

**Minutes**

DVD No. 143

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 15, 2006. Mayor Peggy Dunn presided.

**Councilmembers present:** Lou Rasmussen, Scott Gullledge, Gary Bussing, Debra Filla, Gregory Peppes, Mike Gill, and James Azeltine.

**Councilmembers absent:** Jim Rawlings.

**Staff present:**

Scott Lambers, City Administrator  
Chief Ben Florance, Fire Department  
Kathy Rogers, Finance Director  
Chris Claxton, P&R Director  
Christy Wise, Deputy City Clerk  
Karl Weinfurter, IS Specialist

Shannon Marcano, Assistant City Attorney  
Chief Sid Mitchell, Police Department  
Joe Johnson, Public Works Director  
Mark Klein, Senior Planner  
Jeff Joseph, Planner

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn stated the agenda will include a report from Councilmember Rasmussen under Item No. 9, Councilmembers' Report. She also noted additional information upon the dais regarding Item No. 11B.

**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.**

**4. PROCLAMATIONS**

**Police Week, May 14-20, 2006**

Mayor Dunn read and presented the Police Week proclamation to Police Chief Sid Mitchell while in the presence in the Leawood Police Department Color Guard, who led the Pledge of Allegiance.

**National Public Works Week, May 22-26, 2006**

Mayor Dunn read and presented the National Public Works Week proclamation to Public Works Director Joe Johnson.

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

**6. SPECIAL BUSINESS – None.**

**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. 1050B & 1051A
- B. Accept Minutes of the May 1, 2006 Governing Body meeting
- C. Accept Minutes of the April 17, 2006 Governing Body Work Session meeting
- D. Accept Minutes of the April 11, 2006 Historic Commission meeting
- E. Accept Minutes of the April 10, 2006 IRONHORSE Advisory Board meeting
- F. Accept Minutes of the April 11, 2006 Parks and Recreation Advisory Board meeting
- G. Approve Change Order No. 3 in the amount of \$8,000 to Miller Paving, pertaining to the 2005 Residential Street Improvement Project
- H. Approve Change Order No. 1, in the amount of \$19,790 to Pyramid Contractors, Inc., pertaining to the trail connection located at 123<sup>rd</sup> Street and Roe Avenue
- I. Approve Change Order No. 1 in the amount of \$157,000, to Musselman & Hall Contractors, LLC, pertaining to the 2006 Slurry Seal Program
- J. Approve Massage Establishment License for Alexis S. Marrs, d/b/a, Professional Body Works located at 8900 State Line Road, Suite # 355
- K. Approve waiver of rental fees at the Amphitheater for June 4, 2006 [June 11<sup>th</sup> rain out date] Katrina victims fund raising event
- L. Resolution No. 2597 accepting Temporary Construction Easement from property owner, Arlen Guy Wickstrum, 8300 Cherokee Lane, pertaining to the Dykes Branch Channel Improvement Project, [SMAC Project DB-04-024] between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

- M. Resolution No. 2598 approving and authorizing the Mayor to execute a Service Agreement in the amount of \$25,055.00, between the City and Danco Painting Company, pertaining to the repair and painting of walls in the Oak Room located in the Community Center
- N. Declaration of several Police and Public Works Vehicles as surplus property
- O. Fire Department Monthly Report
- P. Municipal Court Monthly Report
- Q. Police Department Monthly Report

Councilmember Azeltine requested to pull Item No. 7A for discussion. On motion of Councilmember Bussing, seconded by Councilmember Gullede, the remainder of the Consent Agenda was approved following a unanimous vote of 7-0.

- 7A. Accept Appropriation Ordinance Nos. 1050B & 1051A

Councilmember Azeltine requested documentation from Staff to explain the nature of all future credit memos. City Administrator Scott Lambers stated the information would have to be listed separately from the actual Appropriation Ordinance.

A motion to approve Item No. 7A was made by Councilmember Azeltine; seconded by Councilmember Gullede. The motion carried following a unanimous vote of 7-0.

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

- A. Participated on the Blue Ribbon Judging Panel for the Midwest Center for Holocaust Education's White Rose Student Essay Contest and subsequently attended the reception honoring the student essay authors and their parents. The mission for the Midwest Center for Holocaust Education is to teach the history and the lessons of the Holocaust to people of all races and religious beliefs throughout the Midwest. Mayor Dunn congratulated the participating students throughout the region on the exceptional essays.
- B. Attended the opening of the Confucius Institute at the University of Kansas Edward's Campus. The event was hosted by Governor Kathleen Sebelius and Chancellor Robert Hemenway. The mission of the institute is to teach noncredit courses in Chinese language, culture, and business in this area. The University of Kansas was chosen specifically to house the institute as it has a comprehensive program of Chinese studies and is the center of the United States.
- C. Discussed information included as packet information regarding the United Community Services Human Needs Johnson County Trends charts, which was presented at the recent UCS Board meeting. Keynote discussion items demonstrated how human needs service demands have increased with population growth. Points of interest include the highest growth increase within the last four years in the senior population being within the ages of 80-84 as well as the black community surpassing the Hispanic population in key growth by race and ethnicity.

- D. Attended ribbon cutting for Country Club Bank in Parkway Plaza.
- E. Attended ribbon cutting for Bonefish Grill in Cornerstone Shopping Center. There was also a grand opening celebration at the restaurant including a charity night benefiting Marillac Center.
- F. Attended the Curé of Ars DARE Graduation Ceremony with Major John Meier. Mayor Dunn extended appreciation to DARE Officer Randy Wiler for his outstanding work with the students.
- G. Reminder that a Governing Body photograph will be taken immediately prior to the next meeting on June 5<sup>th</sup>. Mayor Dunn encouraged councilmembers to give notice as soon as possible if unable to attend on this date.
- H. Announced there will not be a Governing Body meeting on Monday, July 3<sup>rd</sup>, in recognition of the Fourth of July Holiday.

**9. COUNCILMEMBERS' REPORT – Councilmember Rasmussen's Report**

Councilmember Rasmussen requested that fellow councilmembers listen to a report from Mr. Johnson regarding the medians on Nall Avenue from 151<sup>st</sup> to 153<sup>rd</sup> Streets. Following the report, he stated consideration should be given for placing the item on the next Governing Body meeting agenda in order to obtain public input.

Mr. Johnson reviewed Overland Park's offer to provide a median break at 152<sup>nd</sup> Terrace, however not at 153<sup>rd</sup> Terrace as one exists at 153<sup>rd</sup> Street. This has been approved by the Overland Park Public Works Committee as well as the Overland Park City Council. The possibility of a break at 153<sup>rd</sup> Terrace was reconsidered and rejected as projections indicate storage will be needed for northbound traffic turning left into Overland Park at 153<sup>rd</sup> Terrace. There will be an option to modify the median in the future if it is determined that west-turning traffic at this intersection falls below current projections.

A median break at 152<sup>nd</sup> Terrace will provide full access for residents of the Villas of Ironhorse. Although some residents of Brittany Woods subdivision desired a median break at 153<sup>rd</sup> Terrace, they do have full access at 153<sup>rd</sup> Street with an open median.

Mr. Johnson informed that Staff will request acceptance of the median breaks as adopted by Overland Park at the next Governing Body meeting.

Councilmember Azeltine confirmed with Mr. Johnson the term "chicken lane" refers to no median at all. The current plan does not allow the original request by the Leawood Public Works Committee to completely eliminate the medians between 152<sup>nd</sup> and 153<sup>rd</sup> Terraces, which is an approximate one-quarter mile stretch. Other entrances into Leawood will remain open but will become right-in/right-out. From an engineering point of view, it was felt unsafe to completely omit the medians.

Mr. Johnson reviewed for Mayor Dunn that future action will be a Staff request to proceed forward with improvements to Nall Avenue with a second median break at 152<sup>nd</sup> Terrace in addition to the break at 153<sup>rd</sup> Street.

Councilmember Azeltine verified with Mr. Johnson this will be the last section of Nall to undergo improvements.

Mr. Johnson affirmed for Councilmember Gullede that the new plan is an overall improvement in terms of access points for the citizens of Leawood with safety taken into account. Following the next Governing Body meeting, notices will be sent to property owners who have attended prior meetings. As Overland Park has agreed to provide full access at 152<sup>nd</sup> Terrace, Mr. Johnson stated his recommendation is to not completely omit the medians.

Mr. Johnson noted Councilmember Bussing's request to include language in the agreement regarding monitoring stacking movements at 153<sup>rd</sup> Terrace. Mr. Lambers reminded that any future median reconstruction costs will be the total responsibility of Leawood.

**10. STAFF REPORT – None.**

***COMMITTEE RECOMMENDATIONS***

**11. PLANNING COMMISSION**

*[From the April 25, 2006 Planning Commission meeting]*

- A. Ordinance No. 2167 approving a Preliminary Site Plan for the Cornerstone Claddagh Irish Pub, located on the southeast corner of 135<sup>th</sup> Street and Nall Avenue [Roll Call Vote]

On behalf of the applicant, Mike Halstead of Halstead Architects offered to answer questions related to the preliminary site plan.

Councilmember Bussing asked Mr. Halstead to address the concern under Staff Comments of “the hexagonal portion of the building appears to be architecturally incompatible with the rest of the development,” as it does not appear to be included in the stipulations. Mr. Halstead stated it was agreed upon at the April 25<sup>th</sup> Planning Commission meeting to keep the hexagonal tower, however the material used must be cast stone. Mr. Lambers verified Staff's position to allow the exterior signature element with suggestion that it be modified to a more circular nature as long as it can be maintained on the interior as it is a main seating area for the restaurant. The Planning Commission did not object to the feature as proposed.

Mr. Halstead clarified for Councilmember Gullede further agreements made at the Planning Commission meeting as:

1. Open space ratio recommendation of 30%. Mr. Halstead stated this requirement has been met and confirmed in a letter to Staff from Duane Hicks of Klover Architects.
2. Keeping the hexagon tower as long as the correct cast stone approved for the development is utilized. Other façade materials such as the brick colors and simulated stucco were approved.
3. The design of the water feature will be submitted by the developer, RED Development.
4. Shutters rather than fake windows will be used on the back of the building.
5. Landscaping rather than wooden doors will be used to screen the electrical transformers behind the building.
6. Leawood color green will be used on some of the interior tile features.

Regarding Stipulation No. 14, Councilmember Peppes confirmed with Planner Jeff Joseph that signage will be discussed at the time of final application.

Councilmember Gill asked how any anticipated parking issues would be handled. Mr. Halstead stated 2-3 spots have been added since the previous site plan with parking areas pushed against adjacent developments. He expressed desire to work with Staff on alternatives to increase parking. Mayor Dunn noted there is cross-parking within the development. Mr. Halstead felt there would be adequate parking on general business days, however not for special events such as St. Patrick's Day.

Mayor Dunn confirmed with Mr. Joseph that the 30% open space requirement has been met.

A motion to approve the preliminary site plan was made by Councilmember Gullede; seconded by Councilmember Peppes.

Mayor Dunn inquired if the restaurant would allow smoking. Mr. Halstead informed there is an exterior smoking area in the outdoor patio space.

Councilmember Azeltine commented the Planning Commission did not push the issue of the hexagon shape as the development has become an eclectic mix of architectural styles even though the Master Plan requires prairie style buildings. In order to prevent this from occurring in the future, he suggested performing a case study of Cornerstone Development to assess why the finished building designs are vastly different from the original Master Plan. Mr. Halstead offered the solution of restricting tenants to meet certain design motifs. Mayor Dunn stated Councilmember Azeltine's point is pertinent to the fact that a number of the Cornerstone tenants have a trademark appearance.

The ordinance passed with the following unanimous roll call vote of 7-0: Yea: Councilmembers Filla, Gill, Azeltine, Bussing, Peppes, Rasmussen, and Gullede. Nay: None. (Councilmember Rawlings absent).

*[From the March 28, 2006 Planning Commission meeting]*

- B. Resolution No. 2599 approving a Final Site Plan for 2020 W. 89th Street Parking Lot located at 2020 W. 89<sup>th</sup> Street – *[Continued from the April 17, 2006 and May 1, 2006 Governing Body meetings]*

Mayor Dunn noted an addendum to the Public Works Memorandum concerning this case at the dais.

Mr. Lambers stated the applicant has just submitted a revised proposed terms of pedestrian trail easement. Copies of the document were distributed to the Governing Body.

Councilmember Azeltine announced he would abstain from voting on this item for reasons stated at the previous Governing Body meeting.

Mr. Lambers recommended approval of the application with the following revisions to the proposal included as stipulations:

1. Item No. 1 should include the words “subject to Staff approval” following the word “drawing” in the first sentence.
2. Item No. 4 should include a period after the word “trail” with the following language deleted.
3. Deletion of the second sentence should occur in Item No. 7.
4. Item No. 8 should be completely omitted.

On behalf of the applicant, Curtis Holland, Esq., Polsinelli, Shalton et al., provided a brief history of the property including problems associated with the building being underparked. A prospective tenant is interested in the building subject to additional parking. He noted the request is in compliance with the 4.0 parking allowance.

Mr. Holland stated progress has been made with Staff regarding the easement issue. The applicant is in agreement with Mr. Lambers’ modifications concerning the proposal with the exclusion of deleting the second sentence in Item No. 7. The proposed item reads as follows:

“The easement shall be granted to the City prior to obtaining a building permit for the parking lot expansions. If the City shall fail to obtain a similar easement for the property to the north within 5 years, the easement shall be vacated by the City and returned to the Property Owner.”

Managers of the property are concerned with having an open-ended obligation lasting an uncertain period of time as this could essentially devalue assets of the shareholders. Mr. Holland suggested the alternative of releasing the applicant from financial obligation of constructing the trail if the City cannot acquire an easement to the adjacent northern property within a certain time frame. Another option would be to cap the cost of the trail with the current estimate of \$25,000. Mr. Holland also reported there is now a higher comfort level concerning liability following discussion with the applicant’s insurance carrier.

Mayor Dunn quoted a section of Item No. 1 as, "To protect the pedestrians using the trail, every attempt shall be made to provide for some separation between the trail and the drive aisle (i.e. shrubs, grass strip, etc.)," and questioned whether there would be enough room given previous concerns related to the required width of the trail. Mr. Lambers stated the separation will be tertiary to providing an adequate width for the trail and to being a safe distance from the ravine to the south. If there is a possibility to provide separation from the curb by way of shrubbery or perhaps a lawn strip, the City will make a good faith effort to do so. Mr. Holland stated understanding to this point. Use of a high-backed curb was confirmed by Mr. Lambers.

Mr. Lambers clarified for Councilmember Filla it is the applicant's preference to defer construction of the trail on the north property line until an easement has been obtained from the adjacent property owner to allow continuation of the walkway. Regarding the desire for obligation finality, Mr. Lambers stated it would be reasonable to incorporate terms to release the easement should development occur to the north and preclude the trail from going forward as anticipated. Ending the trail at the applicant's north property line would be nonsensical.

If northward continuation of the trail is prevented, Councilmember Filla suggested the applicant create a circular walkway by looping the northern portion towards the front of the building for employee usage.

Councilmember Bussing verified with Mr. Lambers that property immediately north of the proposed parking lot is currently green space and is owned by the development group of Ward Parkway Shopping Center. This area was once envisioned as a pocket park.

Councilmember Peppes thanked Mr. Holland for compromises made to provide the pedestrian trail and assured him that future development to the north will be asked to do the same. Although it is not the ideal solution for his client, Mr. Holland agreed to the addition of a clause releasing the easement if continuation of the trail is not possible.

Councilmember Rasmussen asked the rationale of requiring a width of 10-feet for trails but only 5-feet for sidewalks. Mr. Lambers explained the 10-foot width is a standard imposed by Leawood with the intention of affording bicyclers enough room to pass one another or ride side-by-side. The ADA [Americans with Disabilities Act] requires a sidewalk width of 5-feet. Mr. Lambers pointed out that most cities do not allow bicycles on the sidewalk. The southern portion of the trail can be narrowed if there are construction issues associated with the ravine in this area.

Leasing agent Bob Fagan with C.B. Richard Ellis informed Councilmember Rasmussen the normal term for an initial office lease is 5-10 years with renewal options. Occupancy is usually longer than 10 years.

A motion to approve the final site plan using the following modified proposed terms of pedestrian trail easement was made by Councilmember Peppes:

1. Item No. 1 should include the words “subject to Staff approval which shall not be unreasonably withheld” following the word “drawing” in the first sentence.
2. Item No. 4 should include a period after the word “trail” with the following language deleted.
3. Delete the second sentence in Item No. 7 and replace with, “If development to the north precludes continuation of the trail, the easement will be released.”
4. Item No. 8 should be completely omitted.

Stipulation No. 5 of the resolution will be omitted and replaced with these terms and necessary renumbering of stipulations will occur.

A second to the motion was made by Councilmember Filla.

Mayor Dunn expressed appreciation to Mr. Holland for the willingness to compromise in such a congenial manner.

The motion was approved following a vote of 6-0-1 (Councilmember Azeltine abstaining).

Councilmember Azeltine also commended the applicant’s cooperation. He impressed upon Staff that this type of discussion is more appropriate at the Planning Commission level.

**12. OLD BUSINESS – None.**

**13. NEW BUSINESS**

- A. Resolution No. 2595 providing for the offering for sale by the City of Leawood, Kansas of Transportation Development District Special Obligation Bonds, Series 2006-A [THE RESURRECTION PROJECT] in the approximate amount of \$170,000, to provide funds to finance the Resurrection Transportation Development District Project of the City; authorizing the placement agent to offer the Bonds for sale by private placement; and authorizing certain related matters and actions [CIP # 190]

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Gullledge.

Councilmember Rasmussen confirmed with Mr. Lambers that all property owners within this area have agreed to participate in the project with the exclusion of two. Attorney Larry Winn has indicated readiness to make a submittal to the City. It is anticipated that a certain property owner on 135<sup>th</sup> Street and State Line Road will submit a separate TDD application. In theory, the balance of the undergrounding will occur all at once.

Councilmember Gill voiced favor of approving the item, however stated concern for the City's protection as issuer of the Bonds. Mr. Lambers affirmed the investment letter included in the packet will serve as an adequate safeguard, however Councilmember Gill requested confirmation from Bond Counsel Bryan Cave and from the placement agents. Finance Director Kathy Rogers informed the documents were prepared by Bryan Cave. Councilmember Gill requested that an additional letter be obtained from Bryan Cave informing that adequate disclosures, etc., have been made. Mr. Lambers stated the main security defense is the private placement requirement of the City, which assures that the purchasers have full knowledge as to the creditworthiness of the Bonds. The City will not be involved if there is a default.

Following discussion regarding the special assessment property tax mechanism of payment from property owners, the motion carried with a unanimous vote of 7-0.

- B. Resolution No. 2596 providing for the offering for sale by the City of Leawood, Kansas of Transportation Development District Special Obligation Bonds, Series 2006-B [THE CORNERSTONE PROJECT] in the approximate amount of \$485,000, to provide funds to finance the Cornerstone Transportation Development District Project of the City; authorizing the placement agent to offer the Bonds for sale by private placement; and authorizing certain related matters and actions [CIP # 191]

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Gill. The resolution was approved following a unanimous vote of 7-0.

**14. OTHER BUSINESS – None.**

Councilmember Gullede requested to make an announcement. He expressed gratitude to Mayor Dunn and Mr. Lambers for the tireless hours they have contributed in trying to resolve the Johnson County tax issue associated with House Bill 2689.

**ADJOURN**

The Governing Body meeting adjourned at 8:55 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk