

## Minutes

Audio Tape No. 595

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, July 7, 2003. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** Scott Gulledege, Louis Rasmussen

**Staff present:**

Scott Lambers, City Administrator	Patricia A. Bennett, City Attorney
Randy Hill, Deputy Fire Chief	Sid Mitchell, Chief, Police Dept.
Joe Johnson, Public Works Director	Chris Claxton, Parks & Rec. Dir.
Kathy Rogers, Finance Director	Mark Andrasik, Info Systems Dir.
Colleen Browne, Human Resources Dir.	Deb Harper, City Clerk
Diane Binckley, Planning & Develop. Dir.	Emily Gleasure, Deputy City Clerk

108    **1.    PLEDGE OF ALLEGIANCE**

124    **2.    APPROVAL OF AGENDA**

Councilmember Dunn arrived at 7:32 P.M.

Councilmember Dunn asked that Item "7F", Minutes of the February 21, 2003, Stormwater Management Committee meeting, be removed from the Agenda. Councilmember Rawlings made a motion to approve the remaining Agenda, seconded by Councilmember Story. The motion was approved 6-0-0.

157    **3.    CITIZEN COMMENTS -**

G. Gordon Thomas, 10516 Mohawk Lane, spoke on the limited access by citizens to be heard at Governing Body meetings, including the time constraints during Citizen Comments, and the voting procedures.

262    **4.    PROCLAMATIONS**

Mayor Dunn proclaimed July 13-19, 2003, **National Aquatics Week**. Kim Curran, Recreation Service Manager, accepted the proclamation. Mayor Dunn also proclaimed

July 2003, **National Parks & Recreation Month.** Chris Claxton, Parks & Recreation Director, accepted the proclamation.

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

391 **6. SPECIAL BUSINESS - None**

393 **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. 976 & 977
- B. Minutes of the June 16, 2003, Governing Body meeting
- C. Minutes of the May 13, 2003, Historic Commission meeting
- D. Minutes of the May 27, 2003 Arts Council meeting
- E. Minutes of the May 29, 2003, IRONHORSE Golf Course meeting
- G. Mayoral Appointment of Deb Welch as Historic Commission Member for a 3-year term
- H. Renewal of Cereal Malt Beverage [CMB] License for Zipz Convenience Store, located at 4821 W 135<sup>th</sup> Street
- I. Approve purchase in the amount of \$19,582, from Shawnee Mission Ford for the purchase of a 2003 Ford F-150 Pick-Up for Police Department [PSO Truck] [*This is a 2003 budgeted item*]
- J. Third and Final Payment in the amount of \$94,727.24 to Sailors Building Co., LLC, pertaining to the Plaza Pointe Benefit District 135th & Roe Intersection Improvement Project [CIP # 174]
- K. Ninth and Final Payment in the amount of \$12,000.00, to R.A. Knapp Construction, Inc., pertaining to the SMAC Project No. DB-04-015, located at 84th & State Line Road
- L. Resolution approving and authorizing the Mayor to execute Staffing Services Agreement for an amount not to exceed \$25,000, between the City and Accounting Solutions, for temporary staff in conjunction with the implementation of the Eden Project
- M. Resolution approving a \$184,212 grant request by the Kansas Criminal Justice Coordinating Council for the Federal Edward Byrne Memorial State & Local Law Enforcement Assistance Program [BYRNE], to assist with the funding of the Intergraph Computer Aided Dispatch [CAD] and Records Management System for the Police Department
- N. Resolution approving and authorizing the Mayor to execute a Rental Agreement in the amount of \$75.00 per month between the City and Attic Storage of Blue Valley, pertaining to the storage of legal documents
- O. Resolution approving and authorizing the Mayor to execute a construction agreement in the amount of \$500,363.95 [with a 10% contingency totaling \$550,400.35] between the City and Seal-O-Matic Paving Company, pertaining to the 2003 Residential Street Mill & Overlay Project

- P. Resolution approving and authorizing the Mayor to execute a Right-of-Way [ROW] Maintenance Agreement between the City and Waterford Homes Association for property located at 130<sup>th</sup> Street & Mission
- Q. Resolution approving and authorizing the Mayor to execute an Inter-local Agreement between the City, the Kansas Department of Transportation [KDOT], and Olsson Associates, in the amount of \$202,724.94, pertaining to the 119<sup>th</sup> Street & Mission Road Intersection Improvement Project [CIP # 159]
- R. Resolution calling for a Public Hearing to be conducted on Monday, August 4, 2003, to consider the vacation of a street right-of-way [ROW] located at approximately 136<sup>th</sup> & Kenneth Parkway [State Line Station]
- S. Resolution calling for a Public Hearing to be conducted on Monday, August 4, 2003, to consider the 2004 Fiscal Budget for the City of Leawood, Kansas
- T. Resolution approving a Final Site Plan for Roly Poly Sandwiches outdoor seating, located at 4312 W. 119<sup>th</sup> Street [Camelot Court] *[from the June 24, 2003, Planning Commission meeting]*
- U. Resolution approving a Revised Final Site Plan for Plaza Pointe Lot 12 & 13, parking lot changes, located south of 135<sup>th</sup> Street and west of Roe Avenue *[from the June 24, 2003, Planning Commission meeting]*

Councilmember Taylor made the motion to approve the Consent Agenda, seconded by Councilmember Rawlings. The motion was approved 6-0-0.

408 **8. MAYOR'S REPORT**

- A. Attended a luncheon sponsored by the Urban League of Greater Kansas City. Author Paul Kivel, Uprooting Racism: How White People Can Work for Racial Justice, spoke on how race relations can be improved in the Kansas City area.
- B. Appreciation to Kathy Rogers, the Finance Department, Scott Lambers, other department heads and the citizen members for their hard work in conjunction with the 2004 Annual Budget.
- C. The Leawood Stage Company led by the Leawood Arts Council put on a great performance recently with "Celebrate Broadway."
- D. The Lion's Fountain Dedication was July 4, 2003. Appreciation to Brian Anderson and the Parks Department staff for their hard work to complete the project.
- E. Appreciation to all departments involved in the annual 4<sup>th</sup> of July celebration.
- F. Gift items distributed to the Governing Body were from the Jewish Federation, as a thank you for supporting the Sister City relationship with the Gezer Region.
- G. Leawood residents George and Florene Lieberman were selected as the Volunteers of the Year. The Volunteer Center of Johnson County will honor them at a special dinner July 18, 2003.
- H. A special thanks to Officers Kurt Yoder and Rod Lasley who helped a recent stranded motorist (the Mayor's mother) in Leawood.

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

562 **10. STAFF REPORT - None**

**COMMITTEE RECOMMENDATION**

564

**11. PLANNING COMMISSION**

*[from May 27, 2003, Planning Commission meeting]*

**A. Ordinance amending § 16-2-4.5 of the Leawood Development Ordinance [LDO] pertaining to front Setback Requirements [Roll Call Vote]**

Councilmember Story questioned the way the setbacks were determined. Diane Binckley stated the amended ordinance addressed the various types of lots found in Leawood. Specifically for corner lots, the lot abutted to either side of the corner lot would be measured as to their setbacks. Lines would be drawn from those setbacks to a meeting point on the corner lot. The corner lot could then build up to, but not in front of, the lines designated. This would prevent a corner home from protruding ahead of homes on either side. However, if either side house was in violation of the stated setback limit, the corner house could not base its setback on the violation. Councilmember Gill suggested a corner house should setback in relation to other corner houses at the intersection. Councilmember Story asked that more consideration be given to setbacks of 4-corner intersection homes and the issue should be revisited at a later time. Patty Bennett suggested the wording under 16-2-4.5 (A2) be changed from “shall not exceed” to “shall not be less than” to clarify the intent.

Councilmember Taylor made a motion to approve with the new wording, seconded by Councilmember Rawlings. The ordinance passed 6-0-0 following a unanimous roll call vote.

950 **B. Ordinance amending § 16-2-9.2 of the Leawood Development Ordinance [LDO] pertaining to Non-Residential Uses [Roll Call Vote]**

Councilmember Gill asked for an explanation of wall pack lights. Ms. Binckley stated they were large, square light fixtures that allowed the entire light source to be seen; they were bright and obtrusive.

Councilmember Taylor made a motion to approve, seconded by Councilmember Bussing. The ordinance passed 6-0-0 following a unanimous roll call vote.

981 **C. Ordinance amending Sections 16-4-1.2 and 16-4-1.3 of the Leawood Development Ordinance [LDO] pertaining to Accessory Uses, Buildings and Structures [Roll Call Vote]**

Councilmember Gill asked for the purpose of the ordinance. Ms. Binckley replied the purpose was three-fold: 1) to clarify the fact that a pool rather than the pool fencing needed to be 10 feet off the property line; 2) the RP-2 category which covers villa homes has been added back into the ordinance; and 3) lighting for sports courts be required to be approved by the Planning Commission and Council. Councilmember Gill asked if sports courts included driveways painted to look like sports courts. Ms. Binckley stated they are not currently viewed as sports courts.

Councilmember Taylor made a motion to approve, seconded by Councilmember Dunn. The ordinance passed 6-0-0 following a unanimous roll call vote.

**D. Ordinance amending § 16-4-5.4, of the Leawood Development Ordinance [LDO] pertaining to Required Parking Ratio [Roll Call Vote]**

Councilmember Gill confirmed with Ms. Binckley that there were no significant changes to the ordinance.

Councilmember Taylor made a motion to approve, seconded by Councilmember Rawlings. The ordinance passed 6-0-0 following a unanimous roll call vote.

1062 **E. Ordinance amending Sections 16-4-6.9 and 16-4-6.14, of the Leawood Development Ordinance [LDO] pertaining to sign regulations [Roll Call Vote]**

Councilmember Taylor asked Ms. Binckley why construction trailers were allowed to have signage on them that was larger than the ordinance allowed. She stated that once the development had been approved, the trailers had been allowed on the site. Councilmember Taylor stated he felt the contractors' trailers should conform to signage height requirements, as did the applicants who were trying to sell or lease sites being built. He cited the Price Chopper development as an example. Ms. Binckley stated this point could be revisited at a later time.

Councilmember Gill made a motion to approve, seconded by Councilmember Story. The ordinance passed 6-0-0 following a unanimous roll call vote.

**F. Ordinance amending Sections 16-4-7.2, 16-4-7.3, and 16-4-7.6 of the Leawood Development Ordinance [LDO] pertaining to landscaping and screening requirements [Roll Call Vote]**

Councilmember Gill made a motion to approve, seconded by Councilmember Story. The ordinance passed 6-0-0 following a unanimous roll call vote.

1175 **G. Ordinance amending Sections 16-4-9.2, 16-4-9.3, and 16-9.4 of the Leawood Development Ordinance [LDO] pertaining to Fences and Walls [Roll Call Vote]**

Councilmember Story questioned how this ordinance would be enforced. He cited residents who installed a hot tub and built a fence around it, later removing the hot tub and keeping the fence as a privacy fence were prohibited from doing so in Leawood by the LDO. He suggested inserting wording into the ordinance to make it easier to enforce. Ms. Binckley stated the enforcement of such ordinance would be difficult. Councilmember Taylor suggested setting up a permit system that would renew every 5 to 7 years, the approximate working time of a hot tub. Scott Lambers stated having language in place in the ordinance would be more effective for enforcement should a violation be documented. He suggested incorporating the language at a later time.

Councilmember Bussing made a motion to approve, seconded by Councilmember Taylor. The ordinance passed 6-0-0 following a unanimous roll call vote.

**H. Ordinance amending § 16-9-139 of the Leawood Development Ordinance [LDO] pertaining to building height definition [Roll Call Vote]**

Councilmember Gill stated the amendment was changing an absolute height to an average height, effectively raising the building heights, with averages capable of manipulation. He felt the highest point on a building should be the building height, and not an average number. Ms. Binckley stated the purpose of the ordinance change was to target the height of homes, not commercial buildings. Councilmember Gill suggested amending the absolute height of homes to a specific number if it was causing conflicts, but not change to an average height. Councilmember Taylor asked how a building on a slope should be measured. Councilmember Gill stated the question was the average height, not average grade. Mayor Dunn asked for a motion to continue until August 4, 2003, rather than deny.

Councilmember Gill made the motion to deny the amendment, but later withdrew it. Councilmember Gill made the motion to continue to the August 4, 2003 Governing Body meeting, with a second from Councilmember Story. The motion passed unanimously.

**I. Ordinance amending § 16-2-8.1 of the Leawood Development Ordinance [LDO] pertaining to Principal Permitted and Special Uses [Roll Call Vote]**

Councilmember Dunn questioned Ms. Binckley as to whether the revised language in the new amended ordinance was the same as the language in the LDO prior to its revision in 2002. She stated the only difference was a special use permit was stipulated instead of an allowed use permit. Councilmember Dunn requested to see a copy of the old LDO prior to the 2002 revision for comparison.

Councilmember Dunn made a motion to continue to the August 4, 2003 Governing Body meeting, seconded by Councilmember Gill. The motion passed unanimously.

1568 **13. NEW BUSINESS**

**A. Ordinance levying assessments on lots, pieces, and parcels of property located in the City of Leawood, Kansas, for the purpose of paying for the cost of improvements to Roe Avenue at the intersection thereof with 135<sup>th</sup> Street and south to 137<sup>th</sup> Street [CIP # 174]**

Councilmember Gill asked if any of lots were single-family residences that would have to bear a portion of the assessment. Ms. Bennett advised that they were all commercial lots in Plaza Pointe. Mayor Dunn confirmed with Ms. Bennett that the 15-year bonding coincided with the 15-year benefit districts in Plaza Pointe.

Councilmember Story made the motion to approve, seconded by Councilmember Taylor. The ordinance passed 6-0-0 following a unanimous roll call vote.

**B. Ordinance levying assessments on lots, pieces, and parcels of property located in the City of Leawood, Kansas, for the purpose of paying for the cost of improvements to 133<sup>rd</sup> Street between State Line and Mission Road Improvement [CIP # 178]**

Councilmember Gill confirmed with Ms. Bennett that there were single-family residences included in the assessment, with only one (the Keebles) objecting. The Keebles were being assessed \$2,294 over 15 years. Ms. Rogers stated each property owner had the option of paying the entire amount in a one-time payment before August 14, 2003, or paying over 15 years at the interest rate of the City's bond rate. Councilmember Gill asked if there was a policy in place wherein the developer paid all specials before the individual lots were sold. Ms. Rogers stated she was not aware of such a policy. Joe Johnson explained how the assessments were spread as the property was developed. Councilmember Taylor stated he would like to see a more a more consistent policy on assessment of properties.

Mayor Dunn stated that as the lots were built, the homeowners would be paying for the assessment. Councilmember Gill stated that this provided a new perspective to special benefit districts in residential areas, by putting the burden of the "special" taxes on the taxpayers. He felt that it would have a negative effect on the ability to bring new citizens into the City, assessing them with taxes on improvements for the commercial developments. Councilmember Bussing stated it had been his assumption that the developer would pay the full benefit district costs, and never be apportioned out to the individual residences.

Councilmember Gill suggested that the special assessment on the Keeble property, which had no value to the owner, be borne by the City. Mayor Dunn advised this action would set a precedent. Mr. Lambers stated that if the Governing Body were to make any special consideration of assessments for properties, that consideration should be done at the formation of the benefit district, initiating a policy that the City would participate in paying a portion of the assessment. He cautioned initiating such a policy at this point, stating citizens would then have an expectation that the Governing Body would pay their assessments for them. Ms. Bennett advised that the City was to spend funds for public benefit only. The previous resolution approved by the Governing Body stated that the City would not spend at-large funds on the street and it would be 100% paid by the properties abutting it. If a motion were made tied to a public benefit, it should be looked over by the bond counsel.

Discussion continued on how the Keebles came to acquire the property from the developers. Councilmember Bussing stated Mr. Keeble had done extensive work to improve the looks of the property. He stated he did not know if legally the land could be transferred back to the developer.

Councilmember Gill asked in the future that developers would be required to give full, upfront disclosures to potential buyers of Wilshire Place lots that the special assessment would be placed on their properties. Councilmember Bussing asked Mr. Lambers to relay to the developer that he found the assessment to Mr. Keeble's lot disagreeable and would consider it an act of good faith on the developer's part to assume the assessment on it.

Councilmember Dunn made the motion to approve, seconded by Councilmember Rawlings. The ordinance passed 6-0-0 following a unanimous roll call vote.

**C. Resolution approving and authorizing the Mayor to execute a Community Service Agreement between the City and Blue Valley Unified School District No., 229, pertaining to the assignment of School Resource Officers [SRO]**

Councilmember Story made the motion to approve, seconded by Councilmember Gill. The motion passed unanimously.

2619 **D. Approve Change Order No. 14, for a 40-day extension with Vanum Construction, Inc., pertaining to the Ironwoods Park Project, 14701 Mission Road [CIP # 116] and the I-Lan Park Project, 12601 Nall Avenue [CIP# 111]**

*Staff Comment: The City Administrator is recommending an extension to the construction agreement for these projects. If the extension is granted, it is recommended the contract not be extended beyond August 28, 2003 for I-Lan Park.*

Councilmember Taylor asked about the discrepancy of a \$21,000 increase on the change order form between the contract price before the change order and the contract price after the change order, when the net total increase/decrease in contract price was \$0. Chris Claxton stated an error on the change order had occurred and the amount of \$5,485,717.00 should have been listed as the contract price before the change order.

Councilmember Bussing asked if there were any completion clauses in the contract. Mr. Lambers stated he was not aware of any incentives for the contractor for early completion. Mayor Dunn mentioned that a delegation from Taiwan would be visiting hopefully in September for the I-Lan Park dedication.

Councilmember Dunn made a motion to approve a 32-day extension for I-Lan Park and a 40-day extension for Ironwoods Park, seconded by Councilmember Gill. The motion passed 5-1-0. Yea: Councilmembers Dunn, Gill, Bussing, Story and Rawlings. Nay: Councilmember Taylor. Councilmember Taylor stated he could not support the motion because he felt there had been a lack of work done over the past 60 days at the sites by the contractor, especially at I-Lan Park.

- 2872 **E. Discussion of installation of elevator at Ironwoods Nature Center, located within the park at 14701 Mission Road**

*Staff Comment: The City Administrator concurs with Staff and the Park & Recreation Advisory Board.*

Councilmember Gill made the motion to adopt the recommendation endorsed by the City Administrator not to install the elevator, seconded by Councilmember Rawlings. The motion was approved unanimously.

- F. Schedule Governing Body Work Session on August 4, 2003, at 7:00 P.M., for a presentation of proposed Public Art**

Mayor Dunn noted that artist Nate Fors would be at the meeting to explain his proposed artwork for City Park. Councilmember Rawlings made the motion to approve, seconded by Councilmember Dunn. The motion was approved unanimously.

**14. OTHER BUSINESS - None**

- 2929 **15. ADJOURN**

There being no further business, the meeting was adjourned at 9:03 P.M.

---

Debra Harper, City Clerk

---

Emily Gleasure, Recording Deputy City Clerk