

**Minutes**

DVD No. 239

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 2, 2010. Mayor Peggy Dunn presided.

**Councilmembers present:** Julie Cain, Andrew Osman, Gary Bussing, Lou Rasmussen, James Azeltine, Debra Filla, and Mike Gill

**Mayor/Councilmembers absent:** Councilmember Jim Rawlings

<b>Staff present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief John Meier, Police Department	Joe Johnson, PW Director
Chief Ben Florance, Fire Department	Lovina Freeman, HR Director
Richard Coleman, Comm. Dev. Director	Chris Claxton, P&R Director
Mark Klein, Assistant Planning Director	Deb Harper, City Clerk
Karl Weinfurter, Info. Systems Specialist	Pam Gregory, Assistant City Clerk
Kathy Rogers, Finance Director	

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn noted the following modifications to the agenda:

- Item No. 12A – Revised as an Ordinance
- Addition of Item No. 9 – Report from Councilmember Osman

A motion to approve the amended agenda was made by Councilmember Bussing; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Rawlings absent).

**3. CITIZEN COMMENTS**

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.

**4. PROCLAMATIONS – None.**

**5. PRESENTATIONS/RECOGNITIONS – None.**

**6. SPECIAL BUSINESS**

**A. PUBLIC HEARING**

Consider the 2011 Fiscal Budget for the City of Leawood

Seeing no one present to speak, a motion to close the public hearing was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rawlings absent).

**B. Ordinance attesting to an increase in taxes [.11 %] levied for the budget year 2011 for the City of Leawood, Kansas, Johnson County, Kansas [Roll Call Vote]**

City Administrator Scott Lambers stated in past years, the City has acknowledged an increase in property tax revenues. Although they have kept the mill levy relatively flat, the assessed valuation growth allowed them to collect additional funds. Less property tax will be collected in 2011. The result of the assessed valuations from the county assessor's office has resulted in a .11% increase in the mill levy in order to meet the dollar amount set by the Council as part of the budget.

Councilmember Rasmussen was concerned with the expenditure increase shown in the Budget in Brief information for the Parks and Recreation Department, versus the figures in the approved budget. He also wanted clarification of the amounts that adjusted the mill levy rate by .11%.

Mr. Lambers recommended they continue this to the next Governing Body meeting for clarification.

A motion to continue this item to the August 16, 2010, Governing Body meeting was made by Councilmember Rasmussen; seconded by Councilmember Gill.

Councilmember Osman asked why they hadn't received any additional information regarding the wage increase discussion that took place at the June 28th budget meeting. Mr. Lambers clarified he had given them additional information at the Council meeting following the budget session. After researching the possibility of providing a lump sum payment as opposed to an increase added to an employee's base salary, it would increase the 2011 Budget by almost \$800,000. By 2012, this would level out to be revenue neutral. At that meeting, no additional interest was expressed regarding the lump sum payment and he assumed they should proceed with the budget numbers. These numbers represent the maximum to be spent. He had also advised if the Council wanted to give this additional consideration, they needed to do so as soon as possible to notify the employees of the change.

The motion to continue this to the August 16, 2010, Governing Body meeting carried following a unanimous vote of 7-0. (Councilmember Rawlings absent).

**C. Approve selection of MC Realty Group, LLC, as Owner's Representative for Leawood Justice Center to be located at 117<sup>th</sup> & Tomahawk Creek Parkway**

A motion to approve the selection of MC Realty Group as the Owner's Representative for the Leawood Justice Center was made by Councilmember Gill; seconded by Councilmember Bussing.

City Attorney Patty Bennett clarified for Councilmember Rasmussen that the Owner's Representative will work with the City on the Request for Proposals [RFP's] and contracts for the architect/engineer, as well as the ultimate contractor for the facility.

Dave Lovetere, MC Realty Group, LLC, stated they will be reviewing the contracts to assure they comply with City regulations and will have their in-house attorneys review them as well.

Councilmember Osman thought it would have been beneficial to have a Councilmember included on the selection committee for the Owner's Representative. In addition, he thought they should have included a biography of some of the low bidding companies in their packets for comparison.

Councilmember Gill thought Mr. Osman had made some valid points and commented that he had inquired about information earlier as well.

Mayor Dunn had knowledge of the majority of these companies and noted the selection process was not an easy decision. They were all excellent companies; however, she felt confident in the selection of MC Realty Group.

Councilmember Rasmussen noted Councilmember Rawlings had informed him he was in favor of selecting MC Realty Group as the Owner' Representative. Mayor Dunn noted he had sent a memo stating his support.

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

## **7. CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 2010-27, 2010-28
- B. Accept minutes of the July 19, 2010 Governing Body meeting
- C. Accept minutes of the July 6, 2010 Governing Body meeting
- D. Accept minutes of the July 6, 2010 Governing Body Work Session
- E. Accept minutes of the June 30, 2010 Storm Water Management Committee meeting
- F. Accept minutes of the May 20, 2010 Ironhorse Golf Advisory Board
- G. Accept minutes of the May 25, 2010 Arts Council meeting
- H. Accept minutes of the April 7, 2010 Bicycle Friendly Committee meeting
- I. Accept minutes of the June 3, 2010 Sustainability Advisory Board
- J. Accept minutes of the May 6, 2010 Sustainability Advisory Board

- K. Approve renewal of Cereal Malt Beverage [CMB] license to Ra Sushi Bar Restaurant, located at 11638 Ash Street
- L. Approve renewal of Cereal Malt Beverage [CMB] license to Paddy O'Quigley's, located at 11851 Roe Avenue
- M. Approval of Massage Establishment License for State Line Chiropractic, located at 10346 State Line Road
- N. Approve Change Order No. 1 in the amount of \$17,900.00 to O'Donnell & Sons Construction pertaining to the 2010 Residential Mill & Overlay Program [Project # 70008]
- O. **Resolution No. 3433** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and Secretary of Transportation of the State of Kansas [KDOT] for the State Line Road Traffic Signal Improvement Project [from 128<sup>th</sup> Street to 135<sup>th</sup> Street] [Project # 46-N-0526-01] CMQ-N052(601), Agreement No. # 143-10
- P. **Resolution No. 3434** approving and authorizing the Mayor to execute a Construction Agreement between the City and Miles Excavating, Inc., in the amount of \$458,936.65, for the 2010 Parking Lot Improvement Project [Parks Maintenance # 76012; Public Works Facility # 76015; and Ironhorse Golf Course Maintenance # 49116]
- Q. **Resolution No. 3435** approving and authorizing the Mayor to renew an Inter-local Agreement between the City and the Board of Johnson County Commissioners [BOCC] pertaining to the Type II Basic Life Support Program [Med-Act]
- R. Declaration of Surplus Parks & Recreation Equipment

A motion to approve the Consent Agenda was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0. (Councilmember Rawlings absent).

## 8. MAYOR'S REPORT

- A. Mayor Dunn had the honor of attending a portion of the Boy Scout's National Jamboree, held in Fort A.P. Hill, Virginia, as they celebrated 100 years of Boy Scouts of America. On one particular day, Secretary of Defense Robert Gates gave the opening keynote remarks to 45,000 scouts and leaders in attendance.
- B. Mayor Dunn congratulated Councilmember Julie Cain's daughter, Stephanie Cain, who starred in the title role of Theatre in the Park's "Cinderella." She has been highly praised as a singer, dancer and actor. Mayor Dunn wished her the best of luck as she heads to the College Conservatory of Music at the University of Cincinnati.
- C. Mayor Dunn reminded everyone to vote on August 3, 2010, in the Primary Elections. Voting is one of their greatest privileges and voter turnout is predicted to be low at approximately 19% across the State of Kansas. Johnson County turnout is predicted to be 24%. Mayor Dunn wished all of the candidates the best of luck.

**9. COUNCILMEMBERS' REPORT– Councilmember Osman  
Timeline and procedure for sign approval**

Councilmember Osman reported that a new tenant was planning to lease a space in the shopping center at Somerset and Lee Boulevard. They will have minor modifications and should open next week; however, the owner had voiced concerns regarding the sign ordinance.

Mr. Osman distributed a schedule showing the Planning Commission application deadlines, meetings, and publication deadlines. This schedule did not state when it would go before the City Council. Mr. Osman developed a timeline representing a 123-Day process for a tenant to have sign installation under the current Leawood Development Ordinance [LDO] and proposed a timeline modification of 45 days to streamline the process. He asked if they could have the City staff approve signage for certain minor changes.

Mr. Lambers had previously offered this as an option to the City Council because of the tremendous amount of planning activities at that time. He had suggested under certain instances, there could be an administrative approval process for signs. The Council and the Planning Commission did not agree this should be approved at the staff level. The circumstance Councilmember Osman has laid out is rare. Typically, with a new tenant, they will change the façade to meet their corporate requirements. In this instance, the tenant is not making any changes to the façade whatsoever; therefore, no planning application would need to go forward. Mr. Lambers felt if the Council wanted to consider this, it should be brought before the Planning Commission for their input before proceeding. They would need clear restrictions that no planning application would be needed and there were no changes to the façade. The only change would be the signs. There are approved sign design guidelines for staff to compare to ensure compliance.

Mayor Dunn clarified that under the new sign ordinance, temporary banners no longer have a 30-day time limitation. Mr. Lambers confirmed the LDO had been amended to reflect this.

Councilmember Osman noted an instance in Camelot Court where a sign could be erected that matches the façade of the building. The owner has the signage guidelines on file. He thought this was another example of something that could be approved at the staff level. This would streamline the process and they wouldn't need a temporary sign. He wanted the Governing Body to explore revising the language to fit within the guidelines and not compromise the integrity of a small business by utilizing critical time on signage.

Councilmember Gill was in favor of accelerating this process for existing buildings that are not being changed; however, since signage is permanent, he didn't want the decision to be solely administrative.

Mr. Lambers stated the reason the Council meetings are not identified on the Planning Commission schedule is because the Council had clarified they want the Planning Commission minutes to be included. Typically, it is the second meeting of the month before the minutes are available; however, if an item appears on the Consent Agenda, it is noted that no minutes are available.

A motion was made by Councilmember Rasmussen to instruct the City Administrator to create a procedure to streamline the sign installation timeline for instances that a sign would comply with the development requirements, LDO requirements, and when there is no change in the façade so City staff can exercise their judgment.

Mayor Dunn asked if Mr. Rasmussen's motion included removing the City Council and Planning Commission from the process or if he only wanted to streamline the timeframe.

Councilmember Rasmussen clarified his motion was only for unique situations where an applicant is conforming to all City regulations and there would be no reason for the City Council or Planning Commission to approve it.

The motion was seconded by Councilmember Azeltine.

Mayor Dunn thought this should go to the Planning Commission for their determination if they would want to be taken out of this process. Reviewing signage is one of their primary functions. She agreed they could review the timeline to possibly expedite it; however, she was not in favor of excluding the City Council or Planning Commission from the process.

Councilmember Azeltine thought these would be rare instances and staff would only use their judgment if everything regarding the site was in compliance and signage was the only thing changing. He felt an applicant should not be required to go through the entire process if they are only changing signage. The staff should have straightforward guidelines they are required to follow for approval.

Mr. Lambers noted if an applicant has a sign deviation and the Council approves it; the guidelines are amended to allow it. If they make an exception to something as part of the design guidelines, they should clarify that it is only allowed in that particular instance. There have been modifications in several developments to allow deviations that are not consistent in terms of either design or colors.

Councilmember Azeltine asked if Mr. Lambers felt there was a way to streamline this process. Mr. Lambers stated given the limited circumstance Councilmember Osman had proposed, this may be something they would want to consider; however, he preferred that if this motion passed, he would draft a proposed LDO amendment, take it to the Planning Commission for comment and then bring it back to the Council to decide if they want to proceed.

Councilmember Bussing stated he has served on the City Council for many years and has never gotten a complaint on the timeline for a sign. He was opposed to any amendment to the sign ordinance.

Councilmember Filla suggested that they have the Planning Commission be the only review point and not require that the City Council take additional time for review.

Councilmember Rasmussen stated his motion was for the City Council to request that the City Administrator return with a proposed change in the timeline.

Mayor Dunn wanted clarification of Mr. Rasmussen's motion and assumed his motion included elimination of review by the City Council and Planning Commission.

Councilmember Rasmussen withdrew his motion on the table; Councilmember Azeltine withdrew his second.

A motion to have the City Administrator review the sign ordinance and return with potential ways to reduce the timeline for sign approval was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion carried following a vote of 6-1. Nay: Councilmember Bussing. (Councilmember Rawlings absent).

**10. STAFF REPORT** – None.

**COMMITTEE RECOMMENDATIONS**

*[from the June 30, 2010 Stormwater Management Committee meeting*

**11.** Recommendation to not revise the LDO at this time; reconsider next year

**Original Request:** Review and analyze revisions to the Leawood Development Ordinance [LDO] regarding pervious concrete *[from the June 21, 2010 Governing Body meeting]*

A motion to approve the Stormwater Management Committee's recommendation to not revise the LDO at this time was made by Councilmember Bussing; seconded by Councilmember Gill. The motion carried following a unanimous vote of 7-0. (Councilmember Rawlings absent).

**12. PLANNING COMMISSION**

*[From the July 13, 2010 Planning Commission Meeting]*

**\*A. Ordinance No. 2455 approving a Preliminary Site Plan for Town Center Business Park – Lots 8 and 9, located east of Roe Avenue on Granada Road (PC Case 52-10) [Roll Call Vote]**

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

Chuck Peters, Peters & Associates, stated this office building will consist of 32,500 square feet and will have similar architecture to the surrounding buildings. They have a signed lease with Reece & Nichols, who are proposed to obtain occupancy in July, 2011. Mr. Peters stated they have no deviations; however, they took exception to the interpretation in the LDO of the bicycle and pedestrian access. They had previously met with City staff to discuss their suggested access. They proposed to provide a pedestrian walk to the cul-de-sac, which is private property and then connect to the existing walk installed by Sunrise Assisted Living. Staff preferred to continue the sidewalk through the parking lot, which he felt was unsafe.

Mark Klein, Assistant Planning Director, clarified there is a hike/bike trail extending from City Hall under Roe Avenue and stops just south of the Sunrise property line. The LDO requires there be a connection to the entrances of each of the buildings to public access ways. Staff wanted to ensure that the public would have access onto the Sunrise property. Part of the reason for the stipulation was to allow time to determine if this access would be allowed or if they would need a dedicated easement.

Councilmember Rasmussen confirmed with Mr. Klein there is an access easement along the south property line. Mr. Klein confirmed that the applicant would be responsible for paving the trail connecting to their property line.

Mr. Klein noted concern expressed by the Fire Marshal that people were parking along the cul-de-sac. He confirmed that Sunrise and the proposed project would share access from Granada Street.

Councilmember Rasmussen noted the City had been working on this trail for many years and he felt it was crucial for the staff to work with the applicant and developer to ensure they understood the importance of connecting and allowing access to the trail.

Mayor Dunn noted the Planning Commission was permitting the trash enclosure to be detached from the building, provided the design guidelines for the Town Center Business Park are modified to allow it. Detached trash enclosures have been debated for many years and have been required to be attached primarily because the doors remain closed and they are maintained. There have been issues with the doors remaining open on detached enclosures causing an unsightly appearance.

Mr. Peters was concerned with people using their trash containers for personal disposal and indicated he would place the enclosure away from the neighbors and would ensure that it's not visible from the street. They have several detached trash enclosures at other locations and haven't had any issues with safety or maintenance. He confirmed they have maintenance crews that routinely clean the enclosures and ensure that the doors remain closed.

Community Development Director Richard Coleman stated it was often difficult to attach the trash enclosures at office buildings and it would be difficult at this particular site as well.

Councilmember Rasmussen confirmed with Mr. Coleman that the trail easement was on the north side of the drainage ditch and that the property line bisects the ditch. Mr. Rasmussen asked if the applicant would be required to keep the drainage ditch clean. Mr. Coleman confirmed for final plan approval, the applicant will be required to submit a drainage study showing they are retaining all of the run-off and erosion control for the site.

Mr. Peters stated they were currently in compliance with the Town Center Business Park design guidelines.

Councilmember Bussing thought they would need to change the language on Stipulation 3(b) to reflect this.

**[Mr. Klein's comments regarding the design guidelines for the trash enclosures and preliminary approval were inaudible.]** He clarified this stipulation was from the original preliminary Town Center Business Park approval in 1994.

Mayor Dunn confirmed with Mr. Klein that approval of this ordinance would change the previously approved stipulation in the preliminary from 1994. She confirmed that when this returns for final plan approval, they would have the appropriate wording for Stipulation 3(b).

Councilmember Rasmussen wanted to ensure that the trail is wheelchair accessible. Mr. Klein confirmed they would ensure ADA compliance.

Councilmember Gill wanted clarification of who would be responsible for the cost of the future 10' ft. pedestrian bike trail and bridge. Mr. Peters stated the easement is located on the east side of their property and condominium property, and also on the condemnation property. He indicated they would be responsible for the pedestrian access point to the bridge; however, the City would be responsible for the cost of the bridge. Mr. Coleman estimated the cost of the bridge to be \$40,000.

The motion to pass the ordinance carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Rawlings absent).

- B. **Resolution No. 3436** approving a Final Site Plan for a Tenant Finish for Camelot Court – Orange Leaf Self Serve Frozen Yogurt, located at 4260 W. 119<sup>th</sup> Street (PC Case 58-10)

Bob Del Popolo, Del Popolo Architecture, stated they would like to change to a more informal type of seating on the patio, such as a bistro type of wrought iron.

Mayor Dunn confirmed with Mr. Del Popolo that this proposed seating had been approved by the Planning Commission.

Mayor Dunn asked where they were planning to replace the green space that was being removed with the addition of the patio. Mr. Del Popolo stated it would be located on the corner turn-around and also placed adjacent to the patio.

Mr. Coleman indicated they will be removing a portion of the asphalt and replace it with grass.

Mr. Del Popolo stated the patio will have access from the outside walkway with handicap accessibility.

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

**[From the June 22, 2010 Planning Commission Meeting]**

- C. Ordinance approving a Preliminary Site Plan and Preliminary Plat for the City of Leawood Justice Center, located on the southwest corner of 117<sup>th</sup> Street and Tomahawk Creek [Planning Commission Case # 60-10) [Roll Call Vote]

Mr. Coleman stated there was some confusion with several items when this plan was presented. He recommended that this be remanded to the Planning Commission for further review.

A motion to remand this to the Planning Commission was made by Councilmember Gill; seconded by Councilmember Bussing.

Mayor Dunn suggested that the language under the first paragraph of the memo be changed to read “were not to reference any future specific uses for programming of the site.”

Councilmember Osman asked if they decided to move the old City Hall building to this location, what would happen to the site plan once it’s approved. Mayor Dunn stated this approval would only include the foot print of the Justice Center. If they decide this would be a good location for the City Hall building, it would need to go through the entire planning process to determine the correct location on the site.

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

**13. OLD BUSINESS** – None.

**14. OTHER BUSINESS** – None.

**15. NEW BUSINESS** – None.

**ADJOURN**

There being no further business, the meeting was adjourned at 9:20 P.M.

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Debra Harper, CMC, City Clerk

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Pam Gregory  
Recording Deputy City Clerk