

Minutes

DVD No. 453

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, 7:00 P.M. on Monday, December 2, 2019. Mayor Peggy Dunn presided.

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

**Councilmembers Absent:** None

<b>Staff Present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
David Ley, Public Works Director	Chief Troy Rettig, Police Department
Chris Claxton, Parks & Recreation Director	Dawn Long, Finance Director
Mark Tepesch, Info. Services Specialist III	Ross Kurz, Info. Services Director
Deputy Fire Chief Colin Fitzgerald	Chief Dave Williams, Fire Department
Richard Coleman, Comm. Services Director	Marcia Knight, Asst. City Attorney
Mark Klein, Planning Official	Kelly Varner, Future City Clerk
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 to continue recognition of April Bishop to the December 16, 2019 Governing Body meeting.

**A motion to approve the amended agenda was made by Councilmember Harrison; seconded by Councilmember Sipple. The motion was approved with a unanimous vote of 8-0.**

**3. CITIZEN COMMENTS**

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to 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 members of the public signed in to speak on a non-agenda topic would be called upon in order of sign-in. Mr. Jeffries, who had signed in to speak on Agenda Item 14.A. would be called when that item was reached on the agenda.

Mr. Tom Dusterhoft, 4800 W. 135th Street, Suite 270, owner of Massage Heights, stated the company is an ethical membership-based massage franchise in business for 11 years and employing 20 therapists. He thanked the Governing Body for past and present opportunities to speak. Mr. Dusterhoft expressed concern about changing requirements for massage therapists and the licensing process. The market for massage therapists is competitive, with more demand than supply. If revisions are not well-crafted, therapists could be lost and businesses could be damaged or at a disadvantage. He suggested input from business owners be sought and offered his services in this regard. He opined that Lenexa licensing laws are very consistent with current practice. He understands there is a January 2020 meeting on the topic.

Mayor Dunn stated she was not familiar with the changes and deferred to Mr. Lambers. She stated if the topic was to be discussed in the future the City Clerk would notice Mr. Dusterhoft, who would be welcome to attend. Mr. Lambers stated area cities have been working for more commonality for consistent requirements for massage therapists and operations, before emergence of recent issue. This is still at the Staff level and he anticipated this would come forward in about 60 days, likely in February, for ordinance consideration.

Ms. Bennett confirmed to Councilmember Azeltine that Leawood's ordinance is 20 years old and needs revision and clean-up in regard to licensing and enforcement. Leawood is looking to make changes similar to those made by neighboring Johnson County cities.

Councilmember Harrison inquired if there would be a grace period or grandfathering if the ordinance is revised. Mr. Bennett stated current licenses would continue, but would be expected to conform at the next license renewal.

Mr. Rick Brown, 9614 High Drive, stated he lives behind 96<sup>th</sup> Street and Lee Boulevard. Neighbors have not been able to equitably weigh-in on redevelopment of the site. He expressed concern about the two-level building being proposed, as the profile would be higher than the surrounding area. A residential property to the south has been purchased by the City, and the structure is to be demolished for a potential park. Also, concern about who in the neighborhood would have the opportunity to voice their preferences.

Mayor Dunn confirmed the property had been purchased. She stated deed restrictions are in place in regard to single-family residential, and this had been part of the conversation at a recent Leawood Estates Home Owners Association meeting. Mr. Lambers stated the City has completed the sale for property of less than one acre, and the next step would be demolition of the structure and Police Station antennae. Residents required to participate in removal of the deed restrictions would receive notice and instructions by certified letter. Deed restrictions of concern are for no commercial use, and question is would a park be for a commercial use, and also for farm animals. Once restrictions are removed, the City would start the planning process. The City had to own the property before plans could be submitted and Work Sessions will be held. There would be a preliminary plan, revised plat and probably rezoning, to go before the Planning Commission and Governing Body. There would be opportunities to speak at two public hearings at the Planning Commission and Governing Body meetings. He stated the City needs to move forward with the new Fire Station, so the Final Plan for the station may go forward concurrently with the Preliminary Plan for the property.

Mayor Dunn stated this has been a deliberative process. There was one public hearing in Chambers with theme of desiring a passive park, no sports, but the City is very far from final plan. As pointed out by Mr. Lambers, there are a number of steps in the planning process. She stated Mr. Dusterhoft would certainly be in proximity to receive a certified letter and have comments heard.

Ms. Charlotte Shaw, 9618 High Drive, stated her property backs up to property purchased by City for a hefty price. She questioned the wisdom of this large expenditure for property with deed restriction for residential only, and if the City thought it would just proceed regardless. Having any type of park is not needed because City Park, and all its amenities, is located just 1.5 miles south and Brook Beatty Park is 1.4 miles to the north. Plans and extensive drawings she has seen show a potential pavilion maybe utilizing the existing structures and a two-story new Fire Station with elevator access to a meeting room at significant cost. An architect has been paid for two plans for the new Fire Station. The new Fire Station should be kept to one-story and the Old City Hall used for meeting space. The existing Fire Station and Old City Hall hold to the dignity and character of the area. A park behind their properties is unwanted and residents were never asked about the park or the Community Garden. The gardens were just installed, and have not been properly cared for and cleaned up. They are unpleasant to look at during winter months. She offered to show photographs.

Mayor Dunn state the City had conceptual drawings of new Fire Station prior to purchase of the residential property. Use will depend on what happens with the deed restrictions and there would be opportunities to voice opinions. She sympathized in regard to the condition of the Community Garden; there is a real desire to remedy the appearance.

Councilmember Filla stated she serves on Community Garden Task Force and it was hoped to use this location for one more season. She invited Ms. Shaw to participate in the Task Force. She stated what had been a one and one-half year pilot garden was extended several years in search of a permanent location. A site in Ironwoods Park has been identified. She expressed appreciation for the comments, agreeing the pilot garden site was not kept as tidy as should have been, lacking formal regulations to be developed for a permanent site.

Ms. Ellen Brown, 9614 High, inquired about the deed restriction process. Mr. Lambers stated the process to approve a change in deed restrictions, established by the Kroh Brothers, is extremely detailed and convoluted, requiring a certain number of property owners within a certain distance, representing 51% of front yard lineage, to approve the change. A map has been prepared to identify these property owners and their amount of linear footage. The map was provided to the Leawood Estates HOA, so the HOA could provide to their residents. Deed restrictions can only be removed every five years, taking place after 2020, but before 2025. Ms. Brown stated she attended the HOA meeting and she did not receive any paperwork or map, which she would like to see. Mr. Lambers asked Ms. Brown to contact him tomorrow in regard to the map. Certified letters should be distributed mid-January.

Councilmember Osman expressed appreciation for citizen attendance and communications, as the City cannot know concerns unless they are provided. As part of the Council for eight years, he has seen the City be open and communicate with residents. The Governing Body does not participate in back-room deals or proceed haphazardly. The first Governing Body Work Session on redevelopment of the site was eight years ago, after the vote approving the Police Department relocation to Town Center Parkway. As part of master planning, the City has to decide what must be done with the site, the historic Old City Hall, the old and bandaged existing Fire Station that should have been replaced five to seven years ago, and the cell phone tower that could not be removed until the lease expired. The City has had, and will continue to have, multiple Work Sessions and open communications with residents on the topic. The plan of possible location of the new Fire Station on the site was provided to the HOA about two to two and one-half years ago. Discussion will continue with input from Staff and residents to determine what is best for City.

Councilmember Rawlings stated for the record that he would contact the management company for the Leawood Estates HOA to ensure action is taken in regard to communications, and afterwards would speak with Mr. Lambers. Mr. Lambers stated the matter was not real time sensitive, given the time of year.

Mayor Dunn thanked residents for their attendance and comments.

4. **PROCLAMATIONS** - None

5. **PRESENTATIONS/RECOGNITIONS** **City Prosecutor Marcia Knight, Prosecutor of the Year**

Ms. Bennett wanted to share news of the award. She is thrilled with the education, abilities and professionalism of Ms. Knight, sentiments echoed by all Municipal Court and the Police Department Staff. Ms. Knight is a real asset to the Legal Department. She was honored by the Kansas Highway Patrol Drug and Alcohol Evaluation Unit with their first “Prosecutor of the Year” award in regard to prosecution of traffic safety laws.

Ms. Knight was surprised, humbled and honored to receive the award, which she did not bring, and she thanked the City for the recognition. She loves her job and Leawood has a stellar Police Department which makes her job so much easier. Ms. Knight introduced her children in attendance.

Mayor Dunn offered congratulations and suggested Ms. Bennett take a photograph of the award which would be shared with the Council.

**April Bishop, Cultural Arts Coordinator, retiring after 15 years of service [2004-2019]**  
*[Continued to the December 16, 2019 Governing Body Meeting]*

**Debra Harper, City Clerk, retiring after 19 years of service [2000-2019]**

Mayor Dunn asked Ms. Harper to come forward. Mayor Dunn read the inscription on a crystal award for Ms. Harper’s outstanding and distinguished service as a Paralegal from March 6, 2000 to September 9, 2002, and City Clerk from September 10, 2002 to December 31, 2019. Mayor Dunn presented the award, stating great appreciation from the Governing Body and thanking Ms. Harper for unbelievable dedication to the community and personal service to her.

A round of applause was offered.

Ms. Harper was humbled and offered heartfelt thanks. She leaves with peace of mind that the Clerk’s office would be in great hands. Ms. Varner and Ms. Jacobus possess strong values and ethics, and are high-caliber, professional and hard-working. She has loved and immensely enjoyed working at the City. Mayor Dunn wished Ms. Harper the best on her continued journey and future plans, and stated she would be leaving huge shoes to fill.

**6. SPECIAL BUSINESS**

- A. Approve City Administrator’s recommendation of appointment of Kelly Varner as City Clerk, effective December 7, 2019

**A motion to approve Agenda Item 6.A. was made by Councilmember Azeltine; seconded by Councilmember Larson. The motion was approved with a unanimous vote of 8-0.**

Ms. Harper administered the oath of office to swear-in Ms. Varner, with appointment effective December 7, 2019. Mayor Dunn welcomed Ms. Varner.

- B. Public Hearing - Amendments to 2019 Fiscal Budget

Mayor Dunn opened the public hearing. No one was seen or heard to speak.

**A motion to close the public hearing was made by Councilmember Filla; seconded by Councilmember Sipple. The motion was approved with a unanimous vote of 8-0.**

- C. **Resolution No. 5272**, adopting amendments to the 2019 Fiscal Budget for the City of Leawood, Kansas

**A motion to approve Agenda Item 6.C. was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.**

**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. 2019-46 and 2019-47
- B. Accept minutes of the November 18, 2019 Governing Body meeting
- C. Accept minutes of the October 10, 2019 Sustainability Advisory Board
- D. Accept Minutes of October 8, 2019 Parks & Recreation Advisory Board Meeting
- E. Accept Minutes of the August 28, 2019 Stormwater Management Committee Meeting
- F. Approve Appointment of Presiding Officers for 2020
- G. Approve renewal of Cereal Malt Beverage (CMB) License for Walgreens Co., located at 4701 Town Center Drive
- H. Approve renewal of Cereal Malt Beverage (CMB) License for Walgreens Co., located at 5230 W 151st Street
- I. Approve renewal of Cereal Malt Beverage (CMB) License for Breakout KC, located at 11535 Ash Street
- J. Approval of MACPP CO-OP Bid in the total amount of \$95,706.00 from Shawnee Mission Ford to purchase One (1) 2020 Ford Escape 4x4SE (Community Development Unit 502); and Two (2) 2020 Ford F-450 Super Cab & Chassis 4x2 (Public Works Unit 440 and Unit 441)
- K. Approval of MACPP CO-OP Bid in the total amount of \$51,498.00 from American Equipment for Two (2) service bodies (Public Works Unit 440 and Unit 441)
- L. **Resolution No. 5273**, approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2020 alcohol tax fund for an amount not to exceed \$350,000 – *CONTINUED FROM THE NOVEMBER 18, 2019 GOVERNING BODY MEETING*

- M. **Resolution No. 5274**, approving the 2020 Human Service Fund Recommendation from United Community Services of Johnson County [UCS] and the City of Leawood's participation for an amount of \$16,500.00
- N. **Resolution No. 5275**, adopting the 2020 Fee Schedule for fees not specifically provided for in the Code of the City of Leawood, 2000, and rescinding Resolution No. 5135, in accordance with § 1-701 of the Code of the City of Leawood, 2000
- O. **Resolution No. 5276**, approving a proposal from Travelers Insurance Company for the 2020 property/liability insurance and additional coverages
- P. **Resolution No. 5277**, approving and authorizing the Mayor to execute an agreement with Board of County Commissioners of Johnson County, Kansas to provide medical direction for the City's emergency opioid antagonist protocol
- Q. **Resolution No. 5278**, approving and authorizing the Mayor to execute an Indian Creek Watershed Agreement by and between the City of Leawood and the cities of Lenexa, Olathe, Overland Park, Prairie Village (Watershed Organization 2) for the purpose of stormwater and flood control matters within the Watershed Organization boundaries
- R. **Resolution No. 5279**, approving and authorizing the Mayor to execute a Blue River Watershed Agreement by and between the City of Leawood and the cities of Olathe, Overland Park, Spring Hill and unincorporated Johnson County, Kansas (Watershed Organization 3) for the purpose of stormwater and flood control matters within the Watershed Organization boundaries
- S. **Resolution No. 5280**, approving and authorizing the Mayor to execute an Agreement between the City and Board of County Commissioners of Johnson County, Kansas, for the design of a Stormwater Management Project pertaining to the Waterford Subdivision Stormwater Improvement Project [SMAC Project TM-04-007] [Project #77017]
- 7.T. **Resolution No. 5281**, approving and authorizing the Mayor to execute a Right-of-Way Maintenance Agreement between the City and Leawood Hills Development, LLC, located at approximately 150<sup>th</sup> & Canterbury

Mayor Dunn requested Consent Agenda Items 7.L. and 7.M. be pulled for comment.

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

Councilmember Cain requested Consent Agenda Item 7.P. be pulled.

Councilmember Azeltine requested Consent Agenda Items 7.Q. and 7.R. be pulled.

**A motion to approve the remainder of the Consent Agenda was made by Councilmember Azeltine; seconded by Councilmember Larson. The motion was approved with a unanimous vote of 8-0.**

- 7.L. **Resolution No. 5273**, approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2020 alcohol tax fund for an amount not to exceed \$350,000 – *CONTINUED FROM THE NOVEMBER 18, 2019 GOVERNING BODY MEETING*

Mayor Dunn pulled the item because United Community Services Director Ms. Julie Brewer and Leawood's DAC Representative Ms. Stephanie Kelly were present. The City is grateful for their attendance and tremendous work.

Ms. Brewer thanked the City for its long-term partnership with eight other cities and the County who collect per-drink tax. Tax dollar collection began 30 years ago and fund total is now \$2 Million. DAC and volunteers do the important work, researching and interviewing program grantees each year.

Ms. Kelly stated although the budget is large, many applications are received and distribution requires much contemplation and difficult decision-making. The money makes a difference in lives and futures in the County. The team works very hard and she is honored to serve on behalf of Leawood.

Mayor Dunn thanked Ms. Brewer and Ms. Kelly for their service and attendance. She stated 30 years ago, alcohol tax collection was so much less compared to today, and the City is fortunate to have the alcohol tax dollars. The City is confident the dollars are well-spent; the City receives reports. It is gratifying to see the number of agencies/organizations touched.

Mr. Lambers noted Leawood's contribution portion of 20% of the total funding for the County, speaks well of the City.

**A motion to approve Consent Agenda Item 7.L. was made by Councilmember Cain; seconded by Councilmember Larson. The motion was approved with a unanimous vote of 8-0.**

7.M. **Resolution No. 5274**, approving the 2020 Human Service Fund Recommendation from United Community Services of Johnson County [UCS] and the City of Leawood's participation for an amount of \$16,500.00

**A motion to approve Consent Agenda Item 7.M. was made by Councilmember Filla; seconded by Councilmember Harrison. The motion was approved with a unanimous vote of 8-0.**

7.O. **Resolution No. 5276**, approving a proposal from Travelers Insurance Company for the 2020 property/liability insurance and additional coverages

Councilmember Sipple noted the proposal was for a large dollar amount and asked if the contract was bid, why the premium increase 7.3% when inflation is approximately 2% to 3%, and if the City submitted claims in 2019 that caused premium to increase for 2020. Ms. Bennett stated the contract was not bid and no sizeable claims impacted. She invited Mr. James Charlesworth, Insurance Consultant, to speak to rate.

Mr. James Charlesworth, Charlesworth Consulting, 1828Walnut, Suite 701, Kansas City, Missouri, stated national loss events such as wildfires, hurricanes, wind storms and hail over the last couple of years resulted in rate increases of 10% to 20%. The rate is higher than inflation, but increase is truly under 5%, rather than 7% which is considered realistic, as increased property values/construction costs account for the difference. Premium rates have remained flat or slightly decreased for the last 10 years, and rate increases are anticipated in the coming years. The City's current insurance broker Arthur J. Gallagher Risk Management Services reviewed to ensure the City received the best rate available.

Councilmember Sipple asked how often the City bids a \$0.5 Million contract. Mr. Charlesworth stated best practice is to bid every three to five years, not every year. The City will be doing a Request for Proposal [RFP] for brokerage services in 2020, and the broker will be asked to look for alternatives.

**A motion to approve Consent Agenda Item 7.O. was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a vote of 7-1; Nay vote from Councilmember Sipple as he was uncomfortable with some responses and bids were not sought.**

Ms. Bennett confirmed the City would be doing an RFP for brokerage services and the broker would investigate insurance proposals. If bids are sought each year, insurance companies may become uncomfortable and reluctant to respond. Mr. Lambers stated cost increases as value of what the City is protecting increases. Disasters are everywhere and all seeking insurance are impacted. The City does not control such factors, and to self-insure the City would need to set aside a tremendous amount of money which would earn little interest.

- 7.P. **Resolution No. 5277**, approving and authorizing the Mayor to execute an agreement with Board of County Commissioners of Johnson County, Kansas to provide medical direction for the City's emergency opioid antagonist protocol

Chief Rettig confirmed to Councilmember Cain the Police Department has only one emergency opioid antagonist, NARCAN, kept on-hand and secured in the Property Room if needed to counter-act a Fentanyl overdose. Fentanyl is a granular, extremely powerful opioid, which can be extremely harmful if handled.

Councilmember Cain applauded the City and County for being proactive in the regard, as well as for suicide prevention efforts.

Councilmember Sipple inquired if the Police Department has ever had to use NARCAN. Chief Rettig stated the Police Department had not used, but medical responders and firefighters are using NARCAN. He was aware that a dosage of NARCAN was administered on the interstate about six weeks ago.

**A motion to approve Consent Agenda Item 7.P. was made by Councilmember Cain; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.**

- 7.Q. **Resolution No. 5278**, approving and authorizing the Mayor to execute an Indian Creek Watershed Agreement by and between the City of Leawood and the cities of Lenexa, Olathe, Overland Park, Prairie Village (Watershed Organization 2) for the purpose of stormwater and flood control matters within the Watershed Organization boundaries

Councilmember Azeltine asked when SMAC funding policy change from stormwater to watershed projects would be effective. Mr. Ley stated stormwater funding of 75% match from SMAC ceased last year. Watershed groups are to meet next year and discuss issues. The County has hired a consultant to reach out to cities for their issues and he has worked with the consultant on Leawood's information. Hopefully, SMAC funding policy will be available early 2020.

Councilmember Azeltine noted By-Laws, Article IV, Staff Support, were vague in regard to how resources would be handled across watershed organization members. He expressed concern about impact on City Staff, especially when a project may benefit cities other than Leawood. Mr. Ley stated all upstream water flows through Leawood. The City would be asked if staffing was available to review an issue and provide a solution. Staffing was not a concern.

Councilmember Filla noted watershed problems can be cheaper to address upstream rather than downstream. She asked if there were any other local municipalities or regions, or other areas of the country that may be experiencing benefits from watershed projects at this time. Mr. Ley stated only education has been provided thus far. Councilmember Filla pointed out that Nashville, Tennessee, has posted watershed signs, and the Blue River Survey revealed only 16% of people are aware of the watershed in which they live. She stated there is a vast amount of education to be done.

Mr. Ley confirmed to Mayor Dunn that he will remain a part of the SMAC Committee; every city is to have a representative. The City has three SMAC projects: Leawood South, Patrician Woods and Waterford.

**A motion to approve Consent Agenda Item 7.Q. was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.**

- 7.R. **Resolution No. 5279**, approving and authorizing the Mayor to execute a Blue River Watershed Agreement by and between the City of Leawood and the cities of Olathe, Overland Park, Spring Hill and unincorporated Johnson County, Kansas (Watershed Organization 3) for the purpose of stormwater and flood control matters within the Watershed Organization boundaries

**A motion to approve Consent Agenda Item 7.R. was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.**

**8. MAYOR’S REPORT**

- A. I attended the United Community Services of Johnson County Kansas Public Policy Forum where Senator John Skubal participated as a panelist. Enclosed in your packet is a copy of their Local Public Policy Platform as well as their Federal and Kansas Legislative Priority Positions.
- B. Attended the 132<sup>nd</sup> Annual Dinner of the Greater Kansas City Chamber of Commerce where former Kansas City, Missouri, Mayor Pro Tem Alvin Brooks was honored as the “2019 Kansas Citian of the Year.” He was former leader and founder of Ad Hoc Group Against Crime. This was a very well-deserved award and congratulations are in order.
- C. Remind all of the Johnson and Wyandotte Counties Council of Mayors Holiday Social on Wednesday evening and the Employee Appreciation Luncheon on Thursday.

**9. COUNCILMEMBERS’ REPORT - None**

**10. CITY ADMINISTRATOR REPORT - None**

**11. STAFF REPORT - None**

***COMMITTEE RECOMMENDATIONS***

**12. PUBLIC WORKS COMMITTEE**

**[from the November 6, 2019 Public Works Committee Meeting]**

Recommendation to have staff negotiate a Design Engineering Agreement with Burns & McDonnell for the Mission Road Improvement Project from 133<sup>rd</sup> to 143<sup>rd</sup> Streets (2022 CIP Project 80175)

Councilmember Osman, Chair of the Public Works Committee, stated the committee evaluated Request for Qualifications received from four engineering firms at their meeting last month. The committee recommends Burns & McDonnell and is seeking approval for Staff negotiation with this firm.

Mr. Ley confirmed the project was part of the Capital Improvement Program, funded by Temporary Notes.

**A motion to approve Agenda Item 12. was made by Councilmember Filla; seconded by Councilmember Sipple. The motion was approved with a unanimous vote of 8-0.**

**13. STORMWATER MANAGEMENT COMMITTEE**

**[from the November 20, 2019 Stormwater Management Meeting]**

- A. Stormwater Management Committee response regarding review of easement costs pertaining to the Leawood South SMAC Project TM-04-008

Councilmember Azeltine, Chair of the Stormwater Management Committee, stated the committee met on November 20, 2019 and reviewed the Leawood South SMAC Project. Fifty properties are impacted, 19 easements are needed, and only four easements have been received. Staff has worked on this project for several years and the project was redesigned to obtain the four easements. Staff has provided three options: 1) continue to request easements donations, but some property owners have hired an attorneys and obtaining these easements may be difficult, 2) condemn and pay for easements so Staff can move forward, and 3) complete design and put construction on hold, likely losing the 75% matching SMAC funding. The committee recommendation is to pay residents for easements and condemnations as necessary. The City needs to decide what is best to serve the majority.

Mayor Dunn pointed out condemnation was opposite of City's historic practice. In the past if easements were not provided the City would walk away from the project. She inquired about the impact of resident-hired attorneys on the condemnation process. Ms. Bennett stated the process would be fairly straightforward to get into court. The attorneys would come to land view and appraiser hearings, and present their views. If there would be an appeal of appraiser decision, the City would still get the title to the property. Overall process would take longer and the City would pay more if it would proceed to a jury for a different amount. The City could potentially have to pay attorney fees.

Councilmember Filla stated it was an easy decision to spend \$200,000 rather than lose SMAC funding.

Mr. Ley confirmed to Mayor Dunn the \$200,000 estimate for easements includes, about \$175,000 for easements and \$25,000 for anticipated condemnation costs. Value of easements have already been appraised. Payments would be based on lot size; both permanent stormwater easements and temporary construction easements are needed. This cost would not be reimbursed by the County. The total cost of the project would be \$200,000 plus \$3.5 Million, with SMAC application submitted for 75%. If the project is put on hold, an application submitted in the future would be subject to the SMAC funding policy at that time. If the project moves forward now, it is anticipated that construction would begin in November 2020, starting downstream at the golf course during winter time for less disruption of play. Original timeline was to have commenced in January 2020, but easements have caused one-year delay.

Mr. Ley confirmed to Councilmember Cain the 12600 block of Wenonga floods by several feet and larger storm sewers structures are needed. In 2013, residents came to the City wanting remedy. He confirmed with the County the project is still eligible for 75% matching SMAC with some additional time taken to obtain easements, but if the project design is complete and the project placed on a hold for a few years, a new application would be required. Mr. Ley stated a new design path was created between two side-entry garages, and one of these property owners does not want to provide easement.

Councilmember Harrison stated she walked the neighborhood after the last Stormwater Management Committee meeting, and there is a large amount of landscaping installed on the easement between the two garages. She asked if property owners would be able to replace the landscaping on an easement, after the project. The City should be liable for likely \$20,000 replacement cost. Mr. Ley stated typically landscaping is placed just outside easements, but the City cannot control if property owners landscaping in an easement.

Councilmember Sipple inquired how many months negotiation and condemnation with property owners would delay the project. Mr. Ley estimated about six months, July 2020, based on resolutions and ordinance in January 2020. Once easements are in-hand, utilities could relocate starting January 2021.

**A motion to approve payment and condemnation for easements was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.**

**13.B. Councilmember Azeltine** – Referral to Stormwater Management Committee to create policy for obtaining easements on stormwater projects

Councilmember Azeltine stated projects are being delayed because residents are not donating easements. The Leawood South stormwater project discussed in Agenda Item 13.A. has been in the works for seven or eight years. An encompassing policy for obtaining stormwater project and corrugated metal pipe replacement easements is needed so the City does not have to react to each situation, and to facilitate realistic schedules for the City and utility companies, and reduce Staff time and resident frustration. As always, Staff would continue to work with residents to minimize impacts.

Mayor Dunn recommended creation of the policy, especially when SMAC dollars involved. If the project is “apples to apples” with City dollars only, and one group provides easement dedication and one group wants to be paid, she wants a force-rank of dedications for priority of dollars. Councilmember Azeltine agreed. Councilmember Filla stated 100% of the committee does as well.

Mr. Ley confirmed to Councilmember Sipple that Overland Park and Shawnee obtain needed easements by offering value and if not accepted, they condemn fairly quickly. He was not aware of how other area cities handle.

Councilmember Filla pointed out that a large amount of money is yet to be spent on corrugated metal pipe replacement and these projects consume a vast amount of Staff time, over many years.

**A motion to create a policy moving forward to obtain easements on stormwater projects was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.**

**14. PLANNING COMMISSION**

**[from the October 22, 2019 Planning Commission Meeting]**

- A. Ordinance amending Section 16-2-10.3 of the Leawood Development Ordinance entitled “Materials and Colors” and repealing existing Section 16-2-10.3 and other sections in conflict herewith. (PC Case 39-19) [ROLL CALL VOTE]

Mr. Klein stated the amendment is proposed to clarify and provide some flexibility as new materials entering the market, being a guide to developers in regard to prohibited materials and to specify some materials that are truly allowed. Lists are not all-inclusive. Highlights include permitted use of architectural cast stone, and zinc, stainless steel and composite panels, some with wood, metal and stone patterns. Manufactured stone, excluding Architectural Cast Stone [ACS] meeting ACS Institute Standards, would be prohibited except for commercial detailing and full use on single-family residential, as shown in Section 16-2-10.3, B) 8) of the proposed amendment.

Mr. Klein displayed a “Physical Properties Comparison Chart of Various Types of Stone”, and reviewed material PSI [pounds per square inch] and water absorption rates. The City has encouraged thin-set natural stone over the past 10 years, which is applied by a stone mason rather than by unskilled labor; most developers have been agreeable to install stone veneer. He displayed pictures of existing commercial buildings in different projects in the City with cultured stone installed by casual labor from 2004 to 2008 or 2009, having missing, deteriorating, fading and exposed backing material.

Mr. Coleman stated that although the City has made strong arguments against manufactured stone, the proposed amendment would codify. Manufactured stone has improved in the last three years, but the City cannot vet different manufacturers and application plays a key role. Cost of natural stone is approximately 50% higher than manufactured stone.

Mr. Coleman stated the proposed amendment adds some materials to catch-up with the phenomenal amount of new materials in the last five to 10 years. PSI and water absorption rate data is not always readily available, and testing comes from groups. City Code would continue to be reviewed as manufacturer data and experience with new materials becomes available. The City does not want to be prohibitive. Developers have wanted to use materials that do not meet Code, and there have been large wall repairs because of material or application failure.

Mayor Dunn shared her experience of a stone falling out while she had been seated on a restaurant outdoor patio.

Mr. Coleman confirmed to Councilmember Osman that when new materials are proposed for use, the City speaks with the developer, and the architects that represent them, about materials. True consultations on new marketplace materials have not occurred. Staff have spoken with stone manufacturer Sturgis. As expected, stone masons support stone and manufacturers support manufactured stone.

Councilmember Osman stated he was uncomfortable voting due to limited time to review agenda packet material with the holiday, substantial change to delineate allowed and prohibited materials, and lack of displayed specifications, photographs or even actual samples in the agenda packet. He has spoken with the Leewood Chamber Economic Development Council and both types of stone suppliers, natural and manufactured, about marketplace trends in construction materials. The suppliers detailed their product issues in about 10 minutes. Neighboring buildings using natural materials that are not constructed at the same time may have a different appearance based on where the stone was quarried and discoloration over time. Natural has both positives and negatives. Wall base discoloration/deterioration can be due to snow melt/salt. This has been seen in the natural limestone in the past two to five years at Corinth Shopping Center. Manufactured stone typically has a 50-year warranty with approved application.

Councilmember Osman reminded that technology/materials change, stating LED lighting used today was prohibitive 10 years ago based on cost, low reliability and lumens. If the proposed amendment is not time-sensitive, he recommended continuance to re-evaluate information, and have Staff consult with architects and manufacturers to focus on available materials. He questioned use on residential homes, if manufactured stone has issues; the City should protect residents. Mr. Coleman confirmed the proposed amendment was not time-sensitive and was agreeable to further research and documentation; the proposed amendment was only to codify.

Councilmember Cain supported Councilmember Osman’s statement about protecting residents. Mr. Coleman stated the City typically does not get involved in how residential single-family builds, as long as City Code is met. Vinyl siding is prohibited.

Councilmember Rawlings asked for examples of architectural cast stone use. Mr. Coleman stated the trim on the Justice Center and City Hall is architectural cast stone. Use of this type of stone would be approved. Mayor Dunn pointed out this could be part of additional information to be provided to the Governing Body.

Councilmember Azeltine supported continuation of the topic, desiring to see objective, measurable data and metrics that a layperson could understand. Councilmember Sipple would also like to see pro and con engineering reports, and magazine articles. Mr. Coleman stated some of this information could be provided, but he would not want to overload the Governing Body.

Mr. Klein pointed out the proposed amendment addresses a technology update in regard to Class 4 laminated asphalt shingles on single-family residential. These singles are now lighter weight and can withstand greater impacts from storms. PSI of 275 would be reduced to 265 PSI. Many insurance companies offer a discount if these shingles are used. Councilmember Rawlings stated this is a good example of incorporating technology changes.

Councilmember Harrison asked if the past mandate of having wood shake roofs in Leawood was imposed by the City or Home Owner Associations [HOAs]. She does not want to be unnecessarily increase costs or be prohibitive. Mayor Dunn stated HOA deed restrictions supersede City Code, giving the example that Hallbrook HOA allows only use of wood, slate or tile roofs. Because of new technology, City Code now allows some types of composition roofs. Ms. Bennett stated a past court case confirmed the City of Shawnee could not override HOA deed restrictions on wood shake.

Councilmember Filla supported the generation of a pre-approved and prohibited material lists, and to clearly delineate a process to have a material added to the approved or removed from prohibited lists. She stated any protections the City can provide, especially to residents who may be unaware of known issues, would be beneficial.

Councilmember Cain noted that bricks being used for crosswalks has been discussed by the Governing Body in the past, and she inquired if material contractors to be spoken with would be the same ones who provide bricks. Information on paving bricks might be incorporated. She stated the crosswalks on the south side of 151<sup>st</sup> Street and Nall are deteriorating; the City needs to be a good steward for all. Councilmember Osman pointed out that Prairie Village has struggled for years to find the right type of brick.

Councilmember Rawlings requested eventual Staff review of cultural stone in residential applications, desiring lists of allowed and prohibited stone types. There are some disastrous examples in northern remodels by rehabbers, not professional house flippers. Flagstone was installed on exterior walls and when the property sold, the new owner painted over the stone.

Mayor Dunn stated there had been great discussion. She heard Staff has recommended natural stone and developers have changed accordingly. What Staff has done over the last 10 years has resulted in better projects, and the proposed amendment would codify. She agreed with Councilmember Azeltine about the need for measurable data.

Mr. Kevin Jeffries, 13451 Briar, Leawood Chamber of Commerce, agreed the discussion had been great. In the future he would like the City to involve the Economic Development Council [EDC] and Chamber into discussions that have major impact on businesses, and to get input from the business community. Concerns raised tonight were not raised at the Planning Commission meeting. It is time-consuming for City Staff to vet materials. As materials and technology change, City Code needs to change.

Councilmember Azeltine asked if there would be an EDC meeting before January 21, 2020. Mr. Jeffries stated there would not be a meeting by that date. Councilmember Azeltine requested to have input from Mr. Jeffries' contacts on the topic, if possible.

**A motion to continue the item to the January 21, 2020, Governing Body meeting was made by Councilmember Osman; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 8-0.**

14.B. **Ordinance No. 2969**, amending Section 16-4-4 of the Leawood Development Ordinance entitled "Temporary Use Standards" and repealing existing Section 16-4-4 and other sections in conflict herewith. (PC Case 115-19) [ROLL CALL VOTE]

Mr. Klein stated the Leawood Development Ordinance currently allows an applicant no more than six temporary use permits annually, each a maximum number of 10 consecutive days. Town Center Plaza, Park Place and Town Center Plaza would like to host more special events such as sidewalk sales, farmers markets, and special movie showings, and pop-up businesses for Christmas and Halloween which need to be open more than 10 consecutive days. Residents may want birthday parties with a band with on-street parking. The proposed amendment would remove the limitation on the number of annual permits and change the number of consecutive days to 30. Back-to-back permits could be issued to extend beyond 30 days, with the permitting process providing the City some control. A flat fee would be charged per permit.

Mayor Dunn stated the City is being very business friendly. Councilmember Osman offered compliments on the proposed amendment, stating this was a perfect example of looking at and adapting to market trends.

**A motion to pass Agenda Item 14.B. was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion was approved with a unanimous roll call vote of 8-0.**

15. **OLD BUSINESS** - None

16. **OTHER BUSINESS** - None

17. **NEW BUSINESS**

**Ordinance No. 2970C**, amending Article 1 of Chapter 9 of the Code of the City of Leawood, 2000, to add Section 9-122, entitled "Court Costs and Fees" and repealing Sections in conflict herewith [ROLL CALL VOTE]

Ms. Bennett stated the proposed Code revision would clean-up the path currently through Charter Ordinance 18 and Code Section 1-701, restating Court authority in the Court section of the City Code.

**A motion to pass Agenda Item 17. was made by Councilmember Filla; seconded by Councilmember Larson. The motion was approved with a unanimous roll call vote of 8-0.**

Mayor Dunn reminded the December 16, 2019, Council meeting would start at 7:00 P.M.

**ADJOURN**

There being no further business, the meeting was adjourned at 9:06 P.M.

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Debra Harper, CMC, City Clerk

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Cindy Jacobus, Assistant City Clerk