

**Minutes**

Audio Tape Nos. 508, 509, 510

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 p.m., on Monday, April 2, 2001. Mayor Peggy J. Dunn presided.

**Councilmembers present:** Scott E. Gullede, Gary L. Bussing, Jim Rawlings, Shelby Story, Louis Rasmussen, James E. Taylor, Sr., Patrick L. Dunn, and Mike Gill.

**Staff present:**

Patricia A. Bennett, City Attorney	Ben C. Florance, Fire Chief
Kathy Rogers, Finance Director	Diane Binckley, Planning/Develop. Dir.
Joe Johnson, Public Works Director	Jeff Cantrell, Neighborhood Serv. Admin.
Craig Hill, Deputy Police Chief	Julie Hakan, Human Resources Director
Chris Claxton, Parks & Recreation Director	Bob Sadler, Internet Specialist
Martha Heizer, City Clerk	Deb Harper, Deputy City Clerk

**1. PLEDGE OF ALLEGIANCE**

150 **2. APPROVAL OF AGENDA**

Mayor Dunn advised Agenda Item # 9F to be continued to the April 16, 2001, Governing Body meeting, and Item # 11A to be continued to the May 7, 2001, meeting. The agenda as amended was approved unanimously on motion of Taylor, seconded by Story.

270 **3. RECOGNITION Retirement of Bettie Bridges, Volunteer Emergency Preparedness Coordinator.**

Mrs. Bridges was honored with a plaque from the City along with awards from the Fire and Police Departments for over 20 years of service to the City.

**4. PROCLAMATIONS**

CASA/GAL Child Advocate Day – April 5, 2001  
Crime Victims' Rights Week – April 22 through April 28, 2001  
Fair Housing Month – April 2001

870 **5. CITIZEN COMMENTS**

Marsha Dixon Monica, 12913 Canterbury, representing the Leawood Chamber of Commerce, thanked the Governing Body for their support of the Chamber.

995 **6. CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Appropriation Ordinance No. 914
- B. Minutes of the March 19, 2001, Governing Body meeting
- C. Minutes of the February 15, 2001, Golf Course Committee meeting
- D. Minutes of the March 26, 2001, Strategic Spending Committee meeting
- E. Minutes of the March 7, 2001, Arts Council Committee meeting
- F. Resolution No. 1602 approving Final Plat of Summertree Villas, located at approximately 151<sup>st</sup> & Mission Road

Councilmember Rasmussen requested # 6F be removed from the Consent Agenda. There being no further requests, a motion was made by Councilmember Dunn, seconded by Councilmember Gill, to approve the remainder of the Consent Agenda. The motion carried by a unanimous vote.

Councilmember Gill recused himself from # 6F to avoid the appearance of a conflict of interest. Councilmember Rasmussen entered a motion that an additional stipulation be added to the resolution approving the Final Plat and further moved adoption of same.

The additional stipulation to read as follows: The developer agrees to insert the following covenant running with the land in all deed restrictions binding the lots in the development: The lots in this subdivision are adjacent to or near a public golf course. Homeowners, by this covenant, acknowledge that the lots in this subdivision may, therefore, be subject to being struck by golf balls, noise, inconvenience and other items customarily inherent in a lot neighboring a golf course. Homeowners expressly accept this lot subject to this restriction and waive any right to pursue the course or its customers for any claim, nuisance or any demand for relief based upon customary use of the golf course. Developer further agrees to submit a copy of said restrictions to be filed prior to release of the final plat for recording.

Councilmember Taylor seconded the motion, and was carried by a unanimous vote.

1210 **7. SPECIAL BUSINESS**

- A. **Ordinance adding new Articles 7, 8, and 9 to Chapter XIII of the City of Leawood Code 2000 establishing regulations for the use of the rights-of-way to construct, operate, and/or maintain communications systems and cable systems, establishing required terms for granting communications and cable services franchises, and establishing compensation for such use of the rights-of-way.**

Patricia Bennett, City Attorney, requested, in light of pending legislation regarding Senate Bill No. 306, this item be tabled indefinitely until such time that the legislature took action regarding the issue. A motion was so made by Councilmember Gill, seconded by Councilmember Story, and carried by a unanimous vote.

Councilmember Rasmussen asked if municipalities would be able to become more involved with the issue. Mayor Dunn advised all Johnson County municipalities would be able to play an active role in the issue.

1515        **B.     Second of Three Readings: An ordinance granting to American Fiber Systems, Inc., a franchise authorizing the right to construct, operate, and maintain a communications system using the rights-of-way in the City of Leawood, Kansas.**

1550        **8.     MAYOR'S REPORT**

- ??     Expressed sympathy to the Mike Gullion Family on the loss of their son in a recent accident
- ??     A government forum hosted by Ingram's
- ??     The 23<sup>rd</sup> annual Camp Fire Boys and Girls donation drive hosted and sponsored by Leawood Hy-Vee to benefit the Salvation Army's adult rehabilitation center
- ??     Career Day at Notre Dame de Sion High School
- ??     Ribbon cutting for the State Link banners displayed along State Line Road
- ??     Thanked Councilmember Bussing for spearheading the Strategic Spending Committee

1795        **9.     PLAN COMMISSION RECOMMENDATIONS**

*[from 01-23-2001 Plan Commission meeting]*

- A.     Resolution No. 1603 approving recommendation regarding preliminary site plan, preliminary plat, and rezoning request from RP-2, Planned Two-Family Residential; & AG, Agricultural, to R-1, Single Family Residential; RP-3, Planned Apartment House Residential; & AG, Agricultural, for an apartment complex and single family dwellings located within Pine Lakes subdivision at 137<sup>th</sup> & Mission Road [4 companion ordinances].**

Attorney Larry Winn III, representing the applicant, gave a presentation.

3240        Councilmember Gill was concerned about the effect of the zoning and the 5-year sunset provision for the project. If the Council approved the proposed plan and if the sunset provision came into play, he wanted an acknowledgment from the property owner that if the proposed plan expired and a new plan under RP-3 came forward, that the standard for that plan would be "best of breed" as depicted by the current proposed plan. Mr. Gill said that staff was in the process of revising the zoning ordinances. Any new plan that was filed subsequent to the possible expiration of the current proposed plan (if

approved) would be impacted by RP-3 zoning as amended. He would be looking for less density and higher end type requirements in amended RP-3 zoning. This was incentive for building within the 5-year window. Mr. Gill was looking for an estoppel provision to enforce.

4115 Councilmember Rasmussen was concerned about the traffic situation. There was past experience where development was delayed but zoning remained, and then the density was increased, creating a problem for the City's traffic planning. Mr. Rasmussen said the proposed plan was a good one, but if the plan was sunset in 5 years and the zoning remained, how would the City protect itself from changes in the density. Mr. Winn said it had always been suggested that in no event would the total number of units being considered (272 multi-family units and 20 duplexes) ever be exceeded, whether agreed to by legal agreement, deed restriction, minutes of the Council meeting. He said that even though the City's traffic consultants thought that south Mission Road would handle the additional traffic, they still had doubts as to whether it could. Mr. Winn said he had even suggested to the Plan Commission on the sunset stipulation that they tie the start of construction of the multi-family to the completion of Mission Road to the City's ultimate approved standards and start the sunset provision at that point. The Mayor pointed out stipulation #12 regarding a traffic study, and that any improvements necessary from the study would also be tied to Council approval. Mr. Rasmussen said he was thinking that the final development plan and plat would be adjusted as a result of the traffic study. Mr. Winn said that he understood that Mission Road expanded to its ultimate characteristic would appear to be able to handle any traffic currently master planned or currently under consideration.

4555 Bill Praderio, 13700 Fontana, and Bob and Denise Roberts, 4009 W. 138<sup>th</sup> St., spoke about the issue.

5590 Councilmember Gill moved to adopt the resolution with 3 stipulations: 1) that stipulation #12 be clarified to indicate that... a traffic study shall be provided for review and necessary adjustments prior to the final development plan and plat.....; 2) that there be a new stipulation #32 indicating that if the plan in fact would sunset, the plan would then be subject to any zoning laws in effect at that time and in addition, if the plan was changed before sunset, it would be subject to all zoning law changes in effect at the time the plan was changed; and 3) that there be a new stipulation #33 indicating that the City would demand a "best of breed" standard for a future plan if indeed the proposed plan expired. Motion seconded by Bussing. In order to assure the quality of the project that Mr. Gill desired, Councilmember Taylor suggested taking the elevations prepared by the architect and figuring percentages of building materials described as "quality" for the exteriors of structures. Mr. Gill added that he was looking to find estoppel language that the City Attorney and property owner could come up with, and Mr. Taylor's suggestion could also be used. Motion carried; Bussing, Rawlings, Dunn, Story, Gill, Rasmussen, Taylor in favor; Gulledge opposed (he was opposed to the density).

**B. Ordinance No. 1888 rezoning from RP-2, Planned Two-Family Residential, to RP-3, Planned Apartment House Residential, for property located within Pine Lakes subdivision at the southeast corner of 137<sup>th</sup> & Mission Road.**

On motion of Dunn, seconded by Story, Council unanimously passed the ordinance on roll call vote.

- C. Ordinance No. 1889 rezoning from AG, Agricultural, to RP-3, Planned Apartment House Residential, for property located within Pine Lakes subdivision at the southeast corner of 137<sup>th</sup> & Mission Road.**

On motion of Taylor, seconded by Dunn. Council unanimously passed the ordinance on roll call vote.

- D. Ordinance No. 1890 rezoning from RP-2, Planned Two-Family Residential, to AG, Agricultural, for property located within Pine Lakes subdivision at the southeast corner of 137<sup>th</sup> & Mission Road.**

On motion of Taylor, seconded by Story, Council unanimously passed the ordinance on roll call vote.

- E. Ordinance No. 1891 rezoning from AG, Agricultural, to R-1, Single Family Residential, for property located within Pine Lakes subdivision at the southeast corner of 137<sup>th</sup> & Mission Road.**

On motion of Taylor, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

- F. Approve Special Use Permit [SUP] for a sport court located at 13000 Meadow Lane. [Applicant: Hovelsrud] - continued to the April 16, 2001, Governing Body meeting.**

*[from 03/06/2001 Plan Commission meeting]*

- 7650 **G. Resolution No. 1604 approving preliminary site plan and preliminary plat for office buildings Pinnacle II & III, located at approximately 115<sup>th</sup> & Tomahawk Creek Parkway.**

Mitch Hoefler of Hoefler Wysocki Architects gave a short presentation. There was discussion about the tenants who would occupy the buildings.

9100 **END OF TAPE NO. 508  
NEW TAPE NO. 509**

Brick Owens, landscape architect with HNTB, gave a presentation. The Mayor asked that comments about a recommended 100-foot right turn lane along southbound Tomahawk Creek Parkway noted on page 5 of the staff report under "Traffic" be specified in stipulation of approval #5 for clarification. Councilmember Taylor felt there should be a stipulation that the cost of any signalization at 115<sup>th</sup> and Tomahawk Creek Parkway should it be required would be the responsibility of the developer. Traffic engineer Tom Swenson stated that while future traffic volumes well out into the future might meet a warrant for a signal, he felt for several reasons that the City would probably never want to install a traffic signal at that intersection. He understood that the traffic generated by the project and other developments in the area could be absorbed in the street system. Public Works Director Johnson said that current traffic patterns with the new development didn't warrant a signal, but if it was determined in

the future that a signal was required, the City would install it. Mrs. Binckley said that a stipulation for a 5-year sunset provision would have to be added.

Councilmember Dunn moved to adopt the resolution with the additional stipulation regarding the sunset provision and the additional wording regarding traffic that the Mayor requested for stipulation #5. Motion seconded by Rasmussen and carried unanimously.

1470           **H.     Resolution No. 1605 denying preliminary site plan, preliminary plat, and rezoning request from SD, Special Development District, to RP-4, Planned Cluster Residential, for Hallbrook Villas, located at approximately 112<sup>th</sup> Street and State Line Road [companion ordinance]. [A valid protest petition had been filed.]**

Mel Lavery of Hallbrook Farms Development reviewed his reasons why the rezoning was appropriate. He added that the rezoning was consistent with the recently approved City Comprehensive Plan, was supported by the Villa 1 and Villa 2 Homes Associations and the homes association on the Missouri side of the state line, and the rezoning was what he understood was asked of them when the comprehensive planning process was taking place and was what they said they would do.

Susan Horowitz, 2104 W. 115<sup>th</sup> St., and Herman A. Mountain of the Foxcroft subdivision on the Missouri side of the state line spoke in favor of the rezoning; Greg Musil on behalf of Joe Carter and Diana Carter spoke against the plan.

2920     Councilmember Taylor moved to adopt the resolution, seconded by Rawlings. Councilmember Bussing said he couldn't support the motion. He felt that the zoning application was ill-timed. He preferred to see the comprehensive plan followed across all the tracts in the area under consideration. To zone the land now essentially prohibited the City's ability to look at alternatives for the tracts. It wasn't necessary to change the zoning now; there was no imminent development, no plan for the tracts discussed.

Councilmember Story agreed with Mr. Bussing. It was imprudent to make a favorable decision on the zoning request and tie the City's hands for the future should some comprehensive plan go before the Council that involved something other than all residential.

Councilmember Gill didn't see anything to compel a change in zoning, and, although the developer might agree to eliminate them by stipulation, he was strongly opposed to private streets. Councilmember Rasmussen said that the reason previous Council had voted to allow private streets was to maintain the flexibility for specific tracts of land in the City, and the area being considered was one of them. To vote against the rezoning solely on opposition to private streets wasn't quite right because current ordinances allowed private streets. The Mayor noted that the plan had an immediate sunset – the stipulation #10 that the developer offered – and the plan was brought before the Council due to the need for a plan to be brought with a rezone. It was truly the rezone that the Council should focus on; the plan could be the

plan if it was filed tomorrow, but most likely it wouldn't be until all tracts in the area were developed together.

For clarification, Mr. Story said he wasn't against approving the request based on private streets, and he wasn't stating that he was in favor of commercial development versus residential by not being in favor of granting the request. It might very well be the most realistic use of the land to have all residential; it might not. He felt the Council was being asked prematurely and felt the Council should wait until they had an opportunity to look at the area as a whole. He didn't think the Council would ever see a proposal to develop a combination of the lots until someone had the ability to put all the pieces together and bring in a plan.

3860 Councilmember Dunn said that the request brought the property into accordance with the master plan as Council requested be done when they approved the master plan; it made good planning sense to do so. Councilmember Gullede said he opposed the master plan, and he wasn't going to force a situation where Council would make a decision for one group or another, so he was also opposed to the rezoning.

Mr. Taylor's motion to adopt the resolution failed; Rawlings, Dunn, Rasmussen, Taylor in favor; Gullede, Bussing, Story, Gill opposed. The Mayor stated that if she had had the opportunity to vote on the matter, she would have abstained to avoid the appearance of a conflict of interest.

**I. Ordinance rezoning from SD, Special Development District, to RP-4, Planned Cluster Residential, for Hallbrook Villas, located at approximately 112<sup>th</sup> Street and State Line Road. [Protest Petition] – no action taken.**

4030 **10. PUBLIC WORKS COMMITTEE RECOMMENDATIONS**

**A. Configuration of 133<sup>rd</sup> Street and assessment of Benefit District Project.**

Councilmember Dunn, Chairman of the Public Works Committee, reviewed the matter involving 3 possible alignments for 133<sup>rd</sup> Street out to State Line Road. Mr. Dunn said the Committee recommended that the City not pay approximately \$150,000 from general revenues to move Eaton 20 feet to the south. The Committee recommended that the City proceed with alignment A without moving Eaton with the understanding that staff would be directed to work with Greenbrier residents directly during construction to provide whatever landscaping and buffering was possible and helpful to minimize the impact as much as possible. They also recommended that before a final determination was made, the affected residents along Eaton be specifically informed of their share of the costs of being included in the benefit district and have an opportunity to state whether they wished to participate or not prior to the April 16<sup>th</sup> Council meeting so Council could finalize their decision at that time.

4870 Councilmember Gill requested that no action be taken at the Council meeting. He wanted to see the plan that staff had for buffering with Eaton left as it was. He wanted to know a cost estimate for moving Eaton 20 feet and what the buffering alternatives were that would be available with the 20-foot

movement scenario. Cost estimates could be with or without a benefit district. He said the City needed to protect the residential properties. Public Works Director Johnson said he estimated about \$45,000 for landscaping (with Eaton moved south) and in addition, would look at the cost of a wrought iron fence or fencing barrier; landscaping would be comparable to that for Wilshire. Mr. Johnson talked about costs and assessments for the residential and commercial properties. The Mayor clarified that if residents didn't want to participate in the benefit district, Eaton in its current location would be milled and overlaid, and landscaping would be done whether Eaton was moved or not and residents would have the ability to participate in the landscaping plans whether they participated in the benefit district or not. Mr. Johnson also talked about speed limits and signage.

6390 11:00 P.M. On motion of Taylor, seconded by Story, Council voted unanimously to extend the meeting to 11:30 P.M.

6605 Joe Borich, 4108 W. 110<sup>th</sup> St.; Craig and Carrie Lusker, 13124 Meadow Lane; John and Jeanette Fournier, 13104 Pembroke Lane; Jan Jones, 13013 Pembroke; and Mark Lindsey, 2301 W. 131<sup>st</sup> St., spoke about the issue.

9168 **END OF TAPE NO. 509**  
**NEW TAPE NO. 510**

11:30 P.M. On motion of Gullledge, seconded by Gill, Council voted unanimously to extend the meeting to 12:00 A.M.

Dominick Varraveto, 2740 W. 131<sup>st</sup> Terr.; Boris Peharda, 2305 W. 131<sup>st</sup> Terr.; Ann Kenny, 2709 W. 131<sup>st</sup> St.; Grant Arends, 13017 Pembroke; Tim O'Hagan, 2304 W. 131<sup>st</sup> St.; Mark Nolte, 13008 Pembroke Lane; and Ken Barker, 13012 Pembroke Lane, spoke about the issue.

1095 Councilmember Gill noted that Council received the Public Works Committee's recommendations with great appreciation for all their work and efforts. He felt that citizen proactive involvement if it could be had was important and would support some level of reasonable City participation to continue discussions with developers regarding participation in the benefit district. Councilmember Bussing said that Councilmember Taylor's suggestion of a wall as a buffer should be brought to residents' attention. He was interested in talking to the commercial property owners again about funding with a representative from the homeowners included.

1610 Mr. Bussing moved to continue the matter to the May 7, 2001, Governing Body meeting for further discussion, seconded by Taylor. Motion carried; Dunn opposed; Gullledge, Bussing, Rawlings, Story, Gill, Rasmussen, Taylor in favor.

1815 12:00 A.M. On motion of Taylor, seconded by Gullledge, Council voted unanimously to extend the meeting to 12:30 A.M.

**11. OLD BUSINESS**

- A. Ordinance amending Code § 11-205 of the City of Leawood, Kansas, 2000, pertaining to Disturbing the Peace** – continued to the May 7, 2001, Governing Body meeting.

**12. NEW BUSINESS**

- A. Discuss and Approve Student/Cultural Exchange Program with Sister City, I-Lan, Taiwan.**

Mayor Lu of I-Lan proposed that a “Contemporary Music Group” visit Leawood July 23<sup>rd</sup> through July 29<sup>th</sup>. The Sister City Committee was in favor of the exchange. Councilmember Taylor moved to support the exchange – to respond to Mayor Lu that the City was looking forward to the visit and to proceed to find housing and functions for the students. Motion seconded by Gullede and carried unanimously.

- 2425 **B. Request Public Works Committee review of drainage issues along hole # 13 at IRONHORSE Golf Club.**

Councilmember Rasmussen moved to assign the matter to the Public Works Committee, seconded by Taylor and carried unanimously.

**13. OTHER BUSINESS - None**

- 2720 **ADJOURN.** There being no further business, the meeting was adjourned at 12:15 A.M.

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Martha Heizer, City Clerk