

Minutes

DVD No. 403

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 20, 2017. Mayor Peggy Dunn presided.

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

**Councilmembers Absent:** None

<b>Staff Present:</b> Scott Lambers, City Administrator	Chief Troy Rettig, Police Department
Patty Bennett, City Attorney	Ross Kurz, Info. Services Director
Chris Claxton, Parks & Recreation Director	Mark Klein, Planning Official
Mark Tepesch, Info. Services Specialist III	Dawn Long, Finance Director
Richard Coleman, Community Dev. Director	Chief Dave Williams, Fire Department
Nic Sanders, Human Resources Director	Brian Anderson, Parks Superintendent
David Ley, Interim Public Works Director and City Engineer	Debra Harper, City Clerk Cindy Jacobus, Assistant City Clerk

**Others Present:** Kevin Jeffries, President, Chief Executive Officer and Director of Economic Development, Leawood Chamber of Commerce

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn stated the agenda had been amended for a simple reorder of items under 16. New Business.

**A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Cain. The motion was approved by 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 use profanity or 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.

Mayor Dunn stated the two citizens who had signed in to speak on Agenda Item 12.A. would be called upon when the topic was discussed.

Ms. Lauren Conderman, 3201 W. 82<sup>nd</sup> Street, presented graphics and spoke about flooding issues on her property. She displayed a graphic depicting the natural creek [Dykes Branch] that backs to her home highlighted in light blue and a concrete “creek” channel highlighted in dark blue that is in Prairie Village. She stated a new bridge built in the last six years that has helped water issues, but new conditions in the last 10 years are factors in continued flooding. Her lot is the lowest elevation in the area and a portion of the lot is in the flood plain. When her home was constructed in 2008, it was built on as high an elevation as the City and the Home Owners Association permitted at that time, but it is now apparent the elevation was insufficient. Neighbors in the area experience and complain about other issues. She presented a graphic depicting her house and the 100-year flood plain boundary. She stated during a normal rain, water floods 30 ft. to 40 ft. into the yard. A 100-year level flood happens quite frequently, when water floods 60 ft. to 70 ft. into the yard. During the last heavy rains, water came within 10 ft. of her house. A meeting with the City’s Special Projects Engineer David Roberts was pleasant and he provided advice specific for the yards. When the City installed a new drainage system to raise property elevations and help residents with their flooding issues on 81<sup>st</sup> Terrace, it subsequently created two grassy knolls that prohibit water from entering the creek and she cannot control water on her property. One knoll is located in her yard and one knoll is located in her neighbor’s yard. Erosion on her property is not of concern because of the rock wall and natural grasses installed on her lot. She requested assistance and a more permanent solution from the City to help the area between the bridge at Wenonga and Prairie Village. She stated the bridge had several large concrete puzzle pieces to help with erosion, but the pieces have been washed away by the heavy rains.

Mayor Dunn thanked Ms. Conderman and asked Mr. Ley for comment. Mr. Ley stated the DB-24 stormwater construction project downstream of Ms. Conderman’s property, involved a private channel on 10 properties between the bridge at Wenonga and Prairie Village. The private channel is to be maintained by the property owners. The articulated concrete blocks will be replaced and concrete channel bottom stated as part of the Kissick Construction approved for the 2017 flood damage repairs. The City has permanent easements of 80 ft. to the west of the bridge and this will be the extent of the improvements to the channel.

Councilmember Filla suggested a revised Stormwater Management Committee referral for an overall review and study of what is occurring over the long-term. If a resident makes improvements to their yard, that just moves the situation to another yard. A proactive approach for long-term solutions for different areas is needed to advise citizens about what they can do and what, if anything, the City can do.

Councilmember Azeltine asked if timing of referral would be important in regard to the upcoming project mentioned by Mr. Ley. Mr. Ley stated timing in regard to that Federal Emergency Management Agency [FEMA] project would not be relevant. To ensure adequate discussion time, Ms. Conderman’s concern could be reviewed at the Stormwater Management Committee meeting scheduled for fourth Wednesday in January 2018 since the agenda for the December Stormwater Management Committee meeting is full.

Mr. Lambers pointed out this concern is all private property. Mayor Dunn stated Johnson County Stormwater Management Advisory Council [SMAC] projects involve several years of waiting, but if this would become a SMAC project the City would take over. Mr. Ley confirmed to Councilmember Azeltine that Johnson County is revising their SMAC project criteria and this process is not expected to be available until mid-2019.

Councilmember Osman pointed out that Leawood and Prairie Village are working together on a project in the Cloisters area on 83<sup>rd</sup> Street, and he asked if Prairie Village might be looking into issues in the area. Mr. Ley stated the Cloisters does not drain into this channel, but drains downstream of this location into Dykes Branch.

**A motion to refer the subject to the Stormwater Management Committee on the fourth Wednesday in January 2018 was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 7-0.**

Mayor Dunn invited Ms. Conderman to attend the January Stormwater Management Committee meeting, if Ms. Conderman's schedule permits.

**4. PROCLAMATIONS** **Small Business Saturday, November 25, 2017**

Mayor Dunn read portions of the proclamation into the record. She stated the proclamation had been mailed to the requestor.

**National American Indian Heritage Month,  
November, 2017**

Mayor Dunn read portions of the proclamation into the record.

**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 upon 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. 2017-44 and 2017-45
- B. Accept November 20, 2017 Governing Body Work Session minutes
- C. Accept May 9, 2017 Historic Commission minutes
- D. Approve renewal of Cereal Malt Beverage license for Mr. Gyro's Greek Food & Pastries Camelot Court, located at 11707 Roe Avenue, Suite # C
- E. Approve renewal of Cereal Malt Beverage license for Cosentino Price Chopper, located at 3700 W. 95<sup>th</sup> Street
- F. Approve renewal of Cereal Malt Beverage license for Walgreen's, located at 4701 Town Center Drive
- G. Approve renewal of Cereal Malt Beverage license for Walgreen's, located at 5230 W. 151<sup>st</sup> Street
- H. Approve Change Order No. 3 in the amount of \$20,582.74, to O'Donnell & Sons Construction, pertaining to the 2017 USAB/Thin Asphalt Overlay Program
- I. Approve 5<sup>th</sup> and Final Pay Request in the amount of \$500.00 to J.M. Fahey Construction Company, pertaining to the 2017 Arterial Mill & Overlay Project [On Roe between Tomahawk Creek Parkway & 135th Street; and on 133rd Street between State Line Road and the western city limits] [Project # 72053]
- J. Approve 2<sup>nd</sup> and Final Pay Request in the amount of \$6,555.00, to Wildcat Painting, pertaining to the 2017 Leawood Aquatic Center Pool Project [Project # 74003]

- K. Approve purchase in the amount of \$24,690.20, from Blue Valley Public Safety, Inc., for the replacement of storm warning siren located at Ironhorse Golf Course, 15400 Mission Road
- L. Approve purchase in the amount of \$17,646.00 to Creative Displays, for installation and maintenance of annual Holiday lighting at City Hall, located at 4800 Town Center Drive
- M. Approve purchase in the amount of \$55,121.00, from Shawnee Mission Ford for E250 Van [\$40,501.00] & Service Body and Landscaper Body [\$14,620.00]
- N. Approve purchase in the amount of \$198,364.00, from American Equipment for [2] truck bodies [\$46,030.00]; [3] flat bed, spreader, plow [\$88,968.00]; and [1] Water Tank Body [\$63,366.00]
- O. Approve purchase in the amount of \$72,008.00 from Summit Truck for mounting equipment unit for water tank truck
- P. **Resolution No. 4853**, approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$14,990.00 between the City and C & C Group, Inc., to perform annual generator service located at Leawood Justice Center, City Hall, Public Works Facility, Fire Station Nos. 1, 2 and 3
- Q. **Resolution No. 4854**, approving and authorizing the Mayor to execute various agreements between the City and ADP, LLC, pertaining to the purchase and use of ADP software for time and attendance purposes
- R. **Resolution No. 4855**, approving a Revised Final Plat for the Enclave at Highland Villas, Second Plat, located south of 143<sup>rd</sup> Street and east of Nall Avenue. (PC Case 97-17) *[from the October 24, 2017 Planning Commission meeting]*
- S. **Resolution No. 4856**, approving a Revised Final Plat for the Enclave at Highland Villas, Third Plat, located south of 143<sup>rd</sup> Street and east of Nall Avenue. (PC Case 98-17) *[from the October 24, 2017 Planning Commission meeting]*
- T. **Resolution No. 4857**, approving a Revised Final Plat for Leawood Justice Center Second Plat, located north of 119<sup>th</sup> Street and west of Tomahawk Creek Parkway. (PC Case 130-17) *[from the November 14, 2017 Planning Commission meeting]*
- U. **Resolution No. 4858**, approving a Revised Final Plat for Camelot Court Shopping Center Second Plat, located north of 119<sup>th</sup> Street and west of Tomahawk Creek Parkway. (PC Case 131-17) *[from the November 14, 2017 Planning Commission meeting]*
- V. Police Department Monthly Report
- W. Fire Department Monthly Report
- X. Municipal Court Monthly Report

Councilmember Sipple requested Consent Agenda Item 7.A. be pulled.

Councilmembers Cain and Osman requested Consent Agenda Item 7.Q. be pulled.

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

7.A. Accept Appropriation Ordinance Nos. 2017-44 and 2017-45

Councilmember Sipple stated he would recuse from voting because his wife is listed as a payee. His wife has provided contractor services to Parks & Recreation Department for many years.

**A motion to approve Consent Agenda Item 7.A. was made by Councilmember Filla; seconded by Councilmember Osman. The motion was approved with a unanimous vote of 6-0; recusal from voting by Councilmember Sipple for reason stated.**

7.Q. **Resolution No. 4854**, approving and authorizing the Mayor to execute various agreements between the City and ADP, LLC, pertaining to the purchase and use of ADP software for time and attendance purposes

Councilmember Cain pointed out the Staff Review Fact Sheet mentions a \$36,000 annual cost in the “Discussion” section and then \$36,000 monthly services in the “Costs” section. Mr. Sanders clarified the monthly services cost after system implementation are estimated to be \$36,000 per year, about \$8 to \$9 a month per employee, with an anticipated spike in monthly services cost during the summer months. Mr. Sanders stated the existing system is DOS-based, technical support is no longer available, the creator of the software is deceased and the subject matter expert recently retired. An extensive review of replacement systems has been ongoing for one to one and one-half years. The City had received a bid from our existing Enterprise Resources system provider for \$90,000 due to software licensing cost. ADP was given positive rating while another finalist did not.

Mr. Sanders confirmed to Councilmember Cain the majority of employees are hourly rather than salaried, and are eligible for overtime. The proposed system will have employee leave management tracking and on-line access for time-in/out.

Councilmember Osman asked how the bid process was conducted and if the City would be bound by contract for two years. Mr. Sanders stated he inherited the project. As mentioned, an existing system provider was targeted, the experience of former Information Services Director Mark Andrasik was sought in regard to his work with the KRONOS system, the other finalist, and then ADP was pulled in for consideration. No formal Request for Qualifications [RFQ] or Request for Information [RFI] was issued. The ADP system was felt to be the best fit. Costs of other systems can be provided. Mr. Lambers stated that based on Kansas cash basis law, the City would be bound by contract for only one year. Mr. Sanders stated the contract provides for a 60-day out clause and the City owns the data, which would be portable.

**A motion to approve Consent Agenda Item 7.Q. was made by Councilmember Osman; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 7-0.**

**8. MAYOR’S REPORT**

A. Congratulations to Councilmembers Debra Filla, Lisa Harrison, Chuck Sipple and Julie Cain on your re-election to the Leawood City Council on November 7. Congratulations also to Mary Larson as our Ward Two Councilmember-Elect. Thank you all for your willingness to serve our fine community.

- B. Thank you to Kansas City, Missouri, voters for overwhelming approval of “Better KCI.” Mr. Joe Reardon, Chamber President and Chief Executive Officer and Mr. Tim Cowden, President and Chief Executive Officer of the Kansas City Area Development Council had presented to the Governing Body who were very vocal in their support. The Leawood Chamber of Commerce had also endorsed. “Better KCI” will be good for everyone.
- C. Thanks to Parks & Recreation Director Chris Claxton and Special Events Supervisor Tony Nichols for organizing a wonderful Holiday Lighting Ceremony. There was great participation from Councilmembers, City Administrator and Department Heads. Performers included Nativity Parish Children’s Choir, Mission Trail Elementary and the Leawood Stage Company. The overall event was sponsored by Commerce Bank and refreshments were provided by Corner Bakery Café.
- D. I had the pleasure of greeting the graduates of the recently completed Citizens Police Academy conducted by Corporal Erik Butler. Councilmembers Andrew Osman, Jim Rawlings, Lisa Harrison and Chuck Sipple are former graduates. A letter received from graduate Dick Fuller and his daughter Shauna Bartel stated “It was very enlightening, as each officer gave a brief background as to their training and experience, the number of officers that have completed advanced studies and are recognized as experts in many different fields. The City of Leawood is to be commended for recognizing and encouraging the development of such a competent and professional police force. We really enjoyed this experience and in this difficult and trying environment for men in uniform highly recommend citizens participation as it will certainly open many eyes as to how fortunate we are to have such a dedicated and capable force.”
- E. Attended two Veterans Day events. The first was the 10<sup>th</sup> Anniversary Veterans Day Celebration at the Sprint Campus where military aircraft landed on site at Paige Field. City Administrator Scott Lambers also joined me along with Kansas Lieutenant Governor Jeff Colyer and Secretary of Insurance Ken Selzer. The second event was at Leawood Middle School. The Leawood Honor Guard presented the colors. Police Chief Troy Rettig and others from his leadership team as well as leadership from our Fire Department were also in attendance.
- F. My thanks to Leawood Foundation Chair Alice Hawk and Parks & Recreation Director Chris Claxton for organizing a lovely donor reception for individuals who contributed to the All-Inclusive Playground at Leawood City Park. Councilmembers Lisa Harrison, Chuck Sipple and James Azeltine, as well as City Administrator Scott Lambers were also in attendance.
- G. Leawood Rotary had approximately 15 members who joined Scout groups to clean up our trails along Tomahawk Creek. Among the group were Rotarians Jim Rawlings, Lisa Harrison and Chuck Sipple. My thanks to all for giving up a Saturday to join this clean-up effort.
- H. Had the pleasure of reviewing a proposal for the City of Leawood to build a zoo. The creative plans were part of an interactive learning project presented by second graders at Mission Trail Elementary. I was assured that our staff recruitment would be a breeze as they all offered to be zoo keepers!
- I. Happy Thanksgiving to one and all!

**9. COUNCILMEMBERS’ REPORT – None**

**10. CITY ADMINISTRATOR REPORT – None**

11. STAFF REPORT – None

**COMMITTEE RECOMMENDATIONS**

12. STORMWATER MANAGEMENT COMMITTEE

*[from the October 25, 2017, Stormwater Management Committee meeting]*

- A. **Stormwater Concerns:** 12600 Delmar, TM-04-006 Project [CIP # 77018]  
**Recommendation:** Move forward with the project, with the possibility of filing condemnation proceedings if all necessary easements aren't obtained

Councilmember Osman, Chair of the Stormwater Management Committee, stated he was proud of the committee which has several extremely capable engineers. The topic was been discussed at Governing Body and Stormwater Management Committee meetings, and the issue has been well-vetted.

Mayor Dunn invited Mr. Ley to provide comment. Mr. Ley stated the size of the box culvert had been determined to be appropriate. Three upstream neighbors who do not experience flooding have not signed easements. To obtain these easements, properties may need to be condemned. A total of nine easements are required for the project and six easements have been signed.

Councilmember Cain asked for an overview of the condemnation process. Mr. Ley stated he would like the City would hire an appraiser to review plans and value the property before an offer is made to the property owners. If an agreement cannot be reached and the easements are not signed, then the City's Attorney would file condemnations with the Johnson County Courthouse. The Court would hire several attorneys and an appraiser to determine value, which the City would pay the Court and the Court would pay to the property owners. The entire process would be anticipated to take three to six months.

Mr. Ley confirmed Councilmember Cain's statement that the City requires all necessary easements, otherwise the project would need to be delayed or terminated. Mr. Ley stated condemnation is acceptable to downstream property owners, who want the project to move forward.

Councilmember Cain noted the City, not the property owners, would incur expenses with condemnation and property owners not signing easements would be paid, while others are not. Mayor Dunn inquired if there was a mechanism for the City to recoup the costs. Mr. Ley stated to recoup costs, a Benefit District would need to be created and involve everyone.

Mr. Lambers pointed out the dollar amount involved for the three needed easements, \$10,000 to \$20,000 would not be significant; the City would not be acquiring property or precluding use of property by the owner. As recommended, the project needs to move forward and the condemnation process is within the City's domain authority and this is only a matter of determining compensation. This issue may arise on other projects in the future, at which time the Governing Body may decide to condemn or not, to proceed with a project.

Councilmember Azeltine stated Overland Park routinely condemns to obtain easements and historically Leawood has attempted to obtain easements in an amenable way. He stated future projects would involve a thorough upfront discussion of such items.

Councilmember Sipple asked if the timeline required to obtain easements with action would negatively impact the project timeline. Mr. Ley stated the City would move quickly with the condemnation process and project should start as scheduled in mid-2018 and complete in 2018.

Mr. Tom Messenger, 12515 Delmar, President, Patrician Woods Home Owner Association [HOA], stated the three easements that have not been signed are in regard to property in Aintree Manor and another subdivision to the east of Patrician Woods. He thanked the Governing Body and the Stormwater Management Committee, and stated the City Administrator and City Engineer have been excellent to work with on a project that satisfied the needs of everyone. He stated he would like to comment on Agenda Item 12.B. when that topic is discussed.

Mr. John Martin, 4503 W. 126<sup>th</sup> Street, provided copies of a handout dated October 26, 2017 to the City Clerk. He stated his property backs up to Roe Boulevard at the far bottom of the southwest end of Patrician Woods, and the property receives all water flowing downward. The water exits under Roe Boulevard. When Roe Boulevard was widened several years ago, Patrician Woods residents viewed drawings, issued were noted and the project was re-engineered for a larger outlet channel under Roe. Should the proposed 12600 Delmar project be implemented, his property will be at the bottom end of water going through a channel. On a continuously basis, water backs up and overflows the existing channel, impacting extensive "Johnson County Master Gardener" landscaping. His property has been a stop on the garden tour for many years, and in 2009 other gardeners were brought in at the last minute to restore landscaping impacted by a storm. His original desire had been to reside in Waterford, but he purchased one of the last four lots in Patrician Woods because of the need for a walk-out type property for his family. At that time, Roe Boulevard was only two lanes and more lanes and sidewalks have been added. He met with Mr. Shawn Johnson of City Staff and Councilmember Azeltine on October 1, 2017, and they walked the entire length of the drainage area. When Mr. Shawn Johnson was on site, water was compressing in the channel and backing up on three properties. Councilmember Azeltine indicated the flooding situation would be placed on the agenda of the next Stormwater Management Committee meeting, which Councilmember Azeltine chaired on October 25, 2017. The topic was not on the Committee's agenda, and he has tried to approach the City and Councilmember Azeltine twice by email, without response. Mr. Martin pleaded that someone help him with a water drainage situation where water is not getting through the channel. He stated the way he has been treated is disturbing and reiterated his statement that Mr. Johnson feels there is definitely a situation as demonstrated by a water mark and rising level of water in the channel.

Councilmember Azeltine disagreed with Mr. Martin's statement the topic would be placed on the next meeting of the Stormwater Management Committee. He had stated to Mr. Martin that he was welcome to attend the meeting, which was done by others. A walk-through had occurred on October 1 and he concurs with observations, but there is also historic background which is relevant. In 2013, City Staff distributed surveys to 11 houses connected to the proposed project. According to Staff, two of the eleven responded they wanted improvements, but the remainder of the returned surveys indicated "not in my backyard." A response was not received from Mr. Martin.

Mr. Martin stated there was no indication on the survey that the Delmar channel would be reworked. He stated the survey was flawed and the Engineering Group should know what the situation would be if the channel was reworked on the top. Mr. Martin stated that one of his neighbors was moving and did not want to be involved in disturbing his yard aesthetics and rework of the channel.

Councilmember Filla asked Mr. Ley if moving forward with the 12600 Delmar SMAC project discussed earlier would impact the issues voiced by Mr. Martin. Mr. Ley stated as part of the preliminary review, the engineer was required to look both upstream and downstream using the latest Federal Emergency Management Agency [FEMA] model for the entire watershed and to consider the larger box culvert that had been used at Roe. The engineer stated to the City and in the report that the project at 126<sup>th</sup> and Delmar does not impact downstream at Roe. The channel was part of the original development; it is a gabion-wall channel with a concrete bottom built for water over-topping during a 10-year storm, which is normal.

Councilmember Filla inquired if receipt of only two, now three with Mr. Martin's, positive survey responses was reflective overall, if there was a way to address the issues of one property owner when other property owners do not want and if any other complaints were received. Mr. Ley said the survey stated the City would be doing at project at 12600 Delmar and that the City was looking if there was interest in continuing to Roe. The survey presented three options: 1) do nothing, 2) widen channel for a 100-year event to be in-banks, or 3) install a box culvert with fill disturbance areas of impact provided. A total of 20 questionnaires were sent out and 10 responses were received and 10 were not returned. Of the 10 responses, eight stated "do nothing" and two responses from owners closer to Roe wanted the project. Mr. Ley stated no other downstream complaints had been received. It was clear that upstream property owners would not sign easements, so if something was done it would need to occur downstream.

Councilmember Azeltine favored a referral of the issue to the Stormwater Management Committee after completion of the 12600 Delmar project and because the Johnson County Stormwater Management Advisory Council [SMAC] is reworking the guidelines for future projects.

Councilmember Cain asked if the upstream 126<sup>th</sup> Street project which is to receive SMAC funding should be delayed pending revision of SMAC guidelines. Mr. Ley stated the project should not be delayed. SMAC is revising their guidelines into three categories of watershed-based studies: 1) maintenance of existing storm sewer, 2) stormwater treatment and 3) flooding. He stated his understanding that flooding would need to occur in three or four houses downstream to qualify for SMAC funding. The City would need to condemn property downstream to help Mr. Martin and that project would not qualify for SMAC funding; the City would pay 100%.

**A motion to refer water drainage issues at 4503 W. 126<sup>th</sup> Street to the January 24, 2018 Stormwater Management Committee was made by Councilmember Azeltine; seconded by Councilmember Harrison.**

Councilmember Harrison noted the City has heard from many citizens regarding flooding and asking the City for assistance over the last six months. She asked if the City has a protocol regarding the placement of private items such as landscaping, retaining walls and park benches within a specific distance from a creek. Mr. Ley stated the City handles on a case-by-case basis and Stormwater Engineer David Roberts addresses with the property owner. A permit must be obtained for property owner work in the flood plain.

**Based on the previously scheduled topics for the January 2018 Stormwater Management Committee meeting, a friendly amendment to the motion was made by Councilmember Harrison and Mayor Dunn to refer the issue to the February 28, 2018 Stormwater Management Committee meeting.**

Mr. Lambers stated it would be appropriate for Staff to contact other survey participants so they may attend the February 28, 2018 Stormwater Management Committee meeting. The positions of other survey participants or property owners may have changed.

**The motion to approve the referral was approved with a unanimous vote of 7-0.**

**A motion to approve the Agenda Item 12.A., Stormwater Management Committee's recommendation to move forward with the 12600 Delmar, TM-04-006 Project [CIP # 77018] with the possibility of filing condemnation proceedings if all necessary easements are not obtained was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with unanimous vote of 7-0.**

**B. Monument and tree on island:**

**Recommendation: Staff recommends City pay 50% of \$40,000; HOA requesting 75%**

Councilmember Azeltine clarified that Page 2, second to last paragraph should state the City would offer to pay 50% of the \$40,000 estimate, up to a maximum of \$20,000. If the project costs less, the City's 50% would be less than the maximum \$20,000. Mr. Lambers stated to avoid confusion, the HOA is requesting the City pay 75% and the HOA 25% of cost; the HOA is not requesting to pay 75% as may be construed by the language of the agenda item.

Councilmember Rawlings stated in his on-site review of the property, the two wing walls on each side of the central round stone wall did not appear to be used as they had no landscaping. There was only a single tree in the middle of the round stone wall. He suggested the price of the restoration could be decreased if the wing walls were not replaced. He asked the Patrician Woods HOA President in attendance, Mr. Tom Messenger, if the HOA would be agreeable or if this had been discussed.

Councilmember Cain stated in addition to the HOA's consideration of not replacing the wing walls, she recalled the use of old stone, the storage location of stones and who would do the work had been discussed. She had understood the HOA to want a check from the City and then the HOA would be responsible for the rest of the aspects of the project. Mr. Lambers stated the suggestion had been made at the last meeting prior that prior to work being done that a price be agreed upon. The HOA was to contract with a private company and would submit an invoice to the City. The contractor will need to pull all permits required for the work.

Councilmember Azeltine pointed out the City would be setting a precedent should a similar situation arise.

Mr. Lambers confirmed to Councilmember Sipple the City would inspect the work and an invoice would be required before the City would issue a check. Mr. Lambers confirmed that once the project is complete, maintenance and any future replacement becomes the responsibility of the HOA.

Councilmember Osman stated agreement with Councilmember Azeltine in regard to setting precedent, and added this was dangerous. His understanding of what the HOA would like to do and what his decision would be based upon is the written meeting minutes and evaluations, since he was not present at the meetings. The City has no record that the HOA had obtained right-of-way permit for monument installation. Mr. Lambers stated the City has other documentation, but nothing in regard to a right-of-way permit and agreement that should the area need to be accessed, the HOA would be responsible if they wished to restore. Lacking the permit, the City could take the position the City does not need to participate, but in his opinion the City should participate to the 50% level recommended.

Councilmember Osman pointed out that if a commercial or residential property owner builds in the right-of-way or easement, they run the risk of access needed by the City or easement holder such as a utility company. For commercial developments, this would probably mean the disruption of a parking lot. This is a bad situation that occurred years ago. Technically, the City is not at fault or responsible for reconstruction. He stated the goal tonight should be to determine if the City has a moral or legal obligation, the cost and if the City decides to participate it should be noted the Governing Body voted on a right-of-way or easement issue for City reimbursement.

Councilmember Osman presented a hypothetical example of a future re-do of the new Camelot Court entrances off Roe Boulevard if the City would determine that survey lines were in error. A decision would need to be made as to who and how much would be paid for reconstruction. He stated residents in Prairie Village who had constructed a community area with benches and fire pit in an island right-of-way without a permit, were required to dismantle the area after one year when the Prairie Village needed access.

Mayor Dunn stated it had been the Governing Body's recommendation to only restore grass. The topic was then referred to the Stormwater Management Committee, where residents made their argument and Stormwater Management Committee Chair Azeltine opted to do something different. Mr. Lambers stated the City does not have a moral or legal obligation, and the Governing Body decision would be case-specific. He reiterated there is lack of documentation and stated he would be comfortable with Governing Body decision, regardless.

Councilmember Azeltine stated that before Mayor Dunn and Mr. Lambers were with the City, many things happened that were prohibited including several developments with private streets that were not built to City Code. He questioned how the City could not be aware that eight street islands were constructed without permits, and blamed faulty systems and processes. He stated this is a unique case that should be compensated.

Councilmember Harrison inquired if there are any utilities located under the monument in question or under the other monuments located in Patrician Woods. Mr. Ley stated a storm sewer box is located beneath the monument in question, but nothing was under others in Patrician Woods. He stated there could be other monuments in the City with utilities or storm sewer located beneath. Mr. Lambers stated if an HOA wishes to do something new in the right-of-way, it would be the HOA's responsibility for restoration.

Mr. Tom Messenger requested that his neighbor and Patrician Woods Engineer Mr. Tom Heausler be allowed to read a paragraph from a City resolution that was presented at a prior meetings.

Mr. Tom Heausler, 4301 W. 126<sup>th</sup> Terrace, stated his house overlooks the stone monument and has enjoyed the view and the monuments value for 25 years. He stated Resolution No. 3008, signed by Mayor Dunn in April 2008, specifically addresses replacement of stone monuments in the public right-of-way, calling for replacement with like materials at 100%, not 50%, and independent of cost. He gave opinion that it would be a precedent for the City not to pay 100%.

Mr. Lambers stated Section 5 of the Resolution No. 3008 addresses street reconstruction and this involves a stormwater project. Mr. Heausler stated the monument is part of the street which is being constructed in the project. He stated his belief that the City has an obligation to replace the monument.

Mr. Messenger stated the HOA would hire a contractor and submit an invoice to the City. The work would be done to City Code. Mr. Messenger stated the HOA would like the City to provide a drilling for a 2-inch plastic tube from the property curb to the island for the purpose of irrigation. Lack of irrigation was the reason no bushes were at the site. The HOA wants to install a sprinkler system which will be especially needed for the planting of a 4-inch caliper tree, requiring 25 years to mature. The HOA also requests the City pay 75%, not 50%, or a split difference of 67%.

Councilmember Filla pointed out the City has revised landscaping recommendations to plant 2.5-inch caliper trees rather than 4-inch caliper trees. The City's arborists have stated a 2.5-inch caliper tree can establish and grow better over a five year period.

Mr. Messenger confirmed to Councilmember Sipple that the City would not be supporting the cost of water, water meter or system cost for the irrigation.

Mr. Lambers confirmed to Councilmember Cain that he supports the request made by Mr. Messenger tonight and at the last Stormwater Management Committee meeting for a 2-inch pipe, and that the Governing Body did not need to vote on that request.

**A motion to approve Staff's recommendation Agenda Item 12.B, for a 50% cost share up to \$20,000 to be paid by the City was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 7-0.**

Mayor Dunn thanked Mr. Messenger and Mr. Heausler for their attendance.

### 13. PLANNING COMMISSION

[from the October 24, 2017, Planning Commission meeting]

- A. **Resolution No. 4859**, approving a Final Plan for changes to the façade of a tenant space for Town Center Crossing – Zoe’s Kitchen, located south of 119<sup>th</sup> Street and east of Roe Avenue. (PC Case 96-17)

Mr. Curt Petersen, Polsinelli P.C., 6201 College Boulevard, Overland Park, stated there are several Zoe’s Kitchen locations in the area including the Country Club Plaza, Corbin Park on 135<sup>th</sup> Street and Oak Park. The restaurants serve trendy Mediterranean cuisine. The proposed location takes up one-half of the space vacated by the Drunken Fish restaurant in Town Center Crossing; Bonobos takes up the other half. The shopping center is eclectic, not Johnson County beige, with businesses having exciting iconic storefronts such as the Apple store’s white wall, the green of L.L. Bean, the Asian Feng Shui, the intricate scrollwork of Kendra Scott, Sullivan’s blade sign and Crate & Barrel. The applicant is requesting approval of a Final Plan for modifications to the recess storefront façade to create more patio space, to work on glazing and to add signature colors. Above the canopy, stained wood siding made to withstand weather would be affixed to spandrel glass. It is hoped the wood siding could be removed in the future without damaging the spandrel glass. The Planning Commission supported the proposed plan by vote of 6-1. Staff opposes the proposed plan largely because private shopping center owner would not approve of the proposed design. Mr. Petersen displayed a letter of support from the owner of the shopping center, Washington Prime Group, dated October 24, 2017.

Councilmember Sipple inquired if the colorful stained wood siding was a design standard for Zoe’s and if the wooden slats would be lit from behind. Mr. Petersen stated there was a mix of design used across the metro; some locations use the colored wood siding and others do not. There would be no backlighting of the vertical wood panels.

Mayor Dunn pointed out one of the Staff concerns had been weathering and maintenance of rain screen. There are some developments in the City with wood that is weathering because of outdoor conditions and the sun, and appears to need re-staining. Mr. Petersen said the “rain screen siding” is manufactured for outdoor use. The design has been shown to the property owner, and the shopping center’s design guidelines to ensure a quality appearance can and would be strictly enforced. Mr. Petersen noted the Mayor’s point about the sun and stated the storefront faces north.

Mr. Petersen stated to Councilmember Cain the wood might be replaced rather than stripped and re-stained. The anticipated lifespan of the wood is expected to be many years. He stated vinyl had been initially proposed to Staff. Councilmember Cain stated preference for stained wood, being less noticeable than a bright-colored awning or vinyl.

Mayor Dunn asked for an anticipated timeline for opening. Mr. Petersen stated he did not know, but the applicant is anxious and could move in couple months upon approval of the Final Plan.

Councilmember Osman stated the City needs to be cognizant of where restaurants are located and of parking ratios, to avoid the situation at Corinth. Johnny’s, Urban Table, Salty Iguana, BRGR and Spin Pizza are all located at one end of Corinth and the other side has all the open parking.

**A motion to approve the Planning Commission’s recommendation of Agenda Item 13.A. was made by Councilmember Filla; seconded by Councilmember Osman. The motion was approved unanimously by a vote of 7-0.**

- B. **Ordinance No. 2863**, approving a Special Use Permit, Preliminary Plan, and Final Plan for the City of Leawood – City Park Temporary Storage Container, located north of 109<sup>th</sup> Street and east of Lee Boulevard. (PC Case 102-17) [ROLL CALL VOTE]

Mr. Klein stated Agenda Items 13.B, 13.C. and 13.D. are applications for temporary storage for the City’s Parks Department due to flooding of facilities at 103<sup>rd</sup> and State Line Road. The proposed locations are one 8 ft. wide, 40 ft. long and 8 ft., 6 inch tall container at City Park near the playground, two 8 ft. wide, 20 ft. long and 8 ft., 6 inch tall containers in Ironwoods Park near the maintenance shed and one 8 ft. wide, 40 ft. long and 8 ft., 6 inch tall container at the Public Works Maintenance facility at 103<sup>rd</sup> Street.

Councilmember Sipple preferred the container at City Park to be kept away from the playground and shelter. Mr. Anderson stated the container would be located to the east of the Lions Shelter and the flood plain was a factor in the proposed placement. Ms. Claxton stated another reason for the proposed placement is because items stored in a small existing building and the proposed container would work together. Most visitors would view the small end of the container and planting some upright junipers for screening has been considered. The Special Use Permits [SUPs] are for a period of two years and the containers are expected to be used for one to two years.

Councilmember Filla recalled the 20-year use of “temporary” trailers at the former Police Station and expressed appreciation for the two-year term of the SUPs. The containers will provide a means to have equipment in various places to get City work done. She suggested the City could sponsor a fun art in public places project to decorate the containers. Mayor Dunn suggested the containers be painted a light tan color.

Councilmember Cain stated the containers would be new, have shelving and be dispersed throughout the City. The containers are necessary and needed quickly.

Councilmember Filla requested a FEMA payment update for flooding. Chief Williams stated only notification that the City was declared part of the disaster has been received. Johnson County is setting up a state meeting. Based on his past experience, it will likely take several months for the funds to reach the City.

**A motion to pass the ordinance was made by Councilmember Cain; seconded by Councilmember Sipple. The motion was approved with a unanimous roll call vote of 7-0.**

- C. **Ordinance No. 2864**, approving a Special Use Permit, Preliminary Plan, and Final Plan for the City of Leawood – Ironwoods Park Temporary Storage Containers, located east of Mission Road and south of Ironwoods Drive. (PC Case 107-17) [ROLL CALL VOTE]

**A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Harrison. The motion was approved with a unanimous roll call vote of 7-0.**

- D. **Ordinance No. 2865**, approving a Special Use Permit, Preliminary Plan, and Final Plan for the City of Leawood – Public Works Maintenance Facility Temporary Storage Container, located south of 143<sup>rd</sup> Street and east of Kenneth Road. (PC Case 108-17) [ROLL CALL VOTE]

Councilmember Sipple inquired if the container would be located behind the locked gate of the facility or accessible after hours. Mr. Klein stated the container would be behind the locked gate.

**A motion to pass the ordinance was made by Councilmember Cain; seconded by Councilmember Azeltine. The motion was approved with a unanimous roll call vote of 7-0.**

- E. Resolution approving a Revised Final Plan for Leawood Elementary School – Parking Lot Addition, located north of 123<sup>rd</sup> Street and east of Norwood Drive. (PC Case 83-17) – *CONTINUED TO THE DECEMBER 4, 2017 GOVERNING BODY MEETING*
- F. **Ordinance No. 2866**, amending Section 16-2-7 of the Leawood Development Ordinance entitled “Table of Uses” and repealing existing Section 16-2-7 and other sections in conflict herewith. (PC Case 109-17) [ROLL CALL VOTE]

Mr. Klein stated the proposed amendment would bring the Leawood Development Ordinance [LDO] in conformance with City Code recently revised to prohibit short-term rentals of less than 30 days of residential property or a portion of residential property. The proposed amendment also removes the bed and breakfast use. Revision to prohibit short-term rentals and elimination of the bed and breakfast use, provides clarity that rental of residential property is not considered a hotel and precludes Airbnbs.

Mr. Klein confirmed to Councilmember Filla that hotels and Airbnbs would be clarified by the proposed amendment presented in Agenda Item 13.D. Mr. Lambers stated the City has no “bed and breakfasts”, but some Airbnbs have been advertised. With approval of the proposed ordinances, City Code can be enforced.

Councilmember Azeltine inquired if there has been any nationwide litigation occurring in this regard. Mr. Lambers stated there was been litigation in regard to regulations, and the state legislature is becoming involved. The City is being proactive.

Councilmember Cain stated for the remedy if advertising for a precluded use is discovered. Mr. Coleman stated a Code Enforcement Courtesy Notice for violation of ordinance would be issued. If the recipient does not respond or if the response is unsatisfactory, a citation would be issued.

Councilmember Harrison inquired if any property had been purchased in the City for the purpose of an Airbnb and what was being done in other cities. Mr. Coleman stated he was not aware of any property specifically purchased for the use.

**A motion to pass the ordinance was made by Councilmember Rawlings; seconded by Councilmember Harrison. The motion was approved with a unanimous roll call vote of 7-0.**

- G. **Ordinance No. 2867**, amending Section 16-9-148 of the Leawood Development Ordinance entitled “Hotel” and repealing existing Section 16-9-148 and other sections in conflict herewith. (PC Case 110-17) [ROLL CALL VOTE]

**A motion to pass the ordinance was made by Councilmember Sipple; seconded by Councilmember Cain. The motion was approved with unanimous roll call vote of 7-0.**

- H. **Ordinance No. 2868**, amending Section 16-4-1.3 of the Leawood Development Ordinance entitled “Permitted Accessory Uses, Buildings and Structures” and repealing existing Section 16-4-1.3 and other sections in conflict herewith. (PC Case 111-17) [ROLL CALL VOTE]

Mr. Klein stated the proposed amendment would permit the administrative approval of recycle bins in commercial district which meet specific regulations. Each commercial district would be limited to one recycle bin for community use accessible by the public. Currently, recycle bins are located at schools and churches and within commercial districts must be located within an enclosure attached to a building, must be recommended for approval by the Planning Commission and approved by the Governing Body as part of the Final Development Plan. The intent is to allow recycle bins within commercial districts, but provide controls so the bins do not become a nuisance to adjoining property.

Mr. Klein confirmed to Councilmember Filla that 135<sup>th</sup> Street development would be impacted. If the proposed amendment is approved, one recycling bin would be located in Market Square, in a small internal delivery area behind the Price Chopper. Councilmember Filla thanked Mr. Klein for such flexibility and creatively in this regard.

Mayor Dunn inquired if the individual who had spoken on the topic at the Planning Commission meeting was present; no one was seen or heard to speak.

Mr. Klein confirmed to Councilmember Cain it would be up to a commercial property owner to initiate an application for a recycle bin. If the application met all regulations, the application could be administratively approved.

Mayor Dunn pointed out the regulations are restrictive and Ranchmart would not qualify. She stated for the record she is a frequent user of Ripple Glass recycling bins, always having to use bins outside of Leawood. The surface area around glass recycle bins can be extremely dangerous as users do not exercise caution when making deposits. She asked who would be responsible to carefully monitor to ensure these are not hazardous. Mr. Klein stated the proposed regulations prohibit overflow or stacking, and that all material must be contained within the bin. He stated Ms. Stacia Stelk, a Ripple Glass representative who spoke during the Public Hearing of the Planning Commission meeting, realizes debris is an issue.

Councilmember Filla noted the company now has dedicated drivers who carry brooms and dustpans to tidy up. Mr. Coleman stated the bins would only be emptied when full, so the City would plan to monitor. Mr. Lambers stated since glass is a safety issue, the City would need to monitor with assumption the company may not do a good job. Citations could be issued and the company may decide to remove the bins. This is an attempt to provide glass recycling in the City. Councilmember Filla expressed hope for a positive experience.

**A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Cain. The motion was approved with a unanimous roll call vote of 7-0.**

- I. **Ordinance No. 2869**, amending Section 16-2-5.3 of the Leawood Development Ordinance entitled “R-1 [Planned Single Family Low Density Residential District (15,000 Sq. Feet Per Dwelling)]” and repealing Section 16-2-5.3 and other sections in conflict herewith. (PC Case 113-17) [ROLL CALL VOTE]

Mr. Klein stated Agenda Items 13.I and 13.J. relate to newly created lots, in-fill development and re-subdivisions, within R-1 and RP-1 Districts. R-1 lots must be a minimum of 15,000 sq. ft. and RP-1 lots must be a minimum of 12,000 sq. ft. and both of these districts have a requirement that new lots sized to be compatible within 300 ft. of the surrounding area. There are maximum caps. The current ordinances do not prohibit lots in adjacent cities from being used in the average lot size calculation. An adjacent city may have a smaller lot size requirement and this would drive the Leawood lot size. The proposed amendments clarify that only Leawood lots, and not those of other cities, are to be used in calculation.

Councilmember Sipple inquired if the proposed revised formula would have impacted any lot size calculations approved in the last year, including 89<sup>th</sup> Street and Lee Boulevard. Mr. Klein stated two R-1 lots, at 105<sup>th</sup> and Mission and on 151<sup>st</sup> Street, that were granted a variance. 89<sup>th</sup> Street and Lee Boulevard was RP-2 and not impacted.

**A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with a unanimous roll call vote of 7-0.**

Mayor Dunn complimented Mr. Klein for his hard work.

- J. **Ordinance No. 2870**, amending Section 16-2-5.4 of the Leawood Development Ordinance entitled “RP-1 [Planned Single Family Residential District (12,000 Sq. Feet Per Dwelling)]” and repealing Section 16-2-5.4 and other sections in conflict herewith. (PC Case 114-17) [ROLL CALL VOTE]

**A motion to pass the ordinance was made by Councilmember Filla; seconded by Councilmember Cain. The motion was approved with a unanimous roll call vote of 7-0.**

#### **14. OLD BUSINESS**

- Ordinance No. 2871C**, amending § 1-208 of the Code of the City of Leawood, Kansas, 2000, entitled ‘Compensation’ and repealing existing section 1-208 and other sections in conflict herewith [ROLL CALL VOTE]

Councilmember Sipple proposed a revision to the amendment so that compensation would not have to be revisited every few years. He proposed to have the base pay of the Mayor and Councilmembers be adjusted annually using the same percentage as the employee cost-of-living [COL] adjustments. Mr. Lambers stated employees do not receive COL adjustments, only merit increases with a maximum cap of 3.9%.

**A motion was made by Councilmember Sipple to revise the amendment to annually adjust the base pay for the Mayor and Councilmembers using the same percentage as the annual employee pay adjustment in the City’s budget. The motion died for lack of second.**

Mayor Dunn confirmed to Councilmember Azeltine that the proposed ordinance amendment was based on amounts previously discussed.

**A motion to pass the ordinance as proposed by Agenda Item 14. was made by Councilmember Filla; seconded by Councilmember Sipple. The motion was approved with a unanimous roll call vote of 7-0.**

Based on the comments of Councilmember Sipple, Mr. Lambers suggested the Governing Body provide direction in a separate motion as to how often elected official compensation should be reviewed on a periodic basis.

**15. OTHER BUSINESS**

Request City Administrator review elected official compensation every two years

**A motion was made by Councilmember Filla to direct the City Administrator to bring forth compensation for elected officials for review every two years; seconded by Councilmember Rawlings. The motion was approved with a 6-1 vote; Nay vote from Councilmember Azeltine for reason that the subject of compensation is not one he favors.**

**16. NEW BUSINESS**

A. **Ordinance No. 2872**, appropriating the amounts set up in each fund in the budget for Fiscal Year 2018, 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]

Mr. Lambers noted the proposed ordinance comes before the Governing Body each year. The ordinance allows City Staff to initiate payments per expenditure ordinances, to ensure payments are not delinquent and to take advantage of early payments.

**A motion to pass the ordinance was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous roll call vote of 7-0.**

B. Schedule a Work Session on Monday, February 5, 2018 at 6:00 P.M. to discuss Self-Storage Facility Use

Councilmember Azeltine asked Councilmembers to envision how self-storage facilities would look like in a shopping center in their Wards, especially if the shopping center is challenged with start-up or during an economic downturn. He stated he does not support the use.

Councilmember Rawlings pointed out Work Session would be for discussion. Mayor Dunn stated use request had been brought to the City.

**A motion to schedule the Work Session was made by Councilmember Rawlings; seconded by Councilmember Cain. The motion as approved with a vote of 6-1; Nay vote from Councilmember Azeltine for reason stated.**

- C. Organizational meeting scheduled on Monday, January 8, 2018, pursuant to K.S.A. and § 1-206 of the Code of the City of Leawood, Kansas, 2000 [This will replace the previously scheduled January 16, 2018 Governing Body meeting]

Mayor Dunn pointed out the proposed meeting would replace the January 16, 2018 Governing Body meeting. The main purpose of the proposed meeting would be to swear-in newly elected Councilmembers. Per Kansas statute, all cities are required to conduct swear-in ceremonies on this same day. Mr. Lambers stated the start time of the meeting would be 5:30 P.M. rather than 7:30 P.M. and the duration of the meeting would be very brief.

Mr. Lambers stated his intention to ask the Executive Director of the League of Kansas Municipalities to amend regulations in this regard to provide for a possible date of second meeting in January or next scheduled meeting of the Governing Body. Mayor Dunn pointed out that all Johnson County Mayors have made the same request.

**A motion to approve the organizational meeting was made by Councilmember Filla; seconded by Councilmember Sipple. The motion was approved with a vote of 6-1; Nay vote from Councilmember Osman for reason of the idiocy of State's date dictate.**

Mayor Dunn wished everyone an enjoyable time with family and friends during the upcoming holiday.

## **ADJOURN**

There being no further business, the meeting was adjourned at 9:55 P.M.

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Debra Harper, CMC, City Clerk

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Cindy Jacobus, Assistant City Clerk