

Minutes

DVD No. 206

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, January 5, 2009. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
John Meier, Police Department
Chief Ben Florance, Fire Department
Karl Weinfurter, Info. Systems Specialist
Patty Bennett, City Attorney
Deb Mansfield, City Clerk

Mark Klein, Asst. to the Planning Dir.
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Lovina Freeman, HR Director
Joe Johnson, Public Works Director
Richard Coleman, Comm. Dev. Director

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted that Agenda Items 12A, 12B, and 12C have been withdrawn. A motion was made by Councilmember Rasmussen, seconded by Councilmember Gill to approve the agenda. The motion was approved following a unanimous 8-0 vote.

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 – None.

6. SPECIAL BUSINESS

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 motion to approve the Consent Agenda was made by Councilmember Rasmussen; seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

- A. Accept Appropriation Ordinance Nos. 1117B, 1118A, 1118B, and 1118C
- B. Accept Minutes of the December 1, 2008 Special Call Governing Body meeting
- C. Accept Minutes of the November 13, 2008 Green Task Force Committee meeting
- D. Accept Minutes of the November 14, 2008 Stormwater Management Committee meeting
- E. Accept Minutes of the November 20, 2008 Ironhorse Golf Course Advisory Board meeting
- F. Approve 5th and Final Pay Request in the amount of \$83,051.40 to JM Fahey, pertaining to the 2008 Residential Street Reconstruction Project [Project # 80208]
- G. Approve 7th and Final Pay Request in the amount of \$12,491.00 to Bruner Contracting, pertaining to Leawood Public Works Vehicle Storage [Project # 76011]
- H. Approve 3rd and Final Pay Request in the amount of \$98,530.62 to JM Fahey, pertaining to the 2008 Mill & Overlay Project [Project # 70004 & 77008]
- I. Approve payment in the amount of \$797,758.45 to Kansas City Power and Light [KCPL] pertaining to the burying of power lines along Nall Avenue between 143rd and 154th Street, in accordance to that certain Utility Agreement dated February 5, 2007 [Project # 80143]
- J. **Resolution No. 3148** calling for a public hearing to be held on Monday, February 2, 2009 to consider the 2010-2014 Capital Improvement Program [C.I.P.] for the City of Leawood, Kansas
- K. **Resolution No. 3149** approving and authorizing the Mayor to execute a Retainer Agreement between the City and Bottaro, Morefield & Kubin, L.C., pertaining to the Oddo litigation
- L. **Resolution No. 3150** approving a Final Site Plan for tenant finish for Parkway Plaza - Sumo Restaurant, located at the northwest corner of 135th Street and Roe Avenue (PC Case #94-08)
- M. **Resolution No. 3151** accepting Public Infrastructure Improvements through private development Pinnacle Centre II and IV, located at 114 Street, Phase 2, in accordance with the GASB-34 Guidelines of reporting inventory of Assets
- N. **Resolution No. 3152** accepting Public Infrastructure Improvements through private development OneNineteen Shops located on the northeast corner of 119th & Roe Avenue, in accordance with the GASB-34 Guidelines of reporting inventory of Assets

- O. **Resolution No. 3153** accepting Public Infrastructure Improvements through private development Chadwick Street, at 135th to 137th Streets, in accordance with the GASB-34 Guidelines of reporting inventory of Assets
- P. **Resolution No. 3154** accepting Public Infrastructure Improvements through private development Tuscany Reserve Village, at 137th & Chadwick, in accordance with the GASB-34 Guidelines of reporting inventory of Assets
- Q. **Resolution No. 3155** accepting Public Infrastructure Improvements through private development Leabrooke, 5th Plat, at 146th & Manor, in accordance with the GASB-34 Guidelines of reporting inventory of Assets

8. MAYOR'S REPORT

- A. Contribution in the amount of \$1,570.00 from the Cloisters Homes Association to be evenly distributed between the Police and Fire Departments. Mayor Dunn acknowledged the wonderful donation received by the Cloisters Homes Association. A motion was made by Councilmember Rawlings, seconded by Councilmember Rasmussen to accept the donation. The motion was approved following a unanimous vote of 8-0.
- B. At the Leawood Chamber of Commerce's December Board meeting, they adopted the Chamber's legislative platform for 2009. They also adopted the Johnson County's Public Policy Council's 2009 State Legislative Platform. The Mayor distributed this document in 'Draft' form to the Councilmembers.
- C. The Mayor, along with Police Chief John Meier, attended the DARE graduation at Corinth elementary. She extended compliments to Officer Randy Wiler for his continued fabulous work with the students
- D. Attended a ribbon cutting ceremony, with Councilmember Azeltine, at the Massage Heights at Parkway Plaza.
- E. Holiday greetings from both I-Lan and Gezer Region sister cities were received. Mayor distributed the cards to Council for their viewing.
- F. Mayor congratulated the Leawood Lions for the successful efforts in their bell ringing campaign. For many years, they have been the organization with the most dollars collected with the Salvation Army. This year they collected \$31,025.69; 37 lions rang for 211 hours; another 64 volunteers rang an additional 172 hours. Former city of Leawood, Finance Director Harry Malnicoff counted [mostly quarters] the money
- G. A reminder of Governing Body goal setting work session scheduled on January 12, 2009 at 6:00 P.M.
- H. The Mayor wished everyone a Happy New Year

9. COUNCILMEMBERS REPORT- None

10. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

11. IRONHORSE GOLF COURSE ADVISORY BOARD

[From the December 12, 2008 Ironhosre Golf Course Advisory Board meeting]

- A. Accept recommendation of expenditure in the amount of \$4,750.00 for the replacement of the pond fountain on No. 11

Chris Claxton stated earlier this year, a fountain was placed on No. 11. Some have become concerned, mainly, Mr. Rochelle and Mr. Sanders, that it needed to be replaced with a larger fountain with a bigger capacity for moving the water around. The Committee has recommended that the fountain be replaced. Additionally, one of the things discussed at the committee level was they were asked to contact their homes association and get some confirmation to see if they could get matching funds. They have not heard back from them, however, at the meeting Mr. Rochelle felt certain they would be successful in obtaining those funds. Mayor Dunn stated the agenda reflects the amount of \$4,750.00; however, Chris' memo reflects only \$4,250.00. Ms. Claxton verified that the \$4,250 was correct, which included \$1,000 for installation. Councilmember Filla made a motion to accept the Golf Course Committee's recommendation to split the cost for the replacement of the pond fountain in the amount of \$4,250, contingent upon the matching funds being received from the homes association. The motion was seconded by Councilmember Azeltine.

Councilmember Rasmussen made a friendly amendment for the amount not to exceed \$4,750.00, to allow for a little cushion to accommodate any fluxuation of any charges; and that the City won't expend the money until the funds are received from the homes association. The friendly amendment was approved by Councilmembers Filla and Azeltine. The motion carried following a unanimous vote of 8-0.

12. PLANNING COMMISSION

[From the September 23, 2008 Planning Commission meeting]

- A. Resolution approving the Planning Commission's recommendation to deny a Rezoning, Preliminary Site Plan, and Preliminary Plat for Town Center Business Park - Walgreens, located on the northeast corner of 117th Street and Roe Avenue
CONTINUED FROM THE OCTOBER 20, AND NOVEMBER 3, 2008 GOVERNING BODY MEETINGS -THIS ITEM HAS BEEN WITHDRAWN
- B. Resolution approving the Planning Commission's recommendation to deny a Special Use Permit for Town Center Business Park - Walgreens, located on the northeast corner of 117th Street and Roe Avenue
CONTINUED FROM THE OCTOBER 20, AND NOVEMBER 3, 2008 GOVERNING BODY MEETINGS -THIS ITEM HAS BEEN WITHDRAWN
- C. Resolution approving the Planning Commission's recommendation to deny a Preliminary Site Plan for Town Center Business Park - Discover O, located at the north of 117th Street and east of Roe Avenue
CONTINUED FROM THE OCTOBER 20, AND NOVEMBER 3, 2008 GOVERNING BODY MEETINGS -THIS ITEM HAS BEEN WITHDRAWN

- D. Ordinance amending § 16-2-5.3 (R-1, Planned Single Family Low Density Residential District) of the Leawood Development Ordinance [LDO], pertaining to Building Height (PC Case #56-06) [Roll Call Vote]

Mr. Lambers stated these ordinances represent 2 years work of attempting to achieve the goals of the City Council to propose regulations on height limitation with regards to residential reconstruction and new construction, while still taking into account existing structures. They are proposing that these ordinances do not become effective until January 1, 2010, which would allow sufficient time to make homebuilders and homeowners aware of these regulations. The appeal process would not be directed to the Board of Zoning Appeals [BZA], and would be governed by the statutory regulations.

After these ordinances have been in effect for one year, a report will be submitted to the Council that would reflect the impact these ordinances have had upon the community; particularly, those items that have gone before the BZA. At that time, the Council can determine if they want to continue this process or modify it.

Councilmember Rasmussen asked why three [3] Planning Commissioners voted in the negative. Mr. Coleman stated one reason was because an additional 3 feet could be granted to the maximum allowance of 35 feet which would be 38 feet. Another issue was the fairness as they perceived it as houses were being built on lots that had never had a house on it [new subdivision in the southern part of the city] versus where a house had been torn out and rebuilt.

Councilmember Gill inquired what the zoning classification was in the northern part of the City and why did the other ordinances needed to be addressed. Mr. Coleman stated the zoning classification was R-1 and RP-1 and the other 4 ordinances addressed where the height of the buildings are measured from.

Councilmember Gill, in referencing Agenda No. 12F, stated if there was a farm house located on a lot that was zoned Agricultural [AG], and a developer wanted to develop this into residential property, but the 2nd story of that building could not exceed 50% of the total square footage of the main. There are 2-story houses with equal square footing all over south Leawood coming from AG, and he didn't feel there was a need for this.

Mr. Lambers stated the only item changing on Agenda Item 12F is the language following height limit, *'as measured from grade at the front of the building.'*

Mayor Dunn asked about the 35-foot height restriction on a house located on a 10-acre lot with no adjacent dwellings. Mr. Coleman referred to the definitions of rebuild and remodel homes. If there were already houses there, this would not apply if you had a lot and had never had a structure on it.

Councilmember Gill asked if it would apply if you had a structure that had been burned down. Mr. Coleman stated you would be able to rebuild the existing house, you could make it bigger, but not taller.

Councilmember Gill stated he felt we were trying to solve a lot of problems that we haven't received complaints on.

Mr. Lambers stated the target was to resolve these issues on a city-wide level, and not just segment the community into different sections and to have the appeal process through the BZA. If you own a 10-acre tract of land and want to go higher than what the limitations are, most of this will take effect in northern Leawood. The ordinance is geared for, if you have 3 lots and the middle one is being torn down and rebuilt, and the lots on either side are single-story low pitched roof, then they will have limitations on what they can build new. It would be 1 ½ story home with height limitations, depending upon the sideyard setbacks requirements

Councilmember Gill asked about massing. Mr. Lambers stated this is the first step. The staff was getting into a circular argument and felt until the height issue was addressed the massing issue couldn't be resolved. Now that the height issue is completed, the massing issue can be addressed.

Councilmember Bussing asked if the City has been able to identify construction located in north Leawood over the last year that would violate the proposed ordinance amendments. Mr. Lambers said there are a couple that would exceed the 30-foot height limitations, unless they were to place the house further away from the side yard setback. The Planning Commission did a tour a couple of years ago and identified some homes that were borderline.

Councilmember Bussing stated there are still lots available for residential housing for RP-1 in south Leawood. Developers can go out and build whatever they want, provided they were within 35' height limitation. This proposal is a height limitation in relation to homes on either side.

Mr. Lambers stated the goal is to recognize the character of the established neighborhood by the height of the existing rooftops and to regulate to what extent a home could be remodeled or reconstructed and the height as it relates to those structures.

Councilmember Bussing stated he understands the difficulty the staff has had, but cannot support these proposed ordinances, as he feels this approach will ultimately result in the decrease of property value in Leawood. It will limit a potential homeowner of what they can build on their lot. The more restrictions that are placed on development will result in the continued decline in property value.

Councilmember Cain stated the potential for 2-story homes will absolutely be wiped out if the 2nd story can't be more than 50% of the total square footage of the main story footprint. She feels massing is the bigger issue. She doesn't have a problem with the height issue, but does have an issue with the 50%.

Mayor Dunn asked where the 50% originated. Mr. Lambers stated the Planning Commission began with the concept of having a 2-story structure, you would have a straight wall going up 25-30 feet; if you have a 50% limitation more than likely the home will be off set or centered on either side so you create a stair step effect so the homeowners wouldn't be looking up at a wall.

Councilmember Filla commended the Planning Commission for working with the home builders and homeowners to get to this point. It has accomplished what was supposed to be achieved. The oversized homes in the northern part of the City have been on the market over a year, much to the detriment of the homeowners on either side of these homes. She further commented that unlike the newer homes association located south of I-435, there are no deed restrictions that are consistent in this area. There is a hodgepodge of restrictions; some requiring 90% approval by the homes association before any changes are made. She extended her appreciation to the Council for the creation of the Task Force and for allowing this work to be done.

Mayor Dunn recalls Councilmember Filla having a great number of photos of these types of homes prior to the creation of the task force that were not pleasing to the eye. Since that time, complaints have diminished considerably.

Mayor Dunn asked Mr. Lambers if there was another mechanism available that would allow for some type of temporary enforcement of these ordinances; as she is not comfortable with these proposals, either.

Mr. Lambers responded property owners will not commission plans for a home to be built that may not be approved, as the cost could be between \$15,000-20,000. He suggested putting these provisions in place and monitor what requests are going to the BZA.

Councilmember Gill stated he understands a lot of thought and work has gone into these proposed provisions; however he would like to see some pictures, and hear some testimony. He feels he does not have sufficient information to make a decision tonight.

Councilmember Filla recalls one resident coming in and commenting one of her children had stated 'the sunshine is gone' after a large house had been rebuilt in their neighborhood and was so large that it obliterated the sunlight from shining onto their home. It was a full 'square; full square walls on the back, full square walls on the front, there was no angled in. Most of the good looking homes have good looking lines, they have angled roofs, they have architectural lines, and they have dormers that take away from the bulk that tends to not make you feel like you have a house looming over you in your side yards and back yards. This is what has been addressed.

Councilmember Bussing suggested continuing these proposed provisions for a period of time and have staff evaluate the plans as they come in against the provisions and see what impact they would have on the plans that are being submitted.

Councilmember Azeltine concurred with Mr. Bussing and added that the Planning Commission has been working on this for a long time, and doesn't feel comfortable voting on this tonight and suggested a work session to schedule on the first two ordinances.

Councilmember Gill asked Mr. Coleman about the lot sizes located in old Leewood. The smallest lot would be approximately 55-60 feet, with the length being about 105-110 feet. With 30-foot side yard setbacks, and 30-foot front setback, and 35-foot back set back, that would only leave you 35 feet to build your footprint, with a 15-foot height restriction.

Councilmember Rasmussen suggested these ordinances be continued and the Councilmembers' concerns be forwarded to Mr. Coleman.

Mr. Lambers confirmed with Mayor Dunn that Agenda Items 12F, 12G, 12H, and 12I, be passed, however, 12D and 12E be continued to a work session in March or April to give sufficient time to address concerns and questions.

A motion was made by Councilmember Peppes to continue Agenda Items 12D and 12E to April 20, 2009 so that a work session can be scheduled prior to that date; seconded by Councilmember Gill. The motion was approved following a unanimous vote of 8-0.

- E. Ordinance amending § 16-2-5.4 (RP-1, Planned Single Family Residential District) of the Leawood Development Ordinance [LDO], pertaining to Building Height (PC Case #57-06) [Roll Call Vote] – ***CONTINUED TO APRIL 20, 2009***
- F. **Ordinance No. 2379**, amending § 16-2-5.1 (AG, Agricultural District) of the Leawood Development Ordinance [LDO], pertaining to Building Height (PC Case #77-08) [Roll Call Vote]

A motion was made by Councilmember Gill, seconded by Councilmember Azeltine to pass the ordinance. The ordinance was passed following a unanimous vote of 8-0.

- G. **Ordinance No. 2380**, amending § 16-2-5.2 (RP-A5, Planned Rural Residential District) of the Leawood Development Ordinance [LDO], pertaining to Building Height (PC Case #55-06) - [Roll Call Vote]

A motion was made by Councilmember Bussing, seconded by Councilmember Azeltine to pass the ordinance. The ordinance was passed following a unanimous vote of 8-0.

- H. **Ordinance No. 2381**, amending § 16-2-5.5 (RP-2, Planned Cluster Detached Residential District) of the Leawood Development Ordinance [LDO], pertaining to Building Height (PC Case #58-06) - [Roll Call Vote]

A motion was made by Councilmember Filla, seconded by Councilmember Azeltine to pass the ordinance. The ordinance was passed following a unanimous vote of 8-0.

- I. **Ordinance No. 2382**, amending § 16-2-5.7 (RP-4, Planned Apartment House Residential District) of the Leawood Development Ordinance [LDO], pertaining to Building Height (PC Case #53-06) - [Roll Call Vote]

A motion was made by Councilmember Filla, seconded by Councilmember Gill to pass the ordinance. The ordinance was passed following a unanimous vote of 8-0.

13. OLD BUSINESS

14. OTHER BUSINESS

- A. Discussion regarding easement acquisition [O'Brien] for Roe Avenue Improvement Project between 140th and 143rd Street

Mr. Lambers stated the property on the east side has been platted, developed and the City has acquired the necessary right-of-way easements; however the same has not occurred on the west side of Roe. The property is currently owned by Mr. O'Brien. The City needs to acquire the right-of-way and easements to proceed with the project. Mr. O'Brien has not expressed an interest in dedicating the right-of-way to the City without proper compensation. An option of the City is to acquire the Right-of-way through condemnation. If Council desires to pursue this action, the City has the ability to recover these costs and assess it back onto the property owner.

Another option, one that the property owner is asking, is that the street fee that will be imposed upon his property be exchanged for the right-of-way acquisition. The difference between the two amounts is sizeable.

Mr. Lambers stated another option would be to offer the property owner a credit of the easement, ROW and acquisition amounts towards the street fees whenever the property is developed. He feels this is a fair proposal to make to him. If not, then he is requesting the Council authorize condemnation proceedings to begin so the project can move forward.

Councilmember Bussing made a motion to accept Mr. Lambers' recommendation to offer Mr. O'Brien a credit equal to the cost of the right-of-way and easements and if not acceptable to Mr. O'Brien, then authorize condemnation proceedings. The motion was seconded by Councilmember Rasmussen.

Mayor Dunn asked what amounts would be used.

Mr. Lambers stated whatever the street fee amount is in place at the time the property is developed should be the amount that he is charged for. This achieves the goal for the City to acquire the right-of-way without placing a lien against the property. This will show a credit for him.

Mr. Lambers clarified for Councilmember Gill that the City would not be giving a check to Mr. O'Brien in the amount of \$262,293. This amount will be in the form of a credit to be granted to the property owner at the time the development takes place, and will be reflected as a credit on the planning application.

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

15. NEW BUSINESS

ADJOURN

There being no further business, the meeting was adjourned at 9:00 P.M.

Debra Mansfield, CMC, City Clerk