

## Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, October 20, 2014. Mayor Peggy Dunn presided.

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

**Councilmembers Absent:** None

**Staff Present:** Scott Lambers, City Administrator  
Richard Coleman, Comm. Dev. Dir.  
Chief John Meier, Police Dept.  
Patty Bennett, City Attorney  
Deb Harper, City Clerk  
Cindy Jacobus, Asst. City Clerk

**Others Present:** Brian, Sarah and Spencer Collins, Leawood Residents  
Jerry LaMartina, Kansas City Star Reporter  
Chuck Sipple, pending Councilmember Ward No. 3

## Discuss Structures in Front Yards

Mayor Dunn opened the Work Session by welcoming Mr. Sipple, who would be sworn in as Councilmember for Ward 3 at the Council meeting to follow.

Mr. Lambers stated the ordinance in question was adopted in the 1990s with the intent to protect the integrity of residential neighborhood streetscapes. The ordinance precludes the placement of structures in front yards unless specifically exempted by the Governing Body. In June the Council asked that a survey be conducted of homeowner associations [HOAs] to capture opinions on the matter. Mr. Lambers stated that overall, survey return rate was 50% and he provided the following summary.

### Question No. 1

This question dealt with HOA deed restrictions. Based on responses, a large percentage of HOAs preclude these types of structures and a few HOAs indicated these structures require their approval. It was difficult to extrapolate from HOA responses as to whether they were from newer HOAs that had envisioned and addressed this issue, as opposed to older HOAs who were probably silent on the issue.

**Question No. 2**

This question dealt with regulations of the structures, if they were permitted. Responses were mixed, but more respondents indicated they should be regulated.

**Question No. 3**

This question dealt with the review and approval process, if these structures were permitted. The most striking HOA response was that they wish to participate in the process.

**Question No. 4**

This question dealt with potential limitations if regulated. Potential limitations included height, size, color, location, number and ancillary items. Seventy percent of the HOAs were opposed to permitting any ancillary items such as chairs or tables.

Mr. Lambers stated if the intent of the Council was to allow these structures, the Leawood Development Ordinance [LDO] would need to be amended through a planning application with a Public Hearing.

Mayor Dunn thanked Mr. Lambers for facilitating the survey and was pleased with a 50% return rate. Mr. Lambers stated he had hoped for 70% to 75%, but that he too was pleased with a 50% return rate.

Mayor Dunn reminded that meeting discussion and documentation needed to reference structures that hold books versus Little Free Library, which is a company in Madison, Wisconsin.

Councilmember Filla stated that 25 HOAs represent 80% of Leawood homes, with Leawood Estates and Leawood representing the largest number. Councilmember Cain agreed and added that of the 9,500 properties in Leawood, those two HOAs represent 2,500 homes. Mr. Sipple asked if any homes in Leawood are not members of HOAs. Mr. Lambers replied that every home is in a HOA. Councilmember Osman clarified that his home and others in a six block area have an inactive HOA.

Mr. Lambers stated HOAs responses were anonymous, so there is no way to track how many homeowners were represented. He also pointed out that of all the correspondence that had been received regarding this issue, only 2% of correspondence was from Leawood residents and most was from out-of-state.

Councilmember Cain stated the ordinance talks about structures in the front yard, but not the right-of-way [ROW]. Mr. Lambers clarified there are two separate ordinances; one for ROW and one for front yard setback. Staff's strong recommendation is that nothing be allowed in the ROW and that ROW would not be part of this discussion. He commented that some cities on the West Coast and in Nebraska had removed these structures if they were located in the ROW.

In regard to Question No. 3, Councilmember Azeltine asked if it addressed approval by abutting property owners, if approval could be required and if the City could mandate. Mr. Lambers reiterated the purpose of the survey was to get a sense of HOA opinions and Work Session goal was to develop a desirable plan to be evaluated by staff and brought back for additional discussion. Mandating approval would be difficult and could have ramifications, so this would need to be researched legally and administratively.

Councilmember Azeltine asked if any consideration was given to inactive HOAs and/or those managed by an external company. Mr. Lambers replied it had not and this would need to be identified and addressed separately.

Councilmember Azeltine asked if the City could draft an ordinance that would require HOA approval and that subsequently requested City approval. Mr. Lambers replied if the HOA petitioned the City on the homeowner's behalf, the structure would have to meet current City limitations. Mayor Dunn reminded that HOA deed restrictions supersede City ordinances. If the City allows these structures but an HOA does not allow them, then the structure would not be permitted.

Councilmember Rezac asked how surrounding cities' ordinances address these structures. Mr. Lambers replied ROW restrictions would be expected to be identical to keep the ROW free of any type of structures. Prairie Village, a community in Wisconsin and a few other communities have restrictions/prohibitions, but they have chosen not to enforce their ordinances. He expressed his belief that an approved ordinance needs to be enforced and is not for staff to decide if/when to enforce. If Council were to allow these structures, the City's ordinance would need to be changed.

Councilmember Cain agreed that involving the HOAs is important, especially if 74% were asking for their approval first. She stated many HOAs have an Architectural Review Board who requires neighbor sign-off and she liked the idea of having the HOAs approach the City.

Mayor Dunn stated she had received communications from the City of Merriam, which had also had discussions about these structures. Merriam has a requirement that books cannot be piled next to the structure and may have additional regulations as their review process progresses. Mr. Lambers agreed the structures are intended to hold a limited number of books.

Councilmember Rezac agreed with the HOAs being the first line of approval, but stated the City needs an ordinance on size, height and perhaps color requirements. Mr. Lambers stated those requirements are easy to apply and the difficult requirements are the number per property and the number per household. Some cities do not allow structures within 500 feet of each other. He stated two scenarios: 1) start off with an ordinance, which is his preference, or 2) utilize HOA self-imposed regulations.

Mayor Dunn suggested some similarities between the way the BZA interacts with HOAs and property owners, but this type of item would not go to the BZA as they deal with safety and welfare. Ms. Bennett stated the BZA cannot make decisions based on the neighborhood approval. Building permits for teardowns and rebuilds require notice to the HOAs, who are given 30 days to react. Mr. Coleman stated when application is made for a teardown or rebuild, and if the HOA has contacted the City and is on the list to be notified, the City sends them a copy of the plans and allows a certain amount of time for response. If the plans meet City criteria, the permit is issued. Ms. Bennett pointed out this allows the HOAs to protect their restrictions, but the City is still protected by established regulations.

Councilmember Osman stated the City did not initiate the initial enforcement of these structures, but rather the City received several complaints and responded/enforced based on City ordinances. He applauded the survey sent to the HOAs because public feedback is important and stated his opinion that the dynamic of north Leawood is different than the townhomes, apartments and larger homes of south Leawood. North Leawood has large tracts of land and homes are not close to each other. However, for closely spaced properties or villas with a small strip of land, a structure could be a nuisance. The large HOA near his neighborhood had stated their support of the Little Free Library initiative to him, based on interpretation of their deed restrictions.

Councilmember Osman suggested to be broad in the regulations of size and location, and to give the power to the HOA to decide color, etc. He stated although the City can establish regulations and the HOA restrictions override City ordinances, some property owners may be unhappy regardless. He questioned how to classify a Little Free Library, as some structures look like an art piece and others do not.

Councilmember Filla asked about notification of property owners within 200 feet of structures that hold books. In regard to zoning, Ms. Bennett stated property owners within 200 feet receive certified letters and Mr. Coleman added 500 feet for HOAs. Ms. Bennett stated the intent is to ensure HOAs are notified of a renovation or rebuild. She stated new development requires notification of property owners within 500 feet.

Councilmember Filla stated her desire for notification of property owners within 200 feet. She asked if the issue should go to the HOA first and then the City, or vice versa, and which process would be most fluid. Mr. Coleman replied the request could come in as a building permit application and would involve staff, who would then request an approval from the HOA. Ms. Bennett stated the City cannot enforce HOA rules or interpretation of them.

Councilmember Filla asked how staff would know if the neighbors had been notified. Mr. Coleman replied that staff would provide the applicant with property owner and HOA(s) addresses within the notification distance. The applicant could then provide the City receipts from their mailings. Councilmember Cain stated that a receipt of mailing does not indicate approval from any of the recipients. Councilmember Filla commented that a recent home build did not meet HOA approval/requirements and the HOA filed an injunction.

Ms. Bennett strongly suggested this process. She pointed out the BZA handles notification differently, as their notice is through Public Hearing. Mr. Lambers confirmed that notification through the BZA would be inappropriate.

Councilmember Rasmussen said his HOA has resident contracts and spoke of no governmental interference with private contracts. His HOA deed restrictions prohibit such structures. He stated he had received comments from two Leawood residents within the 7,500 in his ward and both were against allowing structures in front yards. Councilmember Rasmussen said City ordinances control the streetscape because of community desire for open spaces and he did not agree with shifting the responsibility of this control from the City to the HOAs.

Councilmember Osman suggested that HOAs might wish to reevaluate/update their deed restrictions for structures located outside the ROW, to address color, size, etc., to ensure structure appearance would meet their expectations.

Mayor Dunn stated the BZA variance process looks at five items and she reiterated she was speaking in regard to structures that hold books and not the possibility of an ordinance that would allow anything in the front yard. She stated this type of item should not go before the BZA, as they review safety and welfare. Ms. Bennett stated the BZA evaluates appeals from staff decisions and exceptions, and structures in front yards could be listed as a specific use.

Councilmember Rezac asked about the process if someone wanted to erect a book structure and their HOA denied the request. Mr. Coleman pointed out two tracks: 1) HOA and 2) City. If the City received a request within the parameters of the ordinance, the staff would inform the applicant of any HOA restrictions, but ultimately a permit would be issued. If the resident is part of an inactive HOA, then the only step for the applicant would be to submit to the City. Ms. Bennett stated this track would have the City interpreting HOA restrictions/decisions, and she was not in favor. She encouraged establishing consistent requirements throughout the City; the more restrictive regulations of either the HOA or City would prevail.

Mr. Lambers stated an administrative process that included notification within 200 feet and a positive response from the HOA could be enacted. If there is disagreement from any party, administrative approval would be inappropriate and an alternate process would be needed.

Councilmember Azeltine shared Councilmember Rasmussen's concern for shifting responsibilities for code enforcement to the HOAs but felt concern would be alleviated if the City establishes a baseline for HOA approval as long as certain criteria are met for size, dimension, number per property, distance between structures, notice and location outside ROW. He acknowledged many neighborhoods have formerly private streets with no sidewalks and small front yards, making the restriction of avoiding the ROW difficult. Councilmember Azeltine stated his disagreement with a process of administrative approval and his preference for approval as a Consent Agenda item. Mayor Dunn emphasized the need for cautious development of an ordinance and pointed out the LDO amendment process would include Public Hearings.

Councilmember Filla supported following the lead of survey respondents in regard to limitations for these structures. Mr. Lambers stated some of these structures are very identifiable, while others blend in with the color of the home. Survey respondents were in support of a structure that blended in with the neighborhood; he recommended the use of earth tone colors and to tie the color to that of the home.

Councilmember Cain stated strong support for HOA approval before issuance of a City permit in order to avoid an undue burden on the HOA. She was in agreement with earth tone colors, but was uncertain how to address distance between structures.

Councilmember Azeltine inquired about the anonymity of the survey and Councilmember Rasmussen stated statistics from the survey needed to be expanded for the Council's information.

Councilmember Rasmussen pointed out the alleged desirability of the structures had not been challenged. He stated these structures had been touted as being able to bring the community together, so if permitted, the affected community should be involved in the process. He inquired if other Councilmembers had received feedback in regard to these structures. Councilmember Rawlings stated he heard from two residents in favor and three opposed.

Councilmember Filla stated support of a streamlined process including HOA and homeowner notification within a 200 foot area, and regulations established by the City.

Mayor Dunn stated a resolution had not been brought forth and voiced the need for the City Attorney to guide the process to avoid potential legal issues. Mr. Lambers replied if all agreed that administrative approval is the only process, it would be the only avenue and this would avoid any controversy. He also did not see a resolution brought forth, but he wanted to move forward to prepare legislation that would allow if all parties [homeowner, HOA, City] approved.

Mayor Dunn requested to receive a proposal from Mr. Lambers regarding this initiative. She also asked for a continuation of the moratorium at the Council meeting to follow, to allow time for proposal preparation and further discussion.

There being no further business, the Work Session was adjourned at 7:20 P.M.

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Deb Harper, CMC, City Clerk

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Cindy Jacobus, Assistant City Clerk