

City Council Minutes – January 7, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 7, 2003. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price -9. Mayor Felker presided -1.

AFTER THE MEETING was called to order, prayer was offered by Jim Bradshaw, Director of Christian Education Faith Lutheran Church.

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION to approve the appointment of John Randolph (Randy) Mettner, Jr., to the Metropolitan Topeka Airport Authority for the un-expired term of Craig Kendall who has resigned, for a term that will expire November 30, 2004, was presented.

A COMMUNICATION to approve the re-appointment of Breta Bloomberg to the Topeka/Shawnee County Landmarks Commission, for a term that would expire December 31, 2005, was presented.

Minutes of the Regular Meeting of December 17, 2002, were presented.

Councilmember Dunn moved to approve the consent agenda. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

Mayor Felker requested that item 5B be moved to next item of consideration.

RESOLUTION NO. 7304 introduced by Mayor Harry Felker, granting a waiver of the requirements of City of Topeka Code Sections 138-76 et seq. relating to property

tax exemptions for the Star-Kist Foods DBA Heinz Pet Products plant located at 220 Brickyard Road in Topeka, Kansas, was presented.

Kathy Moellenberndt, Go Topeka explained the request.

Brenden Long, City Attorney stated that Ordinance No. 17901 should be added to the list on page 2 of the resolution.

Councilmember Dunn moved to amend the resolution to include Ordinance No. 17901. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

Councilmember Dunn moved to approve the resolution as amended. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

PROJECT BUDGET in the amount of \$2,721,700 and ORDINANCE NO. 17933 introduced by Mayor Harry Felker, authorizing Water Main Project No. 28490-00, which provides for the installation of a water transmission main from the Water Treatment Plant generally south on Oakley Avenue to Front Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading December 17, 2002, was again presented.

Neil Dobler, Public Works Director gave the staff report on Project No. 28490-00, 28492-00, 28494-00 and 28495-00.

Councilmember Duffy expressed concerns that these projects would provide service to residents outside city limits at the taxpayers expense without the intent to annex.

In response, Neil Dobler stated that all of the projects are within the city limits except Project No. 28494-00 and he is not aware of consent to annex.

Several Councilmembers expressed concern with promoting growth by providing additional water services to an area that is not annexed, and how the project relates to the Growth Plan.

Don Rankin, Water Superintendent explained that the water system is viewed in its entirety and how it would best serve all customers in or outside city limits. This project would not just serve the Sherwood Lake area, it will service the entire surrounding area.

Councilmember Stubbs stated that she would encourage the use of these funds in areas that can be annexed.

Councilmember Duffy stated that he feels the issues that have been brought up concerning this project should be addressed by the Planning Department.

Councilmember Hecht stated that she agrees and would like the questions that have been raised answered before she can make an informed decision on this project.

Neal Dobler stated that they would meet with the Planning Director concerning the Growth Plan and bring it back at a later date.

Councilmember Alcalá inquired on the fire safety issues in the area.

Don Rankin stated that at this time there is not any fire safety issues, however, with continued growth in the area there could be in the future.

Councilmember Price moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price -9.

A PROJECT BUDGET in the amount of \$478,000 and ORDINANCE NO. 17934 introduced by Mayor Harry Felker, authorizing Water Main Project No. 28492-00, which provides for the water main installation along North Topeka Avenue from Elm Row Avenue north to Reo Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading December 17, 2002, was again presented.

Councilmember Duffy moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price -9.

A PROJECT BUDGET in the amount of \$549,100 and AN ORDINANCE introduced by Mayor Harry Felker, authorizing Water Main Project No. 28494-00, which provides for the water transmission main installation along Indian Hills Road from Southwest 29th Street south to Southwest 33rd Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading December 17, 2002, was again presented.

Councilmember Pomeroy moved to remove the item from the agenda. The motion seconded by Stubbs carried. Councilmembers Alcalá and Lane voted "no". (7-2-0)

A PROJECT BUDGET in the amount of \$286,100 and ORDINANCE NO. 17935 introduced by Mayor Harry Felker, authorizing Water Main Project No. 28495-00, which provides for the water main installation along Southeast 10th Avenue from Jefferson Street east to Shunganunga Creek as more specifically described herein, all pursuant to

Section A12-1 of the Code of the City of Topeka placed on first reading December 17, 2002, was again presented.

Councilmember Lane moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price -9.

A COMMUNICATION in accordance with K.S.A. 75-2724, by the City of Topeka Planning Department requesting the City Council's consideration to determine if there is a feasible alternative to the Fleming Place Owners Association proposal to remove the Fleming Mansion at 1001 SW Gage Boulevard was presented.

A ZONING PETITION (Z02/34) by The Fleming Place Owners Association, Inc. requesting to amend the District Zoning Classification from "R-1" Single family Dwelling District and "PUD" Planned Unit Development District (O&I-2 District use group and "C-4" District use group) ALL TO "PUD" Planned Unit Development District ("C-4" District use group and "OS-1" District use group) on property located at the southwest corner of SW 10th Avenue and SW Gage Boulevard in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17936 introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at the southwest corner of SW 10th Avenue and SW Gage Boulevard in the City of Topeka, from "R-1" Single Family Dwelling District and "PUD" Planned Unit Development District ("O&I-2" use group and "C-4" use group) ALL TO "PUD" Planned

Unit Development District ("C-4" use group and "OS-1" use group) placed on first reading December 10, 2002, was again presented.

Brenden Long explained the process and the importance of using the right criteria to make an informed decision that there has not been a feasible alternative presented.

Barry Beagle, Planning Department gave the staff report, and the history of the developer's plan for the area.

Several Councilmembers expressed concern on the increased traffic flow, maintaining green space and the small percentage of residential input.

Howard T. Paul, developer and representative for Walgreen Drug Stores appeared to answer questions and explain the proposal. He explained that several public meetings have been held to discuss the proposals in conjunction with mailings sent directly to the residents home. A majority of the residents that attended the meetings were against the alternative proposal, the Village Inn site because they did not want the current green space reduced. He stated that promises were made at the original time of development, but not by the property owner. He also noted that Don Chubb did not put his property on the historic register until 1991, long after the shopping center was built.

He continued to explain how their proposal incorporated the goals of the 2010 Growth Plan and how the project will provide increased tax benefits to the city and other taxing entities, and it exceeds landscape requirements 3 to 1. Lastly, he stated that their proposal addresses the most important issue, that the Fleming Mansion will not be demolished, it will be moved to another location.

Discussion continued concerning the intent of the 2010 Growth Plan and how the project incorporates the plan, level of actual interior deterioration of the Fleming

Mansion, condition of the building's outside structure, cost of refurbishing, and the tax value if relocated.

Angela Sharp, Professional Engineering Consultants appeared to further explain the project and answer questions. She stated that this particular proposal salvages more green space than the alternative proposal. She explained their projected traffic generation report and concluded that there would not be any detrimental effects.

Don Chubb spoke in opposition of the project. He explained that the original proposal stated that no building would ever be built on the corner and the deed was never filed. He stated that there are other alternatives available. Several offers to rent or lease the mansion have been made and he offered to buy the home at the appraised value.

Dennis Eskie spoke in opposition of the project and gave the history of the property. He and Tom Petersen made a lot of promises to get approval for the Fleming Place Development and before any changes are made the Fleming's should be contacted for their approval. He asked that the City Council please consider an alternative site for the Walgreen Drug Store.

Ralph Lewis, owner of the Fleming House Mansion spoke in support of the proposal and explained the financial implications that is involved in maintaining the property.

Tom Peterson, developer spoke in support of the project and explained that he fully understands the original proposal, however, times change and the Fleming Place development needs to change with the times to prosper.

Discussion continued by several Councilmembers expressing their appreciation for the Fleming Place development and they inquired on past, present and proposed usage of the property.

Mayor Felker noted that it was nearly 11:00 p.m. and asked for a motion to continue the meeting.

Councilmember Hecht moved to continue the meeting through the Fleming Place proposal and First readings. The motion was seconded by Councilmember Stubbs.

Councilmember Alcalá made a friendly amendment to include item 5C, a communication by Shawnee County on behalf of the Family Service and Guidance Center of Topeka, Inc. The second concurred.

The motion to continue the meeting carried. Councilmember Duffy voted "no".
(8-1-0)

Arlene Clayton, Joanne Proctor, Ramon Powers, Rick Friedstrom, Melvin Harrington, Don Taylor, Dustin Reichart, Jim Mellenbrush, Terry Wood, Chrystal Brim, Michael Hooper, and Breta Bloomberg spoke in opposition of the Walgreen Drug Store. They commented on the importance of maintaining the historical character of the neighborhood, restoration of the mansion, increased traffic flow, property loss value and feasible alternatives.

Tom Green, Attorney for Walgreens appeared and discussed what constituted feasible alternatives to removing the Fleming Mansion, and noted why the alternatives mentioned were not feasible.

Bob Sherbourne, Gene Wilcox, Thad Sullivan, Henry McClure, Bob Keeshan and Joseph Ledbetter spoke in support of the Walgreen Drug Store. They commented on the appearance of the mansion, increased revenue and the quality of the development.

Jim Reardon appeared and noted that the Council has the ability to make these decisions. He stated that the Fleming Place is unique, Walgreens is not.

Councilmember Lane moved to find that there is no feasible and prudent alternative to removal of the Fleming Mansion at 1001 SW Gage Boulevard. The motion was seconded by Councilmember Dunn.

Councilmember Duffy asked if the motion included demolition.

Councilmember Hill stated that she has received very little input from her constituents and believes that the mansion has out lived its life.

Councilmember Price stated that he would oppose the motion and feels that taken action on the issue at this time is premature.

Councilmember Dunn stated that she believes that Mr. Fleming would have liked to see the mansion moved into Gage Park for use by children.

Councilmember Dunn called the question.

Councilmember Dunn withdrew the call for the question.

Councilmember Pomeroy stated that he believes that the developer is sincere in their commitment to the proposal, but the City Council and the community need to realize that circumstances may change so that future needs may be met.

Each Councilmember declared exparte communications of telephone calls, U.S. mail, e-mails and discussion with area residents and representatives of the developers.

The City Attorney suggested that the motion state "That there is no feasible and prudent alternative to removal of the Fleming Mansion at 1001 SW Gage Boulevard and the program includes all possible planning to minimize harm to such a historic property resulting from such use."

Councilmember Lane moved to include the language suggested by the City Attorney.

The motion carried. Councilmembers Pomeroy, Duffy, Stubbs and Price voted "no". (5-4-0)

Councilmember Stubbs moved to refer the zoning petition back to the planning commission because she believes there should have been more neighborhood input concerning the design. The motion was seconded by Councilmember Price.

Councilmember Alcalá made a substitute motion to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Dunn carried. Councilmembers Pomeroy, Stubbs and Price voted "no". (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Alcalá, Lane, Dunn, Hecht, Duffy, and Hill -6. Noes: Councilmembers Pomeroy, Stubbs and Price -3.

A COMMUNICATION by Shawnee County requesting the approval of the City Council of the adoption by Shawnee County of a resolution of intent to issue health care facility improvement revenue bonds on behalf of the Family Service and Guidance Center of Topeka, Inc., was presented.

Councilmember Alcalá moved to approve the communication. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

AN ORDINANCE introduced by Councilmember Clark Duffy relating to the approval procedure for City-Financed developer projects request for project petition, amending City of Topeka Code Section 126-66 and repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker, relating to the designation of street names, more specifically changing the name of SE 34 Terrace to SE Crestwater Drive was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "R-2" Single Family Dwelling District and located at 1132 NW Harrison in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 513 SW Van Buren in the City of Topeka, Kansas pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 523 SW Van Buren in the City of Topeka, Kansas pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 515 SW Van Buren in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker designating real property more specifically described herein as historic landmark and presently zoned "C-5" Commercial District and located at 521 SW Van Buren in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 517 SW Van Buren in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker relating to the vacation of a portion of Old K-172 Highway right-of-way adjoining the north side of U.S. Highway 24 and west of NW Rochester Road, City of Topeka, Shawnee County, Kansas, and specifically repealing City of Topeka Ordinance 17914 was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker relating to the vacation of a portion of SW Topeka Boulevard right-of-way paralleling the Kansas Army National Guard complex located at 131 SW 27th Street, City of Topeka, Shawnee County, Kansas, was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker relating to the vacation of a portion of a 30-foot wide platted building setback along NW Topeka Boulevard and NW Lyman Road as dedicated by Bauersfeld's Market Place Subdivision No. 1 for property located at 2060 NW Topeka Boulevard, City of Topeka, Shawnee County, Kansas, was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker amending the Master PUD Plan of Glad Tidings Assembly of God Church by providing for a church and associated

parking on property located on the south side of I-470 and extending west of SW Burlingame Road in the City of Topeka, Kansas, was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located on the northeast corner of NW Lower Silver Lake Road and NW Furman Road in the City of Topeka, from "R-1" Single Family Dwelling District to "I-1" Light Industrial District was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at the northwest corner of SW 8th Avenue and SW Lane Avenue in the City of Topeka, from "M-1" Two Family Dwelling District with Resolution of Intent "D&O" Multiple Family Dwelling and Office District and "M-S" Medical Services District ALL TO "O&I-2" Office and Institutional District was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at the northwest corner of SW 8th Avenue and SW Lane Avenue in the City of Topeka, from "M-1" Two Family Dwelling District to "O&I-2" Office and Institutional District was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the

Code of the City of Topeka, by providing for certain changes in zoning on two tracts of property: the first being located on the East side of SE Croco Road, the centerline of which is approximately 400-feet South of SE 29th Street and the second, being located on the South side of SE 19th Street, the centerline of which is approximately 330-feet East of SE Croco Road in the City of Topeka, from "R-1" Single Family Dwelling District to "C-2" Commercial District was presented for first reading.

AN ORDINANCE introduced by Clark Duffy, Lisa Stubbs and Lisa Hecht, sitting as the Public Health and Safety Committee, relating to permit fees, amending City of Topeka Code Section 26-139 and Section 107.2 of the Uniform Building Code and specifically repealing said original sections was presented for first reading.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 2:13 a.m.

Iris Walker
City Clerk