

City Council Minutes – November 14, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 14, 2006. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9. Mayor Bunten presided: -1.

AFTER THE MEETING was called to order, Pastor Peter O’Sullivan, Christ the King Church gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION approving and authorizing the City Manager to execute Amendment No. 2 to City of Topeka Contract No. 36091 between the City and Washburn-Lane Parkway Renovations, L.L.C., was presented.

RESOLUTION NO. 7888 introduced by Norton N. Bonaparte, Jr., City Manager and Councilmembers Sylvia Ortiz, Clark Duffy, and Jeff Preisner expressing support for the Plaza West Apartments, L.P., Development Project was presented.

MINUTES of the regular meeting of November 7, 2006 were presented.

Cereal Malt Beverage License applications bearing the approval of the Chief of Police and City Inspectors for The Break Room, 911 S. Kansas Avenue; and Heart of America Food, One Expocentre Drive, was presented.

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for the Kansas Expocentre, One Expocentre Drive, was presented.

An Open After Mid-Night License application bearing the approval of the Chief of Police for Pan Killers, 1620 S.W. 6th Street, was presented.

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

A PROJECT BUDGET in the amount of \$3,745,000 and ORDINANCE NO. 18749 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 29093-02 which provides for installation of a new force main from the Deer Creek Pump Station to the Oakland Wastewater Treatment Plant, as more specifically described herein placed on first reading November 7, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Ortiz moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18750 introduced by Norton N. Bonaparte, Jr., City Manager authorizing the initiation of condemnation proceedings to acquire property for Improvement Project No. 606270, the second phase of the park expansion of the Betty Phillips Park formerly known as Hi-Crest Park, placed on first reading November 7, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to adopt the ordinance. The motion was seconded by Councilmember Nave.

Councilmember Nave asked if the property owners have reached an agreement with the City.

Randy Speaker, Deputy City Manager stated that negotiations have reached impasse. He explained that a second appraisal was conducted on the properties and one property increased in value.

Councilmembers Ortiz and Kennedy questioned the necessity of acquiring the properties.

Randy Speaker stated that acquiring the properties would complete the vision of the overall Hi-Crest Neighborhood Plan for the park area.

Councilmember Nave asked if the Hi-Crest Neighborhood Improvement Association approves of the acquisition of properties for the park.

Randy Speaker stated that the NIA agrees with clearing the areas because they believe it would help reduce crime in the area.

Councilmember Nave made a substitute motion to vote on each property separately. The motion was seconded by Councilmember Blackburn.

Brenden Long, City Attorney suggested that they exclude any properties they do not wish to be included in the condemnation proceedings instead of voting on each parcel separately.

Councilmember Blackburn withdrew the second to the motion to vote on each property separately.

Councilmember Nave moved to amend the ordinance by excluding Parcel No. 2, located at 3337 S.E. Girard, and Parcel No. 3, located at 3311 S.E. Irvingham. The motion was seconded by Councilmember Haynes.

The motion to amend the ordinance by excluding Parcel No. 2 and Parcel No. 3 failed. Councilmembers Alcala, Ortiz, Haynes, Duffy, Blackburn, Preisner and Harmon voted “no”.

(2-7-0)

The motion to adopt the ordinance carried. Councilmembers Kennedy, Alcala, Nave and Blackburn voted “no”. (5-4-0)

The ordinance was adopted on roll call vote as follows: Ayes: Ortiz, Haynes, Duffy, Preisner and Harmon -5. Noes: Kennedy, Alcala, Nave and Blackburn -4.

ORDINANCE NO. 18751 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 26-523 and establishing § 26-524 regarding building and building regulations relating to demolition, and repealing said original section placed on first reading November 7, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of \$3,277,100 and ORDINANCE NO. 18752 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 70142-03, Part B, which provides for the widening of California Avenue as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading November 7, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Roger Wilch, area resident spoke in support of widening S.E. California Avenue to three lanes. He also stated that sidewalks are needed in the area.

Vicki Smith, area resident spoke in support of widening S.E. California Avenue to three lanes only, and stated that the area also needs curbs, gutters and sidewalks.

Mike Teply, Acting Public Works Director stated that the project would widened S.E. California Avenue to five lanes between S.E. 28th Street and S.E. 30th Street, and then three lanes between S.E. 30th Street and S.E. 33rd Street.

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18753 introduced by City Manager, Norton N. Bonaparte, Jr., 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 placed on first reading November 7, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to adopt the ordinance. The motion was seconded by Councilmember Haynes.

Councilmember Duffy stated that he verified that each of the property owners that have refused to pay are located outside the city limits and he finds that disappointing.

Councilmember Kennedy left the meeting.

The motion to adopt the ordinance carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -8. Absent: Kennedy -1.

A COMMUNICATION requesting approval of the Real Estate Acquisition Report and Real Estate Contract for acquisition of property located at 1183 SW Washburn, was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

L.J. Polly, representing the Elmhurst Neighborhood spoke in support of the real estate acquisition report. He thanked the Council, Mayor and City staff for their support in developing green space in their neighborhood.

Councilmember Blackburn stated that he opposes spending funds on green space because he believes the City already struggles with the maintenance of the green space they currently own.

The motion to approve the communication carried. Councilmember Blackburn voted “no”. (7-1-0)

A PUBLIC IMPROVEMENT PETITION, a PROJECT BUDGET in the amount of \$721,800 and RESOLUTION NO. 7889 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Sewer Improvement Project No. 40926-01 which provides for sanitary sewer service to the Mission Ridge Subdivision, as more specifically described herein was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Ortiz carried. Councilmember Nave was out of the room. (7-1-0)

A PUBLIC IMPROVEMENT PETITION, a PROJECT BUDGET in the amount of \$986,000 and RESOLUTION NO. 7890 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Street Improvement Project No. 60607-00 which provides for street improvements in Mission Ridge Subdivision, as more specifically described herein was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Blackburn moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Preisner carried.

Councilmember Nave was out of the room. (7-1-0)

A FINAL PLAT for Northridge Heights Subdivision located north of NW 50th Street between NW Green Hills Road and NW Rochester Road, the centerline of which being approximately 2,400 feet east of the intersection of NW 50th Street and NW Green Hills Road, within unincorporated Shawnee County, Kansas was presented. (P06/18)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Mike Engler, Bartlett & West Engineers gave a brief history of the project and stated that it conforms to the Comprehensive Metropolitan Plan. He also noted that the developer has signed a consent to annex.

Councilmember Blackburn asked if the owner has agreed to pay the Parkland Development fees.

Mike Engler stated that the developer has agreed to pay the fees.

Councilmember Blackburn asked if the Parkland Development fees could be incorporated into the sewer tap fee.

Brenden Long, City Attorney stated that staff recommended the fees be paid at the same time the final plat is recorded with the Shawnee County Register of Deeds. He suggested that the Council designate a time certain when the Parkland Development fees must be paid.

David Thurbon, Planning Director stated that they have discussed several options with the developer regarding payment of fees, and they were unable to come up with an acceptable method.

Mike Engler stated that the developer would prefer not to pay the fees in one lump sum and would consider other methods of payment.

Councilmember Alcalá asked if the payment method issue could be resolved in a separate agreement.

Brenden Long recommended that a separate agreement be used to outline a payment mechanism for the fees.

Councilmember Alcalá moved to approve the final plat. The motion was seconded by Councilmember Preisner.

David Thurbon explained that they disagree that the development is consistent with the Metropolitan Comprehensive Plan because the area can not be annexed, and the complete system of urban services can not be provided. He also stated that there is undeveloped land between the development and the city limits.

Councilmember Duffy made a substitute motion to remand that final plat back to the Planning Commission for clarification on why the Council should make exceptions to the existing sewer hook up ordinance; the current water policy resolution; the current park development ordinance; specifically the tax component of the Growth Management Element of the Metropolitan Comprehensive Plan; verification that the City would default on their sewer bonds; and clarify whether the area is inside or outside the growth area. The motion was seconded by Councilmember Haynes.

Councilmember Alcalá stated that he would oppose the substitute motion because he believes the project would greatly enhance the area and increase revenue for the City.

Councilmember Blackburn asked if the project would assist the stormwater revenue fund.

Mike Teply stated that revenues would increase with new development.

The substitute motion to remand that final plat back to the Planning Commission failed. Councilmembers Alcala, Ortiz, Nave, Blackburn and Preisner voted “no”. (3-5-0)

Councilmember Duffy asked if anyone could clarify the specific items he asked about in his motion.

David Thurbon stated that the development is located outside the Municipal Service Area (MSA) and the current ordinance relating to sewer service applies to property inside the MSA. He also stated that the sewer system is an investment that has already been put in the ground and should be utilized.

Discussion continued regarding the tax equity issue in providing sewer service to areas outside the MSA, and why the Council should make exceptions to City policy.

Councilmember Duffy stated that he believes his questions should have been addressed by the Planning Commission. He also stated that as a Governing Body they should have an explanation of why they should make exceptions to City policy in this specific case.

Councilmember Alcala clarified that they are not running new lines to accommodate the project, therefore, the City would receive revenue.

Mike Teply stated that they would receive revenue from the project but it would also create an expense for the City.

Councilmember Alcala stated that Councilmember Duffy brings up very valid points and there needs to be more training of staff, and discussions between the Planning Commission and City staff to resolve the issues. He also stated that until that time he would consider each request on a case by case basis.

Councilmember Haynes stated that staff is trying to follow policy set by Council, and when the Council considers requests contrary to current policy it makes it very difficult for

developers, staff and the Council. He also stated that there needs to be a set policy that everyone can follow.

Councilmember Blackburn stated that he is opposed to any new extension of infrastructure that cannot be annexed, and he would not support development any further north of city limits than this project.

Councilmember Preisner expressed concern with the City following the law with regards to policy, and with creating a hardship on the developer. He suggested that the final plat be deferred for one week to allow time for policy questions to be answered.

Councilmember Preisner withdrew his second to the motion to approve the final plat.

Councilmember Alcala moved to approve the final plat. The motion was seconded by Councilmember Ortiz.

Councilmember Blackburn made a substitute motion to amend the final plat by entering into a contractual agreement with the developer requiring that one-third of the Parkland Development fees are paid prior to recording the final plat, followed by two additional one-third payments for two consecutive years. The motion seconded by Councilmember Preisner carried. Councilmember Preisner voted "no". (7-1-0)

Councilmember Alcala moved to approve the final plat as amended. The motion was seconded by Councilmember Ortiz.

Councilmember Preisner made a substitute motion to defer the final plat for one week to receive written verification that denial of the final plat would create a hardship for the developer. The motion seconded by Councilmember Harmon carried unanimously. (8-0-0)

A FINAL PLAT for Hidden Valley Subdivision No. 5 located approximately 1900 feet west of SW Urish Road, and 2200 feet north of SW 21st Street, within the City's three-mile

extraterritorial jurisdiction and Municipal Service Area, all within unincorporated Shawnee County, Kansas was presented. (P06/31)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to approve the final plat. The motion was seconded by Councilmember Ortiz.

Councilmember Duffy stated that the development is located right next to city limits but cannot be annexed because of one parcel opposing annexation that is located between the development and city limits. He noted that because the Council recently disapproved a resolution that would have allowed nonconsensual unilateral annexation, the City cannot receive their return on the services provided, and the project will cost city taxpayers.

The motion to approve the final plat carried unanimously. (8-0-0)

ORDINANCE NO. 18755 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of October 23, 2006, through October 29, 2006, and enumerating said expenditures therein was presented for first and final reading.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

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

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -8. Absent: Kennedy -1

ORDINANCE NO. 18754 introduced by City Manager Norton N. Bonaparte, Jr. 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 SE Klein Street and SE 4th Street in the City of

Topeka, Kansas from “R-2” Single Family Dwelling District TO “X-2” Mixed Use District placed on first reading November 7, 2006 was again presented. (Z06/11)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmembers Alcala, Ortiz and Harmon declared exparte communications through email, telephone conversations and personal correspondence.

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

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -8. Absent: Kennedy -1.

RESOLUTION NO. 7891 introduced by City Manager Norton N. Bonaparte, Jr. in accordance with Section 48-23a.04(2)(r) of the Code of the City of Topeka, approving a Conditional Use Permit to allow unenclosed, outdoor equipment/product storage on property zoned “X-2” Mixed-Use District and located on the northeast corner of SE Klein Street and SE 4th Street within the City of Topeka, Kansas was presented. (CU06/4)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmembers Alcala, Ortiz and Harmon declared exparte communications through email, telephone conversations and personal correspondence.

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

RESOLUTION NO. 7892 introduced by City Manager Norton N. Bonaparte, Jr. in accordance with Section 48-4.02(c)(3) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a vehicle surface parking lot in association with two principle uses on property currently zoned “R-1” Single-Family Dwelling District and located on

the northeast corner of SW 17th Street and SW Boswell Street in the City of Topeka, Kansas was presented. (CU00/12A)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Duffy stated that he would oppose the resolution because it does not follow the Comprehensive Metropolitan Plan, it is contrary to the current city ordinance regulating parking, and encourages proliferation of parking in the area.

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember Haynes carried. Councilmembers Duffy and Preisner voted 'no'. (6-2-0)

RESOLUTION NO. 7893 introduced by City Manager Norton N. Bonaparte, Jr. in accordance with Section 48-17.02(c)(2) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a Automotive Service Station, Type III on property currently zoned "C-3" Commercial District and located on the northwest corner of SW 21st Street and S. Kansas Avenue in the City of Topeka, Kansas was presented. (CU05/3)

Norton N. Bonaparte, Jr., City Manager gave the staff report.

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

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located at the northwest corner of SW Arvon Place and SW 21st Street within unincorporated Shawnee County, Kansas and surrounded by the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A06/17)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire property by eminent domain for City of Topeka Improvement Project No. 12053-03 which provides for the removal and replacement of the Topeka Boulevard Bridge over the Kansas River was presented for first reading.

AN ORDINANCE introduced by Councilmember Brett Blackburn amending City of Topeka Code Section 18-2 concerning mandatory minimum punishment of the owner, harborer or possessor of an animal violating the animal ordinance Chapter 18, except subsection 18-8 and 18-145, and repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., 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 northwest corner of SW 10th Avenue and SW Urish Road in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. *(Z06/17)*

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made 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 south of SE 29th Street about 1/4 mile west of SE West Edge Road and east of Kansas Turnpike in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. *(Z06/21)*

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made 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 between SW Marlboro and SW Shenandoah Roads and SW 43rd Terrace and SW 46th Street in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. (Z06/24)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinance 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 corners of SW 42nd Lane and SW Shenandoah Road and SW 43rd Terrace and SW Shenandoah Road in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. (Z06/26)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made part of the Zoning Ordinance by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located between SE 23rd Terrace and K-4 Highway (Kansas Turnpike) approximately 1,320 feet west of SE Croco Road in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. (Z06/29)

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE CITY COUNCIL, were presented.

Norton N. Bonaparte, Jr., City Manager announced that warrant amnesty will be offered on November 20th through 22nd from 7:30 a.m. to 4:30 p.m.; free parking will be provided in the downtown area beginning November 20, 2006 through January 3, 2007 during the hours of 11:00 a.m. and 2:00 p.m.; the Police Department will conduct a Commercial Robbery Prevention and Response Training session on November 29, 2006 from 6:00 p.m. to 8:00 p.m. at the Law

Enforcement Center; and the Old Prairie Town Village will host Family Holiday Night on November 29, 2006 from 6:30 p.m. to 8:30 p.m.

Councilmember Ortiz stated that the motion relating to Ordinance No. 18745 in the November 7, 2006 Council Minutes reflect that Councilmember Ortiz made the motion and seconded the motion. She requested a correction to the minutes. She also announced that TARC is offering free shredding services this week during the hours of 9:00 a.m. and 3:30 p.m. She requested that the road closed sign located on 10th Street and California Avenue be moved back one block because the sign creates a blind spot.

Councilmember Blackburn suggested that the City Manager meet with the Shawnee County Sherriff's Department and County Commissioners to discuss the possibility of upgrading the City's weapon firing range to accommodate both law enforcement agencies.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:03 p.m.

Iris Walker
City Clerk