

Minutes

DVD No. 322

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, April 21, 2014. Mayor Peggy Dunn presided.

Councilmembers Present: Jim Rawlings, Julie Cain, Debra Filla, James Azeltine, Lou Rasmussen, Carrie Rezac, Andrew Osman, and Tom Robinett.

Councilmembers absent: None

Staff present: Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief Dave Williams, Fire Dept.	Joe Johnson, PW Director
Chief John Meier, Police Dept.	Chris Claxton, P&R Director
Mark Andrasik, Info Systems Director	Dawn Long, Finance Director
Richard Coleman, Comm. Dev. Director	Mark Klein, Planning Official
Brian Anderson, Park Supt.	Deb Harper, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn stated Councilmember Azeltine will be adding an item Under Councilmember's Report, for a referral to the Public Works Committee.

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

Vicky Mayer, 12504 Pembroke, stated she had a concern with a trailer that had been parked in front of her residence for over a week. A police officer responded, however the trailer remained there until Thursday. The officer stated a trailer could be parked there for 24 hours, and as long as it was moved, even just 100 feet. The ordinance states a trailer cannot be parked on any city street in Leawood except between the hours of 11:00 PM and 6:00 AM.

Mr. Lambers stated he had discussed this issue with Police Chief Meier and Community Development Director Richard Coleman. The situation will be reviewed further and a report will be submitted to the Governing Body in two weeks.

4. PROCLAMATIONS

Arbor Day, April 25, 2014

Mayor Dunn read the proclamation into the record and presented it to Parks Superintendent Brian Anderson. Mr. Anderson stated Jeff Peterson, Outdoor Education Supervisor, will be having some seedling giveaways and will offer several classes all week about tree planting and care at the Nature Center.

5. OATHS OF OFFICE ADMINISTERED TO MAYOR-ELECT PEGGY DUNN; COUNCILMEMBERS-ELECT JIM RAWLINGS, JAMES AZELTINE, CARRIER REZAC, ANDREW OSMAN, [TERM EXPIRES 2018] AND TOM ROBINETT [TERM EXPIRES 2016]

6. ROLL CALL OF MAYOR AND COUNCILMEMBERS

7. PRESENTATIONS/RECOGNITIONS

8. SPECIAL BUSINESS

- A. **Resolution No. 4206**, accepting the 135th Street Corridor Study submitted by Design Workshop, Inc., and directing City Staff to incorporate same into the City of Leawood's Comprehensive Plan

Mr. Coleman expressed his thanks to everyone for their hard work on this project.

Councilmember Osman commended the staff and entire City for the process of looking at this in its entirety, as it is important to evaluate how to develop a city that is bookended by Kansas City and Overland Park. However, he feels this process has been fundamentally flawed because the real input should be by the community of developers, real estate people, property owners, and constituents. There are a finite number of developers who could take on this task. He feels developers should have been asked for their input as to the feasibility of this Study. It is impossible to develop a couple thousand acres of land into what the City is detailing now in the Master Plan, and is not in favor of this.

Mayor Dunn stated the City is accepting this study, not approving it. She confirmed that real estate developers and landowners attended the meetings.

Councilmember Azeltine stated this will return to the Governing Body for approval in the form of amendments to the Leawood Development Ordinance [LDO]. In addition to the three community gatherings that included many developers, there was an online gathering place. This is just the beginning; not a conclusion.

Councilmember Osman stated he wanted to voice his concerns from this point forward on a number of issues that need evaluation in this study.

A motion to approve Resolution No. 4206 was made by Councilmember Rawlings; seconded by Councilmember Filla.

Mr. Lambers stated this process will be twofold with amendments made to the Comprehensive Plan and LDO to further strengthen the position of the contents of this study. Also, the City will attempt to procure another grant through the Mid-America Regional Council [MARC] and have them go through a similar study for the implementation of this plan, which will take about 6-7 months to complete.

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

- B. **Ordinance No. 2656**, establishing a Temporary Moratorium ending on July 22, 2014, on all Planning Activity, including, but not limited to Rezoning, Site Plans, Plats, and Special Use Permits for property located in the 135th Street Corridor, as depicted on the exhibit attached hereto and incorporated herein by reference [Roll Call Vote]

STAFF COMMENT: The City Administrator is recommending that the Governing Body adopt this ordinance to ensure that any and all planning applications in the Study Corridor be put on hold to allow the Comprehensive Plan amendment process to be completed and thus be applicable to such planning items.

Mr. Lambers confirmed with Councilmember Rezac that any case going through the process currently will stop. Any application that comes in will be accepted, but it will go no further until July 22nd. It is not uncommon for political subdivisions to go through an extensive Comprehensive Plan review process and to have such a moratorium. It needs to be specific and direct and typically tied to a Comprehensive Plan amendment but doesn't necessarily have to do so. All applicants will be made aware of this following formal action tonight.

Mr. Lambers confirmed with Councilmember Osman there is no way to circumvent this moratorium. If exceptions are made, the moratorium can be challenged for being discriminatory. He does not anticipate this moratorium being extended. Additional Planning Commission and City Council meeting have been allowed for this process to be completed. This document will be incorporated into the Comprehensive Plan. The implementation of it will come later. There is no need for the moratorium to be active during the implementation process. Having this adopted as part of the Comprehensive Plan sends a specific message to the development community as to what the Council envisions for this Corridor.

Mr. Lambers confirmed with Mayor Dunn that if the Comprehensive Plan was adopted prior to July 22nd, the moratorium would be lifted.

Curtis Holland, Polsinelli Law Firm, stated they just found out about the moratorium this morning and was present on behalf of their clients, Bank of America and HyVee. Bank of America owns the 32 acres at the southeast corner of 135th and Roe, known as the Villaggio property. They are represented tonight by Dave Vanderveen and Jim Thompson. HyVee is an applicant and prospective buyer of about 14 acres of property in that development, and represented by Bob Johnson of RH Johnson. Currently, there is a pending application for the HyVee grocery store on this site. Part of their frustration is learning today that this moratorium may impact this project, without having received prior notice. They have been meeting with staff over several months and filed the application on March 25th. The applicant has spent several thousand dollars preparing these applications. They are formally objecting and protesting the imposition of the moratorium. It doesn't seem to be a good deal for the City or for the stakeholders who own property in and along that Corridor.

With no activity along 135th Street because of the moratorium, any activity should be encouraged. Their concern is the moratorium will be extended beyond the July 22nd end date. He understands Mr. Lambers mentioned the moratorium cannot be targeted in one area, however, they feel targeted even if that is not the intent, as they will now be prevented from moving forward.

Councilmember Azeltine assured Mr. Holland they are not being targeted. This is the culmination of a 1 ½ year effort. This information was on the agenda which are posted on the City's website on the Thursdays prior to the Council meetings. Mr. Holland stated in the business world, the agendas are checked on Monday mornings. He was disappointed that no advance notice was given.

Councilmember Filla stated the concept of creating sustainable places is not a concept that has come out of the blue, and encouraged Mr. Holland to embrace the concepts of creating sustainable places. Mr. Holland stated they are not opposed to sustainability, and willing to work towards that goal, but wanted to register their complaint and hope that they can bring this project through in three months and be allowed to spend the tens of millions of dollars they want to spend in this Corridor.

A motion to pass Ordinance No. 2656 was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

9. 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.

Item No. 9N was requested to be pulled by Councilmember Azeltine. Councilmember Rasmussen requested that 9K be pulled; and Councilmember Filla pulled 9E.

- A. Accept Appropriation Ordinance Nos. 2014-12 and 2014-13
- B. Accept minutes of the April 7, 2014 Governing Body meeting
- C. Accept minutes of the February 13, 2014 Sustainability Advisory Board meeting
- D. Mayoral Appointment for Governing Body Presiding Officers from May 2014 through April 2015
- F. Approve issuance of Temporary Alcohol Permit to conduct The Taste of Leawood Fundraising Event on Saturday, June 14, 2014, in accordance with Code § 3-216
- G. Approve Change Order No. 15 in the amount of \$58,874.00 to Titan Built pertaining to the Leawood Justice Center Project to be located at Town Center Drive & Tomahawk Creek Parkway [Project # 76008]
- H. Approve Co-Op Bid in the amount of \$24,378.99 from Shawnee Mission Ford for the purchase of a 2014 Ford Taurus [Unit # 509]
- I. **Resolution No. 4207**, approving and authorizing the Mayor to execute an Amendment to that certain Land Purchase Agreement dated November 18, 2013, between the City and Cynthia R. Pitts, to extend real estate closing date to May 16, 2014, for property located at 8701 Ensley Lane, in connection with the Leawood Heritage
- J. **Resolution No. 4208**, approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$2,733,534.22 from Miles Excavating, Inc., pertaining to the 2014 Residential Street Reconstruction Program [Project # 80214, 72045, and 70251]
- L. **Resolution No. 4210**, approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood and the City of Kansas City, Missouri, pertaining to the resurfacing of State Line Road between College Boulevard and 123rd Street [Project # 72055]
- M. **Resolution No. 4211**, approving and authorizing the Mayor to renew a Maintenance Agreement between the City and Intergraph Public Safety, Inc., in the amount of \$29,251.44, pertaining to the management of the Intergraph Software System
- O. **Resolution No. 4213**, approving and authorizing the Mayor to execute an Inter-Local Agreement and Letter of Understanding by and among the City of Leawood and cities of Fairway, Merriam, Mission, Prairie Village, Roeland Park, and the Johnson County Parks and Recreation District, pertaining to the SuperPass Program at the Leawood Aquatic Center, located at 10601 Lee Boulevard
- P. **Resolution No. 4214**, approving and authorizing the Mayor the execute an Addendum to that certain Fullcourt Enterprise Upgrade Modification Licensing Agreement dated March 3, 2014, between the City and Justice Systems, Inc., for an additional amount not to exceed \$3,200 for the upgrade and an amount not to exceed an additional \$100.00, for annual maintenance.
- Q. Fire Department Monthly Report
- R. Police Department Monthly Report
- S. Municipal Court Monthly Report

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

- E. Approve Calendar for Election Question of Reauthorization of .125% Retailers' Sales Tax

Councilmember Filla asked if this information would be placed on the city's website. Mr. Lambers stated providing information and the published information can be posted, however, when it comes to sales tax or bond elections, the City cannot advocate for the request.

A motion to approve Item No. 9E on the Consent Agenda was made by Councilmember Filla; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 8-0.

- K. **Resolution No. 4209**, approving and authorizing the Mayor to execute a Utility Agreement for reimbursable cost estimated to be \$2,128,920.40, between the City and Kansas City Power & Light Company [KCP&L] for the burying of overhead power lines on 143rd Street, between Nall and 333 feet east of Windsor Drive [Project # 80162]

Councilmember Rasmussen asked that the total number of linear feet be added, as it is over a mile.

A motion to approve Resolution No. 4209 was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

- N. **Resolution No. 4212**, approving and authorizing the Mayor to accept a Retainer Letter from Debra Vermillion to act as Pro Tem Prosecutor for the Leawood Municipal Court

Patty Bennett confirmed with Councilmember Azeltine this is a temporary contract position. During budget, this may be a more permanent request for the position. It may or may not be this individual.

A motion to approve Resolution No. 4212 was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

10. MAYOR'S REPORT

- A. Mayor Dunn extended the City's sincere sympathy to the families of the victims of the fatal shootings that occurred on April 13th, Dr. William Corporon, Reat Underwood and Terri LaManno. She attended the funeral for Dr. Corporon and his grandson Reat at Church of the Resurrection in Leawood, along with 3,000 other attendees. Reverend Adam Hamilton did a superb job relaying the message of the importance of love reigning over hate.

Friends from the City's Sister City, the Gezer Region of Israel, and Mayor Peter Weiss sent messages of concern and condolences regarding these tragic murders.

- B. Sympathies are also extended to family of Leawood resident Mary Trembley, who died recently at the age of 99. She was a longtime member of the Leawood Woman's Club and a very active volunteer in our community.
- C. Additionally, condolences also go to the family of Jack Nagel. Jack was very active with our Leawood Lions Club as President. In 2001, he received the Lions Club International Foundation's highest form of recognition: the Melvin Jones Fellowship Award acknowledging an individual dedicated to humanitarian service.
- D. She attended a press conference held at Sporting Park in Kansas City, Kansas with Kansas City Mayor Sly James and Unified Governing of Wyandotte County and Kansas City, Kansas, Mayor Mark Holland, Jackson County Executive Mike Sanders and Johnson County Commission Chairman Ed Eilert, where each announced a \$65,000 pledge for a total of \$260,000 for operational needs of the Kansas City 2016 bid initiative. It was a remarkable display of bi-state, bi-partisan cooperation.
- E. Mayor Dunn, City Administrator Scott Lambers, and Police Chief John Meier attended the retirement reception for Overland Park Police Chief John Douglass, honoring him for his 41 years of service to the Overland Park Police Department. Best wishes were extended to him on his future endeavors.
- F. Mayor Dunn had the pleasure of meeting with Senator Bob Dole in Olathe as he began a statewide tour that includes Ottawa, Paola and many others during the next few weeks. He said that as early as June, his wife Elizabeth will join him. His message is simply to thank all of the voters who supported him during his multiple terms running for the Senate and his love for not only his service to our state and nation but his military service. There were a number of veterans present to honor him.

11. COUNCILMEMBERS' REPORT

Councilmember Azeltine – Recommendation to Public Works Committee to review current City Policy when private property is damaged by contractor that has been hired by City.

Councilmember Azeltine advised the Carriage Crossing Homeowners Association requested an incident that happened late last year involving the City and a contractor hired by the City for curb replacement be addressed. An irrigation line and electrical power line owned by the HOA was cut in the vicinity of 130th Terrace and Nall. Initially, the contractor took responsibility for the damage done and reported to the City and the HOA by email that both had been repaired. However, the electrical power line was never repaired and is still not functioning. Subsequently, the City's Construction Inspector informed the HOA that it was their responsibility to locate and identify any private utilities and that the City would not be holding the contractor responsible for any further diagnosis or repairs. Apparently, the HOA was not informed in advance of this responsibility and asked that this policy be reviewed.

A motion to refer this issue to the Public Works Committee for review of policies and procedures regarding instances such as these where the City and/or its contractor does damage to private property and report back to the Council at a future date certain was made by Councilmember Azeltine; seconded by Councilmember Filla.

Mr. Johnson stated this could be discussed at the next Public Works meeting.

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

12. STAFF REPORT

COMMITTEE RECOMMENDATIONS

13. PLANNING COMMISSION

[From the January 28, 2014 Planning Commission meeting]

- A. **Ordinance No. 2657**, approving a Rezoning from RP-1 (Planned Single Family Residential District) to RP-3 (Planned Cluster Attached Residential District), Preliminary Plan, Final Plan, and Final Plat for Highland Villas, [formerly known as Grace Gardens] located south of 143rd Street and east of Nall Avenue. (PC Case 09-14) [Roll Call Vote] – ***[CONTINUED FROM THE FEBRUARY 17, 2014, THE MARCH 3, 2014, AND THE APRIL 7, 2014 GOVERNING BODY MEETINGS]***

Curtis Holland, Polsinelli Law Firm, stated the Planning Commission recommended approval months ago with one outstanding condition of approval which has since been satisfied, regarding landscaping and screening between the property and adjoining single-family properties.

Councilmember Cain asked about the additional landscaping. Harold Phelps, Phelps Engineering, stated they have intensified the landscaping more on the north end where the units currently are not constructed, but also adding additional landscaping on the south side. It will be along the entire east side adjacent to the driveway areas where the potential lights could shine through.

A motion to approve Ordinance No. 2657 was made by Councilmember Rasmussen; seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

[From the March 24, 2014 Planning Commission meeting]

- B. **Resolution No. 4215**, approving a Revised Final Plan for Mission Farms – Phase III – Additions/Carport, located south of 105th Street and east of Mission Road (PC Case 39-14)

Councilmember Rezac recused herself from this agenda item, due to the appearance of a conflict.

Nicole Anderson, NSPJ Architects, on behalf of Doug Weltner for Mission Farms and Saddle Properties gave a presentation.

Councilmember Rasmussen asked how the east façade had changed. Ms. Anderson stated none of it had changed, and was not part of this. The façade and buffer zone have stayed the same. The carports are not visible from that area either because of the height of the garage. The new stair tower faces the highway and gives depth and projection to the elevation. It is an open stair tower. The carports are not visible from the east elevation, and they are at the minimum height allowed by code. The main change in the townhomes is on the lake side with the decks, which have been separated to allow for more privacy.

The townhomes have courtyard entrances with brick material wrapping all sides. Per the request of the Fire Department, the gate access point was moved into the courtyard, which effected landscaping changes. The decks of the townhomes overhang the pond; there is a modular rock retaining wall along the edge of the pond, which will be refilled after this is complete.

A motion to approve Resolution No. 4215 was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 7-0. [Councilmember Rezac recused].

Councilmember Rezac rejoined the meeting.

C. **Resolution No. 4216**, approving a Final Plan and Final Plat for Enclave at Cedar Pointe, located north of 133rd Street and west of State Line Road (PC Case 40-14)

Brad Sonner, Olsson Associates, stated the Final Plan and Final Plat are very consistent with the Preliminary Plan and Preliminary Plat that was approved by the Council a few months ago.

Mr. Sonner confirmed with Councilmember Osman that the detention basin at the entrance of the development was developed and maintained by The Village of Seville, and there is an agreement between the developer and the developer of Seville to utilize it.

Mr. Klein advised when this project came forward; it came as both The Village of Seville and this property. Village of Seville didn't want to develop on this residential portion. They had the retention pond. At the time Village of Seville was approved, it was stipulated that because they knew there would not be many lots to support the detention pond, it would have to be owned and maintained by the commercial development. From what he recalled, it was designed to incorporate both Village of Seville commercial and the residential that would eventually go in. At one point, a different application came in for 36 units for this area.

Jim Lambie, Lambie Custom Homes, Inc., clarified with Councilmember Osman that there is an agreement in place. Block had contacted him and wanted to give the retention basin to them, however, they didn't want to take responsibility for the full basin because it covers their parking lot. They are using about 1% of it, and the agreement in place states that they will pay for their share of the maintenance on that pond, which they have not maintained since installation. They are trying to ascertain a solution to this problem.

Mr. Lambers recalled the concern was raised some time ago because the individual residences could not be held accountable for any maintenance; therefore, the developer of the shopping center either needed to use this detention pond or detain it on their site, which they did not do. The position at the time was that they were responsible for it and if they wanted to engage in a private agreement with the residences because it is a minute portion, it is a private matter that does not involve the City. As far as the City is concerned, it is the commercial property's responsibility.

Councilmember Rasmussen asked what the City's position regarding the allegation that the detention pond is not maintained.

Mr. Lambers replied it has gone into stages of being totally overgrown. The City has been dealing with Mr. David Block regarding this issue. The natural habitat around the edges provides stability for the banks. In terms of it being deprived of oxygen, the city will look to the developer for that. Once the residences come in, the City will be more aggressive around the edges to make sure it is maintained better. As you recall, the residences were very concerned about that, so they put a shelf in about 3 feet down so if a youngster were to fall, there would be a place to hit. The weeds serve the purpose of keeping kids away. There is a balance to be achieved here, but certainly, the pond itself should be clear with the edging allowed to grow somewhat as a deterrent.

Councilmember Cain stated she walks this area all the time and does not see the balance. It is very unsightly and has been for some time. When it was first developed, it had a fountain in the middle and looked lovely. It is totally overgrown now. It states in the documents that the developer of Enclave shall provide a water source close to the retention pond that will be a manual operation capable of restoring the water surface elevation to the original pool elevation and drought conditions and asked if they were agreeing to that on their property.

Mr. Sonner replied they are asking them to put a valve on the sprinkler. If the pond level goes down, you wouldn't fill it with a sprinkler system; it would be a meter on a fire hydrant. The way the stipulation reads now, the commercial developer would be responsible for that, and they would pay their share of the cost. If the City cited the shopping center that it needed to be filled, they would have to fill it, and that would be a shared cost. There is a hose bit by the entry monument. If the water was low, it would make sense to use a fire hydrant.

A motion to approve Resolution No. 4216 was made by Councilmember Rasmussen; seconded by Councilmember Cain. The motion carried following a unanimous vote of 8-0.

- D. **Ordinance No. 2658**, amending § 16-2-5.7 of the Leawood Development Ordinance [LDO], RP-4 (Planned Apartment Residential District) (4,000 sq. ft. per Dwelling), pertaining to modifying the building height within the RP-4 District to match that of the RP-3 District [Planned Cluster Attached Residential District] (6,000 sq. ft. per Dwelling) (PC Case 50-14) [Roll Call Vote]

Mark Klein stated this amendment is to simply make the height of the RP-4 District, which is a higher density than the RP-3 District, the same as that of the RP-3 District. The difference is RP-3 is Planned Cluster Attached Residential that allows a maximum of four units to be attached; whereas, the RP-4 allows a maximum of twelve units. It seemed fitting to have the higher density match the height of the lower density.

A motion to approve Ordinance No. 2658 was made by Councilmember Filla; seconded by Councilmember Robinett. The motion carried following a unanimous vote of 8-0.

14. OLD BUSINESS - None

15. OTHER BUSINESS – None

16. NEW BUSINESS

Ordinance No. 2659, granting to Unite Private Networks, LLC, a Franchise Agreement to construct, operate and maintain a Telecommunications System in the City of Leawood, Kansas and prescribing the terms of said contract franchise [Roll Call Vote]

Patty Bennett advised it is her understanding this is a smaller company that will be providing fiber into primarily individual businesses. This is the City's standard contract franchise.

A motion to approve Ordinance No. 2659 was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

ADJOURN

There being no further business the meeting was adjourned at 9:00 P.M.

Debra Harper, CMC, City Clerk