

Minutes

DVD No. 248

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, January 3, 2011. Mayor Peggy Dunn presided.

Councilmembers present: Julie Cain, Andrew Osman, James Azeltine, Debra Filla, Jim Rawlings, Gary Bussing, Lou Rasmussen, and Carrie Rezac

Mayor/Councilmembers absent: None

Staff present: City Administrator Scott Lambers	Patty Bennett, City Attorney
Chief John Meier, Police Department	David Ley, City Engineer
Chief Ben Florance, Fire Department	Howard Mann, Fleet/Facilities Manager
Richard Coleman, Comm. Dev. Director	Dawn Long, Interim Finance Director
Mark Klein, Planning Official	Lovina Freeman, HR Director
Scott Smith, Web Master	Deb Harper, City Clerk
Chris Claxton, P&R Director	Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modifications to the agenda:

- Addition of Item No. 9 – Councilmembers Report from Councilmember Debra Filla

A motion to approve the amended agenda was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. 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 Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year 2009

Mayor Dunn presented the Certificate of Achievement in Financial Reporting to Interim Finance Director Dawn Long, Senior Accountant Theresa Lodde and Accountant II Karry Rood.

6. SPECIAL BUSINESS – None.

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. 2010-49, 2010-50, and 2010-51
- B. Accept minutes of the December 20, 2010 Governing Body meeting
- C. Accept minutes of the November 9, 2010 Parks & Recreation Advisory Board meeting
- D. Appointment of Interim Finance Director Dawn Long as City Treasurer, in accordance with Code §1-406
- E. Approve payment in the amount of \$17,725.50 to League of Kansas Municipalities for 2011 dues and membership
- F. Accept bid in the amount of \$63,487.29 from Fry & Associates, Inc., pertaining to the purchase and installation of playground equipment at Gezer Park, located at 13300 Mission Road
- G. Approve 2nd and Final Pay Request in the amount of \$2,479.50 to MTS Contracting Services, pertaining to the City Hall Exterior Concrete Replacement Project
- H. Approve payment in the amount of \$12,310.00 to Concentra Health Services, Inc., for the 2011 Wellness physicals for firefighters
- I. Approve Final Pay Request in the amount of \$50,078.00 to Regents Flooring for carpet replacement of Council Chambers, stairwell, 1st and 2nd lobby areas, and Planning Conference Room
- J. **Resolution No. 3526** calling for a Public Hearing on Monday, February 7, 2011, to consider the 2012-2016 Capital Improvement Program [C.I.P.] for the City of Leawood, Kansas
- K. **Resolution No. 3527** approving and authorizing the execution and delivery of a State and Municipal Lease/Purchase Agreement between Commerce Bank, national association, and the City of Leawood, Kansas with respect to certain golf carts for the City's public golf course facility, Ironhorse Golf Course, located at 15400 Mission Road
- L. **Resolution No. 3528** accepting a Deed of Dedication from Oltjen Investments, LLC, regarding Tract F of Glen Abbey of Leawood, located at 143rd & Juniper for street right-of-way
- M. **Resolution No. 3529** accepting new Public Infrastructure for storm sewers located at 2008 W. 104 Street [Park Maint. Building]; 14303 Overbrook Road [PW Maint. Building]; and 15300 Mission Road [Ironhorse Golf Course Maint. Building], in accordance with GASB-34 Guidelines of reporting Inventory of Assets

Councilmembers Rezac and Osman requested to pull Item No. 7F.

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

- 7F. Accept bid in the amount of \$63,487.29 from Fry & Associates, Inc., pertaining to the purchase and installation of playground equipment at Gezer Park, located at 13300 Mission Road

Councilmember Rezac confirmed with Parks and Recreation Director Chris Claxton that they had worked with all of the vendors on revisions to their bids before selecting Fry & Associates for the main playground structure. Ms. Claxton noted although it appeared like Little Tikes was the low bidder; overall, they did not meet the best product for the price. Their footprint was much larger and would have affected several things, requiring a change order.

Councilmember Osman confirmed with Ms. Claxton this was advertised on November 16th and bids opened on December 7th. The notice was sent to representatives of major manufacturers. Mr. Osman asked why U.S. Toy Company, which is located in Leawood and is a member of the Chamber of Commerce, did not have knowledge of the bid process. Since there are funding concerns, they should take the opportunity to work with all of the manufacturers, including reps that have not been notified. Ms. Claxton confirmed they plan to install the structure by summer. The order needs to be placed by the end of January; otherwise, they will lose \$4,000 on the current bid. She was not aware if U.S. Toy had play structure equipment.

Councilmember Azeltine asked why this wasn't assigned to the Parks and Recreation Advisory Board. Ms. Claxton confirmed staff had spoken with the board and the Leawood Foundation several months ago regarding an appropriate design for the park. Both groups liked all of the structures; however, they focused on this design. The manufacturers are not required to bid the exact structure, but must include a certain number of slides, decks, play features, etc. Mr. Azeltine thought there could be less confusion with the bidding process if the committee had been included in the recommendations. In the future, he preferred that the committee be included in the first phase of the bidding process to make a specific vendor recommendation. Ms. Claxton confirmed that of the \$63,487 cost, \$49,815 had been collected from donations.

Mayor Dunn clarified these funds were restricted for Gezer Park; however, they were not specifically designated for the play equipment. Ms. Claxton confirmed the Leawood Foundation had made the play area their priority for fundraising. There are some restricted funds for the Havdalah Garden and fire pit, but are not included in the \$49,815.

Doug Pickert, Indigo Design, gave a presentation of the play structure designs submitted by the manufacturers.

Rather than submit their "model" plan through the typical public bid process, Mr. Pickert felt it was more advantageous to contact a number of local suppliers for bids to receive equivalent plans. They worked with several suppliers on improving the plans to achieve their desired outcome.

The “model” plan has a large shade structure, slides, panels, tunnels, etc., including a 9 foot high deck and 12 other play features. Most of the manufacturers fell short when including additional play features. None of the manufacturers could match the 9 foot deck feature, which meant the slides would be lower. One of the manufacturers, Game Time, chose not to submit a plan. The plan submitted from Little Tikes included a larger footprint; therefore, the site plan would need to be modified, which would increase the cost. Of all the plans, the submittal from Fry & Associates was the best product for the price. He was also unaware if U.S. Toy represented a manufacturing company.

City Attorney Patty Bennett confirmed if staff wanted to include a proposal from U.S. Toy, they would need to discard all of the bids and begin again.

Councilmember Osman felt since U.S. Toy is a representative of Leawood and has Little Tikes play equipment, they should have been included in the process. Mr. Pickert thought only one representative was authorized per manufacturer in this area. Mr. Osman clarified U.S. Toy has a sister company advertised on their website as their authorized representative.

Councilmember Bussing asked if staff had a procedure for companies interested in being considered for bids. City Administrator Scott Lambers replied that if a potential vendor contacts him, he invites them to send their information to the appropriate department to be kept on file. He was also unaware if U.S. Toy represented a manufacturing company. Mr. Bussing felt they should proceed since the City had advertised and held the open bid process. Mr. Lambers indicated if U.S. Toy would have contacted him, he would have advised Ms. Claxton of their product line and services.

A motion to approve Consent Agenda Item No. 7F was made by Councilmember Rezac; seconded by Councilmember Cain. The motion carried following a vote of 7-1. Nay: Councilmember Osman. Mr. Osman felt all options were not explored and thought the Leawood Foundation wanted to work on getting most of the equipment donated.

8. MAYOR’S REPORT

- A. Happy New Year to all!
- B. Acceptance of \$1,900.00 donation from the Cloisters Homes Association to be equally benefited by the Fire and Police Departments

A letter was received from James Jenkins, President of the Cloister’s Homes Association, regarding a \$1,900.00 donation on behalf of the Cloister’s Homes Association for the Leawood Police and Fire Departments. Mr. Jenkins would like all credit for this donation to go to former President, Hal Hollister, who he says is responsible each and every year promoting this gift. This is the largest amount they have collected thus far on an annual basis. This is a great example of philanthropy from the homes association and the City of Leawood is very grateful to receive such a gift.

A motion to accept the donation from the Cloister’s Homes Association was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

- C. The Leawood Lions Club had a very successful bell ringing season, benefiting the Salvation Army. This year, they collected \$33,289.63. There were 32 Lions who rang for a total of 192 hours along with help from other groups, including some Leawood employees. The top Lion bell ringer was Jim Bays, who collected \$2,926.29, ringing a total of 14 hours. Former Finance Director for the City of Leawood and former Big Lion Harry Malnicof, unfolded and counted all of the dollar bills; however, he did not count the 5 gallon can of pennies, which was counted by Lion Leroy Kashka. The Leawood Lions Club is remarkable every year and is the top fundraising organization that rings for the Salvation Army. The Salvation Army raises close to \$4 Million with their bell ringing campaign.
- D. Reminder of Martin Luther King observance in the City of Leawood on Monday, January 17th. The next City Council meeting will be on Tuesday, January 18th, preceded by a work session at 6:00 P.M.

9. COUNCILMEMBERS' REPORT – Councilmember Filla

Councilmember Filla asked the Governing Body to mark their calendars for the 3rd Annual Homes Association meeting on Thursday, February 3rd. Social hour begins at 5:30 P.M., dinner at 6:00 P.M., followed by the meeting at 7:00 P.M. They will be issuing the “Green Gauntlet Challenge” to the homes associations for Leawood to be the first City in Johnson County to be 100% recycling. Reservations will be needed.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the December 14, 2011 Planning Commission meeting]

- A. **Ordinance No. 2479** amending Section 16-4-6.13, Permanent Sign Regulations, of the Leawood Development Ordinance [LDO], pertaining to permanent sign regulations within the BP (Planned Business Park) District (PC Case #104-110) [Roll Call Vote]

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

- B. **Resolution No. 3530** approving a Revised Final Plan for revised sign criteria for Bi-State/Centennial Park, located south of 139th Terrace and east of Kenneth Road (PC Case #117-10)

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

- C. **Resolution No. 3531** approving a Revised Final Plan for Bi-State/Centennial Park – Building 23, located at 1920 W. 143rd Street (PC Case 99-10)

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

Councilmember Rezac confirmed with Planning Official Mark Klein that under the Staff Report, the 1'-10" height was a typo and should read 16". The maximum is 18".

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

12. OLD BUSINESS – None.

13. OTHER BUSINESS

[from the December 6, 2010 Governing Body meeting]

Discussion of installation of an HVAC unit at Ironhorse Golf Course Clubhouse, located at 15400 Mission Road

Councilmember Rasmussen reiterated comments from the December 6th Governing Body meeting that he wanted a performance specification clause included in the contract so when the clubhouse is at capacity and there are extreme heat conditions outside, the company would guarantee their equipment could handle those extreme conditions. He didn't want to spend additional money without a guarantee.

Mayor Dunn confirmed Mr. Rasmussen had requested this be included in the contract during the last meeting and Public Works Director Joe Johnson had indicated this could occur.

Howard Mann, Fleet and Facilities Manager, confirmed he had been involved with this project since 2007. Due to the building remodel, they considered some design considerations and increased the tonnage as much as funding would allow. At that time, they hired a consultant to review the floor plan and perform calculations based upon tonnage and occupancy. Based on these calculations, the formulas work; however, some of the issues pertain to the doors consistently opening and closing. Two units are capable of bringing in outside air; however, they are not enough to compensate. When turning on the hood to the grill, it exhausts a tremendous amount of cubic feet of air per minute out of the building. The powered component of that unit was not functioning and was repaired. Unfortunately, that repair came late into 2008 and they were unable to determine whether it would have a major impact. This year, there were several days of extreme heat. There were equipment issues with some of the pumps, which caused the units to break down. Late in the summer they experienced days with extreme temperatures and were able to maintain a comfortable temperature as long as there were no issues with the units.

Councilmember Rasmussen reiterated he would not vote in favor of the contract if it does not include a performance guarantee. Mr. Mann stated he had never been given an ironclad performance guarantee from any contractor; however, he would discuss it with them. Mr. Rasmussen felt engineers should be able to determine heating and cooling performance requirements.

Mayor Dunn clarified the question this evening was whether to go with staff's recommendation to accept the quote from The Fagan Company or go out for public bid. If they go out for bid, the recommendation is to hire Fagan to draft specifications for the request for proposal [RFP] process.

Councilmember Osman asked the tonnage requirement per square foot for the building. Mr. Mann did not have this information with him; however, he could provide it at a later time. Mr. Osman thought they needed to consider all of the components, such as doors opening, use of the grill, etc., to determine if the facility has the proper tonnage. He reiterated comments that this should go out for bids and hoped The Fagan Company would be the lowest bidder.

Mr. Lambers clarified they do not allow a vendor to prepare the specs and then submit a bid because it could create a situation where they prepare the specs to their advantage or a disadvantage to other vendors.

Mayor Dunn asked if they wanted The Fagan Company to submit a bid if they could hire another vendor to prepare the specs. Mr. Lambers replied it would require them to start over and their intent was to expedite this.

Councilmember Azeltine didn't want to discard all of the work done by staff to start the bidding process. He suggested they refer this to the Public Works Committee for clarification of design specifications that are necessary for successful completion of the project and await their recommendation.

Mayor Dunn confirmed with Mr. Mann they wanted to install the equipment by spring and it should take less than 30 days for installation.

Councilmember Azeltine felt the role of the committee was to have this discussion and determine their recommendation before coming to the Governing Body, which is the policy-making body for the City. They shouldn't be spending this much time on minutia for a contract of this nature.

Mayor Dunn reiterated that the question this evening was whether to accept this bid, or go out for bids. Mr. Azeltine thought staff had requested direction on this.

Mr. Lambers clarified the Council had directed them to go out for bid because of Councilman Osman's belief that the air conditioning units could be purchased and installed at a much lower price. The Council did not have the benefit of the breakdown of the bid, which should have been provided to show there was much more to the \$33,000 cost than just an air condition unit.

Mr. Mann thought a contractor could have an issue providing a performance guarantee because they would have no control over how often the doors would be open.

Mr. Lambers thought they could ask The Fagan Company to determine what parameters they would allow in the contract regarding outside heat conditions, humidity and inside temperature. If they are unwilling to provide this, he recommended they proceed and prepare the specs with a performance measure and move forward.

Councilmember Azeltine concurred with Councilmember Rasmussen's comments wanting assurance they wouldn't be making the same past mistakes.

A motion for staff to proceed with the contract from The Fagan Company to include some measures for performance and return with clarification to questions at the January 18th Governing Body meeting was made by Councilmember Filla; seconded by Councilmember Rasmussen.

Councilmember Bussing felt Mr. Rasmussen's request was unreasonable and would force a contractor to meet unrealistic assumptions and require them to install a unit with too much capacity for the building. This would only drive up the costs. They need to rely on the experts who understand they want a comfortable environment on hot, humid days.

Councilmember Azeltine concurred with Councilmember Bussing with a caveat that they be given specific measures and metrics of what they can expect given a particular set of circumstances.

Mayor Dunn stated if the doors are open for a length of time and the unit cannot maintain a comfortable temperature, it would not be the fault of the contractor.

Councilmember Rezac concurred with Councilmember Bussing's comments that any system cannot be expected to work 100% of the time. They can express what they expect the system to accomplish; however, if it doesn't meet that expectation, what leverage does the City have.

Mayor Dunn confirmed with Mr. Mann they have maintenance agreements with some of the larger HVAC systems; however, not with this particular building. The current proposal will provide a unit that will put the building into a positive pressure mode and bring in 100% outside air. No air will be recycled inside. The air will be cooled to maintain a specific temperature drop across the evaporator that will push enough cubic feet of air into the building to allow for times when the doors are opening and closing regularly. There are currently 5 systems with a total of approximately 25 tons.

Councilmember Osman confirmed with Mr. Mann that \$33,000 was not unreasonable for a 6-ton commercial unit, considering some of the other aspects and that it would be tied into their electronic control system.

Councilmember Bussing asked if double door entrances could help with positive air flow. Mr. Mann didn't feel this would gain anything since the probability remains that both doors could be propped open. There are also physical design characteristics that would be an issue.

Mr. Lambers thought there should be a way to measure the systems cooling production, regardless of the impact on the building itself.

Ms. Bennett confirmed the draft contract was ready; however, they needed to include language regarding the performance guarantee.

Mr. Lambers confirmed staff understood the intent of the motion and they would have something drafted that the contractor is willing to agree to and return on January 18th to either proceed or go another direction.

The motion for staff to proceed with the contract from The Fagan Company to include some measures of performance carried following a vote of 7-1. Nay: Councilmember Osman. Mr. Osman was not in favor of moving forward with only one proposal and wanted other bid options.

14. NEW BUSINESS – None.

ADJOURN

There being no further business, the meeting was adjourned at 9:17 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk