

City Council Minutes –February 17, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 17, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Alcala, 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 Alcala.

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

Councilmember Stubbs asked to pull item 3C, a final plat for Southbrook Subdivision No. 5 for separate discussion.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION to approve the re-appointments of Kay Houser, Trini Perez and Ted Heim to serve another two-year term on the Community Corrections Advisory Board was presented.

A FINAL PLAT for Hanrahan South Subdivision located on the north side of SE 37th Street at SE South Park Avenue in the City of Topeka, Kansas, was presented. (P00/7)

Minutes of the Regular Meeting of February 10, 2004 were presented.

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

A FINAL PLAT for Southbrook Subdivision No. 5 on a 3.36-acre parcel located at the northwest corner of SW 37th Street and SW Fairlawn Road in the City of Topeka, was presented. (P03/50)

Councilmember Stubbs expressed concern with the access off of 37th Street.

Bill Fiander, Planning Department stated that the road access has met all standards for subdivision regulations.

Mike Engler, Barlett & West explained that the entrance was set prior to the street improvements that are presently there.

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

Councilmember Alcala requested to move item #50 to the top of Unfinished Business due to the amount of people signed up to speak on the issue.

Mayor McClinton stated that item #50 would be considered as the first item under Unfinished Business.

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, February 17, 2004, at 7:00 P.M. in conjunction with Conditional Use Permit request CU03/19 by Joshua and Sandra D. Akpovona to establish a motor vehicle sales facility on property located on the northwest corner of SW 6th Avenue and Buchanan Street in the City of Topeka, Kansas.

RESOLUTION NO. 7443 introduced by Mayor James A. McClinton in accordance with Section 48-23a.03.2.k of the Code of the City of Topeka, approving a Conditional Use Permit to establish a motor vehicle sales facility on property currently zoned "X-1" Mixed Use District and located at the northwest corner of SW 6th Avenue and SW Buchanan Street in the City of Topeka, Kansas, was presented. (CU03/19)

Bill Fiander, Planning Department gave the staff report and explained that the expansion involves a legal non-conforming use, and the design is contrary to the neighborhood plan. He continued to explain that they would like the area to have more emphasis on residential development. He also stated that they did not agree with the proposed 6-foot chain link fencing

along Buchanan, and the area NIA believes that the fencing should be a 4-foot ornamented fence to better accommodate the neighborhood.

Councilmember Alcalá expressed concern with the height of the fence in relation to crime prevention in the area.

Matt Warner, H.T. Paul architect stated that seventy-four percent of the neighborhood supports the project, however, there are two main issues surrounding renovation versus demolition of the house. He explained that the renovation of the house would cost over \$200,000 which is too costly for the applicant, and they are unable to insure the home because of the condition that it is in. He continued to explain that they are proposing a 6-foot ornamental fence along 6th Street and north along Buchanan Street to the existing driveway, and a 6-foot chain link fence would be used for the remainder of the project.

Councilmember Preisner moved to close the public hearing and approve the resolution. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

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 placed on first reading February 10, 2004, was again presented.

Councilmember Preisner moved to refer the ordinance to the Policy and Finance Committee. The motion was seconded by Councilmember Haynes.

Councilmember Duffy stated that there are three factors he would like to have the committee address:

- Should the City of Topeka maximize the use of assets or allow corporations to use them free of charge, and should the corporations pay property taxes.
- Address who regulates the rates for Westar Energy, Inc., how can the City of Topeka affect the rate, and what factors would be involved in lowering the rates.

- Analyze the best way to stabilize or relieve the tax burden from the citizens of Topeka.

Councilmember Alcalá stated that he would not support the motion based on the information received in the work session concerning an additional gas and electrical rate increase in March of this year. He stated that he would like to see them cut funds from the capital budget and nonessential services to make up the cost difference.

Councilmember Stubbs stated that she would like the committee to examine the 2005 budget and present a report that would be easy for the public to comprehend so they can better understand the possible rate increase.

The motion to refer the ordinance to the Policy and Finance Committee carried. Councilmembers Alcalá and Chancler voted "no". (7-2-0)

ORDINANCE NO. 18166 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 placed on first reading February 10, 2004, was again presented.

Neil Dobler, Public Works Director gave the staff report.

David Price stated that he believes the city is not in compliance with the rules and regulations of condemnation.

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

ORDINANCE NO. 18167 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 placed on first

reading February 10, 2004, was again presented.

Neil Dobler gave the staff report.

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

ORDINANCE NO. 18168 introduced by Councilmembers Jeff Preisner, John Nave and Clark Duffy authorizing the St. Patrick's Day Committee to hold the St. Patrick's Day Street Fair on March 17, 2004 placed on first reading February 10, 2004, was again presented.

Pat Finan, Chairman of the St. Patrick's Day Committee gave a brief overview of the celebration and stated that they would like to move it outside.

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

A FINAL PLAT for Capitol View Subdivision on a 11.5-acre parcel located on the south side of SW 17th Street extended and approximately 1050 feet west of SW Arvonía Place within unincorporated Shawnee County, Kansas, was presented. (P03/42)

ORDINANCE NO. 18169 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 placed on first reading February 10, 2004, was again presented. (A03/10)

David Thurbon, Planning Director gave the staff report.

Councilmember Alcalá stated that he would oppose the annexation because he believes that the cost to the city will be too high compared to the potential revenue that could be made by

providing water service to the area.

Brent Blackburn appeared in support of the final plat and stated that the applicants are willing to participate in the extension of 17th Street when needed, including signalization.

Mike Engler, Bartlett & West Engineering stated that the applicant will pay a portion or percentage of the extension of 17th Street with the provision that they are credited for improvements that they would have already made to 17th Street. He also stated that they would pay a portion of the traffic signal cost.

Councilmember Stubbs asked a series of questions regarding the developmental costs to improve 17th Street.

Councilmember Price suggested including an offer in the proposal to help pay for the traffic light.

Mike Engler stated that they could commit up to \$20,000 toward the cost of the traffic signal.

Councilmember Alcala asked if emergency response service could be provided to the area without prolonging response time to other areas of the City.

In response, Dennis Phillips, Fire Chief stated that the area would be well protected without compromising other areas of the City.

Vic Miller stated that the reason the County Commission did not approve the annexation was because the City does not have a street improvement policy in place.

Councilmember Haynes moved to disapprove the final plat. The motion was seconded by Councilmember Alcala.

Councilmember Pomeroy made a substitute motion to approve the final plat. The motion was seconded by Councilmember Duffy.

The Chair ruled that the substitute motion was out of order.

Councilmember Alcalá moved to defer until the street improvement policy issue is resolved. The motion died due to lack of second.

The motion to disapprove the final plat failed. Councilmembers Alcalá and Chancler voted “yes”. (2-7-0)

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

A ZONING PETITION and ORDINANCE NO. 18170 introduced by Mayor James A. McClinton designating real property more specifically described herein as a historic landmark and presently zoned “R-2” Single Family Dwelling District and located at 1020 SW 8th Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading February 3, 2004, was again presented. (HL03/6)

Bill Fiander gave the staff report.

Connie Mize spoke in support of the proposal.

Mayor McClinton asked if there was additional exparte, besides Councilmember Pomeroy. There was none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18171 introduced by Mayor James A. McClinton designating real property more specifically described herein as a historic landmark and presently zoned “C-5” Commercial District and located at 600 SE Madison Street in the City

of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading February 3, 2004, was again presented. (HLO3/7)

Bill Fiander gave the staff report.

Mayor McClinton asked if there was any exparte communications. There was none declared.

Councilmember Nave 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: Chancler, Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9.

A ZONING PETITION and ORDINANCE NO. 18172 introduced by Mayor James A. McClinton 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 northeast corner of SE 37th Street and S. Kansas Avenue in the City of Topeka, Kansas from “I-1” Light Industrial District to “PUD” Planned Unit Development District (“I-1” use group) placed on first reading February 3, 2004, was again presented. (Z03/32)

Bill Fiander gave the staff report.

Councilmember Chancler asked if the tenants would be relocated.

Donald Hanrahan, applicant appeared to answer questions and explained that the land is leased and the tenants own their own mobile homes.

Joseph Ledbetter, President of the Hi-Crest NIA appeared in support of the project.

Mayor McClinton asked if there was any exparte communications. There was none declared.

Councilmember Haynes moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Price carried. Councilmember Chancler voted "no".

(8-1-0)

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

ORDINANCE NO. 18173 introduced by 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, 2003, was again presented. (Z77/50)

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

A ZONING PETITION and AN ORDINANCE introduced by Mayor James A. McClinton 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 northeast corner of NW Western Avenue and NW Gordon Street in the City of Topeka, Kansas from "R-2" Single Family Dwelling District to "R-4" Single Family Dwelling District placed on first reading February 3, 2004, was again presented. (Z04/1)

Bill Fiander gave the staff report.

Councilmember Alcalá stated that this proposal had not been presented to the Neighborhood Improvement Association (NIA).

Councilmember Alcalá moved to defer until the next NIA meeting on March 1, 2004.

The motion was seconded by Councilmember Nave.

Mike Engler, Bartlett & West Engineering explained the project and stated that the applicant chose this site because the zoning is in compliance with the current neighborhood plan.

Mayor McClinton asked if there was additional exparte, besides Councilmember Alcala. There was none declared.

The motion to defer until the next NIA meeting carried. Councilmembers Duffy, Stubbs, Preisner and Price voted "no". (5-4-0)

A ZONING PETITION and AN ORDINANCE introduced by Mayor James A. McClinton 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 west side of SE California Avenue, the centerline of which is approximately 300-feet north of SE 25th Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "C-2" Commercial District to "R-1" Single Family Dwelling District placed on first reading February 3, 2004, placed on first reading. (Z04/4)

Bill Fiander gave the staff report.

Cliff Cormier, property owner stated that the property is in a transitional period and rezoning the property to "R-1" will negate the financial investment he has in the property. He asked the Council to deny the request.

Councilmember Nave stated that he is concerned about commercial development across the street from the Highland Park High School.

Brent Blackburn stated that he supports the petition and the Council should consider the best use of the land.

Teddy Van Vale stated that he distributed a petition signed by members of his church that are opposed to the zoning. They believe it would disturb the security and serenity of long term residents.

Mayor McClinton asked if there was any exparte communications. There was none declared.

Councilmember Preisner moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Price failed. Councilmembers Pomeroy, Haynes, Duffy, Stubbs, Preisner and Price voted "no". (4-5-0)

A ZONING PETITION and ORDINANCE NO. 18174 introduced by Mayor James A. McClinton 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 from 3370 to 3432 SW Brendan Avenue in the City of Topeka, Kansas from "M-1" Two Family Dwelling District with Resolution of Intent for "C-4" Commercial District to "M-1" Two Family Dwelling District placed on first reading February 3, 2004, was again presented. (Z04/5)

Bill Fiander gave the staff report.

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

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

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

A ZONING PETITION and ORDINANCE NO. 18175 introduced by Mayor James A. McClinton 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 3707 SW 6th Avenue from “E” Multiple Family Dwelling District with Resolution of Intent for “C-2” Commercial District and “C-4” Commercial District to “O&I-3” Office and Institutional District placed on first reading February 3, 2004, was again presented. (Z04/6)

Bill Fiander gave the staff report.

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

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

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

A ZONING PETITION and ORDINANCE NO. 18176 introduced by Mayor James A. McClinton 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 3545 SW 6th Avenue from “E” Multiple Family Dwelling District with Resolution of Intent for “C-4” Commercial District to “O&I-2” Office and Institutional District placed on first reading February 3, 2004, was again presented. (Z04/7)

Bill Fiander gave the staff report.

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

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

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

ORDINANCE NO. 18177 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. This was deferred from the meeting of February 10, 2004.

Neil Dobler gave the staff report.

Brenden Long, City Attorney explained the amendments to strike lines 23, 24, and 25 and add a new subsection 2(H) stating, "The public works director and planning director or their designees may jointly grant an exception from the underground utility location requirement to allow for construction of a residential or commercial structure. In granting such an exception, the following factors shall be considered:

1. Whether a plat has been recorded.
2. Percentage of adjacent homes constructed with above ground utilities.
3. Location of existing above ground utilities.
4. Location of roads or streets.
5. Location of natural water courses.
6. Sub surface geological conditions.
7. Topographical conditions.
8. Excessive financial burden.

Councilmember Stubbs moved to amend the ordinance as stated by the City Attorney.

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

Councilmember Stubbs moved to adopt the ordinance as amended. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

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

A RESOLUTION introduced by Councilmember Lisa Stubbs relating to the establishment of an unpaid volunteer position of Chaplain to the Mayor, City Council and City Staff was presented.

Councilmember Stubbs moved to refer the resolution to the Policy and Finance Committee. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

RESOLUTION NO. 7444 introduced by Mayor James A. McClinton setting the public hearing for Lateral Sanitary Sewer District No. 40919-01, located at approximately SE 21st Street and SE Rice Road was presented.

Neil Dobler gave the staff report.

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

AN ORDINANCE introduced by Mayor James A. McClinton relating to the execution of an amendment to a loan agreement between Topeka, Kansas and the State of Kansas, for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a Wastewater Treatment Project was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Park Improvement Project No. 30243-00, which provides for the improvement of existing park facilities as more specifically described herein, all pursuant to Section A12-1 of the Code of the

City of Topeka was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, pertaining to an amendment to the text and map of the Topeka Comprehensive Metropolitan Plan was presented for first reading. *(CPA 03/03)*

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 that a sign be posted to inform the public that all cell phones should be turned off or put on vibrant during Council meetings.

Councilmember Pomeroy distributed a handout from H.T. Paul relating to the Ward-Mead Neighborhood Zoning Proposal.

Councilmember Duffy submitted three documents for a future agenda relating to eligibility standards for economic development tax exemptions, procedures for review of Industrial Revenue Bond applications, and countywide financing of infrastructure and economic development.

Ted Mize and Fred Sanders appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:28 p.m.

Iris Walker
City Clerk