

Minutes

DVD No. 279

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, May 7, 2012. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None

Staff present: Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief John Meier, Police Dept	Chris Claxton, P&R Director
Interim Chief Steve Duncan, Fire Dept	Joe Johnson, PW Director
Mark Andrasik, Info Systems Director	Lovina Freeman, HR Director
Richard Coleman, Comm. Dev Director	Dawn Long, Finance Director
Mark Klein, Planning Official	Deb Harper, City Clerk
Dawn Long, Finance Director	Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modifications to the agenda:

- Addition of Councilmembers Report – Referral from Councilmember Filla
- Continue Item No. 13 – Arts Council Independent Contractor Agreement to the May 21, 2012, Governing Body meeting

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

City Administrator Scott Lambers clarified Agenda Item No. 13 was continued at the request of the vendor.

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

Mayor Dunn read the proclamation into the record.

Bike to Work Week, May 14-18, 2012

National Public Works Week, May 20-26, 2012

Mayor Dunn read the proclamation into the record.

Municipal Clerks Week, April 29-May 5, 2012

Mayor Dunn read the proclamation into the record.

5. PRESENTATIONS/RECOGNITIONS

Introduction of French Firefighter Exchange Student, Marius Dore

Interim Fire Chief Steve Duncan introduced French Firefighter Exchange Student Marius Dore stating he would be with the Leawood Fire Department for 11 weeks. This is the second year the City of Leawood has been selected to host a foreign exchange student. Mr. Dore thanked the department staff and City of Leawood for their hospitality.

6. OATH OF OFFICE ADMINISTERED TO COUNCILMEMBER-ELECT LOU RASMUSSEN, [TERM EXPIRES 2016]

7. SPECIAL BUSINESS

A. Presentation of 2011 Annual Audit

Kaleb Lilly, Partner, Rubin Brown, stated members of City management were prompt in their requests, which resulted in a very efficient and effective audit.

Michael Fox, Senior Accountant, Rubin Brown, presented the required auditor communications and issued an unqualified or clean opinion on the City's financial statements, which is the highest level of assurance they can provide. There were no disagreements with management and no other matters that would warrant communication of the City Council.

Mr. Lilly noted the following new accounting and auditing pronouncements:

- GASB 63 - Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position
- GASB 65 – Items Previously Reported as Assets and Liabilities

B. **Resolution No. 3795** accepting the 2011 Comprehensive Annual Financial Report [Audit] for the City of Leawood, Kansas

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

C. Public Hearing Park Place Development Improvement District Assessments [Project # 83196]

Seeing no one present to speak, a motion to close the public hearing was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

- D. **Ordinance No. 2540**, levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for construction of improvements to Nall Avenue, 117th Street, Town Center Drive and Roe Avenue and construction of Storm Water Improvements within the City of Leawood for establishment of an Improvement District, pursuant to K.S.A. § 12-6a01, et. seq., and the City's home rule authority of Article 12, Section 5 of the Kansas Constitution, located in Park Place Development [Project # 83196]

A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Rawlings. The motion carried following a unanimous roll call vote of 8-0. Nay: None.

- E. Public Hearing One Nineteen Transportation Development District Assessments [Project # 80456]

Seeing no one present to speak, a motion to close the public hearing was made by Councilmember Rasmussen; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 8-0.

- F. **Ordinance No. 2541**, levying assessments on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of construction of certain public and private road and parking lot related improvements and other such transportation related improvements, located within 119th Street Development District, within the City of Leawood, Kansas, [One Nineteen Transportation Development District] [Project # 80456]

A motion to pass the ordinance was made by Councilmember Rezac; seconded by Councilmember Filla. The motion carried following a unanimous roll call vote of 8-0. Nay: None.

- G. **Resolution No. 3796** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$20,389,844.00, between the City and Titan Built Construction as the General Contractor for the Leawood Justice Center to be located at Town Center Drive & Tomahawk Creek Parkway [Project # 76008]

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Osman.

Mr. Lambers did not anticipate any substantial changes to the project; however, if rock is discovered during the initial excavation, there could be a change order. Updates will be provided periodically throughout the project.

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

8. 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. 2012-14, 2012-15, 2012-16
- B. Accept minutes of the April 16, 2012 Governing Body meeting
- C. Accept minutes of the April 9, 2012 Governing Body Work Session
- D. Accept minutes of the March 27, 2012 Arts Council meeting
- E. Accept minutes of the March 22, 2012 Leawood Foundation meeting
- F. Accept minutes of the February 16, 2012 Sustainability Advisory Board meeting
- G. Accept minutes of the February 8, 2012 Public Works Committee meeting
- H. Accept minutes of the November 2, 2011 Bicycle Friendly Committee meeting
- I. Mayoral Appointment for Governing Body Presiding Officers from May 2012 through April 2013
- J. Approve renewal of Cereal Malt Beverage [CMB] license for Hallbrook Country Club, located at 11300 Overbrook Road
- K. Approve renewal of Retail Liquor License for Par 4 Liquor, LLC [f/n/a ZIPZ Spiritz] located at 4821 W. 135th Street
- L. Approve 2nd and Final Payment in the amount of \$785.00 to Premier Contracting, Inc., pertaining to the roof replacement at Ironhorse Maintenance Building, located at 15400 Mission Road [Project # 74045]
- M. Approve 3rd and Final Payment in the amount of \$8,026.50 to Premier Contracting, Inc., pertaining to the roof replacement at Ironhorse Maintenance Building, located at 15400 Mission Road [Project # 74045]
- N. Approve purchase in the amount of \$34,970.00 from Van Wall Equipment, for the purchase of mower for Parks & Recreation Department
- O. **Resolution No. 3797** approving a Special Event at Park Place at 117th & Nall Avenue, for a Street Fair to be conducted on Friday, July 13, 2012 in Leawood, Kansas
- P. **Resolution No. 3798** accepting the Board of County Commissioners of Johnson County's Order of Detachment of certain property from the boundaries of the Fire District, and the transfer of such land to the City for fire protection services
- Q. **Resolution No. 3799** accepting a Quit Claim Deed from Hallmark Farms, pertaining to real property located north of I-435 and west of State Line Road, for additional Parkland
- R. **Resolution No. 3800** approving and authorizing the Mayor to execute a Service Contract in the amount of \$30,578.00 between the City and Motorola Solutions, pertaining to Inspection Services for R56 grounding for the Leawood Justice Center to be located at Town Center Drive & Tomahawk Creek Parkway [Project # 76029]
- S. **Resolution No. 3801** approving a Final Sign Plan for Park Place – Marv's Delicatessen, located at 11554 Ash Street (PC Case # 41-12)
- T. **Resolution No. 3802** approving a Revised Final Plan for Clare Bridge of Leawood – Roof (existing assisted living facility), located north of 128th Street and west of State Line Road (PC Case # 39-12)
- U. **Resolution No. 3803** approving a Final Sign Plan for Parkway Plaza - Oliver's Pizza, located north of 135th Street and west of Roe Avenue (PC Case # 42-12)

- V. **Resolution No. 3804** approving a Final Plan for a Tenant Finish for Park Place – Alysa Rene Boutique (women’s apparel), located at 11555 Ash Street (PC Case # 44-12)
- W. **Resolution No. 3805** approving a Final Plan for a Tenant Finish for Park Place – Retail Space G-30 Storefront, located at 5262 W. 116th Place (PC Case # 46-12)
- X. **Resolution No. 3806** approving a Final Plan for a Tenant Finish for Park Place – Retail Space G-25 Storefront, located at 5275 W. 116th Place (PC Case # 47-12)
- Y. **Resolution No. 3807** approving a Final Plan for a Tenant Finish for Park Place – Geno’s Clothiers (men’s apparel), located at 5256 W. 116th Place (PC Case # 48-12)

Councilmember Azeltine requested to pull Item Nos. 8P and 8Q and Councilmember Rezac pulled Item No. 8Q for discussion.

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

- 8P. **Resolution No. 3798** accepting the Board of County Commissioners of Johnson County’s Order of Detachment of certain property from the boundaries of the Fire District, and the transfer of such land to the City for fire protection services

Mr. Lambers confirmed the City was already protecting this area and there would be no additional costs.

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

- 8Q. **Resolution No. 3799** accepting a Quit Claim Deed from Hallmark Farms, pertaining to real property located north of I-435 and west of State Line Road, for additional Parkland

Mr. Lambers confirmed this park land will be green space for the City. Hallmark Farms Associates required them to accept this prior to their dedication of the land the City is interested in for possibly developing into an Off Leash Dog Park.

Fred Logan, Esq., Logan Logan & Watson, representing Hallmark Farms Associates and Managing Partner Donald Hall, stated this is a donation of 13.22 acres, located north of the creek.

Mr. Lambers confirmed they were not aware of any environmental issues and did not feel a study was necessary.

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

9. MAYOR'S REPORT

- A. Attended a groundbreaking ceremony for AMC's World Headquarters, followed by a celebration party at Mestizo's Restaurant in Park Place. Nearly all City Councilmembers, City Administrator Scott Lambers and department heads joined AMC CEO Gerry Lopez and their employees to hear remarks from Governor Sam Brownback and Park Place Developer Jeff Alpert. Lieutenant Governor Jeff Collyer, Secretary of Commerce Pat George and other representatives from the State were also in attendance.
- B. Attended a Leawood Chamber of Commerce ribbon cutting ceremony with Councilmember James Azeltine for Sammy's Pizza, located at 133rd and State Line. Mayor Dunn wished them much success.
- C. Finance Department Accountant Karry Rood and Public Works Department Project Engineer Dave Roberts, along with the Employee Activities Committee, organized a great "Bring Your Child to Work" Day for a number of City staff's children and grandchildren. There were terrific activities all day and everyone had a wonderful time.
- D. Had the pleasure of serving as a keynote speaker at a Naturalization Ceremony at the Federal Courthouse in Kansas City, Kansas, to 90 new citizens from 37 countries. This was a very impressive group. Mayor Dunn learned during the reception following that several are Leawood residents. Congratulations to one and all!
- E. The May Council of Mayors meeting was hosted by Bonner Springs Mayor Clausie Smith. Congressman Kevin Yoder was a special guest with remarks from Washington DC on issues that might affect us locally.
- F. Reminder on Friday, May 11th from 5:30 to 8:00 P.M., there will be an Art Show and reception featuring Clifford Bailey, co-sponsored by the Leawood Arts Council and Leawood Fine Art Gallery, located in Camelot Court.

10. COUNCILMEMBERS' REPORT – COUNCILMEMBER FILLA

A motion for the Chair and Vice-Chair of the Sustainability Advisory Board and Public Works Committee to work with staff to review the implementation of the Complete Streets Policy was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

11. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

12. PUBLIC WORKS COMMITTEE

[from the August 16, 2011, October 18, 2011, November 9, 2011, December 14, 2011, February 8, 2012, and April 11, 2012 Public Works Committee meetings]

- A. Recommendation that Council approve the hiring of a consultant; and the creation of a Benefit District for traffic calming on 85th Terrace between State Line Road and Lee Boulevard

Councilmember Azeltine reported traffic calming options have been discussed at length at several Public Works Committee meetings and meetings with residents. These options included speed tables, raised intersections and a right-in, right-out at 85th Terrace and State Line.

In addition to establishing a Benefit District, this involves hiring a traffic consultant for design and review of possible impacts from the installation of one or more of these measures.

A motion to approve the recommendation was made by Councilmember Azeltine; seconded by Councilmember Osman.

Clint Thezan, 8525 High Drive, stated some of the residents on neighboring streets were concerned they would be impacted by the changes. They understood that some of them don't necessarily have a say or vote on the proposed Benefit District; however, 28 of the 33 neighbors polled preferred that no additional measures be taken beyond the proposed sidewalks and narrowing of the street. He asked as they consider a Benefit District that consideration be given to those neighbors directly impacted because they can only access their streets via 85th Terrace.

Councilmember Azeltine confirmed comments were entertained from residents on the neighboring streets at their meetings and were informed they could address the City Council with their concerns.

Councilmember Filla thought there was great involvement between the citizens, Public Works Committee and Police Department and they should have an understanding of what they are trying to accomplish for everyone to win. Everyone was well aware during their conversations at the meetings that they wouldn't want to create a solution for 85th Terrace that would negatively impact the adjoining streets.

Public Works Director Joe Johnson confirmed the cost would range \$110,000-\$175,000, depending on whether they implement one or more of the calming measures. The sidewalk and narrowing of the street is in the Capital Improvement Program [CIP] for 2014. These projects would be done in conjunction with one another. If the Benefit District is established, there are 29 homeowners that would be assessed. With approval this evening, the committee will draft a petition with all property owners listed for signatures and return before the City Council.

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

[from the April 11, 2012 Public Works Committee meeting]

- B. Recommendation that a separate budgetary line item be made on Pay as You Go [PAYGO] basis for sidewalks

Councilmember Azeltine reported the ordinance states property owners are responsible for any repairs to sidewalks and the City has the prerogative to repair it and then assess the property owner. The Public Works Departments shows a history of \$20,000-\$30,000 in repairs. This recommendation will approve a line item in future budgets for sidewalk maintenance. The ordinance language will remain the same.

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

[from the April 11, 2012 Public Works Committee meeting]

- C. Recommendation that \$167,000 of unused Salt Funds be used for micro-surfacing 133rd Street between State Line Road and western city limits; Pawnee, and Briar between 133rd Street and 135th Street

Councilmember Azeltine stated due to the mild winter, Public Works staff recommended the unused salt funds be used for micro-surfacing some of the City's streets that were not scheduled to be done for a few years. This project would occur over the summer.

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

*****13. LEAWOOD ARTS COUNCIL**

[from the November 21, 2011 Leawood Arts Council meeting]

Resolution approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$2,500.00 between the City and Jeffrey A. Rumaner, artist, pertaining to Art on Loan piece entitled, 'Guardian' - **CONTINUED TO THE MAY 21, 2012 GOVERNING BODY MEETING**

14. PLANNING COMMISSION

[From the February 22, 2011 Planning Commission meeting]

Resolution approving a Final Sign Plan for Ranchmart – U.S. Bank, located north of 95th Street and east of Mission Road (PC Case #18-11) **Continued From The March 21, 2011, March 5, 2012, March 19, 2012, April 2, 2012, and April 16, 2012 Governing Body Meetings - THIS APPLICATION HAS BEEN WITHDRAWN BY APPLICANT**

15. OLD BUSINESS - None

16. OTHER BUSINESS

Discussion of Walgreen's lighting issue

Mr. Lambers recalled the extensive internal lighting discussion during a previous Governing Body meeting where Walgreen's was approved for their Final Plan. Concern was expressed by several Councilmembers of the visibility of that lighting. A Temporary Certificate of Occupancy [TCO] was recently granted to Walgreen's to proceed with stocking and training; however, they were put on notice of the uncertainty whether the City Council was satisfied with the lighting situation. A permanent Certificate of Occupancy [CO] could be issued if the Council deems appropriate.

Mayor Dunn noted she and Mr. Lambers had visited Walgreen's in response to the lighting concerns.

Doug Henslick, Developer with Manor Road Partners, stated they installed lens covers to the bottom portion of the louver to the 2 most northern rows of lights. The actual bulb is not visible whatsoever. Additional lens covers have been ordered for the remaining lights and will be installed this week.

Mayor Dunn felt the lens covers were necessary to match the high quality and beauty of the building's exterior; however, they do not block enough of the lighting from the street due to the difference in elevation. In conversations with a Walgreen's representative, he had stated they could adjust the shades to a ½ or ¾ level to improve the issue, in which they did so for a few days thereafter. He had indicated they had done this with other Walgreen's stores in the past. If the shades are utilized along with the lens covers there is a significant improvement.

Mr. Henslick stated Walgreen's intended to open on May 1st; however, it was delayed because of the lighting issue. The shades were installed to keep the sunlight out during the day. Walgreen's representatives informed him they were not willing to close the shades along Town Center Drive, because it gives the appearance that they are closed. Mayor Dunn clarified the concerns were evening visibility and she was referring to adjusting the shades to the ½ or ¾ level, not complete closure. The lights are still visible at that point.

Councilmember Filla clarified her comments at the previous meeting referred to blocking the light fixtures from the streetscape, not the light bulbs.

Councilmember Osman stated there were several facilities along the street with visible lighting and felt this Walgreen's was overly landscaped with a beautiful façade and they had gone above and beyond in working with the City. The lights will be shaded by trees. Adjusting the shades halfway would be tactful; however, he felt they should move forward and grant the CO.

Mr. Henslick stated Walgreen's was adamant if the shades are lowered even a portion it would hurt their evening business by blocking the energy and life that light creates from Town Center Drive.

Mr. Logan stated they had agreed at the previous meeting that the light source, or bulbs, would not be visible. Mayor Dunn clarified after listening to the meeting DVD, the term "bulb" was never mentioned. Mr. Lambers concurred and stated "lights" were discussed. The bulb issue was introduced by the contractor and was not discussed. Mr. Logan noted the stipulation refers to "light source" and have done everything possible to hide the bulbs and reduce the light. Mayor Dunn noted this was a main topic of discussion because of the encroachment.

Mr. Logan quoted minutes from the previous meeting; "Mayor Dunn confirmed with Mr. Telowitz that the vertical metal baffles below the light fixtures would restrict the view of the lamps from the street." This suggests the metal baffles would restrict the view of the bulbs. There was never any stipulation light fixtures would not be seen. Mayor Dunn clarified they were referring to "lights" and realized they would need to install a dropped ceiling to camouflage the lights. They felt lowering the shades halfway during the evening would be a way to remedy this.

Councilmember Azeltine couldn't recall their discussion involving lowering shades and concurred with Councilmember Osman to move forward and issue the CO. The applicant has gone through their process and satisfied the requirements set out. He didn't feel they should ask them to now do something else.

Mr. Henslick confirmed their TCO was valid through May 9th awaiting the outcome of this meeting. He personally had no problem with lowering the shades; however, this was an internal decision by Walgreen's.

Mr. Lambers noted they should have originally discussed the open ceiling in more detail and had assumed the lighting would be recessed into the ceiling. Mr. Henslick replied none of the Walgreen's stores he had developed had dropped ceilings; however, some of the older stores may.

Mayor Dunn requested they continue this discussion to allow Mr. Henslick time for further discussion with Walgreen's regarding lowering the shades halfway. Mr. Henslick argued their approval did not include lowering the shades; the louver fixtures were approved. No matter what light fixture is installed, it will be visible because of the grade change. Mayor Dunn thought lowering the shades would be an easy compromise; however they could return with another solution to shielding the light source because this is not currently meeting their approval. Mr. Henslick argued he didn't think there was another solution and had spent \$15,000 on lens covers trying to rectify this situation.

Mr. Lambers confirmed he would issue the CO if they would agree to lower the shades halfway during the evening. Councilmember Azeltine felt since they had complied with all stipulations that were part of the approved planning applications, they should be issued their CO.

Mayor Dunn confirmed the City did not keep them from opening on May 1st. Mr. Henslick stated Walgreen's postponed their opening because he had informed them the Council still needed to review the lighting issue and a CO would not be granted. At that time, a TCO was not going to be granted until he had written a letter to all Councilmembers requesting they respond. They are currently stocked and planning to open tomorrow.

Mr. Lambers explained if there is an issue with compliance, normally staff would not issue a TCO or CO. If the applicant disagrees, they can come before the Council to request that it be issued. This is a rare situation because the Council was driving the concerns and why it was back before them this evening.

A motion to continue this discussion to the May 21, 2012, Governing Body meeting and extend the TCO to May 23, 2012, unless the lighting issue is resolved beforehand was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a vote of 7-0. Nay: Councilmember Osman.

17. NEW BUSINESS - None

ADJOURN

There being no further business, the meeting was adjourned at 9:25 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk