

**Minutes**

DVD No. 262

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 1, 2011. Mayor Peggy Dunn presided.

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

**Mayor/Councilmembers absent:** James Azeltine

<b>Staff present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief John Meier, Police Department	Franki Shearer, Assistant City Attorney
Chief Ben Florance, Fire Department	Dawn Long, Interim Finance Director
Richard Coleman, Comm. Dev. Director	Chris Claxton, P&R Director
Mark Klein, Planning Official	Deb Harper, City Clerk
Mark Andrasik, Info Systems Director	Pam Gregory, Assistant City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

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

Cheryl Schoenberg, 14824 Fairway Court, stated their property, located in the Leebrooke Subdivision, abuts the land that is currently under contract for purchase as an addition to Ironwoods Park. They can view the amphitheatre stage area from their back deck. When they were looking at the land, they were given information about the park and amphitheatre by the developer. Had they not been given this information, she felt it was the buyer's responsibility to investigate what would happen with the surrounding land in the future. The information clearly showed an amphitheatre with future access from Leebrooke and that events held at the park had to end by 11:00 P.M. They all purchased their homes after the park plan existed and all homes that abut the park were built after the temporary stage was in place. Public comments stating rehearsals ran later than midnight and that the lights were on as well are false.

Ms. Schoenberg felt the desire from some was to not only stop any changes to the park, but also end community utilization. This public park should be utilized as the voters deemed before the surrounding homes were built. Harassment of Leawood residents legally using the park must end and she felt the Mayor and City Council must publicly take a stand. She was in favor of the amphitheatre expansion plans if they are to finish what was started from the 1998 bond issue; otherwise, she asked that they make a public rendering for a Master Plan that includes the new land and have a civil discussion about the future of Ironwoods Park.

Councilmember Rasmussen confirmed with Ms. Schoenberg she did not receive any notification from the City regarding the purchase of the additional land.

Mayor Dunn clarified there has been no park plan application made at this time. If an application is submitted, the City would notify the public located within 500 feet and there would be an interact meeting.

Ray Zaar, 9107 Riggs Lane, Overland Park, stated group activities like community theatre is an educational opportunity for both children and adults. The group of volunteers are remarkable and selfless, always working together with respect to all. They deserve to have proper restrooms and dressing rooms and would do everything possible to not create too much noise. In his experience, they never went past 11:00 P.M. at any time and people tried to be respectful leaving the park. He asked the Governing Body to consider the educational, cultural, and positive aspects of this theatre for the future.

Patty Logan, 3910 W. 143<sup>rd</sup> Street, stated her family fully supports the Leawood Stage Company and have attended most of the productions over the past several years. Although she wasn't complaining, she stated they can clearly hear the productions from their front yard. After researching the City's website, she was unable to find any information regarding the proposed plans. Property owners living within the area need to have the overall plans shared before expecting them to say they should have known what the plans were.

Calvin Cochran, 3910 W. 143<sup>rd</sup> Street, stated although the theatre is facing the opposite direction of their home, they can still hear the productions from almost a mile away. He stated he has been to many productions and they have all been great. He felt the proposed additions to the park were too grand for the site. The restrooms and additions to the stage would change the focus of the park, which needs to remain a community place to enjoy nature. The voters wanted an amphitheatre, which is what he felt they already have. A production stage would have permanent lights and sound; however, this seems to be inconsistent with the scope of the Leawood Stage Company. A temporary show for a single month of the year does not warrant a large permanent structure like the one proposed. There is a lot of speculation as to the land that will be purchased and where the amphitheatre would be situated. He was opposed to any addition of this scale to the park.

David Martin, 9527 Connell Drive, Overland Park, stated he had been involved with several productions of the Leawood Stage Company and felt they had been making the best with what they've been given. He felt it was extremely commendable that an organization that does not charge admission would try to raise all of the funds privately.

Mr. Martin supported the amphitheatre and asked the Governing Body to reduce the scale in proportion to the site so it would be acceptable to everyone.

Mike Saxton, 1700 W. 41<sup>st</sup> Street, Kansas City, Missouri, stated he has performed with the Leawood Stage Company on several occasions. He thought people should feel fortunate to have the benefit of an amphitheatre provided with the park for the community. If they change the show to an earlier start time and have fewer shows, they limit the scope. The productions have always ended by 11:00 P.M. If people are allowed time to leave quietly with minimal lighting, they will all achieve the benefit while addressing the issues that have been raised.

**4. PROCLAMATIONS - None**

**5. PRESENTATIONS/RECOGNITIONS - None**

**6. SPECIAL BUSINESS**

Request from Cornerstone LLC to release Letter of Credit securing Benefit Districts

Arthur Fillmore, Esq., Levy and Craig, stated his client, Steven Eginore, is a Leawood resident. Their request is for the City to release the Letter of Credit [LOC], which secures the payment of the taxes generated from the Special Benefit District [SBD] created for the Cornerstone Development. The SBD was approved in the amount of \$3.62 Million. Leawood's policy at that time was that any SBD payments needed to be secured by a LOC. Mr. Eginore guaranteed the LOC for 35% of the amount of improvements, or \$1,266,766, eight years ago. They understood the LOC would be released upon 35% of the lots being sold, and 5 years. In 2008, the development discovered the City's interpretation of the policy meant 35% of square footage, not the lots, and at the end of five years, the City could draw down on the LOC if all of the SBD taxes had not been paid. As part of a compromise, the LOC was reduced to \$683,114. Due to economy issues, in 2009 the project was in default and was deeded to M&I Bank, in lieu of foreclosure. Around this same time, Summit Investments purchased the note as part of a large portfolio from M&I Bank. Summit still owns the property and intends to develop it. Cornerstone and Summit have always paid the taxes due with respect to the SBD. Mr. Eginore voluntarily renewed the LOC in 2009 and 2010 even after he was advised in 2003 he had a five-year limit on the LOC. Being a third party, Mr. Eginore has no control over the payments any longer.

Bob Omer, Summit Investments, stated they are a private investment group based in Denver, Colorado. Purchases are usually made on distressed loans from banks throughout the United States. They purchased a pool of loans, including Cornerstone, from M&I Bank. Due to the economy, Summit took title to this property. Since that time, they've been looking for local development partners and have hired architects to continue to develop the property. They handle the payment of property taxes on hundreds of properties and are always made timely, unless the taxes are under protest. This property is managed by the local Merrill Company.

Mayor Dunn confirmed with Mr. Omer that Summit Investments will actively be involved in this project.

Mr. Omer confirmed for Councilmember Rezac that Summit Investments has owned other loans and property in the Kansas City metro area for the past 8 years.

City Attorney Patty Bennett confirmed Summit Investments would not be replacing the LOC.

City Administrator Scott Lambers confirmed for Mayor Dunn that the corner feature has not been constructed; however, is still part of the plan.

Councilmember Filla asked for clarification on the similarities and/or differences between this request and the request previously made by the Church of the Resurrection. Mr. Lambers responded the Council released the LOC for the church because they had paid their taxes for five years. This is the timeframe the Council may consider a release; however is not obligated. The new entity, Summit Investments, has been paying the taxes for two years.

As an alternative, Mr. Fillmore requested that the LOC sunset on August 1, 2013, conditional upon payment of the taxes in the interim. At this point, the City would have four years of tax payment history with Summit.

A motion to release the LOC on August 1, 2013, conditional upon Summit Investments continuing to make the tax payments in the interim, was made by Councilmember Filla; seconded by Councilmember Osman. The motion carried following a vote of 6-1. Councilmember Rasmussen felt because of the overall payment history and collection of assessments by the County, the City should make every effort to ensure the credit worthiness of these projects. (Councilmember Azeltine absent).

Mayor Dunn quoted a comment in the letter from Mr. Fillmore stating "Summit is a "good citizen" who has not, does not, and will not default on its obligations."

## 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. 2011-28
- B. Approve renewal of Cereal Malt Beverage [CMB] license to Ra Sushi Bar Restaurant, located at 11638 Ash Street
- C. Approve renewal of Cereal Malt Beverage [CMB] license to Paddy O'Quigley's, located at 11851 Roe Avenue
- D. Approve payment in the amount of \$49,826.00 to Microsoft Corporation via Software House International, Inc., pertaining to the annual Microsoft license renewal
- E. **Resolution No. 3629** approving and authorizing the Mayor to renew the Service Agreement for an amount not to exceed \$42,300, between the City and Securitas Security Services USA, to provide School Crossing Guard Services

- \*\*\* F. Resolution approving a Final Site Plan for a Tenant Finish for Park Place – Park Place Office, located at the southeast corner of Town Center Drive and Nall Avenue. (PC Case 70-11) *[from the June 28, 2011 Planning Commission meeting]* – **CONTINUED TO THE AUGUST 15, 2011 GOVERNING BODY MEETING**
- G. **Resolution No. 3630** approving a Final Sign Plan for Parkway Plaza – Addie Rose, located north of 135<sup>th</sup> Street and west of Roe Avenue. (PC Case 73-11) *[from the July 26, 2011 Planning Commission meeting]*
- \*\*\* H. **Resolution No. 3631** approving a Final Plan for Park Place – Hemline, located at the southeast corner of Town Center Drive and Nall Avenue. (PC Case 74-11) *[from the July 26, 2011 Planning Commission meeting]*
- I. **Resolution No. 3632** approving a Final Sign Plan for Market Square – Pride Cleaners, located north of 135<sup>th</sup> Street and east of Mission Road. (PC Case 76-11) *[from the July 26, 2011 Planning Commission meeting]*

Councilmember Osman requested to pull Item No. 7D and Councilmember Filla pulled Item No. 7E for discussion.

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

- 7D. Approve payment in the amount of \$49,826.00 to Microsoft Corporation via Software House International, Inc., pertaining to the annual Microsoft license renewal

Councilmember Osman confirmed with Information Systems Director Mark Andrasik that Software House International was not a part of Microsoft. Mr. Andrasik confirmed they have the State of Kansas contract, which gives the City the best cost.

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

- 7E. **Resolution No. 3629** approving and authorizing the Mayor to renew the Service Agreement for an amount not to exceed \$42,300, between the City and Securitas Security Services USA, to provide School Crossing Guard Services

Councilmember Filla commented part of the Police Department budget is to provide school crossing guard services. She felt this is one of the most valuable services the City provides to its citizens.

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

**8. MAYOR'S REPORT**

- A. Reminder that the August 15, 2011, Governing Body Work Session regarding "Goals and Objectives" will begin at 5:30 P.M.

**9. COUNCILMEMBERS' REPORT - None**

**10. STAFF REPORT – None.**

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION**

*[from the January 25, 2011 Planning Commission meeting]*

- A. 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 AND JUNE 20, 2011 GOVERNING BODY MEETINGS]***

***Staff Comment: Staff recommends this item be continued to the September 19, 2011 Governing Body meeting, due to the delay in execution of the real estate contract between the City and Citizens Bank & Trust Company, for the purchase of approximately 45 acres of real property located adjacent to and east of the City's Ironwoods Park, located at 14701 Mission Road***

A motion to continue this to the September 19, 2011, Governing Body meeting was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

*[from the July 12, 2011 Planning Commission meeting]*

- B. **Ordinance No. 2503** amending Section 16-4-2 of the Leawood Development Ordinance [LDO], Prohibited Uses, pertaining to oil and gas wells (PC Case 67-11)

Planning Official Mark Klein stated the Leawood Development Ordinance [LDO] does not address the drilling of oil and gas wells. The current ordinance went into effect in December, 2002. Prior to this, the LDO did address this issue; however, limited it to areas within the RP-A5 (minimum of 5-acres), RP-A (minimum of 1 acre), and AG Districts. There was also a requirement to have a minimum of 10 acres in order to drill for oil and gas, which was done with a Special Use Permit [SUP]. Staff wasn't sure why this was omitted from the current LDO. Their proposal would ban oil and drilling throughout the entire City.

Councilmember Rasmussen confirmed with Assistant City Attorney Franki Shearer that the City's appeal with the Kansas Corporation Commission [KCC] was denied. They approved both the exception to the 10-acre requirement and an exception to allow the well to be closer than 330 feet from a property line. Two adjacent property owners have filed motions for reconsideration that are pending with the KCC. While these are pending, the notice of intent will not be granted and drilling cannot occur per the KCC. Staff received no specific reasons as to why the KCC granted the exceptions.

The City is not joining the property owners in their appeal because staff felt they may not have a standing. The City's course of action is to enact the ordinance banning drilling. The timeframe to file a motion to reconsider expired on July 18<sup>th</sup>. At that time, staff knew there was going to be at least one, possibly two, motions filed to reconsider and they felt this aspect of the proceedings would be covered. The KCC will take this up as one motion on August 10<sup>th</sup>. Mr. Rasmussen felt the City has standing in this because of the moratorium the Council declared on June 6<sup>th</sup>. He wanted staff to look into joining the appeal. Mayor Dunn was uncomfortable not knowing the ramifications of this and wanted to be educated before recommending they enter into an appeal. Ms. Shearer reiterated they were aware going into this that the property owner(s) were planning to file a motion to reconsider. Should the KCC decide to stand with the exceptions and not reverse their decision, there is then an opportunity for a case to be filed in District Court. They are currently in an intermediate step of a 15-day timeframe between the actual granting of the exceptions and any case that would go to District Court. Mayor Dunn confirmed the City forwarded a letter, dated March 22nd, to the KCC addressing the City's concerns on this issue. Ms. Shearer confirmed the KCC is aware of their intentions to pass this ordinance.

Matthew Keenan, 14104 Pawnee lane, stated he owns a vacant lot located two lots down from the referenced drilling site. He reiterated the KCC is well aware of tonight's actions. At the time they entered their ruling, they had said the City had not yet taken action. The argument he made in the briefing was that the City had jurisdictional authority over the KCC on oil and gas matters and by virtue of the Mayor's letter, the City's position was quite clear. He thought in their minds, the letter wasn't equivalent to a stand-down order or a formal ordinance precluding this. In Mr. Keenan's reconsideration, he submitted all of the City's documents and was optimistic that they have an appreciation of how the landscape has changed since he initially filed the documents in early June. He and two other neighbors testified before the KCC and thought the record was very extensive about their objections and concerns.

Mayor Dunn noted the Planning Commission voted unanimous approval of the LDO amendment.

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 7-0. Nay: None. (Councilmember Azeltine absent).

**12. OLD BUSINESS** - None

**13. OTHER BUSINESS** - None

**14. NEW BUSINESS**

- A. Schedule a Governing Body Work Session at 6:00 P.M., on December 19, 2011, to discuss trail repair at 123<sup>rd</sup> Street along Mission Road to Tomahawk Creek Park

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Rezac.

Mr. Lambers confirmed staff will have all of the information for the Council to base their decision on whether they should repair or abandon the trail.

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

- B. Schedule a Governing Body Work Session at 6:00 P.M., on Tuesday, January 3, 2012, to discuss Parks & Recreation Cost Recovery Study

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

- C. Schedule a Governing Body Work Session at 6:00 P.M., on Tuesday, January 17, 2012, to discuss potential revisions to existing Transportation Development District [TDD] Policy

A motion to approve the Work Session was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

- D. Schedule a Governing Body Executive Session at 6:00 P.M., on Monday, March 26, 2012, for Personnel Matter; City Administrator's Annual Review

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

- E. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, February 6, 2012, to discuss potential purchase of city-leased street lights from Kansas City Power & Light [KCP&L]

A motion to approve the Work Session was made by Councilmember Rezac; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

- F. Schedule a Governing Body Executive Session at 6:00 P.M., on Tuesday, September 4, 2012 for Personnel Mater; City Administrator's 6-month Review

A motion to approve the Executive Session was made by Councilmember Rezac; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

A motion to recess into Executive Session at 9:05 P.M. for a period of 15 minutes to discuss matters related to attorney-client privilege was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

The Governing Body reconvened into regular session at 9:20 P.M.

A motion to adjourn the regular meeting was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

**ADJOURN**

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