

Minutes

Audio Tape No. 615-616

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:35 P.M., on Monday, February 2, 2004. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Ben Florance, Fire Chief
Sid Mitchell, Chief, Police Dept.
Karl Weinfurter, Info Systems Specialist
Diane Binckley, Planning & Develop. Dir.
Emily Gleasure, Deputy City Clerk

Patricia A. Bennett, City Attorney
Joe Johnson, Public Works Director
Chris Claxton, Parks & Rec Director
Kathy Rogers, Finance Dir.
Deb Harper, City Clerk

112 **1. PLEDGE OF ALLEGIANCE**

196 **2. APPROVAL OF AGENDA**

Mayor Dunn stated that Item "6B" [Resolution finding as to the advisability and authorizing the construction of storm water improvements [SMAC Project DB-04-024-01] to the Dykes Branch between 83rd Street & Wenonga south to 86th Street and Overhill, located within the City of Leawood, Kansas, pursuant to K.S.A. § 12-16a01 et. seq] would be continued to the February 16th, 2004, Governing Body meeting. Councilmember Rasmussen made a motion to approve the Agenda. Councilmember Story seconded the motion, and the motion was approved unanimously, 8-0-0.

227 **3. CITIZEN COMMENTS**

G. Gordon Thomas, 10516 Mohawk Lane, outlined issues he felt the City should consider regarding citizen rights.

344 **4. PROCLAMATIONS – None**

345 **5. PRESENTATIONS/RECOGNITIONS - None**

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6. SPECIAL BUSINESS –

A. Acceptance of Public Comment for Improvement District pertaining to SMAC Project DB-04-024; from 83 Street & Wenonga south to 86th Street & Overhill; Dykes Branch

Christine Carle, 8420 Ensley Lane, stated she had agreed to the easement despite having had no flooding at her residence and not benefiting from the project. Ms. Carle said she was upset at now having to pay for the project of which she does not believe in.

Mayor Dunn stated for the record that individual homeowners would be compensated for the property and easements taken by the City for assessment purposes. Councilmember Rasmussen asked Ms. Carle if she was in favor of the project, to which she replied no. He then asked if she had been aware the project's planning had begun ten years ago. She replied no, that when she bought her home two years ago, the project plans were not disclosed to her.

Chaunce Gundelfinger, 8606 Belinder, stated that the project was not disclosed when he bought his home, which was located in the flood plain. He signed the easement, believing that there would be no cost to him. He stated he realized the project would occur, but there was a question as to how it would be funded. He questioned why someone would not sign the easement, knowing that by not doing so, they would also be among those who would have to pay \$1500 yearly for ten years. He asked that the Governing Body help with the negotiations to resolve this problem.

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William Wesemann, 8407 Cherokee Lane, felt that the City had an obligation to him to proceed with the project as stated with no cost to him when he entered into an agreement by signing the easement. He stated his property would not benefit from this project. He will retain counsel if he is required to pay an assessment. He asked why the people living near the Leawood Country Club were not being assessed for the project as they have flooding also.

Chuck Pacunski, 8606 Meadow Lane, stated he had negotiated in good faith with the City when he signed the easement, and felt he was blindsided when he later received a letter stating he would be assessed \$1500 per year. He stated he understood three people had not signed easements. He asked that other options be seriously considered.

Gary Johnson, 8525 Cherokee Lane, stated he purchased his home in 2000 at which time it was disclosed that "improvements" would be made to his backyard "imminently." He signed the easement and would be agreeable to any plan. He asked that the City "just do it!"

946 Kevin Webb, 8600 Belinder, stated he signed the easement, and felt the second letter the neighbors received was too abrupt for those who acquiesced. He felt no one would be able to discuss this rationally until the financial impact for each homeowner was defined. He asked that homeowners be advised as to the end result of each homeowner's property following the completion of the project (i.e., would they be in a flood plain). Additionally, he asked that the power lines back at the creek line be buried at the same time as the stormwater improvements were being conducted.

Jim Winne, 8520 Belinder, stated he did not sign the easement. He stated he had a lot of questions as to what would happen with his property. He was concerned that he would be limited to any additions he wished to make to his home, as he would be losing half of his property. He stated he was for helping his neighbors get out of the flood plain, but wanted it done with answers and not a threatening letter. Mr. Winne stated he had retained counsel over this issue. Mayor Dunn asked Mr. Winne whether he would sign the easement if he could get answers to his questions from the City. Mr. Winne stated that from what he had heard, there were very few options. He wanted to weigh the benefits to the costs of the project before he would sign.

1219 John Harms, 8637 Overhill, stated he signed his easement with the understanding that he would not be charged extra taxes. He stated he is for the project, but did not appreciate being blindsided by the assessment.

Janice Lahue, 8416 Ensley Lane, indicated she signed in by mistake and did not desire to speak on the issue.

Kirby Deeter, 8410 Ensley Lane, said he did not see Tomahawk Creek as a threat to his property. He understood that other neighbors saw it differently and signed his easement, and then was stunned by the second letter he received. He stated that those who supported the project but would not be benefiting by it were losing both land and property value.

1336 Paul Goehausen, 8435 Cherokee Lane, stated he would benefit from the project. He indicated he did not appreciate the City taking ten years to get to this point with the project, incurring a "tremendous waste of money."

Bob Hack, 8308 Cherokee, stated he had not signed the easement because he had expected to get revised documents based upon plans he discussed with David Ley and Shawn Johnson from the City and two engineers from Black and Veatch. He never received revised easement documents, and thus didn't sign. He advised he had owned his home for 33 years and had had serious water damage three times. He asked that the City go back to the original agreement (non-assessed) and start work immediately. He stated many neighbors had held off making improvements on their houses waiting for this project to be completed. He stated that having heard testimony tonight he would sign the easement.

- 1476 Mary Jo Bahovich, 8306 Cherokee Lane, stated she had lived in her home three years and had never had water in her basement. She said she would be willing to give up her trees and the privacy they offered to solve the flooding problem. She stated she had signed her easement.
- Delia Tankard, 8409 Cherokee, advised her home had never flooded in the 29 years she had lived there, but that her backyard was eroding into the creek. She stated she had waited a long time for this project to happen and had signed her easement.
- 1594 Larry LaPorte, 3004 W. 82nd Terrace, stated he was disappointed with the content of the second letter he received and its timing. He did not sign his easement and had not received any information on the project. He felt information should be forthcoming from the City in a more timely manner. Mr. LaPorte indicated he did not have enough information on the project to make an informed decision as to whether to sign the easement. Councilmember Rasmussen asked Mr. LaPorte if there had been any indication by the seller of the imminent project when Mr. LaPorte bought his home three years ago. Mr. LaPorte stated he had been made aware of a project. He attended a meeting last June but had not known that the project was still an open issue.
- 1745 Greg Musil, Esq., 1925 Indian Creek Parkway, Overland Park, KS, stated he was counsel for Mr. Winne. He stated Mr. Winne was not opposed to helping his neighbors, but that in giving up half of his backyard, he was giving up \$20-40,000 worth of value on his home to the benefit of someone else. He was not trying to stop the project, but rather unsure to the extent that he was harmed by the project, that he be compensated for it.
- 1834 Scott Lambers stated that all property owners would be compensated in some fashion. He said that after the City was unable to obtain all of the easements, it had been his recommendation that all property owners who were contributing easements be compensated in the same fashion so there is no disparity in the dispensation of the money. By using Benefit District creation standards, those properties that would benefit would be assessed in a fair manner to offset the cost. He stated in the future the City would not assume there would be 100% participation in such a project. Mr. Lambers indicated the project was good for the City, being 75% financed by outside funding. He asked that during the next two weeks all comments and concerns be directed to him or Joe Johnson, and that a work session be scheduled before the next Governing Body meeting. Prior to that meeting, documents would be prepared addressing any issues or questions from the Councilmembers, whether from their own concerns or those addressed by citizens tonight that needed follow-up.

Mayor Dunn confirmed with Mr. Lambers that it was his recommendation to have Item "6B" on the February 16th, 2004, Agenda and not wait until the March 1st meeting to discuss the issue.

Councilmember Gill asked Mr. Lambers to confirm that three easements were lacking. Joe Johnson stated that in the first phase of the project, 2-3 property owners were waiting for revised plans from Black and Veatch, 1 or 2 properties that were losing a large portion of their backyards had not signed, and 1 or 2 properties that sit in the middle of the channel were owned by a woman in Olathe who had not been in contact with the City. He stated overall there were 2 or 3 properties for which they could not make adjustments to the plan to placate the owners who had not provided easements.

Councilmember Dunn confirmed with Mr. Johnson that residents would be provided within the next two weeks with the amount property owners would be assessed. Councilmember Dunn asked if the residents had been informed of the City policy change that took place a couple of years ago regarding the payment for easements. Mr. Johnson stated that currently the City and representatives from Black and Veatch were meeting with residents on a one-on-one basis to address any questions that they had and work out any plan changes. Councilmember Dunn stated he would be happy to talk to any resident concerning this project.

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Mr. Lambers added that there were some constraints to the options available to the City on the project. The Johnson County Wastewater District decided how their improvements were to be made, and the City then adjusted its plan around the District's plan. Councilmember Dunn stated he had only offered to give answers, not negotiate changes in the plan, which he felt were not possible.

Mayor Dunn stated the cost for the project without the easements would be \$7.1 million. Without the County's 75% funding, the City of Leawood would not be able to afford this type of improvement. If the City did not act on this project quickly, the City would lose the 75% funding, and the project would never be able to be done. Mr. Lambers added that there were 22 jurisdictions in Johnson County waiting for SMAC funding, and should Leawood decide to postpone the project, for whatever reason, the funding would be allocated to another jurisdiction. At that point, Leawood would go to the bottom of the waiting list and there would never be a guarantee that funding would be available again.

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Mr. Gundelfinger asked if there was a time limit beyond which there was a chance the City would have to forfeit the 75% SMAC funding. Mr. Lambers advised the City would need to borrow the money for the project upfront, and the deadline for that to occur was February 16th. If the City did not go forward with the borrowing for the project at that time, it would not have the money to pay for the project for another year. The City would then have to notify the County that the project had been pushed back, and at that point, the County could decide to allocate the money elsewhere. It would be a risk not to proceed on the 16th. There was a bit more flexibility when it came to the assessments in regards to the acquisitions of the easements. However, in order for the project to go ahead, the easements must all be in place. Mr. Lambers stated that at the Work Session on February 16th, the Governing Body would have a chance to review the options as to how to proceed with this project.

Mr. Gundelfinger asked if there would be any reason why the project would not be done. Mayor Dunn advised that financing was the only obstacle for the project. If all easements were dedicated, the project would go forward with 25% funding from the City, and 75% County funding. If all easements were not dedicated, Special Benefit District financing would commence, which would encompass approximately \$850,000 being acquired as an assessment against all abutting property owners.

- B. Resolution finding as to the advisability and authorizing the construction of storm water improvements [SMAC Project DB-04-024-01] to the Dykes Branch between 83rd Street & Wenonga south to 86th Street and Overhill, located within the City of Leawood, Kansas, pursuant to K.S.A. § 12-16a01 et. seq [Continued to the February 16, 2004 Governing Body meeting]**

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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. Approval of Appropriation Ordinance Nos. 990B and 991
- B. Accept Minutes of the January 12, 2004, Governing Body Work Session meeting
- C. Accept Minutes of the January 20, 2004, Governing Body meeting
- D. Accept Minutes of the December 18, 2003, IRONHORSE Advisory Board
- E. Accept Minutes of the November 11, 2003, Park & Recreation Advisory Board meeting [*continued from the January 20, 2004, Governing Body meeting*]
- F. Approve Change Order No. 7, in the total amount of \$70,477.27 to Walton Construction Company pertaining to the Cornerstone & Church of the Resurrection Public Improvement Project \$29,620.00 [CIP # 190]; and Cornerstone COR Development \$40,857.27 [CIP # 192]

- G. **Resolution No. 2155** approving and authorizing the Mayor to execute a construction agreement for an amount not to exceed \$162,000.00, between the City and Musselman & Hall Contractors, pertaining to the 2004 Slurry Seal Project
- H. **Resolution No. 2166** accepting the 2004 IRONHORSE Golf Course Business Plan, as submitted by Orion Management Solutions [*continued from the January 20, 2004, Governing Body meeting*]
- I. **Resolution No. 2167** consenting to the enlargement of Consolidated Main Sewer District of Johnson County, Kansas, [JCUWD] by the Board of County Commissioners of Johnson County, Kansas [BOCC], pursuant to Johnson County Charter Resolution No. 29-92, for property located in the area of 135th and Roe Avenue
- J. **Resolution No. 2168** approving a Final Site Plan for the Headache and Pain Center located at 11120 Tomahawk Creek Parkway [*from the January 27, 2004, Planning Commission meeting*]
- K. **Resolution No. 2169** approving a Final Site Plan and final plat for Highlands Creek, 4th Plat, located south of 143rd Street and east of Nall Avenue [*from the January 27, 2004, Planning Commission meeting*]
- L. **Resolution No. 2170** approving a Final Plat for Village of Camden Woods, 54th Plat located south of 143rd Street and west of Kenneth Road [*from the January 27, 2004, Planning Commission meeting*]
- M. **Resolution No. 2171** approving a Final Plat for Village of Camden Woods, 55th Plat located south of 143rd Street and west of Kenneth Road [*from the January 27, 2004, Planning Commission meeting*]
- N. **Resolution No. 2172** approving a Final Plat for Village of Camden Woods, 56th Plat located south of 143rd Street and west of Kenneth Road [*from the January 27, 2004, Planning Commission meeting*]
- O. **Resolution No. 2173** approving a Final Plat for Villas of Whitehorse 2nd Plat located north of 151st Street and east of Nall Avenue [*from the January 27, 2004, Planning Commission meeting*]
- P. Fire Department 2003 Year-End Report

Councilmember Bussing requested Item “7H” be pulled for discussion. Councilmember Taylor requested Item “7F” be pulled for discussion. Councilmember Gullede made a motion to approve the remainder of the Consent Agenda. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 8-0-0.

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Councilmember Taylor recused himself, citing a conflict of interest on Item “7F.” Councilmember Dunn confirmed with Mr. Lambers that the Change Order was being paid for by the Benefit District. Councilmember Gill restated his distaste for the process by which the General Contractor (Walton) ran the City’s business, and would not support this type of contract again. Mr. Lambers advised that the landscaping was part of the project cost, but not part of the original bid. While it was a Change Order, it was an anticipated Change Order for the project.

Councilmember Gill made a motion to approve the Item. Councilmember Rasmussen seconded the motion, and the motion was approved 7-0-1, with Councilmember Taylor recusing.

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Councilmember Bussing asked that the acceptance of the Business Plan for Ironhorse Golf Course (Item "7H") be continued to the March 1st, 2004, Governing Body meeting. He stated he had submitted a memo to Mr. Lambers that had also been forwarded to the other Councilmembers that listed concerns he wanted additional information on.

Mayor Dunn confirmed with Dick Fuller, Chairman, Ironhorse Advisory Board, that he had received Councilmember Bussing's memo on Friday. At that time, Mr. Fuller faxed the questions to Orion, and had the answers to Councilmember Bussing's questions ready tonight. Councilmember Bussing asked for additional time to review and discuss the responses.

Councilmember Rasmussen recommended accepting the Business Plan. By holding up the acceptance for an additional month, it would prevent the Management Team from being able to start selling its various programs. Councilmember Bussing stated he understood that the document was a Business Plan for the Governing Body to accept (as having received), allowing time at a subsequent meeting to discuss questions or concerns. He did not understand that the Governing Body would *accept* in the context of *endorsing* the Plan, and all of the contents within.

Mr. Lambers suggested that the meeting to discuss the Plan be held on February 16th, and not on March 1st. Councilmember Rasmussen asked the Ironhorse Management Team present whether they could proceed with their advertising if the Plan was accepted excluding Councilmember Bussing's areas of concern. Mr. Fuller stated that the basis of Councilmember Bussing's questions concerned the advertising aspect of the Plan, and he didn't think management could proceed without full acceptance.

Councilmember Bussing stated he would not be available for the February 16th Governing Body meeting. He stated he did not object to the acceptance the Business Plan and understood his questions would be addressed by the Management Team. He suggested moving forward and accepting the Plan tonight.

Councilmember Story asked what was understood to be implied by accepting the Business Plan. Mr. Lambers advised that there were assumptions contained in the Business Plan from the Management Team. By accepting the Plan, the Governing Body was accepting Orion Management's opinions and assumptions forecast, but not adopting them as part of the Plan document. There had also been budgetary implications in the document in the past and it was felt that it was inappropriate to consider those types of requests outside of normal budgeting process. The acceptance aspect of the Plan was simply that the Governing Body was accepting a document that had been submitted. The Plan had budgetary implications for the 2005 Budget, and by accepting them, the Governing Body was acknowledging that these requests would be considered with other funding requests from other departments, and would compete accordingly. Mr. Lambers stated that it was his recommendation that the Plan be approved tonight. The questions that Councilmember Bussing raised, and had been responded to by Orion, would be copied to the Governing Body. In the future, a Work Session would be provided before the acceptance of the Plan, so that all issues could be addressed beforehand.

Councilmember Bussing asked to schedule a Work Session this year as soon as possible to discuss the Business Plan with the Orion Management Team.

Councilmember Rasmussen made a motion to approve the Orion Business Plan. Councilmember Taylor seconded the motion, and the motion was approved unanimously 8-0-0.

3596 **8. MAYOR'S REPORT**

- A. Extended appreciation to Roxanne Wu-Rebein, the Sister City Committee and Colleen Browne for all of their hard work in organizing the Lunar New Year Celebration for the Year of the Monkey.
- B. Presented a synopsis of the 2003 State of the City Address to the Leawood Lions Club and Leawood Rotary Club last week.
- C. Congratulated the Leawood Lions Club for volunteering to ring the bell for the Salvation Army this past holiday season, accumulating 369 hours and raising over \$33,000.00. For this, they received the Crystal Bell Award from the Salvation Army.
- D. Attended the City Hall Day in Topeka on January 29th with Scott Lambers.
- E. Attended the Kansas Day Celebration on January 29th at Leawood City Hall, organized by Beverly Hurley and the Historic Commission.

9. COUNCILMEMBERS' REPORT

Councilmember Gill noted that in reading the Fire Chief's report, one in ten citizens of Leawood were the beneficiaries of an emergency response from the Fire Department for a total of 2,853 fire and emergency medical calls. Chief Florance was recognized by Councilmember Gill for the good work of the Fire Department.

3855 **10. STAFF REPORT - None**
A. Update on Traffic Calming on 85th Terrace between State Line Road and Lee Boulevard

Joe Johnson stated 51% of the people in the area were receptive to the Benefit District project. An RFP was being developed to send out for the selection of the Consultant.

Mayor Dunn advised that in speaking with the Leawood Lions Club and the Leawood Rotary Club, they requested a further explanation on the City's Traffic Calming Policy.

3930 **11. PLANNING COMMISSION - None**

3938 **12. OLD BUSINESS - None**

3940 **13. NEW BUSINESS**

A. Resolution No. 2174 providing for the issuance by the City of Leawood, Kansas, of General Obligation Bonds, Series 2004 in the approximate amount of \$10,545,000.00 to provide funds to refund certain outstanding General Obligation Bonds of the City; authorizing the underwriter to offer the Bonds for sale; and authorizing certain related matters and actions

Kathy Rogers stated that because of low interest rates, the City had a projection on a savings of \$322,000.00. She indicated that George K. Baum would serve as both Financial Advisor and Underwriter.

Councilmember Rasmussen asked if 60% of the savings would be accruable to Ironhorse Golf Club. Ms. Rogers stated she had not looked into that. Councilmember Rasmussen asked Roger Edgar, of George K. Baum, if it was possible to get a commitment from a potential purchaser at a price that the Governing Body could consider before the documentation was complete. Mr. Edgar stated it was not possible.

Mayor Dunn asked Ms. Rogers to pass on her appreciation to the Finance Staff for their hard work and diligence in pursuing this effort.

Councilmember Rawlings made a motion to approve the Resolution. Councilmember Gullede seconded the motion, and the motion was approved unanimously, 8-0-0.

- Tape #616
- First and Final Reading**
- B. Charter Ordinance No. 37, levying and imposing taxes upon and for the privilege of engaging in any business, trade, occupation or profession or rendering or furnishing any service for profit or livelihood in the City of Leawood, Kansas, to provide revenue to defray a part of the expenses of said City; defining terms used in the Chapter Ordinance; prescribing licensing and administrative procedures and penalties pursuant to K.S.A. § 12-137 [Roll Call Vote]**
Councilmember Rasmussen made a motion to pass the Ordinance. Councilmember Gill seconded the motion, and the motion was passed unanimously with a Roll Call vote, 8-0-0.
- 74
- C. Ordinance No. 2040 amending Article 2, of Chapter 5 of the Code of the City of Leawood, 2000, pertaining to Solicitors, Canvassers, Peddlers, Transient Merchants, and repealing all other sections in conflict herewith [Roll Call Vote]**
Councilmember Taylor made a motion to pass the Ordinance. Councilmember Rasmusen seconded the motion, and the motion was passed unanimously with a Roll Call vote, 8-0-0.
- 95
- D. Ordinance No. 2041 repealing Code Sections 5-401 through 5-405 of the Code of the City of Leawood, 2000, pertaining to Commercial use of Streets: Loudspeakers and Sound Trucks [Roll Call Vote]**
Councilmember Gill confirmed with Mr. Lambers that the repealed content was being replaced elsewhere in the Code.

Councilmember Taylor made a motion to pass the Ordinance. Councilmember Rasmussen seconded the motion, and the motion was passed unanimously with a Roll Call vote, 8-0-0.
- 119
- E. Ordinance No. 2142 amending Code Sections 11-205, of the Code of the City of Leawood, 2000, pertaining to Disturbing the Peace, and repealing all other sections in conflict herewith [Roll Call Vote]**
Councilmember Rasmussen made a motion to pass the Ordinance. Councilmember Taylor seconded the motion, and the motion was passed unanimously with a Roll Call vote, 8-0-0.
- 140
- *F. Ordinance No. 2143 amending Article 1, Chapter V, of the Code of the City of Leawood, 2000, pertaining to Business Licenses and Regulations, and repealing all other sections in conflict therewith [Roll Call Vote]**
Councilmember Story made a motion to pass the Ordinance. Councilmember Rasmussen seconded the motion, and the motion was passed unanimously with a Roll Call vote, 8-0-0.

- 178 **14. OTHER BUSINESS**
Mayor Dunn asked that a motion be made to schedule a Work Session on February 16th, 2004, at 5:30 P.M. for the Governing Body to discuss DB-04-024-01 (SMAC) and the draft of the Transportation Development District (TDD) Policy.

Councilmember Bussing stated he would not be in attendance that evening.

Councilmember Gill made a motion to schedule the Work Session. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 8-0-0.

- 709 **15. ADJOURN**
There being no further business, the meeting was adjourned at 9:28 P.M.

Debra Harper, City Clerk

Emily Gleasure
Recording Deputy City Clerk