

Minutes

DVD No. 359

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, 7:30 P.M. on Monday, November 16, 2015. Mayor Peggy Dunn presided.

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

**Councilmembers Absent:** Carrie Rezac

<b>Staff Present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
Dawn Long, Finance Director	Mark Andrasik, Info. Services Director
Mark Klein, Planning Official	Chris Claxton, Parks & Recreation Director
Chief Dave Williams, Fire Department	Nic Sanders, Human Resources Director
Chief Troy Rettig, Police Department	Joe Johnson, Public Works Director
Debra Harper, City Clerk	Richard Coleman, Community Services Dir.
Cindy Jacobus, Assistant City Clerk	

**Others Present:** None

1. **PLEDGE OF ALLEGIANCE** – Led by Boy Scouts from Troop 10.

2. **APPROVAL OF AGENDA**

Mayor Dunn noted two amendments to the agenda. Agenda Item 11.A. for Bi-State Central was continued to the December 7, 2015, Governing Body meeting and Agenda Item 11.E. for Ranch Mart had the planning application withdrawn by the applicant, after continuation from five prior Governing Body meetings. Mayor Dunn expressed disappointment in the withdrawal.

**A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 7-0.**

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.**

Mr. Thad Carver, 12408 Eaton Street (just west of State Line Road at 124<sup>th</sup> Street) spoke about trees. He provided “Tree City USA Program in Kansas” brochures; bio of Ms. Kim Bomberger, District Community Forester-North Central, Northeast Districts, Kansas Forest Service; and written copy of his comments to the City Clerk.

Mr. Carver stated he was an Extension Master Gardner, a founding member of the Fairway, Kansas Tree Board, and had drafted the ordinance that is currently the governing document for the Fairway Tree Board. He stated Leawood had met the Tree City USA Program in Kansas requirements to be a tree city by designating Parks Superintendent Brian Anderson and Horticulture/Forest Supervisor Dustin Branick as professionals responsible for tree governance rather than a tree board. Mr. Carver stated the relationship of a city tree board to its community, as well as the board's authority, varies from city to city. He provided specific examples of tree board benefits to cities, citizens, local communities and volunteers.

Mr. Carver requested the City Council give consideration to forming a tree board and invite Ms. Bomberger to speak to the Council on the subject of forming a tree board.

Mayor Dunn thanked Mr. Carver and stated the information he had provided would be included in the next Council Work Session on tree protection, currently scheduled for December 7, 2015.

**4. PROCLAMATIONS** **Small Business Saturday, November 28, 2015**

Mayor Dunn read the proclamation into the record. No one was present to accept the proclamation.

**5. PRESENTATIONS/RECOGNITIONS** – None

**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. 2015-42, 2015-43, and 2015-44
- B. Accept minutes of the November 2, 2015 Governing Body meeting
- C. Accept minutes of the November 2, 2015 Governing Body Work Session
- D. Approve renewal of Cereal Malt Beverage [CMB] license for Cosentino's Price Chopper, located at 3700 W. 95<sup>th</sup> Street
- E. Approve renewal of Cereal Malt Beverage [CMB] license for Walgreen's # 13950, located at 4701 Town Center Drive
- F. Approve purchase in the amount of \$17,897.00 [\$8,500.00 trade-in] from Gail's Harley Davidson for the purchase of a Harley Davidson Police motorcycle
- G. Approve purchase in the amount of \$69,520.45 from Professional Turf Products for the purchase of [2] Turf Sprayers replacement units for Parks & Recreation Department
- H. Approve Final Pay Request in the amount of \$12,650.40 to Hofer Wysocki Architecture pertaining to the Leawood Justice Center Project, located at Town Center Drive & Tomahawk Creek Parkway [Project # 76008]
- I. **Resolution No. 4526**, adopting the 2016 Fee Schedule for fees not specifically provided for in the Code of the City of Leawood, 2000, and rescinding Resolution No. 4152, in accordance with § 1-701 of the Code of the City of Leawood, 2000
- J. **Resolution No. 4527**, approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$78,648.20 between the City and Lan-Tel, pertaining to the Mission Road Fiber Project [Project # 76046]

- K. **Resolution No. 4528**, approving a Revised Final Plan for Changes to a Tenant Façade for Town Center Plaza – Yoga Six (Yoga Studio), located north of 119<sup>th</sup> Street and east of Nall Avenue (PC Case 115-15) *[from the October 27, 2015 Planning Commission meeting]*
- L. **Resolution No. 4529**, approving a Revised Final Plat for Leawood Lot 808 - Lischer Residence, located south of 94<sup>th</sup> Terrace and west of Belinder (PC Case 127-15) *[from the October 27, 2015 Planning Commission meeting]*
- M. **Resolution No. 4530**, approving a Final Sign Plan for Leawood Executive Park – Tricom Technical Services (Career Placement Agency) Monument Sign, located south of College Boulevard and east of Ash Street (112-15) *[from the October 27, 2015 Planning Commission meeting]*
- N. Fire Department Monthly Report
- O. Municipal Court Monthly Report
- P. Police Department Monthly Report

**A motion to approve the Consent Agenda was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 7-0.**

## **8. MAYOR’S REPORT**

- A. At the request of Kansas Governor Sam Brownback, flags will be flown at half-staff through November 19<sup>th</sup> to honor the Paris terrorist attack victims. Our sincere sympathies to the families and loved ones of this terrible tragedy. A moment of silence was observed.
- B. Many thanks to Parks & Recreation Director Chris Claxton, Aquatics/Special Event Supervisor Tony Nichols and their team for organizing a great holiday lighting ceremony. Participants included St. Michael the Archangel Choir, Leawood Elementary Choir and the Leawood Singers. City Administrator Scott Lambers and nearly all Department Heads and Councilmembers were in attendance.
- C. Attended two Leawood Chamber of Commerce ribbon cuttings. The first was for Bare Med Spa in Park Place, and the second was to celebrate the 10-year anniversary of Ranch Mart Wines and Spirits. We wish them all continued success.
- D. Participated in two Veterans Day events this past week. The first was at the National World War I Museum and Memorial, and the second was at the Sprint Campus.
- E. Thank you to Councilmember Chuck Sipple for representing Leawood at the Johnson County Veterans Day ceremony at the Lenexa National Guard Armory.
- F. Joined Prairie Village Mayor Laura Wassmer and Independence Mayor Eileen Weir on a panel discussion for the Women’s Leadership Initiative, a division of the Urban Land Institute of Kansas City. Councilmember Carrie Rezac was among the audience members.
- G. Attended the Johnson County Community College Foundation dinner where Leawood resident Dr. Mary Davidson Cohen was honored as the 2015 Johnson Countian of the Year. Sincere congratulations to Mary.
- H. The City of Leawood was recently recognized as 2015’s 5<sup>th</sup> Best Small City in America in a recent study from the leading personal finance outlet WalletHub.com. Analysts compared 22 metric ranges of 1,268 U.S. cities with a population between 25,000 and 100,000. Three key metrics were housing costs, school system quality and number of restaurants per capita. Princeton, New Jersey ranked 1st; Littleton, Colorado 2nd; Dublin, Ohio 3rd; and Brookfield, Wisconsin 4th.

- I. Congratulations to newly appointed Deputy Police Chief Kevin Cauley on his new position within our fine Police Department.
- J. Happy Thanksgiving to one and all!

**9. COUNCILMEMBERS' REPORT** – None

**10. STAFF REPORT** – None

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION**

*[From the October 27, 2015 Planning Commission meeting]*

- A. Ordinance approving a Revised Preliminary Plan, Revised Final Plat and Final Plan for Bi-State – Central States Warehouse Addition, located north of 143<sup>rd</sup> Street and east of Kenneth Road. (PC Case 99-15) [ROLL CALL VOTE] *CONTINUED TO THE DECEMBER 7, 2015 GOVERNING BODY MEETING*
  
- B. **Ordinance No. 2761**, approving a Preliminary Plan and Special Use Permit [SUP] for a Medical Outpatient Facility for Plaza Pointe – MAO Leawood, located north of 137<sup>th</sup> Street and east of Briar Street. (PC Case 118-15) [ROLL CALL VOTE]

Applicant Mr. Patrick Joyce, Professional Engineer, BHC Rhodes, stated the project is a medical outpatient care facility for Mid-America Orthopedics, who currently has three locations in Wichita. They specialize in bone fractures, knee and shoulder injuries, sports injuries and joint replacement.

The proposed outpatient facility would be a 14,615 sq. ft. single-story building located in the last undeveloped lot in Plaza Pointe. The facility would consist of a 4,800 sq. ft. isolated surgery center and a 7,200 sq. ft. clinic and physical therapy area having shared waiting and procedure rooms with the 2,600 sq. ft. urgent care area. The facility would be locally staffed with four doctors, seven nurses/scribes, three physical therapists and one aide. There would be 51 parking spaces, an asphalt parking lot, enclosed storms sewers and gutters, and use of the existing retention basin.

Mr. Joyce stated architect Mr. Eric Wittman, SPT Architecture-Wichita, could not be present and read a description of architectural highlights prepared by Mr. Wittman. The overall style of the facility was developed by review of other buildings in the area. The building includes tower elements, elevations and massing to avoid a big-box look and create a village feel. Entrances would have metal awnings for identification and provide cover during inclement weather. Roofline and towers would be mansard metal seam. Exterior wall sconces highlight architectural features and provide safety. The façade would be a combination of brick, stone and stucco.

Councilmember Rasmussen recalled the history of another similar facility that required back-up generators and the difficulties encountered with generator sound level testing and restrictions. He inquired if the proposed facility would require a back-up generator which he did not see included, and if so, its location and orientation. Councilmember Rasmussen stated he would like a continuance of the agenda item in this regard.

Mr. Joyce stated a generator would not be required as the proposed facility would utilize an interruptible power source; basically, a large battery.

Councilmember Rasmussen inquired if staff was in agreement that a back-up generator was not needed. Mr. Klein stated his belief that staff reviews the need for generators as part of the final plan, but staff had received the applicant's information in response to an initial submittal review letter. Mr. Joyce confirmed he had previously been questioned by staff in this regard and had responded in writing that no generator would be utilized. Councilmember Rasmussen stated he protested the City's procedure of waiting until the final plan to review back-up generators.

Councilmember Osman clarified the proposed facility was located directly in front of the Church of the Resurrection and in the same general vicinity as CVS Pharmacy, Gaslight Grill and Zipz! The proposed facility would be surrounded by all commercial, so no noise impact to nearest residential would be expected. He was in favor to approve, regardless of whether a generator or battery back-up would be used.

**A motion to approve Agenda Item 11.B. was made by Councilmember Filla; seconded by Councilmember Azeltine. The ordinance was passed with a unanimous roll call vote of 7-0.**

- C. **Ordinance No. 2762**, amending Section 16-4-12.3 of the Leawood Development Ordinance [LDO] entitled "Special Use Permit Required" and repealing existing section 16-4-12.3 and other sections in conflict herewith. (PC Case 108-15) [ROLL CALL VOTE]

Mr. Klein stated the proposed amendment would provide an exemption for existing wireless communication towers only from district and residential setback requirements, provided the height of the tower would not increase and antennae and their mounting, as well as cabling, were concealed in a uniform manner. He stated some towers may have been constructed prior to current ordinances or in an area that was not yet developed.

**A motion to approve Agenda Item 11.C. was made by Councilmember Osman; seconded by Councilmember Rawlings. The ordinance was passed with a unanimous roll call vote of 7-0.**

- D. **Resolution No. 4531**, approving a Final Plan for a change to the façade of a tenant space for Town Center Crossing – Suit Supply, located south of 119<sup>th</sup> Street and east of Roe Avenue. (PC Case 117-15)

Mr. Klein stated no applicant was present due to air travel difficulties. The applicant has agreed to address concerns of an unbalanced façade by preserving the center demising column on the tenant space. Mayor Dunn noted this was Planning Commission Recommendation, Stipulation 1.

Councilmember Filla thanked staff for their detailed review and also the applicant for their agreement to the stipulation.

Councilmember Rasmussen recalled his statement at a prior Council meeting that he would vote against future items for this developer due to lack of their sidewalk plan for pedestrian and bicycle access within Town Center Plaza for nearly two years. Town Center Crossing and Town Center Plaza properties have the same ownership.

**A motion to approve Agenda Item 11.D. was made by Councilmember Rawlings; seconded by Councilmember Osman. The ordinance was passed with a roll call vote of 6-1. Nay vote from Councilmember Rasmussen for reasons previously stated.**

*[From the April 28, 2015 Planning Commission meeting]*

- E. Ordinance approving a Revised Preliminary Plan for Ranch Mart, located north of 95<sup>th</sup> Street and east of Mission Road (PC #61-13) [ROLL CALL VOTE] – THE APPLICANT HAS WITHDRAWN THE PLANNING APPLICATION

Councilmember Osman asked staff for clarification of withdrawal of Agenda Item 11.E. and about the possibility of Ranch Mart appearing before the Governing Body in the future. Mr. Lambers replied the withdrawal was made by email request from Attorney John Petersen after a telephone conversation in which Mr. Petersen requested a continuance.

Councilmember Osman requested an overview of the 2010 approved plan and anticipated work timeline. Mr. Lambers stated the building permit process was to kick-off for the 2010 plan and reasonable, desperately needed progress must be made. Mr. Coleman stated the 2010 plan includes façade improvements and a raised parapet wall. Phase 1 would be Seasonal Concepts, Phase 2 would be west of the grocery store, Phase 3 would be O’Neill’s and Foos, and Phase 4 would be the north side.

Mayor Dunn stated there had been two additional plans brought before the Council since the 2010 plan. The Planning Commission’s recommendation in July 2013 was less preferred to the second plan proposed, but the 2010 plan was the least preferred of all plans.

Councilmember Cain stated the phased work would take many years to complete and inquired how construction progress would be monitored. Mr. Lambers stated each phase would require a building permit. If a determination was made that a phase took longer than expected, the City would advise the permit holder and if the situation did not resolve, the permit holder would be advised the permit was in jeopardy. The City would be looking for a good faith effort.

Councilmember Azeltine asked Mr. Lambers to verify for the record that in the future, applicants would go through the usual planning process to an approved final plan, before any Community Improvement District [CID] applications were considered. Mr. Lambers confirmed and stated he planned to amend the current CID policy and bring before the Council after the first of the year. A CID application would be submitted for an administrative review and the Governing Body Work Session to discuss would not be scheduled until final plan had been approved. It is important to keep the two processes separate and incentives are not to be part of the planning process. Mayor Dunn stated for the record the revised CID policy would be procedurally consistent with the process of Overland Park.

**12. OLD BUSINESS – None**

**13. OTHER BUSINESS – None**

**14. NEW BUSINESS**

- A. **Ordinance No. 2763**, appropriating the amounts set up in each fund in the budget for Fiscal year 2016, providing for the payment of all claims and charges against the accounts provided for therein; and approving and ratifying the payment of all claims against the accounts [ROLL CALL VOTE]

**A motion to approve Agenda Item 14.A. was made by Councilmember Rasmussen; seconded by Councilmember Sipple. The ordinance was passed with a unanimous roll call vote of 7-0.**

- B. Schedule Governing Body Work Session on Monday, January 25, 2016 at 6:00 P.M., to discuss Governing Body Short, Near & Long-Term Goals

Mayor Dunn noted the Governing Body Work Session to discuss this topic had previously been scheduled for January 11, 2016, and the reschedule was due to a travel plan conflict for the City Administrator.

Councilmember Rasmussen inquired and Mr. Lambers confirmed that attendees would receive documentation of previously approved goals and a status update for each.

**A motion to approve the Agenda Item 14.B. was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 7-0.**

Mayor Dunn reminded attendees to update their calendars accordingly.

- C. Schedule Governing Body Executive Session on Monday, March 21, 2016 at 6:00 P.M., for Personnel Matter; City Administrator's annual review

**A motion to approve the Agenda Item 14.C. was made by Councilmember Filla; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 7-0.**

- D. **Resolution No. 4532**, approving requirement of the distribution of Tree Protection Education Materials with certain Residential Building Permit or Demolition Permit Applications

Mr. Lambers stated the resolution was drafted in response to the Governing Body directive to provide education to those proposing to undertake significant rework on their properties. Staff research found the "Best Management Practices – Managing Trees During Construction" booklet, which is currently in the process of update and available after the first of the year.

Mayor Dunn pointed out each applicant for a residential building or demolition permit would be provided a copy of the booklet and be required to sign a receipt acknowledgment. If an applicant had previously received the booklet in regard to a prior application, they would not be required to receive another copy. She stated there had been prior Council consensus on education and the proposed resolution and materials was a great response from staff on the value of trees and preservation, if the applicant was inclined to do so.

**A motion to move consideration of Agenda Item 14.D. until after the Council Work Session on tree preservation scheduled for December 7, 2015, placing the agenda item on the Governing Body Agenda for the same day, was made by Councilmember Rasmussen; seconded by Councilmember Filla.**

Mr. Lambers asked Councilmember Rasmussen for his intended Work Session goals. Councilmember Rasmussen stated he would like to add language to the proposed resolution and had already spoken with staff in this regard. He noted the lack of a concise definition of “applicant”, which could be the home owner, builder or contractor, and the ability and process for monitoring compliance should be added in a new “Section D”. Councilmember Rasmussen provided example language for effectiveness feedback: “On completion of construction, staff will file with the City Building Official a suitable report reflecting on applicant’s compliance with the recommendations.” He stated a function of the Work Session would be to ensure staff is prepared.

Councilmember Filla also questioned materials provided to applicants other than the owner, resulting in the owner having to rely upon another party to share the information. She suggested the potential for a separate mailing to owner, at very little cost to the City.

Councilmember Azeltine stated the applicant was named on the building permit. Once tree preservation material was provided, the recipient could not be forced to use, but education is a good first step. Best management practices are not a requirement and the City cannot dictate what residents do with trees on private property.

Councilmember Filla stated the continuance would allow discussion of Mr. Carver’s suggestion of a tree board and perhaps other tree-related items. Mayor Dunn stated a tree board had been discussed in the past without consensus and because the City has other groups that address trees. She would like to have time to review the materials provided by Mr. Carver; which could potentially be incorporated by City groups.

Councilmember Cain stated that although she recalled the prior discussions of a tree board, based on recent information shared by a relative who is a Councilperson in North Chicago about the dissemination caused by the Emerald Ash Borer [EAB], she was in favor of the continuance. She would vote in favor of the resolution, but wanted to ensure the resolution was not the City’s entire tree protection policy. She welcomed the Work Session to be proactive and to open up other related topics. Councilmember Cain pointed out the City would be hosting an educational meeting on EAB for home owner associations, and that in her subdivision all boulevard trees are ash trees, 40 ft. in height.

Councilmember Rawlings expressed concern that topics were becoming muddled. He stated that the Leawood HOA Board had discussed tree preservation during construction at length and 100% of the 1,358 home owners had endorsed. He stated there was no reason to delay the vote on the proposed construction-related resolution.

**Mayor Dunn recognized Councilmember Rasmussen’s motion and called for the vote. The motion failed 3-4, with Aye votes from Councilmembers Cain, Rasmussen and Filla; Nay votes from Councilmembers Osman, Sipple, Rawlings and Azeltine.**

**A motion to approve Agenda Item 14.D., providing for the future possibility to further discuss and amend, was made by Councilmember Osman; seconded by Councilmember Rawlings. The motion passed with a vote of 6-1. Nay vote from Councilmember Rasmussen for reasons previously stated.**

Mr. Lambers asked that he be provided with specific topics and additional details for the December 7<sup>th</sup> Work Session besides EAB, to ensure the appropriate staff would be present.

**ADJOURN**

There being no further business, the meeting adjourned at 8:33 P.M.

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Debra Harper, CMC, City Clerk

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Cindy Jacobus, Assistant City Clerk