

Minutes

DVD No. 116

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, February 7, 2005. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Scott Gullledge, James E. Taylor, Sr., Gregory Peppes, Lou Rasmussen, Gary Bussing and Debra Filla.

Councilmembers absent: Mike Gill

Staff present:

Patty Bennett, City Attorney
Ben Florance, Fire Chief
Joe Johnson, PW Director
Chris Claxton, P&R Director
Karl Weinfurter, IS Specialist

Diane Binckley, P&D Director
Chief Sid Mitchell, Police Department
Deb Harper, City Clerk
Christy Wise, Deputy City Clerk
Colleen Browne, HR Director

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn stated that there would be a staff report for agenda item No. 10 from Public Works Director, Joe Johnson. Mayor Dunn advised additional material for Agenda No. 11B had been distributed to the Council.

A motion was made by Councilmember Rasmussen, seconded by Councilmember Gullledge to approve the agenda. The motion carried following a unanimous vote of 7-0.

3. CITIZEN COMMENTS - None

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.

4. PROCLAMATIONS - None

- 5. PRESENTATIONS/RECOGNITIONS** Recognition of Jim Dickson for 12 years of Service to the IRONHORSE Advisory Board.

Chris Claxton, Parks & Recreation Director, as well as Dick Fuller, Chairman of IRONHORSE Advisory Board, honored Mr. Dickson for his dedication and service. Shane Gardner of Orion read a letter addressed to Mr. Dickson from Paul Vermeulen, the United States Golf Association (USGA) Mid-Continental Region Director, which recognized his contributions to making the IRONHORSE Golf Club a valuable environmental asset to the City of Leawood.

Mayor Dunn relayed a message of accolades and appreciation to Mr. Dickson from Councilmember Gill, who could not be at the meeting tonight. Mayor Dunn then presented the service award to Mr. Dickson. Mr. Dickson stated that he was humbled by the kind words and would never forget them.

- 6. SPECIAL BUSINESS – None**

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. Appropriation Ordinance Nos. 1017C & 1017D [2004]
- B. Accept minutes of the January 18, 2005 Governing Body Work Session meeting
- C. Accept minutes of the January 18, 2005 Governing Body meeting
- D. Accept minutes of the November 9, 2004 Historic Commission meeting
- E. Approve renewal of Cereal Malt Beverage [CMB] License for Dragon Dynasty, 12248 State Line Road
- F. Approve renewal of Cereal Malt Beverage [CMB] License for Phillips Town Center 66, 11921 Roe Avenue
- G. Approve renewal of Cereal Malt Beverage [CMB] License for Hen House, 11721 Roe Avenue
- H. Approval of Massage Establishment License for Jason Crowl, located at 3617 W. 133rd Street, in accordance with Code § 5-520
- I. Resolution No. 2358 calling for a public hearing to be held on Monday, February 21, 2005, regarding 2006-2010 Capital Improvement Projects [C.I.P.]
- J. Adoption of the 2006 Budget/Financial Calendar
- K. Approve bid in the amount of \$16,125.70, to Blue Valley Public Safety to replace Storm Warning Siren
- L. Approve payment in the amount of \$10,870.00, to Health Plus/EHS, pertaining to the annual firefighters' physicals

- M. Approve Co-op Bid in the amount of \$45,152, to Shawnee Mission Ford for the purchase of a F-450 truck for Public Works and a passenger van for Parks and Recreation Departments
- N. Approve Change Order No. 3, in the amount of \$26,143.33, to Seal-O-Matic Paving Company, Inc., pertaining to the 2004 Residential Mill & Overlay Project
- O. Approve Change Order No. 1, in the amount of \$10,445.00, to O'Donnell & Sons Construction, pertaining to the Roe Avenue, 135th to 137th Street Improvement Project [CIP # 83194]
- P. Approve 6th and Final Pay Request in the amount of \$38,538.78, to Seal-O-Matic Paving Company Inc., pertaining to the 2004 Residential Street Mill and Overlay Program
- Q. Resolution No. 2359 approving a Final Site Plan and Final Plat for Chadwick Place located south of 135th Street and east of Chadwick *[from the January 25, 2005, Planning Commission meeting]*
- R. Resolution No. 2360 approving a Final Site Plan for Village of Seville, 2nd Phase, located north of 133rd Street and west of State Line Road *[from the January 25, 2005, Planning Commission meeting]*
- S. Resolution No. 2361 correcting Final Plat for the Patio Homes at Hallbrook, 3rd Plat, located at approximately 116th & Overbrook Road
- T. Resolution No. 2362 accepting and approving the Annual Report regarding the Leawood Public Art Impact Fee and providing for no change to such impact fee, pursuant to Code § 12-601 et seq
- U. Resolution No. 2363 accepting and approving the Annual Report regarding the Leawood Park Impact Fee and providing for no change to such impact fee, pursuant to Code § 12-401 et seq
- V. Resolution No. 2364 accepting and approving the Annual Report regarding the South Leawood Transportation Impact Fee and providing for no change to such impact fee, pursuant to Code § 13-601 et seq
- W. Resolution No. 2365 accepting and approving the Annual Report regarding the K-150 Highway Corridor [a/k/a 135th Street Corridor] Transportation Impact Fee and providing for no change to such impact fee, pursuant to Sections 13-506 and 13-509 of the Code of the City of Leawood, 2000, and repealing Resolution No. 2287
- X. Fire Department 2004 Year End Report
- Y. Declaration of surplus Fire Department property

Mayor Dunn noted that some minor edits were done to items 7A and 7B. Councilmember Rasmussen requested to pull item 7U for discussion. A motion was then made by Councilmember Gullede, seconded by Councilmember Taylor to approve the remainder of the Consent Agenda. The motion was approved following a unanimous vote of 7-0.

- 7U. Resolution No. 2363 accepting and approving the Annual Report regarding the Leawood Park Impact Fee and providing for no change to such impact fee, pursuant to Code § 12-401 et seq

Councilmember Rasmussen expressed his concern regarding expenditures of the fund balance, totaling \$203,000. He stated that the fund balance is being restricted due to a balloon payment in 2009 for purchase of the park. Mr. Rasmussen stated that he intends to persuade members of the Council during the Budget Session to release some of the balance now rather than in five years in order to meet the needs of the park, i.e. restroom facilities, improvements to amphitheater. Councilmember Rasmussen then moved to approve item 7U, which was seconded by Councilmember Peppes.

Mayor Dunn thanked Councilmember Rasmussen for voicing his concerns prior to the Budget Session to provide staff with sufficient time to address the issue. Councilmember Taylor reemphasized Councilmember Rasmussen's comments. The motion was approved following a unanimous vote of 7-0.

8. MAYOR'S REPORT

- A. Presentation of two mini-versions of State of the City remarks to the Vanguard Club and Leawood Rotary. Councilmember Bussing and Councilmember Rawlings attended events.
- B. Attended production of "All Aboard for Broadway" by J. Kent Barnhart and Company at the Leawood United Methodist Church, sponsored by the Leawood Arts Council.
- C. Reminder for presentation of "Our Town" by the Leawood Stage Company beginning February 10th through February 19th. Article regarding production in Kansas City Star.
- D. Lunar New Year celebration a great success with nearly 100% City Council attendance. Extended appreciation to I-Lan Sister City Committee including Staff Liaison, Colleen Browne. Congressman Dennis Moore, State Representative Pat Colloton, and Director General Jo-Chin Wang of the Taipei Economic & Cultural Office were among the 125 guests.
- E. Hosted along with Kansas City Mayor Pro Tem, Alvin Brooks, at the Peachtree Restaurant at 19th and Vine, a breakfast with other area neighbor mayors to welcome guests from Israel who were here to prepare the Unity Dinner.
- F. Attended Unity Dinner at Alpine Lodge on January 30th, with over 500 guests. Compliments to Kim Curran and Logan Wagler for assistance in making dinner a huge success.
- G. Attended activity at St. Michael the Arch Angel Catholic Parish for Catholic Schools Week, which honored grandparents and special guests.
- H. Attended Council of Mayors at the Sycamore Ridge Golf Course in Spring Hill. Presentations were given by Nicole Brown, Johnson County Health Department Health Educator and Ken Davis, Regional Prevention Center Director, on research regarding the health risks of tobacco use.

A model ordinance was given for review to Johnson County City Councils to take under consideration for possible passage by May 2005. Additional documents regarding tobacco usage were distributed confirming that youth access in Johnson County was very poor, 57% of retailers selected for a compliance check did sell to minors. Karen Wulfsuhle, Executive Director of United Community Services, informed that JIAC funding would be cut for this year as well as next year before becoming nonexistent. During a work session, Mayor Ron Shaffer of Prairie Village was congratulated for being elected to chair the Mid-America Regional Council Board of Directors [MARC].

- I. Attended dinner on February 6th with citizens from Kibbutz Gezer Israel, the Gezer Regional Manager, the Gezer Region Sister City Committee, and nearly 100% of City Councilmembers. The Gezer Regional Manager announced that a stone model of the Gezer calendar will be sent as a gift to the City of Leawood to be placed in Gezer Park.

9. COUNCILMEMBERS' REPORT - None

10. STAFF REPORT

Joe Johnson, Public Works Director, furnished an update on construction of Roe Avenue. He stated that street closings would take place next week south of 127th Street to 135th Street. Tree removal and grading for retaining walls will take place at this time followed by milling existing pavements and building box culverts. After this, storm sewer work and grading the road will begin. Completion of asphalt work is anticipated for early November with reopening of roads and total project completion by March 2006.

Councilmember Taylor asked when the completion of Phase I would take place and Mr. Johnson stated it would be May 2005. Mr. Johnson also stated that appropriate notification to the public would be released informing them of road closures.

Mayor Dunn inquired about weather sensitivity of the work schedule. Mr. Johnson stated that heavy rains or snowfall could delay work to some degree. Mayor Dunn also confirmed with Mr. Johnson that Mission Road would not be closing at this time as construction is not scheduled until summer.

Councilmember Bussing asked if the east-west intersection of 127th Street would remain open as well as the east-west intersection at 133rd Street. Mr. Johnson replied that the 127th Street intersection would remain open, however the 133rd intersection would be closed.

COMMITTEE REPORTS

11. PLANNING COMMISSION

[from the January 11, 2005, Planning Commission meeting]

- A. Resolution No. 2366 approving a Final Site Plan for 20/20 Building located at 2020 West 89th Street *[remanded from the Governing Body]*

A motion was made by Councilmember Rasmussen, seconded by Councilmember Rawlings to approve this Resolution. The motion was approved following a unanimous vote of 7-0.

- B. Resolution No. 2367 approving the Planning Commission's recommendation to adopt the 2004-2005 Leawood Comprehensive Plan and map, in accordance with K.S.A. § 12-747 *[remanded from the Governing Body]*

Diane Binckley, Planning and Development Director, stated this item had been remanded back to the Planning Commission with a request to review the intersection of College Boulevard and Tomahawk Creek Parkway/Mission Road at the northwest corner as well as a request to change the land use from open space to residential. She stated that the Planning Commission made the amendment to take the Comprehensive Plan back to residential, including the option for continuum care. Suggestions from Councilmembers were taken into consideration while amending the plan.

Councilmember Taylor and Councilmember Filla both extended their appreciation to the staff and Planning Commission for their hard work.

Steve Adams, representative of the Long family who own the property at College Boulevard and Tomahawk Creek/Mission Road, asked the Council to consider changing the land use of this area from open space to commercial, rather than residential. He expressed the Long family's views that as this tract had been designated residential for 25 years in the past with no development, other compatible options should be considered. He stated that the owners have the property under contract with Tomahawk Pointe, LLC, who is represented by John D. Petersen of Polsinelli, Shalton, et al.

Councilmember Taylor stated that he was not aware of this area being designated anything other than residential and Mr. Adams clarified that it had been changed from residential to open space-public on the Master Plan three years ago.

Councilmember Bussing commented on the history of the land swap and asked if there were commitments made to the Longs by the City at this time. Mr. Adams answered that the Longs were presented with proposed development of the property with deed restrictions to single family residential, however this restriction was for 25 years only and has now been lifted.

Councilmember Rasmussen asked if the restriction could have been extended, as is typical for covenants running with the land by homeowner associations. Mr. Adams clarified that the Longs' property was separate and distinct from land included in the Longwood Forest Homes Association and that the deed restriction was inclusive to this tract. Councilmember Rasmussen questioned as to whether this information was part of official city records. Mr. Adams replied that it was.

Mayor Dunn then noted a letter from Mr. Petersen's associate, Chase Simmons, from the January 11th Planning Commission Meeting minutes which primarily dealt with the issue of residential use for the tract. She asked Mr. Petersen if he was aware of the outcome from the Planning Commission Meeting when continuum care was the recommended use and actually approved that evening.

Mr. Petersen responded that his firm was not aware of the recommendation for assisted living at this site. He stated that it was his understanding from conversations with Mr. Simmons that there would not be an opportunity for them to speak at the Planning Commission Meeting on January 11th, therefore the letter was submitted. Ms. Binckley stated that the letter from the applicant was read into the record and via phone conversation with Mr. Simmons, she did make him aware that continuum care was the suggested use for the property.

Mr. Petersen thanked the Mayor and Councilmembers for including his most recent correspondence as part of the agenda packet. He asked the Council to consider this area for office use as an alternative to residential. Mr. Petersen pointed out that as the land has been deemed developable by the Planning Commission and can in fact be brought out of the flood plain; it was his opinion that residential use would still be undesirable due to its position on two major thoroughfares. He stated that office utilization would be a more reasonable option. He compared the success of the The Woods development in Leawood, residential adjacent to office, as being constructed in the same pattern that his client is proposing for the acreage in question. He also stated that in years past his firm had made application to use this property for an assisted living facility but was met with resistance.

Councilmember Peppes asked for an exact definition of open space designation, whereas Ms. Binckley responded that open space can be zoned to recreation and would allow for a few uses. She stated that it is now being considered for residential due to a past application from the Polsinelli law firm when continuum care use was in fact supported by the staff at that time, however was not supported by residents adjacent to the property. Ms. Binckley clarified for Councilmember Peppes that in order for this land to be used for anything other than open space, the land use would have to be changed on the Comprehensive Plan.

Mayor Dunn stated that this land is currently zoned as agricultural. She stated that the Council is not being asked to change the zoning, only the land use demarcation on the Master Plan. Mayor Dunn then commented on a prior meeting with herself, Chuck Peters, Chase Simmons, and the City Administrator in which it was agreed upon at that time to change the land use back to residential with the possibility of a villa development. She stated that Mr. Peters and Mr. Simmons were very comfortable with the residential designation and therefore, the City Administrator requested the remand back to the Planning Commission for this demarcation on the Comprehensive Plan.

Councilmember Bussing commented that he was intensely aware of property owners' rights and asked Mr. Petersen specifically what he was interested in the City Council deciding tonight. Mr. Petersen stated that his chief concern was the ability to keep options open for use of the land so that by working together with the City and adjacent neighbors, a plan for development could be submitted. It was his understanding that the land could not reasonably be developed for residential uses. He stated that an office designation or residential designation on the Master Plan would allow for more flexibility concerning continuum care usage.

Councilmember Bussing stated that he was not aware of the many issues or history surrounding this piece of land and felt that he needed more information before making a decision to change the land use to anything other than R-1. Mayor Dunn stated that when the Planning Commission denied the earlier proposal, the Polsinelli law firm withdrew the proposal, otherwise the information would have been included in the packets. Mr. Petersen explained that the decision to withdraw the proposal rested on the desire to present a more factual argument.

Councilmember Taylor questioned Ms. Binkley that if the land remained designated as residential on the Master Plan, would it take a supermajority of the Council to approve anything other than this use should the developer want to utilize it as an office complex. Ms. Binkley answered that it would not, unless the Planning Commission did deny the request. Mayor Dunn stated that a supermajority would have to take place tonight in order to change it from R-1 as the Planning Commission had already approved this decision. Mayor Dunn conveyed the request of Councilmember Gill, who was absent, to have the issue continued for two weeks should there be a decision to change the property to anything other than residential due to the absence of City Administrator Scott Lambers.

Councilmember Bussing further stated that changing recommendations from the Master Plan would require more information. Councilmember Rasmussen agreed that this land has a difficult history. He also stated that the fact that the property is on two major intersections is not a deterrent for residential zoning as it has been done successfully in many areas throughout Leawood, giving 103rd Street and Lee Boulevard as an example. He stated that he would support the decisions made by the Planning Commission.

Citizen and President of Longwood Forest Homes Association, Rufus Nye, 11005 Alhambra Street, stated that they supported the staff and Planning Commission's recommendations. He stated that it was an interesting argument to say the property was not developable for residential as he has seen many parcels in the past become residential when it did not seem possible.

Councilmember Rasmussen moved for approval on this Resolution, seconded by Councilmember Filla. The motion was approved following a unanimous vote of 7-0.

12. OLD BUSINESS- None

13. NEW BUSINESS - None

14. OTHER BUSINESS

ADJOURN

There being no further business, the meeting was adjourned at 8:45 P.M.

Debra Harper, CMC, City Clerk