

Minutes

DVD No. 260

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 Tuesday, July 5, 2011. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: Councilmember Lou Rasmussen

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| Staff present: Scott Lambers, City Administrator | Franki Shearer, Assistant City Attorney |
| Chief John Meier, Police Department | Joe Johnson, Public Works Director |
| Mark Andrasik, Info. Systems Director | Chris Claxton, P&R Director |
| Richard Coleman, Comm. Dev. Director | Deb Harper, City Clerk |
| Mark Klein, Planning Official | 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. 14B – New Business
- *Addition of Item No. 14C – New Business

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

3. CITIZEN COMMENTS

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

4. PROCLAMATIONS - None

5. PRESENTATIONS/RECOGNITIONS - None

6. SPECIAL BUSINESS

- A. Consideration of proposed revised assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for the construction of certain public and private road and parking lot related improvements; and other such transportation related improvements for the One Nineteen Transportation Development District [TDD] located at 119th Street and Roe Avenue, located within the City of Leawood, Kansas, [One Nineteen] [CIP# 80456]

A motion to approve the consideration of revised assessments was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- B. **Ordinance No. 2497**, levying revised assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for the construction of certain public and private road and parking lot related improvements; and other such transportation related improvements for the One Nineteen Transportation Development District [TDD] located at 119th Street and Roe Avenue, located within the City of Leawood, Kansas, [One Nineteen] [CIP# 80456] [Roll Call Vote]

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

- C. Reconsideration of continuance motion made at June 20, 2011 Governing Body meeting regarding the continuance to August 4, 2011 for below listed item:

[from the January 25, 2011 Planning Commission meeting]

Resolution approving a Final Site Plan for a new restroom at Ironwoods Park, located at 3141 Ironwoods Court [PC Case # 17-11] – **[CONTINUED FROM THE MARCH 7, 2011 GOVERNING BODY MEETING]** –

STAFF COMMENT: Staff recommends this item be continued to August 1, 2011 Governing Body meeting

A motion to approve reconsideration of the continuance motion to the August 1, 2011, Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen 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 No. 2011-24
- B. Accept minutes of the June 20, 2011 Governing Body meeting
- C. Accept minutes of the May 17, 2011 Public Works Committee
- D. Accept minutes of the May 12, 2011 Sustainability Advisory Board
- E. Approve Mayoral Appointment of Michelle Moloney to Sustainability Advisory Board for a two-year term ending in 2013
- F. Approve Mayoral Appointment of Gareth L. Matthews to Sustainability Advisory Board for a one-year term ending in 2012
- G. Approve 15th and Final Payment in the amount of \$802.80 to Rasmuson Contracting Services, LLC, pertaining to irrigation retro-fit project at Ironhorse Golf Course, located at 15400 Mission Road
- H. **Resolution No. 3615** calling for a public hearing to be held on August 1, 2011 at 7:30 P.M., to consider the 2012 Fiscal Budget for the City of Leawood, Kansas
- I. **Resolution No. 3616** approving and authorizing the Mayor to execute a Subscription Agreement between the City and Westlaw, a Thomson Reuters Business, to provide electronic legal research services
- J. **Resolution No. 3617** approving a Final Sign Plan for Furr's Oriental Rugs (Retail: Oriental Rugs), located south of 103rd Terrace and west of State Line Road (PC Case # 59-11) *[from the June 28, 2011 Planning Commission meeting]*
- K. **Resolution No. 3618** approving a Revised Final Plat for Tuscany Reserve 5th Plat, located south of 137th Street and west of 138th Street (PC Case # 56-11) *[from the June 28, 2011 Planning Commission meeting]*
- L. **Resolution No. 3619** approving a Final Sign Plan for Town Center Plaza – Seduzione Hosiery Boutique (Retail: Hosiery Boutique), located south of 117th Street and east of Nall Avenue (PC Case # 65-11) *[from the June 28, 2011 Planning Commission meeting]*
- M. **Resolution No. 3620** approving a Revised Final Site Plan for St. Michael The Archangel Playground Expansion, located north of 143rd Street and east of Nall Avenue (PC Case #71-11) *[from the June 28, 2011 Planning Commission meeting]*
- N. Declaration of surplus property [Police vehicles; last 4 VIN/3522; VIN/3523]

Councilmember Rezac requested to pull Item No. 7M, Councilmember Cain pulled Item No. 7K, and Councilmember Osman pulled Item No. 7J for discussion.

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

- 7J. **Resolution No. 3617** approving a Final Sign Plan for Furr's Oriental Rugs (Retail: Oriental Rugs), located south of 103rd Terrace and west of State Line Road (PC Case # 59-11) *[from the June 28, 2011 Planning Commission meeting]*

Community Development Director Richard Coleman confirmed this applicant will be located in the former Audio Mart location. The zoning district is a Planned Business Park [BP] and is shown as a Mixed Use District [MXD] on the Comprehensive Plan. Limited retail is allowed in BP districts.

Mr. Osman stated he has never owned property in this district and therefore, has no interest. He thought the Council should consider allowing retail in its entirety in the BP District. Mr. Coleman stated staff was given direction to review the older zoning districts, including this area, to determine what could be done to help businesses meet the current ordinance. Some of the businesses in this park cannot meet the setbacks and/or parking requirements. Mr. Osman was in favor of this application; however, he was concerned that the language in the BP District does not outline that retail is permitted. Under the current BP zoning, this would not be an allowable use. Audio Mart was a retail business; however, it was grandfathered in. A new retail establishment is not allowed under BP zoning. Mr. Coleman stated they needed to review the use issue. If there is a change in use, it could trigger a rezoning. Mr. Osman stated the current BP zoning uses are: Health Club, Manufacturing, Medical Lab, Medical Service, General Medical Office, Personal Service, Photography Service, Printing, Public Government, Repair Service, Appliance Sales, Audio Part Sales, Business Equipment, Business Service, Catalog Center, Computer Sales, Construction Sales, Furniture Repair, Graphic Design, Green House, Home Remodeling, Medical Supplies, Vending, School Studio, Veterinarian and Warehouse. He didn't want to approve a sign application and then determine this is a retailer and they don't abide by the current Code.

Mayor Dunn thought this application could fall under the Home Remodeling category. Mr. Coleman confirmed limited retail meant each individual business could not be 100% retail. Mr. Lambers defined limited retail as; 20% of the square footage could be dedicated for retail with the remainder used as warehouse/storage space.

Bob Sanders, RSA Architecture, was not aware of their exact retail percentage. The front of the store will be retail with the remainder for storage and rug display.

Mr. Lambers confirmed for Mayor Dunn that under the current ordinance, they would be restricted to 20% retail.

Mr. Sanders stated he was not aware of this.

Mr. Lambers stated the BP District zoning for this area is incorrect. They need to determine the most liberal zoning category, grandfather everything in, and consider special exceptions or deviations for new applicants. There are issues with the setbacks, parking requirements, and those in the floodplain.

Mr. Sanders confirmed this business is currently open.

Mayor Dunn asked if something could be done for the applicant in the interim while they review the BP zoning. Mr. Lambers replied they would confirm whether they are in compliance. If not, they will allow them to continue and return with options for the Council to consider. Mayor Dunn suggested they approve this contingent upon their compliance.

A motion to approve Item 7J with an additional stipulation that approval would be contingent upon compliance with the 20% rule as it relates to retail was made by Councilmember Azeltine; seconded by Councilmember Filla.

Councilmember Cain confirmed with Mr. Coleman they have had other applicants interested in this property; however, due to the floodplain issues, the applicants decided to back out.

Mayor Dunn stated this will require a super majority vote because they would be overriding the Planning Commission's recommendation by adding a stipulation.

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

- 7K. **Resolution No. 3618** approving a Revised Final Plat for Tuscan Reserve 5th Plat, located south of 137th Street and west of 138th Street (PC Case # 56-11) *[from the June 28, 2011 Planning Commission meeting]*

Councilmember Cain confirmed with Mr. Coleman that an accessory structure is a pergola pavilion that is not attached to the home. The applicant requested the re-plat to bring the two lots into one in order to properly place the structure.

A motion to approve Item No. 7K was made by Councilmember Cain; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

- 7M. **Resolution No. 3620** approving a Revised Final Site Plan for St. Michael The Archangel Playground Expansion, located north of 143rd Street and east of Nall Avenue (PC Case #71-11) *[from the June 28, 2011 Planning Commission meeting]*

Councilmember Rezac stated she is a member of the St. Michael Archangel Architectural Building Committee and disclosed she has been involved in discussions regarding this playground application and is receiving no monetary benefit for her vote.

Assistant City Attorney Franki Shearer confirmed with Ms. Rezac there was no committee vote. Ms. Rezac felt she could give an impartial opinion.

Mayor Dunn felt comfortable having Ms. Rezac participate in the vote since she was not receiving any monetary compensation.

Ms. Shearer stated she would not be in favor of Ms. Rezac participating if she had designed the project or had voted on it in another committee.

A motion to approve Item No. 7M was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

8. MAYOR'S REPORT

Annual Report: American Revolution Tricentennial CD Fund

On July 6, 1976, the Leawood American Revolution Bicentennial Committee, under Mayor William Eddy, presented the City with a CD in the amount of \$1,000.00. Last year, it earned \$112.54 in interest on the principal amount of \$8,307.16, which brings the current balance of this CD to \$8,419.70. The new CD yields an interest rate of .30% and will mature on June 16, 2012.

- A. Mayor Dunn thanked Parks and Recreation Director Chris Claxton and the Parks and Recreation team, the Police Department, Fire Department and all other professionals, for a terrific community 4th of July celebration. It was magnificent and was enjoyed by thousands.
- B. Mayor Dunn thanked City Administrator Scott Lambers, Interim Finance Director Dawn Long, Budget Coordinator Kathy Byard, all department directors and the Budget and Finance Committee for completing the review process for the 2012 Budget. This budget should be on an agenda in August, 2011, for adoption. Great job by all involved!
- C. Attended a ribbon cutting ceremony for LeCrusette, sponsored by the Leawood Chamber of Commerce, located in the One Nineteen shopping center. This is a French cookware store and was founded in 1925 in France. There are 52 sites around the world with 6 signature sites. Their location at One Nineteen is the only location in the State of Kansas. They have a full kitchen in the center of the store and have cooking demonstrations and classes. Mayor Dunn wished them much success.
- D. Attended a ribbon cutting ceremony for McAuley & Crandall, Public Accountants. They have new offices in Overland Park. They are long-time (over 10 years) Leawood Chamber of Commerce members. Nancy McAuley is on the Leawood Chamber Board and is still serving as an Ambassador. Mayor Dunn wished them much success.
- E. Congratulations to Church of the Nativity who has been celebrating their 25th Anniversary this year. They celebrated a special All-Parish Mass with Archbishop Naumann presiding at the Overland Park Convention Center. When they were founded in 1986, they had 450 families. Today they have well over 2,200 families. Mayor Dunn wished them many more years of success.
- F. Attended the 10th Annual All-American Celebration, sponsored by the Heartstrings Community Foundation, with City Administrator Scott Lambers, Police Chief John Meier, Fire Chief Ben Florance and members of their departments. They honor our local heroes: fire fighters, police officers, veterans and active military. Heartstrings Community Foundation's mission is to assist adults with developmental disabilities to live meaningful, productive and interactive lives through employment in the community. This event is organized by Leawood resident Anne Hull and is always well done and a very moving experience. Thank you to Police Chief John Meier and Fire Chief Ben Florance for their participation.
- G. Congratulations to Leawood Police Officer Matt Schroder for placing 1st and Officer Troy Osborn for placing 4th in the Metro-wide Motorcycle Competition with dozens of other agencies competing.

- H. The American Heart Association named Leawood resident Dr. Willie Lawrence “Cardiologist Physician of the Year.” This is a national award. Dr. Lawrence practices at Research Medical Center in Kansas City, Missouri. The association honored him for his dedication to patient care in an under-served area of Kansas City and for his efforts to eliminate health disparities. Congratulations to Dr. Lawrence on receiving this honor.
- I. Reminder of the Leawood Stage Company’s production of “Bye Bye Birdie.” Shows will take place on July 14th, 15th, 16th, 17th, 21st, 22nd and 23rd at 8:00 P.M. nightly with free admission at Leawood’s Ironwoods Park Amphitheatre. Councilmember James Azeltine will play a role in the production.
- J. The beautiful Gezer Park is featured on the cover of the July edition of “Leawood Lifestyle” magazine. Mayor Dunn thanked them for featuring Leawood in such a complimentary fashion and noted the City of Leawood has no sponsorship, monetarily or otherwise, with the “Leawood Lifestyle” magazine.

9. COUNCILMEMBERS’ REPORT - None

10. STAFF REPORT

Recommendation to Public Works Committee regarding Traffic Calming Petition on 85th Terrace between State Line Road and Lee Boulevard

Mr. Johnson stated they received a request to review traffic calming from residents living on 85th Terrace between Lee Boulevard and State Line Road. A signed petition was submitted from 75% of the residents. They reviewed the Traffic Calming Policy for speed count and accidents. They reviewed 85th Terrace as both a residential and collector street, which exceeded the minimum 30 points required for further traffic calming studies. The committee could further review this at their August meeting. Part of their discussion would include what it would mean to be part of a Benefit District.

Councilmember Cain confirmed with Mr. Johnson that the residents understood if they move forward, they would incur costs of an estimated \$50,000.

Councilmember Osman confirmed with Mr. Johnson the costs are divided evenly among the properties. The assessment would be spread over a 10-15 year period, depending upon the bond length.

A motion to refer this to the Public Works Committee for further review was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

COMMITTEE RECOMMENDATIONS

11. PUBLIC WORKS

[from June 21, 2011 Public Works Committee]

Recommendation regarding removal of snow on sidewalks

Councilmember Azeltine read the following recommendations from the Public Works Committee:

1. Modify the ordinance to include a timeframe of 48 hours after the snow stops with an accumulation of 2 inches or more of snow.
2. Staff prepare a letter to homes associations on the responsibility of snow removal from sidewalks.
3. Provide information on the City's web page about snow removal of sidewalks.

A motion to authorize staff to draft an ordinance for review by the Public Works Committee in conjunction with the proposed revision was made by Councilmember Azeltine; seconded by Councilmember Bussing.

Councilmember Cain noted the accumulation of 2 inches was not stated in the Code revision. She suggested that commercial properties be given 24 hours to remove snow and ice from sidewalks instead of 48 hours. The revision does not state what the fine would be if they don't comply with the ordinance.

Mr. Johnson felt it would be better to keep the 48-hour recommendation and remove the 2 inch accumulation so people would understand that no matter how much snow falls; they would be required to remove it within 48 hours. In the past, if they received a complaint, they would issue a 10-day courtesy notice to comply; however, the revision would only allow 48 hours. If they don't comply, a citation would then be issued.

Councilmember Filla thought they should treat snow removal as they do for cutting grass and have the City remove the snow and send the homeowner a fine. Mr. Lambers stated grass height is regulated by the State. Cities must provide notification to property owners that they are required to maintain a maximum grass height. Once a property owner receives one notification, the City can take care of it and assess them. Issuing a fine is the best way to achieve compliance for snow removal.

Councilmember Azeltine stated after discussions with the Public Works Committee, they concluded that the City's current ordinance is very vague. Mr. Lambers suggested they include a provision allowing the Council to suspend the 48-hour requirement for certain circumstances.

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

12. OLD BUSINESS - None

13. OTHER BUSINESS

Ordinance No. 2498 revising Ordinance No. 2476 amending §16-2-5.4, of the Leawood Development Ordinance [LDO] RP-1 (Planned Single Family Residential District) (12,000 sq.ft. Per Dwelling) [Roll Call Vote]

Staff Comment: This is a correction to a formatting error regarding the sideyard setback

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

14. NEW BUSINESS

- A. Schedule a Governing Body Work Session at 6:00 P.M. on Monday, October 17, 2011, to discuss the possible establishment of a Community Improvement District [CID] Policy for redevelopment

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

- **** B. **Ordinance No. 2499C** amending Chapter 14, Article 1 of the Code of the City of Leawood, Kansas, 2000, by adding a new Section 14-102A, entitled, 'Driving Under the Influence of Intoxicating Liquor or Drugs and Penalties'; adding a new Section 14-102B, entitled, 'Driving a Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs and Penalties'; adding a new section 14-102C, entitled, 'Ignition Interlock Devices and Tampering therewith'; and repealing sections in conflict herewith [Roll Call Vote]

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

Mayor Dunn noted this is in regards to several legislative changes the City must come into compliance with.

Councilmember Filla asked if they could include language in the LDO that would always refer to the 'then current Kansas legislation' in order to keep from continually updating the LDO. Mr. Lambers replied they are required to go through the entire Planning process each time it is amended.

Councilmember Filla confirmed with City Clerk Deb Harper that this DUI Ordinance is in the City's Code book and would not be in the LDO. The City Code and the LDO are both available to view online.

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

- C. Approve time change from 6:00 P.M. to 5:30 P.M. for the August 1, 2011, Governing Body Work Session and include second topic to discuss Governing Body Support of 'Accepted' Amphitheatre Expansion Plans

A motion to approve the time change for the August 1, 2011, Governing Body Work Session and include a second topic was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Rasmussen absent).

ADJOURN

There being no further business, the meeting was adjourned at 8:45 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk