

MINUTES OF A MEETING
OF THE GOVERNING BODY
OF THE
CITY OF HAYS, KANSAS
HELD ON
MARCH 24, 2005

1. CALL TO ORDER BY CHAIRMAN: The Governing Body of the City of Hays, Kansas met in regular session on Thursday, March 24, 2005 at 7:30 p.m.

Roll Call: Present: Sunell Koerner
Kent Steward
Wayne Billinger
Henry Schwaller IV
Troy Hickman

Chairperson Koerner declared that a quorum was present and called the meeting to order.

2. MINUTES: There were no corrections to the minutes of the regular session held on March 10, 2005; the minutes stand approved as written.

3. FINANCIAL STATEMENT: Deputy City Clerk Doris Wing reported that sales tax collections deposited in February 2005 totaled \$215,089, which is a 5.6% decrease over sales tax collections for February 2004. However, year-to-date sales tax collections are 3% higher than for the same time frame in 2004.

Troy Hickman moved, Wayne Billinger seconded, that the Financial Statement for the month of February 2005 be approved.

Vote: Ayes: Sunell Koerner
Kent Steward
Wayne Billinger
Henry Schwaller IV
Troy Hickman

4. CITIZEN COMMENTS: There were no comments.

5. CONSENT AGENDA: Mayoral Appointments: Wayne Billinger moved, Henry Schwaller IV seconded, that the following mayoral appointments be approved:

Airport Advisory Committee

KayLynn Philip – 3-year term to expire April 30, 2008

Errol Wuertz, Sr. – 3-year term to expire April 30, 2008

Commissioner Steward stated that he did not think it was appropriate for the Mayor to make these appointments. He felt it should be the next Mayor, who will take office on April 14, 2005, to make these appointments.

Chairperson Koerner stated that she was responsible for making the appointments due to the 30-day waiting period.

Vote: Ayes: Sunell Koerner

Wayne Billinger

Henry Schwaller IV

No: Kent Steward

Troy Hickman

Henry Schwaller IV moved, Sunell Koerner seconded, that the following mayoral appointments be approved:

Hays Public Library Board

George Michael Ferguson – 4-year term to expire April 30, 2009

Dottie Staab – 4-year term to expire April 30, 2009

Commissioner Steward objected to these appointments. He stated Mayor Koerner made two appointments to the Library Board when she became Mayor. He felt the appointments should be made by the next Mayor.

Chairperson Koerner stated she did not make those appointments; Commissioner Hickman made them. They were approved when she was Mayor.

Commissioner Schwaller stated the Mayor may have filled a vacant position. It is his recollection that because he and Commissioner Hickman each served an 18-month term, there may have been some overlap. City staff notifies the Mayor that he/she needs to make appointments to various committees. The Mayor searches through applicants who have indicated an interest to serve. Due to the 30-day waiting period, it is necessary for the sitting Mayor to make these appointments so that there will not be a vacancy. If the appointments were to be made by the incoming Mayor, formal approval of the appointments could not be made until the 2nd Commission meeting in May. Commissioner Schwaller stated the Commissioners have had 30 days to make comments on these appointments.

Commissioner Steward expressed his concern that the Library Board does not represent the diversity of our community. It is a group of people that are all of a like mind; we need to get some people on the board that represents other opinions.

Commissioner Billinger requested City staff prepare a policy that would address the overlapping of appointments between mayoral terms and also address the Commission's representation on the Library Board.

Vote: Ayes: Sunell Koerner

Wayne Billinger

Henry Schwaller IV

No: Kent Steward

Troy Hickman

Troy Hickman moved to table the appointment of Dr. John Heinrichs to a 3-year term to the Public Wholesale Water Supply District #15 (PWWSD#15) Board. Motion failed due to lack of a second.

Henry Schwaller IV moved, Wayne Billinger seconded, that the appointment of Dr. John Heinrichs to a 3-year term be rejected.

Commissioner Schwaller stated that PWWSD#15 has not met in some time. He is familiar with Dr. Heinrichs' research; he is quite knowledgeable in water and water science. The current board has not had a chance to meet and

he is more comfortable going forward with the current Board. He feels the City would be best served by the Board presently in place.

Commissioner Billinger expressed concern about replacing Alan States.

Vote: Ayes: Kent Steward

Wayne Billinger

Henry Schwaller IV

Troy Hickman

No: Sunell Koerner

NEW BUSINESS

6. NUISANCE ABATEMENT PROCEEDINGS: Procedures were started November 9, 2004 regarding the dangerous structure on the property at 616 East 12th St. Staff has gone through all of the proper procedures to abate the dangerous structure. The property owner did contact the Planning, Inspection and Enforcement Division of the Public Works Department and implied that the work would be completed but no action has been taken. The property owner did not file for an appeal within 30 days. The owner did not apply for a building permit to repair or demolish the structure within 60 days. The 90 day time limit for the work lapsed February 7, 2005.

Public Works Director Brenda Herrman stated the owner did take out a demolition permit on March 16, 2005. She recommended the Commission pass Resolution 2005-007 to abate in the event that the work is not completed by May 16, 2005.

Troy Hickman moved, Wayne Billinger seconded, that Resolution No. 2005-007, being a resolution authorizing the City of Hays or its designated agent to abate a dangerous structure located on the property at 616 East 12th Street, Hays, Kansas, be approved.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

Henry Schwaller IV

Troy Hickman

7. STOP SIGNS AT 17TH AND ELM: Prior to February 2005, the intersection of 17th and Elm had a 4-way stop. Currently, the stop signs on 17th at Elm have bags placed over them in an effort to allow 17th Street to serve as a collector street. Some residents living near that intersection have voiced concern about the stop signs being removed. Recent traffic counts indicate that there are 1,800 vehicles per day on 17th at Elm and there are 700 vehicles per day on Elm at 17th.

Henry Schwaller IV moved, Troy Hickman seconded, that the 4-way stop at 17th and Elm Streets be reinstalled.

Commissioner Schwaller stated the 4-way stop slows down traffic on 17th Street.

Commissioner Steward stated he doesn't think the stop signs should be removed. The Police Chief timed traffic on 17th and found that it wasn't excessive in speed. He is concerned about setting a precedent whenever someone comes forward with such a request. He doesn't think there is a problem.

Commissioner Schwaller stated that speed percentiles should be looked at along with accident reports for the last four years.

Vote: Ayes: Sunell Koerner

Wayne Billinger

Henry Schwaller IV

Troy Hickman

No: Kent Steward

8. OIL AND GAS LEASE – R-9 RANCH: The Cities of Hays and Russell share a 5% mineral interest on the R-9 Ranch. Because the mineral interests are under 10 net mineral acres, this lease proposes a “minimum” bonus payment of \$100 to the City of Hays.

City Attorney John Bird explained that the when the Cities of Hays and Russell purchased the R-9 Ranch from BET Farms, 50% of the mineral interests

were already gone; they had been retained by prior owners. The deal negotiated was that BET Farms would retain 45% of the mineral interests and the City would get 5%. This oil and gas lease involves the Southwest Quarter of Section 4 only. McCoy Petroleum has signed up the prior owner's mineral interest, BET Farms 45% mineral interest, and would like the Cities of Hays and Russell to join in the lease. It is not necessary for the Cities to join in; however, McCoy Petroleum would still get to drill. If the City of Hays joins in, the City would get paid \$680. If a well is produced, the City would have the landowner's share of the royalty. A rider is attached to the lease that states McCoy Petroleum will not interfere with water production efforts on the real estate.

The City Attorney recommended approval of the lease.

Troy Hickman moved, Kent Steward seconded, that an Oil and Gas Lease for the R-9 Ranch with McCoy Petroleum be approved.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

Troy Hickman

No: Henry Schwaller IV

9. REPORT OF THE CITY MANAGER: The Assistant City Manager had no additional items to report.

10. COMMISSION INQUIRIES AND COMMENTS: Commissioner Hickman reported to the Commission that he has asked City staff to review housing conditions. He would like City staff to routinely inspect rental property.

Commissioner Hickman commented on recent newspaper articles and the editorial concerning the release of water from Cedar Bluff Reservoir and the agreement between the Cities of Hays and Russell and the State of Kansas. He feels there are many inaccuracies in the articles and that is creating an adversarial environment.

City Attorney John Bird stated he has written a letter to the editor to clarify for the public what is actually happening. It is important for the public to know that the City of Hays did not and will not sue lake and recreational interests for

damages. The lawsuit was filed by Trego County, Ness County, and some cities, along with some special interest groups. It was filed against the State of Kansas, but it was to nullify a contract between the Cities of Hays and Russell and the State. Without notice to anyone, they obtained a restraining order from the District Court. The restraining order states that the State cannot do anything it agreed to do in the agreement, especially as it relates to water in Cedar Bluff.

The Commission authorized the City Attorney, in open session on February 17, 2005, to intervene in the lawsuit. Mr. Bird filed a petition to intervene in the lawsuit because the City is a stakeholder in the subject matter of the lawsuit. Governmental entities have the power of condemnation. Under the constitution, they are required to pay anybody whose property they take without their permission. The counties and cities, when they obtained the restraining order, took the City of Hays' property right in the contract. It took away the right to enjoy full ownership of the water rights on the Smoky Hill River. Cedar Bluff Reservoir and all the other water rights are junior to the water rights of the Cities of Hays and Russell. They have stated that it is their intention to get a permanent injunction and have the agreement nullified.

Mr. Bird stated their reasoning in their lawsuit is that there were secret meetings that took place in violation of the Open Meetings Act. That is not true. There was never a meeting subject to the Open Meetings Act that was not open to the public. If the City did not intervene in the lawsuit, it could lose its rights. The Cities of Hays and Russell have given notice to those counties and cities that Hays and Russell have a potential claim. Those counties and cities need to understand that this is not without potential cost. They cannot take property without paying for it. All Hays and Russell have asked for in its pleadings is that this lawsuit be dismissed.

Commissioner Schwaller noted that crack sealing in some areas of town is failing. He requested the Public Works staff to check into the matter.

Commissioner Billinger stated he would like to know what kind of equipment and facility the City has for de-icing airplanes.

Chairperson Koerner requested the Public Works staff check into storage units that are placed on parking lots.

Chairperson Koerner also defended her appointments to the Airport Advisory Board, the Library Board, and the Board of the Public Wholesale Water Supply District #15. The appointments expire on a certain date. The Commission has 30 days to review those appointments. The boards/committees should have those people in place by the time that date is up. If the Commission changes in the middle of a 30 day period and the Commission waits for the next Mayor, there would be a vacancy on the board/committee. It is important that we take a look at the procedures and possibly change them.

Chairperson Koerner stated she doesn't get personal people in the committees to push things through; she looks at the issues. She does not take this responsibility lightly.

Thereupon the Governing Body adjourned.

Submitted by: _____

City Clerk