

Minutes

DVD No. 106

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 16, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Debra Filla, Louis Rasmussen, Jim Rawlings, Gary Bussing, Scott E. Gullledge, James E. Taylor, Sr., and Gregory Peppes.

Councilmembers absent: Councilmember Mike Gill

Staff present :

Scott Lambers, City Administrator
Joe Johnson, Public Works Director
Chris Claxton, Parks & Rec Director
Diane Binckley, Planning & Develop. Director
Deb Harper, City Clerk

Patty Bennett, City Attorney
Kathy Rogers, Finance Director
Mark Andrasik, Info. Systems Director
Jeff Cantrell, Neighborhood Serv. Admin.

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn stated both Councilmembers Filla and Rasmussen have asked to make comments under Councilmembers' Report. With that revision, a motion was made by Councilmember Rasmussen, seconded by Councilmember Taylor to approve the agenda. 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.

At the request of Mr. G. Gordon Thomas, 10516 Mohawk Lane, Deb Harper, City Clerk, read a prepared written statement into the record on his behalf.

4. PROCLAMATIONS - None

5. PRESENTATIONS/RECOGNITIONS - None

6. SPECIAL BUSINESS - None

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 No. 1005
- B. Accept Minutes of the August 2, 2004, Governing Body meeting
- C. Accept Minutes of the July 13, 2004, Historic Commission meeting
- D. Accept Minutes of the July 13, 2004, Parks & Recreation Advisory Board meeting
- E. Accept Minutes of the July 9, 2004, Stormwater Management Committee meeting
- F. Accept minutes of the May 25, 2004 Arts Council meeting
- G. Approve Change Order No 2, in the amount of \$32,448.65, to APAC-Kansas, pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] CIP # 110]
- H. Approve payment in the amount of \$200,550.00, to the City of Overland Park, pertaining to the Water One Relocation Agreement for the Nall Avenue Improvement Project [between 135th Street and 143rd Street] CIP # 139]
- I. Request for payment adjustment in the amount of \$28,638.00, to United Methodist Church of the Resurrection, for taking on Tract No. 54, pertaining to Phase II of the Nall Avenue Improvement Project [between 135th Street and 143rd Street] CIP # 139]
- J. **Resolution No. 2279**, adopting the Fiscal Year 2005 Budget for the City of Leawood
- K. **Resolution No. 2280**, approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$800,454.66 to Seal-O-Matic Paving, Inc., pertaining to the Residential Street Program [CIP # 200]
- L. **Resolution No. 2281**, approving and authorizing the Mayor to execute an Inter-local Agreement between the cities of Leawood, Overland Park and the Kansas Department of Transportation [KDOT] pertaining to the Nall Avenue Improvement Project [between 135th Street and 143rd Street] CIP # 139]
- M. **Resolution No. 2282**, approving a Final Site Plan for Cornerstone, Lot 5; Ted's Montana Grill, located on the southeast corner of 135th Street and Nall Avenue [from the July 27, 2004, Planning Commission meeting]
- N. **Resolution No. 2283**, accepting and approving the Annual Report regarding the Leawood Public Art Impact Fee and providing for no change to such impact fee, pursuant to Code § 12-601 et seq.
- O. **Resolution No. 2284**, accepting and approving the Annual Report regarding the Leawood Park Impact Fee and providing for no change to such impact fee, pursuant to Code § 12-401 et seq.

- P. **Resolution No. 2285**, accepting and approving the Annual Report regarding the South Leawood Transportation Impact Fee and providing for no change to such impact fee, pursuant to Code § 13-601 et seq.
- Q. Declaration of surplus property of a Caterpillar Wheel Loader, last 6 VIN/L00956
- R. Police Department Monthly Report
- S. Fire Department Monthly Report
- T. Municipal Court Monthly Report
- U. **Resolution No. 2286**, approving a Final Site Plan for the Club La Femme building, located within the Leawood Commons at 11401 Nall Avenue [from the August 10, 2004, Planning Commission meeting]

Mayor Dunn asked that Item 7M, be removed for discussion. Councilmember Taylor asked that Item 7G., be removed for discussion; along with items 7I, and 7M, as he would be recusing himself from items 7I, and 7M. Councilmember Filla asked that Item 7R, be pulled for a question. A motion was then made by Councilmember Bussing, seconded by Councilmember Peppes to approve the remainder of the Consent Agenda. The motion carried by a unanimous vote of 7-0.

- G. Approve Change Order No 2, in the amount of \$32,448.65, to APAC-Kansas, pertaining to the Roe Avenue Improvement Project [between 124th Street and 135th Street] CIP # 110]

Councilmember Taylor asked that this Changer Order be continued to the next meeting. He stated he did not feel the City should pay additional funds for the item identified as Item No. 151 on the Change Order, specifically 'substitute cut limestone for a manufactured stone cap for all retaining walls' in the amount of \$21,796.70. Mr. Taylor stated this cost was included in the original contract specifications and the contractor should have made himself aware of this at the time of bidding this project. Mr. Taylor stated the contract specifications needed to be reviewed again on this item.

Mayor Dunn asked Joe Johnson if it was more cost effective to use the lime stone cap. Mr. Johnson stated the manufacturer can make a 15" cap, but the 19" cap had to be made special. The capped limestone would actually be cheaper than having the manufacturer make a mold for the cap to fit the larger walls.

Mr. Rasmussen stated if the specifications for the capstone and the dimensions were clear to the contractor at the time the contract was executed, the City should not pay for this additional cost.

Mayor Dunn asked if the completion of the project would be delayed if this Change Order were to be continued for 2 weeks. Mr. Johnson stated the storm sewer work had been completed to keep up with the road construction, and suggested that the other items listed on the Change Order be approved, and to only continue the capstone item to the next meeting.

A motion was made by Councilmember Taylor, seconded by Councilmember Rasmussen to approve the Change Order, with the exception of the limestone item, identified as Item No. 151 on the Change Order, and to continue this particular listed item to the September 7, 2004, Governing Body meeting.

Scott Lambers, City Administrator clarified with Councilmember Taylor that the issue was whether the cost of this item was subject to being borne by the contractor and not the City. The question is not if this should have been known in advance by the contractor, but rather the question of who is going to be responsible for paying this amount.

Councilmember Taylor reiterated his position that the City should not be paying for this if this item was a specification in the contract documents.

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

- I. Request for payment adjustment in the amount of \$28,638.00, to United Methodist Church of the Resurrection, for taking on Tract No. 54, pertaining to Phase II of the Nall Avenue Improvement Project [between 135th Street and 143rd Street] CIP # 139]

A motion was made by Councilmember Rasmussen, seconded by Councilmember Gullede to approve the payment. The motion carried following a vote of 6-0-1, with Councilmember Taylor recusing.

- M. **Resolution No. 2282**, approving a Final Site Plan for Cornerstone, Lot 5; Ted's Montana Grill, located on the southeast corner of 135th Street and Nall Avenue [from the July 27, 2004, Planning Commission meeting]

Mayor Dunn stated the Planning Commission had voiced some concerns regarding the flagpole height and asked what the height was of other flagpoles in the area. Ms. Binckley stated they ranged from 30' to 40'. The flagpole at Heartland Bank is 30 foot, McDonald's is 30 foot, and the pole at Longhorn is 40 foot.

Jim Powell, Architect, with GHA Architects, representing Ted's Montana Grille, stated he has approximately 30 restaurants being developed. Due to some restrictive covenants, they had been restricted to a 30' flagpole for the restaurant in Omaha, instead of the other location previously mentioned at the Planning Commission meeting. Ted's Montana Grille feels strongly about being able to exhibit their patriotism by flying the American flag and would prefer to have a 50' flagpole, which flies a 10 X 15 flag. Ted's concern is when the trees grow to maturity along 135th Street; the flag would not be as visible. However, Mr. Powell stated Ted's is willing to compromise and have a 40' flagpole, which would carry a 10 X 12 flag.

Mayor Dunn stated since Longhorn has a 40' flagpole, that a precedent has been set, and would be in favor of having a 40' flagpole instead of the 50'.

Mayor Dunn had questions regarding Stipulation No. 8, wherein it states, *'No logos shall be permitted on any directional signage including the signage to reserve parking for take away service,'* as it didn't coincide with the picture of the sign provided in the Council's information packet.

Ms. Binckley explained the picture of the sign in the packet, is essentially a sign for the 'to go' orders. The logo will not be on the sign, however just the wording 'Take Out' would be on the sign. Mayor Dunn asked that the flagpole height be added as a new Stipulation No. 33, restricting the flagpole height to 40 feet.

Councilmember Peppes stated there were comments in the stipulation and staff comments regarding the construction material and asked Mr. Powell if the cast stone material would be used as opposed to other material. Mr. Powell confirmed those changes would be made.

Mayor Dunn stated that due to the additional stipulation being added, this would be considered an override of the Planning Commission's recommendation, and the vote would require a 2/3 majority vote for approval. A motion was made by Councilmember Rasmussen to approve the resolution with the additional stipulation to restrict the flagpole height to 40 feet. The motion was seconded by Councilmember Rawlings and the motion was approved by a 6-0-1 vote, with Councilmember Taylor recusing.

R. Police Department Monthly Report

Councilmember Filla asked if the increase in Minor In Possession [MIP] arrests for the month of July was a direct result of the new law that was recently passed. Scott Lambers stated it is a direct result of a new multi-jurisdictional task force that is made of up officers from area jurisdictions that are teamed up together to respond to these types of calls.

A motion was made by Councilmember Filla, seconded by Councilmember Rawlings to approve the Police Department Monthly Report, and was approved following a unanimous vote of 7-0.

8. MAYOR'S REPORT

- A. Extended appreciation to all involved and to the press in their coverage of the recently approved re-authorization of the City's 1/8 cent sales tax that was overwhelmingly passed in the August 3rd election.
- B. Extended best wishes to the City's friends in I-Lan, Taiwan regarding the recent typhoon that struck their region.
- C. Attended a demonstration and dedication at the Leawood Pioneer Branch Library of the Video Magnifier, purchased by the Leawood Lions Club, to assist the sight impaired.
- D. Attended a press conference by Carol Marinovich, Mayor of the Unified Government, wherein she advised she would not be seeking a 3rd term for Mayor.
- E. Reminded the Council of the upcoming Walk as One Event, sponsored by the NCCJ, for the 5K walk to be held on October 3, 2004. She will be attending an upcoming luncheon on August 24th, when further details of this event will be provided.

- F. A Courtyard concert will be conducted over the lunch hour from 11:30 – 1:00 PM, on Thursday, August 19th in the City Hall courtyard and encouraged everyone to attend
- G. Congratulations to David Basse, recipient of the Outstanding Volunteer Achievement Award from the Leawood Stage Company
- H. Recognition of the newspaper article in the *Kansas City Star* Saturday edition entitled, 'Recalling Ali Kemp,' regarding the self-defense training classes for woman founded by the Ali Kemp Education Foundation. These self-defense classes will be conducted on September 11, 2004. Chris Claxton, advised that the classes are already full. She will be checking with some other agencies to ascertain if additional classes can be scheduled.

9. COUNCILMEMBERS' REPORT

A. Councilmember Filla

Councilmember Filla stated she wanted to comment on some issues relating to the northern part of Leawood. A resident had inquired about turning the current vacant lot on State Line into a park. Ms. Filla advised this property has previous gas leakage problems and has since been purchased by BP Amoco. She has learned the property will be in remediation for at least the next 2 years.

Residents had inquired about traffic calming on 85th Terrace. There is also concern that there are 4 houses currently for sale at 85th and State Line, that have been on the market for quite some time. There has been some discussion with a Homes Association and the Leawood Baptist Church in selling part of the church's property. There was a question regarding the asphalt parking area on the Missouri side, as to if it still had to remain an asphalt parking lot. With these changes in this area of the City, Ms. Filla made a motion to recommend that the Staff and the Planning Commission review and reevaluate the State Line Corridor from the northern boundaries down to 103rd Street as they evaluate the Master Plan annually.

Councilmember Taylor stated a traffic calming study had been conducted on 85th Terrace recently. Ms. Filla stated one of the residents had inquired about having a sidewalk installed. Mr. Johnson stated when the traffic calming analysis was conducted; only 7 residents were interested in creating a benefit district, which was an insufficient number to pursue the benefit district. Ms. Filla stated she wanted to raise the issue of these residents' concerns, and of the concern of the homes for sale in this area that have been on the market for some time and perhaps these issues need to be reviewed again.

Councilmember Rasmussen stated he felt the motion was based more upon the 85th Street area being viable for R-1 zoning, not traffic calming; considering what has happened to the housing issue in this area, and perhaps the City needs to look at changing the zoning.

Councilmember Taylor asked if Ms. Filla had any suggestions for the use of the parking lot across from Target. Ms. Filla stated did not have any suggestions at this time.

Mayor Dunn asked Mr. Lambers to confirm that this request was not going to overburden the staff. Mr. Lambers stated part of the Master Plan review process is to focus on a strategic area of a city and this request would not be inappropriate. Currently, there are funds available in the Planning budget for specific studies to be conducted by a consultant, if needed.

Councilmember Peppes stated he echoed Ms. Filla's recommendation on reviewing the current situations in this area.

Councilmember Filla stated she wanted to compliment the Planning Commission and Planning Staff on their influence and assistance in their attempts to protect this area, in particular the recommendation of planting trees when Target came into this area.

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

B. Councilmember Rasmussen

Mr. Rasmussen stated he attended a meeting at Brookwood school this week regarding the future stormwater issue in this area. The School District staff agreed that this issue needed to be addressed. The overall discussion was positive and it was recommended that Joe Johnson draft and distribute a letter to the principal. Tentatively, the engineering phase would be scheduled to begin in 2005, and construction beginning in 2006.

Councilmember Taylor stated several residents in the area of 123rd Street & Mission Road have been concerned about flooding due to the channel that flows to the northwest. The Public Works Department disseminated a detailed survey to the affected residents as to how they would like to have this channel corrected. Only one resident out of approximately 13, showed an interest in having this corrected. Mr. Taylor extended his appreciation to the Public Works Department for the work and time they had dedicated in conducting this survey and to this project.

Councilmember Bussing wanted to clarify that the Brookwood stormwater issue was from the Stormwater Committee instead of the Public Works Committee. Mr. Rasmussen stated he wanted to be inclusive, because the stormwater inlets on Cherokee would be part of the normal street rehabilitation, and perhaps the 2 stormwater inlets may be installed prior to the street.

10. STAFF REPORT - None

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the July 27, 2004 Planning Commission meeting]

- A. **Ordinance No. 2071**, approving a [16-month] Special Use Permit [SUP] for United Methodist Church of the Resurrection temporary offices located at 13720 Roe Avenue [Roll Call Vote]

Staff Comment: It is the position of the City Administrator that the language recommended by the Planning Commission '...[s]hall be the last extension to be granted...' is inappropriate as a condition of a stipulation, unless such a restriction has been adopted by the City Council as a matter of policy through either a resolution or ordinance.

Mayor Dunn called the Councilmembers' attention to the Staff comment by Mr. Lambers. If the ordinance was approved with Mr. Lambers' suggestion, Stipulation No. 1 would read as follows: *'The Special Use Permit shall extend to December 31, 2005.'* Councilmember Taylor advised he would be recusing himself from this item. A motion was made by Councilmember Rasmussen, seconded by Councilmember Filla to pass the ordinance, with Stipulation No. 1 being amended as requested by Mr. Lambers.

Mr. Lambers stated an applicant should not be precluded from requesting such an extension and had suggested this stipulation being amended to strike the language '...[a]nd shall be the last extension to be granted.'

Councilmember Peppes asked if future extensions could be denied. Mr. Lambers responded in the affirmative and advised however, this would probably be their last request, as their intent is to move into the commercial building. The motion passed following a roll call vote of 6-0-1, with Councilmember Taylor recusing.

12. OLD BUSINESS - None

13. NEW BUSINESS

- A. Ordinance No. 2072, levying an additional City Retailers' Sales Tax in the amount of one-eighth of one percent [.125%] in addition to the one percent [1.0%] currently levied, within the City of Leawood, Kansas, effective July 1, 2005, and ending June 30, 2010**

A motion was made by Councilmember Rawlings, seconded by Councilmember Peppes to pass the ordinance. The motion was approved following a unanimous roll call vote of 7-0.

- B. Ordinance No. 2073C, amending Section 13-503 of Article 5 of Chapter VII of the Code of the City of Leawood, 2000, entitled "Definitions," pertaining to the K-150 Corridor [a/k/a 135th Street Corridor Impact Fee] [Roll Call Vote]**

A motion was made by Councilmember Bussing, seconded by Councilmember Gulledge to pass the ordinance. The motion was approved following a unanimous roll call vote of 6-0-1, with Councilmember Taylor abstaining.

- C. Resolution No. 2287, amending the K-150 Highway Corridor [a/k/a 135th Street Corridor] Transportation Impact Fee and Impact Fee amounts, pursuant to Sections 13-506 and 13-509 of the Code of the City of Leawood, 2000**

A motion was made by Councilmember Bussing, seconded by Councilmember Gulledge to approve the resolution.

Councilmember Filla asked if there was any feedback on the increase of the fees. Mr. Lambers stated when the fees were originally set, they were based upon a low estimate of what the cost would be to the City and these fees needed to be adjusted. Mayor Dunn stated these fees would become effective December 1, 2004; all approved development and/or applications in the process received prior to that date will be grand-fathered.

The motion was approved following a vote of 6-0-1, with Councilmember Taylor abstaining.

D. Ordinance No. 2074C, amending Section 12-403 of Article 4 of Chapter 12 of the Code of the City of Leawood, 2000, entitled 'Definitions,' pertaining to the Park Impact Fee [Roll Call Vote]

A motion was made by Councilmember Rawlings, seconded by Councilmember Taylor to pass the ordinance. The motion was approved following a unanimous roll call vote of 7-0.

E. Ordinance No. 2075C, amending Section 12-603 of Article 6 of Chapter 12 of the Code of the City of Leawood, 2000, entitled 'Definitions,' pertaining to the Public Art Impact Fee [Roll Call Vote]

A motion was made by Councilmember Taylor, seconded by Councilmember Gulledge to pass the ordinance. The motion was approved following a unanimous roll call vote of 7-0.

F. Ordinance No. 2076C, amending Section 13-603 of Article 6 of Chapter 13 of the Code of the City of Leawood, 2000, entitled 'Definitions,' pertaining to the South Leawood Transportation Impact Fee [Roll Call Vote]

A motion was made by Councilmember Gulledge, seconded by Councilmember Bussing to pass the ordinance. The motion was approved following a roll call vote of 6-0-1, with Councilmember Taylor abstaining.

G. Executive Session to be conducted immediately following the regular Governing Body meeting to discuss information relating to the acquisition of real property

A motion was made by Councilmember Gulledge, seconded by Councilmember Taylor to recess into executive session for a period of 30 minutes. The motion was approved by a unanimous vote of 7-0.

ADJOURN

The Governing Body reconvened at 9:15 P.M., followed by a motion by Councilmember Bussing, seconded by Councilmember Rawlings to adjourn. The motion was approved following a unanimous vote of 7-0.

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

Debra Harper, CMC, City Clerk