

**Minutes**

DVD No. 131

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, October 17, 2005. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** Mike Gill.

**Staff present:**

Scott Lambers, City Administrator  
Chief Ben Florance, Fire Department  
Kathy Rogers, Finance Director  
Jeff Cantrell, Neighborhood Serv. Admin.  
Jeff Joseph, Planner  
Christy Wise, Deputy City Clerk

Patty Bennett, City Attorney  
Major John Meier, Police Department  
Joe Johnson, Public Works Director  
Mark Klein, Senior Planner  
Deb Harper, City Clerk  
Scott Smith, Internet/WAN Specialist

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted several changes to the agenda. Item No. 9, Councilmembers' Report, will include a report from Councilmember Rasmussen. Item No. 10, Staff Report, has been removed as Deputy Fire Chief Randy Hill has been called back to the Gulf Region and is not available. He will address the Council at a future meeting. Item No. 11A has been continued to the November 7, 2005, Governing Body meeting. Item Nos. 13A and 13B have been removed. Other Business, Item No. 14, will include the scheduling of an Executive Session for matters subject to the attorney-client privilege.

Councilmember Gullede moved to approve the agenda, seconded by Councilmember Peppes. The motion was approved following a unanimous vote of 7-0.

**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 – None**

**5. PRESENTATIONS/RECOGNITIONS Joint Committee [Foundation/Historic Commission/Arts Council] Arts Project**

Members of the joint committee introduced themselves to the Council as Mary Tearney, Leawood Arts Council [LAC]; Ann Kenney, Arts in Public Places Initiative [APPI]; Alice Hawk, Leawood Foundation and Leawood Historic Commission; and Doug Portell, Leawood Foundation.

Mr. Portell reported that the committee has been working on the current art project for the past 6-7 months. He informed the mission statement of the Leawood Foundation is to provide resources for activities and projects that might not be provided for by tax dollars. After extensive research, artist Dennis Smith has been chosen to provide a sculpture for Ironwoods Park.

The sculpture is of a teacher reading to two children in honor of the teaching profession. A picture was displayed on the overhead. Ms. Hawk described the medium as bronze with possibly a natural rock element added for the bench. The location will be on a hillside near the Oxford Schoolhouse and next to a proposed butterfly garden. Councilmember Taylor confirmed with Ms. Tearney that the figures will be actual life-size.

Councilmember Rasmussen verified with Ms. Hawk that the Leawood Foundation will be responsible for raising funds for the project. The \$80,000 does not include installation fees and will bring the total project cost to an estimated \$100,000.

Councilmember Taylor asked if the Leawood Arts Council would also be involved with financial support of the project. Ms. Kenney replied that contributions from the LAC were a possibility and would be based on the success of fundraising efforts. Ms. Kenney also informed that the artist is presently working on a new model to include the natural slab element and to modify the appearance of the teacher. They have requested a more authentic look for the teacher with her hair up and with a longer skirt.

Mayor Dunn confirmed with Ms. Kenney that the bronze sculpture would be smooth in appearance.

Councilmember Peppes, Council liaison for the Leawood Foundation, commended Ms. Hawk and Mr. Portell for their leadership and dedication in bringing the project to fruition. Mayor Dunn complimented the group collaboration and expressed appreciation for their enthusiastic commitment.

Ms. Tearney noted that this October marks the 10<sup>th</sup> Anniversary of the Leawood Arts Council. Mayor Dunn led a round of applause and standing ovation in recognition of the ten years of service.

**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. Accept Appropriation Ordinance Nos. 1035B & 1036A
- B. Accept minutes of the October 3, 2005 Governing Body meeting
- C. Accept minutes of the September 6, 2005 Historic Commission meeting
- D. Acceptance of Health, AD&D, LTD and Life Insurance Benefits renewal for City Employees
- E. Resolution No. 2480 approving and authorizing the Mayor to execute a Financial Services Agreement between the City and Commerce Bank to provide certain banking service needs to the City of Leawood
- F. Resolution No. 2481 approving a Final Site Plan for 810 Zone located at 4800 W. 119th Street
- G. Resolution No. 2482 approving a Final Site Plan and Final Plat for Parkway Plaza Lot 6, located north of 135<sup>th</sup> Street and west of Roe Avenue
- H. Authorize the Mayor to execute a letter to Kansas Department of Transportation [KDOT] asking for a new sound study is conducted on I-435 Highway [Leawood section]
- I. Police Department Monthly Report
- J. Fire Department Monthly Report
- K. Municipal Court Monthly Report
- \*L. Resolution approving and authorizing the Mayor to execute a Service Agreement in the amount of \$20,000 between the City and the Kansas City Symphony, pertaining to performance in 2006 *This item has been continued to the November 7, 2005 Governing Body meeting*
- \*M. Resolution approving and authorizing the Mayor to execute a Service Agreement between the City and the United Methodist Church of the Resurrection for the rental of space pertaining to the 2006 performance of the Kansas City Symphony *This item has been continued to the November 7, 2005 Governing Body meeting*

Councilmember Rawlings requested to pull Item No. 7E in order to recuse from the vote. Mayor Dunn stated that she would like to pull Item No. 7D. Councilmember Taylor requested to pull Item No. 7F.

Councilmember Rasmussen moved to approve the remainder of the Consent Agenda, seconded by Councilmember Peppes. The motion carried with a unanimous vote of 7-0.

- 7D. Acceptance of Health, AD&D, LTD and Life Insurance Benefits renewal for City Employees

Mayor Dunn noted that Human Resource Director Colleen Browne reported on a negotiated plan redesign that allows the City of Leawood to deliver a quality health insurance plan for employees without an increase in premium for a second consecutive year as well as no increase in dental premiums. She congratulated Ms. Browne on the good news and thanked her for providing savings to Leawood employees.

Councilmember Bussing moved to approve the item, seconded by Councilmember Gullledge. The motion was approved following a unanimous vote of 7-0.

- 7E. Resolution No. 2480 approving and authorizing the Mayor to execute a Financial Services Agreement between the City and Commerce Bank to provide certain banking service needs to the City of Leawood

Councilmember Bussing moved to approve the resolution with a second provided by Councilmember Gullledge. The motion carried with a unanimous vote of 6-0 (Councilmember Rawlings recusing). Mayor Dunn congratulated Commerce Bank and voiced anticipation of working together.

- 7F. Resolution No. 2481 approving a Final Site Plan for 810 Zone located at 4800 W. 119th Street

Councilmember Taylor confirmed with Planner Jeff Joseph that the existing east patio was approved in 2002 as part of Fenton's Restaurant. The requested patio extension to the north side of the building will serve to expand the trash enclosure area.

Councilmember Taylor asked if the sports bar was allowed to have a vehicle used for radio/television satellite transmission in the parking lot. Mr. Joseph advised that the Leawood Development Ordinance does not restrict this practice, however an Administrative Special Use Permit is required. Noise control would fall under regulations of the Police Department.

Councilmember Taylor moved for approval and then rescinded the motion to allow further discussion.

Councilmember Bussing stated concern with the site plan regarding signage and noise control. He requested an applicant presentation.

City Administrator Scott Lambers reported that although there is a decibel limitation in Stipulation No. 6 regarding outside sound, City Staff has no way to monitor or enforce the requirement. Currently, the City does not have sound reading equipment or have personnel on board to respond should a complaint take place after business hours.

Councilmember Taylor confirmed with Mr. Lambers that broadcasting was limited to hours of operation only.

Applicant Ed Nelson, 3140 Tomahawk, Shawnee Mission, Kansas, addressed signage concerns. Current signage will remain unchanged as the additional sign request was rejected by Staff and not approved by the Planning Commission. Regarding sound issues, Mr. Nelson stated that presently the establishment has outside speakers which hang 13-ft. in the air and face the parking lot. The business is open until approximately 1:00 A.M. The current plan will place the speakers on the outside walls, facing the business. A 5-6 foot brick wall will also be added. Mr. Nelson reported no noise complaints to date and the new construction will lessen the chance of future sound issues.

Councilmember Taylor proposed a stipulation to discontinue usage of the outside speakers upon the occurrence of a maximum not to exceed 10 reasonable complaints from the residential area south of 810 Zone. Mr. Nelson agreed to the suggestion.

Councilmember Bussing voiced concern with the unenforceable stipulation and urged Staff and the applicant to find a solution.

Councilmember Rasmussen moved for approval, seconded by Councilmember Rawlings.

Mr. Lambers explained that the third sign request was denied as buildings are allowed a maximum of only two signs. In addition, sign content can only advertise the building. The proposed signage included extended verbiage, which is not allowed by City ordinance. He affirmed for Councilmember Bussing that there will not be a third sign.

Councilmember Bussing suggested a friendly amendment to the motion that would allow Staff and the applicant to work together in deciding further enforcement ramifications regarding Stipulation No. 6.

Councilmember Rasmussen stated that Councilmember Taylor's recommendation to rely on complaints was more practical than purchasing decibel meters. Consultants could be obtained to check the sound if necessary. He stated that the stipulation should remain as written with documented agreement from the applicant to discontinue use of the outside speakers if complaints are received. Councilmember Bussing restated that he would be more comfortable if a solution were found by Staff and the applicant, however declined to make the request a motion.

The motion to approve the resolution carried with a unanimous vote of 7-0.

**8. MAYOR'S REPORT**

- A. Attended Council of Mayors meeting in Bonner Springs. A presentation was given by Judge Stephen Tatum, Chief Judge of the 10<sup>th</sup> Judicial District, regarding the modern role of the judiciary system. He also gave an overview of the Johnson County Courthouse project. County Commissioner Dolores Furtado, who is serving as Chair of the Public Health and Wellness Taskforce of Johnson County, addressed the smoking ordinance and appealed for synchronized activity on the issue throughout Johnson County. She is proposing a jointly-funded survey for certain municipalities that have participated on the taskforce. Mayor Dunn noted that Leawood is not involved in the taskforce at this time. Commissioner Furtado would like to find evidence-based measures of economic impact regarding the issue and take a proactive implementation. The Mid-America Regional Council master draft ordinance includes two exceptions, smoking in residences and 25% of hotel rooms. Annabeth Surbaugh, Chair of the Johnson County Commission, discussed how the ¼-cent sales tax could assist with the needs of the Public Capital Building projects in the county. She mentioned asking cities to absorb Juvenile Intake and Assessment Center [JIAC] funding as federal grants have diminished. It is Chairperson Surbaugh's desire that JIAC funding not receive county support until the sales tax is finished. The 2006 county budget was raised by 1.8 mills.
- B. Attended Iftar dinner at the Leawood Community Center Oak Room in recognition of Ramadan observed by people of the Islamic faith. Many Leawood and Johnson County residents celebrate the month-long, sun-up to sun-down fast. Kansas City, Missouri Mayor Pro Tem Alvin Brooks also attended the dinner.
- C. Attended ribbon-cutting for Peppes Dental Group along with members of the professional staff and Councilmembers Rawlings, Filla, Rasmussen, and Taylor. The event was sensational and set a new standard for grand openings.
- D. Attended the Public Works Department Barbeque. Mayor Dunn thanked Public Works Director Joe Johnson for hosting the event.
- E. Attended Daughters of the American Revolution [D.A.R.] ceremony at Ironwoods Park. A swamp white oak was planted near the amphitheater in honor of the sacrifices given by men and women in American uniform. Mayor Dunn extended appreciation to the Sagamore D.A.R., which was started years ago by four Leawood residents and now has 80 members from several cities. Mike Noll and other members of the Parks and Recreation Department were also thanked for their assistance.
- F. Reminder for the City of Leawood United Way Campaign. Forms should be turned in to Debbi Naster-Hood by Friday, October 21<sup>st</sup>.
- G. Reminder for the Leawood Lion's Pancake Breakfast on Friday from 11:00 A.M. to 7:00 P.M. and Saturday from 7:00 A.M. to 7:00 P.M. in the Oak Room of the Leawood Community Center. Mayor Dunn presented the Council with tickets to the breakfast.

**9. COUNCILMEMBERS' REPORT**

- A. Report from Councilmember Rasmussen – Councilmember Rasmussen discussed the United States Golf Association [USGA] Green Section Turf Advisory Service Report on IRONHORSE Golf Course, specifically Hole #8. He reported meeting with Dick Fuller, Chair of the IRONHORSE Advisory Board; Chris Claxton, Parks & Recreation Director; Shane Gardner, General Manager of Orion; Pete Spratlin, Golf Course Superintendent; and Paul Vermeulen, USGA Mid-Continental Region Director.

Councilmember Rasmussen stated that the report indicated a need to discuss the rebuilding of all greens, which is estimated to cost \$800,000. In addition, raising the elevations of Green Nos. 5, 8, 10, 13, 14, and 17 is recommended.

During the onsite visit, it was determined by the USGA representative that relocation of the creek would not adversely affect the playability of Hole #8. Removing the creek from in front of the tee may, in fact, help some players. Mr. Spratlin mentioned that water continues to drain from the face of a shale cliff for six hours following a storm.

Councilmember Rasmussen stated that he consulted a former Chief Engineer of the Corps of Engineers to examine the area, who concluded that the creek had no effect on the eroding cliff. The erosion is due to constant wetting and drying-out of the cliff, confirming Mr. Spratlin's observation. Drainage from the lot, which is currently utilizing sub pumps, causes water to pour over the cliff.

The engineer indicated that relocating the creek would not solve erosion problems on the cliff as water will continue to drain into this area. When asked his opinion, the engineer stated that the Corps of Engineers would approve the creek relocation as it would not change the overall water courses in the area.

Councilmember Bussing remarked the engineer's findings to be only one opinion versus the facts.

Councilmember Filla and Councilmember Rasmussen discussed the fact that the currently approved plan to move the creek is associated with a \$170,000 cost, which will basically only serve to improve playability. Councilmember Rasmussen noted that the IRONHORSE Advisory Board has historically indicated that the land should not have been developed.

Mayor Dunn recalled the cost to be \$70,000 after deductions from previous work. Mr. Johnson confirmed the \$170,000 figure to be correct based on Continental Engineers proposal to realign the channel, fill-in the existing channel with additional dirt, and plant native grass on the old creek site.

Councilmember Taylor reviewed with Mr. Lambers and Mr. Johnson that the creek bank stabilization and erosion control portion of the project was put on hold until property owner participation could be further determined. There is a \$60,000 cost for these separate improvements.

Councilmember Bussing noted that the USGA report did not reference the feasibility of creek realignment and suggested having a separate meeting to address the issue. Councilmember Rasmussen voiced it was important for fellow councilmembers to know the information from his meeting.

Mayor Dunn clarified with Mr. Lambers that Council has to date approved channel realignment only. Embankment stabilization is a separate project as it was recommended for property owners to pay 50% of the costs. An agreement has not been reached with the property owners at this time. The current standing of the project is to fill the existing creek, realign the channel, and leave the creek bank as it is.

Mr. Lambers stated that the USGA report addressed playability concerns raised by the IRONHORSE Advisory Board. The issue of channel realignment is associated with other erosion concerns which currently exist around the T-boxes of Hole #8. As flow of the creek has created oxbows, the proposal to straighten the creek was made in order to prevent future erosion problems with subsequent embankment improvements from occurring.

#### 10. STAFF REPORT

Update Report from Deputy Fire Chief Randy Hill on the Gulf Region Hurricane Relief Effort – *This item has been removed*

#### COMMITTEE RECOMMENDATIONS

#### 11. IRONHORSE ADVISORY BOARD

*[from the June 23, 2005 Ironhorse Advisory Board meeting]*

- A. Accept recommendation for that certain Professional Service Agreement dated September 2, 2003, between the City and Orion Management Solutions, to provide for the management of the IRONHORSE Golf Facility be extended for a two-year period, ending December 31, 2008 *[Continued from the September 19, 2005 Governing Body meeting]* – **THIS ITEM HAS BEEN CONTINUED TO THE NOVEMBER 7, 2005 GOVERNING BODY MEETING**

*Staff Comment: It is the position of the City Administrator that the course closure for construction in the fall of 2006 and spring of 2007 provides an opportunity to solicit bids for a long-term [4-5 year] management contract because if there is a change in management companies, then a 'seamless' transition could occur prior to the resumption of golfing activities in May, 2007.*

**12. OLD BUSINESS – None**

**13. NEW BUSINESS**

- \*A. Ordinance authorizing the issuance and delivery of General Obligation Refunding Bonds, Series 2005-B, of the City of Leawood, Kansas for the purpose of providing funds to refund certain outstanding general obligation bonds of the City; prescribing the form and details of said Bonds; making provision for the levy and collection of an annual tax for the purpose of paying the principal of and interest on the Bonds as they become due; and making certain covenants with respect thereto [Roll Call Vote] – ***THIS ITEM HAS BEEN REMOVED***
  
- \*B. Resolution prescribing the form and details of and authorizing the delivery of General Obligation Refunding Bonds, Series 2005-B, of the City of Leawood, Kansas, authorized by Ordinance No. 2135 of the City; providing certain covenants and agreements with respect thereto; and providing for execution of certain agreements in connection therewith - ***THIS ITEM HAS BEEN REMOVED***
  
- C. Resolution No. 2483 waiving the bidding process, in accordance with Charter Ordinance No. 32, pertaining to Phase II of the Dykes Branch Channel Improvement SMAC DB-04-024 Project, between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

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

Mayor Dunn clarified with Mr. Lambers that a new contract will be implemented for the project extension, which was recommended by the Stormwater Management Committee.

The motion carried with a vote of 6-1 (Nay: Councilmember Bussing). Councilmember Bussing stated that he was not in favor of waiving the bidding process for such a large project.

- D. Resolution No. 2484 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$2,310,490.00, between the City and Wiedenmann & Godfrey Construction, Inc., pertaining to Phase II of the Dykes Branch Channel Improvement SMAC DB-04-024 Project, between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Councilmember Rasmussen moved for approval, seconded by Councilmember Gulledge. Councilmember Taylor confirmed with Mr. Johnson that Wiedenmann & Godfrey has done previous channel and sanitary sewer work for the City. The resolution was approved following a unanimous vote of 7-0.

- E. Resolution No. 2485 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Board of Johnson County Commissioners for the construction of sewer line improvements pertaining to Phase II of the Dykes Branch Channel Improvement SMAC DB-04-024 Project, between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Councilmember Gullede moved for approval. Councilmember Peppes seconded the motion.

Councilmember Rasmussen inquired if the Board of Johnson County Commissioners had approved participation in the creek realignment project at IRONHORSE Golf Course as sanitary sewer work will be involved. Mr. Johnson stated that the matter will be discussed after sewer relocation plans are obtained from Continental Engineers. The status of easements will also have to be confirmed. Mr. Johnson offered to provide an update as plans progress.

The motion carried with a unanimous vote of 7-0.

- F. Ordinance No. 2135 authorizing and providing for the acquisition of lands or interests therein by condemnation located on the southwest corner of 117<sup>th</sup> Street and Tomahawk Creek Parkway for the purposes of constructing public buildings, including a Justice Center [Roll Call Vote]

Councilmember Gullede moved to pass the ordinance, seconded by Councilmember Taylor.

Charles Miller of Lewis, Rice & Fingersh, requested to make an expression of his clients' intent. His request was granted by the Governing Body. Due to the prolonged nature of negotiations, Mr. Miller stated that his clients were concerned with appearing unreasonable. He relayed that they are operating in good faith, however there is a dispute regarding the value of the property. An appraiser has been hired and they are working with Staff on the difficult task of reconciling information. His client desires to continue negotiations.

Mayor Dunn verified with Mr. Lambers that action taken on the proposed ordinance would not prevent further negotiations.

Councilmember Taylor asked Mr. Miller to name his client's appraiser. Mr. Miller was unsure of the name but stated that he would provide the information to the Governing Body at a later date.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Gullede, Peppes, Filla, Rawlings, Bussing, Taylor, and Rasmussen (Councilmember Gill absent). Nay: None.

- G. Resolution No. 2486 approving and authorizing the Mayor to execute a Development Agreement between the City and Park Place Partners, LLC, for property located at 117 & Nall Avenue, pertaining to the Park Place Improvement Project [CIP # 196]

Councilmember Rasmussen moved for approval, seconded by Councilmember Taylor. The resolution was approved following a unanimous vote of 7-0.

**14. OTHER BUSINESS**

- A. Schedule as Executive Session for November 7, 2005, at 6:00 P.M. to discuss matters subject to the attorney-client privilege.

Councilmember Bussing moved to approve the Executive Session, seconded by Councilmember Rawlings. The motion was approved following a unanimous vote of 7-0.

**ADJOURN**

The Governing Body meeting was adjourned at 8:30 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk