

Minutes

DVD No. 225

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, November 16, 2009. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Lovina Freeman, HR Director
Karl Weinfurter, Info. Systems Specialist
Mark Andrasik, Info. Systems Director
Kathy Rogers, Finance Director

Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Richard Coleman, Comm. Dev. Director
Mark Klein, Assistant Planning Director
Deb Harper, City Clerk
Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modifications to the agenda:

- * Item No. 7J – Continued to the December 7, 2009, Governing Body meeting
- * Item No. 9A – Councilmembers Report from Councilmember Gill
- * Item No. 9B – Councilmembers Report from Councilmember Filla
- * Item No. 9C – Councilmembers Report from Councilmember Rawlings

A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Gill. 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/RECOGNITIONS Recognition of City of Leawood as recipient of 2009 Eden Public Sector Excellence Award- Mark Andrasik and Kathy Rogers, Project Leads

Mayor Dunn congratulated Information Systems Director Mark Andrasik and Finance Director Kathy Rogers on receiving the 2009 Eden Public Sector Excellence Award from Tyler Technologies.

Mr. Andrasik noted this was a group effort, including the Technology Review Committee, Councilmember Gill, City Attorney Patty Bennett, and several employees. There were 221 clients nationwide who had the opportunity to receive this "Organizational Efficiency" award and the City of Leawood was the chosen recipient.

City Administrator Scott Lambers noted that the applicant of Item No. 11E had requested that this be remanded to the Planning Commission.

6. SPECIAL BUSINESS

- A. **Ordinance No. 2420** appropriating the amounts set up in each fund in the budget for fiscal year 2009, providing for the payment of all claims and charges against the accounts provided for therein; and approving and ratifying the payment of all claims against the accounts [Roll Call Vote]

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

- B. **Ordinance No. 2421** amending Ordinance No. 2395, authorizing and providing for the acquisition of lands or interests therein by condemnation for property located at the northeast corner of 117th Street and Roe Avenue for a Parks and Recreation or other public use, in accordance with K.S.A. §26-501, ET SEQ., and repealing Ordinance No. 2395

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Peppes. The motion carried following a roll call vote of 6-1. Yea: Councilmembers Filla, Peppes, Azeltine, Rawlings, Bussing, and Cain. Nay: Councilmember Rasmussen. (Councilmember Gill not seated for vote).

7. CONSENT AGENDA

- A. Accept Appropriation Ordinance Nos. 2009-43, and 2009-44
- B. Accept November 2, 2009 Governing Body minutes
- C. Accept October 26, Governing Body Work Session minutes
- D. Accept September 30, 2009 Stormwater Management Committee minutes
- E. Accept August 27, 2009 Ironhorse Advisory Board minutes
- F. Accept August 25, 2009 Arts Council minutes

- G. Approve Cereal Malt Beverage [CMB] License for Cupini's, located at 3820 W. 95th Street
- H. Accept 6th and Final Pay Request to Linaweaver Construction in the amount of \$20,800.00, pertaining to the 2009 Residential Reconstruction Program [Project # 80209]
- I. Accept 9th and Final Payment to Mega Industries, Inc., in the amount of \$148,512.86 pertaining to the Gezer Park Project located at 133rd and Mission Road [#76006]
- J. Resolution approving and authorizing the Mayor to execute a Professional Engineering Agreement in the amount of \$91,000, between the City and Continental Consulting Engineers, pertaining to Phase I of the Ironwoods Amphitheater Project – ***CONTINUED TO THE DECEMBER 7, 2009, GOVERNING BODY MEETING***
- K. **Resolution No. 3288** approving a Revised Final Plat for Centennial Park Condominiums, located north of 141st Terrace and east of Overbrook, within the Bi-State/Centennial Park development (PC Case # 61-09) *From the October 27, 2009 Planning Commission meeting*
- L. **Resolution No. 3289** amending the City of Leawood's Investment Policy and repealing Resolution No. 3128
- M. **Resolution No. 3290** approving and authorizing the Mayor to execute Addendum No. 1 to that certain Professional Service Agreement, dated March 2, 2009, between the City and Alvarez & Marshal, pertaining to the One Nineteen Transportation Development Sales Tax Analysis
- N. **Resolution No. 3291** ordering a public hearing to be held on December 21, 2009, at 7:30 PM, or as soon thereafter as may be heard, on proposed assessments for construction of certain public and private road and parking lot related improvements and other such transportation related improvements approved by the City, located within 119th Street Development District, located within the City of Leawood, Kansas, and directing the City Clerk to publish Notice thereof and provide written Notice to owners of property of such assessments [One Nineteen Transportation Development District] [CIP # 80456]
- O. **Resolution No. 3292** approving a Final Sign Plan for Parkway Plaza – Emergent Care Plus, located on the northwest corner of 135th Street and Roe Avenue (PC Case #60-09) *[From the October 27, 2009 Planning Commission meeting]*
- P. **Resolution No. 3293** approving a Final Sign Plan for Ranchmart – Tower Cleaners, located north of 95th Street and east of Mission Road (PC Case # 70-09) *[From the October 27, 2009 Planning Commission meeting]*
- Q. **Resolution No. 3294** approving a Revised Final Site Plan for St. Michael the Archangel, located on the northeast corner of 143rd Street and Mission Road (PC Case # 63-09)) *[From the October 27, 2009 Planning Commission meeting]*
- R. Police Department Monthly Report – October, 2009
- S. Fire Department Monthly Report– October, 2009
- T. Municipal Court Monthly Report– October, 2009

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

8. MAYOR'S REPORT

- A. Attended a luncheon hosted by Director General Jacqueline Liu of the Taipei Economic and Cultural Office in Kansas City. She was accompanied by her assistant, Henry Fan. Ms. Liu expressed great support for the City of Leawood's Sister City relationship with I-Lan, Taiwan. Mayor Dunn thanked her for her friendship and wished her well on her new assignment in Kansas City.
- B. Mayor Dunn was the guest speaker at a meeting of the Retired Old Men's Eating Organization, better known as the "ROMEO's." The City of Leawood was her topic of discussion. The men meet every week with a different guest speaker. Mayor Dunn had an enjoyable time and noted they were a very delightful group.
- C. Participated on a panel discussion at The University of Kansas Edwards Campus. This was a Leadership Symposium, titled "Leadership across the generations." Mayor Dunn represented the Baby Boomers.
- D. Attended the Council of Mayors meeting, hosted by Mayor Ron Shaffer of Prairie Village. Most of the delegation members of Johnson and Wyandotte Counties were in attendance and spoke about the upcoming legislative session. The main topics included; State Budget, Local Funds; 911 system; Appraisals of Commercial Real Estate; Comprehensive Transportation Plan; Delinquent Tax Collection Fee and Tax Lien Receivables.
- E. Reminder to the City Council of the Annual Council of Mayors Holiday Social, hosted by the City of Leawood, to be held at Ironwoods Lodge.
- F. Participated in the Table of Faiths luncheon, sponsored by the Greater Kansas City Interfaith Council [GKCIC]. There were over 600 in attendance, including; Councilmembers Debra Filla, Lou Rasmussen and Jim Rawlings, City Administrator Scott Lambers, City Attorney Patty Bennett, Public Works Director Joe Johnson, Major Troy Rettig and Deputy Fire Chief Randy Hill. The mission of the GKCIC is to "grow a sustainable, pervasive culture of knowledge, respect, appreciation and trust among people of all faiths and religious traditions in the greater Kansas City community." Leawood resident Ahmed El-Sherif was honored with the Steve Jeffers Interfaith Leadership Award for his interfaith work in the community.
- G. Mayor Dunn was joined by Councilmembers Rasmussen and Rawlings at the Leawood Arts Show, co-sponsored by the Leawood Arts Council and M&I Bank. Featured artists included; Wayne Rhodus, Selena Varady, Robin Richerson and Mary Lou McLagan.
- H. Mayor Dunn was a guest of the Greater Kansas City Chapter of Hadassah's Annual Silver Tea, which also served as a fundraiser for the Hadassah Hospital in Jerusalem.
- I. Mayor Dunn congratulated Leawood Firefighter Rick Schulze for winning his match at the 5th Annual Kansas City Guns & Hoses Fight Night. The funds for this will go to the Kansas City Crime Commission's Surviving Spouse and Family Endowment Fund.

9. COUNCILMEMBERS' REPORT

- A. Councilmember Gill: Recommendation to Public Works Committee for installation of temporary sidewalk on the north side of 143rd Street, between Roe Avenue and Granada

Councilmember Gill recognized Mayor Dunn and her husband Terry Dunn for receiving the honor of 2009 Johnson Countians of the Year.

A motion to recommend that the Public Works Committee consider installing a temporary sidewalk on the north side of 143rd Street, between Roe Avenue and Granada due to the delay in widening 143rd Street was made by Councilmember Gill; seconded by Councilmember Peppes.

Councilmember Azeltine indicated citizens had requested to have this entire stretch of roadway installed with sidewalks; however, the City only has the right-of-way for installation at this particular location. The Public Works Department will consider tying this to the street program next year.

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

- B. Councilmember Filla: Report on E-Way event conducted at Church of the Resurrection, 13720 Roe Avenue, on Saturday, November 14, 2009

Councilmember Filla reported that Leawood and Overland Park held their second joint e-waste project and were joined by Mission Hills and Prairie Village. They collected 75,000 – 80,000 pounds of electronic waste to be recycled. There are plans next spring to conduct this event with area northern cities. Ms. Filla expressed her appreciation to Liaison Paul Duffendack, of the Green Initiative Task Force Committee, for working to ensure things ran smoothly. The Church of the Resurrection did an outstanding job of supporting this event. Ms. Filla thanked the Public Works Department, Parks Superintendent Brian Anderson and the Parks and Recreation Department for their help as well.

- C. Councilmember Rawlings: Recommendation to Parks and Recreation Advisory Board to draft language for signage to be placed at Gezer Park, 13300 Mission Road, prohibiting individuals, animals and objects being placed in water areas located within the Park

Councilmember Rawlings reported unacceptable behavior at Gezer Park. They have had reports of children playing in the wadie and throwing rocks into the lake. Dogs have been reported in the wadie as well.

Councilmember Rawlings made a motion to recommend that the Parks and Recreation Advisory Board draft language for signage to be placed at Gezer Park, prohibiting individuals, animals and objects being placed in water areas located within the park and return to the Council on the December 21, 2009, Governing Body meeting; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

From the October 27, 2009 Planning Commission meeting:

- A. Resolution approving a Revised Final Site Plan for Bi-State/Centennial Park – PARS Consulting Engineering Building, located north of 141st Terrace and east of Cambridge, within the Bi-State/Centennial Park development (PC Case #67-09)

Councilmember Rawlings confirmed with City Attorney Patty Bennett that he would have no statutory conflict in regards to his brother in law, Jeffrey Zimmerman, the attorney for the applicant.

Christopher Sailors, 2045 W. 141st Terrace, stated Pars Engineering is under contract with Centennial Park to construct the building exactly as it was approved and they have the right to approve any changes to the plan prior to submitting it.

Jeffrey Zimmerman, attorney for the applicant, felt they received a hostile reception at the Planning Commission meeting on October 27, 2009, because of the perception that this building was intentionally built different than the originally approved site plan. The owner had a contract with the contractor to build the building exactly as the approved plans. It wasn't until the final inspection that the City and owner discovered that cultured stone had been installed on the lower portion of the building. The owner had paid for fieldstone as the plans had instructed. Aesthetically, there is no difference between the two types of stone and he thought it was in character of the park and neighborhood.

This business has relocated to Leawood from Overland Park and is currently operating under a temporary occupancy permit, which expires on December 21, 2009. Mr. Zimmerman was concerned that weather conditions could delay removing and reinstalling the masonry if the Council approved the Planning Commission's recommendation. He wanted an extension on the occupancy permit to prevent the business from having to vacate the building in case of this delay. Replacing the stone could also require replacing the existing landscaping, sod and irrigation system. The expense of doing this would have a severe economic impact to this small business; therefore, the revised site plan was proposed to ask the Planning Commission to approve this building as constructed. They didn't have any objection to other changes requested by the Planning Commission. Mr. Zimmerman didn't feel there was a compelling reason to make the business go through the extra expense that would be required.

Councilmember Rasmussen felt staff and volunteers spend a lot of time reviewing what should be approved in the City of Leawood and thought Mr. Zimmerman's comments were incomprehensible.

Mayor Dunn confirmed with Mr. Zimmerman that the owner had paid for fieldstone and received cultured stone and thought there should be cost savings refunded to the owner from the contractor. Mr. Zimmerman indicated they hadn't been successful getting the contractor to stand behind this and could result in a lawsuit.

Councilmember Gill supported the extension of the occupancy permit; however, felt everyone involved had a vested interest in making sure this gets done correctly.

Mr. Zimmerman indicated they would like to have done what was contracted; however, the cost burden would be placed on them. They didn't intend to be contrary and wanted to operate a good business in Leawood.

Mayor Dunn asked why there was no mention of the awnings in any of the stipulations from the Planning Commission. Community Development Director Richard Coleman indicated the awnings were on the revised final site plan and were added as an attempt to improve the appearance of the building.

Mayor Dunn confirmed with Mr. Coleman that they hadn't received the final landscape plan. Mr. Coleman indicated the grade of the sidewalk in question was too steep and would require a handrail, so they decided to replace it with sod and landscaping. They still need to install several caliper trees.

Mr. Zimmerman clarified for Councilmember Cain that the structure had been built by a different contractor and this contractor took over to finish the exterior and interior of the building.

Councilmember Rawlings asked how this mistake passed through the City's final inspection. Mr. Coleman stated the City Inspector hadn't noticed this wasn't real stone. Mr. Zimmerman stated the owner had entrusted that the building would be constructed correctly. The contractor was at fault and had since gone out of business.

Councilmember Peppes confirmed with Mr. Sailors that the awnings were not part of the anticipated design of the building. He preferred to add another layer of stucco to the outside of the building with the approved banding. He also indicated the canopy was wider at the base and narrows at the end and needed to be changed to be completely horizontal.

Mr. Sailors clarified for Councilmember Peppes that when the plan was originally approved through the Council, they had the architect add stucco separations with different colors for appearance. Dr. Peppes asked if they could use the stucco separations instead of the awnings to achieve the original look. Mr. Coleman indicated this wasn't usually done and would check into it.

Councilmember Peppes stated as a small business owner himself in the City of Leawood, he had abided by the City's standards and didn't feel it was appropriate that they should be allowed to construct a substandard building.

Councilmember Filla thought since Mr. Sailors was unaware of the revised plan; this should be continued until the developer could review it with the owner and City staff. Mr. Sailors has vested interest in making sure the continuity of this park is consistent with what he originally approved.

Councilmember Rasmussen concurred with Councilmember Peppes.

Mr. Sailors clarified he did not approve of the current building; however, he was willing to work with the staff and applicant on a solution.

Councilmember Rasmussen confirmed with Mr. Sailors that he was against the Planning Commission's recommendation for approval.

Mayor Dunn concurred with Councilmember Filla's suggestion of a continuance; however, she recommended they remand it to the Planning Commission before action is taken because of their concern. She recommended that staff extend the temporary occupancy permit.

Mr. Coleman noted staff didn't have any objection to leaving the cultured stone in place that was below grade.

Mayor Dunn noted that the Planning Commission had a split vote of 4-3.

City Attorney Patty Bennett recommended they remand this to ask that all parties meet and confer and give the Planning Commission the benefit of Mr. Sailors input.

A motion to remand this to the Planning Commission was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a vote of 7-1. Nay: Councilmember Rasmussen.

Mr. Rasmussen indicated he was willing to go with the Planning Commission's recommendations and felt they had sound solutions to the issue.

Mayor Dunn clarified that the Planning Commission would have all of the Council's remarks on record for the reasons to remand and they were not dictating their vote.

A motion to extend the temporary occupancy permit for a period of six months was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

- B. **Resolution No. 3295** approving a Final Site Plan for a Tenant Finish for Republic of Couture, located on the southeast corner of 119th Street and Roe Avenue (PC Case #49-09)

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

- C. **Resolution No. 3296** approving a Final Sign Plan for Parkway Plaza – Blue Fin, located on the northwest corner of 135th Street and Roe Avenue (PC Case #59-09)

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

Mayor Dunn indicated the sign issue was debated extensively at the Planning Commission meeting and it was determined to be appropriate.

Councilmember Bussing confirmed with Mr. Coleman that the developer was amenable to the guidelines that were removed by the Planning Commission. Mr. Coleman indicated the sign was slightly larger and didn't comply with the City's ordinance; however, they were allowed some deviation.

Mr. Coleman clarified staff concurred with the Planning Commission's recommendation for approval. The staff and Planning Commission reviewed the sign and felt it was in proportion and enhanced the façade.

The motion to approve the resolution carried following a unanimous vote of 8-0.

- D. **Resolution No. 3297** approving a Final Sign Plan for Leawood Plaza – Baskin and Robbins Ice Cream, located on the southwest corner of Pembroke Lane and State Line Road (PC Case # 69-09)

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

- E. Resolution approving a Final Site Plan for Park Place – Cafe' Roux, located on the northeast corner of 117th Street and Nall Avenue (PC Case # 62-09)

A motion to remand this to the Planning Commission at the developer's request was made by Councilmember Gill; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

- F. **Ordinance No. 2422** amending Section 16-4-1.3, of the Leawood Development Ordinance [LDO], pertaining to permitted Accessory Uses, Buildings and Structures- Daycare Uses as an Accessory Use within Church, Religious, Educational and Community Buildings (PC Case 68-09) [Roll Call Vote]

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

- G. **Ordinance No. 2423** approving a Special Use Permit [SUP] for Clearwire Wireless Wimax Internet Facility, located north of 119th Street and east of Nall Avenue on top of the Macy's building, within Town Center Plaza (PC Case # 65-09) [Roll Call Vote]

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

Councilmember Rasmussen confirmed with Police Chief John Meier that they were planning to use fiber optic connections at the City's future Justice Center and this antenna shouldn't interfere.

Robert Herlihy, SSC, Inc., representing Clear Wireless, indicated there is currently one Sprint antenna that is visible on the northeast corner of the building. The applicant plans to install this new antenna 76' feet back so that it won't be visible; however, they plan to still screen it to match the current air conditioning color and building façade. Mr. Herlihy clarified the material would be made of penetrating foam that will allow radio frequency waves to travel through unabated.

The motion carried following a unanimous roll call vote of 8-0. Nay: None.

- H. **Ordinance No. 2424** approving a Preliminary Site Plan and Final Site Plan for Off Street Parking for Molle Toyota, located south of 104th Street and west of State Line Road (PC Case # 45-09) [Roll Call Vote]

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

Councilmember Rasmussen indicated his support; however, he noted that on December 21, they will discuss establishing a Community Improvement District [CIP] and the client may be interested in this process.

Councilmember Cain noted the applicant had indicated it was expensive to bring this before the Council every year and asked what these expenses involved.

Larry Winn, 6201 College Boulevard, stated the fees had become expensive and they had to go before the Board of Zoning Appeals [BZA], Planning Commission and City Council to renew the same permits that had been renewed on multiple occasions. He had previously suggested that the Council give them a six month notice and they could remove the vehicles off the lot rather than go through this process every year.

Mayor Dunn noted that when this was originally approved, it was intended to be for one year.

The motion carried following a roll call vote of 7-1. Nay: Councilmember Gill.

- I. **Ordinance No. 2425** approving a Special Use Permit [SUP] for Off Site Parking for Molle Toyota, located south of 104th Street and west of State Line Road (PC Case # 45-09) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a roll call vote of 7-1. Nay: Councilmember Gill.

12. OLD BUSINESS – None.

13. OTHER BUSINESS

Mayor Dunn reminded everyone that the holiday lighting ceremony would be held at 6:00 P.M., on Monday, November 23, at City Hall.

14. NEW BUSINESS – None.

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

ADJOURN

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk