

Council Minutes – May 20, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 20, 2008. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcalá, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9. Mayor Bunten -1.

AFTER THE MEETING was called to order, Barry Feeker, Topeka Rescue Mission gave the invocation.

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

Councilmember Alcalá questioned if the continuation of the Committee of the Whole meeting that was conducted prior to the Council meeting would be in violation of the Kansas Open Meetings Act. He stated that the Council intends to reconvene the Committee of the Whole meeting after the Council meeting adjourned.

Braxton Copley, Interim City Attorney stated that because the Committee of the Whole meeting was adjourned, the meeting could not continue after the Council meeting. He explained that a twenty-four hour public meeting notice is required before a meeting could be conducted.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Tom Woltkamp to the Board of Building and Fire Appeals for a term that would expire on May 31, 2010 was presented.

BOARD APPOINTMENT recommending the re-appointment of Mike Wilson to the Board of Building and Fire Appeals for a term that would expire on May 31, 2010 was presented.

A FINAL PLAT for Fairlawn Chase Subdivision located at 3420 SW Fairlawn Road in the City of Topeka, Shawnee County, Kansas was presented. (P08/9)

RESOLUTION NO. 8063 introduced by Councilmember Sylvia Ortiz granting Topeka Police Department's Weed and Seed an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

Minutes of the regular meeting of May 13, 2008 were presented.

A 2008 Open After Midnight License renewal application bearing the approval of the Chief of Police and City Inspectors for Ichabod Laundra Bar located at 1501 SW 21st Street, was presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Kennedy carried. Councilmembers Alcalá and Ortiz abstained. (7-0-2)

A 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, May 13, 2008, at 6:00 P.M. to consider the advisability of the adoption of a Redevelopment Project Plan for the East Gate Redevelopment District.

ORDINANCE NO. 19089 introduced by City Manager Norton N. Bonaparte, Jr., adopting a Redevelopment Project Plan for the East Gate Redevelopment District pursuant to K.S.A. 12-1770 et seq., as amended placed on first reading May 13, 2008 was again presented.

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

Matthew Gough, Barber Emerson, L.C., stated that approval would authorize the use of Tax Increment Financing Bonds to pay for certain eligible costs of the project. He noted that the project would be financed through a locally owned company.

John E. Brown, J & J Company stated that he has been a resident and business owner for many years in the Topeka area and is honored to finance the project because it will greatly enhance the area.

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

Councilmember Ortiz moved to close the public hearing and 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, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

RESOLUTION NO. 8064 introduced by Deputy Mayor Jeff Preisner, terminating the lease purchase agreement of a Robinson R-44 helicopter was presented. The resolution was deferred from the meeting of May 13, 2008.

Councilmember Harmon distributed a copy of the proposed amendments to the resolution, and read the document in its entirety.

Councilmember Preisner moved to approve the amendments as distributed. The motion was seconded by Councilmember Haynes.

Councilmember Alcala stated that he was opposed to the amendments, and questioned if the Council initially had the authority to execute the lease purchase agreement.

The motion to approve the amendments as distributed carried. Councilmember Ortiz voted "no." Councilmember Alcala abstained. (7-1-1)

Councilmember Preisner moved to approve the resolution as amended. The motion seconded by Councilmember Swank carried. Councilmembers Alcala and Ortiz abstained. (7-0-2)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing the approval of Amendment No. 4 to Contract No. 36091 with Washburn-Lane Parkway Renovations regarding the College Hill Redevelopment Project was presented.

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

Councilmember Preisner moved to approve the resolution. The motion was seconded by Councilmember Swank.

Councilmember Haynes questioned why the amendment was being proposed; what caused the delays in construction; and if the City would be reimbursed for the additional \$100,000 needed to cover the projected tax revenue shortage.

Jim Langford, Budget and Finance Director stated that the developer did not complete the project by December 31, 2007 due to inclement weather. He also stated that based on final evaluation of projected tax revenue there would be a shortage of \$200,000 which is the City's responsibility. He noted that the developer is offering a partial amount of \$100,000 in good faith, and the City would be responsible for the remaining \$100,000.

Grant Glenn, attorney, Woner, Glenn, Reeder, Girard and Riordan, P.A., stated that the causes for delay were beyond the developer's control. He also stated that the developer is offering the payment even though they are not legally required to do so. He reported that buildings A, B, C, D, G and H are complete, Townhouse buildings E and F are 60% complete, and building I is not complete due to issues with surrounding neighbors.

Councilmember Swank noted that the project is a public and private development and both entities were affected by delays.

Councilmember Haynes asked if the City always assumes the financial risk with this type of a project.

Braxton Copley, Interim City Attorney stated that the contract includes a waiver to substantially complete projects; however, the developer has excusable delays. He also stated that facts were weighed during negotiations for a fair and equitable resolution, but the City is ultimately responsible for the payments if the developer is delayed.

Councilmember Alcalá questioned if City of Topeka Contract No. 36091 is the original contract, and if so the construction deadline was December 31, 2007.

Councilmember Alcalá made a substitute motion to defer the resolution to June 3, 2008. The motion was seconded by Councilmember Ortiz.

Councilmember Preisner stated that he would not support the substitute motion because he believes the contract is a legal binding document.

The motion to defer the resolution to June 3, 2008 carried. Councilmembers Swank and Preisner voted “no.” Councilmember Blackburn abstained. (6-2-1)

A CLAIM submitted by Patrick Higgins in the amount of \$2,400 for damages sustained to the basement of his residence was presented.

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

Patrick Higgins stated that he submitted the receipts for damage as requested by the Council.

Councilmember Alcalá stated that he believes the claimant could not have prevented the sewer line backup because the problem occurred in an area of the sewer line that the City is responsible for maintaining.

Councilmember Alcalá moved to approve the claim in the amount of \$2,400. The motion was seconded by Councilmember Ortiz.

Councilmember Preisner stated that he would not support approval of the claim in the amount of \$2,400 because he believes the City should only be liable for cleanup costs.

Councilmember Preisner made a substitute motion to approve the claim in the amount of \$1,100. The motion was seconded by Councilmember Swank.

Councilmember Woelfel stated that routine and unscheduled maintenance was conducted on the sewer line; therefore, making it compliant with the City's maintenance schedule. He stated that he would not support payment of the claim because it was determined that the City was not at fault.

Councilmember Haynes asked if the property owner has a homeowner insurance policy in place to help cover the cost of damage.

Braxton Copley stated that the claimant does have a policy in place.

Patrick Higgins stated that the reimbursement request includes the \$1,000 insurance policy deductible, cleaning costs, and plumber service fees.

Braxton Copley recommended that the claim be denied based on the fact that it was determined that the City was not negligent.

The substitute motion to approve the claim in the amount of \$1,100 failed. Councilmembers Alcala, Ortiz, Woelfel, Haynes and Harmon voted "no." (4-5-0)

The motion to approve the claim in the amount of \$2,400 failed. Councilmembers Woelfel, Haynes, Blackburn, Preisner and Harmon voted "no." (4-5-0)

Councilmember Alcala moved to reconsider the substitute motion to approve the claim in the amount of \$1,100. The motion seconded by Councilmember Ortiz carried. Councilmembers Woelfel and Haynes voted "no." (7-2-0)

Councilmember Alcala called the question.

The substitute motion to approve the claim in the amount of \$1,100 carried.

Councilmembers Woelfel, Haynes and Harmon voted “no.” (6-3-0)

ORDINANCE NO. 19090 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 28, 2008, through May 4, 2008, 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 Swank carried unanimously. (9-0-0)

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

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 a portion of property located at the northwest corner of SW Wanamaker Road and SW 53rd Street having an address of 5127 SW Wanamaker Road from "RR-1" Residential Reserve District TO "C-2" Commercial District placed on first reading May 13, 2008 was again presented. (Z08/14)

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

Exparte communications were expressed by all Councilmembers.

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

Councilmember Preisner stated that the development could generate approximately \$1.2 million annually in property tax revenues.

Councilmember Haynes asked if the Planning Department's recommendations of the proposed zoning meet the 2025 Comprehensive Metropolitan Plan.

David Thurbon, Planning Department Director stated that staff has reviewed the proposal and recommends disapproval. He stated that the Planning Department staff recommends, C-2 uses only as a part of a Planned Unit Development (PUD) which would incorporate performance standards for landscaping, signage and uses and improvements to SW 53rd Street; or reduce overall commercial zoning to an area of between 10 to 12 acres maximum; or approve the proposal as submitted based upon the Planning Commission's previous action of February 18, 2008 where approval was granted for a more intense combination of C-4/C-2 zoning covering the bulk of the subject area.

Councilmember Haynes asked if the factors listed in the *Golden vs. City of Overland Park* Supreme Court Case were considered in the zoning case.

David Thurbon stated that the factors are considered in all zoning cases.

Councilmember Ortiz asked if the Council should be voting on the issue due to the pending Code of Ethics violation.

Braxton Copley, Interim City Attorney stated that this particular zoning case does not pertain to the alleged violation. He also stated that if a Councilmember believes that there may be a conflict of interest or a Code of Ethics violation then they should abstain from voting on the matter.

Councilmember Blackburn asked if voting on a zoning case constituted the participation of entering into a contract as outlined in the Kansas State Statute.

Braxton Copley stated that participation of a Councilmember voting on a zoning case does not violate any state laws.

Councilmember Alcala asked if the Council should adjourn into executive session to further discuss the matter relating to the pending Code of Ethics violation and how it relates to this zoning case.

Braxton Copley stated that it is not necessary to adjourn into executive session to discuss this particular zoning case because it does not relate to the alleged Code of Ethics violations.

Councilmember Blackburn asked if there were any other laws that should be considered by the Council when making a decision on the zoning case.

Braxton Copley stated that the current City of Topeka Code of Ethics should also be considered.

Councilmember Harmon stated that he was opposed to the proposed C-2 Commercial District zoning change. He requested that the proposal be remanded back to the Planning Commission for further review.

Councilmember Harmon made a substitute motion to remand the ordinance back to the Planning Commission with the stipulation that one of the three recommendations made by the Planning Department is met. The motion seconded by Councilmember Ortiz carried.

Councilmembers Woelfel, Haynes and Preisner voted “no.” Councilmember Alcala abstained.
(5-3-1)

Norton N. Bonaparte, Jr., City Manager pulled item 8B, an ordinance authorizing a zoning change on property located at 3420 SW Fairlawn Road from "R-1" Single Family Dwelling District TO "C-2" Commercial District (*Z08/13*) from the agenda, per the applicant's request.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka,

Shawnee County, Kansas, for the improvement of a roundabout at SW 6th Avenue and Wanamaker with pavement, concrete curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60581-01 as defined and described in Resolution No. 7364, adopted and approved July 1, 2003 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning membership on the Topeka Human Relations Commission, amending City of Topeka Code Section 86-27 and repealing said original sections was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced that the City's e-newsletter "Extra-Ordinarily Topeka" is available for review; the program details of the Topeka 101: A Citizen's Academy; the last Meet the Manager Session would be held at Joe Vagabond's Coffeehouse on May 22, 2008 from 7:30 a.m. to 8:30 a.m.; and City pools would open on May 24, 2008. He also announced that there would not be a City Council meeting on Tuesday, May 27, 2008 pursuant to Resolution No. 8021.

Councilmember Ortiz asked if admission to the Gage Park Carousel would be waived on May 31, 2008 in honor of the Carousel in the Park 100 Year Birthday Celebration.

Norton N. Bonaparte, Jr., City Manager stated that he would contact staff regarding the details of the Celebration and report back to the Council.

Councilmember Woelfel asked if the agenda for the Citizen's Academy has been released.

Norton N. Bonaparte, Jr., gave a brief overview of the Citizen's Academy agenda and stated that it was published in a press release.

Ron Shirrell appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:02 p.m.

Brenda Younger
City Clerk