

Minutes

DVD No. 329

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 21, 2014. Mayor Peggy Dunn presided.

Councilmembers Present: Jim Rawlings, Julie Cain, Lou Rasmussen, Debra Filla, Carrie Rezac, Andrew Osman, Tom Robinett and James Azeltine

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator	Richard Coleman, Comm. Dev. Director
Mark Klein, Planning Official	Patty Bennett, City Attorney
Joe Johnson, Public Works Director	Chris Claxton, Parks & Rec Director
Dawn Long, Finance Director	Chief John Meier, Police Department
Chief Dave Williams, Fire Department	Karl Weinfurter, Info Services
Cindy Jacobus, Assistant City Clerk	Deb Harper, City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA – Item 15.A. continued to August 4, 2014 City Council meeting

A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 8-0.

3. CITIZEN COMMENTS – None

4. PROCLAMATIONS – None

5. PRESENTATIONS/RECOGNITIONS

Mayor Dunn recognized Councilmember Tom Robinett, Ward Three, who served the City for nearly one year as a Councilmember as well as in many other capacities over several years. Mayor Dunn presented Councilmember Robinett with a commemorative plaque and a Key to the City.

6. SPECIAL BUSINESS

- A. **Resolution No. 4283**, authorizing the sale by the City of Leawood, Kansas of General Obligation Bonds and General Obligation Temporary Notes of the City to provide funds to finance the costs of certain public improvements within said city and to refund certain outstanding General Obligation Bonds of the City; approving the form of Notice of Bond Sale and Preliminary Official Statement to be used in connection therewith; and authorizing and directing the City Finance Director to advertise such sale in the manner prescribed by law

A motion to approve Resolution No. 4283 was made by Councilmember Azeltine; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 8-0.

- B. **Public Hearing** One Nineteen Transportation Development District Assessments [Project # 80456]

Mayor Dunn opened the Public Hearing. Due to no one being present, a motion to close the Public Hearing was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.

- C. **Ordinance No. 2676**, levying assessments for tax year 2015 on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of construction of certain public and private road and parking lot related improvements and other such transportation related improvements, located within 119th Street Development District, within the City of Leawood, Kansas [One Nineteen Transportation Development District] [Project # 80456]

A motion to pass Ordinance No. 2676 was made by Councilmember Rezac; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 8-0.

- D. **Public Hearing** Park Place Development Improvement District Assessments [Project # 83196]

Mayor Dunn opened the Public Hearing. Due to no one being present, a motion to close the Public Hearing was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.

- E. **Ordinance No. 2677**, levying assessments for tax year 2015 on lots, pieces, and parcels of ground in the City of Leawood, Kansas, for the purpose of paying for construction of improvements to Nall Avenue, 117th Street, Town Center Drive and Roe Avenue and construction of storm water improvements within the City of Leawood for establishment of an Improvement District, pursuant to K.S.A. § 12-6a01, et seq., and the City's Home Rule Authority of Article 12, Section 5 of the Kansas Constitution, located in Park Place Development [Project # 83196]

A motion to pass Ordinance No. 2677 was made by Councilmember Filla; seconded by Councilmember Robinett. The motion was approved with a unanimous vote of 8-0.

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. Accept Appropriation Ordinance Nos. 2014-25 and 2014-26
- B. Accept minutes of the July 7, 2014 Governing Body meeting
- C. Accept minutes of the June 23, 2014 Governing Body Budget Work Session
- D. Accept minutes of the June 10, 2014 Parks and Recreation Advisory Board
- E. Approve Renewal of Cereal Malt Beverage [CMB] License for Gordon Biersch Brewery Restaurant, located at 11652 Ash Place
- F. Approve Renewal of Cereal Malt Beverage [CMB] License for RA Sushi Bar Restaurant, located at 11638 Ash
- G. Approve Cereal Malt Beverage [CMB] License for Talk of the Town, located at 5201 W. 135th Street
- H. Approve Renewal of Retail Liquor License for Par 4 Liquor, LLC, located at 4821 W. 135th Street
- I. Approve Massage Therapy License for Radiant Yoga & Wellness, located at 4431 W. 119th Street, in accordance with Code § 5-510
- J. Approve Final Pay Request in the amount of \$ 295,555.26 to Vance Brothers, Inc., pertaining to the 2014 Slurry Seal Program [Project # 70015]
- K. Approve purchase in the amount of \$33,936.16 to Professional Turf Products, for maintenance equipment for Ironhorse Golf Course, located at 15400 Mission Road
- L. Approve purchase for an amount not to exceed \$40,000 to Challenger Team, for spring and fall soccer uniform jerseys
- M. **Resolution No. 4284**, accepting a Quit Claim Deed from Camelot Court, LLC, pertaining to potential cross-access easements located at the Leawood Justice Center, a replat of part of Lot 1, and all of Lots 11 thru 15, Camelot Court Shopping Center, a subdivision in the City of Leawood, Johnson County, Kansas
- N. **Resolution No. 4285**, approving a Special Warranty Deed from the City of Leawood, Kansas, to Camelot Court, LLC, pertaining to the access drive north of the Waterway Gas Station
- O. **Resolution No. 4286**, approving an Open Space and "No-Build" Easement Agreement between the City of Leawood, Kansas, and Camelot Court, LLC, pertaining to property located east of Camelot Court Shopping Center
- P. **Resolution No. 4287**, accepting Permanent Utility Easement from Bertrand Gallet and Anne Gallet, for Tract 19; located at 4319 W. 143rd Street, pertaining to the 143rd Street Improvement Project, Nall to Windsor [Project # 80162]
- Q. **Resolution No. 4288**, accepting a Deed of Dedication from Bertrand Gallet and Anne Gallet, for Tract 19; located at 4319 W. 143rd Street, pertaining to the 143rd Street Improvement Project, Nall to Windsor, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets [Project # 80162]
- R. **Resolution No. 4289**, approving and authorizing the Mayor to execute a Professional Service Agreement in the amount of \$49,948.00, between the City and Infrastructure Management Services [IMS], pertaining to Street Inspections

- S. **Resolution No. 4290**, approving and authorizing the Mayor to execute a Professional Service Agreement in the amount of \$38,980.00, between the City and Olsson Associates for a Preliminary Engineering Study of Patrician Woods Subdivision, located at 126th Terrace and Delmar [Project # 77018]
- T. Fire Department Monthly Report
- U. Police Department Monthly Report
- V. Municipal Court Monthly Report

A motion to approve the Consent Agenda was made by Councilmember Rezac; seconded by Councilmember Rasmussen. The motion was approved with a unanimous vote of 8-0.

8. MAYOR'S REPORT

The Israeli Scout Federation Caravan is making a stop in Kansas City this Friday, July 25th, for a song/dance performance at the Jewish Community Center at 2:00 P.M. The group is working with the Heart of America Boy Scouts International Coordinator Tom Johnson. Per their request for a tour of Gezer Park, the City will pick up the Scouts at 10:45 A.M. and transport them to the park, returning by 11:30 A.M. for a luncheon hosted by the City in the Oak Room, lower level of City Hall. City Administrator Mr. Lambers is facilitating the lunch and is also the contact for tickets to their performance. Councilmembers and the Gezer Region Sister City Committee are encouraged to attend the luncheon, park tour if possible, and the performance.

The Leawood Stage Company production of "Hello, Dolly" opened last week and will be performed again this Thursday, Friday and Saturday evenings at Ironwoods Park. More than 4,600 have seen thus far, with one night's attendance hitting 1,500. Last week, the weather was nice and news of the performance is being spread by word of mouth. Councilmember Azeltine has a part in the production. All are hoping for nice weather again this week.

9. COUNCILMEMBERS' REPORT – None

10. STAFF REPORT

Chris Claxton, Parks & Recreation Director

Ms. Claxton gave an update on status of restrooms located at Ironwoods Park, 14701 Mission Road. The restrooms were open for the showing "Hello, Dolly", with some punch list items to be completed approximately two weeks after the show closes on July 27th. In addition, the trail at 123rd and Mission opened on July 3rd and is being used by many. Finally, the dog park located at City Park, 10601 Lee Boulevard, has sidewalks and an ADA compliant approach on the west side of the bridge. Landscaping maintenance and a drinking fountain are also complete, with more amenities en route.

Mayor Dunn and Councilmember Cain shared positive feedback from the community regarding the dog park.

COMMITTEE RECOMMENDATIONS

11. PARKS AND RECREATION ADVISORY BOARD

[from the June 10, 2014 Parks & Recreation Advisory Board meeting]

Consideration for the naming of the dog park, located at 10601 Lee Boulevard

Councilmember Cain stated that of the names presented for consideration, the two the committee chose to bring to City Council were “Canine Creek” and “Leawoof” (presented by April Bishop). Councilmember Rawlings expressed support of the name “Leawoof” because of its originality. In regard to format of the name, Ms. Claxton does not recall the format of the dog park entrance archway. Councilmember Rasmussen and Mayor Dunn prefer the ease of all caps.

A motion to name the Dog Park “Leawoof” was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.

12. PLANNING COMMISSION – None

13. OLD BUSINESS – None

14. OTHER BUSINESS – None

15. NEW BUSINESS

A. Ordinance amending Article I of Chapter II of the Code of the City of Leawood, 2000, entitled, ‘Animal Control,’ and repealing existing Chapter herewith [Roll Call Vote] – **CONTINUED TO AUGUST 4, 2014 GOVERNING BODY MEETING**

B. **Ordinance No. 2678C**, amending Chapter 1, Article 8 of the Code of the City of Leawood, 2000, by adding new Sections 1-855 through 1-858, establishing a new Leawood Camelot Court Community Improvement District [CID] Agency Fund [Roll Call Vote]

A motion to pass Ordinance No. 2678C was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 8-0.

C. Request for Right-of-Way [ROW] Encroachment Permit for the installation of a fence located at 11912 Mohawk Road [Applicant: Mr. John Snyder]

STAFF COMMENT: *The City Administrator strongly recommends that this request be denied.*

Mr. Coleman stated the fence was granted approval by the Board of Zoning Appeals [BZA] to be placed in the rear yard setback on a through lot to Mission Road. Under the Leawood Development Ordinance [LDO], the rear yard setback is 30 feet, similar to the front yard. The fence is currently constructed 25 feet into the right-of-way [ROW] and 4 feet north of the north property line.

Councilmember Rawlings stated that on the east side of Mission Road, three to four fences appear to encroach the ROW. Mr. Coleman replied that fence encroachments gradually decrease until the next cross-street.

Applicant Presentation:

Mr. John Snyder, 11912 Mohawk Road, Oxford Hills, appeared and stated he and his family have lived in the home since November 2001, and that he has made several improvements to the home. The home was built around 1980 with no fence permit on file. In 2010, Mr. Snyder sought a permit for a pool in the back yard, which included a fence. The City was aware of the encroachment at that time and required self-locking fence gates. He pointed out the drop-off topography of the easement. Mr. Snyder hired a contractor in May to replace the fence at existing location with a 6 foot cedar fence, and was advised to obtain a permit. The BZA voted unanimously to grant approval to build the fence on the existing property line, contingent upon the approval by City Council. Ms. Bennett pointed out that BZA could not grant approval without approval of City Council. BZA then approved a variance to the property line. He pointed out that given the topography, it makes sense to place the fence in the current location with the understanding that it could be taken down if Mission Road needed to be widened. A retaining wall at the property line leaves little room between the upper and lower yard, which is a hardship and cost estimate is \$200,000 to remove the wall. Therefore, Mr. Snyder respectfully requested to keep the fence in its current location.

Councilmember Azeltine asked about any disadvantage to the City if the request is granted. Mr. Lambers replied the situation is more than this individual application and that a consistent and firm approach to these requests is required. He also stated that while the City did not originally inspect the fence, it needs to be placed in the proper location and the only justification to not do so is that the fence has always been in that location. His concern is that allowing the encroachment will only compound the mistake and set a precedent for similar situations that would allow a personal citizen to capture public ROW for personal use. The easement is not City property; it is ROW for utility services, so any utility work would occur on the property owner's side of the fence. Councilmember Azeltine asked if it would make sense to redraw the ROW. Mr. Lambers stated that when the fences are rebuilt, they all need to move to the east along the ROW line. Councilmember Azeltine questioned why the applicant was sent to the BZA if the BZA had no authority to approve the request. Mr. Lambers clarified the BZA did not have authority to grant encroachment into the ROW, but rather had the authority to place the fence on the property line.

Councilmember Filla asked if any utility work had occurred since the Mr. Snyder owned the house. Mr. Snyder confirmed that there had not. Councilmember Filla asked if the City envisions expanding Mission Road with a need of the ROW. Mr. Lambers stated the need would only be for utility use and not for expansion. Councilmember Filla asked Mr. Snyder about agreeing to move the fence if necessary in the future. Mr. Snyder replied the fence would be relocated if Mission Road were to be expanded and that the City could have access to the ROW any time necessary. He also stated he would move the fence to remove any issue with the encroachment on the neighbor's property, even though the neighbor does not object, since the BZA could only approve the fence on his property line.

Councilmember Osman stated that while he understands both sides, he is concerned the issue might set a precedent.

Councilmember Filla asked if other residential lots have ROW in the back yard. Mr. Lambers replied that it occurs on Mission Road and throughout the city. He also stated his is a macro perspective, not individual, and approving this case will create a precedent for subsequent similar requests. Councilmember Filla recognized the uniqueness of the situation and expressed a desire to understand why the City needs the ROW in the future.

Councilmember Rezac stated an appreciation for the comprehensive perspective. She pointed out the unique feature that the house is along Mission Road. To address the issues, Mr. Snyder has agreed to execute an encroachment agreement, which addresses the first obstacle. Regarding non-compliance fence lines, if the City needed the ROW all the fences would come into compliance at that point. Mr. Lambers stated property owners along Mission could ask to extend the fences to the same line that Mr. Snyder is requesting. He stated that to give Mr. Snyder consideration, his recommendation would be to allow the encroachment to the point of whichever fence on either side is protruding least into the ROW.

Mayor Dunn stated the fences are all in different locations and that Bradford Place has a uniform wrought iron fence with brick columns. Mr. Snyder pointed out that Bradford Place does not have the ROW issue. He stated further frustration that the City could have told him to move the fence in 2010, when he made improvements to his yard.

Councilmember Rezac stated this a large piece of land that no one is able to use and it could be beneficial to allow it to be used until something requires the fence to be moved. Mr. Lambers pointed out that this is the point at which the requirement should begin. Councilmember Rezac asked if the maximum distance could be changed because of the topography or if it just a dimensional issue for the ROW. Mr. Lambers pointed out that fences and utilities exist in the ROW, and if the City gives up the ROW and there is a future need, then the City would be required to condemn and compensate the owner. Councilmember Rezac pointed out the fence is able to be moved and that the City probably will not need the ROW.

Councilmember Azeltine stated it seems nonsensical to not allow the fence to go back up in the same location even though Mr. Snyder should have requested a permit, since he is agreeing to an encroachment agreement for any future utility work. Councilmember Azeltine understands the issue of precedent, but believes the key factor is that if no utilities are on Mr. Snyder's side of the fence, it should be allowed.

Councilmember Osman asked if dilapidated fences are required to be fixed in their entirety. Mr. Lambers replied that if over 50% is dilapidated, the entire fence needs to be replaced in conformity to City Codes. If only a portion is dilapidated, that portion can be replaced and the fence can remain. Councilmember Osman asked about the plans that were approved in 2010 when the permit was requested for the pool and what staff considered at that time. Mr. Coleman replied the pool's distance to the rear and side setbacks were considered; a pool can be built within 10 feet of the property line and a patio can go right up to the property line. Because no permit was requested for a fence, the fence line was not inspected or evaluated.

Councilmember Rasmussen stated he doesn't believe utilities are relevant. He asked when the property was platted and when the easement was established. Mr. Snyder replied the property was platted in 1978 and Mr. Lambers stated the easement was most likely established much earlier. As the ROW was acquired during the platting process, Councilmember Rasmussen questioned if the former property owners were compensated for the ROW. Mr. Johnson replied that part of the platting requirements included a utility easement. Councilmember Rasmussen asked about adverse possession for the owner. Ms. Bennett replied it would be very difficult to show on ROW. Councilmember Rasmussen pointed out the owner's innocence in the situation and stated he supports an encroachment agreement and replacement of the fence.

Councilmember Cain stated the easement on the west side of Mission Road must be narrower. Mr. Johnson stated that Mission Road does not go down the exact middle of the 100 feet ROW, but was constructed to the west side of the ROW to avoid the hillside on the east. Councilmember Cain asked how the wrought iron fence is so close to the road. Mr. Coleman replied the BZA granted a variance to the homeowners and that the fence is not in the ROW. Mr. Johnson stated the ROW is for a 4-lane street. If the road were to be widened, it would require a retaining wall.

Councilmember Cain stated a compromise was suggested for a uniform look along Mission Road and that this fence could, in fact, establish the fence line along Mission Road. Mayor Dunn asked Mr. Snyder if moving the fence to match the fence on the north, as a 20 ft. encroachment, would be a possibility. Mr. Snyder replied that he will do what needs to be done, but that location would greatly affect his landscaping. He wants to find a compromise that does not set a precedent and feels his situation is unique.

Councilmember Robinett stated he feels the attempt is to make things uniform and moving the fence 5 feet to line up with the fence to the north might be visually better, but that is no different than leaving the fence where it is because for either scenario the fence would still be in the ROW. There has been no intent by the City or the property owner to cause any harm. He stated that every future request could be evaluated on its own merit.

Councilmember Azeltine stated he sees no reason why the City cannot grant the request if the City can still retain its rights.

Mayor Dunn asked Ms. Bennett about legal documentation that would accompany the encroachment agreement. Ms. Bennett replied the ROW agreement would run with the land.

A motion to allow the existing ROW encroachment to continue, to allow the property owner to erect a fence and to direct staff to draft a ROW agreement between the City and the property owner was made by Councilmember Azeltine; seconded by Councilmember Rezac.

A friendly amendment to state the encroachment agreement will be addressed for the City to take possession was made by Councilmember Rasmussen; accepted by Councilmember Azeltine and Councilmember Rezac.

Councilmember Osman stated that with respect to the friendly amendment, the City could take the ROW with no justification. Mr. Lambers added that in a friendly amendment the City has the right to move anything in the ROW without justification and with only Governing Body approval. Councilmember Azeltine pointed out that Mr. Snyder was willing to accept the risk.

Councilmember Cain asked if the motion should require that the fences align. Mayor Dunn pointed out that not all the fenced lots are through lots and this particular lot is especially unique. Therefore, all lots should not be allowed to encroach to this extent. Mr. Snyder stated it would be beneficial to point out the uniqueness and establish that not every property would be given similar permission without proper justification.

The motion carried with a vote of 7-1. Nay: Councilmember Cain because a series of missteps have occurred, and she believes this is an opportunity to correct the issues.

- D. Schedule a Work Session at 6:00 P.M., on Monday, October 20, 2014 to discuss structures in front yards

A motion to schedule a Work Session on Monday, October 20, 2014 to discuss structures in front yards was made by Councilmember Rezac; seconded by Councilmember Filla. The motion was approved with a unanimous vote of 8-0.

Mayor Dunn reminded Councilmembers and staff present that a reception for Councilmember Robinett would be held at Hereford House, immediately following the Council Meeting.

There being no further business, the meeting was adjourned at 9:10 P.M.

Deb Harper, CMC, City Clerk

Cindy Jacobus, Assistant City Clerk