

**Minutes**

DVD No. 159

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, February 5, 2007. Mayor Peggy Dunn presided.

**Councilmembers present:** Mike Gill, Scott Gulledge, Gregory Peppes, Gary Bussing, Jim Rawlings, James Azeltine, and Debra Filla.

**Councilmembers absent:** Lou Rasmussen.

**Staff present:**

Patty Bennett, City Attorney  
Kathy Rogers, Finance Director  
Chris Claxton, P&R Director  
Jeff Joseph, Senior Planner  
Rene Gurney, Municipal Judge  
Deputy City Clerk, Christy Wise

Chief John Meier, Police Department  
Joe Johnson, Public Works Director  
Mark Klein, Asst. to the Planning Director  
Mark Andrasik, IS Director  
Deb Harper, City Clerk  
Karl Weinfurter, IS Specialist

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

A motion to approve the agenda was made by Councilmember Gill; seconded by Councilmember Peppes. The agenda 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.**

Alex Dee, 4313 W. 132<sup>nd</sup> Terrace, stated he inadvertently placed his name on the sign-in sheet and did not wish to speak.

Dev Anand, 9990 College Boulevard, also passed on the opportunity to speak.

4. **PROCLAMATIONS – None.**
5. **PRESENTATIONS/RECOGNITIONS – None.**
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. 1067B, 1068A, 1070B, and 1071A
- B. Accept Minutes of the January 16, 2007 Governing Body meeting
- C. Accept Minutes of the January 16, 2007 Governing Body Work Session meeting
- D. Accept Minutes of the October 26, 2006 IRONHORSE Advisory Board meeting - *Continued from the December 4, 2006 and December 18, 2006 Governing Body meetings*
- E. Approve 2007 Governing Body Goals and Objectives
- F. Renewal of Cereal Malt Beverage [CMB] license for Hen House located at 11721 Roe Avenue
- G. Renewal of Cereal Malt Beverage [CMB] license for Dragon Dynasty located at 11248 State Line Road
- H. Second and Final Payment in the amount of \$75,619.60 to J.M. Fahey Construction Company, pertaining to the Tomahawk Creek Parkway Project [2006 Arterial Mill & Overlay Program]
- I. Approve Change Order No. 3 in the amount of \$6,103.50 to Pyramid Contractors, Inc., pertaining to the Pedestrian Bridge Project [CIP # 80112]
- J. Third and Final Payment in the amount of \$19,789.03 to Pyramid Contractors, Inc., pertaining to the Pedestrian Bridge Project [CIP # 80112]
- K. Approve purchase in the amount of \$35,156.29 from Ed Rohr Safety Projects, pertaining to the purchase of police equipment
- L. Approve purchase in the amount of \$39,76004 to Van-Wall Equipment, Inc., pertaining to equipment at IRONHORSE Golf Course
- M. Resolution No. 2732 approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$1,395,604.00 between the City and Kissick Construction pertaining to the Town Center Drive and Roe Avenue Intersection and Tributary Improvement Project [CIP # 80196]
- N. Resolution No. 2733 ordering a public hearing to be held on March 5, 2007, at 7:30 P.M., regarding a Permanent Easement Vacation located at 2544 W. 132 Terrace, located within the Wilshire Place Subdivision, Leawood, Kansas

- O. Resolution No. 2734 to approve Consenting to the Enlargement of Johnson County Consolidated Main Sewer District located at 3908 W. 140<sup>th</sup> Drive Lot 3, Merry Lea Farms
- P. Resolution No. 2735 approving and authorizing the Mayor to execute a Utility Relocation Agreement in the amount of \$527,641.00, between the City and Kansas City Power & Light [KCP&L] for the relocation of power lines on Nall between 143<sup>rd</sup> Street to south city limits [CIP # 83143]
- Q. Resolution No. 2736 approving and authorizing the Mayor to execute a Utility Relocation Agreement in the amount of \$166,062.00, between the City and Kansas City Power & Light [KCP&L] for the relocation of power lines on Nall between 143<sup>rd</sup> Street to south city limits [CIP #83143]
- R. Resolution No. 2737 approving and authorizing the Mayor to execute an extension of the Sponsorship/Purchase Agreement between the City and Coca-Cola, Inc. to December 31, 2008 –*Continued from the January 3, 2007 Governing Body meeting*
- S. Resolution No. 2738 approving and authorizing the Mayor to execute a Letter of Understanding between the City and Johnson County Department of Human Services & Aging to provide City funding for an amount not to exceed \$2,000.00, for the 2007 Utility Assistance Program
- T. Resolution No. 2739 authorizing and approving the Mayor to execute an Agreement in the amount of \$102,123.00, between the City and Justice Systems, Inc. pertaining to the purchase and installation of and training on FullCourt Software for the Municipal Court operations
- U. Resolution No. 2740 approving a Final Site Plan for Artichokes, located at the southeast corner of 105th Street and Mission Road within the Mission Farms development [*From the January 23, 2007 Planning Commission meeting*]
- V. Resolution No. 2741 approving a Final Site Plan for Room 39, located at the southeast corner of 105th Street and Mission Road within the Mission Farms development [*From the January 23, 2007 Planning Commission meeting*]
- W. Resolution No. 2742 approving a Final Site Plan for Boudreaux's, located at the southeast corner of 105th Street and Mission Road within the Mission Farms development [*From the January 23, 2007 Planning Commission meeting*]
- X. Fire Department 2006 Year End Report

Mayor Dunn noted that clerical corrections were made to Item No. 7B.

On motion of Councilmember Rawlings, seconded by Councilmember Gullledge, the Consent Agenda was approved following a unanimous vote of 7-0.

**8. MAYOR'S REPORT**

- A. Attended the Leawood Chamber of Commerce ribbon cutting for Cassis, a new French restaurant at Town Center Plaza. Councilmember Azeltine also attended the event.
- B. Mayor Dunn thanked Councilmember Azeltine for attending the ribbon cutting for National Tire and Battery at 135<sup>th</sup> Street and State Line Road on her behalf while she was out of town.
- C. Presented abbreviated versions of the State of the City Address to the Leawood Lions Club and the Leawood Rotary Club, which was also attended by Councilmembers Rawlings and Bussing.
- D. Participated in a press conference at the Leawood South Country Club announcing the Duramed Futures Golf Tour, which is the Ladies Professional Golf Association's [LPGA] developmental tournament. There will be 132 women from 42 countries participating in the golfing event. The tournament will be held at the country club from May 15<sup>th</sup> through May 20<sup>th</sup> and is being sponsored by Mercedes-Benz of Kansas City to benefit the National Kidney Foundation of Kansas and Western Missouri.
- E. Attended the Greater Kansas City Chamber of Commerce's 2<sup>nd</sup> Annual Governors' Summit on Regional Economic Development. There were 200 elected officials and corporate leaders present at the event. The fact that State Line is a benefit rather than a barrier was stressed. The forum consisted of the two governors of Missouri and Kansas coming together with the attendees to identify and explore points of intersection on key issues affecting the growth and development of our community and region. At the end of the conference, a 2007 Platform for Action was signed by Governor Sebelius and Governor Blunt as well as Conveners Gary Forsee, Donald Hall, Jr., and John Bluford. Mr. Bluford is also the Chairman of the Greater Kansas City Chamber of Commerce and CEO of Truman Medical Center.
- F. Announced the upcoming Studio Arts Tour, hosted by the Leawood Arts Council at M&I Bank on Friday, February 9<sup>th</sup>, from 5:30 P.M. to 7:30 P.M. Featured artists will be Tom Bloyd, Jeanne Davis, Marearl Denning, and Susan Minter.
- G. Mayor Dunn congratulated members of the Leawood Police Department who participated in the Polar Bear Plunge. Of the 170 participants, nine were Leawood police officers. Seven inches of ice had to be cut from the lake in order for the plunge to take place. The Leawood officers raised \$1,700 for the Special Olympics.
- H. Announced the rescheduling of the 6<sup>th</sup> Annual Kansas Day Lecture due to inclement weather. The new date for the free event is Thursday, March 1<sup>st</sup>, from 7:00 P.M. to 8:00 P.M. in the Oak Room of City Hall.

**9. COUNCILMEMBERS' REPORT – None.**

**10. STAFF REPORT – None.**

## **COMMITTEE RECOMMENDATIONS**

### **11. PLANNING COMMISSION**

*[From the January 23, 2007 Planning Commission meeting]*

- A. Resolution No. 2743 approving a Final Site Plan and Final Plat for Madden McFarland Interiors, located on the southeast corner of 135<sup>th</sup> Street and State Line Road

Applicant Ron Stallbaumer of Wendlandt & Stallbaumer Architecture, 7924 Floyd, Overland Park, Kansas, 66204, distributed updated three-dimensional color elevations to the Governing Body and displayed slides illustrating the final plan. He confirmed for Mayor Dunn that the color elevations are consistent with information supplied in the agenda packets although reveals more of the existing landscaping. There have been no significant changes to the plan since preliminary plan approval.

Referring to Stipulation No. 21, "The applicant shall be responsible for the installation of a corner feature at the northeast corner of the site. The applicant will be notified of the cost, not to exceed \$25,000, associated with such corner feature at a later date," Councilmember Bussing asked how this dollar amount was reached and if it will set precedence for other corner developments along 135<sup>th</sup> Street. Senior Planner Jeff Joseph stated that City Administrator Scott Lambers recommended the now fixed amount at the Planning Commission meeting during the preliminary plan phase, which will also be used for the other corners of this intersection.

To Councilmember Bussing's question regarding the source of the cost estimate, Mayor Dunn stated she discussed the amount with Mr. Lambers. There will be three corner features at this intersection including the median feature that was approved in the 2007 Budget. At this time, it is unknown what will be on the northern corner. The figure is a low dollar amount for this location; however, given the size of the tract, Mr. Lambers felt it was more than fair. She stated the amount does not set precedence for other developments at different intersections along 135<sup>th</sup> Street.

Councilmember Bussing requested future clarification as to the rationale behind establishing capped figures, particularly concerning extensive developments.

Councilmember Gill echoed Councilmember Bussing's remarks, adding that the Council should be involved in the creation of such policies. He verified with Mr. Joseph that a contract will be put in place between the City and a design firm for the corner feature, which will be installed by the applicant at a future date. The City will pay the balance of costs exceeding \$25,000.

Mayor Dunn stated the north and south corner features are to be coordinated in design.

Although this is a fair amount for the applicant to bear, Councilmember Gill stated that \$25,000 does not sound like enough money to make the statement desired at the entrance to Leawood. Mayor Dunn confirmed that the City will cover any additional costs.

Councilmember Azeltine requested to hear the applicant's account of how the figure was determined.

W.B. Madden, 7301 Falmouth, Prairie Village, Kansas, 66208, stated the \$25,000 amount is fair in his opinion given that the monument is at the City's request and considering his right-of-way land donation worth \$115,000. He pointed out that if he were not remodeling his building, he would not be required to donate the right-of-way or contribute to the corner feature. As another feature at 135<sup>th</sup> Street and Nall Avenue was quoted in the newspaper to cost \$1.4-million, he agreed that his contribution does not sound like enough money for the project. Mr. Madden stated he does not know from where the amount was derived, however agrees to pay the \$25,000 with the citizens of Leawood paying the balance.

Mayor Dunn informed that the referenced \$1.4-million monument to be installed at 135<sup>th</sup> Street and Nall Avenue was designed by and is to be completely funded by the developer with no utilization of taxpayer dollars. A monument of this size would be too large for the Madden McFarland tract at the 135<sup>th</sup> Street and State Line Road intersection.

Councilmember Azeltine agreed it is important to state that the \$25,000 amount should not be viewed as a precedent by other developers.

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

Councilmember Peppes confirmed with Mr. Joseph there is no date certain for the corner feature at this time. It was also verified that fire sprinklers will be placed throughout the entire building.

The resolution was approved following a vote of 5-1-1 (Nay: Councilmember Bussing; Abstain: Councilmember Gulledge). Councilmember Gulledge stated his abstention is for consistency purposes due to the fact that he was absent during the original preliminary plan presentation of this project and abstained on a subsequent vote.

**12. OLD BUSINESS – None.**

**13. NEW BUSINESS**

- A. Ordinance No. 2211 amending Article 1 of Chapter 11 of the Code of the City of Leawood, 2000, by adding a new Section 11-108, entitled "Dirt Bikes, Trail Bikes and All Terrain Vehicles [ATV] prohibited" [Roll Call Vote]

Mayor Dunn noted that a letter from the law offices of Lathrop & Gage regarding this item has been placed upon the dais. City Attorney Patty Bennett stated the letter is on behalf of Chris Wally, citizen, and contains suggestions to the proposed ordinance. She stated the ordinance can be revised in response to the points outlined in the letter if Council so desires.

Chris Wally, 4501 W. 143<sup>rd</sup> Street, highlighted sections of the letter written by his attorney, Harry Wigner, Jr. The definition of all terrain vehicle in § 11-108(B)(2) of the proposed ordinance should be updated as many ATVs manufactured today exceed the referenced dry weight of 1,000 pounds with many reaching 1,400-1,500 pounds.

Additionally, section § 11-108 (B)(2)(c), states that an unmodified utility cart with seating for two people and containing a bed or flatbed should not be classified as an ATV. Mr. Wally commented that this exception begins to render the ordinance useless.

Ms. Bennett stated there are valid points in Mr. Wigner's letter and offered to make any wanted changes to the proposed ordinance. The letter also suggests limiting the "ingress" and "egress" on property to prevent an individual from riding an ATV up and down a driveway. She stated the letter also asks that Council consider banning all licensed motorcycles from being driven on the street and off the driveway. This issue would fall under a different area than unlicensed recreational vehicles. Depending upon direction given by Council, a retainer could be established in order to gain more knowledge of the current ATV/dirt bike definitions.

Councilmember Filla confirmed with Police Chief John Meier that there have been no other issues related to ATVs, dirt bikes, or snowmobiles reported throughout the City. In light of this and the fact that the offending party in this case has taken action to alleviate bothering his neighbor, a motion was made by Councilmember Filla to continue the item until a point in time when it becomes a public nuisance as this one case does not warrant the time and energy needed to codify a new section. The motion died for the lack of a second.

James Velgie, 11716 High Drive, stated he is concerned with the motivation behind the proposed ordinance. He summarized the ongoing disagreement between neighbors Chris Wally and Dr. Joe Waeckerle including the fact that Dr. Waeckerle disallowed the use of ATVs and dirt bikes on his property following complaints by Mr. Wally. Mr. Velgie concluded that the City Council should not be used as a tool in resolving a personal dispute by serving the hidden agenda of one individual, especially when such regulations are enforceable through a homeowner's association [HOA]. He stated both parties should stand down and not tie-up the City's time on this issue.

Councilmember Gill asked Mr. Velgie for his point of view on whether dirt bikes should be ridden on private properties in residential areas. Mr. Velgie stated he chose to move to Leawood because of the high integrity of the government, outstanding public safety, and excellent educational systems. His concern is not whether dirt bikes should be banned, but rather how a ban based upon the current motivation would undermine the integrity of the Governing Body. He suggested tabling the issue.

Dr. Joe Waeckerle, 4601 W. 143<sup>rd</sup> Street, stated the Governing Body has been informed of issues between Mr. Wally and himself for the last 1½ years. He apologized for this fact as it goes against his philosophy of being part of the solution rather than part of the problem. In trying to resolve these issues, he has sold the ATVs and moved the church football practices to another location. Additionally, the dirt bikes are no longer in use. Dr. Waeckerle stated under the American Disability Act [ADA], the use of a recently purchased two-seated utility vehicle will be necessary to maintain his 10-acres as he has been declared disabled due to recent back surgery. He stated he will abide by any decision made by the Governing Body but does not feel that a problem still exists. As this is a personal issue, it should not have risen to the current legislative level.

Councilmember Azeltine confirmed with Dr. Waeckerle that if the ordinance is not passed, he will refrain from using the described prohibited vehicles on his property. It was clarified that the proposed ordinance does not restrict usage of utility vehicles.

Councilmember Azeltine expressed to Dr. Waeckerle that if the ordinance is passed, it will not be in order to instigate a vendetta. The Governing Body is a policy-making board and has spent an amazing amount of time discussing this issue through various means of communication over a period of months. The reason for discussion is a lack of clarity in the current ordinance. Councilmember Azeltine asked Dr. Waeckerle if he had any other suggestions as to how to enforce an ordinance that would prevent the City from mediating a dispute between two property owners.

Given the measures he has taken in selling the offending vehicles, refraining from riding the dirt bikes, and relocating the football practices, Dr. Waeckerle respectfully disagreed that the issue is anything more than a personal vendetta at this point.

Mayor Dunn noted that Dr. Waeckerle's letter dated January 30, 2007, was included as packet information.

Referring to the prior comment regarding HOAs regulating recreational vehicle usage, Councilmember Gulledge pointed out there is not an HOA in the area that Mr. Wally and Dr. Waeckerle reside. He assured that after personally spending many months dealing with this issue, there are other associated problems apart from the ongoing dispute such as the noise decibel levels emitted from the vehicles. The current ordinance needs more detail in order for law enforcement officers to make proper decisions.

Councilmember Gulledge stated appreciation for the fact that the dispute has been worked out between the two gentlemen, however does not understand why Dr. Waeckerle objects to passing the proposed ordinance if he has already taken steps to comply with the restrictions. Dr. Waeckerle stated concern for how much governmental time was wasted on the issue.

Councilmember Gulledge stated usage of a utility vehicle to maintain property during certain periods of time should not be a problem. He agreed that Mr. Wigner's letter raises points of interest.

A motion to continue the item for a period of 30 days in order to review certain issues in relationship to the currently proposed ordinance was made by Councilmember Gulledge; seconded by Councilmember Peppes.

Ms. Bennett requested specific direction from Council if the item is continued. Councilmember Gulledge suggested polling the Council with items listed in the letter from Lathrop & Gage to determine what is important to include in the ordinance.

Discussion took place regarding the fact that the entire issue could have been resolved at a much earlier time if the two parties had practiced better communication skills.

Councilmember Filla re-verified with Chief Meier that there have been no other instances in the City related to this matter. She reiterated that the issue should be continued until further warranted.

Councilmember Gill stated the proposed ordinance is more than adequate and he neither in favor of a continuance nor with prohibiting utility vehicles for their intended purposes. He noted there have been past occasions in which a single incident brought forth action by the Governing Body, such as some of the lighting and signage ordinances. Councilmember Gill stated there is merit to a simply stated ordinance prohibiting the use of dirt bikes on private property. Clear boundaries should be set for the Police Department to reference when such complaints occur.

Councilmembers Gulledge removed his motion for a continuance and Councilmember Peppes removed his second to the motion.

Mr. Wally pointed out that this is not an issue solely between himself and Dr. Waeckerle as he placed a call to the Police Department in December regarding the usage of an ATV upon property on 144<sup>th</sup> Terrace. He stated no objection to a utility vehicle being used for intended purposes, however reminded that the video shown at a prior Governing Body meeting illustrated the vehicle in question being driven at a high rate of speed by teenagers.

Councilmember Rawlings stated it is his understanding that the ordinance was drafted in order to avoid future noise problems that were brought to the Councils' attention. He agreed that a resolution should be reached this evening.

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

Councilmember Azeltine restated his comment from a previous meeting that this ordinance should be addressed in a broader context of a more comprehensive noise ordinance. He predicted that further clarifications will come before the Governing Body in the future.

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

- B. Ordinance No. 2212 amending Chapter 8 of Article 1 of the Code of the City of Leawood, 2000, by repealing Sections 1-823 through 1-826 pertaining to the Special Public Golf Course Fund [Roll Call Vote]

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

Councilmember Filla confirmed with Mayor Dunn it will still be possible to view independent information related to the golf course during the budget process although it will no longer be in a separate fund.

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

- C. Ordinance No. 2213 extending the duration of validity of a Preliminary Site Plan and Preliminary Plat for 135<sup>th</sup> & Roe Office Retail Development located on the northeast corner of 135<sup>th</sup> Street and Roe Avenue [Roll Call Vote]

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

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

- D. Schedule a Governing Body Executive Session at 6:30 P.M. on Monday, February 19, 2007 to discuss personnel matter of non-elected personnel

A motion to approve the meeting was made by Councilmember Rawlings; seconded by Councilmember Filla.

Councilmember Bussing advised he will be out of town on this date.

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

- E. Schedule a Governing Body Work Session at 6:00 P.M. on Monday, March 12, 2007, to discuss 2008-2012 Capital Improvement Projects [C.I.P.]

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Gill. The motion was approved following a unanimous vote of 7-0.

- F. Schedule a Governing Body Work Session at 6:30 P.M. on Monday, April 2, 2007 to discuss Park & Recreation User Fees

A motion to approve Item No. 13F was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0.

- G. Schedule a Governing Body Executive Session at 6:30 P.M. on Monday, April 23, 2007 to discuss Personnel Matter; City Administrator's 6-month review

A motion to approve the Executive Session was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved following a unanimous vote of 7-0.

**14. OTHER BUSINESS – None.**

**ADJOURN**

The Governing Body meeting adjourned at 8:50 P.M.

---

Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk