

City Council Minutes – November 21, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 21, 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 Buntten presided: -1.

AFTER THE MEETING was called to order, Mike Siebert, Topeka Youth for Christ, gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of November 14, 2006 were presented.

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

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. The final plat was deferred from the meeting of November 14, 2006. (P06/18)

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

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

Councilmember Duffy stated that he would not support the final plat because he believes it is contrary to a number of ordinances and resolutions that establish City policies on how they want to manage the growth of the city.

Councilmember Preisner asked if approval of the final plat would violate any current City policies.

Bill Fiander, Planning Department stated that the Metropolitan Comprehensive Plan supports annexation prior to urbanization development in addition to having an adequate urban service package in place, or one scheduled for the near future. He noted that the development is inconsistent with both policies, and is located outside the Municipal Service Area.

Councilmember Alcala stated that he believes that Councilmember Duffy raised valid points regarding inconsistencies in City policy. He suggested that they adopt a policy that would allow for the approval of final plats outside city limits based on the stipulation that area infrastructure is already in place. He stated that he would support the development because infrastructure already exists in the area, and the development would generate revenue which eliminates the cost from being passed to the taxpayers.

Councilmember Blackburn stated that he would support this development, however, he would not support any additional development further north of city limits until a set policy is established. He asked staff to make sure that the sewer rate being charged for the area is adequate.

Councilmember Haynes asked if there were other developments outside city limits that would qualify for service due to infrastructure already being in place.

Mike Teply, Acting Public Works Director stated that there were a number of potential developments located outside city limits that would qualify.

Councilmember Haynes asked if the policy could be amended at this time to ensure that policy criteria is consistent for this development, as well as, all others from this date forward.

Brenden Long, City Attorney stated that the criteria would need to be incorporated in the subdivision guidelines, and could not be included at this time. He suggested that they address the issue separately.

Councilmember Haynes stated that he would not support approval of the final plat until a clear policy is established. He also stated that he believes it is unfair to the developers to handle each request on a case-by-case basis.

Councilmember Duffy stated that he agrees with Councilmember Haynes, however, the current policies that are in place should be followed until a new policy is established.

Mike Engler, Bartlett & West Engineers stated that the developer would entail a hardship if the final plat is denied. He explained that the development meets the criteria of Ordinance No. 18548 because the developer has agreed to annexation, and the development does not need sewer extension. He also noted that the property is located within the primary urban service boundary as defined in the Wastewater Management Plan.

Brenden Long suggested that approval of the final plat be subject to the execution of an agreement between the City of Topeka and the developer outlining a payment plan for the Parkland Development fees. He stated that the developer has agreed to pay one-third of the fees prior to recording the final plat with the Shawnee County Register of Deeds, followed by two additional one-third payments for two consecutive years.

Councilmember Alcalá made a substitute motion to accept the final plat subject to the execution of an agreement between the City of Topeka and the developer outlining a payment plan for the Parkland Development fees, as specified by the City Attorney. The motion was seconded by Councilmember Nave.

Discussion continued on the importance of clarifying policy issues and simplifying the process for staff and developers.

Councilmember Duffy requested that the substitute motion be divided into two parts.

Mayor Bunten asked if there were objections to dividing the motion into two parts.

Upon hearing no objections, the substitute motion to accept the final plat contingent on execution of an agreement between the City of Topeka and the developer outlining a payment plan for the Parkland Development fees carried unanimously. (9-0-0)

The motion to approve the final plat as amended carried. Councilmembers Haynes, Duffy, Preisner and Harmon voted “no”. (5-4-0)

A RESOLUTION relating to the implementation of a code of ethics policy for the City of Topeka, its elected officials, appointees and employees was presented.

Councilmember Blackburn explained that the Economic and Community Development Committee recommended that the resolution be disapproved because a new ordinance will be introduced on next week’s agenda. He noted that the new ordinance incorporates the changes and will be discussed at the Committee of the Whole meeting on Tuesday, November 28, 2006.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Duffy failed. (0-9-0)

A COMMUNICATION authorizing the amendment to the contract between the City of Topeka and Rural Water District No. 8 for the sale of water and specifically authorizing City Manager Norton N. Bonaparte to execute the contract amendment, was presented.

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

Councilmember Harmon explained the amendments listed in the Policy and Finance Committee report. He also stated that the contract was removed from committee without a recommendation.

Councilmember Duffy moved to accept the committee report. The motion was seconded by Councilmember Alcala.

Several Councilmembers expressed concern with the verbiage of the contract and asked for clarification of the amendments.

Councilmember Duffy moved to defer the communication for one week. The motion was seconded by Councilmember Preisner.

Brenden Long, City Attorney stated that a written explanation of the amendments would be prepared and distributed to the Council.

Councilmember Kennedy stated that she opposes deferring the item for one week because she believes the contract has been delayed long enough.

Councilmember Blackburn requested that an amendment be added to the contract that would require certain areas of Rural Water District No. 8 to maintain urban service standards.

The motion to defer the communication one week carried. Councilmembers Kennedy, Alcala and Ortiz voted "no". (6-3-0)

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 placed on first reading November 14, 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 Alcala.

Councilmember Alcala asked if any of the properties would be used for future development.

Mike Teply, Acting Public Works Director stated that the majority of the properties would be used for development with the exception of two parcels that have access issues, and two parcels where the property owners can not be located.

Councilmember Blackburn questioned the necessity of purchasing parcels that are not needed on a permanent basis.

Mike Teply stated that the two vacant lots would primarily be used for construction staging areas.

Councilmember Blackburn asked if the areas could be accessed through temporary construction easements.

Discussion continued on the necessity of acquiring property for the bridge project on a permanent basis and acquiring additional information on the property owners.

Mike Teply stated that the engineering firm recommended that the City acquire the properties on a permanent basis.

Councilmember Alcala called the question.

The motion to adopt the ordinance failed. Alcala, Kennedy, Ortiz, Nave, Haynes, Duffy and Blackburn voted “no”. (2-7-0)

ORDINANCE NO. 18756 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 placed on first reading November 14, 2006 was again presented. (A06/17)

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

Angela Sharp, Bartlett & West Engineers appeared to answer questions.

Councilmember Preisner moved to 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. 18757 introduced by Councilmember Brett Blackburn amending City of Topeka Code Section 18-2 concerning mandatory minimum punishment of the owner, harbinger or possessor of an animal violating the animal ordinance Chapter 18, except subsection 18-8 and 18-145, and repealing said original section placed on first reading November 14, 2006 was again presented.

Councilmember Blackburn explained that the amendment simplifies the Municipal Court procedure.

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 COMMUNICATION from City Manager Norton N. Bonaparte, Jr., requesting that a public hearing date be set for December 5, 2006 for the purpose of hearing and answering objections of taxpayers to proposed amendments to the 2006 Budget was presented.

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

Councilmember Preisner moved to approve the communication. The motion seconded by Councilmember Alcala carried. Councilmember Duffy was out of the room. (8-1-0)

ORDINANCE NO. 18758 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of October 30, 2006, through November 5, 2006, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Preisner carried. Councilmember Duffy was out of the room. (8-1-0)

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

ORDINANCE NO. 18759 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 6, 2006, through November 12, 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 Blackburn carried. Councilmember Duffy was out of the room. (8-1-0)

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

ORDINANCE NO. 18760 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 placed on first reading November 14, 2006 was again presented. (Z06/17)

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

Mayor Buntun asked if there were any additional exparte communications besides Councilmember Ortiz. There were none declared.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Alcala carried. Councilmember Duffy was out of the room. (8-1-0)

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

ORDINANCE NO. 18761 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 placed on first reading November 14, 2006 was again presented. (Z06/21)

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

Mayor Buntun asked if there were any additional exparte communications besides Councilmember Nave. There were none declared.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Nave carried. Councilmember Duffy was out of the room. (8-1-0)

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

ORDINANCE NO. 18762 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 "OS-1" Open Space District placed on first reading November 14, 2006 was again presented. (Z06/22)

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

Mayor Buntin asked if there were any additional exparte communications besides Councilmember Nave. There were none declared.

Councilmember Ortiz moved to 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, Alcalá, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18763 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 placed on first reading November 14, 2006 was again presented. (Z06/24)

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

Mayor Bunten asked if there were any additional ex parte communications besides Councilmembers Nave and Blackburn. There were none declared.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmembers Kennedy 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. 18764 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 placed on first reading November 14, 2006 was again presented. (Z06/26)

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

Mayor Bunten asked if there were any additional ex parte communications besides Councilmember Blackburn. There were none declared.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Blackburn 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. 18765 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 placed on first reading November 14, 2006 was again presented. (Z06/29)

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

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

Councilmember Preisner moved to 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.

Councilmember Alcala requested that item 5D, an ordinance authorizing the initiation of condemnation proceedings to acquire property for the Topeka Boulevard Bridge Improvement Project No. 12053-03 be reconsidered due to the Council's previous action that would cause the project to be delayed for six months.

Councilmember Alcala moved to reconsider item 5D, an ordinance relating to condemnation proceedings for the Topeka Boulevard Bridge Improvement Project No. 12053-03. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Councilmember Alcala asked for a legal explanation of the process.

Brenden Long, City Attorney stated that Council Rules prohibit the reconsidering of an item for six months if it is disapproved. He suggested that staff be allowed to answer the Council's questions to avoid delaying the project.

Councilmember Alcala moved to defer the ordinance for one week. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

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

Norton N. Bonaparte, Jr., City Manager reported that a Park Maintenance employee was recently injured on the job. He stated that he would keep the Council posted on her condition as he receives information. He also reported that as of November 21, 2006, 444 warrants were processed as a result of the warrant amnesty that would continue until 5:00 p.m. on November 22, 2006. He also announced that City Hall would be closed on November 23rd and 24th in observance of the Thanksgiving Holiday.

Councilmember Alcala asked for a report on the Municipal Court collection process. He stated that he would like the report to include Municipal Court's total amount of outstanding debt.

Councilmember Ortiz encouraged everyone to utilize the free parking being offered in the downtown area.

Councilmember Duffy asked why they did not use the Topeka Building Commission to finance the bonds for the Cyrus K. Holliday Building improvements.

Jim Langford, Budget and Finance Director stated that he would research the request and report back to the Council.

Councilmember Blackburn reported that the JEDO Board approved \$250,000 of incentive pay to a local business so they would remain in the Topeka area. He also reported that the JEDO Board did not approve the request to reimburse the City \$420,000 to finance the SW 37th Street and Wannamaker Road Improvement Project. He stated that he was disappointed that

the request was denied because the project will have to be financed through general obligation bonds.

Councilmember Duffy noted that the financing source for the SW 37th Street and Wanamaker Road Improvement Project has changed from the original proposal. He asked Mayor Bunten if he would explain his stance on the issue.

Mayor Bunten explained that originally he supported the project being financed from the ½ cent sales tax revenue, however, due to the success of the small business incentive program he now believes that JEDO funds are best utilized for that program.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:40 p.m.

Iris Walker
City Clerk