

Minutes

DVD No. 184

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, March 31, 2008. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: Scott Gullede

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Patty Bennett, City Attorney
Mark Andrasik, Information Systems Director
Deb Harper, City Clerk
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted three items of Other Business under 7A, 7B, and 7C. Item No. 7A is a report from the City Administrator regarding the Johnson County appraisers meeting that was held this afternoon at the County. Item No. 7B is a discussion of the start time for the April 7, 2008 Council meeting. Item No. 7C is an announcement regarding tomorrow, April 1, 2008.

A motion to approve the agenda was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion carried 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.**

David Thompson, 12715 Sagamore Road, stated concerns with the increase of coyote attacks on pets in the Leawood surrounding neighborhoods. He went on to express four main concerns:

1. Emotional bond between the owner and the pet.
2. Financial cost of having a pet.
3. The safety Issue. Referring to the information pamphlet on the City's website regarding coexistence with coyotes, it states that coyotes will not progress to hurting a human. He stated this is a false statement. There are coyote attacks every year throughout the United States. Mr. Thompson went on to say that although he is not an expert, there is information on the internet from professionals in this field, who will advise you that an increase in pet attacks by coyotes frequently proceeds to attacking humans, due to getting acclimated to the human environment. They then start to lose their fear.
4. Decrease in property values. He noted that the information on the coyote attacks have appeared on the front page of The Kansas City Star and in The USA Today newspapers. Mr. Thompson expressed his desire for the Council to do something to mitigate these attacks.

Mayor Dunn stated that although this item is not on the agenda for Council this evening, it will be on the agenda for the April 7, 2008 Council meeting for discussion and an update on this issue will be given by Police Chief, John Meier. Mayor Dunn expressed appreciation to Mr. Thompson for stating his concerns and understands the emotional attachment to pets and expressed that both the Council and City share in these concerns.

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

- A. Resolution approving Final Site Plan located approximately at the southeast corner of 137th Street and Mission Road for multi-family housing [Applicant: Oddo Development]

City Attorney, Patty Bennett noted that the applicant would like to request a motion to remand back to the Planning Commission.

Doug Patterson, Attorney for Oddo Development, stated when they met with the Planning Commission on February 19, 2008, one of the conditions for recommendation of approval was that one of the buildings be removed. This building was removed in a plan that was submitted to Council. The relocation of the building to another area caused the area that this new building was planned upon to change from the plan that they had been reviewing at the time. Therefore, the decision of staff was this was a change in the plan that the Planning Commission reviewed and approved. Our focus is to have the plan sent back to the Planning Commission, as they have not yet reviewed the changes.

Mr. Patterson, stated that one of the other conditions of the Planning Commission meeting was to meet with the Tuscany Reserve Homes Association members. They had planned to come before Council after the February 19, 2008 meeting, but time did not allow the Tuscany Reserves Homes Association to have this meeting. This meeting was held on March 12, 2008. There were a large number of people in attendance and progress is being made, however, a couple of sticking points unresolved. The members of the homes association contacted Jim Orr, Representing the Tuscany Reserves Homes Association, requesting this matter be continued from tonight. Mr. Patterson noted that by continuing the meeting, the applicant would have time to finalize the plan.

Mayor Dunn questioned Mr. Patterson to continue this meeting to allow time to meet with the Tuscany Reserve residents as requested to work out these sticking points, and then come to Council, instead of remanding back to Planning Commission at this time.

Mr. Patterson stated that the procedure agreed upon with the Planning Commission was that the applicant plan the project setbacks, as directed by the mediating judge, who stated the plan must be agreed upon without stipulations or recommendations when it comes back to Council. Once agreed on a plan, it goes back to the Planning Commission for the stipulations.

Councilmember Rasmussen noted that some of the stipulations occur at the City Council level. He questioned whether Mr. Patterson is saying when the plan comes from the Planning Commission to the Council; it will be the void of the basic public safety stipulations.

Mr. Patterson stated that this is the current structure.

City Attorney, Patty Bennett, stated that during the mediation, the applicant asked to be able to present this plan to the City without staff comment other than a staff recommendation of denial. The idea will be for the Council to look at this to see if there is some compromise that the parties would agree upon.

Councilmember Gill noted he is in agreement with the compromise discussions with the residents. He stated that it is important that we economize the time of the residents, the Planning Commission and the Governing Body. Mr. Gill stated, most likely, this plan would be remanded to the Planning Commission.

Mr. Patterson stated the Planning Commission wanted them to remove the building. The building was moved from the east side of the drive and put in on the west side of the drive. The area that once contained four buildings, now contains five. Councilmember Gill questioned if the number of buildings were the same. Mr. Patterson was in agreement with Mr. Gill. Councilmember Gill stated there is a difference between moving and removing. Mr. Patterson stated they could eliminate the building from the entire plan, if need be.

Mr. Gill noted he would like to minimize the number of hearings. Mr. Gill recommended continuing to work with the residents, come to Council with a proposal when ready; the Council could then proceed with their comments. Mr. Patterson stated he would accept a continuance instead of a remand.

Mayor Dunn stated that Mr. Gill could not guarantee a remand. She requested Mr. Patterson not accept this as absolute. Mayor Dunn questioned if the residents of Tuscany Reserves realized there would no longer be the super majority requirement from the Governing Body if this was to be remanded this evening. Mayor Dunn also questioned if the public hearing will remain open for their comments. Mr. Patterson was in agreement.

Councilmember Rasmussen questioned if the City Council has the authority to put stipulations into the zoning issues as they have historically.

Patty Bennett stated these are settlement negotiations and the Council will have the authority to talk with the developer to add whatever stipulations the City believes is important on the plan to approve.

Councilmember Peppes questioned what would happen when staff puts their stipulations in and you see something along the lines of a specific issue. He noted he relies upon staff to give him guidance.

Ms. Bennett stated the idea is conceptually to work together with the developer to come up with a concept plan that will work. The stipulations will come up later. This is a different procedure.

Jim Orr, Representing the Tuscany Reserves Homeowners Association and Mr. Barry Hopkins, President of the Tuscany Reserves Homeowners Association, wanted to clarify they did ask for a continuance last week. He stated he was able to meet with the board to obtain a consensus with them as to some specific criteria and directions the board wanted to pursue. It was his understanding this is what the Planning Commission requested. The Board contacted Doug and Patty to discuss the issue due to this being time sensitive. Doug had suggested a remand. Mr. Orr stated he had no objections, however, it could affect whether or not a super or simple majority is required. There was not enough time to get the information out. Mr. Orr stated that his goal would be to take the consensus communicated by his client to work with the Oddo's and City staff to come up with a proposal and present it to the Council to reach some kind of agreement.

Councilmember Azeltine noted if a continuance is granted and there are any significant changes to the plan then the Council could not hear it, due to the fact that it did not come from the Planning Commission.

Patty Bennett stated this would be similar to many different cases in a final plan where you ask for changes from them or they submit changes in front of you. They would ask you to approve something from that plan.

Mr. Azeltine noted that would require a super majority and from there the presumption is that the Council could remand it back to the Planning Commission and then come back to Council.

Ms. Bennett stated if something is approved by the Governing Body it is anticipated it will be remanded back to the Planning Commission for other staff stipulations.

Mr. Azeltine noted concern that the Council not circumvent the Planning Commission. He stated that the Planning Commission's recommendation was for the removal of one specific building. The applicant would like to not only remove it, but move it. They are not taking it out of the plan, but moving it to another location. The applicant believes this meets the intent of the Planning Commission. It is not what the minutes reflect. Mr. Azeltine noted that the fifth stipulation on the resolution states that the building proposed at the northeast corner of the development shall be removed. Ms. Bennett stated they believe this meets the intent of the Planning Commission and would like to move it. However, these are unlike most final plans. The Council may have a list of items they want the Planning Commission to look at in addition to the move/removal of the building. Mr. Azeltine noted if continued, the same plan will be brought back. Ms. Bennett stated the applicant will meet with the Tuscany Reserves Home Owners Association; they may or may not make further changes to the plan. Mr. Azeltine questioned if the changes would be incorporated into the plan presented to Council. Ms. Bennett stated what comes on the agenda is the recommendation of the Planning Commission. What they suggest to Council will be somewhat different. Mr. Azeltine confirmed it will be the same plan plus a presentation from the applicant that will include the new changes.

Scott Lambers stated Mr. Azeltine is correct, depending on the changes. The Council can then override, approve, or remand.

A motion to continue Item No. 6A to April 7, 2008 was made by Councilmember Filla; seconded by Councilmember Gill. A date certain will be established at that time.

Councilmember Bussing questioned at what point does the City stop trying to find a settlement and go back into a normal development process.

Ms. Bennett stated that once the plan is presented to the Governing Body and Council has given their input, the idea would be the Governing Body, and developer, be able to come to an agreement conceptually, once final approval or denial has been given.

Mr. Bussing noted that because this is a special circumstance, the City can't declare we want to preserve the right for super majority in the event of a remand to the Council. Ms. Bennett stated the City promised the court to follow the standard procedures.

Mayor Dunn noted that the continuance leaves the super majority in place.

Mayor Dunn made a request that on April 7, 2008, Mr. Patterson know definitively a solid date for the continuance. Mr. Patterson stated he wanted to hear this item tonight, but wanted to accommodate the Tuscany Reserves Homeowners Association. Mr. Patterson stated that it is his desire to compromise with Tuscany Reserve and that he is optimistic.

Councilmember Gill questioned Mr. Patterson if they have contacted Sienna and offered them an opportunity to talk without the threat of deed restriction litigation. Mr. Patterson confirmed that they have offered to do this.

The motion was approved with a unanimous vote of 7-0.

7. OTHER BUSINESS

- A. Report regarding appraisal meeting with Johnson County officials.

Scott Lambers, City Administrator stated the County Appraiser requested meetings with representatives from all of the cities of Johnson County to provide information on the increased and assessed evaluations. The individual homeowner evaluations were mailed out today and should be received within a day or two. The City of Leawood can expect, based upon the appraiser's information, an increase in assessed valuation of 4 ¼ - 4 ½ percent.

- B. Start time for April 7, 2008 Governing Body meeting.

Mr. Lambers stated in anticipation that the Kansas University basketball team may participate in the Final Four, the work session scheduled for April 7, 2008 at 6:00 P.M. could be postponed to a later date and the Governing Body meeting be rescheduled from 7:30 P.M. to 5:30 P.M., due not only for the Council, but the residents interested in the Final Four.

Mayor Dunn noted concern that people may want to see the game regardless if Kansas University is playing and suggested the meeting time be moved up accordingly and the work session be rescheduled to a later date.

Councilmember Azeltine noted he would not arrive to the Governing Body meeting until 6:00 P.M.

Councilmember Peppes made a motion to approve the start time of the Governing Body meeting to 5:30 P.M.; seconded by Councilmember Rawlings. The motion was approved with a unanimous vote of 7-0.

Councilmember Azeltine questioned the growth of the City's assessed valuation effect on the approved Capital Improvement Plan [C.I.P.]. Mr. Lambers stated the City will keep the current expenditures for 2009; and make adjustments in the future.

- C. Election on April 1, 2008

Mayor Dunn noted a reminder to vote on Election Day April 1, 2008 and congratulated all candidates running in the election.

ADJOURN

Mayor Dunn adjourned the meeting at 8:25 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk