

**Minutes**

The City Council of the City of Leawood, Kansas, met for a Work Session Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, December 3, 2012. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** Andrew Osman

**Staff present:** Scott Lambers, City Administrator  
Joe Johnson, Public Works Director  
Pam Gregory, Assistant City Clerk  
Patty Bennett, City Attorney  
Richard Coleman, Comm. Dev. Director

**Others Present:** Greg Musil, Esq., Polsinelli Shughart, representing KCOI  
Daniel Murphy, Esq., Polsinelli Shughart, representing KCOI  
Scott Beeler, Esq., Lathrop & Gage, representing The Woods HOA  
Dr. Charles Rhoades, Owner KCOI  
Paul Kerens, KCOI  
Ken Kuse, KCOI  
Brian Kubicki, Acoustical Design Group  
Robert Maher, President The Woods HOA  
Allen and Janet Agron, Residents of The Woods  
Kent Sunderland, Resident of The Woods

**Discussion regarding Kansas City Orthopaedic Institute's Generator,  
located at 3651 College Boulevard, Leawood, KS 66211**

**Welcome by the Mayor**

Mayor Dunn called the meeting to order at 6:20 P.M. Introductions were made by those present.

**Opening Remarks – City Administrator Scott Lambers**

The noise level from the emergency generator located at the Kansas City Orthopaedic Institute [KCOI] continues to be in violation of the City's ordinances. Citations have been issued; however, they have been 'stayed' depending upon a successful resolution to this matter. The City Council decided during a previous Governing Body meeting to allow this work session to be different than those in the past, in which both parties would be allowed to participate in the discussion in an attempt to bring this to closure.

**Presentation**

Greg Musil, Esq., Polsinelli Shughart, representing KCOI, stated the emergency generator is located on the west side of KCOI next to The Woods property line. This generator has been in place since the business opened in 1998 and is tested once a month for up to one hour and up to four hours annually, as required by Federal law under the National Fire Protection Association [NFPA]. This is a diesel generator large enough to power the building as a backup should a power outage occur. The City and the neighbors brought the following issues to KCOI's attention:

- Generator noise level during monthly testing
- Lighting located on the west side of the building
- Air conditioning units used to chill the MRI equipment
- Landscaping that has not been replaced

The generator is 14 years old; however, it should last because it is not used a lot. Installing a new generator or relocating the current one would be a huge expense. The proposed solution would be to install a foam metal box enclosure as a sound suppression. This will reduce the current DB level at the property line from 95 to 70 with a maximum of 75, depending upon certain weather related conditions [heat, humidity, wind, etc.]. Sound engineers confirmed the appropriate DB variation level is 3-5. The City has cited KCOI under its Nuisance Ordinance because the Leawood Development Ordinance [LDO] states the maximum DB level is 60 at the property line. KCOI is willing to make these improvements and comply with the neighbors wishes, which will be an investment of approximately \$150,000; however, they want to ensure the City will not continue to issue citations. The proposal would be for KCOI to work with City staff to allow operation of the emergency generator once a month for testing under the specifications that were given to the neighbors.

The lighting is required to be on at night to meet Fire Codes; however, KCOI has obtained bids for shades to cover the stairwells and office windows that face the homes.

The air conditioning units have been partially enclosed to help reduce the DB level, since they cycle 24 hours a day, seven days a week, 365 days a year.

The landscaping plan is currently being implemented.

Scott Beeler, Esq., Lathrop & Gage, representing The Woods HOA, stated on behalf of the neighbors, they were in agreement with the proposal. KCOI was constructed on the far west side of the property along with the generator. It is important that the City understand that the neighbors realize the building cannot be moved and are willing to compromise; however, they want to ensure the City will not grant exemptions to support any other possible future hospital. Mr. Beehler concurred with all of Mr. Musil's comments.

Mr. Lambers acknowledged that better planning could have prevented this problem. The generator was not clearly identified. If an applicant were to come in and request a similar facility, the City would require they meet the current ordinance; therefore, he didn't foresee another issue like this occurring.

City Attorney Patty Bennett stated the City currently has a number of exemptions in the Nuisance Ordinance under 'Disturbing the Peace,' such as emergency and public safety vehicles, festivals, concerts, etc. She suggested they include language that would allow an exception or deviation to an accredited hospital that complies with NFPA guidelines to test generators; however, state that the DB level shall not exceed 75 at the property line. The 60 DB level in the LDO currently has no exemptions. In order to amend the language in the LDO, it would require going through the Planning Commission first. They would need to hold public hearings and could return before the Council in February, 2013, and be adopted upon publication. KCOI had spoken with the Planning staff in 1998, in which they had approved the generator; however, it was not formally approved on the plan.

Mr. Musil confirmed as a part of their agreement, they have replaced the wheels on the roll-out trash containers. Mr. Beehler stated loose trash would be picked up on a daily basis.

Allen Agron, Resident of The Woods, stated in regards to lighting, they had also requested that KCOI install shield-type reflectors for the parking lot lights on the west side of the building. Daniel Murphy, Esq., Polsinelli Shughart, representing KCOI, confirmed this is in the agreement.

Mr. Musil confirmed there would be a contract agreement between KCOI and The Woods HOA.

Mr. Musil stated sound engineers confirmed an enclosure would be a better solution for sound suppression than constructing a wall. He wanted to ensure the Council understood that no one tried to deceive the City in 1998 and that the plan for the generator should have been formally identified.

Mayor Dunn received consensus from the City Council to amend the language in the Nuisance Ordinance under 'Disturbing the Peace' to include an exception or deviation for testing the generator as required by NFPA regulations; however, state that the DB level shall not exceed 75 at the property line.

Dr. Charles Rhoades, Owner KCOI, thanked the City Council and the neighbors for reaching a compromise for resolution of this matter.

There being no further business, the work session was adjourned at 7:15 P.M.

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Pam Gregory, Assistant City Clerk