

City Council Minutes - June 10, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 10, 2003. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Lane, Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9. Absent: Mayor Felker -1.

Mayor Felker was attending the National Conference of Mayors.

AFTER THE MEETING was called to order, prayer was offered by Councilmember Lane.

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

THE CONSENT AGENDA was presented as follows:

Minutes of the regular meeting of June 3, 2003 were presented.

Councilmember Alcalá moved to approve the Consent Agenda. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held on Tuesday, June 10, 2003, at 7:00 P.M., in conjunction with Conditional Use Permit request CU03/5 by Lindemuth, Inc., to establish an amusement indoor establishment on property located 821 SW 21st Street.

RESOLUTION NO. 7347 introduced by Mayor Harry Felker in accordance with Section 48-16.02(c)(1) of the Code of the City of Topeka, approving a Conditional Use Permit to establish an amusement indoor establishment on property currently zoned "C-2" Commercial District and located at 821 SW 21st Street in the City of Topeka, Kansas, was presented. (CU03/5)

Barry Beagle, Planning Department gave the staff report and explained why the Zoning and Platting Committee recommended disapproval. They expressed concerns

with the 300-foot zone around school premises where alcohol cannot be sold or served and that the Alcohol Anonymous Group meets across the street, and it did not seem appropriate to have the sale of liquor so close in proximity.

Areas of concern discussed by members of the Council included; location of the establishment, land use compatibility, site development, operating characteristics, building design and City license requirements.

Deputy Mayor Pomeroy gave an opportunity for anyone present to speak. No one appeared.

Councilmember Price moved to close the public hearing and approve the resolution. The motion seconded by Councilmember Duffy carried. Councilmember Alcala voted "no". (8-1-0)

ORDINANCE NO. 18026 introduced by Councilmember Harold Lane amending the City of Topeka Code Section 30-31 concerning the refunding of business license fees and repealing said original section placed on first reading June 3, 2003 was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

ORDINANCE NO. 18027 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 15th Street and SW Fairlawn Road in the City of Topeka, Kansas from "R-1" Single Family Dwelling District to "O&I-1" Office and Institutional District placed on first reading June 3, 2003 was again presented. (Z78/59)

Barry Beagle gave the staff report for items 5B, 5C and 5D under Unfinished Business and explained that all property owners were notified that their resolution of intent was scheduled for final action this evening.

Deputy Mayor Pomeroy gave an opportunity for anyone present to speak. No one appeared.

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

ORDINANCE NO. 18028 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 southeast corner of SE Powell Street and SE 25th Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District to "M-2" Multiple Family Dwelling District placed on first reading June 3, 2003 was again presented. (Z80/38)

Barry Beagle gave the staff report.

Deputy Mayor Pomeroy gave an opportunity for anyone present to speak. No one appeared.

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

ORDINANCE NO. 18029 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 1815 SW Fairlawn Road in the City of Topeka, Kansas from "R-1" Single Family Dwelling District to "O&I-1" Office and Institutional District placed on first

reading June 3, 2003 was again presented. (Z86/10)

Barry Beagle gave the staff report.

Deputy Mayor Pomeroy gave an opportunity for anyone present to speak. No one appeared.

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

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 5252 SW 19th Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District to "O&I-1" Office and Institutional District placed on first reading June 3, 2003 was again presented. (Z88/14)

Barry Beagle gave the staff report and explained that the applicant signed a waiver and release form stating that they no longer wanted the resolution of intent activated for this property. He stated that no further action regarding the reclassification of zoning is required by the Council.

Councilmember Pomeroy moved to accept the waiver and release form and deny the zoning permit. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

A ZONING PETITION and ORDINANCE NO. 18030 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 3330 SW 29th Street in the City of

Topeka, Kansas from “M-2” Multi-Family Dwelling District and “C-2” Commercial District ALL TO “PUD” Planned United Development District (commercial and multi-family use groups) placed on first reading June 3, 2003 was again presented. (Z03/18)

Barry Beagle gave the staff report.

Mike Engler appeared to answer questions.

Deputy Mayor Pomeroy asked if there were any exparte communications. There were none declared.

Councilmember Duffy moved to approve the zoning petition 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: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

A ZONING PETITION and ORDINANCE NO. 18031 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 515 SW Horne Street in the City of Topeka, Kansas from “M-3” Multi-Family Dwelling District to “O&I-2” Office and Institutional District placed on first reading June 3, 2003 was again presented. (Z03/21)

Barry Beagle gave the staff report.

Councilmember Pomeroy inquired on the parking issues.

Barry Beagle stated that the applicant could acquire a Conditional Use Permit to establish offsite parking, vacate the alley for additional parking or minimize the use of building to accommodate the existing parking.

Councilmember Pomeroy disclosed his exparte communications.

Councilmember Haynes moved to approve the zoning petition 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: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

A ZONING PETITION and ORDINANCE NO. 18032 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 south side of SE 45th Street, the centerline of which is approximately 990-feet east of SW Topeka Boulevard in the City of Topeka, Kansas from "I-1" Light Industrial District to "OS-1" Open Space District placed on first reading June 3, 2003 was again presented. (Z03/22)

Barry Beagle gave the staff report.

Deputy Mayor Pomeroy asked if there were any exparte communications. There were none declared.

Deputy Mayor Pomeroy gave an opportunity for anyone present to speak. No one appeared.

Councilmember Haynes moved to approve the zoning petition 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: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

A ZONING PETITION and ORDINANCE NO. 18033 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 at the southwest corner of SE 45th Street and SE Mercier Street in the City of Topeka, Kansas from “I-1” Light Industrial District to “OS-1” Open Space District placed on first reading June 3, 2003 was again presented. (Z03/23)

Councilmember Haynes moved to place item 5J, a Zoning Petition and Joint Shawnee County Resolution and City of Topeka Ordinance, under Unfinished Business at the bottom of the agenda. The motion died for lack a second.

Barry Beagle gave the staff report.

Deputy Mayor Pomeroy asked fi there were any exparte communications. There were none declared.

Deputy Mayor Pomeroy gave an opportunity for anyone present to speak. No one appeared.

Councilmember Price moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

Councilmember Lane moved to suspend the rules to add a Zoning Petition by Menninger Foundation (Z03/26) to item 5J, under Unfinished Business. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Councilmember Price moved to reinstate the council rules. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

A ZONING PETITION and A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA ORDINANCE NO. 18034 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 at the northwest corner of SW Wanamaker Road and SW 6th Avenue in the City of Topeka, Kansas from "RR-1" Residential Reserve District and "C-4" Commercial District all to "PUD" Planned Unit Development District ("C-2" use group) placed on first reading June 3, 2003 was again presented. (Z03/26)

Barry Beagle gave the staff report.

Mark Wittenberg, representative of the River Hill Shops gave an overview of the Master Land Use Plan of the entire Menninger property. He explained that the demand from new retailers interested in starting a business in the City of Topeka is to exist within a live, work and play community. He showed comparison of the River Hill Shops development to the Bradley Fair Development in Wichita, Kansas.

He continued to explain that one of the key advantages of the development is the installation of a round-about at the 6th and Wanamaker interchange. He discussed the factors that make up a life style center including building characteristics, greenscaping and hardscaping, community activity space, traffic control and pedestrian friendly areas.

He addressed the following concerns of the surrounding area residents: the wildlife will be protected by public parks and walking trails; the cost of the round-about will be absorbed by the developer; current traffic studies show that it is not necessary to extend 6th Street; the water run-off problem will be eliminated by the upgrade of 6th Street; littering will be controlled by numerous trash enclosures; the majority of the area will be zoned "O&I-1"; existing vacant retail space within the City cannot be used for a life style center format; and finally the development should generate additional revenue

from outside the City instead of taking it from other areas of the City.

Councilmember Duffy expressed concern because there was not a “PUD” Planned Unit Development for the entire area so they would know what’s planned for all of the acreage.

David Harrison, representative for Opus appeared for questions and explained the concept plan and stated that the plan is flexible, however, it is very important to stay consistent with what is trying to be accomplished.

Mike Engler, Bartlett & West Engineers explained the traffic report for the area both now, and in the future. The construction of a round-about is a more cost effective solution to the intersection problems than a standard traffic signal. The total cost of the round-about is approximately \$1,000,000 that will be paid by Menninger and the Security Benefit Group.

Dr. Schand, adjacent property owner expressed concerns with the cost of the infrastructure and that funds would be taken from other parts of the City.

Gary Musselman, Director of Kansas State Activities expressed concerns with the overall plan, the intensive use of the area, security issues, littering, signage along I-70, and the high rate of retail turnover.

Bruce Graham, Kansas Power Cooperative opposed the lack of an overall plan, not working with existing landowners, and believes the developer should have to pay for the extension of 6th Street.

Larry Hesse, 525 Urish Road spoke in opposition of the development because of the safety issues involved, cost and change of environment.

Al Turner, Building Manager, Tallgrass Medical Center expressed concern with

the safety issues related to the increase in traffic on 6th Street.

Tom Lemon, 1299 Pembroke Lane appeared in support of the development and stated that he plans to build his home in the area.

Bobbie Athon, Kansas State Historical Society made an investment in the wildlife trail and expressed concern with the removal of trees on the trail if 6th Street is improved.

Joseph Ledbetter spoke in support of the development and stressed the importance of the revenue that will be generated from the development and the jobs that will be created.

Councilmember Haynes moved to refer the proposal to the Zoning and Platting Committee to study the long-term infrastructure and the establishment of a benefit district. The motion died for lack a second.

Councilmember Price moved to approve the zoning petition and adopt the Joint Shawnee County Resolution and City of Topeka Ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Duffy inquired on the classification of the remainder of the area and asked who would be financially responsible for the 6th Street upgrade.

Neil Dobler, Public Works Director stated that there are two financial options that could be considered, City-at-large money or to set up a benefit district for all, or a portion of the street.

Councilmember Haynes made a substitute motion to refer the proposal to the Zoning and Platting Committee. The motion died for lack a second.

Councilmember Duffy stated that he believes it is unfortunate that the developers did not present the entire plan of action for the Menninger property to the Council so that

an informed decision could be made.

Councilmember Nave stated that he supports retail and economic development, however, this is a matter that needs careful planning to manage growth. He explained that a commitment was made to bring people downtown and we have nothing to offer them, a matter that needs attention. He also expressed concern that this may be another empty building in seven to ten years.

Councilmember Stubbs discussed balanced growth and how it relates to the 2010 Growth Management Plan and is looking forward to future presentations to help make informed decisions concerning managed growth of the City of Topeka.

Councilmember Alcalá stated that he agrees with Councilmember Stubbs and believes that there are a lot of good things developing in the downtown area.

Each Councilmember disclosed their exparte communications consisting of emails, telephone calls, and letters.

Councilmember Pomeroy requested to divide the question.

The motion to approve the zoning petition carried. Councilmember Pomeroy and Nave voted “no”. (7-2-0)

The motion to adopt the ordinance carried. Councilmember Nave voted “no”. (8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcalá, Pomeroy, Haynes, Duffy, Stubbs, Preisner and Price -8. Noes: Nave -1.

ORDINANCE NO. 18035 introduced by Mayor Harry Felker annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located on the east side of SE Croco Road, 150 feet north of SE 23rd Street Terrace and

adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading May 20, 2003 was again presented. This item was deferred one week from the meeting of June 3, 2003. (A03/3)

Barry Beagle gave the staff report and stated that he has received a consent to annexation agreement for the property.

Councilmember Duffy asked if a dedicated green space had been incorporated into the proposal. He expressed concerns with presenting a proposal that is not consistent with the policy or the open space provision of the Comprehensive Plan and therefore, would have difficulty supporting the proposal.

In response, Barry Beagle stated that this proposal is a small parcel of land, consisting of 45 lots. This size of an area would make it difficult to yield a significant area for park space because each subdivision donates land according to the population generated.

Deputy Mayor Pomeroy noted that the time was 10:55 p.m.

Councilmember Lane moved to extend the meeting until the end of the agenda. The motion seconded by Councilmember Preisner carried. Councilmembers Alcala and Duffy voted “no”.

Brenden Long, City Attorney recommended that item 5L, a Final Plat for Woodglen Subdivision, under Unfinished Business be considered first since the consent to annex is contingent on the approval of the final plat.

A FINAL PLAT for Woodglen Subdivision on property located on the east side of SE Croco Road, 50-feet north of SE 23rd Street Terrace within unincorporated Shawnee County, Kansas, was presented. This item was deferred one week from the

meeting of June 3, 2003. (P03/6)

Councilmember Lane moved to approve the final plat. The motion was seconded by Councilmember Stubbs.

Chadwick Taylor, Attorney for Ball Construction explained that one of the main factors in developing the final plat in this location was because of the close proximity to Lake Shawnee recreation area and sports complex and it is also close to a elementary school play ground.

The motion to approve the final plat carried. Councilmembes Duffy and Price voted “no”. (7-2-0)

The annexation ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Stubbs, and Preisner -7. Noes: Duffy and Price -2.

RESOLUTION NO. 7348 introduced by Councilmembers Harold Lane and Bill Haynes amending Topeka City Council Rules and Procedures as adopted and amended through May 1, 2003 was presented.

Councilmember Lane moved to approve the resolution. The motion was seconded by Councilmember Haynes.

The motion to approve the resolution carried. Councilmember Price voted “no”. (8-1-0)

A PROJECT BUDGET in the amount of \$33,150 and RESOLUTION NO. 7349 introduced by Mayor Felker authorizing Sidewalk Improvement Project No. 24111 which provides for construction of a concrete sidewalks and authorizing the same was presented.

Neil Dobler, Public Works Director gave the staff report.

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

AN ORDINANCE introduced by Mayor Harry Felker relating to multiple violations of unlawfully parked vehicles in parking meter spaces 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 generally located at the southwest corner of the intersection of SW Summerfield Drive and SW Fairlawn Road in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District to "O&I-1" Office and Institutional District was presented for first reading. (Z91/7)

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 generally located at the southwest corner of the intersection of SW Summerfield Drive and SW Fairlawn Road in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District with Resolution of Intent for "PUD" Planned Unit Development District to "O&I-1" Office and Institutional District was presented for first reading. (Z91/32)

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Preisner announced that there would be a Public, Health and Safety Committee meeting on June 16, 2003 at 4:00 p.m. in the City Council Office.

Councilmember Pomeroy announced that there would be a Policy and Finance Committee meeting on June 24, 2003 at 4:30 p.m. in the City Council Office.

Councilmember Duffy announced that there would be a Economic and Community Development meeting on June 13, 2003 at 11:30 a.m. in the City Council Office.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Lane inquired on the status of the annexation of the Dillions store located on the corner of SW 29th and Urish Road and asked when the burned structure located in the 300 block of East 13th Street would be cleaned up.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 11:15 p.m.

Iris Walker
City Clerk