

City Council Minutes –February 10, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 10, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Alcalá, Pomeroy, Chancler, Nave, Haynes, Duffy, Stubbs Preisner and Price -9. Mayor James A. McClinton presided -1.

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

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

Councilmember Duffy moved to suspend the Council Rules. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Councilmember Duffy moved to add a resolution relating to House Bill 2654 to the Consent Agenda. The motion seconded by Councilmember Preisner carried. Councilmember Alcalá voted "no". (8-1-0)

Councilmember Duffy moved to reinstate the Council Rules. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Councilmember Alcalá asked to pull item 3D, a resolution opposing House Bill 2654 for separate discussion.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7441 introduced by Councilmember Lisa Stubbs relating to housing tax credits for senior rental housing through Rosehill Place, L.L.C. and Continental Realty Inc., was presented.

Minutes of the Regular Meeting of February 3, 2004 were presented.

Cereal Malt Beverage applications bearing the approval of the Chief of Police and City

Inspectors for The Celtic Fox Irish Pub and Restaurant at 118 SW 8th Street, and Texaco at 1107 SW 6th Avenue, were presented.

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

RESOLUTION NO. 7442 introduced by Mayor James A. McClinton expressing the opposition of the City of Topeka to House Bill 2654 concerning the annexation authority of cities in Kansas, was presented.

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Price carried. Councilmember Alcalá voted "no". (8-1-0)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy, pertaining to an amendment to the text and map of the Topeka Comprehensive Metropolitan Plan placed on first reading December 30, 2003, was again presented. (CPA03/03)

Bill Fiander, Planning Director gave the staff report and explained the four themes presented in the plan:

- Re-establish the area between 10th Street and Kansas Avenue extending to the railroad tracks, west of Monroe Street to a residential area
- Designate the Monroe School as a National Historic site
- Identify historic cultural resources
- Balance and better accommodate the "Mixed Use" area.

Wayne Hill gave the history of their family business located in the Monroe Neighborhood.

John Hamilton, representing several homeowners and business owners in the Monroe area spoke in opposition of the plan. He also distributed written comments from Marc Lahr who was ill and asked that all zoning cases be denied except Zoning Case No. Z03/38.

Frank Kirtdoll stated that he opposes the plan and all downzoning except Zoning Case

No. Z03/38.

Larry Hill, Hill & Co. stated that the plan would cause harm to their family business expansion. He continued to explain that he was grandfathered into the current zoning regulations however, if the downzoning is approved any future buyers would have to operate a warehouse type business, or lose the zoning classification.

Councilmember Preisner asked for assurance that they would not build a warehouse on the property during Phase II of the plan.

Councilmember Duffy asked if Mr. Hill is willing to relocate his business and if any individuals or organizations have offered to assist with relocation.

Councilmember Pomeroy asked if the traffic would increase if a new warehouse was built.

In response, Mr. Hill stated that they would not build a warehouse for two years if the plan is not approved and zoning is not changed. He continued to explain that he has visited with the City of Topeka Chief Administrative Officer, Go Topeka, the Federal Government and several independent business owners and developers and an alternative has not been reached. He also stated that the majority of the traffic flow would still come to the main building, not the warehouse.

Bob Keeshan appeared in opposition to the plan and urged the Council to kill the plan. He stated that the majority of the people in the Monroe area are opposed to the plan. He stated that he believes the City record concerning the plan is inaccurate. He submitted two videotapes of Planning Commission meetings to the Mayor for the record. He continued to explain that if the plan were passed Hill & Co. would not have any defenses for rezoning in the future.

Eunice Baggerly stated that she supports the plan and would like to see more residents

in the area.

Amy Herrick, owner of Reliable Car Shop stated that the downzoning would degrade and erode the future value of her property. She explained that the average property tax generated from a business in the area is \$14,700 and \$1,004 from homeowners.

Fred Sanders stated that the Topeka Housing Authority (THA) would not pursue any projects in the Monroe area. The THA is working on a model block project for the area and hope to make a presentation on February 25, 2004, however, the Monroe NIA has been excluded from the decision making process for the project.

Henry McClure stated that he opposes the plan because it does not address the highest and best use of the property.

Jennie Prichard, Vice President of the Monroe NIA stated that she opposes the plan because it exceeds the NIA boundaries and she believes it is an attempt to control the land.

Joseph Schoonover stated that residential blight in the Monroe area was aided by two failed plans, and he is opposed to this one. He stated that a plan should be created based on reality instead of what the potential might be.

Gary Schnellbacker, real estate appraiser stated that he is opposed to downzoning as a concept because it takes away the value of the property.

Dave Ireland explained the vote of the Topeka Metropolitan Planning Commission regarding the Monroe Plan.

Constance Sawyer stated that she supports the plan because the area has a lot of history.

Carolyn Brady area resident stated that she was opposed to the plan.

Frank Meade landowner in the area stated that he opposes the plan.

Doug Jones, member of the Historical Society stated that he supports the plan because the

area is too close to the interstate and the railroad tracks for people to build homes.

Andre Mehrens business owner in the area stated that he is opposed to the downzoning because it would limit business expansion possibilities.

Bob Sherburne stated growth only happens when people have options to improve their property.

Scott Teeter stated that he has two sons enrolled in the Magnet School and supports the plan and believes it represents the best compromise. However, he is concerned with the safety and attractiveness of the area around the school.

Joseph Ledbetter stated that he opposes the plan except Zoning Case No. Z03/38. He believes that the plan will drive out businesses because they cannot expand.

Howard Blackman stated that he opposes the plan because the businesses generate most of the revenue from the area.

John Huffman, business owner on Kansas Avenue stated that he has buyers for his property located on 21st and Kansas Avenue however, he cannot get them to commit because the zoning is undecided. He also stated that he would appreciate a decision as soon as possible on the matter.

Each Councilmember declared exparte communications including numerous personal conversations with area residents, email, telephone conversations, and written correspondence.

Councilmember Alcalá moved to approve the plan. The motion seconded by Councilmember Pomeroy failed. Councilmembers Chancler, Nave, Haynes, Duffy, Preisner and Price voted "no". (3-6-0)

Brenden Long, City Attorney stated that it would be difficult to legally support the Monroe zoning cases if approved, because the plan was denied.

Councilmember Pomeroy stated that he would prefer to remand the zoning cases back to the Planning Commission so they can work on a new neighborhood plan.

Councilmember Stubbs stated that the zoning cases should be disapproved because it will be at least a year or more before a new plan is established, and it would be inconsiderate to make the business owners wait for a decision to be made.

Councilmember Duffy stated that whatever decision is made the business owners in the area should be aware of the fact that the zoning may change.

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from “C-4” Commercial District, “C-2” Commercial District, “M-3” Multiple-Family Dwelling District, and “M-2” Multiple-Family Dwelling District, TO “C-5” Commercial District, in an area of irregular boundary as reflected on the attached vicinity map placed on first reading December 30, 2003, was again presented. (Z03/38)

Councilmember Pomeroy suggested reverting back to reflective zoning.

Each Councilmember declared exparte communications including personal conversations with area residents, email, telephone conversations, and written correspondence.

Frank Kirtdoll stated that the NIA supports the zoning.

Councilmember Haynes moved to disapprove the zoning petition and ordinance. The motion seconded by Councilmember Nave carried. Councilmember Pomeroy voted "no".

(8-1-0)

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from “M-3” Multiple-Family Dwelling District, and “M-2” Multiple-Family Dwelling District, “E” Multiple-Family Dwelling District, and “I-1” Light Industrial District TO “M-1a” Limited Multiple-Family Dwelling District, in an area of irregular boundary as reflected on the attached vicinity map placed on first reading December 30, 2003, was again presented. (Z03/39)

Each Councilmember declared exparte communications including personal conversations with area residents, email, telephone conversations, and written correspondence.

Frank Kirtdoll stated that he plans to build a museum in the area.

Councilmember Nave moved to disapprove the zoning petition and ordinance. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from “M-1” Two-Family Dwelling District, “M-2” Multiple-Family Dwelling District, “O&I-1” Office and Institutional District, “C-4” Commercial District, and “I-1” Light Industrial District TO “R-2” Single-Family Dwelling District, in an area of irregular boundary as reflected on the attached vicinity map placed on first reading December 30, 2003, was again presented. (Z03/40)

Each Councilmember declared exparte communications including personal conversations

with area residents, email, telephone conversations, and written correspondence.

Frank Kirtdoll stated that he concurs with the Council that the zoning case should be disapproved.

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

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from “C-4” Commercial District, and “I-1” Light Industrial District, “M-2” Multiple-Family Dwelling District, and “M-1” Two-Family Dwelling District, TO “X-1” Mixed-Use District, in an area of irregular boundary as reflected on the attached vicinity map placed on first reading December 30, 2003, was again presented. (Z03/41)

Each Councilmember declared exparte communications including personal conversations with area residents, email, telephone conversations, and written correspondence.

Frank Kirtdoll stated that he concurs with the Council that the zoning case should be disapproved.

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

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the

District Zoning Classification from “I-1” Light Industrial District, “I-2” Heavy Industrial District, and “M-1” Two-Family Dwelling District, TO “X-2” Mixed-Use District, in an area of irregular boundary as reflected on the attached vicinity map placed on first reading December 30, 2003, was again presented. (Z03/42)

Each Councilmember declared exparte communications including personal conversations with area residents, email, telephone conversations, and written correspondence.

Frank Kirtdoll stated that he concurs with the Council that the zoning case should be disapproved.

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

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from “I-1” Light Industrial District, “I-2” Heavy Industrial District, and “R-1” Single-Family Dwelling District, TO “OS-1” Open Space District, in an area of irregular boundary as reflected on the attached vicinity map placed on first reading December 30, 2003, was again presented. (Z03/43)

Each Councilmember declared exparte communications including personal conversations with area residents, email, telephone conversations, and written correspondence.

Frank Kirtdoll stated that he concurs with the Council that the zoning case should be disapproved.

Councilmember Preisner moved to disapprove the zoning petition and ordinance. The

motion seconded by Councilmember Nave carried unanimously. (9-0-0)

Councilmember Nave encouraged business owners and residents to work closely with Planning staff on developing a new plan.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the location of equipment, amending Topeka City Code Section 130-693, and repealing said original section placed on first reading December 9, 2003 was again presented.

Councilmember Stubbs moved to defer the ordinance for one week. The motion was seconded by Councilmember Preisner.

Frank Kirtdoll stated he has a right to speak to each item on the agenda.

The motion to defer one week carried unanimously. (9-0-0)

AN ORDINANCE introduced by Mayor James A. McClinton authorizing the initiation of condemnation proceedings to acquire property by eminent domain for the City of Topeka Waterline Improvement Project No. 28491-00, in the area of Vail Avenue and Lower Silver Lake Road south and east to North Topeka Avenue and Laurent Street was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton authorizing the initiation of condemnation proceedings to acquire property by eminent domain for the City of Topeka Street Improvement Project No. 60444-02, in the area of the SW 20th Park was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, granting Westar Energy, Inc., its successors and assigns, and electric energy franchise in the City of Topeka, Kansas, prescribing the terms thereof and relating thereto, and repealing Ordinance No. 15667 was presented for first reading.

Vic Miller requested that he be allowed to speak.

Mayor McClinton ruled that public comment on first readings was out of order.

Councilmember Alcala challenged the ruling.

Mayor McClinton asked for a vote on if the ruling of the chair should be upheld.

The ruling of the chair was upheld. Councilmembers Alcala, Chancler, and Haynes voted "no". (6-3-0)

AN ORDINANCE introduced by Mayor James A. McClinton annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located between SW 17th Street and SW 21st Street approximately 700-feet west of the intersection of SW 17th Street and SW Arvonía Place and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A03/10)

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Duffy announced that there would be an Economic Development Committee meeting held on February 13, 2004 at 11:00 a.m. in the City Council Office.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen distributed the weekly Legislative report.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcala requested additional information on the cost of water service, secondary access and impact of tax dollars to the area of SW 17th Street and Arvonía Place. He also requested information on Westar Energy, Inc., franchise fees including franchise fee breakdown and amount of revenue from all franchise fees.

Councilmember Duffy asked how the County plans to provide public safety services for the SW 17th Street and Arvonía area and if the City taxpayers have to help pay for the services. He requested information relating to fees vs. property tax to sustain revenue. He also asked if

the ordinance relating to Westar Energy, Inc., franchise agreement required the cost increase to be passed on to the customers. He stated that he would like to address Senate Bill 290, reducing the membership on the Capital Plaza Authority Board. He also stated that he would like the City to take an initiative to meet regularly with other urban Cities to discuss common interests. He also commended staff and volunteers for snow removal efforts.

Councilmember Stubbs stated that she would like to have joint urban City and urban County meetings set up in the future. She also stated that she would encourage everyone to attend the State of Kansas annexation hearing because of the huge financial impact it will have on the state as a whole. She also requested additional information on franchise fees.

Councilmember Haynes thanked Mike Kaiser, Robby McBernie and all other residents who assisted with the snow removal in District 5.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:50 p.m.

Iris Walker
City Clerk