

**Minutes**

Audio Tape No. 604

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:35 P.M., on Monday, October 20, 2003. Mayor Peggy Dunn presided.

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

**Councilmembers absent:** None

**Staff present:**

Scott Lambers, City Administrator  
Ben Florance, Fire Chief  
Joe Johnson, Public Works Director  
Jeff Cantrell, Neighborhood Serv. Admin.  
Diane Binckley, Planning & Develop. Dir.  
Dan Mahanke, Sports Supervisor

Patricia A. Bennett, City Attorney  
Scott Barton, Captain, Police Dept.  
Karl Weinfurter, Info Systems Specialist  
Colleen Browne, Human Resources Dir.  
Deb Harper, City Clerk  
Emily Gleasure, Deputy City Clerk

150    **1.    PLEDGE OF ALLEGIANCE**

233    **2.    APPROVAL OF AGENDA**

Councilmember Story made a motion to approve the Agenda. Councilmember Rawlings seconded the motion, and it was approved 7-0-0.

249    **3.    CITIZEN COMMENTS**

Councilmember Gill arrived at 7:40 P.M.

Ed Peterson, 5522 Aberdeen, former Fairway Mayor and current County Commissioner, addressed the Council on the County's budget for parkland acquisitions and the approval of the CARS program last week.

G. Gordon Thomas, 10516 Mohawk Lane, requested that the public be allowed to remove items from the Consent Agenda. Mr. Thomas identified \$4,000.00 for a bar-b-que unit, \$10,000.00 for Christmas lighting and \$150,000.00 for the Oxford Schoolhouse renovation, as being items citizens would not approve if they were allowed to have a voice in how City money was spent.

- 395 **4. PROCLAMATIONS**  
Mayor Dunn proclaimed **Dictionary Day**, October 16, 2003, in the City of Leawood, and expressed her appreciation to Mary Tearney, Chairman of the Arts Council Committee. Through her efforts with other volunteers, Ms. Tearney helped to secure a dictionary for every 3<sup>rd</sup> Grader, in both public and private school, in Leawood. Mayor Dunn also proclaimed **Red Ribbon Week**, October 23-31, 2003, acknowledging the efforts of the citizens to protect the community from the dangers of alcohol and other drugs.
- 421 **5. PRESENTATIONS/RECOGNITIONS – None**
- 424 **6. SPECIAL BUSINESS – None**
- 426 **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. 985
  - B. Accept Minutes of the October 6, 2003, Governing Body meeting
  - C. Accept Minutes of the September 9, 2003, Park and Recreation Advisory Board meeting
  - D. Accept Minutes of the September 16, 2003, Historic Commission meeting
  - E. Accept Minutes of the August 28, 2003, IRONHORSE Advisory Board meeting
  - F. Approve bid in the amount of \$15,990.00, from M & M Golf Cars, for the purchase of [3] Turf Utility Vehicles [Parks & Recreation Department]
  - G. Approve bid in the amount of \$19,750.00, from Commercial Turf & Tractor, for the purchase of an Aerator [Parks & Recreation Department]
  - H. Approve bid in the amount of \$19,900.00, from Commercial Turf & Tractor, for the purchase of a Tractor [Parks & Recreation Department]
  - I. Approve bid in the amount of \$36,766.00, from Turf Technology, for the purchase of a Mower [Parks & Recreation Department]
  - J. **Resolution No. 2108** approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Creative Displays in the amount of \$9,850.00, pertaining to the holiday lighting of City Hall
  - K. **Resolution No. 2109** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$53,435.00, between the City and Sellers & Marquis, pertaining to the Pool Building Roof Replacement Project, at City Park, 10601 Lee Boulevard
  - L. **Resolution No. 2110** approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$150,700.00 [\$11,000.00 contingency], between the City and Sunflower Construction, LLC, pertaining to the Oxford Schoolhouse Renovation Project, located at Ironwoods Park, 14701 Mission Road
  - M. **Resolution No. 2111** accepting a 2003 Assistance to Firefighters Grant Program [Fire Act] Grant from The Department of Homeland Security, in the amount of \$74,597.00, for the purchase of self-contained breathing apparatus [SCBA] units and associated equipment

- N. **Resolution No. 2112** approving and authorizing the Mayor to execute an Inter-local Agreement between the City and the Johnson County Board of County Commissioners, [BOCC] in the amount of \$1,887,251.00, pertaining to the SMAC Stormwater Project No. JB-04-008 [Lee Boulevard to State Line and 103 to I-435]
  - O. **Resolution No. 2113** approving and authorizing the Mayor to renew a Data Access & License Agreement between the City and the Board of County Commissioners of Johnson County [BOCC] for an amount not to exceed \$10,013.14, for access and use of the County's GIS System
  - P. **Resolution No. 2114** approving and authorizing the Mayor to execute an Inter-local Federal AID Road Construction Agreement by and between the City, the Kansas Secretary of Transportation, and Bucher Willis & Ratliff Corporation [BWR], pertaining to the Roe Avenue Improvement Project [between 124<sup>th</sup> Street and 135<sup>th</sup> Street] [CIP # 110]
  - Q. **Resolution No. 2115** accepting Permanent Storm Sewer and Temporary Construction Easements located at 2204 W. 104<sup>th</sup> Street, from Edward L. & Anne M. LeCluyse, pertaining to the SMAC Stormwater Project No. JB-04-008 [Lee Boulevard to State Line and 103 to I-435]
  - R. **Resolution No. 2116** accepting Permanent Storm Sewer Easement and Temporary Construction Easements located in part of Tract 'A,' Bridgewood Subdivision, from Van A. McElvain of Bridgewood Development, L.C., pertaining to the Roe Avenue Improvement Project [between 124<sup>th</sup> Street and 135<sup>th</sup> Street] [CIP # 110]
  - S. **Resolution No. 2117** accepting a Temporary Construction Easement located in part of Tract 'C,' Bridgewood Subdivision, from Van A. McElvain of Bridgewood Development, L.C., pertaining to the Roe Avenue Improvement Project [between 124<sup>th</sup> Street and 135<sup>th</sup> Street] [CIP # 110]
  - T. **Resolution No. 2118** accepting a Temporary Construction Easement located in part of Tract 'D,' Bridgewood Subdivision, from Van A. McElvain of Bridgewood Development, L.C., pertaining to the Roe Avenue Improvement Project [between 124<sup>th</sup> Street and 135<sup>th</sup> Street] [CIP # 110]
  - U. **Resolution No. 2119** accepting a Temporary Construction Easement located in part of Tract 'E,' Bridgewood Subdivision, from Van A. McElvain of Bridgewood Development, L.C., pertaining to the Roe Avenue Improvement Project [between 124<sup>th</sup> Street and 135<sup>th</sup> Street] [CIP # 110]
  - V. **Resolution No. 2120** accepting a Temporary Construction Easement located in part of Tract 'F,' Bridgewood Subdivision, from Van A. McElvain of Bridgewood Development, L.C., pertaining to the Roe Avenue Improvement Project [between 124<sup>th</sup> Street and 135<sup>th</sup> Street] [CIP # 110]
  - W. Acceptance of Health Insurance Benefits renewal for City Employees
  - X. Declaration of surplus property from Park & Recreation Department
  - Y. Fire Department Monthly Report
  - Z. Municipal Court Monthly Report
- \*\*Due to a Police Department computer conversion- the Monthly Police Reports will not be available***

- AA. **Resolution No. 2121** approving a Final Site Plan for Covenant Chapel Church, Phase II, located at 13300 Kenneth Road [*from the August 26, 2003, Planning Commission meeting*] – *Continued from the October 6, 2003, Governing Body Meeting*

Councilmember Taylor left the Council Chambers at 7:41 P.M.

Mayor Dunn congratulated Randy Hill, of the Police Department, for securing the grant from the Department of Homeland Security, in regards to Item “7M.”

There being no further discussion, Councilmember Gullede made a motion to approve the Consent Agenda. Councilmember Story seconded the motion, and it was approved 7-0-0, with Councilmember Taylor not seated for the vote.

448 **8. MAYOR’S REPORT**

- A. Attended the departure of the “Driving for Bruce” golf cart at Ironhorse Golf Club, as it continued its 2,000-mile trek to Pebble Beach. Proceeds raised will benefit ALS research.
- B. Attended the Double 10 celebration with City Administrator Scott Lambers, Councilmembers Taylor and Rawlings and Sister City Committee Chair Roxanne Wu-Rebein.
- C. Attended the dedication of the Manor of Grace Gardens, the new assisted-living retirement community in Leawood
- D. Attended a homecoming celebration at Merrill Lynch for Lt. Col. Scott Babcock, returning from military duties in Kuwait and Iraq during the past year
- E. Recognized members of the Police Department upon receiving the 2003 KMBC-TV9 Metropolitan Chiefs and Sheriffs’ Association Awards of Valor
- F. Congratulated Chris Gish of Public Works for representing Leawood at the American Public Works Association Annual Snow Plow and Equipment Rodeo. Mr. Gish placed second in the Mechanics Competition.
- G. Encouraged the Councilmembers to participate in the various planned activities during the hosting of the delegation from I-Lan, Taiwan October 24-27, 2003

Councilmember Taylor returned to the Council Chambers at 7:48 P.M.

576 **9. COUNCILMEMBERS’ REPORT - None**

577 **10. STAFF REPORT – None**

**COMMITTEE RECOMMENDATION**

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**11. PLANNING COMMISSION**

*[from September 23, 2003, Planning Commission meeting]*

- A. **Ordinance No. 2029** approving a Special Use Permit for a temporary sales trailer for Siena of Leawood, located at 140<sup>th</sup> Street & Mission Road [Roll Call Vote]

Councilmember Taylor made a motion to pass the Ordinance. Councilmember Rasmussen seconded the motion, and it was passed unanimously by an 8-0-0 Roll Call vote.

- B. **Ordinance No. 2030** approving a Preliminary Site Plan and Final Site Plan for St. Michael the Archangel Rectory, located approximately north of 143<sup>rd</sup> Street and east of Nall Avenue [Roll Call Vote]

*Staff Comment: The applicant has stated that they do not agree with the Planning staff's interpretation of Stipulation #4 that "all" means both existing and new. It is their contention that "all" means new. The Planning staff recommended that the Planning Commission amend Stipulation #4 to include the added language "existing and new." The Planning Commission declined to do so, yet the Planning Commission reiterated that "all" means all. At the Planning Commission meeting, the applicant indicated that they wanted to defer this dispute until the next phase, when the Sanctuary, came to fruition. It is the City Administrator's position that the term "all" in Stipulation #4 includes existing and new, and it applies to the entire project including the existing school, the pending Rectory and the future Sanctuary. If the Governing Body agrees with the position of the City Administrator, then the Stipulation #4 should be amended accordingly prior to the consideration of any action regarding Case 47-03.*

Mr. Lambers gave the background on the issue concerning the definition of the word "all" as used in Stipulation No. 4 ["all utilities shall be placed underground"] of the Planning Commission's requests to the applicant. He stated he felt this term should be clarified to avoid confusion in the future, contrary to the Planning Commission's recommendation.

Councilmember Dunn verified that Mr. Lamber's request was, in the future the word "all" would mean "the total sum of," and also adding "existing and new" to Stipulation No. 4. Any application that came forward in the future having similar stipulations would also include this new language.

Mr. Chris Arth, Parish Administrator for St. Michael the Archangel Parish, gave a brief presentation on the history of how the misunderstanding came to be concerning the expectation that all utilities were to be buried underground. He stated it was their understanding that utilities would be buried for the school and temporary worship facility, and their occupancy of those buildings began in April 2003. In July 2003, a letter was received reminding them that all utilities must be buried including those along Nall Avenue, but that it was not required until Phase II of their development, several years in the future. A short time later, a house was offered without cost to the Church to be used as a rectory. Originally the rectory was to be constructed during Phase II, but to take advantage of the offer, the Church came before the Planning Commission on September 23, 2003. As part of the site plan revisions, it was stipulated that all the utility lines would have to be buried. At that point, the Church had not executed any statement acknowledging the Church's agreement to bury any previously existing power lines, and they were asking tonight not to be required to do so until there could be a hearing on the issue. The Church wished to take advantage of the donated house and begin to plan the moving of the building. Last week, the Church received a letter from Staff stating they wanted the power line issue resolved now. Mr. Arth asked on behalf of the Church to be allowed to have a hearing to discuss a timeframe during which they could come into compliance with the stipulation.

826 Mayor Dunn confirmed with Mr. Arth that it was the Church's understanding that existing power lines would not need to be buried until Phase II of their building plan was completed, and not be conditioned upon the moving of the rectory/house. Mr. Arth stated that the Church had been asked to agree to the stipulation as part of the site plan.

Councilmember Gill stated there were two issues: 1) Does "all" mean "all," and 2) when does this need to be done. Mr. Arth stated the Church understood the wording "all utilities" to mean "all new utilities." Councilmember Gill asked why the issue was disregarded at the time the letter was received and that the meaning of the word "all" was obvious to him. Mr. Arth stated other issues surrounding the site plan were occupying their time and energies. Councilmember Gill confirmed with Diane Binckley that "all" meant "all, new and existing." Ms. Binckley also advised that Staff had advised the Planning Commission that the utilities would not need to be underground until the completion of the sanctuary in Phase II, as opposed to the rectory, which was not a cornerstone to Phase II. Councilmember Gill advised he felt it was a point of honest misunderstanding. He stated, however, that regardless of whether the power lines were buried with new construction or the City came along and buried them, the Church would be required to contribute to the costs involved in that improvement. Mr. Arth countered that the Church was unaware that the power lines needed to be buried, and questioned why the Church had to pay 100% of those costs, while it only paid 25% of the frontage assessment on the Nall Avenue improvements.

Mayor Dunn addressed Mr. Arth's statement about the Nall Avenue development. She said that in a conversation she and Mr. Arth had before he went to the Planning Commission, he stated he thought the Church had already paid \$400,000.00 for the Nall Avenue improvement and Leon Roberts of the Archdiocese also believed the utility costs had been paid. When Mayor Dunn confirmed those statements with Staff, she learned they had not been paid. However, there was clearly contemplation on the part of the Church at that time that they were required to bury the power lines, or there would not have been the assumption that the Church had already paid.

Councilmember Taylor replied, concerning the 25% participation assessment, that the Nall Avenue improvements from 135<sup>th</sup> Street to 151<sup>st</sup> Street was scheduled to be completed by 2007, being funded by the Federal Government as well the County and City. The City's portion was figured to be 25%, which was then divided between the property owners along Nall Avenue, all of whom had participated in the expansion. Joe Johnson stated he thought the City's portion was slightly higher. Councilmember Taylor continued that his point was that the Church was only picking up a small portion of the actual cost. He suggested that the Church and/or diocese look into alternative funding such as a Benefit District to lessen the financial burden of the initial cost.

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Mr. Arth countered that the power lines along Nall Avenue needed to be moved as a part of the improvements. The Nall Avenue improvements would be completed before the Church started its Phase II development. He questioned whether there was money in the Nall Avenue budget to move the power lines. Since there would be costs associated with both the moving and the burying of the lines, Mr. Arth asked if St. Michael's could benefit from the avoidance of the moving costs. He asked that the Church be given an opportunity to discuss these issues before agreeing to the stipulations. Councilmember Taylor replied that Mr. Arth was having his hearing now. Mayor Dunn added that she had listened to the Planning Commission's meeting tape, and it was stated clearly several times, that "all" meant "all" regarding the burying of the power lines, both new and existing.

Councilmember Rasmussen confirmed with Mr. Johnson that the power lines along Nall Avenue were in the public right-of-way. Councilmember Rasmussen stated he felt Mr. Arth had a constructive point in regards to believing the costs of moving the power lines had already been built into the Nall Avenue improvement project. He stated it was his opinion that “all” meant “all.” The issue to be resolved was that of timing. Councilmember Rasmussen said he felt the Church should not have to be put in the position of having to place the lines underground until the construction of Nall Avenue was underway. Otherwise the Church would be picking up an unfair portion of the cost. He suggested the timing of the burying of the lines not be associated with the construction of the Church’s Phase II sanctuary, but completed when the Nall Avenue construction required the relocation of them. He also thought the Church should at that time only pick up the incremental costs of the work.

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Mayor Dunn confirmed with Mr. Arth that he would rather leave the timing open for the Church to bury the power lines, and not tie that project into the Nall Avenue improvements. Mr. Arth added he was not in a position to make a decision as to what stipulations the Archdiocese would be willing to agree to, but would need a few minutes to discuss the suggestions raised tonight with other representatives of the Church whom were also present.

Councilmember Story stated he thought what Mr. Arth was asking for tonight was 1) to approve the addition of the donated house for use as the rectory; 2) to postpone the decision on Stipulation #4 as to whether “all” meant “all” or “all” meant something less than “all”; and 3) to decide when the power lines along Nall Avenue should be relocated underground, whether during the Nall Avenue improvements or the sanctuary construction. The Governing Body needed to decide whether to approve or disapprove Mr. Arth’s request. Councilmember Story said there appeared to be a consensus among the Councilmembers that the power lines would have to be buried, and reiterated that the best time to do this would be during the Nall Avenue improvements to incur the least cost.

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Councilmember Bussing addressed Mr. Arth, stating he did not wish for Mr. Arth to walk out of the meeting tonight thinking that the power lines would not need to be buried. Without the Council voting tonight for Stipulation #4, Councilmember Bussing felt Mr. Arth might think there was still some hope that the Church could come back at a later date to convince the Governing Body that some of the lines would not need to be placed underground. He felt that confirming the Planning Commission’s recommendation tonight would allow the Church to go forward with its planning with less uncertainty about its potential indebtedness.

1669 Mayor Dunn suggested Mr. Arth retire from the Council Chambers to confer with the other representatives from the Church. Councilmember Rasmussen asked if there were any language changes that need to be made to Stipulation #4. Mr. Lambers stated that the proposed language that Staff wanted was on page 5 of the packet handout ["All power lines, utility lines, etc. (both existing and proposed, including utilities and power lines adjacent to abutting right-of-way) are required to be placed underground. This must be done prior to final occupancy of the next phase of the development, the proposed sanctuary"]. Councilmember Story advised Mr. Lambers that by including this wording, it might constitute a loophole for future plans. Mr. Lambers stated he thought the wording should read, "all, both existing and proposed," and that an underground placement of utilities policy should be initiated tonight to prevent problems in the future.

Mayor Dunn asked Mr. Lambers if a misunderstanding of the wording had occurred with another applicant two weeks prior. Mr. Lambers stated there was one applicant who was still contesting the wording, and he would be given the option to agree to the language change, or to go back through the entire planning process for the stipulation to be amended similarly to what was being recommended tonight.

1760 Councilmember Gill stated he was indifferent as to the addition of language to the stipulation, as he felt "all" meant "all." He pointed out that the word "all" appeared in the Planning Commission's stipulations eight other times, and wondered if those stipulations would need to be adjusted also.

Councilmember Taylor suggested to Mr. Lambers that the proposed wording should cover the right-of-way easements as well as private property.

1807 Mr. Arth returned to the Council Chambers. He stated that the only way for the Church to move ahead would be to agree to the stipulation. Mayor Dunn confirmed with Mr. Arth that if the stipulation was amended to read, "all, both existing and proposed," that Mr. Arth would execute in writing an agreement to Stipulations #1 through #19. Mayor Dunn reiterated that a Special Benefit District could be financially advantageous, as well as the backing of the Governing Body and Staff for passing on savings to the Church through the Nall Avenue improvements. Mr. Lambers confirmed that he felt allowing the Church to wait until the utility lines were to be placed underground during the Nall Avenue improvements would increase savings, and would be met favorably by the Governing Body. Mayor Dunn stated the Church would need to work with Staff on a Benefit District proposal.

1883 Councilmember Dunn made a motion to pass the Ordinance with Staff's recommendation for the additional language in Stipulation #4. Councilmember Story seconded the motion, and it was passed unanimously with an 8-0-0 Roll Call vote.

C. **Ordinance No. 2031 amending § 16-2-10.3, [Materials & Colors] of the Leawood Development Ordinance [LDO] pertaining to weight requirements for SBS modified composition-roofing material [Roll Call Vote]**

1910 Councilmember Rasmussen confirmed with Ms. Binckley that the lighter weight shingles would be safer, despite studies done on wind and impact damage. Ms. Binckley explained that due to technology, the new shingles were lighter but still met all of the ICBO and ICC requirements. The new shingles were composed of rubberized asphalt, and the Leawood Development Ordinance [LDO] would differentiate between them and the current composition shingles. The asphalt shingles had received a higher hail impact rating and the wind rating equaled that of the composite shingles.

Councilmember Dunn made a motion to pass the Ordinance. Councilmember Rawlings seconded the motion, and it was passed unanimously with an 8-0-0 Roll Call vote.

2007 **12. OLD BUSINESS – None**

2009 **13. NEW BUSINESS**  
**Schedule Governing Body Work Session on Monday November 3, 2003, at 6:00 P.M. to further discuss the establishment of a Transportation Development District Policy**

Councilmember Dunn made a motion to approve the scheduling of the Work Session. Councilmember Rawlings seconded the motion, and it was approved unanimously 8-0-0.

2028 **14. OTHER BUSINESS - None**

2032 **15. ADJOURN**

There being no further business, the meeting was adjourned at 8:40 P.M.

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Debra Harper, City Clerk

Emily Gleasure, Recording Deputy City Clerk