

Minutes

DVD No. 155

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, December 4, 2006. Mayor Peggy Dunn presided.

Councilmembers present: Gregory Peppes, Mike Gill, Gary Bussing, Jim Rawlings, Lou Rasmussen, James Azeltine, Debra Filla, and Scott Gullledge.

Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Major John Meier, Police Department
Joe Johnson, Public Works Director
Mark Klein, Senior Planner
Jeff Cantrell, Neighborhood. Serv. Admin.
Karl Weinfurter, IS Specialist

Patty Bennett, City Attorney
Chief Sid Mitchell, Police Department
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Jeff Joseph, Senior Planner
Deb Harper, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn stated Item Nos. 7E and 7F will be continued to the December 18, 2006, Governing Body meeting. She also noted that a revised cover memo for item No. 10A had been placed upon the dais. A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The agenda was approved 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 – None.

5. PRESENTATIONS/RECOGNITIONS Resolution No. 2691, Recognition of Chief Sid Mitchell upon his retirement from the Police Department

Mayor Dunn read the resolution into the record and presented Chief Mitchell with a plaque in honor of his 31 years of dedicated service. Chief Mitchell also received a standing ovation.

Chief Mitchell thanked Mayor Dunn, City Administrator Scott Lambers, and the Governing Body for lending their support and confidence to him and members of the department over the years. He stated the men and women of the Leawood Police Department are the best in the field. Chief Mitchell then introduced his wife and daughter present in the audience.

Mayor Dunn stated it is comforting to know that Chief Mitchell will not be leaving the area and wished him well with all future endeavors including his presidency to the Federal Bureau of Investigations National Academy Association [FBINAA] in 2008.

Recognition of Town & Country Bank for Sponsorship of Cultural Arts and Events

Leawood Arts Council Chair Mary Tearney introduced Bill Ellwood, Dennis Bartkoski, and Larry Corrigan of Town & Country Bank. She thanked them for lending support over the last three years to programs such as the Sundays in September Jazz Concert Series at Ironwoods Park and the Family Concerts held in the City Hall Courtyard. Additionally, the bank also sponsors tables at events such as Tea with Shakespeare and the Leawood Stage Company's Gala.

Mr. Ellwood thanked the community of Leawood for allowing the bank to participate in making the City a special place. Mayor Dunn thanked Mr. Ellwood for giving to the cultural arts community. She also thanked Ms. Tearney for recognizing their efforts.

6. SPECIAL BUSINESS

A. Public Hearing on amendments to 2006 Fiscal Budget

Mayor Dunn opened the public hearing for comments.

A motion to close the public hearing was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

B. Resolution No. 2693 adopting amendments to the 2006 Fiscal Budget for the City of Leawood, Kansas

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Filla. The resolution was approved following a unanimous 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. 1064A and 1064B
- B. Accept Minutes of the September 12, 2006 Historic Commission meeting
- C. Accept Minutes of the October 10, 2006 Historic Commission meeting
- D. Accept Minutes of the August 9, 2006 Leawood Foundation meeting
- E. Accept Minutes of the October 26, 2006 IRONHORSE Advisory Board meeting –
CONTINUED TO THE DECEMBER 18, 2006, GOVERNING BODY MEETING
- F. Final Pay Request in the amount of \$69,715.29 to APAC-Kansas, Inc., pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] [CIP # 80110] – **CONTINUED TO THE DECEMBER 18, 2006, GOVERNING BODY MEETING**
- G. Approve Change Order No. 1 in the amount of \$68,494.00 to Pyramid Excavation and Construction, Inc., pertaining to the 2006 Storm Sewer Project non-SMAC Project at Cherokee Lane and 9800 blk. of Wenonga Road, and replace existing wall located at 14400 Mission Road
- H. Resolution No. 2694 establishing the 2007 Fee Schedule for fees not specifically provided for in the Code of the City of Leawood, 2000, and rescinding Resolution Nos. 2513 and 2676
- I. Resolution No. 2695 approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the Board of County Commissioners of Johnson County, pertaining to wireless 911 fees
- J. Resolution No. 2696 approving and authorizing the Mayor to execute an Independent Contractor Agreement for an amount not to exceed \$182,300 between the City and Holiday Sand and Gravel Company, pertaining to the greens reconstruction project at Ironhorse Golf Course, 15400 Mission Road
- K. Resolution No. 2697 approving and authorizing the Mayor to execute Amendment No. 1 to that certain Engineering Service Agreement dated April 17, 2006, between the City and Design Sense, Inc., in the amount of \$37,670, to provide design engineering services for the City, pertaining to the new facilities at Ironwoods Park, located at 14701 Mission Road
- L. Resolution No. 2698 accepting Temporary Construction Easements from Kevin & Cheryl Lockett, 5413 W. 148 Terrace; and Water District No. 1 of Johnson County, Kansas, pertaining to the Nall Avenue Improvement Project, 143rd Street to 159th Street [CIP # 80143]
- M. Resolution No. 2699 accepting a Deed of Dedication from Water District No. 1 of Johnson County, Kansas, pertaining to the Nall Avenue Improvement Project, 143rd Street to 159th Street [CIP # 80143]
- N. Resolution No. 2700 accepting a Permanent Drainage Easement from Water District No. 1 of Johnson County, Kansas, pertaining to the Nall Avenue Improvement Project, 143rd Street to 159th Street [CIP # 80143]

- O. Resolution No. 2701 accepting a Temporary Construction Easements from Stone Ledge Developments, pertaining to the Nall Avenue Improvement Project, 143rd Street to 159th Street [CIP # 80143]
- P. Resolution No. 2702 accepting a Temporary Construction Easement from Howard R. and Lori M. Roy pertaining to the Nall Avenue Improvement Project, 143rd Street to 159th Street [CIP # 80143]
- Q. Resolution No. 2703 approving a Final Plat for LeaBrooke Town Manors 1st Plat, located south of 145th Street and west of Kenneth Road [*from the November 14, 2006 Planning Commission meeting*]
- R. Resolution No. 2704 approving a Final Plat for LeaBrooke Town Manors 2nd Plat, located south of 145th Street and west of Kenneth Road [*from the November 14, 2006 Planning Commission meeting*]
- S. Resolution No. 2705 approving a Final Plat for LeaBrooke 5th Plat, located south of 145th Street and west of Kenneth Road [*from the November 14, 2006 Planning Commission meeting*]
- T. Resolution No. 2706 approving a Final Plat for LeaBrooke 6th Plat, located south of 145th Street and west of Kenneth Road [*from the November 27, 2006 Planning Commission meeting*]
- U. Resolution No. 2707 approving a Final Plat for LeaBrooke 7th Plat, located south of 145th Street and west of Kenneth Road [*from the November 27, 2006 Planning Commission meeting*]

Councilmember Rasmussen requested to pull Item No. 7H. On motion of Councilmember Peppes, seconded by Councilmember Azeltine, the remainder of the Consent Agenda was approved with a unanimous vote of 8-0.

- 7H. Resolution No. 2694 establishing the 2007 Fee Schedule for fees not specifically provided for in the Code of the City of Leawood, 2000, and rescinding Resolution Nos. 2513 and 2676

In order to encourage sexual alterations of pets and prevent stray animals, a motion to raise the fee for an unaltered dog or cat from \$15.00 to \$25.00 was made by Councilmember Rasmussen. The motion was seconded by Councilmember Azeltine.

Mr. Lambers stated raising the fee would not generate much revenue but would be an incentive for pet owners to maintain breeding control.

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

A motion to approve the resolution establishing the 2007 Fee Schedule was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Azeltine thanked Staff for eliminating the restriction on number of immediate family members from the annual pool pass. A motion to call for the question was then made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

The resolution establishing the 2007 Fee Schedule was approved following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Conducted the 9th Annual Holiday Lighting Ceremony at Leawood City Hall. Councilmembers Peppes, Rasmussen, Rawlings, Bussing, and Azeltine were present along with many members of the Professional Staff and a crowd of several hundred. Performing at the event were The Nativity Star Singers, The Leawood Singers, and the Prairie Star Elementary School Choir. Mayor Dunn extended appreciation to Commerce Bank for serving as the major sponsor for the evening and to members of the Parks and Recreation Department, especially Special Project and Events Supervisor Lindsay Youle, for organizing the event.
- B. Attended the Annual Legislative Forecast Breakfast sponsored by Lathrop & Gage. A presentation was given with candid briefing of the foreseen 2007 Legislative initiatives. Presenters included Representative Ed O'Malley, Representative-Elect Jeff King from Southeast Kansas, and Senator John Vratil, who discussed the ending balance that will be evident at the end of 2006. The balance will be far greater than anticipated with credit given to the extra revenue collected from the higher individual and corporate income taxes. They noted, however, that it is harder to legislate with revenue surplus. It is predicted that school finance will reign as one of the hot topics for the coming year.
- C. Attended the National World War I Museum opening at Liberty Memorial. Utilization of highly interactive technology brings the history to life. Mayor Dunn highly recommended attending the museum, which is open daily excluding Mondays.
- D. Mayor Dunn expressed gratitude to employees who participated in the Have-A-Heart/Help-A-Child Program. The City of Leawood was the first organization to deliver donations, which are to be given to SAFEHOME this year. Recognition was given to Court Clerk II Jamie Reese for organizing the fundraiser as a member of the LEAP Committee.
- E. Mayor Dunn congratulated Public Works Director Joe Johnson and the Public Works crews for efficiently performing snow removal during the first two major snowstorms of the season.
- F. Acknowledged Human Resources Director Colleen Browne for organizing the first City of Leawood Newsletter, which will be a bi-monthly publication.
- G. Announced the annual Governing Body Goals and Objectives Work Session will take place on either January 22nd or 29th, 2007, which are not regular City Council meeting nights. Mayor Dunn urged Councilmembers to consult their calendars in order to schedule the work session during the December 18th, 2006, Governing Body meeting.

9. COUNCILMEMBERS' REPORT

- A. Referral to Public Works Committee regarding placement of KCPL utility poles

Councilmember Rasmussen reported that as more utilities are placed underground in Leawood, it is becoming difficult to find locations to place antennae for automatic readings of the meters. KCPL is asking the City to consider the possibility of installing antennae for City-owned streetlights on existing right-of-ways. Being sensitive to the streetscapes, Councilmember Rasmussen shared that he is not excited about the possibility of installing additional poles along the street that are not utilized for public safety lighting. The issue will be discussed at the next Public Works Committee meeting, to which representatives of KCPL will be invited. Councilmember Rasmussen stated he will provide a future update when a possible solution is reached.

A motion to refer the issue of antennae locations for underground utilities to the Public Works Committee was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT

- A. Approve Design/Build Recommendation for new facilities at Ironwoods Park, located at 14701 Mission Road

A motion to approve the Design Build recommendation was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the November 14, 2006 Planning Commission meeting]

- A. Ordinance No. 2196 approving a Special Use Permit and Preliminary Site Plan for Oberweis Ice-cream and Dairy, located south of 135th Street and east of Nall Ave
[Roll Call Vote]

Joe Fahee with Oberweis Ice-Cream and Dairy, Aurora, Illinois, provided a history of the company, which was incorporated in the 1950's as a home delivery service of dairy products. The proposed site will be the first store in Kansas with 41 existing stores in the St. Louis area, Indiana, and Illinois. He noted all of the dairy products are hormone-free as the company pays the dairy farmers to operate without the use of hormones.

Having grown-up in the Chicago area, Councilmember Gulledge stated he is familiar with the company and their quality products.

Mr. Lambers confirmed for Councilmember Bussing that the requested interior parking deviation is commonplace due to the interior lot line. A separation would cause extensive loss of property. There are no other deviation requests for the originally approved plat.

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Gill.

Referring to the Staff Comment, "Staff is not supportive of the metal or wood roof top screen wall shown on top of the building. Staff is recommending the applicant use a masonry material (stone or brick) on the screen wall," Councilmember Rasmussen verified with Senior Planner Jeff Joseph that the applicant has agreed to change the material during the final planning stage.

Henry Klover, 10955 Lowell, architect of the overall Cornerstone development, verified for Mayor Dunn that the signage approved by the Planning Commission is in compliance with development criteria. The primary concern related to a logo on the iron railing, which could be considered signage. He suggested that the Planning Commission review the logo to ascertain if it could be classified as artwork rather than signage. Mr. Klover confirmed for Councilmember Rasmussen that if considered a piece of art, the logo will not offset the art impact fee.

Referring to Stipulation No. 11, "All pedestrian crosswalks shall be marked with a different colored material to match the rest of the Cornerstone development," Mayor Dunn stated it was her understanding that the development would utilize pavers for the crosswalks. Mr. Joseph explained there will be a mixed-use of materials with some areas of the development containing pavers and some with colored concrete. The applicant determines the material to be used.

Speaking on behalf of the applicant, Michael Aragona, architect of the building, stated the materials used will meet the criteria of the development. Mr. Klover recalled the original approval of the development contained colored concrete crosswalks with brick pavers around the periphery. He stated this particular application will need to be consistent with existing sites upon the development. Mayor Dunn noted as the building is on the periphery, pavers may be in order.

Mr. Fahee informed Councilmember Rasmussen that the facility will serve as a retail store for dairy products as well as an ice-cream parlor, but will not be a distribution area.

Mr. Aragona clarified for Mayor Dunn that the drive-thru windows shown on the renderings were misinterpreted by Staff as fake windows, which precipitated the unnecessary stipulation prohibiting fake windows.

The ordinance passed with the following unanimous roll call vote of 8-0: Yea: Councilmembers Peppes, Filla, Rasmussen, Bussing, Gulledge, Rawlings, Azeltine, and Gill. Nay: None.

- B. Resolution No. 2708 approving a Final Site Plan for Cornerstone Tract A corner feature, located on the southeast corner of 135th Street and Nall Avenue

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Mr. Lambers stated Staff is recommending approval of the plan as submitted.

Chad Potter with Patti Banks Associates, 201 Main Street, displayed a sketch of the corner feature on the overhead.

Mr. Klover confirmed for Councilmember Bussing that stormwater slopes towards this area, however a drainage system has been installed for water diversion. He also advised Councilmember Azeltine that the patio of the Claddagh Irish Pub will overlook this area. Mr. Potter stated materials of the adjacent building were considered when designing the proposed corner feature.

Mayor Dunn noted there will be a great deal of landscaping between the water feature and the restaurant. Mr. Potter stated the stone used for both sites will be compatible.

Mr. Klover commented that the corner water feature was designed with the overall image of Leawood in mind rather than the surrounding buildings.

Councilmember Azeltine noted that the Planning Commission minutes reflect that the final elevations of the pub were not available at the time of the corner feature application. Mr. Lambers provided verification that it is not necessary for water features to receive preliminary approval as the 135th Street Corridor Guidelines are already set in place. Mayor Dunn pointed out the Planning Commission could have opted to continue the item if they were uncomfortable with the design, however it was approved unanimously. Councilmember Azeltine voiced his intent to vote in favor of the water feature with the caveat that there seems to have been some disconnection at the Planning Commission level regarding how the design will flow with the overall development.

Mr. Lambers reviewed that Claddagh Irish Pub originally proposed a design for the water feature as part of their application approval; however, they withdrew this portion from the project after being informed by the developers of Cornerstone that it was not their responsibility as the site actually belongs to the entire development. The overall developer then contracted with Patti Banks Associates to design the corner feature as it is an independent project.

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

12. OLD BUSINESS – None.

13. NEW BUSINESS

- A. Discussion regarding an ordinance regulating dirt bikes in residential areas

City Attorney Patty Bennett reviewed that the issue was brought up approximately three months ago with interest from certain councilmembers to research and further discuss regulations on the use of dirt bikes in residential areas. The interest was precipitated by a citizen complaint.

Councilmember Gill stated he would like for Staff to move another step forward in resolving the issue. Referring to the example language given from the City of Shawnee ordinance, he suggested refining the blanket exception for private driveways by including the language, "for the purpose for ingress and egress." Additionally, focus should not be limited to dirt bikes and trail bikes as all-terrain vehicles [ATVs] should be included as well.

Councilmember Bussing concurred with Councilmember Gill's statements. He also requested consideration be given to the impact these vehicles have upon the noise ordinance and to enforcement ability.

A motion to direct Staff to continue the development of an ordinance for further discussion and review was made by Councilmember Bussing; seconded by Councilmember Azeltine.

Mayor Dunn stated a public hearing on this issue would be in order.

Councilmember Azeltine commented that procedures regarding determining decibel readings of the machines would need to be set in place. Mr. Lambers stated a ban of such vehicles on private property will resolve noise issues as the operation of such would not be allowed within City limits. Councilmember Azeltine requested that Staff research the enforceability of the noise ordinance relating to the vehicles.

Councilmember Gill suggested defining the nuisance-making vehicles and enforcing a ban upon them at any noise level.

Councilmember Gullledge added that snowmobiles would fall under this category.

Councilmember Azeltine stated the Governing Body will have to repeat the discussion if the vehicle element and the noise element are treated as mutually exclusive entities. He requested that the motion be reread.

City Clerk Deb Harper reread the motion as "to direct Staff to continue to develop an ordinance regarding dirt bikes, trail bikes, ATVs, and snowmobiles for further discussion and review."

Councilmember Bussing stated the intent of his motion is to define and address the different types of offending vehicles, including the noise issue if Staff feels it is pertinent to do so.

It was noted that ATVs are outlawed at the State level in cities of the first class because of safety issues.

The Governing Body clarified there is no desire to regulate noise-making lawn/yard equipment such as riding lawn mowers and snow-blowers, only recreational vehicles.

Mr. Lambers stated the State definition of ATVs will be reviewed. He recommended notifying dirt bike associations within the metropolitan area of the public hearing in order to obtain input. A work session can be scheduled, if necessary, following the drafting of a strict ordinance and the public hearing.

Chris Walley, 4501 W. 143rd Street, informed the State definition of ATVs is outdated and does not include the new side-by-side utility ATVs. He stated an ordinance limited to the state definition would be too narrow to address existing problems in his neighborhood.

The motion carried following a unanimous vote of 8-0.

14. OTHER BUSINESS

- A. Recess into Executive Session to discuss matters related to attorney-client privilege

Mr. Lambers stated an Executive Session will not be necessary as there are only two easements yet to acquire. Contact has been made with a relative of one of the property owners with indication that the easement will be successfully acquired. He recommended proceeding with the balance of the agenda as moving forward with the condemnation does not preclude resolution of the easements. An update will be given prior to the next Governing Body meeting.

- B. Public Hearing on the advisability for the construction of stormwater and erosion control improvements along west side of Ironhorse Golf Course, 15400 Mission Road

Mayor Dunn opened the public hearing for comments. As there were no individuals present to speak on the item, a motion to close the public hearing was made by Councilmember Filla; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 8-0.

- C. Resolution No. 2709 finding as to the advisability of an improvement, specifically acquisition of interests in property and construction of stormwater and erosion control improvements along west side of Ironhorse Golf Course, located at 15400 Mission Road, within the City of Leawood, Kansas, pursuant to K.S.A. § 12-6a01 et seq.

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Gill. The resolution was approved following a unanimous vote of 8-0.

- D. Resolution No. 2710 declaring it necessary to appropriate private property for the use of the City of Leawood for the Stormwater Improvement Project

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Gill. The resolution was approved following a unanimous vote of 8-0.

- E. Ordinance No. 2197 authorizing and providing for the acquisition of lands or interests therein by condemnation for the Stormwater Improvement Project [K.S.A. § 26-201 [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Gill; seconded by Councilmember Filla. The ordinance passed with the following roll call vote of 8-0: Yea: Councilmembers Bussing, Gullledge, Rawlings, Rasmussen, Azeltine, Peppes, Filla, and Gill. Nay: None.

Councilmember Rasmussen confirmed with Mr. Lambers that a Request for Proposal [RFP] for the construction at IRONHORSE Golf Course can now be issued. Mayor Dunn expressed appreciation to Public Works Director Joe Johnson for his continued efforts in the negotiation aspect of the projects.

ADJOURN

The Governing Body meeting adjourned at 8:55 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk