



The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, November 17, 2016

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 18

CALL TO ORDER

Mayor Rhoads called the November 17, 2016 Regular Session No. 18 to order at 6:15pm.

Present: 7 - Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Diane Forte
Councilmember Chris Moreno
Councilmember Dave Mosby
Councilmember Diane Seif

Absent: 1 - Councilmember Craig Faith

INVOCATION

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA

COUNCIL ACTION: Motion was made by Councilmember Binney, seconded by Councilmember Forte, to approve the published agenda. On motion of Councilmember Seif, second by Councilmember Mosby, the Council voted 4 "aye" (Councilmembers Seif, Mosby, Edson and Moreno), 3 "no" (Councilmembers Binney, Carlyle and Forte), 1 "absent" (Councilmember Faith), by roll call vote to AMEND the agenda by removing Item. #7.C., BILL NO. 16-247.

1. PUBLIC COMMENTS:

Ms. Deborah Calhoun and Ms. Meagan Tripses with the Newberry Subdivision were present regarding the Transfer Station. (See below for copy of their comments.)

Mr. Dale Coy requested an ordinance to address litter being thrown on

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lawns, particularly advertisements.

Mr. Brian Stanley felt the UDO provisions for single-family residential dwellings were too vague and should be reviewed, specifically the relationship between homeowner and those who rent rooms. Mr. Arbo will be in touch with Mr. Stanley.

LETTER FROM MS. CALHOUN AND MS. TRIPSES:

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City of Lee's Summit Missouri
City Hall
200 SE Green
Lee's Summit, MO 64063

Dear Mayor and Members of the Lee's Summit City Council:

The City entered into a contract on March 1, 2016, with a company that Larry Giroux formed to sign the contract (Summit Waste Systems, LLC). It is apparently a subsidiary of another of his companies, Heartland Environmental Services, LLC. We also know that one of his companies bought the City's equipment for \$1.1 million. We are now learning that maybe it was back as far as 2014 that your predecessors initiated this.

Although we have studied the Unified Development Ordinance as you suggested, the City will not tell us (citizens and business owners--the taxpayers) any of the deadlines the Contractor must comply with, even though the UDO states that you shall. As a result, the City has not even disclosed the dates of the public hearings for the proposed land use for a trash transfer station, which is not permitted as a matter of right. The City and the Contractor knew that going in that the citizens and business owners of the City of Lee's Summit, Missouri must be included in public discussions on matters that affect the health, safety, and welfare of their persons, property, business interests, and hard-earned money.

As far as we know, the proposed trash transfer station is still in the design stage. According to the Contract at page 8, the City's financial responsibility for the costs of the design, permitting, and construction of the trash transfer station shall be limited to \$1.1 million, at no out-of-pocket costs to the Contractor. Now, it has come to our attention that the proposed trash transfer station is already around \$500,000.00 over budget. This is a 41 % increase above and beyond the City's \$1.1 million financial obligation if the trash transfer station is approved and may also be in addition to another \$200,000 above and beyond the \$1.1 million, if not more.

We contacted Mr. Hartnett who the City designated as its spokesman to us. He

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claims to be unaware of any \$500,000+/- increase and said that the City paid SCS \$75,000 for their design services. In March 2016, however, the City is on record stating that SCS was owed \$262,444 even though the Contract was entered into on March 1, 2016 and limited the City's financial obligations to \$1.1 million. On November 16, 2016, City Attorney, Brian Head assured us that there is nothing on the City's agenda for its November 17, 2016, City Council meeting that concerns the proposed trash transfer station in any manner.

The Contract at pages 21-22 contains a financing contingency. The Contractor acknowledges that the continued performance by the City is contingent upon available funding and allocation of City funds and that the City's funds are limited to payment from available revenues and shall constitute a current expense of the City and not a debt of the City in contravention of any constitutional or statutory limitations or requirements concerning indebtedness by the City. Nor shall anything in the Contract constitute a pledge of the general tax revenues, funds, or moneys of the City.

At the time the City executed the Contract on March 1, 2016, it represented to the Contractor that the City's obligations under the Agreement have been funded and allocated for the Contract at least through the fiscal year ending June 30, 2016. As far as we are aware, the City paid the Contractor around \$130,000 for the compost pad to be constructed and paid \$30,000+/- to remove crushed rock from the edge of the landfill.

It was known if at any time *during* or prior to the design, construction, and/or permitting of a 500 ton/day trash transfer station that if it becomes evident that the necessary costs for the design, construction, and permitting exceed \$1.1 million and the City's governing body fails to approve and appropriate the necessary additional funding, the City shall not be obligated to continue to expend any of the remaining \$1.1 million in funds received from the Contractor and that the Contractor received \$1.1 million in equipment in exchange.

We know that if the cost exceeds \$1.1 million, that the City and Contractor agreed to negotiate in *good faith*, an equitable allocation of the excess costs in order to justify the excess costs borne by either party if such an agreement can be reached. If the City determines that the additional \$500,000 or \$700,000 in the planning stage is not justified or in keeping with its duties to its taxpaying citizens and business owners, the City will have met its obligations under the Contract.

In the event the City fails to approve and appropriate costs exceeding \$1.1 million, the Contractor is not obligated to perform. At that point, the Contractor shall have the right to terminate all or portions of the Contract with respect to the trash transfer station, and it may opt to keep portions of the Contract relating to the Landfill Closure and Yard Waste Program, or not. The Contract only allowed a request to extend the life of the Landfill by one year. Although a vertical extension was approved, the Landfill's life need not be extended; in

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which case its closure will commence, beginning in 2016 as contemplated in the Contract.

If we understand the Contract correctly, because the cost exceeded the City's financial obligation before the permit stage for the land use that is not permitted as a matter of right for a trash transfer station, or the permitting stage for a trash transfer station from MDNR, the City is not obligated to pay the Contractor a \$200,000 demobilization fee.

We've done some research and have found that a comparable sized trash transfer station built in 2006 in the State of Missouri cost far more than \$1.1 million; and notably, none of the trash transfer stations we have looked into were built anywhere near schools, residential communities, or other businesses such as office buildings, restaurants, or retail shops.

We are requesting that this letter be incorporated in its entirety into the minutes of the November 17, 2016 City Council Meeting.

Sincerely,

Deborah Calhoon and Meagen Tripses
Newberry HOA

2. COUNCIL COMMENTS:

3. APPROVAL OF CONSENT AGENDA:

- A. [2016-0697](#) Approval of Type H, S and Tasting Liquor License for Summit Cellar & Spirits, 815 NE Lakewood Boulevard, Lee's Summit, MO 64064

COUNCIL ACTION: On motion of Councilmember Binney, seconded by Councilmember Forte, the Council voted unanimously (Councilmember Faith "Absent") to approve a Type H, S and Tasting Liquor License for Summit Cellar & Spirits, 815 NE Lakewood Boulevard as part of the Consent Agenda.

4. PROPOSED ORDINANCES:

- A. [BILL NO. 16-238](#) AN ORDINANCE VACATING A CERTAIN EASEMENT GENERALLY LOCATED EAST OF THE INTERSECTION OF SW KESSLER DRIVE AND SW LONGVIEW BOULEVARD IN THE CITY OF LEE'S SUMMIT, MISSOURI.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Binney, that Bill No. 16-238 be adopted and numbered Ord. No. 8015. The motion carried by the following vote:

Aye: 5 - Councilmember Binney
Councilmember Edson
Councilmember Forte
Councilmember Mosby
Councilmember Seif

Away FT: 2 - Councilmember Carlyle
Councilmember Moreno

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Absent: 1 - Councilmember Faith

Enactment No: Ord. No. 8015

- B.** [BILL NO.](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "KESSLER RIDGE AT
[16-239](#) NEW LONGVIEW, 1ST PLAT, LOTS 1-55 & TRACTS A-D", AS A
SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 16-239 be adopted and numbered Ord. No. 8016. The motion carried by the following vote:

Aye: 6 - Councilmember Binney
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Away FT: 1 - Councilmember Carlyle

Absent: 1 - Councilmember Faith

Enactment No: Ord. No. 8016

- C.** [BILL NO.](#) AN ORDINANCE APPROVING THE CASH ESCROW DEPOSIT AGREEMENT
[16-240](#) GUARANTEEING THE INSTALLATION OF SUBDIVISION IMPROVEMENTS
FOR MILL CREEK OF SUMMIT MILL, 4TH PLAT, LOTS 125-171 & TRACT T
AND MILL CREEK OF SUMMIT MILL, 6TH PLAT, LOTS 173-177
SUBDIVISIONS BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI
AND CMH PARKS, INC. A TENNESSEE CORPORATION, D/B/A SUMMIT
CUSTOM HOMES.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 16-240 be adopted and numbered Ord. No. 8017. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith

Enactment No: Ord. No. 8017

- D.** [BILL NO.](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "MILL CREEK OF
[16-241](#) SUMMIT MILL, 4TH PLAT, LOTS 125-171 & TRACT T", AS A SUBDIVISION
TO THE CITY OF LEE'S SUMMIT, MISSOURI.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that Bill No. 16-241 be adopted and numbered Ord. No. 8018. The motion carried by the following vote:

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Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith
Enactment No: Ord. No. 8018

E. [BILL NO.](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "MILL CREEK OF
[16-242](#) SUMMIT MILL, 6TH PLAT, LOTS 173-177", AS A SUBDIVISION TO THE
CITY OF LEE'S SUMMIT, MISSOURI.

ACTION: A motion was made by Councilmember Moreno, seconded by Councilmember Seif, that Bill No. 16-242 be adopted and numbered Ord. No. 8019. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith
Enactment No: Ord. No. 8019

F. [BILL NO.](#) AN ORDINANCE AUTHORIZING EXECUTION OF AN
[16-243](#) INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF
LEE'S SUMMIT, MISSOURI AND THE RAYTOWN C-2 SCHOOL DISTRICT
FOR LEASE OF A MOTOR VEHICLE. (F&BC 11/7/16)

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 16-243 be adopted and numbered Ord. No. 8020. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith
Enactment No: Ord. No. 8020

G. [BILL NO.](#) AN ORDINANCE APPROVING AWARD OF RFP NO. 2017-020 TO
[16-244](#) SPRINGSTED, INC. AND AUTHORIZING THE CITY MANAGER, ON BEHALF
OF THE CITY TO ENTER INTO A ONE-YEAR CONTRACT WITH
SPRINGSTED, INC. FOR THE PROVISION OF A COMPENSATION AND
BENEFIT STUDY WITH THE OPTION OF UP TO FOUR (4) ONE-YEAR

RENEWALS FOR THE PURPOSES OF PROVIDING ON-CALL SUPPORT
RELATED TO THE IMPLEMENTATION OF THE COMPENSATION STUDY.
(F&BC 11/7/16)

The bill was read for the first time by Councilmember Edson and motion for second reading passed. The bill was read for a second time but failed on a vote of 4 "aye", 2 "no" (Councilmembers Mosby and Moreno), 1 "away from the table" (Councilmember Carlyle), and 1 "absent" (Councilmember Faith).

Later in the meeting, Councilmember Moreno moved to RECONSIDER Bill No. 16-244. Motion was seconded by Councilmember Binney and passed on a vote of 5 "aye", 2 "no" (Councilmembers Seif and Mosby), and 1 "absent" (Councilmember Faith).

ACTION: A motion was made by Councilmember Moreno, seconded by Councilmember Binney, that Bill No. 16-244 be adopted and numbered Ord. No. 8023. The motion carried by the following vote:

Aye: 5 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno

Nay: 2 - Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith

Enactment No: Ord. No. 8023

5. RESOLUTIONS:

- A. [RES. NO. 16-21](#) A RESOLUTION AUTHORIZING THE AIRPORT DIVISION TO MAKE APPLICATION FOR AN ENERGY EFFICIENCY IMPROVEMENT PROJECT GRANT WITH THE MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT DIVISION OF ENERGY FOR CERTAIN AIRPORT PROJECTS. (BOAC 10-10-16) (F&BC 11/7/16)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Edson, that Resolution No. 16-21 be adopted. The motion carried by a unanimous vote (Councilmember Faith "Absent").

6. PUBLIC HEARINGS (Sworn):

- A. [2016-0662](#) PUBLIC HEARING - Appl. #PL2016-165 - PRELIMINARY DEVELOPMENT PLAN ON PROPERTY ZONED PMIX - The Grove, approximately 73 acres located at the northeast and southeast corners of SE M-291 Hwy. and SE Bailey Rd.; Westcott Investment Group, LLC, applicant.

Mayor Rhoads closed the regular session at 7:08 pm., opened the public hearing and asked all those interested in providing testimony to be sworn in by the City Clerk.

Mr. Aaron March was present for the applicant and stated they agree with

all provisions included in Staff's letter dated November 11, 2016.

Ms. Christine Stanton, Senior Planner, entered Exhibits 1-21 into the record and clarified the subject property was rezoned by a City-initiated rezoning; this application was for the preliminary development plan. Staff recommended approval, subject to Items 1-4.

Following some discussion, Mayor Rhoads closed the public hearing and opened the regular session at 7:42 p.m.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Binney, to direct staff to present an ordinance approving Appl. #PL2016-165 - PRELIMINARY DEVELOPMENT PLAN ON PROPERTY ZONED PMIX - The Grove, approximately 73 acres located at the northeast and southeast corners of SE M-291 Hwy. and SE Bailey Rd.; Westcott Investment Group, LLC, applicant. The motion carried by a unanimous vote (Councilmember Faith "Absent").

- B. [2016-0666](#) PUBLIC HEARING - Appl. #PL2016-168 - SPECIAL USE PERMIT renewal for automotive sales - Pinnacle Auto Sales, 516 SW 3rd St; Pinnacle Investments, LLC, applicant.

Mayor Rhoads closed the regular session at 7:47 pm., opened the public hearing and asked all those interested in providing testimony to be sworn in by the City Clerk.

Mr. John Finnegan was present and advised this application was to renew the Special Use Permit. he was requesting 10 years.

Ms. Christina Stanton, Senior Planner, entered Exhibits 1-21 into the record. Staff was recommending approval, subject to the letter of November 11, 2016, Items 1-2, with the Planning Commission recommendation for a three-year extension to the existing special use permit.

There being no further testimony, Mayor Rhoads closed the public hearing at 7:53 p.m. and reopened the regular session.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Seif, to direct staff to present an ordinance approving Appl. #PL2016-168 - SPECIAL USE PERMIT renewal for automotive sales - Pinnacle Auto Sales, 516 SW 3rd St; Pinnacle Investments, LLC, applicant. The motion carried by a unanimous vote (Councilmember Faith "Absent").

- C. [2016-0698](#) PUBLIC HEARING - Application #PL2016-167 - PRELIMINARY DEVELOPMENT PLAN - New Longview Commercial Phase II, approximately 13 acres located at the southeast corner of SW Fascination Dr and SW Longview Blvd; Box Real Estate Development, applicant.

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Following a break, Mayor Rhoads closed the regular session at 8:10 pm., opened the public hearing and asked all those interested in providing testimony to be sworn in by the City Clerk.

NOTE: Councilmember Moreno away from the table from 8:10 to 8:30 p.m.

Mr. Russ Pearson reviewed the proposed development and background in detail.

Mr. Robert McKay, Director of Planning and Development, entered Exhibits 1-29 into the record. Staff felt the proposal was a very good fit and recommended approval, subject to six conditions.

Mr. Scott Coryell with the Longivew Alliance commended the team for this master plan.

Mr. John Lovell also supported the project.

Hearing no further testimony, Mayor Rhoads closed the public hearing at 9:04 p.m. and reconvened the regular session.

Motion was made by Councilmember Carlyle, seconded by Councilmember Forte, to direct Staff to bring forward an ordinance, subject to Staff's letter of November 11, 2016, and 6 conditions.

MOTION FAILED.

Aye: 3 - Councilmember Binney
Councilmember Carlyle
Councilmember Forte

Nay: 4 - Councilmember Edson
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith

7. OTHER BUSINESS:

- A.** [BILL NO. 16-245](#) AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN FOR THE GROVE, ON APPROXIMATELY 73 ACRES ZONED PMIX, PLANNED MIXED USE, LOCATED AT THE NORTHEAST AND SOUTHEAST CORNERS OF SE M-291 HWY. AND SE BAILEY RD., ALL IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE NO. 5209 FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

ACTION: A motion was made by Councilmember Seif, seconded by Councilmember Moreno, that Bill No. 16-245 be adopted and numbered Ord. No. 8021. The motion carried by the following vote:

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Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith

Enactment No: Ord. No. 8021

- B.** [BILL NO.](#) AN ORDINANCE GRANTING A SPECIAL USE PERMIT RENEWAL FOR CAR
[16-246](#) SALES IN DISTRICT CP-2 ON LAND LOCATED AT 516 SW 3RD STREET,
PINNACLE AUTO SALES, FOR A PERIOD OF FIVE (5) YEARS FROM THE
CURRENT PERMIT EXPIRATION DATE, TO EXPIRE ON DECEMBER 21,
2021, ALL IN ACCORDANCE WITH ARTICLE 10 WITHIN THE UNIFIED
DEVELOPMENT ORDINANCE, FOR THE CITY OF LEE'S SUMMIT,
MISSOURI.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that Bill No. 16-246 be adopted and numbered Ord. No. 8022. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Forte
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Absent: 1 - Councilmember Faith

Enactment No: Ord. No. 8022

- C.** [BILL NO.](#) AN ORDINANCE AMENDING SECTION 2-530 OF THE CODE OF
[16-247](#) ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI, TO UPDATE
PROVISIONS PERTAINING TO CLOSED MEETINGS, RECORDS AND VOTES,
TO BE IN CONFORMITY WITH THE MOST CURRENT REVISED VERSION OF
MISSOURI'S SUNSHINE LAW.

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 16-247 be referred to the City Council Rules Committee. The motion carried by the following vote:

Aye: 4 - Councilmember Edson
Councilmember Moreno
Councilmember Mosby
Councilmember Seif

Nay: 3 - Councilmember Binney
Councilmember Carlyle
Councilmember Forte

Absent: 1 - Councilmember Faith

- D.** [2016-0633](#) Discussion / Direction - Chapter 100 Conceptual Incentive Request -

Village at View High Multi-Family Residential

Mr. Mark Dunning, Assistant City Manager, provided a recap of the project. Staff was requesting informal direction on how to proceed. If directed, Staff will begin the public hearing process. Mayor Rhoads received four approvals, with Councilmember Carlyle away from the table and Councilmember Faith absent.

8. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

Councilmember Mosby requested the Rules Committee revisit the use of "consensus".

9. COUNCIL ROUNDTABLE:

Councilmember Forte reminded everyone of the Christmas lighting ceremony tomorrow evening. Also, the Saturday after Thanksgiving is "Small Business Day" and she encouraged everyone to shop at small, local businesses.

Councilmember Binney appreciated the voters' approval of the Public Safety bond issues. Sadly, he noted that the victim of an explosion lost his life. Also, Police Officer Hurt was battling for his life.

10. STAFF ROUNDTABLE:

11. ADJOURNMENT

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Internet site at "www.cityofls.net".