

City Council Minutes – January 13, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 13, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs, and Price -7. Mayor James A. McClinton presided -1.

AFTER THE MEETING was called to order, prayer was offered by Reverend Tom Watson, Elshaddai Church of God in Christ.

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

THE CONSENT AGENDA was presented as follows:

Approval of claim of Roger Davis alleging that on or about August 27, 2003, there was a water main break at 1801 SW 30th that caused the sewer line to shift and the sewer backed up into his basement at 1801 SW 30th causing damage, was presented. The amount of damages claimed is \$21,382.92.

Minutes of the Regular Meeting of January 6, 2004 were presented.

AN APPLICATION for a Dance Hall License bearing the approval of the Chief of Police and City Inspectors from Azteca Club, 1201 SE 6th Avenue, was presented.

AN APPLICATION for a Cereal Malt Beverage license bearing the approval of the Chief of Police and City Inspectors from Miami Tavern and Grill, 3026 NE Seward, was presented.

Councilmember Pomeroy moved to approve the consent agenda. The motion seconded by Councilmember Price carried. (6-1-0) Councilmember Nave voted “no”.

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, January 13, 2004, at 7:00 P.M. in conjunction with vacation request V04A/1 by W and M Properties, L.L.C. to vacate an east/west alley right-of-way extending east of SW Clay Street and SW 8th Avenue.

ORDINANCE NO. 18152 introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of a 20-foot wide public alley right-of-way located east of SW Clay Street, the centerline of which is approximately 140-feet south of SW 8th Avenue as dedicated by the plat of Horne's Addition, City of Topeka, Shawnee County, Kansas, placed on first reading January 6, 2004, was again presented. (V04A/1)

Bill Fiander, Planning Department gave the staff report and stated that the owners wished to vacate the alley to consolidate like-ownership on the north and south sides of the alley into one contiguous property.

Mike Engler, Bartlett and West appeared for questions.

Councilmember Pomeroy asked the intent of the applicant and noted that the property is zoned PUD on the north side and residential on the south side. He asked if there is an assumption that it would all become business PUD if the vacation of the alley were approved.

Mike Engler stated that they had made no assumptions that the zoning would change on the south side. He stated that they did not have a plan as of yet.

Councilmember Pomeroy stated that he had no problem with the vacation of the alley, but he would have great reservations about encroachment on the residential area to the south.

Michael Bradley, Enhancement Chair of the Old Town Neighborhood Improvement Association appeared and stated that they had no position on the vacation request. He stated that they do have concerns about development of the area, and wanted to make sure there was not a presumption that the zoning would change due to the vacation request.

Councilmember Price moved to close the public hearing and adopt the ordinance. The motion was seconded by Councilmember Nave.

Councilmember Pomeroy requested that the question be divided.

The motion to close the public hearing carried unanimously. (7-0-0)

Councilmember Pomeroy stated that he is satisfied after the discussion with Mr. Engler that there is no expectation on the City's part to allow encroachment on the residential zoning to the south and so he would support the vacation request.

The motion to adopt the ordinance carried. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –7. Absent: Preisner –1.

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, January 13, 2004, at 7:00 P.M. in conjunction with vacation request V03S/2 by the City of Topeka Public Works – Water Division to vacate a portion of Bolmar road presently referred to as Waterworks Drive.

ORDINANCE NO. 18153 introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of a portion of a street right-of-way Bolmar Avenue located west of NW MacVicar Avenue and north of I-70, City of Topeka, Shawnee County, Kansas, placed on first reading January 6, 2004, was again presented. (V03S/2)

Bill Fiander, Planning Department gave the staff report and stated that the Water Division is requesting to vacate this public right-of-way for security purposes. He stated that this is an exclusive drive to the Water Treatment Plant.

Councilmember Stubbs moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Pomeroy carried unanimously. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –7. Absent: Preisner –1.

A ZONING PETITION and ORDINANCE NO. 18154 introduced by Deputy Mayor Duane F. Pomeroy amending the Master PUD Plan of Northland Shopping Center by providing for development of commercial land use and residential housing on property located at the

southeast corner of NW Topeka Boulevard and NW Menninger Road in the City of Topeka, Kansas placed on first reading November 4, 2003, was again presented. (Z69/44D)

Bill Fiander, Planning Department gave the staff report and stated that this was referred back to the Planning Commission on November 18, 2003 for the commission to reconsider its recommendation regarding granting a variance to reduce the perimeter setback from 30 feet to 15 feet on the south property line. He stated that the Planning Commission reconsidered this proposal at their December 15, 2003 meeting and recommended approval. He explained the proposal is for a planned residential development consisting of 324 total units in 22 apartment buildings.

Ross Freeman appeared and stated that he was asked to present for George Hersh, the applicant. He stated that this was actually down-zoning because the PUD would be a smaller development than what would be allowed in the current zoning. He explained the project would be comparable to the Summit Woods development and that it is within the city limits. He stated that the traffic study showed that potential trips would be reduced from 12,000 to 2,000 per day with the amendment.

Councilmember Stubbs asked about the amount of green space in the project.

Ross Freeman showed a map and stated that there was an abundance of green space in the project.

Councilmember Alcalá expressed his concern about the density of the project and asked what basis they used to determine the number of buildings for the project.

Ross Freeman responded that they had a market study created and it showed this was the best utilization of the property. He stated that there is a balance of the number of units per building and square footage.

Councilmember Alcalá also expressed his concern that the property could be sold in four or five years to an owner who does not live here and is only concerned with collecting rent.

Ross Freeman explained that they have checks with taxing credits and Section 42 properties, and they have the lowest rate of default because the limited partners are involved in the property.

George Hersh, applicant stated that the proposed project would be on 30 acres.

Councilmember Alcalá asked if there was accessibility for emergency vehicles.

Dan Neil, Deputy Fire Chief stated that they take a look at all of these developments to make sure they are accessible to fire trucks.

Jack Gumb, Melissa Brown, Greg DeBacker, Ira Freel, Rebecca Presley, Mary Presley, and Chris McGinnis appeared and expressed their concerns about funding of future infrastructure that may be needed because of this project; increased traffic on Topeka Boulevard; possible condemnation of private property if Topeka Boulevard needed to be widened; possible depreciation of homes in their neighborhood because of the twenty-two apartment buildings; the project would change the neighborhood from a suburban area to a crowded neighborhood; and concerns that the applicant would not maintain the property.

Dave Ireland appeared and stated that over the years that he served on the Planning Commission he heard appeals for this type of housing in North Topeka. He stated that this was an opportunity to provide that housing under a controlled PUD. He stated that the applicants have a buffered area in its inner structure.

Each Councilmember declared their exparte communication.

Councilmember Nave expressed his concern that developers do not communicate with the residents in the area. He stated that he had further concerns about funding for future infrastructure improvements, and he was troubled by the density of the project.

Councilmember Haynes noted that the property is zoned for commercial development and if commercially developed, would create more traffic than what is being proposed. He asked if an Improvement District could be established for improvements to the infrastructure.

Brenden Long, City Attorney stated that there is currently no request for infrastructure improvements and an improvement district should not be established with a zoning request.

Councilmember Alcalá expressed his concern that there was no communication or input from the neighbors, and he believed this was corral housing that is subsidized. He stated that the project would also increase traffic in the area, and he believed the property could be sold for residential. He further stated that he would not want to live there, and for these reasons he would not support the amendment.

Councilmember Pomeroy stated that he did not believe there was enough density in the project to call it corraling. He stated that the city has approved projects that are more dense than this proposal in other parts of the community such as the project off of Huntoon and east of Lake Shawnee. He stated that he believed it would be unwise for the council to vote against subsidized housing, especially in a school district that is least integrated. He stated that this is subsidized housing, but not Section 8, and he supports this proposal.

Councilmember Pomeroy moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Duffy carried. Councilmembers Alcalá and Nave voted “no”. (5-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Haynes, Duffy, Stubbs and Price –5. Noes: Alcalá and Nave –2. Absent: Preisner –1.

ORDINANCE NO. 18155 introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of a .57-foot wide street right-of-way the length of property located at 112 E. 8th Street and a 1.22 by 5-foot street right-of-way located on same property legally described as Lot 112 E. 8th Street, Original Town Subdivision, City of Topeka, Shawnee County, Kansas, placed on first reading January 6, 2004, was again presented. (V98S/5)

Bill Fiander, Planning Department gave the staff report and stated this corrects an error found in the legal description.

The ordinance was adopted on roll call vote as follows: Ayes: Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –7. Absent: Preisner –1.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 10th Avenue and SW Robinson Avenue in the City of Topeka, Kansas, from “R-1” Single Family Dwelling District to “M-1” Two Family Dwelling District, placed on first reading January 6, 2004, was again presented. (Z77/50)

Bill Fiander, Planning Department gave the staff report and stated that this zoning was under a Resolution of Intent and this would complete the zoning.

Councilmember Price moved to refer the ordinance to the Public Health and Safety Committee to review. The motion was seconded by Councilmember Duffy.

Following a discussion relating to the process needed to rezone properties with outstanding Resolutions of Intent, the motion carried. Councilmember Alcala voted “no”.

(6-1-0)

A ZONING PETITION AND AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 north of SE 44th Street, west of SE Michigan Avenue and either side of SE Illinois Avenue in the City of Topeka, Kansas, from “R-1” Single Family Dwelling District to “M-1” Two Family Dwelling District, placed on first reading January 6, 2004, was again presented. (Z03/49)

Karl Capps, applicant appeared and stated that he listened to the neighbors and requested the petition be denied.

Councilmember Alcala declared his exparte communications.

Councilmember Pomeroy moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Stubbs failed. Councilmembers Pomeroy, Nave, Haynes, Duffy, Stubbs and Price voted “no”. (1-6-0)

A ZONING PETITION AND AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 either side of SW Woodbridge Drive, the centerline of which is approximately 385-feet north of SW 10th Avenue in the City of Topeka, Kansas from “R-1” Single Family Dwelling District, “M-1” Two Family Dwelling District, “D&O” Multiple Family Dwelling and Office District, “O&I-1” Office and Institutional District, and “PUD” Planned Unit

Development District to “M-1” Two Family Dwelling District, “M-1a” Limited Multiple Family Dwelling District and “M-2” Multiple Family Dwelling District, placed on first reading January 6, 2004, was again presented. (Z03/61)

Bill Fiander, Planning Department gave the staff report and stated that the major concern expressed at the Planning Commission was the density of the project, and that the project would increase traffic in the area.

Wayne Stratton, Elizabeth Gillespie, Leland Chandler, Alan Stanton and Connie Winkley appeared in opposition to the proposed project. They expressed their concerns that the area is mostly residential and there has been disruptive behavior in the duplexes that are currently in the area; property values of their homes would decrease; traffic would increase; not enough separation between single family homes and the multi-family, and inadequate parking for the duplexes.

Mike Engler, Bartlett and West appeared representing the applicant. He stated that they agreed with changing the zoning to M-1a as suggested by staff. He stated that they are also agreeable with M-1 zoning on the east side of the cul-de-sac since it backs up to owners property on the other side of the cul-de-sac. He stated that they would build Woodbridge Drive to 10th Street and direct people to the west. He explained that these would be high quality units ranging in price from \$130,000 to \$150,000 with two-car garages, and there is a demand for these units. He stated that capacity for water and sewer is there.

Councilmember Duffy expressed his concerns about the existing M-2 surrounding residential zoning on three sides.

Mike Engler stated that whatever is built would be in consort with what is there. He stated that the developers have a stake in the property because they own most of it.

Councilmembers Nave, Haynes, Duffy, Stubbs and Price declared their exparte communications.

Councilmember Stubbs asked for an explanation of the 6-5-0 vote of the Planning Commission.

Bill Fiander stated he believed it was because of the density of the project.

Councilmember Price stated that he would like to receive additional information from the Planning Commission regarding their consideration of zoning cases that come before the Council.

Councilmember Duffy stated that the zoning is not consistent with the type of zoning the Council supports in this community. He stated that he is concerned with the density of the project and suggested sending the proposal back to the Planning Commission to lower the density, and they could still have a viable project.

Councilmember Stubbs stated that she was also concerned about the density of the project and believes there could be a compromise.

Councilmember Nave moved to remand the petition back to the Planning Commission. The motion seconded by Councilmember Stubbs carried. Councilmember Alcala voted “no”. (6-1-0)

A ZONING PETITION AND ORDINANCE NO. 18156 introduced by Deputy Mayor Duane F. Pomeroy 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 east side of SW Arvonnia Place, the centerline of which is approximately 1,100 feet north of SW 17th Street in the City of Topeka, Kansas, from

“R-1” Single Family Dwelling District to “C-4” Commercial District, placed on first reading January 6, 2004, was again presented. (Z03/62)

Bill Fiander, Planning Department gave the staff report.

Each Councilmember stated that they did not have any exparte communications.

Councilmember Price moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –7. Absent: Preisner –1.

ORDINANCE NO. 18157 introduced by Deputy Mayor Duane F. Pomeroy relating to the Topeka Planning Commission and specifically increasing the number of members to make a quorum and amending City of Topeka Code § 110-35 and specifically repealing said original section, placed on first reading January 6, 2004, was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –7. Absent: Preisner –1.

ORDINANCE NO. 18158 introduced by Deputy Mayor Duane F. Pomeroy relating to the amendments of the current edition of the Standard Traffic Ordinance for Kansas Cities, amending City of Topeka Code § 142-152 and specifically repealing said original section, placed on first reading January 6, 2004, was again presented.

Brenden Long, City Attorney stated that approval would allow prosecution of deficient sample cases in Municipal Court in accordance with State statutes.

Councilmember Stubbs moved to adopt the ordinance. The motion seconded by Councilmember Price carried unanimously. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –7. Absent: Preisner –1.

ORDINANCE NO. 18159 introduced by Deputy Mayor Duane F. Pomeroy relating to the Capital City Downtown Business Improvement District, establishing the method of raising revenue, amending City of Topeka Code § 42-38 and specifically repealing said original section, placed on first reading January 6, 2004, was again presented.

Councilmember Duffy moved to adopt the ordinance. The motion was seconded by Councilmember Stubbs.

Councilmember Alcalá stated that he has received a suggestion to raise the cap to \$11,000 from \$10,000 so the larger businesses would share in the increase of the rate per square foot.

Jim Parrish, Downtown Business Improvement Board member stated that they would also like to request the ordinance be amended by decreasing the rate per square foot from .049 to .0485. He stated that this would not significantly impact what they are trying to raise in fees.

Councilmember Alcalá moved to amend the ordinance on line 27 by decreasing the rate per square foot from .049 to .0485, and on line 30 by raising the cap from \$10,000 to \$11,000. The motion was seconded by Councilmember Pomeroy.

Councilmember Pomeroy stated that the amendment would spread the fees out some, and without the amendment, the larger companies would see no increase.

Councilmember Duffy stated that he supports raising the cap, but not decreasing the square foot rate. He asked that the question be divided.

Jim Parrish stated that they wanted the decrease to help build good will for this tool they have.

The motion to increase the cap to \$11,000 carried unanimously. (7-0-0)

The motion to decrease the rate from .049 to .0485 failed. Councilmembers Nave, Duffy and Price voted “no”. (4-3-0)

Councilmember Pomeroy moved to adopt the ordinance as amended. The motion seconded by Councilmember Price carried. Councilmember Alcalá voted “no”. (6-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –6. Noes: Alcalá –1. Absent: Preisner –1.

ORDINANCE NO. 18160 introduced by Councilmembers Clark Duffy, Gary Price, and Duane Pomeroy, relating to the creation of the Economic Development Fund, placed on first reading October 14, 2003, was again presented. (This was referred to a work session from the meeting of October 14, 2003.)

Councilmember Duffy explained that they have been working on the next four documents for the past four years and they were explained in detail at a work session. He stated that these documents would implement the economic development strategy of the City.

Councilmember Stubbs stated that there is concern that attaching an arts fee to Industrial Revenue Bonds (IRBs) may force businesses to get their IRBs from the county instead of the city. She suggested making it optional and they would feel like they are a part of the program and could give voluntarily, instead of it being mandatory. She stated that she believes there is some merit to that concern.

Councilmember Duffy stated that there is a waiver in the ordinance if an IRB applicant objected to contributing.

Councilmember Stubbs stated they might not want to decline giving to the arts and that would put them in an uncomfortable position.

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –6. Noes: Alcalá –1.

ORDINANCE NO. 18161 introduced by Councilmembers Clark Duffy, Duane Pomeroy, and Gary Price, sitting as the Economic Development Committee, relating to the arts, creating the Office of the Arts, the Arts Advisory Committee, the Arts Grant Program, the Art in Public Places Program and establishing fees to be deposited to the Topeka Arts Fund, placed on first reading October 14, 2003, was again presented. (This was referred to a work session from the meeting of October 14, 2003.)

Councilmember Duffy moved to amend the ordinance on lines 44 and 45 by striking “one member shall be appointed by each of the City Council members” and change it to say “eleven members shall be appointed by the Mayor”. The motion seconded by Councilmember Nave failed. Councilmembers Alcalá, Pomeroy, Nave, Haynes and Stubbs voted “no”. (2-5-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Nave, Haynes, Duffy, Stubbs and Price –6. Noes: Alcalá –1. Absent: Preisner –1.

ORDINANCE NO. 18162 introduced by Councilmember Clark Duffy relating to the arts fund, amending City of Topeka Code § 138-86 and the addition of § 183-96 and specifically repealing said original sections, placed on first reading October 14, 2003, was again presented. (This was referred to a work session from the meeting of October 14, 2003.)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Nave, Duffy, Stubbs and Price –5. Noes: Alcalá and Haynes –2. Absent: Preisner –1.

A RESOLUTION introduced by Councilmembers Clark Duffy, Duane Pomeroy, and Gary Price relating to the issuance of economic development revenue bonds, and establishing an origination fee for all economic development bonds and rescinding City of Topeka Resolution

No. 6876, was presented. (This was referred to a work session from the meeting of October 14, 2003.)

Councilmember Stubbs moved to amend the resolution to make contribution to the arts program voluntary.

Brenden Long, City Attorney suggested language for the amendment on Page 5, line 109.

Mayor McClinton stated that the motion died for lack of a second.

Councilmember Haynes moved to amend the resolution to require something in writing from the applicant regarding the amount of the voluntary contribution so that they would know the applicant's intent. The motion was seconded by Councilmember Stubbs.

Brenden Long, City Attorney stated that the suggestion could be included, it would need to be clear that the contribution is voluntary.

Councilmember Duffy stated that they worked on this for four years and this issue was not discussed. He stated that he received a memo from John Myers, the City's economic development specialist, and Jim Langford, Budget Director that stated they believed approval of this document would have a chilling effect on economic development, and the amount they would receive would not pay for administration's cost to calculate it. He stated that Dave Graversen wrote that he agreed with them and asked Dave how much money they were anticipating.

Dave Graversen stated that they questioned if this would really generate the money needed for the arts program. He stated that the amount would vary from year to year depending on the number of projects brought to the city. He stated because it is a provision that the city has and the county does not, it might cause applicants to go to the county for their IRBs.

Councilmember Stubbs stated that she does not believe it would have any impact on economic development in one way or the other. She stated that she would not like to see it being used against the city because the city's fees are higher than the county's.

The motion failed. Councilmembers Alcalá, Pomeroy, Duffy and Price voted "no".
(3-4-0)

Councilmember Price moved to approve the resolution. The motion seconded by Councilmember Duffy failed. Councilmembers Alcalá, Nave, Haynes, and Stubbs voted "no".
(3-4-0)

Councilmember Duffy stated that he was on the prevailing side on the vote on the ordinance relating to the arts fund, and moved to reconsider the previous action. The motion seconded by Councilmember Stubbs carried. Councilmembers Alcalá and Pomeroy voted "no".
(5-2-0)

ORDINANCE NO. 18162 introduced by Councilmember Clark Duffy relating to the arts fund, amending City of Topeka Code § 138-86 and the addition of § 183-96 and specifically repealing said original sections, placed on first reading October 14, 2003, was again presented.

Councilmember Duffy moved to amend the ordinance on line 41 by inserting \$100,000 so the language would read as follows: "The Mayor shall, as part of his budget, include the amount of one hundred thousand dollars (\$100,000) as an appropriation to the arts fund for economic development in the City of Topeka. The motion seconded by Councilmember Price carried. Councilmembers Alcalá and Stubbs voted "no". (5-2-0)

Councilmember Duffy moved to adopt the ordinance as amended. The motion seconded by Councilmember Price carried. Councilmembers Alcalá and Stubbs voted "no". (5-2-0)

A RESOLUTION introduced by Mayor Felker setting forth the City of Topeka's policy regarding the undertaking of street improvement projects and repealing City of Topeka Resolution No. 6846, was presented.

Neil Dobler, Public Works Director asked to have the resolution referred to committee to come out at the same time as the impact fee ordinances. He explained the process of meeting with developers and builders to get their input on the policy. He stated that they planned to have a work session to discuss this in three weeks.

Councilmember Haynes moved to refer the resolution to the Committee of the Whole. The motion seconded by Councilmember Stubbs carried unanimously. (7-0-0)

Councilmember Pomeroy moved to extend the meeting through the end of the agenda. The motion seconded by Councilmember Price carried. Councilmembers Alcalá and Duffy voted "no". (5-2-0)

CLAIM APPEAL of Foy and Charlotte Akins alleging that on October 20, 2003, the police caused damage to their lawn at 2518 SE Jefferson after driving across it in pursuit of a possible criminal, was presented. The amount of damages claimed is \$590.

Brenden Long, City Attorney stated that these appeals were heard at a work session last week. He stated that the claim appeals did not receive the necessary votes to approve or deny.

Councilmember Stubbs moved to uphold the legal department's recommendation to deny the claim. The motion seconded by Councilmember Price carried. Councilmembers Pomeroy and Haynes voted "no". (5-2-0)

CLAIM APPEAL of Howard Dyer alleging that on June 26, 2003, his car was hit by a City street sweeper while parked on 5th Street in front of his house, was presented. The amount of damages claimed is \$609.37.

Councilmember Price moved to uphold the legal department's recommendation to deny the claim. The motion seconded by Councilmember Stubbs failed. Councilmembers Pomeroy, Nave and Haynes voted "no". (4-3-0)

Councilmember Duffy moved to approve the claim. The motion seconded by Councilmember Nave failed. Councilmembers Alcalá, Duffy, Stubbs and Price voted "no". (3-4-0)

CLAIM APPEAL of Yolanda McClenic alleging that on August 30, 2003 her basement located at 1193 SW Collins was flooded as a result of a sewer backup, was presented. The amount of damages claimed is \$3,258.22.

Councilmember Price moved to uphold the legal department's recommendation to deny the claim. The motion seconded by Councilmember Stubbs carried unanimously. (7-0-0)

CLAIM APPEAL of Ben Scott alleging that in October 2001 the water was turned off at 2016 SE Adams and the City turned the water back on at the same address without a request to do so causing damage to the house, was presented. The amount of damages claimed is \$2,530.

Councilmember Haynes moved to uphold the legal department's recommendation to deny the claim. The motion seconded by Councilmember Price failed. Councilmembers Pomeroy, Nave and Duffy voted "no". (4-3-0)

Councilmember Duffy moved to approve the claim. The motion seconded by Councilmember Pomeroy failed. Councilmembers Alcalá, Stubbs and Price voted "no". (4-3-0)

RESOLUTION NO. 7432 introduced by Mayor James A. McClinton authorizing an expenditure not to exceed \$17,677 from the park land acquisition and development fund for the purpose of acquiring property to extend the Shunga Trail, was presented.

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

Councilmember Stubbs moved to approve the resolution. The motion seconded by Councilmember Duffy carried unanimously. (7-0-0)

RESOLUTION NO. 7433 introduced by Mayor James A. McClinton authorizing an expenditure not to exceed \$6,993 from the park land acquisition and development fund for the purpose of acquiring property to extend the Shunga Trail, was presented.

Councilmember Haynes moved to approve the resolution. The motion seconded by Councilmember Stubbs carried unanimously. (7-0-0)

RESOLUTION NO. 7434 introduced by Mayor James A. McClinton requesting the Board of Commissioners, Shawnee County, Kansas, to approve annexation of noncontiguous property, was presented.

David Thurbon, Planning Director gave the staff report and stated that the applicant wanted city water and that requires annexation.

Councilmember Haynes moved to approve the resolution. The motion seconded by Councilmember Nave carried unanimously. (7-0-0)

AN ORDINANCE introduced by Mayor James A. McClinton authorizing the issuance of \$46,180,000 aggregate principal amount of Combined Utility Improvement and Refunding Revenue Bonds, Series 2004-A, of the City of Topeka, Kansas, under the authority of K.S.A. 10-116A, K.S.A. 10-1201 et seq., and all amendments thereto, was presented for first reading.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen, CAO stated that he would do whatever he could to work with the Council for funding for the Office of the Arts program. He distributed a copy of a press release of the Mayor's press conference regarding closing of Engine Company No. 3 so the Council

would know exactly was presented. He also distributed some reports that were previously requested by Councilmember Duffy on the Link Loan program and DBE report.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Pomeroy stated that he had previously requested a chart from the Fire Chief comparing the effect on insurance rates from other communities having fewer stations.

Councilmember Price asked for an update on the code review ordinances.

Councilmember Duffy stated that gaming is being considered by the legislature and the City should be standing in line saying “me too”. He asked that administration get with the lobbyists and make sure that Topeka will not get shut out in anyway on this legislation. He stated that he is still wanting for monthly, quarterly reports and monthly way master reports he previously requested. He stated that during discussion on December 19th a question came up on the Kansas Fly-Off project. He stated that on the map he received, the park was eliminated there was a road going in the middle of what was supposed to be the park. He asked if that was consistent with the ordinance the council adopted. He stated that he also requested a list of economic development incentives from John Myers that he has not received. He also asked that administration let him know if they are not going to pursue the artist relocation program. He stated that Mr. Myers has not been responsive to that program.

NO FURTHER BUSINESS appearing the meeting was adjourned at 11:18 p.m.

Iris Walker
City Clerk