

Minutes

Audio Tape Nos. 519 & 520

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 16, 2001. Mayor Peggy J. Dunn presided.

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

Staff present:

Patricia A. Bennett, City Attorney	Kathy Rogers, Finance Director
Diane Binckley, Planning/Develop. Dir.	Ben C. Florance, Fire Chief
Julie Hakan, Human Resources Director	Lisa Wetzler, Asst. City Attorney
Sid Mitchell, Police Chief	Jeff Cantrell, Neighborhood Serv. Admin.
Chris Claxton, Parks & Recreation Director	David Ley, Special Projects Engineer
Martha Heizer, City Clerk	Deb Harper, Deputy City Clerk
Karl Weinfurter, Info. Systems Specialist	

1. PLEDGE OF ALLEGIANCE

165 **2. APPROVAL OF AGENDA**

Item 8, Consent Agenda, was moved ahead to follow Item 5, Citizen Comments. On motion of Story, seconded by Gill, Council unanimously approved the agenda as amended.

210 **3. PROCLAMATION**

The Mayor designated the structure located at 4203 W. 151st St., the H. Franklin and Betty J. Coulter home, a Leawood Historic Structure to be recorded in the Leawood Register of Historic Places.

350 **4. PUBLIC HEARING TO CONSIDER THE 2002 FISCAL BUDGET**

The Mayor opened the hearing. There was no public comment. On motion of Rasmussen, seconded by Gill, Council voted unanimously to close the hearing.

435 **5. CITIZEN COMMENTS**

G. Gordon Thomas, 10516 Mohawk Lane, commented on limiting the length of time that individuals should hold elective office.

700

8. 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. 922
- B. Minutes of the July 2, 2001, Governing Body meeting
- C. Minutes of the May 22, 2001, Arts Council meeting
- D. Minutes of the May 31, 2001, Golf Course Committee meeting
- E. Minutes of the June 12, 2001, Historic Commission meeting
- F. 2001 Goals & Objectives report – 2nd quarter
- G. Departmental reports
- H. Retail liquor occupation license renewal for Ranchmart Wine & Spirit Shoppe, 3748 W. 95th Street
- I. Declaration of Public Works surplus property for auction [1989 Chev. S-10 pickup, last 4 VIN/4896, Asset #00304, Unit 424; and 1987 Chev. C-10 pickup, last 4 VIN/7965, Asset #00603, Unit 421]
- J. Approve bid in the amount of \$44,575.00 from KCR International for the purchase of a cab & chassis, 4900 single axle truck, for the Parks & Recreation Dept.
- K. Approve bid in the amount of \$42,502.00 from Knapheide Truck Equipment for the purchase of a hook loader body, Stellar 96-10-24 Model, for the Parks & Recreation Dept.
- L. Approve bid in the amount of \$98,387.00 from the low bidder Site-Rite Construction Co. for non-SMAC stormwater improvements project located at 12211 Sagamore (121st & State Line Rd.)
- M. Approve funding expenditure in the amount of \$18,893.00 for the Juvenile Intake Assessment Center [JIAC] for the year 2002
- N. Approve Change Order No. 1 with Bruner Contracting Co., LLC, in the amount of \$124,164.58, regarding the Public Works Maintenance Facility [CIP #156]
- O. Approve and authorize execution of a design engineering contract between the City and Schlagel & Associates in the amount of \$77,000 for design of 135th Street and Roe along the Plaza Pointe Development
- P. Approve and authorize execution of a contract between the City and Holland Corp. in the amount of \$330,736.00 for the construction of 135th Street and Roe along the Plaza Pointe Development
- Q. Approve and authorize the execution of a consulting agreement between the City and Public Finance Consultants, Inc. [PFC], in the amount of \$5,400 for consulting services on certain financial matters
- R. Resolution No. 1620 approving the final plat for Scottsdale Asset Management II Office Building to be located at 4901 College Boulevard [Applicant: Peters & Associates]

- S. Acceptance of General Warranty Deed for the conveyance of real property located at 135th and Mission Road in conjunction with the Settlement Agreement dated April 26, 2001, and Amendment to Settlement Agreement dated May 7, 2001, between the City and Supermarket Developers, Inc., [SMD] for the construction of the Price Chopper store.

Items 8.A, F, N, & O were removed for discussion. On motion of Dunn, seconded by Story, Council unanimously approved the remainder of the Consent Agenda.

8.A. Councilmember Taylor referred to Appropriation Ordinance Check No. 82553 to Shred-It Kansas City, stating he recused himself only from the vote on that particular item because he had a personal relationship with the company. On motion of Gill, seconded by Story, Council unanimously approved the ordinance.

8.F. Councilmember Story updated the Governing Body on the evaluation of "core government" services, a short term goal of the Governing Body on page 3 of the Goals & Objectives report; there had been a lot of progress, and he said he would like to work on a web site questionnaire with the co-interim city administrators. On motion of Story, seconded by Dunn, Council unanimously approved the 2nd quarter 2001 Goals & Objectives.

8.N. Councilmember Taylor advised that staff and the sub-committee of the Public Works Committee met with Doug Boyd of ACI/Boland (project construction manager) after the last Council meeting to review the change order. On motion of Rasmussen, seconded by Gullede, Council unanimously approved the change order.

8.O. Councilmember Taylor moved to continue the matter to the August 6, 2001, Governing Body meeting in order to hear more from the Public Works Director about his recommendation to contract with Schlagel & Associates, seconded by Gullede. City Attorney Bennett said that Schlagel & Associates was being used by the property owners involved in the benefit district, and some time ago, Council voted by charter ordinance to allow certain projects to go forward without competitive bidding. Finance Director Rogers added that this was reimbursement for expenses Schlagel had already incurred on the project. Councilmember Gill agreed with Mr. Taylor; he wanted to be sure that the project was properly engineered, that there were no risks to the City, that the Public Works Director was comfortable with the quality of the engineering work that had been done. Motion carried unanimously.

1350 6. **SPECIAL BUSINESS**

- A. **Third and Final Reading: Ordinance No. 1898 granting to and authorizing to Everest Midwest Licensee, LLC, a Franchise Agreement authorizing the right to construct, operate, and maintain a communications system using the rights-of-way in the City.**

On motion of Rasmussen, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

- 1520 **B. Approving and authorizing the execution of a Public Land Use Agreement between Everest Midwest Licensee, LLC, and the City to install and maintain communications fiber optic cable within existing conduit.**

On motion of Rasmussen, seconded by Taylor, Council unanimously approved the agreement.

- 1555 **C. Second of Three Readings: An ordinance granting to and authorizing to American Fiber Systems a Franchise Agreement authorizing the right to construct, operate, and maintain a communications system using the rights-of-way in the City.**

7. SPECIAL CANINE PERMIT APPEALS

- A. Re-evaluation of animal permit to allow more than two [2] canines at 4101 W. 124th Street. {Appellant: Sandra Ryals Alig} [Continued from May 7, 2001, Governing Body meeting] – APPEAL WITHDRAWN**

- 1630 **B. Appeal of denied animal permit to allow seven [7] canines (show dogs) at 3005 W. 89th Terrace. [Appellant: Mark and Janet Ewing]**

Attorney Curtis Holland spoke in favor of the permit on behalf of the Ewings. He suggested 5 special stipulations for Council consideration, including one that the Council approve a temporary permit for a 6-month trial period so the Ewings could prove their points.

- 2260 Janet Ewing addressed the Council. She said she wasn't a "backyard breeder," didn't breed dogs for sale.

- 2830 City Attorney Bennett felt the Council had no choice but to deny the permit in accordance with the ordinance since there were at least 2 neighbors within 350 feet of the Ewings who objected to the issuance of a permit. In accordance with the ordinance, the dogs would have to be removed from the premises immediately. She suggested tabling the matter for 6 months to give the Ewings a chance to decide what they wanted to do with the dogs to come into compliance with City ordinance, that a delay with certain stipulations might be in order. She suggested Council review the ordinance during the 6-month period to be sure it satisfied the intent of the City government. She said the Council would want to take some action on the ordinance soon so the Ewings wouldn't be left with a decision in 6 months where the next day they would have to remove the dogs from their premises if the Council didn't amend the current ordinance to give themselves discretion to go outside the 2-dog limit.

Councilmember Gill said that for personal and professional reasons to avoid the appearance of a conflict of interest, he would recuse himself from the vote on the permit, but after that vote, he wanted an opportunity to comment on the ordinance in general.

Councilmember Story moved to table the matter for 6 months (to the second meeting in January 2002) to give staff an opportunity to evaluate the ordinance, make a recommendation to the Council, and for Council to decide if the ordinance was written in the fashion it wanted it to be written, and to go ahead and put in place the 5 stipulations put forth by Mr. Holland during that period of time, and should the issue remain as it did today at the end of the 6 months, then it would return to the Council for reconsideration. Motion seconded by Bussing.

Knowing the background of the ordinance and why it was written the way it was, Councilmember Rasmussen felt that if the Council amended it, they would be setting themselves up for what he characterized as “backyard breeders.” He was willing to go along with the condition, but didn’t want to infer that he was willing to change the existing ordinance.

3390 Robert Lunt, 3009 W. 89th Terrace, next door to the Ewings, opposed the issuance of a permit for several reasons; the City should enforce the ordinance.

There was discussion as to whether or not all the dogs should be licensed with the appropriate fee during the deferral period. Ms. Bennett suggested the motion could be amended to state that it was essentially a temporary permit to lapse at the end of 6 months and that would allow the licensing clerk to have the ability to license the dogs subject to the appropriate vaccinations.

Mr. Story clarified the intent of his motion – the reason he suggested 6 months was because it took time to review an ordinance. However, with that in mind, he suggested that staff try to move expeditiously and not wait 6 months to have it back before the Council, and have a decision made as to whether or not they would keep the current language or change it in such a way that it gave the Council discretion in matters such as this. Once the Council ruled on the issue, the applicants would know one way or another which ordinance would apply when they returned to the Council the second meeting in January. And he was also willing to add as a stipulation that the dogs be licensed, although he was somewhat hesitant to do so under the guise of a temporary permit because he wasn’t certain that the ordinance allowed that authority, but he agreed to proof of vaccination and payment of the appropriate fees. Mr. Bussing, who seconded Mr. Story’s motion, agreed.

In response to Councilmember Gullede, Mrs. Ewing said her intention in the next 6 months would be to move from Leawood. It seemed to her that the Council was postponing the matter for 6 months because of a technicality in the ordinance, not because they wanted to grant a permit.

There was discussion about separating Mr. Story’s motion into 2 motions. Mr. Story’s motion seconded by Mr. Bussing, to state that the matter be tabled for 6 months to the second Council meeting in January 2002, putting in place the 5 stipulations offered by Mr. Holland during that time period, with a 6th stipulation for proof of vaccinations and payment of appropriate license fees for the dogs not currently licensed. (The Mayor noted that Mr. Holland’s stipulation #4 regarding a 6-month permit was

actually a deferral). Motion carried; Gullede, Bussing, Dunn, Story, Taylor in favor; Rawlings, Rasmussen opposed; Gill recused. Mr. Rasmussen said a lot of work went into the current ordinance, felt it was fair to the animals, fair to the animal owners, and fair to surrounding neighbors; the current ordinance was a compromise, subject to debate, but had worked. Mr. Rawlings felt that with 4 objections from neighbors, there was sufficient evidence of a nuisance to the neighborhood; no permit should be granted based on the current ordinance.

Councilmember Bussing moved to direct staff to review the ordinance and return to Council with a recommendation by the September 4, 2001, Governing Body meeting, seconded by Story. Councilmember Gill asked staff to look at “evidence” of a nuisance (in his opinion, one version of the facts) versus “conclusive determination of the issue.” He didn’t believe they meant the same thing. Councilmember Dunn said he would support the motion, but didn’t have any intention of changing the spirit of the current ordinance; it was a good ordinance, but it was fair to give everyone a fair period of time to deal with the situation. Motion carried unanimously.

5045 **9. MAYOR’S REPORT**

- ?? Thanked staff for the successful 4th of July celebration
- ?? Recent roundtable discussion with Kansas City and Lee’s Summit mayors at an awards ceremony for 25 women from the Kansas City community who demonstrated outstanding success in their business endeavors sponsored by the Kansas City Business Journal
- ?? KCADC Board meeting and their new web address targeted at national real estate and site consultant audiences and mention of UPS relocation of regional headquarters to Leawood
- ?? Thanked the Leawood Stage Company, Leawood Arts Council, and staff for the Stage Company’s outstanding musical production at City Hall amphitheater July 12-15

COMMITTEE RECOMMENDATIONS

5545 **10. PLAN COMMISSION – [from June 26, 2001, Plan Commission meeting]**

A. Resolution approving Conditional Use Permit and Preliminary Plan for a ZIPZ Convenience Store & Retail Center located at Plaza Pointe, south of 135th Street, West of Roe. [Applicant: Jack Beal & Jerry Colovich, ZIPZ, L.L.C.]

Councilmember Taylor recused himself from Items 10.A & B and left his Council seat. The applicant wasn’t present. Councilmember Gill moved to continue the matter to the August 6, 2001, Governing Body meeting, seconded by Gullede. Mr. Gill was particularly interested in signage; he expected a significant toning down from what he thought their normal signage was. Councilmember Bussing asked that the applicant tell the Governing Body specifically how they intended to comply with the 135th Street Corridor guidelines. Mr. Rasmussen was concerned about private water mains for fire; to the extent that the Fire Department was permitted to test, the City could find itself in a fire situation where fire hydrants were inoperable. The City needed to be sure the Fire Department would have the right to go

onto private property to test hydrants. The Mayor asked that the Fire Marshal revise his memo to allow for that (a super majority Council vote would be required to change stipulation #14 because the Council would essentially be disagreeing with the Plan Commission, or a simple majority could send the matter back to the Plan Commission for consideration). Mr. Gill's motion carried; Gullede, Bussing, Rawlings, Dunn, Gill, in favor; Taylor recused; Story not seated for the vote; Rasmussen opposed (he felt the application should be denied on the basis of the facts already before the Council).

6375 **B. Approve Special Use Permit (renewal) for a temporary building located south of 137th Street, West of Roe. [Applicant: United Methodist Church of the Resurrection]**

Councilmember Taylor had recused himself and wasn't present at his Council seat, and Councilmember Story had returned to his seat. Councilmember Gullede moved to approve the permit (for a period of 2 years from the date of Council approval, to be the last extension granted), seconded by Bussing. Motion carried unanimously, except Taylor.

Councilmember Taylor returned to his Council seat.

6985 **11. OLD BUSINESS**

A. Ordinance No. 1899C amending Section 11-205 of the Code of the City of Leawood, Kansas, 2000, pertaining to Disturbing the Peace – [continued from May 7, 2001, Governing Body meeting]

Councilmember Gill moved to pass the ordinance, seconded by Dunn. City Attorney Bennett said that golf course equipment such as mowers were considered municipal maintenance vehicles and equipment, and as such, would be exempt under the ordinance. Mr. Gill explained why he felt the prima facie violation section should be eliminated - he didn't feel it should be a criminal event to make a noise that could be heard by a neighbor at a resident's property line; there should be some element of culpability or unreasonableness or loudness associated with it other than merely being audible. The ordinance was passed unanimously on roll call vote.

7480 **12. NEW BUSINESS**

A. Discussion regarding the stopping of road construction of 133rd at Pawnee [per resident's request].

John Fournier, 13104 Pembroke, spoke in favor of stopping the construction at Pawnee.

Councilmember Gill summarized residents' positions. They appreciated the berming solution and didn't want to jeopardize it, and when the road was built, wanted construction traffic kept out of the neighborhoods. Mr. Gill said that to delay building a portion of the road would delay the buffering which was very important to the residents. He added that part of the critical infrastructure needed to abate traffic created by development along 135th Street from the residential neighborhoods was an access road, namely 133rd Street. Holding up the build through would probably not be in the interest of the points of agreement.

8958 **END OF TAPE NO. 519**
NEW TAPE NO. 520

Jan Jones, 13013 Pembroke, asked about traffic studies and construction traffic barriers.

- 360 **B. Resolution No. 1621 authorizing the sale of \$9,300,000 General Obligation Bonds of the City of Leawood to provide funds to pay the costs of public improvements to Fire Station No. 3 in the amount of \$3,250,000, and South Park in the amount of \$6,050,000, within the City; approving the form of notice of bond sale and preliminary official statement to be used in connection therewith.**

Adopted unanimously on motion of Rasmussen, seconded by Taylor.

- 400 **C. Approving and authorizing an Annexation Agreement between the City and COR Development, LLC, pertaining to annexation of property located at 135th Street and Nall Avenue.**

Councilmember Taylor recused himself from 12.C,D,&E and left his Council seat. On motion of Rasmussen, seconded by Gullledge, Council unanimously approved the agreement, except Taylor.

- D. Acceptance of Petition for Annexation of property located at 135th Street and Nall Avenue into the City of Leawood.**

On motion of Dunn, seconded by Bussing, Council unanimously accepted the petition, except for Mr. Taylor who had recused himself.

- E. Ordinance No. 1900 annexing property located at 135th Street and Nall Avenue into the City of Leawood, pursuant to consent of the Owner.**

On motion of Rasmussen, seconded by Gill, Council unanimously passed the ordinance on roll call vote, except for Mr. Taylor who had recused himself.

Councilmember Taylor returned to his Council seat.

13. OTHER BUSINESS – None.

910 **14. EXECUTIVE SESSION**

- A. Discuss matters subject to attorney-client privilege.**

On motion of Dunn, seconded by Gullledge, Council voted unanimously to convene in executive session at the end of the meeting for a period of 30 minutes to discuss 2 matters under attorney-client privilege.

955 Council convened in executive session at 9:55 p.m. and returned to regular session at 10:25 p.m. On motion of Rawlings, seconded by Bussing, Council voted unanimously to extend the executive session 20 minutes.

ADJOURN. Council returned to regular session at 10:40 p.m. No action was taken. There being no further business, the meeting was adjourned.

Martha Heizer, City Clerk