,000 per condo. Phase I development would include the main streets and their connections of the village green, the buildings on either side of the main street (street retail, professional offices above them, and one of the residential buildings), as well as one of the parking structures. There were other buildings that would possibly be added in Phase I, but currently did not have occupants so they were not represented. Mr. Heaps presented another view of the parking garage and explained its design elements.

6149 Councilmember Gullledge conferred with Mr. Alpert about similar centers in other U.S. cities. Mr. Alpert acknowledged that several were as dense as the proposed Town Center project, in cities comparable to Leawood.

Councilmember Gullledge asked Mr. Petersen what the original plan was that the neighbors kept referring to that they had liked but had been changed. Mr. Petersen replied he did not know. Councilmember Rasmussen pointed out that the original plan was shown at the back of the agenda material packet. Mr. Alpert stated when they met originally with the neighbors, the neighbors were taken through a thought process by Mr. Heaps in terms of how a design such as Town Center evolved, but there was not a plan presented at the first meeting. At the second meeting, the plan that Councilmember Rasmussen referred to was presented, and was quite dense. Mr. Alpert believed the residents were under the impression that the design process shown by Mr. Heaps, which was more open, was an original "plan."

6563 Councilmember Rasmussen discussed with Mr. Walsh the vehicular intersections #1, 2, 8, 7, and 6, and the internal flow of traffic. Mr. Heaps concurred with Councilmember Rasmussen that there were no walking streets in the plan. They discussed the Grove development in California, with all of the internal streets being walking streets and the retail-parking garage being the best in the country at eight or nine stories high. Mr. Heaps pointed out the Grove was not a mixed-use area nor did it have underground parking.

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Councilmember Rasmussen questioned the use of elevators versus escalators in the parking garages in regard to safety issues. Mr. Heaps stated they would look into it.

49 Councilmember Rasmussen questioned Harold Phelps, the plan's water engineer, as to why the engineers were not aware of water detention areas on the site. Mr. Phelps replied that of the two pointed out earlier by a resident, one was an actual water feature, with little storage capacity. Mr. Rasmussen asked why Mr. Phelps thought the original engineers had placed detention areas on the site that was now up for rezoning, with the plan's engineers stating no detention was needed. Mr. Phelps answered that with every property one should look at both the positive and negative effects of detention, and not take a broad stand that every property required detention. On the Park Place site, the negative effects outweighed the positive benefits of detention. Councilmember Rasmussen asked if the water flow down the already eroded channels would increase by this development. Mr. Phelps replied that without any improvements, the development would cause an increase in runoff. He stated Tomahawk Creek Apartments would incur the same amount of water, but it would come in different peaks.

214 Councilmember Gill concurred with Diane Binckley that the Governing Body had a recommendation for approval of Park Place before them from the Planning Commission with certain (20) stipulations. Mr. Petersen clarified some of the stipulations, including #2 (park impact fee), 5 (asking that this stipulation be removed), 6 (height, asking for a

10' height deviation), and 17 (trees), stating they agreed with the remaining stipulations by the Planning Commission.

374 Councilmember Taylor confirmed with Shannon Marcano, Assistant City Attorney, that to pass the recommendation, the vote needed to be a $\frac{3}{4}$ majority, or 7 of the 8 Councilmembers approving. If the Governing Body made changes to the recommendations proposed by the Planning Commission, there would need to be a $\frac{2}{3}$ approval or 6 of the 8 Councilmembers.

388 Councilmember Bussing asked why one of the proposed parking garages could not be placed near the theater, as Park Place was a continuance of the entire 160 acre plan and the modification would alleviate the parking problem encountered at the theater. It was pointed out by Mayor Dunn that one of the stipulations included looking into such a modification.

449 Councilmember Rawlings asked Ms. Binckley to restate the history of the development of the area beginning with Leawood Country Manor.

494 The motion to approve the application for rezoning was made by Councilmember Taylor with the following changes: 1) Stipulations #5, 26 and 17 be removed; 2) Stipulation #6 changed to plus (+) as the ordinance states; 3) Stipulations #27 and 8 include language changes. Councilmember Gill seconded the motion asking that Stipulation #26 be restored; Councilmember Taylor approved this change. Councilmember Taylor stated he felt the plan would be an asset for the city, despite the issues brought before the Governing Body by the Edgewood residents. Councilmember Bussing stated he admired the work done on the project; however, he felt it wasn't appropriate for the character of Leawood.

716 Councilmember Gill stated his approval for the new plan, and that the team of Alpert and Mann would be able to achieve the goals of the Park Place plan better than anyone else.

855 Councilmember Dunn made a motion to extend the Governing Body meeting for 30 minutes to 11:30 P.M., seconded by Councilmember Gulledge. The motion was approved unanimously.

861 Councilmember Dunn stated he supported the proposal and that it appeared to be the type of development plan that had emerged because of the city's adoption of the MDX zoning. He added that with bioengineering, the stormwater issue would be resolved.

955 Councilmember Gulledge stated he felt this was the right project, however it was still too large, and he would not be able to approve it.

997 The roll call vote was taken with the following results: Yea: Councilmembers Taylor, Gill, Dunn, Story and Rawlings. Nay: Councilmembers Bussing, Rasmussen and Gulledge. The motion failed, 5-3-0.

1048 Councilmember Rasmussen stated he was against the plan for the following four reasons:
1) the stormwater problem; 2) density; 3) non-pedestrian friendly; and 4) variation in
height.

1092 Mr. Petersen asked for a motion to rescind the vote and continue the discussion at a later
date. Councilmember Taylor made the motion to continue this matter until June 16,
2003, seconded by Councilmember Dunn. Councilmember Gill asked for the Mayor's
opinion on the plan; Mayor Dunn stated had she had the opportunity to vote she would
have voted in the affirmative. Councilmembers Bussing and Gullede stated they would
both be open to hearing new information on June 16th. Councilmember Rasmussen
reiterated that the applicants had not taken the three issues (stormwater, internal traffic
flow, and density) into consideration for tonight's presentation, and didn't feel the plan
would change over the next two weeks. He felt it was giving the citizens the wrong
message by giving the applicants another chance to present a new plan. The motion to
continue passed 7-1, with Councilmember Rasmussen dissenting.

1367 **12. OLD BUSINESS - None**

1369 **13. NEW BUSINESS**

**A. Approve Change Order No. 13, in the amount of \$20,521.00, to Vanum
Construction, Inc., pertaining to the Ironwoods Park Project [CIP # 116]**

Councilmember Taylor made the motion to approve, seconded by Councilmember
Story. The motion passed unanimously.

**B. Resolution approving and authorizing the Mayor to execute Addendum No.
2, to the Engineering Agreement in the amount of \$63,322.00, between the
City and Black & Veatch Engineers, pertaining to the SMAC Project DB-04-
024; 83 Street & Wenonga south to 86 & Cherokee; Dykes Branch**

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

**C. Resolution approving and authorizing the Mayor to execute an Inter-local
Agreement between the City and Board of County Commissioners of
Johnson County [BOCC] for the reimbursement of \$63,322.00, to the City
pertaining to the SMAC Project DB-04-024; 83 Street & Wenonga south to
86 & Cherokee; Dykes Branch**

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

**E. Ordinance amending Section 11-904, of the Code of the City of Leawood
2000, pertaining to Smoking Regulations, specifically repealing the appeal
process [Roll Call Vote]**

Councilmember Gill made the motion to approve, seconded by Councilmember
Story. The motion was put to a roll call vote and passed unanimously, 8-0-0.

1445 **14. OTHER BUSINESS**

A resolution was put before the Governing Board as required by KDOT for authority to award a contract to APEC/Reno Construction for the 119th Street & Mission Road intersection construction. Councilmember Taylor made the motion to approve, seconded by Councilmember Rawlings. The motion was approved unanimously. It was subsequently determined, this item was identified as Item 7P under the Consent Agenda.

1496 **15. ADJOURN**

There being no further business, the meeting was adjourned at 11:23 P.M.

Debra Harper, City Clerk

Emily Gleasure, Recording Deputy City Clerk