

**Minutes**

DVD No. 126

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, August 1, 2005. Mayor Peggy Dunn presided.

**Councilmembers present:** Jim Rawlings, Gary Bussing, Lou Rasmussen, Mike Gill, James E. Taylor, Sr., Gregory Peppes, and Debra Filla.

**Councilmembers absent:** Scott Gulledge.

**Staff present:**

Scott Lambers, City Administrator  
Chief Ben Florance, Fire Department  
Diane Binckley, P&D Director  
Joe Johnson, Public Works Director  
Deb Harper, City Clerk  
Mark Andrasik, IS Director

Patty Bennett, City Attorney  
Chief Sid Mitchell, Police Department  
Chris Claxton, P&R Director  
Jeff Cantrell, Neighborhood Serv. Admin.  
Christy Wise, Deputy City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

Mayor Dunn stated that Item No. 9A will be discussed under Item No. 10, Staff Report. She advised that Councilmember Filla has requested to give a report under Item No. 9A.

A motion to approve the agenda was made by Councilmember Peppes, seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 7-0.

**3. CITIZEN COMMENTS**

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

**5. PRESENTATIONS/RECOGNITIONS Introduction of New Deputy Police Chief, John Meier**

Police Chief Sid Mitchell introduced new Deputy Police Chief, John Meier, to the Governing Body. Mr. Meier expressed his eagerness to begin serving the citizens of Leawood.

**Recognition of Ruth Shank for 30 Years of Service to the Parks and Recreation Department; Summer Camp Program**

Parks and Recreation Director Chris Claxton, Kim Curran, and Logan Wagler introduced Ms. Shank and stated their appreciation for her dedication. Mr. Wagler announced that Ms. Shank is retiring as a camp counselor.

Ms. Shank shared a few outstanding moments from her 30 years of experience with children in the Balloon Tree Camp and recited a poem. Mayor Dunn stated that she was very beloved to the Summer Camp Program and would be missed.

**6. SPECIAL BUSINESS**

- A. **PUBLIC HEARING** Consider the 2006 Fiscal Budget for the City of Leawood

Mayor Dunn opened the public hearing for comments. There being no comments, a motion to close the public hearing was made by Councilmember Gill, seconded by Councilmember Peppes.

Councilmember Bussing thanked Finance Director Kathy Rogers for including the Budget in Brief as packet information and stated it was an excellent document. Mayor Dunn concurred with Councilmember Bussing's comments.

The motion was approved following a unanimous vote of 7-0.

**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. 1030B and 1031A
- B. Accept minutes of the July 18, 2005 Governing Body meeting
- C. Accept minutes of the June 14, 2005 Joint Governing Body/Budget & Finance Work Session
- D. Accept minutes of the June 15, 2005 Joint Governing Body/Budget & Finance Work Session
- E. Accept minutes of the July 6, 2005 Public Works Committee meeting
- F. Approve bid in the amount of \$99,945.00, from American Equipment Company, for the purchase of a Public Works Sweeper

- G. Approve purchase for an amount not to exceed \$80,000 from Independent Salt Company for the purchase of winter road salt
- H. Approve renewal of Microsoft Licensing coverage in the amount of \$35,688.50, between the City and Microsoft Corporation via Software House International, Inc., pertaining to the yearly license renewal *[This item was approved by the Governing Body in the budget process]*
- I. Resolution No. 2446 approving a Final Site Plan and Final Plat for Villas of Whitehorse 3<sup>rd</sup> Plat located north of 151<sup>st</sup> Street and east of Nall Avenue *[from the July 26, 2006 Planning Commission meeting]*
- J. Resolution No. 2447 approving a Final Site Plan and Final Plat for Villas of Highlands Ranch located north of 138<sup>th</sup> Street and east of Chadwick *[from the July 26, 2006 Planning Commission meeting]*
- K. Resolution No. 2448 approving a Final Site Plan for Leawood United Methodist Church - playground located at 2915 W. 95<sup>th</sup> Street *[from the July 26, 2006 Planning Commission meeting]*
- L. Resolution No. 2449 approving a Final Site Plan for Chadwick Place located south of 135<sup>th</sup> Street and east of Chadwick. *[from the July 12, 2005 Planning Commission meeting]*

Mayor Dunn noted that minor technical corrections were made to Item Nos. 7B and 7C. Councilmember Taylor requested to pull Item No. 7K.

Councilmember Peppes moved to approve the remainder of the Consent Agenda, seconded by Councilmember Gill. The motion was approved following a unanimous vote of 7-0.

- 7K. Resolution No. 2448 approving a Final Site Plan for Leawood United Methodist Church - playground located at 2915 W. 95<sup>th</sup> Street *[from the July 26, 2006 Planning Commission meeting]*

Councilmember Taylor confirmed with Planning & Development Director Diane Binckley that converting 14 parking spaces to the playground area would not cause parking issues for the church. Councilmember Taylor moved to approve the resolution, seconded by Councilmember Rawlings.

Mayor Dunn clarified with Ms. Binckley that the playground was for personal use of the church only. The motion was approved following a unanimous vote of 7-0.

## **8. MAYOR'S REPORT**

- A. Attended lunch at IRONHORSE Golf Course in celebration of its 10<sup>th</sup> Anniversary. Orion Management Group presented each member of the Governing Body with a commemorative coaster and coin. Mayor Dunn stated that she has received high compliments regarding the golf course and its importance to Leawood. She congratulated Parks & Recreation Director Chris Claxton, the IRONHORSE Advisory Board, and the Orion Management Group.

- B. Attended the Champagne Gala fundraiser hosted by the Leawood Stage Company at Ironwoods Park prior to the production of "South Pacific." Councilmembers Bussing, Rawlings, and Rasmussen were also present. Liz Hoyt, former Chairperson of the Leawood Stage Company, was honored with the Volunteer of the Year Award and Jerry and Margaret Nerman received the 2005 Leawood Advocate for the Arts Award during the champagne reception. Mayor Dunn offered congratulations to Mike Eggleston, Chairman of the Leawood Stage Company, and Mary Tearney, Chairman of the Arts Council. She also extended appreciation to Chris Claxton and the Parks & Recreation Department, the Public Works Department, and the Police Department for their involvement in the production.
- C. Congratulated Prairie Village Councilmember Kay Wolf for being elected into the State House of Representatives. She will be representing District 21 and is replacing the seat left by Dean Newton.

**9. COUNCILMEMBERS' REPORT**

- A. **Councilmember Filla** – Councilmember Filla informed that she represented Leawood at a media launch for The Ward Parkway Center, Rebuilding History. The event was kicked-off by Developers Diversified Realty and presentations were made by Kansas City, Missouri Mayor Kay Barnes and Councilmember Jim Glover.

**10. STAFF REPORT**

- A. Recommendation to the Stormwater Committee to review approval of Change Order pertaining to the Dykes Branch Channel Improvement SMAC DB-04-024 Project, between 83rd Street and Wenonga Road south to 86th Street and Overhill Road

Public Works Director Joe Johnson explained the change order request. Staff would like the contractors of Phase I, Wiedenmann & Godfrey, to continue with Phase II of the project. He stated that Johnson County Unified Wastewater District and the residents are extremely pleased with the performance of the company.

Councilmember Gill moved to refer the change order request to the Stormwater Committee. The motion was seconded by Councilmember Peppes.

Councilmember Bussing confirmed with Mr. Johnson that the change order would replace a competitive bid for Phase II. Wiedenmann & Godfrey's unit prices from Phase I will also be used for Phase II. Mayor Dunn verified with Mr. Johnson that there would be the ability to stop the negotiation process if necessary and go to bid.

Mr. Johnson affirmed for Councilmember Taylor that Staff is comfortable with the pricing in comparison to other bids.

Councilmember Rawlings asked if there was a precedent for this type of request. Mr. Johnson responded that a contractor had been retained in the same manner for a past stormwater project.

The motion was approved following a unanimous vote of 7-0.

### ***COMMITTEE RECOMMENDATIONS***

#### **11. PLANNING COMMISSION**

- A. Ordinance approving Intrust Bank and Retail Center for a Preliminary Site Plan located south of 135th Street and east of Kenneth Road within the Leawood Market Center [Roll Call Vote] *[continued from the July 18, 2005 Governing Body meeting]*

Ron Shaffer of Bucher, Willis, and Ratliff Corp., presented revised elevations and site plan drawings. Modifications included decreased width of the drive aisle, the addition of pavers to the drive aisle, and reduction of square footage to the retail building to allow for a loggia across the entire store front. There are also additional sidewalks, seating, and landscaping. The drive aisle will now only accommodate one-way traffic to the north.

Councilmember Taylor voiced issues with the design process as the approved master plan depicts the bank on the east side of the lot with a single structure rather than two separate buildings. He also requested clarification for the purpose of the drive aisle as traffic flow seemed to be adequate without this feature. Doug Winckley of Intrust Bank explained that the drive aisle will make the bank more accessible to customers who come in from the south entrance as it will prevent the need to drive around the entire retail building. Councilmember Taylor stated that placing the bank to the east would eliminate this problem. Mr. Winckley informed that the hard corner location is preferred due to the visibility factor.

Councilmember Peppes requested to hear Staff's opinion of the revised plan. Ms. Binckley reviewed the major changes of the plan and stated that it was an improvement to the previous request, however preferred Staff's original proposal. Mayor Dunn reminded that the Planning Commission had approved two-way traffic between the two structures and did not agree with the design provided by Staff.

Councilmember Bussing stated his continued opposition to the plan due to variances from the originally approved preliminary plan and said he would not support the request.

Councilmember Gill reviewed that the options would be to approve/disapprove the revised plan, approve/disapprove the plan recommended by the Planning Commission, or remand back to the Planning Commission.

Councilmembers Taylor and Rasmussen both stated that they were not in favor of the revised plan. With confirmation of three nay votes, Mayor Dunn advised that the favorable option would be a remand with clear directives to the Planning Commission.

Councilmember Rasmussen expressed that the east to west relocation of the facility was a major change and would not support any plan other than Staff's original design for the development.

Councilmember Gill stated that the proposed location is appropriate for Intrust Bank. Conversely, he was not pleased with the choppy pad-site look created by splitting the building and would like to see a single footprint on the lot.

Councilmember Bussing agreed with Councilmember Gill's remarks. He commented that Intrust Bank would be an excellent business for this area; however, he would also like to see a unitary structure.

Councilmember Peppes moved to remand the project back to the Planning Commission with direction to have a single unit structure on the lot. Councilmember Bussing seconded the motion.

Councilmember Rasmussen stated that review of the overall development should occur as the concept has become unfocused. He noted considerable changes to the pad sites and parking areas since the time of preliminary approval.

Councilmember Rawlings concurred with Councilmembers Bussing and Gill. He voiced disappointment with the plan as it did not measure up to the original intent for this corner.

Councilmember Filla suggested that development be put on hold until a tenant is found for the anchor building. Mayor Dunn clarified the issue to be the overall design rather than the order of lot construction.

Councilmember Taylor stated that a single structure would alleviate traffic circulation concerns for this area and was in support of a remand.

Councilmember Rasmussen verified with Ms. Binckley that changes from the preliminary plan occurred due to compromises made between the developer and applicant.

Mr. Shaffer and Mr. Winckley confirmed with Mayor Dunn that the desire of the Council is to have a unitary structure on the lot rather than two buildings. Mayor Dunn added that review of the overall development is also being requested upon remand.

Mr. Winckley, Mayor Dunn, and Councilmember Gill discussed leasing and ownership options for additional tenants of the building. Mr. Winckley stated that decisions regarding this issue would be at management's discretion.

In terms of time frame, Ms. Binckley estimated that a remand would be heard at the Planning Commission level on August 23<sup>rd</sup> and come back to the Governing Body on September 6<sup>th</sup>.

The motion to remand back to the Planning Commission carried following a unanimous vote of 7-0.

Due to the presence of David Arteberry, City Clerk Deb Harper requested that Item No. 13A be moved ahead of Item No. 12A. Mayor Dunn agreed to the request.

### **13. NEW BUSINESS**

- A. Resolution No. 2450 authorizing the sale by the City of Leawood, Kansas of \$4,090,000 General Obligation Bonds and \$27,500,000 General Obligation Temporary Notes of the City to provide funds to finance the costs of certain public improvements within said 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

David Arteberry of George K. Baum & Company, financial advisor to the City, explained the process of selling the notes and bonds. The sale will take place on September 6<sup>th</sup>, with a report given to the Council on the same evening. Mr. Arteberry noted a correction on the agenda regarding the amount for General Obligation Temporary Notes. The figure should be \$33,200,000 rather than \$27,500,000.

Councilmember Rasmussen moved for approval, seconded by Councilmember Gill. The motion carried following a unanimous vote of 6-0 (Councilmember Taylor recusing due to conflicts of interest).

Councilmember Bussing inquired about interest rates. Mr. Arteberry stated that rates at this time were 3.8% for bonds and 3% for notes.

### **12. OLD BUSINESS**

- A. Public Works Committee recommendation regarding the channel re-alignment for the IRONHORSE Golf Club Stormwater Project [*continued from the July 18, 2005 Governing Body meeting*]

City Administrator Scott Lambers reviewed the issues associated with the project including realignment of the channel and repair of erosion damage. Regarding the individuals whose land is affected by the erosion, two of the four property owners are willing to participate with the repairs. Mr. Lambers recommended that Council authorize Staff to proceed with the channel realignment as requested and defer the creek bank stabilization issue while communication continues with the property owners. He reported that the erosion was created due to natural conditions with no liability to either party. Failing a compromise with the residents, one option would be to omit this portion of the project.

Mayor Dunn noted that location of the realignment is not a topic for discussion as the engineers are currently working on this aspect in conjunction with the IRONHORSE Advisory Board. Mr. Lambers stated that the proposed improvement would not significantly impact play of the course and would be a long-term solution to the erosion problem. Mayor Dunn reviewed that the IRONHORSE Advisory Board has requested that the proposed realignment be moved 20-30 feet north.

Councilmember Rasmussen stated that he would not participate in approval of this project as it is not a matter of public interest. He viewed the expenditure to be an illegal use of public funds for private benefit. Councilmember Rasmussen informed that the golf course intends to hire a United States Golf Association [USGA] professional to determine if there will be increased difficulty of play on Hole #8.

Mayor Dunn clarified that the request under consideration this evening excludes refilling of the current creek location site and is for channel realignment only, which would be an expenditure totally for public land.

Councilmember Rasmussen felt that stabilization of the current creek bank should occur but that channel realignment was unnecessary.

Mr. Lambers confirmed for Councilmember Gill that the creek is migrating north, however the bank erosion along private property is the result of sun bleaching rather than water currents. The current project proposal will utilize Rip-Rap in five areas of the creek to prevent future erosion problems from occurring in this vicinity. The original plan would resolve the immediate erosion problem but would not thwart reoccurrence.

Councilmember Gill stated that he would reference creek bank stabilization only as Plan A and stabilization with realignment as Plan B. He asked what the long-term downside would be for Plan A. Mr. Lambers responded that creeks naturally try to flow straight, which creates oxbows along the bends. Therefore, erosion will eventually continue in other areas. The realignment will facilitate the natural occurrence of the creek. If Plan A improvements are made, there will still be a need for Plan B in the future.

Councilmember Filla asked what options the property owners would have regarding erosion problems with Plan A. She also inquired if it were possible to let the creek straighten out naturally. Mr. Lambers informed that if the creek remains active in the current location, the property owners would have to build a concrete reinforced wall with backfill. Phil Gibbs, project engineer, felt this method would be considerably more expensive than improvements proposed for Plan B.

Councilmember Rawlings confirmed with Mr. Lambers that realignment of the creek will not benefit the golf course in terms of flooding from Blue River. Damage created from flooding is a separate issue. However, the Rip-Rap will aide in preventing erosion within the confines of the creek bank during rain events. Regarding legality issues, Mr. Lambers stated that the majority of the project is on public land with \$60,000 needed to repair the portion on private property. A 50/50 split between the property owners and the City at-large is being proposed.

Councilmember Taylor reported that he has viewed the location for the suggested realignment and felt that the project was warranted in order to protect city-owned property. He also stated that bank stabilization would be the best solution to correct the erosion problem. In support of the IRONHORSE Advisory Board, Councilmember Taylor agreed with having a USGA expert assess the project and make adjustments if necessary in order to maintain the integrity of the golf course.

Councilmember Taylor moved to support Staff recommendations to proceed with channel realignment for the IRONHORSE Golf Course with continued negotiations between the City and property owners concerning creek bank stabilization. Councilmember Bussing seconded the motion.

Mr. Lambers clarified for Councilmember Filla that Plan A would simply deal with erosion that presently exists. The creek will continue to erode in order to find the path of least resistance, necessitating a future need for Plan B. Councilmember Filla was concerned with spending money on an improvement which will occur naturally over time as the creek self-straightens. Mr. Lambers explained that there will always be a state of erosion unless Rip-Rap is installed.

Mayor Dunn confirmed with Councilmember Rasmussen that a number of creeks were realigned during construction of the golf course. Councilmember Rasmussen voiced that the proposed realignment was unnecessary as continued erosion to the north side of the creek would not affect the golf course.

Councilmember Bussing stated that spending tax dollars on other stormwater projects to improve drainage, prevent street flooding, and maintain the safety of residents was analogous to this situation which will prevent stormwater damage to residential property. He stated that the problem was unique and would not create precedence. The danger is not immediate, however is imminent with continued sloughing of the creek bank. Councilmember Bussing reiterated his support for the motion.

Mayor Dunn reminded that the current issue is channel realignment only. Councilmember Taylor clarified that his motion was for approval of channel realignment and continued negotiations with property owners concerning the creek bank stabilization.

Councilmember Gill questioned if increased water speed upon straightening of the creek would also cause erosion problems. Councilmember Bussing informed that the law requires engineers to maintain the same drop and water speed for creek realignments. He also clarified that erosion found under the residential homes was caused by sun bleaching rather than the creek.

Councilmember Gill inquired about the cost differentials for Plan A and Plan B. Mr. Johnson stated that Plan B would cost \$207,000 more than Plan A.

Councilmember Rasmussen confirmed with Mr. Lambers that the cost for realignment only is \$170,000. Councilmember Bussing noted that this figure is included in the bonding for the overall golf course improvements.

Mayor Dunn verified with Mr. Lambers that formal written approval regarding the realignment has not been received from the Corps of Engineers. However, through verbal communications, no problems have been indicated and the project can be handled through the local permit process. Council approval is needed to begin the process with Corps, which is estimated to take six months.

Councilmember Gill voiced his intent to support the motion, however was concerned that final placement of the realignment would negatively affect the playability of Hole #8. Councilmember Bussing assured that engineer Phil Gibbs is cognizant of the needs associated with the hole and will accommodate them to the best of his ability. Mayor Dunn confirmed with Councilmember Bussing that the consulting engineer for the project is Continental Engineers.

Councilmembers Gill, Bussing, and Taylor further discussed the playability of Hole #8. Councilmember Gill stated that he would like to see the final drawings before construction begins. Mayor Dunn advised that the final design will require Council approval.

Councilmember Filla asked if the engineers had an estimate for how long it would take the creek to self-straighten. She also inquired if a modified version of the proposed realignment had been considered. Mr. Lambers stated that a modified version would have to take place from the east, near the bridge, as this would be the first location to straighten naturally given the narrow oxbow. He informed that he could not give a timeline for natural straightening of the creek.

The motion was approved following a vote of 5-2 (Nay: Councilmembers Filla and Rasmussen). Councilmember Filla informed that she had concerns with the maintenance difficulties associated with the golf course.

### **13. NEW BUSINESS**

- B. Ordinance No. 2121 attesting to the increase in taxes levied for budget year 2006 necessary to finance public services for the City of Leawood [Roll Call Vote]

Mayor Dunn noted that Section Two of the ordinance states that the mill levy will remain the same in 2006 as it is in 2005. Councilmember Rasmussen confirmed with Mr. Lambers that there could be a slight tax revenue variance in the hundredths or thousandths based upon determinations made by the County.

Councilmember Bussing moved for approval, seconded by Councilmember Taylor. The ordinance was passed with a unanimous roll call vote of 7-0.

- C. Ordinance No. 2122 authorizing Sunday sales of Alcoholic Liquor and Cereal Malt Beverage in the original package within the City of Leawood, Kansas [Roll Call Vote]

Councilmember Taylor moved for approval, seconded by Councilmember Peppes.

Mr. Lambers noted that this ordinance also allows for the sale of cereal malt beverages in grocery stores.

The motion carried with a unanimous roll call vote of 7-0.

**14. OTHER BUSINESS - None**

**ADJOURN**

The Governing Body meeting adjourned at 9:30 P.M.

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Debra Harper, CMC, City Clerk

Christy Wise  
Recording Deputy City Clerk