

Council Minutes – March 9, 2010

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 9, 2010. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9. Mayor Bunten presided -1.

AFTER THE MEETING was called to order, National Guard Chaplain Dunn gave the invocation.

POSTING OF THE COLORS was presented by the Shawnee Heights Navy Junior Reserve Officers Training Corps. Unit.

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

A PRESENTATION of the 2010 Topeka Armed Forces Personnel of the Year Awards was conducted by Ron Brown, Topeka Military Relations Committee.

A PRESENTATION of the FEMA Flood Plain Update was given by Randy Speaker, Deputy City Manager.

Councilmember Woelfel requested to pull item 4B, denial of a Civil Claim Appeal for Dr. and Mrs. Joe McFarland from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced that item 4B would be removed from the consent agenda and placed on the Council agenda under Unfinished Business as item 5B.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8241 introduced by Councilmember Deborah Swank, granting Mulvane Art Museum an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

MINUTES of the regular meeting of February 23, 2010 were presented.

MINUTES of the special meeting of March 1, 2010 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Sunshine Energy SE #69 located at 3830 SW 29th Street was presented.

An Open After Midnight License application bearing the approval of the Chief of Police and City Inspectors for College Hill Tavern located at 1616 SW 17th Street was presented.

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

ORDINANCE NO. 19390 introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for the St. Patrick's Day Celebration on March 17, 2010 placed on first reading March 1, 2010 was again presented.

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

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

DENIAL OF A CIVIL CLAIM APPEAL for Dr. and Mrs. Joe McFarland seeking \$10,000 to cover the costs of replacing a retaining wall on their property at 2709 SW Boswell was presented.

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

Councilmember Woelfel stated that the presentation made at the work session prior to the Council meeting discussed the actions taken over the past several years by Dr. and Mrs. McFarland to reduce the drainage and erosion issues. He stated that the claimant is seeking \$10,000 to replace twenty feet of a retaining wall.

Councilmember Woelfel moved to approve the denial of the Civil Claim Appeal for Dr. and Mrs. McFarland. The motion was seconded by Councilmember Wolgast.

Councilmember Swank spoke in support of the City's decision to try and solve the drainage problem and replace the storm water system with larger pipe. She stated that she would support the denial of the civil claim because the infrastructure that was in place met specifications at the time of installation almost fifty years ago. She expressed concern with continued erosion on the claimant's property.

Councilmember Harmon asked if the Council approves the denial of the civil claim appeal would it preclude the claimant from seeking recourse at a later date.

Jackie Williams, City Attorney stated that approval of the denial would not set precedent for future claims. He reminded the Council to review the facts for each case and make a decision based on the facts presented.

Councilmember Wolgast stated that he believes the drainage issue should have been corrected long ago because of the poor engineering design of a two block area in the neighborhood. He noted the streets and driveways of the two block area all drain into the same problem area.

Councilmember Hiller stated that the claimant's retaining wall has already been repaired twice and it is likely repairs will be needed again because of continued erosion. She questioned if other methods could be used to divert flood water from the property and stop erosion from progressing. She asked if water was draining from other areas in the neighborhood.

Councilmember Swank stated that she believes the City should continue to monitor the situation in the neighborhood and see if there are other ways to improve the water runoff issues.

Kelly Haller, Water Pollution Control Environmental Technician stated that the system in the area was installed in the mid to late 1950's and met design criteria at that time. He noted that

the system installed in 2009 should handle a 30 to 40 year flood event; however, the system for a 50 year flood event would take a large amount of money to install. He noted that there are no guarantees that the City system could handle a 50 to 100 year flood event. He stated that the claimant would still have to deal with the water running over the retaining wall; however, the new system would cut down the volume of water running onto his property.

Councilmember Alcalá asked if the claimant has done everything possible to the property to keep the erosion from progressing.

Dr. McFarland stated that he has distributed truckloads of dirt on his property to force the water runoff away from his home; however, water runoff continues from the street.

Mayor Bunten noted over the years the neighborhood has had numerous problems with storm water runoff.

Councilmember Alcalá spoke in support of approving the Civil Claim Appeal for Dr. McFarland and bringing attention to the flooding problems in the area. He also stated that he believes the water is coming from the street overflow because the smaller pipe size that was installed for that neighborhood could not handle any decent amount of rainfall.

Norton N. Bonaparte, Jr., stated that the request is for one property owner specifically, not the entire area. He noted that in 2007 the Shunga Creek overflowed due to an exorbitant amount of rainfall and many property owners had flooding issues.

Kelly Haller stated that the new system should handle a normal amount of rainfall; however, it still could not handle a 50 or 100 year flood event.

Dr. McFarland stated that the pictures he presented to the Council were flood waters taken before the new system was installed. He noted that there has not been heavy rainfall to test the new system.

Councilmember Alcalá asked Dr. McFarland if he feels that the City is approving the civil claim appeal for him personally.

Dr. McFarland stated that the issue is an engineering problem that should have been corrected many years ago.

The motion to approve the denial of the civil claim appeal failed. Councilmembers Hiller, Alcalá, Ortiz, Woelfel and Wolgast voted “no.” (4-5-0)

Councilmember Woelfel questioned the intent of the motion, and if the motion approved the civil claim appeal.

Jackie Williams, City Attorney suggested to the Council to make a motion to clearly state the approval or denial of the civil claim appeal.

Councilmember Woelfel moved to approve the Civil Claim Appeal for Dr. and Mrs. Joe McFarland. The motion was seconded by Councilmember Wolgast.

Councilmember Alcalá stated that he believes the original motion approved the civil claim appeal; therefore, he would abstain from voting on the issue again.

Councilmember Harmon stated that he concurs with Councilmember Alcalá. He suggested that a Councilmember who voted on the prevailing side make a motion to reconsider and clarify the intent of the motion to disapprove or approve the civil claim appeal.

The Chair ruled that the previous motion taken by the Council approved the civil claim appeal.

RESOLUTION NO. 8242 introduced by Councilmembers Bob Archer, Deborah Swank and Richard Harmon, sitting as the Policy and Finance Committee, establishing certain guidelines relating to petitions for public improvement projects was presented.

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

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

Joseph Ledbetter expressed concern with the language of Lines 11 through 13 of the resolution. He noted that many developers have stated that the City of Topeka is not a business friendly organization; however, he believes the resolution displays good public policy.

Councilmember Woelfel asked if the section outlined in Lines 29 through 33 of the resolution was added as a new provision to allow the Policy and Finance Committee to examine large development projects; if the developer has to have the funds secured ahead of time; how would a developer disclose their financial interests; why are only area developers being reviewed instead of all developers; and why are only special assessments being researched and not property taxes as well.

Councilmember Archer reported that if the Council is petitioned to grant special assessments to a developer, the provision would allow the Council to delegate the project to the Policy and Finance Committee to review the matter and make a recommendation to the Council. He noted that the process would create more control over special assessments and have formal and systematic guidelines. He also stated that the developer would disclose financial interests through an affidavit; developers within the City's three-mile extraterritorial jurisdiction could be adequately researched; and the Committee is researching a property tax revision.

Councilmember Swank stated that the special assessment process was referred to the Policy and Finance Committee for review by City staff. She noted that after reviewing the process the Committee determined the policy is effective; however, it was discovered that large development projects could be researched further to ensure the City's financial stability connected to the project.

Councilmember Hiller commended the Policy and Finance Committee for their work. She questioned Lines 27 through 28 of the resolution and asked if requiring the developer to disclose any financial interest in any property with delinquent special assessments located in the city corporate limits or the three-mile extraterritorial jurisdiction was a new qualification; if financial interests are not disclosed could it be considered fraud; and why are only the projects contiguous to the city being considered.

Councilmember Archer stated that the intent was to ensure that there are no delinquent specials within the city and contiguous areas; he believes it would take more manpower and funds to research developers outside the areas mentioned; and there is reasonable assurance to ask the developer for disclosure to protect the City's investments.

David Thurbon, Planning Department Director stated that the three-mile extraterritorial jurisdiction makes the connection for a regulation on developers. He noted that this was presented to Council because of the effect delinquent special assessments have on the City's bonded indebtedness; and only developments that are contiguous to city limits can be annexed.

Councilmember Woelfel stated that he would prefer to have a disclosure statement for any area that the developer has projects. He asked if developer and company are synonymous with one another.

David Thurbon stated that developer and company are considered one and the same.

Councilmember Woelfel suggested amending the resolution as follows:

- On Line 26 insert the statement, "The City shall require the developer to disclose whether the developer has any financial interest in any property with delinquent special assessments."
- On Line 28 delete the statement, "located in the corporate limits of the City or the City's three-mile extraterritorial jurisdiction."
- On Line 30; delete the statement "which are contiguous to the City or other development."

Mayor Bunten cautioned the Council on amending the resolution without seeking legal counsel from the City Attorney.

Councilmember Archer stated that Braxton Copley, Deputy City Attorney reviewed and finalized the resolution before it was brought before the Council.

Councilmember Preisner commended the Policy and Finance Committee for their work on the resolution. He noted that the resolution is only suggested guidelines for the special assessment process, not a law binding document.

Councilmember Swank called the question.

The motion to approve the resolution carried. Councilmembers Hiller and Woelfel voted “no.” (7-2-0)

RESOLUTION NO. 8243 introduced by Councilmembers John Alcala, Sylvia Ortiz, Deborah Swank, Karen Hiller, Larry Wolgast, Bob Archer, Jack Woelfel, Richard Harmon and Jeff Preisner in support of participation in Google’s gigabit fiber optic trial community was presented.

Councilmember Alcala gave the staff report and introduced Jared Starkey and Brendan Jensen, promoters of bringing Google’s fiber optic trial community to Topeka.

Mayor Bunten commended the young people of Topeka for bringing the community together and getting Topeka noticed all over the world as Google, Kansas. He stated that it is a remarkable idea and they have done a tremendous job in promoting Topeka as a city that Google should utilize as a fiber optic trial community.

Councilmember Hiller commended the Think Big Topeka Organization and stated that she is proud to be a supporter of Google coming to Topeka. She encouraged citizens to send in their nominations.

Brendan Jensen asked citizens to participate in the Spell Out Topeka and Google Event scheduled on March 20, 2010 from 12:00 p.m. to 2:00 p.m. at Hummer Sports Park located at 2751 SW East Circle Drive South. He stated that they need 500 volunteers for the event and to wear white shirts. He encouraged volunteers to document the event with cameras and camcorders.

Councilmember Harmon expressed his appreciation and thanked Amber Gentry, Rio Cervantes-Reed and Jenny Oxandale for their efforts in bringing the Google experiment to Topeka.

Councilmember Woelfel asked if the City would be revising their webpage to feature Google.

Norton N. Bonaparte, Jr., City Manager stated that the website is being revised.

Councilmember Swank stated that the City of Topeka was featured on the All Things Considered Program on National Public Radio for proclaiming Topeka as Google, Kansas.

Joseph Ledbetter stated that he believes this is a great opportunity for the city's job market.

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

Councilmember Ortiz made a friendly amendment to delete the word "gigabyte" and insert the word "gigabit" wherever the word appears in the resolution.

Councilmember Alcala agreed to the friendly amendment. The second concurred.

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

APPROVAL of the demolition of the structure located at 1021 SE Lime Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented. (CLGR10/04)

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

Joseph Ledbetter questioned if the property was located in the new flood plain. He also asked if the new flood plain map is available for review on the City's website.

Mayor Bunten stated that the new flood plain map is available for review on the City's website.

Councilmember Ortiz asked if the City is demolishing the house or the bungalow because there are two properties on one lot; and if funding is available for demolition of the properties.

Norton N. Bonaparte, Jr., stated that the demolition is for both the house and bungalow and there is funding available for the demolition of the property.

Councilmember Preisner moved to approve the demolition request. The motion was seconded by Councilmember Wolgast.

Councilmember Harmon made a friendly amendment to approve the demolition request based on the determination that there is no feasible or prudent alternative to the demolition.

Councilmember Preisner agreed to the friendly amendment. The second concurred.

Councilmember Hiller asked why the Landmarks Commission did not provide a recommendation.

David Thurbon, Planning Department Director stated that the role of the Landmarks Commission is to determine whether the property is a contributing factor to the historical environs of the area. He noted that state law outlines that the Council must determine if there are no prudent and feasible alternatives to demolition. He also stated that the Planning Department has made a recommendation to the Council that there are no feasible or prudent alternatives to the proposed demolition and plans to minimize harm to the surrounding historical environs has been made.

The motion to approve the demolition request based on the determination that there is no feasible or prudent alternative to the demolition carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

ORDINANCE NO. 19391 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of February 15, 2010, through February 21, 2010, and enumerating said expenditures therein was presented for first and final reading.

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

Joseph Ledbetter questioned the following expenditures:

- Page 9, Justice Systems
- Page 13, television equipment
- Page 15, St. Gregory, L.L.C.
- Page 20, helicopter insurance renewal

Jim Langford, Budget and Finance Director stated that Justice Systems is a contractual service for Full Case Software for the City Attorney’s office; the television equipment was for Traffic Operations traffic lights; St. Gregory, L.L.C., is a shelter plus care federal program to assist the homeless with housing; and the helicopter insurance renewal was paid because it is still in the City’s possession although the helicopter is on auction at this time.

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: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

Councilmember Ortiz moved to add an ordinance relating to Bridge Improvement Project No. 12045 to the March 16, 2010 Council agenda under First Readings. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning accessory uses and requirements for zoning regulations, creating City of Topeka Code Section 48-29.025 and amending Sections 48-29.00, 48-29.01 and 48-29.02 and specifically repealing said original sections was presented for first reading. (ACZR09/6)

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, generally located at the northeast corner of NW 25th Street and NW Alternate US 75 Highway, within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A10/1)

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 5720 SW 21st Street from “C-4” Commercial District TO “PUD” Planned Unit Development District (C-4 use group, plus an outdoor dog exercise area) was presented for first reading. (PUD10/2)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating a recovery zone pursuant to the American Recovery and Reinvestment Tax Act of 2009 for the purpose of issuing recovery zone economic development bonds and designating the bond issuer was presented for first reading.

A RESOLUTION introduced by Deputy Mayor Richard Harmon amending Topeka City Council Rules and Procedures 7.1(b) concerning City Council standing committees was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced that the City is hosting a Flood Plain Open House on March 10, 2010 at the Cyrus K. Holliday building from 3:30 p.m. to 7:30 p.m. to answer questions from property owners. He also announced that this week is Severe Weather Awareness Week; a state-wide tornado drill is scheduled on March 11, 2010 at 1:30 p.m.; a Surviving Progress public forum will be held at the Crestview Community Center on March 11, 2010 from 4:00 p.m. to 7:00 p.m.; and the Topeka Police Department is accepting applications for the Citizen's Academy until March 19, 2010. He encouraged citizens to watch the City of Topeka Presents Program featuring Council District No. 6, and the Mayor's Minute segment on pothole repair. He stressed the importance of residents completing the 2010 Census packets and the role the information plays in the receiving of federal grants.

Councilmember Hiller noted that the City has developed a City Operations Services Team (COST) in an effort to make the City as cost effective as possible. She asked if citizens could email their cost-saving ideas to the City Manager.

Norton N. Bonaparte, Jr., encouraged residents to email, telephone or submit written correspondence outlining cost saving ideas to the City Manager's office.

Councilmember Ortiz commended Mayor Bunten for his efforts in organizing inmate clean up crews for the city.

Mayor Bunten stated that the program has been very successful and he would like to increase the amount of inmate crews working to clean up the city.

Joseph Ledbetter appeared to speak under public comment.

Councilmember Alcalá moved to adjourn the City Council meeting. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:32 p.m.

Brenda Younger
City Clerk