

City Council Minutes – October 26, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 26, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Chancler, Nave, Haynes, Stubbs, Preisner and Muller -8. Mayor James A. McClinton presided -1. Absent: Councilmember Duffy -1.

AFTER THE MEETING was called to order, prayer was offered by Reverend Lisa Schwartz, Unitarian Universalist Fellowship of Topeka.

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the re-appointment of John Randolph Mettner, Jr., to the Metropolitan Topeka Airport Authority for a three-year term that would expire on November 30, 2007 was presented.

RESOLUTION NO. 7542 introduced by Mayor James A. McClinton declaring the eligibility of the City of Topeka to submit an application to the Kansas Department of Transportation for use of transportation enhancement funds set forth by the Federal Transportation Equity Act for the 21st century for Improvement Project No. 30127-11, which provides for the Shunga Creek Trail project and authorizing Mayor James A. McClinton to sign the application was presented.

RESOLUTION NO. 7543 introduced by Mayor James A. McClinton declaring the eligibility of the City of Topeka to submit an application to the Kansas Department of Transportation for use of transportation enhancement funds set forth by the Federal Transportation Equity Act for the 21st century for Improvement Project No. 30239-01, which provides for the Deer Creek Trail project and authorizing Mayor James A. McClinton to sign the

application was presented.

RESOLUTION NO. 7544 introduced by Mayor James A. McClinton declaring the eligibility of the City of Topeka to submit an application to the Kansas Department of Transportation for use of transportation enhancement funds set forth by the Federal Transportation Equity Act for the 21st century for Improvement Project No. 86235-04, which provides for the Washburn/Lane pedestrian lighting project and authorizing Mayor James A. McClinton to sign the application was presented.

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for Club London, 720 South Kansas Avenue, was presented.

Minutes of the Regular Meeting of October 19, 2004, were presented.

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

NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, October 26, 2004, at 7:00 P.M. in conjunction with Conditional Use Permit CU04/5 by Alfred P. and Lila C. Gooding to establish a vehicle surface parking lot on located on the north side of SW 8th Avenue and centrally located between SW Tyler Street and SW Polk Street in the City of Topeka, Kansas.

A RESOLUTION introduced by Mayor James A. McClinton in accordance with Section 48-9.02(c)(7) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a vehicle surface parking lot on property currently zoned "M-2" Multiple Family Dwelling District and "M-3" Multiple Family Dwelling District and located on the north side of SW 8th Avenue and centrally located between SW Tyler Street and SW Polk Street in the City of Topeka, Kansas, was presented. (CU04/5)

Bill Fiander, Planning Department gave the staff report. He stated that the Planning Commission recommended disapproval by a vote of 5-2-0 on July 19, 2004. He explained that approval of the proposal would permit the encroachment of an off-site parking lot in an area intended to remain as residential use. He also stated the subject property is part of the Old Town Neighborhood Improvement Association (NIA), and that the immediate vicinity consists primarily of single-family dwellings or multi-family apartments.

Bryan Smith, representative for the applicant appeared and explained the request. He stated that he has contacted the Old Town NIA and businesses in the notification area. He explained that the applicant applied for vacation of the alleyway on May 29, 2002 and was granted the vacation on June 25, 2002 with the intention of constructing a parking lot for Hill's Pet Nutrition.

Councilmember Chancler expressed concern with the Council approving the initial stage of a project and then not following through with it, this creating a negative working relationship with area developers. She also asked why the NIA was not informed of this project while they were developing the Old Town NIA plan.

In response, Bill Fiander clarified that approval of a vacation only determines that there is no longer a use for an alleyway, roadway or public easement. He continued to explain that in no way does it confirm approval of a zoning change to accommodate the proposed use at the time of vacation application.

Councilmember Stubbs stated that the approval of a vacation does not confirm approval of intended land use, only that it is possible. She quoted Barry Beagle, former Planning Department employee from the August 18, 2003 City Council Minutes; "The wording doesn't

authorize construction of a parking lot. There is no connection between the alley vacation and the parking lot.” She also inquired on the necessity of demolishing the buildings.

In response, Bryan Smith stated that it was a strong possibility that the buildings would have been demolished whether the project was approved or not. He explained that the applicant experienced numerous problems with tenants involving drugs and prostitution. He also stated that the buildings were in poor condition and it was not financially feasible to repair them.

Hi Stockwell, President of the Old Town NIA appeared in opposition of the proposal. He stated that the parking lot is in direct conflict with the neighborhood plan.

Michael Bradley, Old Town NIA Enhancement Chair gave a brief overview of the current buildings and tenants in the surrounding proposed area. He stated that he believes that the buildings were demolished due to neglect and lack of tenant management.

Councilmember Preisner moved to close the public hearing and approve the resolution. The motion was seconded by Councilmember Haynes.

Councilmembers Preisner, Pomeroy, Alcala, Chancler, Nave and Muller declared ex parte communications through email, telephone conversations and personal conversations.

Councilmember Pomeroy made a substitute motion to close the public hearing and concur with the Planning Commission. The motion was seconded by Councilmember Stubbs.

Brenden Long, City Attorney stated that he would recommend that they clarify the motion on the table and explained that the resolution would require a super majority vote for approval.

Councilmember Haynes stated that he would abstain from voting because he has a financial conflict of interest.

Councilmember Stubbs moved to close the public hearing. The motion seconded by Councilmember Preisner carried. (7-0-0)

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Stubbs failed. Councilmembers Pomeroy, Alcala, Nave, Stubbs, Preisner and Muller voted "no". Councilmember Haynes abstained. (1-6-0)

ORDINANCE NO. 18332 introduced by Mayor James A. McClinton authorizing the issuance of \$6,875,000 aggregate principal amount of General Obligation Bonds, Series 2004-C, of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, K.S.A. 12-685 *et seq.*, K.S.A. 12-6a01 *et seq.*, the home rule authority granted to the cities of the State of Kansas by Section 5, Article 12 of the Kansas Constitution, and Charter Ordinance Nos. 68 and 89 of the City, all as amended placed on first reading October 19, 2004 was again presented.

RESOLUTION NO. 7540 introduced by Mayor James A. McClinton prescribing the form and details of the General Obligation Bonds, Series 2004-C of the City of Topeka, Kansas, in the aggregate principal amount of \$6,875,000 the issuance of which were authorized by the City pursuant to its Ordinance adopted and approved October 26, 2004; and authorizing certain other documents and actions in connection with the issuance of the bonds was presented.

RESOLUTION NO. 7541 introduced by Mayor James A. McClinton authorizing and directing the issuance of Temporary Notes, Series 2004-A of the City of Topeka, Kansas, in the aggregate principal amount of \$23,140,000 for the purpose of providing funds to pay the cost of renewing a portion of the principal amount of the Series 2003-A Temporary Notes of said city, dated November 24, 2003, and for the purpose of providing funds to pay a portion of the cost of certain improvements in said city was presented.

Jim Langford, Finance Director gave the staff report. He explained that the City of

Topeka received four bids regarding the refinancing of the General Obligation Bonds, with Morgan Stanley D.W., Inc. offering the lowest true interest cost at 3.98%. He also stated that five bids were received for the financing of the Temporary Notes, with City Group Global Markets offering the lowest true interest cost at 1.3884%.

Councilmember Preisner moved to adopt the ordinance and resolutions. The motion seconded by Councilmember Stubbs carried unanimously. (8-0-0)

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

A PROJECT BUDGET in the amount of \$5,946,984 and AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 86248-00, which provides for the City's acquisition and renovation of the current EBA Building located at 620 SE Madison as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading October 5, 2004 was again presented. This ordinance was deferred from the meeting of October 12, 2004.

Councilmember Alcala stated that he would not support this proposal because he does not agree with the current appraisal price of the building.

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Stubbs failed. Councilmembers Pomeroy, Alcala, Chancler and Haynes voted "no". (4-4-0)

The resolution amending the 2004-2005 Capital Budget was withdrawn.

AN ORDINANCE introduced by Mayor James A. McClinton relating to sign regulations, repealing City of Topeka Code Sections 118-277 and 118-280, and amending City of Topeka Code Section 48-31.01, 48-31.02, 48-31.03, 118-1, 118-2, 118-58, 118-59, 118-179, and 118-

276, and repealing the original sections placed on first reading August 24, 2004 was again presented.

Councilmember Stubbs moved to refer the ordinance to the Committee of the Whole for a work session. The motion was seconded by Councilmember Chancler.

Councilmember Alcalá stated that he would not support the ordinance because he believes it is unfriendly to the businesses.

The motion to refer carried. Councilmembers Alcalá and Haynes voted "no". (6-2-0)

Mayor McClinton stated that individuals signed up to speak on this issue would be allowed to speak at the work session.

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 gave the staff report and explained that the Planning Commission reaffirmed their original decision to approve the proposal by a vote of 7-2-1 on October 18, 2004. He also stated that two additional documents were added to the packet; a district map showing all mini-storage facilities within each Council District, and a neighborhood petition signed by area residents opposing the storage facility.

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

Councilmember Chancler stated that she would like to see more consistency regarding approval of projects by the City Council.

Ken Lindemuth, applicant appeared for questions and explained the request.

Ben Swinnen, representative for the applicant stated that the project is consistent with the “Golden Criteria” outlined in the NIA plan.

Mayverdis Jamison, representative for various property owners along Cunningham Street stated that they oppose the storage facilities because it would increase neighborhood noise and traffic.

Rick Schmidt, project engineer appeared for questions.

Betty Phillips spoke in opposition of the project and stated that she opposes the project because it would be contrary to the City’s Comprehensive Plan.

Joseph Ledbetter stated that he supports both sides of the proposal and would be happy to discuss other proposals Mr. Lindemuth might consider for this area.

Diane Alpert, Botwin and Company spoke in opposition of the project and stated that she believes it does not further the revitalization of the area.

Mayor McClinton asked if there were any additional exparte communications besides Councilmembers Alcalá, Chancler, Nave and Haynes. There were none declared.

The motion to approve the zoning petition and adopt the ordinance failed. Councilmembers Alcalá, Chancler, Haynes and Muller voted "no". Councilmember Nave abstained. (3-4-1)

Councilmember Haynes commended Mr. Lindemuth for his interest in developing this particular area of the city, however, he stated that he sympathizes with the concerns expressed by area residents.

A COMMUNICATION requesting the allocation of \$100,000 for Youth and Social Services, Youth Intern Program and Success by Six for FY 2005 was presented.

Councilmember Chancler moved to allocate the \$100,000 as follows:

\$30,000 to the Success by Six Program

\$40,000 to the City of Topeka Intern Program

\$18,455 to the Senior Citizen Centers, distributed as follows;

- \$5,738 to the East Topeka Council on Aging
- \$8,000 to Lulac
- \$1,981 to Papans Landing
- \$2,115 to Papans Landing Home Visiting and Telephone Reassurance Program
- \$621 to Papans Landing for the Home Delivered Meals Program
- \$11,545 to the Contingency fund

The motion was seconded by Councilmember Alcalá.

Councilmember Stubbs expressed concern with the large amount of money being allocated to the City of Topeka Intern Program. She stated that it is a great program but it is not a Youth and Social Service Program, and funding should be the responsibility of each department.

Councilmember Stubbs made a substitute motion to distribute \$50,000 to the Success by Six Program, \$30,000 to the City of Topeka 2005 Youth Intern Program, and \$20,000 to the Senior Citizen Centers as stated by Councilmember Chancler. The motion was seconded by Councilmember Haynes.

Councilmember Chancler expressed concern with allocating the entire \$50,000, requested by Success by Six instead of distributing a portion of the funds to the Contingency fund because there is always worthy projects that are presented to the Council throughout the year.

Dave Graversen, Chief Administrative Officer stated that \$30,000 would adequately fund the City of Topeka Youth Intern Program.

The substitute motion failed. Councilmembers Alcalá, Chancler, Nave and Muller voted "no". (4-4-0)

Councilmember Stubbs stated that allocating money towards the Contingency fund defeats the purpose of a Youth and Social Service funding request application deadline.

Councilmember Stubbs made a substitute motion to move the remaining \$11,545 from the Contingency fund to the Success by Six Program, and allocate the remainder as previously stated by Councilmember Chancler. The motion seconded by Councilmember Preisner carried. Councilmembers Alcalá, Chancler and Nave voted "no". (5-3-0)

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of \$34,890 and RESOLUTION NO. 7545 introduced by Mayor James A. McClinton authorizing Lateral Sanitary Sewer District No. 40659-02 as more specifically described herein was presented.

Neil Dobler, Public Works Director gave the staff report.

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

AN ORDINANCE introduced by Mayor James A. McClinton, instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas to pay the cost for sewage collection and treatment where such payments to the City have not been made due to neglect, failure or refusal to pay, pursuant to K.S.A. 12-631k was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, regarding water service line, amending Topeka City Code Chapter 146, Division 4 and Sections 146-76, 146-77, 146-78, 146-79, 146-80, 146-81, and 146-82 and specifically described herein was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton designating real property

more specifically described herein as a historic landmark and presently zoned “M-1” Two Family Dwelling District and located at 817 SW Lincoln Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading. (HL04/2)

AN ORDINANCE introduced by Mayor James A. McClinton designating real property more specifically described herein as a historic landmark and presently zoned “O&I-2” Office and Institutional District and located at 1101 SW Topeka Boulevard in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading. (HL04/3)

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 at 516 SW Topeka Boulevard in the City of Topeka, Kansas from “M-3” Multiple Family Dwelling District TO “D-1” Downtown Mixed Use District was presented for first reading. (Z04/54)

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 east side of SE Powell Street, the centerline of which is approximately 350-feet north of SE 29th Street in the City of Topeka, Kansas from “R-1” Single Family Dwelling District with Resolution of Intent for “E” Multiple Family Dwelling ALL TO “R-1” Single Family Dwelling District was presented for first reading. (Z04/55)

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 at 1813 SW 29th Street in the City of Topeka, Kansas from “R-1” Single Family Dwelling District with

Resolution of Intent for “D&O” Multiple Family Dwelling and Office District ALL TO “R-1” Single Family Dwelling District was presented for first reading. (Z04/58)

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 13144-00, which provides for miscellaneous building upgrades and general maintenance to city hall and the law enforcement center 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 Councilmember Clark Duffy establishing salaries of the Mayor and City Councilmembers, amending City of Topeka Code Sections 2-26, and repealing said original section was presented for first reading.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen distributed a communication regarding a brief update on the Management Partner’s recommendations.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcala expressed concern with the horizontal parking located near the intersection of 6th Street and Lake Street.

Councilmember Chancler requested that she is notified when information that she has requested is placed in her mailbox.

Councilmember Stubbs commented on Debacker’s drainage problem.

Councilmember Pomeroy commented on the poor condition of the two trailers located in the 600 block of Swygart.

Mayor McClinton commented on the EBA Building proposal and encouraged the Councilmembers to let staff know how they are to proceed with obtaining office space for city departments that are currently leasing space.

Councilmember Pomeroy suggested that staff negotiate a lower purchasing price for the EBA Building.

Kevin Murphy, Joseph Ledbetter and Hi Stockwell appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:45 p.m.

Iris Walker
City Clerk