

Council Minutes – July 1, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, July 1, 2008. 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, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9. Mayor Bunten -1.

AFTER THE MEETING was called to order, Councilmember Harmon requested a moment of silent meditation.

A PRESENTATION on the 2009 City Operating Budget was given by Jim Langford, Budget and Finance Director.

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

THE CONSENT AGENDA was presented as follows:

APPROVAL OF CLAIM authorizing the Workers' Compensation Settlement for Jeffrey Holtzman in the amount of \$30,066.75 was presented.

APPROVAL OF CLAIM authorizing the Workers' Compensation Settlement for Kevin DelBiaggio in the amount of \$18,500 was presented.

Minutes of the regular meeting of June 24, 2008 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Applewood BBQ & Bistro located at 3310 SE 29th Street, Suite 500, was presented.

An Open After Midnight License renewal application bearing the approval of the Chief of Police and City Inspectors for That Place located at 3701 SW Plaza Drive, was presented.

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

Councilmember Kennedy moved to suspend the Council Rules to add a resolution relating to the extension of the agreement with Community First, Inc., to the agenda. The motion seconded by Councilmember Blackburn carried. (9-0-0)

Councilmember Kennedy moved to add the resolution to the agenda. The motion seconded by Councilmember Blackburn carried. Councilmember Haynes abstained. (8-0-1)

Mayor Bunten announced that the resolution would be added to the agenda under New Business as item 6C.

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. The resolution was deferred from the meeting of May 20, 2008.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Swank moved to defer the resolution until August 12, 2008. The motion was seconded by Councilmember Preisner.

Braxton Copley, Interim City Attorney stated that the developer has requested that the parking lot project be financed through general obligation bonds; therefore, the resolution would need to accompany the final reading of the ordinance authorizing the issuance of bonds.

Councilmember Haynes asked for more information on the project extensions requested by the developer.

Braxton Copley suggested that a work session be scheduled to discuss the issues with the developer.

Councilmember Alcala made a substitute motion to direct the City Manager to schedule a work session with the developer to discuss the issues. The motion was seconded by Councilmember Haynes.

Randy Speaker stated that it appears that the date of August 12, 2008 is available to schedule a work session; however, he must confirm the date with the City Manager's office.

Councilmember Alcala stated that it was his intent to schedule a work session and withdraw the item from the agenda. He noted that a specified agenda date could be determined at the work session.

Braxton Copley requested that the motion state that the item be deferred until one week following the work session.

Councilmember Alcala withdrew the substitute motion. The second concurred.

The motion to defer the resolution until August 12, 2008 carried. Councilmember Alcala voted "no." Councilmembers Haynes and Blackburn abstained. (6-1-2)

A REQUEST by Jerry L. Penner, Sr., to operate a salvage yard on a 1.41-acre parcel located at 417 SE 13th Street in the City of Topeka, Kansas was presented. (SVC08/1)

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Ortiz stated that she was informed by the applicant that he is on probation for a zoning violation until January 2009.

Braxton Copley, Interim City Attorney confirmed that the applicant is on probation for operating a salvage yard without a license. He stated that probation would not prevent him from obtaining a license to operate a salvage yard.

Councilmember Ortiz asked if the Council should postpone approval of the license until January 2009 when the applicant is no longer on probation.

Braxton Copley stated that approval of the license would allow him to lawfully operate a salvage yard from this date forward, and would not affect the past zoning court case with the applicant.

Mike Francis, legal counsel for the applicant requested early termination of the applicant's probation because he has otherwise satisfied his probationary terms. He stated that traffic problems have never been an issue, and Mr. Penner was never notified that there were stipulations to abide by regarding traffic regulations. He also stated that he believes the salvage yard would not have a negative impact on the surrounding area. He noted that Mr. Penner is willing to install the recommended fencing around the property when the planned recreation trail is constructed.

Councilmember Woelfel asked Mr. Penner if he believes traffic has been an issue for the area, and if he is the owner of the property.

Jerry L. Penner, Sr., stated that he does not believe traffic has ever been an issue for the area. He also stated that he is currently leasing the property and considering ownership.

Councilmember Kennedy asked for a brief history of the property and the problems associated with issuing the salvage yard license.

Braxton Copley stated that the City Council revoked Mr. Penner's salvage yard license effective March 5, 2003 after it was issued without City Council approval on January 13, 2003. He also stated that Mr. Penner subsequently re-applied and was denied by the City Council on June 17, 2003.

David Thurbon, Planning Department Director stated that Mr. Penner is presently in compliance for a provisional land use. He noted that he is unaware of who is the current property owner.

Councilmember Kennedy expressed concern with the appearance of the property. She asked if the City has addressed the issue.

David Thurbon stated that the property is in much better condition than it has been in previous years and Mr. Penner has had two years to fully comply in cleaning up the property.

Councilmember Woelfel asked if there are any problems with the site plan for this property.

David Thurbon stated that the site plan was approved by the Fire Marshal.

Councilmember Harmon asked if the salvage yard license is subject to renewal, and if the license is granted to the applicant or the property.

Braxton Copley stated that the applicant assumes all risk because it is a license on premises. He also stated that the license is issued to the applicant and is nontransferable to another site.

Councilmember Alcalá moved to approve the request. The motion seconded by Councilmember Kennedy failed. Councilmembers Kennedy, Haynes, Swank and Preisner voted “no.” Councilmembers Woelfel and Blackburn abstained. (3-4-2)

ORDINANCE NO. 19117 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of June 9, 2008, through June 15, 2008, and enumerating said expenditures therein was presented for first and final reading.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Alcalá carried. Councilmember Alcalá voted “no.” Councilmember Haynes abstained. (7-1-1)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Ortiz, Woelfel, Swank, Blackburn, Preisner and Harmon -7. Noes: Alcala -1. Abstain: Haynes -1.

RESOLUTION NO. 8078 introduced by Councilmember Lana Kennedy relating to extending the agreement with Community First, Inc., for the sale of the real estate consisting of Sumner School was presented.

Councilmember Kennedy gave the staff report and stated that the contract has been signed by Community First, Inc.

Braxton Copley, Interim City Attorney stated that the sixty day extension would commence after the City Manager has executed the agreement.

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

Councilmember Haynes asked if Community First, Inc., has asked for other exceptions.

Sandra Lassiter, Community First, Inc., stated that they would have preferred to have more time but because of the urgency in the matter they signed the contract.

The motion to approve the resolution carried unanimously. (9-0-0)

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 June 24, 2008 was again presented. (Z08/14) The ordinance was remanded back to the Planning Commission from the meeting of May 20, 2008.

Randy Speaker, Deputy City Manager gave the staff report and stated that approval would require seven affirmative votes by the Council.

Councilmember Kennedy moved to adopt the ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Kennedy asked if the Planning Department recommends approval of the zoning proposal and if the proposed zoning complies with the 2025 Topeka-Shawnee County Comprehensive Metropolitan Plan.

Councilmember Alcalá asked why the property was not considered as a Planned Unit Development “PUD” District.

David Thurbon, Planning Department Director stated that staff recommended approval because the total acreage for the zoning proposal was reduced to 14 acres. He confirmed that the zoning proposal complies with the 2025 Topeka-Shawnee County Comprehensive Metropolitan Plan. He noted that the applicant did not apply for a “PUD” District.

Councilmember Haynes asked where the arterial streets would be located, and if the City could provide the necessary services to accommodate a shopping center in the future. He also stated that it was his understanding that it takes several years for the City to recover the cost of extending City services.

David Thurbon stated that SW 53rd Street and SW Wanamaker Road would be the arterial streets. He also stated that the cost of extending City services is recovered in a timely manner for commercial property and high density residential areas. He noted that there would be a slower emergency response time, as well as, other utility issues for the area.

Councilmember Blackburn stated that the zoning proposal was remanded back to the Planning Commission with the intent in finding a compromise. He also stated that he would

support the zoning proposal because it meets the standards outlined in the 2025 Topeka-Shawnee County Comprehensive Metropolitan Plan, and the proposal has been approved by staff. He noted that the development would add to the Topeka-Shawnee County property tax base, as well as, meets the required zoning laws.

Councilmember Alcalá requested that the factors listed in the *Golden vs. City of Overland Park, Kansas* Supreme Court Case be read.

David Thurbon gave a brief overview of the factors that were considered by staff including traffic, density, existing and future population, zoning classification, suitability, conformance to the 2025 Topeka-Shawnee County Comprehensive Metropolitan Plan and the recommendation of professional staff.

Braxton Copley, Interim City Attorney noted that residents located in the immediate area of the zoning proposal should be taken into consideration; however, what is best for the broader area or the city as a whole should be the main factor in approving a zoning proposal.

Exparte communications were declared by all Councilmembers.

The motion to adopt the ordinance failed. Councilmember Alcalá voted “no.” Councilmembers Ortiz and Haynes abstained. (6-1-2)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 26-446, 26-448, 26-449, 26-458, 26-459, and 26-463 to 26-466 concerning backflow prevention and cross connection control and specifically repealing said original sections and section 26-450 through 26-454, 26-457, 26-460, 26-461, 26-462 and 26-464 was presented for first reading.

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 Stone Crest Subdivision and Stone Crest Subdivision No. 2 with piping, manholes, engineering and all other contingencies needed to complete Sanitary Sewer Improvement Project No. 40942-00, as defined and described in Resolution No. 7947, adopted and approved May 15, 2007 was presented for first reading.

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 Stone Crest Subdivision with piping, manholes, engineering and all other contingencies needed to complete Sanitary Sewer Improvement Project No. 40943-01, as defined and described in Resolution No. 7948, adopted and approved May 15, 2007 was presented for first reading.

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 Stone Crest Subdivision with pavement, curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60623-01, as defined and described in Resolution No. 7949, adopted and approved May 15, 2008 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., adopting a twelve month extension of the franchise for Southwestern Bell Telephone Company d/b/a AT and T Kansas was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a 12-foot wide strip of platted utility easement in Lauren's Bay Estates located on the west side of SW Stonybrook Drive at SW 46th Street, extended, City of Topeka, Shawnee County, Kansas was presented for first reading. (V08E/2)

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

Randy Speaker, Deputy City Manager reported that he attended a meeting with the Kansas Department of Transportation and Federal Highway Commission to initiate a study for the possible re-routing of Interstate 70. He also stated that he received a preliminary report notifying the City that the proposed TIF District surrounding the S. Topeka Boulevard and Kansas Avenue Intersection is eligible for tax increment financing bonds. He also encouraged citizen participation in the Heartland Visioning process, as well as, the 2009 City budget process.

Councilmember Alcalá encouraged city residents to apply for the Franchise Fee Refund program. He requested that a press release be issued to explain program qualifications and to alert the citizens who may qualify.

Mayor Bunten requested that House Bill No. 2217 regarding appointments to boards and commissions be explained in detail.

Braxton Copley, Interim City Attorney stated that House Bill No. 2217 has a specific provision which provides that any mayoral appointments to boards or commissions must be approved within 45 days by the Council. He also stated that if the Council does not approve an appointment a reason must be given as to why the appointment was disapproved.

Councilmember Kennedy asked why all nine Councilmembers could not attend the meeting with Community First, Inc.

Braxton Copley stated that the Kansas Open Meetings Act (KOMA) now states that if a majority of the governing body gather for the purpose of discussing City business or affairs a notice must be published prior to the meeting, and the meeting must be open to the public. He

also stated that in order to avoid a potential KOMA violation the majority of the governing body could not be present.

Councilmember Blackburn asked if four Councilmembers could have attended the meeting.

Braxton Copley stated that provided a series of meetings or communication was not conducted and no other issues were discussed, no more than four Councilmembers could have attended the meeting.

Mayor Bunten asked the Council to review the names submitted for appointments to various boards and commissions and choose their nominations.

Nancy Johnson, Sandra Lassiter, Deborah Edwards, Bishop Ronald Lassiter and Gene Jani appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:44 p.m.

Brenda Younger
City Clerk