

**Minutes**

DVD No. 287

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, September 4, 2012. Mayor Peggy Dunn presided.

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

**Mayor/Councilmembers absent:** Carrie Rezac

<b>Staff present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief Dave Williams, Fire Dept.	Chris Claxton, P&R Director
Captain Dale Finger, Police Dept.	Lovina Freeman, HR Director
Mark Andrasik, Info Systems Director	Dawn Long, Finance Director
Richard Coleman, Comm Dev Director	Deb Harper, City Clerk
Mark Klein, Planning Official	Pam Gregory, Assistant City Clerk
Joe Johnson, Public Works Director	

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

City Administrator Scott Lambers requested that the Executive Session under Item No. 14F, City Administrator's 6-month review, be deferred to March, 2013, and that this work session topic be revised to review a Community Improvement District [CID] application for Ranchmart North.

A motion to approve the agenda was made by Councilmember Azeltine; seconded by Councilmember Rawlings.

Councilmember Bussing asked if this CID application could wait until December 17<sup>th</sup>. Mr. Lambers replied the attorney for the applicant requested a meeting with the Mayor; however, he did not clearly indicate whether it was to discuss the application or discuss having a special work session on an off-meeting night and they have asked him to clarify. If the latter is correct, they will return to try and schedule that work session when all of the City Council could be present. Staff wanted to at least have something scheduled before the end of the year.

The motion carried following a unanimous vote of 7-0. Councilmember Rezac 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**

**Constitution Week, September 17-23, 2012**

Mayor Dunn declared the week of September 17-23, 2012, as Constitution Week and asked the citizens to reaffirm the ideals the Framers of the Constitution had in 1787.

**Suicide Prevention Week, September 9-15, 2012**

Mayor Dunn declared September 9-15, 2012, as Suicide Prevention Week and urged Kansans to learn how they can help because suicide prevention is everyone's business.

**5. PRESENTATIONS/RECOGNITIONS - None**

**6. SPECIAL BUSINESS**

- A. **Resolution No. 3890**, accepting the Revised Certified Cost Summary in the amount of \$1,620,000.00, in accordance with that certain Development Agreement dated September 18, 2008 between the City and 119<sup>th</sup> Street Development, LLC, pertaining to the One Nineteen Development Project, Transportation Development District [TDD] located at 119<sup>th</sup> Street and Roe Avenue [Project # 80456]

Councilmember Rasmussen asked when they estimated the sales tax increase to cease. Finance Director Dawn Long replied if revenues continue as they are, both debt issues will be paid off by June, 2019.

Roger Edgar, George K. Baum & Company, City Financial Advisor, confirmed the sales tax increase in the TDD agreement would remain in force if the property changes hands. Councilmember Rasmussen asked if they should consider that the bonds become payable if the property is sold. Mr. Edgar replied their approach has been that once bonds are issued to reimburse costs, they need to protect the revenue stream to secure payment of those bonds. This type of provision was not included in the agreement. This would be taking a subsidy from a developer that was previously given and the economic benefits of this incentive would be withdrawn.

A motion to request staff to return within 90 days with language to consider calling the bonds if the property is sold was made by Councilmember Rasmussen. The motion died for lack of a second.

Mr. Lambers noted if the developer had accrued the entire benefit and then sold the property he could understand Councilmember Rasmussen's suggestion; however, it would be viewed unfavorable by a developer if they were responsible for future revenue they haven't received.

Mr. Edgar stated this would present a negative credit factor to the issuance of the bonds because it would be an extraordinary redemption provision for investors. \$930,000 was originally certified; however, was not reimbursed from the first issuance, with another \$236,000 for additional parking improvements. The proposed \$1.6 Million bond issue would reimburse costs of approximately \$1.4 Million. The City's obligation would be satisfied.

Mayor Dunn noted this TDD had a lifespan of 22 years; however, this project has been very successful, in which they are projecting payoff in 7 years. Mr. Edgar stated as in the past, they will structure the new bond issue for a maximum maturity of 22 years from the date of the first issue and will advance them as revenues come in. They have assumed no increase or decrease in revenues and have based their projections on the last 12 months.

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

- B. **Resolution No. 3891**, ordering a Public Hearing to be held on September 17, 2012, at 7:30 P.M., or as soon thereafter as may be heard on assessments for certain public and private road and parking lot related improvements and other such transportation related improvements approved by the City, located within 119<sup>th</sup> Street Development District, located within the City of Leawood, Kansas, and for the City Clerk to publish Notice thereof and provide written notice to owners of property of such revised assessments [One Nineteen Transportation Development District] [ CIP # 80456]

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Cain.

City Clerk Deb Harper confirmed the public hearing notice must be published no later than 10 days prior to the hearing.

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

- C. **Resolution No. 3892** approving and authorizing the Mayor to execute Amendment No. 3 to that certain Professional Architectural Service Agreement, dated December 20, 2010, in the amount of \$167,455.00, between the City and Hofer Wysocki Architects, LLC [HWA] pertaining to the Leawood Justice Center Construction Project to be located at 117th & Tomahawk Creek Parkway [Project # 76008]

Dave Walter, Owner's Representative McRealty Group, noted the following design work has been requested by the project team:

1. Garage Addition (\$81,200)
2. Basement Alternate (\$37,380)
3. Bike Rack and Canopy Design (\$6,500)
4. Geothermal HVAC Upgrade (\$39,375)
5. Indoor Generators (\$3,000)

The design work for the alternate basement under the courtroom will be an add-on if the City decides to move forward with it. Because of revisions to how they planned to run the KCP&L service, there will be an additional architect amount of \$1,600. There may also be additional amounts for “as built” services to help KCP&L create an easement.

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 7-0. (Councilmember Rezac 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 Nos. 2012-33
- B. Accept minutes of the August 20, 2012 Governing Body meeting
- C. Accept minutes of the August 20, 2012 Governing Body Work Session
- D. Accept minutes of the May 22, 2012 Leawood Arts Council meeting
- E. Approve 3<sup>rd</sup> and Final Pay Request in the total amount of \$9,068.80 to Premier Contracting, pertaining to Fire Station No. 1 Roof Replacement Projects [\$5,126.80 – Project # 76025]; and Historical Building Roof Replacement Project [\$3,942.00 - Project # 74032]
- F. Approve 4<sup>th</sup> and Final Pay Request in the amount of \$7,680.00 for Fire Station No. 3 Roof Replacement Project [Project # 74045]
- G. **Resolution No. 3893** approving a Final Sign Plan for Mission Farms – Fusion Fitness (Fitness Classes), located south of 105<sup>th</sup> Street and east of Mission Road. (PC Case 97-12) [*From the August 28, 2012 Planning Commission meeting*]
- H. **Resolution No. 3894** approving a Final Sign Plan for BMO Harris Bank – ATM Sign, located at the northwest corner of 89<sup>th</sup> Street and State Line Road. (PC Case 100-12) [*From the August 28, 2012 Planning Commission meeting*]
- I. **Resolution No. 3895** approving a Final Sign Plan for Leawood Commons - BMO Harris Bank – ATM Sign, located north of Town Center Drive and east of Nall Avenue. (PC Case 101-12) [*From the August 28, 2012 Planning Commission meeting*]
- J. **Resolution No. 3896** approving a Final Sign Plan for Parkway Plaza– Mio An Italian Trattoria (Retail: Restaurant), located north of 135<sup>th</sup> Street and west of Roe Avenue. (PC Case 103-12) [*From the August 28, 2012 Planning Commission meeting*]
- K. **Resolution No. 3897** approving a Final Sign Plan for Nueterra (Healthcare Management Company), located south of College Blvd. and east of Roe Avenue. (PC Case 105-12) [*From the August 28, 2012 Planning Commission meeting*]
- L. **Resolution No. 3898** approving a Final Sign Plan for Park Place – Revised Office Tenant Sign Criteria, located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue. (PC Case 111-12) [*From the August 28, 2012 Planning Commission meeting*]

- M. **Resolution No. 3899** approving a Final Plan for a tenant finish for Park Place – Parisi Artisan Coffee (Retail: Coffee Shop), located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue. (PC Case 109-12) *[From the August 28, 2012 Planning Commission meeting]*
- N. **Resolution No. 3900** approving a Final Sign Plan for Park Place – Benjamin F. Edwards & Co. (Office: Investment Company), located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue. (PC Case 110-12) *[From the August 28, 2012 Planning Commission meeting]*
- O. **Resolution No. 3901** approving a Final Sign Plan for Park Place – Douthit, Frets, Rouse, Gentile & Rhodes (Office: Legal), located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue. (PC Case 112-12) *[From the August 28, 2012 Planning Commission meeting]*
- P. **Resolution No. 3902** approving a Final Sign Plan for Park Place – Archer Foundation, located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue. (PC Case 113-12) *[From the August 28, 2012 Planning Commission meeting]*
- Q. **Resolution No. 3903** approving a Final Sign Plan for Mission Farms – Tavern At Mission Farms (Retail: Restaurant), located south of 105<sup>th</sup> Street and east of Mission Road. (PC Case 114-12) *[From the August 28, 2012 Planning Commission meeting]*

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

## 8. MAYOR'S REPORT

- A. Attended the Johnson County Republican Party luncheon at Town Center Plaza's Hereford House in Leawood with Senator Jerry Moran as the keynote speaker. Congresswoman Lynn Jenkins was also in attendance.
- B. Participated in a Leawood Chamber of Commerce ribbon cutting ceremony for Little Sunshine's Playhouse and Preschool, located at the Ironhorse Center at 151<sup>st</sup> and Nall. This is their first location in the State of Kansas; however, it is their seventh location within five states. They are very excited to be in Leawood and look forward to a possible second Kansas location in the near future. Mayor Dunn wished them much success.
- C. Attended the Blue Valley Educational Foundation's 2012 Community Breakfast, in which Superintendent Dr. Tom Trigg reported on the remarkable success of the students and the hard work of their staff. Their statistics and results confirm that the Blue Valley School District is one of the best in the nation. Mayor Dunn offered her sincere congratulations for all of their awards and honors.
- D. Reminder of the annual Police and Fire Open House, to be held on September 12<sup>th</sup> from 5:00-8:00 P.M. This event is always popular with the residents and others of the community.

**9. COUNCILMEMBERS' REPORT**

**A. Councilmember Rawlings Update on Justice Center**

McRealty Group has received proposals for furniture design and will be submitting them to the City soon. Utility storm drains will begin at the end of this month. The earthwork and courthouse slab-on-grade is completed. The steel structure for the courthouse is scheduled to be completed by September 14<sup>th</sup>, weather permitting. The foundation walls for the police station have been poured and the concrete slab will be poured on September 7<sup>th</sup>. The steel structure for the police station is scheduled to begin September 12<sup>th</sup>. The overall project is 16% complete with an anticipated completion date of October, 2013.

**B. Councilmembers Osman & Filla Report on Public Forum conducted Thursday, August 23, 2012, regarding Brook Beatty Park Improvements**

Councilmember Filla reported low attendance for the public forum and thought it was partially due to Back to School Night. Several of the issues raised had already been shared via email or prior Council meeting. City staff has begun to modify the plans to address these issues. The survey process for gathering comments was informal by sending emails for notification of the public forum. Through her own survey, Ms. Filla determined there were 40 households in a ¾ mile radius with a total of 70 children under the age of six. Three things the park currently provides is: 1) a respite; 2) ability for dogs to get water; and 3) children able to access creek. There was 100% interest in the park from people that have small children.

Councilmember Osman added some of the residents acknowledged via email that they could not attend; however, some attended with young children that were interested in utilizing this park.

Mr. Lambers confirmed work sessions scheduled for September 17<sup>th</sup> and October 1<sup>st</sup> include an overview of all of the City's parks and property that may be included for park improvement and the parks to be included in the Master Plan [MP] review by the consultant. Discussion may include whether they want to separate Brooke Beatty Park and move forward with the proposed improvements. Because of its limited size, he felt there would not be any reason to include it in the MP if they decide to move forward. If there are reservations moving forward, it would remain in the MP study. These improvements are included in the 2013 Budget; therefore, the earliest this could move forward would be after the first of the year. An aerial photo will be available at the work sessions identifying some of the facilities currently in place and vacant tracts of land. Once the parks are selected to be included in the MP, they would then go through each of those parks for Council feedback to be included in the RFQ [Request for Qualifications], which would be the final action.

**10. STAFF REPORT - None**

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION - None**

**12. OLD BUSINESS - None**

**13. OTHER BUSINESS - None**

**14. NEW BUSINESS**

- A. **Ordinance No. 2566C** adding new Chapter One, Article 8, Sections 1-851 through 1-854 of the Code of the City of Leawood, 2000, pertaining to the establishment of the College Boulevard Utility Underground Agency Fund for the City of Leawood, Kansas [Roll Call Vote]

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

Public Works Director Joe Johnson confirmed that the undergrounding rate through KCP&L would be \$300 per linear foot.

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

- B. **Ordinance No. 2567C** amending § 14-103 of the Code of the City of Leawood, 2000, entitled, 'Maximum Speed Limits' [Roll Call Vote]

A motion pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Cain.

Mr. Johnson confirmed the City's ordinance permits the speed limit in a school zone to be 20-30 mph.

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

- C. **Ordinance No. 2568C** amending § 3-211 of the Code of the City of Leawood, 2000, entitled, 'Occupational License Fee for Retail Liquor Stores;' amending § 3-213 of the Code of the City of Leawood, 2000, entitled, 'License Fee for Drinking Establishments;' and amending § 3-215, entitled, 'Caterers' [Roll Call Vote]

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

- D. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, October 15, 2012 to Discuss Justice Center Art Pieces

A motion to approve the work session was made by Councilmember Cain; seconded by Councilmember Bussing.

Mr. Lambers suggested they defer this discussion to a later date and schedule this date for the CID discussion for Ranchmart North because this application is tied to decisions regarding the Slab-N-Pickle application. Councilmember Bussing requested they leave this work session as scheduled until he and Councilmember Cain, Arts Council liaisons, could discuss it with the Arts Council.

The motion carried following a vote of 6-1. Nay: Councilmember Osman. He preferred they discuss the CID application first to possibly resolve the Slab-N-Pickle application that has been ongoing. (Councilmember Rezac absent).

Mayor Dunn reiterated that Councilmembers Bussing and Cain planned to discuss whether this topic could be changed with the Arts Council.

- E. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, December 3, 2012 to Discuss Kansas City Orthopedic Institute Generator

Mr. Lambers stated the applicant was requesting an amendment to the City's Noise Ordinance to allow for their periodic testing to exceed the 60 decibel reading at the property line, which would be 75-85 decibels.

Councilmember Rasmussen argued this applicant has been in violation of their ordinance for several years and felt it was improper for this discussion to take place in a work session. He requested that this discussion occur in a Governing Body meeting so the citizens can voice their concerns in a public forum.

Councilmember Azeltine asked what gives this applicant standing to request a work session and what would prevent any other applicant from requesting an amendment to the City's ordinance. Mr. Lambers replied they have claimed to have federal preemption over the City's ordinance because of a federal requirement to test the generator. To resolve this would involve federal litigation whereas, currently this is in Municipal Court. The City has cited them and is refraining from moving forward until they can hold the work session for discussion. City Attorney Patty Bennett confirmed it was fairly standard for a court case to be continued until something of this nature can be resolved. The City is not intervening. It is reasonable for the Council to consider a request for an amendment to the ordinance and holding a work session would be a better venue with greater ability to ask questions. This is an open session to discuss whether the Council would be amenable to changing the ordinance.

Mr. Lambers stated staff requested they enclose the generator and have the manufacturer's specifications to show what they expect to achieve. They claim they may not be able to achieve this at the property line and after the improvements are made, they want the ordinance to provide flexibility to exceed the current decibel level.

Councilmember Azeltine asked if they would be using this work session to consider amending the ordinance for this specific applicant. Mr. Lambers replied they would be considering a provision in the ordinance to change the decibel requirements for medical facilities that are required to have back-up generators and testing of such generators.

Councilmember Rasmussen stated the applicant could relocate the generator to a new location on their property to mitigate this issue. The citizens have done everything possible to mediate the problem with their own landscaping, etc.

Councilmember Rawlings stated the generator can be heard inside the neighboring homes and felt the hospital should be held accountable for not complying with the ordinance.

Councilmember Rasmussen stated one of the reasons for an open meeting is to give the public the ability to speak. A work session does not allow this and he felt it would be in violation of the open meetings act. Mayor Dunn replied the public is not invited to speak at a work session; however, they are open meetings for the public to attend, which is not in violation of the open meetings act.

Councilmember Azeltine felt by allowing this work session request it would be precedent setting for other applicants.

Mayor Dunn noted she had some of these same questions and concerns; however, she accepted the work session recommendation based upon the advice of their professional staff. Staff could make a one-time exception to allow the public to speak at the work session if this is a concern. She was unaware if citizens had been complaining about this issue for several years and had recently just learned of it over the last few months.

Mr. Lambers stated the attorney for the applicant was planning to give a presentation regarding this issue. If the Council decides to make an exception to allow the citizens to participate, he suggested they give the attorney and citizens each 20 minutes to speak and then the Governing Body could hold their discussion for the remainder of the work session.

Councilmember Azeltine stated the purpose of a work session is not to litigate individual complaints and reiterated this would be precedent setting.

A motion to have the work session as scheduled incorporating the suggestion of 20 minutes each for the attorney and citizens, and the remainder of the meeting for Governing Body discussion was made by Councilmember Filla; seconded by Councilmember Cain.

Ms. Bennett stated the applicant was arguing that due to the use of the building and health care requirements, federal regulations supersede the City's ordinance. The changes that have been suggested by their attorney would still require them to purchase a new generator and insulate it.

Mayor Dunn noted one of the residents had informed her they were able to specify that the generator could not operate before 10:00 A.M. Ms. Bennett thought the generator operates for one hour once a month and is tested for three hours every six months to one year. The applicant has abided by the input from the residents for the best time of day for testing.

A motion to call the question was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a vote of 6-1. Nay: Councilmember Bussing.

The motion to have the work session as scheduled incorporating the suggestion of 20 minutes each for the attorney and citizens, and the remainder of the meeting for Governing Body discussion carried following a vote of 4-3. Yea: Councilmembers Filla, Bussing, Rawlings and Cain. Nay: Councilmember Osman, Rasmussen and Azeltine. (Councilmember Rezac absent).

Mr. Lambers confirmed staff would notify the homes association and abutting property owners of this work session.

- F. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, December 17, 2012 to review CID for Ranchmart North

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.

**ADJOURN**

There being no further business, the meeting was adjourned at 8:55 P.M.

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Debra Harper, CMC, City Clerk

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Pam Gregory  
Recording Assistant City Clerk