

Minutes

DVD No. 120

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, April 18, 2005. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

Staff present:

Scott Lambers, City Administrator
Diane Binckley, P&D Director
Chief Ben Florance, Fire Department
Chris Claxton, P&R Director
Deb Harper, City Clerk
Jeff Cantrell, Neighborhood Serv. Admin.

Patty Bennett, City Attorney
Chief Sid Mitchell, Police Department
Renee Gurney, Municipal Court Judge
Joe Johnson, PW Director
Christy Wise, Deputy City Clerk
Karl Weinfurter, IS Specialist

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted an additional report to be given by Councilmember Gill under Item No. 9, Councilmembers' Report. She also advised that discussion concerning landscaping on 133rd Street, as requested by Councilmember Taylor, will be placed under Other Business as 14A. Another addition to Other Business will be Item No. 14B, scheduling of an Executive Session for a period of ten minutes immediately following the regular meeting to discuss a personnel matter.

A motion was made by Councilmember Rawlings, seconded by Councilmember Peppes to approve the agenda. The motion carried following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

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.**

Mayor Dunn noted that a technical correction had been made to item No. 7B. A motion was made by Councilmember Rasmussen, seconded by Councilmember Gill, to approve the Consent Agenda. The motion was approved following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended homecoming for the 1951 Leawood fire pumper, donated by the Leawood Woman's Club, at Fire Station No. 1. Also in attendance were many of the professional staff, members of the Leawood Woman's Club, and past Leawood volunteer firefighters. Mayor Dunn stated that it was a grand celebration and commented what a treat it was to see Fire Chief Ben Florance driving the truck down Lee Boulevard. She shared a photograph of the celebration with the Council.
- B. Attended ribbon-cutting for Shape Express, new members of the Leawood Chamber or Commence, located at 135th and Roe in the Plaza Point Shopping Center.
- C. Served as presenter on a panel with Kansas City, Missouri Mayor Kay Barnes and Lee's Summit Mayor Karen Messerli for the National Association of Women Business Owners. The event, held at the Kauffman Foundation, was the associations' public policy summit.
- D. Guest speaker at the 17th Annual Conference for the North American Taiwanese Women's Association on Friday, April 15th. Coincidentally, while walking at I-Lan Park the following Sunday, Mayor Dunn reported that three large tour buses containing 150 delegates visited the park in order to take photographs of the monument.
- E. Attended a Council of Mayors meeting at Prairie Village City Hall. David Warm, Executive Director of the Mid-America Regional Council, discussed the anticipated congestion mitigation air quality [CMAQ] funding cuts, Operation Greenlight, Homeland security setting the standard for intergovernmental cooperation in the entire area, and the regional investment fund. Mac Andrew, Director of Infrastructure for Johnson County, spoke about the Southeast Corridor Study, which MARC has been asked to lead as a regional effort due to the fact that Johnson County is growing at a rate of 2% per year. In addition, CARS funding was discussed. It was reported that since the program started in 1984, \$188 million dollars has been distributed with \$15.4 million per year for the last three years. A resolution requesting that the Johnson County Commissioners continue the CARS Program at full funding was unanimously passed by the mayors. Mayor Dunn relayed that this Council of Mayors meeting was the last to be attended by Overland Park Mayor Ed Eilert and Kansas City, Kansas Mayor/CEO of the Unified Government Carol Marinovich. On behalf of the City of Leawood, she congratulated them for their many years of outstanding dedicated service and led a round of applause.
- F. Mayor Dunn expressed gratitude to Councilmember Taylor for representing Leawood in her absence at the St. Michael The Arch Angel DARE Graduation.

9. COUNCILMEMBERS' REPORT

A. Councilmember Rasmussen's Report

Councilmember Rasmussen reviewed that during the Goals and Objectives Work Session, efforts to relieve traffic congestion and reduce noise impact on I-435 were discussed. Since that time, he has met with County Chairperson Annabeth Surbaugh, County Commissioner Ed Peterson, and an Overland Park Councilmember who has been actively involved in the installation of sound barriers. He reported that he has also discussed options with engineering groups.

Councilmember Rasmussen moved that the City Administrator be authorized to prepare a document, in the proper format, expressing the support of the Leawood Governing Body with regards to the efforts of Johnson County and the Kansas Department of Transportation to site and construct a new east/west four-lane highway, south of I-435 connecting U.S. 69 Highway and Highway 71 in order to alleviate I-435's increasing traffic congestion and its accompanying impacts, such as noise on adjoining neighborhoods. The motion was seconded by Councilmember Taylor.

Councilmember Rawlings recalled a similar proposed project near the 175th Street area that was unsuccessful. Councilmember Rasmussen stated that prior efforts to build an east/west highway have always been met with political opposition; however, due to the increasing traffic growth, he felt strongly that something needed to be done.

Councilmember Gill inquired if any portion of the south connector would be located in Leawood. Councilmember Rasmussen answered that the current proposals position the road close to the County line. There is an issue to either place the road exclusively across Johnson County or have it go into the adjacent southern county.

Councilmember Gill confirmed with Mayor Dunn and City Administrator Scott Lambers that the Mid-America Regional Council will be involved. Mr. Lambers added that MARC has been asked to take the lead as the issue will span both Kansas and Missouri jurisdictions. He added that time was not an ally concerning this issue as continuing development will make the project more costly and politically nonviable.

Councilmember Taylor verified with Councilmember Rasmussen that this highway would not be going to Lawrence nor was it the proposed 21st Century Parkway. Mayor Dunn corroborated with Mr. Lambers that the 21st Century Parkway was to be around 179th Street.

Mayor Dunn inquired about additional sound barriers. Councilmember Rasmussen stated that this issue would be included in the next phase of the process.

The motion was approved following a unanimous vote of 8-0.

B. Councilmember Gill's Report

Councilmember Gill discussed an article featured in the Watchdog series of the Kansas City Star on Sunday, April 17th, concerning fire response times in the metropolitan area. He commended reporters Matt Campbell and Richard Espinoza for their fine work. He also recognized the heroic efforts of the fire department. In reading the article, Councilmember Gill noticed that the statistics went through 2002, which coincided with the addition of fire station #3.

Councilmember Gill motioned to have a more detailed report from Fire Chief Ben Florance concerning the state of the Fire Department. Chief Florance stated that he would be happy to provide a Staff Report at the May 2nd City Council meeting. Councilmember Taylor seconded the motion. The motion was approved following a unanimous vote of 8-0.

10. STAFF REPORT - None

COMMITTEE REPORTS

11. PLANNING COMMISSION

[from the March 22, 2005 Planning Commission meeting]

- A. Ordinance No. 2100 approving a Special Use Permit [SUP] and a Preliminary Site Plan for Cornerstone-Winstead's located on the southeast corner of 135th Street and Briar [Roll Call Vote]

Councilmember Taylor advised that he would be recusing himself from this item and left the Chambers.

Winstead's owner, Nabil Haddad, introduced architect Henry Klover. Mr. Klover presented via site plan drawings and elevations.

Councilmember Gill moved for approval with a second by Councilmember Filla.

Councilmember Peppes noted that 72 parking spaces were approved, however 105 spaces were needed to accommodate seating inside the restaurant. He asked how the extra spaces would be acquired. Mr. Klover responded that Staff felt the 72 spaces were adequate as the new ordinance allows one car per two seats. Councilmember Peppes then questioned the amount of back-up that would be created from the drive-through. Diane Binckley, Planning and Development Director, reported that eight spaces are required by ordinance, which is identified on the plan with the possibility of expanding to twelve spaces. She also suggested that employees could park in other areas of the Cornerstone development to free up parking for customers.

Councilmember Peppes stated concern that the Jimmy Buffet restaurant, Cheeseburger in Paradise, was being held at a higher standard than Winstead's in terms of changing the building design to fit in with Cornerstone. Ms. Binckley stated that Cheeseburger in Paradise is being allowed to keep their identifying water tower feature and that material changes had been worked out.

Mayor Dunn confirmed with Ms. Binckley that the neon lighting in the tower element of Winstead's would provide a halo effect.

Mr. Lambers suggested that a stipulation be added to provide a pedestrian walkway on the south side of the restaurant in order to accommodate employees and other pedestrians that would be parking off-site. Councilmember Gill made a friendly amendment to his motion for approval to include pedestrian accommodations across Briar Street as Stipulation No. 22 in the final plan. Councilmember Filla seconded the friendly amendment. Mayor Dunn confirmed with Ms. Binckley that the walkway would be demarcated with different materials.

Councilmember Bussing verified with Ms. Binckley that the land immediately south of the site was under the responsibility of Cornerstone and not part of this particular plat. She reported that the area has been landscaped with a retaining wall installed to allow for sidewalk construction.

Councilmember Rasmussen questioned whether the Winstead's building fit in with the spirit of the 135th Street Corridor Study. Councilmember Gill responded that he felt Winstead's was entirely appropriate in terms of tradition. He acknowledged that the site had challenging parking issues, however felt it was a welcome addition to the 135th Street Corridor. Councilmember Bussing stated that this particular project did not comply with the 135th Street guidelines, which were intended to create a pedestrian-friendly environment. He felt that the entire plat has become a hodge-podge of uses and not friendly with pedestrians at all. On this basis, Councilmember Bussing voiced his intent to vote against the project.

The ordinance passed with the following roll call vote of 5-2: Yea: Councilmembers Gill, Filla, Peppes, Rawlings, and Gulledge. Nay: Councilmembers Rasmussen and Bussing. (Councilmember Taylor recusing)

- B. Ordinance approving a rezoning request from AG [Agriculture] to SD-O [Planned Office], Preliminary Site Plan and Preliminary Plat for Tomahawk Point located on the northwest corner of College Boulevard and Mission Road [Roll Call Vote]

Staff Comment: This item was denied by the Planning Commission. Staff has determined that the protest petition that was filed with the City Clerk's Office on Tuesday, April 5, 2005, is valid. Therefore, a minimum vote of 7 will be required to approve this rezoning.

Councilmember Rasmussen stated that subsequent to Council approval to change the Comprehensive Plan and discussion specifically related to this site, he contacted Planning Commissioner Charles Munson.

Councilmember Rasmussen reported that discussion took place regarding surface and subsurface hydraulics; utility placement for the area; alleged prior agreements with the property owner and prior administrations; and, effects of the potential elimination of the sewer plant.

John Petersen of Polsinelli, Shalton, et al., gave an overview of the site and history of prior rezoning requests. He stated that the project would in fact meet the Golden Criteria for the neighborhood.

Chuck Peters of Peters and Associates addressed the Council and stated that his prior involvement with the Merrill Lynch building, directly to the south of the proposed site, met very similar obstacles. He stated that he became involved with the project subsequent to the Interact meeting as he desired to ensure quality planning in order to protect his interests with Merrill Lynch. Regarding residents concerns, he proposed setting the structures back 75 feet from the property line and constructing a stone wall to provide a natural visual and mental barrier. He stated that all requirements from the Planning Commission could be met.

Steve Adams of Blackwell, Sanders, et al., spoke on behalf of the landowners, the Long family. He reviewed the land swap and deed restriction history of the property, which expired in 2002. He felt the project would be a good mix with surrounding properties as they are low one-story buildings that would blend with the residential structures. He stated that the plan is consistent with other developments in Leawood such as Leawood Corporate Manor and Leawood Country Manor.

Mr. Petersen summarized the Golden Criteria requirements and reiterated that this project could meet the qualifications. He stated that they are willing to adhere to Stipulation Nos. 1 through 19.

Mayor Dunn advised that we would move on to the citizen comment portion of the meeting before hearing questions from the Governing Body.

CITIZEN COMMENTS:

1. Stuart Stein, 4104 W. 110th Terrace, speaking in opposition of the project, pointed out some historical perspectives of the property. He was also concerned with having the property filled as it would eliminate a place for downhill running water to pool, thus flooding residents' backyards. He suggested providing a retention area between the residents and the proposed plan.
2. Dotty Riley, 11013 Alhambra, representing the Longwood Forest Homeowners Association, spoke in opposition to the rezoning. She stated that homeowners relied on the Comprehensive Plan before electing to purchase their homes and felt that it should not be changed without compelling reasons. She also stated that commercial properties were not good neighbors for various reasons.

3. Rod Richardson of Wallace, Saunders, et al., 10111 W. 87th, Overland Park, KS, spoke in opposition to the rezoning on behalf of the Longwood Forest Homeowners Association, specifically Dotty Riley and Rufus Nye. He enumerated the history of failed rezoning requests for this parcel and stated that there have been no changes to justify rezoning. He commented that it violates the current and previous Comprehensive Plan and cited reasons not to approve the project such as traffic concerns, environmental concerns, and drainage issues.
4. Tom Flowers, 4313 W. 110th Street, spoke in opposition to the rezoning. He stated his concern regarding the negative traffic impact and surface water problems that would occur if the plan is approved.
5. Pat Turner, 11013 Buena Vista, spoke in opposition to the project due to traffic concerns. She stated that there were only two entrance/exits to the subdivision, Delmar and Buena Vista, which are becoming increasingly difficult to utilize with the current state of traffic on College Boulevard.

Councilmember Gulledge asked Harold Phelps of Phelps Engineering to explain the dyke process. Mr. Phelps referred to planning designs and indicated a proposed retaining wall on the western edge of the property which would support the fill used to take the land out of the floodplain. He pointed out a shaded area on the diagram that would continue to flood because of the backwater through the storm sewer system under Mission Road. He stated that by leaving the western edge in a natural state, it would provide positive drainage with a detention basin for this area. Councilmember Gulledge confirmed with Mr. Phelps that the shaded area could adequately handle the water from the neighborhood as well as the proposed development.

Councilmember Bussing recalled that past consideration for development of this tract indicated some leeway on the Master Plan. Mr. Lambers clarified the current zoning, agricultural from open space, was made with anticipation that a request for rezoning would occur. He also stated that cities tend to underplan property to assure residents of a use that would be reasonable, providing necessary safeguards such as proper notification and protest petition protection.

Councilmember Bussing asked why the open space was not reverted back to the original zoning of residential. Mr. Lambers stated that he agreed with Mr. Petersen's assertion that single family residential is not a likely event to see for this tract of land due to the varying surrounding uses, specifically the wastewater plant. With offices across the street, extension of this use such as commercial or an assisted living facility would be appropriate. Mr. Lambers stated that the question is not if the proposal is unreasonable but rather if it is the best reasonable option for this tract of land. Councilmember Bussing voiced that Mr. Long has a right to develop his property.

Councilmember Taylor asked Mr. Phelps if hydrostatic pressure could undermine a dyke system and cause flooding and foundation failures on the opposite side of the pressure point. Mr. Phelps stated that he was not aware of any specific cases but it was a possible occurrence.

Mr. Phelps confirmed that this land was previously modeled as an ineffective flow area and could be filled, according to FEMA, upon filing a letter of amendment stating that it is above the 100 year floodplain. He stated that Staff's requirement to provide a study showing no rise in the 100 year adjacent water surface elevation have been met. Mr. Phelps reported that the land fill would not cause problems within the City limits or downstream based upon the Indian Creek Study.

Councilmember Taylor verified with Mr. Phelps and Mr. Petersen that the area to be used as a catch basin would belong to the proposed property owner. Councilmember Taylor asked Mr. Peters why he felt this development of office buildings would be marketable when there is a 25% vacancy in Johnson County. Mr. Peters responded that there is a high level of demand for this location with 50% of the development being immediately occupied. James O'Keefe, proposed owner and developer, added that he felt the investment would be successful and termed the land "legacy property."

Councilmember Gullede requested that Mr. Petersen address the traffic concerns made by Mrs. Turner. He also asked Mr. Peters if he would be interested in reducing the size of the project. Mr. Petersen reported that the traffic study determined that the affected intersections and street ways would operate at acceptable levels of service. He added that the applicant would adhere to the stipulations recommended by the Public Works Department. He stated there was certainly the possibility of redesigning the buildings and working things out with the neighbors. Mr. Peters reiterated their willingness to accommodate the sensitivities of Longwood Forest residents.

Councilmember Rawlings commented that the land would eventually be developed at some point. He asked Mr. Phelps to explain the current condition of the water runoff during heavy rain. Mr. Phelps stated that the storm sewer inlets discharge away from the property, however surface water pools onto the property. As Indian Creek water elevations subside, the water then goes into the drainage system across Mission Road. Councilmember Rawlings suggested shifting the building structures east and keeping a detention pond on the site to prevent residential flooding. Ms. Binckley responded there were several options possible and encouraged the Council to give direction to the applicant and Staff. She suggested continuing the item or remanding back to the Planning Commission.

Councilmember Gill requested that the traffic study be provided to the Council as he did not feel comfortable making a decision without reviewing this information. To address Mr. Stein's concerns, Councilmember Gill suggested changing the design to one large building rather than four smaller buildings to preserve the natural barriers that exist. He encouraged Mr. Peters and the residents to engage in further dialogue in order to reach a compromise.

Councilmember Gill also asked Mr. Peters why he had a change of heart about the project when he was originally opposed. Mr. Peters explained that the original design in terms of general layout and architecture was not in keeping with the look of Tomahawk Creek Parkway. His involvement occurred by way of protecting the quality of the area.

Speaking on behalf of Mr. O'Keefe, Mr. Petersen stated that he would welcome the opportunity to discuss planning changes with the residents.

Mayor Dunn confirmed by consensus of the Council that a refilling fee would be waived in the occurrence of a new plan.

Councilmember Rasmussen verified with Mr. Peters that it was common for commercial buildings to be built on slabs. Mr. Peters stated that it was unique for a commercial building to include a basement. Mr. Peters also substantiated that a left-hand turn from Tomahawk Point onto Mission Road would be possible, according to the traffic study.

Councilmember Rasmussen confirmed with Mr. Phelps that the water source going into the stormwater culvert crossing Mission Road is due to overland flow from the west. Mr. Phelps explained the drainage path from the Longwood Forest Estates. He stated that there were additional storm inlets located on Alhambra and Buena Vista which discharge out to College, across Mission, and into Indian Creek. During heavy rains, water that does not drain will go into the unfilled land of the proposed project.

Mr. Peters stated that utility and telecommunication service lines would be underground, however he had no control over placement of the utility boxes.

Councilmember Filla inquired about the possibility of the wastewater plant being commissioned. Mr. Lambers stated that the plant will ultimately be transferring to another facility in the next 10-15 years. Councilmember Filla stated that the flooding issues should be contended with in order to prevent future repair costs. Mr. Lambers confirmed with Councilmember Filla that the 60,000 square feet of office space is insignificant given the approved office zoning for the City. He agreed that College Boulevard is a premiere location and views the project as extremely viable.

Councilmember Taylor asked if it would be appropriate to continue the item due to the missing traffic report and in order to allow discussion between the developer and residents. Mr. Lambers suggested continuing the item for two weeks without anticipation of a final solution but to have a progress report submitted in terms of reaching a compromise with the rezoning issue.

Mayor Dunn verified with Mr. Lambers that it would not be necessary to remand a new plan to the Planning Commission given modest reconfigurations.

Councilmember Rasmussen questioned why the Long family felt the property should have a deed restriction for 25 years. Mr. Adams responded that it was due to negotiations with Plaza Savings, who wanted to restrict development of the property.

Councilmember Peppes motioned to continue the request for rezoning under Special Business on May 2nd with inclusion of the traffic study. Councilmember Gulledge seconded the motion.

Councilmember Rasmussen requested that a stormwater study also be included.

Councilmember Gill stated that he would not support the current plan but felt that accommodations could be made to make the project more appropriate.

The motion was approved following a unanimous vote of 8-0.

Mayor Dunn stated that a 5-minute recess would be taken.

Recess 5 Minutes

The Council reconvened at 10:20 PM.

12. OLD BUSINESS – None

13. NEW BUSINESS

Schedule Governing Body Work Session on May 2, 2005, at 6:00 P.M., regarding discussion on personnel positions for 2006 budget

Mr. Lambers reported that this work session would serve as an overview for the budget sessions in June.

A motion was made by Councilmember Gill, seconded by Councilmember Taylor, to approve the scheduling of the Work Session. The motion was approved following a unanimous vote of 8-0.

14. OTHER BUSINESS

A. Discussion regarding landscaping on 133rd Street.

Councilmember Taylor relayed that he has been contacted by two parties with serious objections to the proposed landscaping plan for Parkway Plaza on 135th and Roe. Specifically, they would like more evergreen trees placed in order to shield their homes from the new development. Currently there are 9 trees planned, the residents are requesting 17. Councilmember Taylor recommended imposing the cost of the additional trees onto the developer.

Mayor Dunn confirmed with Mr. Lambers that as the final planning has already been approved, this issue is between the developer and the citizens.

Councilmember Taylor withdrew his request for City involvement on this issue.

B. Schedule an Executive Session immediately following the regular Governing Body meeting for a period of 10 minutes to discuss a personnel matter.

A motion was made by Councilmember Rawlings, seconded by Councilmember Gullledge, to approve the scheduling of the Executive Session. The motion was approved following a unanimous vote of 8-0.

The Governing Body recessed into Executive Session at 10:35 PM. The regular meeting reconvened at 10:45 PM.

ADJOURN

A motion to adjourn the regular meeting was made by Councilmember Rasmussen, seconded by Councilmember Rawlings. The motion was approved following a unanimous vote of 8-0. The meeting adjourned at 10:45 PM.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk