

Minutes

DVD No. 265

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, September 19, 2011. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None

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

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following amendment to the agenda:

- Addition of Item No. 14A – Governing Body Executive Session

A motion to approve the amended agenda was made by Councilmember Rasmussen; seconded by Councilmember Filla. 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

Double Ten Day, October 10, 2011

Mayor Dunn read the proclamation into the record.

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. 2011-34, and 2011-35
- B. Accept minutes of the September 6, 2011 Governing Body meeting
- C. Accept minutes of the July 12, 2011 Historic Commission meeting
- D. Accept minutes of the July 14, 2011 Sustainability Advisory Board meeting
- E. Approve bid in the amount of \$5,324.00 from Rawhide Harley Davidson for the purchase of a Police Motorcycle [\$10,250.00-trade-in allowance]
- F. Approve Change Order No. 1 in the amount of \$175,000 to O'Donnell & Sons Construction, pertaining to the mill & overlay of 103rd Terrance and 104th Street, and bridge deck replacement [in conjunction with the 2011 Residential Mill & Overlay Project # 70010] [Project # 72015] [*Waiving Bidding process was approved on 9-6-2011; See Resolution No. 3657*]
- G. **Resolution No. 3659** calling for a public hearing to be held on October 17, 2011 at 7:30 P.M., or as soon thereafter as may be heard, to consider amendments to the 2011 Fiscal Budget for the City of Leawood, Kansas
- H. **Resolution No. 3660** approving and authorizing the Mayor to execute 2012 Employee Benefit Plan documents
- I. **Resolution No. 3661** designating holidays for the year 2012
- J. **Resolution No. 3662** accepting a Storm Sewer Easement from Leawood South Country Club for property located in Leawood South, Fifth Plat, pertaining to the 2011 Storm Sewer Maintenance Project [Project # 77111]
- K. **Resolution No. 3663** accepting a Storm Sewer Easement from Leawood South Country Club for property located in Leawood South, 2nd Plat, bordering Lots 18 and 19, pertaining to the 2011 Storm Sewer Maintenance Project [Project # 77111]
- L. **Resolution No. 3664** accepting a Storm Sewer Easement from Leawood South Country Club for property located in Leawood South, 2nd Plat, bordering Lots 4 and 5, pertaining to the 2011 Storm Sewer Maintenance Project [Project # 77111]
- M. **Resolution No. 3665** approving a Final Sign Plan for Leawood Shops – Vintage Market, located at 7930 Lee Boulevard (PC Case # 44-11) [*from the August 23, 2011 Planning Commission meeting*]
- N. **Resolution No. 3666** approving a Revised Final Plan for Plaza Pointe – Revised Design Guidelines, located at the southwest corner of Roe Avenue and 135th Street (PC Case 83-11) [*from the August 23, 2011 Planning Commission meeting*]

- O. **Resolution No. 3667** accepting a First Amended and Restated Petition to Amend and Reaffirm a Transportation Development District [TDD] for the Park Place Development located at the southeast corner of Town Center Drive and Nall Avenue, in Leawood, Kansas pursuant to the provisions of K.S.A. §12-17,140 et seq, and the City's Home Rule Authority to determine its local affairs and government as authorized by Article 12, Section 5 of the Kansas Constitution; calling and providing for the giving of notice of a public hearing on the advisability of amending a Transportation Development District in the City of Leawood, Kansas, and financing certain transportation project improvements therein
- P. **Resolution No. 3668** accepting a Petition for creation of a Transportation Development District [TDD] for the Park Place Development located at the southeast corner of Town Center Drive and Nall Avenue, in Leawood, Kansas pursuant to the provisions of K.S.A. §12-17,140 et seq, calling and providing for the giving of notice of a public hearing on the advisability of creating a Transportation Development District in the City of Leawood, Kansas, and financing certain transportation project improvements therein
- Q. Fire Department Monthly Report
- R. Police Department Monthly Report
- S. Municipal Court Monthly Report

Councilmember Filla requested to pull Item No. 7H, Councilmember Osman pulled Item No. 7M and Councilmember Rezac pulled Item No. 7F for discussion.

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

- 7F. Approve Change Order No. 1 in the amount of \$175,000 to O'Donnell & Sons Construction, pertaining to the mill & overlay of 103rd Terrance and 104th Street, and bridge deck replacement [in conjunction with the 2011 Residential Mill & Overlay Project # 70010] [Project # 72015] [*Waiving Bidding process was approved on 9-6-2011; See Resolution No. 3657*]

Councilmember Rezac thought they had waived the bidding process for this project because the City already had a contract with O'Donnell & Sons and because they were already working in that area. City Engineer David Ley clarified they were requesting the change order to complete the mill and overlay, which is in the budget for this year. They agreed to carry forward the unit price and provided a new price on the bridge. Mayor Dunn noted this was economically prudent for the City.

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

- 7H. **Resolution No. 3660** approving and authorizing the Mayor to execute 2012 Employee Benefit Plan documents

Councilmember Filla congratulated Human Resources Director Lovina Freeman and City staff for their efforts in renewing the City's health and dental care plans with no increases in premiums. Mayor Dunn commended the City's employees for remaining healthy to help keep rates low.

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

- 7M. **Resolution No. 3665** approving a Final Sign Plan for Leawood Shops – Vintage Market, located at 7930 Lee Boulevard (PC Case # 44-11) *[from the August 23, 2011 Planning Commission meeting]*

Planning Official Mark Klein confirmed for Councilmember Osman that staff had been working with this applicant for quite some time on several issues associated with this plan. Mr. Osman commented it is frustrating when a tenant doesn't come before them immediately to apply for a permit and he commended staff for working so diligently to resolve the issues. Mr. Klein confirmed the City charges a double permit fee if an applicant moves forward with sign installation before obtaining a permit.

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

8. MAYOR'S REPORT

- A. The September Council of Mayors' meeting was hosted by Olathe Mayor Michael Copeland. DeSoto Mayor David Anderson passed the Chairman's gavel to Prairie Village Mayor Ron Schaffer. Congratulations to Mayor Schaffer on that appointment. The annual December Social for all Councilmembers and Mayors in Johnson and Wyandotte County will be held on December 7, 2011, at the Overland Park Convention Center.
- B. Sergeant Mark Hackathorn organized a very beautiful memorial ceremony for the 10th Anniversary of 9/11. Thank you to Sergeant Hackathorn, Police Chief John Meier, Fire Chief Ben Florance and their departments for their participation. Chaplin Marion Pember from Johnson County Fire District #2 presided. The Miller-Marley Choir performed "America, I Love You," written by the Gant Sisters in 2001. Councilmembers Jim Rawlings, Carrie Rezac and James Azeltine also attended with family members.
- C. Thanks to Leawood Foundation Chair Alice Hawk and Parks and Recreation Director Chris Claxton for organizing a lovely Fire Pit Dedication at Gezer Park for private donors Al and Barbara Beitchman, Harvey Bodker, Alan Edelman and Dr. Debbie Sosland-Edelman. Councilmembers Andrew Osman, Jim Rawlings, Carrie Rezac and James Azeltine were in attendance as well as members of the Gezer Sister City Committee and the Parks and Recreation Advisory Board. Rabbi Alan Cohen provided a blessing. Heart of America Boy Scout Chief Executive Ken Miller gave remarks. Stephen Cohn, Scout Master for Troop 61, and his scout troop presented the colors and joined in the festivities.

- D. Officer Phil Goff organized another terrific open house for the Police and Fire Departments. The weather was great and there were 500-600 people in attendance. Thanks to Police Chief John Meier, Fire Chief Ben Florance and their departments for creating a true community event. Councilmembers Jim Rawlings, Andrew Osman and James Azeltine also attended.

9. COUNCILMEMBERS' REPORT – None.

10. STAFF REPORT

Community Development Director Richard Coleman - Introduction of New Building Official, Travis Torrez

Mr. Coleman introduced Travis Torrez, the City's new Building Official, from Austin, Texas. Mr. Torrez was born and raised in Spring Hill, Kansas, and attended UMKC and Kansas State University. He is a Master Code Professional, Certified Building Official and a Certified Fire Marshall.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the January 25, 2011 Planning Commission meeting]

- A. **Ordinance No. 2509** approving a 5-year Special Use Permit [SUP] for Cingular Wireless d/b/a AT&T Mobility – Cellular Tower, located south of I-435 and east of Mission Road (PC Case # 84-11) [Roll Call Vote]

Curtis Holland Esq., Polsinelli Shughart, represented Cingular Wireless d/b/a AT&T Mobility. This is a continuation of Cingular's efforts to build a 4G network in the City of Leawood. They are requesting a 5-year extension to the Special Use Permit [SUP] to allow the tower structure to continue. An interact meeting was held inviting anyone located within 1,000 feet of the structure; however, no one attended the meeting. Mr. Holland confirmed they were in agreement with all of the stipulations.

Councilmember Rasmussen expressed concern regarding landscaping issues at some of the City's cell tower locations and asked why the trees had not been replaced and maintenance had not been enforced. Community Development Director Richard Coleman replied they have not received any complaints regarding the landscaping around this tower. City staff visits random sites to monitor landscape maintenance; however, they have not targeted cell tower sites. Mr. Holland responded the plantings at this site are well beyond the compound area extending onto the City's property. Someone monitoring the compound may not realize trees have been removed. It may be hard to determine which of the landscaping belongs to the cell tower and which belongs to the park. The landowner is not in charge of the tower, the compound, or the landscaping; it is the responsibility of Cingular Wireless. The landscape issues have been addressed with City staff; concluding that many of the trees shown on the landscape plan have been removed and would be replaced.

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

Mayor Dunn confirmed with staff that the trees would be planted before this approval would go into effect.

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

- B. **Ordinance No. 2510** approving a 5-year Special Use Permit [SUP] for Cingular Wireless d/b/a AT&T Mobility - Wireless Antennas, located south of I-435 and east of Mission Road (PC Case 85-11) [Roll Call Vote]

Curtis Holland Esq., Polsinelli Shughart, represented Cingular Wireless d/b/a AT&T Mobility. Cingular Wireless is requesting a 5-year extension to the SUP to allow for the continuation of the existing antennas and the addition of the new 4G high speed wireless internet antennas. The antennas will be flush-mounted to the tower structure, as per the ordinance.

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

Councilmember Rezac referred to Mr. Holland's comment from the Planning Commission meeting stating "Leawood is difficult in building a network because you need tall tower structures." She asked if Leawood was comparatively different to other cities. Mr. Holland replied Leawood has one of the most rigorous cell tower codes in the metro-area and is more of a residential community, which makes it difficult to find locations for tower structures and abide by the Code.

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

- C. 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, JUNE 20, 2011, AND AUGUST 1, 2011 GOVERNING BODY MEETINGS]***

Mr. Lambers reminded the Council when this application was considered at a previous meeting, they decided to continue it until the City had completed the acquisition of the +/- 45 acres adjacent to Ironwoods Park thinking there may be an alternative site for the amphitheatre. Options tonight would be to approve, deny, continue, remand or withdraw the application; however, a remand would not be appropriate at this time since the issue is not with the restrooms themselves, but is with the potential of relocation and whether or not the restrooms of this magnitude would be needed. Other than denial, which would require a super majority vote, all options would take a simple majority vote.

Councilmember Rasmussen reported the Amphitheatre Steering Committee recommended this item be continued until a Master Plan can be developed integrating the new park land usage with the existing park.

A motion to continue the request for approval of a Final Site Plan for a new restroom at Ironwoods Park for a period of 12 months to allow staff adequate time to review land use opportunities and develop a possible Master Plan for the overall park was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Mr. Lambers noted if relocation is determined to be undesirable or unfeasible during the Master Plan process, consideration of this application could move forward at the 12 month mark and would not have to wait for the final Master Plan to be completed.

Councilmember Bussing suggested if they delay construction of the restrooms, they should consider constructing additional parking at the Lodge. He asked if the remaining funding from the bonds were tied to this particular application or if they could use it for additional parking. Mr. Lambers replied these are linked because the Council authorized staff to proceed with the Planning application on the assumption those funds would be used for this. If the Council is considering continuing this and wants to use the funding for another purpose, it should be placed on another agenda to be considered at another Council meeting. Mayor Dunn suggested in order to notify the public, Councilmember Bussing could prepare a report regarding additional parking for the next Council meeting. Mr. Lambers noted the additional parking has already been designed. If the Council authorizes them to proceed with the Planning process at the next meeting, construction would not be able to proceed until March/April, 2012. They would also want to tie this to another asphalt construction project to capture the benefit of having a larger project.

Councilmember Filla thought they may be able to link additional parking with the new park land. She asked if they should consider using some of the remaining funds from the bonds for design of the Master Plan. Mayor Dunn recommended they not do this since this was part of the 1998 Park Bond money for the existing Ironwoods Park.

Councilmember Rezac was not in favor of continuing this and preferred to deny or withdraw the application. Continuing this would indicate the possibility that these restrooms could still be located as they are presented.

Mr. Lambers confirmed for Councilmember Osman if the Council decides to use the money for additional parking, they could direct staff to go through the Planning process and have the funding linked with the remaining proceeds of the bond issue (+/- \$400,000). If they proceed with the parking, the proceeds would be spent in their entirety. If the Council then decides to move forward with the restrooms, they would need to find an alternative source within the City's budget to pay for it. Mr. Osman preferred to remand or continue this and wanted to further explore the possibility of de-linking the funding.

Councilmember Bussing saw no advantage to continue this and preferred to withdraw it. He suggested they wait and consider the restrooms once a Master Plan for the entire park is completed. Mayor Dunn noted a continuance would not preclude them from moving forward with additional parking.

Councilmember Filla noted the benefit for continuing this is so the Planning Commission and staff would not have to begin the process all over again. The restroom approval was for the number of stalls, which does not mean they are approving the size and scope of the project laid out by the architects. Councilmember Rezac asked the Council to keep in mind that the size and aesthetics of the restrooms are tied to the proposed amphitheatre.

Chris White, 14613 Pawnee, requested that this restroom application be withdrawn because of the issues associated with it. His primary issue was that they would be approving Phase I of a project that hasn't been approved. In reading through the 2001 Parks and Recreation minutes, there were several statements continuing to demonstrate that the project being pursued by the Leawood Stage Company and the City does not match anything represented of the voters in the 1998 Park Bond. According to the architects, the correct sizing for restrooms is one stall for every 250 people. The restrooms subject to approval have 12 stalls, which would be appropriately sized for 3,000 people. By moving forward or continuing this project it would seriously undermine the confidence in the community after being promised this facility would serve 600-700 people. They are not benefiting from this money with everything on hold. He asked the Council to put forth the same effort into the northern part of Ironwoods Park that was put into Gezer Park. If the application is withdrawn and they move forward with planning using community involvement, the end result will be a better facility that will be strongly supported by neighboring communities.

Sharon Ervin, 3201 W. 147th Street, continues to be opposed to the amphitheatre plan, which includes the restrooms. The theatre is too close to her home, the sound echoes, and she is exposed to the lighting in her bedroom. There is pollution in the air from all of the vehicles around them. It seems inappropriate to have a commercial venue so close to residential homes.

Laura Mahaffey, 14617 Chadwick Street, requested that this restroom application be withdrawn. Residing one street over from the park, she stated quality of life concerns regarding the noise from the amphitheatre into the evenings. If the amphitheatre is enlarged, it will exacerbate it.

Mayor Dunn confirmed for Councilmember Osman if this application is withdrawn and the Council decides not to move forward with the parking, the funds from the remaining bonds could be used for something else at Ironwoods Park. Mr. Lambers clarified the Council would need to have a formal action to de-link them. By default the money would be reserved intended to build the restrooms.

Councilmember Bussing confirmed with Mr. Lambers that withdrawal of this application would automatically de-link it.

Councilmember Cain thought if the application is withdrawn, the money spent on design would have been spent in vain. Mr. Lambers clarified the plans for both the parking lot and restrooms could be placed on hold so if they decide to proceed with either project in the future they could review those plans to see if they are appropriate. Mayor Dunn noted there was some stormwater work done with those dollars as well. Councilmember Cain didn't disagree with the need for additional parking; however, she reminded the Council that they had all previously agreed to the huge need for restrooms.

Councilmember Rasmussen referred to Mr. White's comments regarding the restroom facilities being sized for 3,000 people and clarified the specifications for the amphitheatre have never changed and is designed for 1,500 people. He reiterated this should be continued until a Master Plan can be developed for the overall park.

Councilmember Rezac agreed the restrooms would be beneficial to the patrons of the current amphitheatre; however, this particular restroom plan is too large and is not keeping to the aesthetics of the other park buildings. She asked if they could scale down this restroom application as opposed to the need of a new application. Mr. Lambers replied they would need to remand this to the Planning Commission directing staff to reduce the size of the plan.

The motion to continue the request for approval of a Final Site Plan for a new restroom at Ironwoods Park for a period of 12 months carried following a vote of 6-2. Nay: Councilmembers Bussing and Rezac for reasons stated.

12. OLD BUSINESS

13. OTHER BUSINESS

**** **14. NEW BUSINESS**

- A. Schedule a Governing Body Executive Session immediately following the regular Governing Body meeting to discuss matters protected by attorney-client privilege

A motion to recess into Executive Session at for a period of 10 minutes was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 8-0.

The Governing Body recessed into Executive Session at 9:00 P.M.

The Governing Body reconvened into regular session at 9:10 P.M.

A motion to adjourn the regular meeting was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

ADJOURN

There being no further business, the meeting was adjourned at 9:10 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk