

## City Council Minutes – September 23, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 23, 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, Price and Preisner -9. Mayor Felker presided -1.

AFTER THE MEETING was called to order, Mayor Felker asked for a moment of silent meditation.

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

Councilmember Stubbs requested that item 3C, Worker's Compensation claim for Charles Bland be pulled for separate discussion.

RESOLUTION NO. 7393 introduced by Councilmember Clark Duffy granting University United Methodist Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

APPLICATION for Kirkland Security to operate an Alarm Installation and Service Company within the Topeka City limits was presented.

Minutes of the Regular Meeting of September 16, 2003 were presented.

APPLICATIONS for Open After Mid-night License bearing the approval of the Chief of Police and City Inspectors for Goose Too, 5630 SW 29<sup>th</sup> Street and Emmanuelli Salsa Club, 716 Kansas Avenue, was presented.

Councilmember Lane moved to approve the remainder of the Consent Agenda. The motion seconded by Councilmember Preisner carried. Councilmember Duffy voted "no".

(8-1-0)

APPROVAL of Worker's Compensation Settlement Claim in the amount \$15,000 for Charles Bland was presented.

Councilmember Lane moved to approve the Worker's Compensation claim. The motion seconded by Councilmember Duffy carried. Councilmember Price 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, September 23, 2003, at 7:00 P.M., to obtain citizen comment and review of a property tax exemption ordinance for improvements to real and personal property on behalf of Reser's Fine Foods, 3167 SE 10<sup>th</sup> Street, Topeka, Kansas.

ORDINANCE NO. 18092 introduced by Mayor Felker, exempting certain property, more specifically property owned by Reser's Fine Foods, Inc. from ad valorem taxation for economic development purposes, pursuant to the provisions of the Code of the City of Topeka, Chapter 138, Article III, and located at approximately 3167 SE 10<sup>th</sup> Street, Topeka, Shawnee County, Kansas placed on first reading September 16, 2003 was again presented.

John Myers, Chief Administrative Office gave the staff report and explained the company's expansion since 1991. He stated that the company originally employed 25 people in a 55,000 square foot facility and now currently occupies a 200,000 square foot facility and has approximately 700 employees. The application for property tax exemption is for a major expansion of their Topeka distribution facility and will create approximately 20 new jobs. The project includes a new capital investment of \$4,300,000 for building and site preparation, building construction, and machinery and equipment and the project would generate an additional \$85,000 of ad valorem taxation.

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

Councilmember Lane moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Stubbs 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.

ORDINANCE NO. 18093 introduced by Mayor Harry Felker relating to the operation of the parks and recreation advisory board responsibilities, amending Topeka City Code Section 102-58, and repealing said original section placed on first reading September 16, 2003 was again presented.

Rogers Brazier, Parks and Recreation Director gave the staff report.

Bill Edwards, chairman of the Parks and Recreation Advisory Board appeared for questions.

Councilmember Alcala expressed concern with the lack of geographical diversity of the board and the need to implement term limitations so the city is represented fairly.

Councilmember Pomeroy stated that there is a need for new board members to generate new ideas.

Councilmember Nave also stated that he agrees that there should be term limitations to allow for new vision.

Councilmember Alcala moved to refer the ordinance to the Public, Health and Safety Committee. The motion was seconded by Councilmember Lane.

Councilmember Stubbs stated that term limitations need to be addressed for all boards and believes that this ordinance should be placed in the Policy and Finance Committee.

Councilmember Pomeroy stated that he would oppose sending the ordinance to the Public, Health and Safety Committee because he believes the board has diversity, however term limitations need to be defined for all boards.

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)

Councilmember Price moved to adopt the ordinance. The motion seconded by Councilmember Stubbs carried. Councilmember Alcalá voted "no". (8-1-0)

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

ORDINANCE NO. 18094 introduced by Councilmember Clark Duffy relating to the reorganization of the planning and zoning program of the City of Topeka, specifically creating a City of Topeka planning commission, pursuant to K.S.A. 12-741 *et seq.* providing for transition measures, and amending City of Topeka Code Section 110-26 through 110-50 inclusive, 110-71 through 110-77 inclusive and specifically repealing said original sections placed on first reading September 16, 2003 was again presented.

Brenden Long, City Attorney explained that the changes that were made to the ordinance were technical amendments only.

Councilmember Duffy moved to approve the amendments. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

Rich Eckert, Shawnee County attorney explained the intentions of the County if the Metropolitan Planning organization is split up. He presented the following:

- 1) Create a separate County Planning Department and County Planning Commission.
- 2) Create a resolution that would eliminate joint zoning regulations in the 3-mile extraterritorial area.

- 3) Create a resolution enacting county subdivision regulations into all parts of unincorporated Shawnee County areas.
- 4) Create a resolution dealing with particular parts of the zoning regulations that are unique to the County only.

Councilmember Haynes asked if there was anything the City could do to prevent the split.

In response, Rich Eckert explained that he could not answer that question, however, that is an issue that needs to be addressed by both government entities.

Councilmember Alcalá asked if the Comprehensive Metropolitan Plan and all other regulations that have been approved would need to be re-approved if the Planning Commission splits. He also asked if there would be a time frame that has to be followed.

Brenden Long explained that the ordinance states that all current plans and regulations that are currently in effect within the city limits would remain in effect, unless a new plan is presented by the new commission for adoption.

Harold Houk, Chairman of the Metropolitan Planning Commission (MPO) explained the action taken at the Planning Commission meeting on September 22, 2003. He stated that the Planning Commission opposes the split of the joint Planning Commission, as well as the MPO. They believe it would cause needless duplication of staff and costs, potential loss of delay in federal funds, and eliminate proper planning for the community as a whole.

Councilmember Duffy asked if the Planning Commission has discussed resolving the concerns of the existing ordinance.

Harold Houk explained that they have reviewed the ordinance and do not recommend any changes provided the joint commission remains in place.

Councilmember Stubbs stated that she would like to clarify that this action is not a reflection of the current Planning Commission, only an attempt to move forward.

Mayor Felker noted that they have not yet researched the exact amount of jobs that may be lost.

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

FINAL PLAT for Monarch Meadow Subdivision located on the south side of SW 41<sup>st</sup> Street, approximately 985-feet west of SW Wanamaker Road within unincorporated Shawnee County, Kansas was presented. (*P03/12*)

ORDINANCE NO. 18095 introduced by Mayor Harry Felker annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, and located on the south side of SW 41<sup>st</sup> Street, approximately 985-feet west of SW Wanamaker Road, and adjacent to the City boundary, 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 placed on first reading September 16, 2003 was again presented. This was deferred from the meeting of September 16, 2003. (*A03/07*)

Barry Beagle, Planning Department gave the staff report.

Brian Smith, representative for the applicant appeared to answer questions. He explained that the primary concern is the inadequate road infrastructure at the intersection of SW 41<sup>st</sup> Street and Wanamaker Road, an area that is included in the 2006 Capital Improvement Budget. He continued to explain that they have met all requirements and asked that the City Council apply the same standards that have been applied to others.

Mike Murray, representative for area residents stated that they appreciate the improvements that are going to be made to SW 41<sup>st</sup> Street and Wanamaker Road intersection. He continued to explain that their main concern is public safety and therefore, they oppose any new subdivisions in the area until the road infrastructure is improved and can handle the increased traffic. He also stated that the Auburn-Washburn School District is opposed to new development until the roads are improved and asked that the Council place a restriction on the plat that would prevent development until the roads are improved.

Mike Lopez, area resident stated that he opposed all new subdivisions in the area because of the need for improvements of road infrastructure, water service and larger schools to accommodate the new students.

Councilmember Duffy stated that problems concerning road infrastructure in rural Shawnee County should be taken care of by the County.

Councilmember Price suggested that area residents help fund the road improvements.

Joseph Ledbetter appeared and spoke in support of the proposal. He stated that the development would add a huge tax base to the City's economy, create jobs for the community, and encourage City population growth.

Councilmember Stubbs stated that the Council does not have the authority to place restrictions on final plats.

Councilmember Stubbs moved to refer to the Planning Commission with the stipulation that the plat would be presented to the Council within the 60-day time limit. The motion was seconded by Councilmember Price.

Councilmember Alcalá asked what kind of impact restricting the permits would have on the development.

Brian Smith stated that the applicant would oppose the delay of permits because there would not be residents occupying the homes for almost a year. The question of adequate road structure at the SW 41<sup>st</sup> Street and Wanamaker intersection was approved in the 1999 Capital Budget and the most recent traffic study for this area showed that a signaled intersection would not be needed until 2008. He also stated that the applicant has already agreed to the restriction of commercial development permits until the road construction is complete.

Councilmember Stubbs stated that they must address the current traffic issues, as well as the need for, and enforcing of new policy tools.

Councilmember Duffy asked if they could impose a benefit district on the area, if the proposal is accepted.

Brenden Long stated that is it possible to create a benefit district for improvements of SW 41<sup>st</sup> Street; however, if impact fees are associated with approval of the final plat they could not retroactively apply the fees.

Councilmember Alcalá stated that he believes the area should be financed through a benefit district.

Councilmember Haynes stated that the improvements should be paid for by a benefit district and policy issues need to be addressed.

The motion to refer to the Planning Commission failed. Councilmembers Lane, Alcalá, Pomeroy, Nave and Duffy voted "no". (4-5-0)

Councilmember Alcalá moved to approve the final plat and adopt the ordinance. The motion seconded by Councilmember Lane carried. Councilmembers Haynes, Stubbs, Preisner and Price voted "no". (5-4-0)



The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave and Duffy -5. Noes: Haynes, Stubbs, Preisner and Price -4.

A FINAL PLAT for Lauren's Bay Subdivision by Brainstorm Development Group, L.L.C. on property located between SW Marlboro Road and SW Shenandoah Road and between SW 43<sup>rd</sup> Terrace and SW 46<sup>th</sup> Street within unincorporated Shawnee County, Kansas was presented. (P03/3)

Barry Beagle gave the staff report and explained that Lauren's Bay Subdivision directly ties in with Monarch Meadows Subdivision, beginning immediately west through SW 44<sup>th</sup> Street, completing a proper circulation system.

Gene Jani, Brainstorm Development Group, L.L.C. appeared to answer questions. He stated that he has completed all of the regulations and requirements for the development, researched infrastructure, traffic safety and water service, invested \$35,000 of personal money and agreed to annexation. He continued to explain that the Lauren's Bay Subdivision creates connectivity with other subdivisions, and he would appreciate the same treatment that other developers have received.

Councilmember Preisner moved to approve the final plat. The motion was seconded by Councilmember Alcala.

Councilmember Stubbs stated that she is concerned with the opposition of the neighbors and would like to remind the Council that she gave out the wrong information concerning public comment and believes it would be of great disservice to the public if they were not allowed to speak on the issue.

Councilmember Stubbs made a substitute motion to defer for two weeks. The motion was seconded by Councilmember Duffy.

Councilmember Pomeroy stated that the subdivisions should proceed by orderly growth allowing for improvements of the roads.

Councilmember Preisner stated that because they have already approved Monarch Meadows Subdivision and the applicant has completed all of the requirements the Council should approve the final plat.

Gene Jani stated that he previously spoke with Councilmember Stubbs and believes that she would not approve the final plat even if the improvements to the road infrastructure were implemented.

In response, Councilmember Stubbs stated that she does not agree with Mr. Jani and that she would approve the subdivision when road infrastructure is improved.

Councilmember Preisner called the question.

The motion to defer for two weeks failed. Councilmembers Lane, Alcalá, Nave, Haynes and Preisner voted "no". (4-5-0)

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

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. 28490-01, approximately located along SW 5<sup>th</sup> Street and SW 6<sup>th</sup> Street 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. 28493-00, approximately located on Wanamaker Road, from 10<sup>th</sup> Street to 17<sup>th</sup> Street was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Pomeroy stated that the Policy and Finance Committee would review both resolutions regarding the City's Procurement Program presented at the September 16, 2003 City Council meeting by Councilmember Alcalá and Councilmember Haynes.

Councilmember Duffy announced that there would be an Economic and Development Committee meeting on September 26, 2003 at 11:30 a.m. in the City Council Office.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Pomeroy inquired on the sewer back up claim concerning Shiloh Baptist Church.

Councilmember Duffy asked if the members of the JEDO Board have the authority to amend an Interlocal Agreement. He requested that the Council receive a copy of the list of JEDO Board members and what actions were taken at the meetings. He also requested information on if he is still a member of the JEDO Board, terms and conditions of membership, and finally, the intentions of the JEDO Board concerning utilization of allocated funds.

Councilmember Haynes requested that a memo addressing Councilmember Duffy's questions concerning the JEDO Board be distributed to the Council as soon as possible.

Councilmember Nave stated that it is very important that the JEDO Board receives clear and concise answers to their questions, and if the JEDO Board issues are not resolved as soon as possible it would have a serious impact on the message the City is sending to the community concerning diversity.

Brenden Long stated that the primary issue concerning “racial preference” or a “set aside program” is if it is unconstitutional, and this must be proven by a study showing that a certain group has been discriminated against by a particular government entity.

Councilmember Alcalá stated he has never had any problems receiving information from the JEDO Board or communicating with them. He further stated that the Council must make a positive change in policy and procedure that would have a long-term effect on minority businesses in the City of Topeka.

Councilmember Stubbs expressed concern with the legality of incorporating the word “goals” or “set aside program” into the revised JEDO Board ordinance and stated that they need policy criteria to follow when making JEDO Board decisions.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 9:47 p.m.

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Iris Walker  
City Clerk