

Minutes

DVD No. 187

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, May 5, 2008. Mayor Peggy Dunn presided.

Councilmembers present: Gregory Peppes, Gary Bussing, Jim Rawlings, Lou Rasmussen Debra Filla, Julie Cain, James Azeltine, and Mike Gill

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Lovina Freeman, HR Director
Joe Johnson, Public Works Director
Mark Klein, Asst. to the Planning Director
Jeff Joseph, Senior Planner

Patty Bennett, City Attorney
Kathy Rogers, Finance Director
Chris Claxton, P&R Director
Karl Weinfurter, Info. Systems Specialist
Deb Harper, City Clerk
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the addition of Item Nos. 6B and 6C to the agenda and an additional document added to Item No. 6F placed upon the dais.

City Administrator Scott Lambers, asked that Item No. 7G be continued to the May 19, 2008 Governing Body meeting. Mayor Dunn asked Parks and Recreation Director Chris Claxton to give an update on the new initiative program, regarding a healthy lifestyle under the Staff Report. Mayor Dunn noted there would be a personnel matter added to Item No. 14C; the Governing Body Executive Session.

A motion to approve the agenda was made by Councilmember Rasmussen; seconded by Councilmember Gill.

Mayor Dunn noted there would be additions to the Councilmembers Report from Councilmembers Azeltine and Peppes.

The motion to approve the agenda carried following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

Mayor Dunn recognized Mary Prewitt, The Humane Society of the United States. Ms. Prewitt stated she was there to speak only if the coyote issue was going to be discussed. Mayor Dunn noted it was scheduled to be heard on May 19, 2008, due to the public anticipating that date.

Councilmember Filla noted the report on coyotes given to Council by City Administrator Scott Lambers was an excellent report and questioned if it could be available to interested citizens or linked to the City's website. Mr. Lambers stated there were copies of the report at the front counter if anyone were interested. Mayor Dunn asked that the same information be made available on the City's website.

4. PROCLAMATIONS – None. Municipal Clerks Week, May 4 – 10, 2008

Mayor Dunn asked City Clerk Deb Harper and Deputy City Clerk Pam Gregory come forward to accept the proclamation. Mayor Dunn read the proclamation into the record and thanked them for their work.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

Mayor Dunn noted new material for Item Nos. 6A and 6B placed upon the dais.

- A. Request to re-file application for one-year Special Use Permit [SUP] for Molle Toyota, located at 105th Street and State Line Road

A motion to approve the request was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Mayor Dunn questioned why the application was returned for approval when it was denied by Council approximately seven months ago. City Attorney Patty Bennett stated she had discussed with Larry Wynn, attorney for the applicant, if there could be a motion to reconsider and possibly waive the time limit of re-application, as this had been done in the past.

Larry Wynn, 6201 College Boulevard, stated they wanted the opportunity to re-file the application four months before they would ordinarily be able to, and noted this would be the best way to get it before the Council to begin again.

Mayor Dunn noted the motion to allow the re-filing was not in any way an indication of how it would be received, and stated it would be to re-file for a one-year period.

The motion carried with a unanimous vote of 8-0.

- *B. **Resolution No. 3019** approving and authorizing the Mayor to execute an Amended Lease Agreement between the City and Orion Management Solutions, Inc., pertaining to the serving of alcoholic beverages at the Ironhorse Golf Club, located at 15400 Mission Road***C.** Resolution approving and authorizing the Mayor to execute a Fourth Amendment to that certain Agreement dated October 16, 2006, between the City of Leawood, Kansas and Orion Management Solution, Inc., for the management of the IRONHORSE Golf Course [2007-2009]

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

- *C. **Resolution No. 3020** approving and authorizing the Mayor to execute a Fourth Amendment to that certain Agreement dated October 16, 2006, between the City of Leawood, Kansas and Orion Management Solution, Inc., for the management of the IRONHORSE Golf Course [2007-2009]

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 8-0.

7. **CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted 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. Accept Appropriation Ordinance Nos. 1102A and 1102B
- B. Accept Minutes of the March 31, 2008 Governing Body meeting
- C. Accept Minutes of the March 27, 2008 IRONHORSE Advisory Board meeting
- D. Approve renewal of Retail Liquor Store License for Wolff's Fine Wines & Spirits, located at 11841 Roe Avenue
- E. Mayoral Appointment for Governing Body Presiding Officers from May 2008 through April 2009
- F. Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards
- G. Resolution establishing a fee, not specifically provided for in the Code of the City of Leawood, 2000, specifically for the Planning & Development Tenant Finish Plan, in accordance with Section 1-701 of the Code of the City of Leawood, 2000 – *Continued to May 19, 2008 Governing Body meeting.*

- H. **Resolution No. 3015**, ordering a public hearing to be held on June 2, 2008, at 7:30 P.M., or as soon thereafter as may be heard, on the proposed assessments for the Villaggio Stormwater Detention Project, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [CIP # 83198]
- I. **Resolution No. 3016**, ordering a public hearing to be held on June 2, 2008, at 7:30 P.M., or as soon thereafter as may be heard, on the proposed assessments for construction of improvements to Nall Avenue at the intersection thereof with 135th Street and south to 137th Street within the City of Leawood, Kansas, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [CIP# 83192]
- J. **Resolution No. 3017**, ordering a public hearing to be held on June 2, 2008, at 7:30 P.M., or as soon thereafter as may be heard, on the proposed assessments for construction of 133rd Street between Roe Avenue and the western city limit; Briar from 133rd Street south to 135th Street; 135th Street from the western city limit east to Roe Avenue and Roe Avenue between 133rd Street and 135th Street and other amenity features, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [Parkway Plaza] [CIP # 83195]
- K. **Resolution No. 3018**, ordering a public hearing to be held on June 2, 2008, at 7:30 P.M., or as soon thereafter as may be heard, on the proposed assessments for Stormwater and Erosion Control Improvements along west side of Ironhorse Golf Course , located at 15400 Mission Road, pursuant to K.S.A. § 12-6a01 et seq., and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments SMAC Project NC-04-001 [CIP # 80172]
- L. **Resolution No. 3021** approving a Final Site Plan for One Nineteen - JP Wine Bar & Coffeehouse, located at the southeast corner of 119th Street and Roe Avenue [from the April 22, 2008 Planning Commission meeting]
- M. **Resolution No. 3022** approving a Final Site Plan Park Place - Ra Sushi, located at the northeast corner of 117th Street and Nall Avenue [from the April 22, 2008 Planning Commission meeting]
- N. **Resolution No. 3023** approving a Final Site Plan for One Nineteen - Revised Design Criteria, located at the southeast corner of 119th Street and Roe Avenue [from the April 22, 2008 Planning Commission meeting]
- O. **Resolution No. 3024** approving a Final Site Plan for One Nineteen – Elizabeth Salon, located at the southeast corner of 119th Street and Roe Avenue [from the April 22, 2008 Planning Commission meeting]

A motion to approve the Consent Agenda was made by Councilmember Gill; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 8-0.

8. MAYOR'S REPORT

- A. Attended the grand opening and ribbon cutting ceremonies for Phase I of Park Place along with City Administrator Scott Lambers, Councilmembers Filla, Rawlings, Azeltine, and Parks and Recreation Director Chris Claxton. Also in attendance were Leawood Chamber of Commerce Board of Directors Chair Tom Robinett and President Kevin Jeffries. Mayor Dunn stated it was a very exciting event and thanked Park Place Developers Jeffrey Alpert and Melanie Mann. Mr. Alpert stated the success of Park Place was due to the incredible level of support from the Council, Staff, and the City of Leawood. Alpert stated the success of Park Place was due to the incredible level of support from the Council, Staff, and the City of Leawood.
- B. Attended the Arbor Day Celebration with the planting of three Littleleaf Linden trees. Mayor Dunn thanked the Leawood Foundation and the Leawood Woman's Club for their donations that made the trees possible. She also noted appreciation to the Parks and Recreation Department and Director Chris Claxton for planting the trees. The Leawood Foundation created the *Trees of Leawood* logo. Mayor Dunn thanked Leawood's 60th Anniversary Co-Chairman Alice Hawk for all of her hard work.
- C. Attended the Shawnee Mission Education Foundation's *Celebrate Success* Luncheon with City Administrator Scott Lambers. The luncheon was held in honor of Dr. Marjorie Kaplan and her extraordinary career as Superintendent of the Shawnee Mission School District. Mayor Dunn stated Dr. Kaplan had 40,000 graduates during her career and wished her success in the future.
- D. Attended a community luncheon hosted by the Metropolitan Organization to Counter Sexual Assault [MOCSA] along with Major Troy Rettig, Captain Dale Finger and other members of the Leawood Police Department. Also in attendance was Leawood Chamber President Kevin Jeffries.
- E. Attended a breakfast hosted by the United Community Services [UCS] of Johnson County Council of Advisors. Mayor Dunn stated there were a number of presentations; including, a presentation by retired District Court Judge Sam Bruner on the Johnson Countians for Justice Program. Dr. Bob Clark, Kansas University Edwards Campus, gave a presentation on the Johnson County Education and Research Triangle. Executive Director Karen Wulfkuhle presented the Regional Demographic Profile and an update on the United Community Services' Strategic Planning Status Report. Mayor Dunn noted she had some documentation to be distributed to Council.
- F. Mayor Dunn welcomed and congratulated new Director General Dale Jieh of the Taipei Economic and Cultural Office in Kansas City. She noted he was assigned to office on May 3, 2008.
- G. Mayor Dunn noted reminders for Thursday, May 8, 2008, The Kansas City Symphony at Yardley Hall; and a special Council meeting regarding discussion of the Oddo Development plan on Monday, May 12, 2008, at 7:00 P.M.

9. COUNCILMEMBERS REPORT

- A. Councilmember Azeltine noted he had received a call from a citizen located in the Pavillions of Leawood. He stated the storm sewer line discharges near the rear of some homes and the grading has caused standing water. Mr. Azeltine made a motion to refer it to the Stormwater Committee for review; seconded by Councilmember Gill. The motion carried with a unanimous vote 8-0.
- B. Councilmember Peppes made a motion to refer improvements of the 8900 Block of State Line Road to the Public Works Committee for review; seconded by Councilmember Bussing. The motion carried following a unanimous vote of 8-0.

10. STAFF REPORT

Parks and Recreation Director Chris Claxton presented a new initiative – “Live Healthy Leawood” for elementary age children to encourage more physical activity, along with better nutritional choices to live a healthier lifestyle. Currently, 50 children have registered. Ms. Claxton noted they were partnered with Commerce Bank. The children can pick up a pedometer at the bank to track their success. She noted there are three eight-week sessions. The City has applied for a \$10,000 grant from the General Mills Corporation. If the grant is denied, hopefully the program can be funded through community partners.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[From the March 25, 2008 Planning Commission meeting]

- A. **Ordinance No. 2318** approving a rezoning from AG [Agriculture] and RP-1 [Planned Single-family Residential] to R-1 [Planned Single-family low density Residential]; Preliminary Site Plan; and Preliminary Plat, for the Church of the Nativity, located north of the intersection of 119th Street and Mission Road [Roll Call Vote] –*[Continued from the April 21, 2008 Governing Body meeting]*

Mayor Dunn noted she was recusing herself due to JE Dunn Construction Company [a family owned business] giving preliminary cost estimates regarding the expansion of the Church. Councilmember Rawlings presided over the meeting in his capacity as Presiding Officer.

City Administrator Scott Lambers stated the church acknowledged the requirement that the power lines be underground. The church had requested the item be deferred to the future, no sooner than five years. They would like to finance it for a period of no less than 10 and no more than 15 years. They also requested a one-year notification that the project would move forward. Mr. Lambers stated the terms and conditions could be modified into the stipulation.

Councilmember Rasmussen made a motion to pass the ordinance with the revision of stipulation No. 19; seconded by Councilmember Azeltine.

Stipulation No. 19 should be revised to read as follows:

“All power lines, utility lines, etc. (both existing and proposed) shall be placed underground at such time as is directed by the City, provided, however, that the City will give the Applicant at least 12 months notice prior to the required undergrounding date and that such requirement shall, in no event, be mandated within the next five years. Applicant understands that it may seek to participate in a Transportation Development District or other financing, if available, for said purpose and that the City may make the determination as to the appropriate type of financing, if more than one type is available.”

Councilmember Bussing confirmed the requirement time frame and questioned if the financing options would include the Special Benefit District [SBD] or Transportation Development District [TDD]. Mr. Lambers stated it would not to be required within the next five years and at the City’s discretion thereafter. He stated it could include TDD; however, not the SBD, due to requirement that the City own the facility.

James Taylor, Church of the Nativity and The Archdioces of Kansas City, Kansas stated the City could issue general revenue bonds to aid in the expense. Councilmember Bussing confirmed with Mr. Taylor that if the City chose not to issue the revenue bonds, it would be taken off.

Councilmember Gill questioned if the church was tax exempt. Mr. Lambers confirmed this and stated the City could have an agreement of payment in lieu of taxes. Mr. Taylor noted it had been done before in other organizations. He stated the intention of the ordinance was for new, not existing development.

Councilmember Gill confirmed with Mr. Taylor they were against burying the power lines; however, the ordinance was an agreement to bury them. Mr. Taylor stated he believed the ordinance needed to be addressed in the future, due to the burden it would inflict on property owners in older neighborhoods.

Councilmember Azeltine asked if the ordinance applied only to new development. City Attorney Patty Bennett stated the ordinance applied to any new or amended preliminary or final development plan and would not apply on reconstruction of a house, unless it was a new development plan. Mr. Lambers stated the planning process allows the City to add the stipulation, and that Council has the flexibility to add it and noted it had been done before.

Mr. Lambers confirmed with Councilmember Peppes the number of votes needed in order to pass the ordinance was six.

The ordinance passed with stipulation No. 19 revised as previously stated with the following unanimous roll call vote of 8-0. Yea: Councilmembers Peppes, Azeltine, Rawlings, Filla, Bussing, Cain, Gill, and Rasmussen. Nay: None.

- B. **Resolution No. 3025** approving a Final Site Plan and Final Plat for Church of the Nativity, located north of the intersection of 119th Street and Mission Road
[Continued from the April 21,2008 Governing Body meeting]

The motion to approve the resolution with stipulation No. 19 revised as previously stated was made by Councilmember Rasmussen; seconded by Councilmember Gill. The motion carried with a unanimous vote of 8-0.

- C. **Ordinance No. 2319** approving a Special Use Permit for the Church of the Nativity, located north of the intersection of 119th Street and Mission Road [Roll Call Vote] [*Continued from the April 21, 2008 Governing Body meeting*]]

A motion to pass the ordinance with stipulation No. 19 revised as previously stated was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion carried with the following unanimous roll call vote of 8-0. Yea: Councilmembers Peppes, Rawlings, Bussing, Gill, Filla, Cain, Rasmussen, and Azeltine. Nay: None.

12. **OLD BUSINESS – None.**

13. **OTHER BUSINESS – None.**

14. **NEW BUSINESS**

- A. **Resolution No. 3026** pledging the intentions of the Governing Body of the City of Leawood, Kansas, if the City is re-authorized by the electorate to levy a one-eighth of one percent [.125%] City Retailers' Sales Tax

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried with a unanimous vote of 8-0.

Mayor Dunn rejoined the meeting.

Councilmember Bussing recalled discussion that the County Commissioners requested a statement with regard of intent to allocate the funds. Mayor Dunn noted that the item for discussion currently was the Governing Body's initiative and that discussion took place during a previous work session. She noted motion from Councilmember Rasmussen of the intent; however, the minutes were not included with the current agenda. Mayor Dunn noted she would send an e-mail to Chairman Surbaugh and include a copy to all Councilmembers.

Councilmember Rasmussen stated he voted for approval of the resolution based upon Council reviewing the item he had spoke about in a Governing Body Work Session he felt was inappropriate use of taxpayers' money.

- B. **Resolution No. 3027** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the Board of Johnson County Commissioners [BOCC] pertaining to the creation and establishment of the Transportation Cooperation Council [TCC] as a collaborative organization to serve as an advisory board to maintain and improve the community's mobility through a unified vision of transportation

Staff Comment: The City Council has been requested to approve the Interlocal Cooperative Agreement with the understanding that the voting standard and method that is currently proposed, a simple majority of the TCC membership, will be replaced with a different standard and methodology which will require a majority of the TCC membership and a majority from each of the classes of cities. This change is intended to provide a "weighting" component into the voting process.

Mayor Dunn thanked Councilmembers Rasmussen and Azeltine for their participation on this project. She noted the resolution was an amended version and if approved, Councilmember Azeltine agreed to serve as the Leawood representative, with Councilmember Cain as the alternate.

Mayor Dunn stated the language regarding land use planning that impacts transportation issues was the deleted language at the request of some cities of the first class. She noted the reason for the amended third version was to incorporate the voted "weighting" model at some point in the future. Mayor Dunn stated the three classes of cities [1st, 2nd, and 3rd] would each need a majority voting for the item, and as a whole, there would need to be a majority vote. If there was a tie, normally it would fail; however, it would be the opposite in this situation and would pass due to the numbers in the cities of the second class.

Councilmember Azeltine questioned if there was a deadline for voting on it before the changes were added. Mr. Lambers stated it was anticipated that the remaining cities of Johnson County would participate. They would then propose to amend the Inter-local Agreement [ILA] to change the current voting process. Councilmember Azeltine questioned if the current approval was to not wait by class. Mayor Dunn confirmed and stated other cities had already approved another version. Mayor Dunn stated that Commissioner John Segale noted that in the interim; all Transportation Cooperation Council [TCC] meetings that occur prior to August 1, 2008, or before all cities have approved version three, it's anticipated that by August 1st, version three would be approved. There was also discussion that if by October 1, 2008 that did not occur, some cities of the first class would withdraw. Mayor Dunn stated the City of Leawood has the option to withdraw at any time. The intent would be to withdraw if the "weighting" voting model did not move forward. Mr. Lambers stated the participation of the cities of the first class would be contingent on that change, due to their belief that larger growing cities would be the most impacted.

Councilmember Gill questioned what the TCC could do. Mr. Lambers stated it was intended to be an advisory entity to coordinate County-wide transportation issues. The language that was removed had the possibility of them getting involved in local land use decisions; therefore, an individual zoning application could be subject to their review. Mr. Gill stated he would support it because having a metropolitan-wide mode of transportation was important; however, felt it was a poor governance model.

The motion to approve the resolution was made by Councilmember Azeltine; seconded by Councilmember Bussing. The motion carried with a unanimous vote of 8-0.

- C. Schedule a Governing Body Executive Session immediately following the regular meeting on Monday, May 5, 2008, for preliminary discussions relating to the acquisition of real property & Personnel Matter on non-elected personnel

A motion to approve the Executive Session for a time period of 45 minutes was made by Councilmember Peppes; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

The Governing Body recessed into Executive Session at 8:30 P.M.

The Mayor and Council reconvened into regular session at 9:15 P.M. A motion was made by Councilmember Azeltine, seconded by Councilmember Bussing authorizing staff to pursue the disposal of City-owned real property located at 114th and Tomahawk Creek Parkway, and appraisal and acquisition of real property located on the northeast corner of 117th and Roe Avenue for public use. The motion was approved by the following vote of 6-2. Yea: Councilmembers Peppes, Cain, Bussing, Rawlings, Gill, and Azeltine: Nay: Councilmembers Rasmussen and Filla.

ADJOURN

A motion was made by Councilmember Bussing; seconded by Councilmember Peppes to adjourn the meeting. The motion was approved by a unanimous vote and the meeting was adjourned at 9:20 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk