Regular Meeting

THE LEAWOOD CITY COUNCIL

May 2, 2005

Minutes

DVD No. 121

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 2, 2005. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Scott Gulledge, 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
Chris Claxton, P&R Director
Kathy Rogers, Finance Director
Kathy Byard, Budget Coordinator
Christy Wise, Deputy City Clerk
Patty Bennett, City Attorney
Chief Ben Florance, Fire Department
Joe Johnson, PW Director
Dawn Long, Accounting Manager
Deb Harper, City Clerk
Mark Andrasik, IS Director

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted agenda changes that have occurred since the time of Council distribution. Item No. 11B will be continued to the May 16th Governing Body meeting and Item No. 13B should read Monday, May 16th rather than May 9th.

A motion was made by Councilmember Peppes, seconded by Councilmember Rawlings, 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.

4. PROCLAMATIONS • Municipal Clerks Week, May 1-7, 2005

Mayor Dunn read the Proclamation for Municipal Clerks Week into the record and recognized City Clerk Deb Harper and Deputy City Clerk Christy Wise.

5. PRESENTATIONS/RECOGNITIONS Certificate of Achievement for Excellence in Financial Reporting

Distinguished Budget Presentation Awards Program

Finance Director Kathy Rogers introduced Dawn Long, Accounting Manager, and Kathy Byard, Budget Coordinator, and extended appreciation to her Staff for their dedication and hard work. Mayor Dunn presented the awards to Ms. Rogers and noted that this is the seventh consecutive year that the Finance Department has received these honors.

6. SPECIAL BUSINESS

[from the March 22, 2005 Planning Commission meeting]

A. 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] – ***[Continued from April 18, 2005 Governing Body meeting]***

Staff Comment: The applicant will provide the Governing Body with an update on the discussions between the applicant and area residents.

Chuck Peters of Peters and Associates updated the Council on the progress of efforts to compromise with the residents of Longwood Forest. Due to scheduling difficulties, he has had only one meeting with Rufus Nye, President of Longwood Forest Homeowners Association, which took place today. Mr. Peters reported that the meeting was optimistic, however a consensus was not reached. He stated that his client is more than willing to negotiate the final planning, but more input is needed from the residents.

CITIZEN COMMENTS:

1. Rod Richardson of Wallace, Saunders, et al., 10111 W. 87th Street, Overland Park, Kansas, spoke on behalf of Mr. Nye and residents of Longwood Forest. He suggested a 30-day continuance on the matter in order to reach a compromise between the developer and residents.

Mayor Dunn confirmed with Mr. Peters that a 30-day continuance would be acceptable and Councilmember Bussing moved to continue the item to the June 6th, 2005, Governing Body meeting. Councilmember Rasmussen seconded the motion.

Councilmember Rasmussen confirmed with Joe Johnson, Public Works Director, that the stormwater issues could be addressed by engineers within the 30-day time frame.

Councilmember Gulledge inquired if rezoning could be approved in the event that a preliminary plan is not agreed upon in 30 days. City Administrator Scott Lambers counseled that land cannot be rezoned without an accompanying plan.

Councilmember Bussing verified with Mr. Lambers that it would not be necessary to fully resolve hydraulic and wastewater issues in the preliminary planning stage. However, it will be made clear to the applicant that they must conform to stormwater requirements upon final planning. Mayor Dunn stated that this is the uniform process for all planning approvals.

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

B. Presentation of 2004 Annual Audit

Kathy Rogers introduced David Cochran of Cochran, Head & Co., P.A., who gave a short presentation of the annual audit results.

C. Resolution No. 2394 accepting the 2004 Comprehensive Annual Financial Report [Audit] for the City of Leawood, Kansas

Councilmember Rasmussen motioned to approve the resolution with a second from Councilmember Rawlings.

Councilmember Gill confirmed with Ms. Rogers that this was the first audit subsequent to the Eden software conversion. Mr. Cochran and Ms. Rogers agreed that the software has been very effective.

Mr. Cochran corroborated for Councilmember Taylor that his recommendations included incorporating the Eden software package into management of the IRONHORSE Golf Course. Councilmember Taylor also inquired about the recommendation for a formal written investment policy. Mr. Cochran and Mr. Lambers explained that the recommendation refers to a policy for short-term investments. Mr. Cochran stated that the policies should be in writing and approved by the Governing Body.

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

D. Ordinance No. 2101 amending Chapter 1, Article 8, of the Code of the City of Leawood, 2000, by adding new Sections 1-827 through 1-830, establishing a Special Highway Fund for the City of Leawood, Kansas [Roll Call Vote]

Councilmember Rasmussen moved to pass the ordinance, seconded by Councilmember Gill. The ordinance passed following a unanimous roll call vote of 8-0.

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. Accept Appropriation Ordinance Nos. 1024B & 1025A
B. Accept minutes of the April 18, 2005 Governing Body Work Session meeting
C. Approve renewal of Cereal Malt Beverage [CMB] license for Hallbrook Country Club, 11200 Overbrook Road
D. Mayoral Appointment for Governing Body Presiding Officers from May 2005 through April 2006
E. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards
F. Approve Co-op Bids for certain PW Equipment [2005-1, Equipment Trailer; 2005-2, 6-Yard Spreader; 2005-3, Dump Body; 2005-4, Platform Body; 2005-5, Snowplow; and 2005-6,[3] 2-Yard Spreaders
G. Resolution No. 2395 approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of $22,000, pertaining to the July 4th fireworks display to be conducted at City Park, 10601 Lee Boulevard
H. Resolution No. 2396 authorizing the acceptance of a Deed of Dedication from Leabrooke, 3rd Plat, to the City for property located at 145th & Kenneth Road, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets
I. Resolution No. 2397 approving a final site plan for Mission Reserve located south of 151st Street and west of Mission Road *[from the April 12, 2005 Planning Commission meeting]*

Mayor Dunn noted that minor technical corrections had been made to Item No. 7B. She also pulled No. 7E for discussion. Councilmember Bussing moved to approve the remainder of the Consent Agenda, seconded by Councilmember Gulledge. The motion was approved following a unanimous vote of 8-0.

E. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards

Mayor Dunn recognized the Art Council Committee volunteers in the audience and congratulated them on the recent art show. She extended her appreciation to all volunteers for the City of Leawood.

Councilmember Bussing moved to approve the Mayoral Appointments, seconded by Councilmember Gulledge. The motion was approved following a unanimous vote of 8-0.

8. MAYOR'S REPORT

A. Attended ribbon-cutting for Skin Deep Laser Med Spa at Town Center Plaza with new members of the Leawood Chamber of Commerce. Councilmember Rasmussen also attended the event.

B. Attended ribbon-cutting at the IRONHORSE Centre for Security Savings Bank, also with new members of the Leawood Chamber of Commerce.

C. Congratulated the Leawood Chamber of Commerce for being recognized by resolution of the Kansas House of Representatives. They were presented a certificate of congratulations for contributions to the business community and outstanding membership growth by State Representative Pat Colloton. There are currently 330 members compared to 130 members in 1998. The resolution was passed unanimously as a model for other cities to follow. Mayor Dunn shared an article from the Sun Newspaper regarding the honor with the Council.

D. Attended the Gold Bank Art Show, which showcased the work of Pam Peffer and Vickie Trotter. She extended appreciation to Mary Tearney and the Arts Council for hosting the event as well as to Gold Bank for underwriting. Councilmember Rawlings and Councilmember Rasmussen were also in attendance.

E. Attended Trail Clean-up Day, hosted by the Parks and Recreation Department, along with Councilmember Rawlings. She reported that the trash clean-up was far less extensive than in past years. Participants included citizens from Olathe, Lenexa, Prairie Village, Overland Park, and Leawood.

F. The Volunteer Center of Johnson County hosted the 5th Annual Movers and Shakers Recognition to honor youthful dedication to community service. Mayor Dunn distributed a list of the participating youth, who were recognized by Congressman Dennis Moore with special certificates.

G. Announced that Leawood City Hall was featured in the Kansas Area Development Council quarterly growth update report. She shared the article with the Council.

9. COUNCILMEMBERS' REPORT - None

10. STAFF REPORT – Report by Chief Ben Florance

Chief Florance gave a review of the Leawood Fire Department report, which was generated in reference to an article in the Kansas City Star. Mayor Dunn commended Chief Florance for the hard work put into his excellent report. She noted the fact that Leawood was one of only two departments in Johnson County to meet response time goals during the 16 year period covered in the report.

Mayor Dunn asked for further explanation of the Locution system. Chief Florance stated that it is a computer aided dispatch system, which will allow for immediate transmission of information to the fire stations.

Chief Florance confirmed for Councilmember Bussing that Leawood does not have a mutual aid agreement with Kansas City, Missouri such as the one with Overland Park; however, aid is dispatched through the Johnson County Emergency Communications Center when needed. He stated that our services are needed in Kansas City, Missouri once or twice a year with their services needed in Leawood even less frequently.

COMMITTEE REPORTS

11. PLANNING COMMISSION

[from the March 29, 2005 Planning Commission meeting]

A. Resolution No. 2398 approving a Final Site Plan and Final Plat for Estates of Old Leawood located at 8901 Sagamore [Leawood Country Club]

Staff Comment: *The City Administrator strongly opposes a portion of Stipulation No. 27, with regards to the reference of a possible future restriction to the access of the pedestrian bridge. It is the City Administrator's position that the last sentence of Stipulation No. 27 should be removed.*

Before beginning council discussion on this matter, Mayor Dunn read a statement into the record (see attached).

Councilmember Rawlings also read a statement into the record (see attached).

Doug Patterson, representing Leawood Country Club Partners, LLC, stated that they agree with all the Staff recommendations except for Stipulation No. 31, regarding removal of monument signs from the final plan. He requested that this restriction be eliminated.

Mr. Patterson discussed additional stipulations recommended by the Staff and stated agreement to them.

Mayor Dunn requested that the doubling in size of the pool from preliminary to final planning be addressed. Mike Shirk of Genesis Survey, Inc., explained that the pool was enlarged in order to make it handicap accessible as well as contain a larger number of people. He stated that the shape of the pool was changed to make it more aesthetically pleasing.

Mayor Dunn confirmed with the applicant that he agreed to Stipulation No. 29, regarding building permits for no more than five houses prior to completions of the amenities.

CITIZEN COMMENTS:

1. Martha Weber Conradt, 8625 Overhill Road, stated that she was in favor of the walking trails and playground equipment being included in the green area as it affords the opportunity to build community with neighbors.

2. Angela Hagen, 2544 W. 91st Street, commended the developers for making positive changes by including the playground and enlarging the pool. She felt it was important that the recreational areas be developed as stated in Stipulation No. 29. She also stated that she was in favor of the monument signs.

3. Connie Cardell, 8915 High Drive, expressed concern with overhead utility lines and transformers causing safety hazards and suggested having them buried. She questioned the permanency of the zoned recreational space. Ms. Cardell suggested that the developers give up some of their land for the parking lot as well as create an access to the walking trails for neighbors south of the development. She also stated concern that property values would decline in the event that the development is not successful.

4. Gordon Henke, 8901 High Drive, suggested that the developer provide additional tennis courts. He was also excited about the prospect of the old City Hall on Lee Boulevard possibly being converted into a Community Center.

5. Mark McGrory, 9006 High Drive, requested the Council to consider putting a time frame on construction of the trails. He also requested limitations be put on the hours of operation for construction.

Mayor Dunn pointed out that the hours of construction are addressed in Stipulation No. 10 as being Monday through Saturday, 8:00 AM to 9:00 PM.

Regarding access to the south of the trail system, Mr. Patterson explained that the southern cul-de-sac on Sagamore Street will lead to the trails, going between lot Nos. 24 and 25. He confirmed with Mayor Dunn that there is a pedestrian bridge on the northern side of the development.

Councilmember Bussing confirmed with Mr. Lambers that the hours of construction are more restrictive than the general City ordinance allows due to the fact that it is an infill project taking place in an established neighborhood. Mr. Lambers also verified that there is no safeguard against future rezoning requests of the current recreational space as landowners have the right to request rezoning.

Mayor Dunn asked Diane Binckley, Director of Planning and Development, to review the restrictions of the tennis court lighting. Ms. Binckley stated that Stipulation No. 7 states that only low profile lighting with cut offs can be used for both the tennis court and swimming pool.

Councilmember Rawlings confirmed with Mr. Lambers that there is no current utility line policy relating to buried lines for existing residential developments. Mr. Lambers stated that the power lines are not part of the project.

Councilmember Rasmussen asked Ms. Binckley to explain the reasoning behind Stipulation No. 31, restricting the use of monument signs. Ms. Binckley responded that as northern Leawood only has a few monument signs, Staff felt that it was not in character with the neighborhood. Mayor Dunn requested to see elevations of the intended monument signs. The signs are four feet high and twelve feet long. They are made of stone with insets and double as retaining walls. Ms. Binckley pointed out that the signs were to be located to the north and south of the pool area. Councilmember Peppes commented that the monument signs were tastefully done.

Ms. Binckley confirmed for Councilmember Peppes that placing the parking lot adjacent to the pool allows safer access for pedestrians versus putting the parking area across the street. She also reported that there is a land grading difference to the west with additional landscaping to diminish the view of the parking lot.

Councilmember Peppes also questioned the renderings of the Architectural Review Board concerning the proposed house designs. Ms. Binckley referred to FDP-5 in the packets which illustrate elevations of homes. She stated that the designs were similar to existing homes in north Leawood, however the City does not review the plans for residential building permits. Mr. Patterson confirmed that the declaration provides for input and representation of surrounding neighbors on the Association Board.

Mayor Dunn asked Bill Whitaker of Leawood Country Club Partners, LLC, to address Ms. Cardell's remarks regarding property values. Mr. Whitaker explained the quality of the structures, which will be upscale and range from $750,000 to $1.5 million. He quoted home sizes ranging from 2,800 to 5,000 square feet and stated that uniformity will be maintained on the exterior.

Mr. Whitaker clarified for Councilmember Bussing that the two gaited trails around the center cul-de-sac are asphalted internal pathways that will lead to the verandas. Councilmember Bussing suggested omitting the gates. Mr. Whitaker responded that the development team felt very strongly about having the gates in order to protect the privacy of the homeowners. Mr. Lambers added that the internal trails and verandas are part of the private development and will be indicated with "Private Property" signs as well as fencing of the verandas.

Councilmember Gulledge moved to approve the resolution with the six additional stipulations and the omission of Stipulation No. 31. The motion was seconded by Councilmember Bussing.

Councilmember Gill clarified with City Attorney Patty Bennett that private deed restrictions run in favor of the neighboring homes associations to assure permanence of the recreational space. Ms. Bennett confirmed that the members do have the ability to participate in decisions regarding the recreational areas.

Mr. Patterson reassured that the deed restrictions will remain in place.

Councilmember Gill stated his intent to vote in favor of the plan. He stated that he felt very good about the fact that the former private club property will now be accessible to the public. He commended the residents, developers, and Staff for their collaborative efforts in making such an agreeable plan.

Mayor Dunn noted that although the land will be open to the public, it remains privately owned and will not be maintained by the City.

Councilmember Filla asked for clarification of exactly which homeowners will be allowed to participate in the deed restrictions. Ms. Bennett referred to page 16 of the deed restriction, which states that written consent of the surrounding homes associations is required for any changes to the bridge facility, external trails, and recreational facilities.

Mr. Lambers stated that landowners are entitled to apply for rezoning, however safeguards will include the record, the current recreational zoning, and protection through the deed restrictions that the amenities remain in place.

Councilmember Gill stated that the Staff and developers have met his objectives in preserving the recreational areas and green space.

Councilmember Filla suggested that Mr. Patterson prepare an alternate parking plan in the event that future problems arise.

Councilmember Filla also requested the inclusion of two addresses for memberships to the pool and tennis courts, 9117 Lee Boulevard and 8551 High Drive. Mr. Whitaker stated that he is amenable to including the two addresses. Mayor Dunn tallied that this brings the homeowners invited for memberships to 68, outside of the 27 homes within the Estates of Old Leawood.

Councilmember Filla confirmed and Mr. Whitaker affirmed that the location of the playground would be in the southern area of the walking trails. Mr. Whitaker also stated that recommendations from area residents regarding playground location and equipment would be welcome.

Mr. Lambers stated that the playground was initially planned adjacent to the swimming pool. However, in order to reduce misunderstandings and conflict, he strongly discouraged this area, as the pool is a private amenity versus the publicly accessible playground.

Councilmember Filla verified with a resident that there is no interest in creating an access from High Drive to the walking trails.

Mayor Dunn requested verification of the time frame in which the infrastructure will be built. Mr. Whitaker conferred with Mr. Lambers and agreed to have all amenities complete upon issuance of the 5th building permit or within 36 months upon completion of pending litigation.

Councilmember Gulledge made a friendly amendment to his motion to add the following remark to Stipulation No. 29: Building permits for no more than 5 houses shall be issued prior to the completion of the amenities within Tracts A and B or within 36 months upon completion of the litigation, whichever comes first. Councilmember Gulledge also added a stipulation to expand the deed restrictions to include 9117 Lee Boulevard and 8551 High Drive.

Councilmember Bussing seconded the friendly amendment.

Mayor Dunn and Mr. Lambers clarified that Stipulation No. 31, regarding removal of the monument signs, shall be substituted with allowing the signs as presented in FDP-4.

The resolution was approved by the following 6-2 vote: Yea: Councilmembers Gulledge, Bussing, Rawlings, Rasmussen, Taylor, and Gill. Nay: Councilmembers Peppes and Filla.

12. OLD BUSINESS

13. NEW BUSINESS

A. Resolution amending and restating Resolution No. 2165, finding as to the advisability of and authorizing the improvement and construction of 133rd Street between Roe Avenue and the western city limit, Briar from 133rd Street South to 135th Street, 135th Street from the western city limit East to Roe Avenue and Roe Avenue between 133rd Street and 135th Street and other amenity features, located within the City of Leawood, Kansas, and accepting First Amended Petition for Improvement District, pursuant to K.S.A. § 12-16a01 Et Seq. [Parkway Plaza East/West CIP # 195]

Councilmember Rasmussen moved to approve the resolution, seconded by Councilmember Taylor.

Councilmember Gill verified with Ms. Bennett and Mr. Lambers that the City would take a loss in the event of foreclosure on an individual condominium with insufficient assets. Councilmember Gill was concerned with the risk liability. Mr. Lambers stated that individual ownership of the ten condominiums would increase rather than decrease protection to the City.

Councilmember Bussing echoed Councilmembers Gill's concerns.

Councilmember Gill, Ms. Bennett, and Mr. Lambers further discussed the risks and benefits of approving the resolution.

Councilmember Rasmussen amended his motion to continue the item to the May 16th Governing Body meeting. Councilmember Taylor seconded the motion amendment. The motion carried following a unanimous vote of 8-0.

B. Schedule Governing Body Work Session at 6:00 P.M., on Monday, May 16, 2005, to discuss Special Benefit Improvement District for Villaggio of Leawood-West located south of 135th Street and east of Roe Avenue

Mr. Lambers stated that the Work Session is being requested due to the fact that the applicant wishes to include underground stormwater improvements as part of the Special Benefit Improvement District financing.

Councilmember Bussing moved to approve the scheduling of the Work Session, seconded by Councilmember Filla.

Councilmember Peppes confirmed with Mr. Lambers that information regarding the issue would be provided prior to the date of the Work Session.

The motion was approved following a vote of 7-0 (Councilmember Taylor recusing).

14. OTHER BUSINESS

ADJOURN

The Governing Body meeting adjourned at 10:00 PM

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Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk

Statement made by Mayor Peggy Dunn, at the May 2, 2005 Leawood Governing Body meeting regarding the Leawood Country Club issue.

Before we begin, I would like to make a statement for the record.

My husband, Terry Dunn, is a member of the Board of Directors for UMB Financial Corporation and he owns some shares in that corporation. It was brought to my attention after the Governing Body preliminary plan and zoning approval of this agenda item in November, 2004, that another separate and distinct corporation, UMB Bank, is the holder of a mortgage on the property that is subject to this Final Plan request. I have been advised by the City Attorney, Patricia Bennett, that my husband's board position and limited stock ownership with UMB Financial do not create a conflict of interest in this instance. Therefore, I will be participating in the discussion and possible action, if necessary, of this agenda item.

Statement made by Councilmemmber Jim Rawlings at the May 2, 2005 Leawood Governing Body meeting regarding the Leawood Country Club issue.

Mayor, I would also like to make a statement.

I am employed with UMB Bank in its Human Resources Department as has been repeatedly disclosed on Statements of Interest forms. I have also been advised by the City Attorney, Patricia Bennett, that my position with UMB Bank does not create a conflict of interest in this instance. Therefore, I will be participating in the discussion and possible action on this agenda item.