

**Minutes**

Audio Tape Nos. 535 & 536

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chamber, 4800 Town Center Drive, at 7:30 P.M., on Monday, December 17, 2001. Mayor Peggy J. Dunn presided.

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

**Staff present:**

Scott M. Lambers, City Administrator  
Patricia A. Bennett, City Attorney  
Ben C. Florance, Fire Chief  
Sid Mitchell, Chief of Police  
Chris Claxton, Parks & Recreation Dir.  
Bob Sadler, Internet Specialist  
Martha Heizer, City Clerk

Kathy Rogers, Finance Director  
Mark Klein, Planner  
Cindy Pitts, Human Resources Specialist  
Jeff Cantrell, Neighborhood Serv. Admin.  
Joe Johnson, Public Works Director  
Deb Harper, Deputy City Clerk

**1. PLEDGE OF ALLEGIANCE**

140 **2. APPROVAL OF AGENDA**

Items 9.A. and 10.A. to be continued to a February 11, 2002, Governing Body work session at 5:30 P.M., with Governing Body discussion only, no public input. Item 9.D. was to be removed at the request of the applicant, William Madden of Madden-McFarland Interiors, who withdrew his planning application in order to request a rezone. Councilmember Taylor thought Mr. Madden might have misunderstood what he would be able to do and not be able to do with his business, and asked that the matter be continued rather than withdrawn to have legal staff talk with Mr. Madden to be sure he understood the limitations on his business. City Attorney Bennett said if the Governing Body wanted to approve 9.D., she could talk to Mr. Madden about a stipulation that Mr. Madden's primary business would be an interior decorating service and increase in gross sales triggering a rezoning requirement wouldn't be a factor. The Governing Body decided to leave 9.D. on the agenda for discussion. On motion of Dunn, seconded by Rasmussen, Council unanimously approved the agenda as amended.

3. **PROCLAMATIONS** – None.

655 4. **PRESENTATIONS/RECOGNITIONS**

The Mayor presented plaques to the following for 25 years of service to the City: 1) Fire Captain Gary K. Bottoms, March 1, 1976 to March 1, 2001; 2) Fire Captain David D. Koontz, December 1, 1976 to December 1, 2001; and 3) Police Chief Sidney R. Mitchell, January 5, 1976 to January 5, 2001.

1110 5. **SPECIAL BUSINESS**

- A. **Approve and authorize execution of a contract between the City and Wendell Castle, Inc., in the amount not to exceed \$50,000, to fabricate and deliver a bronze park bench “Blind Faith” to be placed at Brook Beatty Park, located at 87<sup>th</sup> & Lee Boulevard**

Dick Horn, Chairman of the Leawood Arts Council, gave a presentation. On motion of Bussing, seconded by Rasmussen, Council unanimously approved the contract.

1360 6. **CITIZEN COMMENTS**

G. Gordon Thomas, 10516 Mohawk Lane, wanted to know why a citizen couldn't request removal of a Consent Agenda item for discussion. The Mayor advised that it was the Governing Body's policy not to permit that, that he should ask his Council representative to remove it on his behalf.

1730 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. 933
- B. Minutes of the November 19, 2001, Governing Body meeting
- C. Minutes of the December 3, 2001, Governing Body meeting
- D. Minutes of the September 10, 2001, Technology Review Committee meeting
- E. Minutes of the October 25, 2001, IRONHORSE Golf Club Committee meeting
- F. Appointments to the Recreational Vehicle [RV] Ordinance Sub-Committee – Leawood residents Allen Agron, John Hoover, Doug Moore, Jack Cox, Jake Jacobson, and Mike West; Councilmembers Story and Taylor also on the sub-committee
- G. CMB License Renewal for Cosentino's located at 3700 W. 95<sup>th</sup> Street
- H. CMB License Renewal for Osco Drug located at 11729 Roe
- I. Approve and authorize execution of a Utility Relocation Agreement between the City and Kansas Gas Service, for the relocation of gas lines in conjunction with the 119<sup>th</sup> Street & Mission Road Intersection Improvement Project [CIP # 159]; the City to pay Kansas Gas \$96,000 for the relocation

- J. Permanent Right-of-Way [ROW] Grant from City to Johnson County Unified Wastewater District [JCUWD], in connection with the construction of Fire Station No. 3, located at 148<sup>th</sup> & Mission Road
- K. Final Pay Request in the amount of \$67,553.06, to J.M. Fahey Construction, pertaining to the City Park Renovation Project and Lee Boulevard Improvement Project
- L. Approve 2<sup>nd</sup> and Final Pay Request in the amount of \$27,125.66, to Superior Bowen Asphalt Company, pertaining to the Tomahawk Creek Parkway Overlay Project
- M. Approve 3<sup>rd</sup> and Final Pay Request in the amount of \$5,000.00, to McCorkendale Construction Company, in conjunction with the 143<sup>rd</sup> Street & Granada Box Culvert Project [CIP # 162]
- N. Approve 6<sup>th</sup> and Final Pay Request in the amount of \$6,851.07, to Seal-O-Matic Paving Company, in conjunction with the Roe Avenue Improvement Project [CIP # 169]
- O. Pay Request in the amount of \$457,435.58, to Merit General Contractors, Inc., in conjunction with the construction of Fire Station No. 3
- P. Approve Bid in the amount of \$17,346.00, from low bidder Factory Direct Appliance, for kitchen equipment, in conjunction with the construction of Fire Station No. 3 [these equipment items were approved by the Governing Body in the budget process]
- Q. Approve Bids for various exercise and fitness equipment in the total amount of \$17,066.00, in conjunction with the construction of Fire Station No. 3 [these equipment items were approved by the Governing Body in the budget process]
- R. Approve Change Order No. 3, in the amount of \$4,132.00, with Merit General Contractors, Inc., in conjunction with the construction of Fire Station No. 3
- S. Approve Change Order No. 2 with McCorkendale Construction Company, for an additional year on Maintenance Bond, [no additional cost] in conjunction with the 143<sup>rd</sup> Street & Granada Box Culvert Project [CIP # 162]
- T. Approve Change Order No. 5, in the amount of \$5,879.00, with Pyramid Excavation & Construction Company, in conjunction with the SMAC Project, 86<sup>th</sup> Street & Overhill Rd. [Project # DB-04-017]
- U. Resolution No. 1656 designating holidays for the year 2002, in accordance with the Personnel Rules & Regulations of the City of Leawood, Kansas
- V. Departmental Reports
- W. Approve bid in the amount of \$21,030.00, with Kaw Roofing & Sheet Metal, Inc., to conduct repairs on the City Hall roof and add snow guards

Item 7.R. was removed for further discussion. On motion of Rasmussen, seconded by Gill, Council unanimously approved the remainder of the Consent Agenda.

7.R. There was discussion as to why Kansas City Power & Light wasn't paying for electrical service changes in the amount of \$3,715.00, changes made by them. Councilmember Taylor wanted to see any correspondence with them regarding the issue. On motion of Taylor, seconded by Gill, Council unanimously approved the change order.

1960 **8. A. MAYOR'S REPORT**

1. Noted Asst. City Attorney Lisa Wetzler's memo regarding the telecom franchising bill; the City retained franchise authority with an access line fee with a growth factor and maintained control of the right-of-way; the City's franchises would have to be renegotiated under the new bill; it was understood that there wouldn't be any substantive changes to the bill in the upcoming legislative session.
2. United Community Services annual meeting at which their 2002 Public Policy Platform was distributed.
3. Employee luncheon on December 7, 2001, for "Have a Heart/Help a Child" annual employee giving program; Marica Putman, Public Works Administrative Clerk, was selected runner-up Employee of the Year, and Janis Steele, Parks & Recreation Service Manager, was selected Employee of the Year.
4. Leawood Chamber of Commerce Hall of Fame Awards given to the Leawood Police and Fire Departments, Town Center Plaza, and Gene (former Councilmember and Mayor) and Lee (former Johnson County Election Commissioner) Alt.
5. Public Works holiday luncheon.
6. December 18, 2001, Governing Body social dinner, and December 19, 2001, Council of Mayors annual social dinner; no official business would take place.
7. Congratulated the Parks & Recreation Department for receiving the 2001 Heart of America District Annual Award for Facility of the Year from the Heart of America District Tennis Association.
8. Congratulated Leawood resident Julie Robinson on being confirmed the newest U.S. District Judge in Kansas by the U.S. Senate; she was the first African-American U.S. District Judge in Kansas.

**B. COUNCILMEMBER'S REPORT**

2620 Councilmember Dunn reported on the National League of Cities Conference that he attended in Atlanta, December 5<sup>th</sup>-December 9<sup>th</sup>. The Conference focused on homeland security, combatting racism/celebrating diversity in communities, issues surrounding youth education and families, and government policies. He attended sessions on stormwater; he would have some initiatives to present regarding stormwater in January at the Governing Body goal session. And also in January, he planned to present some ideas for celebrating diversity in Leawood.

**9. PLANNING COMMISSION RECOMMENDATIONS**

*[from August 28, 2001, Planning Commission meeting]*

- A. Ordinance amending § 4-4 of the Leawood Development Ordinance pertaining to Off-Street Parking, Storage, Loading Regulations and Parking Lot Design Standards. *[Continued from November 19, 2001, Governing Body meeting]* – CONTINUED TO FEBRUARY 11, 2002, GOVERNING BODY WORK SESSION**

*[from October 23, 2001, Planning Commission meeting]*

- 2840 **B. Resolution No. 1657 approving the final plat of Wilshire Place, 2nd Plat, located at approximately 132<sup>nd</sup> & High Drive. *[Continued from December 3, 2001, Governing Body meeting]***

Councilmember Gill moved to adopt the resolution, seconded by Gullede. Brick Owens of HNTB said the developer had an agreement with Greenbriar of Leawood subdivision that Tract B would contain the west monument for the Greenbriar subdivision, that the new monument would be lighted and built to match the existing monument, that the sprinkler system would be reconstructed with water and electrical lines, and that all related costs would be the responsibility of the developer.

There was discussion about an area at the southeast end of the development where there was neither culvert nor concrete spillway, but there was some sort of natural channel; there was some flooding in that section. Councilmember Bussing said it was his expectation that as a result of the improvements in Wilshire and the improvement of 133<sup>rd</sup> Street, the stormwater issues affecting the homeowners would be resolved. Ed Schlagel, Project Engineer for the Wilshire Place development, clarified that the southeast end really pertained to the 3<sup>d</sup> Plat, the next agenda item. He went on to explain how the improvements would help resolve the flooding problems. Stan McDermott, 2665 W. 131<sup>st</sup> Terr. in Greenbriar, spoke about the substantial flooding in his backyard. Mr. McDermott felt that the unimproved section or streamway just south of his property that Mr. Gill referenced needed to be widened and improved substantially so the flow would be increased in the area, therefore decreasing the chance of water backing up into his yard. And he wanted to be sure that no additional runoff would go from the Wilshire development into the existing concrete streamway. Public Works Director Johnson said he would take a look at what improvements could be made to the unimproved streamway that would have a positive impact, and that the developer would be responsible to improve the streamway at his expense.

Motion to adopt the resolution carried unanimously.

- 3845           **C.     Resolution No. 1658 approving the final plat of Wilshire Place, 3<sup>rd</sup> Plat, located at approximately 132<sup>nd</sup> & High Drive. [Continued from December 3, 2001, Governing Body meeting]**

On motion of Gulledge, seconded by Gill, Council unanimously adopted the resolution.

- 3900           **D.     Resolution approving a preliminary site plan for an office building to be located south of 127<sup>th</sup> Street and west of State Line Road. [Applicant: Madden McFarland Interiors] [Continued from December 3, 2001, Governing Body meeting]**

See discussion under Approval of the Agenda.

Councilmember Taylor asked that the Governing Body reject Mr. Madden's withdrawal of his plan application because he felt that Mr. Madden's letter of withdrawal was written with some misinformation he had been given over the past several years; he hoped for the opportunity between now and the next Governing Body meeting for the City Attorney and other staff to meet with Mr. Madden to resolve the problem that Mr. Madden believed he had. Mr. Taylor moved to continue the matter to the January 7, 2002, Governing Body meeting, seconded by Rasmussen.

Councilmember Story felt that Mr. Madden understood what he was asking for and that Mr. Madden was entitled to withdraw if he so desired to proceed with his rezoning application to guarantee use of his property in the future. Mr. Taylor mentioned his concern about the possibility of spot zoning occurring with Mr. Madden's rezoning application.

Councilmember Gulledge asked if the Governing Body could indeed (legally) continue the matter when the applicant had already withdrawn his plan application. Mr. Gulledge thought perhaps the Governing Body might be doing something that was against Mr. Madden's wishes or request. City Administrator Lambers requested that Mr. Madden's request be honored, and if he later had a change of mind, then the matter could be reconsidered under Robert's Rules of Order. Councilmember Dunn said that a motion to continue was meaningless in light of the fact that Mr. Madden had withdrawn his application, and Mr. Lambers pointed out that the appropriate procedure was simply to move on and then reconsider the matter if Mr. Madden decided he had made a mistake.

Mr. Taylor's motion to continue failed; Gill, Rasmussen, Taylor in favor; Gulledge, Bussing, Rawlings, Dunn, Story opposed. Mr. Lambers said that in order to reconsider an issue, some action had to be taken. On motion of Dunn, seconded by Bussing, Council voted unanimously to abide by the applicant's request for withdrawal. Mr. Dunn said that if he found that Mr. Madden was mistaken in his request, he would happily bring the matter back up for reconsideration.

5075        **E.        Resolution No. 1659 approving request for rezoning from AG to SD(0) and SD(NCR), and preliminary plat and preliminary site plan approval, for office and retail complex to be located south of 135<sup>th</sup> Street and west of Chadwick. [Applicant: Tuscany Reserve Commercial]**

Brick Owens of HNTB architects gave a presentation. He said there was an existing pond in the single family area that they planned to improve and provide storm drainage capacity. There was discussion about how they planned to fund the de-siltation of the pond so that the City wouldn't receive a request to do so in the future. Mr. Owens said the pond would be the responsibility of the homes association; the maintenance of the pond would be supported by homes association dues. Councilmember Taylor wanted some type of commitment from the developer that the homes association would maintain a financial stability in order to pay for improvements so they wouldn't have to be the financial responsibility of the City, wanted to see proof of the beginning of an escrow account through the homes association or by the developer. Councilmember Dunn said that the City had many options for charging payment back to the residents if the City had to get involved with a privately-owned pond, and he planned to talk about the issue in January because the City would have the responsibility for seeing that the pond was maintained one way or another. The Mayor felt that it would probably be prudent for the developer to think of a proactive way to address the issue in advance and escrowing funds, etc., would be appropriate.

Councilmember Bussing requested a memorandum with regard to how the project complied with the 135<sup>th</sup> Street Corridor Guidelines based on his own outline of the types of comments that he was interested in.

Mr. Owens gave a presentation on the residential portion of the project. (See Agenda Item 9.H.)

Councilmember Gill preferred to have RP-1 zoning with variances rather than the RP-4 zoning that would end up being in place if the plan wasn't built by the project's sunset. The Mayor noted that the matter would have to be remanded to the Planning Commission for consideration of RP-1 zoning. Mr. Gill stated that he wouldn't like a multi-family plan stretched to the maximum under RP-4. He asked if the developer would stipulate that the RP-4 zoning would revert to AG if the plan under consideration wasn't built.

8805        **END OF TAPE NO. 535**  
**NEW TAPE NO. 536**

Attorney Larry Winn III thought that with RP-1 zoning with variances, the developer would have to go to the Board of Zoning Appeals for each and every lot, and that would be extremely onerous. He said the developer would rather revert back to AG than go through individualized, case-by-case BZA. City Attorney Bennett said reversion to AG wouldn't be automatic; the land owner would have to agree to it and it would have to be considered by the Planning Commission and then by the Council. She said that

deed restrictions on the lots were another possibility as far as a stipulation that the land would be burdened with single family only. Mr. Gill asked if a stipulation could be added stating that between now and final approval, the developer would figure out some way to revert RP-4 zoning to AG that was enforceable, and if not, the plan would be back before the Council as a preliminary. Mr. Winn and Mr. Owens agreed.

Councilmember Gullede moved to adopt the resolution (for commercial), seconded by Bussing. Motion carried unanimously.

**F. Ordinance No. 1921 rezoning from AG, Agricultural, to SD (0), Special Development District Office, for Tuscany Reserve Commercial, property located south of 135<sup>th</sup> Street and west of Chadwick**

On motion of Bussing, seconded by Gill, Council passed the ordinance on roll call vote; Gullede, Bussing, Rawlings, Story, Gill, Rasmussen, Taylor in favor; Dunn not seated for the vote.

**G. Ordinance No. 1922 rezoning from AG, Agricultural, to SD (NCR), Special Development District Neighborhood Commercial Retail, for Tuscany Reserve Commercial, property located south of 135<sup>th</sup> Street and west of Chadwick**

On motion of Bussing, seconded by Gullede, Council passed the ordinance on roll call vote; Gullede, Bussing, Rawlings, Story, Gill, Rasmussen, Taylor in favor; Dunn not seated for the vote.

Councilmember Dunn returned to his Council seat.

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**H. Resolution No. 1660 approving request for rezoning from AG to RP-1 and RP-4, and preliminary plat and preliminary site plan approval, for Tuscany Reserve Residential located south of 135<sup>th</sup> Street and west of Chadwick. [Applicant: Tuscany Reserve Residential]**

See Agenda Item 9.E. for presentation.

Councilmember Gullede moved to adopt the resolution with an additional stipulation #19 that if the project wasn't constructed within 3 years, the property owner agreed that a rezoning application would be submitted to the Planning Commission and Governing Body requesting that the property be rezoned to Agriculture, seconded by Gill. Motion carried unanimously.

- I. Ordinance No. 1923 rezoning from AG, Agricultural, to RP-4, Planned Cluster Residential, for Tuscany Reserve Residential, property located south of 137<sup>th</sup> Street and west of Chadwick. [Applicant: Tuscany Reserve Residential]**

On motion of Bussing, seconded by Rawlings, Council unanimously passed the ordinance on roll call vote.

- J. Ordinance No. 1924 rezoning from AG, Agricultural, to RP-1, Planned Single Family Residential, for Tuscany Reserve Residential, property located south of 137<sup>th</sup> Street and west of Chadwick. [Applicant: Tuscany Reserve Residential]**

On motion of Taylor, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

**10. OLD BUSINESS**

- A. Ordinance amending § 14-301, 14-302, and 14-304 of the Code of the City of Leawood 2000, pertaining to parking. [Continued from November 19, 2001, Governing Body meeting] CONTINUED TO FEBRUARY 11, 2002, GOVERNING BODY WORK SESSION**

**11. NEW BUSINESS**

745

- A. Ordinance No. 1925C amending § 1-502 of the Code of the City of Leawood 2000 pertaining to Deferred Compensation ICMA-RC § 457 Plan [deferred compensation] as amended and restated, effective January 1, 2002, required by EGTRRA [Economic Growth & Tax Relief Reconciliation Act of 2001]**

On motion of Rasmussen, seconded by Bussing, Council unanimously passed the ordinance on roll call vote.

790

- B. Approve Change Order No. 1 with Site Rite Construction Company in the amount of \$35,000.00 for Phase II of the stormwater project at 137<sup>th</sup> Terr. and Fontana, in conjunction with the non-SMAC Stormwater Project at 12211 Sagamore**

On motion of Rasmussen, seconded by Gill, Council unanimously approved the change order.

- 830           **C.     Approve Change Order No. 3 with Seal-O-Matic Paving Company in the amount of \$54,235.13 for storm sewer improvements near the intersection of 137<sup>th</sup> Street & Fontana in Leawood Meadows, in conjunction with the 2001 Street Improvement Program**

On motion of Taylor, seconded by Rasmussen, Council unanimously approved the change order.

- 855           **D.     Approve Change Order No. 4 with Seal-O-Matic Paving Company in the amount of \$34,013.94 for additional roadway reconstruction and other work, in conjunction with the 2001 Street Improvement Program**

On motion of Taylor, seconded by Dunn, Council unanimously approved the change order.

**12.   OTHER BUSINESS – None.**

- 940           **ADJOURN.** There being no further business, the meeting was adjourned at 9:45 P.M.

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Martha Heizer, City Clerk