

## **Council Minutes – September 23, 2008**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 23, 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 presided -1.

AFTER THE MEETING was called to order, Councilmember Alcala gave the invocation.

POSTING OF THE COLORS was presented by the Topeka High School Junior Reserve Officers' Training Corps.

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

A PRESENTATION of the Law Enforcement Partnership Panel was given by Carol Roberts, Chairperson.

Councilmember Ortiz requested to pull item 4A, a Civil Claim Appeal by Peondre Walker from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced that item 4A would be removed from the consent agenda and placed on the Council agenda under New Business as item 6D.

THE CONSENT AGENDA was presented as follows:

A FINAL PLAT for McFarland Farm Subdivision No. 4 located at the northwest corner of SW Huntoon Street and SW McAlister Road, all being within the City of Topeka, Shawnee County, Kansas was presented. (P08/6)

RESOLUTION NO. 8106 introduced by Councilmember Sylvia Ortiz granting Cereilo Arreola an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8107 introduced by Councilmember Jeff Preisner granting Sharkey's an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8108 introduced by Councilmember Lana Kennedy granting Topeka Natural Food Co-Op an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8109 introduced by City Manager Norton N. Bonaparte, Jr., transferring ownership of the bell from the United States Ship Topeka which will be displayed at Topeka High, Unified School District 501 was presented.

MINUTES of the regular meeting of September 16, 2008 was presented.

Dance Hall License applications bearing the approval of the Chief of Police and City Inspectors for CG's Lounge located at 501 NW Lyman Road; and Las Fuentes Mexican Restaurant located at 4111 SW Gage Center Drive, was presented.

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

Councilmember Preisner requested that item 6B, a resolution authorizing the initiation of condemnation proceedings for Street Improvement Project No. 60632-01 be considered next on the Council agenda.

Upon hearing no objections, Mayor Buntin announced that item 6B would be considered next on the Council agenda.

RESOLUTION NO. 8112 introduced by City Manager Norton N. Bonaparte, Jr., authorizing initiation of condemnation proceedings to acquire property interests for Street

Improvement Project No. 60632-01 which provides for street construction at Lauren's Bay Estates was presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Preisner moved to defer the resolution until October 7, 2008. The motion was seconded by Councilmember Kennedy.

Councilmember Alcalá made a substitute motion to approve the resolution. The motion was seconded by Councilmember Ortiz.

John Hamilton, attorney representing Tom Moses referenced an aerial photograph of the area included in the proposed condemnation proceedings. He explained that the initial final plat for the area did not include an extension of SW Marlboro Road in Lauren's Bay Estates Subdivision. He stated that the property owner is opposed to the street construction and believes there is enough connectivity to major thoroughfares for the new subdivision. He also stated that if a cul-de-sac would be developed in this area, the condemnation would not be needed.

Councilmember Blackburn asked if the initial plans included the extension of SW Marlboro Road.

John Hamilton stated that the City's master plan displays SW Marlboro Road as a dead-end street.

Tom Moses, property owner expressed concern with the proposed condemnation proceedings. He stated that SW Marlboro Road is considered a country lane with no curb and gutters. He encouraged the Council to only authorize condemnation proceedings as a last resort.

Councilmember Preisner asked how the property owner gained access to the public easement, as well as, how did Brainstorm Development Group acquire a quit claim deed for the public easement.

Tom Moses stated that the County extinguished the roadway for public easement and offered Brainstorm Development Group access to the public easement. He noted that Brainstorm Development Group offered him a quit claim deed to the easement to settle the issue.

John Hamilton stated that the County declined the method of dedication of a public easement, so they issued a revised title policy stating the easement no longer existed; therefore, creating the need for a quit claim deed.

Joe Terrill stated that Bridle Path Acres' easements were dedicated and setbacks relocated for property owners to offer a sense of country living in the community. He stated that he opposed the extension of SW Marlboro Road because it would alter the original concept of Bridle Path Acres. He also stated that the extension would create traffic and pedestrian safety issues.

Councilmember Preisner asked if the County has been notified of the steep grade on SW 41<sup>st</sup> Street.

Joe Terrill stated that he has not contacted the County.

Councilmember Blackburn asked if the original plat for Bridle Path Acres Subdivision included turn-a-rounds.

Joe Terrill stated that when he purchased the property turn-a-rounds were included in the plat; however, he believes they are not needed. He also expressed concern with SW Marlboro Road extending through to SW 53<sup>rd</sup> Street.

Dick Jones stated that he believes it is the Council's responsibility to act ethically and responsibly. He also requested a clear plan to implement the infrastructure for the area.

Councilmember Preisner stated that the City has a responsibility to construct infrastructure for residents in the benefit district.

Deborah Jones expressed concern with the steep grade of SW 41<sup>st</sup> Street and SW Marlboro Road and believes increased traffic could exasperate the situation for the families in the subdivision.

Jay Edsall noted that the community does not have sidewalks installed. He expressed concern with the extension creating more traffic on SW Marlboro Road. He stated that the proposed cul-de-sac properties in Lauren's Bay Estates would eliminate the need for extending the street.

Gene Jani, developer stated that the Topeka Planning Department recommended the extension for infrastructure purposes. He also stated that his developments include temporary turn-a-rounds to help aid in City infrastructure connections. He clarified that he did not cut through Mr. Moses' property and noted that they both own the easement. He reported that he is abiding by the Planning Department's standards in constructing good and proper development for connectivity.

Councilmember Preisner questioned the necessity of connectivity for the development.

Bill Fiander, stated that every platted subdivision is set up to connect to other subdivisions to lower the costs associated with infrastructure projects. He also stated that it is imperative to extend the road because each phase is planned separately from one another, if not, the adjoining 85 lots could potentially be lost. He also noted that cul-de-sacs could not be more than 500 feet long without a variance.

Councilmember Preisner asked if the adjoining 85 lots are not developed who would be financially responsible to cover the cost of the benefit district.

Bill Fiander stated that he is unsure if the 85 lots are included in the benefit district boundaries.

Councilmember Blackburn asked if a different plat was used to develop the first tract, and if it displayed the area as a public easement.

Braxton Copley, Deputy City Attorney stated that the platting subdivision process can have a formal dedication or a legal instrument, such as a deed, which would give legal right to the County for the public roadway. He also stated that Mr. Moses' parcel is not platted.

John Hamilton stated that the property is being developed east to west with the last phase located near Mr. Moses' property. He also stated that David Thurbon appeared as a witness for testimony and stated that zero lots would be lost if cul-de-sacs were developed.

Councilmember Swank requested additional time to consider the issue. She asked if the adjoining 85 lots could be developed without the extension, and would a delay affect the development of the subdivision.

Councilmember Blackburn questioned if a stop order was put into place for the project because connectivity was lost.

Gene Jani stated that the subdivision does not have water connectivity on the east side so the west side is currently being developed. He also stated that the benefit district has been approved by the Council; however, staff has final word on the properties, and SW Marlboro Road would not connect all the way to SW 53<sup>rd</sup> Street. He also stated that the City of Topeka could be liable for the \$14,000,000 approved for the benefit district if the subdivision fails.

Braxton Copley, Deputy City Attorney stated that there is recourse available if Mr. Jani believes staff is acting illegally or overstepping their bounds. He noted that staff must comply with subdivision regulations.

Shawn Bruns, City Engineer stated that the plat indicates the intent of SW Marlboro Road temporary turn-a-round which would be vacated when the projects are extended. She also stated that the subdivision must provide connectivity.

Councilmember Alcalá asked if the resolution is approved could legal action be taken against the City.

Braxton Copley stated that the property owner could question the authority of the City to condemn the property outside the city limits, and file a lawsuit against the City.

Gene Jani stated that the platting phase is at the final stages and if no connectivity is there a stop order would be placed on the project. He noted that he has followed subdivision regulations as required by the Topeka Planning Department. He also stated that he could not move forward if the street is not extended and encouraged the Council to approve the resolution.

Councilmember Blackburn requested that an exemption be prepared to continue development while the connectivity issue is resolved.

Braxton Copley stated that he is not aware of a provision in the subdivision regulations that would allow for an exemption.

Councilmember Woelfel asked when the Lauren's Bay Estates project was approved; if the road was included; and if the property owners were notified of the proposed street extension.

Gene Jani stated that the final plat was approved by City Council approximately two years ago and included an extension of the road. He explained that he does not want to create a hardship for the property owners on SW Marlboro Road; however, he does not have time to re-plat the subdivision.

Tom Moses stated that he was not notified about the street extension.

John Hamilton stated that the road extension was not shown on the final plat.

Councilmember Blackburn suggested that City code, as well as, the subdivision regulations be amended so that there is some flexibility for development and connectivity issues.

The substitute motion to approve the resolution carried. Councilmembers Alcalá, Ortiz and Harmon voted “no.” Councilmember Haynes abstained. (5-3-1)

Councilmember Blackburn requested to schedule a worksession to discuss the condemnation issues and find a positive solution for all parties involved.

Councilmember Harmon concurred and requested more information to be included in the Council agenda packet if the issue is complex.

Councilmember Preisner moved to add an ordinance, concerning a quorum of the Topeka Planning Commission to the Council agenda under First Readings. The motion seconded by Councilmember Alcalá carried. Councilmember Woelfel voted “no.” Councilmember Blackburn abstained. (7-1-1)

Mayor Bunten announced that the ordinance would be placed on the Council agenda under First Readings as item 8A.

BOARD APPOINTMENT recommending the appointment of Kimberly Scott to the Civil Service Commission for a term that would expire on September 30, 2012 was presented. The board appointment was deferred from the meeting of September 16, 2008.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Alcalá moved to approve the board appointment. The motion was seconded by Councilmember Ortiz.

Councilmember Woelfel expressed concern with Ms. Scott’s qualifications regarding the commission appointment.



Councilmember Haynes asked if the role and duties of the Civil Service Commission as outlined in Charter Ordinance No. 94 have been researched.

Braxton Copley, Deputy City Attorney stated that he would provide the requested information in one week.

Councilmember Haynes made a substitute motion to defer the board appointment for two weeks. The motion was seconded by Councilmember Swank.

Councilmember Alcala explained that Ms. Scott has requested to serve the city in a volunteer capacity and believes the Civil Service Commission would be a good choice.

The motion to defer the board appointment for two weeks carried. Councilmembers Alcala, Ortiz and Harmon voted “no.” (6-3-0)

ORDINANCE NO. 19165 introduced by Councilmember Deborah Swank, creating Chapter 66, Article 2, in the Code of the City of Topeka establishing the Sustainability Advisory Board and amending Section 1 of Ordinance No. 19095 relating to non-statutory boards and commissions and repealing said original section placed on first reading September 9, 2008 was again presented. The ordinance was deferred from the meeting of September 16, 2008.

Councilmember Swank gave the staff report and stated that the Board would act in an informational capacity to aid in the development of sustainable practices. She also stated that the community has expressed a great amount of support in establishing the Board.

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

Councilmember Ortiz asked how many members would serve on the board, and how they would be appointed.

Councilmember Swank stated that the City Council would nominate individuals and the Mayor would make the board appointments. She also stated that the Board would consist of nine members, with at least five of the nine members being currently licensed, have a degree in, or have substantial past experience in the fields of conservation and/or natural resource conservations or a similar field relating to the environment or conservation.

Councilmember Blackburn asked if the ordinance could be amended to state that one appointment should come from each Councilmember.

Braxton Copley, Deputy City Attorney stated that the City has a policy in place that allows the Mayor to appoint individuals to boards or commissions; however, he would research the issue and report back to the Council.

Councilmember Blackburn moved to amend the ordinance to replace the word “awareness” with the word “assessment” in each place that it appears in the ordinance. The motion was seconded by Councilmember Kennedy.

Councilmember Swank stated that she would not support a policy change regarding nominations because the current policy seems to work.

Councilmember Woelfel asked if the Sustainability Advisory Board would have a financial impact on the Public Works Department.

Mike McGee, Deputy Public Works Director stated that it would depend on the projects the Board choose to implement.

Lacey Bisnett gave the definition of sustainability and stated that the City could become more environmentally-friendly, energy conscious and economical with the Board’s recommendations.

Angel Romero stated that environmental issues were discussed at the visioning meetings. She also stated that Topeka could set an example for other cities by improving the quality of life and making the community a better place to live.

The motion to amend the ordinance to replace the word “awareness” with the word “assessment” in each place that it appears in the ordinance carried unanimously. (8-0-0)

Councilmember Swank moved to adopt the ordinance as amended. The motion seconded by Councilmember Preisner carried. Councilmember Woelfel voted “no.” Councilmember Kennedy was out of the room. (7-1-0)

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

RESOLUTION NO. 8110 introduced by City Manager Norton N. Bonaparte, Jr., concerning residency requirement exceptions for Department Heads was presented. The resolution was deferred from the meeting of September 16, 2008.

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

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

RESOLUTION NO. 8111 introduced by Deputy Mayor Jeff Preisner disapproving the appointment of Carol Torrence to the Planning Commission was presented.

Councilmember Preisner gave the staff report.

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

Councilmember Preisner made a substitute motion to amend the resolution by adding the statement, “WHEREAS, upon vote of the Council at the September 9, 2008 Council meeting the

motion to approve the appointment of Ms. Torrence to the City Planning Commission failed; and” beginning on Line 22; adding the statement “pursuant to HB 2217” after the word “finding” on Line 25; deleting the word “and” after the word “Commission” on Line 26; deleting Lines 27 through 29 in their entirety; and deleting the statement “has articulated views on a zoning case which oppose growth and development of the City and which are in conflict with the majority of Council and thus,” after the word “Torrence” beginning on Line 31. The motion was seconded by Councilmember Blackburn.

Councilmember Haynes asked if the Council is required to provide findings in the resolution for disapproval of the nomination as outlined in HB 2217.

Braxton Copley, Deputy City Attorney stated that in his opinion the resolution complies with HB 2217.

Councilmember Haynes stated that he disagrees and believes the Council should specifically state their findings for disapproval of the appointee.

Councilmember Alcalá called the question.

Councilmember Blackburn challenged the call.

The Chair overruled the challenge to the call.

The motion to amend the resolution failed. Councilmembers Alcalá, Ortiz, Haynes and Harmon voted “no.” (4-4-0)

Councilmember Kennedy entered the room.

Councilmember Harmon stated that in his opinion there have not been sufficient findings by the Council as to why the appointment should be disapproved.

Micheal McDonald spoke in support of the resolution and expressed concern with the nominee’s qualifications.

Councilmember Harmon made a substitute motion to reconsider the motion to amend the resolution. The motion seconded by Councilmember Preisner carried. Councilmembers Ortiz and Haynes voted “no.” (7-2-0)

The motion to amend the resolution by adding the statement, “WHEREAS, upon vote of the Council at the September 9, 2008 Council meeting the motion to approve the appointment of Ms. Torrence to the City Planning Commission failed; and” beginning on Line 22; adding the statement “pursuant to HB 2217” after the word “finding” on Line 25; deleting the word “and” after the word “Commission” on Line 26; deleting Lines 27 through 29 in their entirety; and deleting the statement “has articulated views on a zoning case which oppose growth and development of the City and which are in conflict with the majority of Council and thus,” after the word “Torrence” beginning on Line 31 carried. Councilmembers Alcala, Ortiz and Haynes voted “no.” (6-3-0)

Councilmember Preisner moved to approve the resolution as amended. The motion seconded by Councilmember Swank carried. Councilmembers Alcala, Ortiz, Haynes and Harmon voted “no.” (5-4-0)

ORDINANCE NO. 19166 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of September 1, 2008, through September 7, 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 Swank carried unanimously. (9-0-0)

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

PRESENTATION OF A CIVIL CLAIM APPEAL by Peondre Walker against the City of Topeka was presented.

Councilmember Kennedy moved to approve the civil claim appeal. The motion was seconded by Councilmember Blackburn.

Councilmember Woelfel stated that he would not support the civil claim appeal because he believes the actions taken by the Police Officer were appropriate for the situation.

Councilmember Swank stated that she would support the civil claim appeal based on the pictures distributed by the claimant, the situation did not pose a safety hazard.

Councilmember Blackburn questioned if a “No Parking” sign was posted, and why the charges were dismissed in a court of law.

Braxton Copley, Deputy City Attorney stated that in his opinion the Police Officer was justified and felt the vehicle was blocking the public easement and creating a safety hazard. He also stated that the court’s decision on the matter should not have an affect on the Council’s decision.

The motion to approve the civil claim appeal carried. Councilmembers Woelfel and Harmon voted “no.” (7-2-0)

RESOLUTION NO. 8113 introduced by City Manager Norton N. Bonaparte, Jr., authorizing construction of a vehicle surface parking lot on real property presently zoned “M-1” Two-Family Dwelling District located at 1325 SW 16<sup>th</sup> Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented. (CU07/04)

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Swank carried. Councilmembers Alcalá, Ortiz and Haynes voted “no.” Councilmember Blackburn abstained. (5-3-1)

AN ORDINANCE introduced by Deputy Mayor Jeff Preisner amending City of Topeka Code Section 110-35 concerning a quorum of the Topeka Planning Commission and specifically repealing said original section was presented for first reading.

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL;

Randy Speaker, Deputy City Manager announced upcoming community events. He also reported that he after attending the Kansas Department of Transportation hearings he is hopeful that the City would be awarded funds for infrastructure projects.

Councilmember Ortiz announced that the Great Mural Wall Dedication ceremony would be held on September 28, 2008 at 1:00 p.m. at the intersection of SW Western and 20<sup>th</sup> Streets.

Councilmember Swank announced that the Festival of Speed Parade event would be held on October 7, 2008 at 7:00 p.m. in the downtown Topeka area.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:54 p.m.

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Brenda Younger  
City Clerk