

City Council Minutes – September 14, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 14, 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, Duffy, Nave, Haynes, Stubbs and Preisner -8. Mayor James A. McClinton presided -1.

AFTER THE MEETING was called to order, prayer was offered by Reverend Richard Rounds, McCrite Chapel.

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

INTERVIEWS AND ELECTION OF COUNCILMEMBER FOR DISTRICT NO. 9, was presented.

Richard Harmon, Tiffany Muller, Jack Crocker, Robert Percival and Terry Crowder interviewed for the vacancy of Council District No. 9.

Following the interviews, Tiffany Muller received five votes and was chosen to represent Council District No. 9.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7521 introduced by Councilmember Jeff Preisner granting Shakes Frozen Custard an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

A FINAL PLAT for Monarch Meadow Subdivision No. 2 located on the east side of SW Lincolnshire Road approximately 200-feet south of SW 41st Street in the City of Topeka, Kansas, was presented. (P04/25)

The City Clerk stated that the minutes of the regular meeting of September 7, 2004 would be presented at next week's Council meeting.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Stubbs carried unanimously. (8-0-0)

RESOLUTION NO. 7520 introduced by Mayor James A. McClinton authorizing the issuance and delivery of \$39,125,000 principal amount of General Obligation Refunding Bonds, Series 2004-B, of the City of Topeka, Kansas, for the purpose of providing funds to refund certain outstanding General Obligation Bonds of the City; prescribing the form and details of said bonds and authorizing the execution of an escrow trust agreement by and between the City and Commerce Bank & Trust, Topeka, Kansas, and authorizing certain other documents and actions in connection with the issuance of the bonds, all pursuant to K.S.A. 10-427 *et. seq.* and Article I of Charter 10 of the Kansas Statutes annotated, all as amended was presented.

ORDINANCE NO. 18315 introduced by Mayor James A. McClinton authorizing the issuance of \$39,125,000 aggregate principal amount of General Obligation Refunding Bonds, Series 2004-B, of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, and K.S.A. 10-427 *et seq.*, all as amended placed on first reading September 7, 2004 was again presented.

Randy Bailes, Financial Director gave the staff report and explained that they received a total of three bids and the lowest bid was received at 3.5134 percent from George K. Baum. He stated that the refunding of the outstanding General Obligation Bonds would save approximately 3 million dollars over the life of the bonds. He stated that Kelsi Powell and Jeff White from Columbia Capital Management were present to answer questions.

Councilmember Nave moved to adopt the ordinance and approve the resolution. The motion seconded by Councilmember Haynes carried unanimously. (8-0-0)

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

A PROJECT BUDGET in the amount of \$17,000 and ORDINANCE NO. 18316 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 13143-00, Phase 1, which provides for the hiring of a structural engineer to provide an engineering analysis of Fire Station No. 5 as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading September 7, 2004 was again presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Chancler moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

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

A ZONING PETITION and AN ORDINANCE introduced by Mayor James A. McClinton amending the Master PUD Plan of SE 29th Street and Cunningham Street by allowing development of an indoor mini-storage on property located at 210, 220, 230, 240, and 250 SE 29th Street in the City of Topeka, Kansas placed on first reading September 7, 2004 was again presented. (Z73/19D)

Bill Fiander, Planning Department gave the staff report and explained that the applicant is proposing to construct a warehouse that is a drive-in climate controlled indoor mini-storage, and on-site caretaker's unit. He stated that because a drive-in climate controlled mini-storage would comprise the eastern portion of the space, it is to be re-classified as "I-1" use group to accommodate the proposed uses.

Councilmember Preisner moved to approve the zoning petition and adopt the ordinance. The motion was seconded by Councilmember Stubbs.

Mayverdis Jamison, Diane Alpert, Josh Sheldon, Betty Phillips, Ettamae Trice, Sandy Swartz and Mike Bell spoke in opposition of the proposal and stated that the new mini-storage facility would create very few jobs; increase large truck traffic; depreciate the value of area residential homes; and disturb the peace in surrounding neighborhoods. They also expressed concern with the Planning Department's decision to support the proposal instead of following the neighborhood revitalization plan.

Councilmember Stubbs asked Bill Fiander to explain why the Planning Department is supporting the proposal.

In response, Bill Fiander stated that the site no longer appears to be the most suitable for large-scale retail because of the amount of time it has set vacant. He also stated that the site is not located at a major intersection where greater traffic volumes warrant large-scale retail uses. He continued to explained that the re-use of a portion of the property to something other than retail is considered rational under the given market conditions.

Councilmember Stubbs stated that the large empty retail space is going to be difficult to fill, and this proposal may be the start of something good for the area.

Councilmember Chancler, Haynes, Nave, Preisner and Alcalá declared exparte communications through email, personal conversations, telephone calls, and U.S. mail.

Councilmember Nave stated that he would not participate in voting on this issue because he had given testimony at the Planning Commission meeting.

Councilmember Chancler urged the City Council to support the neighborhood and listen to what the people of the area want.

The City Attorney stated if the proposal did not receive a super majority vote it would automatically be remanded back to the Planning Commission for reconsideration.

The motion to approve the zoning petition and adopt the ordinance failed. Councilmembers Pomeroy, Alcalá, Chancler, Duffy and Haynes voted "no". (2-5-0)

Councilmember Preisner urged opposing Councilmembers to explain to the Planning Commission what they would like them to address regarding the proposal in order for them to proceed with reconsideration of the petition

AN ORDINANCE introduced by Councilmember John Alcalá relating to tethering or chaining of dogs, amending City of Topeka Code Section 18-4, Cruelty to animals and repealing said original section placed on first reading September 7, 2004 was again presented.

Mary Ann Earp, Topeka Humane Society spoke in support of the ordinance and stated that the Cities of Wichita and Lawrence have implemented anti-tethering laws. She also noted that the Department of Agriculture issued a statement that the tethering of dogs was inhumane.

Councilmember Alcalá moved to refer the ordinance to the Policy and Finance Committee for revisions. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

AN ORDINANCE introduced by Mayor James A. McClinton relating to fire fighting services and providing for a contract between the City of Topeka, Kansas and the Goodyear Tire and Rubber Company Plant for the purpose of furnishing all fire department services for the Goodyear Tire and Rubber Company Plant placed on first reading April 27, 2004 was again presented.

Councilmember Preisner gave the committee report and stated that the Public, Health and Safety Committee recommended "Do Not Pass" by a vote of 3-0-0 on August 16, 2004. He

explained that the committee did not approve the contract because there is not a formula in place regarding the charge of fire fighting service fees outside of city limits.

Councilmember Preisner moved to adopt the committee report. The motion seconded by Councilmember Haynes carried. Councilmember Stubbs was out of the room. (7-1-0)

The ordinance failed to be adopted on roll call vote as follows: Nos: Pomeroy, Alcalá, Chancler, Duffy, Nave, Haynes and Preisner -7. Stubbs was out of the room -1.

AN AMENDED PROJECT BUDGET in the amount of \$4,378,620 and ORDINANCE NO. 18317 introduced by Mayor James A. McClinton, authorizing an amendment to the project budget for Project No. 12062-00, which provides for the construction of a Kansas Avenue fly-off ramp: west alignment which will require the construction of a bridge and ramp adjoining the Kansas Avenue Bridge as well as the improvement of the trafficway from Kansas Avenue to Curtis Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka and K.S.A. 12-685, *et seq.* and repealing City of Topeka Ordinance No. 18041 placed on first reading July 27, 2004 was again presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Alcalá moved to approve the amended project budget and adopt the ordinance. The motion was seconded by Councilmember Haynes.

Bob Sherburne spoke in opposition of the project and stated that it would only benefit the Great Overland Station.

The motion to approve the amended project budget and adopt the ordinance carried. Councilmembers Pomeroy, Chancler and Duffy voted "no". (5-3-0)

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

FINAL PLAT for Sherwood Estates Subdivision No. 63 located on the northeast corner of the intersection of SW 41st Street and SW Indian Hills Road in unincorporated Shawnee County, Kansas, was presented.

Bill Fiander, Planning Department gave the staff report and stated that the Planning Commission initially disapproved the final plat. He explained that they reconsidered their decision because the development would be served by the Sherwood Regional Treatment Plant and the City is obligated under contract to provide water service to the area, therefore making the area exempt from the requirement for annexation prior to reviewing city services. He also stated that he would like to clarify that the Planning Commission's intention is to approve only those subdivisions located within the municipal service boundary so that the property can be annexed into the City of Topeka.

Councilmember Duffy stated that he concurs with the Planning Commission that the property should be annexed. However, he does not understand how a property receiving city services is exempt from annexation.

Bill Fiander stated that property is exempt from annexation because of the contract that it is under with Sherwood Regional Treatment Plant. He explained that the property would be an island annexation and the owner would have to ask the County to concur with the annexation.

Councilmember Duffy suggested that they hold the final plat for annexation proposal from the consultant, and require that they reduce the total number of lots.

David Thurbon, Planning Director stated that the Planning Commission agrees with the Council regarding annexation of property and strive to annex areas as soon as practicable.

Councilmember Preisner moved to approve the final plat. The motion died due to a lack of a second.

Councilmember Stubbs asked when the preliminary proposal was approved because she believes that is when they should require annexation prior to providing city services, not in the final plat stage.

Bill Fiander stated that the preliminary plat was submitted in the 1960's.

Councilmember Pomeroy suggested that the Planning Department research the proposal to find out if there was a hook-up limitation placed on the plat.

Brenden Long, City Attorney stated that if they defer the final plat they must take action within thirty days.

Mike Engler, Bartlett & West Engineers stated that the owner expects to be annexed. He explained that island annexation would not be necessary because the property located to the east is contiguous to property under consent to annex, which is contiguous to city property. He also stated that the number of lots has already been reduced from the preliminary proposal.

Councilmember Chancler asked why the process of annexation for these properties has not yet begun.

David Thurbon stated that the annexation process has not begun because they are waiting on the implementation of the annexation plan.

Councilmember Duffy moved to defer the final plat until October 12, 2004 with the intent of reviewing the annexation plan prior to approval. The motion seconded by Councilmember Chancler carried unanimously. (8-0-0)

APPROVAL of a communication recommending Wendling, Noe, Nelson & Johnson, L.L.C., to perform an independent audit for the City's financial statements for the years ended December 31, 2004, 2005 and 2006, with the option to renew the contract for years ended December 31, 2007 and 2008, was presented.

Councilmember Haynes moved to approve the communication. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

A RESOLUTION introduced by Councilmember Duane Pomeroy concerning the Topeka Police Department Helicopter Unit was presented.

Councilmember Pomeroy moved to approve the resolution. The motion was seconded by Councilmember Haynes.

Councilmember Stubbs asked why they are focusing on only one option, instead of studying the entire helicopter program.

Councilmember Pomeroy moved to amend the resolution to strike line 16. The motion seconded by Councilmember Haynes failed. Councilmembers Alcalá, Chancler, Nave, Haynes, Stubbs and Preisner voted "no". (2-6-0)

The motion to approve failed. Alcalá, Chancler, Nave, Stubbs and Preisner. (3-5-0)

A RESOLUTION introduced by Councilmember John Alcalá relating to the purchase of Self-Contained Breathing Apparatus (SCBA) units for the Topeka Fire Department was presented.

Councilmember Alcalá moved to approve the resolution. The motion was seconded by Councilmember Chancler.

Councilmember Alcalá stated that he believes it is very important to provide the City of Topeka Fire Fighters with the necessary equipment to do their job. He suggested that the funding come from the General Fund or any other available funding source.

Councilmember Preisner stated that he agrees with Councilmember Alcalá, however, he questions where they will find the money to fund the equipment.

Dave Graversen, Chief Administrative Officer stated that there is no funding available at this time.

Councilmember Duffy and Councilmember Stubbs stated that they believe this issue should have been presented during budget proceedings.

Councilmember Alcalá stated that he was aware of the need for new equipment prior to the finalization of the budget.

Randy Currie, Interim Fire Chief stated that he expressed the need for new equipment at the July 27, 2004 Fire Department budget presentation, and also submitted a memorandum to Administration on August 13, 2004 regarding the matter.

Councilmember Duffy stated that it was determined that the money would be generated within the department budget to purchase the necessary equipment.

In response, Randy Currie stated that he did find the money within the department budget to purchase the necessary equipment and to implement a new SCBA program beginning next year.

Councilmember Stubbs moved to refer the resolution to the Public, Health and Safety Committee. The motion was seconded by Councilmember Nave.

Councilmember Chancler stated that the safety of the fire fighters and the community is very important and they need to find funding to purchase the necessary equipment.

Councilmember Alcalá stated that he believes this matter is too critical to place in a committee for review.

Councilmember Duffy stated that it is crucial to look at the entire fire department budget, not just an isolated issue when making funding decisions.

The motion to refer the resolution to the Public, Health and Safety Committee carried.
Councilmembers Alcalá and Chancler voted "no". (6-2-0)

Councilmember Alcalá stated that he would like to submit the following statement for the record:

On this date, the Topeka City Council chose not to approve funding for replacement of twenty-five Self-Contained Breathing Apparatus (SCBA) units sorely needed by the Fire Department to ensure the safety of our firefighters. Likewise, Administration has chosen not to take this matter seriously by virtue of its very failure to formulate and propose a plan to replace these units. Therefore, I am placing the City of Topeka on notice that by this inaction, I believe the Governing Body and Administration have acted recklessly and wantonly by potentially placing our firefighters' lives at risk and needlessly opening the door to possible liability claims. I believe it is imperative that the City's Governing Body and Administration work together to find the funds to immediately replace the needed twenty-five SCBA units.

PUBLIC IMPROVEMENT PETITION, PROJECT BUDGET in the amount of \$334,000 and RESOLUTION NO. 7522 introduced by Mayor James A. McClinton authorizing Street Improvement Project No. 60572, Phase 2 as more specifically described herein was presented.

Neil Dobler gave the staff report.

Councilmember Stubbs moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Preisner carried unanimously.
(8-0-0)

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Preisner announced that there would be a Public, Health and Safety Committee meeting on September 20, 2004 at 12:00 noon in the City Council Office.

NO FURTHER BUSINESS appearing the meeting was adjourned at 11:00 p.m.

Iris Walker
City Clerk