

Minutes

DVD No. 219

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, August 3, 2009. Mayor Peggy Dunn presided.

Councilmembers present: Gregory Peppes, Jim Rawlings, Debra Filla, Lou Rasmussen, Gary Bussing, and Mike Gill [via teleconference]

Mayor/Councilmembers absent: Councilmembers Azeltine and Cain

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Karl Weinfurter, Info Systems Specialist
Richard Coleman, Comm. Dev. Director
Mark Klein, Assistant Planning Director

Patty Bennett, City Attorney
Joe Johnson, PW Director
Chris Claxton, P&R Director
Lovina Freeman, HR Director
Deb Harper, City Clerk
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted an addition to the agenda.

- * Item No. 9 – Report from Councilmember Bussing

A motion to approve the amended agenda was made by Councilmember Peppes; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

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

A. PUBLIC HEARING

Consider the 2010 Fiscal Budget for the City of Leawood

As no one was present to speak, a motion to close the public hearing was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Bussing recognized the staff for their outstanding work on the budget. Mayor Dunn concurred and noted the City of Leawood was in a very fortunate position.

The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

- B. Resolution No. 3244 approving the Planning Commission's recommendation for denial of a Revised Final Site Plan for State Line Executive Office Park, located at 8010 and 8014 State Line Road. (PC Case # 31-09) [Roll Call Vote] – *CONTINUED FROM THE JULY 20, 2009 GOVERNING BODY MEETING***

City Attorney Patty Bennett stated Council requested staff to review what it might take, short of an ordinance amendment, to allow the owners of the State Line Executive Park to use something other than concrete or slate tile roofing materials for two of their buildings. The only way to allow the use of other roofing materials would be an ordinance revision, which requires notification, returning through the Planning Commission and Council, and publication. This leaves the Council three options; (1) approve the Planning Commission's recommendation of denial, (2) remand this application, asking that it run concurrent with the ordinance revision to allow a temporary change in the roofing ordinance to allow composition, (3) approve it, subject to a stipulation that the ordinance is revised and published to allow composition.

Mayor Dunn thought this was a unique situation since they installed new composition roofs a couple of years ago on two adjacent buildings. Council's goal is to have something other than composition and shake/shingle roofs on commercial buildings and asked if there was a way to express their intent for January 1, 2010, and put a moratorium on something other than commercial grade roofs.

Ms. Bennett thought they should add wording to the ordinance to read, "Composition roofs allowed for projects with building permits pulled prior to January 1, 2010."

Mayor Dunn confirmed with City Administrator Scott Lambers that the Governing Body could still have an opportunity to deny a composition or shake/shingle roof on a commercial building if it came to them before January 1, 2010. Their decision could be based upon whether the case was consistent with this one and approve it; however, if it was a request for a stand alone building, they could deny it.

Mr. Lambers clarified that January 1, 2010, would allow enough time for them to amend the Leawood Development Ordinance [LDO] to allow it.

A motion to override the Planning Commissions recommendation of denial and approve the plan, subject to the stipulations in the staff report and subject to an amended LDO, to allow installation of the requested roofing material was made by Councilmember Bussing; seconded by Councilmember Filla.

Mayor Dunn clarified that the motion required six affirmative votes to override the Planning Commissions recommendation of denial.

Councilmember Peppes confirmed with Mr. Lambers that the LDO amendment would go before the Planning Commission for their recommendation; however, Council would have the ultimate authority.

Mayor Dunn thought the Planning Commission should have the minutes from both City Council meetings on this item when they review the amendment to have a better understanding of Council's deliberation.

Councilmember Filla was concerned that weather might damage their building if they couldn't get a permit before the LDO amendment.

Mr. Lambers indicated it would take approximately 90-120 days to process everything.

Willard Snyder, Real Estate Corporation, stated the roofs were currently leaking; however, he thought they could be temporarily patched.

Mayor Dunn confirmed with Mr. Snyder that they intended to identically match the roofs of the other two buildings.

The motion to override the Planning Commissions recommendation of denial and approve the plan carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

- C. Approve Change Order No. 6, for an amount not to exceed \$13,000 with Mega Industries, Inc., for additional sod at Gezer Park, located at located at 133rd and Mission Road [# 76006]

A motion to approve Change Order No. 6 was made by Councilmember Gill; seconded by Councilmember Bussing.

Mr. Lambers noted the additional sod would be placed in the most public portions of the park interior. They plan to apply weed killer to the existing grass along the perimeter and re-seed it.

Councilmember Peppes was concerned with another change order and thought they could weed and seed it for a fraction of the cost.

Parks and Recreation Director Chris Claxton stated once they kill the existing weeds, there would be little or no grass remaining. It is irrigated; however, she was concerned of bringing the turf to quality.

Mr. Lambers clarified they would weed and seed the perimeter between the street and sidewalk on the west, and between the bike path and 133rd Street on the south. The difference in grasses wouldn't be as noticeable in these areas because they are broken up by the street.

Councilmember Peppes thought the park was beautiful; however, was concerned that they had already spent more than intended and would be voting against it.

The motion to approve Change Order No. 6 carried following a simple majority vote of 4-3. Yea: Councilmembers Bussing, Rawlings, Gill, and Mayor Dunn. Nay: Councilmembers Peppes, Rasmussen, and Filla. (Councilmembers Azeltine and Cain absent).

- D. Approve Change Order No. 1 [no dollar amount] with Musselman & Hall Contractors to slurry seal the bike/hike trail at Gezer Park, located at located at 133rd and Mission Road [# 76006]

A motion to approve Change Order No. 1 was made by Councilmember Rasmussen; seconded by Councilmember Peppes.

Mr. Lambers stated part of the bike trail had been damaged and patched. This slurry seal will match it to look the same and wouldn't need to be re-done in the near future.

The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

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. 2009-28, 2009-29, and 2009-30
- B. Accept Minutes of the June 22, 2009 Joint Governing Body/Budget & Finance Committee Work Session
- C. Approve payment in the amount of \$35,008.70, to Microsoft Corporation via Software House International, Inc., pertaining to the Microsoft Licensing Agreement
- D. Declaration of surplus property; Public Works Vehicles: 2001 Dodge last 4 VIN/9191; 1987 Int'l last 4 VIN/3203; and 1997 Chevy last 4VIN/4642

A motion to approve the Consent Agenda was made by Councilmember Filla; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

8. MAYOR'S REPORT

- A. The Leawood Stage Company ended their final performance of "Brigadoon," with a total of seven nights. There were nearly 12,000 theatre attendees. Mayor Dunn extended her congratulations to the Leawood Stage Company, Stage Company Chair Paul Anderson and the hundreds of others involved, for providing a very professional and entertaining production.
- B. Mayor Dunn had the pleasure of meeting and touring City Hall with a Rotary International student from Unna, Germany, who is residing with a Leawood resident this summer.

9. COUNCILMEMBERS' REPORT

Councilmember Bussing expressed appreciation to staff for the improvements to the islands, located along 135th Street. Mayor Dunn concurred and indicated the lakes along Tomahawk Creek Parkway have improved as well.

10. STAFF REPORT

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the June 23, 2009 Planning Commission meeting]

- A. **Ordinance No. 2405** amending the Leawood Development Ordinance [LDO] by amending Section 16-4-5.3, entitled 'Design Standards' pertaining to the design of parking structures (PC Case # 34-09) [Roll Call Vote]

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

Councilmember Bussing asked why they created the ordinance this way and why they were changing it.

Assistant Planning Director Mark Klein stated when the LDO was done in 2002; the consultant tried to make the garages not resemble parking garages by drawing attention to the retail storefronts.

Community Development Director Richard Coleman stated the applicant convinced the Planning Commission and the Governing Body that it wasn't in their best interest to have retail on the ground floor of the parking garage facing Nall. The reason for retail in parking garages is to help enhance pedestrian atmosphere.

Councilmember Bussing asked why they needed to change the ordinance when the next garage going in at Park Place was approved without this requirement. Mr. Klein stated there is no specific deviation granted within the LDO to remove the 70% requirement. In order for them to move forward with the parking garage as approved without the storefronts, they need to repeal that section of the ordinance.

Councilmember Peppes confirmed with Mr. Coleman that their intention was to keep the LDO this way once it was changed. In the future; however, Mr. Coleman thought there could be similar plans with retail on the first floor of the garage.

Mayor Dunn clarified this would no longer be a requirement and it wouldn't preclude someone from that.

The motion carried following a unanimous roll call vote of 6-0. Yea: Councilmembers Rawlings, Peppes, Rasmussen, Filla, Bussing, and Gill. Nay: None. (Councilmembers Azeltine and Cain absent).

- B. **Ordinance No. 2406** amending the Leawood Development Ordinance [LDO] by amending Section 16-2-9.2, entitled 'Non-Residential Uses' pertaining to lighting standards (PC Case # 36-09) [Roll Call Vote]

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

Councilmember Rasmussen stated the purpose of this ordinance was to establish that lighting would not glare onto someone else's property and stated he would be voting against it.

Mayor Dunn clarified some of this lighting was already in place. It does state that all other restrictions regarding the amount of light permitted at the property line will remain in force. She asked if staff had concerns that glare may be an issue with this ordinance. Mr. Klein stated they review each individual development and their lighting standards and understood Mr. Rasmussen's concerns; however, felt comfortable with the other standards in place. The way the ordinance is currently written, it eliminates many of the decorative light fixtures and restricts having a flat lens.

Mayor Dunn confirmed with Mr. Klein that the passage of this ordinance would not eliminate the use of shields that are sometimes used.

Mr. Klein confirmed for Councilmember Rawlings that one of the light fixtures in the court yard of City Hall has a lantern style globe and there was something similar going in at The Estates of Old Leawood as well. Park Place also has several decorative light fixtures located along their private streets.

The motion carried following a roll call vote of 5-1. Yea: Councilmembers Bussing, Peppes, Filla, Rawlings, and Gill. Nay: Councilmember Rasmussen. (Councilmembers Azeltine and Cain absent).

- C. **Ordinance No. 2407** amending the Leawood Development Ordinance [LDO] by amending Section 16-4-5.7 (Off-Street Parking Requirements in Office, Commercial, and Industrial Districts) of, pertaining to lighting standards (PC Case # 39-09) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Peppes. The motion carried following a roll call vote of 5-1. Yea: Councilmembers Filla, Peppes, Rawlings, Bussing, and Gill. Nay: Councilmember Rasmussen. (Councilmembers Azeltine and Cain absent).

[from the July 14, 2009 Planning Commission meeting]

- D. **Resolution No. 3245** approving a Revised Final Site Plan and Revised Final Plat for Park Place; Building G and Parking Garage B, located north of 117th Street and east of Nall Avenue [PC Case # 30-09]

Jeffrey Alpert, Park Place Developers, stated the building is approximately 75,000 square feet with first floor retail and two levels of office space located above. They currently have a lease in place with a national insurance company for use of 25,000 feet, who is the driving force of getting this approved and need to obtain occupancy by October, 2010.

Patrick Lenahan, Berger Devine Yaeger Architects, gave a presentation of the design of Building G.

They concentrated the design to the east and west ends, and center of Building G. The east is blue stucco with brick on the bottom and a gable roof. The west will be stucco, decorative ceramic tile accents on the columns, and a canopy on the corner. The center will have brick detailing in the columns with decorative metal panels at the center bay. The buildings located between are considered background buildings since they aren't as visible. There will be a high degree of landscaping on 116th Street similar to what is currently in Park Place. There is a wide variety of materials along the entire façade with various colors of stucco, brick, cast stone, and decorative plaster for some of the trim, simulating limestone.

The back side of the building is designed with emphasis on the ends as well. The design is carried from the north so the end caps are consistent. The central portion has precast concrete panels with brick at the base. This faces the parking garage across the service alley and there is no widespread public view of this façade from 117th Street. There is emphasis on the central bay and pedestrian connection between this building and the north entrance of the garage. Storefront is located at the base of the entry, which is the lobby for the office space. The remaining pedestrian level is made of different colors of brick and is the rear entrances for tenants.

Mayor Dunn thought some areas looked blank and confirmed with Mr. Alpert they plan to have this filled in with temporary storefronts with graphics similar to Phase I until they locate a permanent tenant. Mr. Alpert clarified that the east and west ends wrap around and will have retail tenants.

Councilmember Bussing referred to the center of the north elevation and asked if this was the location for their tenant. Mr. Alpert stated they planned to either lease the top level or the west half of both the second and third floors.

Mayor Dunn confirmed with Mr. Klein that the Planning Commission had omitted some of the stipulations and added one for a revised traffic study requested by the Public Works Department. Mr. Klein verified this had been completed.

Mr. Coleman noted that the percentages of stucco, detailing, and four-sided architecture was removed by the Planning Commission.

Mr. Lenahan gave a presentation of the design of Parking Garage B and indicated they worked on this design until they felt everyone would be comfortable with its appearance.

The basic structure is made of precast architectural concrete, which provides a warm color and smooth texture. The columns along the length of the façade, two of the bays, and the base of the garage are made of a thin brick product embedded into the concrete. The center two bays have a translucent glass curtain wall, as well as precast concrete panels. The upper levels have more decorative iron. The east garage entry has decorative concrete panels with a cross pigmented pattern. The top of the building has corneous detailing with decorative medallions. The sloping ramps are slightly visible behind the façade of the center four bays. Some of this exposure is driven by a building code, which forces them to keep 20% of the wall area on each tier open for ventilation. They currently have 22% open area. Staff didn't want the ramps exposed; however, when they added additional screening to screen them, they fell below the 20% requirement. The north elevation faces the service alley using the same architectural precast concretes with emphasis in design at the vehicle and pedestrian entries. The east elevation faces future retail and has a ground level trellis. Emphasis in design is placed at the corners of the west elevation.

Mayor Dunn referred to the north facade of Parking Garage B and was concerned that people in Building G would be facing a large span of precast concrete and wanted more definition. Mr. Lenahan indicated there were other material options they could consider; however, they were directed to be consistent with the first garage. The majority of the south façade of Building G will be exposed to corridor space.

Mayor Dunn confirmed with Mr. Lenahan that the ramps on the west façade of Parking Garage A, located on Nall, were completely screened.

Mr. Alpert noted this was a service alley and they never intended for the office building or garage to be predominant. The corridors run along the west wall of the office building; therefore, people shouldn't be exposed to the service alley. He felt this garage contained more articulation than the existing one and wanted the same design philosophy.

Mayor Dunn asked why they didn't hide the ramps like in Parking Garage A. Mr. Alpert didn't like the staggered panel look of Parking Garage A and chose to design strong horizontal elements for the predominant view of Parking Garage B. The portions of the visible ramps should blend in with the background.

Mayor Dunn confirmed with Mr. Alpert that the precast concrete is tinted to simulate limestone.

Councilmember Bussing confirmed with Mr. Alpert there is approximately 28% stucco on Building G.

Councilmember Rasmussen asked if they would consider placing planters on the south elevation of the parking garage along 117th Street. Mr. Alpert indicated they have a standard landscape with trees and shrubs that should screen a good portion of the structure from the ground level and would cover both sides of the sidewalk.

Mayor Dunn confirmed with Mr. Alpert that all of the landscaping would be similar to that in Phase I.

Councilmember Bussing referred to Stipulation Nos. 7C and 7D under staff comments and confirmed with Mr. Klein that Stipulation 7D was still outstanding and although 7C had been provided, they hadn't had time to review it.

Mr. Alpert agreed to Stipulation 7C regarding the mechanical units.

Mayor Dunn noted Page 10 had suggested language if this were to move forward.

Mr. Alpert referred to Stipulation 7D and preferred to complete the building prior to placing the amenities, such as benches and street planters. They planned to return with the signage and street amenities at the same time for review.

Councilmember Rawlings understood Mr. Alpert's view and confirmed with staff that they should have a date certain for compliance with Stipulation 7D if this was approved. Mr. Klein thought they could return with a Revised Final Plan showing where the amenities were.

Mr. Lambers reminded Council that these amenities were tied to the F.A.R. bonuses they received; therefore, if they don't return, the bonuses would be achieved without providing the amenities. The amenities need to be in place before Council approves the final square footage. Mr. Alpert indicated they weren't ready for the final F.A.R. of the project and the amenities would likely be in the commercial portion and this should finish ahead of the residential.

Mayor Dunn thought Stipulation Nos. 7C and 7D should return to the Planning Commission and City Council for review and have it tied to the signage, which would be prior to the final certificate of occupancy.

A motion to approve the resolution with Stipulation Nos. 7C and 7D to return to the Planning Commission and City Council for review was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Bussing asked that they amend their motion that these stipulations be submitted within 60 days to the Planning Commission for review.

Councilmember Rasmussen accepted the amended motion as stated; seconded by Councilmember Filla.

Mayor Dunn clarified for Councilmember Gill that the motion was for approval of the resolution with a date certain within 60 days to go before the Planning Commission satisfying Stipulation Nos. 7C and 7D. This will override the Planning Commissions recommendation and will require a super majority vote for approval.

Councilmember Bussing clarified that the applicant didn't need to go before the Planning Commission within 60 days; however, their submission needed to be given to staff within this time frame and placed on the Planning Commission's agenda as their schedule allows.

Mayor Dunn asked if Mr. Coleman was comfortable with the way the ramps of the parking garage were designed. Mr. Coleman stated they would be visible; however, the screening should blend in with the precast.

The motion carried following a vote of 6-0. (Councilmembers Azeltine and Cain absent).

12. OLD BUSINESS – None.

13. OTHER BUSINESS – None.

14. NEW BUSINESS

- A. Schedule a Governing Body Work Session on Monday, November 2, 2009, at 6:00 P.M., to Discuss Transportation Development District [TDD] financing for Park Place Improvement District [Project # 80196]

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

Mr. Lambers stated the reason for scheduling two work sessions (Item Nos. 14A and 14B) was to allow ample opportunity to discuss their request for TDD financing.

- B. Schedule a Governing Body Work Session on Monday, November 16, 2009, at 6:00 P.M., to further Discuss Transportation Development District [TDD] financing for Park Place Improvement District [Project # 80196]

A motion to approve the Work Session was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

- C. Schedule a Governing Body Executive Session on Monday, August 3, 2009, immediately following the regular meeting to discuss matters related to attorney-client privilege

A motion to approve the Executive Session was made by Councilmember Rasmussen; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

- D. Re-Schedule a Governing Body Work Session from Monday, August 10, 2009 to Monday, September 28, 2009, at 6:30 P.M., to discuss Transportation Development District [TDD] for One Nineteen Development Project [119 & Roe Avenue]

A motion to approve the Work Session was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

A motion to recess into Executive Session at 9:12 P.M. for a period of 20 minutes was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 6-0. (Councilmembers Azeltine and Cain absent).

The Governing Body reconvened into regular session at 9:32 P.M.

A motion to adjourn the regular session at 9:32 P.M. was made by Councilmember Bussing; seconded by Councilmember Filla.

ADJOURN

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk