

Minutes

Audio Tape No. 552

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:40 P.M., on Monday, June 17, 2002. Mayor Peggy J. Dunn presided.

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

Staff present:

Scott M. Lambers, City Administrator
Patricia A. Bennett, City Attorney
Ben C. Florance, Fire Chief
Cindy Pitts, Human Resources Specialist
Sid Mitchell, Chief of Police
Jeff Cantrell, Neighborhood Serv. Admin.
Martha Heizer, City Clerk

Joe Johnson, Public Works Director
Diane Binckley, Planning/Development Dir.
Chris Claxton, Parks & Recreation Dir.
Sam Maupin, Building Official
Mark Andrasik, Info. Systems Director
Deb Harper, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

220 **2. APPROVAL OF AGENDA**

The Mayor noted that Item 11.D. would be continued to the August 5, 2002, Governing Body meeting, and Items 11.G. and 12.A. continued to the September 3, 2002, Governing Body meeting. Item 13.A. to schedule a work session on August 5th at 6:30 P.M. to discuss recreational vehicles, and Item 13.B. to schedule a work session on July 1st at 6:30 P.M. to discuss a limited access gate policy, were added to the agenda. On motion of Taylor, seconded by Gill, Council unanimously approved the agenda as amended.

345 **3. CITIZEN COMMENTS**

Robert Sjolin, 3217 W. 82nd Terr., expressed his opinion about the quality of life in north Leawood versus that in south Leawood, and on Item 11.D. regarding a request for a sport court that would be continued to the August 5th Governing Body meeting.

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS – None.

630 **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. Appropriation Ordinance No. 948
- B. Minutes of the June 3, 2002, Governing Body meeting
- C. Minutes of the April 23, 2002, Arts Council meeting
- D. Minutes of the April 25, 2002, IRONHORSE Golf Course Committee meeting
- E. Minutes of the May 14, 2002, Parks & Recreation Advisory Board meeting
- F. Bid in the amount of \$35,382.00 from Myers Brothers of Kansas City, Inc., for the purchase of Mobile Column Lifts, Support Stands & Tire Dolly for the Public Works Facility at 14303 Overbrook Road [CIP#156] *[This item was approved by the Governing Body in the budget process]*
- G. Bid in the amount of \$3,477.00 from Drake-Skruggs Equipment, Inc., for the purchase of a Platform Body for the Public Works Department *[This item was approved by the Governing Body in the budget process]*
- H. Bid in the amount of \$29,838.00 from Olathe Ford through a co-op bid program for the purchase of [2] 2002 Ford Ranger Pickup Trucks for the Parks Maintenance Division *[This item was approved by the Governing Body in the budget process]*
- I. Fifth & Final Payment in the amount of \$8,125.59 to Seal-O-Matic Paving Company for the Lee Boulevard Improvement Project, Phase 2 [between 103rd Street and I-435] [CIP # 177]
- J. Resolution No. 1737 approving and authorizing the Mayor to execute a Development Agreement between the City and PCC Two, LLC, pertaining to property located at 115th Street and Tomahawk Creek Parkway, Pinnacle II Project
- K. Resolution No. 1738 approving and authorizing the Mayor to execute a Licensing Agreement between the City and American Society of Composers, Authors and Publishers, [ASCAP], for an annual fee of \$250.00, pertaining to the performance of certain musical compositions
- L. Resolution No. 1739 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Durham Transportation for an amount not to exceed \$1,740.00, pertaining to transportation associated with July 4th Celebration
- M. Resolution No. 1740 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and David Martin in the amount of \$600.00, pertaining to furnishing music for the 2002 Leawood Stage Company Production

- N. Resolution No. 1741 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Charles T. Hestand in the amount of \$400.00, pertaining to furnishing music for the 2002 Leawood Stage Company Production
- O. Resolution No. 1742 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Tracy Ramsey in the amount of \$350.00, pertaining to Stage Management for the 2002 Leawood Stage Company Production
- P. Resolution No. 1743 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Creative Displays, Inc., in the amount of \$8,740.00, pertaining to the holiday lighting ceremony
- Q. Resolution No. 1744 approving and authorizing the Mayor to execute a Second Amendment to the Agreement between the City and Marrs Tree Service, Inc., for an amount not to exceed \$27,000.00, pertaining to the trimming and removal of hanging tree limbs related to the January 2002 winter ice storm
- R. Resolution No. 1745 approving the Final Plat for Mission Reserve 1st Plat located on the southwest corner of 151st & Mission Road
- S. Resolution No. 1746 approving the Final Plat for Mission Reserve 2nd Plat located on the southwest corner of 151st & Mission Road
- T. Approve Declaration of surplus property [1992 White Chev 1500 Pick-up Truck w/camper shell, last 4 VIN/2674; and White 1993 Chev Lumina, last 4 VIN/1145] [Public Works Department] [To Be Auctioned]
- U. Police Department Monthly Report for May 2002
- V. Fire Department Monthly Report for May 2002
- W. Municipal Court Monthly Report for May 2002

7.K. was removed. On motion of Rasmussen, seconded by Taylor, Council unanimously approved the remainder of the Consent Agenda.

7.K. Councilmember Gill removed the item in order to recuse himself to avoid the appearance of a conflict of interest. On motion of Rasmussen, seconded by Gullledge, the rest of the Council unanimously adopted the resolution.

700 **8. MAYOR'S REPORT**

- A. The Leawood Chamber of Commerce hosted a forum for the 28th District House of Representative candidates
- B. Council of Mayors meeting with Johnson and Wyandotte County legislators as was customary for the wrap-up of the legislative session
- C. Donation of \$125 from the Leawood Garden Club for renovation of flower and shrub bed lines surrounding the flag pole area at City Park

- D. Dedication of the Bi-State City Trail connection on June 29th at 10:00 A.M.
- E. On Saturday, June 15th, the Mayor threw out the first pitch at a softball game between the Mid-America Young Marines and the Leawood Fire Department, the proceeds of the game going to Leawood's Fire Department Combat Challenge Fund

9. COUNCILMEMBERS' REPORTS – None.

1000 **10. STAFF REPORT**

Parks & Recreation Director Claxton reported on the July 4th celebration to be held at City Park. The City would have the complete celebration returned after a few years' absence since the Park renovation was completed.

Public Works Director Johnson said that the debris cleanup from the January 2002 winter ice storm had been completed. He said that on July 1st, the Council would consider an agreement for debris cleanup at Ironhorse golf course which had been approved by FEMA.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from May 14, 2002, Planning Commission meeting]

- A. **Approve Special Use Permit [SUP] to Southwestern Bell for a DSL site to be located south of 129th Street and east of Roe Avenue [Continued from June 3, 2002, Governing Body meeting] – CONTINUED TO THE JULY 1, 2002, GOVERNING BODY MEETING**

[from April 23, 2002, Planning Commission meeting]

- 1400
- B. **Resolution No. 1747 approving the Final Plat for Tuscany Reserve-Residential, located at approximately 137th & Pawnee [Continued from the June 3, 2002, Governing Body meeting]**

The applicant, Chase Simmons, addressed two modifications made since the preliminary plan – 1) Lot 85 or 86 with a small streamway and many trees was left in its natural state as requested by the Corp of Engineers, and 2) the developer chose to build Pawnee out to 135th St. for the access to the residential, rather than Chadwick, which was partially built. When the commercial and office portions were developed, Chadwick would need to be extended, and that was the developer's responsibility if not already built by neighbors to the east.

Harold Phelps of Phelps Engineering addressed the stormwater and siltation issues. He said that the overall site was basically in its natural state, having been farm land. During the winter, the pond in the southeast corner of the site was de-silted and the pond dam which had been breached was reconstructed. No other construction work had been done on the site. The dam was in a location so that all of the site drained to that basin. The basin was designed for adequate storage

to detain the water from the site to its pre-development condition. So for all practical purposes, the excess water created from the site was detained in the stormwater detention pond. Because of its location on the site, everything drained to the pond; there was no drainage on the property with the exception of the back side of the dam that drained away from the property. The developer constructed erosion control on the back side of the dam, an ongoing project due to storms that had occurred. They put up some additional siltation fencing to try to take care of some concerns from downstream property owners. They submitted their erosion control plans to the State for approval, and street and storm sewers with erosion control plans to City staff for their review and comments. Mr. Phelps said they were in compliance with the City's stormwater ordinance.

Mr. Phelps explained that the pond storage for the stormwater detention requirement (the volume that was required to be detained) was above the water surface elevation of the pond itself, so even if the pond did silt in, they still met the detention requirement. But of course, it was understood that the developer didn't want a pond that silted in; that wasn't why he was selling premium lots next to the pond.

Councilmember Gill said that Don Donahoo, the developer of Highlands Ranch downstream, requested in his March 25, 2002, letter to the City, that the City insure that the project was designed, constructed, and maintained to protect the lake at Highlands Ranch and the homes surrounding it from any and all damage and loss resulting from siltation or additional water runoff from Tuscany. He asked Mr. Phelps, as the stormwater engineer for the project, if he could insure that. Mr. Phelps said he could certify that the stormwater detention met City requirements. He said that from the stormwater runoff conditions, Mr. Donahoo would be protected from any increase in stormwater runoff based on the development. As far as the siltation issue, Mr. Phelps explained there were best management practices, things they could do, but he couldn't insure that no silt would end up downstream. In his professional opinion, there would be less silt than in an agricultural state because there weren't any conservation methods applied to the farm ground prior to the Tuscany development. Mr. Gill asked if there was a plan to de-silt the pond at some point in time. Mr. Simmons said that there was a new requirement that the City had that the pond be inspected annually and certified that there wasn't a siltation problem. Mr. Simmons also noted that maintenance was provided throughout the development, so there would be a cash flow for maintenance, even when the developer was gone; that was an added safeguard to the downstream property owners and to the City.

Mr. Gill said that Mr. Donahoo suggested in his letter that a small siltation pond at each of the two or three stormwater discharge locations, and ahead of the "detention pond," would prove to be much easier and much less expensive for the Tuscany Reserve homeowners to maintain. Mr. Gill asked Mr. Phelps if he had considered that suggestion. Mr. Phelps said that the difficulty with that was the number of trees that were in the ditch areas; they would have to remove trees and vegetation that the developer was trying to save. Putting the tree issue aside, Mr. Gill asked if the suggestion would be an improvement in the arena of stormwater protection. Mr. Phelps said that in his professional opinion, the ponds wouldn't be very effective. The planned pond, with its size, was very effective in de-siltation.

Councilmember Taylor felt there should be an escrow account or some type of fund for erosion control on the back side of the dam separate from cash flow for any other maintenance costs that would be ongoing and an amount sufficient to cover any type of costs that would occur in the future. Mr. Phelps agreed there should be a mechanism to fund de-siltation of the pond; on the back side of the dam, they would do hydro-seeding to get a good stand of grass according to the erosion control plan they submitted, as well as a grouted riprap that would protect the dam itself. Mr. Taylor said he would not be in favor of the project unless a funding mechanism was part of the deed restrictions or phrased in the development plans.

2650 Councilmember Rasmussen said it was his experience that developers somehow or other forgot to write such stipulations into deed restrictions. He said that the Planning Commission stipulations to be voted upon didn't include what was noted in the record. He said the Planning Commission minutes indicated that Brick Owens said that it was in the stipulations that the homes association would maintain the pond. Mr. Rasmussen didn't see that in the stipulations. He said he wouldn't vote for the project tonight. City Administrator Lambers felt that stipulation #8 (all stipulations of the Public Works Department must be resolved per attached Public Works memo, prior to recording the plat) and 3(c) of the second page of the Public Works memo that indicated that the homes association would be responsible for any and all maintenance work required for the pond to function as designed, covered the concern. Mr. Lambers felt that was sufficient to insure that it was clear that the homes association was responsible for the maintenance of the facility to function as it was designed by the engineer and approved by the City staff.

2870 Public Works Director Johnson said the best thing to do with all developments would be to have the erosion control in place before any construction started; Phelps was told that he had to have the erosion control in place before the City would approve construction plans for streets and storm sewers and plans for the sanitary sewer and issue a blasting permit for the sanitary sewer.

3315 Jerry Nebbia, 14126 Manor Dr. in Highlands Ranch, was concerned that there didn't seem to have been any sort of approval process that Tuscan Reserve had to go through to begin development of their property. Mr. Nebbia believed that the construction that was going on at Tuscan heavily contributed to siltation problems in Highlands Ranch. Had an approval process been in place before any construction took place, problems in Highlands might not have occurred. He asked that the City get an approval process in place so problems could be averted in other developments, and requested some help from the City in preventing future siltation problems in Highlands Ranch and in fixing the existing problem created by construction that had already taken place in Tuscan.

Public Works Director Johnson explained that the City issued several permits for developments, generally the first one was a land disturbance permit before digging could begin. He said the only work that had been done was on the dam in late winter and a State permit wasn't required for that and the City didn't issue a land disturbance permit. He asked that before any other work was done, the developer get the grading plans and erosion control plans to the City for review. A permit was issued a few days ago, and they should start construction of the sanitary sewer in a few weeks, and the process would continue. Mr. Johnson said that generally, when it rained, any

silt north of the lake in Highlands Ranch drained into the lake. He added that the City should have issued a permit for the dam work so they would have been aware of what activities were going on and could have made sure that everything was in place before any work on the dam. Mr. Johnson didn't feel that breaching the dam caused the siltation problems that Mr. Donahoo and Mr. Nebbia complained about. Mr. Johnson felt that the siltation problems were due to everything that drained in the watershed, so he tried to minimize what came off a construction site to lessen that impact.

3895 Councilmember Rasmussen moved to adopt the resolution with an additional stipulation #24 to state that the homes association deed restrictions running with the land conform to the City Administrator's interpretation of sub-paragraph 3)c) of page 2 of the Public Works memo dated March 18, 2002, and noted in stipulation #8 (tape meter #2650), so it would be very clear that it would be appropriate that a funding mechanism to collect monies from the property owners for maintenance be established. Motion seconded by Taylor. Mr. Simmons agreed to the additional stipulation. Motion carried unanimously.

[from May 28, 2002, Planning Commission meeting]

4240 **C. Approve Special Use Permit [SUP] and a revised final site plan for temporary classrooms at Prairie Star Elementary School located at 143rd Street & Mission Road**

In response to Councilmember Taylor, Blue Valley School District Board member Robert Regnier said that the current plan was not to bus students to another school to alleviate some pressures. On motion of Rasmussen, seconded by Gill, Council unanimously approved the SUP for a period of 2 years.

D. Approve Special Use Permit [SUP] for a Sport Court located at 3613 W. 129th Street [Applicant: Gibson] – CONTINUED TO THE AUGUST 5, 2002, GOVERNING BODY MEETING

4540 **E. Resolution No. 1748 approving preliminary site plan for Bank of Blue Valley, located within the Market Square Center Development, on the northeast corner of 135th Street and Mission Road**

Councilmember Gill recused himself to avoid the appearance of a conflict of interest and left his Council seat. Councilmember Taylor moved to adopt the resolution, seconded by Gullledge. Attorney Stewart Stein on behalf of the Bank of Blue Valley and architect Carey Goodman made presentations. Mr. Taylor's motion carried unanimously.

Councilmember Gill returned to his Council seat.

5065 **F. Ordinance amending § 3-1[RP-A]; 3-2[R-1]; 3-3[RP-1]; 3-4[RP-2]; 3-13[AG]; and 3-16[RP-A5] of the Leawood Development Ordinance [LDO] pertaining to roofing**

Councilmember Taylor moved to pass the ordinance. Motion died for lack of a second. Councilmember Dunn was concerned about the removal of the weight requirement for asphalt shingles; he wasn't comfortable passing the ordinance without the weight requirements remaining, and didn't feel that the City was ready for that change. Building Official Sam Maupin said he had discovered that there were fewer and fewer products of the laminant composite shingle, the asphalt shingle, that weighed more than 330 pounds per square. The roofing industry no longer required the weight requirements on the bundles of shingles placed at a job site. One would have to get into the actual evaluation report that ICBO and other agencies put out as to the weight. Mr. Dunn thought it might be appropriate to continue the matter in order for everyone to gain further information on the subject. He learned from one roofer that weight was the only way he could tell the quality of the shingle; Mr. Dunn said there might be a product of lighter weight that was good quality, but weight was the only sure way the roofer had to know the quality.

5515 Councilmember Taylor said there was a Planning Commission work session with competent people on the Commission studying the matter, and staff had researched and developed the ordinance and reported that they had made the best selection of material. He felt comfortable relying on the expertise involved, so felt that the Council should support the Planning Commission's recommendation of approval.

Councilmember Rasmussen was not comfortable with the change; he wanted the total input from the homes associations in his Ward, Ward 2. The question of roofing materials in Leawood had a long history. He said that cities that strongly supported their homes associations turned out to be well run, well financed, and of great value. Those that didn't, became slums. Mr. Rasmussen moved to continue the matter to the July 15, 2002, Governing Body meeting, seconded by Gullede. City Administrator Lambers said that if the Council's desire was for staff to notify the homes associations of the pending consideration of the ordinance, perhaps a longer continuance to the second meeting in August would be in order. Staff could provide them a summary of the changes, make copies of the ordinance available to the homes associations, and ask that any responses be returned to the staff by the end of July so they could compile them for the second meeting in August. Mr. Rasmussen and Mr. Gullede agreed to continue the matter to the August 19th meeting.

The Mayor said it seemed that the weight issue also needed to be investigated further. She said the issue was raised at the Planning Commission meeting and there was an explanation that satisfied them, but obviously it was still of some concern to Councilmembers. Mr. Maupin said he understood that the weight was less because the industry had improved the product, making it stronger, more durable, which would hold up longer and had a better warranty than the former 330 pounds per square. He could contact roofing manufacturers and have them send all the data

to staff to back up claims of less weight-better quality. Mr. Gill said he would like to look beyond the manufacturers' marketing materials if there was something that had a little more independent view. Mr. Dunn said he wasn't interested in looking at materials from manufacturers, preferred to see materials from independent agencies.

- 6230 Ginevera Moore, 9006 High Drive, Vice-President of the Leawood Estates Homes Association, said that homes associations dealt with deed restrictions that often times were conflicting and ambiguous and vague with regards to material standards in general and roofing material standards in particular. Her homes association spent considerable time and effort over the past 6-9 months trying to figure out how they could enforce their standards in a manner that was consistent with how the City enforced theirs. They were pretty close to finding a way to do that, but part of the key for them to be able to be successful in that endeavor was to be able to convince their members that the City would be enforcing roofing materials that had high quality and consistency that members looked for. They were pleased with the City's amendments to the ordinance. The one sticking point that they had was the issue of the minimum weight requirement and encouraged the Council to do further research as to the merits of leaving a minimum weight requirement standard in the amendments.

Mr. Rasmussen's motion to continue to the August 19th Governing Body meeting carried; Gullede, Bussing, Rawlings, Dunn, Story, Gill, Rasmussen in favor; Taylor opposed (he felt that the Council should support the Planning Commission's recommendation of approval).

[from August 28, 2001, Planning Commission meeting & September 26, 2001, Board of Zoning Appeals meeting (BZA)]

G. Ordinance amending Code § 4-4 of the Leawood Development Ordinance pertaining to Off-Street Parking, Storage, Loading Regulations and Parking Lot Design Standards [Recreational Vehicles] *[Continued from May 6, 2002, Governing Body meeting]* [companion ordinance] – CONTINUED TO SEPTEMBER 3, 2002, GOVERNING BODY MEETING

12. OLD BUSINESS

A. Ordinance amending Chapter 14, Article 3, Sections 14-301, 14-302, and 14-304, of the Code of the City of Leawood 2000, pertaining to parking [Recreational Vehicles] *[Continued from May 6, 2002, Governing Body meeting]* [companion ordinance] – CONTINUED TO SEPTEMBER 3, 2002, GOVERNING BODY MEETING

13. OTHER BUSINESS

A. Schedule work session for August 5, 2002, 6:30 P.M., to discuss recreational vehicles

So scheduled unanimously on motion of Story, seconded by Gill.

B. Schedule work session for July 1, 2002, 6:30 P.M., to discuss a limited access gate policy

So scheduled unanimously on motion of Taylor, seconded by Gulledge.

6745 **ADJOURN**

There being no further business before the Council, the meeting was adjourned at 9:15 P.M.

Martha Heizer, City Clerk