

Minutes

DVD No. 253

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, March 21, 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	Joe Johnson, Public Works Director
Chief Ben Florance, Fire Department	Chris Claxton, P&R Director
Richard Coleman, Comm. Dev. Director	Lovina Freeman, HR Director
Mark Klein, Planning Official	Deb Harper, City Clerk
Mark Andrasik, Info Systems Director	Pam Gregory, Assistant City Clerk
Dawn Long, Interim Finance Director	

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. 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 – None.

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. 2011-9, 2011-10
- B. Accept minutes of the March 7, 2011 Governing Body meeting
- C. Accept minutes of the March 7, 2011 Governing Body Work Session
- D. Accept minutes of the February 8, 2011 Parks & Recreation Advisory Board meeting
- E. Accept minutes of the January 11, 2011 Historic Commission meeting
- F. Accept minutes of the December 1, 2010 Bicycle Friendly Committee meeting
- G. Approve Mayoral Appointment of Scott Pashia to the Sustainability Advisory Board for a two-year term ending in 2013
- H. Approve issuance of Temporary Alcohol Permit to conduct The Taste of Leawood Fundraising Event on Saturday, June 11, 2011 in accordance with Code § 3-216
- I. Approve waiving of City fees for the Taste of Leawood Fundraising Event to be conducted at The City Park, 10601 Lee Boulevard, on Saturday, June 11, 2011
- J. Approval of Massage Establishment License for Michael Lathrop, located at 8900 State Line Road
- K. **Resolution No. 3561** approving the 2012-2016 Capital Improvement Program [C.I.P.] for the City of Leawood, Kansas
- L. **Resolution No. 3562** approving and authorizing the County Assistance Road Program [C.A.R.S.] proposed 2012-2016 Five Year Program
- M. **Resolution No. 3563** approving and authorizing the Mayor to execute a 10-year Master Lease-Purchase Agreement between the City and Oshkosh Capital Corporation pertaining to the lease of two [2] 2011 Pierce PUC Fire Pumpers in the principal amount of \$1,190,486.00
- N. **Resolution No. 3564** approving and authorizing the Mayor to execute a Second Amendment to that certain Right-of-Way Maintenance Agreement dated April 6, 2009, in the amount of \$42,549.12, between the City and Kansas Land Management pertaining to right-of-way and median maintenance
- O. Resolution approving a Final Site Plan for a new restroom at Ironwoods Park, located at 3141 Ironwoods Court [PC Case # 17-11] –***CONTINUED TO JUNE 20, 2011 GOVERNING BODY MEETING [from the February 22, 2011 Planning Commission meeting] NOTE: NO STAFF PRESENTATION WILL BE MADE***
- P. Fire Department Monthly Report
- Q. Police Department Monthly Report
- R. Municipal Court Monthly Report

Councilmember Filla requested to pull Item No. 7G and Councilmember Azeltine pulled Item Nos. 7K, 7M and 7O for discussion.

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

- 7G. Approve Mayoral Appointment of Scott Pashia to the Sustainability Advisory Board for a two-year term ending in 2013

Councilmember Filla commented there is still an open slot on the Sustainability Advisory Board and they are looking for someone who is very hands on and involved with the Prairie Star School system.

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

- 7K. **Resolution No. 3561** approving the 2012-2016 Capital Improvement Program [C.I.P.] for the City of Leawood, Kansas

Councilmember Azeltine referred to the illustration on Page 60 of the C.I.P. regarding the dept per capita in comparison to the industry average. He suggested they have a separate illustration showing the debt and debt per capita the City is directly responsible for so no one is misled regarding TDD responsibility.

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

- 7M. **Resolution No. 3563** approving and authorizing the Mayor to execute a 10-year Master Lease-Purchase Agreement between the City and Oshkosh Capital Corporation pertaining to the lease of two [2] 2011 Pierce PUC Fire Pumpers in the principal amount of \$1,190,486.00

Councilmember Azeltine asked if this was a budgeted expense and included in the C.I.P. Chief Florance responded this is an expenditure in accordance with the City's Vehicle Replacement Policy. Replacing vehicles is not placed in the C.I.P.

Councilmember Rasmussen asked about the previous problem with the lug nuts on Pierce fire trucks. Chief Florance stated they have noted that past problem; however, Pierce products are still the best in the world.

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

- 7O. Resolution approving a Final Site Plan for a new restroom at Ironwoods Park, located at 3141 Ironwoods Court [PC Case # 17-11] –***CONTINUED TO JUNE 20, 2011 GOVERNING BODY MEETING [from the February 22, 2011 Planning Commission meeting] NOTE: NO STAFF PRESENTATION WILL BE MADE***

Councilmember Azeltine referred to the staff memo addressing a protest petition filed on March 7, 2011, that was reviewed and deemed invalid because protest petitions may only be filed against rezoning, preliminary plans, and Special Use Permits. He thought when this comes before them; it would be a combined preliminary and final plan.

City Attorney Patty Bennett responded the restrooms alone are a final plan, not subject to a protest petition. If the amphitheatre comes through, it will come through as a revised preliminary and final plan.

A motion to continue Item No. 70 to the June 20, 2011, Governing Body meeting was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended the annual meeting of the Leawood Foundation, who had their greatest fundraising year to date. Congratulations to Chair Alice Hawk and the Foundation's Board of Directors. They raised \$75,000 in 2010, primarily for the Gezer Park children's play area. Mayor Dunn appreciated their attempts at the public/private partnership they value so much.
- B. There will be a trail clean-up day on Sunday, March 27th, from 2:00 – 5:00 P.M., and will meet at Tomahawk Creek Park. Volunteers are welcome.
- C. The Leawood Stage Company is presenting "Down on Memminger," which will be a dramatic reading by Kirby Fields on April 1st and 2nd at 8:00 P.M., and April 3rd at 2:00 P.M. This will take place in the Oak Room at City Hall. Reservations are suggested.
- D. "Medical Practices on the Trails" will be an introductory overview about the Historic Trails in this area, presented by Drew Bodner. Dr. Pete Cuppage will present a comprehensive examination of the medicine and medical practices used on the Western Trails. This will take place on Saturday, April 16th, at 10:00 A.M. at the Historic Oxford Schoolhouse. Reservations are suggested.
- E. "Taking Tea with Shakespeare" will be presented by the Leawood Stage Company, the Magna Carta Chapter of the Daughters of the British Empire and The Barn Players, on Sunday, April 17th. Doors open at 1:30 P.M. Tea is served at 2:00 P.M. Reservations are suggested.

9. COUNCILMEMBERS' REPORT

Councilmember Gary Bussing – Placed under Old Business for further discussion

A resident requested to drill a gas well on their property. Councilmember Bussing had requested that the City Attorney draft a letter to the Kansas Corporation Commission [KCC] stating the City's concerns of a possible approval of this.

Ms. Bennett stated Assistant City Attorney Franki Shearer researched the drilling of natural gas wells in residential areas. In some places, this is relatively common; however, not in Kansas. It is currently in front of the KCC for review. It would need certain exceptions because the property is less than 10 acres. The letter is written to register great concern because the City does not have any regulations regarding natural gas wells. The KCC has some regulations; however, they are not in detail for a small residential lot. There is no prohibition in the City's Code.

Councilmember Bussing asked the City Council to concur with this position.

Mayor Dunn noted the intent of the letter was to acknowledge their lack of jurisdiction but to also request that the KCC take their concerns regarding the proposed well into consideration when reviewing the application.

City Administrator Scott Lambers stated the property owners had requested an exception to the KCC requirements that the well be located on at least 10 acres. The letter focuses on the safety concerns that this property is less than 2 acres.

Councilmember Rasmussen asked to review the letter.

Mr. Lambers stated the owners have a hearing scheduled before the KCC to get the permit to install the well.

This item was placed under Old Business for further discussion to allow time for the City Council to review the letter.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the February 22, 2011 Planning Commission meeting]

- A. **Ordinance No. 2486** amending § 16-4-7.6 of the Leawood Development Ordinance [LDO], General Regulations; Landscaping, pertaining to screening of trash enclosures [PC Case #25-11] [Roll Call Vote]

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

Councilmember Rezac confirmed with Community Development Director Richard Coleman that this ordinance pertains to commercial structures. The intent of amending the ordinance was to clarify some of the language concerning landscaping. If a trash enclosure is located in a parking lot, it would be required to have landscaping and screening around it.

Mayor Dunn noted it is an exception for trash enclosures not to be attached to a building.

Councilmember Filla confirmed with Mr. Coleman this is not inclusive of recycling bins and asked staff to consider a Ripple Glass recycling container in Leawood. This container is intended to be very visible, which contradicts the ordinance.

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

- B. **Resolution No. 3565** approving a Final Site Plan for Church of the Nativity-dumpster screening, located at 3800 W. 119th Street [PC Case # 02-11]

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

- C. **Resolution No. 3566** approving a Final Plan for a Tenant Finish for Park Place-Gordon Biersch, located at 11652 Ash Street [PC Case # 16-11]

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

Jeffrey Alpert, Park Place Village, LLC, welcomed Gordon Biersch, a new tenant to Park Place. This is a quality upper-casual brewery restaurant with a wide and varied menu. The beer will be brewed at their downtown location and brought to the Leawood restaurant.

John Leonard, Vice President Gordon Biersch, stated they were excited to be in Leawood and looked forward to opening in September. The restaurant is 7,500 square feet. The two outdoor dining patios will seat 75 and are planned to be used when weather permits.

Councilmember Cain confirmed with Mr. Leonard there will be no televisions on the patios. She referred to Planning Commission Stipulation No. 1 and asked if this Public Art Impact Fee had been paid. Planning Official Mark Klein stated he would get confirmation of this.

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

- D. Resolution approving the Planning Commission's recommendation for denial of a Final Sign Plan for Ranchmart North- US Bank, located at 3700 W. 95th Street [PC Case # 18-11]

A motion to approve the Planning Commission's recommendation for denial was made by Councilmember Filla; seconded by Councilmember Rasmussen.

Dan Motush, Acme Sign, represented US Bank. He thought the Leawood Development Ordinance [LDO] was lacking by not addressing relationships between tenants and sub-tenants. Several grocery stores are welcoming banks into their properties. These are two separate entities that have different tax filings. Several nearby cities do consider the sub-tenant as a separate entity and recognize the need to identify their operations within the building. He understood there were plans to review the LDO and hoped this would be addressed at that time.

Mayor Dunn thought if Price Chopper came into compliance with the current sign ordinance, US Bank could install their sign. Currently; however, Price Chopper has 7 signs on their building. Mr. Coleman responded if Price Chopper removed their other signs and US Bank had their own entrance, they could install their sign. Staff will consider the issues stated by Mr. Motush when reviewing the LDO; however, under the current circumstances, the US Bank sign cannot be approved.

Councilmember Rasmussen stated there has been a continuous problem with signage clutter at Ranchmart North.

Councilmember Azeltine confirmed with Mr. Coleman there is no entrance directly into the bank.

Councilmember Osman asked if they could continue this item until after they review the LDO at the work session on July 18th. He wanted to be sure and address the entire sign ordinance during this work session.

Councilmember Filla withdrew her motion.

A motion to continue this to the September 19, 2011, Governing Body meeting to allow time to complete the work session regarding the sign ordinance was made by Councilmember Osman; seconded by Councilmember Azeltine.

Councilmember Bussing requested that as part of the LDO review, they be flexible in the ordinance to protect the current businesses, but allow options for signage to provide opportunities for businesses to come into the areas that need help.

Councilmember Filla felt with Price Chopper's current signage being only white in color and all the same size, it reduced sign clutter. If they chose to redo their sign, it would be multiple colors and could create more distraction.

When reviewing the LDO, Mr. Motush asked the staff and Governing Body to consider the competitive advantage between sites that are allowed two signs for one tenant, versus sites allowed two signs for two tenants.

The motion to continue this to the September 19, 2011, Governing Body meeting carried following a vote of 7-1. Nay: Councilmember Rasmussen.

[from the January 25, 2011 and March 8, 2011 Planning Commission Meetings]

- E. **Resolution No. 3567** approving a Final Site Plan for Town Center Plaza – Lot 9 – Walgreens, located at 4701 Town Center Drive (PC Case #04-11) [***CONTINUED FROM THE FEBRUARY 21, 2011 GOVERNING BODY MEETING***]

Fred Logan, Esq., Logan, Logan and Watson, gave a presentation on the design and landscape elements of the project. They have accepted all of the Planning Commission stipulations. The landscape plan is far more extensive than what is required under the ordinance. All of the building components have been lowered two feet. The tower elements have been included to compliment the Town Center Plaza design. The main roof line is 22 feet 3 inches above grade, which is lower than the roof line of every other building in the vicinity.

Nick Telowitz, Nova Group Architects, gave a presentation showing the following articulation that has been added to the building:

- Pilasters between the windows have been lowered with a capstone added
- Pilaster thickness has been increased to 8 inches
- Brick detail added at the light fixtures and tower columns
- Brick texture added above the windows and at the towers
- Increased the area of accent brick below the water table

Design revisions also include four black fabric awnings over the tower windows with two at each tower. Five 6x6 panels of landscape trellis have been added in front of the glass areas, which softens the building walls.

Councilmember Cain reiterated comments from the previous meeting that the building was too large for that particular corner and intended to deny the plan this evening.

Councilmember Osman was pleased with the presentation and thought it showed a dramatic difference in the articulation and landscaping. He felt any opposition to this should have been stated at the planning stage, not at the final plan.

Councilmember Bussing concurred with Councilmember Osman. He recalled his concerns regarding visibility through the windows and asked how the awnings would address these concerns. Mr. Telowitz responded it only addresses the northwest corner of the main entrance that has no blinds and should further restrict visuals into the store. Since the bottom window sill height is 7 feet, there should be no visibility of merchandise in the store.

Mayor Dunn confirmed with Mr. Telowitz that the vertical metal baffles below the light fixtures would restrict the view of the lamps from the street.

Councilmember Rezac felt the level of additional detail had greatly enhanced the building and was a much better project.

Mr. Logan reiterated statements from the previous meeting that they would abide by the Code and there would not be pictures in the windows. Ms. Bennett noted 5% of the window area can have pictures/signs.

Councilmember Rawlings previously denied this plan; however, after seeing all the revisions to enhance the building, he was now in favor of the project.

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-1. Nay: Councilmember Cain.

12. OLD BUSINESS

Councilmember Gary Bussing – Concerns regarding well drilling on property located at 2600 W. 143rd Street

Councilmember Osman thought the letter should explain the deviation from the 10 acres and state how many acres the property owner has to address the concerns of proximity to other residents regarding the flammable material. Ms. Bennett responded this is not a formal pleading that will be on file; it is an informal letter to the KCC. Mr. Coleman thought the lot consisted of 1.8 acres.

Councilmember Bussing commented the letter is intended to address their concerns; however, he wanted the Council to remember the City has no standing in this issue.

Mayor Dunn felt the letter addressed the City's concerns regarding any exception request.

Councilmember Azeltine asked why the City did not file a formal protest. Ms. Bennett responded they had missed the deadline and didn't realize the Council would have an interest objecting to it. Staff was unaware there was something on file with the KCC until recently. They are not required to notify the City.

Councilmember Rasmussen suggested the letter explain why they didn't file the formal protest. He thought the concern regarding the effect this well would have on the gas reserves on the surrounding properties undercuts their position. Councilmember Azeltine agreed it detracts from their point. Councilmember Filla clarified protecting the gas reserves for the neighbors was a moot point since they don't want anyone tapping into them. Bringing this up in an argument takes away from their real concerns of safety.

Councilmember Rasmussen commented that the section in the LDO that addressed the drilling of natural gas wells was removed when the LDO was revised in 2002.

Mr. Coleman stated the property owners were drilling wells for their heat pump when they discovered the natural gas.

Councilmember Rezac suggested they "cc" the City Council on the letter to further enhance their opposition.

A motion to approve the letter and forward it by registered mail to the KCC was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

13. OTHER BUSINESS – None.

14. NEW BUSINESS

- A. Schedule a Governing Body Work Session at 6:00 P.M., on Tuesday, July 5, 2011 to discuss Transportation Development District [TDD] for Village of Seville located at 133rd & State Line Road

A motion to approve the work session was made by Councilmember Filla; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 8-0.

- B. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, July 18, 2011 to Review revisions of the Leawood Development Ordinance [LDO] Sign Regulations

A motion to approve the work session was made by Councilmember Filla; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 8-0.

ADJOURN

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

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk