

Minutes

Audio Tape No. 553

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 P.M., on Monday, July 1, 2002. Mayor Peggy J. Dunn presided.

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

**Staff present:**

Scott M. Lambers, City Administrator  
Patricia A. Bennett, City Attorney  
Ben C. Florance, Fire Chief  
Sid Mitchell, Chief of Police  
Jeff Cantrell, Neighborhood Serv. Admin.

Joe Johnson, Public Works Director  
Diane Binckley, Planning/Development Dir.  
Chris Claxton, Parks & Recreation Dir.  
Bob Sadler, Internet Specialist  
Kathy Rogers, Finance Director  
Martha Heizer, City Clerk

**1. PLEDGE OF ALLEGIANCE**

The Mayor asked for a moment of silence for Leawood resident Ali Kemp as an expression of the City's deep sympathy for her family; Ms. Kemp was murdered at 123<sup>rd</sup> and State Line Rd. in Leawood.

265 **2. APPROVAL OF AGENDA**

The Mayor noted that Item 12.A. would be continued to the August 19, 2002, Governing Body meeting, and added an item under Special Business – a discussion of the City of Leawood's contribution to the TIPS Hotline reward fund for murdered Leawood resident Ali Kemp. On motion of Gullede, seconded by Gill, Council unanimously approved the agenda as amended.

330 **3. CITIZEN COMMENTS**

Dolores Furtado, 10104 Hemlock, Overland Park, Kansas, introduced herself as a candidate for District 4 County Commissioner.

G. Gordon Thomas, 10516 Mohawk Lane, made comments about retaining the Leawood Country Club at 8901 Sagamore, not allowing the property to be developed.

740 **4. PROCLAMATIONS**

The Mayor proclaimed July 14-20, 2002, as "National Aquatics Week." She presented the proclamation to Parks & Recreation Director Claxton and commended her on the City's beautiful Aquatic Center at Leewood City Park.

890 **5. PRESENTATIONS/RECOGNITIONS**

The Mayor presented the Government Finance Officers Association of the United States and Canada (GFOA) Distinguished Budget Presentation Award for the City's 2002 Budget to Finance Director Kathy Rogers and Joey Green of the Finance Department. The Mayor also presented a GFOA Certificate of Recognition for Budget Preparation to Mrs. Rogers as the person primarily responsible for the City's having achieved the award.

1095 **6. SPECIAL BUSINESS**

The Mayor requested that the City consider making a contribution to the TIPS Hotline reward fund for Ali Kemp; the fund stood at \$25,000. Councilmember Gullledge moved that the City match the \$25,000 in the fund bringing the total to \$50,000 to further enhance the possibility of the capture of the individual who committed the heinous crime against a young citizen of Leewood, seconded by Gill. Motion carried unanimously.

1265 **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. 949
- B. Minutes of the June 17, 2002, Governing Body meeting
- C. Minutes of the June 17, 2002, Governing Body Work Session meeting
- D. Minutes of the May 28, 2002, Arts Council meeting
- E. Minutes of the May 14, 2002, Historic Commission meeting
- F. Minutes of the April 9, 2002, Historic Commission meeting
- G. Approve Cereal Malt Beverage [CMB] Retail License to Paddy O'Quigley's at 11851 Roe Avenue
- H. Approve Cereal Malt Beverage [CMB] Retail License to Supermarket Developers, Inc., for the Price Chopper Food Store at 13351 Mission Road
- I. Resolution No. 1749 approving Final Plat of the Villas of Chapel Green-Residential [*formerly Reserve at St. Michael's*] located at approximately 141<sup>st</sup> Terrace & Nall Avenue [*from 06-25-02 Planning Commission meeting*]
- J. Resolution No. 1750 approving and authorizing the Mayor to execute a Use and Operation Agreement between the City and Junior Golf Foundation of Greater Kansas City, Inc., for implementation of the First Tee Golf Program for Kids to be held at IRONHORSE Golf Course
  
- K. Resolution No. 1751 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Robert Craig, for an

- amount not to exceed \$900.00, pertaining to the 2002 Leawood Stage Company Summer Production
- L. Resolution No.1752 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Phil Leonard, for an amount not to exceed \$1,000.00, pertaining to the 2002 Leawood Stage Company Summer Production
  - M. Resolution No. 1753 approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and S.E.C.T. Theatre Supplies, for an amount not to exceed \$10,740.85, pertaining to the 2002 Leawood Stage Company Summer Production
  - N. Resolution No. 1754 approving and authorizing the Mayor to execute an Agreement between the City and Shawnee Mission Tree Service for an amount not to exceed \$12,875.00, for the removal of hanging tree limbs at IRONHORSE Golf Course related to the January 2002 winter ice storm
  - O. Resolution No. 1755 approving and authorizing the Mayor to execute an Agreement between the City and Professional Service Industries, Inc., [PSI], for an amount not to exceed \$50,000.00, to conduct soil testings at Ironwoods Park, 14701 Mission Road, and I-Lan Park, 12601 Nall Avenue
  - P. Resolution No. 1756 consenting to the enlargement of Consolidated Main Sewer District [JCUWD] by the Board of County Commissioners of Johnson County, Kansas, [BOCC], pursuant to Johnson County Charter Resolution No. 29-92, to provide sewer service to Ironwoods Park at 14701 Mission Rd.
  - Q. Approve granting of Sanitary Sewer Easement to Johnson County Unified Wastewater District [JCUWD] for property located at I-Lan Park, 12601 Nall Avenue
  - R. Accept a Byrne Grant through the Kansas Criminal Justice Coordinating Council in the amount of \$366,110.00, for the implementation of a new Police Computer-Aided Dispatch [CAD] System and Records Management System [RMS]
  - S. Approve Bubeck Service, Inc., for services in the amount of \$10,375.00, pertaining to the purchase & installation of HVAC System [humidity controlled] for City Hall computer room
  - T. Bid in the amount of \$169,267.00 from Shawnee Mission Ford for the purchase of seven [7] 2002 police black-and-white vehicles [*This item was approved by the Governing Body in the budget process*]

Items 7.I., O., Q., and R. were removed for further discussion. On motion of Taylor, seconded by Gill, Council unanimously approved the remainder of the Consent Agenda.

- 7.I. After clarification that Villas of Chapel Green and Reserve at St. Michael's were the same project (the name was changed in midstream) and that the zoning was R-1, not RP-4, and on motion of Gill, seconded by Taylor, Council unanimously adopted the resolution.
- 7.O. Councilmember Taylor felt there was some duplication of services that the City already had in their contract with Theiss Doolittle Architects. PSI said they would do earthwork

testing, concrete testing, asphalt testing, shallow foundation inspections, masonry inspections, testing of reinforced concrete, placement of reinforced steel, and structural masonry. Theiss Doolittle had a team of architects, planners, and all types of engineers, and all those tasks were spelled out as an inspection requirement of the Theiss Doolittle contract – construction administration. Parks & Recreation Director Claxton said that she had been assured by Theiss Doolittle that those tasks were not part of the scope of their contract. Mr. Taylor moved to continue the matter to the July 15, 2002, Governing Body meeting in order to get a better understanding of Theiss Doolittle's and PSI's responsibilities. Motion seconded by Gill. Mrs. Claxton said that a delay would stop work on the parks and delay the project 3-4 weeks. Mr. Gill asked that if Mr. Taylor was correct, and some percentage of the PSI \$50,000 fee really shouldn't be part of the PSI contract, did the Council have the ability, if they approved the PSI agreement, to make an adjustment or recoup the money. City Administrator Lambers preferred to defer for 2 weeks to make sure, because if the City entered into a contract, it would have to honor that contract, and a dispute with Theiss Doolittle could consume a lot of time. Mr. Lambers suggested an amendment to the motion to provide a conditional approval that if Theiss Doolittle adequately convinced him that their scope didn't include the work, then the PSI contract could move forward. If they were unsuccessful in making that presentation to him, then the matter would be returned to the Council with Theiss Doolittle making a presentation to them. Mr. Taylor said he would amend his motion to approve 4 items in the PSI contract – 1) earthwork, 2) shallow foundations, 3) asphalt, 4) concrete. He would approve the testing for earthwork for both parks and use the others as alternates. He said the earthwork was already ongoing and a delay in the project wouldn't occur. Councilmember Bussing wanted to avoid any delay, turn the matter over to Mr. Lambers for his determination. Councilmember Dunn agreed. Mr. Taylor and Mr. Gill withdrew their motion and second. Mr. Taylor moved to approve the PSI agreement conditioned on the fact-finding of the City Administrator to make sure services weren't duplicated, seconded by Gill. Motion carried unanimously.

7.Q. Public Works Director Johnson assured Councilmember Taylor that the easement wouldn't interfere with the park plans/improvements. On motion of Taylor, seconded by Gill, Council unanimously approved the easement.

7.R. After a brief discussion of the CAD and RMS Systems, and on motion of Bussing, seconded by Gill, Council unanimously accepted the grant.

2715 **8. MAYOR'S REPORT**

A. Attended June 25th dedication of a piece of public art at Brook Beatty Park (86<sup>th</sup> Terr. & Lee Blvd.) – a bronze park bench created by artist Wendell Castle

B. Attended June 28<sup>th</sup> ribbon cutting for Town & Country Bank at Plaza Pointe, 135<sup>th</sup> & Roe Ave.

C. Mayor & City Administrator had recent lunch with newly formed Leewood Kiwanis Club

- D. Attended the June 29<sup>th</sup> Bi-state dedication of the Indian Creek Trail at State Line Rd.

3000 **9. COUNCILMEMBERS' REPORTS**

Councilmember Dunn reported that he and Public Works Director Johnson attended the SMAC meeting on June 28<sup>th</sup>. He said that SMAC adopted the project priority list for 2003 which included part of DB-24 and JB-8 (Lee Blvd./State Line Rd. & 103<sup>rd</sup>/I-435).

3125 **10. STAFF REPORT**

Parks & Recreation Director Claxton reported on July 4<sup>th</sup> celebration activities at Leawood City Park.

**COMMITTEE RECOMMENDATIONS**

3455 **11. PLANNING COMMISSION**

*[from March 12, 2002, Planning Commission meeting]*

- A. **Ordinance approving rezoning from RP-1, Planned Single Family Residential, to RP-4, Planned Cluster Residential, for Reserve at St. Michael's single family subdivision, located at 141<sup>st</sup> Street and Nall Avenue**  
*[Continued from the April 1, 2002, Governing Body meeting]*

On motion of Gill, seconded by Taylor, Council, on roll call vote, unanimously denied the pending ordinance on which the Planning Commission had recommended approval. (No numbered ordinance for publication was required, just a roll call vote.) Rezoning of the property wasn't necessary due to the granting of a variance by the Board of Zoning Appeals.

*[from May 14, 2002, Planning Commission meeting]*

- 3610 B. **Approve Special Use Permit [SUP] to Southwestern Bell for a DSL site to be located south of 129<sup>th</sup> Street and east of Roe Avenue** *[Continued from June 17, 2002, Governing Body meeting]*

Chris Carroll, Director of External Affairs for SBC Southwestern Bell for Johnson County, made a presentation. He said that while Southwestern Bell preferred to have a permit for an indefinite period of time as approved unanimously by the Planning Commission, Southwestern Bell would agree for the Council to consider a 25-year term for the SUP with an option to renew for another 25 years upon its expiration.

The Mayor asked that stipulation #1 be clarified to read, "The DSL box shall be lowered to a height no taller than the Woodlands subdivision monument sign. A landscaping plan shall be

submitted to staff for approval prior to approval of electrical service to the DSL box.” Mr. Carroll agreed to that clarification.

Mr. Carroll said that all of Southwestern Bell’s SUPs granted in other cities for DSL sites and other structures were for an indefinite period of time in perpetuity; as long as they needed them to provide facilities through those particular structures, they had the permits to do so. If a city wanted to get rid of a Southwestern Bell site, it couldn’t do it. Councilmember Gill said that Leawood was different in that respect, that if circumstances changed and the City wanted to get rid of a DSL site for some reason, the City would want to take factors into account and revisit the issue. So Mr. Gill was in favor of a definite term, say 5 years, with some sort of renewal feature associated with the permit. Mr. Carroll said that 5 years wasn’t long enough to recoup their investment on \$350,000.

The Mayor suggested a stipulation having a time limit, as all SUPs in Leawood had. Mr. Gill felt that the requested 25-year term was too long; the size of the investment associated with the payback and the speed at which technology evolved and changed was considerably less than 25 years. City Attorney Bennett said that the franchise term for Time Warner Cable was 20 years. Mr. Carroll felt that any time period less than 25 years would not be acceptable to his company. Mr. Carroll said that he wasn’t officially authorized to accept less than 25 years, but he would be willing to accept 20 years. Mr. Gill felt there should be 2 more weeks of dialogue to go forward on the information and let City Administrator Lambers find out what Southwestern Bell really needed, and to investigate the “no one has ever done it this way before” claim by Mr. Carroll; it struck Mr. Gill as unusual that no community anywhere hadn’t conditioned a SUP with some time parameter on it.

Councilmember Gulledge moved to approve the SUP with the Mayor’s change in stipulation #1 and that the SUP be for an indefinite period of time not to exceed 20 years as evidenced by pre-existing approval of Southwestern Bell’s competition, and that it could be renewed upon mutual agreement of Southwestern Bell and the Governing Body at that time. Motion seconded by Gill. The Mayor asked that the time period stipulation be stipulation #1. Councilmember Bussing wanted it clear for the record that Mr. Carroll’s suggestion that the City bear costs to remove the facility at some point in time wasn’t part of the SUP and wouldn’t be considered. Motion carried unanimously.

**12. OLD BUSINESS**

- A. Installation of gate to restrict traffic on IronHorse Drive/Circle located within the Estates of Iron Horse Subdivision, located at approximately 157<sup>th</sup> Street east of Nall [Continued from the May 20, 2002, Governing Body meeting] - TO BE CONTINUED TO THE AUGUST 19, 2002, GOVERNING BODY MEETING**
- B. Resolution approving and authorizing the Mayor to execute Third Amendment to Annexation Agreement between the City and COR Development, LLC, dated July 16, 2001**

Councilmember Gill moved to extend the Annexation Agreement with COR as amended by a Second Amendment to July 16, 2002, and during the time to July 16<sup>th</sup>, the City and the developers would get together and work out the wording on a Third Amendment. He wanted to see an ultimate extension date of December 31, 2002. He wanted the language in the original agreement restored or something similar that required all applications be filed on or before a date probably in October, but a date that would allow adequate time for complete resolution by December 31, 2002. He wanted to see some cleanup and clarification of certain aspects in the current wording, one of which would be the deletion of final plans which probably wouldn't be completed until after December 31<sup>st</sup>. He wanted some clarification around paragraph 4 of the existing agreement to do 2 things – 1) indicate a willingness on the part of the City to provide special benefit district financing, including financing provisions of up to 15 rather than the normal 10 years, and 2) to delete the language that talked about public financing and economic development assistance which one might interpret as tax abatement or tax increment financing which the Governing Body didn't favor. Motion seconded by Bussing.

The matter would return to Council at the July 15, 2002, Governing Body meeting with new language. Motion carried unanimously, except for Mr. Taylor who recused himself.

7230 **13. NEW BUSINESS**

- A. Resolution No. 1757 approving and authorizing the Mayor to execute an Interlocal Agreement between the City of Leawood and the City of Overland Park, pertaining to the Nall Avenue Improvement Project [between 135<sup>th</sup> Street and 143<sup>rd</sup> Street]**

On motion of Dunn, seconded by Gullledge, Council unanimously adopted the resolution, except for Councilmember Taylor who was not seated for the vote.

**14. OTHER BUSINESS – None.**

7300 **ADJOURN**

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

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Martha Heizer, City Clerk