

Minutes

Audio Tape No. 689

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:15 P.M., on Monday, March 31, 2008. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: - Scott Gullede

Staff present: Scott Lambers, City Administrator
Deb Harper, City Clerk
Pam Gregory, Deputy City Clerk

Others present: Philip Batson, reporter for *The Johnson County Sun*
Jill Cedarstone, freelance writer for *The Kansas City Star*

1. Opening Remarks

Mayor Dunn called the Work Session to order at 6:15 P.M. The purpose of the meeting is to discuss the extension of the 1/8 cent sales tax from July 1, 2010 to June 30, 2015 for the continued use to fund an accelerated Residential and Thoroughfare Street Improvement Program and to make Stormwater Improvements when such improvements are not otherwise eligible for funds from other governmental entities.

Introductions were made by those present.

Scott Lambers stated the reason for the meeting was for direction from Council to establish a date for renewing the City's sales tax, as it expires in mid 2010. If the Council wants the question on a ballot for either the primary or general election, it will have to be in 2008 or 2010. If the City waits until 2010, the sales tax will lapse and it does not become a renewal, it becomes a tax again. Mr. Lambers stated his recommendation is that the Council consider going to the voters prior to the expiration. If wanting to consider the August primary in 2008, staff needs to work immediately to get the necessary documents to the City Council to be filed with the County Clerk before the election. Overland Park decided to go with a mail ballot, which was favorably approved. Lenexa is considering a similar process and is scheduled in May. Mr. Lambers stated his recommendation is that the City target the August primary date due to November being extremely busy, not only with people running for elections, but numerous other issues. He noted the only issue on the August ballot he was aware of is the County's renewal of their sales tax for economic development for the school.

They plan to stop providing to the school and use it for public safety purposes. Mr. Lambers noted he received an e-mail from the county manager asking that the cities endorse their sales tax initiative in August. This is an endorsement of the tax and does not go into any detail of the expenditure of the County or the City.

Mayor Dunn questioned voter turnout in August. She noted historically it has been low, but there is renewal on the economic development tax that should get the vote out.

Mr. Lambers noted it usually takes a primary contest to generate interest on the Republican side for Congress, and he doesn't anticipate that happening this year. He stated this should be a typical turnout, but it is generally low. There have been conversations of moving it to September when school has started. He stated you can have the election in April of 2010, though this would be close to the renewal date. He noted he is not concerned that the voters will not support it.

Councilmember Rasmussen questioned the wording of the existing sales tax. Deb Harper, City Clerk, confirmed the wording is the same as that on the agenda. Mayor Dunn stated this is a renewal of the same existing sales tax.

Mr. Rasmussen stated he will not support the wording in regards to the issue. He noted the Capital Improvement Program [CIP] and the intent of the expenditures are supposed to be for City owned stormwater. Mr. Rasmussen quoted the wording in the CIP Program "approved a 1/8 cent sales tax for improvement of City owned stormwater projects." Contrary to the National Pollution Discharge Elimination System [NPDES] Program that has been in effect for over a decade, this money has been used to utilize the existing channels to help improve the stormwater quality. Mr. Rasmussen noted the address on Norwood as an illustration of where this money has not been used for City owned projects.

Mayor Dunn noted the words "City owned" are not used in this description.

Mr. Rasmussen confirmed this is his issue and would like the wording changed to include this. When this was discussed originally, the money was supposed to be used for City owned stormwater projects. He noted the City should not be using this money to fix homeowners water problems in their yards. Mr. Rasmussen stated he has no objection to spending the money on our existing stormwater system, but he objects to spending the money on someone's personal property.

Mayor Dunn stated she understands Mr. Rasmussen's position, but the language used in this ordinance has been used legally and the way the majority of the Council has approved it.

Councilmember Filla stated how the money is spent has nothing to do with the tax itself. Another issue the Stormwater Committee discussed and approved in the minutes was to renew this early. The Stormwater Committee supported doing this sooner than spring of 2010 to allow adequate time for CIP and budget cycles.

The consensus of the Council was to continue both residential and stormwater, so there is the flexibility to apply it to whichever the higher need is at the time.

Mayor Dunn noted the attempt has been to split it evenly between the roads and stormwater. It has been generating approximately \$650,000 per year.

Councilmember Gill questioned what the total estimated tax proceeds will be. He also questioned the amount projected to spend on stormwater with respect to City owned and non City owned. Mr. Gill stated that an easement is a property right. If the City has an easement it would be considered City owned. He noted, however, he understands Mr. Rasmussen's position and would like to see it broken down.

Mr. Lambers stated City owned would restrict the use of these monies to existing facilities that are public and in City easements that the City has taken over. A lot of the projects that the City is looking at are filling in gaps or expanding storm sewers. The ones that are expanding, the City can do the analysis. For those that are gaps, there is no sewer or easement in place. The City requires that the easement be dedicated in order to assume maintenance.

Councilmember Gill stated if the City doesn't own it, but then acquires ownership and there are stormwater problems, this should be addressed and the problems be fixed.

Councilmember Rasmussen reiterated his position and noted he would like all of the money dedicated to City owned properties and not individual homeowner's private properties.

Mayor Dunn noted Joe Johnson, Public Works Director, is not in opposition with Mr. Rasmussen's views. This has been put on the CIP with professional staff recommendation for approval. Mayor Dunn stated the use of the money is based upon an annual decision.

Councilmember Peppes questioned if this doesn't pass in 2008, can it come again before renewal in spring 2010 at the April election. Mayor Dunn questioned if it doesn't pass in August, would something preclude it from going in November. Mr. Lambers stated the City would not be precluded from that, but the option would be either wait until the City election in 2010, or to do a mail ballot.

Councilmember Peppes questioned if the mail ballot cost would be similar to that of putting it on the ballot. Mr. Lambers stated there is no cost to the City in August or November. The City pays a general election fee.

Mayor Dunn noted Overland Park did a mail ballot and she believed it passed by over 75 percent. Lenexa has agreed to renew theirs as well, and is planning a mail ballot in May. Mayor Dunn stated a mail ballot could be done in 2009.

Mr. Lambers stated each year the City budgets for an election, even if there isn't one, in anticipation for the possibility of a special election.

Councilmembers Azeltine and Bussing joined the meeting at 6:39 P.M.

Mayor Dunn noted this would be on the same ballot the County would have their renewal of the economic development, which is now going toward public safety tax. This is primarily going to be used for the jail. Mayor Dunn stated it is currently going to the schools.

Councilmember Rawlings questioned if the County has an idea what the voters will do.

Mayor Dunn noted everything has been very positive. She stated Chairman Surbaugh will be giving her State of the County Address on April 8, 2008. She is planning to speak on this matter.

Councilmember Filla stated she will support an August ballot.

Councilmember Rasmussen stated he has no objection to the time frame and noted he only objects to the language used to misappropriate the funds. Mayor Dunn stated this is the language the voters have approved. Mr. Rasmussen noted a previous discussion with the Council of making sure how the money would be spent.

Councilmember Azeltine noted if the language was changed it would become a brand new initiative. Mr. Lambers confirmed to Mr. Rasmussen he wants the words "City owned" inserted in the language. Mr. Lambers noted concern depending upon different interpretation of what this states. One of the intents of the money is to be able to do very small projects.

Mr. Rasmussen stated 1/3 of the amount of this sales tax is going to these projects previously noted. He stated \$1 million a year. Mayor Dunn noted this is new information since the televising has been completed in 2007. This is why the City forecast \$1 million per year.

Councilmember Filla noted the first agenda item for the next Stormwater Committee meeting is to discuss the building permit process, since there is currently no place to have it reviewed by City staff. Mayor Dunn questioned if Joe Johnson, Public Works Director, was bringing this for discussion. She stated this was discussed last fall, and was directed by Council to look at this issue.

Mr. Rasmussen stated he would like the language clear.

Councilmember Azeltine questioned Mr. Lambers as to the impact of changing the language. Mr. Lambers stated it would be a restriction of use if there is not an existing concrete storm system in place, this money could not be used.

Mr. Lambers confirmed with Mr. Azeltine if the language is changed, it would still be portrayed as a renewal. Mayor Dunn noted what Mr. Rasmussen is proposing would put more restrictions on the language. Mr. Rasmussen stated he wants the staff to understand his opinion as to the use of this money. Mayor Dunn stated this could vary on a case by case basis. Councilmember Filla stated this can be done without having to change the language.

Councilmember Azeltine questioned how Mr. Rasmussen would change the language. Mr. Rasmussen stated he would have it read as follows: "for the continued use to fund an accelerated Residential and Thoroughfare Street Improvement Program and to make Stormwater Improvements to City owned stormwater facilities that are not otherwise eligible for funds from other governmental entities." Mayor Dunn stated this would restrict the Governing Body's ability to use this for anything else. Mr. Rasmussen stated there are other funds available. Mayor Dunn questioned if this would be just as palatable to voters. She stated she has had numerous letters from residents thanking the City for fixing some of the small problems they couldn't have otherwise fixed without the use of this sales tax.

Councilmember Azeltine questioned if this would preclude the City from getting a permanent easement. Mr. Rasmussen stated it would preclude the situation that exists. Mr. Azeltine noted if there is a situation that would include several people, would he still object to these homeowners granting the City an easement and it becoming City owned properties. Mr. Rasmussen stated this then becomes a different issue. He noted he doesn't want to do this with sales tax money. Mr. Lambers stated Council policy is, if this is intended to be for non-Stormwater Management Advisory Council [SMAC] projects, it is to be a dedicated revenue source each year to have the ability to fund small stormwater projects on a pay-as-you-go basis, in order to handle small neighborhood improvements.

Mayor Dunn noted an example in Ward 1, where a homeowner did not dedicate their easement, and the City staff appropriately moved on. The homeowner called and stated she had all of the easements and was ready to come back in the queue, but understood it would be 2010 before this would take place. She stated this is important for these people and they saw no other way to get these improvements. This money has been dedicated for stormwater. The City has been doing small projects. Once the City has gotten the conveyance, they are privately owned creeks until the City makes the improvement, they then become City owned at that point. This is not viewed any different than the way SMAC has been operating.

Councilmember Peppes stated, although Mr. Rasmussen does have a point, he doesn't agree that the language needs to be changed. He noted there is an understanding as to what the money should be used for.

Councilmember Rasmussen stated this was approved in the CIP Program in 2008. Mr. Lambers stated when the design is brought to the Stormwater Committee for recommendation to the Council, it is then voted on.

Mayor Dunn questioned the project having done this process. Mr. Lambers confirmed no. He noted all of the 2009 projects for the CIP will be in the 2009 budget. If it is scheduled for 2010 construction, the design work for 2009 will be in the budget. Mr. Lambers stated that Mr. Rasmussen had made his concerns very clear. Mr. Rasmussen questioned how some of these projects got on the CIP. Mr. Lambers stated that according to Mr. Johnson, there was a laundry list of projects when the tax was first established. There were more projects than money. Councilmember Azeltine questioned who put the laundry list together. Mr. Lambers stated the citizens did. The City did not have a program in place. The City stated they would not buy an easement and they would rate the project in order of importance.

Councilmember Rasmussen stated an open channeled creek is a better way of getting quality stormwater, which Leawood has. The City needs to look at these projects and what it does to stormwater quality. He stated that piping the stormwater is not his recommendation. Mayor Dunn noted her neighborhood has stormwater pipes and she is pleased with this. Mayor Dunn stated Leawood's residents prefer bio-engineering.

Mayor Dunn stated the Council needed to decide if the language should change and if it is going to be put on the ballot.

Councilmember Gill stated he would like it on the ballot in August. He noted he is not in favor of changing the language because the language used now gives greater flexibility. He stated Mr. Rasmussen makes a good point, but this is about becoming self-disciplined on how the money is used.

Councilmember Filla was in agreement with this. Mr. Lambers stated that the staff evaluates the projects by the severity of the problem and the number of homes affected. Mayor Dunn asked each Councilmember their position and it was reiterated that there is a clear consensus to go forward with the August ballot and the language would remain as stated.

Mayor Dunn stated that when speaking with groups, such as, the Leawood Women's Club, they have been extremely supportive of this tax in the past and anticipates they will be supportive again. They see this as an opportunity to have some acceleration as to what the City might do without this tax and to have people come in from outside the City boundaries to help pay for these issues. There are many people from other communities coming here to shop and this will help fund these issues. Mayor Dunn noted that as long as the money is used wisely and the City can illustrate what has been done, then people will support this. She stated she has not heard any complaints from residents on how the money has been spent.

There being no further business, Mayor Dunn adjourned the Work Session at 7:15 P.M.

Pam Gregory, Recording Deputy City Clerk