

Minutes

DVD No. 100

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, May 3, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Debra Filla, Louis Rasmussen, Scott E. Gullledge, Mike Gill and James E. Taylor, Sr.

Councilmembers absent: Gary Bussing

Staff present:

Scott Lambers, City Administrator
Ben Florance, Chief, Fire Dept.
Sid Mitchell, Chief, Police Dept.
Karl Weinfurter, Info Systems Specialist
Deb Harper, City Clerk
Emily Gleasure, Deputy City Clerk

Patricia A. Bennett, City Attorney
Joe Johnson, Public Works Director
Chris Claxton, Parks & Rec Director
Diane Binckley, Planning & Develop. Dir.
Kim Curran, Sup't. of Recreation
Colleen Browne, Human Resources Dir.

0 **1. PLEDGE OF ALLEGIANCE**

220 **2. APPROVAL OF AGENDA**

Mayor Dunn stated Item No. 5 would be continued to the May 17, 2004 Governing Body Meeting. She also noted Councilmember Rasmussen had an item to discuss under Councilmembers' Report, Item No. 12.

Councilmember Rawlings made a motion to approve the Agenda. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 6-0-0.

316 **3. CITIZEN COMMENTS**

Lloyd Lavelly, 9735 Cherokee Lane, stated he was registering a protest concerning his neighbors' application for a full-sized half-court basketball court next to the Lavelly residence. Mayor Dunn requested Scott Lambers to review Mr. Lavelly's comments, and report back to the Governing Body at a future date.

G. Gordon Thomas, 10516 Mohawk Lane, discussed his views on the recent Governing Body election.

1141 **4. PROCLAMATIONS -**

Mayor Dunn declared **Municipal Clerks Week** in the City of Leawood, **May 2-8, 2004**. City Clerk Deb Harper and Deputy City Clerk Emily Gleasure accepted the Proclamation from Mayor Dunn.

Child Care Provider Appreciation Day was declared to be **May 7, 2004**, in the City of Leawood.

Joe Johnson, Director of Public Work, accepted the Proclamation for **National Public Works Week, May 16-22, 2004**.

5. RESOLUTION NO. 2210 OF APPRECIATION TO WARD ONE COUNCILMEMBER SHELBY STORY [TO BE CONTINUED TO THE MAY 17, 2004 GOVERNING BODY MEETING]

1648 **6. OATH OF OFFICE ADMINISTERED TO COUNCILMEMBER-APPOINTED, GREGORY PEPPE, TO FILL UNEXPIRED TERM OF SHELBY STORY FROM 2004-2006**

Ms. Harper administered the Oath of Office to Councilmember-Appointed Gregory Peppes. Dr. Peppes introduced his wife, children and uncle to the Governing Body and those present in the Council Chambers.

2016 **7. ROLL CALL OF NEW COUNCILMEMBERS**

Ms. Harper read the roll of the new Governing Body members.

2042 **8. PRESENTATIONS/RECOGNITIONS**

Recognition of the Ellis and Associates Platinum Award of Excellence to the Leawood Aquatic Center

Kim Curran, Superintendent of Recreation, accepted the Award of Excellence from Mayor Dunn, for lifeguard professionalism and operational safety standards associated with the Leawood Pool. Mayor Dunn stated the award was the highest honor that could be presented in this area, with only clients in the top 7% of the audit criteria receiving recognition.

2240 **9. SPECIAL BUSINESS**

A. Presentation of 2003 Annual Audit

David Cochran, of Cochran, Head & Co., P.A., gave a brief presentation of the financial audit for 2003.

3610 **B. Resolution No. 2215 accepting the 2003 Comprehensive Annual Financial Report [Audit] for the City of Leawood, Kansas**

Councilmember Rasmussen made a motion to approve the Resolution accepting the 2003 Audit Report. Councilmember Taylor seconded the motion, and the Resolution was approved unanimously, 7-0-0.

3631

C. Request by the Johnson County Interfaith Hospitality Network, Inc., for the City of Leawood to be the lead agency for a CDBG Grant Application and for a public hearing to be set on Monday, May 17, 2004

John Belden, President of the Board of Directors, Johnson County Interfaith Hospitality Network, gave a brief overview of the organization. He stated various facilities and their personnel were prepared to start serving homeless families on May 23rd. Leawood resident, Erica Kratofil, provided the impetus to involve the City with this program, currently supported by the cities of Prairie Village and Lenexa.

Councilmember Gill made a motion to approve the request for a public hearing to be set for May 17, 2004. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 7-0-0.

4134 **10. 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. 997
- B. Accept Minutes of the April 19, 2004, Governing Body meeting
- C. Accept Minutes of the March 25, 2004, IRONHORSE Advisory Board meeting
- D. Mayoral Appointment for Governing Body Presiding Officers from May 2004 through April 2005
- E. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards
- F. Renewal of Cereal Malt Beverage [CMB] license for Hallbrook Country Club, located at 11300 Overbrook Road
- G. Approve Co-op Bids for certain PW Equipment [2004-1 and 2004-2, Platform Body; 2004-3, Dump Body; 2004-4, Material Spreader; 2004-5, Wheel Loader; and 2004-6, Truck Body]; and Fleet Vehicles
- H. Approve Change Order No. 2, in the amount of \$14,948.72, to Miles Excavating, Inc., pertaining to SMAC Stormwater Project No. JB-04-008, from Lee Boulevard to State Line and 103rd Street to I-435 Highway
- I. Approve Final Payment in the amount of \$701.29, to DeGasperi & Associates for architectural services pertaining to the Fire Station No. 2 Remodeling Project, 12701 Mission Road [CIP # 150]
- J. **Resolution No. 2216** approving and authorizing the Mayor to execute Addendum No. 2, to that certain Design Engineering Agreement dated August 19, 2002, between the City and Continental Consulting Engineers, in the amount of \$44,360.00, pertaining to the JB-04-008 SMAC Project, Lee Boulevard to State Line and 103 Street to I-435 Highway
- K. **Resolution No. 2217** approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$2,000.00, between the City and Jeff Rumaner, pertaining to the Public Art Program

- L. **Resolution No. 2218** approving a final plat for Village of Camden Woods, 60th Plat located south of 143rd Street and west of Kenneth Road
- M. **Resolution No. 2219** approving a final plat for Village of Camden Woods, 61st Plat located south of 143rd Street and west of Kenneth Road
- N. **Resolution No. 2220** approving a final plat for Village of Camden Woods, 62nd Plat located south of 143rd Street and west of Kenneth Road
- O. Resolution approving a final plat for Parkway Plaza located at the northwest corner of 135th Street and Roe Avenue - ***CONTINUED TO THE MAY 17, 2004 GOVERNING BODY MEETING***
- P. **Resolution No. 2221** amending the City's Debt Management Policy, previously adopted on April 3, 2000, and repealing Resolution No. 1518 -***CONTINUED FROM THE APRIL 19, 2004 GOVERNING BODY MEETING***
- Q. **Resolution No. 2222** amending the City Special Benefit District Policy, previously adopted on September 2, 2003, and repealing Resolution No. 2072 -***CONTINUED FROM THE APRIL 19, 2004 GOVERNING BODY MEETING***
- R. **Resolution No. 2223** adopting the 2005-2009 Capital Improvement Program [C.I.P.] for the City of Leawood, Kansas

Mayor Dunn stated Item "10K" would be pulled for discussion. She also noted that there was a change in Item "10E," pointing out that the term of Planning Commission member Cy Perkins should continue until 2006, and not 2007 as it had appeared in the memo. Councilmember Taylor asked to pull Item "10 O."

Councilmember Taylor made a motion to approve the remainder of the Consent Agenda. Councilmember Rasmussen seconded the motion, and the motion was approved unanimously, 7-0-0.

Item "10 K" - Chris Claxton discussed the tubular glass sculpture that would be placed in the City Hall lobby as mentioned in Item "10K." She stated the sculpture was on loan from the artist, Jeff Rumaner, who would additionally provide upside lighting at his expense. Access to the sculpture would be restricted by use of velvet roping, and additional insurance would be in place to insure the sculpture while on City property.

Councilmember Gill made a motion to approve the agreement. Councilmember Peppes seconded the motion, and the motion was approved unanimously, 7-0-0.

4745

Item "10 O" - Councilmember Taylor discussed the Parkway Plaza development signage that was out of compliance at 135th Street and Roe Avenue. He asked that the approval for the revised final plat be continued to the May 19th Governing Body Meeting, to allow the developer to come into compliance. Councilmember Rasmussen seconded the motion. Mr. Lambers stated typically, citations and municipal court action were taken to bring a violator into compliance. Mr. Johnson stated he did not feel the additional two weeks would impact going out for bid for the plans for the development. Diane Binckley advised that Jeff Cantrell, Neighborhood Services, had cited Mr. Sailors for the Code violation.

Councilmember Gill confirmed with Mr. Johnson that the right-of-way (ROW) was being reduced five feet to allow the developer to sell his property as it was arranged for in his financing. The City set up an easement as opposed to a ROW to allow the developer the additional five feet, while retaining the same rights as a ROW would have provided. The City would be able to use this easement for stormwater, streets, sidewalks, or whatever public improvements need to be made. Patty Bennett advised it was a fully platted and conveyed easement.

Councilmember Rasmussen felt that by approving the final plat it would appear the Governing Body was also condoning the signage, and that was his reasoning for seconding the motion.

Mayor Dunn called for the question. The motion to continue this item to the May 17, 2004 Governing Body Meeting was approved 4-3-0, with Councilmembers Peppes, Gullledge and Rawlings opposing.

10444 **11. MAYOR'S REPORT**

- A. Attended with Mr. Lambers and several Department Heads the 1st Annual State of the County Address given by County Commissioner Annabeth Surbaugh
- B. Attended the Arbor Day/Ironwoods Park Dedication/Volunteer Appreciation Celebration with Mr. Lambers, Department Heads and Councilmembers Peppes, Rawlings, Rasmussen, Gill and Taylor
- C. Attended the Leawood Lions 50th Anniversary Dinner at Ironwoods Park
- D. Attended the ISAFE (Internet Safety) town hall meeting with Chief Sid Mitchell and Kevin Stafford of the FBI. Prairie Star Middle School will host the pilot program.
- E. Reminder of the Bi-State II meeting that would take place May 5th at 7:00 P.M. at the Overland Park Sheraton
- F. Acknowledged the memo in the Council packets on One KC Day, May 13th at the Fairmount Hotel
- G. Reminded the Governing Body of the group photo to be taken May 17th

11035 **12. COUNCILMEMBERS' REPORT**

Councilmember Rasmussen reported on the ISAFE America Program training session he attended. He stated it made participants aware of the threat to children presented by the Internet and its components. Chief Mitchell commented that Leawood was honored that the FBI had asked that they pilot the program for the state of Kansas.

11558 **13. STAFF REPORT - None**

COMMITTEE RECOMMENDATIONS

11604 **14. PLANNING COMMISSION**

[from the February 24, 2004, Planning Commission meeting]

A. Resolution approving a Final Site Plan for fence style modification for Village at Ironhorse, located at 151st and Granada

Staff Comment: The City Administrator does not support the applicant's request or the Planning Commission's recommendation to allow the fence installed at Village at Ironhorse to remain in place as currently constructed. A fence that resembles the other perimeter wrought iron fences around the golf course, including finials, and is in compliance with the original stipulation of approval for this development, should be required to be installed.

Mark Simpson, 15415 Windsor Circle, stated he felt the issue of finials on fences was a waste of his time and the Governing Body's time. He acknowledged the photos distributed to the Governing Body showing the five types of fences currently in use at Ironhorse Golf Course. Mr. Simpson felt the type of fence that was installed at the Village of Ironhorse was similar to an existing one at the golf course. He stated the Planning Commission had recommended approval of allowing the fence to remain as it had been constructed nearly two years previous. Mr. Simpson stated the gates were installed at the insistence of Williams Gas Company. He further stated the closest fence to his was a barbed wire fence along 151st Street that the City owned. He felt it was hard to believe that the City would fund a barbed wire fence, but complain about a \$75,000.00 fence installed solely to protect the golf course, and not by his choice.

Mayor Dunn confirmed with Mr. Lambers that the gates were to stand as constructed with no modifications.

Councilmember Rasmussen stated the fencing criteria was established ten years ago, and the perimeter fencing was either in place or in the process of being modified. The fence around Ironhorse Clubhouse was not considered a perimeter fence. The perimeter fence design that was chosen years ago was to prohibit vandalism. Three criteria were established for this fence by the Governing Body: 1) a perimeter fencing design approved by the Planning Commission; 2) the fencing would have a 25-foot offset; and 3) understanding that people who bought lots next to the golf course accepted liability for their proximity to the course. Councilmember Rasmussen stated this developer had installed the correct fencing in other areas around the golf course. The Ironhorse Advisory Committee was asking that the City enforce its ordinances. The Committee approached the City Attorney, and the Court noted the defendant had not exercised his administrative remedies (i.e. to go back through the process and request the City to change its criteria). Instead, the defendant went through the Planning Commission, which was not aware of the circumstances of the issue, and made their decision against Staff's recommendation.

Councilmember Rasmussen stated that at a recent Governing Body meeting approval was given to spend \$35,000.00 to phase in fencing in those gaps that existed around the golf course. This approved fencing was to be the same fencing the developer was to install.

Councilmember Peppes confirmed with Councilmember Rasmussen that a permit was required for the installation of a fence. Further, if a permit had been applied for, and the review of the proposed fence showed it to be improper in any way, the permit would have been denied. Councilmember Rasmussen confirmed that no permit was issued for the developer, who was aware that such a permit was required. Mayor Dunn added the developer's fence did not now match the fence that the City was to have installed adjacent to it, thus Staff's recommendation for modification.

Mr. Simpson stated the fence design was not bound by an Ordinance, but a Stipulation, and an interpretation of the phrase, "similarity (of design) of fence." The Planning Commission had agreed his fence was similar to the types of fences currently surrounding the golf course. Secondly, the developer did not willfully do anything wrong. The fence contractor they used (D-fence) misinterpreted their instructions concerning the type of fence that was required, and put in one similar to those they had put up elsewhere for the developer. Mr. Simpson maintained the fence was similar to what was currently being used around the golf course, and felt it did not warrant spending an additional \$10,000 to add finials.

Councilmember Gill confirmed with Mr. Simpson that he gave the fencing company instructions that they misunderstood, and that it was in their contract that they obtain a permit. Mr. Simpson stated in hindsight, D-fence had offered to come in for a permit and pay any penalties. Mayor Dunn stated in lieu of the fact that Mr. Simpson purchased as much as a mile of fencing from D-fence yearly, D-fence might be willing to pay the additional \$10,000.00 for the finials. Had D-fence applied for a permit in the beginning, the fence they chose to install would not have been approved, and Mr. Simpson would not be in the position he was in now.

Mr. Simpson stated there were no children at the Village of Ironhorse, nor anyone under the age of 50. There were no reports of vandalism that would preclude the necessity for finials to be installed. He felt that a \$10,000.00 fine to fix the oversight was over-kill. He stated he had used the same fencing at Nottingham by the Greens Golf Course and at Nichols Golf Course.

Councilmember Rasmussen made a motion to approve the recommendation of Staff [denying the Final Site Plan, as recommended by the Planning Commission] for modification of the fence to include finials and to obtain a fence permit, while allowing the two required gates to remain as constructed. Councilmember Rawlings seconded the motion, and the motion passed unanimously, 7-0-0.

Mr. Simpson advised that the City would have to take the matter up with his counsel, Polsinelli, Shalton & Welte Law Firm, as he was not going to make the fence modification nor obtain the fence permit. He stated he refused to be blackmailed by the City again, as last week he was blackmailed for \$28,000.00 for burying a power line. The City was now coming back to ask for an easement for it, and he refused to grant that easement also.

13627 **15. OLD BUSINESS - None**

13629 **16. NEW BUSINESS**

A. Ordinance calling for an election to be held on August 3, 2004, for the purpose of voting on a proposition to re-authorize the City of Leawood, Kansas, to levy a one-eighth of one percent [.125%] City Retailers' Sales Tax, in addition to the one percent (1.0%) currently levied, within the City of Leawood, Kansas, and to use the revenue from the additional tax to fund an accelerated residential and thoroughfare street improvement program and to make necessary stormwater improvements when such improvements are not otherwise eligible for funds from other governmental entities; such additional tax to take effect on July 1, 2005, and to end June 30, 2010. [Roll Call Vote]

G. Gordon Thomas, 10516 Mohawk Lane, commented on the proposed tax that he felt was an increase in taxes for the taxpayers, allowing the City to spend money it didn't have. Councilmember Rasmussen responded that this was a continuance of a tax. Part of the tax was to go to the City to improve City-owned stormwater projects. This was a priority issue set by objective engineers. The City did not have the ability to solve stormwater problems without revenues. Councilmember Rasmussen felt the need for the sales tax was obvious and citizens had historically voted in favor of raising taxes to fund such projects.

Councilmember Rawlings made a motion to pass the Ordinance. Councilmember Gullege seconded the motion and a Roll Call vote was taken. The motion passed unanimously, 7-0-0.

B. Schedule Governing Body Work Session on Monday, May 10, 2004, at 6:00 P.M., to discuss Transportation Development District Policy [TDD]

Mr. Lambers stated the developers, in response to inquiries from some of the Councilmembers to see the developers' perspective of a TDD proposal, would present a general outline of their proposal. He stated he believed a subsequent Work Session would need to be held also. Mr. Lambers stated background materials would be sent out to the Governing Body before the meeting. Councilmember Rawlings made a motion to schedule the Governing Body Work Session. Councilmember Gill seconded the motion, and the motion was approved unanimously, 7-0-0.

14949 **17. OTHER BUSINESS - None**

18. ADJOURN

There being no further business, the meeting was adjourned at 9:20 P.M.

Debra Harper, City Clerk

Emily Gleasure
Recording Deputy City Clerk