

Minutes

DVD No. 221

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 Tuesday, September 8, 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
Captain Dale Finger, Police Department
Gene Hunter, Fire Marshal
Lovina Freeman, HR Director
Kathy Rogers, Finance Director
Deb Harper, City Clerk
Pam Gregory, Deputy City Clerk

Patty Bennett, City Attorney
Mark Andrasik, Info. Systems Director
Richard Coleman, Community Dev. Dir.
Mark Klein, Assistant Planning Director
Joe Johnson, PW Director
Chris Claxton, P&R Director
Brian Anderson, P&R Superintendent

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modifications to the agenda:

- * Item No. 5 – Presentations/Recognitions – Councilmember Filla
- * Item No. 11A – Planning Commission Committee Recommendation moved prior to Citizen Comments

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

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the March 24, 2009 Planning Commission meeting]

- A. Ordinance approving a Revised Preliminary Site Plan for Town Center Business Park, Lots 4, 5 and 6, located on the northeast corner of 117th Street and Roe Avenue [Case # 04-09] [Roll Call Vote]

STAFF COMMENT: *The City Administrator recommends that this item be continued to a date certain, March 1, 2010, in accordance with the City of Leawood's Development Ordinance [LDO] § 16-5-2.2*

City Attorney Patty Bennett requested that this item be continued for two weeks in order to further review a letter received from the applicant's Counsel. The applicant does not object to the continuance.

A motion to continue this to the September 21, 2009, Governing Body meeting was made by Councilmember Azeltine; seconded by Councilmember Filla. 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.**

Mike Halloran, 13219 Windsor, stated he's been a Triple Crown member at Ironhorse Golf Course since 2003. Since the City took over maintenance, there has been difficulty with the greens including the growth of crabgrass, other weeds, and the absence of grass in many roughs. Instead of conditions improving with the aggressive maintenance plan in place, they have deteriorated. Mr. Halloran felt Ironhorse represented the worse greens in the area and asked that the City not take over complete operation. He wanted the City to consider giving all golf course responsibility to Orion Management and stated that their removal would result in him playing elsewhere.

Tim Orman, 11901 Pawnee Lane, echoed comments by Mr. Halloran. He was interested in finding solutions to keep the course from continuing to lose money and deteriorate. He suggested that the City accept bids from outside management and maintenance companies to lease the course.

Dan Froelick, 13805 Alhambra, stated he's played at Ironhorse since its opening in 1995 and every year people have complained about the course. The City needs to make drastic changes, whether operation and maintenance is given to an outside firm or to Orion. He felt embarrassed to bring people to the course and indicated it's no longer worthwhile to play there. He recommended the City seriously consider the golf committee's recommendation to move the maintenance under the Orion contract.

Skip Talley, 13801 Alhambra, stated he's been in the golf community for over 35 years and that Ironhorse was a good course with worse than bad conditions. He felt the entire golf community echoed this and he also agreed with the committee's recommendation. An organization outside the City needs to be accountable for managing the course and their tax dollars. Mr. Talley thanked the Governing Body for their service to the community.

Jim Mills, 6400 W. 143rd Terrace, felt Ironhorse has the potential to be among one of the best golf courses in the area. He urged the Council to take serious action to avoid many players going elsewhere.

George Waterman, 4412 W. 150th Street, stated he's been a Triple Crown member since the program began and was asked to work with the committee last year to develop a hole-by-hole project improvement list. For a time, the conditions of the course had improved; however, he was disappointed that Ironhorse is not maintained and manicured at the level of other courses in the area. Mr. Waterman noted the bare greens, crab grass, bare spots in the fairway, and unlevel tees. These are sub-standard conditions that make the course unacceptable, especially to those who have given money upfront to the City. The City has spent a lot of money attempting to improve it; however, after two years of re-doing the greens, they are worse than ever. He felt management should be given to the golf professionals at Orion and indicated other courses they operate are in outstanding condition.

Larry Maxfield, 12746 Overbrook, was very upset over the conditions of the golf course and wanted positive action taken. He thanked Councilmember Azeltine for being responsive to his concerns; however, wanted all Councilmembers to get involved. Mr. Maxfield stated he spends several thousand dollars each year on a worthless membership and something needed to be done.

Bob Jacob, 4145 W. 131st Terrace, felt action couldn't happen fast enough and that the bad publicity from the community needed to come to an end. Their confidence level in the City has dropped and they can no longer be patient. He reiterated comments that Orion should take over the maintenance.

Mayor Dunn expressed her appreciation to the citizens for attending and providing their comments.

4. PROCLAMATIONS - None.

5. PRESENTATIONS/RECOGNITION – Councilmember Filla

Councilmember Filla recognized and introduced her aunt, who was visiting from Hawaii.

6. SPECIAL BUSINESS

- A. **Resolution No. 3256**, authorizing the issuance and delivery of \$14,885,000 principal amount of General Obligation Temporary Notes, Series 2009-1; and \$4,985,000 Taxable General Obligation Improvement Temporary Notes, Series 2009-2, of the City of Leawood, Kansas, for the purpose of financing a portion of the costs of certain public improvements in the City; and prescribing the terms and details of said notes and certain covenants and agreements with respect thereto

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

Councilmember Azeltine recused himself from this issue due to a conflict of interest.

The motion carried following a unanimous vote of 7-0.

- B. **Ordinance No. 2409**, authorizing and providing for the issuance and delivery of \$14,885,000 principal amount of General Obligation Temporary Notes, Series 2009-1; and \$4,985,000 Taxable General Obligation Improvement Temporary Notes, Series 2009-2, of the City of Leawood, Kansas, to provide funds to finance the cost of certain public improvement projects within the City; and making certain covenants with respect thereto [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous roll-call vote of 7-0. Nay: None.

Councilmember Azeltine rejoined the meeting.

- C. **Resolution No. 3257** amending the City Special Benefit District Policy, previously adopted on October 18, 2004, and repealing Resolution No. 2299

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

Councilmember Rasmussen asked if they could establish a Special Benefit District [SBD] with less than 100% of the property owners.

City Administrator Scott Lambers stated any application to create a SBD that doesn't have 100% participation would be done on an individual basis and Council would evaluate it accordingly.

Councilmember Rasmussen recalled developers wanting to combine internal and public improvements and wanted clarification of why this wasn't part of this benefit district policy. Mr. Lambers stated the contractors didn't adequately maintain separate records. In order to avoid future problems, the City will determine what should be included in the benefit district and what should be excluded from the internal improvements.

Councilmember Rasmussen noted that changes can occur while establishing benefit districts and confirmed with Mr. Lambers that under petition improvements, minor changes could be handled administratively so the developer wouldn't need to return through the entire process. The definition of a minor change would be something that impacts the benefit district cost by less than 10%. Once the 10% threshold is exceeded, it's necessary to redo the petition and incorporate the new costs.

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

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. 2009-32, 2009-33, and 2009-34
- B. Accept Minutes of the August 3, 2009 Governing Body meeting
- C. Accept Minutes of the August 17, 2009 Governing Body meeting
- D. Accept Minutes of the August 17, 2009 Governing Body Work Session meeting
- E. Accept Minutes of the May 28, 2009 Leawood Foundation meeting
- F. Accept Minutes of the June 16, 2009 Public Works Committee meeting
- G. Accept Minutes of the June 23, 2009 Leawood Arts Council meeting
- H. Accept Minutes of the July 14, 2009 Parks and Recreation Advisory Board meeting
- I. Approve renewal of Retail Liquor Store License for Ranchmart Wine & Spirits, LLC, located at 3748 W. 95th Street
- J. Approve Change Order No. 3 in the amount of \$130,000 to O'Donnell & Sons Construction, pertaining to the joint repair at 103rd & State Line Road
- K. **Resolution No. 3258** approving and authorizing the Mayor to execute Amendment No. 1 to that certain Professional Engineering Agreement, dated September 15, 2008, in the amount of \$12,400, between the City and Phelps Engineering, Inc., for the design of the Gezer Park Tablet, located at 133rd and Mission Road [# 76006]
- L. Approve Change Order No. 7, in the amount of \$50,600 to Mega Industries, Inc., for the base improvement for the monument located at Gezer Park, 133rd and Mission Road [# 76006]
- M. **Resolution No. 3259** approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2010 alcohol tax fund for an amount not to exceed \$110,000
- N. **Resolution No. 3260** approving the 2010 Human Service Fund Recommendation Report [United Community Services-UCS] and the City of Leawood's participation for an amount not to exceed \$10,000
- O. **Resolution No. 3261** approving and authorizing the Mayor to accept a Special Warranty Deed from Merlyn P. McMorris, Trustee and Larry D. Parsons, pursuant to that certain Lease Agreement dated April 1, 1995, as amended, for real property located at 14701 Mission Road known as Ironwoods Park, [f/n/a South Park]
- P. **Resolution No. 3262** consenting to the enlargement of Consolidated Main Sewer District of Johnson County, Kansas, by the Board of County Commissioners [BOCC], pursuant to Johnson County Charter Resolution No. 29-92, for property located at Merry Lea Farms, Lot 1, 3900 W. 140th Drive
- Q. **Resolution No. 3263** consenting to the enlargement of Consolidated Main Sewer District of Johnson County, Kansas, by the Board of County Commissioners [BOCC], pursuant to Johnson County Charter Resolution No. 29-92, for property located at Merry Lea Farms, Lot 2, 3904 W. 140th Drive

- R. **Resolution No. 3264** accepting a Permanent Sidewalk Easement from Paul Keane, for property located at Lot 6, 1st Plat, Mission Farms Subdivision, located at 10421 Howe Lane
- S. Cancellation of October 19, 2009 meetings

Mayor Dunn requested to pull Item Nos. 7M and 7N and Councilmember Peppes pulled Item Nos. 7K and 7L for discussion.

A motion to approve the remaining Consent Agenda items was made by Councilmember Filla: seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

- 7K. **Resolution No. 3258** approving and authorizing the Mayor to execute Amendment No. 1 to that certain Professional Engineering Agreement, dated September 15, 2008, in the amount of \$12,400, between the City and Phelps Engineering, Inc., for the design of the Gezer Park Tablet, located at 133rd and Mission Road [# 76006]
- 7L. Approve Change Order No. 7, in the amount of \$50,600 to Mega Industries, Inc., for the base improvement for the monument located at Gezer Park, 133rd and Mission Road [# 76006]

Councilmember Peppes asked why they were requesting a Change Order if this was part of the original budget. Mr. Lambers stated they couldn't determine what the design requirements would be for the base to hold the tablet until the tablet arrived from Israel. This was a budgeted item for \$65,000; however, the contract needs to be amended for the engineer and the contractor. Mr. Lambers confirmed that this was part of the budgeted \$2.1 Million.

Mayor Dunn clarified that this was an addendum to the scope of the contract with the contractor.

A motion to approve Item No. 7K was made by Councilmember Peppes; seconded by Councilmember Filla.

Mayor Dunn noted the importance to staff of completing this project by early October in anticipation of a meeting with the Council of Mayors' of Johnson and Wyandotte County. She also reminded them that the Gezer delegation will be visiting in mid-October.

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

A motion to approve Item No. 7L was made by Councilmember Peppes; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

- 7M. **Resolution No. 3259** approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2010 alcohol tax fund for an amount not to exceed \$110,000

Mayor Dunn stressed how important it is for the City of Leawood to have the alcohol tax revenue to support the much needed programs in the County.

A motion to approve Item No. 7M was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

- 7N. **Resolution No. 3260** approving the 2010 Human Service Fund Recommendation Report [United Community Services-UCS] and the City of Leawood's participation for an amount not to exceed \$10,000

Mayor Dunn reiterated her comment of importance for these funds as well.

A motion to approve Item No. 7N was made by Councilmember Filla; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Mayor Dunn gave two presentations on economic development regarding the City of Leawood's financial position. The first was to the Leawood Chamber of Commerce Economic Development Council and also with a panel of other Johnson County Mayors to the Johnson County Business Leadership Council of the Greater Kansas City Chamber of Commerce.
- B. Participated in two health care forums, one at Saint Luke's South Hospital with Congressman Jerry Moran, and also Children's Mercy Hospital with Senators Kit Bond from Missouri, John McCain of Arizona and Mitch McConnell from Kentucky.
- C. The Council of Mayors of Johnson and Wyandotte Counties met in Bonner Springs at the new City Library, hosted by Bonner Springs Mayor Clausie Smith. A gift was presented to the outgoing Chairman of the Council of Mayors, Mission Mayor Laura McConwell. Officers for the 2009-10 year include Mayor Dunn as Chairman, DeSoto Mayor Dave Anderson as Vice Chairman and Overland Park Mayor Carl Gerlach as Secretary/Treasurer. The City of Leawood will be hosting the December social at the Ironwoods Park Lodge for the Council of Mayors and their City Councilmembers for Johnson and Wyandotte Counties.
- D. Mayor Dunn congratulated Steven Schowengerdt, Publisher of the new Leawood Lifestyle magazine. This is independent from the City and he is intending to release this monthly publication with no taxpayer dollars involved.
- E. Reminder of the Police and Fire Department Open House on September 16th, from 5:00 – 8:00 P.M. Mayor Dunn encouraged everyone to attend and noted there are usually hundreds of people that come for dinner and tours.

9. COUNCILMEMBERS' REPORT – None.

10. STAFF REPORT – None.

12. PUBLIC WORKS COMMITTEE

[from the August 18, 2009 Public Work Committee meeting]

- A. Recommendation for amendment to the Leawood Development Ordinance [LDO] to provide pedestrian access from the street right-of-way to buildings for commercial and office developments

A motion to approve the recommendation to amend the LDO was made by Councilmember Gill; seconded by Councilmember Peppes.

Councilmember Peppes stated an individual had attended a meeting with concerns of access for visually impaired or handicapped people that come into the development. Staff felt they should give direction to developers regarding ingress and egress from the sidewalks. The Planning Commission will consider this as each case is presented.

Councilmember Azeltine wanted clarification of what the LDO amendments would be. Mr. Lambers stated they would clarify an existing provision for the requirement that pedestrian access continue from a public sidewalk to the sidewalks in front of the businesses without people having to use a driveway or parking area. The sidewalks would be required within the shopping center pedestrian access ways.

Mayor Dunn confirmed with Mr. Lambers that this amendment was intended for moving forward and not retroactive to existing developments enforcing compliance.

Councilmember Rasmussen was concerned with clarification of the amendment. Mr. Lambers stated there would be a designated pedestrian way, which some shopping developments have not done. In one particular instance, there was no turning entrance into the development from the public sidewalk. This amendment gives staff the ability to critically evaluate this.

Mayor Dunn confirmed with Mr. Lambers that this was a recommendation for the LDO amendment and that the actual LDO amendment process would go before the Planning Commission and City Council for approval.

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

13. OLD BUSINESS – None.

14. OTHER BUSINESS – None.

15. NEW BUSINESS

- A. **Ordinance No. 2410** amending Chapter 3, Article 2 of the Code of the City of Leawood, 2000, by amending Section 3-208 entitled “Exemptions,” pertaining to the permitting of alcoholic liquor on certain property owned or leased by the City of Leawood, and repealing existing Section 3-208 and other sections in conflict herewith

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

Councilmember Azeltine asked what prompted this amendment. Mr. Lambers stated the only park where alcohol consumption is currently permitted is Ironwoods. They have included I-Lan and Gezer Park to be permitted to consume alcohol as well with the issuance of administrative permits. The reason for the request is due to the upcoming event with the Gezer delegation and staff felt there could also be a future event from Leawood's other Sister City, I-Lan, Taiwan. If Council prefers, they could include City Park in the amendment as well.

Councilmember Azeltine was concerned with permanently amending the ordinance for only two events. Mr. Lambers stated the public could apply for permits as well. Mr. Azeltine asked what circumstances they would permit alcohol. Mr. Lambers stated someone having a special event would be required to apply for a permit from the City and state the date and time of their event. There currently aren't many requests and he thought staff could evaluate this in the future so if there are problems, they can include more restrictions or not permit it at all.

Councilmember Azeltine asked if the yearly Taste of Leawood event held in the courtyard was approved administratively or if it comes before the City Council.

City Clerk Deb Harper stated this event requires a temporary alcohol permit through the City Clerk's office and is why it comes before the Council for approval on an annual basis. The Code requires that every temporary alcohol permit be approved by the Council. The permit is triggered because it is a private fundraising event. The courtyard is one of the exempted locations in the code that permits the City to serve alcohol.

Mr. Azeltine was concerned with the small size and "all open" areas of Gezer and I-Lan Park, versus the lodge at Ironwoods Park. He thought they should consider this use being City sponsored initially. He approved of the amendment for the Sister City events; however, was opposed to opening these parks for private functions with alcohol consumption.

Mayor Dunn indicated there could be other City sponsored events, such as the Council of Mayors' meeting at Gezer Park. Mr. Azeltine felt if the City held an event they would have complete control over what happens.

A motion for a friendly amendment to allow alcoholic beverages for City-only sponsored events at Gezer and I-Lan Park was made by Councilmember Azeltine.

Mayor Dunn thought if they approved Councilmember Azeltine's friendly amendment, they would need to return with the amended ordinance language at the September 21, Governing Body meeting. She wanted to allow enough time to have this published before the Gezer delegation visit in October.

Ms. Harper stated it would be published and effective on September 29, 2009.

The friendly amendment to the motion failed for lack of acceptance by the original motion makers; Councilmembers Rasmussen and Rawlings.

A formal amendment to allow alcoholic beverages for City-only sponsored events at Gezer and I-Lan Parks was made by Councilmember Azeltine; seconded by Councilmember Gill.

Councilmember Azeltine noted that the County Parks Board polled patrons earlier this year regarding dispensing beer at an event in the Theatre in the Park; the majority didn't want to allow it. He felt they needed to consider this decision very carefully.

Councilmember Peppes confirmed that if the Leawood Rotary Club wanted to hold an event, it wouldn't be City sponsored. He understood Councilmember Azeltine's concerns; however, felt this was a responsible organization and should be allowed.

Ms. Harper stated alcohol is prohibited in any public place unless it is exempted like this ordinance is requesting. To allow alcohol the event must be private; not open to the public.

Councilmember Rasmussen indicated the reason he wasn't interested in a friendly amendment was because he felt there were several organizations in the City that have proven to be responsible and the ordinances, as they apply to City property, can be very restrictive in terms of use on public property.

Councilmember Azeltine stated he wasn't opposed to the idea of the alcohol being permitted; however, thought the direction of this discussion demonstrated the need for guidelines. He wasn't comfortable with staff having the discretion to decide which group would be responsible.

Mayor Dunn noted the City has several policies in place and confirmed with staff that police are present when alcohol is served at Ironwoods Lodge and asked if they would be present in the parks as well. Mr. Lambers thought it would depend upon the size of the event. He agreed with Councilmember Azeltine's comments that the parks are small and indicated he would need to decide if the event would be compatible with the park. Mr. Lambers was comfortable allowing staff to use their judgment and if this proves wrong, they can seek direction from Council.

Councilmember Azeltine was comfortable with the City's current staff making these decisions; however, he indicated new staff was inevitable and was why they needed guidelines.

Ms. Bennett stated the ordinance provides for the Parks Director, under the supervision of the City Administrator, to issue rules and regulations. There are currently some regulations regarding the use of parks, the community center and lodge, and she thought more would be forthcoming.

Councilmember Cain confirmed there are other parks in Johnson County that permit alcohol. Mayor Dunn confirmed that Lenexa allows it in their parks.

Councilmember Gill was in favor of supporting either the formal amendment or the original motion; however, he concurred with Councilmember Azeltine's concerns.

The motion for the formal amendment to allow alcoholic beverages for City-only sponsored events at Gezer and I-Lan Park failed with a vote of 3-5. Yea: Councilmembers Azeltine, Gill, and Filla. Nay: Councilmembers Rasmussen, Rawlings, Bussing, Cain, and Peppes.

The original motion to amend the ordinance permitting alcoholic beverages at I-Lan and Gezer Park carried following a roll call vote of 7-1. Nay: Councilmember Azeltine.

Mayor Dunn was certain with this discussion there would be rigid and stringent guidelines put in place and that all of Councilmember Azeltine's concerns would be noted.

- B. Schedule a Governing Body Executive Session on Tuesday, September 8, 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 Peppes; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

- C. Re-schedule a Governing Body Work Session on Monday, December 7, 2009 at 6:00 P.M., to discuss Informational Signs

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Rawlings.

Mayor Dunn noted this was originally scheduled for October 19th; however, the delegation plans to arrive on October 18th and was why it needed to be rescheduled.

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

A motion to recess into Executive Session at 8:55 P.M. for a period of 30 minutes was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

The Governing Body reconvened into regular session at 9:25 P.M.

In light of the rejection of the contract extension offer to Orion Management Solutions, a motion was made by Councilmember Bussing to have staff prepare a Request for Proposal [RFP] to all eligible course management and maintenance companies for a 3-year contract with 3, 1-year extensions to provide both management and maintenance; seconded by Councilmember Rawlings.

Mayor Dunn confirmed with Mr. Lambers that Orion could be one of the companies that will receive an RFP.

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

A motion to adjourn the regular session at 9:35 P.M. was made by Councilmember Bussing; seconded by Councilmember Cain.

ADJOURN

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk