

**MINUTES OF THE PUBLIC WORKS COMMITTEE
LEAWOOD, KANSAS**

MEETING HELD APRIL 11, 2012

The Public Works Committee met Wednesday, April 11, 2012, at 7:30 AM in the Main Conference Room at Leawood City Hall.

Committee Members in attendance:

James Azeltine, Chair and Ward 4 Councilmember
Andrew Osman, Ward 1 Councilmember
Jim Rawlings, Ward 2 Councilmember
Carrie Rezac, Ward 3 Councilmember
Adam Abrams
John Burge
Ken Conrad
Jon Grams
Marsha Monica

Committee Members absent

Michael DeMent

Guests: (by order of sign in sheet)

Louis C. Rasmussen, Ward 2 Councilmember
Lisa Utt, 2325 W 85th Terrace, Leawood, KS 66206
Amanda Hassett, 2310 W 85th Terrace, Leawood, KS 66206
David Hassett, 2310 W 85th Terrace, Leawood, KS 66206
Ryan Lorei, 2319 W 85th Terrace, Leawood, KS 66206
John Schutt, 8604 Sagamore, Leawood, KS 66206
Kirk Ecton, 2012 W 86th Terrace, Leawood, KS 66206
Phillip Crum, 2020 W 86th Terrace, Leawood, KS 66206
Jane Van Tassel, 8612 Sagamore Road, Leawood, KS 66206

Staff in Attendance:

Patricia A. Bennett, City Attorney
Joe Johnson, P.E., Director of Public Works
David Ley, P.E., City Engineer
Julie Stasi, Administrative Services Manager

- **Chair Azeltine, called the meeting to order at 7:30AM.**
Committee Members, staff and guests introduced themselves.

- **NEW BUSINESS:**

- **Review City's Practice on Sidewalk Maintenance.**

Councilmember Louis C. Rasmussen commented and had a handout for the Committee to read when they had time to understand background on this issue. Advised the City Administrator included in our Capital Improvement Program dated January 13, 2012, the inference to spend \$100,000 in conjunction with a curb replacement project that is going to cost million; (in which he is in favor). But he spotted the \$100,000 and when it is in the Capital Improvement Program, it becomes a bondable issue.

The next thing he wants to talk about briefly is sidewalks in Leawood. There is an assumption which is always bad to make that when you see a sidewalk, it is owned by the City, and that is not true. Very, very few of our sidewalks are owned. There are some. The most pertinent example is the one in the first and second Wards (Lee Boulevard) which went in years ago in conjunction with rebuilding Lee Boulevard. It cost \$500,000 and it caused a furor.

The reason it caused the furor was that the property owners did not want to pick up the liability associated with the sidewalks. It is also characteristic of the north end (the original property owners- didn't want sidewalks). They didn't want the liability associated with it.

When we speak about City expenditures for maintenance (and he wants to make it very clear) that this councilman does not and will not use his judgment over that of Joe Johnson's or the staff. That is what we pay them to do. But the maintenance of our sidewalk – which roughly ran about \$50,000 a year which is involved with such things as construction errors, pulling out storm water inlets, ADA Requirements, you name it. Even sometimes when it got unbearable for our staff, they might have done a few incidental favors. That's the way it works. But it was roughly \$50,000 a year and we weren't too concerned about it. But now if we put into our Capital Improvements Program \$100,000 I get concerned. Because it is really unclear in our Capital Improvements Program whether these things are "Bondable", or "Pay-as-You-Go".

If it is Bondable, I have real concerns. I do not want this City to be involved with any bit of issuing tax exempt bonds for private benefit. If you spend tax payers money on somebody else's property other than the City, you are running a risk. If we go Pay-as-You-Go to do this then you are doing the same thing.

Some sidewalks are owned by institutions like churches, schools, etc.. Not only that, we have Ordinances on the books that say who is responsible for doing this. Just recently, this City council reinforced the opinion that the responsibility for cleaning the sidewalks of snow belongsTo the homeowner.

Chair Azeltine wanted to make sure everyone on the Committee had received a copy of the Ordinances and excerpts from previous year discussions along with the practices of the other cities.

Joe Johnson: The write up explains it pretty well. When he first came to Leawood, we used to

try to send notices (when we would get complaints) to the property owners and tell them they needed to make repairs to the sidewalks. More times than not, that didn't happen. The City would then go out and make the repair. The process to file an assessment on a house is a cumbersome process for the time and money spent repairing sidewalks. In about 1997 or 1998 I talked with the city administrator and advised we were maintaining the sidewalks anyway, and what we are paying for to get the City reimbursed, is a process that causes us to spend more time and money than what we get back. What about the City just creating a list and we can maintain sidewalks as much as we can maintain on an annual basis instead of trying to do the paperwork to try to get our money back. At that time that was approved. Remembers discussion of this at one of the budget sessions. And the Council was fine with that and this is the way we have proceeded.

You can see in the past minutes, we have talked about this a couple of times over the last 5 or 6 years just to reaffirm that this is the way that we want to go and how we want to do it. So we have been doing this. We have lots of requests. This year we have done more sidewalks in the first three months of the year than we did all of last year.

The process is we get a call and put it on our list. There is probably 100 to 150 locations. If someone is really concerned about it, we tell them that by Ordinance and State Statute, it is your responsibility so if you think it is a real hazard to your property, you may want to fix it before City Crews can get out there to fix it. We have a long list and we go through the list as they get placed on the list. We have created a criteria for addressing sidewalks now because we do have so many requests. First is we do sidewalk on property that the City owns. We are just as obligated to fix our sidewalk as a private individual is. Our priorities are to fix sidewalks on City owned property or Park property. Next we look at sidewalks that are next to a storm sewer or a box culvert or adjacent to a bridge. The third priority is everything that is left. The biggest thing we see in a sidewalk repairs is tree roots. If we could take all the trees out of the right-of-way and move them back behind the sidewalk we would probably eliminate about 70% of our sidewalk issues. Trees are probably the biggest issue that we have. Sometimes we have to go in and cut roots to lay the sidewalk flat. That impact so far has been very minimal on trees; but it is necessary to avoid tripping hazards.

What was talked about is that the City is getting ready to do a \$20 million curb program starting next year and that will be bonded. The thought was that as we are doing sidewalks in residential areas, that it may be wise for the City to put in another \$100,000 as pay-as-you-go (no different than how we pay for sidewalk maintenance now). But to have another \$100,000 a year during that curb program to then make more extensive repairs to sidewalks within residential areas as we are replacing curbs in those areas. That is where the extra \$100,000 came. It comes out of the same budget that we use now for sidewalk maintenance. When we do our Mill & Overlay or Reconstruction, we use part of those funds to fix sidewalks along the streets that we are overlaying in residential areas. We though if we added the \$100,000 we would get a big jump and we would contract it out. But that \$100,000 is not being bonded, it

just comes out of the City's General Fund as Pay-as-You-Go.

Patty Bennett-Is here mainly to answer questions. From a legal standpoint we do not see an issue with this.

Jon Grams-Why wouldn't you just have an outside Bond Council give you a legal opinion that it is or isn't permissible to do the sidewalks as part of a bond issue?

James Azeltine-Because the sidewalks are not part of a bond issue. We put \$100,000 in the CIP as Pay-as-You-Go. The big project is for curbs. The curbs is the bonded project.

Joe Johnson-We have another \$100,000 that is being moved out of the general fund into...

James Azeltine-there were two things that Councilmember Lou asked for:

1. Is just in general our practice regarding fixing sidewalks that are technically the responsibility of the home owner.
2. Is the issue regarding bonding-which is to him, not an issue because the \$100,000 going towards sidewalks is paid through Pay-as-You-Go.

James Azeltine-before you take a vote and move on, he has a couple of other things to go through. He reviewed the old ordinance and it makes it very very clear by statute and ordinance as Joe said, it is the responsibility of the home owner and it says if it is not done, the City goes in and the cost is assessed against the lot or piece of land abutting the sidewalk. "is repairs as may be provided by law". There may be two issues we should deal with in making a recommendation to the Council.

1. We are spending \$25,000 to \$35,000; which in a \$50 million budget is nothing. But it is above the City Manager's discretionary level and it is something that he thinks should be budgeted. So that should be a recommendation to the Council.
2. (He may need help with legal here). In order to continue this practice, we might need to alter the Ordinance to basically say; at the discretion of the City or whoever, staff may go in and fix sidewalks as they see fit (or something like that).

Marsha Monica-How much would it cost a homeowner for a couple of slabs of repair? Most homeowners do not have the resources to go out and hire someone.

Joe Johnson- The cost is about \$500 to \$1,000 to rip out two slabs.

James Azeltine-We used to enforce the Ordinance and staff was so busy going out and citing people and trying to follow up on that that it ended up being counter-productive.

Marsha Monica-Second question, when we go out and do this replacement do you give something to the homeowner that says you are allowing us to come on your land?

Joe Johnson-No, the sidewalks are on public right-of-way. Generally we will go out and make the repair and we sometimes have to repair irrigation systems that are near it and then we have a little clean up work with back-fill and then some sod in some areas. Costs depend on what we have to do.

Ken Conrad-So are the sidewalks owned by the City and the Home owner is reasonable for the maintenance?

Patty Bennett-The property is owned by the City. It is the abutting property owner's responsibility to maintain it.

Staff Member Stasi-Similar to the owner mowing the grass, even though it might be in the right-of-way.

Patty Bennett-good example.

Joe Johnson-And the driveways too.

Jon Grams- Why wouldn't it make sense just to say there is a budget amount of whatever the amount is and once that is gone, it is gone for the year and if there are extra locations on the list, it is thrown into the next year. And it seems all the Home Owners Associations should be given a notice once a year of what the policy is or...I'm assuming most people do believe the City owns the sidewalk. The City should send out a notice that the home owner should put in their newsletters an education of who owns the sidewalk.

Ken Conrad-And probably what a homeowner might want to know more is if somebody trips over that damaged sidewalk, who is liable?

Joe Johnson-The property owner.

Patty Bennett-If they call their home owners insurance, the insurance company will say it is the home owner. The bottom line is if you want to encourage them to talk with their own lawyer or insurer, we cannot give legal advice to them. We can tell them what they are legally responsible for under the Code and under the Statute, but not what they will be liable for. People can file a suit for it all and then for more than that.

Jon Grams-Is that on the website somewhere besides in the Code. A little section on sidewalk info would be good to have to reference.

Joe Johnson-Whatever the Ordinance says is what we would put on, we would not free-lance after that.

Marsha Monica-Likes the idea that this be a separate line item in the next budget.

Moves that the Committee recommends to the Council that a line item budgeted item for Sidewalk Repair be established in the 2013 Budget-that it be a Pay-As-You-Go basis and that it be in accordance with the priorities established in existence.

Jon Grams-seconds the motion.

Carrie Rezac-has a question, is fine with the motion but had a question about the \$100,000 amount. Joe in looking at what has been spent in the past it looks considerably lower.

Joe Johnson-It is because we do not have the time or the resources.

Carrie Rezac-so the \$100,000 amount we are seeing is that we expect to do more than in the past?

Joe Johnson-We will contract that work out. When we let the contract out for the curb, we will have already identified the sidewalk areas and that would be part of the project, but it would not be bonded. City Crews would not be doing that work. That \$100,000 would be done by the contractor who is also doing the curb work. That is the difference. The work on our spreadsheet in your packet is City Crews work.

Ken Conrad-as a homeowner, would there be a way that if I wanted to get the sidewalk repaired and I could request the City do it and pay the City to do it in order to have. If I have 16 square feet of sidewalk that might be hard to get somebody out to come out and just do that much concrete. (Similar to how a Homes Association contracts out for trees with a one time come out and repair). But if I could get on a list I wonder if there is a way the City could do it and I'll pay for it. It seems like there are pitfalls on how you select who to do first.

Joe Johnson-You are the only one that has ever called me in 15 years and said I would be willing to pay for it. We start at the top of our list and work our way down.

Patty Bennett-There is a way if you start a petition for sidewalk installation or repair which is essentially what would be happening and you could pay the full assessment.

Joe Johnson-My guess is we would not want to create a Benefit District to do \$2,000 worth.

Ken Conrad-No, but you could come out and say, this needs to be fixed, we fix it and now we are going to assess your property and go through that process.

Patty Bennett-Normally it is a strip of several properties but.

Marsha Monica-Refers to her Motion being just on the one issue.

Repeating that that the Motion was to recommend to the Council that a separate line item in the next budget be made for sidewalks with Pay-As-You-Go basis and in accordance with the criteria that staff has already set for priorities of repair.

Jon Grams seconded the motion. All members present were in favor, **Motion passed.**

Marsha Monica-Could the committee ask to maybe come up with some options that we could propose to homeowners, such as if they are willing to pay for it could there be an option—just asking?

Joe Johnson-If a homes association wants the City to come in, the easiest thing would be to petition the City to create a benefit district.

Marsha Monica-I'm talking about an individual home owner.

Joe Johnson-Right. But to do individual home owners, it is not any more efficient than what we are doing now because if we go here and then there and then here and then there. The thought process was when we were doing the curb program that we were going to be in the subdivision and so it is efficient to rip out the curb and if there is sidewalk right next to the curb, rip that out and then do it. But I am not sure of an efficient way to do it if I am here and then I have to go six houses up and then half a mile and then another mile...and then to try to do that and associate those repairs when I'm doing a construction project.

Marsha Monica-Let me ask you this and then we can move on, Would it be possible when you are doing the curb replacement. She herself found out when they were in her neighborhood found out that the contractor could do some other work while they were there and charge the homeowner. They had an option. When you go into these neighborhoods like that, could you put something on the door? Could you say: "If you need a sidewalk repair or something to contact this person and when they are coming through have an option of getting work done". Nine out of ten people do not know that that is an option.

Joe Johnson-Yes. You could do that. But the calls are while you are there, fix the sidewalk. Residents will pay for their driveways. But their expectation is that the City will pay for the sidewalk. That could be an option on a street project

Ken Conrad- To clarify. Some of the sidewalk repairs in this \$50,000 some that you have spent, are they isolated incidents? Not associated with a curb and gutter project? Okay, then why couldn't we continue to do that but have the homeowner pay for it? I know it is inefficient and you say you have a list, but....why can't we streamline the process?

Joe Johnson: All over the place. Correct. Let's say I do 35 to 40 properties. Then I'm filing 35 to 40 assessments a year and I have to track the costs. I am not sure that is possible to streamline it. The Process to do the assessment, that is not a process that you can streamline.

Chair Azeltine- let's get through the Agenda and if we still want to discuss this, let's do it at the end of the meeting in consideration of our visitors here today.

- **OLD BUSINESS: 85th Terrace TRAFFIC CALMING REQUEST.**
Discussion continued on the request for traffic calming measures.

Ryan Lorei responds in his findings:

Mr. Lorei advised out of the 29 properties on 85th Terrace, he had received 25 votes so far. One home is repossession, so there is no one living in it. Three remaining homes, two he may never be able to get ahold of; the last one he has spoken to and they have just not turned in their sheet yet and he believes it will be a vote for in favor of calming devices. He believes he will end up with 23 votes in favor, 3 votes against any measures or a 79% approval for traffic calming device actions of some kind.

Mr. Lorei advised there different options were:

Speed tables, Raised Intersections, State Line Right-In Right-Out and a fourth option is a combination of any of those.

The narrowing of the street with sidewalk installation is a given and it was explained to the properties that that was being done.

Chair Azeltine asked Mr. Lorei for the breakout of the options chosen.

Ryan Lorei advised there were 2 votes for speed tables. State Line Right-In-Right Out was by far the winner with 10 votes. Raised intersections was 3 votes and then 7 people wanted a combination. The majority of the people who wanted a combination, some were saying I would take either one of these. Although most of those respondents went to the State Line Right-In, Right-Out or the speed tables. Keep in mind, some of these double up, but if you counted people who asked for a combo or said they would take either one. State Line Right-in, Right-Out was 16 votes. Speed Tables was 8. Raised intersections was 7. If you add 8, 16 and 7 you will get much greater than 28, but I'm saying some of those doubled up, but I can explain with the spreadsheet I have for it to make sense.

Joe Johnson- explained that the last meeting, Committee asked staff to look at the estimated

costs again and after more review, we designed it out and came up with Raised Intersections at a little over \$76,000, the Right-In, Right-Out at State Line Road was a little over \$74,000.

Joe Johnson explains the process if the residents are in agreement to proceed in doing a Benefit District then a recommendation would be to proceed with drafting the petition and getting signatures.

If this passes:

The first process would be if approved by Council, we would put together the Petition for the Benefit District. Then probably give it to 85th Terrace Resident Representative Ryan Lorei. Then he would get as many signatures on it as he can and it would then come back to the Council. The Council would take a look at it, it is a public hearing. At that point the Council makes a decision, Yes we accept it; Staff would then be told to create the benefit district.

Carrie Rezac-The consultant doesn't come in until after the Benefit District is created?

Joe Johnson-Correct.

Ken Conrad- Not comfortable with benefit districts and an open ended scope. Seems like there is a large range of possible solutions. Seems out of order.

James Azeltine- He heard that we are going to limit the consultant to those three alternatives: Raised Intersections, Speed Tables, or a Right-in, Right-out feature on State Line. And know that the City plans to narrow the street and place a sidewalk on the north side of 85th Terrace.

Ryan Lorei- Remember the City already hired a consultant and that is where these alternative solutions came from.

Jon Grams made a Motion that the Committee recommend to the Council the approval of a Benefit District for Traffic Calming on 85th Terrace between State Line Road and Lee Boulevard and that would include in the Petition, the hiring of a consultant.

Marsha Monica seconds the Motion.

Voting on the Motion:

Members in favor: Rezac, Monica, Grams, Osman, Abrams, Burge, Grams, Azeltine

Members against: Conrad

Motion Passes.

Joe Johnson-Expects this topic will probably be presented to the first council meeting in May (May 7th, 2012). There will be an opportunity for public comment.

- **PAST MINUTES:**

Marsha Monica motioned to approve Minutes from the previous meeting of February 8, 2012.

Jon Grams seconded the motion to approve. All present members were in favor.

Motion passed unanimously.

- **NEW BUSINESS:**

Review Possibility of using unused salt funds to fund an additional street repair project.

Joe Johnson advised he had talked to the City Administrator about this and he wanted him to run it by the Committee to see that there is agreement. The City Administrator is fine with it.

We budget \$229,000 for salt on an annual basis. We have spent \$10,000 for liquid and we have not used any of it. We are full of salt and do not have to order any for this year, so we have \$219,000 left in the budget for material costs. We would like to take \$167,000 of the \$219,000 remaining budget and micro surface 133rd Street from State Line Road to Nall Avenue, Pawnee from 133rd to 135th and Briar from 133rd t 135th. These streets are so far out to be mill and overlaid, if we do not do something with them this year. No it does not get a lot of traffic, but the street is 10 to 15 years old. If we do not do something to it, it is going to be that when we go to mill and overlay it, it will cost more than just a mill & overlay.

James Azeltine-Where are these streets in the rating?

Joe Johnson-133rd is 2015, Briar is two years out, but it is so bad now, if I don't do something to Briar right now I'm going to have to reconstruct the whole street; it's that bad. 133rd is the same way.

Jon Grams makes a Motion to recommend to the City Council that we use \$167,000 for the streets named in Staffs Request (133rd, Pawnee, and Briar) and micro-surface them this year.

Motion seconded by John Burge. All present members were in favor. Motion passes unanimously.

- **CHAIR AZELTINE ADJOURNED THE MEETING AT 8:34AM.**

Minutes transcribed by Julie Stasi, Leawood Public Works Department