

## Minutes

Audio Tape No. 625

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, April 5, 2004. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** Mike Gill.

**Staff present:**

Scott Lambers, City Administrator  
Ben Florance, Chief, Fire Dept.  
Sid Mitchell, Chief, Police Dept.  
Karl Weinfurter, Info Systems Specialist  
Deb Harper, City Clerk

Patricia A. Bennett, City Attorney  
Joe Johnson, Public Works Director  
Chris Claxton, Parks & Rec Director  
Diane Binckley, Planning & Develop. Dir.  
Emily Gleasure, Deputy City Clerk

66     **1.     PLEDGE OF ALLEGIANCE**

150    **2.     APPROVAL OF AGENDA**

Mayor Dunn advised Item "12A" would be continued to the April 19, 2004 Governing Body Meeting. She also added two items to Other Business: Item "15A," to schedule an Executive Session for a personnel matter to immediately follow the public portion of tonight's meeting; and Item "15B," to refer an issue to the Public Works Committee.

Councilmember Rasmussen made a motion to approve the Amended Agenda. Councilmember Story seconded the motion, and the motion was approved unanimously, 7-0-0.

175    **3.     CITIZEN COMMENTS**

Mayor Dunn noted that a citizen had requested to speak on Item "14A," and would be called upon at that time.

183    **4.     PROCLAMATIONS - Fair Housing Month, April, 2004**

Mayor Dunn proclaimed April 2004 as Fair Housing Month in the City of Leawood.

191    **5.     PRESENTATIONS/RECOGNITIONS – None**

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**6. SPECIAL BUSINESS –**

**A. Overview of Roe Avenue Public Improvement Project, between 124th & 135th Street [CIP # 110]**

Joe Johnson updated the Governing Body on the schedule for this CIP project. He advised there were two message boards on Roe Avenue, one northbound and one southbound, to indicate the road closing as of Wednesday, April 7<sup>th</sup> at approximately noon. Phase I of the project would include the area of Roe Avenue north of 127<sup>th</sup> Street to the bridge, and with work continuing until November. In mid-August, Phase II, that included the intersection of Roe Avenue and 127<sup>th</sup> Street, would be closed to east/west traffic on 127<sup>th</sup> Street. Both Phase I and II are planned to be completed by mid-November. No construction would be done during the winter months, with Phase III beginning in March, 2005. Construction for Phase III would include the portion of Roe Avenue south of 127<sup>th</sup> Street to 135<sup>th</sup> Street. Property owners on Linden would have access to and from their property.

Mayor Dunn confirmed with Mr. Johnson that Roe Avenue would be open from approximately mid-November until approximately April 1, 2005. Additionally, Mayor Dunn confirmed that the stone-faced walls to be constructed were of cultured stone material.

Councilmember Taylor confirmed with Mr. Johnson that no construction vehicles would be parked in Patrician Woods West, but would remain on Roe Avenue.

395 **B. Resolution No. 2200 declaring it necessary to appropriate private property for the use of the City of Leawood, Kansas for the storm water drainage improvements to the Dykes Branch [SMAC Project DB-04-024-01] between 83<sup>rd</sup> Street and Wenonga Road south to 86<sup>th</sup> Street and Overhill Road, in accordance with K.S.A. § 26-201**

*Staff Comment: This Resolution is required by Statute to initiate condemnation proceedings that Staff believes will be necessary to acquire all of the easements in order for this project to go forward.*

Councilmember Rawlings made a motion to approve the Resolution. Councilmember Taylor seconded the motion, and the motion was approved 6-1-0, with Councilmember Rasmussen opposed for reasons stated on previous occasions.

**C. Resolution No. 2201 authorizing acquisition of a permanent storm sewer easement and temporary construction easement located at 8520 Belinder, from Jim and Meghan Winne, for storm water drainage improvements to the Dykes Branch [SMAC Project DB-04-024] between 83<sup>rd</sup> Street and Wenonga Road south to 86<sup>th</sup> Street and Overhill Road**

Councilmember Dunn made a motion to approve the Resolution. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 7-0-0.

- 446    **7.    PRE-BUDGET PUBLIC HEARING            2005 Fiscal Budget**  
Mayor Dunn declared the Public Hearing open and asked twice for citizen comments. There being none, Councilmember Rasmussen made a motion to close the Public Hearing. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 7-0-0.
- 481    **8.    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.    Approval of Appropriation Ordinance No. 995
  - B.    Accept Minutes of the March 22, 2004, Governing Body meeting
  - C.    Accept Minutes of the March 5, 2004, Stormwater Management Committee meeting
  - D.    Accept Minutes of the February 26, 2004, IRONHORSE Advisory Board
  - E.    Accept Minutes of the February 24, 2004, Arts Council meeting
  - F.    Approve 6<sup>th</sup> and Final Payment in the amount of \$4,689.50, to Sunflower Construction, pertaining to the Oxford Schoolhouse Renovation Project, at 14701 Mission Road
  - G.    Approve bid in the amount of \$7,500.00, to Liberty Steel pertaining to the replacement of the stairway at Fire Station No. 2, located at 12701 Mission Road
  - H.    **Resolution No. 2202** approving and authorizing the Mayor to execute a Right-of-Way Maintenance Agreement between the City and Oddo Development Company, Inc., pertaining to Siena Subdivision, located at 140<sup>th</sup> & Mission Road
  - I.    **Resolution No. 2203** approving and authorizing the Mayor to execute a Right-of-Way Maintenance Agreement in the amount of \$58,550.28, between the City and Corporate Lawn & Landscape, pertaining to right-of-way and median maintenance
  - J.    **Resolution No. 2204** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the City of Overland Park, pertaining to the County Assisted Road System [CARS] Program for the public improvement project of 119<sup>th</sup> Street between Nall and Roe Avenue
  - K.    **Resolution No. 2205** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the City of Overland Park, pertaining to the public improvement project of Nall Avenue between 124<sup>th</sup> Street and 131<sup>st</sup> Terrace, as part of the Arterial Street Program
  - L.    **Resolution No. 2206** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$2,340,111.00, between the City and Miles Excavating, Inc., pertaining to the SMAC Stormwater Project No. JB-04-008, from Lee Boulevard to State Line and 103<sup>rd</sup> Street to I-435 Highway
  - M.    **Resolution No. 2207** approving Village of Camden Woods, 59<sup>th</sup> Plat, located south of 143<sup>rd</sup> Street and west of Kenneth Road [*from the March 23, 2004, Planning Commission meeting*]

- N. **Resolution No. 2208** approving a Final Site Plan for Leawood Fountain Plaza, located at 11111 Nall Avenue *[from the March 23, 2004, Planning Commission meeting]*

Councilmember Rasmussen made a motion to approve the Consent Agenda. Councilmember Gullede seconded the motion, and the motion was approved unanimously, 7-0-0.

499 **9. MAYOR'S REPORT**

- A. Attended the Johnson County Suburban Arts Initiative, a 2-day forum held at Johnson County Community College. The three main premises discussed were 1) art enhances livability and recruitment; 2) art preserves the beauty and integrity of the area; and 3) arts and economics are linked together in Johnson County's cultural planning process.
- B. Attended the Culver's Custard of Kansas City grand opening ceremony at their new location, 80<sup>th</sup> Street and State Line Road, with Councilmember Gullede.
- C. Attended a Bi-State II Session with other Kansas Mayors held in Overland Park. The Arts Component was discussed. Mayor Dunn directed the Council's attention to a flyer they received, inviting them to the Bi-State Informational Presentation; Sports Stadiums and the Arts, on Wednesday, May 5<sup>th</sup> at 7:30 P.M.
- D. Advised that a cleaning day along Tomahawk Creek Trail was planned for Saturday, April 17<sup>th</sup>.
- E. Discussed the voting issues on the April 6, 2004 ballot, including the Shawnee Mission School District question, and the race for a new Councilmember in Ward I. She congratulated the incumbent Councilmembers Gullede, Bussing and Rasmussen who were running unopposed in Wards II, III and IV respectively.
- F. Announced the Leawood Arts Council exhibit of paintings by Robert LeBrón at Gold Bank. A reception is to be held Friday, April 16<sup>th</sup> from 5:30-7:30 P.M.

704 **10. COUNCILMEMBERS' REPORT - None**

708 **11. STAFF REPORT - None**

**COMMITTEE RECOMMENDATIONS**

**12. PLANNING COMMISSION**

*[from the February 24, 2004, Planning Commission meeting]*

- A. Resolution approving a Final Site Plan and Final Plat for Leawood Market Center located on the southeast corner of 135<sup>th</sup> Street and Kenneth Road *-[Continued from the March 22, 2004, Governing Body meeting] - TO BE CONTINUED TO THE APRIL 19, 2004 GOVERNING BODY MEETING*

710 **13. OLD BUSINESS - None**

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**14. NEW BUSINESS**

A. Discussion of the City of Leawood's requirement of ICC certification of roofing materials.

*Staff Comment: The City of Leawood by ordinance requires that all roofing materials that are installed within the City receive and maintain an ICC certification. Over the past several months, there have been several requests by city residents to utilize a roofing material that has yet to be certified by the ICC. Therefore, the City Administrator has denied the installation of such materials. The manufacturer has stated that they are in the process of securing ICC certification and this process should be completed within the next 6 months. The Governing Body may want to consider allow the staff to issue 'at-risk' permits for the installation of this material while the certification process is pending.*

Scott Lambers stated that several Leawood homeowners had approached the City requesting the installation of a roofing material, CertainTeed, that was currently not certified with the ICC. Because it did not meet the ICC regulations, the requests had been denied. In discussing the problem with Mayor Dunn, she had suggested issuing an at-risk permit. Mr. Lambers stated he had the authority to issue these permits, but only when an interpretation of a code or ordinance was at stake, and the issue was going before an appeal board. He did not have the authority to issue the permits that would be in direct contradiction with the explicit words of an ordinance. He asked for authority to be given to him by the Governing Body to issue the at-risk permits during the time the manufacturer's certification was being processed, through December 31, 2004. If certification had not been obtained by that time, Mr. Lambers would return to the Governing Body with a statement from the manufacturer on the certification status. If documentation was insufficient, homeowners utilizing the at-risk permit would be given 90 days to come into compliance with the City Code. There was no reason to believe the material would not receive its certification.

Councilmember Story stated he was not opposed to issuing the at-risk permits, but wondered if this could be prevented in the future. Mr. Lambers stated the City was not in a position to evaluate the certification worthy-ness of any material, so it was likely this circumstance would occur again. He noted that liability would be with the homeowner, and the City would have authority to order roof removal if necessary. Failure to comply would result in citations being issued and prosecution ensuing.

891 Councilmember Taylor confirmed with Mr. Lambers that the issue involved only one product from one manufacturer who had a reputation for providing good material. It was also clarified that the homeowners would be given 90 days past the December 31, 2004 certification date, with the weather also being a determining factor. Councilmember Taylor confirmed with Patty Bennett that citations issued would be \$100.00 per day, which would continue until the homeowner came into compliance. Excessive fines for the same infraction could increase the daily fine.

Councilmember Rawlings confirmed with Diane Binckley that the request was due to the slate color option that included a shadow line around the shingle. Councilmember Taylor noted that the change in the weight of the roofing material was a factor in it not being approved by the ICC. Mr. Lambers stated there were several specific cases where the material had been used that would cause hardship to homeowners if they were required to remove it.

1118 Councilmember Rasmussen stated the reason the City had become involved in the regulation of roofing materials was to prevent citizens from being conned into purchasing products that were of poor quality. Manufacturers of such materials were costly to the City, consumptive of Staff time, and legal retribution was frequently unproductive.

Mayor Dunn stated there was currently a situation in which a homeowner had come to City Hall for approval for roofing material, had received a permit, and the roofing company had then put on a different material. The owners were hoping to be given a grace period to allow the manufacturer to obtain their certification before being required to replace their new roof. She stated she was looking for a creative, non-bureaucratic response to this problem.

Councilmember Bussing related a similar situation in his Ward. He suggested allowing Mr. Lambers to provide administrative relief to the homeowners in these situations.

1374 Councilmember Gullede suggested handling the roofing problems on an individual basis, rather than granting permits to anyone who requested them. Ms. Bennett stated this could be achieved by specific wording of a motion.

1460 Councilmember Rasmussen made a motion to continue this discussion to the April 19<sup>th</sup> Governing Body meeting, allowing Staff time to compile a listing of specific cases that needed exceptional approval. Councilmember Gullede seconded the motion.

1517 G. Gordon Thomas, 10516 Mohawk Lane, discussed the roofing issue, asking the Governing Body to restrict roofing products and thus prevent the risk being passed on to the homeowners.

Councilmember Taylor stated the product in question was recognized as a fine material by a quality manufacturer. He stated the ICC certification had nothing to do with the process of manufacturing. He further stated he thought it necessary in this case for Staff to recognize the product by allowing the permits, but at the same time cautioning the homeowner that they may have to remove the roof at a later date or be faced with a fine if they decide to go ahead with the installation of the product.

1754 Mayor Dunn restated the motion. The vote was as follows: Yea: Councilmembers Rasmussen, Story, Rawlings and Gulledge. Nay: Councilmembers Bussing, Dunn and Taylor. The motion carried.

For the record, Councilmember Dunn stated he agreed with Councilmember Taylor that Staff should have the ability to grant the permits. Councilmember Bussing stated he felt Mr. Lambers should have discretionary authority. He further stated the cases he wished to see brought before the Council on April 19<sup>th</sup> should be those in which the homeowner was harmed through no fault of their own, not homeowners who purposefully violated the Code.

1921 **15. OTHER BUSINESS**

**\*A. Schedule Executive Session immediately following the regularly scheduled Governing Body meeting on April 5, 2004 to discuss Personnel Matter**

Councilmember Bussing made a motion to schedule the Executive Session. Councilmember Gulledge seconded the motion, and the motion was approved unanimously, 7-0-0.

**\*B. Referral to Public Works Committee regarding sidewalk and traffic concerns in and around the Pavilions Subdivision**

Councilmember Bussing stated some residents of the Pavilion subdivision had concerns regarding 1) a sidewalk along Mission Road and 2) traffic problems at the Park entrance. He asked that these matters be referred to the Public Works Committee for discussion on Wednesday, April 7, 2004, to give the residents a chance to voice their concerns.

Councilmember Dunn made a motion to approve the referral. Councilmember Rasmussen seconded the motion, and the motion was approved unanimously, 7-0-0.

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**16. ADJOURN**

There being no further business, the meeting was adjourned at 8:30 P.M.

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Debra Harper, City Clerk

Emily Gleasure  
Recording Deputy City Clerk