

Minutes

DVD No. 220

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 17, 2009. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Jack Reece, Web Master
Lovina Freeman, HR Director
Deb Harper, City Clerk

Patty Bennett, City Attorney
Richard Coleman, Comm. Dev. Director
Mark Klein, Assistant Planning Director
Joe Johnson, PW Director
Chris Claxton, P&R Director
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE **Fire Department Honor Guard**

2. APPROVAL OF AGENDA
Mayor Dunn noted the following addition to the agenda:

* Item No. 9B – Councilmembers Report - Councilmember Filla

A motion to approve the amended agenda was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

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.**

4. PROCLAMATIONS - None.

5. PRESENTATIONS/RECOGNITION **Retirement of Fire Captain Ron Peters**
March 19, 1985-October 1, 2009

Mayor Dunn presented Fire Captain Ron Peters with a plaque in recognition of his dedicated service to the City of Leawood for over 24 years. She expressed appreciation for his exemplary service to the community and public safety of the residents.

Fire Chief Ben Florance thanked Captain Peters for all of his hard work for the department and presented him with a plaque.

Captain Peters thanked Mayor Dunn, the City Council and Chief Florance and stated the Leawood Fire Department has an excellent staff that always gives 100%.

6. SPECIAL BUSINESS

- A. **Resolution No. 3246**, authorizing the sale by the City of Leawood, Kansas of General Obligation Temporary Notes of the City to provide funds to finance the costs of certain public improvements within said City; approving the form of Notice of Bond Sale and Preliminary Official Statement to be used in connection therewith; and authorizing and directing the City Finance Director to advertise such sale in the manner prescribed by law

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

- B. **PUBLIC HEARING** Consider the vacation of drainage easement located in Lot 2, The Villaggio at Leawood, a subdivision of land located in the City of Leawood, common situs address, approximately 137th & Roe Avenue

As no one was present to speak, a motion to close the public hearing was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

- C. **Ordinance No. 2408** vacating a Drainage Easement located in Lot 2, The Villaggio at Leawood [Pawnee Place, LLC] a subdivision of land located in the City of Leawood, located at approximately 137th and Roe Avenue [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous roll call vote of 8-0. Nay: None.

- D. **Resolution No. 3247** accepting a Permanent Drainage Easement located in Lot 2, The Villaggio at Leawood, [Pawnee Place, LLC] a subdivision of land located in the City of Leawood, located at approximately 137th and Roe Avenue

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

- E. Resolution accepting the Master Plan Concept prepared by Kevin Cowan, for proposed future expansion of the Amphitheater, located within Ironwoods Park, 14701 Mission Road and directing the City Administrator to place funding for the next phase of construction in the 2011-2015 Capital Improvement Project [CIP] Plan ***SEE REVISED RESOLUTION NO. 3248 BELOW:**

***REVISED RESOLUTION**

- E. **Resolution No. 3248** accepting the portion of the Master Plan concept prepared by Kevin Cowan, for proposed future expansion of the amphitheatre, referenced in the plan as "Phase III," located within Ironwoods Park, 14701 Mission Road

Mayor Dunn recognized Bill Elwood, Chairman of the Amphitheatre Steering Committee and Paul Anderson, Chairman of the Leawood Stage Company.

A motion to approve the resolution was made by Councilmember Rasmussen.

The motion died for lack of a second.

Councilmember Azeltine noted there were two separate issues; a resolution accepting the plan, which involved no monetary commitment at this time, and funding for the next phase of construction. He felt it was important to accept the plan so the committee could begin fundraising. When the time is right to build the amphitheatre, all of the specifics could then come into play. Currently, \$90,000 had already been spent on this proposed project and he felt they shouldn't set it aside for a future Governing Body to begin the entire process over again. This would be accepting the plan without rendering any judgment on it.

A motion was made by Councilmember Azeltine to accept the Master Plan concept prepared by Kevin Cowan for the proposed future expansion of the amphitheatre, located within Ironwoods Park; seconded by Councilmember Filla.

Councilmember Azeltine wasn't in favor of putting anything in the Capital Improvement Plan [CIP], and thought this should occur as part of the normal process, not a pre-ordained act of the Governing Body.

Councilmember Filla thought constructing Phase III, the amphitheatre building, should precede Phase II, the upper concessions, restrooms, and remaining parking lots. She wanted details regarding potential cash flow derived from year-around use of the amphitheatre.

Bill Elwood, Chairman, Leawood Amphitheatre Steering Committee, stated the new location of the proposed amphitheatre would be further south, closer to the trees and pond, and further from residents. The back concessions would serve as a buffer. The stage area will cost approximately \$2.3 Million. In terms of cash flow, ticketing and having multiple points of concession sales will increase revenue. He thought the stage area would provide more profit potential than the back concessions.

Councilmember Peppes wasn't comfortable supporting such a large scaled project and stated he would be voting against it.

Mayor Dunn noted the minutes from the amphitheatre work session were included in the packet under the Consent Agenda; Item No. 7C. Mayor Dunn referred to the letter from Mr. Anderson requesting an endorsement to upgrade the facility, which could be construed as accepting the plan. There was consensus the night of the work session that the amphitheatre needed improvements and consensus to move forward with the \$500,000 bonding authority for restrooms, etc. Mayor Dunn concurred with Councilmember Filla that the next step should be Phase III, as indicated in the plan.

Mayor Dunn was concerned with the motion to accept the entire plan because she felt it was too large of a project for this site. She wanted to accept a smaller portion of the plan, endorse it to encourage private fundraising, and have the City possibly match some of the funds.

Councilmember Azeltine noted that the letter from Mr. Anderson stated "endorsement of such a concept," which the Council would be accepting the concept of this plan. He felt they could have the same concept and have a smaller scaled project. Accepting the plan doesn't represent any financial commitment from the Governing Body.

Councilmember Peppes understood Mr. Azeltine's viewpoint and thought they should vote for something; otherwise, the committee would need to return with a smaller plan. Everyone wanted to see improvements to the amphitheatre; however, this plan was more overwhelming than anticipated.

Councilmember Bussing concurred. The scale of this facility is far beyond what was originally intended and is inappropriate for this tract of land.

Councilmember Cain concurred and had concerns with the one-directional traffic.

Mr. Elwood stated they compared other theatric amphitheatres at \$10 to \$12 Million. Their desire for Leawood was to design it correct the first time to prevent future additions.

Councilmember Rawlings asked what discussions they've had regarding realistic fundraising. Mr. Elwood felt it would be easier to fundraise for a project that was artistically excellent. They weren't currently planning to seek fundraising because of the economic situation and planned to wait for the right opportunity.

Councilmember Azeltine asked if the plan could be downscaled if needed, dependant upon future fundraising. Mr. Elwood thought it was possible; however, they needed to use the funds for what people originally intended. Most of their current funding is applied toward building the stage every year, which limits the number of shows.

Councilmember Gill understood the interest in the improvements and in addition to the \$500,000, he felt they should move forward with the stage improvements of the plan.

Mayor Dunn thought Councilmember Gill was accepting Phase III of the Master Plan, which is the amphitheatre building and the paths and landscaping; however, not accepting Phase II at this time.

Councilmember Gill clarified he was making a friendly amendment to the motion to only accept Phase III of the Master Plan.

Councilmember Azeltine accepted his friendly amendment; seconded by Councilmember Filla.

Mayor Dunn stated they would move forward with the bonded \$500,000 for expansion of the amphitheatre for lower restrooms, paths, landscaping, parking, and concessions, if possible.

Councilmember Cain confirmed with Mayor Dunn there was no monetary obligation from the City at this time and they would be accepting the concept of Phase III of the Master Plan.

Mayor Dunn clarified that the Leawood Stage Company didn't intend to begin fundraising until the appropriate time. She reiterated it was important to include some public matched funds with private fundraising.

Councilmember Azeltine clarified that the \$500,000 bonding authority was in the current CIP and would come before the Governing Body to be appropriated. Mayor Dunn clarified that anything in the CIP had to come before the Governing Body for a vote.

Mr. Elwood stated they plan to apply for federal funding to construct a basement under the stage. There is no current storm shelter and they felt a certain responsibility to the public. Mayor Dunn confirmed that this was included in the \$2.3 Million.

City Clerk Deb Harper confirmed with Mayor Dunn that the current motion was to accept the concept of Phase III of the Master Plan.

The motion carried following a vote of 6-2. Nay: Councilmembers Peppes and Bussing.

Councilmember Filla expressed appreciation to everyone involved in designing the plan.

Mary Tearney, Chairman of the Leawood Arts Council, thanked the Governing Body for their support.

Mayor Dunn recognized all of the volunteers.

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 No. 2009-31
- B. Accept Minutes of the July 20, 2009 Governing Body meeting

- C. Accept Minutes of the July 20, 2009 Governing Body Work Session
- D. Accept Minutes of July 14, 2009 Parks and Recreation Advisory Board meeting
- E. Approve Cereal Malt Beverage [CMB] license to Paddy O'Quigley's, located at 11851 Roe Avenue
- F. Approve Cereal Malt Beverage [CMB] license to RA Sushi Bar Restaurant, located at 11638 Ash
- G. **Resolution No. 3249** adopting the Fiscal Year 2010 Annual Budget for the City of Leawood, Kansas
- H. **Resolution No. 3250** approving and authorizing the Mayor to execute a Service Agreement between the City and KR Lamming Electric, Co., in the amount of \$43,750.00 pertaining to the installation of Fire Station No. 1 Generator
- I. **Resolution No. 3251** approving and authorizing the Mayor to execute Amendment No. 2 to that certain Professional Engineering Service Agreement dated February 16, 2009, between the City and Phelps Engineering, Inc., in the amount of \$84,900.00, pertaining to the 2010 Residential Reconstruction Program [CIP# 80210 & 77005]
- J. **Resolution No. 3252** approving of a Final Sign Plan for Mission Farms – Oppenheimer Sign Plan, located on the northeast corner of I-435 Highway and Mission Road (PC Case # 40-09) *[from the July 28, 2009 Planning Commission meeting]*
- K. **Resolution No. 3253** approving a Final Sign Plan for Park Place - Tortoise Capital Advisors, located at 11500 Ash Street (PC Case # 44-09) *[from the July 28, 2009 Planning Commission meeting]*
- L. Declaration of surplus property; Kawasaki Portable Generator & Spreader
- M. Police Department Monthly Report
- N. Fire Department Monthly Report
- O. Municipal Court Monthly Report

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

8. MAYOR'S REPORT

- A. Attended a press conference with Missouri Governor Jay Nixon, who addressed autism. This same issue was brought before the Governing Body recently by a Leawood resident advocating for similar action in the Kansas Legislature. Governor Nixon visited Children's Mercy Hospital in Kansas City to discuss his strong hopes that mandatory insurance coverage for autism would pass this upcoming legislative session. Insurance providers will cover the most effective treatments for autism. Mayor Dunn noted they were asked to be advocates for this legislation and expressed hope this would occur in the Kansas Legislature as well.
- B. There will be a Studio Art Show on Friday, August 21st, presented by the Leawood Arts Council and sponsored by M&I Bank, located at 11301 Nall Avenue.

- C. The Sundays in the Park Jazz Concert Series, co-hosted by the Leawood Arts Council and Town & Country Bank, will be held on August 23rd, August 30th and September 6th, at the Ironwoods Amphitheatre, located at Ironwoods Park. Admission is free.
- D. Mayor Dunn spoke with officials at the Taipei Economic and Cultural Office in Kansas City, regarding Typhoon Morakot, and learned that no one in I-Lan, Taiwan, Leawood's sister City, was affected. She expressed the City's concern and wished them well.
- E. Mayor Dunn expressed appreciation to Karry Rood of the Finance Department for her involvement in the "Socks for Dots" program. There were 436 pairs of socks donated by the City of Leawood employees, with 100 pairs donated by the Ironhorse Golf Course, for individuals in metro area shelters. They also collected \$149.60 to purchase more. Mayor Dunn thanked all of the employees who participated in this charitable event.
- F. In the August, 2009, edition of The Best Times, there is an article on Colonel Ronald Wright, a Leawood resident and Leawood Foundation Board member, for his 90-day tour of duty in Iraq operating a dental clinic. He was one of three professionals administering care. Mayor Dunn complimented him on his extraordinary service to everyone in Iraq.

9. COUNCILMEMBERS' REPORT

- A. Councilmember Rawlings: Referral to Stormwater Committee regarding Education surrounding stormwater management issues and the awareness program for citizens

Councilmember Rawlings stated one of their goals was to educate themselves and the citizens on how to become better stewards as it relates to stormwater management. The Stormwater Management Committee is upgrading their web page to educate citizens on what they can do to improve the City's water quality. The Green Initiative Citizens Task Force Committee has been working on awareness issues as it relates to rain gardens.

Councilmember Rawlings made a motion to refer the awareness recommendations of the Green Task Force Committee to the Stormwater Committee for further discussion of educating citizens as it relates to rain gardens and the possibility of additional stream and creek plantings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

- B. Councilmember Filla

The City has undertaken becoming a bicycle friendly community and the Green Task Force Committee has requested a sub-task force for one year to help advise.

Councilmember Filla made a motion to refer this to the Parks and Recreation Advisory Board to establish a sub-committee for one year to advise and collaborate with the Parks and Recreation Committee on making Leawood a bicycle friendly community; seconded by Councilmember Rawlings.

Mayor Dunn confirmed with Ms. Filla that the proposed participant would return before the Governing Body for approval.

Councilmember Bussing requested that when the members of this committee are presented, they include a written statement of their goals and objectives.

The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the July 28, 2009 Planning Commission meeting]

- A. **Resolution No. 3254** approving a Revised Final Site Plan for Gardens of Villaggio - Lot 3, located north of 137th Street and east of Roe Avenue (PC Case #41-09)

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Bussing.

Doug Patterson, 4630 W. 137th Street, stated in 2007, they received Preliminary and Final Site Development Plan approval for three buildings, totaling approximately 20,000 square feet.

Mr. Patterson was concerned and felt Stipulation No. 3 wasn't required because the Revised Final Site Plan was approved. He understood if they change the existing plan in any way, they would need to return before the Council with the revision. They weren't interested in changing it because he indicated it took several months to go through the approval process. He was also concerned with Stipulation No. 4, regarding reconstruction of the sidewalk on the north side of the building. The sidewalk slopes downward approximately 8" inches from east to west and accommodates the engineering plan, submitted and approved through the City before construction. The purpose of the slope is to handle flood overflow. There is a drop inlet storm sewer in the lower portion of the sidewalk and is intended to send the water into the public storm sewer system. A French drain and pipe has been placed under the sidewalk to drain underground. Sod is currently in place and it doesn't flood. This has been constructed exactly as the City stipulated. Their engineers informed them if the sidewalk is raised in the middle, a significant rain would cause flooding in the building. When the building to the north is constructed, instead of 200' feet draining to this area, there would be only 8' feet. At this point, they can reconstruct the sidewalk straight. Mr. Patterson stated he didn't like the current look; however, it was necessary from an engineering standpoint.

They are currently operating under a temporary occupancy permit, which expires on September 1, 2009. The permit is conditioned upon approval of the landscape plan, which was installed and died because it wasn't the correct time of year to plant. They don't want to install more landscaping until the proper time. Mr. Patterson agreed to the remaining stipulations.

Mayor Dunn asked for clarification of Staff Comments on Page No. 5, regarding Stipulation No. 3 and the F.A.R. bonuses awarded.

Assistant Planning Director Mark Klein stated originally when the Gardens of Villaggio was approved; it was divided into two sections, retail and office. The retail didn't require F.A.R. bonuses because it was within the allowed .25; however, the office portion had an F.A.R. of .30. The Leawood Development Ordinance [LDO] allows F.A.R. bonuses if the developer provides certain things to allow the increase in square footage. One of the areas the F.A.R. bonuses would be provided was the three office buildings. They've planned a fountain in the middle of the Gardens of Villaggio along with an art feature, which had been installed. There was also updated landscaping supposed to be installed. This was originally shown as three office buildings and wasn't intended to be phased out. Staff anticipated it to develop quickly; however Buildings Q and R have yet to be constructed. Stipulation No. 3 allows the Governing Body to assure that the bonuses promised at the time the F.A.R. was approved were still in place, and that the amenities being provided will be consistent.

Community Development Director Richard Coleman felt having them return would also give the opportunity to have the transformers properly placed. There may be issues with their approved grading plan because the parking lot doesn't drain properly.

Mayor Dunn referred to Mr. Patterson's concerns regarding the Revised Final Site Plan returning through the approval process and confirmed with Mr. Coleman that the entire process should take less than three months.

Mr. Bussing thought if the buildings weren't constructed according to the approved plans, they could deny an occupancy permit. Mr. Coleman stated they could deny the permit if they didn't meet code. Mr. Bussing wanted to work with the applicant and confirmed that they could request building permits with the approved plans after resolving landscaping, grading, and bonus issues. Mr. Coleman noted that this Revised Final Development Plan wasn't the original plan that the Governing Body had approved.

Mayor Dunn listened to the Planning Commission DVD and couldn't recall Mr. Patterson arguing the point of a Revised Final Site Plan for Buildings Q and R. She thought if they expedited it, the approval process could be reduced to two months.

Mr. Patterson understood if they change a building in any material way from the approved Final Site Development Plan, they needed to return for approval. He assured the Council they did discuss the Revised Final Site Plan for the other two buildings at the Planning Commission meeting.

Mayor Dunn asked for clarification regarding Mr. Patterson's comments if the sidewalk is straightened, the building would flood. Public Works Director Joe Johnson stated the original plans reflect a low spot in the sidewalk with a storm sewer inlet box on the south side, between the sidewalk and building.

Mayor Dunn asked the grade of the slope. Mr. Coleman didn't know the exact grade; however, indicated the other property owner was concerned that it could become icy in the winter. Mr. Coleman was concerned because the drainage system becomes clogged and thought another drain should be installed on the north side of the sidewalk.

Mr. Johnson thought if they raise the sidewalk, it would require a drainage system on the north and have it tied to the one on the south. Upon reviewing the grading plan, he thought there was an approximate 6" drop from the east side of the building to the low spot.

Mayor Dunn clarified that the motion was to approve the resolution approving the Revised Final Site Plan for Gardens of Villaggio, Lot 3, located north of 137th Street and east of Roe Avenue.

Mayor Dunn confirmed with staff they intended to have this expedited.

The motion carried following a unanimous vote of 8-0.

Ron Bennett, 12210 Cherokee Street, stated he was a co-owner of the building and has attempted to work with the developer, the builder, and the City since May, 2008, to complete the space and obtain a certificate of occupancy. Mr. Bennett was concerned with the appearance of his entrance and had incurred many delays and several thousand dollars in attorney fees. They still do not have architectural drawings. They were assured that all of the inspections were completed; however, have asked repeatedly for copies and haven't received them. The building wasn't designed with exterior lighting, with exception to the parking lot. It has a gutter-less roof, which creates an icing problem in the winter. He questioned whether the primary entrances to the building were ADA compliant and tried to have the City verify this. Pawnee Place, the overall developers of Villaggio, have failed to enforce and abide by their own restrictive covenants, pertaining to construction standards and quality of materials.

Mr. Bennett felt the City was more concerned with the colors of the parking lot poles and the art feature, than fundamental safety issues. It was suggested in the recent Planning Commission meeting that Mr. Bennett was the reason the City would require new revised plans for the subsequent buildings. He assured them he didn't want to delay construction.

In conclusion, he didn't understand the City's lack of oversight and encouraged the Governing Body to carefully examine what transpired in the Gardens of Villaggio so future commercial buildings are built with uniform standards.

- B. **Resolution No. 3255** approving a Final Site Plan for a tenant finish for One Nineteen - Destination Maternity, located on the southeast corner of 119th Street and Roe Avenue (PC Case #42-09)

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Peppes.

Councilmember Bussing referred to Mr. Bennett's comments and asked if staff could review his concerns related to the City's responsibility.

Mayor Dunn thought they should wait and act on this under Other Business.

Roman Goodfellow, 456 N. 5th Street, Philadelphia, Pennsylvania, complied with the resolution and was ready to continue with the permit process.

Mayor Dunn noted they were being asked to approve something beyond the sign criteria of 24” inches, which was currently approved for the One Nineteen Development. She confirmed with staff that the sign becomes 28” inches because of the lower portion of the letter “y” in “destination maternity.” Mayor Dunn concurred with this approval; however, was concerned they would need to amend all sign criteria to allow 28” inches for everyone.

Mr. Klein stated the Governing Body has the authority to grant a deviation from the sign criteria of the development because this wasn’t part of the LDO.

The motion carried following a unanimous vote of 8-0.

12. OLD BUSINESS – None.

13. OTHER BUSINESS

A motion was made by Councilmember Bussing to direct staff to research Mr. Bennett’s comments at their earliest convenience, and respond directly to him with a copy provided to the Governing Body; seconded by Councilmember Azeltine.

Mr. Coleman stated they have a temporary occupancy permit and staff had been working with Mr. Patterson over the last year to remedy several deficiencies. The building staff reported that it does meet code and he thought they were only missing one inspection report.

Councilmember Rasmussen was concerned they were missing a report. Mr. Coleman stated the contractor hadn’t turned in all of the reports and they were currently in the process of obtaining them.

Councilmember Azeltine hadn’t seen any other development in Leawood equal to this poor condition and encouraged the Governing Body to visit the site. Mayor Dunn had visited the site and concurred.

The motion carried following a unanimous vote of 8-0.

14. NEW BUSINESS

- A. Schedule a Governing Body Executive Session on Monday, August 17, 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 Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

A motion to recess into Executive Session at 9:50 P.M. for a period of 30 minutes was made by Councilmember Filla; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

The Governing Body reconvened into regular session at 10:20 P.M.

A motion to adjourn the regular session at 10:20 P.M. was made by Councilmember Filla; seconded by Councilmember Cain.

ADJOURN

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk