

## **Governing Body Minutes – February 15, 2022**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, February 15, 2022. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M. with the following Councilmembers present: Councilmembers Hiller, Emerson, Kell, Dobler and Duncan -5; and Councilmembers Valdivia-Alcala, Ortiz, Lesser participated remotely

-3. Mayor Padilla presided - 1. Absent: Councilmember Naeger -1.

Public comment for the meeting was available via Zoom or in-person. Individuals were required to contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 5:00 p.m. on February 15, 2022, after which the City Clerk's Office provided the Zoom link information and protocols prior to the meeting start time. Written public comment was also considered to the extent it was personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before February 15, 2022, for attachment to the meeting minutes.

AFTER THE MEETING was called to order, Shampayne Lloyd, Topeka Police Department Chaplain, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by meeting participants.

BOARD APPOINTMENT recommending the reappointment of Carol Roberts to the Topeka Human Relations Commission to fill an unexpired term ending February 28, 2024, was presented. (*Council District No. 7*)

Councilmember Dobler moved to approve the board appointment. The motion seconded by Councilmember Emerson carried unanimously on roll call vote. Mayor does not vote.

(8-0-0)

PRESENTATION on the Planning and Development 2021 Year End Report was presented

by Bill Fiander, Planning and Development Director.

CITY OF TOPEKA FINANCIAL UPDATE was presented by Stephen Wade, Director of Administrative and Financial Services.

INTRODUCTION of the City of Topeka Grants Program was presented by Kalea Pauole, Senior Grants Program Administrator.

Stephen Wade announced Ms. Pauole has lead team efforts in completing 20 grant applications worth \$97 million dollars for Strengthening People and Revitalizing Kansas (SPARK) grant funding.

CONSENT AGENDA was presented as follows:

RESOLUTION NO. 9291 introduced by Councilmember Karen Hiller, approving a special event known as the 2022 St. Patrick's Parade Party, was presented. *(Council District No. 1)*

RESOLUTION NO. 9292 introduced by Councilmember Karen Hiller granting The Celtic Fox an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions, was presented. *(Council District No. 1)*

APPROVAL of a workers' compensation claim settlement in the amount of \$50,000 to resolve the claim on a full and final basis for a work-related injury sustained by an employee while engaged in normal work duties, was presented.

APPROVAL of a Utilities contract for Professional Engineering Services between the City of Topeka and Bartlett and West, Inc. to aid the City in addressing Renewable Natural Gas Facility operations and maintenance, was presented. *(Contract No. 50133)*

MINUTES of the regular meeting of February 8, 2022, was presented.

Councilmember Hiller moved to approve the consent agenda. The motion seconded by Councilmember Kell carried on roll call vote. Councilmember Dobler abstained. (8-0-1)

ORDINANCE NO. 20343 introduced by Interim City Manager William Cochran, concerning the adoption of the 2021 International Energy Conservation Code for Commercial Buildings by adding Chapter 14.85 to the Topeka Municipal Code, was presented.

Bill Cochran, Interim City Manager stated the ordinance was discussed at the February 8, 2022 Governing Body meeting.

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Valdivia-Alcala, Ortiz, Emerson, Kell, Dobler, Duncan, Lesser and Mayor Padilla -9.

ORDINANCE NO. 20344 introduced by Interim City Manager William Cochran, concerning the adoption of the 2021 International Existing Building Code and repeal of the Uniform Code for Building Conservation by amending Chapter 14.25 of the Topeka Municipal Code, was presented.

Bill Cochran, Interim City Manager stated the ordinance was discussed at the February 8, 2022 Governing Body meeting.

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Valdivia-Alcala, Ortiz, Emerson, Kell, Dobler, Duncan, Lesser and Mayor Padilla -9.

ACCEPTANCE of Land Dedications in the Final Plat for Meadowlark Square Subdivision No. 7 located approximately 1/4 mile north of NW 46th Street on the west side of Button Road, all being within unincorporated Shawnee County, Kansas, and contained in the City's three mile extraterritorial jurisdiction, was presented. (P21/26)

Councilmember Emerson moved to approve the final plat. The motion seconded by Councilmember Kell carried on roll call vote. Councilmember Dobler abstained. (8-0-1)

ORDINANCE introduced by Interim City Manager William Cochran, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code, by providing for amendment of the Planned Unit Development Master Plan for the College Hill Redevelopment Subdivision to allow for continued operation of a dog park as an interim use on vacant property located at 1423 SW Lane Street, was presented.

Councilmember Hiller moved to adopt the ordinance. The motion was seconded by Councilmember Duncan.

Mayor Padilla stated prior to proceeding with the vote, each member of the Governing Body who has engaged in ex parte communication with any individual either in favor of, or against, the matter being considered, must state that the communication occurred and indicate that even in light of having engaged in the communication they were able to fairly, objectively, and impartially consider the measure based only upon the evidence provided on the record. The record includes the Planning Commission minutes, the Staff report and its attachments, the public comments made during the Planning Commission hearing and similar relevant information related to the matter.

Ex parte communication was declared by all members of the Governing Body.

Councilmember Lesser stated he would oppose the motion to approve, as the proposal does not fit the City Council’s agenda to support infill housing development as well as he does not believe a dog park is a beneficial use for the property.

Councilmember Dobler asked the City Attorney to clarify what action the Governing Body would be voting on.

Amanda Stanley, City Attorney, stated the current motion on the floor is to approve the Planning Commission's recommendation by adopting the ordinance, which would allow the dog park to remain for three more years.

Councilmember Hiller requested more information on the College Hill Redevelopment PUD Master Plan regarding housing requirements on the tract of land.

Bill Fiander, Planning and Development Director, stated the land was approved for a dog park three years ago, along with approval of an additional use to the PUD to allow the construction of up to eight townhouses. He noted if the request is approved the owner would have to come back to the Governing Body to request approval to extend at the end of three years.

Councilmember Hiller asked if the request is denied can the City force the property owner to develop the property.

Bill Fiander reported if denied, the property owner cannot be forced to develop the property with regards to what is allowed per the zoning regulations.

Councilmember Emerson referenced the eight Golden Factors (*Golden vs. City of Overland Park Supreme Court Case*) to be considered by the Planning Commission and Governing Body when determining approval or denial of zoning changes and specifically inquired on "the suitability of the property for the uses to which it has been restricted under its existing zoning".

Amanda Stanley reported the Planning Commission determined the current zoning of the property is a suitable use to be restricted to only that use.

Bill Fiander stated usually during rezoning of property the City will remove a restriction and place a new restriction on the property; however, in this instance, it would be adding a restriction.

Councilmember Emerson asked if the dog park was an allowable use under the original

PUD. He stated the current PUD expired in September 2021, which then reverts to the original use which does not allow the dog park. He spoke in opposition of extending the current use of the property as a dog park.

Bill Fiander stated a dog park would not be an allowable use under the original PUD.

Councilmember Kell asked if approval would make the City legally liable for dog attacks that occur on the property.

Amanda Stanley reported the City would not be liable.

Councilmember Duncan reported none of the three previous owners of the property have developed the property as outlined in the PUD Master Plan. He stated he will vote to approve the request for a dog park because there is not a mechanism in place for the City to force the current owner to comply with the PUD Master Plan for construction of townhouses.

Councilmember Lesser stated the first step in making the property viable for development is to deny the use of a dog park.

Councilmember Hiller stated she concurs with Councilmember Duncan and believes a dog park is the best use for the property at this time.

Mayor Padilla spoke in favor of the Governing Body working towards improving the property; therefore, he would not support allowing the property to be used as a dog park.

Councilmember Duncan stated allowing the dog park to remain does not prevent the owner from developing the property. He encouraged the Governing Body to begin having conversations about developing the property soon.

The motion to adopt the ordinance failed on roll call vote. Councilmembers Valdivia-Alcala, Ortiz, Emerson, Kell, Dobler, Lesser and Mayor Padilla voted “no.” (2-7-0)

Councilmember Ortiz moved to reject the recommendations of the Planning Commission.

The motion seconded by Councilmember Emerson carried on roll call vote. Councilmembers Hiller and Duncan voted “no.” (2-7-0)

PUBLIC COMMENT was submitted via email by Henry McClure (Attachment A) and the following individuals provided public comment in-person:

Patrick DeLapp expressed concern with the increase of residential fires in the city that are being ruled as arson. He encouraged the City to offer larger rewards, up to \$10,000 for reporting the individuals that are responsible for the fires.

Joseph Ledbetter referenced upcoming budget meetings and suggested having the departments separated by categories so it is easier for the public to understand. He requested more scrutiny on the Utilities portion of the budget as well as increased efforts to publicize the meetings. He also requested discussion and approval of capital improvement plans and budgets take place in two-year cycles instead of the current ten-year cycle.

Dr. Chris Deister referred to the February 12, 2022, Special Meeting Work Session and commended the Governing Body for their in-depth discussion regarding the allocation of ARPA funds. He referenced the substandard concrete used for street improvements and asked if the City has recouped the cost of repairs or if the subcontractor has been required to fix the failing concrete.

Councilmember Hiller referenced upcoming CIP discussions, and requested a report and/or short briefing from Staff on the status or outcome of projects where substandard grade concrete was used for City projects. She asked about the outcome of those projects and if the City recouped any of the costs or if the contractor was required to fix and/or replace the concrete.

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

Bill Cochran, Interim City Manager, cautioned against the approaching winter storm. He reported the abatement process for the White Lakes Mall continues.

Councilmember Valdivia-Alcala suggested everyone prepare for the impending inclement weather and to make sure their kids are properly dressed for the weather, their pets are properly cared for and to check on the elderly. She referenced comments made by Mr. Patrick DeLapp and expressed concern with the residential fires that keep occurring.

Councilmember Ortiz reminded everyone that the City offers free smoke detectors and reported the City has installed 97 smoke detectors in residential homes since January 1, 2022.

Councilmember Emerson responded to Dr. Chris Deister's comments regarding the City streets and the concrete mixture used for improvements. He stated the City reviews the condition of the streets and if repairs are needed the contractor who performed the work is contacted.

Councilmember Kell promoted spaying and neutering pets in order to reduce overpopulation. He encouraged everyone to adopt, foster or consider hospice care pets.

Councilmember Duncan announced he will begin conducting Open Office Hours again from 5:30 p.m. to 7:00 p.m. for residents in District 8 to be held on the third Thursday of the month at Fairlawn Plaza Mall. He encouraged everyone to donate blood. He reported \$10 million of ARPA funding was approved by the Governing Body to be used for Social Services (community needs) and discussions concerning the application process will begin on March 1, 2022, at the Policy and Finance Committee meeting at 1:30 p.m.

Mayor Padilla inquired about the two remaining 2023 budget process workshops.

Stephen Wade, Director of Administrative and Financial Services, stated the upcoming budget workshops will be held on February 21, 2022, and March 10, 2022.

Councilmember Emerson moved to recess into executive session for a period of 30



minutes to discuss personnel matters related to a multiple city employees, pursuant to KSA 75-4319(b)(1). To aid in the discussion, the following individuals were present: Members of the Governing Body and Interim City Manager William Cochran. No action was anticipated when the meeting resumed open session in the City Council Chambers. The motion was seconded by Councilmember Kell.

Mayor Padilla asked all those in favor of recessing into executive session to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” After the voice vote occurred, Mayor Padilla announced the motion carried unanimously on voice vote.  
(9-0-0)

Following a 30-minute time period, the meeting reconvened into open session and Mayor Padilla announced no action was taken during the executive session.

Councilmember Kell moved to recess into executive session for a period of 15 minutes to continue the discussion on personnel matters related to a multiple city employees, pursuant to KSA 75-4319(b)(1). To aid in the discussion, the following individuals were present: Members of the Governing Body and Interim City Manager William Cochran. No action was anticipated when the meeting resumed open session in the City Council Chambers. The motion was seconded by Councilmember Dobler.

Mayor Padilla asked all those in favor of recessing into executive session to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” After the voice vote occurred, Mayor Padilla announced the motion carried unanimously on voice vote.  
(9-0-0)

Following a 15-minute time period, the meeting reconvened into open session and Mayor Padilla announced no action was taken during the executive session.

NO FURTHER BUSINESS appearing the meeting adjourned at 8:15 p.m.

(SEAL)

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Brenda Younger  
City Clerk

# Attachment A

## College Hill Facts and History

Henry McClure owned two commercial buildings and one duplex in the area. These three properties were sold to the Washburn Parkway Renovations LLC at appraised value and McClure owned 20% of the LLC that owned and operated the TIF. (Note: All the other landowners averaged 4 times appraised value when purchased by the developer).

All the partners the partner signed personally on a loan for \$25 million and Commerce Bank. We were able to borrow 100% based on the financial strength of the other partners.

The City of Topeka, Jerry Morgan and Washburn Lane Parkway Revocations, LLC entered into a private public partnership and the development agreement was created. Subsequently about \$6 million in TIF bonds were sold and the city committed about \$4,500,000 in public infrastructure dollars to the college hill project and renovation. The total project was around \$36 million and if you want to ever ask anyone if it was a successful project ask Jerry Farley at Washburn university.

There are two very important things to consider at this juncture. Number one it's the TIF process. The developer was required to gain support of the City, the County, the 501 School Board, and the airport authority all to contribute their tax increment to the project to pay the bonds. The public involvement was quite extensive to garner support for the project. #2. At no time did we tell the public that we'd be using public dollars to create a park.

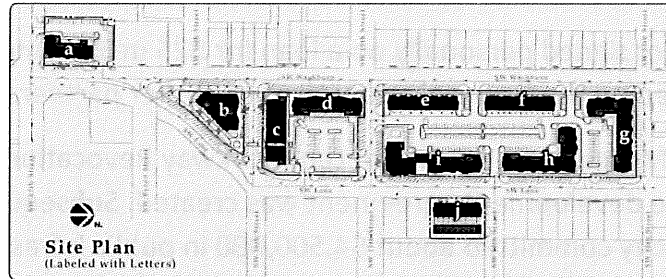
More importantly you must understand that that ground is shovel ready and there are water meters, new sewer lines, gas lines already to create eight more townhomes. The TIF bonds and the public infrastructure dollars were used to tee this up for future development. As stewards of the public funds, it's your duty to get a return on that investment. The shortfall in the TIF bonds mainly we're created by the drop in the economy, property values and lack of sale tax in the district. You need to understand that the developer lost \$10 million from our initial investment to the market value of the real estate the day that we sold it to the current owner.

The current owner has been made aware of the existing development agreement and the developer's original commitment to build townhomes on that site. The original developer was in default of the development agreement at the time it was sold for not building on that site. Were unable to sell the other 25 townhomes in the beginning so we had to turn those all into rentals. At that point we really couldn't afford to build eight more townhomes due to the shift in the economy and the lack of desire for people to wanting to live in that area in a townhome.

The City had the right in the development agreement to approve the new purchaser you literally could have looked at the new owner and said, "yes we'll approve your purchase of this property, but you need to bring all your other properties up to code". Don't forget the original 3 year expired in September of 2021 and the only reason we're here today is due to the fact the existing owner had code violations owed the city of Topeka or the county of Shawnee money.

COLLEGE HILL **T** TOWNHOUSES  
 COLLEGE HILL **L** FLATS/LOFTS  
 COLLEGE HILL **R** RETAIL

COLLEGE HILL **R** RETAIL



College Hill is a mixed-use development featuring the convenience of urban living in a historic neighborhood in the heart of Topeka, Kansas. The project comprises 216 residential units; 23,927 square feet of retail space; and a 6,500 square foot clubhouse on nine acres. College Hill is adjacent to Washburn University, and near state government, Topeka's medical district and the City's downtown district.

This residential portion of the project includes 33 owner-occupied townhouses and 183 one-, two-, three- or four-bedroom modern, flat and loft multi-family units that range from 735 to 1,350 square feet. Standard amenities include nine-foot ceilings, balconies and in-unit security systems.

This development is set apart by the amenities offered right outside your door. Retail space at College Hill is given a first-floor location in three buildings, creating a district that will feature dining, shopping and other services. The centrally located clubhouse will feature a fitness facility, patio, outdoor swimming pool, media room with theater, game room and formal meeting space.

Treanor Architects, a nationally recognized design firm, created a *new urbanism* layout over a four-block area where residential and retail blend together. Each of the developments 10 buildings is unique in its architecture and complements the surrounding neighborhood. Parking is easily accessible from the front and backs of all buildings.



A Great Neighborhood...  
 ...Re-Energized

Washburn Lane Parkway Renovations LLC  
 785.235.3353 • fax785.234.5729  
 mre@cox.net

NOTES:

TIF development is best used on retail projects as the retail sales tax can help the retire the bonds early on extremally successful projects.

The current owner of College Hill has lost the Burger Stand, Flying Monkey Coffee and has never replaced the Monsoon Grill. This will continue to make the short fall even greater.

As a real estate broker, the new owner is too rigid. When approached to purchase land he said, "I will develop on that land before I'd ever sell it". That is no different than white lakes.....give notice for DEMO and all of a sudden KDL has the money.

Since development agreement was never recorded the best thing the partners of the private public partnership can hang their hat on is the recorded planned unit development or PUD.

Please Vote No

## Kelly L. Bogner

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**From:** Henry McClure <mcre13@gmail.com>  
**Sent:** Tuesday, February 15, 2022 2:57 PM  
**To:** Governing Body; City Clerk; Bill Cochran  
**Subject:** PUD amendment



### **This message needs your attention**

- You've never replied to this person.
- This is a personal email address.

Powered by Mimecast

What I want does not matter.

As the Public Partner of the TIF district, your fiduciary responsibility to the bonds is paramount.

That PUD had more public involvement than any plan brought forth in our City. It actually went through the City, County, 501, and MTAA twice.

The Bonds were issued to implement that PUD. Public funds were used to acquire the land, tear down a house, and make 8 lots shovel ready with new water meters and new sewers lines.

Changing the uses should be prohibited until the bonds are retired.

A "NO" vote honors the Council people that preceded you that voted 9-0 for the PUD in question.

A "NO" vote may make the owner develop today or even sell.

If you feel alternatives use are "higher and better" that is on you.

Approving a use that generates NO real estate taxes or sales tax is not financially responsible for the shortfall.

In this case, the Planning Department should have gone over the bond issues with the planning commission. If they did add that to the list of malfeasance to the bonds.

This is NOT a standard deal. The PUD is the only recorded document and the only legitimate remnant of the TIF, and the Shortfall... there is that too.

In this case, with all the conditions of precedent; anyone promoting any use that does not generate any form of tax is derelict in their duty to the City of Topeka.

--  
**Henry McClure**  
**Time kills deals**  
**785-383-9994**