

**Minutes**

DVD No. 222

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, September 21, 2009. Mayor Peggy Dunn presided.

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

**Mayor/Councilmembers absent:** None.

**Staff present:**

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

Patty Bennett, City Attorney  
Joe Johnson, Public Works Director  
Mark Klein, Assistant Planning Director  
Chris Claxton, P&R Director  
Pam Gregory, Deputy City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 5-0. (Councilmembers Peppes, Gill and Rasmussen 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**

**Constitution Week, September 17-23, 2009**

Mayor Dunn proclaimed the week of September 17-23, 2009, as Constitution Week in the City of Leawood and asked citizens to reaffirm the ideals the Framers of the Constitution had in 1787.

**5. PRESENTATIONS/RECOGNITION – None.**

**6. SPECIAL BUSINESS**

- A. Recess into Executive Session to discuss matters related to attorney-client privilege

A motion to recess into Executive Session at 7:40 P.M. for a period of 20 minutes to discuss matters related to the attorney-client privilege was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 5-0. (Councilmembers Peppes, Gill and Rasmussen absent).

The Governing Body reconvened into regular session at 8:00 P.M.

Councilmember Rasmussen joined the meeting at 8:00 P.M.

Councilmember Peppes joined the meeting via teleconference at 8:00 P.M.

**[from the March 24, 2009 Planning Commission meeting]**

- B. Ordinance approving a Revised Preliminary Site Plan for Town Center Business Park, Lots 4, 5 and 6, located on the northeast corner of 117<sup>th</sup> Street and Roe Avenue [MD MANAGEMENT - Case # 04-09] [Roll Call Vote] – **CONTINUED FROM THE SEPTEMBER 8, 2009 GOVERNING BODY MEETING**

**STAFF COMMENT:**        *The City Administrator recommends that this item be continued to a date certain, March 15, 2010, in accordance with the City of Leewood's Development Ordinance [LDO] § 16-5-2.2*

Councilmember Bussing stated the City Council had tried to negotiate for this tract of land; however, failing this, the City Council has directed City Administrator Scott Lambers and City Attorney Patty Bennett to continue to pursue condemnation.

A motion to continue this to the March 15, 2010, Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a vote of 6-1. Nay: Councilmember Rasmussen. (Councilmember Gill absent).

Councilmember Peppes left the meeting via teleconference at 8:04 P.M.

**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. 2009-35 and 2009-36  
B. Accept Minutes of the September 8, 2009 Governing Body meeting  
C. Accept Minutes of the September 8, 2009 Governing Body Work Session  
D. Accept Minutes of the July 9, 2009 Ironhorse Advisory Board meeting  
E. Accept Minutes of the July 8, 2009 Historic Commission meeting

- F. Approve GASB-45 OPEB Calculations
- G. **Resolution No. 3265** approving and authorizing the Mayor to execute a User Agreement between the City of Leawood and the City of Overland Park, pertaining to the INTERGRAPH SYSTEM, for Computer Aided Dispatch [CAD], Records Management [RMS]; and Mobile Data Computer [MDC] Systems
- H. **Resolution No. 3266** approving and authorizing the Mayor to execute a Service Agreement in the amount of \$33,256.00, between the City and CLS, LLC for the installation of opticom signals at 95<sup>th</sup> & State Line Road; 103<sup>rd</sup> Terrace & State Line Road; and College Boulevard and Tomahawk Creek Parkway
- I. **Resolution No. 3267** approving a Final Site Plan for a tenant finish for Mission Farms – Elite Cycling, located on the northeast corner of I-435 Highway and Mission Road. (PC Case # 48-09) *[From the August 25, 2009 Planning Commission meeting]*
- J. **Resolution No. 3268** approving a Sign Plan for Johnson County Pioneer Library, located on the northwest corner of Town Center Drive and Roe Avenue (PC Case # 50-09) *[From the August 25, 2009 Planning Commission meeting]*
- K. Police Department Monthly Report
- L. Fire Department Monthly Report
- M. Municipal Court Monthly Report

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

Councilmember Gill joined the meeting at 8:10 P.M.

## 8. MAYOR'S REPORT

- A. Councilmembers Rawlings, Rasmussen and Azeltine participated in a ribbon cutting ceremony for Exclusive MD, located in Mission Farms, hosted by the Leawood Chamber of Commerce.
- B. Attended the 2009 United Way Kickoff Breakfast with City Administrator Scott Lambers. Rather than set a dollar goal for their campaign this year, they are setting a goal to acquire 25,000 new donors. There are approximately 26% of employees in the greater metro community currently participating. They still intend to announce the total dollar amount raised; however, hope to reach their new donor goal. The City of Leawood will hold a Kickoff Luncheon for a United Way Campaign at the Ironwoods Park Lodge on October 13<sup>th</sup>, 2009, at 11:30 A.M. Mayor Dunn expressed hope that everyone could attend.
- C. Participated in the Greater Kansas City Chamber of Commerce 2009 Leadership Exchange in Denver, Colorado, along with 110 other participants. Organization and planning for this event was orchestrated by Cathy Bennett, sister to City of Leawood Attorney Patty Bennett.

- D. Leawood Police Officer Phil Goeff organized a terrific Police and Fire Department Open House. Police Chief John Meier and Fire Chief Ben Florance were in attendance, along with most members of their departments. Councilmembers Rawlings and Azeltine were also present with approximately 600 others to enjoy these community festivities. Mayor Dunn noted this has become a very popular event for residents and families and thanked everyone for their efforts.

**9. COUNCILMEMBERS' REPORT – None.**

**10. STAFF REPORT – None.**

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION**

***[From the July 28, 2009 Planning Commission meeting]***

- A. **Ordinance No. 2411** amending § 16-4-3, of the Leawood Development Ordinance [LDO], pertaining to Special Use Provisions (PC Case # 37-09) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Peppes absent).

***[From the August 25, 2009 Planning Commission meeting]***

- B. **Ordinance No. 2412** amending § 16-4-12, of the Leawood Development Ordinance [LDO], pertaining to Wireless Communication Towers and Antennae (PC Case # 38-09) [Roll Call Vote]

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

Councilmember Azeltine asked why they were exempting the City from the Special Use Permit [SUP] process for wireless antennae.

Assistant Planning Director Mark Klein indicated the City was undergoing an upgrade to its facilities within City Hall to allow greater efficiency. The antenna will be located on the roof and is 32.5" inches in length and 7.5" inches in height. The exemption is specifically for this type of antenna and removes towers as being exempt within the Leawood Development Ordinance [LDO] amendment.

The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Peppes absent).

- C. **Resolution No. 3269** approving a Revised Final Site Plan for the replacement of an emergency generator located at Fire Station No.1, at 9605 Lee Boulevard (PC Case # 47-09)

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

- D. **Resolution No. 3270** approving a Final Site Plan for a tenant finish for Mission Farms – Office Expansion, located on the northeast corner of I-435 Highway and Mission Road (Case 46-09)

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

Councilmember Rasmussen asked when they would receive the fee schedule for the initial and tenant finish. Mr. Lambers indicated this was copied to the Governing Body as a Staff Report and directive was never given to proceed beyond that. Mr. Rasmussen asked when they were planning discussion on this. Mr. Lambers stated next time they reviewed the permit fees; they were going to segregate out two different types of shell finishes and should come before the Council for review in October. This is done toward the end of the year to allow it to go into effect on January 1<sup>st</sup>.

Mayor Dunn thought the changes proposed would meet Councilmember Rasmussen's desires.

The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

- E. **Ordinance No. 2413** amending § 16-2-10, of the Leawood Development Ordinance [LDO], Architecture/Construction Standards, pertaining to asphalt shingles within commercial districts (PC Case 51-09) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Azeltine.

Mayor Dunn indicated this was delayed to accommodate one specific project. She was concerned with the way the ordinance was written that they could see a rush of cases before January 1, 2010. Mr. Klein was unaware of any other cases coming forward. A Preliminary, then Final Plan could come before the Planning Commission and City Council for review within this time frame. Mayor Dunn thought they may need to make the ordinance more restrictive because of their intent to not have composition shingles in a commercial development.

City Attorney Patty Bennett stated if they have a Preliminary Plan that approved composition, they could come forward with the Final Plan and it would be subject to Governing Body approval.

Mayor Dunn asked if they could approve this with a moratorium on receiving applications for laminated composition shingles for commercial development.

Mr. Lambers felt that wouldn't be necessary. If there is a future application before the deadline, they could evaluate the consistency of it with this current application, which has other buildings with composition shingles. He didn't see this as a big issue and reiterated that Council would have the final decision.

Councilmember Gill confirmed with Mr. Lambers that the probability of a new application receiving Preliminary Plan and Final Plan approval, along with installation by January 1<sup>st</sup> was unlikely.

Mayor Dunn confirmed with Mr. Klein that a new application would come before the Planning Commission and City Council for approval. She reiterated that the Governing Body's intent was to use commercial grade roofing materials, not residential.

The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Peppes absent).

- F. Resolution approving the Planning Commission's recommendation of denial of an amendment to Section 16-4-9, Fences and Walls, of the Leawood Development Ordinance [LDO], pertaining to combination fences consisting of split rail fencing with chain link (PC Case # 81-08)

**\*REVISED 11F**

- F. **Ordinance No. 2414** amending Section 16-4-9.3 of the Leawood Development Ordinance [LDO], entitled, 'General Requirements' pertaining to PVC coated chain link fences installed with split rail wood fences

Mr. Klein stated on occasion, chain link fencing is attached to the outside of split rail fencing and the LDO amendment is intended to ensure that this be attached to the inside of the fence. This went before the Planning Commission and they recommended denial stating they were not supportive of this type of fencing.

Mayor Dunn confirmed with Ms. Bennett that if Council also denied this, the fencing that is currently in place would be grandfathered in until the fence needs more than 50% repair.

Councilmember Filla confirmed with Mr. Klein that the current LDO doesn't allow fencing in front yards unless they are a maximum of 3' feet in height and 24' feet in length.

Councilmember Rasmussen stated there was one exception that the City permits split rail fencing in the front yard; 96<sup>th</sup> Street from State Line to Mission Road. If this ordinance is approved, it would not be applicable to them installing steel fencing to the inside. This is historic and should remain as is.

Councilmember Gill clarified with Mr. Rasmussen that regardless to the outcome of the ordinance; wood fences in the historic district should not be allowed to have metal fencing behind them.

A motion to adopt the Planning Commission's recommendation of denial was made by Councilmember Gill; seconded by Councilmember Azeltine.

Ms. Bennett clarified that whether this passes or not, the existing fences will stay provided they had permits and were built properly.

Mayor Dunn clarified if this doesn't pass, they would be able to replace the fencing as it currently exists. If it passes, they would be required to comply with the way it is written.

Mr. Klein clarified that if the amendment is denied like the Planning Commission recommended, it wouldn't prohibit these types of fences. It would deny this particular amendment, which clarifies that chain link is required to be on the interior. The Planning Commission was trying to impress upon staff and recommend to the City Council that the LDO amendment prohibiting these types of fences may need to return through the process.

Councilmember Gill didn't want to add language that would allow chain link to be attached to wood fencing.

Mayor Dunn confirmed with Ms. Bennett that the current ordinance allows this and if they wanted it changed, it would require additional action. There is currently nothing that prohibits using two permitted fence styles together.

Councilmember Filla felt by attaching split rail fencing to the outside, it could serve as camouflage and would be more attractive than just chain link.

Mayor Dunn clarified that the amendment requires that if a split rail fence existed, a second fence would be needed to provide extra security.

Councilmember Cain concurred with Councilmember Filla.

Councilmembers Gill and Azeltine withdrew their motion to adopt the Planning Commission's recommendation of denial. Mr. Gill felt by adopting this, they hadn't solved the issue of indiscriminant use of chain link fencing.

Mayor Dunn confirmed with Mr. Klein that their current chain link fence allowance doesn't require PVC coating.

A motion to approve the LDO amendment as drafted in the packet was made by Councilmember Filla; seconded by Councilmember Bussing.

Councilmember Cain thought they should specify a black, brown, or hunter green color for the PVC coating. Mayor Dunn concurred and indicated this was also agreed to by the motion makers.

Mayor Dunn clarified that this would be a resolution if it were being denied as recommended; however, since the motion is to approve, it becomes an ordinance and required a roll call vote.

The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Peppes absent).

A motion to refer the matter regarding chain link fencing to the Planning Commission for further review was made by Councilmember Gill; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

- G. Ordinance amending § 16-4-1, Leawood Development Ordinance [LDO], Accessory Uses, of the, pertaining to generators (PC Case # 20-09) [Roll Call Vote]

Councilmember Rasmussen indicated the language in the ordinance didn't specify "gas operated" generators. He was concerned of pollution if people decide to use them long-term.

Mr. Klein assumed these would be gas; however, thought they could specifically state "gas." Another option would be to limit use to power outages, as opposed to permanent use.

Councilmember Gill thought there should be a clear exception in the ordinance for emergency temporary use of other types of generators. There could be power outages or medical emergencies and people need to use whatever is available.

Councilmember Gill thought propane should be allowed because someone may not be able to get gas due to a power outage. He thought they could specify Councilmember Rasmussen's pollution point for permanent generators.

Mayor Dunn felt these were all good points and thought they should request modifications to the ordinance and remand it to the Planning Commission for review.

Mr. Klein indicated this wasn't time sensitive and by remanding, it would allow them additional time for discussion with the Building Department.

A motion to remand this to the Planning Commission for the sake of modifications as stated was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a vote of 7-0. (Councilmember Peppes absent).

**12. OLD BUSINESS** – None.

**13. OTHER BUSINESS**

- A. Discussion of construction process for the proposed Justice Center

Mr. Lambers stated contractors that have been interested in bidding on the City's Justice Center wanted to confirm that the City was planning to proceed with the design/build process.



Contractors had thought several municipalities were moving away from this because of the competitive market among them. The news-paper article that was distributed to Council reflects that submitted bids were considerably less than those being estimated. As a result, he reconsidered his original recommendation for design/build and recommended they proceed with the design/bid process in order to capture the most economic bid process and clearly demonstrate this to the taxpayers. He wanted authorization from Council to proceed.

Mayor Dunn noted she had spoken with other Mayor's in the county and they've discovered tremendous savings in the bid process because of the current market.

A motion to adopt the City Administrator's recommendation to follow the design/bid process for the Justice Center was made by Councilmember Gill; seconded by Councilmember Azeltine.

Councilmember Rawlings asked if they had a date in mind to proceed with the facility. Mr. Lambers stated this was delayed due to concern of sufficient sales tax revenue to cash flow the project; however, he was now confident they wouldn't need to issue temporary debt and could proceed at any time. First, they need to retain a land use firm to master plan the entire site, then request proposals and qualifications for design.

Councilmember Bussing was not in favor of Mr. Lambers recommendation. One of the advantages of design/build was they would know the cost up front. He felt the City's history had not demonstrated their ability to effectively manage projects. If construction bids are reduced, he thought design/build would be down as well.

Mayor Dunn confirmed with Public Works Director Joe Johnson that they would be guaranteed a maximum price with a design/bid/build.

Mr. Lambers wanted to be able to demonstrate through a public bidding process exactly what the savings would be from several bidders. There are benefits from a design/build; however, they would only receive one price. With the current market, he wanted to obtain the economies of a design/bid process.

Councilmember Filla asked if Council would consider making this a LEED Building.

Mayor Dunn indicated there would be additional cost associated and they could consider it when it comes forward. This is a private enterprise and needs to be evaluated carefully because public dollars would be involved.

Ms. Filla indicated that the cost had been reduced due to it becoming more main stream.

Mr. Johnson stated the design in the building would include building green; however, they would need to consider the expense of becoming certified.

Mr. Lambers clarified for Councilmember Bussing that the benefits of a design/build was that the architects and contractors work as a team and would resolve any disputes among themselves with no change orders.

With the design/bid, the architects do the design and the contractor could decide they can't build it for that. While this could occur, it would depend upon the quality of the design and the contractor.

Mr. Lambers clarified that if they pursued a design/bid, Captain Dale Finger of the Police Department would be in charge of the project. There would also be representatives from each division participating as an oversight committee. This will involve the Police, Court, Legal, IT, Codes, and Facilities Maintenance Departments.

Councilmember Bussing confirmed they would be seeking qualified architects and contractors who were specifically familiar with Justice Centers. He felt one of the advantages of design/build was that project management would not be inherent at City Hall. He reiterated concerns regarding the City's past projects not being delivered as expected.

Police Chief John Meier stated the Justice Center in Lenexa was completed as a design/bid project and that they had good experience with this process.

Mr. Lambers clarified they would pre-qualify and set minimum standards for architects and contractors that would require recent design and construction of Justice Center facilities.

Mr. Lambers thought once the stimulus money was gone; the contracting market would become weak. He was concerned if they delayed, contractors would become competitive. Councilmember Azeltine concurred; however, wanted the Governing Body to be cognizant that they would be betting on this.

The motion to adopt the City Administrator's recommendation to follow the design/bid process carried following a vote of 5-2. Nay: Councilmembers Bussing and Rasmussen. (Councilmember Peppes absent).

#### **14. NEW BUSINESS**

- A. **Ordinance No. 2415** amending Chapter 1, Article 8, of the Code of the City of Leawood, 2000, by adding a new section 1-847 through 1-850, establishing an American Recovery & Reinvestment Act [ARRA] of 2009 Fund

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

- B. Schedule a Governing Body Executive Session on Monday, September 21, 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 Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

- C. Schedule a Governing Body Work Session on Monday, December 21, 2009, at 6:00 P.M., to discuss the establishment of a Community Improvement District [CID] Policy for redevelopment

A motion to approve the work session was made by Councilmember Azeltine; seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

Mr. Lambers stated any future requests for work sessions would not be scheduled until 2010.

Mayor Dunn noted there were two Executive Sessions this evening, one regarding matters related to the attorney-client privilege and the other regarding a personnel matter.

A motion to recess into Executive Session at 9:15 P.M. for a period of 20 minutes to discuss matters related to the attorney-client privilege was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

The Governing Body reconvened into regular session at 9:35 P.M.

A motion to extend the Executive Session at 9:35 P.M. for a period of 20 minutes was made by Councilmember Azeltine; seconded by Councilmember Filla.

The Governing Body reconvened into regular session at 9:55 P.M.

A motion to authorize City Attorney Patty Bennett to engage in discussions with Water One for a discussion draft of an inter-local agreement that may have potential to resolve current issues with Water One was made by Councilmember Gill; seconded by Councilmember Bussing.

Councilmember Azeltine confirmed with Ms. Bennett that if they are unable to reach an agreement, Water One would still be required to submit through the City's development process.

The motion carried following a unanimous vote of 7-0. (Councilmember Peppes absent).

A motion to recess into Executive Session at 10:10 P.M. for a period of 50 minutes to discuss a personnel matter was made by Councilmember Filla; seconded by Councilmember Cain.

The Governing Body reconvened into regular session at 11:00 P.M.

A motion to adjourn the regular session at 11:00 P.M. was made by Councilmember Rasmussen; seconded by Councilmember Rawlings.

**ADJOURN**

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Debra Harper, CMC, City Clerk

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Pam Gregory  
Recording Deputy City Clerk