

**Regular Meeting****THE LEAWOOD CITY COUNCIL****July 20, 2020****Minutes**

**Councilmembers present:** Julie Cain, Chuck Sipple, Jim Rawlings, Mary Larson and James Azeltine.

**Councilmembers present via Zoom:** Debra Filla, Andrew Osman and Lisa Harrison.

**Councilmembers Absent:** none

**Staff present:** Scott Lambers, City Administrator  
Dawn Long, Finance Director  
Chief Troy Rettig, Police Department  
Chris Claxton, Parks and Rec Director  
David Ley, Public Works Director

Patty Bennett, City Attorney  
Mark Tepesch, Info. Services Specialist III  
Colin Fitzgerald, Fire Chief  
Nic Sanders, HR Director  
Kelly Varner, City Clerk

**Staff present via Zoom:** Richard Coleman, Planning Director

**Others present via Zoom:** John Petersen, Polsinelli Law Firm, Rick Lashbrook, Lashbrook Company, Mary Tinkler and Scott Keller, KBS III Park Place Village LLC representatives.

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

**A motion to approve the amended agenda was made by Councilmember Rawlings, seconded by Councilmember Sipple. Motion was approved with a unanimous roll-call vote of 8-0.**

**3. CITY CLERK STATEMENT**

To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Governing Body is being conducted remotely using the Zoom media format and some of the members of the Governing Body are appearing remotely. The meeting is being livestreamed on YouTube and the public can access the livestream by going to [www.leawood.org/](http://www.leawood.org/).

Public comments on non-agenda items will not be accepted during this meeting. Public comment on agenda items not requiring a public hearing may not be accepted. As always, public comment on any agenda item can be submitted in advance. Written public comments received at least 24 hours prior to the meeting have been distributed to members of the Governing Body prior to the meeting. Public comments should be directed to [LeawoodPublicCommentGB@leawood.org](mailto:LeawoodPublicCommentGB@leawood.org).

**4. PROCLAMATIONS**

**5. PRESENTATIONS/RECOGNITIONS**

## **6. SPECIAL BUSINESS**

Resolution approving the 2021-2025 Capital Improvement Program [C.I.P.] for the City of Leawood (PC)

Director of Finance Dawn Long stated that the CIP was reviewed by the Planning Commission and accepted questions.

**A motion to approve Item 6 was made by Councilmember Larson, seconded by Councilmember Azeltine. Motion was approved with a unanimous roll-call 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. 2020-25 and 2020-26
- B. Accept minutes of the July 6, 2020 Governing Body meeting
- C. Accept minutes of the June 8, 2020 Budget & Finance Committee Work Session
- D. Approve Mayoral Appointment of the Historic Commission
- E. Resolution approving and authorizing the Mayor to execute an agreement in the amount of \$36,852.00 between the Board of County Commissioners of Johnson County and the Cities of Leawood and Prairie Village pertaining to the construction of storm sewer improvements [2020 Stormwater Improvements Project 80256] (PW)
- F. Resolution approving and authorizing the Mayor to execute a Contract Change Order No. 1 in the amount of \$38,520.00 between the City and Superior Bowen Asphalt d/b/a O'Donnell & Sons pertaining to work on the South Bike Loop and ADA upgrades to College Boulevard and Brookwood [Project 70027] (PW)
- G. Resolution approving a Final Plan for the Leawood Mission Valley Monument Sign located south of 151<sup>st</sup> Street on Granada Road (PC Case # 47-20) (PC)
- H. Approve an expenditure in the amount of \$120,350.00 to Central Salt for the purchase of 2,500 tons of untreated winter rock salt (PW)
- I. Declaration of Surplus Property: (1) 2009 Ford Escape for Purple Wave sale (PW)
- J. Police Department Monthly Report
- L. Municipal Court Monthly Report

Mayor Dunn requested to pull Item 7K.

**A motion to approve the remainder of the Consent Agenda was made by Councilmember Larson, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.**

- K. Fire Department Monthly Report

Mayor Dunn pointed out two retirements, including Captain Troy Schoeppner, who served 25 years, and Captain Joe Sullivan, who served 27 years. She expressed gratitude and congratulations to both.

**A motion to approve Item 7K was made by Councilmember Cain, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.**

## **8. MAYOR'S REPORT**

- Mayor Dunn offered sincere appreciation to Leawood Foundation Chairman Alice Hawk and Foundation Board Members Michelle Dehaemers, Marc Elkins, Ken Selzer, Suzanne Teel, State Farm and Mel Hawk for generously donating an appreciation luncheon for our Leawood Police and Fire Departments, Public Works and Parks and Recreation maintenance personnel. This was a special event held at Ironwoods Lodge. She thanked Parks and Recreation Director Chris Claxton and her team for assisting with the logistics.
- Mayor Dunn offered congratulations to the City of Leawood for national recognition by LendEDU as one of the “most budget friendly cities in the country for renters.” There were over 25,000 American cities in the contest for the ranking, and each was ranked according to its rent-to-income ratio or the proportion of a city’s median household income that goes to annual rent costs, including utilities. The lower percentage is more favorable. Leawood had an average annual rent cost of \$19,156 and a median household income of \$118,795 for a rent-to-income ratio of 16.13%. It is recommended that rent should cost no more than 30% of a renter’s annual income, so the numbers speak well to Leawood’s proximity to high-paying jobs relative to affordable housing in the area. Leawood’s rent-to-income ratio in the country was No. 149 out of the 25,000, and in the State of Kansas, it was No. 4.

**9. COUNCILMEMBERS' REPORT - none**

**10. CITY ADMINISTRATOR REPORT - none**

**11. STAFF REPORT - none**

## ***COMMITTEE RECOMMENDATIONS***

### **12. PLANNING COMMISSION**

#### ***[From the January 28, 2020 Planning Commission Meeting]***

Ordinance approving Planning Commission’s recommendation of denial of request for Revised Preliminary Plan for a Mixed Use and Medium Density Residential Development, located south of 135<sup>th</sup> Street and west of Kenneth Road (PC Case 04-20) [ROLL-CALL VOTE] *[Continued from May 4, 2020, May 18, 2020, June 1, 2020, June 15, 2020 and July 6, 2020 Governing Body Meetings]* (PC)

City Administrator Scott Lambers stated that he had sent an email recapping the conversations between the City and the application’s representative, Mr. Petersen. He indicated they were not able to come to a mutually agreeable solution to the issue; therefore, there is an approved Preliminary Plan that calls for the third lane of 135<sup>th</sup> Street to be installed and for the power lines to be buried. The Revised Preliminary Plan on the dais removes those stipulations. Any and all conversations with regard to trying to reach a compromise are now off the table. The final communication from the applicant was that the client wished to discuss the issue directly with the Governing Body.

Councilmember Harrison stated that she was under the impression that there would be a work session to learn about finance options available with hopes that some of those options could be used in this case.

Mr. Lambers replied that a work session was scheduled to review the current economic development policies. Each will be reviewed, and he will also identify economic incentives that currently do not have policies, which would include property tax abatement. After that meeting, City Council will give guidance as to next steps. These policies are old, and there may be some desire to modify them to reflect trends in today's market. That would most likely be included in a subsequent meeting based on guidance offered.

Councilmember Cain asked for clarification of what was tabled and what was being presented currently.

Mr. Lambers confirmed that the proposed changes from the twin villas to the quadplexes was not being considered, and it could be remanded back to the Planning Commission to discuss details.

Mayor Dunn asked for applicant comments.

John Petersen, Polsinelli Law Firm, appeared and reviewed the proposed project. He reviewed that on July 6<sup>th</sup>, he presented a three-step proposal, covering the villas and the vertical mixed-use building on 135<sup>th</sup> Street with the parking structure. The cost of \$2.1 million would become due when the Mixed-Use Development (MXD) began. He worked with Mr. Lambers and the Finance Department to deliver the other \$7.5 million of public streets that would support the villas and, in part, the townhomes. He pointed out that the costs are not necessary to support the project from the perspective of traffic safety, capacity, ingress, and egress. He felt that it was more necessary for the City at large. He pointed out what he felt to be two fundamental influencers on consideration of the proposal, including the applicant's initial agreement to do the \$2.1 million in improvements. He pointed out that these issues were always points of contention for the applicant, but it became a condition for approval. The idea was put in the infrastructure and then find a mixed-use multi-family developer that has done vertical development, sell the property and get an immediate return on investment. Many developers in the area who have done vertical development entered into discussions but could not get rates high enough to build parking and also take on costs. Other developers were consulted, but they requested land in the deal, which changed the look of the financing. The other influencer was that the developer could lower the price on the land. The landowner has contributed to the costs of public improvements, and the land is also a lower value than it would be if it were in a different location. He pointed out that he would like to go back to the Planning Commission to get the townhome concept in place. There is consensus on Special Benefit District (SBD) financing for the roads that have to be done to support the villas and townhomes at \$7.5 million, which is about 16% of the cost. The developer then offered \$700,000 toward the \$2.1 million, which included higher equity and lower land costs. In discussions with Mr. Lambers, the \$700,000 contribution needed to be increased to \$1.1 million. He asked for the City to invest in the project to help make up the difference between the \$700,000 and \$1.1 million. He stated that private capital invested in the project will be \$109 million with property taxes of \$22,106.10 split between all the different tax jurisdictions. The City's share of the yearly property tax off the site today is \$165.62. With the completed project, the yearly property tax paid is projected to be \$1.59 million per year with the City's share being \$310,963 per year. Ten-year projections are \$106,000 for vacant ground. City of Leawood would collect \$828.10; completed project would product \$16,724,000. City of Leawood would collect \$3,253,000. Nearly half of the \$16 million would go to schools. The day the building permit is pulled, the City receives \$1.1 million for the 135<sup>th</sup> Street Corridor Impact Fee.

He requested Industrial Revenue Bonds (IRB), which the Kansas Department of Revenue states are the most popular and cost-effective methods of financing. They include the benefit of exemption for labor and materials purchased as part of construction. He estimated that the tax exemption would impact

Leawood by approximately \$100,000. The balance of the benefit comes from the state not collecting sales tax. He pointed out MXD developments in other cities have all been built with incentives and sales tax exemptions. He addressed the concept of precedent by suggesting developing a policy that incents targeted projects that pay for improvements that affect the City and that allows for consideration on a case-by-case basis. He asked to take the townhome concept back the Planning Commission for review and direct staff to prepare a development agreement to address the benefit district financing, sales tax exemption, and contractual obligations of the Impact Fees.

Mayor Dunn asked what the duration would be for the IRB.

Mr. Petersen replied that to get an exemption, the property has to be momentarily owned by the City through a lease and a lease back. Once building materials are purchased, the bonds are retired.

Mr. Lambers stated that the City went through the Capital Improvement District (CID) process carefully to establish the policy itself. As part of that, the road work was considered. What was agreed upon was that the applicant would need a Preliminary Plan and Rezoning if necessary. Once those were approved, the applicant would file a Final Plan and a plan for financial incentives. Right now, this conversation is not correct procedurally. If the applicant would like to return to the Planning Commission to discuss the quadplexes, it would be appropriate. The conversation about IRB needs to happen with City Council. Stipulations need to be considered the responsibility of the developer and would remain in place. If the City provides financing for any part of the project, it would occur in the second phase. In terms of IRBs, there are a few problems. The applicant has to own 80% of the building, which is not Mr. Lashbrook's intent. IRBs are intended to create jobs, which would be the secondary benefit to granting any financial incentives. Leawood also does not allow IRBs for single buildings. The stipulations would need to remain with the plan. City Council would add them to the plan and then remand it to the Planning Commission, then it would come back, all of which maintains the integrity of the planning process.

Mayor Dunn confirmed it would still be a Revised Preliminary Plan and that the incentive conversation would occur during the Final Plan.

Mr. Lambers affirmed that the Final Plan comes under consideration at the same time as consideration of financial incentives.

Councilmember Sipple asked who would amortize the SBD debt being used as payment for the internal streets.

Mr. Petersen replied that part of it will be laid off on villa owners, but only so much can be handled that way or the lots won't sell. That is why the SBD is a benefit for only 16% of the cost. The rest will be privately financed debt and equity.

Mr. Lambers stated that the financing discussion is not part of the planning process. The question was not appropriate because it is part of the development agreement.

Mr. Petersen stated that the approach is difficult because a developer must go to the Final Plan stage at \$400,000-\$500,000 of engineering costs to find out if the deal is feasible.

Mr. Lambers replied that Mr. Petersen agreed to it when it was established as a practice.

Mr. Petersen stated that he understood the difference between zoning and land use review and approval. He asked why an investment package couldn't be considered.

Mayor Dunn pointed out that financing was discussed in the last meeting; it is the suggestion of the IRB that conflicts with the planning process.

Mr. Lambers reiterated that the Preliminary Plan is supposed to give a good perspective of what will be built. When the application for Final Plan and the financial requests are considered, they match up with one another. He expressed concern about the statement that the Preliminary Plan was subject to changed due to the developer's wishes. The idea is that negotiations occur during Preliminary Plan consideration, and the Final Plan should be substantially compliant with the Preliminary Plan. He asked that the project be remanded back to the Planning Commission for review of the quadplexes, at which time it can return for Governing Body consideration. After that is approved, financing can be discussed. The body likes the plan; the only objection is about the financing. He suggested that Mr. Petersen should review the December 3, 2019 City Council minutes, where the power lines and the third lane were not part of the objections and that Mr. Petersen extolled the virtue of the third lane and burying the power lines being part of the Certificate of Occupancy for the first villa.

Mr. Petersen stated that Leawood has a planning document that speaks to many financing issues. He asked to reduce the stipulations to a maximum contribution on the stipulations that speak to burying power lines of \$1.1 million.

Mr. Lambers asked what his estimate of the sales tax exemption savings to the developer was.

Mr. Petersen replied that it is between \$1 and \$1.3 million, but there are other costs.

Mr. Lambers asked about the difference of \$200,000.

Mr. Petersen replied that it accounts for bond fees. He stated that it is a \$32 million building with approximately 40-50% being building materials.

Mr. Lambers asked if the developer would give \$1.1 million and receive \$1.2 million.

Mr. Petersen stated that there are other calculations.

Councilmember Azeltine was in favor of remanding the issue back to the Planning Commission but wanted to add in stipulations regarding road improvements. He stated that it seemed that the developer wanted to do the residential portion and then would seek the IRB at the time the MXD portion begins.

Mr. Petersen replied that was correct.

Councilmember Azeltine expressed concern because if the MXD portion is not completed, the street improvements are also on hold. Because an IRB has never been done in Leawood, it will require a deep conversation. The discussion of financing will be concurrent with the Final Plan discussion, as it has been in the past with other financing vehicles.

Mr. Petersen stated that the payment for the third lane and/or power lines tied to the commercial development was at the suggestion of staff as an offer of negotiation and probably the only practical way to do it.

Mr. Lambers disagreed and said that there was not a statement about when the payment would be due; it was an Impact Fee for the entire project. He was willing to consider two payments: one at the beginning and another later in the process. His proposal was two payments totaling \$600,000 for streets and \$500,000 for burying power lines and included the developer making a payment related to the project and not going toward anything else.

Mr. Petersen asked when the payments would occur.

Mr. Lambers replied that one would be at the time of the first Certificate of Occupancy, and the other would be at the time of Certificate of Occupancy for the MXD building.

Mr. Petersen replied that he misunderstood the communication about the matter.

Mr. Lambers replied that it could still be discussed at the appropriate time.

Councilmember Azeltine pointed out that the proposal reduces the City's risk.

Mr. Lambers reiterated that it would be part of the development agreement, along with the SBD and everything else. Another part of the discussion was using temporary financing.

Councilmember Harrison thanked Mr. Petersen for sharing property tax numbers. She asked who paid for the streets when JC Nichols built Waterford.

Mr. Petersen replied that there was probably not a collector street but that the developer probably didn't pay anything for Mission Road, which was left unimproved even though it was most likely on the Capital Improvement Plan to be widened at some point.

Councilmember Harrison asked if the developer traditionally pays for the internal streets.

Mr. Petersen confirmed that is the case, and it is what the developer is planning for the current proposal.

Councilmember Harrison asked if that was the \$7.5 million.

Mr. Petersen replied that it is part of the \$7.5 million because 137<sup>th</sup> Street is included as well.

Councilmember Harrison asked if there was only one mixed-use building and which one it was on the plan.

Mr. Petersen replied that Buildings A, B, C, and D are MXD.

Councilmember Harrison asked if the remainder of the financing would come to the City when Buildings A, B, C, and D begin construction.

Mr. Petersen confirmed that it would.

Councilmember Osman stated that Mr. Petersen did a good job of explaining the points that a developer goes through and some of the financial ramifications for both the developer and the City; however, he thought the efforts to compromise were in good faith, but it is a difficult process. An IRB is a new tool, so the understanding is new as well. He agreed that the plan should be remanded to the Planning Commission and that the Councilmembers could learn more about the tools before discussing a policy that includes them. He understood that time could be an issue, but he felt it was important to allow the Councilmembers to fully understand the new financing option.

Councilmember Filla asked if there was a commitment to if/when the mixed-use development would occur.

Mr. Petersen replied that the market would decide that, but if it's not built, there is no incentive.

Councilmember Filla asked if the villas would be in the \$700,000-\$750,000 range.

Mr. Petersen replied that it was more like \$600,000-\$650,000, and the townhomes are in the \$450,000 range.

Councilmember Filla stated that she didn't remember a presentation where sales tax and revenue that came to the City and schools served as justification for the development. She didn't remember using SBD for streets, either. The IRB and tax abatement are new. She wondered if, because of all the compromising and subsidizing, is it not the right time for the development. She expressed concern about office use in the future and that the housing market price that Leawood needs is lower than that. She did not like the idea of a tax abatement or SBD fees passed on to homeowners. She stated that the pandemic has the potential to change how people live, how people drive, and where people work.

Councilmember Cain stated that the project was fully supported with an override of the Planning Commission and staff recommendations. She didn't know if the Planning Commission could approve the project if it goes back if something contradicts the LDO. She also talked about utilizing the IRB and how the developer gets back the \$1.1 million but the City does not get anything back. She encouraged considering employing the IRB on the entire amount and dividing the responsibility for the remainder of the funding between the developer and the City. She expressed frustration with the project being approved based on the developer's agreement to stipulations but then the developer now changing their position. She still supports the development.

Mayor Dunn stated that the Planning Commission's last denial had no objection to the proposed phasing, and neither is the Governing Body. They got into deep discussion about who would pay for the signal, the third lane, and the burial of the power lines. They knew it was not their charge to decide, so they split the requests into four parts and voted on individual motions. The overall motion was to deny. She assumed the finance discussions would not occur with a remand, but she didn't know for sure. She asked Mr. Lambers if the phasing needed to be discussed with the stipulations being added back in.

Mr. Lambers replied that it did not need to be done, as the applicant would come with a proposal. He felt it was important to distinguish between a stipulation that costs the developer versus financial incentives from the Governing Body; the Planning Commission has no role in that.

Mayor Dunn stated that everyone is fine with the phasing.

**A motion to remand Case 04-2020 – 135<sup>th</sup> Street and Kenneth Road – Mixed Use Medium Density Residential – Request for approval of a Revised Preliminary Plan – with the addition of Stipulations dealing with public improvements to 135<sup>th</sup> and Kenneth and the burying of power lines back to the Planning Commission was made by Councilmember Azeltine.**

Ms. Bennett pointed out that the stipulations are still included.

Mr. Lambers stated that the application was revised to remove the stipulations.

Mr. Petersen stated that he asked for them to be removed but that the application was not made regarding that. He stated that he asked the Planning Commission to modify the stipulations that dealt with financing.

Councilmember Azeltine stated that it includes Impact Fees and the improvements to 135<sup>th</sup> Street.

Councilmember Cain points out that the applicant asks for the change in the approved Preliminary Plan to delete Stipulation No. 4.

Mayor Dunn pointed out that the townhomes were not part of either one.

Councilmember Azeltine stated that the same application that the Planning Commission denied is remanded back.

Mayor Dunn stated that it now includes the townhome discussion.

Ms. Bennett stated that it should be remanded to consider the townhomes, phasing, and perhaps ask for a partial approval that addresses phasing and townhomes while denying the parts of the application that deal with the streets and power lines.

Mayor Dunn stated that planning staff needs to look at the townhomes.

Mr. Lambers stated that it should be able to be remanded to the August meeting, and it would come back to City Council the second meeting of September.

**The motion to remand was amended to include the phasing and the townhomes by Councilmember Azeltine, seconded by Councilmember Filla.**

Councilmember Cain asked if the entire proposal, including the desire to delete stipulations, would be remanded.

Councilmember Azeltine pointed out it is just their desire and that the stipulations are still included.

Mayor Dunn stated that a denied Preliminary Plan that has been modified is what is being remanded. She asked if it requires a simple majority if it is denied a second time.

Mr. Lambers replied that anything that comes back requires a simple majority and that the argument is that the change is not substantial, which is why it can be remanded.

Councilmember Cain replied that the case hasn't been reviewed since January.

Ms. Bennett pointed out that they will have minutes to review, which will make clear that they are not being asked to reconsider their decision based on the stipulations for the road construction and the burying of the power lines; rather, they are being asked to consider the phasing and the townhomes.

Mayor Dunn suggested that Ms. Bennett attend the Planning Commission meeting. She asked for additional discussion.

**Motion was approved with a unanimous roll-call vote of 8-0.**

### **13. OLD BUSINESS**

Ordinance amending Chapter 14, Article 5 of the Code of the City of Leawood, 2000, by adding a new Section 14-501a entitled "Towing of Vehicles from Private Property [non-city initiated]" and repealing other sections in conflict herewith [ROLL-CALL VOTE] *[Continued from March 2, 2020, March 16, 2020 and May 4, 2020 Governing Body Meetings]*

Ms. Bennett stated that the last presentation of this ordinance amendment was pre-pandemic when everything was different. Mr. Leibold, an attorney from Lawrence, appeared in front of this body. Certain tow operators asked us to pass this because under state statute, they can only have liens against vehicles towed from private property if they are towed in accordance with provisions of either a county resolution or a city ordinance. There were a few concerns, one of which was answered by the ordinance itself. The other prompted a revision: if there is a disabled vehicle on private property, the entire development does not need to be posted in order to tow, but the car can be stickered with a tow warning. The ordinance provides that when a car is towed, the Police Department will be notified with the car's location. There are no changes from what was presented in March. Mr. Leibold is fine with it as is. He did not wish to participate tonight.

Councilmember Azeltine stated that Subsection 3 was modified to address the issue of the disabled car in a lot and allows the property owner to affix a written notice to the car. He asked if that was standard in other places. He wondered about the potential for shenanigans.

Ms. Bennett replied that it could occur, but the owner is supposed to mark on the notice when it was posted. If it came to court, they would need to testify that they put the placard on the car.

Councilmember Azeltine asked if the Police Department would have any involvement.

Ms. Bennett confirmed they would not sticker the car on private property.

Councilmember Sipple asked how many times in a given year this situation would come into effect.

Ms. Bennett replied that the City has never governed private tows and has no count. Currently, private tows can occur; they just don't have to notify the City when they do it. This will help if someone thinks a car has been stolen when it actually has been towed.

Councilmember Sipple asked if a commercial property owner calls a tow service, is the Police Department involved at all.

Ms. Bennett replied that they do not have to but, in some cases, have done so. Most tow operators will let police know.

Mayor Dunn stated that a neighboring city had cars being towed from a mixed-use development and it was a headline news story for several nights. She remembered it being remedied quickly.

Councilmember Harrison asked if apartment buildings would be considered private property.

Ms. Bennett replied that they are.

Councilmember Harrison asked about a situation with a visitor who parks in a complex parking lot and doesn't use the car for a week. She wondered if the car could be stickered and towed? She asked similarly how a car owner would indicate that a car wouldn't start and had to be left in a parking lot.

Ms. Bennett replied if the car violates the owner's rules on who parks in the lot, it would be subject to the ordinance.

Councilmember Harrison expressed concern about cars being towed if they have legitimate reasons for not moving them.

Mr. Lambers stated that many apartment complexes ask to be informed of any visiting vehicles.

Councilmember Azeltine stated that the spot would have to have a No Parking sign.

Mr. Lambers pointed out that many complexes have such signs.

Councilmember Harrison was still concerned about a disabled vehicle in a commercial parking lot.

Mr. Lambers pointed out that it is private property, and the owners have the right to manage it.

Ms. Bennett stated that currently, cars can be towed in that situation; this ordinance just adds a layer to it that allows the tow company to get a lien.

Mr. Lambers pointed out that the tow companies notify the City so the owner will pick up and pay for the car.

Mayor Dunn asked for further discussion.

**A motion to approve Item 13 was made by Councilmember Larson, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.**

#### **14. OTHER BUSINESS**

#### **15. NEW BUSINESS**

Ordinance establishing a Common Consumption Area and authorizing the possession and consumption of alcoholic liquor within its boundaries [Park Place CCA] [ROLL-CALL VOTE]

Ms. Bennett stated that this amends an ordinance approved a year ago. Park Place would like to expand hours, and staff has no objection to it. The hours would be M-W 11:00 a.m. – midnight, Th-F 11:00 a.m. – 2:00 a.m., Saturday 10:00 a.m. – 2:00 a.m. and Sunday 10:00 a.m. – midnight. The state passed a statute that allows private developments to allow people to drink open containers outside of businesses in a delineated area. The area listed in the application is the green area next to The Ainsworth.

Mayor Dunn asked if the liquor was sold at restaurants or if residents can bring alcohol to Barkley Square.

Ms. Bennett replied that it could be sold by Ainsworth with a permit. That is the only restaurant that abuts the area.

Mayor Dunn expressed some concern about the 2:00 a.m. time on weekends.

Mary Tinkler, Park Place Property Management, appeared and spoke about the ordinance. She understood that people could bring their own alcohol; however, it is not advertised. The idea for the common consumption area is to bring business to the current tenants, especially those adjacent to Barkley Square.

Mayor Dunn asked if the time frame with the late nights caused any concern with residents nearby.

Ms. Tinkler stated that residents are not out past many of the event times but that the intent was to allow those at Ainsworth time to enjoy their drinks. Many of the customers are residents who walk over regularly. Security and signage will be present, indicating boundary lines.

Councilmember Cain stated that the time frame extension is a big jump. She wondered if there could have been a middle ground.

Ms. Tinkler replied that the reason for the request is twofold. One is to allow customer in the open space on the weekdays; the other is to try to help our businesses rebound from the effects of the pandemic. The thought was that this could attract customers who are not ready to be inside but may want a safe outlet outdoors. There are not many activities currently happening in Leawood.

Councilmember Cain stated that it was an excellent point.

Councilmember Sipple asked if the hours would be the same as The Ainsworth's hours.

Ms. Tinkler replied that they would be.

Councilmember Sipple asked how Park Place would enforce the boundaries of Barkley square so people don't wander with a drink in their hands.

Ms. Tinkler replied that a security guard is onsite through those hours.

Councilmember Sipple asked if it would be Park Place security. He expressed concern about someone being overserved and wandering around.

Ms. Tinkler affirmed that it would be.

Ms. Bennett suggested language that allowed the City to non-renew annually. It was a five-year term, but at the end of each year, the City could give notice that it would not be renewed.

Mr. Lambers pointed out that the noise aspect is a concern because enforcement is at the property line. People in the immediate facility would not have the ability to complain because it is within their property. He was not in favor of 2:00 a.m. and thought 1:30 a.m. would be sufficient; however, it could be modified if there were complaints.

Councilmember Sipple asked if this would be in effect when ice skating is going on.

Councilmember Azeltine asked how late The Ainsworth is open now.

Mayor Dunn replied it is open until 2:00 a.m.

Mr. Lambers stated that his apartment complex has a pool and putting green, and both are open until 10:00 p.m., but there is no restaurant or bar connected to it.

Councilmember Azeltine stated that he liked Ms. Bennett's idea about bringing it back for review.

Tom Keller, General Manager, Park Place Village, appeared and pointed out that the value that the residents bring is paramount to the development, so if it becomes a problem with noise, the hours would get pulled back. The intent is to overlap with The Ainsworth's hours because it becomes difficult to convince people they can be outside certain times but not other times, especially when the restaurant is open.

Mr. Lambers expressed concern that people could call the police, and nothing could be done because the noise ordinance is what it is.

Councilmember Filla appreciated the suggestion of reviewing the hours every year. She pointed out that when people drink, they get loud. She hoped that Mr. Keller would be cognizant of residents' concerns.

Mr. Keller agreed that he wants his residents to be happy with the arrangement.

Councilmember Azeltine pointed out that it is in Park Place's best interests to make sure this is pleasing for everyone, and he felt it would take care of itself if it developed into a situation. He reiterated that the annual evaluation is a good plan.

Councilmember Harrison pointed out that the hours on the website for The Ainsworth are not what are listed in the ordinance. She had no idea that any business in Leawood was open past midnight. She seconded the concerns about it being a residential area. She wants the businesses to rebound but not to the detriment of the residents. She preferred midnight or 1:00 a.m. She appreciated the right to look at the ordinance in a year.

Councilmember Sipple echoed Mrs. Harrison's comments in wanting to keep the businesses successful.

Mayor Dunn pointed out that the annual review sounded like a good idea, but she hoped that if Park Place saw this as an issue in the first few weeks, they would take it upon themselves to modify.

Mr. Keller affirmed that they would monitor it and felt comfortable doing so because they have had no problems up to this point with Barkley Square.

**A motion to approve Item 15 was made by Councilmember Filla.**

Ms. Bennett stated that it would automatically be renewed annually unless the City gives notice of non-renewal prior to the next renewal date.

**Seconded by Councilmember Azeltine. Motion was approved with a unanimous roll call vote of 8-0.**

**A. ADJOURN**

*Meeting was adjourned at 9:03 PM*