

Minutes

Audio Tape No. 608

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, December 1, 2003. Mayor Peggy Dunn presided.

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

Councilmembers absent: Shelby Story.

Staff present:

Scott Lambers, City Administrator
Ben Florance, Fire Chief
Sid Mitchell, Police Chief
Jeff Cantrell, Neighborhood Serv. Admin.
Diane Binckley, Planning & Develop. Dir.
Deb Harper, City Clerk

Patricia A. Bennett, City Attorney
Joe Johnson, Public Works Director
Chris Claxton, Parks & Rec Director
Mark Andrasik, Info Systems Director
Kathy Rogers, Finance Director
Emily Gleasure, Deputy City Clerk

- 150 **1. PLEDGE OF ALLEGIANCE**
- 254 **2. APPROVAL OF AGENDA**
Councilmember Bussing asked to add a Public Works Committee referral under New Business, Agenda Item No. 15. Councilmember Rasmussen made a motion to approve the Agenda with the addition of Councilmember Bussing's request. Councilmember Dunn seconded the motion, and it was approved 7-0-0.
- 287 **3. CITIZEN COMMENTS - None**
- 290 **4. PROCLAMATIONS - None**
- 291 **5. PRESENTATIONS/RECOGNITIONS – None**

- 293 **6. SPECIAL BUSINESS**
- A. Public Hearing: Amendments to the 2003 Fiscal Budget for the City of Leawood, Kansas**
Kathy Rogers stated this was a budget amendment for the Special Parks budget relating to some capital expenditures that had been planned for and carried over. Kansas statute requires a public hearing be conducted for any amendments to the fiscal budget. Mayor Dunn declared the Public Hearing open. There being no public discussion, Councilmember Rasmussen made a motion to close the Public Hearing. Councilmember Taylor seconded the motion, and the motion was approved unanimously 7-0-0.
- B. Resolution adopting the amended 2003 Fiscal Budget for the City of Leawood, Kansas**
Councilmember Rasmussen made a motion to approve the Resolution. Councilmember Taylor seconded the motion, and the motion approved unanimously 7-0-0.

- 347 **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. 988
 - B. Accept Minutes of the November 17, 2003, Governing Body meeting
 - C. Accept Minutes of the November 3, 2003, Governing Body Work Session meeting
 - D. Accept Minutes of the October 30, 2003, IRONHORSE Advisory Board meeting
 - E. Accept Minutes of the October 14, 2003, Park and Recreation Advisory Board meeting
 - F. Accept Minutes of the September 23, 2003, of the Arts Council meeting
 - G. Mayoral appointment of Lora Christian, as a representative on the Alcohol Planning Council [Drug & Alcohol Council- DAC]
 - H. Approve Renewal of Retail Liquor Store License for Stoll Liquor Store, located at 3731 W. 133rd Street
 - I. Approve quote in the amount of \$373,645.00, from St. Paul Fire & Marine Company, pertaining to the 2004 property and casualty insurance renewal
 - *J. Approve purchase in the amount of \$22,166.92, from Communications Associates for the purchase of police portable 800 MHz radios—***THIS ITEM HAS BEEN PULLED***
 - K. Approve Change Order No. 1 in the amount of \$82,440.02, to J.M. Fahey Construction Company, pertaining to the 2003 Arterial Mill & Overlay Program
 - L. Approve 2nd and Final Payment in the amount of \$126,111.09, to J.M. Fahey Construction Company, pertaining to the 2003 Arterial Mill & Overlay Program
 - M. Resolution approving transfer of funds in the amount of \$41,837 from General Fund to Ironhorse Golf Course

- N. Resolution approving Johnson County Drug & Alcoholism Council [DAC] recommendation for allocations of the 2004 Alcohol Tax Fund, for an amount not to exceed \$41,600.00
- O. Resolution approving the 2004 Human Service Recommendation Report [United Community Services- UCS] and the City of Leawood's participation for an amount not to exceed \$6,500
- P. Resolution approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood, and the City of Overland Park for improvements to 135th Street pertaining to the Parkway Plaza Project [CIP # 195]
- Q. Resolution approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood, the City of Overland Park and the Board of County Commissioners for Johnson County [BOCC] pertaining to the 119th Street Improvement Project between Nall and Roe Avenue [2004 Arterial Program]
- R. Resolution approving and authorizing the Mayor to execute an Engineering Service Agreement in the amount of \$350,925.00, between the City and Schlager and Associates, P.A., pertaining to the Parkway Plaza Project, located at 135th & Roe [CIP # 195]
- S. Resolution approving and authorizing the Mayor to execute an Inter-local Agreement between the City of Leawood, and the City of Overland Park for improvements to 133rd Street, pertaining to the Parkway Plaza Project, [CIP # 195]
- T. Resolution approving and authorizing the Mayor to execute a Utility Relocation Agreement in the amount of \$56,949.67, between the City and Kansas City Power & Light [KCPL] to relocate utilities at 137th & Nall Avenue [along church property] [CIP #190]
- U. Resolution approving and authorizing the Mayor to execute a Utility Relocation Agreement in the amount of \$80,486.87, between the City and Kansas City Power & Light [KCPL] to relocate utilities at 135th & Nall Avenue [Cornerstone] [CIP #192]
- V. Resolution approving and authorizing the Mayor to execute Second Amendment to Engineering Services Agreement in the amount of \$9,450.00, between the City and Bucher Willis & Ratliff [BWR] pertaining to the Roe Avenue Public Improvement Project, between 124th & 135th Street [CIP # 110]
- W. Resolution accepting Public Infrastructure Improvements for the Whitehorse Subdivision 5th Plat [GASB-34]
- X. Resolution approving a Final Site Plan for Culver's Restaurant located at approximately 80th Street and State Line Road *[from the November 25, 2003, Planning Commission meeting]*
- Y. Resolution approving a Final Site Plan for a generator at Root Dental Lab, located at 5201 College Boulevard *[from the November 25, 2003, Planning Commission meeting]*
- Z. Resolution approving a Final Site Plan for a monument sign at Claire Bridge Assisted Living Facility located at 12724 State Line Road *[from the November 25, 2003, Planning Commission meeting]*

Mayor Dunn recognized the Mayoral appointment of Lora Christian, Item "7G," and the beneficial work of the group she was associated with, the Johnson County Drug & Alcoholism Council (DAC), Item "7N." Councilmember Rasmussen asked to pull Items "7D" and "7F." Councilmember Taylor asked to pull Item "7R."

Councilmember Dunn made a motion to approve the remainder of the Consent Agenda. Councilmember Bussing seconded the motion, and the motion passed unanimously 7-0-0.

Councilmember Rasmussen advised that the minutes of the October 20, 2003, Ironhorse Advisory Board were incomplete. He stated a reference had been made in the minutes to a study was not included that had been prepared by the Superintendent of Ironhorse Golf Course and himself regarding a proposal for control of a leak problem in one of the irrigation lakes. He asked that the City Administrator send each Councilmember a copy of the report to complete the minutes. Mr. Lambers stated it would be appropriate to defer taking action on the minutes to the December 15th 2003, Governing Body meeting, at which time the minutes would be resubmitted with the study attached.

Councilmember Rasmussen made a motion to continue Item "7D" to the December 15th 2003, Governing Body Consent Agenda with the appropriate study attached. Councilmember Dunn seconded the motion, and it was approved unanimously 7-0-0.

455 Councilmember Rasmussen stated that in regards to Item "7F" he was concerned about the Arts Council approving expenditures to other organizations. He stated he understood that the only people who could authorize the expenditures of funds was the City Council. Mr. Lambers confirmed this was correct. Mayor Dunn stated she was aware that the Arts Council had previously supported other arts organizations. Councilmember Rasmussen referred to the Arts Council approval of a \$50.00 contribution to the People-to-People organization. He stated that one of the issues the Governing Body needed to be concerned about was the committee donating money to a charitable organization that may or may not meet the approval of the Council. Mr. Lambers stated it would be appropriate to pull the minutes so that it could be noted that it was a recommendation to contribute the money, and the item would then be subsequently placed on the Appropriations Ordinance for Governing Body approval.

Councilmember Bussing confirmed with Councilmember Rasmussen that his concern was the process in which the Arts Council was making a recommendation for purchases or contributions. He stated it should be a recommendation, not an authorization or approval of the expenditure of money. Councilmember Bussing stated he felt the Arts Council was very attuned to the manner in which expenditures were to be recommended. Councilmember Rasmussen made a motion to continue Item "7F" to the December 15th 2003, Governing Body Consent Agenda for clarification of authorization for the expenditure of funds. Councilmember Taylor seconded the motion, and the motion was approved unanimously 7-0-0.

608 Regarding Agenda Item '7R,' Councilmember Taylor questioned Mr. Lambers about the selection process of the engineering contract that was to be executed with the Schlagel Company. He stated he understood the development to have both public and private improvements. He questioned the fact that the firm was doing the bulk of the Parkway Plaza Project, when the Governing Body did not have an opportunity to be involved with the engineering selection process as they related to the public streets that the City would own. Joe Johnson stated that in developing a Special Benefit District (SBD), the developer is given the opportunity to request the use of his engineer. When the Resolution of Intent was previously approved by the Governing Body, the developer had asked that he be allowed to use Schlagel to do the design work for the public improvement.

Councilmember Taylor asked if it would be difficult for the City to solicit Request for Proposals [RFP's] from other engineering firms. Mr. Johnson stated that by the time another firm put together their proposal, Schlagel would have been working on the project for nearly a year, and that engineering would be lost, as Schlagel would retain all of their plans and the developer would have already paid Schlagel for their preliminary work.

Councilmember Gill questioned Mr. Johnson as to the percentage of work associated with public improvements. Mr. Johnson stated total construction costs were \$5.7 million. Councilmember Gill asked why the engineering would not have been released for public bid. He stated that it was about quality as well as money, with the bid process assuring these purposes were covered to benefit the City. Councilmember Gill asked Patty Bennett if the City had ever been involved in any litigation over designs by any engineering firm. She stated the City had previously been involved in litigation with Schlagel. Mr. Lambers added that if the Governing Body were to require RFP's for engineering services to be part of the developer's process, it would become more complicated than if the ability to waive the bidding process was eliminated. With such a request, the City would need to be involved in the beginning of a project with a developer, of which currently the City does not take part until after the feasibility studies are completed. Councilmember Gill and Mayor Dunn confirmed with Mr. Johnson that the issue before the Council was the approval of an engineering agreement with Schlagel who had been working with the developer. Mr. Lambers indicated that if Schlagel was not approved, the work that they had done on the project thus far would be held by that firm. Curtis Holland, an attorney present for the Chadwick Place development, reiterated that the engineer would own his drawings and that they would not necessarily be turned over to a new engineer. Mr. Lambers added that if the engineer turned over the drawings, they would include a seal, and the new engineer would have to totally recreate them. While some time may be saved on field work, all the engineering work has to be redone by the engineer of record.

883 Councilmember Gill asked if public money had been spent for engineering costs for private improvements. Mr. Johnson stated he did not think it was possible to separate the public and private aspects of some of the engineering that had been done for the improvements. He said the ability of one engineer to coordinate both the public and private improvements increased the ability of the projects to tie together when completed.

Mayor Dunn confirmed with Mr. Lambers that the Notice of Intent for the creation of the SBD was approved by the Governing Body on November 3rd, but it was only for actual construction. The law governing SBD's acknowledges that in order for such projects to move ahead, the preliminary engineering design work needed to be done before the Resolution of Intent is issued. The costs are funded through the SBD financing even though they occurred prior to the Notice of Intent, recognizing that preliminary work needs to be done for cost estimating and determining viability of the project.

944 Councilmember Gill asked what assurance the City had that the fees being paid were not in any way subsidizing the fees being charged back to the same developer by the same engineering firm. Mr. Johnson stated that the estimated cost for new construction was noted; then, by taking a percentage of that cost, design fees are determined. Councilmember Gill asked Ms. Bennett if the City had full indemnity and bonding to offset any possible litigation costs. Ms. Bennett stated this was the standard contract the City used for engineering with the exception that payment under this contract would not be due until October 15, 2004 at the earliest, when the project was bonded.

976 Councilmember Rasmussen asked Mr. Johnson if there was any documentation of prior evaluation of Schlagel & Associates. Mr. Johnson replied no, the City had not been under contract with Schlagel for some time, and under the last contract with Schlagel the performance was acceptable so there was no cause for disqualification for future work. Councilmember Rasmussen confirmed with Mr. Johnson that the public construction costs was estimated to be \$5.7 million with the total SBD being \$6.9 million, that included design, inspection, bonding, etc. Councilmember Taylor asked if Schlagel was the same firm that worked on Plaza Pointe, where there had been problems with elevations and the connecting of roads. Mr. Johnson stated there had been difficulty in obtaining easements to put the road in properly.

1086 Councilmember Taylor made a motion to approve the Resolution. Councilmember Rawlings seconded the motion. Mr. Lambers stated the Governing Body would be apprised of the identity of the engineering firms retained for future projects. The motion was approved 6-1-0 with Councilmember Gill opposed. For the record, Councilmember Gill stated he was against sole-sourcing for public improvements and with the possibility of circumventing the Public Works Committee.

- 1175 **8. MAYOR'S REPORT**
- A. Wished all present a belated Happy Thanksgiving.
 - B. Attended the Leawood Office Business Center ribbon-cutting ceremony at Plaza Pointe
 - C. Noted that the United Way reached its charitable goal of over \$38 million for 2004. Mayor Dunn expressed her appreciation to all who had participated.
 - D. Attended the kick-off breakfast for the Have a Heart Campaign on November 21st.
 - E. Announced Leawood Arts Council Chairman Mary Tearney had been selected by the Association of Community Arts Agency of Kansas to serve on its Board of Directors for a 3-year term.
 - F. Noted the Holiday Lighting Ceremony would take place Tuesday, December 2, 2003 at 6:00 P.M.
 - G. Reminded the Governing Body that on Wednesday, December 03, 2003 that the Council/Mayors December Social would be held at Milburn Country Club at 6:00 P.M.

- 1259 **9. COUNCILMEMBERS' REPORT**
Shawnee Mission School District Committee's Proposal
Mayor Dunn noted that the report had been assembled by the Boundary and Facility Committee. Councilmember Story had been appointed to represent Leawood on that committee. Mayor Dunn expressed her appreciation for his commitment in this endeavor.

- 1284 **10. STAFF REPORT – None**

1286 **COMMITTEE RECOMMENDATIONS**

11. PUBLIC WORKS COMMITTEE

[from the November 11, 2003, Public Works Committee meeting]

A. Resolution adopting a Revised Street Light Policy for the City of Leawood, Kansas

Councilmember Bussing noted that the Resolution was straightforward. The proposal would be to amend the City's policy to reflect the actual practice today as it applied to street lighting. The change would allow contact of residents only in the immediate area of a requested location of a new streetlight by a citizen. Previously, the entire block was contacted for consent.

Councilmember Rasmussen made a motion to approve the Resolution. Councilmember Gill seconded the motion, and the motion was approved unanimously 7-0-0.

1332 12. **PLANNING COMMISSION**

[from the November 11, 2003, Planning Commission meeting]

A. Ordinance rezoning from AG [Agriculture] to SD-NCR [Planned Neighborhood Retail] and SD-O [Planned Office] and approving Preliminary Site Plan and Preliminary Site Plat for Chadwick Place located south of 135th Street and east of Chadwick [Roll Call Vote]

Curtis Holland, Esq., Polsinelli Shalton & Welte, P.C., made a brief presentation on behalf of the applicant along with Greg Hasselwander, Kevin Cowan Architects. Mr. Holland stated they had worked diligently with staff and have had no significant issues with respect to the project as presented. The proposal is for 8 office buildings, with six buildings at 5,000 sq. feet each; two 2-story office buildings will be located on the southern portion of the complex with 10,000 sq. feet. Two retail buildings will be located on the north side of the property, each having 6,000 square feet. Water retention features have been placed in the middle and the southern portions of the property. A main feeder road will be placed to run through the middle of the complex, having access points to Chadwick and to adjacent properties. All landscaping requirements have been met.

Councilmember Taylor asked about the private drives having street names, as noted in Gene Hunter, Fire Marshall's report. Ms. Binckley stated he was requesting the applicant furnish street names for the private drives which will assist the emergency service personnel when responding to calls. Mr. Taylor asked the reason behind having private drives in this development. Ms. Binckley stated if the City attempted to construct a public street down the middle of the complex, the property could not be developed, as there would not be enough property for the setback requirements. Mr. Taylor asked if the net acreage of this property was less than 10 acres. Ms. Binckley stated after the necessary ROW dedications, it would fall below the 10-acre mark, however they are allowed to use the ROW area for density.

Councilmmember Taylor asked the applicant's construction schedule. Mr. Holland stated a construction start date has not been determined at this point, however, the applicant is trying to move this project as quickly as possible. Executive Hills will be the developer and Mr. Holland understands it is their intent to sell individual lots for development.

Mayor Dunn stated working with the adjacent property owner was discussed at the Planning Commission meeting and asked Mr. Holland the progress of this issue. Mr. Holland stated, unfortunately, there has been no progress. The applicant has made several attempts to contact the property owner, but to no avail.

Councilmember Gill asked Ms. Binckley what the Master Plan showed for the area immediately south of 137th Street and north 138th Street. Ms. Binckley stated the Master Plan reflects medium density residential, however it is currently zoned RP-4 zoning. Mr. Gill stated when this application is submitted for Final Plan approval, he would be interested in seeing what the adjacent residential property owners would be viewing, as far as parking lots, trash receptacle areas, etc.

Councilmember Bussing complimented the developer for working with this unique shape of property and small size as it relates to the development of the entire 135th Street Corridor and appreciates the applicant to attempt to work with the adjacent property owner and would encourage more attempts be made. Mr. Bussing stated he is having difficulty with this tract of land and the stage it sets for development to the east and west. Mr. Holland stated they will continue to attempt to work with the adjacent property owner as it would benefit both parties in terms of potential access off of 135th Street and the applicant's internal setback deviation request in the future.

Councilmember Gill stated he has concerns with a large number of traffic signals on 135th Street requested by developers for this area and asked if the City would be required to install a traffic signal for this development that would differ from the 135th Street Corridor Plan. Ms. Binckley stated the placement of traffic signals have already been identified at certain intervals on 135th Street, along with median brakes, based upon the traffic study and review of the 135th Street Corridor Plan.

A motion was made by Councilmember Gill, seconded by Councilmember Gulledge to approve the rezoning ordinance. The motion was passed following a 6-1-0 roll call vote. Mr. Rasmussen stated he is opposed to this project due to concerns with changes in the setback requirements.

4545 **13. OLD BUSINESS - None**

4547 **14. NEW BUSINESS**

A. Approve Change Order No. 4, in the amount of \$105,164.07, to Walton Construction Company, L.L.C., pertaining to the Cornerstone Special Benefit District Project [CIP # 190]

Councilmembers Gill and Taylor recused themselves from this item due to an appearance of a possible conflict of interest. A motion was made by Councilmember Rasmussen, seconded by Mr. Rawlings to approve the Change Order. The motion carried following a 5-0-2 vote.

4549 **15. OTHER BUSINESS**

Councilmember Bussing stated the City in the previous 12-month period, has approved the waiving of the public bidding process for construction of infrastructure for benefit districts projects. Mr. Bussing made a motion that the Governing Body ask that the Public Works Committee review and evaluate this particular procedure of the Code that permits the developer to act as the general contractor and the waiving of the bidding process, and to ascertain in fact, if the City is benefiting from this process. The Public Works Committee would submit their findings to the Governing Body. Further, he asked that a moratorium be placed upon the waiving of the bidding process, until such time that the Committee's findings could be submitted to the Governing Body. The motion was seconded by Councilmember Gill and was approved following a unanimous vote.

Mayor Dunn asked if there was a time line attached to this assignment. Mr. Lambers stated this would take several months to properly review and evaluate.

4552 **16. ADJOURN**

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

Debra Harper, City Clerk

Emily Gleasure
Recording Deputy City Clerk