

City Council Minutes – August 12, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 12, 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. Mayor Felker presided -1.

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

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

Councilmember Alcalá requested to pull item A from the agenda for separate discussion.

The Consent Agenda was presented as follows:

A Communication recommending the re-appointment of Neta Jeffus to the Topeka Metropolitan Transit Authority for a 4-year term, which would expire June 30, 2007, was presented.

Minutes of the Regular Meeting of August 5, 2003 were presented.

Councilmember Price moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

A RESOLUTION introduced by Mayor Harry Felker and Councilmember John Alcalá, expressing support for the Gardens at Soldier Creek Development Project was presented.

Councilmember Alcalá moved to defer until there has been a presentation made on the project. The motion was seconded by Councilmember Stubbs.

Randy Speaker, Housing and Neighborhood Director stated that a representative is present and they could give a presentation.

Councilmember Alcalá stated that he believes that the neighborhood residents should be

contacted before a decision is made.

Ross Freeman, representative for the applicant stated that the area residents have not been contacted and that presentation could be made at a later date.

Councilmember Pomeroy moved to make a substitute motion to defer for one week. The motion seconded by Councilmember Stubbs carried. Councilmember Duffy voted "no". (8-1-0)

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 Tuesday, August 12, 2003, at 7:00 P.M., for the purpose of hearing and answering objections of taxpayers relating to the 2004 Consolidated Action Plan.

Randy Speaker, gave the staff report and explained that the Consolidated Action Plan gives a general overview of how the City of Topeka plans to implement monies throughout the year. The plan includes; opportunities for public input, changes proposed by HND, reprogrammed funds, Community Development Advisory Board recommendations and the procurement process.

Michael Bell explained the process for allocating the Empowerment Grants.

Jim Olson explained the allocation process for Youth and Social Service Funds.

Randy Crandell explained the process for allocating the Emergency Shelter Grants.

Amy Hyten explained the Community Development Advisory Council (CDAC) recommendations on the Consolidated Plan.

The following individuals appeared in support of the Consolidated Action Plan and offered suggestions for modifications:

Hans Heinemann	Homeless issues
Ross Freeman	Leveraging monies
Diane Alpert and Josh Sheldon	Hi-Crest Feasibility Study
Kevin Kelly	Hi-Crest development
Frank Kirtdoll	Council presentations
Betty Phillips	HND funding process
Joseph Ledbetter	Administrative/Program Costs
Ted Mize	Creation of Citizen Panel to distribute monies
Jenny Prichard	HND organizational chart
Becca Vaugh	Change in plan verbage
JoAnn Peavler	Operating costs

Councilmember Preisner moved to close the public hearing. The motion seconded by Councilmember Alcalá 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 Tuesday, August 12, 2003, at 7:00 P.M., in conjunction with vacation request V03A/3 by Mainline Printing, Inc., to vacate an adjoining east/west alley right-of-way located in the 800 block of SE Adams Street.

ORDINANCE NO. 18059 introduced by Mayor Harry Felker relating to the vacation of a 20-foot wide public alley right-of-way located in the 800 block of SE Adams Street as dedicated by the plat of C.K. Holliday's Addition, City of Topeka, Shawnee County, Kansas placed on first reading August 5, 2003 was again presented.

Barry Beagle, Planning Department gave the staff report.

Bill Van Doren, Bartlett & West Engineers and representative for the applicant appeared for questions.

Councilmember Alcalá moved to close the public hearing 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.

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 Tuesday, August 12, 2003, at 7:00 P.M., in conjunction with CU03/11 by Lee C. and Rose Marie Schmidt, requesting a Conditional Use Permit to establish a 180-foot telecommunication tower on property located on the east side of NW Vail Avenue, north of NW Lower Silver Lake Road.

RESOLUTION NO. 7376 introduced by Mayor Harry Felker in accordance with Section 48-16.02(c)(6) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a telecommunications tower on property currently zoned "R-1" Single Family Dwelling District and located on the east side of NW Vail Avenue, the centerline of which is approximately 820-feet north of NW Lower Silver Lake Road in the City of Topeka, Kansas was presented.

Barry Beagle gave the staff report.

Councilmember Alcala questioned if other sites were given consideration.

Dave Saab, Selective Site appeared for questions.

Shay Bernard, T-Mobile Engineer explained why he chose the site.

Councilmember Haynes moved to close the public hearing and approve the resolution.

The motion was seconded by Councilmember Nave.

Councilmember Alcala made a substitute motion to refer to the Public, Health and Safety Committee. The motion was seconded by Councilmember Lane.

Lee Schmidt appeared and explained that most of the neighbors do not have any concerns with the tower, however, his aunt lives across the street and was concerned about lighting on the tower. He explained that there would not be a light on the tower.

The motion to refer to the Public, Health and Safety Committee failed. Councilmembers Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price voted "no". (2-7-0)

The motion to close the public hearing and approve the resolution carried unanimously. (9-0-0)

Councilmember Lane made a motion to move item 5J, an ordinance relating to temporary signs to the next item on the agenda. The motion seconded by Councilmember Preisner carried. Councilmember Duffy and Stubbs voted "no". (7-2-0)

ORDINANCE NO. 18066 introduced by Councilmember Harold Lane relating to the allowance of certain types of temporary signs without requiring a permit placed on first reading July 15, 2003 was again presented. The ordinance was referred to the Public, Health and Safety Committee on July 15, 2003.

Councilmember Stubbs gave the committee report.

Councilmember Lane explained the ordinance.

Johnny Huffman, owner of the Guard Flag Store appeared in support of the ordinance and explained the amount of revenue his business has lost due to the sign regulations. He also read several letters of support from automobile dealerships within the City of Topeka including Ed Bozarth, Briggs Dodge and John Hoffer.

Councilmember Preisner moved to adopt the ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Duffy inquired on the definition of decorative streamers and expressed concern with the language of line 19 because it does not specify regulations concerning the amount, size or location of streamers.

Councilmember Stubbs stated that she believes that this will send a mixed message to the public and the comprehensive sign code study, needs to be implemented as soon as possible to help clarify the ordinance.

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

ORDINANCE NO. 18060 introduced by Mayor Harry Felker annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, located at 3746 NW 25th Street and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading August 5, 2003 was again presented.

Barry Beagle gave the staff report.

Mayor Felker 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. 18061 introduced by Mayor Harry Felker annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-521, as amended, and said land being annexed for all City purposes, is hereby assigned to a specific City Council District in accordance with Section A2-18 of the Code of the City of Topeka, Kansas placed on first reading August 5, 2003 was again presented.

Barry Beagle gave the staff report.

Bryan Smith, representative for Maximum, L.L.C. appeared for questions and stated that his client has agreed to annexation.

Councilmember Haynes moved to amend the ordinance to include “subject to approval of Final Plat”. The motion died due to lack of second.

Councilmember Haynes moved to defer one week. The motion was seconded by Councilmember Alcala.

Mike Murray stated that the County turned down Monarch Meadows plat because they are concerned with who would be responsible for taking care of the streets. He also urged the City and County to address the street issues.

The motion to defer one week carried. Councilmember Pomeroy voted "no". (8-1-0)

ORDINANCE NO. 18061 introduced by Mayor Harry Felker annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-521, as amended, and said land being annexed for all City purposes, is hereby assigned to a specific City Council District in accordance with Section A2-18 of the Code of the City of Topeka, Kansas placed on first reading August 5, 2003 was again presented.

Vic Miller spoke in support of the ordinance and suggested considering annexing the area along Topeka Boulevard.

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. 18062 introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "R-1" Single Family Dwelling District and located at 400 SW Greenwood Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading August 5, 2003 was again presented. (HL03/2)

Barry Beagle gave the staff report.

Mayor Felker gave opportunity for anyone present to speak. No one appeared.

Councilmember Stubbs 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. 18063 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 517 and 525 SE 37th Street in the City of Topeka, Kansas from "PUD" Planned Unit Development ("C-4" use group) TO "C-2" Commercial District placed on first reading August 5, 2003 was again presented. (Z03/30)

Barry Beagle gave the staff report.

Bill Van Doren, Bartlett & West Engineers appeared for questions.

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

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

Councilmember Lane 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.

Councilmember Pomeroy moved to extend the meeting through the end of the agenda.
The motion seconded by Councilmember Haynes carried. Councilmembers Duffy and Preisner voted "no". (7-2-0)

A ZONING PETITION AND ORDINANCE NO. 18064 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 SW 33rd Street and SW Belle Avenue in the City of Topeka, Kansas from "R-1" Single Family Dwelling District TO "PUD" Planned Unit Development District ("M-2" use group) placed on first reading August 5, 2003 was again presented. (Z03/31)

A FINAL PLAT for Ventana Estates Subdivision on property located at the southeast corner of SW 33rd Street and SW Belle Avenue in the City of Topeka was presented. (P03/30)

Barry Beagle gave the staff report.

Following the staff report, discussion continued by several Councilmembers on the validity of notary on the protest petition.

Brenden Long, City Attorney reviewed the protest petitions and found them to be acceptable.

Joe Zima, representative for USD No. 501 spoke in support of the proposal.

John Etzel stated that he does not support the proposal because he believes there is not enough space for the development.

Mark Boyd, Cook, Flatt & Strobel and representative for the applicant appeared in support and explained the proposal. He stated that there would be ten feet between each building, a detention pond with a fountain, and the easement located on the south side of the property would be dedicated to drainage.

Joseph Ledbetter spoke in support of the proposal because it would generate tax revenue for the City.

Granville Davidson, President, Prairie Trace Community Association spoke in support of the proposal and believes it is a well thought out project.

Sandy Bales spoke in opposition of the proposal because of the density of the project. She also distributed and read a letter of opposition from George Dawson a neighbor of the proposed project.

Roger Bales stated that he opposes the project and asked that it be referred back to the Zoning and Platting Committee to address the density issue.

Donna Vialle stated that she opposes the project because it would increase the traffic and density of the area.

Cindy Shephard spoke in opposition of the proposal and believes it would have a negative impact on the area.

Brenden Long stated that the protest petition approval would require a 7-2-0 vote or better and a motion to override would require a vote of 6-3-0 or better.

Councilmember Duffy moved to approve the zoning petition, final plat and adopt the ordinance. The motion was seconded by Councilmember Haynes.

Each Councilmember stated that they have received emails, telephone calls, and had personal conversations with the developers and area residents.

The motion to approve carried. Councilmembers Preisner and Price voted “no”. (7-2-0)

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

ORDINANCE NO. 18065 introduced by Mayor Harry Felker relating to the parkland development fee, amending Topeka City Code Section 134-143, and repealing said original section placed on first reading August 5, 2003 was again presented. (SR01/1)

J.D. Yanek, representative for the Builder Realtor Coalition appeared in support.

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

CHARTER ORDINANCE NO. 91 introduced by Councilmember Jeff Preisner, exempting the City from the provisions of K.S.A. 41-712 and providing substitute and additional provisions on the same subject in accordance with the provisions of Article 12, Section 5 of the Constitution of the State of Kansas placed on first reading August 5, 2003 was again presented.

Councilmember Preisner explained the charter ordinance and stated that he supports it because it is a matter of freedom of choice.

Francis Wood stated that she opposes the charter ordinance because of the increasing number of alcohol related traffic deaths.

Cliff Cormier, owner of Cormier Liquor Store spoke in opposition of the charter ordinance and stated that he believes the sale of liquor on Sunday would contribute to an increase in domestic abuse and traffic violations.

Mel Lewis, owner of Lewis Retail Liquor spoke in support of the charter ordinance stating that he took an in-store poll and 141 out 150 people were in favor of Sunday liquor sales.

Councilmember Nave stated that it is the individual or business owners right to buy or sale liquor on Sunday.

Councilmember Stubbs stated that she had been contacted by several liquor store owners who were opposed to the ordinance. They stated that they would have to increase their

manpower to cover the work on Sundays, and the small increase in sales would not off-set that expense.

Councilmember Preisner moved to adopt the charter ordinance. The motion was seconded by Councilmember Haynes.

Councilmember Lane stated that it should be a personal choice to allow a business to be open on Sunday.

Councilmember Pomeroy stated that it is good that there are some things that are not allowed on Sunday, and believes that it would not hurt the liquor business in the City of Topeka.

Councilmember Stubbs stated that she believes this ordinance is premature until the State has made a decision on the matter.

Councilmember Preisner called he question.

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Nave, Haynes, Duffy, and Preisner -6. Noes: Pomeroy, Stubbs and Price -3.

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA ORDINANCE introduced by Mayor Felker relating to X Mixed Use District regulations and specifically amending City of Topeka Code §§ 48-31.01, 48-2a.02, 48-23a.03, 48-23a.04, and 48-23a.06 and specifically repealing said original sections placed on first reading July 1, 2003 was again presented. The ordinance was referred to the Public, Health and Safety Committee from the July 15, 2003 meeting.

Chirsty Caldwell, Greater Topeka Chamber of Commerce stated that they agree with the Committee's recommendations to send it back to the Planning Commission for further consideration.

James Davis stated that he also agrees that the ordinance should be sent back to the Planning Commission for reconsideration and change of verbage.

Councilmember Stubbs gave the committee report.

Councilmember Duffy stated that there were opportunities for public input in the normal process and requested a list of the people invited to participate.

Councilmember Stubbs moved to approve the Committee Report to remand back to the Planning Commission. The motion seconded by Councilmember Preisner carried unanimously.

(9-0-0)

A PROJECT BUDGET in the amount of \$150,000 and ORDINANCE NO. 18067 introduced by Mayor Harry Felker, authorizing Improvement Project No. 13136-01, which provides for the improvement of Fire Station No. 3, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading July 15, 2003 was again presented. This was deferred one week from the August 5, 2003 meeting.

Dan Neil, Fire Department gave the staff report and cost breakdown of the project. The cost breakdown consisted of; \$67,000 for roof replacement, \$55,385 for a central air unit, \$4,200 for architectural engineering fees and \$3,300 for new counter tops.

Councilmember Haynes inquired on how the project is being funded and if it would add to the overall bonded indebtedness.

Dave Graversen, Chief Administrative Officer explained that the funding would be out of the CIP Budget from the General Obligation Bonds that were allocated for a fire truck.

Councilmember Stubbs expressed concern with the cost of engineering fees.

Councilmember Lane moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Alcala carried. Councilmember Preisner was out of the room. (8-1-0)

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

A PROJECT BUDGET in the amount of \$19,635 and RESOLUTION NO. 7377 introduced by Mayor Felker authorizing Sidewalk Improvement Project No. 24112-B which provides for construction of concrete sidewalks and authorizing the same was presented. This was deferred for one week from the meeting of August 5, 2003.

Kevin Rooney, Housing and Neighborhood Department gave the staff report.

Councilmember Alcala asked if all parcels on a block have to financially qualify for assistance in order to replace the entire block of sidewalk.

Kevin Rooney explained that there would have to be financial verification for 51% of the residents on the block to qualify the entire block for assistance.

Councilmember Haynes moved to approve the project budget and adopt the resolution. The motion seconded by Councilmember Stubbs carried. Councilmember Nave voted “no”. Councilmember Duffy was out of the room. (7-2-0)

RESOLUTION NO. 7378 introduced by Mayor Felker relating to the leasing of property for the purpose of providing office space for staff of City of Topeka, pursuant to Topeka City Code §2-460(c) was presented.

Kevin Rooney gave the staff report.

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

RESOLUTION NO. 7379 introduced by Mayor Felker, establishing a water main connection charge for water main extension Improvement Project No. 28502, along the easterly right-of-way line of SE 40th Terrace beginning at SE 40th Street; thence southerly approximately 1280 feet was presented.

Neil Dobler, Public Works Director gave the staff report.

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

PUBLIC IMPROVEMENT PROJECT PETITION, PROJECT BUDGET in the amount of \$274,842 and RESOLUTION NO. 7380 introduced by Mayor Harry Felker authorizing Street Improvement Project No. 60593-01 as more specifically described herein was presented.

Neil Dobler gave the staff report.

Councilmember Alcalá moved to approve the public improvement project petition, project budget and resolution. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

PUBLIC IMPROVEMENT PROJECT PETITION, PROJECT BUDGET in the amount of \$79,570 and RESOLUTION 7381 introduced by Mayor Harry Felker authorizing Lateral Sanitary Sewer District No. 40913-01 as more specifically described herein was presented.

Neil Dobler gave the staff report.

Councilmember Alcalá moved to approve the public improvement project petition, project budget and resolution. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

A COMMUNICATION submitting a request by Family Video Movie Club, Inc. requesting to amend the Master “PUD” Plan of the Gage Shopping Center Master Planned Unit

Development Plan to erect a new 40 square foot monument sign in front of the Family Video store at 1401 SW Gage Boulevard in the City of Topeka was presented.

Barry Beagle gave the staff report.

Councilmember Preisner moved to approve the communication. The motion seconded by Councilmember Pomeroy carried. Councilmembers Pomeroy, Duffy, Stubbs and Price voted "no". (5-4-0)

A FINAL PLAT for Lindbloom Subdivision No. 2 on property located on the north side of SE Manitowoc Drive (extended) and west of SE Croco Road within unincorporated Shawnee County, Kansas was presented. (P03/19)

Barry Beagle gave the staff report.

Councilmember Nave moved to approve the final plat. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

The Mayor withdrew the Final Plat for Shiloh Ridge Estates Subdivision. (P03/2)

AN ORDINANCE introduced by Mayor Harry Felker, authorizing Street Repair Project No. 84309, which provides for the construction of curb cuts and sidewalk ramps to provide accessibility to disabled individuals as required by the Americans with Disabilities Act as more specifically described herein, all pursuant to Charter Ordinance No. 89 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by Mayor Felker authorizing the initiation of condemnation proceedings to acquire property by eminent domain for the City of Topeka Water System Improvement Project No. 28489-00, in the Burnetts Mound area was presented for first reading.

AN ORDINANCE introduced by Councilmembers Duane Pomeroy and Lisa Stubbs establishing a process for the filling of vacancies in the offices of mayor or councilmember was presented for first reading.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Lane inquired on the City's liability concerning the purchase of one-way bus tickets for individuals.

Councilmember Alcala announced that he would make an official public statement concerning the P-Card issues at the Topeka Public Library on August 18, 2003 at 7:00 p.m.

Councilmember Pomeroy stated that he would like to place a request relating to the correction of signage on South Topeka Boulevard and the possibility of obtaining signage for the Oakland Expressway under "Pending Requests" on the Council Committee Sheet.

Councilmember Duffy announced that on August 18, 2003 the City of Topeka is invited to hear and provide testimony for the Cares Commission Report regarding the Colmery O'Neil Medical Center and keeping the Veterans Association Hospital in Topeka.

PUBLIC COMMUNICATIONS AND COMMENTS, were presented.

William Richards, JoAnn Peavler, Charles Criqui and Ted Mize appeared for public comments.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 1:50 a.m.

Iris Walker
City Clerk