

Minutes

DVD No. 280

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 21, 2012. Mayor Peggy Dunn presided.

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

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
Karl Weinfurter, Info Systems Spec	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

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

Philip and Janel LaMonica, 8745 High Drive, stated they knew the Estates of Old Leawood was in disrepair when they moved in 8 years ago; however, trusted the City would handle the situation. They were promised recreational acreage for walking trails, a swimming pool, tennis courts and landscaping. Instead, this site has been left unsightly. They were also promised the electrical lines would be buried, which has not occurred. The uncertainty of the situation brings down home values and has made it more difficult for their neighbors to sell their homes. They were outraged that the owners were allowed to pay agricultural taxes after the area was zoned residential; potentially cheating the City out of thousands of dollars. They felt the ongoing situation was not acceptable and deserve to live in a clean and safe environment.

City Administrator Scott Lambers replied the Planning Commission stipulations for those improvements are tied to the first 5 homes being constructed. These are private, not public improvements. They could request that the developer make some improvements; however, they are under no obligation at this time.

Mayor Dunn noted the City had nothing to do with allowing the agricultural tax; this was done at the legislative level.

Councilmember Osman requested staff report on the status of the Estates of Old Leawood and Councilmember Cain requested staff return with any citations that have been issued at a future meeting.

Gordon Henke, 8901 High Drive, requested that the 89th Street KCP&L remaining utility lines be buried and decorative camouflage be installed to the height of the 2 unsightly metal poles and that it be done at the developer's expense.

13. OLD BUSINESS

Continued from the May 7, 2012 Governing Body meeting

Continued discussion of Walgreen's [located at Town Center Drive and Roe] lighting issue

Bob Royce, Manager of Criteria Standards for Walgreen's, stated they were willing to accept the compromise to lower the shades halfway at sunset to reduce the lighting visibility; however, requested the opportunity to present another solution in the future. Mr. Lambers directed the Certificate of Occupancy [CO] be issued tomorrow, May 22, 2012.

4. PROCLAMATIONS - None

5. PRESENTATIONS/RECOGNITIONS - None

***6. SPECIAL BUSINESS

Resolution accepting for filing the Second Amended and Restated Petition for Creation of Transportation Development District for the One Nineteen Development located on the southeast corner of 119th Street and Roe Avenue, pursuant to K.S.A. §12-12,144 et seq.; calling and providing for the giving of notice of a public hearing on the advisability of amending the 119th Transportation Development District [CIP #80456] – ***THIS ITEM HAS BEEN WITHDRAWN***

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. 2012-17, 2012-18 and 2012-19
- B. Accept minutes of the May 7, 2012 Governing Body meeting
- C. Accept minutes of the May 7, 2012 Governing Body Work Session
- D. Accept minutes of the April 12, 2012 Sustainability Advisory Board
- E. Accept minutes of the April 11, 2012 Public Work Committee meeting

- F. Accept minutes of the February 29, 2012 Stormwater Management Committee meeting
- G. Accept minutes of the March 13, 2012 Historic Commission meeting
- H. Approve Change Order No. 1 in the amount of \$167,501.24, to Vance Brothers pertaining to the 2012 Slurry Seal Program [Project # 70011]
- I. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards
- J. **Resolution No. 3808** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$799,990.42 between the City and McAnany Construction Co., Inc., pertaining to the 2012 Residential Mill and Overlay Project [Project # 70012]
- K. **Resolution No. 3809** approving and authorizing the Mayor to execute a Statement of Concurrence to allow the transfer of existing licensee operations on certain 800MHz channels to Johnson County, Kansas
- L. **Resolution No. 3810** approving a Final Plan-Landscape Plan, for Park Place – Barclay Park - Artificial Turf, located at the northeast corner of 117th Street and Nall Avenue. (PC Case # 51-12) *[from the April 24, 2012 Planning Commission meeting]*
- M. Declaration of Surplus Property; 18” Planer
- N. Fire Department Monthly Report
- O. Police Department Monthly Report
- P. Municipal Court Monthly Report

Mayor Dunn and Councilmember Osman requested to pull Item No. 7I for discussion.

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

- 7I. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards

Mayor Dunn expressed her deepest appreciation to all of the estimated 300 volunteers stating they could not accomplish all they do throughout the City without the help of these volunteers.

Councilmember Osman noted there are currently no residents from Ward 1 on the Planning Commission and requested they apply to give their perspective on north Leawood.

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

8. **MAYOR’S REPORT**

- A. Attended the 28th Annual Philanthropic Awards Luncheon, sponsored by Nonprofit Connect. Congratulations to Leawood resident Mary Davidson Cohen who was nominated by the Leawood Foundation and was recognized as the 2012 Philanthropist of the Year. Leawood Foundation Board Chair Alice Hawk presented the award.

- B. Attended a studio art tour with Councilmember Lou Rasmussen at the Leawood Fine Art Gallery, co-sponsored by the Leawood Arts Council.
- C. Attended the Greater Kansas City Chapter of Hadassah Nurses Council's 10th Annual "Walk for Health," which was held at Leawood's Gezer Park and celebrated their Centennial Anniversary. There are more than 1,200 members of the Greater Kansas City Chapter.
- D. Attended the American Stroke Foundation Rose Award Luncheon, which honored Congressman Dennis Moore for his lifetime of community service. Congratulations to Congressman Moore.
- E. Attended two D.A.R.E. graduations with Police Chief John Meier; one at Brookwood Elementary and the other at Curé of Ars. Officer Randy Wiler is the D.A.R.E. Officer for both of these schools and provides outstanding leadership and does an excellent job with the students.
- F. Congratulations to Leawood Police Sergeant Kirt Yoder and Officers Erik Butler and Mark Chudik, who were adopted by a Virginia Police Officers Bicycle Club that rode 230 miles from Virginia to the Police Officer Law Enforcement Memorial in Washington, D.C. They began on May 10th and concluded on May 13th with a culmination ceremony at the memorial. This effort was to raise awareness for officers killed in the line of duty and raise funds to support the police memorial and new national museum that will open in 2013.
- G. Congratulations to 13-year old Leawood Middle School student Gracie Schram who was named one of America's top 10 youth volunteers of 2012 in a ceremony at the U.S. Chamber of Commerce, winning a national Prudential Spirit of Community Award for her outstanding volunteer service. Gracie was selected from a field of more than 26,000 youth volunteers across the country. She recorded and sold copies of a CD that raised more than \$20,000 to build two fish ponds in Africa and a home for 12 orphaned boys in Haiti. Gracie hopes to build another home for orphans with the proceeds from a second CD she has just released.

9. COUNCILMEMBERS' REPORT - None

10. STAFF REPORT Richard Coleman, Community Development Director

[From the February 6, 2012 Governing Body meeting]

Follow-up report on Massage Outcalls and Illumination for massage therapy establishments
– *CONTINUED FROM THE APRIL 2, 2012 GOVERNING BODY MEETING*

Community Development Director Richard Coleman reported staff visited several of the City's massage establishments to measure light levels and concluded a recommendation to reduce the foot candles from 40' to 2' and no change to the ordinance regarding outcalls because it would be difficult to regulate. Outcalls are currently allowed only for medical conditions with a prescription. Councilmember Osman felt businesses should be permitted outcalls. Councilmember Azeltine concurred; however, felt they not be allowed at hotels or residential businesses.

A motion to proceed with staff's recommendation to reduce the foot candles from 40' to 2' and return with specific requirements regarding business outcalls was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

COMMITTEE RECOMMENDATIONS

11. LEAWOOD ARTS COUNCIL

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

Resolution No. 3811 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 FROM THE MAY 7, 2012 GOVERNING BODY MEETING**

Dr. Ann Kenney, Arts Council Committee, stated the art piece was intentionally rusted and is 23' x 10'. It weighs 7,000 pounds and will be placed on the platform west of City Hall.

Councilmember Osman felt the art piece was too grand for that location and thought they may receive complaints. Mayor Dunn noted this is the City's permanent art on loan platform.

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

Dr. Kenney confirmed there was lighting around the platform; however, the art piece is not lit.

Councilmember Rasmussen felt they should have more diversity among their art and not select only contemporary pieces.

The motion carried following a vote of 6-2. Nay: Councilmembers Osman and Rasmussen.

12. PLANNING COMMISSION

[From the October 25, 2011 Planning Commission meeting]

A. Ordinance amending Section 16-4-9 of the Leawood Development Ordinance [LDO], Fences and Walls, pertaining to fences constructed on top of a deck (PC Case # 119-11) **Continued From The November 21, 2011, March 5, 2012, March 19, 2012, and April 2, 2012 Governing Body Meetings -- [Roll Call Vote] -CONTINUED TO THE JUNE 18, 2012 GOVERNING BODY MEETING**

[From the April 24, 2012 Planning Commission meeting]

B. **Resolution No. 3812** approving a Final Plan for Park Place – Site Signage, located at the northeast corner of 117th Street and Nall Avenue (PC Case #45-12)

Jeffrey Alpert, Park Place Village, requested approval of revised sign criteria for Park Place.

Mr. Coleman confirmed approval this evening would be for the wall mounted signs and parking garage signs that were approved by the Planning Commission. Two of the four "P" signs would be changed to "Park Place."

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

[From the January 24, 2012 Planning Commission meeting]

- C. Resolution approving a Final Plan for Ranchmart – Slab N Pickle, located north of 95th Street and east of Mission Road (PC Case # 109-11) –***Continued From the February 20, 2012, March 5, 2012, and March 19, 2012 Governing Body Meetings - CONTINUED TO THE JUNE 4, 2012 GOVERNING BODY MEETING***

[From the April 24, 2012 Planning Commission meeting]

- ***D. Zoning, Preliminary and Final Plat, Preliminary and Final Plan for Ranchmart North, located north of 95th Street and east of Mission Road
Staff Comment: A Protest Petition was received on May 8, 2012, and has been determined to be valid.

City Attorney Patty Bennett stated this application is for a plat and zoning for the Ranchmart Shops, located on the northeast corner of 95th and Mission Road. City staff cannot tell with any degree of certainty whether any part of Ranchmart was ever zoned. No zoning documentation has been discovered. The property was originally annexed to the City by the County at the time of the dissolution of the Mission Urban Township in the late 1950's. It is possible that the property was zoned by the Mission Urban Township; however, the City does not have copies of those documents. There are references in some of the old City minutes that it was zoned at some point before coming into the City; however, there are no documents of what that zoning was or if it actually occurred. Shortly after the annexation in 1960, the post office site came before the City Council with a request to rezone it as commercial. The minutes reflect the Council approved a resolution to allow the City to rezone it as light industrial for post office use only; however, staff cannot locate any paperwork or any ordinance that was passed or published putting that zoning category into effect. A zoning map in 1982 shows the property zoned commercial CP-1 and it appears the 1978 comprehensive plan may have shown it as commercial as well. Staff cannot locate any ordinance that ever put this commercial zoning into effect but it is shown this way on the zoning map for the last 30 years. Additionally, the property is not yet platted. Currently, various pieces of property within Ranchmart have different descriptions. Many of them are very long and tedious adding to the confusion regarding the zoning and making the property hard to track in City records. There is a great degree of public interest in this zoning; however, approval of the application this evening does not serve to approve the pending final plan application regarding the restaurant in the post office site. This is scheduled to come before the Council to determine that particular use on June 4, 2012. The zoning on the property as a whole shown on zoning maps and comprehensive plans for years as commercial, appears to have never been formally adopted under City and State zoning procedures. In order to correct this situation, staff has requested that the Council approve the plat for this land and formally approve the zoning as it has been shown for 30 years.

Mr. Coleman stated several cities have adopted maps in their ordinance as fact. He concurred with Ms. Bennett reiterating staff has researched over 50 years of City documents and have been unable to locate any ordinance confirming the zoning.

Councilmember Azeltine suggested they consider Item No. 12C - Resolution approving a Final Plan for Ranchmart – Slab N Pickle, and the zoning for Lot 3 concurrently at the June 4, 2012, Governing Body meeting.

Mr. Coleman confirmed the properties are owned by different LLC companies; Ranchmart North, Ranchmart McDonalds, Leawood Post Office, and Linwood Pioneer Cemetery. The post office and a portion of the main center on Lot 1 are legal nonconforming structures under the current Leawood Development Ordinance [LDO] because they do not meet the setback requirements. The structure does not need to conform; however, the use does and would apply to the zoning.

Wayne Starr, 9315 Wenonga Road, gave a presentation on behalf of the neighborhood opposing the commercial zoning and the proposed restaurant use of the old post office site. To conform to current commercial zoning of the 125' setback, this would only allow a 32' building on this property. He requested that the City Council approve the Planning Commission's recommendation for commercial zoning for Lots 1, 2, and 4; however, override their recommendation with respect to Lot 3 stating this property is too small for commercial zoning.

Kerry Patrick, 3408 W. 93rd Street, felt the City's legal and planning staff had not done due diligence as it applies to Lot 3. Since 1957, the Regnier Family has been the only continuous owner of Ranchmart North and has all files relating to the zoning and building Code history in their possession. The fact that they have offered no evidence refuting any of the factual information presented by the citizens in protest indicates there is no such evidence. If this zoning is approved, this would be the only restaurant within the City with a bar and patio with big screen outdoor TV's 45' from the residential property line. In 1976, the City sent a letter allowing Putsch's Coffee House to build on Lot 3 with a Special Use Permit [SUP]. The Regnier Family was turned down for commercial zoning in the 1960's. This property was properly zoned originally as R-1 and then for post office use only. A continuance of this matter should be granted if any new information is presented this evening to allow time for review.

Mayor Dunn read a portion of Planning Commission Stipulation No. 1 into the record: "Nothing in this zoning is intended to or shall be construed to create any new rights or benefits beyond the zoning and use of the property for commercial retail use. This zoning does not express any position as to the approval or denial of the pending application [Slab N' Pickle] for final plan approval for the building located at the southeast corner of the property, in which final plan approval shall be subject to separate consideration and action by the Governing Body." This application will be heard on June 4, 2012.

Ms. Bennett confirmed for Councilmember Rasmussen that the comprehensive plan map does not bind the zoning on the property; however, it shows the Governing Body's intent.

Christi Pitts, 9428 Wenonga, declined to speak.

Sally Reicher, 3322 W. 95th Street, declined to speak.

Dick Reicher, 3322 W. 95th Street, deferred his time to Lynn Ellingsworth, 9424 Wenonga.

Dorothy Foley, 9214 Wenonga, left the meeting.

Don Sheffler, 9101 Wenonga, left the meeting.

John Dow, 9302 Wenonga, declined to speak.

Carol Dow, 9302 Wenonga, declined to speak.

Anita Muller, 9400 Wenonga, declined to speak.

John Muller, 9400 Wenonga, declined to speak.

Lynn Ellingsworth, 9424 Wenonga, felt the zoning issue was just as important as the restaurant application and requested that the Council approve the zoning in compliance with the current LDO.

Bruce Berry, 9311 Pawnee, declined to speak.

Vicki Price, 9425 Wenonga Road, declined to speak.

Rebecca Andrews, 9427 Wenonga Road, declined to speak.

John Price, 9425 Wenonga Road, declined to speak.

Mark Andrews, 9427 Wenonga Road, declined to speak.

John Peterson, Esq., Polsinelli Schugart, stated for over 30 years the City has recognized this property as commercial. An adopted zoning map of over 30 years has legal ramification. On behalf of the Regnier Family, he requested that the Council confirm this commercial zoning and by doing so, it would have no constraints or advantages to the proposed restaurant application on June 4, 2012.

Barbara Slankard, 9416 Wenonga, declined to speak.

Edward Slankard, 9416 Wenonga, declined to speak.

Councilmember Filla concurred with Councilmember Azeltine's suggestion to consider Item No. 12C - Resolution approving a Final Plan for Ranchmart – Slab N Pickle, and the zoning for Lot 3 at the June 4th meeting. She felt the zoning would impact any applications presented in the future.

1. **Resolution No. 3813** approving Preliminary and Final Plat for Ranchmart North located north of 95th Street and east of Mission Road. [PC-52-12]

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

Ms. Bennett confirmed for Councilmember Cain they could remand No. 4 to the Planning Commission to give them the opportunity to consider it separately. By voting on this in 4 pieces it would constitute an override and require a 2/3 majority vote.

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

2. **Ordinance No. 2542** approving zoning to R-1 [Planned Low Density Single Family Residential], preliminary plan and final plan for a portion of Ranchmart North [cemetery portion] located north of 95th Street and east of Mission Road. [PC-52-12] [Roll Call Vote]

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

Mr. Coleman confirmed there is no documentation that this portion of property was ever zoned residential.

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

3. **Ordinance No. 2543** approving zoning to SD-CR [Planned General Retail], Preliminary Plan and Final Plan for a portion of Ranchmart North, Lots 1, 2 and 4, located north of 95th Street and east of Mission Road. [PC-52-12] [Roll Call Vote]

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

On behalf of the Regnier Family, Mr. Peterson confirmed they have no documentation that this portion of property was ever zoned commercial.

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

4. Ordinance approving zoning to SD-CR [Planned General Retail], Preliminary Plan and Final Plan for a portion of Ranchmart North, Lot 3, located north of 95th Street and east of Mission Road. [PC-52-12] [Roll Call Vote]

A motion to continue this to the June 4, 2012, Governing Body meeting concurrent with Item No. 12C - Resolution approving a Final Plan for Ranchmart – Slab N Pickle, was made by Councilmember Azeltine; seconded by Councilmember Filla.

Councilmember Cain was not in favor of the motion and preferred they remand No. 4 to the Planning Commission to give them the benefit of their discussion regarding Lot 3.

Ms. Bennett stated the 1982 map presented by Mr. Starr and Mr. Patrick proves that for 30 years the post office site was shown as commercially zoned; however, she agreed it was not zoned commercial in the 1960's.

Councilmember Azeltine asked why the 1976 application was presented as a SUP. Ms. Bennett replied the minutes in 1975 reflected that the entire tract may have been zoned commercial; however, the 1976 application was for less than 1 acre and could not be zoned commercial. There was also indication of a rush to begin construction. She confirmed the City has an ordinance governing the abandonment of nonconforming uses and reiterated that a comprehensive plan map does not bind zoning on a property.

Councilmember Rezac concurred with Councilmember Cain's suggestion to remand No. 4 to the Planning Commission for further consideration.

Ms. Bennett stated the property owner preferred that this be heard concurrent with the final plan application at the June 4th meeting as suggested by Councilmember Azeltine. The protest petition will remain valid.

The motion tied with a vote of 4-4. Yay: Councilmembers Azeltine, Filla, Rawlings and Rasmussen. Nay: Councilmembers Osman, Cain, Rezac and Bussing. Mayor Dunn voted in the affirmative. The motion carried with a vote of 5-4.

Councilmember Bussing commented the presentation by Mr. Starr and Mr. Patrick was well done; however, he was offended at the statement regarding "the City's legal and planning staff completely failing to conduct the required due diligence on the Slab N' Pickle application as it applies to Lot 3." He congratulated the legal department and planning staff on their tremendous work researching this issue.

14. OTHER BUSINESS - None

15. NEW BUSINESS - None

ADJOURN

There being no further business, the meeting was adjourned at 10:35 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk