

Regular Meeting

THE LEAWOOD CITY COUNCIL

January 22, 2013

Minutes

DVD No. 295

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, January 22, 2013. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

Staff present: Scott Lambers, City Administrator
Chief Dave Williams, Fire Dept.
Chief John Meier, Police Dept.
Mark Andrasik, Info Systems Director
Karl Weinfurter, Info Systems Specialist
Richard Coleman, Comm. Dev. Director
Lovina Freeman, HR Director

Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Dawn Long, Finance Director
Mark Klein, Planning Official
Deb Harper, City Clerk
Pam Gregory, Assistant City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

- Item No. 9B – Councilmembers Report withdrawn by Councilmember Cain

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

Don Marsolek, 6724 W. 83rd Street, Overland Park, stated he is the local coordinator for the American Councils Student Exchange Program, which is the only organization that brings exclusively merit based students to the United States.

Sarvinoz Norkuzieva, 14409 Windsor Drive, stated she is an exchange student from a small Country in Central Asia and is staying with an American family in Leawood while attending Blue Valley High School. She stated her experience has been enjoyable and thanked the American Department of Education and the exchange program for the opportunity to learn American lifestyles and cultures.

4. PROCLAMATIONS **Martin Luther King Day, January 21, 2013**

Mayor Dunn read the proclamation into the record.

5. PRESENTATIONS/RECOGNITIONS **Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year 2011 [CAFR]**

Mayor Dunn presented the 2011 CAFR award to Finance Director Dawn Long and Payroll Specialist Gretta Schneider.

6. SPECIAL BUSINESS - None

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. 2012-48, 2012-49, 2012-50, 2012-51, 2012-52, 2012-53, 2013-1
- B. Accept minutes of the December 17, 2012 Governing Body meeting
- C. Accept minutes of the December 17, 2012 Governing Body Work Session
- D. Accept minutes of the December 11, 2012 Parks & Recreation Advisory Board meeting
- E. Approve renewal of Cereal Malt Beverage [CMB] license to Bogey's Bar & Grill, located at 12924 State Line Road
- F. Approve renewal of Cereal Malt Beverage [CMB] license to Hen House, located at 11721 Roe Avenue
- G. Approve payment in the amount of \$17,355.77 to League of Kansas Municipalities, for 2013 Dues and Subscriptions
- H. Approve Change Order No. 5, in the amount of \$28,664 to Titan Built Construction, pertaining to the Leawood Justice Center Project to be located at Town Center Drive & Tomahawk Creek Parkway [Project # 76008]
- I. **Resolution No. 3957** approving and authorizing the Mayor to execute an Extension to that certain Professional Service Agreement dated October 6, 2008, between the City and Rubin Brown, LLP, pertaining to audit services through December 31, 2015, in the amount of \$34,000 per year and an amount not to exceed \$5,000 per program requiring audit

- J. **Resolution No. 3958** approving and authorizing the Mayor to execute a Third Amendment to that certain Lease Agreement dated November 4, 2002, between the City of Leawood, and T-Mobile Central, LLC, successor in interest to Voicestream of Kansas City, Inc., [f/k/a APT], [“T-Mobile”], to lease certain city property for the continued use of a wireless communication antennae on an existing city-owned cellular tower, located at the Leawood Police Department, 9617 Lee Boulevard
- K. **Resolution No. 3959** approving and authorizing the Mayor to execute a Construction Agreement between the City and Martin Underground in the amount of \$174,788.72, pertaining to the Fiber Optic Ring Project for the Justice Center [Project # 76029]
- L. **Resolution No. 3960** approving and authorizing the Mayor to execute a Fiber Installation Agreement between the City and the City of Overland Park, in the amount of \$13,784.00, pertaining to the Fiber Optic Ring Project for the Justice Center [Project # 76029]
- M. **Resolution No. 3961** approving and authorizing the Mayor to execute a Fiber Connectivity Agreement between the City and the City of Overland Park, pertaining to the Fiber Optic Ring Project for the Justice Center [Project # 76029]
- N. **Resolution No. 3962** approving and authorizing the Mayor to execute a Fiber Optical Cable Installation Agreement between the City and the Board of County Commissioners of Johnson County [BOCC], pertaining to the Fiber Optic Ring Project for the Justice Center [Project # 76029]
- O. **Resolution No. 3963** approving and authorizing the Mayor to execute an Information Services Agreement between the City and the Board of County Commissioners of Johnson County [BOCC], in the amount of \$2,500.00, pertaining to the Fiber Optic Ring Project for the Justice Center [Project # 76029]
- P. **Resolution No. 3964** accepting New Public Infrastructure for property located on Wenonga from Somerset to 83rd Street; for property located on 81st Terrace west of Wenonga; for property located on 82nd Street, west of Wenonga; and property located on 82nd Terrace, Wenonga, west 200 feet, pertaining to the 2012 Residential Street Reconstruction Project
- Q. **Resolution No. 3965** approving and authorizing the Mayor to execute an Inter-local Agreement in the amount of \$1,866,303.00, between the City of Leawood, the City of Overland Park, and the Board of County Commissioners of Johnson County [BOCC] pertaining to the Arterial Mill & Overlay Improvement Project on 119th Street between State Line Road and Roe Avenue [Project # 72017 CARS PROGRAM]
- R. **Resolution No. 3966** approving and authorizing the Mayor to execute Amendment No. 5 to that certain Professional Architectural Service Agreement, dated December 20, 2010, in the amount of \$4,700.00, between the City and Hoefler Wysocki Architects, LLC [HWA] pertaining to the Leawood Justice Center Construction Project to be located at 117th & Tomahawk Creek Parkway [Project # 76008]
- S. Declaration of Surplus Property, Public Work Units, 450, 456, and 459
- T. Fire Department Monthly Report

- U. Police Department Monthly Report
- V. Municipal Court Monthly Report

Councilmember Osman requested to pull Consent Agenda Item No. 7J, Councilmember Filla pulled Item No. 7K and Councilmember Azeltine pulled Item No. 7Q for discussion.

A motion to approve the remainder of the Consent Agenda was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. [Councilmember Rasmussen not seated for vote].

Councilmember Rasmussen returned to Chamber.

- 7J. **Resolution No. 3958** approving and authorizing the Mayor to execute a Third Amendment to that certain Lease Agreement dated November 4, 2002, between the City of Leawood, and T-Mobile Central, LLC, successor in interest to Voicestream of Kansas City, Inc., [f/k/a APT], ["T-Mobile"], to lease certain city property for the continued use of a wireless communication antennae on an existing city-owned cellular tower, located at the Leawood Police Department, 9617 Lee Boulevard

Councilmember Osman asked if the 5-year lease term could be shortened until they determine the use of this site. City Administrator Scott Lambers replied the City is obligated to keep the tower up and running for other providers through 2018, at which time they can determine whether to continue to allow the tower service.

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

- 7K. **Resolution No. 3959** approving and authorizing the Mayor to execute a Construction Agreement between the City and Martin Underground in the amount of \$174,788.72, pertaining to the Fiber Optic Ring Project for the Justice Center [Project # 76029]

Councilmember Filla expressed her appreciation to Information Services Director Mark Andrasik and his department for their efforts in working with City staff, Martin Underground, the City of Overland Park, and the Board of County Commissioners [BOCC] on this project to provide the City more flexibility and security.

A motion to approve Item No. 7K was made by Councilmember Filla; seconded by Councilmember Cain.

Mr. Andrasik confirmed there is \$1.6 Million in the Pay-As-You-Go [PAYG] Capital Improvements Fund for technology related to the Justice Center, which includes Item Nos. 7K thru 7O.

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

- 7Q. **Resolution No. 3965** approving and authorizing the Mayor to execute an Inter-local Agreement in the amount of \$1,866,303.00, between the City of Leawood, the City of Overland Park, and the Board of County Commissioners of Johnson County [BOCC] pertaining to the Arterial Mill & Overlay Improvement Project on 119th Street between State Line Road and Roe Avenue [Project # 72017 CARS Program]

Councilmember Azeltine noted 50% of this project would be funded through the CARS Program. Public Works Director Joe Johnson confirmed \$300,000 would be funded from the stormwater fund. This project should take approximately 5 months to complete, beginning in May, 2013.

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

8. MAYOR'S REPORT

Acceptance of the Cloisters Homes Association holiday gift in the amount of \$1,875.00 to Leawood Fire and Police Departments

The City of Leawood's Police and Fire Departments have once again received a year-end gift from the Cloisters Homes Association in the amount of \$1,875.00 to be split evenly between the two departments. This gift is to show appreciation for the services, both rendered and available to them, and how highly they respect the public safety personnel in our community. Mayor Dunn thanked Police Chief John Meier and Fire Chief Dave Williams and their departments for their great work. This is not something they take for granted and is a very pleasant annual surprise. Much appreciation is expressed to Cloisters Homes Association President Evan Stewart and all generous donors for this wonderful gift.

A motion to accept a holiday gift in the amount of \$1,875.00 from the Cloisters Homes Association was made by Councilmember Cain; seconded by Councilmember Osman. The motion carried following a unanimous vote of 8-0.

- A. Attended the Leawood Chamber of Commerce 2013 Kansas Legislative Priorities luncheon where most of Leawood's delegation members participated on a panel. City Administrator Scott Lambers and Councilmembers Lou Rasmussen, Jim Rawlings, Gary Bussing and James Azeltine were also in attendance.
- B. Information on the United Community Services [UCS] of Johnson County 2013 Public Policy Platform has been included in the packet.
- C. Attended the Conveners Reception with Councilmember Lou Rasmussen that was hosted by numerous cities and Chambers from the region with most State Representatives and a few Senators present. The topics were once again related to the upcoming legislative session.
- D. Attended the Johnson & Wyandotte Counties Council of Mayors meeting, hosted by Westwood Mayor John Yè, with Guest Speaker Terrie VanZandt-Travis, Executive Director of Head Start of Shawnee Mission.

- E. Attended a Leawood Chamber of Commerce ribbon cutting ceremony for Thirsty Palette, located in Hawthorn Plaza. They have a new concept of creating art work while enjoying spirits. Mayor Dunn wished them much success.
- F. Attended the Corinth Elementary School D.A.R.E. [Drug Abuse Resistance Education] Graduation with Captain Dale Finger. Officer Randy Wiler provided outstanding leadership for over 100 6th graders.
- G. Participated in the 21st Annual Martin Luther King, Jr. [MLK] Holiday Community Program celebration, co-sponsored by the Johnson County MLK Committee and the Johnson County NAACP. This celebration has been chaired for the last 21 years by Yvette Morton, wife of UMKC Chancellor Leo Morton. There were approximately 400 people in attendance. This year's keynote speaker was Chancellor Leo Morton.
- H. Attended the Olathe, Kansas, Unit of the NAACP Martin Luther King Legacy & Scholarship Awards Committee Dinner with Police Chief John Meier, Major Troy Rettig, Captain Dale Finger and Captain Kevin Cauley.
- I. Congratulations to the Leawood Lions Club for collecting \$27,308.29 by bell ringing for the Salvation Army in 2012. Since this began in 1956, they have collected a total of \$812,491.00. This is an amazing record that needs to be congratulated.
- J. Reminder of the annual Lunar New Year celebration, hosted by the I-Lan Sister City Committee on Sunday, January 27th at 6:00 P.M., at the Blue Koi Restaurant.

9. COUNCILMEMBERS' REPORT

- A. Councilmember Rawlings Update on Justice Center Construction Project

Councilmember Rawlings reported that Titan Construction has been steadily making great progress with the support of MC Realty and the City's professional staff. The exterior brick and masonry work on the Police Station is complete with the roof scheduled to be installed on February 7th. The Courthouse is 90% complete with the roof scheduled to be installed on February 28th. The building should be enclosed by the second week of February, which will allow subcontractors to work inside. Garage finishes are scheduled to be completed May 31st. Because of the good weather to date, the project is ahead of schedule with an anticipated completion date of July 1, 2013.

- B. Councilmember Cain Discussion of Facebook possibilities for City of Leawood – *WITHDRAWN BY COUNCILMEMBER CAIN*

10. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the December 11, 2012 Planning Commission meeting]

Ordinance No. 2608 approving a Rezoning from SD-NCR [Planned Neighborhood Retail] to SD-CR [Planned General Retail] and Preliminary Plan for Camelot Court, located at the northeast corner of 119th Street and Roe Avenue [PC Case 151-12] [Roll Call Vote]

Staff Comment:

This application proposes to change the zoning of the Camelot Court shopping center from SD-NCR (Planned Neighborhood Retail) to SD-CR (Planned General Retail) and to approve a Preliminary Plan for the existing center with no changes. The applicant has also filed a Revised Preliminary Plan for modifications to the center along with Special Use Permits for a drugstore with a drive-thru and a dry cleaner with a drive thru that are only permitted within the SD-CR district.

In addition, the applicant has filed an application with the Board of Zoning Appeals for variances to requirements of the SD-CR district. The SD-CR zoning must be approved before the Board of Zoning Appeals can consider an application for variances to the SD-CR district requirements, and the Board of Zoning Appeals must rule on the requested variances before the Planning Commission and Governing Body can consider the Revised Preliminary Plan.

John Petersen, Esq., Polsinelli Shughart, gave a presentation on behalf of the property owner and developer stating they are scheduled to go before the Board of Zoning Appeals [BZA] with the rezoning request. Pursuant to the Leawood Development Ordinance [LDO], concurrent approval of a Preliminary Plan is required with any rezoning request. They have agreed to all Planning Commission stipulations.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Osman.

Councilmember Rasmussen stated he would be voting against the motion because he did not agree with some of the permitted uses in the SD-CR zoning. Some of these uses will require a Special Use Permit [SUP]; however, if approved, the applicant could request uses such as Auto Sales and Service Centers they may not want in this development. Community Development Director Richard Coleman replied other developments that are zoned SD-CR, such as Town Center Plaza or Town Center Crossing, could also request these uses.

Councilmember Rezac suggested that an Auto Service Center also require a SUP.

Mr. Petersen suggested an additional stipulation be included that would prohibit the applicant an Auto Service Center as a use.

Mayor Dunn noted an additional stipulation would require a super majority vote to override the Planning Commission's recommendation.

Mr. Petersen stated they would be returning with an application requesting assistance through a Community Improvement District [CID] for this development. The reason for the rezoning request is targeted toward remodeling the north end to include a dry cleaning facility and a drive-

thru for CVS. This rezoning would not automatically give them the right to any use until they go through the SUP process.

Mayor Dunn confirmed with City Attorney Patty Bennett that the language in the additional stipulation would state Auto Service Centers would be a prohibited use specific to this development.

Councilmember Rezac suggested they review all SD-CR uses at some point in the future.

Councilmember Bussing amended his motion to include an additional stipulation to prohibit use of an Auto Service Center in this development; seconded by Councilmember Osman. The motion carried following a roll call vote of 7-1. Nay: Councilmember Rasmussen.

12. OLD BUSINESS

Ordinance No. 2609 amending § 2-109 of the Code of the City of Leawood, 2000, entitled 'Limitations on Ownership [Special Animal Permits] [Roll Call Vote]

Ms. Bennett stated this ordinance would limit Special Animal Permits to eight [8] animals and require annual re-inspections. The ordinance would become effective January 1, 2014.

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

Councilmember Cain felt eight [8] animals per household would be too many.

Ms. Bennett stated a request for more than four [4] animals would require a Special Animal Permit. The permit would never be granted for more than eight [8]. The City Clerk works with Animal Control to ensure residents maintain good pet ownership.

City Clerk Deb Harper confirmed the City's ordinance currently allows for 2 cats and/or 2 dogs. The third animal of the same species triggers the need for a special animal permit. None of these Special Animal Permits have ever been revoked. If Animal Control receives complaints they would investigate and issue a citation and the resident would be required to appear in court. In her opinion having the limit below 8 would not meet the needs of the community.

Councilmember Rawlings concurred with Councilmember Cain.

Councilmember Filla called for the vote.

Mayor Dunn received a unanimous vote to call for the question 8-0. Nay: None.

The motion to pass the ordinance carried following a roll call vote of 7-1. Nay: Councilmember Cain. Councilmember Rawlings voted in favor of the ordinance deferring to the professional opinion of City staff.

13. OTHER BUSINESS - None

14. NEW BUSINESS

- A. **Ordinance No. 2610** granting to Zayo Group, LLC, [formerly American Fiber Systems, Inc.,] a Franchise Contract to construct, operate and maintain a Telecommunications System in the City of Leawood, Kansas, and prescribing the terms of said Franchise Contract and repealing Ordinance No. 2371 [Roll Call Vote]

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

- B. **Resolution No. 3967** approving and authorizing the Mayor to execute a renewal to that certain Public Lands Use Agreement between the City and Zayo Group, LLC, [formerly American Fiber Systems, Inc.,] dated November 3, 2008, pertaining to the installation and maintenance of communications facilities within existing conduit

A motion to approve the resolution was made by Councilmember Azeltine; seconded by Councilmember Osman. The motion carried following a roll call vote of 8-0. Nay: None.

There being no further business, the meeting was adjourned at 8:50 P.M.

ADJOURN

Debra Harper, CMC, City Clerk

Pam Gregory, Assistant City Clerk