

City Council Minutes – January 18, 2005

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 18, 2005. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Duffy, Nave, Haynes, Stubbs and Muller -7. Councilmembers absent: Chancler and Preisner -2. Mayor James A. McClinton -1.

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

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

Councilmember Alcalá requested to pull item 3a, a claim appeal for DeAnn Clingan, 4339 Wisconsin Avenue for separate discussion.

THE CONSENT AGENDA was presented as follows:

FINAL PLAT for Colly Creek Subdivision No. 10 on property located at the southeast corner of the intersection of SW 45th Street and SW Cambridge in the City of Topeka, Kansas, was presented. (P04/33)

COMMUNICATION recommending the appointment of Tasha Goodale to the Convention and Visitors Bureau Board of Directors for a term that would expire June 30, 2005 was presented.

Minutes of the Regular Meeting of January 11, 2005 were presented.

An Open After Mid-Night License application bearing the approval of the Chief of Police and City Inspectors for J's Bar & Grill, 320 SE 29th Street, was presented.

Councilmember Stubbs moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Nave carried unanimously. (7-0-0)

APPROVAL of claim appeal in the amount of \$640 for DeAnn Clingan, 4339 Wisconsin Avenue, was presented.

Councilmember Alcalá stated that he believes that the claim is a direct result of a bad decision made by City staff. He asked if he could receive a copy of the log sheet that shows each time the Wisconsin Pump Station was checked on the date that Ms. Clingan's sewer line backed up. He also stated that he believes the log sheet is crucial in making an informed decision regarding the claim.

Neil Dobler, Public Works Director stated that he did not have the information with him. He stated that he would distribute a copy of the log sheet to the Council as soon as possible.

Councilmember Alcalá moved to defer the claim for one week. The motion seconded by Councilmember Pomeroy carried unanimously. (7-0-0)

Councilmember Stubbs stated that it was her understanding, that the Wisconsin Pump Station was one of many pump stations affected by the recent power outage. She stated that there were not enough generators to keep all of the pump stations running, therefore, city staff had to decide in a timely manner which pump stations would cause the most damage. She requested that staff pull all pump station log sheets so that they know which pump stations were affected.

Councilmember Haynes asked if the log sheets would change the legal departments decision on the claim.

Brenden Long, City Attorney stated that the log sheets would help determine if staff responded in a timely manner.

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, January 18, 2005, at 7:00 P.M. in conjunction with vacation request V05E/1 by Edward J. Stiles and Patricia T. Scalia, owners, to vacate a 10-foot wide utility easement located at Lot 1, Block A in Summerfield Subdivision.

ORDINANCE NO. 18369 introduced by Mayor James A. McClinton relating to the vacation of a 10-foot wide east/west utility easement located at Lot 1 North of SW Summerfield Drive at Fieldcrest Court extended as dedicated by the plat Summerfield Subdivision, in the City of Topeka, Shawnee County, Kansas placed on first reading January 11, 2005 was again presented. (*V05E/1*) (*Council District No. 7*)

Bill Fiander, Planning Department gave the staff report.

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

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

ORDINANCE NO. 18368 introduced by Mayor James A. McClinton authorizing the issuance of \$5,635,000 aggregate principal amount of General Obligation Bonds, Series 2005-A, of the City of Topeka, Kansas, under the authority K.S.A. 10-101 to 125, inclusive, the Home Rule authority granted to the cities of the State of Kansas by Section 5 of Article 12 of the Kansas Constitution, and Charter Ordinance No. 89 of the City, all as amended placed on first reading January 11, 2005 was again presented.

RESOLUTION NO. 7567 introduced by Mayor James A. McClinton prescribing the form and details of the General Obligation Bonds, Series 2005-A of the City of Topeka, Kansas, in the aggregate principal amount of \$5,635,000 the issuance of which were authorized by the City pursuant to its Ordinance No. 18368 adopted and approved January 18, 2005; and

authorizing certain other documents and actions in connection with the issuance of the bonds was presented.

Councilmember Preisner entered the room.

Jim Langford, Budget Director gave a brief summary of the bid results. He explained that Harrison Trust & Savings Bank was awarded the bid based on a 20-year term at 4.14% interest. He stated that Jeff White and Kelsey Powell, Columbia Capital Management financial advisors were present for technical questions.

Councilmember Stubbs moved to accept the bid, adopt the ordinance and approve the resolution. The motion seconded by Councilmember Preisner carried. Councilmember Alcalá voted "no". (7-1-0)

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

ORDINANCE NO. 18370 introduced by Mayor James A. McClinton relating to the Capital City Downtown Business Improvement District, establishing the method of raising revenue, amending City of Topeka Code Section 42-38 and specifically repealing said original section placed on first reading January 11, 2005 was again presented.

Jim Parish, member of the Business Improvement District Board stated that they recommended the same assessment rate from a year ago, 4.9 cents. He also stated that the total budget for FY2005 is \$201,000. He explained that this amount does not include the \$41,000 in outstanding fees.

Councilmember Alcalá expressed concern with the outstanding debt that is owed to Downtown Topeka, Inc.

In response, Jim Parish stated that a small part of the debt could not be collected because some of the businesses that owe money have closed.

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

ORDINANCE NO. 18371 introduced by Mayor James A. McClinton annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520c, as amended, generally located at the northwest corner of the SE 45th Street and SE Croco Road within unincorporated Shawnee County, Kansas and said land being annexed for all City purposes placed on first reading January 11, 2005 was again presented. (A04/6)

Councilmember Chancler entered the room.

David Thurbon, Planning Director gave the staff report.

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

A ZONING PETITION and ORDINANCE NO. 18372 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 2135 SW Gage Boulevard in the City of Topeka, Kansas from "M-3" Multiple Family Dwelling District and "O&I-2" Office and Institutional District ALL TO "PUD" Planned Unit Development ("O&I-1" & "C-1" use groups) placed on first reading January 11, 2005 was again presented. (PUD04/10)

Bill Fiander, Planning Department gave the staff report.

Mike Engler, Bartlett & West Engineers appeared for questions.

Deputy Mayor Clark Duffy asked if there were any additional exparte communications besides Councilmember Stubbs and Preisner. There were none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18373 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 Croco Road approximately 740 feet south of SE 30th Terrace in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District placed on first reading January 11, 2005 was again presented. (Z04/60)

Bill Fiander, Planning Department gave the staff report.

Deputy Mayor Clark Duffy asked if there were any exparte communications. There were none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18374 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 201 NE Highway 24 in the City of Topeka, Kansas from “C-4” Commercial District with Resolution of Intent for “I-1” Light Industrial District TO “C-4” Commercial District placed on first reading January 11, 2005 was again presented. (Z04/65)

Bill Fiander gave the staff report.

Deputy Mayor Clark Duffy asked if there were any exparte communications. There were none declared.

Councilmember Stubbs moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Muller carried. Councilmember Preisner was out of the room. (8-1-0)

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

A ZONING PETITION and ORDINANCE NO. 18375 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 directly south of 201 NE Highway 24 in the City of Topeka, Kansas from “R-1” Single Family Dwelling District with Resolution of Intent for “I-1” Light Industrial District TO “R-1” Single Family Dwelling District placed on first reading January 11, 2005 was again presented. (Z04/66)

Bill Fiander, Planning Department gave the staff report.

Deputy Mayor Clark Duffy asked if there were any additional exparte communications besides Councilmember Alcalá. There were none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18376 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 6266 SW Huntoon Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent to "PUD" Planned Unit Development District TO "O&I-1" Office and Institutional District placed on first reading January 11, 2005 was again presented. (Z04/67)

Bill Fiander, Planning Department gave the staff report.

Deputy Mayor Clark Duffy asked if there were any exparte communications. There were none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18377 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 south side of SW 29th Street between SW Lincolnshire Road and SW Villa West Drive in the City of Topeka, Kansas from "PUD" Planned Unit Development District TO "O&I-2" Office and Institutional District placed on first reading January 11, 2005 was again presented. (Z04/68)

Bill Fiander, Planning Department gave the staff report.

Councilmember Duffy asked what level of flood protection would the property owner have with the 25-foot set back in place.

Mike Engler, Bartlett & West Engineers stated that the channel is designed for the 100-year storm regulations. He explained that the minimum opening elevations that have been set for the lots is 1-foot above the 100-year storm flood level.

Deputy Mayor Clark Duffy asked if there were any exparte communications. There were none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18378 introduced by Mayor James A. McClinton 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 23, 2004 was again presented. (Z69/44D)

David Thurbon gave the staff report and stated that 20% of the neighborhood is in opposition, requiring a super majority vote to approve the project. He explained that a meeting was held on December 4, 2004 between the developer, surrounding residents and the Planning Department. He stated that the main concern of area residents was reduced density. The following options were discussed:

1. To reduce the size of the duplexes or town homes located on NW Magnolia Road from three stories to two stories to better blend with the character of the neighborhood.
2. To use the proposed apartment area located on NW Magnolia Road as open space and any future development of the area would require a major PUD plan amendment and remove one or more of the apartment buildings from Lot 8.
3. To realign NW Magnolia Road to create a greater separation between the proposed apartment buildings and the existing single-family area adjacent to the east.
4. A resolution to address the traffic situation at the intersection of NW Walnut Grove Road and NW Topeka Boulevard. Staff recommended that prior to approval of the project the developer would be required to design a new intersection that is approved by the City Engineer to alleviate the traffic problems.

In conclusion, he stated that the Planning Commission recommended approval by a vote of 10-0-0 on December 20, 2004. He also stated that the developer seemed willing to consider any or all of the options presented.

Councilmember Pomeroy questioned the density of the project in relation to other apartment complexes located within the city. He also expressed concern with the apartments obstructing the downtown skyline view of the city for area residents.

David Thurbon stated that the proposed apartment buildings are 17 units per complex, which is lower than the average 20-25 units per complex.

Councilmember Alcalá stated that he believes that the developer has not reached a compromise with area residents because the proposed project does not fit into the existing neighborhood character. He also stated that he is concerned with code compliance and crime issues, and would not support the project.

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

Councilmember Stubbs clarified that the Council sent the proposal back to the Planning Commission with the hopes of a compromise by all parties involved, not because of a density issue.

Councilmember Chancler stated that there are currently several existing apartments located throughout the city that are surrounded by residential areas. She also stated that the proposal meets the requested building requirements of affordable rental property, and should be approved to remain fair throughout the city. She stated that she believes the majority of the existing crime issues will be eliminated when the old building is demolished. She also suggested that they introduce a tenant-screening ordinance to help eliminate the possibility of future crime issues in the apartment complexes.

Councilmember Preisner stated that the apartments would not block the downtown skyline view due to the proposed elevation of the buildings.

Eric Scott, developer stated that they have an excellent reputation regarding similar units in surrounding areas. He stated that it is a quality project that would be placed on the tax roll for the next 15 years. He also stated that they would be implementing a strict tenant screening process that would include individuals with a yearly income range of \$17,000 to \$32,000.

Councilmember Alcala stated that he believes it is a quality project, however, his main concern is if the property is sold and how it would be taken care of.

Rebecca Presley, area resident stated that she believes it is a quality project. She also stated that the developer has not reached a compromise with area residents, and the project does not fit with the character of the neighborhood.

Mary Presley, area resident stated that she believes that the apartment complexes located near the residential homes would devalue the property, however, she does support the senior assisted living 100%.

George Hersh, developer stated that initially the area was slated for a shopping center and a 30 unit building. He explained that the current proposal fits the character of the neighborhood by incorporating a 24 unit building with residential homes. He stated that they met several times with area residents and believes that the final proposal was not financially feasible. He explained that in the past the Police Department received approximately thirty-five telephone calls per year, and within the last year they have received a total of only seven.

Councilmember Stubbs inquired on the market rate of the existing apartment building. She asked the developer if they would agree to Option No. 4, regarding the upgrade of the NW Walnut Grove Road intersection. She also asked if they would consider Option No. 3, to remove the fourth apartment building and realign Magnolia Road, allowing a larger space between the residential homes and the apartment complexes.

In response, Mr. Hersh stated that the existing apartment building is currently rented at 100% market rate and the condition of the building is currently up to city code. He stated that he believes that if Magnolia Road would be realigned to exit at the crest of the hill, it could create a traffic safety issue.

Councilmember Muller asked Mr. Hersh if they would consider Option No. 1, to reduce the apartment complexes from three stories to two stories.

Mr. Hersh stated that they have offered to reduce the two apartment complexes next to the residential homes because it would only decrease the project by 3%. He explained that if

they reduce all four buildings then the project would be decreased by 5% and this would require them to start the project over.

Councilmember Chancler stated that any amount of reduction in units would decrease the availability of affordable rental housing, a commodity that is badly needed in Topeka.

Councilmember Stubbs asked if Housing and Urban Development (HUD) monitors the project and requires ongoing accountability.

Mr. Hersh stated that HUD would monitor the project as long as the bonds are out, approximately forty years. He also stated that he is required to have reserves available for maintenance of the property.

Ira Freel, area resident stated that he supports the project, however, it is too large for the area and it would have a negative affect on the existing roadways.

Melissa Brown spoke in opposition of the project and stated that is would create a huge traffic safety issue. She also stated that she believes that the initial plan that was developed sixty years ago is not a good plan to follow because of the changing needs of the area.

Richard Benson, attorney for area residents urged the Council to reconsider the proposal. He stated that his clients are prepared to appeal the case and he believes that they could win.

Brenden Long, City Attorney stated that he is not aware of any technical issues regarding the case at this time. He also stated that it would require a super majority vote by the Council to approve the proposal.

Greg Debacker, area resident stated that he is not opposed to the project. He stated that traffic studies have shown that an increase in traffic would cause problems.

Councilmember Chancler asked staff to conduct a traffic study to determine if an upgrade is needed. She also stated that it is the City's responsibility to set traffic standards not the developer's.

Councilmember Nave moved to amend the proposal to include Option No. 4. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

Councilmember Muller move to amend the proposal to include Option No. 1. The motion was seconded by Councilmember Alcala.

Councilmember Chancler stated that she opposes the amendment to include Option No. 1 because there is a demand for quality affordable rentals.

Councilmember Stubbs stated that Option No. 1 could be the compromise that is needed.

Councilmember Preisner stated that it is necessary to come to an agreement because there needs to be additional housing in this area to accommodate the new Wal-Mart Store development.

The motion to include Option No. 1 carried. Councilmembers Chancler, Haynes and Duffy voted "no". (6-3-0)

Exparte communications were declared by all Councilmembers through email, telephone calls, personal conversations and U.S. mail.

The motion to approve the zoning petition and adopt the ordinance as amended carried. Councilmember Alcala voted "no". (8-1-0)

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

ORDINANCE NO. 18379 introduced by Councilmember John Alcala 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.

Councilmember Nave gave the committee report and stated that the Policy and Finance Committee recommended “Do Pass” by a vote of 3-0-0 on December 20, 2004.

Councilmember Alcalá stated that he introduced the amendment due to the need expressed by Animal Control for stricter regulations to protect the animals.

Councilmember Duffy moved to adopt the committee report. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Councilmember Preisner moved to adopt the ordinance as amended. The motion was seconded by Councilmember Alcalá.

Councilmember Stubbs asked how the ordinance would be enforced.

Ed Klumpp, Police Chief stated that the Animal Control officer would have the authority to enforce the regulations upon the witnessing of a violation. He explained that the Police Department has drafted an educational course to inform the public of the new regulations.

Councilmember Chancler asked how the new regulation would affect the current “dog-at-large” regulation.

In response, Ed Klumpp explained that it would be difficult to enforce both regulations at the same time. He stated that they would treat each case individually, beginning with repeat offenders that are putting the animals at risk.

The motion to approve as amended carried unanimously. (9-0-0)

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

RESOLUTION NO. 7568 introduced by Councilmember John Alcala relating to the purchase of Self-Contained Breathing Apparatus (SCBA) units for the Topeka Fire Department was presented.

Councilmember Preisner gave the committee report and stated that the Public, Health and Safety Committee recommended "Do Not Pass" by a vote of 2-1-0 on January 3, 2005.

Councilmember Preisner moved to adopt the committee report. The motion was seconded by Councilmember Stubbs.

Councilmember Pomeroy made a substitute motion to accept the committee report. The motion seconded by Councilmember Muller carried. Councilmember Alcala voted "no". (8-1-0)

Jim Langford, Budget Director explained that the proposal replaces the entire stock, approximately 110 SCBA units. He stated that the lease would be based on a 5-year program, costing \$100,000 per year. He also stated that the committee did not agree to fund the project through the general fund.

Howard Giles, Fire Chief stated that he would prefer to phase the entire stock of new SCBA units at the same time. He explained that this would ensure that all fire fighters, receive the same training, on the same equipment, at all locations. He stated that the purchase would require the City Council's approval to provide funding for subsequent years.

Councilmember Preisner asked when the RFP would be presented to the Council.

Jim Langford stated that six to eight weeks would be sufficient.

Councilmember Chancler made a conceptual amendment to the ordinance to delete lines 17 through 19, and add language that would declare administrations intent to purchase the SCBA units within a fixed period of time through the RFP process. The motion seconded by Councilmember Nave carried unanimously. (9-0-0).

Brenden Long, City Attorney stated that he would work on the appropriate language for the amendment.

Councilmember Stubbs asked how they would discard the old units.

Howard Giles stated that they would send the outdated units to K-State University and they would absorb the liability and distribute the units to other Rural Fire Departments.

Councilmember Alcalá moved to utilize the \$504,372 from Improvement Project No. 12051-00 to purchase the SCBA units. The motion was seconded by Councilmember Haynes.

Councilmember Pomeroy stated that he believes they need to be conservative regarding the distribution of funds until they know exactly what the change in the form of government is going to cost.

Councilmember Preisner called point of order.

Councilmember Stubbs stated that she is opposed to the amendment because they need flexibility during the form of government transition.

Councilmember Nave stated that he believes they should leave the money where it is at until they know exactly how much the change in the form of government is going to cost.

Councilmember Muller stated that she believes they should not spend the money so they have the flexibility they need during the transition in form of government.

Councilmember Preisner called the question.

The motion on if the question shall be called failed. Councilmembers Pomeroy, Alcalá, Chancler and Duffy voted "no". (5-4-0)

Councilmember Haynes clarified that any action taken this evening regarding the \$504,372 would only be a statement of intent.

The motion to utilize the \$504, 372 from Project No. 12051-00 to purchase SCBA units failed. Councilmembers Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Muller voted "no". (2-7-0)

Councilmember Duffy stated that he would prefer that a service agreement with a replacement schedule be included in the lease agreement.

Howard Giles stated that the new units would include an eight-year warranty and the air tanks must be replaced every five years. He also stated that this type of equipment entails on-going maintenance costs.

The motion to approve the resolution as amended carried. Councilmembers Haynes, Nave and Preisner voted "no". (6-3-0)

RESOLUTION NO. 7569 introduced by Councilmember Jeff Preisner and Clark Duffy requesting that the \$504,372 realized in FY2004 from City of Topeka Project No. 12051-00 (1996 Rehab Kansas Avenue Bridge Deck) be used to fund the costs associated with the transition to the Council-Manager form of government was presented.

Councilmember Preisner stated that it is very important to set money aside to establish a financial plan prior to the change in the form of government, because it would be the decision of the next Council on how to implement the funds.

Councilmember Acala called the question.

Councilmember Chancler challenged the call.

The motion on if the question shall be called failed. Councilmembers Pomeroy, Chancler, Nave, Duffy and Stubbs voted "no". (4-5-0)

Discussion continued by several Councilmembers regarding the necessity of implementing a financial plan and determining an estimated cost of transition.

Dave Graversen, Chief Administrative Officer stated that they should also financially prepare for some very controversial issues regarding funding in the near future. These issues include; a new financial management system for the City of Topeka and an increase in employee wages.

Councilmember Haynes moved to table the item until April 12, 2005. The motion seconded by Councilmember Nave failed. Councilmembers Pomeroy, Alcalá, Duffy, Stubbs, Preisner and Chancler voted "no". (3-6-0)

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Muller carried. Councilmembers Alcalá, Chancler, Nave and Haynes voted "no". (5-4-0)

FINAL PLAT for Linwood Subdivision No. 5 on property located at the southeast corner of NW 50th Street and NW Green Hills Road, within unincorporated Shawnee County, Kansas was presented. (P04/34)

Bill Fiander gave a brief overview of the history of the final plat for Linwood Subdivision. He stated the Topeka-Shawnee County Metropolitan Planning Commission approved the preliminary plat on February 21, 2000, a 128-lot subdivision to be developed in three-phases. He also stated that on October 16, 2000 the Zoning and Platting Committee approved a replat of Linwood Subdivision No. 2, a portion of the original subdivision located south of the 65-lot final plat Linwood Subdivision No. 3. He stated that on November 17, 2003 the Topeka Planning Commission approved the 64-lot final plat of Linwood Subdivision No. 3, which was to be the third and final phase. He stated that the City Council rejected approval of the final plat due to the fact the subdivision was located outside the municipal service boundary.

In conclusion, he stated that since the City Council's rejection of the initial plat for Linwood Subdivision No. 3 the following policies have been implemented:

- Implementation of a state law granting the City of Topeka sole authority of extending services to subdivisions located within the three-mile extra territorial jurisdiction located within the municipal service boundary.
- The regulations set by the Land Use and Growth Management Policy as an element of the Comprehensive Plan, establishing new policies for growth in the three-mile extra territorial jurisdiction that recommends annexation prior to urbanized development with municipal services.
- The resolution indicating the intent of the Planning Commission to only approve those subdivisions located within the municipal service boundary, which is capable of being annexed into the Topeka City limits.

Councilmember Duffy asked if any new factual differences had developed regarding the final plat since the last time it was presented to the Council.

Councilmember Chancellor asked if Linwood Subdivision No. 5 was similar to Rockfire by the Lake subdivision, if so, could they require the applicant to follow the same procedural steps requiring approval by the Board of Shawnee County Commissioners prior to annexation. She stated that the City would not benefit by denying a final plat that is already receiving city services.

In response, Bill Fiander stated the only difference in the proposal is that there is a slight deviation in the cul-de-sac located near 50th Street. He explained that the Rockfire by the Lake Subdivision is located within the municipal service boundary and Linwood Subdivision No. 5 is not.

Brenden Long, City Attorney stated that there are potential legal problems when placing conditions on plat approvals. He also stated that it is the Council's responsibility to decide if

they should approve a final plat based on the policies established by the Planning Commission and Comprehensive Plan, regarding extending services outside city limits.

Councilmember Haynes suggested that they place the same stipulations on Linwood Subdivision No. 5, as were placed on Rockfire by the Lake subdivision regarding receiving approval by the Board of Shawnee County Commissioners prior to annexation.

In response, Brenden Long stated that Linwood Subdivision No. 5 and Rockfire by the Lake were entirely different cases. He suggested that the Council deny or accept the final plat.

Ben Swinnen, attorney for the applicant encouraged the Council to approve the final plat and stated that they would gain nothing if denied.

Rick Schmidt, applicant stated that he would have platted the entire subdivision when he initially started the project to ensure completion had he been aware that the regulations would change.

Councilmember Duffy stated that it is very important that the new regulations are implemented and followed.

Councilmember Chancler stated that she would support the final plat because she believes that it is not fair to stop development of a subdivision mid-stream.

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

AN ORDINANCE introduced pursuant to the provisions of KSA 12-3013, calling an election to be held on April 5, 2005, for the purpose of voting on an ordinance pertaining to the enactment, adoption, enforcement or administration of City of Topeka ordinances, regulations,

rules or policies concerning homosexual, lesbian or bisexual orientation or gender identity or expression was presented for first reading.

AN ORDINANCE introduced by the Form of Government Transition Committee, relating to the changes in the administrative code pursuant to Charter Ordinance No. 94, amending City of Topeka Code Sections 2-27, 2-28, 2-29, 2-30, 2-33, 2-34, 2-112, 2-114, 2-118, 2-141, 2-142, 2-143, 2-145, 2-146, 2-147, 2-149, 2-150, 2-151, 2-152, 2-153, 2-154, and 2-155 and repealing said original section was presented for first reading.

AN ORDINANCE introduced by the Form of Government Transition Committee, relating to the appointment of board and commission members pursuant to Charter Ordinance No. 94, repealing City of Topeka Code Sections 2-183, 2-184, 2-185, 2-186, 2-187, 2-188, 2-189, 2-190, 2-191, 2-192, 2-193, 2-194, 2-195, 2-196, 2-197, and amending City of Topeka Code Chapter 2, Division 2 and Sections 2-181, 2-198, 2-221, 26-67, 26-68, 26-138, 26-221, 26-236, 42-4, 42-5, 42-39, 86-1, 86-2, 86-27, 86-28, 102-197, 102-198, 106-41, 106-45, 106-204, 110-27, and 110-34, and repealing said original section was presented for first reading.

AN ORDINANCE introduced by the Form of Government Transition Committee, relating to changes in the administrative code regulating financial matters, purchasing, and asset management in conformity with Charter Ordinance No. 94, repealing Topeka City Code Sections 2-252, 2-253, 2-271, 2-286, 2-287, 2-321, 2-324, 2-329, 2-331, 2-346, 2-347, 2-348, 2-363, 2-364, 2-365, 2-386, 2-408, 2-456, 2-458, 2-459, 2-460, 2-479, 2-480, 23-492 and repealing said original section was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing an amendment to the project budget for Bridge Improvement Project No. 12051 which provides for the complete replacement of the Kansas Avenue bridge deck and reconstruction of the pedestrian

sidewalk as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and specifically repealing City of Topeka Ordinance No. 16890 was presented for first reading..

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Pomeroy announced that there would be a Form of Government Transition Committee meeting held on January 19, 2005 at 4:00 p.m. in the City Council Office.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcalá submitted a resolution to be placed on a future agenda requesting the City of Topeka to allow the Kansas Medical Clinic (east location) an additional 120 days to relocate to a new downtown location.

Councilmember Chancler distributed a bookmark commemorating the celebration of Martin Luther King Jr.'s Birthday.

David Owen appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:58 p.m.

Iris Walker
City Clerk