

Minutes

DVD No. 102

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, June 7, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Debra Filla, Louis Rasmussen, Scott E. Gulledge, Mike Gill, Gregory Peppes, Gary Bussing and James E. Taylor, Sr.

Councilmembers absent: None

Staff present:

Scott Lambers, City Administrator
Ben Florance, Chief, Fire Dept.
Sid Mitchell, Chief, Police Dept.
Karl Weinfurter, Info Systems Specialist
Jeff Cantrell, Neighborhood Serv. Admin.
Deb Harper, City Clerk
Emily Gleasure, Deputy City Clerk

Patricia A. Bennett, City Attorney
Joe Johnson, Public Works Director
Chris Claxton, Parks & Rec Director
Colleen Browne, Human Resources Dir.
Kathy Rogers, Finance Director
Diane Binckley, Planning Director
Debbi Naster-Hood, Legal Assistant

- 1 1. **PLEDGE OF ALLEGIANCE**
Mayor Dunn asked for a moment of silence before reciting the Pledge of Allegiance, in recognition of the passing of former President Ronald Reagan.

- 136 2. **APPROVAL OF AGENDA**
Mayor Dunn noted that Item "7B" had been revised. Councilmember Rasmussen made a motion to approve the Agenda. Councilmember Taylor seconded the motion, and the motion was approved unanimously, 8-0-0.

- 209 3. **CITIZEN COMMENTS**
G. Gordon Thomas, 10516 Mohawk Lane, spoke on taxes and government spending.

- 611 4. **PROCLAMATIONS - None**

- 617 5. **PRESENTATIONS/RECOGNITIONS - None**

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6. SPECIAL BUSINESS

A. Resolution No. 2231 expressing the intent of the Governing Body of the City of Leawood, Kansas, for the creation of a Transportation Development District [TDD] to be located within the City, pursuant to K.S.A. § 12-17, 140 et seq., The Transportation Development District Act

Mayor Dunn noted that there had been three work sessions on this topic. Councilmember Rasmussen stated he was in favor of the overall intent of the Resolution, but was concerned with Section “2B” *[the City shall have received from the State receipts for not less than three full months of sales at retail within the operating space the District]*. Scott Lambers stated the wording meant, “The retail sales activity within the 30 acres of the District once the District is created.” Councilmember Taylor stated he was concerned about setting a policy for all future TDDs, not just Park Place. He felt the language needed to be more definitive in the description of the District. Councilmember Rasmussen added that while he would not vote against the Resolution, he felt Section “2B” was indecisive. Mayor Dunn noted this Resolution was specific for Park Place. Mr. Lambers stated it was his opinion that many of the facets of this Resolution for Park Place would be appropriate for a policy the Governing Body would ultimately consider for future projects.

Councilmember Taylor questioned the wording of Section “2A” *[a minimum of 50% (not less than 120,000 square feet) of retail space within the District shall have been completed, open for business and operating for at least three full months;]* as a standard for other developments. Mr. Lambers stated for future projects, the percentage would be consistent (and changeable, if needed), but the square footage would differ.

Councilmember Gill confirmed the intent of Section “2B” with Mr. Lambers. Councilmember Peppes asked if the issue of securities law that Councilmember Gill brought up at the last Work Session had been resolved. Mr. Lambers replied that it was referred to in Section “3” *[That notwithstanding anything herein contained to the contrary, imposition of the transportation district sales tax and issuance of bonds and all terms and details related thereto, including the amount of any bonds to be issued, if any, the structure of and security for any such bonds including the rate of any sales tax and levy of special assessments on property within the District, the timing of the issue, the maturity schedule thereof, provisions for the protection and indemnification of the City, the qualification and eligibility of investors in any bonds and the manner of sale, shall be at the sole discretion of the Governing Body of the City.]*, as an outstanding issue and would be resolved prior to issuing the debt for the project.

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Councilmember Bussing stated he remained unconvinced that it was necessary to provide transportation district financing; however, he would support the Resolution of Intent. He said he was concerned with the size of the sales tax (1%) stated in Section "1" [*The District shall encompass the property described in Exhibit "A" thereto and shall provide for financing of the Project by special assessments on the property within the district and a transportation development district sales tax in an amount not to exceed one percent (1%) on tangible personal property at retail and furnishing of services taxable pursuant to the Kansas retailer's sales tax act*], stating he felt it was completely unacceptable.

Jeff Alpert, Park Place Partners, spoke to the Governing Body, thanking them for the time and attention on this matter that had allowed them to be at this point in the development of the District tonight. He reiterated the importance of the TDD to the Park Place project. Mr. Alpert stated the TDD was not about the financing vehicle, a lower rate source of funds, or getting a loan the Partners might not otherwise get, but rather about the additional revenue source that would be generated through the TDD, creating a method to support the cost of the project.

Councilmember Taylor made a motion to approve the Resolution. Councilmember Peppes seconded the motion, and the motion was approved unanimously, 8-0-0.

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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 Nos. 999 and 1000
- B. Accept Minutes of the May 17, 2004, Governing Body meeting
- C. Accept Minutes of the May 17, 2004, Governing Body Work Session meeting
- D. Accept Minutes of the May 10, 2004, Governing Body Work Session meeting
- E. Accept Minutes of the April 29, 2004, IRONHORSE Golf Advisory Board meeting
- F. Approve payment in the amount of \$16,328.00, to B & C, Inc., pertaining to the printing of the Park and Recreation Summer Program Guide
- G. Approve issuance of Temporary Alcohol Permit to sell/serve alcoholic liquor for the Parkinson's Disease Fundraiser Arts Show, to be held at Town Center Plaza, on June 18 – 20, 2004 [Applicant: Fenton's Bar & Grill]
- H. Approve Change Order No. 5, in the amount of \$440.00, and Final Payment in the amount of \$22,529.32, to Zimmerman Construction Company, pertaining to the Fire State No. 2 Remodeling Project, located at 12701 Mission Road [CIP # 150]
- I. Approve Change Order No. 1, in the amount of \$31,080.00, to APAC-Kansas, Inc., to relocate temporary traffic signals from 127th & Roe to 123rd & Mission Road, pertaining to the Roe Avenue Public Improvement Project, between 124th & 135th Street [CIP # 110]

- J. Affirm extension of Reward Agreement between the City and Kansas City Metropolitan Crime Commission Reward in the amount of \$25,000.00 for a one-year period to June 2005, pertaining to the Alexandra [Ali] Kemp homicide that occurred on June 18, 2002
- K. Certification of final project costs for FLan Park Improvement Project, 12601 Nall Avenue [CIP # 111]
- L. Certification of final project costs for State Line Road Improvements between 103rd Street & I-435 Phase IV Improvement Project [CIP # 137]
- M. Certification of final project costs for Fire Station No. 2 Remodeling Project, 12701 Mission Road [CIP # 150]
- N. Certification of final project costs for 151st Street between Nall Avenue and Glenwood [CIP #167]
- N1. Re-certification of final project costs for 133rd Street from Roe to Mission [133rd Street Benefit District] [Project # 179]
- O. Request by Leawood Baptist Church to temporarily house homeless people at the church, located at 8200 State Line Road, in conjunction with the Interfaith Hospitality Network
- P. **Resolution No. 2232** approving and authorizing the Mayor to execute a Service Agreement in the amount of \$20,000, between the City and Western Enterprises, Inc., pertaining to the July 4^h fireworks display to be conducted at City Park, 10601 Lee Boulevard
- Q. **Resolution No. 2233** approving a \$60,000.00, grant application to the United States Golf Association [USGA] pertaining to IRONHORSE Golf Course
- R. **Resolution No. 2234** approving a final plat for Village of Camden Woods, 63rd Plat, located south of 143rd Street and west of Kenneth Road [*from the May 25, 2004, Planning Commission meeting*]
- S. **Resolution No. 2235** approving a final plat for Village of Camden Woods, 64th Plat, located south of 143rd Street and west of Kenneth Road [*from the May 25, 2004, Planning Commission meeting*]
- T. **Resolution No. 2236** approving a final plat for Village of Camden Woods, 65th Plat, located south of 143rd Street and west of Kenneth Road [*from the May 25, 2004, Planning Commission meeting*]
- U. **Resolution No. 2237** approving a final site plan and final plat for Villas of Whitehorse, 3rd Plat, located north of 151st Street and east of Nall Avenue [*from the May 25, 2004, Planning Commission meeting*]
- V. **Resolution No. 2238** approving a final plat and final plan for LeaBrooke, 2nd Plat, located at approximately 145th Street and Kenneth Road [*from the May 25, 2004, Planning Commission meeting*]
- W. **Resolution No. 2239** approving a final plat for Leawood Country Manor, Lot 5, Block 15, located at 11206 Rosewood [*from the May 25, 2004, Planning Commission meeting*]
- X. **Resolution No. 2240** approving a final plat for Cornerstone of Leawood, 2nd Plat, located south of 135th Street and east of Nall Avenue [*from the May 25, 2004, Planning Commission meeting*]

Mayor Dunn stated Item "7X" had been pulled for a separate vote. She also complimented the Ironhorse Advisory Board for having assembled the grant application documents for Ironhorse Golf Club (Item "7Q"). Councilmember Rasmussen asked that Item "7J" be pulled for discussion. Councilmember Filla asked that Item "7Q" be pulled for discussion.

Councilmember Rasmussen made a motion to approve the remainder of the Consent Agenda. Councilmember Peppes seconded the motion, and the motion was approved unanimously, 8-0-0.

Item "7J" - Councilmember Rasmussen questioned Chief Sid Mitchell as to the effectiveness of the reward money for a dated crime. Chief Mitchell ascertained that despite the lapse in time since the Kemp murder occurred, because of its national high-profile image in the media, the case was still receiving leads daily. He felt the reward money was influential in generating these leads. Councilmember Rasmussen made a motion to approve the extension of the reward money. Councilmember Gill seconded the motion, and the motion was approved unanimously, 8-0-0.

Item "7Q" - Councilmember Filla confirmed with Mr. Lambers that the grant money of \$60,000.00 would be sufficient to fund the construction of the practice holes, and that the City would not need to provide further funding. She questioned whether this type of golf course amenity encouraged children to play golf. Councilmember Rasmussen confirmed that it had been shown that children gained confidence in playing by utilizing the practice holes. Councilmember Gill added that the youth program at Ironhorse had been featured on the Golf Channel on national television. Councilmember Filla made a motion to approve the grant application. Councilmember Rasmussen seconded the motion, and the motion was approved unanimously, 8-0-0.

Item "7X" - Councilmember Taylor recused himself from the vote due to a conflict of interest. Councilmember Rasmussen made a motion to approve the Resolution. Councilmember Rawlings seconded the motion, and the motion was approved, 7-0-1, with Councilmember Taylor recusing.

3137 **8. MAYOR'S REPORT**

- A. Acknowledged the County Economic Research Institute's *2004 Johnson County Advantage* document in the Council packets. It compared Johnson County to other counties throughout the nation by a variety of economic and demographic statistics in three general categories: business climate, economic growth and quality of life.
- B. Attended a rally for Israeli Ambassador, Daniel Ayalon, at Beth Shalom Synagogue, sponsored by the Jewish Community Relations Bureau, American-Jewish Committee. The following morning Mayor Dunn and Mr. Lambers served as honorary chairs for a breakfast in honor of the Ambassador.

- C. Attended the Nativity School DARE graduation with Officer Phil Goff, and the Brookwood School DARE graduation with Officer Randy Wiler.
- D. Attended the Bank of Blue Valley at Market Square ribbon cutting ceremony
- E. Presented the topic, "How Spirituality Intersects City Governance," as guest speaker at the Cathedral Center for Faith and Work
- F. Attended the MARC Regional Assembly with Mr. Lambers, Diane Binckley, the Planning Staff and Planning Commission
- G. Announced the Ironwoods Park concert, Some Like It Hot, on June 27th. Additionally, a Courtyard concert is planned on June 17th during lunchtime, featuring Billy Eberle and The Late for Dinner Band.
- H. Congratulated Howard Mann, Public Works, who received the Professional Manager Award in the Public Fleet Division at the National Public Works Week Awards Luncheon
- I. Expressed appreciation and congratulations to the Leawood Fire Department for their involvement in the U.S. Department of Health and Human Services, "Gift of Life Donation Initiative" program and being awarded a Certificate of Recognition

3802 **9. COUNCILMEMBERS' REPORT**

Councilmember Filla acknowledged that she had met with the Department Heads, and was impressed with the knowledge Staff had imparted to her. She thanked them for helping to inform her on the state of the City of Leawood as she grasped the responsibilities of her new Councilmember position.

3900 **10. STAFF REPORT**

Mr. Lambers asked that the Councilmembers forward the specific areas of interest they wanted discussed at the Budget Work Session meetings to him by the end of the week, to help Staff prepare for the meetings that would occur at the end of the month.

3943 **11. OLD BUSINESS - None**

3948 **12. NEW BUSINESS**

- A. **Resolution No. 2229, accepting a Third Amended Petition, and amending and restating Resolution No. 1524 as amended and restated by Resolution No. 1639, amending and restating Resolution No. 1866, and finding as to the advisability of and authorizing the improvement and construction of 133rd Street from Mission Road to Roe Avenue, [133rd Street Benefit District Improvement Project] pursuant to K.S.A. § 12-6a01 et seq. [CIP # 179]**

Councilmember Gill confirmed with Patty Bennett that the deferral of four years for the payment of the temporary notes had passed. He asked why a change in property ownership would require this new Resolution. Ms. Bennett replied it was due to the timing of this action and the fact that the property had not been platted. Ms. Bennett stated the debt needed to be assessed against each lot so that when the taxes went out on the tax rolls, taxes would be assessed on each lot. Instead of a lineal front foot, taxes would be figured on a square foot basis. The tract in question had been subdivided without a plat, being titled out to various new owners. She stated that when this land was subdivided, a strip of land remained that backed up to the Wilshire development. This land was to be used as the landscape easement, to be maintained by the new developer owner association.

Councilmember Gill asked what incentive this association would have to pay the assessment on a property that would not generate income. Kathy Rogers stated the owners would still be assessed for the land; whether they paid on a timely basis would be the issue to address, as they could be delinquent for three years before the property could be sold. She noted this situation had happened before, on Tomahawk Creek Parkway. Councilmember Gill stated his concern was that should an undeveloped parcel of land be foreclosed because of delinquent taxes, no other buyer would want it, and the City would be left with the responsibility.

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Councilmember Gill confirmed with Ms. Rogers that this was a time critical issue. If the Resolution was not approved on time, the City would not be able to bond the project on time, which would add another year of interest. Ms. Bennett advised that by going forward with the previously submitted second amended petition, taxes would be assessed on the linear front footage, which would result in a higher assessment on the easement tract on the north side of 133rd Street. By using the square foot method, as stated in this third amended petition, the assessment would be spread across what was the west side of the Jameson tract, to the individual owners. She indicated there were two parcels that were green space and would not be developed: the strip to the north already mentioned, and a strip owned by Terra Venture, that would be used as a road in the future. Ms. Rogers added that there was a two-week window to make a decision on this item, to stay within the time constraints.

Councilmember Gill suggested keeping all of the land jointly and severally liable as it was presently for the debt. When it was all paid, it was finished; if not, the City would foreclose. Councilmember Rasmussen stated it had been the historical intent of the Governing Body to keep the north side of the development supported and maintained by the entire development, such was done with homes associations. He expressed his concern that the development could subdivide and exclude that area.

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Mr. Lambers stated the City was limited as to how to handle the situation. It was his opinion that by going forward, and changing from linear foot to square foot calculation, it would reduce the liability to the City. He added it would be possible to require a condition that the assessments must be paid in the final plan brought before the Governing Body.

Councilmember Taylor confirmed with Ms. Binckley that should the property owner of the strip of land north of 133rd Street not maintain the area or pay the assessment, he would not be able to develop the remainder of his property on the south side of 133rd Street. She advised a preliminary site and plat had been approved for that property. Should the developer abandon the property, they would be in nonconformity. This would require them to go back through all the steps to develop the site again, incurring substantial additional cost. At the final site plan, the City could require additional conditions for developing.

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Councilmember Gullede confirmed with Ms. Binckley that over four years ago the developer of the property in question had agreed to maintain the property, with the City stipulating the maintenance at that time.

Councilmember Gill confirmed with Ms. Bennett that these various individual tracts were related through economic interest, and there would be some rejoinder of them in the future when an application for zoning was at hand. He asked why the real estate transaction between the owner and the individuals was being allowed, dividing the property in such a way as to possibly pass on a liability to the City. He questioned why this was good for the City. Ms. Bennett replied it was to clarify the City's petition, changing the assessment from only the properties that abut 133rd Street to assessing all properties over to 135th Street, as had been originally intended.

Joe Johnson discussed the division of the property, showing the allotments held by the various owners on a map. He explained how the assessments had been spread in the Wilshire project, similar to what was proposed for this project.

11104 Ms. Bennett stated that had the project gone ahead without being subdivided or parceled out in some way, it ultimately would have had to be redistributed when it was platted. Statutes were not set up to where an assessment could be placed on a joint and several basis. The division of the property could be done before a final plat was issued, and the property in question would have a preliminary plat. Ms. Binckley added the County allowed property owners to subdivide property without prior approval by the City. Councilmember Gill suggested the City rethink its Special Benefit District (SBD) policy, in light of that information. The City should not place itself in a position to impair collateral. Mayor Dunn reiterated that the City could tie the assessment payments to plan approval. Councilmember Gullede added that the new developer was interested in taking care of the property, as the Wilshire development had ceased to care for by evidence of the condition of the trees and grass. Mr. Lambers advised the City needed to assess on a benefiting basis that would be acceptable to the Attorney General.

11825 Councilmember Rasmussen made a motion to approve the Resolution. Councilmember Rawlings seconded the motion, and the motion passed, 5-3-0, by the following vote: Yea: Councilmembers Peppes, Gullede, Bussing, Rawlings and Filla. Nay: Councilmembers Taylor, Rasmussen and Gill. Councilmember Taylor stated he was concerned that the strip of land north of 133rd Street would become the City's liability. Councilmember Rasmussen concurred, and was additionally concerned that because the Final Plan may not come before the Governing Body for many years, concerns brought up now could be forgotten and slip through the cracks. Councilmember Gill stated he had voted against this project twice, advising SBDs should be used wisely without creating exceptions to the policy.

12216 B. **Resolution No. 2230, ordering a public hearing to be held on June 21, 2004, at 7:30 P.M., or as soon thereafter as may be heard on proposed assessments for the 133rd Street [between Roe Avenue to 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 # 179]**

Mayor Dunn confirmed with Deb Harper that the property owners would be notified of the Public Hearing by certified mail on June 9, 2004.

Councilmember Gullede made a motion for approval of the Resolution. Councilmember Filla seconded the motion, and the motion was approved unanimously, 8-0-0.

12335 **13. OTHER BUSINESS - None**

ADJOURN

There being no further business, the meeting was adjourned at 9:00 P.M.

Debra Harper, City Clerk

Emily Gleasure
Recording Deputy City Clerk