

**Minutes**

Audio Tape No. 588

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:00 P.M., on Monday, May 19, 2003. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** None

**Staff present:**

Scott Lambers, City Administrator  
Ben C. Florance, Fire Chief  
Joe Johnson, Public Works Director  
Colleen Browne, H.R. Director  
Diane Binckley, Planning & Develop Dir.  
Kathy Rogers, Finance Director

Patricia A. Bennett, City Attorney  
Craig Hill, Major, Police Dept.  
Chris Claxton, Parks & Rec. Dir.  
Jeff Cantrell, Neighborhood Serv. Adm.  
Deb Harper, City Clerk  
Mark Andrasik, Info. Systems Dir.

98      **1.      PLEDGE OF ALLEGIANCE**

165      **2.      APPROVAL OF AGENDA**

Mayor Dunn removed Item 7B from the Consent Agenda for clarification, and continued it to the June 2, 2003 meeting, and Item 14J was withdrawn. Councilmember Rasmussen made the motion to approve, seconded by Councilmember Taylor. The vote was unanimous with a 6-0 vote of Councilmembers present.

**3.      CITIZEN COMMENTS - None**

**4.      PROCLAMATIONS - None**

198      **5.      PRESENTATIONS/RECOGNITIONS**

Chief Sid Mitchell introduced the new Police Department mascot, Copper. Copper was designed by Officer Tim Anderson, and sponsored by the Leawood Lions Club.

The American Heart Association presented four Life Saving Awards to Police Officers Mark Hackathorn, Matt Brown, Doug Brokaw and Robert Mahon, for saving the lives of two citizens on two separate occasions using the AED.

374      Councilmember Pat Dunn arrived at 7:12 P.M.

469     **6.     SPECIAL BUSINESS - None**

471     **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.     Approval of Appropriation Ordinance No. 973
- C.     Minutes of the April 8, 2003, Historic Commission meeting
- D.     Minutes of the April 8, 2003, Park & Recreation Advisory Board meeting
- E.     Mayoral Appointment of James Rochel to I-Lan Sister City Committee
- F.     Approve waiver of Massage Therapy License for 'Race for Hope' Charity Event to be conducted on June 21, 2003, at the Leawood Town Center Plaza
- G.     Approve Renewal of Retail Liquor Store License for Wolff's Fine Wines & Spirits, located at 11841 Roe Avenue
- H.     Approve purchase in the amount of \$17,000, from Blue Valley Public Safety, pertaining to the purchase of a storm-warning siren
- I.     Approve purchase in the amount of \$24,000, from MA-Com Communications, pertaining to the purchase of police portable radios
- J.     Approve purchase in the amount of \$5,600 from Worth Harley Davidson for the purchase of police motorcycles
- K.     Approve purchase in the amount of \$20,311.00, from Shawnee Mission Ford, for the purchase of a Park & Recreation Vehicle
- L.     Approve purchase in the amount of \$43,006.72, from Pioneer Log Homes pertaining to the operations at Ironwoods Park, 14701 Mission Road
- M.     Approve purchase of Dump Truck Chassis for Public Works; Sign-Truck Chassis for Public Works; and Pick-up for Parks & Recreation Departments
- N.     Approve 5<sup>th</sup> and Final Payment in the amount of \$1,392.00, to Patton Properties, pertaining to the moving and stabilization of the Oxford Schoolhouse
- O.     **Resolution No. 1953** approving a Final Site Plan [sign guidelines] for Cornerstone of Leawood, located on the southeast corner of 135<sup>th</sup> Street & Nall Avenue *[from April 8, 2003, Planning Commission meeting]* **[Companion Resolution]**
- P.     **Resolution No. 1954** accepting a Revised Final Plat to include a public stormwater easement for Cornerstone of Leawood, located on the southeast corner of 135<sup>th</sup> Street & Nall Avenue *[from April 8, 2003, Planning Commission meeting]*
- Q.     **Resolution No. 1955** approving and authorizing the Mayor to execute a Maintenance Agreement between the City and Intergraph Public Safety, Inc., in the amount of \$8,250, pertaining to the Intergraph Software System for the Police Department
- R.     **Resolution No. 1956** approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of \$300.00, with April Hall pertaining to the June 26-29 Leawood Stage Company Production

- S. **Resolution No. 1957** approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and E105.1FM, LLC, for sponsorship services pertaining to the July 4<sup>th</sup> celebration to be held at City Park, 10601 Lee Boulevard
- T. **Resolution No. 1958** approving and authorizing the Mayor to execute an Independent Contractor Agreement for an amount not to exceed \$1,530.00, between the City and Durham School Services, LT., for shuttle services pertaining to the July 4<sup>th</sup> celebration to be held at City Park, 10601 Lee Boulevard
- U. **Resolution No. 1959** approving consenting to the enlargement of Consolidated Main Sewer District by the Board of County Commissioners of Johnson County, Kansas, pursuant to Johnson County Charter Resolution No. 29-92, for property located on the southeast corner of 135<sup>th</sup> & Nall Avenue [Cornerstone]
- V. **Resolution No. 1960** approving and authorizing the Mayor to execute a Revised Inter-local Agreement, dated March 3, 2003, between the City and Kansas City, Missouri, pertaining to the Resurfacing of State Line Road Project [119<sup>th</sup> Street – I-435 Highway]
- W. **Resolution No. 1961** approving and authorizing the Mayor to execute a Utility Relocation Agreement between the City and Kansas City Power & Light Company [KCPL] in the amount of \$17,246.00, pertaining to the relocation of utilities for the JB-04-008 SMAC Project; from Lee Boulevard to State Line between 103<sup>rd</sup> Street and I-435 Highway
- X. **Resolution No. 1962** granting a Sanitary Sewer Easement to Johnson County Unified Wastewater District [JCUWD] pertaining to the JB-04-008 SMAC Project; located east of Lot 1363, Leawood Estates, commonly known as 10429 Sagamore, and east of Lot 1364, Leawood Estates, commonly known as 10425 Sagamore
- Y. Declaration of surplus property; Miscellaneous Computer Equipment, to be auctioned by Nationwide Auctions
- Z. Declaration of surplus property; miscellaneous Fire Department equipment & furnishings, to be auctioned by Nationwide Auctions
- AA. Police Department Monthly Report
- BB. Fire Department Monthly Report
- CC. Municipal Court Monthly Report

Councilmember Taylor asked for a recusal from items 7O and 7P. Councilmember Rasmussen made the motion to approve the Consent Agenda, seconded by Councilmember Story. The remainder of the Consent Agenda was passed unanimously with a vote of 7-0.

495 Councilmember Rasmussen made the motion to approve Item 7O, seconded by Councilmember Rawlings. The motion passed 6-0, with one recusal by Councilmember Taylor.

Councilmember Rasmussen made the motion to approve Item 7P, seconded by Councilmember Dunn. The motion passed 6-0, with one recusal by Councilmember Taylor.

- 520 **8. MAYOR'S REPORT**
- A. Attended the RSVP Program luncheon, acknowledging 1300 senior volunteers giving a total of 134,000 volunteer hours.
  - B. Attended the Gillis Spirit Award banquet, where the former mayor of Fairway, Ed Peterson, was presented a Spirit Award
  - C. Attended a ribbon cutting ceremony for Fenton's Restaurant
  - D. Attended, with Scott Lambers and Chief Mitchell, the Cure of Ars DARE graduation. Officer Pelger was acknowledged by the Mayor for being the school's DARE officer for the past 13 years and for being a fine example for the students. Officer Pelger will be taking another assignment in the Police Department with another officer taking over the DARE duties.
  - E. The delegation from the Gezer region of Israel arrived Sunday, May 18, to discuss a possible sister-city relationship with Leawood.

612 **9. COUNCILMEMBERS' REPORT - None**

613 **10. STAFF REPORT – None**

***COMMITTEE RECOMMENDATIONS***

618 **11. PUBLIC WORKS  
PUBLIC WORKS**

***[from the April 9, 2003, Public Works Committee meeting]***

**A. Resolution No. 1963 adopting a Traffic Calming Policy for the City of Leawood, Kansas**

Councilmember Bussing stated the policy addressed the procedures for the city to follow when requests for traffic calming devices such as speed bumps, etc., are made.

Mayor Dunn confirmed with Councilmember Bussing that the project financing recommendation for Special Benefit District financing would run with the land and not the property owners.

Councilmember Dunn asked if the Special Benefit District would ultimately fund the plan. Joe Johnson replied that it would.

Councilmember Rasmussen made the motion to approve, seconded by Councilmember Taylor. The motion passed unanimously, with a 7-0 vote of Councilmembers present.

746

**12. PLANNING COMMISSION**

*[from April 22, 2003, Planning Commission meeting]*

**A. Ordinance No. 1990 approving rezoning from AG to R-1, preliminary site plan and preliminary plat for Pine Lakes, located on 140<sup>th</sup> Street, east of Mission Road [Companion Resolution] [Roll Call Vote]**

Bill Preloger, project architect for the applicant, spoke on the single-family development at 138<sup>th</sup> Street and Mission Road. There are 43 lots planned on the 34-acre site, with a single entrance off Mission Road. The site consists of a series of cul-de-sacs off a main road through the subdivision, which then connects to the Tuscany Reserve development currently under construction to the east of Pine Lakes.

Councilmember Gill arrived at 7:28 P.M.

Councilmember Rasmussen made a motion to approve, seconded by Councilmember Taylor. Councilmember Dunn asked for a friendly amendment stipulating that the wording regarding the retention pond include a deed restriction and a funding mechanism in place to assure that it be financially maintained by the development. Councilmembers Rasmussen and Taylor agreed to the friendly amendment.

Councilmember Bussing confirmed with Rick Oddo that a wrought iron fence would be placed on the west side (Mission Road) only at this time; however, Mr. Frank Oddo, who lives immediately north of the site may fence his property along the shared side. Councilmember Bussing confirmed with Diane Binckley that the infrastructure to both Tuscany Reserve and Pine Lakes would be done at the same time, with no gates or other barriers to entry.

A roll call vote was taken with all eight Councilmembers approving the ordinance: Yea: Councilmembers Rasmussen, Taylor, Gill, Dunn, Bussing, Story, Gullledge, and Rawlings. Nay: None.

**B. Resolution No. 1964 approving Final Site Plan and Final Plat for Pine Lakes located on 140<sup>th</sup> Street, east of Mission Road [Companion Ordinance]**

Councilmember Taylor made the motion to approve, seconded by Councilmember Rawlings. The motion was approved unanimously.

1023 13. **OLD BUSINESS**

A. **Ordinance No. 1991 amending Section 8-201 of the Code of the City of Leawood, 2000, pertaining to the definition of Health and Welfare nuisances [Roll Call Vote] [Continued from the May 5, 2003, Governing Body meeting]**

*Staff Comment: This amendment adds 'blockage of waterways' as a defined nuisance in accordance with the recently adopted Stormwater Policy.*

Councilmember Gill questioned the addition of Item I and what the consequences would be to a resident. Patty Bennett stated that a resident would be given a citation and a time frame to remedy the nuisance. Should the homeowner not comply, the city would have the authority to have the work done and assess the cost back to the resident. Any appeals would be directed to the Governing Body. Mr. Johnson added that given a worst-case scenario, a resident's financial obligation as assessed by the city for clean up would be \$2500.

Councilmember Taylor confirmed with Ms. Bennett that the creek running on land owned by a homes association, such as Leawood Forest and Patrician Forest, would be the financial responsibility of that homes association to maintain.

Councilmember Dunn made the motion to approve, seconded by Councilmember Rasmussen. A roll call vote was taken with all eight Councilmembers approving the ordinance: Yea: Councilmembers Rasmussen, Taylor, Gill, Dunn, Bussing, Story, Gullede, and Rawlings. Nay: None.

**SECOND & FINAL READING**

B. **Charter Ordinance No. 35, exempting the City from K.S.A. § 41-719, regarding the possession and consumption of alcoholic liquor in certain public places located within the City of Leawood, Johnson County, Kansas [Roll Call Vote]**

Councilmember Rasmussen made the motion to approve, seconded by Councilmember Bussing. A roll call vote was taken with all eight Councilmembers approving the ordinance: Yea: Councilmembers Rasmussen, Taylor, Gill, Dunn, Bussing, Story, Gullede, and Rawlings. Nay: None.

**SECOND & FINAL READING**

C. **Ordinance No. 1992 amending Chapter III, of the Code of the City of Leawood, 2000, pertaining to Beverages [Cereal Malt Beverages and Alcoholic Liquor], and repealing all other Sections in conflict herewith [Roll Call Vote]**

Councilmember Rasmussen made the motion to approve, seconded by Councilmember Story. A roll call vote was taken with all eight Councilmembers approving the ordinance: Yea: Councilmembers Rasmussen, Taylor, Gill, Dunn, Bussing, Story, Gullede, and Rawlings. Nay: None.

1206 14. NEW BUSINESS

- A. **Ordinance No. 1989**, authorizing a First Amendment to Lease Agreement amending and supplementing a Lease Agreement between the Public Building Commission [PBC] and the City; approving the form and terms of the PBC's Public Building Refunding Revenue Bonds, Series 2003, [The Leawood City Hall Project]; and expressing it's intent to appropriate funds in each year sufficient to pay rental payments and other amounts due and to become due under said Lease Agreement; and authorizing and approving certain related matters [Roll Call Vote]

Kathy Rogers stated the interest rate had been reduced from 5% to 2.54%, saving the city \$240,000 on the principle of the bonds.

Councilmember Gill stated unfortunately, cities are precluded by federal law from refinancing these types of bonds more than once. He felt this type of restriction at the federal level should be eliminated to give a major source of budget savings to all levels of public debt issuers. The city will be saving over \$200,000, and felt this should be a newsworthy item for the media to report.

Councilmember Rasmussen made the motion to approve, seconded by Councilmember Story. A roll call vote was taken with all eight Councilmembers approving the ordinance: Aye: Councilmembers Rasmussen, Taylor, Gill, Dunn, Bussing, Story, Gullledge, and Rawlings. Nay: None.

- B. **Resolution No. 1965** ordering a public hearing to be held on June 16, 2003, at 7:30 P.M., or as soon thereafter as may be heard on proposed assessments for the Roe Avenue Improvement Project, [135<sup>th</sup> Street to 137<sup>th</sup> Street] and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [CIP # 174]

Certified Summary of Costs for the Project was presented. Councilmember Taylor made the motion to approve, seconded by Councilmember Rasmussen. The motion was approved unanimously.

- C. **Resolution No. 1966** ordering a public hearing to be held on June 16, 2003, at 7:30 P.M., or as soon thereafter as may be heard on proposed assessments for the 133<sup>rd</sup> Street [between State Line and Mission Road] Improvement Project, and directing the City Clerk to publish notice thereof and provide written notice to owners of property of such assessments [CIP # 178]

Certified Summary of Costs for the Project was presented. Councilmember Taylor made the motion to approve, seconded by Councilmember Rasmussen. The motion was approved unanimously.

- 1392 D. Appeal of Smoking Compliance Plan for Fenton's, 4800 W. 119th Street, in accordance with § 11-904, of the Code of the City of Leawood, Kansas, 2000 – ***TO BE CONTINUED TO THE JUNE 2, 2003, GOVERNING BODY MEETING***

***Staff Comment: The City Administrator is requesting that this item be continued to the June 2, 2003, Governing Body meeting. The reason for this is that the applicant is utilizing an appeal provision in the City's smoking ordinance. It is the City Administrator's opinion that it was not the intent of the Governing Body for the appeal process to be utilized for a request of this nature, which is to request a total exemption from the ordinance albeit for a specified time period. Instead, it was intended to be used during the initial implementation of the smoking ordinance for those existing businesses that may experience difficulty in achieving compliance. The City Administrator is requesting the Governing Body for confirmation of this position.***

Mayor Dunn stated that the word "difficulty" could be interpreted as "financial hardship." She said four businesses had appeared before the Governing Body on a case-by-case basis, with the Governing Body allowing an appeal and waiver until such time as they did some substantial renovations, to come into compliance with the ordinance.

Councilmember Gill confirmed the Mayor's statement, and added that the Governing Body's expectation for any new business starting up was that the business would be in compliance with the ordinance.

Scott Lambers stated it was unnecessary to include a grandfather clause in regards to an appeal. He suggested that in fairness to the applicant that they could appear before the Governing Body again, or they could be advised administratively, withdraw their appeal, and not appear before the Governing Body if they wished.

Councilmember Dunn asked that the staff bring back a recommendation at the June 2<sup>nd</sup> meeting with the appropriate language change. Councilmember Gullledge asked to see the copy of the letter referenced in the last paragraph.

Councilmember Taylor made a motion to continue this item to the June 2, 2003, Governing Body meeting, seconded by Councilmember Story. The motion was approved unanimously.

- E. Resolution No. 1967 approving and authorizing the Mayor to execute Easement and Maintenance Agreement with COR Development, LLC, for maintenance of easement and right-of-way [ROW] located on the property at the southeast corner of 135th and Nall Avenue [Cornerstone] [Water Feature and onsite stormwater]**  
Councilmember Rasmussen made the motion to approve, seconded by Councilmember Gill. The motion was approved 7-0-1, with Councilmember Taylor abstaining.
- For clarification after the vote, Councilmember Bussing asked Ms. Rogers if the projected cost of \$5.8 million was within the limits of the debt ceiling. Ms. Rogers stated the total would be approximate \$6.5 million, plus interest and issuing cost.
- F. Resolution No. 1968 finding as to the advisability and authorizing the construction of improvements to Roe Avenue, Nall Avenue and 137<sup>th</sup> Street in the vicinity of Briar Street, 137<sup>th</sup> Street and 139<sup>th</sup> Street located within the City of Leawood, Kansas, and accepting Petition for Improvement District, pursuant to the provisions of K.S.A. § 12-6a01 et seq; approximate construction cost of \$840,608.00 [Church of the Resurrection]**  
Councilmember Rasmussen made the motion to approve, seconded by Councilmember Gill. The motion was approved 7-0-1, with Councilmember Taylor abstaining.
- G. Resolution No. 1969 finding as to the advisability and authorizing the construction of Briar Street between 135<sup>th</sup> Street and 137<sup>th</sup> Street, construction of improvements to 135<sup>th</sup> Street from immediately east of Briar Street to Nall Avenue and construction of improvements to 137<sup>th</sup> Street between Briar Street and Nall Avenue located within the City of Leawood, Kansas, and accepting Petition for Improvement District, pursuant to the provisions of K.S.A. § 12-6a01 et seq; approximate construction cost of \$3,585,984.00 [Church of the Resurrection]**  
Councilmember Rasmussen made the motion to approve, seconded by Councilmember Rawlings. The motion was approved 7-0-1, with Councilmember Taylor abstaining.
- H. Resolution No. 1970 finding as to the advisability and authorizing the construction of improvements to Nall Avenue at the intersection thereof with 135<sup>th</sup> Street and south to 137<sup>th</sup> Street within the City of Leawood, Kansas, and accepting petition for improvement district, pursuant to the provisions of K.S.A. § 12-6a01 et seq; approximate construction cost of \$1,422,832.00 [Cornerstone COR Development]**  
Councilmember Rasmussen made the motion to approve, seconded by Councilmember Bussing. The motion was approved 7-0-1, with Councilmember Taylor abstaining.

**I. Resolution No. 1971 waiving the bidding process, in accordance with Charter Ordinance No. 32, for construction of public improvements along and in an area bounded by Nall Avenue to Briar, and 135th Street to 137th Street and further along Nall Avenue to 139th Street and along Roe Avenue from 135th to 137th Street and along 137th Street from Briar to Roe Avenue [Cornerstone COR Development]**

Mayor Dunn stated Walton Construction would be submitting out to bid the different public improvement packages to contractors that staff had selected previously and staff would be present in all bid openings. Staff and Walton would agree on the low bidders for the project, which would then come before the Governing Body for approval.

Councilmember Gill asked why anyone would bid under these conditions. What would the city gain by conducting the bidding in this manner. Mr. Johnson stated Walton was constructing both the church and Cornerstone, and with the timing of the other improvements that were needed for each one, it was felt it was easier for Walton to oversee the coordination of all the projects. Councilmember Taylor pointed out that Walton was the construction manager and not the contractor. Jeff Turk, Assistant Division Manager for Walton, stated that the bid process they designed combined several bids within the project to coordinate the work. By bidding out larger projects, the unit costs were less. He gave examples of earth moving and road construction. Councilmember Gill reiterated his belief that Walton should bid independently and other competitive contractors could bid freely, in a true, formal bid process.

Mr. Lambers clarified the discussion by stating that the general contractor was fixed (Walton), the bidders were not. Walton would be charged a fair price for their services to the contract, that the city will monitor, with the other parts being variable. Councilmember Gill asked if the city had ever waived public bidding on a project of this size (\$6 million). Mr. Johnson replied it had been done on CIP 174 [Roe Avenue Improvement Project between 135<sup>th</sup> and 137<sup>th</sup> Streets].

Councilmember Dunn confirmed with Mr. Johnson that the Governing Body was being asked to approve Walton as the contractor, with the process by which the city and Walton would bid out aspects of this project to other subcontractors, with no competitive bid as far as the city contract goes. There would be no contract with Walton until all the bids were in place; when the city presented Walton the contract it would be with the city's selection of subcontractors that would work under Walton.

Councilmember Story confirmed with Mr. Johnson that the approval tonight was only for the process, and that the Governing Body would then be asked to approve the finalized contract with the subcontractors under Walton at a later date. Mr. Johnson would also bring a calculation of the savings to the city by using this plan for the Governing Body to analyze.

Councilmember Bussing confirmed with Mr. Johnson that all bidders would be sent the same bidding package of the larger project to capture the economies of scale.

Councilmember Gulledge made the motion to approve, seconded by Councilmember Dunn. The vote passed 6-1-1. Yea: Councilmembers Story, Gulledge, Dunn, Bussing, Rasmussen and Rawlings. Nay: Councilmember Gill. Abstain: Councilmember Taylor.

Councilmember Gill stated for the record he felt that a project of this magnitude required a free bidding arena without an individual construction competitor overseeing the process. He felt there were ample ways to coordinate project management without having to abandon a tried and true process.

2424 **14. OTHER BUSINESS - None**

2504 **15. ADJOURN**

There being no further business, the meeting was adjourned at 8:25 P.M.

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Debra Harper, City Clerk

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Emily Gleasure, Recording Deputy City Clerk